

FILED³

MAR 03 2011

MEMORANDUM

Missouri Public
Service Commission

TO: Steven C. Reed, Secretary

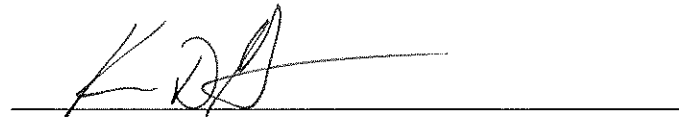
DATE: March 2, 2011

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

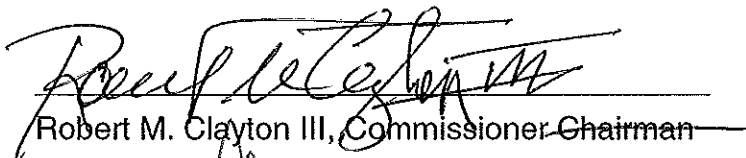
FILE NO: EX-2010-0254

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:

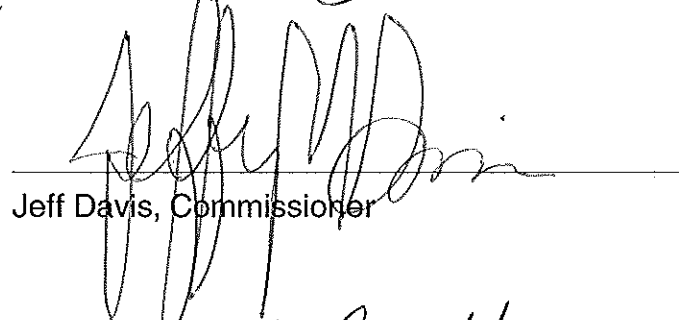
4 CSR 240-22.045 – Rule



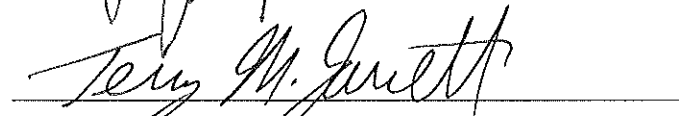
Kevin D. Gunn, Chairman



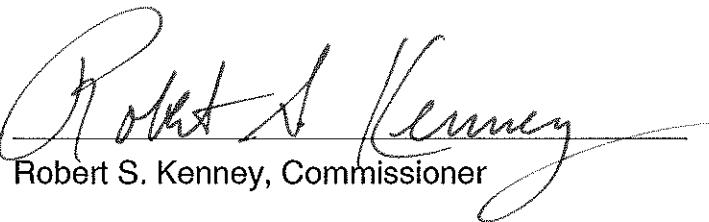
Robert M. Clayton III, Commissioner



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 240-22.045

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

Email address

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 (5) and (6) have been added. Section (3)(D)5 has been removed. Sections (1), (1)(A), (3)(A)1, (3)(A)6, (3)(B)2, (3)(B)3, (3)(B)4, (3)(B)5, and (4)(C) have been amended.

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

MAR 03 2011

ADMINISTRATIVE RULES



Commissioners

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Chairman

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

Re: 4 CSR 240-22.045 Transmission and Distribution Analysis

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
Missouri Public Service Commission
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P.O. Box 360
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(573) 751-2849
morris.woodruff@psc.mo.gov

A handwritten signature in cursive script that reads "Morris L. Woodruff".

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 adopts a rule as follows:

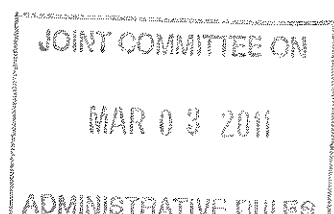
4 CSR 240-22.045 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1749). The sections with changes are reprinted here. The proposed rule 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 rule.

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.

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 preapproval 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 acknowledgement 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 - Comments of Commissioner Jeff Davis: Commissioner Jeff Davis filed written comments regarding this section of the Chapter 22 rules. Commissioner Davis explains that he originally questioned whether this new rule on transmission and distribution analysis planning was needed because it might duplicate at least some of the work going on at the RTO level. Commissioner

Davis explains that he now believes the rule is necessary because events at the Southwest Power Pool (SPP), which is an RTO providing services to Empire and KCPL, have convinced him that the rule is needed to increase accountability for Missouri's electric utilities.

Davis suggests that the rule does not go far enough, and he urges the Commission to expand the rule to include any transmission contemplated by any affiliate to the regulated utility, such as Union Electric's affiliate Ameren Transmission Company, as well as any projects the utility is considering assigning or "novating".

Davis also asks that the rule require the utility to provide a comprehensive list of all transmission projects the RTO is planning or considering in their respective service region or territory.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with the concerns expressed by Commissioner Davis and will address those concerns along with similar concerns and suggestions by other stakeholders through the Commission's responses to COMMENTS 12, 15, 18, and 19 of this order of rulemaking.

COMMENT 7 - Change to Section .045(1): Public Counsel asks the Commission to change a reference to "fundamental planning objectives" to the singular, "objective", reasoning that the rule only describes one fundamental planning objective.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with Public Counsel and will modify this section accordingly.

