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Title 4 - DEPARTMENT OF
ECONOMIC DEVELOPMENT

Division 240 - Public Service Commission

Chapter 22 - Electric Utility Resource Planning

SECRETARY OF STATE

ORDER OF RULEMAKING

By the authority contained in sections 386.040, 386.610, and 393.140, RSMo (1986) and 386.250, RSMo (Cum. Supp. 1991), the Public Service Commission adopts the rules as follows:

- 4 CSR 240-22.010 is adopted as amended.
- 4 CSR 240-22.020 is adopted as amended.
- 4 CSR 240-22.030 is adopted as amended.
- 4 CSR 240-22.040 is adopted as amended.
- 4 CSR 240-22.050 is adopted as amended.
- 4 CSR 240-22.060 is adopted as amended.
- 4 CSR 240-22.070 is adopted as amended.
- 4 CSR 240-22.080 is adopted as amended.

Notices of Proposed Rulemaking containing the text of these rules were published in the Missouri Register on July 1, 1992 (17 MoReg 889-902). The rules, with changes, are reprinted here and will be effective _____. All written comments and reply comments received, together with sworn testimony made during the hearing held September 10, 1992, have been given consideration.

SUMMARY OF GENERAL COMMENTS, INCLUDING TESTIMONY: Proposed rules were filed with the Office of the Secretary of State on June 12, 1992 and comments were solicited at that time. In addition, reply comments were solicited based on original comments of interested parties. A public hearing was held and testimony accepted on September 10, 1992. Testimony was received from the following: Missouri Public Service

Commission Staff, Martin Turner and Mark Oligschlaeger; Office of Public Counsel, Ryan Kind; Missouri Industrial Energy Consumers, Donald E. Johnstone; League of Women Voters, Winifred Colwill; Armco Inc., Charles McKee; St. Joseph Light & Power Company, Joe Norton; The Empire District Electric Company, Robert Fancher; Kansas City Power & Light Company, Steven W. Cattron; Union Electric Company, Gary L. Rainwater; Western Resources, Inc. d/b/a Gas Service, George L. Fitzpatrick; UtiliCorp United, Inc., Missouri Public Service Division, Keith A. Stamm; and Laclede Gas Company, Richard W. French and Christopher Baker.

In addition, written comments were submitted by the following: Missouri Public Interest Research Group (MoPIRG), Missouri Industrial Energy Consumers (MIEC), The Empire District Electric Company (EDE), Laclede Gas Company (Laclede), Union Electric Company (UE), St. Joseph Light & Power Company (SJLP), Missouri Public Service Commission Staff (Staff), Office of the Public Counsel (OPC), Kansas City Power & Light Company (KCPL), Western Resources, Inc. d/b/a Gas Service (Gas Service), and UtiliCorp United, Inc., Missouri Public Service Division (MPS).

Reply comments to Staff's proposed modifications were submitted by the following: MoPIRG, Gas Service, MIEC, KCPL, UE, EDE, SJLP, OPC, League of Women Voters (LWV), Armco, Inc. (Armco), Missouri Department of Natural Resources (DNR), and Staff. In addition, MoPIRG delivered a petition with numerous signatures from the public, supporting, in general, its proposals.

UE, which is generally supportive of the proposed rules, offered various specific changes, which suggestions are set out in conjunction with the specific modifications in the proposed rules adopted by the commission. In addition, UE said it has already been engaging in many resource planning activities, although the proposed rules contain numerous requirements which would require UE to incur additional costs. UE stated that the proposed rules do not go far enough in that they do not call for formal commission approval of the utility's resource acquisition strategy. UE maintained that it would be appropriate and even necessary for the commission to establish standards for preapproval of a utility's planning strategy and thereby allow the utility to know in advance how its plan will be treated by the commission. UE stated that it preferred for the rules to provide for approval of not only the method of planning but the actual substance of the utility's resource acquisition strategy itself. In this regard, UE feared a hindsight attack on various decisions made in the planning and execution of the resource acquisition strategy. Further, UE felt that plan preapproval of this type should carry with it a rebuttable presumption that the utility acted prudently. UE acknowledged that any such determination would

not be conclusive because some exceptions may be appropriate. In addition, UE agreed that this type of preapproval might not carry with it the guarantee of cost recovery from the ratepayer. In general, UE maintained that a process in which plan preapproval does not exist is unfairly one-sided against the utility. UE stated that mere focus on the process, but not the prudence, of a utility's resource plan is unfair in that the utility has to devote substantial time and effort in compliance without gaining any assurance that compliance with the prescribed planning methods will result in cost recovery. In this regard, UE also supported adoption by the commission of "nontraditional" accounting procedures for the recovery of the costs of demand-side resources. UE stated that it believes that the implementation of nontraditional accounting procedures would require an accounting authority order. UE assumed that an accounting authority order would be an appropriate mechanism to ensure that demand-side resources are treated on an equivalent basis with supply-side resources, provided that the commission indicates that it intends to allow the utility to recover all prudently incurred costs in future rates. UE disagreed with the need for a quantitative comparison of the utility's estimated earnings over the three(3)-year implementation period with and without the proposed nontraditional accounting procedures. Such information would be speculative and its dissemination to some portion of the public may violate Securities and Exchange Commission (SEC) regulations. UE believed that incentives for demand-side management are not really necessary, but in order to put demand-side alternatives on a level playing field, disincentives need to be removed. In conjunction with demand-side programs, UE strongly objected to any regulation in which an electric utility is required to consider alternative fuels as a demand-side resource. Finally, UE stated that a limited definition of load-building should be maintained by the commission.

MPS stated that it supported the intent of the proposed rules to provide methodology and framework for the resource planning process. MPS further stated it had already begun to develop the necessary resources to comply with the proposed rules. MPS asserted that its main concerns are that the proposed rules be less prescriptive and more flexible, provide specific cost recovery measures for demand-side programs, and, in order that management prudence be addressed, include preapproval of the utility's resource acquisition strategy. MPS also felt that waivers should be provided for the utilities where expected benefits may not exceed costs of compliance. The rules should specify a demand-side management cost recovery mechanism that will provide assurance that program costs, lost revenues, and incentives can be recovered in future rates.

KCPL stated that it supports resource planning and, in general, supports the concepts set out in the proposed rules, however is of the opinion that the rules are too technical and prescriptive and therefore the additional cost of full compliance over KCPL's current plan would exceed the benefits gained. KCPL expressed its intent to request waivers from various aspects of the proposed rules. In addition, KCPL recommended preapproval of the utility's resource acquisition strategy stating that this would result in more efficient regulatory involvement on the part of the commission as a result of contemporaneous and nonrepetitive litigation. KCPL urged the commission to make the necessary commitment of its and its staff's resources to the process. KCPL states that Financial Accounting Standard No. 71 (FAS 71) makes it imperative that the commission state its intention to allow future rate recovery of all prudently incurred costs which are deferred pursuant to an authorized nontraditional accounting procedure. KCPL argued that contemporaneous approval of plans prior to investment avoids unnecessary costs in litigation and hindsight regulation. Additionally, KCPL believed that the quality of management decisions would improve as the result of pre-implementation screening by all interested parties, thereby avoiding various errors that can be made in the planning process. KCPL stated that plan preapproval allows the commission the opportunity to provide substantial direction and guidance in the demand-side programs. KCPL argued that, without commission approval, the utility takes all the risk without being assured of compensating benefits. KCPL continued that shareholder interests are omitted from the proposed rules. KCPL said this could be remedied by plan preapproval and equal treatment of demand-side and supply-side resources, which KCPL stated the proposed rules lack. KCPL felt that the rules should ensure the equivalency of demand-side and supply-side resources by providing adequate cost recovery. KCPL stated that the commission's method of allowing consideration of nontraditional accounting procedures in the rules is inadequate to balance the supply-side and demand-side interests. KCPL further addressed this concern in stating that the commission's current accounting and ratemaking practices act as disincentives for the utilities to engage in demand-side management programs and felt that adequate demand-side investment depends on removal of disincentives. KCPL urged the commission to be careful of incentives, and to opt for performance based systems, whether in demand-side management or supply-side management. KCPL stated that any mandatory fuel substitution requirement as a demand-side program, as proposed by various commenters, would place the regulated electric utilities at a substantial competitive disadvantage. Finally, KCPL felt that provisions in the current proposed rules involving load building are adequate.

SJLP stated that, during the informal process leading up to the proposal of these rules, many of its comments were taken into consideration. However, one which was not involved the exemption or waiver process for smaller utilities. SJLP proposed that any electric supplier providing less than five (5) percent of the state's total electric energy usage should be exempted from the rules. SJLP suggested various alternatives to the proposed filing requirements if the commission does not exempt SJLP entirely from the rules. SJLP continued by stating that it felt the rules were burdensome, prescriptive and would negatively impact its ability to remain competitive. SJLP stated that imposing major additional costs without demonstrable benefits would jeopardize SJLP's ability to remain competitive with unregulated electric utilities and natural gas companies. SJLP added that the costs of implementation of the rules are not proportional to the size of the utility, requiring approximately the same outlay for both small and large utilities. Therefore, SJLP stated its intent to request a waiver from all the rules until the rules are simultaneously applicable to gas companies and to rural electric cooperatives (RECs), to accommodate SJLP's competitive concerns. SJLP disagreed with the staff proposition that the rules should provide only a method or procedure of planning, and suggested that the commission should focus on the results of the planning process and not how the process was done. The rules should require that the commission issue an order approving the plan and attesting to its reasonableness and prudence for implementation at the time of review. The rules also should provide utilities the opportunity to recover lost revenues associated with demand-side management programs. Furthermore, the commission should indicate in the rules the appropriate recovery mechanism for demand-side management costs.

SJLP, additionally, was strongly opposed to being required to collect, analyze, and promote programs for competitive utilities, such as fuel substitution. SJLP suggested that, for smaller utilities, without a demonstration or quantification of the cost effectiveness of the resource planning methodology, such methodology is unjustified. In addition, SJLP submitted that the waiver or variance provisions in the rules are not feasible due to both the expense and time involved in implementation. SJLP recommended that only the officially adopted resource acquisition strategy be retained by the electric utilities for at least ten (10) years and only those documents that relate directly to the triennial filing should be retained by the utilities, and then only until the next triennial filing is approved. SJLP proposed a "rider" or "surcharge" be allowed to be added to bills in order to recoup expenses immediately. The rider or surcharge would be trued-up at the utility's next general rate case. SJLP contended that the

requirement that requests for authorization of nontraditional accounting treatment be made solely at the time of the triennial filings and that reauthorization is required every three (3) years is overly restrictive. SJLP is opposed to performing quantitative comparisons of estimated earnings with and without the nontraditional accounting treatment.

EDE stated that, as a smaller utility, EDE engaged in a progressive, flexible, and effective planning process for a substantial period of time. EDE believed that a planning process should be judged by results and not methodology, as the commission proposes. EDE believed the rules are not necessary for the continued reliability of its operations and the provision of safe and adequate service at reasonable rates, and stated its intent to request an exemption from the rules. EDE continued by stating that no quantification of costs to benefits was shown and that benefits should be shown which exceed costs. EDE stated that the proposed rules should focus on general policies and objectives of the planning process and are too prescriptive in requiring planning methods. EDE continued that these requirements present an undue burden on a small utility and that an effective plan can be produced without the mandated detailed data and analyses. EDE is also concerned with the costs associated with implementation and demand-side programs and felt that cost recovery should be addressed directly in the rules. EDE preferred plan preapproval as well. In addition, EDE objected to the imposition of the rules on electric utilities without the same requirements being imposed on alternate fuel suppliers, municipal utilities, rural electric cooperatives (RECs), and other competitors. Finally, EDE objected to what it felt will be disproportionate costs imposed on the smaller utilities by the rules, stating that it feels the personnel, equipment and associated costs will be much the same for the smaller utilities and the larger ones.

Gas Service recommended the proposed rules include a measure requiring the electric utilities to consider fuel substitution as an alternative end-use measure. Gas Service reasoned that use of gas is the most readily available, least cost, demand-side resource. In addition, Gas Service stated that requiring consideration of competitive energy sources meets an important purpose of the rule in that the rule should reflect a diversity of end-use energy service needs and existing end-use technologies. In addition, Gas Service felt that the electric utilities will be unable to meet the mandate of cost-minimization in the proposed rules without consideration of demand-side fuel substitution. Gas Service believed that nontraditional accounting and cost recovery procedures should be established to ensure that utility shareholders will not be disadvantaged by implementation of a fuel substitution measure.

Laclede stated that a stricter and more specific assessment of all aspects of load-building programs as they relate to the public interest should be incorporated into the rule. It was Laclede's concern that the electric utilities would take the demand-side programs as an opportunity to engage in prohibited load building activities. This, stated Laclede, would tend to increase load through artificial financial incentives, thus resulting in an overall detriment to ratepayers due to the presumed overall net impact of raising rates. In addition, Laclede recommended that, as an integral part of demand-side resource planning, fuel substitution analyses should be a requirement placed on the electric utilities.

In addition to many specific changes proposed by the OPC, general comments by OPC in regard to the proposed rules were as follows. OPC stated that they were generally supportive of the rules, however, some constructive criticism was in order. OPC supported the use of present worth of long-run utility costs as the primary selection criteria. OPC believed that commission approval of resource plans is necessary because, otherwise, utilities will be inclined to pursue plans that entail the least regulatory risk, rather than plans that entail the least cost. OPC suggested substitute language that would amount to a finding that if a utility's assumptions and estimates are correct, then the utility's plan based upon those assumptions and estimates is reasonable. The commission would not preapprove any actions taken to implement a plan. OPC recommended additional language stating that the purpose of the required review would be to determine whether the utility's resource acquisition strategy provided the public with energy services that are safe, reliable and efficient at just and reasonable rates, in a manner that serves the public interest. OPC contended that the proposed rules allow utilities too much discretion to select plans that do not meet the primary selection criteria. The commission should be the sole arbiter of what is in the public interest. OPC contended that fuel substitution should be considered a demand-side resource and that it would be better to have fuel substitution provisions in the rules than to add such provisions at a future date. Electric utilities would be justified in seeking a waiver from provisions that would require them to consider fuel switching to gas until gas utilities are subject to similar rules. OPC proposed that each utility be required to submit an executive summary suitable for distribution to the public constituting a nontechnical description of the plan. OPC recommended that the rules contain a requirement that the utilities schedule sessions where interested parties may preview resource acquisition strategies before they are formally filed with the commission. OPC proposed that, if any entity requests a hearing regarding a utility's triennial filing, the

commission should convene a hearing. Finally, OPC contended that demand-side management expenditures should be subject to both prudence and used and useful standards.

