

**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.) Case No. EX-2010-0368

**MISSOURI ENERGY DEVELOPMENT ASSOCIATION
COMMENTS TO PROPOSED RULES TO IMPLEMENT THE
MISSOURI ENERGY EFFICIENCY INVESTMENT ACT (SB 376)**

COMES NOW Union Electric Company d/b/a Ameren Missouri and Missouri Energy Development Association (“MEDA”), specifically on behalf of its electric utility members,¹ and hereby provides Comments to the Missouri Public Service Commission’s (“Commission” or “PSC”) Proposed Rules published in the *Missouri Register* on November 15, 2010. The Commission is promulgating proposed rules 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094, to implement Senate Bill 376 (“SB 376”), codified at Section 393.1075, RSMo. Cum. Supp. 2009, and known as the Missouri Energy Efficiency Investment Act (“MEEIA”).

General Comments

1. Governor Jay Nixon signed SB 376 into law on July 13, 2009. The Governor’s press release pointed out that the bill would give the Commission the “ability to encourage cost-effective energy efficiency by making utility investments in energy efficiency programs for their customers at least as profitable as building new power plants or making capital investments.”² Now, a year and a half later, the Commission is

¹ Kansas City Power & Light Company; KCP&L Greater Missouri Operations Company; The Empire District Electric Company; and Union Electric Company d/b/a Ameren Missouri.

² Missouri Governor Jay Nixon News Release, July 13, 2009.

on the verge of adopting rules implementing this law. The MEDA member utilities believe these rules will play a critical role in whether or not Governor Nixon's goal can be reached. If the rules function to encourage Missouri electric utilities to invest in energy efficiency, then the purpose of the bill can be reached. If the rules fail to deal with the very real challenges which frustrate full electric utility investment in energy efficiency in Missouri, then the Governor's goal will go unfulfilled.

Recognizing the critical importance regarding Commission action in this matter, MEDA and its member electric utilities have submitted numerous pleadings and correspondence in this docket and throughout the rulemaking process. As previously noted, at its foundation, SB 376 became law on the principle that greater implementation of cost-effective energy efficiency programs will be beneficial for all Missourians. SB 376 specifically recognizes this fact and includes provisions designed to align the interests of electric service providers and their customers in achieving this goal. MEDA respectfully requests that the Commission consider the following comments and recommendations prior to taking further steps to finalize the proposed rules. MEDA's concerns are organized into two sections, the first containing those concerns with the proposed rule that it considers critical and the second being the remaining, albeit serious, concerns.

Critical Concerns

4 CSR 240-20-093 and 094

2. There are two areas of critical importance to the effectiveness of this rule in enabling the pursuit of achieving all cost-effective energy efficiency. First is how the targets are determined and the relationship of those targets to the goals in 094(2)(A) and

(B). Second and most importantly is how lost revenues are treated. There are several sections of the proposed rules, as outlined below, that are unfavorable to the recovery of lost revenues and as such will dramatically dampen the policy of encouraging utility investment in energy efficiency programs.

Targets, Goals, and Penalties

3. Section 393.1075.3, RSMo. sets forth the underlying policy of the Act and provides positive language that eliminates some of the existing barriers to the implementation of energy efficiency faced by utilities:

3. It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs. In support of this policy, the commission shall:

- (1) Provide timely cost recovery for utilities;
- (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 verifiable efficiency savings.

However, the language in 4 CSR 240-20-094(2) does not follow this same positive direction when it states "...do not meet the incremental or cumulative annual demand-side savings goals established in this section may impact the utility's DSIM revenue requirement but is not by itself sufficient grounds to assess a penalty or adverse consequence for poor performance." As discussed in the Dissenting Opinions of both Commissioner Jarrett and Commissioner Davis, the Missouri Energy Efficiency Investment Act uses positive language that is focused on encouraging the utilities, not

creating additional disincentives to energy efficiency by imposing the risk of penalties or other adverse consequences on utilities.

MEDA also would note similar negative language used in 4 CSR 240-20-093 (2)(E) when the commission “...shall consider...the incentives or disincentives provided to the utility as a result of the inclusion or exclusion of cost recovery component....” Again, the purpose of the MEEIA is to remove barriers and reduce risk to the utilities that are created under the traditional regulatory model of utility cost recovery.

Recommendation: Section 393.1075, RSMo. contains no support for “penalties” or “adverse consequences.” All references, or implications, to penalties or adverse consequences should be removed from each of the four proposed rules relating to the MEEIA, with the exception of 4 CSR 240-20.094(7)(B) as it was explicit in the underlying statute. Attachment A contains recommended changes to clarify that negative consequences are exclusively limited to performance incentives.

4. Comment: 4 CSR 240-20.094(2)(A) and (B) establish energy and demand savings goals, increasing for each year between 2012 and 2020. MEDA opposes the goals reflected in the proposed rule as they appear to have been developed without any utility-specific analyses and are, in fact, inconsistent with current potential studies. Indeed, there is no statutory language supporting the establishment of targets. Instead, the statute directs the Commission to align utility interests so that Missouri utilities are incented to pursue all cost effective energy efficiency.

