

Missouri Department of Natural Resources
Comments on Proposed Revisions to Chapter 22 Rules
December 29, 2009

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Preface

MDNR is pleased to provide written comment on the Version 4 draft of the Chapter 22 rules distributed by the PSC Staff on December 17, 2009.

MDNR's comments focus primarily on issues discussed during the Commission's October 19-20, 2009 workshops on revising the Chapter 22 rules and secondarily on issues raised by changes introduced in the current Staff draft. For each issue, MDNR's discussion of the issue is followed by a proposal for specific revisions to the language in the current Staff draft.

In these comments, references to the "current rules" refer to the rules currently in place, references to the "current Staff draft" refer to the version that PSC Staff distributed to stakeholders on December 17 and references to the "previous Staff draft" refer to the version distributed on October 15, 2009. References to the "NRDC comments" refer to the written comments forwarded by the Natural Resources Defense Council (NRDC) on October 19, 2009.

As a preliminary comment, MDNR reaffirms its view that Missouri utilities should treat energy efficiency as a priority resource and should pursue a level of energy savings from energy efficiency comparable to the levels of impact achieved by aggressive demand-side programs in other states. MDNR's view is that the approach described above is implicit in the state's energy policy goal of achieving all cost-effective demand side savings.¹ As a tangible yardstick to measure utility diligence and progress toward this state policy goal, MDNR proposes that as a starting point, the annual incremental energy savings that Missouri electric utilities achieve through demand-side resources should equal at least 1 percent of sales. The level of annual incremental savings should increase to reach 2 percent of sales. In the context of IRP planning, Missouri utilities should consider and analyze demand-side resources capable of achieving that level of savings and should incorporate that level of savings in their preferred resource plan.

Furthermore, Missouri should develop cost recovery and incentive policies such that utilities are encouraged and rewarded rather than penalized for pursuing that level of demand-side savings. This could occur within or outside the framework of IRP planning.

Finally, MDNR agrees with NDRC's comment that the IRP rules should not have any explicit or implicit bias favoring load growth. As NRDC points out, the combined effect of many factors "may mean that the future for electric utilities is not of load growth, but of load decrease." In MDNR's view, utility progress toward state policy goals established in SB 376 and RSMo 393.1040 should within a few years establish annual reductions in load, rather than annual load growth, as the norm for Missouri utilities.

Each comment includes a discussion of issues and a proposed revision of rule language. Specific additions or changes to current Staff draft language are indicated by underlining.

¹ This state energy policy goal is set forth in § 393.1124.4, RSMo. Following common practice, the remainder of these Comments reference the legislation that established this goal ("SB 376") rather than the statute.

Policy Goals and Objectives - 4 CSR 240-22.010(2) and (2)A

MDNR comments

- (1) MDNR concurs with NRDC that the statement of the fundamental goal (first sentence, 4 CSR 240-22.010(1)) should refer to "just and reasonable costs" rather than "just and reasonable rates." In MDNR's view, customers' interest and welfare is directly and fundamentally related to the actual costs they incur in order to meet their energy needs. The appropriate policy objective is that the level and allocation of these costs be just and reasonable.
- (2) The statement of the fundamental objective in the previous Staff draft required compliance with all applicable state and federal energy and environmental policies. The current Staff draft adds a reference to compliance with "legal mandates" but fails to include any reference to energy and environmental policies. Some state policies set forth policy goals that are intended to drive utility actions rather than precisely prescribed requirements. Because consistency with state energy and environmental policies is an important consideration in resource planning by Missouri utilities, the reference should be retained. Examples of state energy policies include the goal of achieving all cost-effective demand-side savings set forth in SB 376; and the goal of developing and administering energy efficiency initiatives that reduce the annual growth in energy consumption and the need to build additional electric generation capacity, set forth in RSMO 393.1040.
- (3) For consistency with the statement of the fundamental objective, 4 CSR 240-22.010(2)A, 4 CSR 240-22.010(2)(C)2 should require consistency with state energy and environmental policies and 4 CSR 240-22.070(1)C should require compliance with legal mandates.
- (4) The current Staff draft provides a definition for legal mandates but no definition or guideline for identifying applicable legal mandates or applicable state energy and environmental policies. MDNR proposes that the current Staff draft should be revised to establish Commission authority to identify applicable legal mandates and applicable state energy and environmental policies that must be considered by the utility. At Staff's request, MDNR will supply draft language to accomplish this. The current Staff draft appears to leave this decision to the subjective judgment of utility decision makers. If Staff does not add such language, MDNR assumes intervening parties could assert applicable legal mandates or energy and environmental policies in their comments. This issue is further discussed below in MDNR's comments on issues related to 4 CSR 240-22.070(1)(C).
- (5) For consistency with state energy policy established by SB 376, 4 CSR 240-22.010(2)(A) should be changed to reflect priority for demand-side resources that result in cost-effective demand-side savings. The change proposed by MDNR would also clearly establish that Missouri has met the requirements of PURPA Section 111(d)(16) and EISA Section 532(a)(16) to consider adopting policies establishing cost-effective energy efficiency as a priority resource.

- (6) Other resources should be considered and analyzed on an equivalent basis. The current Staff draft of 4 CSR 240-22.010(2)A refers to "renewable energy and supply-side resources. " This paragraph should be changed to explicitly list resource retirements alongside renewable energy and supply-side resources as resources that are to be considered and analyzed on an equivalent basis. This issue of resource retirements is further discussed below in MDNR's comments on 4 CSR 240-22.040(1).

