MEDA
MISSOURI ENERGY DEVELOPMENT ASSOCIATION

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Missouri Public Service Commission

April 7, 2010

Mr. John Rogers
Utility Regulatory Manager
Missouri Public Service Commission
200 Madison Street
Jefferson City, MO 65102-0360

RE: Docket No. EW-2010-0265, SB 376 Rulemaking - Working Draft from MEDA

Dear Mr. Rogers:

Please find attached a draft rule outline supported by AmerenUE, KCP&L and Empire. We are hoping that this document is helpful as you begin to draft the rules to implement SB 376 for the upcoming workshop. Any thoughts or comments MoPSC Staff may have on our suggested draft are very welcome.

If you have any questions regarding this, please do not hesitate to e-mail me at Warren@missourienergy.org or call me at (573) 634-8678.

Sincerely,

Warren T. Wood, PE
President

Missouri Energy Efficiency Investment Act

(1) Definitions. For the purpose of this rule:
   A. Commission means the Missouri public service commission
   B. Demand response means measures that decrease peak demand or shift demand to off-peak periods
   C. Demand-side program means any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the electric meter, including, but not limited to energy efficiency measures, load management, demand response, and interruptible or curtailable load
   D. Energy efficiency means measures that reduce the amount of electricity required to achieve a given end use
   E. Interruptible or curtailable rate means a rate under which a customer receives a reduced charge in exchange for agreeing to allow the utility to withdraw the supply of electricity under certain specified conditions
   F. Total resource cost test means a test that compares the sum of avoided utility costs and avoided probable environmental compliance costs to the sum of all incremental costs of end-use measures that are implemented due to the program
   G. Electric utility infrastructure costs or EUIC means costs for electric utility infrastructure projects that were not included in the electric utility's rate base in its most recent general rate case.
   H. Electric utility infrastructure projects means projects owned by an electric utility that:
      i. Replace or modify existing electric utility infrastructure, including utility-owned buildings, if the replacement or modification is shown to conserve energy or use energy more efficiently; or
      ii. Conserve energy or use energy more efficiently by using waste heat recovery converted into electricity as defined in (1)(I).
   I. Waste heat recovery converted into electricity means an energy recovery process that converts otherwise lost energy from the heat of exhaust stacks or pipes used for engines or manufacturing or industrial processes, or the reduction of high pressure in water or gas pipelines.
   J. Lost revenue means the reduction in revenue that occurs when energy efficiency and/or conservation efforts cause a drop in sales below the level used to set the electricity price. Sources of energy efficiency or conservation efforts can be from utility sponsored programs, third party sponsored programs, building codes, or appliance efficiency standards.

(2) Equal Treatment. It is the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow timely recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs.
   A. The in-service date for a demand-side program shall be the date in which commission approval is granted, thus making approved program costs eligible for cost recovery.
   B. The utility shall estimate the earnings with and without the implementation of demand-side programs. The commission shall implement cost recovery mechanisms, as allowed

by section (4) of this rule, such that the utility earnings with demand-side programs are not less than the earnings without demand-side programs.

C. Reasonable and prudent costs shall include the costs of training, education and information.

D. All demand-side programs shall have efficiency savings capable of measurement and verification

(3) Program Approval

A. The utility shall file proposed performance goals for peak demand and energy savings from utility implementation of cost-effective demand-side programs. The utility shall provide annual and total goals, by demand-side program, for three years subsequent to the year of the filing.

i. The utility may constrain or accelerate projected utility implementation of programs from estimates of economic or phase-in potential, based on its assessment of market potential. The utility may consider market factors including, but not limited to, market barriers to implementation of programs, the effects of rate impacts, lost opportunities which decrease future implementation of measures or programs, the nonenergy benefits and detriments of programs, the strategic value of energy efficiency to the utility, and other market factors it deems relevant.

ii. Commission approval is sufficient for implementation of demand-side programs. Demand-side programs shall not be considered promotional practices.

iii. The utility shall describe and document its data and assumptions. In lieu of the data required in 1. through 4. below, the utility may reference data and analyses filed in its integrated resource plan.