Recommendation: Any goals to be applied in the future, if permissible by law, should be strongly linked to reasonable and achievable savings goals supported by utility-specific potential studies. Without waiving the above-stated objections and concerns,

MEDA proposes language revisions to Paragraphs (2) and (3) in Attachment A relating to how targets are defined and how they impact the revenue requirements. Section 164(2)(D) should also be modified to clarify the relationship between targets and goals. (The proposed language revisions are also referenced in 4 CSR 240-3.164(2)(D) of Attachment A.)

Lost Revenues

5. Comment: The definition of lost revenues should be modified to conform with the definition included in the Chapter 22 rules. There is no reason for the Commission's rules to contain two different definitions for the same concept.

Recommendation: The Commission's definition of lost revenues is in its current Chapter 22 rules should be adopted as part of these rules. This language can be found in Attachment A.

6. Comment: Paragraph 093(2)(G) sections 2, 3, and 4 are not consistent with the statute's goal of aligning utility financial incentives. The MEDA utilities believe it is imperative lost revenues be explicitly addressed in this rulemaking. As part of that effort, lost revenues should be recovered on a one-for-one basis and should not be subject to meeting any targets. It is inconsistent for the Commission to approve a three-year plan with a budget, targets, cost recovery, and incentives, then only allow the lost revenue component to be retrospective. Customer rates should be updated to include the Commission approved plan, which would include forecasts for cost recovery, lost revenues, and incentives. The proposed rules are unnecessarily restrictive for lost revenues and will ultimately prevent the achievement of all cost-effective energy efficiency.

Recommendation: Remove sections 2, 3, and 4 of paragraph 093(2)(G) in their entirety and slightly modify the definition of DSIM revenue requirement and DSIM utility lost revenue requirement.

Other Major Concerns

4 CSR 240-3.163 – Electric Utility Demand-Side Programs Investment Mechanisms Filing and Submission Requirements

7. Comment: MEDA respectfully submits proposed language changes to various definitions set forth in Paragraph (1), and would note, in particular, amended language for Subparagraphs (C) “Annual net shared benefits” and (Similar language changes are proposed to the other rules as applicable (set forth in Attachment A), and such suggested changes will not be repeated under the comments/discussion of those other rules, *infra*.)

Recommendation: MEDA recommends the revised language as set forth in Attachment A.

8. Comment: Paragraph (9)(A) of the proposed rule states, in part:

A person or entity granted intervention in a demand-side program approval proceeding in which a DSIM is approved by the commission, shall be a party to any subsequent related periodic rate adjustment proceeding without the necessity of applying to the commission for intervention;

MEDA disagrees with Paragraph (9)(A) as proposed.

Recommendation: Intervention status in any subsequent related periodic rate adjustment proceeding should not be automatic. With more special interest groups and parties intervening in Commission proceedings, coupled with the fact that such proceedings could stretch over a number of years, it is necessary to verify that the parties are still relevant to the case and have not experienced any change in their relationship to

the applicant that would impact their intervenor status. Simply requiring such person or entity to file a notice of intention to participate within the intervention period is not sufficient, as the proposed rule requires that affidavits, testimony, information, reports, and workpapers to be filed or submitted by the company must be served on such parties concurrently with filing the same with the Commission. MEDA recommends the Commission not make intervention automatic but rather require that the utility notify parties to the most recent previous demand-side program approval proceeding of the new filing. Each party will need to request intervention. As part of that process, the issue of whether or not their participation is still appropriate can be addressed using the Commission's normal procedures. Once intervention is granted, then the utility should serve that party with any affidavits, testimony, information, reports or workpapers.

4 CSR 240-20.093 – Demand-Side Programs Investment Mechanisms

9. Comment: Paragraph (2)(C) states: “Any party to the application for demand-side program approval proceeding may support or oppose the establishment, continuation, or modification of a DSIM and/or may propose an alternative DSIM for the commission’s consideration including, but not limited to, modifications to any electric utility’s proposed DSIM.” MEDA disagrees with Paragraph (2)(C) as proposed and requests a modification. In no case should the utility be compelled to accept a proposed alternative or modified DSIM with which it does not agree. Section 393.1075.4 underscores the voluntary nature of the Act and the permissive language for electric utilities offering such programs: “The commission shall permit electric corporations to implement commission-approved demand-side programs proposed pursuant to this section with a goal of achieving all cost-effective demand side savings.” The

Commission is an agency of limited jurisdiction and authority, and the lawfulness of its actions depends upon whether or not it has statutory authority to act.

Recommendation: The electric utility must have the final say on whether any modification or “alternative DSIM” is acceptable. Attachment A contains additional language which addresses this concern and makes it clear that the utility must agree with any proposed modification before the Commission may order that modification to be implemented.

10. Comment: In Paragraph (2)(E), the following language should be modified, omitting the words “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.”