Proposed revision

(2) The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable and efficient, at just and reasonable costs, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies. The fundamental objective requires that the utility shall:

(A) Consider and analyze demand-side resources as priority resources and consider and analyze renewable energy and supply-side resource additions and retirements on an equivalent basis, subject to compliance with all legal mandates and to consistency with all state energy and environmental policies that may affect the selection of utility electric energy resources, in the resource planning process;

Aggressive Demand-Side Resource Plan "Case" - 4 CSR 240-22.060(3)(A)3

MDNR comments on Staff references to SB 376 in 4 CSR 240-22.050

The current Staff draft acknowledges the "goal of achieving all cost-effective demand-side savings" in the Purpose statement for 4 CSR 240-22.050 and in 4 CSR 240-22.050(1)(B):

4 CSR 240-22.050 PURPOSE: This rule specifies the principles by which potential demand-side resource options shall be developed and analyzed for cost-effectiveness, with the goal of achieving all cost-effective demand-side savings...

4 CSR 240-22.050(1)(B) To fulfill the goal of achieving all cost-effective demand-side savings, the utility shall design highly effective potential demand-side programs pursuant to section (A) that broadly cover the full spectrum of cost-effective end-use measures for all customer market segments;

MDNR supports the inclusion of language that acknowledges the state energy policy goal established by SB 376. However, in MDNR's view, the language in the proposed Staff draft does not sufficiently incorporate that policy goal.

In the context of integrated analysis, the state policy goal presumes that the utility will diligently seek out demand-side measures, identify those that are cost effective and formulate aggressive implementation strategies to achieve all cost-effective savings. The current Staff draft states the policy clearly but does not include provisions that assure utility diligence in these efforts.

Specifically, 4 CSR 240-22.050(1)(B) includes very little that was not already in the current rules. The primary change from the current rule is that the current rule requires the utility to "provide broad coverage of... all major end uses, including at least lighting, refrigeration, space cooling, space heating, water heating and motive power" (4 CSR 240-

22.050(1)(C) whereas the proposed Staff draft requires the utility to consider demand-side resources " that broadly cover the full spectrum of cost-effective end-use measures."

This is a useful but limited change in rule language. It lessens the likelihood that a utility's screening analysis will completely ignore an entire category of end uses such as plug loads.

However, the language change only partially assures that the utility's effort to identify measures for screening will be diligent and comprehensive and does nothing to assure that the utility will formulate aggressive implementation strategies.

In MDNR's view, this result cannot be achieved by adding prescriptive language to 4 CSR 240-22.050. However, it can be achieved by establishing a yardstick at the integration phase that assures utility diligence in these efforts. Such a yardstick is most appropriately established in the provisions of 4 CSR 240-22.060(3)(A)3 that require the utility to identify and analyze "aggressive" demand side cases (see below).

MDNR comments on aggressive demand-side cases and SB 376

The current Staff draft requires the utility, when developing and analyzing alternative resource plans, to include several specific "cases," including an "aggressive demand-side case." In general, MDNR supports this approach, which is intended to assure that the utility analyzes the relative performance of a diverse set of alternative resource plans with respect to the planning objectives identified in 4 CSR 240-22.010(2).

MDNR has substantive concerns with current Staff draft requirement for the "aggressive" demand-side resource plan, which are formulated in 4 CSR 240-22.060(3)(A)2 as follows:

"The utility shall examine cases that:

3. Utilize only demand-side resources, up to the maximum technical potential of demand-side resources in each year of the planning horizon, if that results in more demand-side resources than the minimally compliant plan. This constitutes the aggressive demand-side resource plan for planning purposes..."

MDNR's primary concerns with this draft language are that it fails to consider the implications of state energy policy established by SB 376.

The draft language requires only that the utility identify and analyze a case that is based on the "maximum technical potential"² for demand-side measures and programs that the utility has identified through its screening process. As discussed in the previous section, the requirements of the screening process are not sufficient to assure that the utility's effort to identify measures for screening will be diligent and comprehensive or that the utility will formulate aggressive implementation strategies.

In MDNR's view, the formulation of the "aggressive" demand-side cases should be based on state energy policy established by SB 376. Implicit in this state energy policy is that

² Because only resources that passed cost-effectiveness screening are included, their technical potential is also their economic potential.

utilities should diligently identify all opportunities for cost-effective demand-side savings and aggressively pursue programs and strategies to achieve these savings.

The "aggressive" demand side case requirements should embody this policy by driving the utility to diligently seek out demand-side measures, identify those that are cost effective and formulate aggressive implementation strategies to achieve all cost-effective savings.

In MDNR's view, this is best achieved by including in 4 CSR 240-22.060(3)(A)3 a yardstick to assure utility diligence in these efforts. MDNR anticipates that this would result in an iterative approach to demand-side analysis in which the utility tests the results of its screening and implementation strategy efforts through integration analysis and returns to its screening and implementation strategy efforts if the initial effort to identify "aggressive" cases falls short of the yardstick.

