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MAR 08 2011

Missouri Public Service Commission

MEMORANDUM

TO: Steven C. Reed, Secretary

DATE: March 2, 2011

RE: Authorization to File Order of Rulemaking with the Office of Secretary of State

FILE NO: EX-2010-0254

The undersigned Commissioners hereby authorizes the Secretary of the Missouri Public Service Commission to file the following Order of Rulemaking with the Office of the Secretary of State, to wit:

4 CSR 240-22.070 – Amendment

Kevin D. Gunn, Chairman

Robert M. Clayton III, Commissioner-Chairman

Jeff Davis, Commissioner

Terry M. Jarrett, Commissioner

Robert S. Kenney, Commissioner

Robin Carnahan
Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-22.070

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:
Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010
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Data Entry same Phone FAX
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Interagency mailing address Public Service Commission, 9th Fl, Gov.Ofc Bldg, JC, MO

TYPE OF RULEMAKING ACTION TO BE TAKEN
☐ Emergency rulemaking, include effective date
☐ Proposed Rulemaking
☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration
☒ Order of Rulemaking
Effective Date for the Order
☒ Statutory 30 days OR Specific date

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:
Sections (4)(C), (7)(C), and (8) have been amended. Section (9) has been removed.

Small Business Regulatory Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON
MAR 03 2011
ADMINISTRATIVE RULES

Missouri Public Service Commission

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Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-22.070 Risk Analysis and Strategy Selection

Dear Secretary Carnahan,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission.

Statutory Authority: sections 386.040, 386.250, 386.610 and 393.140, RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact:

Morris L. Woodruff, Chief Regulatory Law Judge
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Morris L. Woodruff
Chief Regulatory Law Judge

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 22 – Electric Utility Resource Planning

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the Commission amends a rule as follows:

4 CSR 240-22.070 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1766). The sections with changes are reprinted here. The proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (Staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and from Public Service Commissioner Jeff Davis. In addition, Staff, Public Counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, KCPL, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine rules that comprise the proposed Chapter 22 of the Commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The Commission will address those comments first, and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT 1 - The Rules Should Be Less Prescriptive: Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred

resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the Commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas and water utility trade organization.

RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, has the virtue of being much shorter than the Commission's rule, but that brevity comes with a cost. As Staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility, but unless the reviewer knows the assumptions and processes that were used to determine the plan; the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the Commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the Commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire commented: "... we're able to do a total company IRP. And since the Missouri rule is the more onerous ... what we do in Missouri, as far as the IRP, in those other jurisdictions. And we are all on the same three-year filing cycle in all three states, which makes it nice for us."

The rules the Commission has proposed strike a proper balance between the utilities' interest in freedom of action and the Commission's need to know the basis for their proposed plans. The Commission will not adopt the rules proposed by MEDA.

COMMENT 2 - Linkage with the MEEIA Rules: Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the Commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and

DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.

RESPONSE: The Commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

This rule requires the utility to document its preferred resource plan and three-year implementation plan. The MEEIA rules do not require a demand-side program to be part of the latest preferred plan, if a demand-side program is part of the utility's preferred resource plan, many of the requirements necessary for the Commission to approve MEEIA demand-side programs will be met through the requirements of this rule.

COMMENT 3 - Preapproval of Large Projects: The electric utilities, through the MEDA rules, advocate for the option of requesting preapproval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that preapproval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand side resources. Ameren Missouri claims that it is a logical extension to provide a preapproval option for large supply-side investments, if preapproval is requested by the utility.

Staff and Public Counsel oppose an option for preapproval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of preapproval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a preapproval process in the Chapter 22 rules.

Dogwood suggests the Commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek preapproval from the Commission for certain large projects.

RESPONSE: The Commission agrees with its Staff and Public Counsel that there are other more appropriate alternatives for preapproval and will not include a provision for preapproval of large investments in its Chapter 22 rules. The Commission is open to further discussion on the preapproval question, but will not undertake a rulemaking on the subject at this time.

