

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

In the Matter of KCP&L Greater Missouri Operations)	
Company's Application for Approval of Demand-)	
Side Programs and for Authority to Establish a)	File No. EO-2012-0009
Demand-Side Programs Investment Mechanism)	

**Missouri Department of Natural Resources' Response to
Staff's Motion for Commission Determinations on Variances**

COMES NOW the Missouri Department of Natural Resources, Division of Energy (MDNR), by and through undersigned counsel, and files this response to the Missouri Public Service Commission Staff's (Staff) Motion for Commission Determination on Variances (Motion). MDNR respectfully states the following:

I. Introduction

MDNR encourages the Commission to focus on policy objectives, as articulated by the Missouri General Assembly in the Missouri Energy Efficiency Investment Act (MEEIA). Specifically, Missouri enacted MEEIA because of utility companies' need for flexibility in the implementation of energy efficiency programs. Historically, utility business operates on the paradigm of "build plants-sell kilowatts-collect return on investment," which can be a difficult paradigm to overcome when implementing energy efficiency programs. In fact, Kansas City Power & Light has withdrawn its MEEIA application, presumably in light of growth and investor concerns.¹ The Missouri Public Service Commission (Commission) should foster a speedy resolution of the issues presented by Staff in order to ensure the parties have a positive experience designing and implementing energy efficiency programs through the MEEIA process.

¹ See *Kansas City Power and Light Company's Notice of Dismissal* in File No. EO-2012-0008, filed February 17, 2012.

MDNR's response to Staff's Motion, and any concerns described below apply to the Demand Side Investment Mechanism (DSIM) portion of KCPL Greater Missouri Operations' (GMO) MEEIA application, and not to GMO's Demand Side Management Program (DSM) plan. The DSM plan proposed by GMO represents a suite of innovative DSM programs that can lead to significant energy savings. MDNR asks the Commission to resolve the issues discussed below and raised by Staff as soon as practicable. The 120-day period set by the Commission in 4 CSR 240-20.094(3) for decisions on DSM program applications clearly signaled the Commission's intent to process the important matters presented in MEEIA implementation cases on a priority basis. The parties agreed to an additional 60 days for this initial, groundbreaking case, and the Commission approved the schedule which provided for those additional 60 days. MDNR requests that the Commission take all steps possible to retain this schedule so that the robust DSM program proposed by GMO can be implemented and begin providing savings to customers, balanced with appropriate cost recovery, incentives and earnings opportunities for the company.

II. MDNR's Response to GMO's Request for Variance from 4 CSR 240-20.093(2)(H)3

In its DSIM application, GMO asked for variance from the requirement set forth in 4 CSR 240-20.093(2)(H)3' that the utility incentive component of the DSIM be collected retrospectively, and that all energy and demand savings used to determine a DSIM utility incentive revenue requirement must be measured and verified through EM&V.² Instead, GMO asks that benefits be collected prospectively. Staff argues that this variance should be rejected because GMO has not demonstrated that it will experience financial harm if it pursued a utility incentive mechanism as is provided for in the rules. GMO has provided a three-year financial

² *Direct Testimony of Tim M. Rush*, EO-2012-0009, p. 26.

analysis that shows its preferred recovery of benefits beginning in the first year of its DSIM, but has not provided a comparison case over a sufficient number of years to show the long-term financial impacts of following the rule. It is appropriate for GMO to provide an analysis that will show the financial impact of an incentive component mechanism following the rule provisions in 4 CSR 240-20.093(2)(H)3. MDNR recommends this analysis show six years of financial impact due to delay in the recovery of a portion of “shared benefits” and a performance incentive beginning in the fourth year. This “baseline” analysis would anticipate GMO recovering all of its “shared benefits” and incentive over a three-year period (i.e., beginning in 2014 and ending in 2016). The analysis should show the impacts of this change on both the company’s financial statement and on customer bills to give a complete picture of the effects of this variance, if granted.