The MIEC stated initially that it supported the commission's development of rules that require cost-effectiveness resource planning by electric utilities. MIEC continued by stating that it strongly opposed any plan preapproval by the commission. MIEC stated it was opposed to any prudence review and any link therefrom to automatic cost recovery stating that it felt utilities should retain responsibility and accountability for decisions regarding both supply- and demand-side resources, and that nontraditional incentives were not appropriate. MIEC believed the commission should allow utilities the broadest discretion possible in management of their business and the concurrent risk of and responsibility for management decisions which prove to be imprudent. MIEC recommended the commission maintain its current traditional standard regarding investments, which must be used and useful before being charged to the ratepayer. MIEC added that the current proposed rules may be construed to result in plan preapproval as a result of measuring the utility's plan against the policy objectives of the rule. MIEC proposed changes in an attempt to clarify the fact that the current body of law regarding traditional ratemaking will not be altered by the proposed rules. MIEC also wished to ensure, with these suggested changes, that traditional rate structure and design are considered by the commission only in a rate case. MIEC further expressed its concern that, together with minimization of long-run utility costs, the commission should consider the mitigation of long-run rate increases. MIEC stated that the policy objectives of the rule should include language directing that cost minimization should remain on equal footing with rate impact in any such action. Additionally, in its reply comments, MIEC took the position that the commission does not have the statutory authority to engage in plan preapproval or to attach any presumption of prudence to proposed plans by utilities. MIEC added that plan preapproval would also be bad regulatory policy as no uncertainty or risk would be eliminated, only shifted to ratepayers. In addition, a tremendous allocation of commission staff and resources would be necessary, and de facto management of the utility would result. Finally, MIEC argued that a successful demand-side program should increase the efficient use of utility resources.

Armco submitted reply comments only and was generally supportive of the position taken by MIEC. Armco added that, to alter the traditional ratemaking procedure, i.e., to incorporate plan preapproval or prudence review, would be to radically alter the careful balance now maintained in utility regulation. Armco maintained that the utilities

should be required to assume the risk of their own decisions as they currently do. Armco pointed out that the rules were not designed to protect utilities from speculative investment nor to analyze and approve substantive management decisions regarding resource plans, but to ensure that the public interest is adequately served by requiring minimum standards of documentation and methodology in the planning process. Armco expressed concern that, due to resource constraints, it will be difficult, if not impossible, for intervenors, such as itself, to effectively present their views outside of a rate case. The commission should not establish dockets for the purpose of receiving compliance filings, establishing intervention deadlines, or setting prehearing conferences because the utilities may argue that the commission has approved their plans. Armco expressed concern that the current proposed rules contain language which may be construed to create an impression of prudence review and approval.

The LWV, which filed only reply comments, expressed support for the integrated resource planning process and general support for the proposed rules. In addition, the LWV offered support for the inclusion of fuel substitution as a mandatory demand-side measure in order to ensure all potential cost-effective energy resources are considered in the utility process. Additionally, the LWV agreed that fuel substitution as a demand-side measure should be waived until such regulations are also imposed on competitors. The LWV stated that to obtain a thorough analysis of environmental costs, the rules should include societal and environmental costs resulting from unregulated, uncontrolled or partially controlled pollutants and other external costs of power production which have not been internalized. LWV continued by stating various specifics, generally in support of the position of OPC, in that stricter and more thorough review should be undertaken of the utilities' resource plans when filed, including a formal review process. LWV stated this process would allow earlier intervention by more parties than is currently specified and would be a more far-reaching review than is currently in the rules. The LWV referred to this as "comprehensive plan review." Utility investment in energy efficiency should be made at least as profitable as utility investment in new generating capacity, and incentives for successful implementation of least-cost plans should be tied to performance.

MoPIRG, a public interest research group, generally supported the proposed rules and offered several additional proposals. Feeling that utilities needed a positive "incentive" to raise demand-side resources to a level plane with supply-side interests, and thereby ensure effecting implementation of integrated resource planning, MoPIRG proposed that 4.5 percent of each utility's gross annual revenue be provided solely as financing for demand-side

energy efficiency and renewable energy programs. In addition, MoPIRG proposed formation of an advisory group to monitor electric utilities and assist in implementation of the resource planning process. MoPIRG also supported fuel substitution as a demand-side resource and additionally suggested that cost minimization should be the primary goal of the process. MoPIRG was opposed to plan preapproval.

The final commenter was the DNR which considered the proposed rules as a good first step toward energy efficiency.

Staff's comments were in support of the proposed rules. Staff stated that, as a result of analyses done by a project team, it was found that a wide variance and significant deficiencies existed in both the quality of information and the scope and thoroughness of the analytical methods of resource planning. Staff stated that the rules became necessary, in their opinion, due to the fundamental changes in the industry over the last two decades, the substantial size and long life of capital investment, and the fact that staff believed the industry failed in many cases to adapt planning techniques and procedures to the changing industry. Staff continued by stating that the industry is faced with fundamental change, i.e., exhaustion of scale economies, demand- and supply-side competition, and a substantial increase in market and regulatory uncertainties. In an informal procedure, directed by the commission, together with all interested entities and persons, staff drafted the proposed rules in an effort to promote well-supported, thorough, long-range electric utility planning.

In regard to the various issues and objections raised by commenters, staff, in its comments and reply comments, offered the following general remarks. Staff stated that a fundamental assumption of the proposed rules is that resource planning and investment decisions should remain the responsibility of utility managers, not regulators. Therefore, the focus of the proposed rules is on the methodology involved in the planning process, rather than on the particular plans and decisions which result from the process. The proposed rules are designed to set minimum standards for information collection and analyses and define the scope of the process. In addition, staff stated that the fundamental basis for the demand-side portion of the proposed rule is that, as a result of various market factors, the concept of simply delivering a supply of energy should be superseded by the objective of providing energy services. Demand-side resource management is a necessary part of the long-range resource planning for efficient and effective energy service.

In regard to the basic objection by various utilities to the suggested method, that being the cost of implementation, staff stated that, while it realized there are virtually no differences in implementation costs between

the smaller and larger utilities, the proposed rules allow a waiver or variance procedure upon demonstration that the cost of compliance outweighs the expected benefit of the information. Staff believed that cost of data collection and analyses is not a valid reason for rejection of the rules.

In regard to the electric utilities' concerns involving the ability to effectively compete with gas and unregulated electric utilities, staff stated that, subsequent to the adoption of these resource planning rules, it fully intends to draft and propose integrated resource planning rules for gas utilities. Staff felt that the need for an integrated resource planning process had the greatest urgency in the electric utility area and therefore proposed these rules first. Staff stated that electric utilities are more capital intensive than gas companies. In addition, staff is aware of and involved in the process of fundamentally altering the market structure of the gas industry by the Federal Energy Regulatory Commission (FERC).

Staff felt that the staggered, three-year period proposed for the filing of the utilities' integrated resource planning is flexible enough to minimize utility costs and allow staff to review this planning process without additional personnel. Staff, in response to utility comments, also noted that trade secrets, confidential or private information or business and financial information may be protected by a utility's request for a protective order.

In response to comments by the utilities regarding nontraditional accounting or ratemaking procedures for demand-side costs, staff stated that the commission may authorize particular nontraditional accounting and/or ratemaking methodology. Staff takes the position that, typically, traditional accounting and ratemaking treatment should be accorded expenses related to demand-side program development and implementation. Staff opposed nontraditional procedures for any but the most extraordinary circumstances, for the reason that demand-side costs are annually recurring and therefore can be recovered through traditional ratemaking methods, as other expenses are.

In regard to specific criticisms by the smaller utilities that the rules are too prescriptive and burdensome for them, and that setting general policy objectives would be preferable, staff responded that policy statements are not specific enough to give focus and direction to long-range resource planning. Staff felt that, together with the provision of waivers for good cause, the proposed rules provide adequate direction while still allowing sufficient flexibility for each utility.

COMMISSION FINDINGS AND CONCLUSIONS RESPECTING MERITS OF COMMENTS AND TESTIMONY: After full review of comments, reply comments, and testimony in regard to the proposed

rules, the commission makes the following findings and conclusions in regard to the adoption, as amended, of the proposed rules.

The first major issue in which most commenters in this matter advocate a position is that involving the commission's preapproval of management plans. Comments were also submitted referring to this concept as approval, strategic preapproval, cost preapproval, prudence review and others. All appear to be modified versions of the concept of commission approval of management plans, strategies, and/or cost expenditures prior to any action being taken or expense being incurred by the utility.

In reviewing this matter, the commission has considered numerous factors and arguments, both in favor and against initiation of plan preapproval, and has substantial concerns regarding several key issues. First, serious statutory and precedential issues exist as to the commission's authority to engage in what may be termed single-issue ratemaking, the preallocation of costs, and the granting of a presumption of prudent action by utility management. Secondly, the commission is wary of assuming, either directly or in a de facto fashion, the management prerogatives and responsibilities associated with strategic decision making, preferring to allow utility management the flexibility to make both overall strategic planning decisions and more routine management decisions in a relatively unencumbered framework. Additionally, the commission is well aware that each of the five (5) utilities which would be subject to these proposed rules have different external and internal factors which affect not only overall planning but the daily management of each company. As the result of this diversity, the commission feels that management flexibility and concomitant risk and responsibility for management and planning decision-making should appropriately and wisely be left to each individual utility.

The commission is also aware that substantial additional resources and personnel would be necessary to initiate and operate such a preapproval program. Utilities argue that the proposed system of resource planning and submission of plans is unduly burdensome and costly with little to indicate favorable results in terms of cost effectiveness. The commission is sympathetic to this argument to the extent that, as each utility is unique and subject to widely varying external and internal influences, procedures are in place both within the proposed rules and within the regulatory framework to allow waivers, variances, and special accounting treatments, for good cause shown, to accommodate each utility's market situation. The commission intends fair and open-minded consideration of waiver, or variance requests, and favors such a procedure, where appropriate, over a possible costly, inflexible and uncertain preapproval scenario. The commission finds that

the current traditional procedure for ratemaking, tariff approval, and the obtaining of variances, waivers and special accounting orders is sufficiently fair, reasonable and flexible for any perceived burdensome or unduly costly contingency which may be encountered by each of the electric utilities.

In conjunction with the issue of plan preapproval, substantial objection has been made by various of the electric utilities that the proposed rules are prescriptive in nature, and therefore exclusory, preventing the utilities from employing methods of resource planning not specifically prescribed by the proposed rules, and additionally, removing the necessary flexibility in the decision-making process. The commission finds that the rules reflect the intent to set basic planning parameters, largely in the areas of data gathering and analyses, to ensure that long-range resource planning is based on adequate and accurate data. It is the commission's opinion that, having used the methods as set out in the rules, the utility is allowed substantial flexibility in making the actual strategic decisions. The commission is of the belief that the rules should be put in place to promote proper, accurate, and increasingly necessary long-range planning, but not to dictate either the strategic decision itself or the decision-making process. In addition, staff has recommended numerous changes in the original proposed rules, based on filed comments by the utilities and others, in an attempt to alleviate concerns in regard to their perceived prescriptive or exclusory nature.

The utilities made substantial comment in regard to the anticipated costs that will be incurred in an effort to comply with the proposed rules and suggested that additions be made allowing them to obtain approval to recover these costs from the ratepayer as they were being incurred or, alternatively, provide for contemporaneous cost-recovery in the rules. The commission is sympathetic to the concerns, particularly of the smaller utilities, that full compliance will be burdensome and not cost-beneficial. The commission notes that clear and accurate cost figures appeared nowhere in any utility's comments or testimony, despite some unsupported estimates, which varied widely. In this regard the commission emphasizes the use of waivers or variances, provision for which are included in the proposed rules, should the various utilities find that full compliance is either effectively impossible or economically unjustified.

In regard to the issue concerning the demand-side planning and marketing by the electric utilities of alternate or substitute fuels, raised primarily by gas companies, it is the commission's opinion that mandating consideration of fuel substitution programs at this time would be inadvisable for reasons as set out previously in this opinion. Principally it is the opinion of the commission that, as the result of the diverse nature of the

various electric utilities and the areas which they serve, maximum flexibility in management decision-making in regard to demand-side programs is the wisest policy at this time. In addition, as no such rule has been yet imposed on the gas companies, the concern expressed by the electric utilities in regard to the unfair disadvantage that would be placed on them in the marketplace is a valid one. Therefore, it is the decision of the commission that, at this time, no mandatory provisions will be placed in the rules regarding fuel substitution or alternate fuels as a part of demand-side resource planning.

On October 24, 1992, H.R. 776, the "Energy Policy Act of 1992" (Energy Policy Act) was signed into law. Section 111 of the Energy Policy Act amends section 111(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) by adding three (3) federal electric standards to the six (6) section 111(d) federal electric standards that were established in 1978. The three (3) federal electric standards added by section 111 of the Energy Policy Act are (1) integrated resource planning, (2) investments in conservation and demand management, and (3) energy efficiency investments in power generation and supply.

Although not set out as a separately enumerated standard, section 111 of the Energy Policy Act also provides that if a state commission implements either the integrated resource planning standard or the investment in conservation and demand management standard, the commission must consider the impact of such standard on small businesses engaged in the design, sale, supply, installation, or servicing of energy conservation, energy efficiency, or other demand-side management measures and assure that utility actions will not provide such utilities with unfair competitive advantage over these small businesses.