COMMENT 4 - Illegal Infringement on the Right to Manage the Utility: Ameren Missouri contends the proposed rules go beyond the Commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The Commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT 5 - Acknowledgment: The Department of Natural Resources urges the Commission to modify the Chapter 22 rules to authorize the Commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the Commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the Commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, Staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the Commission.

RESPONSE: The Commission does not wish to move down the path toward preapproval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the Commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The Commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not preapproval and will not bind a future commission in any future case. In addition, the Commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for

"substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT 6 - Changes to Subsection .070(1)(C): This section requires a utility to select a preferred resource plan that utilizes demand-side resources to the maximum amount that comply with legal mandates and in the judgment of the utility are in the public interest and achieve state energy policies. The Department of Natural Resources proposes additional language in subsection (C) that would specifically give the Commission authority to identify the state energy and environmental policies with which the utility is expected to comply. DNR's proposed language would also make it clear that the utility does not get to choose which energy and environmental policies it will attempt to achieve.

Ameren Missouri would also modify the language of this section by requiring the utility to choose a plan that is in the interest of shareholders as well as that of the public.

RESPONSE: Providing the Commission authority to identify which energy and environmental policies shall apply, as proposed by DNR, does not change, and is included under the over-arching policy statement of proposed 4 CSR 240-22.010(2), which specifies: "the fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe reliable and efficient, at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest." Also, in response to Ameren Missouri's comment, the Commission believes that it is not necessary to add utility shareholders to the list of consideration that makes up the public interest as shareholders are a part of the public interest. The Commission will not modify this subsection.

COMMENT 7 – Change to Subsection .070(4)(C): Public Counsel would remove the word "fundamental" as the modifier of "the objectives in 4 CSR 240-22.010(2)."

RESPONSE AND EXPLANATION OF CHANGE: Public Counsel's proposal is unnecessary as 4 CSR 240-22.010(2) specifically describes the fundamental objective of these rules and thus the reference is appropriate. However, Public Counsel's suggestion exposes a related problem in that the proposed rule refers to the plural fundamental objectives rather than the singular fundamental objective. The Commission will remove the "s" from objectives to make it singular.

COMMENT 8 – Changes to Subsection .070(7)(C): Public Counsel suggests adding the words "identification of" to this subsection to clarify the meaning of the subsection.

RESPONSE: The Commission agrees with Public Counsel's suggestion and will modify the subsection accordingly.

COMMENT 9 - Changes to Section .070(8): This is the section of the rule that requires a utility to evaluate its demand-side programs and demand-side rates. Renew Missouri points out that the requirements of this section differ from those of the evaluation, measurement and verification plans required by the MEEIA rules. Renew Missouri suggests this section be modified to match as closely as possible the similar provisions in the MEEIA rule.

In addition to the changes proposed by Renew Missouri, Public Counsel suggests from minor edits throughout the section to improve the clarity of the section. Specifically, Public Counsel would add a requirement to evaluate cost-effectiveness to (8), would specify "future" cost-effectiveness screening in (8), would specify "demand-side" rate participants in (8)(B)1.A, add "hourly load data to the list in (8)(B)2.A, and add "survey" data to (8)(B)2.B.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with the suggestion of Renew Missouri that the evaluation, measurement, and verification plans for Chapter 22 rules and for the MEEIA rules should be aligned. The Commission will modify this section by inserting the following sentences: "Evaluation plans required by this section are for planning purposes and are separate and distinct from the evaluation, measurement and verification reports required by 4 CSR 240-3.163(7) and 4 CSR 240-20.093(7); nonetheless, the evaluation plan should, in addition to the requirements of this section, include 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). The evaluation plans for each program and rate shall be developed before the program or rate is implemented and shall be filed when the utility files for approval of demand-side programs or demand-side program plans as described in 4 CSR 240-20.094(3).