COMMENT 8 - Change to Subsection (1)(A): At the hearing, Ameren Missouri proposed to insert language from section 4 CSR 240-22.040(7) of the current rule that make it clear that the utility is not required to make a detailed line-by-line analysis of the transmission and distribution system. Ameren Missouri believes this change is necessary so the utilities can avoid doing more analysis than is necessary.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with Ameren Missouri's comment and will modify this subsection accordingly.

COMMENT 9 - Change to Subsection .045(1)(D): At the hearing, Ameren Missouri proposed a change to this subsection that would require the utility to consider improvements to the transmission and distribution networks that incorporate technologies that are "commercially available and field-tested at the time of filing."

RESPONSE: The Commission will not modify this subsection as proposed by Ameren Missouri because to do so would create an inconsistent approach between this rule and the supply-side analysis rule - 4 CSR 240-22.050.

Subsection .045(1)(D) requires that the utility assess transmission and distribution improvements that may become available during the planning horizon even though these improvements may not be commercially available and field tested at the time of the filing.

COMMENT 10 - KCPL's Comments Regarding the Proper Role of RTOs: KCPL is generally concerned that the proposed rule does not adequately recognize the magnitude of the role played by RTO's in the transmission planning process of an electric utility. KCPL asks the Commission to modify several sections of the rule to better recognize the primary planning role of the RTO and the limitations on the ability of the utilities to plan for transmission. Specifically, KCPL asks the Commission to modify subsections .045(1)(C), .045(1)(D), .045(3), .045(3)(B), .045(3)(D), .045(4), .045(4)(A), and .045(4)(C). KCPL did not offer any specific language to resolve its concern.

RESPONSE: None of the other electric utilities expressed a similar concern and KCPL provided no specific alternative language to address its concerns either in its written comments or during its comments offered at the public hearing. The Commission does not believe that any modification is necessary and will make no change to the rule as a result of this comment.

COMMENT 11 - Changes to Subsection .045(3)(A)1: Public Counsel asks the Commission to add a reference to "congestion" as a factor that a utility must assess with regard to transmission upgrades.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with Public Counsel's comment and will modify the subsection accordingly.

COMMENT 12 - Changes to Subsection .045(3)(A)4: Public Counsel asks the Commission to add language to this section to make it clear that utilities must also analyze transmission that will be built and owned by an affiliate of the utility. Staff proposed to achieve the same result by adding similar new language at .045(5). Public Counsel does not oppose Staff's proposed language but believes its proposal is better.

RESPONSE AND EXPLANATION OF CHANGE: The Commission will address Staff's proposed new language at COMMENT 18 to this rule. The Commission agrees with Public Counsel's proposed additional language for this subsection and will incorporate that language, as modified by Public Counsel's witness at the hearing.

COMMENT 13 - Changes to Subsection .045(3)(A)6: Public Counsel proposes a change in this subsection to recognize that an RTO generally does not build transmission itself, but instead approves transmission projects that are built by others. At the hearing, Staff agreed to the change proposed by Public Counsel but suggested slightly modified language. Public Counsel then agreed that

Staff's modified language was most appropriate. Public Counsel also suggested that the word "primarily" be added before "economic reasons" to ensure that this provision does not apply solely to upgrades where 100 percent of the benefits are considered to be economic benefits.

RESPONSE AND EXPLANATION OF CHANGE: The Commission will adopt the modified language proposed by Public Counsel and Staff.

COMMENT 14 - Changes to Subsection .045(3)(B)2: Public Counsel proposes to modify this subsection to make it clear that Missouri utilities are to review RTO expansion plans to assess whether those plans are in the interests of the utility's "Missouri" customers.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with Public Counsel's comment and will modify this subsection accordingly.

COMMENT 15 - Changes to Subsection .045(3)(B)3, 4, and 5: Public Counsel proposes to add additional language to ensure that necessary analysis is performed to assess the impact on planning objectives of transmission built and owned by an affiliate of the utility.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with Public Counsel's comment and will modify this subsection accordingly.

COMMENT 16 - Changes to Subsection .045(3)(D)5: This subsection requires the planning utility to estimate the estimated total cost of each transmission upgrade and "estimated congestion costs". KCPL argues that it would be very difficult for a utility to estimate congestion costs and to do so would entail substantial cost and produce minimal value in the IRP process. For that reason, KCPL asks the Commission to remove the requirement to estimate congestion costs from the subsection.

RESPONSE: The Commission agrees with the proposed change, but for a different reason. The subsection refers to transmission projects "needed to interconnect generation, facilitate power purchases and sales, and otherwise maintain a viable transmission network," instead of economic projects, where congestion cost analysis would be more valuable. For that reason, the Commission will remove the requirement to estimate congestion costs from the subsection.

COMMENT 17 - Changes to Subsection .045(4)(C): Public Counsel proposes changes to this subsection that would ensure that incremental benefits were calculated by comparing the benefits of one approach to the benefits of another approach.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with Public Counsel's comment and will modify the subsection accordingly.