1. The utility shall analyze the cost-effectiveness of the proposed demand-side programs using at least the total resource cost test and utility cost test. The utility shall use inputs or factors realistically expected to influence cost-effective implementation of programs.
2. A description of the proposed programs to be implemented, proposed utility implementation techniques, proposed evaluation methods, the number of eligible participants and proposed rates of participation by year, and the estimated annual peak demand and energy savings.
3. The budget levels of spending for utility implementation of programs, including proposed special programs addressing low income.
4. The rate impacts and average bill impacts resulting from the utility implementation of programs.

B. Demand-side programs approved by the commission must demonstrate energy and demand savings. These savings are to be measured annually during implementation and those results are to be included in the annual report required by section (8) of this rule. At the conclusion of the implementation period the utility shall provide the commission a summary of program results and measured cost-effectiveness over the implementation period.

i. If a program is determined to be not cost-effective the utility shall identify causes why. The fact that a program proves not to be cost effective shall not be grounds for disallowing cost recovery.
ii. The implemented cost recovery mechanism shall dictate any true-up for variations in programs results from the approved plan.

C. The commission shall approve demand-side programs with a goal of achieving all cost-effective demand-side savings. The total resource cost test shall be the primary measure of cost effectiveness; however, the commission shall also consider other measures of cost effectiveness.

D. The commission shall approve programs for low-income customers or general education campaigns that do not need to meet a cost-effectiveness test only if the program or campaign is in the public interest.

E. The Commission shall approve or reject the proposed programs within 90 days.
i. The approval shall specify a cost recovery mechanism compliant with section (4) of this rule.

(4) Cost recovery. The commission shall ensure each utility has implemented a cost recovery mechanism that values demand-side investments at least equal to traditional investments in supply and delivery infrastructure.

A. The commission may develop cost recovery mechanisms to *further encourage* investments in demand-side programs including, in combination and without limitation: decoupling, capitalization of investments in and expenditures for demand-side programs, rate design modifications, accelerated depreciation on demand-side investments, and allowing the utility to retain a portion of the net benefits of a demand-side program for its shareholders.

B. Lost revenues shall be included in any implemented cost recovery mechanism.

C. In setting rates the commission shall fairly apportion the costs and benefits of demand-side programs to each customer class.
i. The commission may, when in the public interest, reduce or exempt the allocation of demand-side expenditures to low income classes, as defined in an appropriate rate proceeding, as a subclass of residential service.

D. Prior to approving a rate design modification associated with demand-side cost recovery, the commission shall conclude a docket studying the effects thereof and promulgate an appropriate rule.
i. The duration of the process under the docket shall not exceed 60 days.
ii. This process shall be conducted concurrent with program approval and the Commission order pursuant to (3)E. shall include any appropriate rule.

E. All charges attributable to demand-side programs approved by the commission rule shall clearly be shown as a separate line item on bills to the utility's customers.

(5) Customer Opt-out

A. Any customer meeting one or more of the following criteria shall be eligible to opt-out of participation in utility offered demand-side programs:
i. The customer has one or more accounts within the service territory of the electrical corporation that has a demand of five thousand kilowatts or more;

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

iii. The customer has accounts within the service territory of the electrical corporation that have, in aggregate, a coincident demand of two thousand five hundred kilowatts or more, and the customer has a comprehensive demand-side or energy efficiency program and can demonstrate an achievement of savings at least equal to those expected from utility-provided programs.

B. The utility shall make available standard notification forms requesting all relevant information to determine customer eligibility to opt-out of participation in demand-side programs. Customers submitting the notification shall be subject to a non-refundable notification fee. The notification fee shall be determined based on the customer's eligibility criteria described in subsection (A) of this section. The utility shall include a schedule of the notification fees on the standard notification form.

i. The utility shall approve or reject the notification within 30 days unless the applicant withdraws the notification to withdraw. No refund of the notification fee shall be made in the event of a withdrawal.

ii. Customers must submit a notification to opt-out no later than one month prior to the proposed implementation date.

iii. Any notification to the electric utility to not participate in demand-side programs shall expire at the end of the implementation period. In the event a customer wishes to continue to not participate in demand-side programs, the customer must resubmit such notification and pay any applicable notification fee.

C. Provided that the customer has submitted proper notification that the customer elects not to participate in demand-side programs offered by an electrical corporation and the electrical corporation has approved the notification, none of the costs of demand-side programs of an electric corporation offered under this rule or by any other authority, and no other charges implemented in accordance with this rule, shall be assigned to any account included in the approved notification.