Section 111 of the Energy Policy Act and section 112 of PURPA state that within two (2) years after the enactment of the standards the commission must commence consideration or set a hearing date for consideration of such standards, and within three (3) years after the enactment of the standards, the commission must make a determination as to whether it is appropriate to implement such standards. Section 112 of PURPA permits "grandfathering" of prior determinations of such standards. The Joint Explanatory Statement Of The Committee Of Conference stated that the conferees did not intend that state commissions that have implemented some or all of the standards of this section engage in additional rulemaking proceedings simply to satisfy the procedural requirement of holding a hearing, nor that these state commissions repeat such proceedings in the future. Therefore, it is the present intent of the commission to establish a docket for the purpose of determining whether the proposed integrated resource planning rules meet the requirements of the Energy Policy Act.

It is also the intent of the commission to enter into a resource planning rulemaking procedure regarding natural gas utilities similar to the rulemaking which is now being concluded regarding electric utilities. This was the commission's thinking prior to the Energy Policy Act becoming law. The commission notes that in addition to the Energy Policy Act amending PURPA regarding federal electric standards, the Energy Policy Act amends PURPA by requiring that the commission consider whether it is appropriate to implement federal gas standards on (1) integrated resource planning and (2) investments in conservation and demand management. The commission plans to proceed with reasonable dispatch on these matters.

Therefore, for the reasons stated, the commission adopts the proposed rules as amended.

4 CSR 240-22.010 Policy Objectives

SUMMARY OF COMMENT: The purpose of the modifications to the proposed rules is in response to concerns expressed by various commenters.

UE, KCPL, MPS, OPC and MIEC objected to some portion of 4 CSR 240-22.010(2), particularly to staff's position that cost minimization should be designated as the primary selection criteria in choosing a resource plan. UE also objected to the word "choosing" as not allowing utility decision makers enough discretion and flexibility in formulating the preferred resource plan.

Several options evolved during the rulemaking process: (1) minimization of present value of long-run utility costs; (2) minimization of rates; (3) use of total resource cost (including utility and participant costs); and (4) equal consideration to all criteria.

KCPL believed that the total resource cost test is most appropriate because it measures the total cost including participant contributions for demand-side resources. UE expressed concern over identifying the primary criterion as minimizing utility costs and believed that equal consideration should be given to all criteria, e.g., minimizing rates, minimizing costs, minimizing environmental impact, maximizing reliability and flexibility.

MIEC supported the minimization of rates as the best criterion to evaluate alternate plans.

The OPC, LWV and MoPIRG believed that the public interest is best served by minimizing the cost for energy services. This "bill reduction" approach is most closely approximated by minimizing long-run utility costs. They argued that using rate minimization is not in the public interest because it biases against demand-side resources. Most demand-side resources do not pass the rate minimization test, and though rates will decline, the average bill (and total amount of money paid to the utilities) will be higher.

Staff contended that UE, KCPL, SJLP and MPS already use cost minimization as the primary resource selection criterion. Staff acknowledged, however, that other criteria may in some circumstances be constraining. Staff believed that the rate minimization criterion is not of equal importance to cost minimization.

The commission has adopted two modifications in the proposed rules in response to comments by utilities and staff, those being the deletion of the term "adequately", and the substitution of the word "other" for "secondary criteria." The term "adequately" was removed as a modifier at the suggestion of OPC, with no objection from staff. The deletion of the term "secondary criteria" was made as the result of comments by utilities that, while cost-minimization may be an important consideration in long-range planning, rate-minimization and flexibility should also be encouraged. Staff did not object to this modification and the commission therefore made the change.

The commission adopts the two modifications in the proposed rules in response to various comments but still holds to the proposition that cost-minimization should be of primary importance in resource plan selection. Based on the foregoing the commission finds that this section will be adopted as modified.

4 CSR 240-22.010(2)

(C) Explicitly identify and, where possible, quantitatively analyze any {secondary criteria or} other considerations which are critical to meeting the fundamental objective of the resource planning process, but which may constrain or limit the minimization of the present worth of expected utility costs. The utility shall document the process and rationale used by decision makers to assess the tradeoffs and determine the appropriate balance between minimization of expected utility costs and these other considerations in selecting the preferred resource plan and developing contingency options. These considerations shall include, but are not necessarily limited to mitigation of -

4 CSR 240-22.020 Definitions

4 CSR 240-22.020(1)

SUMMARY OF COMMENT: There were no adverse comments in regard to 22.020(1) however, the commission has made two corrections as the result of altering the order of sections in 4 CSR 240-22.050. This reordering makes it necessary to change section (3) to (2) in 22.020(1)(A) and (B). The commission adopts this section as amended.

4 CSR 240-22.020

(1) Avoided cost means the cost savings obtained by substituting demand-side resources for existing and new supply resources. 4 CSR 240-22.050{3}(2) requires the utility to develop the following measures of avoided cost:

(A) Avoided utility costs developed pursuant to 4 CSR 240-22.050{3}(2)(D), which include energy cost savings plus demand cost savings associated with generation, transmission and distribution facilities; and

(B) Avoided probable environmental costs developed pursuant to 4 CSR 240-22.050{3}(2)(D) and 4 CSR 240-22.040(2)(B).

4 CSR 240-22.020(2)

SUMMARY OF COMMENT: OPC suggested changes to avoid confusion regarding cost-effectiveness screening tests. Staff concurred and suggested changes to this section and to sections (45), (50) and (56), and the addition of new sections (55) and (58).

4 CSR 240-22.020

(2) Candidate resource options are demand-side programs that pass the screening test{s} required by 4 CSR 240-22.050(7), or supply-side resources that are not rejected on the basis of the screening analysis required by 4 CSR 240-22.040(2).

4 CSR 240-22.020(15)

SUMMARY OF COMMENT: OPC submitted that the definition of "end-use measure" should include fuel-substitution measures. The staff opposes such a change at this time because of practical problems in imposing a requirement of this nature on electric utilities without a balanced and complementary rule for gas utilities. The commission agrees and therefore adopts the section as proposed.

4 CSR 240-22.020(16)

SUMMARY OF COMMENT: OPC suggested adding the phrase "generated or" after the words "power that is" to more accurately reflect the sources of power used by electric utilities. Staff concurs in this change and the commission therefore adopts this section as amended.

4 CSR 240-22.020

(16) Energy means the total amount of electric power that is generated or used over a specified interval of time measured in kilowatt-hours (kWh).

4 CSR 240-22.020(25)

SUMMARY OF COMMENT: OPC submitted argument that this definition should be removed as being unnecessary. OPC notes that, by this definition, most real-world pricing is, to some extent, inefficient. Staff maintains that the definition is necessary, as the term is used in 22.020(39)(F), and therefore needs to be defined.

The commission adopts this section without change as it prefers staff's position. For these reasons the commission adopts this section as proposed.

4 CSR 240-22.020(27)

SUMMARY OF COMMENT: KCPL proposed to expand the definition of levelized cost to include an "economic carrying charge" approach to cost annualization. KCPL stated that the requirement to use levelized costs in supply-side screening was eliminated in the technical workshops to allow the use of an economic carrying charge approach, and KCPL wanted the same flexibility in demand-side resource screening. Staff stated that although such flexibility was appropriate for supply-side screening, it is not appropriate for screening demand-side measures. Staff further noted that while levelized costs are required for screening demand-side measures, they are not required for analyzing the cost-effectiveness of demand-side programs. Present worth analysis is used for demand-side program screening.

The commission finds that this definition should be adopted without modification, and that language to permit the use of an economic carrying charge approach for supply-side screening should be added to 4 CSR 240-22.040(2)(A).

4 CSR 240-22.020(29)

SUMMARY OF COMMENT: OPC argued that the definition should be inclusive of the utilities' efforts to expand their service territory geographically and to attract new customers to an existing service territory.

MPS wished to add "on-peak" load increases to the definition of load-building.

Staff, in response to these comments and concerns, proposed this definition, which has the objectionable activities removed from it.

The commission finds that the rule, as proposed, does not promote a "no-growth" scenario, a concern expressed by SJLP, but does require that the long-term resource costs of load-building must be considered in planning. The definition should not include programs to expand the geographical service area and attract new customers, should include both on-peak and off-peak load building, and should maintain a

clear distinction between demand-side programs and load-building programs. In addition, this definition is consistent with the existing promotional practices rule and proposed changes. Therefore, for these reasons the commission adopts this section as proposed.

4 CSR 240-22.020(38)

SUMMARY OF COMMENT: MPS argued that utility costs, as defined by 22.020(55), should include lost revenues.

Staff responded to that argument by stating that, as defined, lost revenues depend on the length of time between rate cases as well as the load impacts of demand-side programs. Although they may affect the utility's short-term earnings, they are clearly not part of the utility's revenue requirements and should not be included in the definition of utility costs.

The commission holds that the proposed definition should be adopted for reasons as set out by staff, which reflect the commission's current accounting practices. The commission therefore adopts this section as proposed.

4 CSR 240-22.020(39)

SUMMARY OF COMMENT: OPC submitted that the definition, at 22.020(25), and the terms "inefficient pricing of energy supplies", subsection (F), should be omitted.

Staff argued that the term and definition are necessary to define the market imperfections that inhibit efficient energy-related choices.

The commission holds that staff's position is correct in that inefficient energy pricing should be included in the definition of market imperfection. The commission therefore adopts the section as proposed.

4 CSR 240-22.020(41)

SUMMARY OF COMMENT: In response to comments by OPC, the staff proposed an additional definition, that being the definition of "nominal dollars", inserted at (41).

The commission agrees that this term should be defined and adopts the definition as proposed and inserted herein.

4 CSR 240-22.020

(41) Nominal dollars means future or then-current dollar values that are not adjusted to remove the effects of anticipated inflation.

4 CSR 240-22.020(42)

SUMMARY OF COMMENT: As the result of the insertion of (41) above, the number of this definition has been changed from (41) to (42).

4 CSR 240-22.020

{{(41)}}(42) Participant means an energy-related decision maker who implements one (1) or more end-use measures as a direct result of a demand-side program.

4 CSR 240-22.020(43)

SUMMARY OF COMMENT: As the result of the insertion of definition (41), this definition has been renumbered as (43) from (42).

4 CSR 240-22.020

{{(42)}}(43) Planning horizon means a future time period of at least twenty (20) years' duration over which the costs and benefits of alternative resource plans are evaluated.

4 CSR 240-22.020(44)

SUMMARY OF COMMENT: As the result of the insertion of definition (41), this definition has been renumbered as (44).

4 CSR 240-22.020

{{(43)}}(44) Preferred resource plan means the resource plan that is contained in the resource acquisition strategy that has most recently been adopted for implementation by the electric utility.

4 CSR 240-22.020(45)

SUMMARY OF COMMENT: OPC suggested an alteration in this proposed definition in order to avoid any potential confusion regarding screening tests. The staff concurred in this change. Also, as the result of the insertion as (41), the number of the proposed rule has been changed to (45). The commission adopts this proposed section as amended.

4 CSR 240-22.020

{{(44)}}(45) The probable environmental benefits test is a test of the cost-effectiveness of end-use measures {or demand-side programs} that uses the sum of avoided utility costs and avoided probable environmental costs to quantify the {net} savings obtained by substituting the {demand-side resource} end-use measure for supply resources.

4 CSR 240-22.020(46)

SUMMARY OF COMMENT: MPS, OPC and other commenters objected to the term "non-zero probability" in the definition as proposed, stating that the term was too restricted and could involve almost any environmental effect no matter how insignificant in impact or cost.

Staff agreed to change the term to focus on risk as measured by the potential impact on utility rates."

The commission holds that, while the term should be defined, the original language was too restrictive and the concerns of the commenters were understandable. The amendment proposed by staff should alleviate most concerns and more accurately express the commission's intent. In addition, the number of this definition has been changed to reflect the insertion of definition (41) and is amended to (46). The commission adopts this proposed section as amended.

4 CSR 240-22.020

{{(45)}}(46) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental laws, regulations, taxes or other {costs} requirements that utility decision makers judge {to have a nonzero probability of being} may be imposed at some point within the planning horizon which would result in compliance costs that could have a significant impact on utility rates.

4 CSR 240-22.020(47)

SUMMARY OF COMMENT: As a result of the insertion of definition (41), this definition has been changed to (47).

4 CSR 240-22.020

{{(46)}}(47)Resource acquisition strategy means a preferred resource plan, an implementation plan and a set of contingency options for responding to events or circumstances that would render the preferred plan obsolete.

4 CSR 240-22.020(48)

SUMMARY OF COMMENT: As a result of the insertion of definition (41), this definition has been renumbered to (48).

4 CSR 240-22.020

~~{{(47)}}~~(48) Resource plan means a particular combination of demand-side and supply-side resources to be acquired according to a specified schedule over the planning horizon.

4 CSR 240-22.020(49)

SUMMARY OF COMMENT: As the result of the insertion of definition (41), this definition has been renumbered to (49).

4 CSR 240-22.020

~~{{(48)}}~~(49) Resource planning means the process by which an electric utility evaluates and chooses the appropriate mix and schedule of supply-side and demand-side resource additions to provide the public with an adequate level, quality and variety of end-use energy services.

4 CSR 240-22.020(50)

SUMMARY OF COMMENT: The OPC suggested a change in this definition to make it consistent with 22.050(7) as already discussed. Staff had no objection to this change. In addition, the definition has been renumbered to reflect the insertion of definition (41) and has been renumbered to (50).

The commission has no objection to clarifying this definition and therefore adopts this section as amended.

4 CSR 240-22.020

~~{{(49)}}~~(50) Screening test or cost-effectiveness test means the probable environmental benefits test for demand-side measures and the total resource cost test for demand-side programs.

4 CSR 240-22.020:(51)

SUMMARY OF COMMENT: As the result of the insertion of definition (41), this definition has been renumbered to (51).

4 CSR 240-22.020

~~{{(50)}}~~(51) Subjective probability means the judgmental likelihood that the outcome represented by each branch of a chance node will actually occur. The sum of the probabilities associated with the branches of a single chance node must equal one (1). This means that the specified set of potential outcomes must be exhaustive and mutually exclusive.

