BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Consideration and Implementation of Section 393.1075, the Missouri Energy Efficiency Investment Act	)))	File No. EW-2010-0265

Department of Natural Resources' Comments on June 18, 2010 PSC Staff Draft Rule

Linkage of IRP to MEEIA Rule

MDNR does not believe the PSC's Chapter 22 rules for electric utility resource planning should be as closely linked to DSM Programs as proposed in the Staff draft rules. We are not prepared to say that the two rules must be entirely separate, but implementation of cost-effective DSM programs should not be limited to the outcomes of the resource planning process. However, it is DNR's position that the PSC's Chapter 22 rules do not deliver a demand-side portfolio compliant with MEEIA.

A significant point that has not previously been addressed is the fact that the MEEIA is a law. Integrated resource planning, while an important process, is solely a creature of administrative rulemaking; it is NOT a law. The concept of making MEEIA DSM plans dependent on the product of the IRP rules is counter-intuitive and contrary to the intent of MEEIA, which is to move energy efficiency forward in Missouri. By virtue of the fact that Missouri is ranked 41st in the nation in electric utility spending on energy efficiency[1], we can conclude that the IRP process as it currently exists certainly does not result in achieving all cost-effective DSM savings. The history of IRP is part of the problem, and making it a lynchpin of MEEIA is not a solution. In fact, it would be a step backward, not forward, for energy efficiency in Missouri. If anything, MEEIA is the law and therefore should drive the definition of the IRP process, not the opposite, which is what the staff draft rules propose.

Integrated resource planning is a long-term planning process, which has not resulted in implementation of DSM programs that result in substantial savings. Utilities continue to resist analyzing alternative resource plans that include DSM programs achieving significant annual reductions in sales. While one of the outcomes of the resource planning process is an implementation plan, there is no Commission approval of the plan -- only of the process and whether it was in compliance with the PSC's rule requirements. Thus, even if DSM programs survive the IRP process, there is no mandate for them to be implemented.

Again, the intent of MEEIA is to move energy efficiency forward in Missouri. This is supported by the statutory requirements that the PSC provide timely cost recovery; align

[1] ACEEE State Energy Policy Database
http://www.aceee.org/energy/state/missouri/mo_index.htm

utility financial incentives with helping customers use energy more efficiently; and provide timely earnings opportunities associated with cost-effective efficiency savings. MEEIA is about implementation of programs to meet the statutory goal of achieving all cost-effective demand-side savings. In support of the goal, section 393.1075.4 states that "The Commission shall consider the total resource cost test a preferred cost-effectiveness test". Nowhere in the law does it state that "cost-effective DSM savings" means that DSM program plans must also be subjected to integration analysis and be included in a utility's preferred resource plan pursuant to Chapter 22 (4 CSR 240-22.060). But, this integration analysis is currently proposed in Staff's draft rule dated June 18 in 4 CSR 240-20.094 (3)(A)5., (4) and (5)(A) when the DSM program plan is originally filed, when it is modified and again when it is discontinued. It is also required in 240-20.164(2)(B)3 as a "demonstration of cost-effectiveness for each demand-side program and for the total of all demand-side programs of the utility." This additional requirement (240-20.164(B)3.A.-C.) is not applicable to the program or plan approval process established in MEEIA and we recommend that it be deleted.

The MEEIA does not limit DSM program implementation by its impact on the net present value of revenue requirements (NPVRR) if the program has already been determined to be cost-effective. Lowest NPVRR is not the same as cost-effectiveness.