Recommendation: Paragraph (2)(E) would then read: “In determining to approve, modify, or continue a DSIM, the commission shall consider, but is not limited to only considering, the ability to measure and verify the approved program’s impacts, ...” Attachment A reflects the changes necessary for this section.

11. Comment: In Paragraph (4), the language which sets forth requirements for semi-annual adjustments of DSIM should be modified to apply not only to the cost recovery component of the DSIM, but to all components of the DSIM: cost recovery, lost margins or lost revenues and incentive.

Recommendation: In order to comply with the intent of the MEEIA, in particular -- timely cost recovery to utilities, aligning utility financial incentives with helping customers use energy efficiently, and providing timely earnings opportunities associated with cost-effective energy efficiency -- adjustments of DSIM rates between general rate

proceedings should apply to all components of the DSIM. These three components must be addressed in concert to provide a sustainable business model for utilities to pursue DSM programs and both benefit customers and satisfy shareholders. Attachment A reflects the changes necessary for this section.

12. Comment: Paragraph (10)(B) currently reads:

The staff shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred eighty (180) days after the staff initiates its prudence audit. The timing and frequency of prudence audits for DSIM shall be established in the utility's demand-side program approval proceeding in which the DSIM is established. The staff shall file notice within ten (10) days of starting its prudence audit. The commission shall issue an order not later than two hundred ten (210) days after the staff commences its prudence audit if no party to the proceeding in which the prudence audit is occurring files, within one hundred ninety (190) days of the staff's commencement of its prudence audit, a request for a hearing.

While MEDA acknowledges the parties need time to review the Staff's recommendations, the ability to request a hearing within twenty days of the scheduled order date is an extremely short period for other parties to respond to the request for hearing. The timing of the request for hearing also has the potential for a substantial delay in the process timeline setout in the rule.

Recommendation: To minimize the potential for a delay in the Commission order date, MEDA recommends that the Staff's initial recommendation be filed no later than 150 days after the initiation of the prudence audit with the opportunity to request a hearing moved to 160 days from the commencement of the prudence audit. The Commission shall issue an order not later than two hundred ten (210) days after Staff commences its prudence audit, if no party requests a hearing. These changes are reflected in Attachment A.

4 CSR 240-20-.094 Demand-Side Programs

13. Comment: Paragraph (3) provides, in part:

. . . Any existing demand-side program with tariff sheets in effect prior to the effective date of this rule shall be included in the initial application for approval of demand-side programs if the utility intends for unrecovered and/or new costs related to the existing demand-side program be included in the DSIM cost recovery revenue requirement, . . .

Recommendation: Any transition from existing demand-side programs in effect pursuant to existing and approved tariff sheets must ensure the recovery of lawfully approved and unrecovered costs. This language may require clarification regarding a company's ability to recover such costs, particularly in the event that such tariffed program is being discontinued.

14 Comment: Paragraph (4) provides in part:

Applications for approval of modifications to electric utility demand-side programs. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility shall file an application with the commission for modification of demand-side programs by filing information and documentation required by 4 CSR 240-3.164(4) when there is a variance of twenty percent (20%) or more in the approved demand-side program annual budget and/or any program design modification which is no longer covered by the approved tariff sheets for the program. . . .

Recommendation: MEDA proposes two changes to the above language, by inserting the word "plan" after demand-side program, and revising the annual budget language to a three-year budget. These changes would allow flexibility in the timing of applications for modification of the plan, and reduce the number of applications. The proposed rule allows very little flexibility as most changes within a program would trigger the requirement to file for Commission approval of that change. Changing the focus to the demand-side program plan would require Missouri utilities to seek approval

when making major modifications to its demand-side plan. In other words, if a utility plans to significantly deviate from the program which it has filed with the Commission, then filing for a modification makes sense. Filing every time a utility needs to reallocate funds between already approved programs does not accomplish any purpose. The proposed changes are reflected in Attachment A.

15. MEDA has included a redline copy of the proposed rules as **Attachment A** to these comments, incorporating all of the comments and recommendations discussed above.

16. Ameren Missouri has been authorized to file these comments on behalf of MEDA.

Conclusion

MEDA respectfully requests that the Commission consider the foregoing comments when finalizing the proposed rules addressed herein.

Respectfully submitted,

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d/b/a Ameren Missouri

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Dated: December 15, 2010

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 15th day of December, 2010, to all parties on the Commission's service list in this case.

/s/ Wendy K. Tatro _____
Wendy K. Tatro

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

PROPOSED RULE

4 CSR 240-3.163 Electric Utility Demand-Side Programs Investment Mechanisms Filing and Submission Requirements

PURPOSE: This rule sets forth the information that an electric utility must provide when it seeks to establish, continue, modify, or discontinue a Demand-Side Programs Investment Mechanism (DSIM). This rule also sets forth the requirements for submission of information related to DSIM rate adjustment filings and for submission of annual reports as required for electric utilities that have a DSIM.