D. Customers electing not to participate in an electric corporation's demand-side programs under this section shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs offered by the electric corporation.

E. Any customer who opts out of shall continue to be allocated costs until all costs have been recovered from any programs the customer was eligible to participate prior to opting out.

(6) Electric Utility Infrastructure Costs. The commission may approve an electric utility's petition to recover EUIC under this section.

A. An electric utility may submit a filing under this section no more than once per year; and

B. An electric utility must file sufficient information to satisfy the commission regarding the proposed EUIC or be subject to denial by the commission. The information includes, but is not limited to:

i. The location, description, and costs associated with the project;

ii. Evidence that the electric utility infrastructure project will conserve energy or use energy more efficiently than similar utility facilities currently used by the electric utility;
iii. The proposed schedule for implementation;
iv. A description of the costs, and salvage value, if any, associated with the existing infrastructure replaced or modified as a result of the project;
v. The proposed rate design and an explanation of why the proposed rate design is in the public interest;
vi. The magnitude and timing of any known future electric utility projects that the utility may seek to recover under this section;
vii. The magnitude of EUIC in relation to the electric utility's base revenue as approved by the commission in the electric utility's most recent general rate case, exclusive of fuel cost adjustments;
viii. The magnitude of EUIC in relation to the electric utility's capital expenditures since its most recent general rate case;
ix. The amount of time since the utility last filed a general rate case and the utility's reasons for seeking recovery outside of a general rate case;
x. Documentation supporting the calculation of the EUIC; and
xi. A cost/benefit analysis showing that the electric utility infrastructure project is in the public interest.

C. Upon approval of the proposed projects and associated EUIC rate schedule, the utility may implement the electric utility infrastructure projects.

(7) Applied research and development grants. The commission may, by order, approve and make grants for applied research and development projects of general applicability that identify new technologies or strategies to maximize energy savings, improve the effectiveness of energy conservation programs, or document the carbon dioxide reductions from energy conservation programs. When approving projects, the commission shall consider proposals and comments from utilities and other interested parties. The commission may grant up to $5,000,000 annually. The monies granted shall be paid by the Department of Natural Resources.

(8) Annual Report. Each utility shall submit an annual report to the commission describing the demand-side programs implemented by the utility in the previous year. The report shall be submitted to the commission no later than 120 days after the conclusion of the utility's program year.

A. The report shall include for each program approved by the commission:
i. The estimated cost-effectiveness as measured by the total resource cost and utility cost tests;
ii. The net lifetime economic benefits;
iii. Expenditures, including incentive payments;
iv. A description of techniques to estimate and an estimate of peak and energy savings; and
v. A description of techniques to estimate and an estimate of avoided costs

B. The annual report shall also include an assessment of the implemented cost recovery mechanism. This assessment shall include evidence that demand-side investments are being valued equal to traditional investments in supply and delivery infrastructure. In the event the demand-side investments are not receiving equivalent value, the utility shall identify the sources of inequality and propose at least one remedy for the commission's consideration.

i. Other interested parties may submit evidence that demand-side investments are not being valued equal to traditional investments in supply and delivery infrastructure.

ii. If the utility or other interested party alleges unequal treatment of investments, the commission shall open an appropriate case within 10 days to investigate. The outcome of that case, which shall take no longer than 60 days, shall include a ruling that either:

1. Demand-side investments are being valued equal to traditional investments in supply and delivery infrastructure under the utility's implemented cost recovery mechanism; or
2. Demand-side investments are not being valued equal to traditional investments in supply and delivery infrastructure under the utility's implemented cost recovery mechanism.

iii. In the event demand-side investments are found not being valued equivalently, the commission's order shall also include a remedy. The commission's remedy shall be implemented within 30 days of the order.

C. For applicable programs, the utility shall provide the commission a confidential list of all customers who received monetary incentives in the previous year from any demand-side program approved by the commission. The disclosure required shall include, but not be limited to, the following: the name of the participant, or the names of the principles if for a company, the property address, and the amount of the monetary incentive paid.

(9) Tax credits and disclosures

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

B. As a condition of participation in any demand-side program offered by an electrical corporation under this section when such program offers a monetary incentive to the customer, the customer shall attest to non-receipt of any tax credit listed in subsection (A) of this section.

C. The penalty for a customer who provides false documentation under subsection (B) of this section shall be a class A misdemeanor.