Performance Targets

Energy savings performance targets must be included in the Commission's rule implementing the Missouri Energy Efficiency Investment Act (MEEIA) to provide a benchmark against which to measure whether utility DSM plans represent appropriate progress toward meeting the statutory goal of achieving "all cost-effective demand-side savings." (Section 393.1074.4 RSMo) The performance targets included in the June 19 draft rules do not provide an adequate benchmark. Staff's retreat from the reasonable, appropriate performance targets that were included in the June 9 draft is a drastic step backward, has not been explained and is not justifiable or reconcilable with the goals of MEEIA. In addition,, the shortening of the time frame for the performance targets is of great concern. The ramp up schedule DNR proposed as was included in the June 9 draft is identical to that proposed by ACEEE: http://www.aceee.org/energy/national/FederalEERSfactsheet_Mar09.pdf.

Utilities in Midwestern states with savings targets routinely argue that such targets are unattainable. Typically, these concerns are expressed during a rulemaking process, before utilities have experience in meeting a rule's requirements. However, once savings targets have been established, utilities are able to make progress toward achieving savings. Energy savings in various states are achieved after statewide energy savings targets are established. On its face, this is evidence that setting targets helps motivate utilities to achieve savings. Questions concerning how much energy have been saved, and which states are actually meeting their targets are secondary, and largely addressed by NRDC's June 14, 2010 filing in this docket titled "Energy Efficiency Performance Goals", filed in response to AmerenUE's June 11 presentation titled "All Cost Effective DSM: What is it?"

Specific performance targets supported by the Missouri Department of Natural Resources (MDNR), which were proposed in the joint filing of MDNR, NRDC and GRLC on May 25 and included in 4 CSR 240-20.093(2) of the draft rule proposal distributed by Staff on June 9, provide a reasonable, appropriate guide to measuring compliance with MEEIA's "all cost effective" policy goal, and an appropriate schedule for ramping up toward all cost effective demand side savings.

DNR requests that the energy savings targets and schedule from the June 9 draft rules be reinstated.

Use of Performance Targets to Determine Financial Incentives (DSIM)

MEEIA directs the Commission to provide timely cost recovery, align utility financial incentives with helping customers use less energy and provide timely earnings opportunities for cost-effective efficiency savings. Aggressive but attainable targets for energy savings will legitimize utility financial incentives. The targets must be set in the rule, providing certainty to all stakeholders, and serve as a prerequisite before financial incentives are awarded to utilities. Put simply, the targets need to be in place so that performance can be measured and appropriate utility financial incentives determined.

It is confusing, then, that the performance targets to demonstrate consistency with the goal of achieving all cost-effective demand-side savings in 240-20.094(2), are not the same as "annual energy and demand savings targets established by the commission for the DSIM utility incentive component" as stated in 240-20.093(2)(G)1. Why wouldn't the utility performance incentives be linked to the performance targets?

All Cost-Effective Demand Side Savings and Achievable Potential Definitions

MDNR wishes to comment on two changes in the definitions included in the June 18 draft rules:

1. The June 18 draft of 4 CSR 240-20.092 093(1)(A) defines "all cost effective demand side savings goals" as " the greater of the realistic achievable energy savings and demand savings as determined through a utility market potential study or the incremental annual energy savings goals and incremental annual demand savings goals in 4 CSR 240-20.0943(2)." The previous draft referred to "maximum" not "realistic" achievable potential. The wording change from "maximum" to "realistic" was suggested by a participant in the most recent workshop but there was no workshop discussion of its possible impacts.
2. The June 18 draft of 4 CSR 240-3.164 provides definitions for "maximum" and "realistic" achievable potential. The previous draft provided no definitions for levels of achievable potential. MDNR does not know Staff's source for the definitions in the June 18 draft rule.

MDNR agrees that the rules should include definitions for "all cost-effective" goals and for levels of achievable potential. These should be consistent with provisions in the rule setting standards for the potential studies that utilities are required to perform.

However, MDNR has deep reservations concerning the definitions in the current rule and proposes the following revisions:

- The definition in 4 CSR 240-20.092 093(1)(A) should simply refer to "achievable potential."
- The definitions related to achievable potential in 4 CSR 240-3.164 should be standard definitions based on a nationally recognized source.