In its formulation of this yardstick, MDNR has taken into account available information from states outside Missouri where cost-effective demand-side savings are aggressively pursued. For example, a March 2009 report by ACEEE³ provides a review of the states that a panel of experts consider the top energy efficiency states: Minnesota, Texas, Iowa, Wisconsin, California, Massachusetts, Connecticut, Vermont, New York, Oregon, New Jersey, Washington, Rhode Island, and Nevada. Many of these states achieved annual energy savings of 0.70% to over 1.0% of total annual energy sales in 2006 and 2007. In addition, a review of ACEEE's database of state energy efficiency efforts indicates that several states (Illinois, Iowa, Michigan, Minnesota, Ohio and Wisconsin) currently have policies or regulatory proceedings under way that would require energy savings between 1 and 2 percent of annual energy sales.

Proposed revision

4 CSR 240.22(060)(3)(A)...The utility shall examine cases that...

3. utilize sufficient demand-side resources to achieve all cost-effective demand-side savings, consisting of two or more cases that collectively constitute the aggressive demand-side resource cases and include at least the following two cases in addition to any other aggressive demand-side cases required per 4 CSR 240-22(060)(6)-(8):

(a) A case that utilizes sufficient demand-side resources to achieve or surpass a one percent incremental reduction in energy usage by 2015 and maintaining one percent or higher for each year in the remaining 20-year planning horizon; and

(b) A case that utilizes sufficient demand-side resources to achieve or surpass a two percent incremental reduction in energy usage by 2022 and maintaining two percent or higher for each year in the remaining 20-year planning horizon.

³ March 2009 Meeting Aggressive New State Goals for Utility-Sector Energy Efficiency: Examining Key Factors Associated with High Savings

Aggressive Renewable Energy Resource Plan "Case" - 4 CSR 240-22.060(3)(A)2

MDNR comments

In addition to an "aggressive" demand-side case, the current Staff draft in 4 CSR 240.22(060)(3)(A)2 requires the utility to develop and analyze an "aggressive" renewable energy case. MDNR agrees that there should be an aggressive renewable energy case but has concerns with its formulation in the current Staff draft.

This requirement for the "aggressive" renewable energy case is formulated in 4 CSR 240-22.060(3)(A)2 as follows:

"The utility shall examine cases that:

...2. Utilize only renewable energy resources, up to the maximum potential capability of renewable resources in each year of the planning horizon, if that results in more renewable energy resources than the minimally compliant plan. This constitutes the aggressive renewable energy resource plan for planning purposes;"

In MDNR's view, this formulation places an unnecessary burden on the "aggressive renewable energy case" that would likely distort the analytic results of integration analysis. It simply does not make sense to develop an alternative resource plan whose resources consist exclusively of renewable generation resources. For example, the "aggressive renewable energy case" formulated in the current Staff draft could not include any of the following types of resources:

- demand-side resources to which the utility is currently committed
- refurbishment or retirement of non-renewable generating resources
- addition of non-renewable resources intended to meet peak demand requirements

With respect to the final point, some potential renewable generation resources (e.g. biomass) may be suitable to meet new peaking requirements but many of the most cost-effective resources are suitable primarily to meet baseload or intermediate load requirements because of their intermittent nature. Requiring all energy and demand requirements to be met by renewable resources would place an unnecessary burden on the renewable resources included in the aggressive renewable energy case and would probably result in a misleading estimate of NPVRR.

For these reasons, the requirements for the aggressive renewable energy case should be refined by removing the requirement that only renewable energy resources may be included in the resource plan, permitting the utility to continue current commitments to demand-side resources and requiring that baseload or intermediate energy requirements that result from load growth or resource retirements be met by renewable energy sources. In MDNR's view, the proposed revision will result in more informative analysis of the costs and benefits of aggressively pursuing renewable energy generation.

Proposed revision

4 CSR 240.22(060)(3)(A).. The utility shall examine cases that...

2. Utilize only demand-side resources to which the utility is already committed and utilize only renewable energy resource additions to meet baseload or intermediate load energy requirements resulting from load growth or resource retirements, up to the maximum potential capability of renewable resources in each year of the planning horizon, if that results in more renewable energy resources than the minimally compliant plan. This constitutes the aggressive renewable energy resource plan for planning purposes.

Selection of the Preferred Resource Plan - 4 CSR 240-22.070(1)(C)

MDNR comments

In MDNR's view, one factor that utility decisions makers must weight heavily when selecting a preferred resource plan is whether the plan is consistent with the SB 376 goal of "achieving all cost-effective demand-side savings."

The current Staff draft sets forth conditions that must be satisfied when selecting its preferred resource plan in 4 CSR 240-22.070(1). One of these conditions is that the preferred resource plan must "utilize demand-side resources to the maximum amount that in the judgment of the utility decision makers is consistent with the public interest and achieves state energy policies." [4 CSR 240-22.070(1)(C)].

The current Staff draft language appears excessive in assigning all aspects of the decision in 4 CSR 240-22.070(1)C to the judgment of utility decision makers - including not only whether the plan is consistent with SB 376 but also whether SB 376 is state energy policy.

In MDNR's view, if demand-side screening and integrated analysis occurs as proposed in the current Staff draft as modified by MDNR's proposed revisions, the determination whether a plan is consistent with the state energy policy established by SB 376 should be susceptible to determination on objective grounds. It should not be a determination that requires the subjective judgment of utility decision makers.

Furthermore, the question of determining whether SB 376 and other policies are state energy policies should not be a determination that requires the judgment of utility decision makers. If there is an issue concerning which state policies are to be considered "applicable" in the context of integrated resource planning, the Commission should intervene to settle the issue. If the Commission does not already have authority to do this, provisions should be added to 4 CSR 240-22.080 to establish that authority.

