

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Consideration and)	
Implementation of Section 393.1075, the Missouri)	<u>File No. EX-2010-0368</u>
Energy Efficiency Investment Act.)	

**STAFF COMMENTS TO PROPOSED
MISSOURI ENERGY EFFICIENCY INVESTMENT ACT RULES**

COMES NOW the Staff of the Missouri Public Service Commission and, for its comments to the Commission’s proposed rules for implementation of Section 393.1075, RSMo. Supp. 2009 (the “Missouri Energy Efficiency Investment Act”)—proposed rules 4 CSR 240-20.093 Demand-Side Programs Investment Mechanisms, 4 CSR 240-20.094 Demand-Side Programs, 4 CSR 240-3.163 Electric Utility Demand-Side Programs Investment Mechanisms Filing and Submission Requirements, and 4 CSR 240-3.164 Electric Utility Demand-Side Programs Filing and Submission Requirements—published in the November 15, 2010 edition of the *Missouri Register*, Vol. 35, No. 22, at pages 1610 to 1685, states:

1. Attached to this pleading are Staff’s comments to the above-mentioned proposed rules. As stated in those comments Staff generally supports the proposed Missouri Energy Efficiency Investment Act rules; however, as stated and presented in those comments, for the reasons stated in its brief filed in this File No. EX-2010-0368 on September 14, 2010, it is still Staff’s position that the Commission does not have the requisite statutory authority to authorize or permit changes to the rates of a demand-side investment mechanism outside of a general rate proceeding.

2. In its attached comments Staff supports the inclusion of the currently drafted annual energy and demand savings *targets* as defined in proposed rule 4 CSR 240-20.094 and the incremental and cumulative annual energy and demand savings *goals* specified in proposed rule 4 CSR 240-20.094(2), and the associated distinction in the proposed language. Staff views the distinction between

the incremental and cumulative annual energy and demand savings *goals* as “soft goals” and the annual energy and demand savings *targets* as “hard goals” is appropriate.

3. In its attached comments Staff supports the proposed rule 4 CSR 240-20.094(3)(A) requirement that proposed demand-side programs be analyzed through the integration analysis process required by Chapter 22 Electric Utility Resource Planning.

4. In its attached comments Staff elaborates on its concerns with the language of the proposed rules allowing simultaneous approval of demand-side programs and a demand-side investment mechanism. If the Commission changes the language of the proposed rules so that changes to the rates of a demand-side investment mechanism are not permitted outside of a general rate proceeding, these concerns are alleviated. As presented in its comments, to address those concerns Staff recommends, for purposes of 4 CSR 240-3.163, 4 CSR 240-20.093, and 4 CSR 240-20.094, that “filing for demand-side program approval” be defined to mean “a utility’s case filing for approval, modification or discontinuance of demand-side program(s) which may also include a simultaneous request for the establishment, modification or discontinuance of a DSIM,” and that certain terms in the proposed rules be modified to “filing for demand-side program approval.”

5. In its attached comments, Staff explains that it is uncertain of the meaning of “deferral accounting” as it appears in proposed rule 4 CSR 240-20.093(5) and the intent of that subsection, and recommends the subsection be deleted in its entirety.

6. In its attached comments, Staff points out that as the term “Staff” is currently defined attorneys in the Office of the General Counsel who are neither in the Office of the Staff Counsel nor are the General Counsel are included in that definition; Staff questions whether the Commission intends to include them within the scope of “Staff” for purposes of these proposed rules.

7. In its attached comments Staff recommends the proposed rules be changed to eliminate provisions that would allow the explicit recovery of lost revenues; however, if those lost revenues provisions remain, Staff offers certain changes intended to clarify them.

8. As part of its attached comments Staff has included, with proposed changes in red, changes intended to clarify the provisions in the proposed rules relating to the explicit recovery of lost revenues and, separately, a marked-up version of the proposed rules with the changes needed to conform to Staff's position that demand-side investment mechanism rates may only be authorized and changed in general rate proceedings.

Wherefore, Staff submits its comments to proposed rules 4 CSR 240-20.093 Demand-Side Programs Investment Mechanisms, 4 CSR 240-20.094 Demand-Side Programs, 4 CSR 240-3.163 Electric Utility Demand-Side Programs Investment Mechanisms Filing and Submission Requirements, and 4 CSR 240-3.164 Electric Utility Demand-Side Programs Filing and Submission Requirements—published in the November 15, 2010 edition of the *Missouri Register*, Vol. 35, No. 22, at pages 1610 to 1685.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 15th day of December 2010.

/s/ Nathan Williams

**Staff Comments to Missouri Public Service Commission Proposed Rules
Missouri Energy Efficiency Investment Act
File No. EX-2010-0368**

The Missouri Energy Efficiency Investment Act (MEEIA) rules will implement the provisions of Section 393.1075 RSMo Supp. 2009. The Missouri Legislature has stated through MEEIA that the Missouri Public Service Commission (Commission) shall permit electrical corporations regulated by the Commission (electric utilities) to implement and recover costs related to Commission-approved demand-side programs. The following Staff recommendations, like the proposed MEEIA rules published in the November 15, 2010 edition of the *Missouri Register*, are structured to address the issues that face the Commission and Missouri's electric utilities associated with implementation of MEEIA.

Development of Missouri Energy Efficiency Investment Act Rules

During 2009 and 2010, Staff organized a stakeholder process, including a series of workshops, to obtain broad stakeholder input concerning MEEIA and to draft rules to comply with MEEIA. In preparing the draft rules to present to the Commission, Staff, with direction from the Commission¹, attempted to balance the interests of all the stakeholders by considering all the information provided in the workshops and submitted in File No. EW-2010-0265. The draft rules Staff presented to the Commission in File No. EX-2010-0368 do not fully reflect the positions of Staff, and Staff believes they do not fully reflect the position of any one stakeholder or stakeholder group. From those draft rules, the Commission crafted four rules to publish in the *Missouri Register* as proposed rules to implement MEEIA. A brief overview of the purpose of the four proposed rules follows:

- **4 CSR 240-20.094 Demand-Side Programs:** Sets forth the definitions, requirements and procedures for filing and processing applications for approval, modification, and discontinuance of electric utility demand-side programs. This

¹ Some direction for preparation of the proposed MEEIA rules was provided by the Commission in the July 28, 2010; August 4, 2010; August 18, 2010; and August 25, 2010 Agenda meetings.

rule also sets forth requirements and procedures related to customer opt-out, tax credits, monitoring customer incentives and collaborative guidelines for demand-side programs.

- **4 CSR 240-3.164 Electric Utility Demand-Side Programs Filing and Submission Requirements:** Sets forth the information that an electric utility must provide when it seeks approval, modification or discontinuance of demand-side programs.
- **4 CSR 240-20.093 Demand-Side Programs Investment Mechanisms:** Allows the establishment and operation of Demand-Side Programs Investment Mechanisms (DSIM), which allow periodic rate adjustments related to recovery of costs and utility incentives for investments in demand-side programs.
- **4 CSR 240-3.163 Electric Utility Demand-Side Programs Investment Mechanisms Filing and Submission Requirements:** Sets forth the information that an electric utility must provide when it seeks to establish, continue, modify, or discontinue a DSIM. This rule also sets forth the requirements for submission of information related to DSIM rate adjustment filings and for submission of annual reports as required for electric utilities that have a DSIM.

The Staff generally supports the proposed MEEIA rules, but will outline a few areas of support and a few areas of concern in the following comments. One of the areas of concern is fundamental to the timing of cost recovery and was the subject of legal briefs filed by September 14, 2010 in response to an August 25, 2010 Commission *Order Directing Filing*. As many of the issues are intertwined, the Staff comments will address all four of the before-mentioned rules.

STAFF SUPPORTED LANGUAGE

Annual Energy and Demand Savings Targets/ Incremental and Cumulative Annual Energy and Demand Savings Goals

During the workshops, stakeholder discussions, legal briefs and Commission Agenda meeting discussions, it was obvious that there is confusion related to the annual energy and demand savings *targets* and the annual energy and demand savings *goals*. There is a

distinction between the annual energy savings *targets* and annual demand savings *targets* as defined in proposed 4 CSR 240-20.094 versus the incremental annual energy and demand savings *goals* and cumulative annual energy and demand savings *goals* specified in proposed 4 CSR 240-20.094(2).

The *goals* specified in 4 CSR 240-20.094(2) are **not** tied to the utility incentive component of a DSIM. Moreover, the *goals* in 4 CSR 240-20.094(2) are **not** a mandate and may be informed by the utility's demand-side management (DSM) market potential study required by 4 CSR 240-3.164(2)(A). The *goals* in 4 CSR 240-20.094(2) along with the realistic achievable annual energy savings and annual demand savings as determined through the electric utility's market potential study required in 4 CSR 240-3.164(2)(A) shall provide guidance to the Commission and the electric utility for planning purposes and represent what could be viewed as reasonable progress towards achieving a statutory goal of achieving all cost effective demand-side savings. There are no incentives or penalties tied to the *goals* in 4 CSR 240-20.094(2).

The annual energy savings *targets* and annual demand savings *targets* as defined in 4 CSR 240-20.094 are approved by the Commission at the time of each demand-side program's approval. These *targets* are used in determining the utility's performance levels for the utility incentive component of a DSIM.

As currently drafted, Staff supports the inclusion of annual energy and demand savings *targets* as defined in 4 CSR 240-20.094 and the incremental and cumulative annual energy and demand savings *goals* specified in 4 CSR 240-20.094(2). The distinction between the incremental and cumulative annual energy and demand savings *goals* as "soft goals" and the annual energy and demand savings *targets* as "hard goals" is appropriate.

Program Relationship to Chapter 22

Staff supports the inclusion of the requirement that proposed demand-side programs be analyzed through the integration analysis process required by Chapter 22 Electric Utility

Resource Planning. Various groups, including but not limited to, the Great Rivers Environmental Law Center, Kansas City Power and Light Company (KCPL), Missouri Department of Natural Resources, Renew Missouri and the Sierra Club, expressed opposition regarding the requirement that proposed demand-side programs be analyzed through the integration analysis process required by Chapter 22 Electric Utility Resource Planning. Some of the concerns expressed by these stakeholder organizations were that the process is a burdensome requirement and that it may not result in a set of demand-side resources that are adequate to meet a MEEIA goal of achieving all cost-effective demand-side savings; therefore, the results of the Chapter 22 integration analysis process should not be a limiting factor in the approval of the demand-side programs submitted under the proposed 4 CSR 240-20.094 rule. These stakeholder groups contend that the Total Resource Cost (TRC) test should be an adequate measure, by itself, to determine which demand-side programs are proposed and approved. Staff does not agree with the concerns of these stakeholder groups.

Missouri's Chapter 22 Electric Utility Resource Planning rules are expected to continue to result in an ongoing and dynamic electric utility resource planning process to "optimize" both supply-side resources and demand-side resources at the lowest cost to electricity ratepayers while taking into consideration risk and uncertainty associated with critical uncertain factors such as: future customer loads (for energy and for demand), future fuel and purchased power prices, future economic conditions, future legal mandates, and new technology. Simply using the TRC test to determine which demand-side programs are proposed and approved does not give any consideration to risk and uncertainty associated with critical uncertain factors. Proposed rule 4 CSR 240-20.094(3)(A) requires that proposed demand-side programs, "Are included in the electric utility's preferred [resource] -plan or have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility." Staff supports this requirement as it places demand-side resources on an equal basis with supply-side resources. Section 393.1075.3 RSMo Supp. 2009, states that, "It shall be the policy of the state to value demand-side investments equal to traditional investments in

supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs.” The requirement that proposed demand-side programs be analyzed through the integration analysis process is consistent with MEEIA. Moreover, the requirement in proposed rule 4 CSR 240-20.094(3)(A) indicates that the integration analysis should be completed and filed as required by 4 CSR 240-3.164(2)(B)3., but does not state that the results would necessarily be a limiting factor in the approval of demand-side programs.