Specifically, MDNR proposes that 4 CSR 240-3.164 should incorporate definitions from the National Action Plan for Energy Efficiency (NAPEE) *Guide for Conducting Energy Efficiency Potential Studies.* MDNR provides these definitions at the end of these comments.

In MDNR's view, the definitions in the June 18 draft, taken together, could significantly and adversely influence Commission review of progress toward the legislative goal of "achieving all cost effective demand-side savings" as well as future utility conduct of potential studies. MDNR's concerns and rationale for its alternative proposals are as follows:

The core distinction in NAPEE's *Guide* is between "achievable potential" and "program potential." As NAPEE uses the terms, "achievable potential" takes expected program participation into account and is the reference point for considering various levels of "program potential" that are based on different levels of utility funding and implementation.

By contrast, the dialogue in Missouri concerning levels of achievable potential has been strongly influenced by a taxonomy of achievable potential promoted by the consulting firm Global Energy Partners (GEP). GEP's taxonomy focuses on a distinction between "maximum" and "realistic" achievable potential. In MDNR's view, it would be a mistake to permanently embed GEP's taxonomy into Missouri's rule, for the following two reasons:

First, the NAPEE definitions were developed in a broad national effort to reach consensus on standard practice. There does not seem to be an equivalent reference point for definitions of "maximum" and "realistic" achievable potential. GEP offers varying definitions in its studies *Assessment of Achievable Potential for Energy Efficiency and Demand Response in the U.S. (2010 – 2030)*, 5-262 to 5-263 and *AmerenUE Demand Side Management (DSM) Market Potential Study Volume 4: Program Analysis*, Section 2.2. The definitions in the September 17 draft rule differ from both the definitions offered by GEP.

Second, and most significantly, the GEP taxonomy relies on an absolute distinction between "maximum" and "realistic" achievable potential that introduces an analytic weakness. The taxonomy does not acknowledge that there can be many levels of "achievable potential" based on the level of funding and aggressiveness of implementation that the company elects to pursue. Estimates from a market potential

study are highly variable, dependent on the measures included in a study, the range of customer incentives considered in the study questionnaires, and in the assumptions used to calculate energy savings forecasts.

Embedding the GEP taxonomy into the June 18 draft rule language could introduce this analytic weakness into Missouri's rule, with the following potential adverse consequences:

- The draft language could limit the Commission's view of the potential for cost-effective demand side savings to the level of funding and aggressiveness of implementation that the company elects to assume in its potential study
- Future utility potential studies could focus unduly on establishing a single level of "realistic" achievable potential, limiting their study of the range of options under different levels of program implementation. This would be most likely to occur if the rule requires the utility to conduct potential studies but fails to establish adequate standards for conducting them.

The definitions from the NAPEE *Guide* are as follows:

> Achievable potential is the amount of energy use that efficiency can realistically be expected to displace assuming the most aggressive program scenario possible (e.g., providing end-users with payments for the entire incremental cost of more efficiency equipment). This is often referred to as maximum achievable potential. Achievable potential takes into account real-world barriers to convincing end-users to adopt efficiency measures, the non-measure costs of delivering programs (for administration, marketing, tracking systems, monitoring and evaluation, etc.), and the capability of programs and administrators to ramp up program activity over time.
>
> Program potential refers to the efficiency potential possible given specific program funding levels and designs. Often, program potential studies are referred to as “achievable” in contrast to “maximum achievable.” In effect, they estimate the achievable potential from a given set of programs and funding. Program potential studies can consider scenarios ranging from a single program to a full portfolio of programs. A typical potential study may report a range of results based on different program funding levels.