The Commission agrees with the edits proposed by Public Counsel and will modify the section accordingly.

COMMENT 10 - Deletion of Sections .070(9): Public Counsel suggests this section is largely duplicative of section 4 CSR 240-22.080(12) and would delete most of it, while moving non-duplicative provisions to .080(12).

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with Public Counsel's suggestion and will delete the section.

4 CSR 240-22.070 Resource Acquisition Strategy Selection.

(4) The utility shall describe and document its contingency resource plans in preparation for the possibility that the preferred resource plan should cease to be appropriate, whether due to the limits identified pursuant to 4 CSR 240-22.070(2) being exceeded or for any other reason.

(A) The utility shall identify as contingency resource plans those alternative resource plans that become preferred if the critical uncertain factors exceed the limits developed pursuant to section (2).

(B) The utility shall develop a process to pick among alternative resource plans, or to revise the alternative resource plans as necessary, to help ensure reliable and low cost service should the preferred resource plan no longer be appropriate for any reason. The utility may also use this process to confirm the viability of a contingency resource plans identified pursuant to subsection (4)(A).

(C) Each contingency resource plan shall satisfy the fundamental objective in 4 CSR 240-22.010(2) and the specific requirements pursuant to 4 CSR 240-22.070(1).

(7) The utility shall develop, describe and document, officially adopt, and implement a resource acquisition strategy. This means that the utility's resource acquisition strategy shall be formally approved by an officer of the utility who has been duly delegated the authority to commit the utility to the course of action described in the resource acquisition strategy. The officially adopted resource acquisition strategy shall consist of the following components:

(C) A set of contingency resource plans developed pursuant to the requirements of section (4) of this rule and identification of the point at which the critical uncertain factors would trigger the utility to move to each contingency resource plan as the preferred resource plan.

(8) Evaluation of Demand-Side Programs and Demand–Side Rates. The utility shall describe and document its evaluation plans for all demand-side programs and demand-side rates that are included in the preferred resource plan selected pursuant to 4 CSR 240-22.070(1). Evaluation plans required by this section are for planning purposes and are separate and distinct from the evaluation, measurement and verification reports required by 4 CSR 240-3.163(7) and 4 CSR 240-20.093(7); nonetheless, the evaluation plan should, in addition to the requirements of this section, include 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). The evaluation plans for each program and rate shall be developed before the program or rate is implemented and shall be filed when the utility files for approval of demand-side programs or demand-side program plans with the tariff application for the program or rate as described in 4 CSR 240-20.094(3). The purpose of these evaluations shall be to develop the information necessary to evaluate the cost-effectiveness and improve the design of existing and future demand-side programs and demand-side rates, to improve the forecasts of customer energy consumption and responsiveness to demand-side programs and demand-side rates, and to gather data on the implementation costs and load impacts of demand-side programs and demand-side rates for use in future cost-effectiveness screening and integrated resource analysis.

(B) Impact Evaluation. The utility shall develop methods of estimating the actual load impacts of each demand-side program and demand-side rate included in the utility's preferred resource plan to a reasonable degree of accuracy.

1. Impact evaluation methods. At a minimum, comparisons of one (1) or both of the following types shall be used to measure program and rate impacts in a manner that is based on sound statistical principles:

A. Comparisons of pre-adoption and post-adoption loads of program or demand-side rate participants, corrected for the effects of weather and other intertemporal differences; and

B. Comparisons between program and demand-side rate participants' loads and those of an appropriate control group over the same time period.

2. The utility shall develop load-impact measurement protocols that are designed to make the most cost-effective use of the following types of measurements, either individually or in combination:

A. Monthly billing data, hourly load data, load research data, end-use load metered data, building and equipment simulation models, and survey responses; or

B. Audit and survey data on appliance and equipment type, size and efficiency levels, household or business characteristics, or energy-related building characteristics.