Finally, Staff would like to clarify for the Commission that should the electric utility determine that it wants to propose demand-side programs or program plans which are not included in the electric utility’s preferred resource plan, a completely new Chapter 22 analysis and new preferred resource plan are not necessary. The only requirement of 4 CSR 240-20.094(3)(A) is that demand-side programs and program plans, “have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility.” Further, such integration analysis to determine the impact of individual demand-side programs on the net present value of revenue requirements of the electric utility have been requested by Staff during 2010 on several occasions for demand-side programs which were not in the preferred resource plans of the individual electric utilities. The electric utilities performed the integration analysis, reported the incremental change to the net present value of revenue requirements, and communicated to Staff that the integration analysis was not burdensome taking no more than a day or two to set up and run the integration analysis with the proposed demand-side program(s).

AREAS OF STAFF CONCERN

Demand-Side Investment Mechanism (DSIM) Approval and Rate Changes Outside of a General Rate Case Proceeding

One of the fundamental tensions among the stakeholders in the MEEIA workshops was whether the Commission has authority to permit changes to the rates of a DSIM outside of a general rate proceeding, *i.e.*, whether the Commission has authority to employ a

process like that used for electric utility fuel and purchased power and environmental cost recovery mechanisms. Many of the stakeholders in the numerous workshops and discussions held and documented in File No. EW-2010-0265 are of the opinion that the Commission has that authority and many are not. Because of this disagreement, Staff prepared two alternative draft versions of the MEEIA rules. On August 25, 2010, the Commission issued in File No. EX-2010-0368 an *Order Directing Filing* in which it directed interested participants to raise their legal issues or concerns and “provide the commission with a full legal briefing of that issue no later than September 14, 2010.” Numerous participants, including Staff, briefed the issue of the Commission’s authority to permit changes to the rates of a demand-side investment mechanism outside of a general rate case proceeding, *i.e.*, between general rate cases. The rules the Commission has proposed permit changes to the rates of a demand-side investment mechanism outside of a general rate case proceeding.

For the reasons stated in its brief filed in File No. EX-2010-0368 on September 14, 2010, and restated below, it is still Staff’s position that the Commission does not have the requisite statutory authority to authorize or permit changes to the rates of a demand-side investment mechanism outside of a general rate proceeding. Therefore, Staff recommends the following changes to the proposed rules to make them lawful:

- In 4 CSR 240-3.163: the purpose section and sections (1)(F), (G), (I), (J) and (K); (2); (2)(A), (J) and (K); (3); (4); (4)(B); (5)(B); (8)(A), (B), (C), (D), (E), (F) and (G); (9); (9)(A) and (B) require elimination or modification to reflect that DSIM rates may only be authorized and changed in general rate proceedings.
- No changes are required in 4 CSR 240-3.164 due to this issue.
- In 4 CSR 240-20.093: the purpose section and sections (1)(I), (M), (N), (P), (Q), (R) and (DD); (2); (2)(B), (F), (G)1, (G)2, and (I); (3); (3)(B) and (D); (4); (4)(A), (B), (C), and (D); (5); (5)(A); (6); and (10); (10)(A), (B), (B)1, and (B)2. require elimination or modification to reflect that DSIM rates may only be authorized and changed in general rate proceedings.

- In 4 CSR 240-20.094: sections (1)(J), (L), (M), (N) and (Y); and (2)(E) require elimination or modification to reflect that DSIM rates may only be authorized and changed in general rate proceedings.

Staff has attached a marked-up version of the MEEIA rules which reflect the necessary recommended changes to address the legal issue that DSIM rates may only be authorized and changed in general rate proceedings. If these changes are made, the Commission will need to renumber certain subsections of the Proposed Rules, as Staff, to avoid confusion when comparing versions of the rules, did not renumber for deletions.

Staff's Legal Analysis

In setting utility rates, the Commission is required to consider all relevant factors, and single-issue ratemaking is prohibited. §392.240.1; *State ex rel. Missouri Water Company*, 308 S.W.2d 704, 718-19 (Mo. 1957); *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 56-58 (Mo. banc 1979). Missouri courts have articulated that the rationale behind the prohibition on single-issue ratemaking is to prevent the Commission from allowing a utility to “raise rates to cover increased costs in one area without realizing there were counterbalancing savings in another area.” *State ex rel. Midwest Gas Users' Association v. Public Service Commission of Missouri*, 976 S.W.2d 470, 480 (Mo. App. 1998). In circumstances where a cost is readily ascertainable and the utility has little or no control over that cost, Missouri courts have found the prohibition against single-issue ratemaking inapplicable to the pass through of that cost to customers. Examples include the pass through of taxes (*Hotel Continental v. Burton*, 334 S.W.2d 75 (Mo. 1960)) and the pass through of natural gas costs by use of a purchased gas adjustment (PGA) clause, related actual cost adjustment (ACA) clause and gas costs incentive mechanism to calculate natural gas rates (*State ex rel. Midwest Gas Users' Association v. Public Service Commission of Missouri*, 976 S.W.2d 470 (Mo. App. 1998)).

Unlike the pass through of taxes in *Hotel Continental* and natural gas costs in *Midwest*

Gas Users' Association which Missouri courts found are not prohibited single-issue ratemaking, the development, implementation, evaluation and other costs of demand-side programs are well within the control of the utilities who administer them. Therefore, unless the Legislature has created an exception, passing these costs through in rates is impermissible single-issue ratemaking.

The most direct support for the proposition the Commission has authority to authorize or permit changes to the rates of a demand-side investment mechanism outside of a general rate case proceeding is the language of section 393.1075.3(1) and (3), RSMo Supp. 2009 which directs the Commission to “[p]rovide timely cost recovery for utilities” and “[p]rovide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.” When the Legislature provides a definition for a word or phrase, that definition is authoritative and to be read into the statute where that word or phrase appears as a part of the statute itself. *State ex rel. Exchange Bank of Richmond v. Allison*, 155 Mo. 325, 56 S.W. 467 (1900); *State v. Brushwood*, 171 S.W.3d 143 (Mo. App. 2005). However, in the absence of such a definition, “[w]ords and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.” Section 1.090 RSMo 2000. Neither “[p]rovide timely cost recovery for utilities” nor “[p]rovide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings” is a technical phrase having a peculiar and appropriate meaning in law. Nor is either phrase, or any word or subpart of either phrase, defined in section 393.1075 RSMo Supp. 2009. The nonarchaic dictionary definition of “timely” is “occurring at a suitable time; seasonable; opportune; well-timed: a timely warning.”² Notably, it does not mean “contemporaneously” or even necessarily near in time. With few exceptions, rate changes are timely only when the Commission approves them as the result of a general rate proceeding. Review of the cost recovery mechanisms listed in section 393.1075.5 RSMo Supp. 2009 reveals that all are mechanisms available, and used, in general rate proceedings: “capitalization of investments in and expenditures for

²*Dictionary.com Unabridged*. Random House, Inc. 03 Sep. 2010. <[Dictionary.com http://dictionary.reference.com/browse/timely](http://dictionary.reference.com/browse/timely)>.

demand-side programs, rate design modifications, accelerated depreciation on demand-side investments, and allowing the utility to retain a portion of the net benefits of a demand-side program for its shareholders”; therefore, this part of the statute does not support that recovery of these costs only through rates established in a general rate proceeding is untimely.

When the Legislature, or voters by initiative petition, have viewed cost recovery through rates from a general rate proceeding to be untimely or inopportune, they have expressly provided for recovery of those costs outside of a general rate proceeding. There are two recent examples of this pertaining to electrical corporations. In 2005, the Legislature passed Senate Bill 179 which became law and is now codified at section 386.266 RSMo 2009. Senate Bill 179 allows the recovery of fuel and purchased-power costs, and costs of compliance with environmental laws and regulations, by means of “rate schedules authorizing periodic rate adjustments outside of general rate proceedings.” By initiative in 2008, voters passed Proposition C (“Renewable Energy Standard”), which is codified at sections 393.1020 to 303.1030 RSMo Supp. 2009. Proposition C required the Commission to establish rules to enforce the Renewable Energy Standard, including “recovery outside the context of a regular rate case” of the costs the utility incurs and the benefits to its customers of its compliance with the Renewable Energy Standard. Section 393.1030.2(4) RSMo Supp. 2009. The Commission did so by rules 4 CSR 240-3.161, 4 CSR 240-3.162, 4 CSR 240-20.090 and 4 CSR 240-20.091.

Additionally, the Legislature, in 2003, established for water and gas utilities regulated by the Commission, infrastructure system replacement surcharges to allow recovery, through rates outside of a general rate proceeding, of certain costs associated with replacing or extending the life of existing infrastructure that were not considered when the utility’s general rates were last established. Section 393.1000 to 1015, RSMo Supp. 2009.

The Commission simply does not have statutory authority from the Missouri Energy Efficiency Investment Act to change or determine any rates of electrical corporations outside of a general rate proceeding; thus, demand-side investment mechanisms must be

approved in general rate proceedings, as must rate recovery from customers of the costs and utility incentives associated with them.

Simultaneous Approval of Demand-Side Programs and DSIM

If the Commission still disagrees with Staff's position on the legal issue regarding authorizing or permitting changes to the rates of a demand-side investment mechanism outside of a general rate case proceeding and this language remains in the proposed MEEIA rules, Staff has additional concerns with related language regarding simultaneous approval of demand-side programs and a DSIM as drafted by the Missouri Energy Development Association (MEDA). The Commission directed Staff to include language provided by MEDA related to simultaneous approval of demand-side programs and a DSIM. The concerns of Staff include:

- **The absence of a definition for the phrase, “filing for demand-side program approval.”** Staff recommends the following definition be included in 4 CSR 240-3.163, 4 CSR 240-20.093, and 4 CSR 240-20.094:

“Filing for demand-side program approval means a utility’s case filing for approval, modification or discontinuance of demand-side program(s) which may also include a simultaneous request for the establishment, modification or discontinuance of a DSIM.”

- **The use of inconsistent terms in the language proposed by MEDA.**

Inconsistent terms include the following:

- “utility’s filing for demand-side program approval” found in 4 CSR 240-3.163(1)(I) and 4 CSR 240-20.093(1)(P).
- “utility’s filing for demand-side program approval proceeding” found in 4 CSR 240-3.163(1)(F), (G), (J), and (K); 4 CSR 240.20.093(1)(M), (N), (Q), (R) and (DD); and 4 CSR 240-20.094 (1) (J), (L), (M) and (N).
- “demand-side program approval proceeding” found in 4 CSR 240-3.163(9), (9)(A) and (B); 4 CSR 240-20.093(1)(I), (DD); and 4 CSR 240-20.093(1) (I), (2), (2)(G)2, (3)(B), (4) and(10).

- “application for demand-side program approval proceeding” found in 4 CSR 240-20.093(2)(B).

Due to the lack of a definition and the use of inconsistent terminology, it is unclear whether a “filing”, “application” or “proceeding” is intended to occur. Therefore, Staff recommends that if this language remains in the proposed MEEIA rules, that the recommended definition for the phrase “filing for demand-side program approval” be utilized and that consistent terminology be used throughout the proposed MEEIA rules as indicated above.