4 CSR 240-22.020(52)

SUMMARY OF COMMENT: As the result of the insertion of definition (41), this definition has been renumbered to (52).

4 CSR 240-22.020

{{(51)}}(52) Sulfur dioxide emission allowance is an authorization to emit, during or after a specified calendar year, one (1) ton of sulfur dioxide, as defined in Title IV of the Clean Air Act Amendments of 1990, 42 USC 7651a(3).

4 CSR 240-22.020(53)

SUMMARY OF COMMENT: As the result of the insertion of definition (41), this definition has been renumbered to (53).

4 CSR 240-22.020

{{(52)}}(53) Supply-side resource or supply resource means any device or method by which the electric utility can provide to its customers an adequate level and quality of electric power supply.

4 CSR 240-22.020(54)

SUMMARY OF COMMENT: As the result of the insertion of definition (41), this definition has been renumbered to (54).

4 CSR 240-22.020

{{(53)}}(54) The technical potential of an end-use measure is an estimate of the load impact that would occur if that measure were installed at every location in the utility's service territory where the measure is technically feasible but has not yet been installed.

4 CSR 240-22.020(55)

SUMMARY OF COMMENT: The OPC commented that potential confusion existed in the original proposed rules due to an inconsistency between definitions of "screening test" and various terms used in 22.050(7). As a result of those comments, staff offered various changes, including addition of 22.020(55) to clarify the involved terms. The commission concurs and adopts the new definition.

4 CSR 240-22.020

(55) The total resource cost test is a test of the cost-effectiveness of demand-side programs that compares the sum of avoided utility costs plus avoided probable environmental costs to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver and evaluate each demand-side program to quantify the net savings obtained by substituting the demand-side program for supply resources.

4 CSR 240-22.020(56)

SUMMARY OF COMMENT: This definition has been clarified in response to OPC's comments. This section has been renumbered to (56) as the result of the insertion of definitions at 22.020(41), and (55).

4 CSR 240-22.020

{{(54)}}(56) The utility benefits test is a test of the cost-effectiveness of end-use measures {or demand-side programs} that uses avoided utility costs to quantify the {net} savings obtained by substituting the {demand-side resource}end-use measure for supply resources.

4 CSR 240-22.020(57)

SUMMARY OF COMMENT: This section has been renumbered to (57) as the result of the insertion of definitions (41) and (55).

4 CSR 240-22.020

{{(55)}}(57) Utility costs are the costs of operating the utility system and developing and implementing a resource plan that are incurred and paid by the utility. On an annual basis, utility cost is synonymous with utility revenue requirement.

4 CSR 240-22.020(58)

SUMMARY OF COMMENT: The OPC commented that potential confusion existed in the original proposed rules due to an inconsistency between definitions of "screening test" and various terms used in 22.050(7). As a result of those comments the staff offered various changes, including 22.020(58) to clarify the involved terms. The commission concurs and adopts the new definition.

4 CSR 240-22.020

(58) The utility cost test is a test of the cost-effectiveness of demand-side programs that compares the avoided utility costs to the sum of all utility incentive payments, plus utility costs to administer, deliver and evaluate each demand-side program to quantify the net savings obtained by substituting the demand-side program for supply resources.

4 CSR 240-22.020(59)

SUMMARY OF COMMENT: This section has been renumbered to (59) as the result of the insertion of definitions (41), (55) and (58).

4 CSR 240-22.020

{{(56)}}(59) Utility discount rate means the post-tax rate of return on net investment used to calculate the utility's annual revenue requirements.

4 CSR 240-22.020(60)

SUMMARY OF COMMENT: This section has been renumbered to (60) as the result of the insertion of definitions (41), (55) and (58).

4 CSR 240-22.020

{{(57)}}(60) Uncertain factor means any event, circumstance, situation, relationship, causal linkage, price, cost, value, response or other relevant quantity which can materially affect the outcome of resource planning decisions, about which utility planners and decision makers have incomplete or inadequate information at the time a decision must be made.

4 CSR 240-22.020(61)

SUMMARY OF COMMENT: This section has been renumbered to (61) as the result of the insertion of definitions (41), (55) and (58).

4 CSR 240-22.020

{{(58)}}(61) Weather measure means a function of daily temperature data that reflects the observed relationship between electric load and temperature.

4 CSR 240-22.030 Load Analysis and Forecasting

4 CSR 240-22.030(1)(A)

SUMMARY OF COMMENT: A suggested change by SJLP was to delete the following in 22.030(1)(A)2.: "If the utility uses subclasses which do not fit into these categories, it must explain the reasons for its choice of subclasses.". In its place, SJLP proposed to add the following: "The utility shall use the subclasses that it believes best reflect the energy usage characteristics of its service area, subject to the availability of reliable data and statistical validity." SJLP does not agree that the utility should explain the reasons that its choice of subclasses are different from those listed in the rule.

Staff disagreed stating that the subclasses listed in the rule were chosen because of the aggregation bias that may occur in the forecast if these subclasses are not used. Therefore, if the utility does not use the subclasses listed it must show that it has looked at the aggregation bias issue and concluded that in their service territory another set of subclasses will be better in eliminating any bias in the forecast.

The commission agrees with staff in that uses of subclasses as set out must be uniform or reason must be shown why such a subclass is inappropriate. Therefore, the paragraph is adopted as proposed.

4 CSR 240-22.030(1)(B)

SUMMARY OF COMMENT: Suggested changes in the language of 22.030(1)(B)1. and 2. were proposed by SJLP and UE for purposes of clarification. The staff agreed with these suggested changes. As a result, the commission, based on the agreed changes between staff and the commenting utilities, adopts the proposed paragraphs as amended.

4 CSR 240-22.030(1)(B)

1. For each jurisdiction {for} under which the utility {makes forecasts} has rates established and for which it prepares customer and energy forecasts, each major class, and to the extent data is required to support the detail specified in paragraph (1)(A)1., for each subclass, actual monthly energy usage and number of customers and weather-normalized monthly energy usage {and number of customers};

2. For each major class, estimated actual and weather-normalized demands at the time of monthly system peaks; and

4 CSR 240-22.030(1)(C)1.

SUMMARY OF COMMENT: A proposed change was suggested by SJLP to delete the following: "If the utility uses a different unit measure, it must explain the reason for choosing

different units." In its place, SJLP proposed to add the following: "The utility shall use those subclasses that it believes best reflect the energy usage characteristics of its service area subject to the availability of reliable data and statistical validity."

Staff did not believe that the additional language added any clarification to the rule. Staff felt that subclasses was the wrong term. While the utility might use units that best reflect the energy usage characteristics of its service area, staff felt this might not be the only, or even the primary, reason for the utility's choice. Staff saw no reason to restrict the rule to include the SJLP suggested language as the only reason. Staff maintained that allowing the utility to explain the reason for its choice of units gives it a greater degree of flexibility.

The commission agrees with staff in regard to the proposed change in that flexibility should be allowed. The commission therefore adopts the subsection as proposed.

4 CSR 240-22.030(1)(C)2.

SUMMARY OF COMMENT: A proposed change was suggested by UE to delete the following: "The utility shall develop and implement a procedure to routinely measure and regularly update estimates of the effect of both actual and normal weather on class and system electric loads." UE substituted the following: "The utility shall develop and implement a procedure to routinely measure and regularly update estimates of the effect of weather on class and system electric loads."

UE argued that the inclusion of the words "both actual and normal" to this portion of the rule would require the utility to "disaggregate actual loads into weather and non-weather related loads", and that a more appropriate requirement would be to determine the difference between loads "under actual versus normal weather."

The staff does not believe that the proposed rule requires the utility to disaggregate actual loads into weather and non-weather related components, nor does the staff believe that the suggested change to the proposed language conveys the concept that the utility should look at the differences in loads caused by the difference between actual and normal weather.

The commission finds that, as there seems to be a potential misinterpretation in the proposed language, an amendment to this proposed rule should be adopted to help to clarify the fact that disaggregation is not required. The commission therefore adopts the paragraph as amended.

4 CSR 240-22.030(1)(C)

2. The utility shall develop and implement a procedure to routinely measure and regularly update estimates of the effect of {both actual and} departures from normal weather on class and system electric loads.

4 CSR 240-22.030(1)(C)2.C.

SUMMARY OF COMMENT: OPC suggested that the phrase "tests of statistical significance" should be changed to "all relevant test statistics." OPC stated that the reason for the change is that "there are other important statistical tests that should be made in addition to significance tests."

The staff agreed with OPC, but stated that the rule already requires the statistical results of the models be included. The "tests of statistical significance" phrase was added to emphasize that, along with estimates of the model parameters, the utility should include measures of whether or not these estimates are statistically significant. In order to take into account the OPC suggestion however, the word "relevant" was added as a modifier.

The commission agrees with staff's modification and therefore adopts the rule as amended.

4 CSR 240-22.030(1)(C)2.

C. The utility shall document the methods used to develop weather measures and the methods used to estimate the effect of weather on electric loads. If statistical models are used, the documentation shall include at least: the functional form of the models; the estimation techniques employed; the data used to estimate the models, including the development of model input data from basic data; and the relevant statistical results of the models, including parameter estimates and tests of statistical significance; and

4 CSR 240-22.030(1)(D)1.

SUMMARY OF COMMENT: KCPL recommended a change in text to remove the following wording related to the time period requirements on the data base for energy: "start from January 1982 or for the period of time used as the basis for the utility's forecast of these loads, whichever is longer." KCPL substituted the following time period requirements: "be provided for the three calendar years preceding the utility's date of filing as required by these rules."

Staff disagreed with this suggested change, as it is crucial that the data set used as the basis for the utility's forecast be maintained. Staff maintains that this is a matter of sound documentation for forecasting. In its comments, KCPL sought to limit the initial filing to a three(3)-year period, but agreed that, over time, the

utility would maintain up to a ten(10)-year period of historical data. However, the proposed language change does not do this, instead limiting the data base to three (3) years.

Staff also agreed that only three (3) years of weather normalized data need be maintained. KCPL argued that to perform ten (10) years of weather normalization of loads as compared to three (3) years is a "misallocation of KCPL forecasting resources" if the purpose is only to use the trends from the weather-normalized loads as a "sanity check" for load forecasting.

The commission determines that the rule as proposed should be adopted in that a primary purpose for requiring a longer period of weather normalized loads is that errors in weather normalization procedures may not show up over a short time period, particularly if the errors are themselves weather related. It is the commission's opinion that once the weather normalization procedures are established, the application of those procedures to a single year requires few additional resources. Because the weather analysis of a single year's loads will not find weather related errors in the estimation procedure, the commission believes that the benefits of applying the procedure to previous years is well worth the additional effort. The commission therefore adopts the paragraph as proposed.

4 CSR 240-22.030(1)(D)2.

SUMMARY OF COMMENT: KCPL proposed to remove the following wording related to the time period requirements on the data base for energy: "start from January 1990 or for the period of time used as the basis of the utility's forecast of these loads, whichever is longer." KCPL substituted the following time period requirements: "be provided for the three calendar years preceding the utility's date of filing as required by these rules."

The staff disagreed with this suggested change for the same reasons given as a response to the similar suggested change to (1)(D)1.

An additional proposed change by SJLP to this paragraph would add the following words: "Estimated actual and weather-normalized class and system monthly demands at the time of the system peak and weather-normalized hourly system loads shall start from January of 1990 if available, or for the period of time used as the basis for the utility's forecast of these loads, whichever is longer;"

Staff agreed with the addition of the word "estimated", but disagreed with the addition of the words "if available." The words "if available" are not appropriate modifiers for the rule because it allows the utility that does not want to develop these estimates to simply say that since they had

not performed the estimation, the estimates are not available.

The commission agrees with staff that standards should be set and maintained in regard to data collection and find that the proposed standards are reasonable and not burdensome. The commission would point out that, should good reason exist why such data cannot be gathered, the utilities may apply for waiver or variance under the provisions of these rules. Therefore, the commission adopts this paragraph as amended.

4 CSR 240-22.030(1)(D)

2. Estimated {A}actual and weather-normalized class and system monthly demands at the time of the system peak and weather-normalized hourly system loads shall start from January 1990 or for the period of time used as the basis of the utility's forecast of these loads, whichever is longer.

4 CSR 240-22.030(2)(A) and (C)

SUMMARY OF COMMENT: UE proposed to substitute the word "assumptions" for "factors". The staff agreed with this proposed substitution of words. UE also proposes the following: "Where the utility has modeled the relationship between the number of units and the driver variables for a major class but not for subclasses within that major class, it shall {identify the factors which affect} consider how a change in subclass shares of major class units, {and shall explain how these factors were used to predict the subclass shares of the total number of units for the major class.} could impact the major class forecast."

Staff felt, and the commission agrees, that the alternative wording captures the intent of the rule using simpler language and fewer words. Therefore, the commission adopts these subsections as amended.

4 CSR 240-22.030(2)

(A) Choice of Driver Variables. The utility shall identify appropriate driver variables as predictors of the number of units for each major class or subclass. The critical {factors} assumptions that influence the driver variables shall also be identified.

(C) Where the utility has modeled the relationship between the number of units and the driver variables for a major class but not for subclasses within that major class, it shall {identify the factors which affect} consider how a change in the subclass shares of major class units, {and shall explain how those factors were used to predict the subclass shares of the total number of units for the major class} could affect the major class forecast.

4 CSR 240-22.030(3)(A)1. and 2.

SUMMARY OF COMMENT: KCPL suggested adding the words "process equipment" and delete the words "motor drives" where found in this rule for purposes of accuracy. Staff agreed with the suggested change.

SJLP suggested the addition of the phrase "and cost justified." The staff disagreed with this suggested addition maintaining paragraph 22.030(3)(A)2. specifically deals with the issue of cost justification, and the suggested phrase does not need to be added.

The commission agrees that the phrase "process equipment" should be substituted for "motor drives" as being clearer and more accurate. The commission does not agree that the phrase "and cost justified" should be included in this section as cost justification of data collection and processing in these proposed rules are dealt with in other provisions, particularly those involving waivers, and need not be inserted here. The commission therefore adopts paragraph 1. as amended and paragraph 2. as proposed.