Proposed revision

4 CSR 240-22.070(1) The utility shall select a preferred resource plan from among the alternative resource plans...The preferred resource plan shall satisfy at least the following conditions:...

(C) Utilize demand-side resources to the maximum amount that complies with legal mandates, is consistent with state energy and environmental policies, including but not necessarily limited to those identified by the Commission, and in the judgment of the utility decision makers is consistent with the public interest...

Commission Acknowledgment of Utility's Resource Acquisition Strategy - 4 CSR 240-22.080

MDNR comments

The Commission should have authority to "acknowledge" that the substance of a utility's long-term resource planning is "reasonable." This authority would provide a useful avenue for the Commission to consider the substance of a filing as well as its adherence to the requirements of Chapter 22 and for utilities to benefit from the consistency of their actions with an acknowledged resource plan or acquisition strategy.

Additional features of MDNR's concept and formulation of "acknowledgment" include the following:

- The authority to acknowledge will add weight and consequence to Commission review of the substance of the utility's IRP filing. As formulated by MDNR, it will also add weight and consequence to substantive concerns expressed in intervenors' comments.
- The authority to acknowledge is, importantly, the authority not to acknowledge. As formulated by MDNR, compliance with Chapter 22 requirements is a necessary but not a sufficient condition for acknowledgment. The Commission will have authority to "return with comments" portions of the utility's resource plan or acquisition strategy that the Commission finds not to be reasonable.
- In rate cases or other cases to which long-term resource planning is relevant, the utility may benefit from consistency of its actions with an "acknowledged" resource plan or acquisition strategy but also must explain any inconsistencies in its actions. It will be the utility's responsibility to demonstrate that its actions are consistent with the acknowledged resource plan or acquisition strategy. Thus, utilities will be encouraged to align business planning with long-term resource planning.

To incorporate these concepts into Chapter 22, MDNR proposes to add two definitions to Chapter 22 and revise several provisions of 4 CSR 240-22.080.

Proposed Revisions

(1) Definitions: MDNR proposes to add the following definitions to 4 CSR 240-22.020:

Acknowledgement is an action that the Commission may take with respect to the officially adopted resource acquisition strategy or any element of the resource acquisition strategy including the preferred resource plan. Acknowledgment means that the Commission finds the plan or strategy to be reasonable at a specific date, typically the date of the filing or the date that acknowledgment is given. Acknowledgment may be given in whole or in part. Acknowledgment is not a finding of prudence. Prudence findings are limited to rate cases. In proceedings in which the reasonableness of resource acquisitions is considered, such as rate cases, energy planning cases and regulatory planning procedures, consistency with an acknowledged resource plan or acquisition strategy may be used as supporting evidence. Furthermore, in these cases, the utility bears the

burden of proof that past or proposed actions are consistent with an acknowledged resource plan or acquisition strategy and must explain and justify why it took any actions inconsistent with an acknowledged resource plan or acquisition strategy.

Substantive concern means any issue that, while not rising to a deficiency in meeting requirements of Chapter 22, might be a substantive consideration in determining whether the electric utility's preferred resource plan or resource acquisition strategy is reasonable at the time of review.

(2) Purpose Statement: MDNR proposes to revise the purpose statement of 4 CSR 240-22.080 as follows:

" PURPOSE: This rule specifies the requirements for electric utility filings to demonstrate compliance with the provisions of this chapter. The purpose of the compliance review required by this chapter is not commission approval of the substantive findings, determinations or analyses contained in the filing. The purpose of the compliance review required by this chapter is to determine whether the utility's resource acquisition strategy meets the requirements stated in 4 CSR 240-22.010(2)(A)-(C). However, if the commission determines that the filing substantially meets these requirements, the commission may further acknowledge that the preferred resource plan or resource acquisition strategy seems reasonable in whole or in part at the time of the finding. This rule also establishes a mechanism for the utility to solicit and receive stakeholder input to its resource planning process. "

(3) Authority to acknowledge: MDNR proposes to revise 4 CSR 24-022.080(16) by adding a new paragraph (B). Subsequent paragraphs in 4 CSR 24-022.080(16) should be renumbered accordingly.

(16) The commission will issue an order which contains its findings regarding at least one of the following options:

(A) That the electric utility's filing pursuant to this rule either does or does not demonstrate compliance with the requirements of this chapter, and that the utility's resource acquisition strategy either does or does not meet the requirements stated in 4 CSR 240-chapter 22.

(B) If the Commission finds that the filing achieves substantial compliance with the requirements outlined in (A), the Commission may acknowledge the utility's resource acquisition strategy in whole, in part or with exceptions; may return the preferred resource plan or resource acquisition strategy to the utility with comments related to acknowledgment; or may take no further action.

(4) Review Schedule: MDNR proposes the following revisions to the review schedule to accommodate additional review that may be required to accommodate issues related to the potential Commission acknowledgment:

(7) The staff shall conduct a limited review each triennial compliance filing required by this rule and shall file a report not later than one hundred fifty (150) days after each utility's scheduled triennial compliance filing date. The report shall identify any deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or

analyses required to be performed by this chapter and any other deficiencies and may provide suggested remedies for any identified deficiencies. Staff may also identify concerns with the utility's triennial compliance filing, may identify substantive concerns as defined in this rule related to the substantive reasonableness of the preferred resource plan or resource acquisition strategy and may provide suggested remedies for any identified concerns. If the staff's limited review finds no deficiencies or no concerns, the staff shall state that in the report. A staff report that finds that an electric utility's filing is in compliance with this chapter shall not be construed as acceptance or agreement with the substantive findings, determinations or analysis contained in the electric utility's filing.