(1) As used in this rule, the following terms mean:

(A) Annual net shared benefits means the utility's avoided costs, 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;

(B) Annual report means a report of information concerning a utility's demand-side programs having the content described in section (5);

(C) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from energy savings and demand savings associated with generation, transmission, and distribution facilities. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(D) Demand means the rate of electric power use measured over an hour in kilowatts (kW);

(E) 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 meter including, but not limited to, energy efficiency measures, load management, demand response, and interruptible or curtailable load;

(F) Demand-side programs investment mechanism, or DSIM, means a mechanism approved by the commission in a utility's filing for demand-side program approval to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation:

1. Cost recovery of demand-side program costs through capitalization of investments in demand-side programs;

2. Cost recovery of demand-side program costs through a demand-side program cost tracker;

3. Accelerated depreciation on demand-side investments;

4. Recovery of lost revenues; and

5. Utility incentive based on the achieved performance level of approved demand-side programs;

(G) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval proceeding or a semi-annual DSIM rate adjustment case;

(H) DSIM rate means the charge on a customer's bill for the portion of the DSIM revenue requirement assigned by the commission to a rate class;

(I) DSIM revenue requirement means the sum of the DSIM cost recovery revenue requirement, DSIM utility lost revenue requirement, and the DSIM utility incentive revenue requirement, as approved by the commission in the utility's last filing for demand-side program approval;

(J) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval proceeding to provide the utility with a portion of annual net shared benefits based on the achieved performance level of approved demand-side programs demonstrated through energy and demand savings measured and documented through EM&V reports compared to energy and demand savings targets;

(K) DSIM utility lost revenue requirement means the component of the utility's revenue requirement as approved by the commission in a utility's filing for demand-side program approval proceeding to address the recovery of lost revenue;

(L) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

(M) Energy means the total amount of electric power that is used over a specified interval of time measured in kilowatt-hours (kWh);

(N) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(O) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

Deleted: measured and documented through evaluation, measurement, and verification (EM&V) reports for approved demand-side programs

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(P) Lost margin or lost revenues means the reduction between rate cases in billed demand (kW) and energy (kWh) due to installed demand-side measures, multiplied by the fixed-cost margin of the appropriate rate component;

(Q) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility decision-makers, may be imposed at some point within the planning horizon which would result in compliance costs that could have a significant impact on utility rates. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its probable environmental costs;

(R) Staff means all commission employees, except the secretary of the commission, general counsel, technical advisory staff as defined by section 386.135, RSMo, hearing officer, or regulatory judge; and

(S) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs plus avoided probable environmental cost to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program to quantify the net savings obtained by substituting the demand-side program for supply-side resources.

(2) When an electric utility files to establish a DSIM as described in 4 CSR 240-20.093(2), the electric utility shall file the following supporting information as part of, or in addition to, its direct testimony for the demand-side program filing. Supporting workpapers shall be submitted as executable versions in native format with all formulas intact.

(A) The notice provided to customers describing how the proposed DSIM will work, how any proposed DSIM rate will be determined, and how any DSIM rate will appear on customer bills.

(B) An example customer bill showing how the proposed DSIM shall be separately identified on affected customers' bills.

(C) A complete description and explanation of the design, rationale, and intended operation of the proposed DSIM.

(D) Estimates of the effect of the DSIM on customer rates and average bills for each of the next three (3) years for each rate class.

(E) Estimates of the effect of the utility incentive component of DSIM on utility earnings and key credit metrics for each of the next three (3) years which shows the level of earnings and credit metrics expected to occur for each of the next three (3) years with and without the utility incentive component of DSIM.

(F) A complete explanation of all the costs that shall be considered for recovery under the proposed DSIM and the specific account used for each cost item on the electric utility's books and records.

(G) A complete explanation of any change in business risk to the electric utility resulting from implementation of a utility incentive related to the DSIM in setting the electric utility's allowed return on equity, in addition to any other changes in business risk experienced by the electric utility.

(H) A proposal for how the commission can determine if any DSIM utility incentives are aligned with helping customers use energy more efficiently.

(I) Annual reports, if any, required by 4 CSR 240-20.093(8).

(J) If the utility proposes to adjust its DSIM rates between general rate proceedings, proposed DSIM rate adjustment clause tariff sheets.

(K) If the utility proposes to adjust the DSIM revenue requirement between general rate proceedings, a complete explanation of how the DSIM rates shall be established and adjusted to reflect over-collections or under-collections as well as the impact on the DSIM revenue requirement as a result of approved new, modified, or discontinued demand-side programs.

(3) If an electric utility files to modify its approved DSIM, the electric utility shall file with the commission and serve parties, as provided in section (9), the following supporting information as part of, or in addition to, its direct testimony. Supporting workpapers shall be submitted with all models and spreadsheets provided as executable versions in native format with all formulas intact.

(A) Information as required by subsections (2)(A) through (K).

(B) Explanation of any proposed modification to the DSIM and why the proposed modification is being requested.

(C) A complete explanation of any change in business risk to the electric utility resulting from modification of a utility incentive related to the DSIM in setting the electric utility's allowed return on equity, in addition to any other changes in business risk experienced by the electric utility.