4 CSR 240-22.030

1. Where applicable for each major class, end-use information shall be developed for at least lighting, {motor drives,} process equipment, space cooling, space heating, water heating and refrigeration.

4 CSR 240-22.030(3)(A)3.

SUMMARY OF COMMENT: SJLP suggested that the word "yet" and the phrase "by disaggregating the load into its cooling, heating and nonweather-sensitive components" be deleted from the proposed rule. SJLP believed the paragraph presumes that if end-use data does not exist at the current time, it will exist at some future time whether it is cost-justified and appropriate or not.

Staff believed SJLP has totally misinterpreted the meaning of the paragraph. Staff stated that this paragraph does not presume anything about whether the appliance stock approach to end-use is cost-justified. This paragraph simply states that if the utility has not yet performed an appliance stock load analysis for space cooling or space heating, it is required to disaggregate its load into cooling, heating and nonweather-sensitive components.

SJLP also suggested that the words "or both" be added after the phrase "the cooling or heating components." Staff did not object to this addition, but did not believe that it was required.

The commission has determined that the rule, as set out, is appropriate and agrees with staff that this rule makes no statement in regard to cost-justification. The

rule, on its face, requires specific categories for collection and analyses of appliance loads. Provisions involving cost justification and waivers are contained elsewhere in the proposed rule. Therefore the commission adopts the paragraph as proposed.

4 CSR 240-22.030(3)(B)2.

SUMMARY OF COMMENT: MPS offered a suggestion to substitute the word "annual" for the word "monthly" throughout this paragraph. MPS argues that the requirement for monthly estimates instead of annual estimates will impose an undue burden on the utility.

Staff responded that this is a misinterpretation of what the proposed rules would require.

In its review of the language, Staff noticed that the word "monthly" as a modifier should be added.

The commission agrees that the proposed change by MPS is unnecessary. The proposed rules require planned periodic estimates of monthly peaks. Should this become burdensome the utility may file a request for variance or waiver of the provision. The commission adopts this paragraph as amended.

4 CSR 240-22.030(3)

2. Estimates of end-use energy and demand. For each end use, the utility shall estimate end-use monthly energies and demands at time of monthly system peaks, and shall calibrate these energies and demands to equal the weather-normalized monthly energies and demands at time of monthly peaks for each major class for the most recently available data.

4 CSR 240-22.030(5)

SUMMARY OF COMMENT: UE suggested grammatical changes to the language used to describe the utility's base case forecast in 22.030(5). The staff agrees with the suggested changes. The commission adopts the section as amended.

4 CSR 240-22.030

(5) Base-Case Load Forecast. The utility's base-case load forecast shall be based on projections of the major economic and demographic driver variables that utility decision makers believe to be most likely. All components of the base-case forecast shall be based on the assumption of normal weather conditions. The load impacts of implemented demand-side programs shall be incorporated in the base-case load forecast {and} but the load impacts of proposed demand-side programs {should} shall not be included in the base-case forecast.

4 CSR 240-22.030(5)(B)

SUMMARY OF COMMENT: In regard to 22.030(5)(B) numerous suggestions were offered which resulted in changes in the proposed rules. They are as follows:

SJLP suggested adding the phrase "where appropriate" to the requirement for a separate forecast for number of units and use per unit. SJLP felt that, for the lighting class, it was not appropriate to maintain records on the number of lighting fixtures or be required to forecast those numbers.

Staff disagreed. Staff felt that if the number of units were not specified for the lighting class, how would the utility take into account the possibility that more efficient lights may be installed by customers to either replace old, less efficient lights, or as new lights. In addition, if the utility did not have a measure of the use per unit for existing lights, it could not evaluate the effectiveness of a demand-side program in which old lights are replaced by more efficient ones. Staff stated that the issue of separate forecasts for number of units and use per unit was based on the determination of efficiency of use. It was therefore necessary to separate the two components to make that determination.

SJLP would remove the following language from the proposed rule: "These forecasts shall be compared to historical trends, and significant differences between the forecasts and long-term and recent trends shall be analyzed and explained."

SJLP interpreted weather to be a driver variable and argues that the treatment of weather is different from the treatment of other types of driver variables such as household income or nonmanufacturing employment.

Staff did not agree that weather could be a driver variable for the number of units. In section (2), driver variables for number of units are specified as "the economic or demographic factors (driver variables) that affect the number of units." Therefore, staff disagreed with the suggested removal of the language.

SJLP suggested removing language requiring the comparison of the utility's forecast of number of units to trends, and simply requiring that the utility document its forecasts. SJLP argued that forecasts can be presented and evaluated in a number of different ways depending on the nature of the data, and it is not appropriate to specify a single approach to all forecasts of number of units.

Staff stated that SJLP provided no examples of these various methods, but regardless, the rule does not state that the comparison and analysis required are the only or even best way to present and evaluate forecasts. Staff stated that the rule requires, as a part of what the utility does with respect to providing information for regulatory

review, a comparison of the forecast to historical trends and an analysis of significant differences.

MPS suggested the rule be changed to require only annual forecasts of energy use per unit. Staff disagreed for the same reasons given in staff's response to comments in regard to (3)(B)2.

SJLP suggested that the word "documented" be substituted for the word "specified", and the following sentence be removed from (5)(B)2.A. of the proposed rule: "The utility shall document how the forecast of use per unit has taken into account the effects of real prices of electricity, real prices of competitive energy sources, real incomes and any other relevant economic and demographic factors." SJLP argued that the driver variables should not be listed in the rule because it may be impossible to determine the separate effects of each.

Staff disagreed with the suggested change. Staff stated that the proposed rule did not require the utility to determine the "separate effects" of each of the driver variables. However, the rule implies that there are specific driver variables which are important to consider. To remove the proposed language would, in essence, state that there are no particular driver variables of importance for the utility to consider. Staff felt this was not the case and stated SJLP did not indicate that it believed the list of driver variables was somehow incorrect.

UE suggested that the word "considered" be substituted for the words "taken into account". UE argued that the requirement for the utility to show how the listed driver variables are "taken into account" implies that those variables would be implicitly defined as driver variables, whether they were or not in a given case.

Staff disagreed with UE's interpretation of the meaning of "taken into account." Staff stated that the correct interpretation was that the utility should analyze the potential impact of driver variables listed and either find them to be significant or not. Staff felt the word "considered" would certainly apply to those cases where the utility found certain driver variables were not significant. In the cases where certain driver variables prove to be significant, the requirement to show how the driver variables were taken into account would imply more than a simple listing of such variables. Staff stated it would mean a descriptive account of how the driver variables caused use per unit to change, and, where appropriate, a quantification of that change.

SJLP suggested adding the phrase "for which the utility has adequate data available" to modify the classes and end-uses for which loads must be forecast. Staff argued that SJLP incorrectly interpreted the proposed rule to require each utility to forecast for all possible end uses for each major class. Staff stated this was inaccurate. Staff stated

SJLP either made this interpretation because it did not correctly understand what the words "end use" meant or as an argument which improperly took words out of context and applied them to an extreme. Staff felt SJLP's suggestion that the words "and for each end use" be removed leaves a rule entitled "End-use Detail" having no reference to end use in the body of the rule.

The commission agrees generally with staff in that the various suggested changes involve collection of data which the commission feels is necessary for proper long-range planning. While the commission recognizes the need for flexibility in decision making, it finds that the methods used here are appropriate for establishing a reliable data base upon which to base long-range resource planning.

UE suggested two changes be made to the proposed language involving the requirement to forecast the stock of energy-using capital goods. The first suggestion was the addition of the phrase "and where the utility has determined that end-use forecasting methods are appropriate." Staff agreed with the content of UE's argument, although there was some doubt on the staff's part that the utility would or should be making expenditures on information which it determined was not cost effective. Staff offered to modify UE's suggested language to give specific recognition to the cost benefit and feasibility language already used in (3)(A)2. Staff felt the changes suggested captured UE's concern about measuring stocks of appliances that are not used in the forecast as well as providing a link back to language that had already been used to describe the conditions under which the utility was required to perform appliance stock end-use forecasting.

The second change suggested by UE was to remove the phrase "and demands at time of the summer and winter system peaks." UE argued that forecasted demands could come from day-type load shape analysis and energy usage forecast, rather than from demand relationships to measures of energy using capital goods. Staff disagreed with UE in arguing that the inclusion of the words "demands at the time of summer and winter peaks" would preclude the use of the day-type load shape analysis. Staff felt the use of end-use load shapes was what was expected to occur, and the rule required the utility to document the methods being used.

The commission finds the change offered by UE and modified by staff is appropriate in that it reflects concern for cost-effectiveness while requiring sound long-range data analyses. The commission therefore adopts subparagraph (5)(B)2.C. as amended and the rest of section (5) as proposed.

C. The stock of energy using capital goods. For each end use for which the utility has developed measures of the stock of energy using capital goods, and where the utility has determined that forecasting the use of electricity associated with these energy using capital goods is cost-effective and feasible, it shall forecast those measures and document the relationship between the forecasts of the measures to the forecasts of end-use energy and demands at time of the summer and winter system peaks. The values of the driver variables used to generate forecasts of the measures of the stock of energy using capital goods shall be specified and clearly documented.

4 CSR 240-22.040 Supply-Side Resource Analysis

SUMMARY OF COMMENT: UE objected to the terminology "nonzero probability" in the definition of probable environmental cost and in paragraph (2)(B)1 on the grounds that a literal interpretation would require the utility to estimate expected costs for any pollutant with even an infinitesimal probability of being subject to future additional regulation. UE suggested substituting "significant" for "nonzero". MPS also objected to the term "nonzero" and suggested substituting "fifty percent".

Staff understood this concern, but believed that MPS's suggestion of "fifty percent" to be unwise. Staff felt the potential risk depended on both the probability of new regulations and the cost of complying with them. Staff explained that, for pollutants with a very high cost of mitigation, for instance, a ten percent (10%) probability could pose a major financial risk. Staff felt that, since it was the degree of risk that was important, it would propose to remove any reference to a level of probability and focus instead directly on the risk.

The commission agrees, as stated in 22.010, that staff's suggested substitution of the concept of "significant impact" expresses the intent of the rule and should replace the term "nonzero". In addition, 22.040 reflects a change suggested by OPC regarding expression of amounts in "nominal dollars".

UE has objected to a portion of the proposed rule regarding supply-side resource analysis and has proposed an alternative procedure. Part of UE's objection rested on a misinterpretation of what staff believed was the clear language and intent of the rule. No other commenter has indicated a similar misunderstanding of these sections. Staff's objection to UE's proposed changes to the rule center on the unsuitability of the proposed changes to the prediction of fuel prices in the long-run. Staff stated that UE has proposed appropriate procedures for planning fuel purchases a few years in advance, and its proposal probably accords with its current practice in buying fuel. However,

staff felt the intent of the proposed rule is to set minimum requirements for strategic planning. For strategic planning of future fuel supplies, staff felt the planners should not concentrate on individual suppliers, as UE seems to interpret the proposed rule as requiring, but instead consider the entire industry as a whole.

The commission favors the rule as proposed with minimum changes, as long-term, accurate, supply-side planning is an increasing necessity considering the impact or potential impact of both the Clean Air Act Amendments of 1990 and the Energy Policy Act.

KCPL objected to parts of 22.040 for various reasons. KCPL took exception to the section of the proposed rule that requires the utility to consider the previous record of accuracy when the utility selects a vendor to perform the fuel price forecast. The reason for KCPL's objection was not clear to staff. Staff stated however that the intent of this provision of the proposed rule is to require the utility to apply appropriate criteria to the selection process. Staff explained it is common practice to select a consultant partly on the basis of prior performance. This is the reason, in a solicitation for consultant services, to require references to be supplied by the vendor. This provision seems to put into a rule what is now common practice.

KCPL's other objection is based on its prediction of what some future forecaster might do to bias a forecast in some direction. Staff does not share KCPL's concern in this matter, but if KCPL's fear should turn out to be the case, KCPL has the option of providing instructions to its expert to prevent this bias from occurring and to reject the work if it does occur. KCPL's suggested alternative language is so vague, in staff's view, as to render this section of the rule meaningless if KCPL's alternative language were to be adopted by the commission.

SJLP has proposed changes to two sections of this rule. In accordance with staff's belief that cooperative arrangements among utilities can reduce the cost burden on individual utilities and improve the quality of the planning, staff supported SJLP's proposed changes to both the first sentence of section (1) and the language addition to section (3).

The commission supports staff in regard to the rule requiring some consideration of past performance in the selection of consultant services, seeing nothing objectionable in this rule, and regarding review of past performance as being sound business practice. The commission also supports the proposed changes by SJLP, feeling that, particularly among the smaller utilities, benefit in efficiency, accuracy and reduced cost might be obtained by cooperative planning arrangements.

OPC suggested clarification of the fact that in order to maintain consistency with the definition of "utility discount rate" given in 4 CSR 240-22.020, all cost and benefit estimates should be expressed in nominal dollars. Staff concurred and the commission finds that this is appropriate.

The reasons for the additions to subsection (2)(A) concerning the use of an economic carrying charge annualization are explained in the discussion of 4 CSR 240-22.020(27).

The reasons for the changes to subsection (2)(B) are explained in the discussion of 4 CSR 240-22.020(46).

4 CSR 240-22.040

(1) The analysis of supply side resources shall begin with the identification of a variety of potential supply-side resource options which the utility can reasonably expect to develop and implement solely through its own resources or for which it will be a major participant. These options include new plants using existing generation technologies; new plants using new generation technologies; life extension and refurbishment at existing generating plants; enhancement of the emission controls at existing or new generating plants; purchased power from utility sources, cogenerators or independent power producers; 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. The utility shall collect generic cost and performance information for each of these potential resource options which shall include at least the following attributes where applicable:

4 CSR 240-22.040

(2) Each of the supply-side resource options referred to in section (1) shall be subjected to a preliminary screening analysis. The purpose of this step is to provide an initial ranking of these options based on their relative annualized utility costs as well as their probable environmental costs, and to eliminate from further consideration those options that have significant disadvantages in terms of utility costs, environmental costs, operational efficiency, risk reduction or planning flexibility, as compared to other available supply-side resource options. All costs shall be expressed in nominal dollars.