COMMENT 18 – New Section .045(5): Staff proposed to add a new section to require the utility to describe the transmission plans of affiliated transmission companies, as well as other transmission company projects that impact or that may be impacted by the electric utility.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with Staff's proposed addition and will add this new section to the rule.

COMMENT 19, New Section .045(6): Staff proposes to add a new section that will require the utility to identify and describe any transmission projects under consideration by an RTO for the utility's service territory.

RESPONSE: The Commission agrees with Staff's proposed addition and will add this new section to the rule.

4 CSR 240-22.045 Transmission and Distribution Analysis

(1) The electric utility shall describe and document its consideration of the adequacy of the transmission and distribution networks in fulfilling the fundamental planning objective set out in 4 CSR 240-22.010. This provision shall not be construed to require a detailed line-by-line analysis of the transmission and distribution system, but is intended to require the utility to identify and analyze opportunities for efficiency improvements in a manner that is consistent with the analysis of other supply-side resource options. Each utility shall consider, at a minimum, improvements to the transmission and distribution networks that—

(3) Transmission Analysis. The utility shall compile information and perform analyses of the transmission networks pertinent to the selection of a resource acquisition strategy. The utility and the Regional Transmission Organization (RTO) to which it belongs both participate in the process for planning transmission upgrades.

(A) The utility shall provide, and describe and document, its—

1. Assessment of the cost and timing of transmission upgrades to reduce congestion and/or losses, to interconnect generation, to facilitate power purchases and sales, and to otherwise maintain a viable transmission network;

2. Assessment of transmission upgrades to incorporate advanced technologies;

3. Estimate of avoided transmission costs;

4. Estimate of the portion and amount of costs of proposed regional transmission upgrades that would be allocated to the utility, and if such costs may differ due to plans for the construction of facilities by an affiliate of the utility instead of the utility itself, then an estimate, by upgrade, of this cost difference;

5. Estimate of any revenue credits the utility will receive in the future for previously built or planned regional transmission upgrades; and

6. Estimate of the timing of needed transmission and distribution resources and any transmission resources being planned by the RTO primarily for economic reasons that may impact the alternative resource plans of the utility.

(B) The utility may use the RTO transmission expansion plan in its consideration of the factors set out in subsection (3)(A) if all of the following conditions are satisfied:

1. The utility actively participates in the development of the RTO transmission plan;

2. The utility reviews the RTO transmission overall expansion plans each year to assess whether the RTO transmission expansion plans, in the judgment of the utility decision-makers, are in the interests of the utility's Missouri customers;

3. The utility reviews the portion of RTO transmission expansion plans each year within its service territory to assess whether the RTO transmission expansion plans pertaining to projects that are partially or fully driven by economic considerations (i.e. projects that are not solely or primarily based on reliability considerations), in the judgment of the utility decision makers, are in the interests of the utility's Missouri customers;

4. The utility documents and describes its review and assessment of the RTO overall and utility-specific transmission expansion plans; and

5. If any affiliate of the utility intends to build transmission within the utility's service territory where the project(s) are partially or fully driven by economic considerations, then the utility shall explain why such affiliate-built transmission is in the best interest of the utility's Missouri customers and describe and document the analysis performed by the utility to determine whether such affiliate-built transmission is in the interest of the utility's Missouri customers.

(4) Analysis Required for Transmission and Distribution Network Investments to Incorporate Advanced Technologies.

(C) The utility shall describe and document its optimization of investment in advanced transmission and distribution technologies based on an analysis of—

1. Total costs and benefits, including:

A. Costs of the advanced grid investments;

B. Costs of the non-advanced grid investments;

C. Reduced resource costs through enhanced demand response resources and enhanced integration of customer-owned generation resources; and

D. Reduced supply-side production costs;

2. Cost effectiveness, including:

A. The monetary values of all incremental costs of the energy resources and delivery system based on advanced grid technologies relative to the costs of the energy resources and delivery system based on non-advanced grid technologies;

B. The monetary values of all incremental benefits of the energy resources and delivery system based on advanced grid technologies relative to the costs and benefits of the energy resources and delivery system based on non-advanced grid technologies; and

C. Additional non-monetary factors considered by the utility;

3. Societal benefit, including:

A. More consumer power choices;

B. Improved utilization of existing resources;

C. Opportunity to reduce cost in response to price signals;

D. Opportunity to reduce environmental impact in response to environmental signals;

4. Any other factors identified by the utility; and

5. Any other factors identified in the special contemporary issues process pursuant to 4 CSR 240-22.080(4) or the stakeholder group process pursuant to 4 CSR 240-22.080(5).

(5) The electric utility shall identify and describe any affiliate or other relationship with transmission planning, designing, engineering, building, and/or construction management companies that impact or may be impacted by the electric utility. Any description and documentation requirements in sections (1) through (4) also apply to any affiliate transmission planning, designing, engineering, building, and/or construction management company or other transmission planning, designing, engineering, building, and/or construction management company currently participating in transmission works or transmission projects for and/or with the electric utility.

(6) The electric utility shall identify and describe any transmission projects under consideration by a RTO for the electric utility's service territory.