(D) Any additional information the commission ordered to be provided.

(4) If an electric utility files to discontinue its approved DSIM, the electric utility shall file with the commission and serve parties, as provided in section (9), the following supporting information as part of, or in addition to, its direct testimony. Supporting workpapers shall be submitted with all models and spreadsheets provided as executable versions in native format with all formulas intact.

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.093(3)(D).

Deleted: Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V

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(B) If the utility's DSIM allows adjustments of the DSIM rates between general rate proceedings, a complete explanation of how the over-collection or under-collection of the DSIM revenue requirement that the electric utility is proposing to discontinue shall be handled.

(C) A complete explanation of why the DSIM is no longer necessary to provide the electric utility a sufficient opportunity to recover demand-side programs costs, lost revenues, and/or to receive a utility incentive.

(D) A complete explanation of any change in business risk to the electric utility resulting from discontinuation of a utility incentive related to the DSIM in setting the electric utility's allowed return on equity, in addition to any other changes in business risk experienced by the electric utility.

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(E) Any additional information the commission ordered to be provided.

(5) Each electric utility with approved demand-side programs shall submit, with an affidavit attesting to the veracity of the information, annual reports as required in 4 CSR 240-20.093(8) to the manager of the energy resource analysis section of the staff, public counsel, and others as provided in section (9). The submission to the staff may be made through the commission's electronic filing and information system (EFIS). Annual reports shall include at a minimum the following information and all models and spreadsheets shall be provided as executable versions in native format with all formulas intact:

(A) A list of all approved demand-side programs and the following information for each approved demand-side program:

1. Actual amounts expended by year, including customer incentive payments;
2. Peak demand and energy savings impacts and the techniques used to estimate those impacts;
3. A comparison of the estimated actual annual peak demand and energy savings impacts to the level of annual peak demand and energy savings impacts that were projected when the program was approved;
4. For market transformation programs, a quantitative and qualitative assessment of the progress being made in transforming the market;
5. A comparison of actual and budgeted program costs, including an explanation of any increase or decrease of more than ten percent (10%) in the cost of a program;
6. The avoided costs and the techniques used to estimate those costs;
7. The estimated cost-effectiveness of the demand-side program and a comparison to the estimates made by the utility at the time the program was approved;
8. The estimated net economic benefits of the demand-side program;
9. For each program where one (1) or more customers have opted out of demand-side programs pursuant to section 393.1075.7, RSMo, a listing of the customer(s) who have opted out of participating in demand-side programs;
10. A copy of the EM&V report for the most recent annual reporting period; and
11. Demonstration of relationship of the demand-side program to demand-side resources in latest filed 4 CSR 240-22 compliance filing; and

(B) If the utility's DSIM includes adjustments of the DSIM rates between general rate proceedings, the actual revenues billed under the DSIM.

(6) If the electric utility is not submitting a Surveillance Monitoring Report as required in 4 CSR 240-3.161(6) Electric Utility Fuel and Purchased Power Cost Mechanisms Filing and Submission Requirements, then it shall submit a Surveillance Monitoring Report in the form and content required in 4 CSR 240-3.161(6). In addition to the requirements under 4 CSR 240-3.161(6), each electric utility with a DSIM shall submit as page 6 of the Surveillance Monitoring Report a quarterly progress report in a format determined by the staff, and all models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

(7) EM&V reports shall document, include analysis, and present any applicable recommendations for at least the following, and all models and spreadsheets shall be provided as executable versions in native format with all formulas intact:

(A) Process evaluation and recommendations, if any; and

(B) Impact evaluation—

1. The lifetime and annual gross and net demand savings and energy savings achieved under each program, and the techniques used to estimate annual demand savings and energy savings; and
2. A demonstration of the cost-effectiveness of the program, to include at a minimum the TRC of each program.

A. If a program is determined not to be cost-effective, the electric utility shall identify the causes why and present appropriate program modifications, if any, to make the program cost-effective. If there are no modifications to make the program cost-effective, the utility shall describe how it intends to end the program and how it intends to achieve the energy and demand savings initially estimated for the discontinued program.

B. The fact that a program proves not to be cost-effective is not by itself sufficient grounds for disallowing cost recovery.

(8) If an electric utility's DSIM includes adjustments of the DSIM rates between general rate proceedings, when it files with the commission tariff sheets to adjust its DSIM rates as described in 4 CSR 240-20.093(4), and serves parties as provided in section (9) in this rule, the tariff sheets shall be accompanied by supporting testimony and contain at least the following supporting information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

(A) Amount of revenue that it has over-collected or under-collected through the most recent recovery period by rate class.

(B) Proposed adjustments or refunds by rate class.

(C) Electric utility's short-term borrowing rate.

(D) Proposed adjustments to the current DSIM rates.

(E) Complete documentation for the proposed adjustments to the current DSIM rates.

(F) Annual report as required by 4 CSR 240-20.093(8).

(G) Any additional information the commission ordered to be provided.