Utility and Statewide Collaboratives; Technical Resource Manual (TRM); DSM Potential Studies

4 CSR 240-20-094(8) contains a description of utility-specific collaborative groups to provide “for the design, implementation and review of demand-side programs as well as the design and implementation of a statewide technical reference manual.” Workshop participants generally agreed that a *statewide* collaborative complementary to the individual utility collaboratives would help develop some common products, such as the statewide technical reference manual mentioned above and in 4 CSR 240-20.093(7)(E). NRDC described the utility of such a collaborative in their “Language Regarding

Collaboratives" memorandum sent to Staff on June 14. The present rule will not provide a statewide forum to discuss important issues that individual utilities will have to face in developing and implementing effective DSM programs.

One aspect of the collaborative's work is drafting a statewide technical reference manual (TRM). At the workshops there seemed to be a broad consensus that such a document would be helpful in supporting effective program evaluation studies and in establishing a set of deemed savings estimates to be used in the program planning and design process. While the TRM is mentioned twice in the draft rules, there are no provisions that describe content and approval of this important document. In the joint filing by MDNR, NRDC and GRELC, the following language is recommended that specifies the purpose, structure, and content, of a TRM:

"10. Technical Resource Manual

Purpose: this rule specifies the contents and preparation of a Missouri-specific manual and data base containing minimum standards for Missouri verification, evaluation, and measurement practices and minimum standards for estimating savings values for specific measures.

A. Commission staff will develop and maintain the Technical Resource Manual (TRM) working in collaboration with a group consisting of Commission staff, Commission-appointed evaluators, the Office of Public Counsel, the Missouri Department of Natural Resources, participating Missouri gas and electric utilities, and other interested parties.

B. Contents and Revision. The TRM will consist of two major sections:
   1. A set of minimum standards for the conduct and review of verification, evaluation and measurement studies, revised at least every three (3) years to reflect developments in program design and in statistical and evaluation methodology.
      a) Evaluation standards will:
         i. Specify the appropriate comparison groups for a particular program design.
         ii. Specify the approach to evaluation of participant selection (i.e., how program participants are selected from the larger population of customers).
         iii. Specify the sampling methodology (including the acceptable confidence level and sample error).
         iv. Provide references to a library of acceptable questionnaire designs and survey items.
         v. Specify the diagnostic analyses necessary to identify and resolve sampling and response biases.

vi. Provide methods for the estimation of net savings, including the specification of methods for quantifying the effects of free-ridership and spillover.

vii. Provide methods for parsing energy savings between electric and gas utilities.

viii. Specify the requirements for evaluation reports, including report appendices and table layouts.

These standards will apply to the conduct of all types of evaluation studies, including market potential studies, process evaluation studies and impact evaluation studies.

2. An estimated savings database, revised as necessary to reflect the results of evaluation and measurement studies as described in section 9. The estimated savings database will list a series of energy efficiency measures, and the levels of savings and net-to-gross ratios for each. The items in the database will include the costs necessary to calculate measure-specific TRC. These cost and benefit values will be used to produce program-level TRC values. Database items will differentiate measures by program class (e.g., residential, commercial, industrial), by energy type (electric vs. gas) and whether they are weather sensitive.

C. Effect of the TRM

1. Utilities may use the results from evaluation and measurement studies that comply with the TRM for purposes of demonstrating verified net savings for use in mechanisms approved under section 13 of these rules.
2. Utilities may use the estimated savings levels in the TRM in calculating verified net savings."

Given the importance of the TRM for standardizing evaluation practice, providing standards for market potential studies, process and impact evaluation studies, and for providing a common set of measures for DSM programs, MDNR is willing to facilitate the development of a statewide TRM if the above language describing the TRM from the MDNR, NRDC and GRELC draft is included in the final rules. The TRM would also address the design issues for Market Potential Studies contained elsewhere in the draft rules (see 4 CSR 240-3.164((2)).

If rule provisions directing the development of a statewide TRM are adopted, the rules should also provide for the use of an estimated savings database in program planning.