In reviewing the issue of variances, MDNR requests that the Commission be mindful of the parameters it set for itself in reviewing DSIMs, along with those set by the General Assembly in the MEEIA statute:

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.³

and

³ 4 CSR 240-20.093(2)(C)

(E) 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.⁴

The statutory goal of achieving all cost-effective demand-side savings (Sec. 393.1075 RSMo.), in combination with the legislative authorization that "[t]o comply with this section the commission may develop cost recovery mechanisms to further encourage investments in demand-side programs" (Sec. 393.1075 RSMo), and the rule provisions cited above, should provide guidance to the Commission not only in its review of a DSIM proposal but also in evaluating the presence of good cause for variances. That is, the Commission may find good cause for one or more variances in the utility's assertions regarding factors enumerated in subsections 1-3 of 4 CSR 240-20.(2)(C), cited above, for reasons that the variance is consistent with state policy "to further encourage investment in demand-side programs," without extensive factual or quantitative justification. In other instances, it may be appropriate for the Commission to find that the Company should provide additional support for variances, or possibly modify its application, as described below.

MDNR is unaware of any requirement that a utility seek and obtain approval of variances in advance of a MEEIA filing. In fact, a blanket decision that all variances must be addressed as a threshold matter in MEEIA cases is not appropriate. It is possible, and indeed quite likely, that the Commission may find that some variances will clearly warrant consideration "with the case,"

⁴ 4 CSR 240-20.093(2)(E)

while others may be more appropriately addressed in advance of the filing of the parties' positions on the substance of the MEEIA applications.

III. MDNR's Response to Staff's request for additional variances

In its Motion, Staff requested that the Commission direct GMO to file four additional variances to address areas where GMO's DSIM application differs from the rule. These areas address GMO's definition of DSM program benefits, GMO's definition of the performance incentive in its DSIM, and GMO's use of existing potential studies.

A. Calculation of Benefits: 4 CSR 240-20.093(2)(H)

GMO refers to "shared benefits" throughout its application, while the rules refer to "net shared benefits." GMO is seeking a share of gross benefits, while the rule envisions recovery of a portion of net benefits; i.e., net of program costs. "Net shared benefits" are defined in at least three of the rules as:

Annual net shared benefits means the utility's avoided costs measured and documented through evaluation, measurement, and verification (EM&V) reports for approved demand-side programs less the sum of the programs' costs including design, administration, delivery, end use measures, incentives, EM&V, utility market potential studies, and technical resource manual on an annual basis;⁵

Based on the schedules filed with its testimony, GMO appears to refer to gross benefits, rather than net shared benefits as defined in the rule. This is a substantive difference which should be addressed, possibly by a variance request or possibly by a revision to GMO's DSIM application using "net shared benefits" as defined in the rule. If a variance is requested, MDNR also recommends that GMO should present a quantification of the difference between "shared benefits" as described in its DSIM and "net shared benefits" as described in the rule to assist

⁵ 4 CSR 240-20.093 (1)(C), 4 CSR 240-20.094 (1)(C) and 4 CSR 240-20.163 (1)(A)

parties in formulating positions on the variance and the Commission in determining whether to grant the variance.

Finally, given that program costs occur in the first three years while GMO is assessing program benefits over fifteen years, it should not be difficult for GMO to adjust its benefits calculations to account for program costs.

B. Rule 4 CSR 240-20.093(2)(H)3

Staff is requesting that the Commission reject the requested variance of 4 CSR 240-20.093(2)(H)3 on the grounds that the request for prospective recovery is not based on savings verified by EM&V. Some savings from GMO's existing programs have been verified by past EM&V studies, while some programs have not been implemented or evaluated. GMO requests that all expected savings be recovered prospectively, while Staff states that all recovery be made retrospectively, after EM&V.

Both of these positions are premature. GMO assumes that all prospective savings will be verified once EM&V is completed, while Staff maintains that no savings exist prior to verification through EM&V. There have been EM&V studies that have verified savings attributable to past program performance from GMO's existing programs. These EM&V studies were conducted by independent evaluators and provided to GMO's energy efficiency advisory group in recent years. However, there is also a suite of programs that have not yet been evaluated.