(9) Party status and providing to other parties affidavits, testimony, information, reports, and workpapers in related proceedings subsequent to the demand-side program approval proceeding establishing, modifying, or continuing a DSIM.

(A) ~~A utility filing a subsequent periodic rate adjustment proceedings shall notify all parties to its previous demand-side program approval proceeding so that those parties may file for intervention in the new case. Once intervention has been granted, affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent related semi-annual DSIM rate adjustment proceeding or demand-side program approval proceeding to modify, continue, or discontinue the same DSIM shall be served on or submitted to all parties from the prior related demand-side program approval proceeding and on all parties from any subsequent related periodic rate adjustment proceeding or demand-side program approval proceeding to modify, continue, or discontinue the same DSIM, concurrently with filing the same with the commission or submitting the same to the manager of the energy resource analysis section of the staff and public counsel.~~

(B) A person or entity not a party to the demand-side program approval proceeding in which a DSIM is approved by the commission may timely apply to the commission for intervention, pursuant to 4 CSR 240-2.075(2) through (4) of the commission's rule on intervention, respecting any related subsequent periodic rate adjustment proceeding, or, pursuant to 4 CSR 240-2.075(1) through (5), respecting any subsequent demand-side program approval proceeding to modify, continue, or discontinue the same DSIM.

(10) Right to Discovery Unaffected. In addressing certain discovery matters and the provision of certain information by electric utilities, this rule is not intended to restrict the discovery rights of any party.

(11) Variances. Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.

(12) Rule Review. The commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date of this rule and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

AUTHORITY: section 393.1075.11, RSMo Supp. 2009. Original rule filed Oct. 4, 2010.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule is estimated to cost affected private entities two hundred thousand dollars (\$200,000) in year one, two hundred thousand dollars (\$200,000) in year two, two hundred thousand dollars (\$200,000) in year three, and two hundred thousand dollars (\$200,000) in year four.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after publication of this notice in the **Missouri Register** and should include a reference to Commission Case No. EX-2010-0368. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/case-filing-information>. A public hearing regarding this proposed rule is scheduled for Monday, December 20, 2010, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule and may be asked to respond to commission questions.*

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service

Deleted: A person or entity granted intervention in a demand-side program approval proceeding in which a DSIM is approved by the commission shall be a party to any subsequent related periodic rate adjustment proceeding without the necessity of applying to the commission for intervention; however, such person or entity shall file a notice of intention to participate within the intervention period.

Deleted: In any subsequent demand-side program approval proceeding, such person or entity must seek and be granted status as an intervenor to be a party to that proceeding. A

Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

PROPOSED RULE

4 CSR 240-3.164 Electric Utility Demand-Side Programs Filing and Submission Requirements

PURPOSE: This rule sets forth the information that an electric utility must provide when it seeks approval, modification, or discontinuance of demand-side programs.

(1) As used in this rule, the following terms mean:

(A) Avoided cost or utility avoided cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from energy savings and demand savings associated with generation, transmission, and distribution facilities. The utility shall use the same methodology used in its most recently adopted preferred resource plan to calculate its avoided costs;

(B) Baseline demand forecast means a reference end-use forecast of demand in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(C) Baseline energy forecast means a reference end-use forecast of energy in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(D) Demand means the rate of electric power use over an hour measured in kilowatts (kW);

(E) Demand-side portfolio or portfolio of programs means all of a utility's demand-side programs at a defined point in time;

(F) 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 meter including, but not limited to, energy efficiency measures, load management, demand response, and interruptible or curtailable load;

(G) Demand-side program plan means a particular combination of demand-side programs to be delivered according to a specified implementation schedule and budget;

(H) Economic potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from customer adoption of all cost-effective measures, regardless of customer preferences;

(I) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

(J) Energy means the total amount of electric power that is used over a specified interval of time measured in kilowatt-hours (kWh);

(K) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(L) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

(M) Lost margin or lost revenues means the reduction between rate cases in billed demand (kW) and energy (kWh) due to installed demand-side measures, multiplied by the fixed-cost margin of the appropriate rate component;

(N) Maximum achievable potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation and ideal implementation conditions. Maximum achievable potential establishes a maximum target for demand-side savings that a utility can expect to achieve through its demand-side programs and involves incentives that represent a very high portion of total programs costs and very short customer payback periods. Maximum achievable potential is considered the hypothetical upper-boundary of achievable demand-side savings potential, because it presumes conditions that are ideal and not typically observed;

(O) Measure means any device, technology, or operating procedure that makes it possible to deliver an adequate level and quality of energy service while—

1. Using less energy than would otherwise be required; or
2. Altering the time pattern of electricity so as to require less generating capacity or to allow the electric power to be supplied from more fuel-efficient units;

(P) Non-participant test (sometimes referred to as the ratepayer impact measure test or RIM test) is a measure of the difference between the change in total revenues paid to a utility and the change in total cost incurred by the utility as a result of the implementation of demand-side programs. The benefits are the avoided cost as a result of implementation. The costs consist of incentives paid to participants, other costs incurred by the utility,