(A) Cost rankings shall be based on estimates of the installed capital costs plus fixed and variable operation and maintenance costs levelized over the useful life of the resource using the utility discount rate. In lieu of levelized cost, the utility may use an economic carrying charge annualization in which the annual dollar amount

increases each year at an assumed inflation rate and for which a stream of these amounts over the life of the resource yields the same present value.

(B) The probable environmental costs of each supply-side resource option shall be quantified by estimating the cost to the utility {of mitigating the environmental impacts of the resource} to comply with additional environmental laws or regulations that {are likely to} may be imposed at some point within the planning horizon.

1. The utility shall identify a list of environmental pollutants for which {there is}, in the judgment of utility decision makers, {a nonzero probability that} additional laws or regulations {will} may be imposed at some point within the planning horizon which would result in compliance costs that could have a significant impact on utility rates.

2. For each pollutant identified pursuant to paragraph (2)(B)1., the utility shall specify at least two (2) levels of mitigation {beyond} that are more stringent than existing requirements which are judged to have a nonzero probability of being imposed at some point within the planning horizon.

4 CSR 240-22.040

(3) The analysis of supply-side resource options shall include a thorough analysis of existing and planned interconnected generation resources. The analysis can be performed by the individual utility or in the context of a joint planning study with other area utilities. The purpose of this analysis shall be to ensure that the transmission network is capable of reliably supporting the supply resource options under consideration, that the costs of transmission system investments associated with supply-side resources are properly considered and to provide an adequate foundation of basic information for decisions about the following types of supply-side resource alternatives:

4 CSR 240-22.040(9)

(C) A summary of the results of the uncertainty analysis described in section (8) that has been completed for candidate resource options {described in section (8)}; and

4 CSR 240-22.050 Demand-Side Resource Analysis

SUMMARY OF COMMENT: UE noted that the definition of load building program contained in section (10) of 4 CSR 240-22.050 is inconsistent with the definition at 4 CSR 240-22.020(29) and suggested that the phrase in section (10) defining load building should be deleted. Staff agreed that definition (29) is the intended one and there is no need for

a modifying phrase to define the term in section (10). Staff suggested changes to be reflected in section (10). The commission agrees with UE and staff and adopts staff's suggested changes for purposes of consistency.

MPS objected to the proposed definition of "load building program" because it is not limited strictly to efforts to increase on-peak loads. MPS argued that without this limitation, demand-side management programs that have the potential to reduce system peak load requirements, improve system load factor, and defer the need for new capacity may not be fairly evaluated in the resource planning process. MPS stated that separate classification of load management demand-side management program costs and load impacts that do not contribute to on-peak system demand should not be required by the rules.

In regard to arguments involving load building, the commission holds that the definition of load building in the rules is intended to include promotional efforts that are primarily designed to sell more electricity, regardless of whether these load increases occur during on-peak or off-peak hours. It is essential

that the definition include off-peak load building (sometimes called "valley filling") because it is the commission's opinion that, in the long-run, such load increases add to the need for new supply-side resources. Staff suggested the changes to section (10) to emphasize the necessity to separately classify the costs of demand-side programs and the costs of load building programs in order to make it possible to do the comparative analysis of alternative resource plans with and without load building programs as required by 4 CSR 240-22.060(5). The commission concurs and adopts section (10) as amended.

OPC suggested adding the word "incremental" at the beginning of paragraph (4)(C)2. Staff agreed with this change, and the commission supports same. OPC also noted that, since avoided probable environmental costs are excluded from the benefit side of the utility cost test, they should also be excluded from the enumerated costs. Staff agreed and proposed to change subsection (4)(G) accordingly. The commission supports this change.

OPC pointed out that section (7) of 4 CSR 240-22.050 on demand-side program cost-effectiveness screening might be confusing and could be interpreted as inconsistent with the screening test definition at 4 CSR 240-22.020(49). Staff agreed, and proposed modifications to make it clear that the total resource cost test is the intended measure of cost-effectiveness for demand-side programs, and that the utility cost test is for comparative and informational purposes. The commission agrees and adopts said change.

SJLP objected to both the requirement to perform the utility benefits test and the requirement to include distribution capacity benefits in demand-side measure and

program screening. It is the commission's position that both requirements can and should provide accurate and useful information and should be helpful in demand-side programs and integrated resource planning. In addition, as stated in the commission's general comments, should performance of these requirements become burdensome or impossible, SJLP is encouraged to seek waivers or variances based on a showing of good cause.

OPC suggested a new subsection that defines the terms "cream skimming, lost opportunities, and free riders" and requires that they shall be considered when programs are designed. A new section was also suggested which requires the utility to consider the applicability of different types of utility actions to achieve optimum market penetration of demand-side programs. The proposed section then goes on to enumerate a number of customer incentives and marketing methods. Staff opposed these additions but suggested that a sentence be added to section (5) to clarify the objective of the required research activities.

While the commission agrees that good research, marketing and evaluation techniques are essential to the appropriate design and successful development of demand-side resources, the commission does not believe that it is necessary or advisable to try to include in the rule an exhaustive list of such activities that must be considered by the utility. As stated in the COMMISSION FINDINGS section, managerial flexibility in demand-side planning is intended by the rules, the commission having no desire to engage in micro-management of the utilities. The commission agrees with Staff's suggested addition to section (5).

The commission notes that section (2) refers to the end-use measure screening test, but that this test is not described until section (4). Therefore existing section (2) will be moved after existing section (4) and renumbered as section (4), and existing sections (3) and (4) will be renumbered (2) and (3) respectively.

4 CSR 240-22.050

{(2) The utility shall estimate the technical potential of each end-use measure that passes the screening test.}

{(3)}{(2) Calculation of Avoided Costs. The utility shall develop estimates of the cost savings that can be obtained by substituting demand-side resources for existing and new supply-side resources. These avoided cost estimates, expressed in nominal dollars, shall be used for cost-effectiveness screening and ranking of end-use measures and demand-side programs.

4 CSR 240-22.050(2)(D)

2. Demand period avoided energy costs. Any capacity cost per kilowatt-year allocated to the demand periods but not included in the avoided demand cost shall be converted to an avoided energy cost by dividing the avoided capacity cost per kilowatt-year by the number of hours in the associated demand period. The utility shall add this converted avoided capacity cost to both of the running cost estimates developed pursuant to paragraph {(3)}(2)(C)1. to calculate the demand period direct energy costs and the probable environmental energy costs.

4 CSR 240-22.050(2)(D)

4. Nondemand period avoided energy costs. Avoided capacity cost per kilowatt-year allocated to the nondemand periods within each season shall be converted to a per-kilowatt-hour cost by dividing the avoided capacity cost per kilowatt-year by the number of hours in the associated nondemand period. The utility shall add this converted avoided capacity cost to both of the running cost estimates developed pursuant to paragraph {(3)}(2)(C)1. to calculate the nondemand period direct energy costs and the probable environmental energy costs.

4 CSR 240-22.050

{(4)}(3) Cost-Effectiveness Screening of End-Use Measures. The utility shall evaluate the cost-effectiveness of each end-use measure identified pursuant to section (1) using the probable environmental benefits test. All costs and benefits shall be expressed in nominal dollars.

4 CSR 240-22.050(3)(C)

2. Incremental {A} annual operation and maintenance costs (regardless of who pays these costs) levelized over the life of the measure using the utility discount rate; and

4 CSR 240-22.050(3)

(G) For each end-use measure that passes the probable environmental benefits test, the utility shall also perform the utility benefits test for informational purposes. This calculation shall include the cost components identified in {subsection (4)(C)} paragraphs (3)(C)1. and 2.

4 CSR 240-22.050

(4) The utility shall estimate the technical potential of each end-use measure that passes the screening test.

4 CSR 240-22.050

(5) The utility shall conduct market research studies, customer surveys, pilot demand-side programs, test marketing programs and other activities as necessary to estimate the technical potential of end-use measures and to develop the information necessary to design and implement cost-effective demand-side programs. These research activities shall be designed to provide a solid foundation of information about how and by whom energy-related decisions are made, and about the most appropriate and cost-effective methods of influencing these decisions in favor of greater long-run energy efficiency.

4 CSR 240-22.050

(7) Cost-Effectiveness Screening of Demand-Side Programs. The utility shall evaluate the cost-effectiveness of each potential demand-side program developed pursuant to section (6) using {the utility cost test and} the total resource cost test. The utility cost test shall also be performed for purposes of comparison. All costs and benefits shall be expressed in nominal dollars. The following procedure shall be used to perform these tests:

4 CSR 240-22.050(7)

(B) In each year of the planning horizon, the benefits of each demand-side program shall be calculated as the cumulative demand reduction multiplied by the avoided demand cost plus the cumulative energy savings multiplied by the avoided energy cost, summed over the avoided cost periods within each year. These calculations shall be performed using the avoided probable environmental costs developed pursuant to section {(3)}{(2)};

4 CSR 240-22.050

(9) Evaluation of Demand-Side Programs. The utility shall develop evaluation plans for all demand-side programs that are included in the preferred resource plan selected pursuant to 4 CSR 240-22.070{(7)}{(6)}. The purpose of these evaluations shall be to develop the information necessary to improve the design of existing and future demand-side programs, and to gather data on the implementation costs and load impacts of programs for use in cost-effectiveness screening and integrated resource analysis.

4 CSR 240-22.050

(10) Demand-side programs and load building programs shall be separately designed and administered, and {demand-side program} all costs shall be separately classified so as to

permit a clear distinction between {these} demand-side program costs and the costs of load-building programs {to promote increased sales, attract new customers or induce customers to switch to electricity from other forms of energy supply for the provision of end-use energy services}. The costs of demand-side {activities} resource development that also serve other functions shall be allocated between the functions served.

4 CSR 240-22.050(11)

(D) Documentation of the methods and assumptions used to develop the avoided cost estimates developed pursuant to section {(3)}{(2)} including:

4 CSR 240-22.060 Integrated Resource Analysis

SUMMARY OF COMMENT: OPC suggested that the word "objectives" should be substituted for the word "goals" in section (2) of 4 CSR 240-22.060 to be consistent with the terminology used in 4 CSR 240-22.010(2). Staff agreed with this change, and the commission concurs, adopting the change.

The requirement to develop and analyze alternative resource plans initially without load building programs and subsequently including them was the subject of much comment, both formally and informally. Two controversial aspects appeared in the issue. First, the types of activities that should be covered, and specifically whether geographical expansion of service territory and efforts to attract new customers should be included in the definition; and second, the scope and extent of the impacts that must be considered, and specifically, whether the utility should be required to analyze the impacts on competing energy suppliers.

As the commission has stated in the COMMISSION FINDINGS section, the intent of the rules and specifically these provisions, was not to promote a "no-growth" scenario. Nothing in the rules suggests that an electric utility may not seek to increase loads under appropriate circumstances. What is in fact required is a long-run analysis of such efforts from a planning perspective rather than a short-term viewpoint. It is the commission's position that the utilities should at least be possessed of sufficient long-term data to make informed decisions.

The commission adopts the rule as amended and incorporates several suggested changes for purposes of clarification.

4 CSR 240-22.060

(2) Specification of Performance Measures. The utility shall specify a set of quantitative measures for assessing the performance of alternative resource plans with respect to

identified planning objectives. These measures shall include at least the following: present worth of utility revenue requirements, present worth of probable environmental costs, present worth of out-of-pocket costs to participants in demand-side programs, levelized annual average rates and maximum single-year increase in annual average rates. All present worth and levelization calculations shall use the utility discount rate and all costs and benefits shall be expressed in nominal dollars. Utility decision makers may also specify other measures that they believe are appropriate for assessing the performance of resource plans relative to the planning {goals} objectives identified in 4 CSR 240-22.010(2).

(5) Analysis of Load-Building Programs. If the utility intends to continue existing load-building programs or implement new ones, it shall analyze these programs in the context of one (1) or more of the alternative plans developed pursuant to section (3) of this rule, including the preferred resource plan selected pursuant to 4 CSR 240-22.070(6). {and using} This analysis shall use the same modeling procedure and assumptions described in section (4). {This analysis} and shall include the following elements:

4 CSR 240-22.070 Risk Analysis and Strategy Selection

SUMMARY OF COMMENT: Substantial objection to this chapter involving data analyses and strategy selection was made, particularly, by the smaller utilities. Objection centered around the required data and the quantification of strategic analyses in the decision-making process.

The commission reemphasizes that strategic decision-making itself has been left to the utilities. What is proposed here is data collection and analyses requirements to assist in long-term planning and decision-making. Specifically, the primary purpose of this proposed rule is to require the utility to quantify its judgments about the uncertainties in planning based on unknown future events, including such major factors as load growth, fuel prices, capital costs, demand-side program effectiveness and future environmental requirements. Based on the utility's quantification of these factors, the proposed rule requires the utility to evaluate the risk associated with alternative resource plans. In addition, the utility is required to plan a strategy that will allow it to respond in an effective way to unexpected events. Therefore, the commission believes this rule to be reasonable, and adopts the rule with only editorial changes for clarification. The commission notes that existing section (7), which deals with selection of the preferred resource

plan, should logically precede existing section (6), so these sections are reordered and renumbered accordingly.

OPC suggested revising the sentence that comprises paragraph (9)(C) to clarify its meaning. No opposition was expressed regarding OPC's suggestion. The commission concurs in OPC's suggestion and adopts this rule.