Any decision to grant or reject this variance should be made in the context of the review of GMO's DSIM application; i.e., "taken with the case." MDNR and other parties are participating in a series of technical conferences designed to highlight various aspects of GMO's request and, potentially, construct a settlement on key issues that is agreeable to all parties. A

Commission determination on the variance to rule 4 CSR 240-20.093(2)(H)3 at this time would eliminate a possible compromise on this issue before the full impact of GMO's request is understood. MDNR requests that the Commission not take action on this variance request at this time, pending potential resolution of this issue among parties through a stipulation and agreement or further development of the issue during the course of this case.

C. GMO Utility Incentive Component

The Utility incentive is defined in multiple places in the rules. For example:

- 4 CSR 240-20.094 (1):
 - (M) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission to provide the utility with a portion of annual net shared benefits based on the approved utility incentive component of a DSIM;
 - (Z) Utility incentive component of a DSIM means the methodology approved by the commission in a utility's demand-side program approval proceeding to allow the utility to receive a portion of annual net shared benefits achieved and documented through EM&V reports.
- 4 CSR 240-20.094 (2):
 - (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. (Emphasis added.)

GMO proposes two "incentive" components in its DSIM: (1) a fixed payment of 12% of shared benefits, and (2) a fixed dollar award for annual performance relative to the savings targets

specified in its plan, called the “performance bonus.”⁶ If the Commission finds that Staff’s position is correct; that is, that neither the fixed percentage of shared benefits nor the performance bonus constitutes a “*portion of annual net shared benefits achieved*,” then the options to remedy the situation could include either a variance request from GMO or a revision to its DSIM application.

D. Potential Study

Staff suggests that the potential studies submitted by GMO in support of its DSIM do not conform to the standards established in 4 CSR 240-3.164(2)(A). Additionally, they note that GMO’s DSIM application does not “provide for its service territory a showing of energy and demand savings potentials, including technical, economic, realistic achievable and maximum achievable potentials for energy savings and for demand savings, or baseline forecasts for energy and demand.”⁷ The potential studies provided in GMO’s DISM application predate the establishment of the MEEIA rules and the requirement that potential studies provide an assessment of “technical, economic, realistic achievable and maximum achievable potentials for energy savings and for demand savings.”⁸

Staff’s concern with the potential studies submitted in GMO’s DSIM application is overstated. The potential studies GMO submitted in support of their DSM plan do not meet the standards of the rule, largely because they predate the rule. Nevertheless, GMO proposes to meet energy and demand savings goals as specified in section 4 CSR 240-20.094(2)(B) of the rules:

(B) The commission shall also use the greater of the cumulative realistic achievable energy savings and demand savings as determined through the utility’s

⁶ See *Direct Testimony of Tim M. Rush*, EO-2012-0009, p. 19-20.

⁷ Staff Motion, p. 9

⁸ *Id.*

market potential study or the following cumulative demand-side savings goals as a guideline to review progress toward an expectation that the electric utility's demand-side programs can achieve a goal of all cost effective demand-side savings.

GMO's expected cumulative savings levels are 1.5% of total annual energy and 3.0% of annual peak demand by 2014, as specified in 4 CSR 240-20.094(2)(B)3.⁹

GMO's savings goals are consistent with the rule. The differences between the potential studies provided by GMO and the characteristics of potential studies as described in the rule are a historical artifact that should not delay the Commission's consideration of GMO's DSIM application.

WHEREFORE, MDNR respectfully submits this Response to Staff's Motion.

Respectfully submitted,

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⁹ See *Direct Testimony of Tim M. Rush*, EO-2012-0009, p 23. This passage describes levels of incremental annual savings that sum to the cumulative goals specified in 4 CSR 240-20.094(2)(B)3 over three years.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been transmitted electronically to all counsel of record this 17th day of February, 2012.

/s/ Jessica L. Blome