

4 CSR 240-20.093 Demand-Side Programs Investment Mechanisms

PURPOSE: This amendment...

lost revenue and throughput disincentive – one or the other

(1) The definitions of terms used in this section can be found in 4 CSR 240-20.092 Definitions for Demand-Side Programs and Demand-Side Program Investment Mechanisms, which is incorporated by reference.

(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 filing for demand-side program approval. OPC - add language about a process of potential study.

(A) An application to establish a DSIM shall include the following supporting information as part of, or in addition to, its direct testimony. Supporting workpapers shall be submitted as executable versions in native format with all formulas intact.

1. The notice provided to customers 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.

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

3. A complete description and explanation of the design, rationale, and intended operation of the proposed DSIM.

4. Estimates of the effect of the DSIM and all other impacts of the program spending, in aggregate, on customer rates and average bills for each of the next five (5) years-, and as a net present value over the lifetime of the program impacts, for each rate class. These estimates will take into account the net present value of all lifetime benefits from the efficiency programs accruing to the utility system and consumers, including any price effect impacts resulting from reduced electric demand.

5. 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.

6. 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.

7. 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.

8. A proposal for how the commission can determine if any utility incentives component of a DSIM ~~are~~is aligned with helping customers use energy more efficiently.

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

10. If the utility proposes to adjust the DSIM ~~cost recovery~~(Ameren strike) 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~~(Ameren strike) revenue requirement as a result of approved new, modified, or discontinued demand-side programs.

11. If net shared benefits are to be determined as part of the DSIM, the method proposed for calculation of the net shared benefits to be used throughout the life of the approved DSIM.

~~(B) 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. If an electric utility files to modify its approved DSIM, the electric utility shall file with the commission and serve upon parties, as provided in section (14) below, the following supporting information as part of, or in addition to, direct testimony. Supporting workpapers shall be submitted with all models and spreadsheets provided as executable versions in native format with all formulas intact.~~

1. Information as required by subsection (2)(A), above;
2. Explanation of any proposed modification to the DSIM and why the proposed modification is being requested;
3. 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; and
4. Any additional information the commission orders to be provided.

(CB) Any party to the application for a utility's filing for demand-side program approval 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. Both the utility and the commission retain the authority to approve, accept, or reject any proposed establishment, continuation, or modification of a DSIM or any proposed alternative DSIM.

(DG) 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.

(ED) 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.

(FE) In determining to approve, modify, or continue a DSIM, the commission may 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. In this context the word "disincentives" means any barrier to the implementation of a DSIM. There is no penalty authorized in this section.

(GF) 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 resource manual, shall be allocated to demand-side programs and thus shall be eligible for recovery through an approved DSIM. The commission shall approve any cost recovery component of a DSIM simultaneously with the programs approved in accordance with 4 CSR 240-20.094 Demand-Side Programs.

(HG) 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 utility lost revenue component of a DSIM simultaneously with the programs approved in accordance with 4 CSR 240-20.094 Demand-Side Programs.

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

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 utility lost revenue component of a DSIM shall be implemented on a retrospective-basis and all energy and demand savings to determine a DSIM utility lost revenue requirement must be measured and verified through EM&V prior to recovery. Adding throughput disincentive or new section to be aligned and recover per GAAP. (Ameren) prospective-basis (Ameren) OPC and Renew opposes the prospective-basis change. DOE – what happens to prospective if utility discontinues DSIM?

(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 utility incentive component of a DSIM 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 utility incentive component of a DSIM simultaneously with the programs approved in accordance with 4 CSR 240-20.094 Demand-Side Programs.

3. Any utility incentive component of a DSIM shall be implemented on a retrospective basis and all energy and demand savings used to determine a DSIM utility incentive revenue requirement must be measured and verified through EM&V.

(J) 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.

(K) If the commission approves utility incentive component of a DSIM, 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.

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

(M) If a program subject to the cost effective test (DOE) 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 burden is on the utility to prove there are no viable program modifications that can make the program cost-effective. Ameren – mandate on voluntary program. Who do they provide the proof to? In this case, 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. Nothing here-in requires utilities to end any program deemed not cost-effective immediately. Utilities proposal for any discontinuation of a program should consider, but not be limited to: the potential impact on the market for energy efficiency services in its territory; the potential impact to vendors and the utilities relationship with vendors; the potential disruption to the market and to customer outreach efforts from immediate starting and stopping of programs; and whether the long term prospects indicate that continued pursuit of a program will result in a long term cost-effective benefit to ratepayers. DOE – does not mention the exemptions from cost effective testing, such as low income. Search for consistency throughout 093 and 094. Low income is 'public interest standard'. Ameren- Effect on throughput disincentive net shared benefits. OPC - incentive for utility to capture saving from low income programs. Ameren-incentive is to satisfy stakeholders.

(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.

(A) When submitting an application to discontinue a DSIM, the electric utility shall ~~meet the filing requirements in 4 CSR 240-3.163(4).~~ file with the commission and serve on parties as provided in section (14), the following supporting information as part of, or in addition to, direct testimony. Supporting workpapers shall be submitted with all models and spreadsheets provided as executable versions in native format with all formulas intact.

1. An example of the notice to be provided to customers.
2. 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.
3. 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.
4. 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.
5. Any additional information the commission orders to be provided.

(B) Any party to the utility's filing for demand-side program approval 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 notice to customers, 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 a~~ Adjustments to DSIM rates between general rate proceedings shall occur not less than annually, and may include adjustments to the DSIM cost recovery revenue requirement, ~~and shall not include any adjustments to the DSIM utility lost revenue requirement (Ameren throughput disincentive) 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.~~

(A) The electric utility shall file tariff sheets to adjust its DSIM rates 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.