4 CSR 240-22.070

{(7)} The utility shall select a preferred resource plan from among the alternative plans that have been analyzed pursuant to the requirements of 4 CSR 240-22.060 and sections (1) - (6) of this rule. The preferred resource plan shall satisfy at least the following conditions:

(A) In the judgment of utility decision makers, the preferred plan shall strike an appropriate balance between the various planning objectives specified in 4 CSR 240-22.010(2); and

(B) The trend of expected unserved hours for the preferred resource plan must not indicate a consistent increase in the need for emergency imported power over the planning horizon.}

4 CSR 240-22.070

{{(7)}}(6) The utility shall select a preferred resource plan from among the alternative plans that have been analyzed pursuant to the requirements of 4 CSR 240-22.060 and sections (1) - (5) of this rule. The preferred resource plan shall satisfy at least the following conditions:

(A) In the judgment of utility decision makers, the preferred plan shall strike an appropriate balance between the various planning objectives specified in 4 CSR 240-22.010(2); and

(B) The trend of expected unserved hours for the preferred resource plan must not indicate a consistent increase in the need for emergency imported power over the planning horizon.

{{(6)}}(7) The impact of the preferred resource plan on future requirements for emergency imported power shall be explicitly modeled and quantified. The requirement for emergency imported power shall be measured by expected unserved hours under normal-weather load conditions.

(C) The utility may use an alternative method of calculating expected unserved hours per year if it can demonstrate that the alternative method produces results that are equivalent to those obtained by a method that meets the requirements of subsection {{(6)}}(7)(B).

4 CSR 240-22.070(10)

(A) A preferred resource plan selected pursuant to the requirements of section {(7)}{(6)} of this rule;

4 CSR 240-22.080 Filing Schedule and Requirements

4 CSR 240-22.080 PURPOSE Section

SUMMARY OF COMMENT: The PURPOSE section, which precedes the substance of 4 CSR 240-22.080 and references the planning objectives stated in 4 CSR 240-22.010(2)(A)-(C), drew wide comment respecting the matter of preapproval of resource plans, resource acquisition strategies, and investment decisions. The rules as presently drafted do not provide for approval of such plans, strategies, or decisions. UE, KCPL, MPS, EDE, and SJLP are basically in favor of approval. UE proposed a section (14) which would state that commission approval of a resource acquisition strategy would constitute a rebuttable presumption of prudence. Staff, MIEC, Armco, and MoPIRG are opposed to approval. OPC recommended the adoption of language that it believed constituted something of a middle ground. LWV supported OPC's proposal and Armco testified in opposition to it.

Although the commission appreciates the arguments raised by the five (5) electric utility companies, OPC and LWV, the commission finds the contrary logic to be persuasive, the commission finds that the focus of the rules should appropriately be on the planning process itself rather than on the particular plans or decisions that result from the process.

The commission is concerned about the level of resources that it has available and which would be required if the commission were to take upon itself and its staff the approval of resource acquisition strategies. At hearing, Armco and staff indicated that resource constraints would impair the commission's ability to substantively scrutinize strategic resource planning preapproval filings. In addition, the commission's responsibilities are set by statute. The commission's approach is not new. The most recent statement regarding this concern is the August 26, 1992 Order Establishing Jurisdiction And Clean Air Act Workshops in Case No. EO-92-250. Further, in the Callaway and Wolf Creek rate cases, in adopting a "reasonable care" standard of review, the commission spoke to UE's and KCPL's concerns regarding hindsight regulation. Re: Union Electric Co., Case Nos. EO-85-17 and ER-85-160, 27 Mo. P.S.C. (N.S.) 183, 194 (1985); Re: Kansas City Power & Light Co., Case Nos. EO-85-185 and EO-85-224, 28 Mo. P.S.C. (N.S.) 228, 281-82 (1986).

As staff noted in its comments, the commission is cognizant that it is generally not bound by stare decisis, res judicata, and collateral estoppel. The commission does not favor UE's recommendation that a rebuttable presumption

as to the reasonableness and prudence of the utility's decisions to implement the resources contained in the utility's strategy should be created by these rules. MIEC asserted that UE's proposal violates section 393.135, RSMo 1986 and State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n, 585 S.W.2d 41, 46, 57 (Mo. banc 1979).)

The commission declines to adopt OPC's proposal that the commission approve the electric utilities' resource plans, but not the assumptions or estimates involved therein, and thereby such approval would not constitute a finding of prudence. The commission finds persuasive the misgivings expressed by Armco at the public hearing that OPC's proposal would merely create a "gray area" regarding whether the commission had engaged in preapproval of the triennial filing of each utility.

The commission believes however that it is appropriate to adopt staff's suggested changes to the PURPOSE section, using the same language in subsections (5), (6), and (13) of 4 CSR 240-22.080, and reject all other language changes suggested for this section. Thus, the word "requirements" will be substituted for the words "planning objectives," but no other changes will be made regarding this language.

4 CSR 240-22.080

PURPOSE: This rule specifies the requirements for electric utility filings to demonstrate compliance with the provisions of this chapter of rules. The purpose of the compliance review required by this chapter of rules 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 {planning objectives} requirements stated in 4 CSR 240-22.010(2)(A) - (C).

4 CSR 240-22.080(1)

SUMMARY OF COMMENT: Of the affected utilities, EDE and SJLP submitted the principal comments. Both contended that their present strategic resource planning activities are adequate and successful and the requirements of the proposed rules are not cost effective. As a consequence, both intend to seek across the board exemptions. The commission has dealt thoroughly with this issue in its COMMISSION FINDINGS section but would emphasize the waiver or variance procedure should, with good cause shown, be used if the situation is appropriate.

Both EDE and SJLP asserted that there are deleterious competitive impacts on them if they must comply with the

strategic resource planning rules but their gas, REC, and municipal competitors are not required to do so. EDE also asserted that it would be harmed by the disclosure requirements of the proposed rules and the requirement that it consider higher levels of pollutant mitigation.

The proposed rules are the culmination of a process initiated by the commission to investigate the electric utility resource planning process. Individuals with expertise in economics, engineering, finance, accounting, and management were part of the investigative staff project team. The report issued by the project team found that in those situations where satisfactory planning procedures existed, the planning procedures were only partially successful. The report called for the commission to adopt rules to set minimum standards for strategic resource planning by directing the utilities to collect certain data and perform specific analyses. In addition, the proposed rules are the result of numerous workshops where the concerns of interested entities were permitted to be raised. The commission believes that the rules as adopted pursuant to this Order of Rulemaking are reasonable and that the burden of showing a lack of cost effectiveness is and should be on the utility, which is uniquely positioned to make this showing.

The commission notes again that the instant rule includes a waiver or variance section, 4 CSR 240-22.080(11), which allows any of the covered utilities to obtain a waiver or variance for good cause shown. The intent of this section is to provide sufficient flexibility respecting the individual circumstances of the affected utilities.

Regarding EDE's concern that competitors will be able to obtain access to EDE's plans and underlying assumptions, the commission notes that 4 CSR 240-22.010(1)(E) permits EDE to request a protective order applying to this information.

SJLP proposed an alternative minimum size larger than that in the proposed rules for the determination of which electric utilities would be covered by the Chapter 22 rules. The commission finds that SJLP's proposal that five percent (5%) of the state's total retail electric sales be the threshold for coverage by the rules is arbitrary. SJLP provides no rationale why five percent (5%) should be the cutoff rather than some other percentage.

The commission finds that the standard for imposition of the rules should be at one (1) million megawatt-hours sold to Missouri retail electric customers for 1991 by electric utilities under the commission's jurisdiction. This would include those electric utilities both with their own generating capacity and with substantial retail sales to a considerable number of Missouri customers. The commission appreciates the comments of SJLP in general, but in particular appreciates that SJLP has pointed out a lack of precision in certain language regarding the coverage of the

rules. The commission remedies this imprecision by amending the proposed language to state that coverage extends to each electric utility which sold more than one (1) million megawatt-hours to Missouri retail electric customers for calendar year 1991. This alteration does not change the five (5) utilities still subject to the proposed rules.

OPC in its initial comments made a number of suggestions which prompted reply comments. OPC proposed that a new subsection (G) be added to section (1) requiring a separately bound executive summary which would comprise a nontechnical description of the plan for distribution to the public. OPC stated that the new subsection (G) would require amendment of subsection (D) because (G) would require some information duplicative of the information required by (D) as presently drafted. OPC would amend (D) to require a sworn statement respecting the resource acquisition strategy. LWV supported the OPC's proposal that there be an executive summary in nontechnical language and also suggests that information concerning reserve capacity and requirements should be included. UE objected to OPC's proposal that an executive summary be separately bound and respecting OPC's proposal regarding the submission of a sworn statement, UE objected to this suggestion as being unnecessary and possibly prejudicial.

The commission finds these suggestions of OPC and LWV as being duplicative of the plain language of subsections (1)(G) and (1)(D). While the commission appreciates the intent of these proposals, it also finds them somewhat redundant of procedures in the proposed rules.

4 CSR 240-22.080

(1) Each electric utility which sold more than one (1) million megawatt-hours to Missouri retail electric customers in calendar year 1991 {as identified in the annual reports on file with the commission} shall make a filing with the commission every three (3) years that demonstrates compliance with the provisions of this chapter of rules. The utility's filing shall include at least the following items:

4 CSR 240-22.080(2)

SUMMARY OF COMMENT: UE, KCPL, MPS, EDE, and SJLP all recommended that this section should be more specific regarding demand-side management cost recovery. UE assumed that an accounting authority order would be an appropriate mechanism to ensure that demand-side resources are treated on an equivalent basis with supply-side resources. UE preferred that both the commission's rule and the accounting authority order indicate that the commission intends to allow the utility to recover all prudently incurred costs which are deferred pursuant to an authorized or reauthorized

nontraditional accounting procedure. UE stated that such language is needed to mitigate the skepticism of the utility's independent accountants and the financial community in general. Although KCPL made no direct reference to accounting authority orders, KCPL and UE proposed identical language to amend section (2). KCPL stated that this language is needed to ensure that the costs reflected on the utility's balance sheet as a regulatory asset meet the requirements of FAS 71. KCPL contended that section (2) is significantly deficient because it only addresses "nontraditional accounting procedures" while KCPL listed in its comments options utilized in other jurisdictions which KCPL apparently does not categorize as nontraditional accounting procedures and associated ratemaking treatment.

MPS, EDE, and SJLP believed that section (2) needs to be more definite regarding demand-side management cost recovery. MPS specifically identified as disincentives, which cost recovery must address, the under-recovery of demand-side management program costs, lost revenues, lost supply-side investment opportunities, and uncertainty. EDE identified as costs that must be addressed, demand-side management program costs, and lost revenues. SJLP identified lost revenues, and proposed the adoption of two additional sections, section (14) on immediate recovery of implementation costs, and section (15) on cost recovery associated with accounting for demand-side management.

KCPL stated that development and implementation of demand-side cost recovery options should not be limited to the triennial filings. SJLP concurred and contended that requiring reauthorization of previously authorized accounting procedures is overly restrictive.

UE opposed performing a quantitative comparison of its estimated earnings over the three (3) year implementation period with and without the proposed nontraditional accounting procedures. UE asserted that such information would be very speculative and its dissemination to some portion of the public may violate SEC regulations. SJLP also opposed performing these comparisons.

OPC stated that it was puzzled by the suggestion that the development and implementation of demand-side cost recovery options should not be limited to the triennial filings because in order for regulatory policy to provide an incentive (or, as might also be argued, remove a disincentive), the program must be authorized before it is undertaken. OPC asserted that the language of section (2) is broad enough to permit requests for the recovery of lost revenues. Staff agreed that the language "nontraditional accounting procedures and information regarding any associated ratemaking treatment" should not be read as excluding the various options cited by KCPL in its initial comments, nor as excluding options yet to be discovered. Staff also stated that even though a utility is required to

indicate the nontraditional accounting and/or ratemaking methodology it will seek, it is not precluded from later seeking different treatment.

OPC and MIEC argued that in addition to the prudence standard, demand-side management costs must meet the "used and useful" standard of section 393.135, RSMo 1986 ("fully operational and used for service" standard). OPC stated that the commission as part of its findings in this docket need not determine how the used and useful test should be applied to demand-side management programs.

MIEC also contended that the utilities' proposals for guaranteed demand-side management cost recovery, advance approval of demand-side management investments, and special rate treatment for demand-side management violate the prohibition against single-issue ratemaking.

Staff took the position that barring any truly extraordinary circumstances, the commission should not engage in any nontraditional accounting and/or ratemaking procedures. Nonetheless, in the event the commission decided to so proceed, staff believed that the information required by proposed section (2) is necessary.

Staff maintained that requests for guaranteed full recovery of demand-side management expenditures, including protection from regulatory lag, are a radical departure from traditional ratemaking. Staff contended that FAS 71 requires an indication that future rate recovery of amounts booked as regulatory assets is probable, not guaranteed, and that any wording that might be used by the commission in this rule may not satisfy the concerns of some external auditors, or may go beyond what other external auditors would require.

Thus, staff believed that, as has been the commission's practice, a specific order granting a nontraditional accounting procedure for a particular utility, rather than a commission rule, is the proper place for the commission to include any appropriate language regarding an intent to allow future rate recovery of prudently incurred and deferred costs. Staff challenged UE's use of the commission's recent order in Case No. EO-92-179, which entailed UE's accounting authority order application in regard to post retirement benefit expense other than pensions. Staff asserted that contrary to UE's characterization, Case No. EO-92-179 cannot be cited for anything other than very limited application. The staff noted that standard limiting language is found in virtually all commission accounting authority orders.

Regarding the three (3)-year comparison of earnings with and without the nontraditional accounting procedures and associated ratemaking treatment which the utility is seeking or intends to seek, the staff states that this information is needed to determine the relative materiality of these expenditures and whether the utilities' expected

earnings levels will be sufficient to recover these expenditures without the need for nontraditional treatment.