(8) Also within one hundred fifty (150) days after an electric utility's triennial compliance filing pursuant to this rule, the public counsel and any intervenor may file a report or comments. The report or comments, based on a limited review, may identify any deficiencies or concerns which the public counsel or intervenor believes could prevent the utility's resource acquisition plan from effectively fulfilling the objectives of the electric resource planning rules, and may identify substantive concerns as defined in this rule related to the substantive reasonableness of the preferred resource plan or resource acquisition strategy. Public counsel or intervenors may provide suggested remedies for any identified deficiencies or concerns.

(9) If the staff, public counsel or any intervenor finds deficiencies in or concerns with a triennial compliance filing, it shall work with the electric utility and the other parties to reach, within sixty (60) days of the date that the report or comments were submitted, a joint agreement on a plan to remedy the identified deficiencies and concerns. The parties may also confer concerning any substantive concerns as defined in this Chapter that were noted in the reports filed by staff, public counsel or intervenors. If full agreement cannot be reached, this should be reported to the commission through a joint filing as soon as possible, but no later than sixty (60) days after the date on which the report or comments were submitted. The joint filing should set out in a brief narrative description those areas on which agreement cannot be reached. If any substantive concerns are resolved during this period, their resolution shall also be noted in the joint filing.

Definitions - 4 CSR 240-22.020

MDNR comments and proposed revisions

In addition to the definitions of "acknowledgment" and "substantive concern" proposed in the previous section, MDNR proposes adding a definition for "renewable energy" and revising the definitions of "realistic achievable potential" and "resource planning" included in the current Staff draft:

(1) Realistic achievable potential [4 CSR 240-22.020(46)]

The current Staff draft definition of "realistic achievable potential" [4 CSR 240-22.020(46)] is as follows: *"Realistic achievable potential of a demand-*

side candidate resource option or portfolio is an estimate of the load impact that would occur if that resource option or portfolio were implemented in amounts consistent with the most aggressive cost-effective implementation of the resource option or portfolio considered by the utility."

This definition fails to indicate that determination of the implementation level is not simply an arbitrary choice by the utility decision makers but depends on objective factors.

The following proposed definition draws from the National Action Plan for Energy Efficiency (NAPEE) manual on best practices for analyzing demand side potential. It identifies the specific considerations that the utility should take into account when identifying the implementation level associated with realistic achievable potential:

"Realistic achievable potential of a demand-side candidate resource option or portfolio is an estimate of the load impact that would occur if that resource option or portfolio were implemented in amounts consistent with the most aggressive cost-effective implementation of the resource option or portfolio possible (e.g., providing end-users with payments for the entire incremental cost of more efficiency equipment). Realistic achievable potential takes into account real-world barriers to convincing end-users to adopt efficiency measures, the non-measure costs of delivering programs (for administration, marketing, tracking systems, monitoring and evaluation, etc.), and the capability of programs and administrators to ramp up program activity over time."

(2) Renewable energy (new definition)

Several rules in the current Staff draft (4 CSR 240-22.010, .040, .060 and 080) refer to "renewable energy." Some of these are prescriptive references whose application requires the term to be clearly defined. MDNR proposes the following definition, which is intended to be sufficiently flexible to accommodate possible regulatory changes:

"Renewable energy" means electricity generated from a source that is classified as a renewable energy source under a state or federal renewable energy standard to which the utility is subject or that is classified as a "biogenic energy source" by the U.S. Environmental Protection Agency."

(3) Resource planning [4 CSR 240-22.020(49)]

The current rule definition of this term, which is unchanged in the current Staff draft, refers only to resource additions. It should be revised to provide a parallel reference to resource retirements. This is consistent with the revised Staff draft treatment of additions and retirements in 4 CSR 240-22.060. The topic is further discussed in the next section of MDNR comments.

MDNR proposes the following definition, which is intended to achieve this parallel treatment:

"Resource planning means the process by which an electric utility evaluates and chooses the appropriate mix and schedule of supply-side, demand-side, and distribution and transmission resource additions and retirements to provide the public with an adequate level, quality and variety of end-use energy services."

Supply Side Resources to be Considered - 4 CSR 240-22.040(1)

MDNR comments

In MDNR's view, the treatment of resource retirements requires special attention in the revision of the Chapter 22 rules. As MDNR discussed in its comments on 4 CSR 240-22.010(2)(A), utilities should consider and analyze supply-side additions and retirements on an equivalent basis. Moreover, a combination of factors - the aging of existing power plants, the impact on load of pursuing all cost-effective demand side savings and the prospect of more stringent federal energy and environmental policies - probably justify consideration of resource retirements as a special contemporary issue.

It is clear that the current Staff draft of the resource integration rule contemplates that utilities will analyze resource retirements on the same basis as resource additions. For example, 4 CSR 240-22.060(3)(A) and (6)(A) list resource additions and retirements as components of the utility's alternative resource plans and implementation plans respectively.

