



November 18, 2009

Mr. Steve Dottheim  
Missouri Public Service Commission  
200 Madison Street  
Jefferson City, MO 65101

RE: Case No. EW-2009-0412 Chapter 22 Electric Utility Resource Planning Rules - Staff Questions

Dear Mr. Dottheim:

Please find attached MEDA's responses to MOPSC Staff's questions regarding 'acknowledgement' and 'pre-approval'.

If you have any questions, please e-mail me at [Warren@missourienergy.org](mailto:Warren@missourienergy.org) or call me at (573) 634-8678.

Sincerely,

Warren Wood,  
President, Missouri Energy Development Association

**FOLLOW UP STAFF QUESTIONS REGARDING ACKNOWLEDGEMENT OR PREAPPROVAL DIRECTED TO MEDA AND/OR MDNR AND TO ANY PARTICIPANT THAT WOULD LIKE TO RESPOND**

Both MEDA and MDNR have provided documents that propose that the Commission engage in some conferring of what both call “acknowledgment.” MEDA refers to acknowledgment of the electric utility’s “integrated resource plan,” while MDNR refers to acknowledgment of the electric utility’s “preferred resource plan or resource acquisition strategy.” MDNR seems to use the terms “preferred resource plan” and “resource acquisition strategy” interchangeably, whereas these terms are not interchangeable for MEDA. In addition to acknowledgement, MEDA has proposed an option for the electric utilities to seek “pre-approval.” The Staff indicated at the workshop on October 19-20 that it would consider MEDA’s and MDNR’s “proposals.” In doing so, the Staff posed certain questions for which it stated it would like responses. Because the Staff is intent in considering what MEDA and MDNR have suggested, the Staff is hereby submitting those and other questions to MEDA and MDNR and requesting responses by November 19. If other participants would like to respond and/or comment, the Staff would welcome responses and/or comments.

1. For both MEDA and MDNR: What effect does the Commission conferring “acknowledgement” have, if any, on the burden of proof in a subsequent rate case respecting recovery of any costs associated with the “integrated resource plan,” “preferred resource plan,” “resource acquisition strategy,” or “resource investment”?

MEDA answer: Commission acknowledgement does not change the existing law that governs the burden of proof in subsequent rate cases (or other cases) regarding the recovery of costs. The Commission would give considerable weight to the fact that the plan was acknowledged in deciding questions of prudence (just as the Commission could raise questions if a plan different than the acknowledged plan is implemented).

2. For both MEDA and MDNR: What effect does the Commission conferring “acknowledgement” have, if any, on “decisional prudence”?

MEDA answer: Acknowledgement is not decisional prudence. Rather, it is simply a statement by the Commission that as of the time of the acknowledgment the plan “seems reasonable.” If a utility wants decisional prudence, that is, not to be second-guessed later on the resource decision it has made, then it would ask for decisional prudence under 4 CSR 240-22.080(15) (citation to MEDA’s version of the rule). As noted earlier, the Commission would give considerable weight to the fact that the plan was acknowledged in deciding questions of prudence.

3. For both MEDA and MDNR: Does the Commission have to affirmatively “acknowledge” the electric utility’s integrated resource plan in order for the Commission to have been deemed to have “acknowledged” the electric utility’s “integrated resource plan,” “preferred resource plan,” “resource acquisition strategy” or “resource investment”?

MEDA answer: Acknowledgement is not a default, the Commission would have to affirmatively acknowledge the IRP plan.

For example, if the Commission does not elect to indicate its agreement with unresolved (a) concerns or (b) alleged deficiencies propounded by the Staff, Public Counsel, or an intervenor, does that constitute “acknowledgment” by the Commission?

MEDA answer: No, the Commission would have to affirmatively make the statement that they are choosing to acknowledge the IRP plan.

4. For MEDA: What procedure, including schedule, does MEDA suggest be utilized in the new docket that it proposes be established for purposes of an electric utility seeking pre-approval of the utility’s resource acquisition strategy or any sub-component thereof?

MEDA answer: See attached for discussion purposes. The request for pre-approval could be made in concert with the filing of the utility’s IRP or at such other time when the utility is preparing to finalize its decision.

5. For MEDA: What effect does the Commission conferring “pre-approval” have, if any, on the burden of proof in a subsequent rate case respecting recovery of any costs associated with the “integrated resource plan,” “preferred resource plan,” “resource acquisition strategy,” or “resource investment”?

MEDA answer: MEDA considers the word “pre-approval” to be the same as “decisional prudence.” This would mean the utility no longer has to demonstrate the decision, at the time it was made, was prudent.