1. Amount of revenue that it has over-collected or under-collected through the most recent recovery period by rate class.
2. Proposed adjustments or refunds by rate class.
3. Electric utility's short-term borrowing rate.
4. Proposed adjustments to the current DSIM rates.
5. Complete documentation for the proposed adjustments to the current DSIM rates.
6. ~~Annual report as required by 4 CSR 240-20.093(8).~~
7. Any additional information the commission ordered to be provided.

~~(B) 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 filing for demand-side program approval. 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 filing for demand-side program approval, 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 filing for demand-side program approval, 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.

~~(CA)~~ An electric utility with a DSIM shall file to adjust its DSIM rates no less often than annually. ~~once every six (6) months.~~

~~(DB)~~ ~~The semi-annual a~~ 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 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 or ~~semi-annual~~ DSIM rate adjustment case. All annual DSIM rate adjustments shall include a full what's meant by full – is there a difference between full true-up and true-up? (Ameren) true up of past DSIM collections based on the latest EM&V results OPC-what type of EM&V results, gross or net? DOE-does EM&V play into this at all? Any over/under collections will be accounted for in the going forward DSIM rates. what happens if utility discontinues DSIM for prospective true-up?

~~(EG)~~ 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.

~~(FD)~~ If the staff, public counsel, or other party receives information which has not been submitted in compliance with ~~section (4)(A) 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 ~~section (4)(A) 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 ~~section (4)(A) 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 ~~section (4)(A) 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 may request 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. OPC – where should we incorporate opportunity for stakeholders to propose new plans during a cycle? Ameren – agrees that there should be more flexibility to the rules.

(A) Duration of DSIM. Once a DSIM is approved by the commission, it shall remain in effect ~~for a term of not more than~~ until the utility fully recovers of all costs including revenue requirements, components, performance incentive, etc., or for the term otherwise ordered by the commission. ~~-(Ameren)four (X) years unless it~~ what happens if utility discontinues DSIM for prospective true-up? The commission ~~may earlier~~ authorizes the modification or discontinuance of the DSIM, or change the duration previously approved. ; ~~although a~~ Then 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, 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. OPC – disclose DSIM on utility websites.

(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. The commission staff shall provide oversight and guidance to the independent commission contractor, but shall not influence the independent contractor's audit(s). Staff counsel shall provide legal representation to the independent contractor in the event the independent contractor is required to testify before the commission. DOE – Cost effectiveness testing exemptions (part D).

(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. Document, include analysis, and present any applicable recommendations for at least the following. 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—

I. 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

II. A demonstration of the cost-effectiveness of the program, to include at a minimum the TRC of each program. DOE – What about SCT? OPC – include them all.

III. See Ameren changes.

(E). The fact that a program proves not to be cost-effective is not by itself sufficient grounds for disallowing cost recovery. Ameren – is this needed? Is this in the correct place?

12. 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

32. Be filed with the commission in the case in which the utility's demand-side program approval was received 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~~:

1. Include specific methodology for performing EM&V work, in place of a statewide technical resource manual, until a statewide technical resource manual is approved by the commission.

1.2. If available, utilize a commission-approved statewide technical resource manual when performing EM&V work, as appropriate. All applications to establish, continue or modify a DSIM filed after a statewide technical resource manual is approved by the commission shall require EM&V contractors to use the most current statewide technical resource manual for performing EM&V work. Applications approved before the statewide technical resource manual is approved shall utilize the methodology approved with the application.

(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 program 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. 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) An affidavit attesting to the veracity of the information;

(B) 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 TRC net economic benefits and net shared 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~~ As part of its annual report, the electric utility shall file or provide a reference to the commission case that contains 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

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

(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). 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. The report shall be submitted to the Staff, Public Counsel, and parties approved by the commission.~~

(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 Section (9)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 fifty (150) days after the staff initiates its prudence audit. The timing and frequency of prudence audits for DSIM shall be established in the utility's filing for demand-side program approval 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 sixty (160) 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.~~

(14) Party status and providing to other parties affidavits, testimony, information, reports, and workpapers in related proceedings subsequent to the utility's filing for demand-side program approval modifying, or continuing a DSIM.

(A) A person or entity granted intervention in a utility's filing for demand-side program approval in which a DSIM is approved by the commission shall **have the right to(Empire)** 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 utility's filing for demand-side program approval, 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 utility's filing for demand-side program approval 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 proceeding and on all parties from any subsequent related periodic rate adjustment proceeding or utility's filing for demand-side program approval 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 utility's filing for demand-side program approval 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 utility's filing for demand-side program approval to modify, continue, or discontinue the same DSIM.

(15) MEEIA Rate Design Modifications

(1) An electric utility may request modification of its rate design for demand-side cost recovery by filing tariff schedule(s) with the Commission as part of —

(A) An application for approval of demand-side programs or a demand-side program plan and a DSIM; or

(B) A general rate case proceeding

(162) Any request for modification of a rate design shall include with the filing supporting documentation for the request, including but not limited to workpapers, data, computer model documentation, analysis, and other supporting information to support and explain the modification of the rate design. All information shall be labeled and all spreadsheets shall have all formulas intact.

(173) 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.

AUTHORITY: section 393.1075.11, RSMo Supp. 2010. Original rule filed Oct. 4, 2010, effective May 30, 2011.*

**Original authority: 393.1075, RSMo 2009.*