Deleted: Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net retail kWh below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V

and the loss in revenue as a result of diminished consumption. Utility costs include the costs to administer, deliver, and evaluate each demand-side program;

(Q) Participant test means the test of the cost-effectiveness of demand-side programs that measures the economics of a demand-side program from the perspective of the customers participating in the program;

(R) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility decision-makers, may be imposed at some point within the planning horizon which would result in compliance costs that could have a significant impact on utility rates. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its probable environmental costs;

(S) Program pilot means a demand-side program designed to operate on a limited basis for evaluation purposes before full implementation;

(T) Realistic achievable potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation and realistic implementation conditions. Realistic achievable potential establishes a realistic target for demand-side savings that a utility can expect to achieve through its demand-side programs and involves incentives that represent a moderate portion of total program costs and longer customer payback periods when compared to those associated with maximum achievable potential;

(U) Societal cost test means the total resource cost test with the addition of societal benefits (externalities such as, but not limited to, environmental or economic benefits) to the total benefits of the total resource cost test;

(V) Staff means all commission employees, except the secretary of the commission, general counsel, technical advisory staff as defined by section 386.135, RSMo, hearing officer, or regulatory judge;

(W) Technical potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from a theoretical construct that assumes all feasible measures are adopted by customers of the utility regardless of cost or customer preference;

(X) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility cost plus avoided probable environmental cost to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program to quantify the net savings obtained by substituting the demand-side program for supply-side resources; and

(Y) Utility cost test means the test that compares the avoided utility costs to the sum of all utility incentive payments, plus utility costs to administer, deliver, and evaluate each demand-side program to quantify the net savings obtained by substituting the demand-side program for supply-side resources.

(2) When an electric utility files for approval of demand-side programs or demand-side program plans as described in 4 CSR 240-20.094(3), the electric utility shall file or provide a reference to which commission case contains the following information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

(A) A current market potential study. The current market potential study shall use primary data and analysis for the utility's service territory. The determination of whether to conduct a market potential study for the utility's service territory or for all statewide investor-owned electric utilities shall be at the discretion of the electric utility. If the current market potential study of the electric utility that is filing for approval of demand-side programs or a demand-side program plan is part of a statewide investor-owned electric utilities market potential study, the sampling methodology shall reflect each utility's service territory and shall provide statistically significant results for that utility. The current market potential study shall be updated with primary data and analysis no less frequently than every four (4) years. To the extent that primary data for each utility service territory is unavailable or insufficient, the market potential study may also rely on or be supplemented by data from secondary sources and relevant data from other geographic regions. The current market potential study shall be prepared by an independent third party with opportunities for commission staff and stakeholder review and input in the planning stages of the analysis including review of assumptions and methodology in advance of the performance of the study, and shall include at least the following:

1. Complete documentation of all assumptions, definitions, methodologies, sampling techniques, and other aspects of the current market potential study;

2. Clear description of the process used to identify the broadest possible list of measures and groups of measures for consideration;

3. Clear description of the process used to determine technical potential, economic potential, maximum achievable potential, and realistic achievable potential for a twenty (20)-year planning horizon for major end-use groups (e.g., lighting, space heating, space cooling, refrigeration, motor drives, etc.) for each customer class; and

4. Identification and discussion of the twenty (20)-year baseline energy and demand forecasts. If the baseline energy and demand forecasts in the current market potential study differ from the baseline forecasts in the utility's most recent 4 CSR 240-22 triennial compliance filing, the current market potential study shall provide a comparison of the two (2) sets of forecasts and a discussion of the reasons for any differences between the two (2) sets of forecasts. The twenty (20)-year baseline energy and demand forecasts shall account for the following:

- A. Discussion of the treatment of all of the utility's customers who have opted out;

- B. Changes in building codes and/or appliance efficiency standards;
- C. Changes in customer combined heat and power applications; and
- D. Third party and other naturally occurring demand-side savings.

(B) Demonstration of cost-effectiveness for each demand-side program and for the total of all demand-side programs of the utility. At a minimum, the electric utility shall include:

1. The total resource cost test and a detailed description of the utility's avoided cost calculations and all assumptions used in the calculation. To the extent that the portfolio of programs fails to meet the TRC test, the utility shall examine whether the failure persists if it considers a reasonable range of uncertainty in the assumptions used to calculate avoided costs;

2. The utility shall also include calculations for the utility cost test, the participant test, the non-participant test, and the societal cost test; and

3. The impacts on annual revenue requirements and net present value of annual revenue requirements as a result of the integration analysis in accordance with 4 CSR 240-22.060 over the twenty (20)-year planning horizon.