- **Uncertainty regarding the operation of language in 4 CSR 240-20.093(5).**

This paragraph states the following:

(5) Implementation of DSIM. Once a DSIM is approved, modified or discontinued by the commission, the utility shall use deferral accounting using the utility’s latest approved weighted average cost of capital until the utility’s next general rate proceeding. At the time of filing the general rate proceeding subsequent to DSIM approval, modification or discontinuance the commission shall use an interim rate adjustment order to implement the approved, modified or discontinued DSIM.

Staff is uncertain regarding the operation of language in 4 CSR 240-20.093(5) as drafted by MEDA and recommends that the language in this paragraph be removed. Specifically, the meaning of the reference to “deferral accounting” in this section is unclear. In general, “deferral accounting” means a process of capturing an increased level of expense as a regulatory asset or liability on a utility’s balance sheet instead of immediately charging the increased expenses against earnings on its income statement. The normal effect of deferral accounting is to hold the utility harmless from certain adverse earnings impacts until such time that the increased costs can be reflected in the utility’s rates.

Based on this understanding, Staff interprets the use of the term “deferral accounting” in the proposed MEEIA rules as allowing the utility to defer the impact of increased DSIM

costs on its balance sheet until such time that the utility can reflect the increased DSIM costs in its rates through either a DSIM or a general rate proceeding. If this interpretation is accurate, Staff opposes this provision. Staff believes that allowing for both deferral accounting and the opportunity for expedited rate recovery of DSIM costs is unnecessary and may go beyond the intent of the MEEIA. If a utility is able to avoid charges against income related to increased DSIM costs through use of deferral accounting until its next rate case, the primary rationale for expedited rate recovery goes away. Alternatively, if a utility is allowed to adjust its rates to account for increases to its DSIM costs significantly faster than under ordinary ratemaking procedures in this jurisdiction, the need for additional earnings protection for the utility through use of deferral accounting is likewise not evident. For this reason, to the extent that the Commission adopts procedures allowing for expedited rate recovery of DSIM costs by utilities, Staff recommends that the language in the proposed rule 4 CSR 240-20.093(5) concerning deferral accounting be removed.

As an additional concern, Staff also notes that the provision regarding “deferral accounting” provides for use of the utility’s weighted average cost of capital as part of the deferral process. Applying an interest rate to deferred costs has the impact of holding the utility financially harmless concerning the time-value of money while it waits for recovery of its increased costs through customer rates. Elsewhere in the proposed rule (4 CSR 240-20.093(10)), though, the applicable language specifies that any refunds given back to customers as a result of subsequent prudence reviews of DSM expenditures are to have interest applied to the refund amounts at a rate equal to the utility’s short-term borrowing rate. In almost all circumstances, a utility’s weighted average cost of capital will be significantly greater than its short-term borrowing rate. Under the proposed MEEIA rule language, then, utilities will be compensated for the time-value of monies owed them through the DSIM at a higher interest rate than customers will receive for the time-value of monies likewise owed back to them on account of the DSIM. Absent a specific demonstration that a utility’s cost of capital is in fact higher than its customers’ average cost of capital, such a differential is not warranted, and the two rates of interest should be set equally if deferral accounting of DSIM revenue requirements is allowed.

In this event, Staff recommends that the utility's short-term borrowing rate be used for both purposes.

Ultimately, Staff recommends elimination or modification of the language referenced under the heading, "Demand-Side Investment Mechanism (DSIM) Approval and Rate Changes Outside of a General Rate Case Proceeding" to reflect that DSIM rates may only be authorized and changed in general rate cases. However, if the Commission disagrees with the Staff on the legal issue regarding authorizing or permitting changes to the rates of a DSIM outside of a general rate case proceeding and this language remains in the rules, Staff still has additional concerns with related language regarding simultaneous approval of demand-side programs and a DSIM as drafted by MEDA, and recommends that modifications be made consistent with the comments above.

Definition of "Staff"

In the proposed rules, the term Staff is currently defined as, "all commission employees, except the secretary of the commission, general counsel, technical advisory staff as defined by section 386.135, RSMo, hearing officer, or regulatory judge." The definition of Staff in each of the draft rules would include attorneys in the Office of the General Counsel other than the General Counsel who are not in the Office of the Staff Counsel. Staff is not certain that result is intended. The definitions appear at 4 CSR 240-3.163(1)(R), 4 CSR 240-3.164(1)(V), 4 CSR 240-20.093(1)(AA) and 4 CSR 240-20.094(1)(W).

Lost Revenue Adjustment Mechanism

At the August 4, 2010 Agenda meeting, the Commission directed Staff to draft language stating that the Commission may approve recovery of lost revenues. This revision occurred in several areas of the proposed MEEIA rules; however, the most substantive language relating to recovery of lost revenues is included below.

As currently drafted in the definition sections throughout 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094:

- **Lost revenue means** the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net retail KWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V.
- **DSIM utility lost revenue requirement means** the component of the utility's revenue requirement explicitly approved (if any) by the commission in a utility's filing for demand-side program approval proceeding to address the recovery of lost revenue.

4 CSR 240-20.093(2)(G):

(G) Any utility lost revenue component of DSIM shall be based on energy or demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V.

1. The commission shall order any DSIM utility lost revenue requirement simultaneously with the programs approved in accordance with 4 CSR 240-20.094.

2. In a utility's demand-side program approval proceeding in which lost revenues are considered there is no requirement for any implicit or explicit lost revenue recovery or for a particular form of lost revenue component.

3. The commission may address lost revenues solely or in part, directly or indirectly, with a performance incentive mechanism.

4. Any explicit lost revenue component of DSIM shall be implemented on a retrospective basis and all energy and demand savings for claimed lost revenues must be measured and verified through EM&V prior to recovery.

Staff recommends that the proposed MEEIA rules include no provisions for the explicit recovery of lost revenues. Kushler, York and Wittee (2006), state that although there was a fair amount of focus on regulatory mechanisms that specifically compensated utilities for “lost revenues” resulting from their energy efficiency programs in the early 1990s, this approach has essentially been abandoned. As of July 2010, there are merely eight (8) states (one (1) pending) which have provisions for a lost revenue adjustment mechanism.³

“Several states have had such mechanisms in the past, but generally such practices have ended. The movement away from direct reimbursement for lost revenues is likely due to several factors including: the fact that the approach is vulnerable to “gaming” by over-claiming savings; that it typically leads to very contentious reconciliation hearings as parties argue about the measurement of savings; and that it doesn’t do anything to address the utility disincentive regarding broader energy efficiency policies beyond the specific program addressed with the mechanisms. “Lost revenue” recovery remains a concern to utilities and their regulators, but we observed that commissions appear to be addressing this either through decoupling mechanisms and/or performance incentives.”⁴

In addition, it is unclear whether a decoupling mechanism is authorized by MEEIA; therefore, Staff recommends the throughput incentive be addressed through the utility incentive component of a DSIM. However, if the Commission determines that a DSIM utility lost revenue requirement should be included in the MEEIA rules, Staff recommends changes be made to the current language.

Staff recommends the following **redline** revisions be made to clarify the language relating to lost revenue recovery in 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094.

³ State Electric Efficiency Regulatory Frameworks. Institute for Electric Efficiency. July 2010, p. 2-10.

⁴ Kushler, York and Witte. Aligning Utility Interests with Energy Efficiency Objectives: A Review of Recent Efforts at Decoupling and Performance Incentives. American Council for an Energy-Efficient Economy, Report No. U061. Oct. 2006, p. 8.

Definition sections throughout 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094:

- **Lost revenue means** the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net **system** retail KWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V.
- **DSIM utility lost revenue requirement means** the component of the utility's revenue requirement explicitly approved (if any) by the commission in a utility's filing for demand-side program approval proceeding to address the recovery of lost revenue.

4 CSR 240-20.093(2)(G):

(G) Any utility lost revenue component of DSIM shall be based on energy or demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V.

1. A utility cannot recover revenues lost due to utility-demand side programs unless it does not recover the fixed cost as set in the last general rate case, i.e. actual annual billed system kWh is less than the system kWh used to calculate rates to recover revenues as ordered by the Commission in the utility's last general rate case.

2. The commission shall order any DSIM utility lost revenue requirement simultaneously with the programs approved in accordance with 4 CSR 240-20.094.

3. In a utility's demand-side program approval proceeding in which lost revenues are considered there is no requirement for any implicit or explicit lost revenue recovery or for a particular form of lost revenue component.

4. The commission may address lost revenues solely or in part, directly or indirectly, ~~with a performance incentive mechanism~~ through a utility incentive component of DSIM.

5. Any explicit lost revenue component of DSIM shall be implemented on a retrospective basis and all energy and demand savings for claimed lost revenues must be measured and verified through EM&V prior to recovery.

These revisions clarify that lost revenues are only the result of changes in revenues that occur when Commission-approved demand-side programs cause a drop in net system retail kWh below the level of system retail kWh used to set the electricity rates in the electric utility's last general rate proceeding. In other words, a utility cannot recover revenues lost due to utility demand-side programs unless it does not recover the fixed costs set in the last general rate case. Moreover, incorporating the revisions will prevent a utility from "double dipping" by claiming lost revenues due to demand-side programs while continuing to build load. Finally, utilities would not be able to earn more than authorized if they raise sales between rate cases because, with the recommended revisions, if overall sales exceed the system retail kWh set in the last rate case, the utility would be unable to recover any lost revenues.

This mark-up reflects the changes necessary to address the legal issue of demand-side investment mechanism (DSIM) approval and rate changes outside of a general rate proceeding. If the changes are made, the Commission will need to renumber certain subsections of the Proposed Rules as Staff did not renumber for deletions in order to avoid confusion when comparing versions of the rules. Additional proposed revisions were not included in the following mark-up to avoid confusion since most changes depend on the Commission's decision on other issues.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

PROPOSED RULE

**4 CSR 240-3.163 Electric Utility Demand-Side Programs Investment Mechanisms
Filing and Submission Requirements**

PURPOSE: This rule sets forth the information that an electric utility must provide when it seeks to establish, continue, modify, or discontinue a Demand-Side Programs Investment Mechanism (DSIM). This rule also sets forth the requirements for submission of information related to ~~DSIM rate adjustment filings and for~~ submission of annual reports as required for electric utilities that have a DSIM.

(1) As used in this rule, the following terms mean:

(A) Annual net shared benefits means the utility's avoided costs measured and documented through evaluation, measurement, and verification (EM&V) reports for approved demand-side programs less the sum of the programs' costs including design, administration, delivery, end-use measures, incentives, EM&V, utility market potential studies, and technical resource manual on an annual basis;

(B) Annual report means a report of information concerning a utility's demand-side programs having the content described in section (5);

(C) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from energy savings and demand savings associated with generation, transmission, and distribution facilities. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(D) Demand means the rate of electric power use measured over an hour in kilowatts (kW);

(E) Demand-side program means any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the meter including, but not limited to, energy efficiency measures, load management, demand response, and interruptible or curtailable load;

(F) Demand-side programs investment mechanism, or DSIM, means a mechanism approved by the commission in a ~~utility's filing for demand-side program~~

~~approval~~general rate proceeding to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation:

1. Cost recovery of demand-side program costs through capitalization of investments in demand-side programs;
2. Cost recovery of demand-side program costs through a demand-side program cost tracker;
3. Accelerated depreciation on demand-side investments;
4. Recovery of lost revenues; and
5. Utility incentive based on the achieved performance level of approved demand-side programs;

(G) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a ~~utility's filing for demand side program approval~~general rate proceeding~~or a semi-annual DSIM rate adjustment case~~;

(H) DSIM rate means the charge on a customer's bill for the portion of the DSIM revenue requirement assigned by the commission to a rate class;

(I) DSIM revenue requirement means the sum of the DSIM cost recovery revenue requirement, DSIM utility lost revenue requirement, and the DSIM utility incentive revenue requirement, ~~if allowed by the commission in the utility's last filing for demand side program approval~~;

(J) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission in a ~~utility's filing for demand side program approval~~general rate proceeding to provide the utility with a portion of annual net shared benefits based on the achieved performance level of approved demand-side programs demonstrated through energy and demand savings measured and documented through EM&V reports compared to energy and demand savings targets;

(K) DSIM utility lost revenue requirement means the component of the utility's revenue requirement explicitly approved (if any) by the commission in a ~~utility's filing for demand side program approval~~general rate proceeding to address the recovery of lost revenue;

(L) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

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

(N) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(O) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

(P) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility

demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(Q) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility decision-makers, 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. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its probable environmental costs;

(R) Staff means all commission employees, except the secretary of the commission, general counsel, technical advisory staff as defined by section 386.135, RSMo, hearing officer, or regulatory judge; and

(S) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs plus avoided probable environmental cost 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-side resources.