However, the current Staff draft does not require utilities to consider resource retirements in the supply side screening, even though screening is necessary for resource retirements to qualify as "supply-side candidate resource options" that can be included in candidate resource plans. [See 4 CSR 240-22.060(1).]

To enter screening, resource retirements must be included in the menu of resources that are subjected to supply-side analysis. However, the current Staff draft of the supply side analysis rule includes no reference to resource retirements. The current Staff draft omits even the meager reference to resource retirements that appears in the resource retirements [4 CSR 240-22.040(6)(A)] of the current rule.

For these reasons, the revised Chapter 22 rules should explicitly and consistently require that resource retirements be considered and analyzed in the same way that renewable resources and other supply side resources are considered and analyzed.

As proposed below, 4 CSR 240-22.040(1) and 4 CSR 240-22.040(4) should be revised to include resource retirements as "potential supply-side resource options" and "supply side candidate resource options" to be considered by the utility in its supply side analysis. A related change to the definition of resource planning was proposed in the previous section discussing revisions to 4 CSR 240-22.020.

Proposed revisions

4 CSR 240-22.040(1): The utility shall identify a variety of potential supply-side resource options which the utility can reasonably expect to develop, implement or acquire. These potential supply-side resource options include full or partial ownership

of new plants using existing generation technologies; full or partial ownership of new plants using new generation technologies, including technologies expected to become commercially available within the twenty (20) year planning horizon; renewable energy resources on the utility-side of the meter, including a wide variety of renewable generation technologies; technologies for distributed generation; life extension and refurbishment at existing generating plants; retirement of existing generation plants or other supply-side resources; enhancement of the emission controls at existing or new generating plants; purchased power from bi-lateral transactions and from organized capacity and energy markets; generating plants efficiency improvements which reduce the utility's own use of energy; and upgrading of the transmission and distribution systems to reduce power and energy losses.

4 CSR 240-22.040(4): (4) All preliminary supply-side candidate resource options which are not eliminated shall be identified as supply-side candidate resource options. The supply-side candidate resource options that the utility passes on for further evaluation in the integration process shall represent a wide variety of supply-side resource addition and retirement options with diverse fuel and generation technologies, including a wide range of renewable technologies and technologies suitable for distributed generation.

Supply Side Forecasting of Uncertain Factors - 4 CSR 240-22.040(5)

MDNR comments

Both the current supply side rule and the current Staff draft supply side rule contain a section requiring the utility to "develop, describe and document, ranges of values and probabilities for uncertain factors related to" supply-side candidate resource options. The draft rules contain a list of "required elements" such as fuel prices and the cost of emission allowances that is essentially unchanged from that in the current rule. However, in other respects, the draft rule is much less prescriptive than the current rule with respect to how the forecast analysis is to be conducted.

The issue of prescriptive rules has been extensively discussed in the stakeholder workshops. One distinction that has been put forth by MDNR and other parties is between requirements that prescribe particular analytic methods (which may become outdated or otherwise inappropriate) and requirements that prescribe minimum considerations that the utility should take into account when pursuing an analysis. MDNR's view, which was echoed by other parties, is that it is reasonable to remove the former (prescriptions of particular methodology) but that the latter should be retained (prescriptions of what the utility should consider). A corollary is that the utility should transparently report both the factors that it considered in the analysis and the methodology used to do the analysis.

In MDNR's view, the following requirements, which appear in 4 CSR 240-22.040(8) of the current rules but have been deleted from 4 CSR 240-22.040(5) of the current Staff draft, prescribe factors to be considered in the forecast and transparent reporting of the analytic method and results rather than specific methodology:

4 CSR 240-22.040(8)(1)(G)2 "The provider of each fuel price forecast shall be required to identify the critical uncertain factors that drive the price forecast and to provide a range of forecasts and an associated subjective probability distribution that reflects this uncertainty"

4 CSR 240-22.040(8)(2)(B)2 "The provider of the estimate shall be required to identify the critical uncertain factors that may cause the capital cost estimates to change significantly and to provide a range of estimates and an associated subjective probability distribution that reflects this uncertainty"

4 CSR 240-22.040(8)(2)(C)2 "The critical uncertain factors that affect these [O&M] cost estimates shall be identified and a range of estimates shall be provided, together with an associated subjective probability distribution that reflects this uncertainty"

4 CSR 240-22.040(8)(2)(D)2 "The provider of the forecast shall be required to identify the critical uncertain factors that may cause the value of allowances to change significantly and to provide a range of forecasts and an associated subjective probability distribution that reflects this uncertainty"

In MDNR's view, any forecast of future values of an uncertain factor, regardless of the identity of the forecaster, should consider [to paraphrase the current rule] critical uncertain factors that may cause the value of a factor to change significantly and may affect the upper and lower bounds of the probability distribution. The language of the current rule appropriately assumes that it is a standard forecasting practice. However, even with prescriptive language in place, MDNR has noted instances in which utility considerations and reporting appear to fall short of the requirements of the current rule.

MDNR also proposes that a forecast over the planning horizon should be uniformly required for all the uncertain factors analyzed.

For these reasons, MDNR proposes that 4 CSR 240-22.040(5) in the current draft be revised as follows.