6. For MEDA: What effect does the Commission conferring “pre-approval” have, if any, on “decisional prudence”?

MEDA answer: MEDA believes they are the same thing.

7. For MEDA: There is no definition provided by MEDA of the term “pre-approval” in its proposed 4 CSR 240-22.020 Definitions. Please provide a definition of the term “pre-approval” as used by MEDA.

MEDA answer: Pre-approval means decisional prudence. It means the utility decision, at the time it was made, was prudent.

8. For MEDA: Under what circumstances does MEDA envision that a utility would seek pre-approval and request the Commission to open a new docket for that purpose? Under what circumstances would the utility “require additional regulatory certainty”? What threshold should the rule establish to govern when a utility could seek pre-approval?

MEDA answer: MEDA does not believe it is necessary to set a threshold for when a utility could seek decisional prudence, but believes it would normally be when a utility is faced with a decision about making a large investment.

9. For MEDA: How does the pre-approval of the utility's resource acquisition strategy in MEDA paragraph 4 CSR 240-22.080(15) differ from the acknowledgement of the utility's integrated resource plan in MEDA paragraph 4 CSR 240-22.080(12)?

MEDA answer: As explained above, pre-approval equates to decisional prudence. As contemplated by MEDA, pre-approval may also include specific ratemaking treatment.. See earlier answers for the meaning of acknowledgment.

10. For MEDA: Under MEDA's proposal, does the acknowledgement of the utility's integrated resource plan occur only if a full agreement is not reached regarding remedies for all alleged deficiencies? Would that not create an incentive to not reach full agreement?

MEDA answer: Presuming we are using the definitions contained in the MEDA rule, it is unlikely the Commission would acknowledge a plan that contains one or more deficiencies.

It is MEDA's belief that the process would work in the following manner:

Utility files IRP.

1. No deficiencies – Commission acknowledges
2. Deficiencies with agreement on how to fix – utility fixes and then comes back to seek acknowledgment
3. Alleged deficiencies without agreement – Commission decides if there are deficiencies.
  - a. If deficiencies, orders utility to fix. Utility fixes then come back for acknowledgement.
  - b. If no deficiencies, Commission acknowledges

11. For MDNR: Is it MDNR's intent to use the terms "preferred resource plan" and "resource acquisition strategy" interchangeably?

**DRAFT Missouri Preapproval Rule Language – For Discussion Purposes Only**

**November 18, 2009**

**I. Missouri Preapproval**

Prior to undertaking the construction of a generation facility or entering into a new power supply contract, a company can file a petition with the Missouri Public Service Commission to obtain a determination of the rate-making principles and treatment for the new construction or contract.

Generating facility includes new plant or improvements to an existing facility.

The company proposes the rate-making treatment it wants the MPSC to approve.

The Commission has 180 days to enter an Order. If no Order issues within that time, the treatment proposed by the company in its application is deemed approved.

The Commission staff, public counsel, and any intervenor shall review the company's petition and shall file a report or comments within 60 days. This report shall indicate the appropriateness of the company's rate-making treatment proposal and, if necessary, recommended modifications or alternate rate-making treatment proposal.

If the staff, public counsel, or any intervenor disagrees on the company's proposed rate-making treatment, they shall work with the company and the other parties to reach, within 45 days of the date that the report or comments were submitted, a joint agreement on a plan to remedy any discrepancies. If full agreement cannot be reached, this shall be reported to the Commission through a joint filing as soon as possible, but no later than 50 days after the date on which the report and comments were submitted.

If full agreement on remedying discrepancies is not reached, then within 60 days from the date on which the staff, public counsel, and any intervenor submitted a report or comments relating to the company's compliance filing, the company may file a response and the staff, public counsel, and any intervenor may file comments in response to each other. The company response shall address any discrepancies set forth by staff, public counsel or any intervenor.

The rate-making treatment approved in the Order (or deemed approved by operation of law) must be used by the MPSC in all subsequent rate-making proceedings.

The company has one year from the effective date of the Order to notify the MPSC whether it will go forward with the construction or contract.

- a. If it notifies the MPSC that it will NOT go forward, then the Order has no effect and cannot be used against the company in later proceedings.
- b. If it notifies the MPSC that it will go forward and subsequently does not, it must notify the MPSC and file an alternative supply plan within 90 days.

The application must include:

- 1) A description of the company's conservation measures;
- 2) a description of the company's demand side management efforts;
- 3) the company's most recent resource and load forecasts; and
- 4) a description of all power supply alternatives considered to meet the company's load requirements.

The Commission must consider whether the plan selected by the company is reasonable, reliable and efficient.