(2) When an electric utility files to establish a DSIM as described in 4 CSR 240-20.093(2), the electric utility shall file the following supporting information as part of, or in addition to, its direct testimony ~~for the demand-side program filing~~. Supporting workpapers shall be submitted as executable versions in native format with all formulas intact.

(A) The notice provided to customers as part of the initial notification to customers of the general rate increase request describing how the proposed DSIM will work, how any proposed DSIM rate will be determined, and how any DSIM rate will appear on customer bills.

(B) An example customer bill showing how the proposed DSIM shall be separately identified on affected customers' bills.

(C) A complete description and explanation of the design, rationale, and intended operation of the proposed DSIM.

(D) Estimates of the effect of the DSIM on customer rates and average bills for each of the next three (3) years for each rate class.

(E) Estimates of the effect of the utility incentive component of DSIM on utility earnings and key credit metrics for each of the next three (3) years which shows the level of earnings and credit metrics expected to occur for each of the next three (3) years with and without the utility incentive component of DSIM.

(F) A complete explanation of all the costs that shall be considered for recovery under the proposed DSIM and the specific account used for each cost item on the electric utility's books and records.

(G) A complete explanation of any change in business risk to the electric utility resulting from implementation of a utility incentive related to the DSIM in setting the electric utility's allowed return on equity, in addition to any other changes in business risk experienced by the electric utility.

(H) A proposal for how the commission can determine if any DSIM utility incentives are aligned with helping customers use energy more efficiently.

(I) Annual reports, if any, required by 4 CSR 240-20.093(8).

~~(J) If the utility proposes to adjust its DSIM rates between general rate proceedings, proposed DSIM rate adjustment clause tariff sheets.~~

~~(K) If the utility proposes to adjust the DSIM cost recovery revenue requirement between general rate proceedings, a complete explanation of how the DSIM rates shall be established and adjusted to reflect over collections or under collections as well as the impact on the DSIM cost recovery revenue requirement as a result of approved new, modified, or discontinued demand side programs.~~

(3) ~~If an electric utility files to modify its approved DSIM~~When an electric utility files a general rate proceeding following the general rate proceeding that established its DSIM as described in 4 CSR 240-20.093(2), in which it requests that its DSIM be continued or modified, the electric utility shall file with the commission and serve parties, as provided in section (9), the following supporting information as part of, or in addition to, its direct testimony. Supporting workpapers shall be submitted with all models and spreadsheets provided as executable versions in native format with all formulas intact.

(A) Information as required by subsections (2)(A) through (K).

(B) Explanation of any proposed modification to the DSIM and why the proposed modification is being requested.

(C) A complete explanation of any change in business risk to the electric utility resulting from modification of a utility incentive related to the DSIM in setting the electric utility's allowed return on equity, in addition to any other changes in business risk experienced by the electric utility.

(D) Any additional information the commission ordered to be provided.

(4) ~~If an electric utility files to discontinue its approved DSIM~~When an electric utility files a general rate proceeding following the general rate proceeding that established its DSIM as described in 4 CSR 240-20.093(2), in which it requests that its DSIM be discontinued, the electric utility shall file with the commission and serve parties, as provided in section (9), the following supporting information as part of, or in addition to, its direct testimony. Supporting workpapers shall be submitted with all models and spreadsheets provided as executable versions in native format with all formulas intact.

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.093(3)(D).

~~(B) If the utility's DSIM allows adjustments of the DSIM rates between general rate proceedings, a complete explanation of how the over collection or under collection of the DSIM revenue requirement that the electric utility is proposing to discontinue shall be handled.~~

(C) A complete explanation of why the DSIM is no longer necessary to provide the electric utility a sufficient opportunity to recover demand-side programs costs, lost revenues, and/or to receive a utility incentive.

(D) A complete explanation of any change in business risk to the electric utility resulting from discontinuation of a utility incentive related to the DSIM in setting the electric utility's allowed return on equity, in addition to any other changes in business risk experienced by the electric utility.

(E) Any additional information the commission ordered to be provided.

(5) Each electric utility with approved demand-side programs shall submit, with an affidavit attesting to the veracity of the information, annual reports as required in 4 CSR 240-20.093(8) to the manager of the energy resource analysis section of the staff, public counsel, and others as provided in section (9). The submission to the staff may be made through the commission's electronic filing and information system (EFIS). Annual reports shall include at a minimum the following information and all models and spreadsheets shall be provided as executable versions in native format with all formulas intact:

(A) A list of all approved demand-side programs and the following information for each approved demand-side program:

1. Actual amounts expended by year, including customer incentive payments;
2. Peak demand and energy savings impacts and the techniques used to estimate those impacts;
3. A comparison of the estimated actual annual peak demand and energy savings impacts to the level of annual peak demand and energy savings impacts that were projected when the program was approved;
4. For market transformation programs, a quantitative and qualitative assessment of the progress being made in transforming the market;
5. A comparison of actual and budgeted program costs, including an explanation of any increase or decrease of more than ten percent (10%) in the cost of a program;
6. The avoided costs and the techniques used to estimate those costs;
7. The estimated cost-effectiveness of the demand-side program and a comparison to the estimates made by the utility at the time the program was approved;
8. The estimated net economic benefits of the demand-side program;
9. For each program where one (1) or more customers have opted out of demand-side programs pursuant to section 393.1075.7, RSMo, a listing of the customer(s) who have opted out of participating in demand-side programs;
10. A copy of the EM&V report for the most recent annual reporting period; and
11. Demonstration of relationship of the demand-side program to demand-side resources in latest filed 4 CSR 240-22 compliance filing; and

~~(B) If the utility's DSIM includes adjustments of the DSIM rates between general rate proceedings, the actual revenues billed under the DSIM.~~

(6) If the electric utility is not submitting a Surveillance Monitoring Report as required in 4 CSR 240-3.161(6) Electric Utility Fuel and Purchased Power Cost Mechanisms Filing and Submission Requirements, then it shall submit a Surveillance Monitoring Report in the form and content required in 4 CSR 240-3.161(6). In addition to the requirements under 4 CSR 240-3.161(6), each electric utility with a DSIM shall submit as page 6 of the Surveillance Monitoring Report a quarterly progress report in a format determined by the staff, and all models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

(7) EM&V reports shall document, include analysis, and present any applicable recommendations for at least the following, and all models and spreadsheets shall be provided as executable versions in native format with all formulas intact:

(A) Process evaluation and recommendations, if any; and

(B) Impact evaluation—

1. The lifetime and annual gross and net demand savings and energy savings achieved under each program, and the techniques used to estimate annual demand savings and energy savings; and

2. A demonstration of the cost-effectiveness of the program, to include at a minimum the TRC of each program.

A. If a program is determined not to be cost-effective, the electric utility shall identify the causes why and present appropriate program modifications, if any, to make the program cost-effective. If there are no modifications to make the program cost-effective, the utility shall describe how it intends to end the program and how it intends to achieve the energy and demand savings initially estimated for the discontinued program.

B. The fact that a program proves not to be cost-effective is not by itself sufficient grounds for disallowing cost recovery.

~~(8) If an electric utility's DSIM includes adjustments of the DSIM rates between general rate proceedings, when it files with the commission tariff sheets to adjust its DSIM rates as described in 4 CSR 240-20.093(4), and serves parties as provided in section (9) in this rule, the tariff sheets shall be accompanied by supporting testimony and contain at least the following supporting information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.~~

~~(A) Amount of revenue that it has over-collected or under-collected through the most recent recovery period by rate class.~~

~~(B) Proposed adjustments or refunds by rate class.~~

~~(C) Electric utility's short-term borrowing rate.~~

~~(D) Proposed adjustments to the current DSIM rates.~~

~~(E) Complete documentation for the proposed adjustments to the current DSIM rates.~~

~~(F) Annual report as required by 4 CSR 240-20.093(8).~~

~~(G) Any additional information the commission ordered to be provided.~~

(9) Party status and providing to other parties affidavits, testimony, information, reports, and workpapers in related proceedings subsequent to the ~~demand-side program approval~~general rate proceeding establishing, modifying, or continuing a DSIM.

(A) A person or entity granted intervention in a ~~demand-side program approval~~general rate proceeding in which a DSIM is approved by the commission shall be a party to any subsequent related ~~periodic rate adjustment~~ proceeding without the necessity of applying to the commission for intervention; however, such person or entity shall file a notice of intention to participate within the intervention period. In any subsequent ~~demand-side program approval~~general rate proceeding, such person or entity must seek and be granted status as an intervenor to be a party to that proceeding. Affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent ~~related semi-annual DSIM rate adjustment proceeding or demand-side program approval~~general rate proceeding to modify, continue, or discontinue the same

DSIM shall be served on or submitted to all parties from the prior related ~~demand-side program approval~~ general rate proceeding and on all parties from any subsequent related ~~periodic rate adjustment proceeding or demand-side program approval~~ general rate proceeding to modify, continue, or discontinue the same DSIM, concurrently with filing the same with the commission or submitting the same to the manager of the energy resource analysis section of the staff and public counsel.

(B) A person or entity not a party to the ~~demand-side program approval~~ general rate proceeding in which a DSIM is approved by the commission may timely apply to the commission for intervention, pursuant to 4 CSR 240-2.075(2) through (4) of the commission's rule on intervention, ~~respecting any related subsequent periodic rate adjustment proceeding, or, pursuant to 4 CSR 240-2.075(1) through (5),~~ respecting any subsequent ~~demand-side program approval~~ general rate proceeding to modify, continue, or discontinue the same DSIM.

(10) Right to Discovery Unaffected. In addressing certain discovery matters and the provision of certain information by electric utilities, this rule is not intended to restrict the discovery rights of any party.

(11) Variances. Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.

(12) Rule Review. The commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date of this rule and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

AUTHORITY: section 393.1075.11, RSMo Supp. 2009. Original rule filed Oct. 4, 2010.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule is estimated to cost affected private entities two hundred thousand dollars (\$200,000) in year one, two hundred thousand dollars (\$200,000) in year two, two hundred thousand dollars (\$200,000) in year three, and two hundred thousand dollars (\$200,000) in year four.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after publication of this notice in the **Missouri Register** and should include a reference to Commission Case No. EX-2010-0368. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/case-filing-information>. A public hearing regarding this proposed rule is scheduled for Monday, December 20, 2010, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule and may be asked to respond to commission questions.*

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

PROPOSED RULE

4 CSR 240-3.164 Electric Utility Demand-Side Programs Filing and Submission Requirements

PURPOSE: This rule sets forth the information that an electric utility must provide when it seeks approval, modification, or discontinuance of demand-side programs.