Proposed Revision

4 CSR 240-22.040(5) (5) The utility shall develop, and describe and document, a forecast across the 20-year time horizon for values and probabilities for several important uncertain factors related to supply-side candidate resource options identified in section (4). Critical uncertain factors that affect the forecasted values and probabilities shall be identified and considered in these forecasts. The utility shall identify the critical uncertain factors that were identified, describe how they were accounted for and provide a range of estimates with an associated subjective probability distribution that reflects this uncertainty, and provide a description of the statistical and methodological steps taken to develop the estimated values of both the critical factors and the subjective probabilities.

Demand Side Resources - 4 CSR 240-22.050

1. 4 CSR 240-22.050(1)(A)3 references 4 CSR 240-22.030(4)(A)1, which lists uses that must be examined when creating the DSM screening menu. Plug loads should be added to the residential end uses listed in 4 CSR 240-22.030(4)(A)(1)A and cooking equipment should be added to the commercial end uses listed in 4 CSR 240-22.030(4)(A)(1)B.
2. Distributed generation needs to be defined. For the sake of clarity, customer-based distributed generation (demand-side rule) should be distinguished from utility-scale distributed generation (supply-side rule). MDNR proposes the following revisions and definitions:
 - a) The references in 4 CSR 240-22.040(1) should be revised to refer to "utility-scale distributed generation" and the reference in 4 CSR 240-22.050(1)(A)4 should be revised to refer to "customer-based distributed generation."
 - b) The following definitions should be added to 4 CSR 240-22.020:
 - (i) Distributed generation means a grid-connected electric generation system that is sized based on local load requirements and distributed primarily to serve local load.
 - (ii) Customer-based distributed generation means distributed generation that is operated under the customer's control, located at the customer's point of use and primarily serves the local load of the customer.
 - (iii) Utility-scale distributed generation means distributed generation that is operated under the utility's control and primarily serves the load of local utility customers.
3. 4 CSR 240-22.050(3)(F) directs the utility to consider cooperation with other electric utilities in statewide marketing programs. MDNR proposes to revise the rule to also direct the utility to consider cooperation in marketing or joint delivery with natural gas utilities that share its service territory.
4. The review of other utilities' demand-side rates required by 4 CSR 240-22.050(4)(A) should not necessarily be limited to those implemented by "similar" utilities. MDNR proposes to revise 4 CSR 240-22.050(4)(A) as follows: "(A) Review demand-side rates that have been implemented by other utilities and identify whether similar demand-side rates would be applicable for the utility, taking into account factors such as similarity in electric prices and customer makeup."
5. To accommodate references in the Chapter 22 rules to the load impact of demand-side portfolios and demand-side rates the definition of load impact (4 CSR 240-22.020) should be revised as follows: "(30) Load impact means the change in energy usage and the change in diversified demand during a specified interval of time due

to the implementation of a demand-side measure or program, a demand-side rate or a demand-side portfolio.

6. MDNR appreciates that the current Staff draft provides a rigorous definition of the phrase "describe and document." The Chapter 22 rules should consistently use this precise phrase when requiring the utility to describe and document its analysis. For example, 4 CSR 240-22.050(3)(I) should be revised as follows: "The utility shall describe and document how it performed the assessments and developed the estimates pursuant to section (G), including sources and quality of information."
7. Industry experts, regulators and DSM practitioners routinely rely on DSM impact on load as the most appropriate single indicator of the level of effectiveness or aggressiveness of demand-side programs. For this reason, utility filings should include transparent and unambiguous reporting on demand-side program and portfolio impacts at both summary and detail levels. The current Staff draft includes several references to supply-side portfolios in its analytic and reporting requirements. For example, 4 CSR 240-22.050(6)(B) requires the utility to estimate load impacts for both demand-side programs and portfolios.

Missouri utilities have typically incorporated demand-side resources in their alternative resource plans as a portfolio rather than individual programs. However, the current Staff draft rule is ambiguous as to whether a demand-side portfolio is to be considered a "potential demand-side resource option" and its reporting requirements for DSM load impact, which appear in 4 CSR 240-22.050(9)(I), make no explicit reference to reporting on portfolios. Furthermore, in past filings, MDNR has repeatedly found it difficult to obtain summary estimates of DSM portfolio load impacts in a readily accessible form. For the sake of consistency and transparency, the requirement in 4 CSR 240-22.050(9)(I) should be revised as follows.

(I)A summary of the time differentiated load impact estimates over the planning horizon for each demand-side candidate resource option and each portfolio of demand-side candidate resource options pursuant to section (6)(B), including a tabulation of the estimated annual change in energy usage and in diversified demand for each year in the planning horizon due to the implementation of the candidate demand-side resource option or portfolio.

8. The definition of TRC in 4 CSR 240-22.020 (56) lists the costs included in the denominator as " the sum of all incremental costs related to the end-use measures that are implemented due to the program or related to the rates (including both utility and participant contributions), plus utility costs to administer, deliver and evaluate each demand-side program or demand-side rate to quantify the net savings obtained by substituting the demand-side program or demand-side rate for supply-side resources." The description of the TRC test in 4 CSR 240-22.050(5)(A)3(B)3 states "the costs of potential demand-side programs and potential demand-side rates shall not include lost revenues or utility incentive payments to customers." To be consistent with the above two quotes, 4 CSR 240-22.050(5)(A)3(B)4 should be revised as follows: "The costs shall include, but separately identify, the costs of any

rate of return or incentive included in the utility's recovery of incremental demand-side program costs only to the extent that the rate or return or incentive are intended to recover incremental costs other than lost revenues or utility incentive payments. to customers. In this calculation, utilities shall take care not to double-count utility costs to administer, deliver and evaluate each demand-side program."