Based on the comments and the public hearing, the commission determines that certain amendments to section (2) are warranted. The commission does not believe that it is either appropriate or arguably even lawful for it to engage in ratemaking in a rulemaking proceeding. Thus, the commission declines to add any proposed language regarding "future rate recovery," "prudently incurred costs," "used and useful," or "fully operational and used for service," and deletes presently included language regarding "fixing rates" and "reasonable or prudent expenditures." These matters should more appropriately be dealt with in a non-rulemaking proceeding. Although the commission may authorize a utility to take the specific action for which the utility has requested commission authorization, it has been the general approach or policy of the commission to decline to make a ratemaking determination outside the context of a rate case. Typically, the commission states, in an "ORDERED" section of the order authorizing the specific action, that nothing in the order should be considered as a finding by the commission of the reasonableness of the expenditures involved, nor as an acquiescence in the value of the properties, and the commission reserves the right to consider the ratemaking treatment to be afforded the expenditures, and their resulting cost of capital, in a later proceeding.

The commission notes KCPL's concern about the phrase "nontraditional accounting procedures and information regarding any associated ratemaking treatment" being read narrowly. The commission's view of this matter is accurately reflected by the comments of OPC and staff. Regarding KCPL's and SJLP's concerns about the development and implementation of demand-side cost recovery options being limited to the triennial filings, the commission notes that the utilities are not precluded from seeking a waiver or variance pursuant to section (11) or action may be appropriate pursuant to section (10).

Regarding the comparison of estimated earnings over the three (3) year implementation period, the commission concurs with staff in that the review of such estimates over the specific period is reasonable and appropriate for fair and efficient ratemaking.

4 CSR 240-22.080

(2) The electric utility's compliance filing may also include a request for nontraditional accounting procedures and information regarding any associated ratemaking treatment to be sought by the utility for demand-side resource costs. If the utility desires to make any such request, it must be made in the utility's compliance filing

pursuant to this rule and not at some subsequent time. If the utility desires to continue any previously authorized nontraditional accounting procedures beyond the three (3)-year implementation period, it must request reauthorization in each subsequent filing pursuant to this rule. {Commission authorization of any nontraditional accounting procedures does not constitute a finding that the expenditures involved are reasonable or prudent, and should not be construed as approval or acceptance of any item in any account for the purpose of fixing rates.} Any request for initial authorization or reauthorization of these nontraditional accounting procedures must -

4 CSR 240-22.080(3)

SUMMARY OF COMMENT: SJLP stated that this section should reference as the basis for the sequence of initial compliance filings the gross annual Missouri revenues from retail electric sales of the covered electric utilities rather than merely the gross annual operating revenues. The commission believes that there is merit to this part of the recommendation of SJLP, and amends the language of section (3) as indicated below. This amendment does not alter the five (5) electric utilities which are covered by these rules or the sequence of filing respecting these utilities.

4 CSR 240-22.080

(3) The electric utilities shall make their initial compliance filings on a staggered basis in order of decreasing size of gross annual Missouri operating revenues from retail electric sales {as identified in the most current annual reports on file with the commission} for calendar year 1991. The electric utility with the largest gross annual Missouri operating revenues shall make its initial filing seven (7) months after the effective date of this chapter. The remaining electric utilities shall make their initial filings in successive increments of seven (7) months from the effective date of this chapter.

4 CSR 240-22.080(4)

SUMMARY OF COMMENT: Both UE and KCPL proposed that language be added to section (4) stating that the commission will establish a docket for the purpose of determining whether the utility's proposed resource acquisition strategy should be approved, approved with modifications or disapproved. The commission addressed this same proposal in the PURPOSE section. That discussion will not be repeated here. The commission rejects UE's and KCPL's proposals for the reasons set out in the commission findings section and the discussion regarding the PURPOSE section.

Armco is opposed to the language which provides that the commission will establish a docket for the purpose of receiving the compliance filing, establishing intervention deadlines, and setting a prehearing conference. Armco believed that not only was there no need for the establishment of a docket just to receive a filing when there will be no substantive review, but was concerned that such language implied the occurrence of due process and the determination of some substantive right. Armco was concerned that ultimately, the utility may argue that the filing has been approved after a substantive review and intervenors are bound by the proceedings. The commission appreciates Armco's concern, but believes that even the limited activities intended by the commission require the creation of a docket and a schedule of certain proceedings.

4 CSR 240-22.080(5) and (6)

SUMMARY OF COMMENT: OPC's criticism of the language of sections (5) and (6) was similar to its criticisms of the language of the PURPOSE section. OPC believed that these paragraphs should be modified so that the review conducted by the staff, OPC, and any intervenor, and the reports that follow, are not limited.

UE and KCPL recommended that certain language be substituted for language in the proposed rule. References to "deficiencies" would be deleted and the suggested language, similar to the language suggested by UE and KCPL for the PURPOSE section, would require that the staff, OPC, and/or intervenors recommend approval, approval with modifications, or disapproval. MIEC and Armco had recommendations similar to those they expressed regarding the PURPOSE section and section (4).

The commission will not reiterate the discussion of these matters set out for the same or similar items in the PURPOSE section and section (4). The commission finds that the use by staff, OPC or intervenors of the term "deficiencies" as set out in this section does not constitute any prejudgment on the part of the commission.

The amendment adopted by the commission for sections (5) and (6) is the same adopted by the commission for the PURPOSE section.

4 CSR 240-22.080

(5) The staff shall review each compliance filing required by this rule and shall file a report not later than one hundred twenty (120) days after each utility's scheduled filing date that identifies 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 which in its limited review, the staff determines would cause the electric utility's resource acquisition strategy to fail to meet the {planning objectives} requirements identified in 4 CSR 240-22.010(2)(A) - (C). If the staff's limited review finds no deficiencies, 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 of rules shall not be construed as acceptance or agreement with the substantive findings, determinations or analysis contained in the electric utility's filing.

(6). Also within one hundred twenty (120) days after an electric utility's compliance filing pursuant to this rule, the office of public counsel and any intervenor may file a report or comments based on a limited review that identify any deficiencies in the electric utility's compliance with the provisions of this chapter of rules, any deficiencies in the methodologies or analyses required to be performed by this chapter of rules, and any other deficiencies which the public counsel or intervenor believes would cause the utility's resource acquisition strategy to fail to meet the {planning objectives} requirements identified in 4 CSR 240-22.010(2)(A) - (C).

4 CSR 240-22.080(7)

SUMMARY OF COMMENT: SJLP requested that only the officially adopted resource acquisition strategy be required to be retained by the electric utilities for at last ten (10) years and only those documents that relate directly to the filing every third year should be retained by the utilities and then only until the next filing is approved. Staff commented that more information than what SJLP suggested needs to be retained. This information is necessary not just to evaluate a utility's current filing but possibly also subsequent filings. The staff notes that section (7) applies to contractors utilized by a utility to produce any part of a resource acquisition strategy. The commission concurs with the comments of staff and adopts this section as proposed.

4 CSR 240-22.080(8)

SUMMARY OF COMMENT: UE and KCPL both suggested that the word "deficiencies" should be removed and other language such as "disputes or disagrees with" or "disputed areas" should be used. The language suggested by UE and KCPL is not as descriptive as the word "deficiencies," and as a consequence, the commission declines UE's and KCPL's request. Nonetheless, the commission wants to make clear that by use of the word "deficiencies," there is no prejudgment on the part of the commission.

Armco expressed concern about the language which provides for review of the filing by intervenors, OPC, and staff. Armco's fear in part is the implication that an intervenor may be bound by the proceedings despite their limited and abbreviated nature. The commission understands Armco's concern, but believes the present language provides sufficient safeguards. Section (8) is adopted as proposed.

4 CSR 240-22.080(9)

SUMMARY OF COMMENT: OPC recommended that if any party requests a hearing, then in order to develop a full record, the commission should convene a hearing. The commission declines OPC's suggested change in language. The commission believes that it should retain the discretion not to schedule a hearing when it believes a hearing is not warranted.

As with section (8), UE and KCPL recommend that the word "deficiencies" be replaced. The commission's response is the same as with section (8). Section (9) is adopted as proposed.

4 CSR 240-22.080(10)

SUMMARY OF COMMENT: MPS stated that this section should be revised to permit utilities to implement contingency options that are cost effective upon sixty (60) days written notice and submission of a revised implementation plan, without a formal review process. OPC opposed MPS's suggestion stating that the goals of the process could be undermined if a utility is permitted to file and implement a revised implementation plan without review and commission determination.

The comments of OPC and MPS indicate to the commission that there is some confusion as to the limits of what section (10) entails. Section (10) does not prohibit a utility from implementing a contingency option before (1) notice is provided to the commission of a utility decision that the preferred resource plan is no longer appropriate, (2) the utility submits to the commission a revised implementation plan, or (3) the commission reviews a revised implementation plan. The commission will not approve contingency options, revised implementation plans, or preferred resource plans under section (10). The commission sees no need to amend section (10) and adopts it as proposed.

4 CSR 240-22.080(11)

SUMMARY OF COMMENT: See the COMMISSION FINDINGS section and the SUMMARY OF COMMENT section for 4 CSR 240-22.080(1) for a discussion of EDE's and SJLP's positions that they should be

exempted in entirety from the Chapter 22 proposed rules. The commission declines to adopt EDE's and SJLP's proposals. Section (11) is adopted as proposed.

4 CSR 240-22.080(13)

SUMMARY OF COMMENT: OPC's criticism of the language of section (13) is similar to its criticisms of the language of the PURPOSE section and sections (5) and (6).

UE and KCPL recommended that certain language be substituted for language in this proposed section. UE and KCPL suggested that section (13) should require the commission to issue an order approving, approving with modifications, or disapproving the utility's resource acquisition strategy and, should the commission find that the second or third of these options is appropriate, require the utility to submit a conforming resource acquisition strategy for hearing and approval.

MPS stated that it would be in the best interests of the utility and its customers for the commission to formally approve the resource acquisition strategies that meet the objectives of the resource planning process. SJLP proposes language for section (13) that would have a commission finding that the utility's strategy meets the planning objectives of 4 CSR 240-22.010(2)(A) - (C) constitutes a determination of reasonableness and prudence.

MIEC and Armco made recommendations similar to those already expressed regarding the PURPOSE section and sections (4), (5), and (6). Staff's suggestion is the same that it offered for the PURPOSE section and sections (5) and (6).

The commission will not reiterate the discussion of these matters that are set out for the same or similar items in the PURPOSE section and section (4). The amendment which the commission adopts for section (13) is the same as that adopted for the PURPOSE section and sections (5) and (6).

4 CSR 240-22.080

(13) The commission will issue an order which contains findings that the electric utility's filing pursuant to this rule either does or does not demonstrate compliance with the requirements of this chapter of rules, and that the utility's resource acquisition strategy either does or does not meet the {planning objectives} requirements stated in 4 CSR 240-22.010(2)(A) - (C), and which addresses any utility requests pursuant to section (2) for authorization or reauthorization of nontraditional accounting procedures for demand-side resource costs.

4 CSR 240-22.080(X) OPC's SUGGESTED SECTION

SUMMARY OF COMMENT: OPC proposed that a new section be inserted between presently proposed sections (2) and (3) which would add a requirement that electric utilities should schedule sessions where interested entities and persons may preview resource acquisition strategies before they are formally filed with the commission. OPC believed that such sessions will decrease the time required to review plans and may decrease post-filing disputes regarding plan assumptions, methodologies, and results. The LWV supported OPC's proposal and suggested that public notification of these sessions be provided at least two (2) weeks in advance of the sessions. UE responded that it prefers input from interested entities and persons occur on an informal and ongoing basis rather than through required meetings. UE stated that formal preview sessions would impose great hardships on itself and others.

The commission believes that UE's concerns are well taken. Resources are finite. The preview sessions would require a commitment of time that would otherwise be spent reviewing the filing of the immediately preceding utility or meeting other deadlines. The commission declines to incorporate OPC's suggestion into the rules as being impractical at this time.

4 CSR 240-22.080(14) UE's SUGGESTED SECTION (14)

SUMMARY OF COMMENT: UE's suggested section (14), which would create a rebuttable presumption of prudence, is addressed in the COMMISSION FINDINGS section and summaries regarding the PURPOSE section and section (2) of these proposed rules. These summaries and findings will not be reiterated. The commission declines to adopt UE's proposed section (14) based on the matters discussed in these other sections in this Order of Rulemaking.

4 CSR 240-22.080 (14) and (15) SJLP's SUGGESTED SECTIONS (14) and (15)

SUMMARY OF COMMENT: SJLP suggested a section (14) which would establish a mechanism such as a "rider" or "surcharge" to be added to customers' electric bills which would allow immediate recovery of the costs associated with implementing the proposed Chapter 22 rules and which would be trued-up at the time of the utility's next general rate case. SJLP suggested a section (15) which would indicate the appropriate cost recovery mechanism associated with accounting for demand-side management programs. These matters are addressed in the summaries regarding the PURPOSE section and section (2) of the proposed rules. These summaries will not be reiterated. The commission declines to adopt SJLP's proposed sections (14) and (15) based on the

matters discussed in these other sections in this Order of Rulemaking.

4 CSR 240-22.080 MoPIRG's OTHER SUGGESTIONS

SUMMARY OF COMMENT: MoPIRG proposed that the commission require electric utilities to provide yearly for demand-side management projects 4.5% of their gross revenues with almost ninety percent (90%) of these funds to be used to provide financing for energy efficiency and renewable energy projects. MoPIRG also requested that the commission form an advisory group of electric utilities, state regulators, and members of the public to implement MoPIRG's proposal. MoPIRG stated that the commission could request, but not demand, funds from the electric utilities to help cover the participation expenses of not-for-profit, non-governmental, public interest groups.

LWV supported MoPIRG's proposal regarding formation of an advisory group. OPC stated it cannot support a "fixed percentage" approach to demand-side management because OPC believes that the proposed rules are sufficient for encouraging utilities to engage in demand-side management and the proposed rules will provide discretion in determining the right amount. OPC characterized MoPIRG's proposal as "a requirement that utilities 'throw money at' the goal of achieving increased conservation."

SJLP also submitted comments in opposition to MoPIRG's proposals.

The commission considers OPC's and SJLP's responses to MoPIRG to be well taken and declines to adopt MoPIRG's proposals.

REVISED STATE AGENCY AND PRIVATE ENTITY COSTS: Since changes made in the Order of Rulemaking do not alter the cost estimates by more than ten percent, revised cost estimates are not necessary.