(1) As used in this rule, the following terms mean:

(A) Avoided cost or utility avoided cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from energy savings and demand savings associated with generation, transmission, and distribution facilities. The utility shall use the same methodology used in its most recently adopted preferred resource plan to calculate its avoided costs;

(B) Baseline demand forecast means a reference end-use forecast of demand in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(C) Baseline energy forecast means a reference end-use forecast of energy in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(D) Demand means the rate of electric power use over an hour measured in kilowatts (kW);

(E) Demand-side portfolio or portfolio of programs means all of a utility's demand-side programs at a defined point in time;

(F) Demand-side program means any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the meter including, but not limited to, energy efficiency measures, load management, demand response, and interruptible or curtailable load;

(G) Demand-side program plan means a particular combination of demand-side programs to be delivered according to a specified implementation schedule and budget;

(H) Economic potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from customer adoption of all cost-effective measures, regardless of customer preferences;

(I) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

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

(K) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(L) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

(M) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net retail kWh below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(N) Maximum achievable potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation and ideal implementation conditions. Maximum achievable potential establishes a maximum target for demand-side savings that a utility can expect to achieve through its demand-side programs and involves incentives that represent a very high portion of total programs costs and very short customer payback periods. Maximum achievable potential is considered the hypothetical upper-boundary of achievable demand-side savings potential, because it presumes conditions that are ideal and not typically observed;

(O) Measure means any device, technology, or operating procedure that makes it possible to deliver an adequate level and quality of energy service while—

1. Using less energy than would otherwise be required; or
2. Altering the time pattern of electricity so as to require less generating capacity or to allow the electric power to be supplied from more fuel-efficient units;

(P) Non-participant test (sometimes referred to as the ratepayer impact measure test or RIM test) is a measure of the difference between the change in total revenues paid to a utility and the change in total cost incurred by the utility as a result of the implementation of demand-side programs. The benefits are the avoided cost as a result of implementation. The costs consist of incentives paid to participants, other costs incurred by the utility, and the loss in revenue as a result of diminished consumption. Utility costs include the costs to administer, deliver, and evaluate each demand-side program;

(Q) Participant test means the test of the cost-effectiveness of demand-side programs that measures the economics of a demand-side program from the perspective of the customers participating in the program;

(R) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility decision-makers, 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. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its probable environmental costs;

(S) Program pilot means a demand-side program designed to operate on a limited basis for evaluation purposes before full implementation;

(T) Realistic achievable potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation and realistic implementation conditions. Realistic achievable potential establishes a realistic target for demand-side savings that a utility can expect to achieve through its demand-side programs and involves incentives that represent a moderate portion of total program costs and longer customer payback periods when compared to those associated with maximum achievable potential;

(U) Societal cost test means the total resource cost test with the addition of societal benefits (externalities such as, but not limited to, environmental or economic benefits) to the total benefits of the total resource cost test;

(V) Staff means all commission employees, except the secretary of the commission, general counsel, technical advisory staff as defined by section 386.135, RSMo, hearing officer, or regulatory judge;

(W) Technical potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from a theoretical construct that assumes all feasible measures are adopted by customers of the utility regardless of cost or customer preference;

(X) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility cost plus avoided probable environmental cost 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-side resources; and

(Y) Utility cost test means the test 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-side resources.

(2) When an electric utility files for approval of demand-side programs or demand-side program plans as described in 4 CSR 240-20.094(3), the electric utility shall file or provide a reference to which commission case contains the following information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

(A) A current market potential study. The current market potential study shall use primary data and analysis for the utility's service territory. The determination of whether to conduct a market potential study for the utility's service territory or for all statewide investor-owned electric utilities shall be at the discretion of the electric utility. If the current market potential study of the electric utility that is filing for approval of demand-side programs or a demand-side program plan is part of a statewide investor-owned electric utilities market potential study, the sampling methodology shall reflect each utility's service territory and shall provide statistically significant results for that utility. The current market potential study shall be updated with primary data and analysis no less frequently than every four (4) years. To the extent that primary data for each utility service territory is unavailable or insufficient, the market potential study may also rely on or be supplemented by data from secondary sources and relevant data from other geographic regions. The current market potential study shall be prepared by an

independent third party with opportunities for commission staff and stakeholder review and input in the planning stages of the analysis including review of assumptions and methodology in advance of the performance of the study, and shall include at least the following:

1. Complete documentation of all assumptions, definitions, methodologies, sampling techniques, and other aspects of the current market potential study;

2. Clear description of the process used to identify the broadest possible list of measures and groups of measures for consideration;

3. Clear description of the process used to determine technical potential, economic potential, maximum achievable potential, and realistic achievable potential for a twenty (20)-year planning horizon for major end-use groups (e.g., lighting, space heating, space cooling, refrigeration, motor drives, etc.) for each customer class; and

4. Identification and discussion of the twenty (20)-year baseline energy and demand forecasts. If the baseline energy and demand forecasts in the current market potential study differ from the baseline forecasts in the utility's most recent 4 CSR 240-22 triennial compliance filing, the current market potential study shall provide a comparison of the two (2) sets of forecasts and a discussion of the reasons for any differences between the two (2) sets of forecasts. The twenty (20)-year baseline energy and demand forecasts shall account for the following:

- A. Discussion of the treatment of all of the utility's customers who have opted out;

- B. Changes in building codes and/or appliance efficiency standards;

- C. Changes in customer combined heat and power applications; and

- D. Third party and other naturally occurring demand-side savings.

(B) Demonstration of cost-effectiveness for each demand-side program and for the total of all demand-side programs of the utility. At a minimum, the electric utility shall include:

1. The total resource cost test and a detailed description of the utility's avoided cost calculations and all assumptions used in the calculation. To the extent that the portfolio of programs fails to meet the TRC test, the utility shall examine whether the failure persists if it considers a reasonable range of uncertainty in the assumptions used to calculate avoided costs;

2. The utility shall also include calculations for the utility cost test, the participant test, the non-participant test, and the societal cost test; and

3. The impacts on annual revenue requirements and net present value of annual revenue requirements as a result of the integration analysis in accordance with 4 CSR 240-22.060 over the twenty (20)-year planning horizon.

(C) Detailed description of each proposed demand-side program to include at least:

1. Customers targeted;

2. Measures included;

3. Customer incentives;

4. Proposed promotional techniques;

5. Specification of whether the program will be administered by the utility or a contractor;

6. Projected gross and net annual energy savings;

7. Proposed annual energy savings targets and cumulative energy savings targets;

8. Projected gross and net annual demand savings;

9. Proposed annual demand savings targets and cumulative demand savings targets;
10. Net-to-gross factors;
11. Size of the potential market and projected penetration rates;
12. Any market transformation elements included in the program and an EM&V plan for estimating, measuring, and verifying the energy and capacity savings that the market transformation efforts are expected to achieve;
13. EM&V plan including at least the proposed evaluation schedule and the proposed approach to achieving the evaluation goals pursuant to 4 CSR 240-3.163(7) and 4 CSR 240-20.093(7);
14. Budget information in the following categories:
 - A. Administrative costs listed separately for the utility and/or program administrator;
 - B. Program incentive costs;
 - C. Estimated equipment costs;
 - D. Estimated installation costs;
 - E. EM&V costs; and
 - F. Miscellaneous itemized costs, some of which may be an allocation of total costs for overhead items such as the market potential study or the statewide technical reference manual;
15. Description of any strategies used to minimize free riders;
16. Description of any strategies used to maximize spillover; and
17. For demand-side program plans, the proposed implementation schedule of individual demand-side programs.

(D) Demonstration and explanation in quantitative and qualitative terms of how the utility's demand-side programs are expected to make progress towards a goal of achieving all cost-effective demand-side savings over the life of the programs. Should the expected demand-side savings fall short of the incremental annual demand-side savings levels and/or the cumulative demand-side savings levels used to review the utility's progress, the utility shall provide detailed explanation of why the incremental annual demand-side savings levels and/or the cumulative demand-side savings levels cannot be expected to be achieved, and the utility shall bear the burden of proof.

(E) Identification of demand-side programs which are supported by the electric utility and at least one (1) other electric or gas utility (joint demand-side programs).

(3) Designation of Program Pilots. For programs designed to operate on a limited basis for evaluation purposes before full implementation (program pilot), the utility shall provide as much of the information required under subsections (2)(C) through (E) as is practical and shall include explicit questions that the program pilot will address, the means and methods by which the utility proposes to address the questions the program pilot is designed to address, a provisional cost-effectiveness evaluation, the proposed geographic area, and duration for the program pilot.

(4) When an electric utility files to modify demand-side programs as described in 4 CSR 240-20.094(4), the electric utility shall file a complete explanation for and documentation of the proposed modifications to each of the filing requirements in section (2). All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

(5) When an electric utility files to discontinue a demand-side program as described in 4 CSR 240-20.094(5), the electric utility shall file the following information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

(A) Complete explanation for the utility's decision to request to discontinue a demand-side program.

(B) EM&V reports for the demand-side program in question.

(C) Date by which a final EM&V report for the demand-side program in question will be filed.

(6) Variances. Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.

(7) Rule Review. The commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

AUTHORITY: section 393.1075.11, RSMo Supp. 2009. Original rule filed Oct. 4, 2010.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule is estimated to cost affected private entities \$1,120,000 in year one, three hundred twenty thousand dollars (\$320,000) in year two, three hundred twenty thousand (\$320,000) in year three, and \$1,120,000 in year four.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after publication of this notice in the **Missouri Register** and should include a reference to Commission Case No. EX-2010-0368. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/case-filing-information>. A public hearing regarding this proposed rule is scheduled for Monday, December 20, 2010, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions.*

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities**

PROPOSED RULE

4 CSR 240-20.093 Demand-Side Programs Investment Mechanisms

PURPOSE: This rule allows the establishment and operation of Demand-Side Programs Investment Mechanisms (DSIM), which allow ~~periodic rate adjustments related to~~ recovery of costs and utility incentives for investments in demand-side programs.