Findings of Deficiency and Concern - 4 CSR 240-22.080(6-7) and 4 CSR 240-22.020

MDNR Comments

The current rule directs the parties reviewing a filing (Staff, OPC and interveners) to identify "deficiencies" in their review of a utility's filing. The current rule does not define "deficiency" but in MDNR's reading of the current rule, 4 CSR 240-22.080(5) and (6) sets forth three basic types of a deficiency finding, which MDNR would label as follows:

- (1) Prescriptive deficiency - a failure to comply with a specific provision of the Chapter 22 rules
- (2) Methodological deficiency - a "major" deficiency in methodologies or analyses that the utility is required to perform
- (3) Substantive deficiency - "other deficiencies which... would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in 4 CSR 240-22.010(2)(A)–(C)."

The current Staff draft directs the parties to identify both "deficiencies" and "concerns" and provides the following definitions for these terms:

4 CSR 240-22.020(8): Deficiency means anything that would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in Chapter 22.

4 CSR 240-22.020(5) Concern means anything that, while not rising to the level of a deficiency, may prevent the electric utility's resource acquisition strategy from effectively fulfilling the objectives of Chapter 22.

MDNR identifies the following issues related to the current Staff draft definition of "deficiency" and associated provisions of the current Staff draft of 4 CSR 240-22.080(7) and (8).

- (1) The phrase "requirements identified in Chapter 22" can be narrowly interpreted to limit review to prescriptive deficiencies - the failure to comply with requirements that are specifically prescribed in the rule. Because the current Staff draft removes many of the prescriptive elements from Chapter 22 rules, a narrow interpretation of the definition proposed in the current Staff draft would result in severely circumscribed scope for any finding of a deficiency. In MDNR's view, if the definition proposed by Staff is not revised, it is likely that some parties will advance a narrow interpretation of what constitutes a deficiency. MDNR's view is based in part on past

conferences of parties where a narrow interpretation of similar phrases was advanced.

- (2) There is tension between the definition in 4 CSR 240-22.020(8) and the provisions of 4 CSR 240-22.080(7) which state that the staff report "shall identify any deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter and any other deficiencies." A narrow interpretation of the definition implies that there is one type of deficiency- a failure "to meet the requirements identified in Chapter 22" - whereas the phrase in 4 CSR 240-22.080(7) implies that there are other types of deficiencies that fall outside the scope of the definition.

MDNR identifies the following issues related to the current Staff draft definition of "concern":

(1) If the scope of findings of a deficiency is severely circumscribed, many issues that now are treated as "deficiencies" would be treated as "concerns" under the new rules. MDNR would have no problem with that result if "concerns" are given equal weight to "deficiencies" in the determination of remedies and in the Commission's review of unresolved issues. However, it appears that "concerns" will not be given equal weight, for the following reasons:

1. The current Staff draft definition states that a concern "does not rise to the level of a deficiency."
2. Furthermore, the term "concern" as used in recent filings has not given as much weight to "concerns" as to "deficiencies".

Proposed Revision

To resolve these issues, MDNR proposes a revision of the definitions of "deficiency" and "concern." The following proposed definition of "deficiency" is based on the provisions of 4 CSR 240-22.080(5) and (6) in the current rule:

4 CSR 240-22.080(8) Deficiency means a failure to comply with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter or any other deficiency which the reviewing party determines would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in 4 CSR 240-22.010(2)(A)–(C).

The following definition of "concern" revises the current Staff draft definition to eliminate any implication that a concern, because it is a concern, is less important than a deficiency:

4 CSR 240-22.020(5) Concern means anything that, while not falling within the definition of a deficiency, may prevent the electric utility's resource acquisition strategy from effectively fulfilling the objectives of Chapter 22.

Reports Reviewing Filing by Staff and Parties - 4 CSR 240-22.080(7) and (8)

MDNR comment

In the current rule, 4 CSR 240-22.080(5)-(6) provide essentially identical parameters for the review of utility filings by the staff and other parties. Key phrases describing what is to be reviewed use identical wording.

In the proposed Staff draft, the parameters of review by parties appear to be more limited than that by Staff. As written, the language of 4 CSR 240-22.080(8) appears to limit parties' ability to consider deficiencies in methodology or analysis and appears to limit parties' consideration of deficiencies to those that "could prevent the utility's resource acquisition plan from effectively fulfilling the objectives of the electric resource planning rules."

Reasons for limiting review by parties compared to review by staff were not discussed in stakeholder workshops; furthermore, no rationale for the differences in language is apparent to MDNR.

Proposed Revision

MDNR proposes that 4 CSR 240--22.080(8) be revised as follows. As in the current rule, the key phrases describing what is to be reviewed use identical wording to that in 4 CSR 240--22.080(7).

- (7) Also within one hundred fifty (150) days after an electric utility's triennial compliance filing pursuant to this rule, the public counsel and any intervenor may file a report or comments. The report or comments, based on a limited review, may identify any deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter and any other deficiencies and may provide suggested remedies for any identified deficiencies. The report may also identify concerns with the utility's triennial compliance filing and may provide suggested remedies for any identified concerns.

Note: the change from 120 to 150 days is consistent with a previous comment.