Utility Performance Incentives

Performance incentives are discussed in 4 CSR 240-20.093(2)(G). This section establishes a shared net benefits approach to providing an incentive for utility performance towards the DSM goals. While 4 CSR 240-20.093(2) requires electric utilities to file an application with the Commission for a DSIM in a general rate proceeding, MDNR recommends that the rules establish some guidelines for performance incentives. Please see the MDNR, NRDC and GRLC joint filing dated May 25, 2010, Section 13 "Utility Performance Incentives".

Additional Comments

4 CSR 240-20.093:

Page 4, 20.093(2)(C), the list in 1-3 are the statements of policy of MEEIA; they do not represent criteria for cost recovery. If Staff keeps this list of policy statements in this section, the paragraph should read: "the commission shall approve the establishment, continuation or modification of a DSIM and associated tariff sheets if it finds the DSIM will assist the commission's efforts to implement state policy contained in MEEIA to:"

Page 5, 20.093(2)(I) 5. If the commission sets up a "low income class" as a subclass of residential service, and reduces or exempts the allocation of DSM program costs to that class, the rule as drafted would require those costs to "be assigned to other customers within the residential class." This is not part of the MEEIA.

Page 6, 20.093(4): Delete all of bracketed language.

4 CSR 240-20.094 comments:

Page 2, 20.094(3)(A) 3. MEEIA does not require programs to be "demonstrated through a pilot program" or previously used by a similarly sized utility elsewhere in order to be "likely to result in energy or demand savings". Perhaps Staff intended to provide that such experiences were two examples of the means of meeting the criteria, and if so, DNR proposes the following language:

"3. Are likely to result in energy or demand savings; programs may be deemed to meet this criteria if they were successfully ~~as~~ demonstrated through a pilot program, are part of ~~or~~ a similar established program at a utility of like size, or appear in the statewide TRM."

Page 3, 20.094(3)(B): For low-income and general education campaigns, the statutory test is solely whether it is in the public interest. The provision that they must also "meet the requirements in subsection (1) 2-5" is beyond the requirements of MEEIA. The Commission frequently deals with matters that require it to determine what is or is not in the public interest and this further mandate is not appropriate or required.

Page 3, 20.094(3)(C): Subsection (A)2-5 should not apply to programs partially funded by customers or tax credit or government or other incentives. This is clearly beyond the requirements of MEEIA.

4 CSR 240-3.163 comments:

Page 4, 3.163 (8): Delete all of bracketed text.

4 CSR 240-3.164 comments:

Page 3, 3.164(2)(A)—A marginal comment asks for "legal language to say "cannot be obtained" very strongly". The rule language jointly filed by MDNR, NRDC and GRLC contained the following minimum requirements for market potential studies:

"d) Minimum requirements for market potential studies:
i. Preparation by an independent third party.
ii. Assessment of the potential for cost-effective demand-side savings in a utility's service territory over the Plan period. For purposes of this potential, the study shall use the societal cost test.
iii. Clear description of the process used to identify potential measures and groups of measures for consideration and identification of any significant assumptions in this process.
iv. Statement of the projected costs and energy and demand savings associated with each measure or group of measures covered by the study. The study shall base the costs and savings on the best available information, **including but not limited to actual values experienced by the utility that is the subject of the study**, utilities operating in similar markets, and other third party studies." (emphasis added)

Page 3, 3.164(2)(A)4.A. Reference to "customers who have received an "acceptance to opt-out" is not consistent terminology with 240-20.094, which refers to a "utility's acknowledgement or plan to dispute a customer's notification". Terms should be consistent.

Page 4, (2)(E) DNR requests Staff to explain likely electric utility with electric utility joint programs, or if they meant electric and other utilities operating in same area; i.e., gas or non-regulated utilities, DNR recommends striking second "electric" in reference to joint programs supported "by the electric utility and at least one other entity such as a ~~electric~~ gas corporation or non-regulated utility service provider". Joint programs are more likely to be with natural gas utilities in the same or adjacent to, the electric utility's service territory.