(1) As used in this rule, the following terms mean:

(A) Annual demand savings target means the annual demand savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual demand-side savings targets are the baseline for determining the utility's demand-side programs' annual demand savings performance levels in the methodology for the utility incentive component of a demand-side programs investment mechanism (DSIM);

(B) Annual energy savings target means the annual energy savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual energy savings targets are the baseline for determining the utility's demand-side programs' annual energy savings performance levels in the methodology for the utility incentive component of a DSIM;

(C) Annual net shared benefits means the utility's avoided costs measured and documented through evaluation, measurement, and verification (EM&V) reports for approved demand-side programs less the sum of the programs' costs including design, administration, delivery, end-use measures, incentives, EM&V, utility market potential studies, and technical resource manual on an annual basis;

(D) Annual report means a report of information concerning a utility's demand-side programs having the content described in 4 CSR 240-3.163(5);

(E) Approved demand-side program means a demand-side program or demand-side program pilot which is approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs;

(F) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from energy savings and demand savings associated with generation, transmission, and distribution facilities. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(G) Baseline demand forecast means a reference forecast of summer and winter demand at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(H) Baseline energy forecast means a reference forecast of energy at the class level in the absence of any new demand-side programs but including the effects of naturally-

occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(I) Cost recovery component of a DSIM means the methodology approved by the commission in a ~~demand-side program approval~~ general rate proceeding to allow recovery of costs of approved demand-side programs with interest;

(J) Demand means the rate of electric power use measured over an hour in kilowatts (kW);

(K) Demand response means measures that decrease peak demand or shift demand to off-peak periods;

(L) Demand-side program means any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the meter including, but not limited to, energy efficiency measures, load management, demand response, and interruptible or curtailable load;

(M) Demand-side programs investment mechanism, or DSIM, means a mechanism approved by the commission in a ~~utility's filing for demand-side program approval~~ general rate proceeding to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation:

1. Cost recovery of demand-side program costs through capitalization of investments in demand-side programs;

2. Cost recovery of demand-side program costs through a demand-side program cost tracker;

3. Accelerated depreciation on demand-side investments;

4. Recovery of lost revenues; and

5. Utility incentive based on the achieved performance level of approved demand-side programs;

(N) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a ~~utility's filing for demand-side program approval~~ general rate proceeding ~~or a semi-annual DSIM rate adjustment case~~;

(O) DSIM rate means the charge on customers' bills for the portion of the DSIM revenue requirement assigned by the commission to a rate class;

(P) DSIM revenue requirement means the sum of the DSIM cost recovery revenue requirement, DSIM utility lost revenue requirement, and the DSIM utility incentive revenue requirement, ~~if allowed by the commission in utility's last filing for demand-side program approval~~;

(Q) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission in a ~~utility's filing for demand-side program approval~~ general rate proceeding to provide the utility with a portion of annual net shared benefits based on the achieved performance level of approved demand-side programs demonstrated through energy and demand savings measured and documented through EM&V reports compared to energy and demand savings targets;

(R) DSIM utility lost revenue requirement means the component of the utility's revenue requirement explicitly approved (if any) by the commission in a ~~utility's filing for demand-side program approval~~ general rate proceeding to address the recovery of lost revenue;

(S) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

(T) Energy means the total amount of electric power that is used by customers over a specified interval of time measured in kilowatt-hours (kWh);

(U) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(V) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

(W) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs or rates and charges of the electric utility are considered by the commission;

(X) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(Y) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility decision-makers, 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. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its probable environmental costs;

(Z) Program pilot means a demand-side program designed to operate on a limited basis for evaluation purposes before full implementation;

(AA) Staff means all commission employees, except the secretary of the commission, general counsel, technical advisory staff as defined by section 386.135, RSMo, hearing officer, or regulatory judge;

(BB) Statewide technical reference manual means a document that is used by electric utilities to assess energy savings and demand savings attributable to energy efficiency and demand response;

(CC) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs and avoided probable environmental cost 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-side resources;

(DD) Utility incentive component of a DSIM means the methodology approved by the commission in a ~~utility's demand-side program approval~~ general rate proceeding to allow the utility to receive a portion of annual net shared benefits achieved and documented through EM&V reports; and

(EE) Utility market potential study means an evaluation and report by an independent third party of the energy savings and demand savings available in a utility's service territory broken down by customer class and major end-uses within each customer class.

(2) Applications to establish, continue, or modify a DSIM. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility shall file an application with the commission to establish, continue, or modify a DSIM in a ~~utility's demand-side program approval~~ general rate proceeding.

(A) The electric utility shall meet the filing requirements in 4 CSR 240-3.163(2) in conjunction with an application to establish a DSIM and 4 CSR 240-3.163(3) in conjunction with an application to continue or modify a DSIM.

(B) Any party to the ~~application for demand-side program approval~~ general rate proceeding may support or oppose the establishment, continuation, or modification of a DSIM and/or may propose an alternative DSIM for the commission's consideration including, but not limited to, modifications to any electric utility's proposed DSIM.

(C) The commission shall approve the establishment, continuation, or modification of a DSIM and associated tariff sheets if it finds the electric utility's approved demand-side programs are expected to result in energy and demand savings and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers and will assist the commission's efforts to implement state policy contained in section 393.1075, RSMo, to—

1. Provide the electric utility with timely recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs;

2. Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and

3. Provide timely earnings opportunities associated with cost-effective measurable and/or verifiable energy and demand savings.

(D) In addition to any other changes in business risk experienced by the electric utility, the commission shall consider changes in the utility's business risk resulting from establishment, continuation, or modification of the DSIM in setting the electric utility's allowed return on equity in general rate proceedings.

(E) In determining to approve, modify, or continue a DSIM, the commission shall consider, but is not limited to only considering, the expected magnitude of the impact of the utility's approved demand-side programs on the utility's costs, revenues, and earnings, the ability of the utility to manage all aspects of the approved demand-side programs, the ability to measure and verify the approved program's impacts, any interaction among the various components of the DSIM that the utility may propose, and the incentives or disincentives provided to the utility as a result of the inclusion or exclusion of cost recovery component, utility lost revenue component, and/or utility incentive component in the DSIM.

(F) Any cost recovery component of a DSIM shall be based on costs of demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs. Indirect costs associated with demand-side programs, including but not limited to costs of utility market potential study and/or utility's portion of statewide technical reference manual, shall be allocated to demand-side programs and thus shall be eligible for recovery through an approved DSIM. The commission shall order any DSIM

approval ~~simultaneously with the programs approved in accordance with 4 CSR 240-20.094~~ in a general rate proceeding or in a semi-annual DSIM rate adjustment case.

(G) Any utility lost revenue component of DSIM shall be based on energy or demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V.

1. The commission shall order any DSIM utility lost revenue requirement ~~simultaneously with the programs approved in accordance with 4 CSR 240-20.094~~ only in a general rate proceeding.

2. In a utility's ~~demand-side program approval~~ general rate proceeding in which lost revenues are considered there is no requirement for any implicit or explicit lost revenue recovery or for a particular form of lost revenue component.

3. The commission may address lost revenues solely or in part, directly or indirectly, with a performance incentive mechanism.

4. Any explicit lost revenue component of DSIM shall be implemented on a retrospective basis and all energy and demand savings for claimed lost revenues must be measured and verified through EM&V prior to recovery.

(H) Any utility incentive component of a DSIM shall be based on the performance of demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and shall include a methodology for determining the utility's portion of annual net shared benefits achieved and documented through EM&V reports for approved demand-side programs. Each utility incentive component of a DSIM shall define the relationship between the utility's portion of annual net shared benefits achieved and documented through EM&V reports, annual energy savings achieved and documented through EM&V reports as a percentage of annual energy savings targets, and annual demand savings achieved and documented through EM&V reports as a percentage of annual demand savings targets.

1. Annual energy and demand savings targets approved by the commission for use in the DSIM utility incentive component are not necessarily the same as the incremental annual energy and demand savings goals and cumulative annual energy and demand savings goals specified in 4 CSR 240-20.094(2).

2. The commission shall order any DSIM utility incentive revenue requirement ~~simultaneously with the programs approved in accordance with 4 CSR 240-20.094~~ only in a general rate proceeding

~~(I) If the DSIM proposed by the utility includes adjustments to DSIM rates between general rate proceedings, the DSIM shall include a provision to adjust the DSIM rates every six (6) months to include a true-up for over and under collection of the DSIM revenue requirement as well as the impact on the DSIM cost recovery revenue requirement as a result of approved new, modified, or deleted demand-side programs.~~

(J) If the commission approves a DSIM utility incentive component, such utility incentive component shall be binding on the commission for the entire term of the DSIM, and such DSIM shall be binding on the electric utility for the entire term of the DSIM, unless otherwise ordered or conditioned by the commission when approved.

(K) The commission shall apportion the DSIM revenue requirement to each customer class.

(3) Application for Discontinuation of a DSIM. The commission shall allow or require a DSIM to be discontinued or any component of a DSIM to be discontinued only after providing the opportunity for a hearing in a general rate proceeding.

(A) The electric utility shall meet the filing requirements in 4 CSR 240-3.163(4).

(B) Any party to the ~~demand-side program approval~~general rate proceeding may oppose the discontinuation of a DSIM or any component of a DSIM.

(C) In addition to any other changes in business risk experienced by the electric utility, the commission may take into account any change in business risk to the electric utility resulting from discontinuance of the DSIM in setting the electric utility's allowed return on equity in a general rate proceeding.

(D) If the utility requests that cost recovery be discontinued, in its initial notice to customers regarding the general rate proceeding, the electric utility shall include a commission-approved description of why it believes the cost recovery component of the DSIM should be discontinued.

~~(4) Requirements for Semi-Annual Adjustments of DSIM Rates, if the Commission Approves Adjustments of DSIM Rates Between General Rate Proceedings. Semi-annual adjustments to DSIM rates between general rate proceedings shall only include adjustments to the DSIM cost recovery revenue requirement and shall not include any adjustments to the DSIM utility lost revenue requirement or the DSIM utility incentive revenue requirement. Adjustments to the DSIM cost recovery revenue requirement may reflect new and approved demand side programs, approved program modifications, and/or approved program discontinuations. When an electric utility files tariff sheets to adjust its DSIM rates between general rate proceedings, the staff shall examine and analyze the information filed by the electric utility in accordance with 4 CSR 240-3.163(8) and additional information obtained through discovery, if any, to determine if the proposed adjustments to the DSIM cost recovery revenue requirement and DSIM rates are in accordance with the provisions of this rule, section 393.1075, RSMo, and the DSIM established, modified, or continued in the most recent demand-side program approval proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff sheets to adjust its DSIM rates. If the adjustments to the DSIM cost recovery revenue requirement and DSIM rates are in accordance with the provisions of this rule, section 393.1075, RSMo, and the DSIM established, modified, or continued in the most recent demand-side program approval proceeding, the commission shall issue an interim rate adjustment order approving the tariff sheets and the adjustments to the DSIM rates shall take effect sixty (60) days after the tariff sheets were filed. If the adjustments to the DSIM cost recovery revenue requirement and DSIM rates are not in accordance with the provisions of this rule, section 393.1075, RSMo, or the DSIM established, modified, or continued in the most recent demand-side program approval proceeding, the commission shall reject the proposed tariff sheets within sixty (60) days of the electric utility's filing and may instead order the filing of interim tariff sheets that implement its decision and approval.~~

~~(A) An electric utility with a DSIM shall file to adjust its DSIM rates once every six (6) months.~~

~~(B) The semi-annual adjustments to the DSIM rates shall reflect a comprehensive measurement of both increases and decreases to the DSIM cost recovery revenue~~

~~requirement established in the most recent demand side program approval proceeding or semi-annual DSIM rate adjustment case plus the change in DSIM cost recovery revenue requirement which occurred since the most recent demand side program approval proceeding or semi-annual DSIM rate adjustment case.~~

~~(C) The electric utility shall be current on its submission of its Surveillance Monitoring Reports as required in section (9) and its annual reports as required in section (8) in order to increase the DSIM rates.~~

~~(D) If the staff, public counsel, or other party receives information which has not been submitted in compliance with 4 CSR 240-3.163(8), it shall notify the electric utility within ten (10) days of the electric utility's filing of an application or tariff sheets to adjust DSIM rates and identify the information required. The electric utility shall submit the information identified by the party, or shall notify the party that it believes the information submitted was in compliance with the requirements of 4 CSR 240-3.163(8), within ten (10) days of the request. A party who notifies the electric utility it believes the electric utility has not submitted all the information required by 4 CSR 240-3.163(8) and as ordered by the commission in a previous proceeding and receives notice from the electric utility that the electric utility believes it has submitted all required information may file a motion with the commission for an order directing the electric utility to produce that information, i. e., a motion to compel. While the commission is considering the motion to compel, the processing timeline for the adjustment to increase DSIM rates shall be suspended. If the commission then issues an order requiring the information be submitted, the time necessary for the information to be submitted shall further extend the processing timeline for the adjustment to increase DSIM rates. For good cause shown, the commission may further suspend this timeline. Any delay in submitting sufficient information in compliance with 4 CSR 240-3.163(8) or a commission order in a previous proceeding in a request to decrease DSIM rates shall not alter the processing timeline.~~

~~(5) Implementation of DSIM. Once a DSIM is approved, modified, or discontinued by the commission, the utility shall use deferral accounting using the utility's latest approved weighted average cost of capital until the utility's next general rate proceeding. At the time of filing the general rate proceeding subsequent to DSIM approval, modification, or discontinuance the commission shall use an interim rate adjustment order to implement the approved, modified, or discontinued DSIM.~~

~~(A) Duration of DSIM. Once a DSIM is approved by the commission, it shall remain in effect for a term of not more than four (4) years unless the commission earlier authorizes the modification or discontinuance of the DSIM, although an electric utility shall submit proposed tariff sheets to implement interim semi-annual adjustments to its DSIM rates between general rate proceedings.~~

~~(B) If the utility has an implemented DSIM, the electric utility shall file a general rate proceeding within four (4) years after the effective date of the commission order implementing the DSIM, assuming the maximum statutory suspension of the rates so filed.~~

(6) Disclosure on Customers' Bills. ~~Regardless of whether or not the utility requests adjustments of its DSIM rates between general rate proceedings, a~~Any amounts charged under a DSIM approved by the commission, including any utility incentives allowed by the commission, shall be separately disclosed on each customer's bill. Proposed language regarding this disclosure shall be submitted to and approved by the commission before it appears on customers' bills.

(7) Evaluation, Measurement, and Verification (EM&V) of the Process and Impact of Demand-Side Programs. Each electric utility shall hire an independent contractor to perform and report EM&V of each commission-approved demand-side program in accordance with 4 CSR 240-20.094 Demand-Side Programs. The commission shall hire an independent contractor to audit and report on the work of each utility's independent EM&V contractor.

(A) Each utility's EM&V budget shall not exceed five percent (5%) of the utility's total budget for all approved demand-side program costs.

(B) The cost of the commission's EM&V contractor shall—

1. Not be a part of the utility's budget for demand-side programs; and
2. Be included in the Missouri Public Service Commission Assessment for each utility.

(C) EM&V draft reports from the utility's contractor for each approved demand-side program shall be delivered simultaneously to the utility and to parties of the case in which the demand-side program was approved.

(D) EM&V final reports from the utility's contractor of each approved demand-side program shall—

1. Be completed by the EM&V contractor on a schedule approved by the commission at the time of demand-side program approval in accordance with 4 CSR 240-20.094(3); and
2. Be filed with the commission and delivered simultaneously to the utility and the parties of the case in which the demand-side program was approved.

(E) Electric utility's EM&V contractors shall use, if available, a commission approved statewide technical reference manual when performing EM&V work.

(8) Demand-Side Program Annual Report. Each electric utility with one (1) or more approved demand-side programs shall file an annual report by no later than sixty (60) days after the end of each calendar year in the form and having the content provided for by 4 CSR 240-3.163(5) and serve a copy on each party to the case in which the programs were last established, modified, or continued. Interested parties may file comments with the commission concerning the content of the utility's annual report within sixty (60) days of its filing.

(9) Submission of Surveillance Monitoring Reports. Each electric utility with an approved DSIM shall submit to staff, public counsel, and parties approved by the commission a Surveillance Monitoring Report in the form and having the content provided for by 4 CSR 240-3.163(6).

(A) The Surveillance Monitoring Report shall be submitted within fifteen (15) days of the electric utility's next scheduled United States Securities and Exchange Commission (SEC) 10-Q or 10-K filing with the initial submission within fifteen (15) days of the

electric utility's next scheduled SEC 10-Q or 10-K filing following the effective date of the commission order establishing the DSIM.

(B) If the electric utility also has an approved environmental cost recovery mechanism or a fuel cost adjustment mechanism, the electric utility shall submit a single Surveillance Monitoring Report for all mechanisms.

(C) Upon a finding that a utility has knowingly or recklessly provided materially false or inaccurate information to the commission regarding the surveillance data prescribed in 4 CSR 240-3.163(6), after notice and an opportunity for a hearing, the commission may suspend a DSIM or order other appropriate remedies as provided by law.

~~(10) Prudence Reviews. A prudence review of the costs subject to the DSIM shall be conducted no less frequently than at twenty-four (24) month intervals.~~

~~(A) All amounts ordered refunded by the commission shall include interest at the electric utility's short-term borrowing rate.~~

~~(B) The staff shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred eighty (180) days after the staff initiates its prudence audit. The timing and frequency of prudence audits for DSIM shall be established in the utility's demand-side program approval proceeding in which the DSIM is established. The staff shall file notice within ten (10) days of starting its prudence audit. The commission shall issue an order not later than two hundred ten (210) days after the staff commences its prudence audit if no party to the proceeding in which the prudence audit is occurring files, within one hundred ninety (190) days of the staff's commencement of its prudence audit, a request for a hearing.~~

~~1. If the staff, public counsel, or other party auditing the DSIM believes that insufficient information has been supplied to make a recommendation regarding the prudence of the electric utility's DSIM, it may utilize discovery to obtain the information it seeks. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel, the processing timeline shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown, the commission may further suspend this timeline.~~

~~2. If the timeline is extended due to an electric utility's failure to timely provide sufficient responses to discovery and a refund is due to the customers, the electric utility shall refund all imprudently incurred costs plus interest at the electric utility's short-term borrowing rate.~~

(11) Tariffs and Regulatory Plans. The provisions of this rule shall not affect—

(A) Any adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism that was approved by the commission and in effect prior to the effective date of this rule; and

(B) Any experimental regulatory plan that was approved by the commission and in effect prior to the effective date of this rule.

(12) Nothing in this rule shall preclude a complaint case from being filed, as provided by law.

(13) Variances. Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.

(14) Rule Review. The commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

AUTHORITY: section 393.1075.11, RSMo Supp. 2009. Original rule filed Oct. 4, 2010.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule is estimated to cost affected private entities nine hundred five thousand dollars (\$905,000) in year one, three hundred forty-two thousand five hundred dollars (\$342,500) in year two, four hundred fifty-five thousand dollars (\$455,000) in year three, and four hundred fifty-five thousand dollars (\$455,000) in year four.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after publication of this notice in the **Missouri Register** and should include a reference to Commission Case No. EX-2010-0368. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/case-filing-information>. A public hearing regarding this proposed rule is scheduled for Monday, December 20, 2010, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions.*

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities**

PROPOSED RULE

4 CSR 240-20.094 Demand-Side Programs

PURPOSE: This rule sets forth the definitions, requirements, and procedures for filing and processing applications for approval, modification, and discontinuance of electric utility demand-side programs. This rule also sets forth requirements and procedures related to customer opt-out, tax credits, monitoring customer incentives, and collaborative guidelines for demand-side programs.

(1) As used in this rule, the following terms mean:

(A) Annual demand savings target means the annual demand savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual demand-side savings targets are the baseline for determining the utility's demand-side programs' annual demand savings performance levels in the methodology for the utility incentive component of a demand-side programs investment mechanism (DSIM);

(B) Annual energy savings target means the annual energy savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual energy savings targets are the baseline for determining the utility's demand-side programs' annual energy savings performance levels in the methodology for the utility incentive component of a DSIM;

(C) Annual net shared benefits means the utility's avoided costs measured and documented through evaluation, measurement, and verification (EM&V) reports for approved demand-side programs less the sum of the programs' costs including design, administration, delivery, end-use measures, incentives, EM&V, utility market potential studies, and technical reference manual on an annual basis;

(D) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from energy savings and demand savings associated with generation, transmission, and distribution facilities. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(E) Baseline demand forecast means a reference forecast of annual summer and winter peak demand at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(F) Baseline energy forecast means a reference forecast of annual energy at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(G) Customer class means major customer rate groupings such as residential, small general service, large general service, and large power service;

(H) Demand means the rate of electric power use over an hour measured in kilowatts (kW);

(I) Demand-side program means any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the meter including, but not limited to, energy efficiency measures, load management, demand response, and interruptible or curtailable load;

(J) Demand-side programs investment mechanism, or DSIM, means a mechanism approved by the commission in a ~~utility's filing for demand-side program approval~~general rate proceeding to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation:

1. Cost recovery of demand-side program costs through capitalization of investments in demand-side programs;

2. Cost recovery of demand-side program costs through a demand-side program cost tracker;

3. Accelerated depreciation on demand-side investments;

4. Recovery of lost revenues; and

5. Utility incentive based on the achieved performance level of approved demand-side programs;

(K) Demand-side program plan means a particular combination of demand-side programs to be delivered according to a specified implementation schedule and budget;

(L) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a ~~utility's filing for demand-side program approval~~general rate proceeding~~or a semi-annual DSIM rate adjustment case~~;

(M) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission in a ~~utility's filing for demand-side program approval~~general rate proceeding to provide the utility with a portion of annual net shared benefits based on the achieved performance level of approved demand-side programs demonstrated through energy and demand savings measured and documented through EM&V reports compared to energy and demand savings targets;

(N) DSIM utility lost revenue requirement means the component of the utility's revenue requirement explicitly approved (if any) by the commission in a ~~utility's filing for demand-side program approval~~general rate proceeding to address the recovery of lost revenue;

(O) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

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

(Q) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(R) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

(S) Interruptible or curtailable rate means a rate under which a customer receives a reduced charge in exchange for agreeing to allow the utility to withdraw the supply of electricity under certain specified conditions;

(T) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net retail kWh below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(U) Preferred resource plan means the utility's resource plan that is contained in the resource acquisition strategy most recently adopted by the utility's decision-makers in accordance with 4 CSR 240-22;

(V) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility's decision-makers, 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. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its probable environmental costs;

(W) Staff means all commission employees, except the secretary of the commission, general counsel, technical advisory staff as defined by section 386.135, RSMo, hearing officer, or regulatory judge;

(X) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs plus avoided probable environmental cost 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-side resources; and

(Y) Utility incentive component of a DSIM means the methodology approved by the commission in a ~~utility's demand-side program approval~~ general rate proceeding to allow the utility to receive a portion of annual net shared benefits achieved and documented through EM&V reports.

(2) Guideline to Review Progress Toward an Expectation that the Electric Utility's Demand-Side Programs Can Achieve a Goal of all Cost-Effective Demand-Side Savings. The fact that the electric utility's demand-side programs do not meet the incremental or cumulative annual demand-side savings goals established in this section may impact the utility's DSIM revenue requirement but is not by itself sufficient grounds to assess a penalty or adverse consequence for poor performance.

(A) The commission shall use the greater of the annual realistic achievable energy savings and demand savings as determined through the utility's market potential study or the following incremental annual demand-side savings goals as a guideline to review progress toward an expectation that the electric utility's demand-side programs can achieve a goal of all cost-effective demand-side savings:

1. For 2012: three-tenths percent (0.3%) of total annual energy and one percent (1.0%) of annual peak demand;
2. For 2013: five-tenths percent (0.5%) of total annual energy and one percent (1.0%) of annual peak demand;
3. For 2014: seven-tenths percent (0.7%) of total annual energy and one percent (1.0%) of annual peak demand;
4. For 2015: nine-tenths percent (0.9%) of total annual energy and one percent (1.0%) of annual peak demand;
5. For 2016: one-and-one-tenth percent (1.1%) of total annual energy and one percent (1.0%) of annual peak demand;
6. For 2017: one-and-three-tenths percent (1.3%) of total annual energy and one percent (1.0%) of annual peak demand;
7. For 2018: one-and-five-tenths percent (1.5%) of total annual energy and one percent (1.0%) of annual peak demand;
8. For 2019: one-and-seven-tenths percent (1.7%) of total annual energy and one percent (1.0%) of annual peak demand; and
9. For 2020 and for subsequent years, unless additional energy savings and demand savings goals are established by the commission: one-and-nine-tenths percent (1.9%) of total annual energy and one percent (1.0%) of annual peak demand each year:

(B) The commission shall also use the greater of the cumulative realistic achievable energy savings and demand savings as determined through the utility's market potential study or the following cumulative demand-side savings goals as a guideline to review progress toward an expectation that the electric utility's demand-side programs can achieve a goal of all cost-effective demand-side savings:

1. For 2012: three-tenths percent (0.3%) of total annual energy and one percent (1.0%) of annual peak demand;
2. For 2013: eight-tenths percent (0.8%) of total annual energy and two percent (2.0%) of annual peak demand;
3. For 2014: one-and-five-tenths percent (1.5%) of total annual energy and three percent (3.0%) of annual peak demand;
4. For 2015: two-and-four-tenths percent (2.4%) of total annual energy and four percent (4.0%) of annual peak demand;
5. For 2016: three-and-five-tenths percent (3.5%) of total annual energy and five percent (5.0%) of annual peak demand;
6. For 2017: four-and-eight-tenths percent (4.8%) of total annual energy and six percent (6.0%) of annual peak demand;
7. For 2018: six-and-three-tenths percent (6.3%) of total annual energy and seven percent (7.0%) of annual peak demand;
8. For 2019: eight percent (8.0%) of total annual energy and eight percent (8.0%) of annual peak demand; and
9. For 2020 and for subsequent years, unless additional energy savings and demand savings goals are established by the commission: nine-and-nine-tenths percent (9.9%) of total annual energy and nine percent (9.0%) of annual peak demand for 2020, and then increasing by one-and-nine-tenths percent (1.9%) of total annual energy and by one percent (1.0%) of annual peak demand each year after 2020.

(3) Applications for Approval of Electric Utility Demand-Side Programs or Program Plans. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission for approval of demand-side programs or program plans by filing information and documentation required by 4 CSR 240-3.164(2). Any existing demand-side program with tariff sheets in effect prior to the effective date of this rule shall be included in the initial application for approval of demand-side programs if the utility intends for unrecovered and/or new costs related to the existing demand-side program be included in the DSIM cost recovery revenue requirement, DSIM utility lost revenue requirement, and/or if the utility intends to establish a DSIM utility incentive revenue requirement for the existing demand-side program. The commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of demand-side program plans within one hundred twenty (120) days of the filing of an application under this section only after providing the opportunity for a hearing. In the case of a utility filing an application for approval of an individual demand-side program, the commission shall approve, approve with modification acceptable to the electric utility, or reject applications within sixty (60) days of the filing of an application under this section only after providing the opportunity for a hearing.

(A) For demand-side programs and program plans that have a total resource cost test ratio greater than one (1), the commission shall approve demand-side programs or program plans, and annual demand and energy savings targets for each demand-side program it approves, provided it finds that the utility has met the filing and submission requirements of 4 CSR 240-3.164(2) and the demand-side programs and program plans—

1. Are consistent with a goal of achieving all cost-effective demand-side savings;
2. Have reliable evaluation, measurement, and verification plans; and
3. Are included in the electric utility's preferred plan or have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility.

(B) The commission shall approve demand-side programs having a total resource cost test ratio less than one (1) for demand-side programs targeted to low-income customers or general education campaigns, if the commission determines that the utility has met the filing and submission requirements of 4 CSR 240-3.164(2), the program or program plan is in the public interest, and meets the requirements stated in paragraphs (3)(A)2.–3.

1. If a program is targeted to low-income customers, the electric utility must also state how the electric utility will assess the expected and actual effect of the program on the utility's bad debt expenses, customer arrearages, and disconnections.

(C) The commission shall approve demand-side programs which have a total resource cost test ratio less than one (1), if the commission finds the utility has met the filing and submission requirements of 4 CSR 240-3.164(2) and the costs of such programs above the level determined to be cost-effective are funded by the customers participating in the programs or through tax or other governmental credits or incentives specifically designed for that purpose and meet the requirements as stated in paragraphs (3)(A)2. and 3.

(D) Utilities shall file and receive approval of associated tariff sheets prior to implementation of approved demand-side programs.

~~(E) The commission shall simultaneously approve, approve with modification acceptable to the utility, or reject the utility's DSIM proposed pursuant to 4 CSR 240-20.093.~~

(4) Applications for Approval of Modifications to Electric Utility Demand-Side Programs. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility shall file an application with the commission for modification of demand-side programs by filing information and documentation required by 4 CSR 240-3.164(4) when there is a variance of twenty percent (20%) or more in the approved demand-side program annual budget and/or any program design modification which is no longer covered by the approved tariff sheets for the program. The commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of modification of demand-side programs within thirty (30) days of the filing of an application under this section, subject to the same guidelines as established in subsections (3)(A) through (C), only after providing the opportunity for a hearing.

(A) For any program design modifications approved by the commission, the utility shall file for and receive approval of associated tariff sheets prior to implementation of approved modifications.

(5) Applications for Approval to Discontinue Electric Utility Demand-Side Programs. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission to discontinue demand-side programs by filing information and documentation required by 4 CSR 240-3.164(5). The commission shall approve or reject such applications for discontinuation of utility demand-side programs within thirty (30) days of the filing of an application under this section only after providing an opportunity for a hearing.

(6) Provisions for Customers to Opt-Out of Participation in Utility Demand-Side Programs.

(A) Any customer meeting one (1) or more of the following criteria shall be eligible to opt-out of participation in utility-offered demand-side programs:

1. The customer has one (1) or more accounts within the service territory of the electric utility that has a demand of the individual accounts of five thousand (5,000) kW or more in the previous twelve (12) months;

2. The customer operates an interstate pipeline pumping station, regardless of size; or

3. The customer has accounts within the service territory of the electric utility that have, in aggregate across its accounts, a coincident demand of two thousand five hundred (2,500) kW or more in the previous twelve (12) months, and the customer has a comprehensive demand-side or energy efficiency program and can demonstrate an achievement of savings at least equal to those expected from utility-provided programs.

A. For utilities with automated meter reading and/or advanced metering infrastructure capability, the measure of demand is the customer coincident highest billing demand of the individual accounts during the twelve (12) months preceding the opt-out notification.

(B) Written notification of opt-out from customers meeting the criteria under paragraph (6)(A)1. or 2. shall be sent to the utility serving the customer. Written notification of opt-out from customers meeting the criteria under paragraph (6)(A)3. shall be sent to the

utility serving the customer and the manager of the energy resource analysis section of the commission or submitted through the commission's electronic filing and information system (EFIS) as a non-case-related filing. In instances where only the utility is provided notification of opt-out from customers meeting the criteria under paragraph (6)(A)3., the utility shall forward a copy of the written notification to the manager of the energy resource analysis section of the commission and submit the notice of opt-out through EFIS as a non-case-related filing.

(C) Written notification of opt-out from customer shall include at a minimum:

1. Customer's legal name;
2. Identification of location(s) and utility account number(s) of accounts for which the customer is requesting to opt-out from demand-side program's benefits and costs; and
3. Demonstration that the customer qualifies for opt-out.

(D) For customers filing notification of opt-out under paragraph (6)(A)1. or 2., notification of the utility's acknowledgement or plan to dispute a customer's notification to opt-out of participation in demand-side programs shall be delivered in writing to the customer and to the staff within thirty (30) days of when the utility received the written notification of opt-out from the customer.

(E) For customers filing notification of opt-out under paragraph (6)(A)3., the staff will make the determination of whether the customer meets the criteria of paragraph (6)(A)3. Notification of the staff's acknowledgement or disagreement with customer's qualification to opt-out of participation in demand-side programs shall be delivered to the customer and to the utility within thirty (30) days of when the staff received the written notification of opt-out.

(F) Timing and Effect of Opt-Out Provisions. A customer notice shall be received by the utility no earlier than September 1 and not later than October 30 to be effective for the following calendar year. For that calendar year and each successive calendar year until the customer revokes the notice pursuant to subsection (6)(H), none of the costs of approved demand-side programs of an electric utility offered pursuant to 4 CSR 240-20.093, 4 CSR 240-20.094, 4 CSR 240-3.163, and 4 CSR 240-3.164 or by other authority and no other charges implemented in accordance with section 393.1075, RSMo, shall be assigned to any account of the customer, including its affiliates and subsidiaries listed on the customer's written notification of opt-out.

(G) Dispute Notices. If the utility or staff provides notice that a customer does not meet the opt-out criteria to qualify for opt-out, the customer may file a complaint with the commission. The commission shall provide notice and an opportunity for a hearing to resolve any dispute.

(H) Revocation. A customer may revoke an opt-out by providing written notice to the utility and commission fourteen (14) to sixteen (16) months in advance of the calendar year for which it will become eligible for the utility's demand-side program's costs and benefits.

(I) A customer who participates in demand-side programs initiated after August 1, 2009, shall be required to participate in program funding for a period of three (3) years following the last date when the customer received a demand-side incentive or a service.

(J) A customer electing not to participate in an electric utility's demand-side programs under this section shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs offered by the electric utility.

(7) Tax Credits and Monetary Incentives.

(A) Any customer of an electric utility who has received a state tax credit under sections 135.350 through 135.362, RSMo, or under sections 253.545 through 253.561, RSMo, shall not be eligible for participation in any demand-side program offered by a utility if such program offers the customer a monetary incentive to participate.

(B) As a condition of participation in any demand-side program offered by an electric utility under this section, when such program offers a monetary incentive to the customer, the customer shall attest to non-receipt of any tax credit listed in subsection (7)(A) and acknowledge that the penalty for a customer who provides false documentation is a class A misdemeanor. The electric utility shall maintain documentation of customer attestation and acknowledgement for the term of the demand-side program and three (3) years beyond.

(C) The electric utility shall maintain a database of participants of all demand-side programs offered by the utility when such programs offer a monetary incentive to the customer including the following information:

1. The name of the participant, or the names of the principals if for a company;
2. The service property address; and
3. The date of and amount of the monetary incentive received.

(D) Upon request by the commission or staff, the utility shall disclose participant information in subsections (7)(B) and (C) to the commission and/or staff.

(8) Collaborative Guidelines.

(A) Utility-Specific Collaboratives. Each electric utility and its stakeholders are encouraged to form a utility-specific advisory collaborative for input on the design, implementation, and review of demand-side programs as well as input on the preparation of market potential studies. This collaborative process may take place simultaneously with the collaborative process related to demand-side programs for 4 CSR 240-22. Collaborative meetings are encouraged to occur at least once each calendar quarter.

(B) State-Wide Collaboratives. Electric utilities and their stakeholders are encouraged to form a state-wide advisory collaborative to: 1) address the creation of a technical reference manual that includes values for deemed savings, 2) provide the opportunity for the sharing, among utilities and other stakeholders, of lessons learned from demand-side program planning and implementation, and 3) create a forum for discussing state-wide policy issues. Collaborative meetings are encouraged to occur at least once each calendar year. Staff shall provide notice of the statewide collaborative meetings and interested persons may attend such meetings.

(9) Variances. Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.

(10) Rule Review. The commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

AUTHORITY: sections 393.1075.11 and 393.1075.15, RSMo Supp. 2009. Original rule filed Oct. 4, 2010.

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