(C) Detailed description of each proposed demand-side program to include at least:

- 1. Customers targeted;
- 2. Measures included;
- 3. Customer incentives;
- 4. Proposed promotional techniques;
- 5. Specification of whether the program will be administered by the utility or a contractor;
- 6. Projected gross and net annual energy savings;
- 7. Proposed annual energy savings targets and cumulative energy savings targets;
- 8. Projected gross and net annual demand savings;
- 9. Proposed annual demand savings targets and cumulative demand savings targets;
- 10. Net-to-gross factors;
- 11. Size of the potential market and projected penetration rates;
- 12. Any market transformation elements included in the program and an EM&V plan for estimating, measuring, and verifying the energy and capacity savings that the market transformation efforts are expected to achieve;

13. EM&V plan including at least the proposed evaluation schedule and the proposed approach to achieving the evaluation goals pursuant to 4 CSR 240-3.163(7) and 4 CSR 240-20.093(7);

14. Budget information in the following categories:

- A. Administrative costs listed separately for the utility and/or program administrator;
- B. Program incentive costs;
- C. Estimated equipment costs;
- D. Estimated installation costs;
- E. EM&V costs; and
- F. Miscellaneous itemized costs, some of which may be an allocation of total costs for overhead items

such as the market potential study or the statewide technical reference manual;

15. Description of any strategies used to minimize free riders;

16. Description of any strategies used to maximize spillover; and

17. For demand-side program plans, the proposed implementation schedule of individual demand-side programs.

(D) Demonstration and explanation in quantitative and qualitative terms of how the utility's demand-side programs are expected to make progress towards a goal of achieving all cost-effective demand-side savings over the life of the programs. The utility shall provide a detailed explanation of how the expected demand-side savings compare to the savings levels defined in 4 CSR 240-20.094(2)(A) and (B).

(E) Identification of demand-side programs which are supported by the electric utility and at least one (1) other electric or gas utility (joint demand-side programs).

(3) Designation of Program Pilots. For programs designed to operate on a limited basis for evaluation purposes before full implementation (program pilot), the utility shall provide as much of the information required under subsections (2)(C) through (E) as is practical and shall include explicit questions that the program pilot will address, the means and methods by which the utility proposes to address the questions the program pilot is designed to address, a provisional cost-effectiveness evaluation, the proposed geographic area, and duration for the program pilot.

(4) When an electric utility files to modify demand-side programs as described in 4 CSR 240-20.094(4), the electric utility shall file a complete explanation for and documentation of the proposed modifications to each of the filing requirements in section (2). All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

Deleted: Should the expected demand-side savings fall short of the incremental annual demand-side savings levels and/or the cumulative demand-side savings levels used to review the utility's progress, the utility shall provide detailed explanation of why the incremental annual demand-side savings levels and/or the cumulative demand-side savings levels cannot be expected to be achieved, and the utility shall bear the burden of proof.

(5) When an electric utility files to discontinue a demand-side program as described in 4 CSR 240-20.094(5), the electric utility shall file the following information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

(A) Complete explanation for the utility's decision to request to discontinue a demand-side program.

(B) EM&V reports for the demand-side program in question.

(C) Date by which a final EM&V report for the demand-side program in question will be filed.

(6) Variances. Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.

(7) Rule Review. The commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

AUTHORITY: section 393.1075.11, RSMo Supp. 2009. Original rule filed Oct. 4, 2010.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule is estimated to cost affected private entities \$1,120,000 in year one, three hundred twenty thousand dollars (\$320,000) in year two, three hundred twenty thousand (\$320,000) in year three, and \$1,120,000 in year four.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after publication of this notice in the **Missouri Register** and should include a reference to Commission Case No. EX-2010-0368. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/case-filing-information>. A public hearing regarding this proposed rule is scheduled for Monday, December 20, 2010, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions.*

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities**

PROPOSED RULE

4 CSR 240-20.093 Demand-Side Programs Investment Mechanisms

PURPOSE: This rule allows the establishment and operation of Demand-Side Programs Investment Mechanisms (DSIM), which allow periodic rate adjustments related to recovery of costs and utility incentives for investments in demand-side programs.

(1) As used in this rule, the following terms mean:

(A) Annual demand savings target means the annual demand savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual demand-side savings targets are the baseline for determining the utility's demand-side programs' annual demand savings performance levels in the methodology for the utility incentive component of a demand-side programs investment mechanism (DSIM);

(B) Annual energy savings target means the annual energy savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual energy savings targets are the baseline for determining the utility's demand-side programs' annual energy savings performance levels in the methodology for the utility incentive component of a DSIM;

(C) Annual net shared benefits means the utility's avoided costs ~~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;~~

Deleted: measured and documented through evaluation, measurement, and verification (EM&V) reports for approved demand-side programs

(D) Annual report means a report of information concerning a utility's demand-side programs having the content described in 4 CSR 240-3.163(5);

(E) Approved demand-side program means a demand-side program or demand-side program pilot which is approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs;

(F) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from energy savings and demand savings associated with generation, transmission, and distribution facilities. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(G) Baseline demand forecast means a reference forecast of summer and winter demand at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(H) Baseline energy forecast means a reference forecast of energy at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(I) Cost recovery component of a DSIM means the methodology approved by the commission in a demand-side program approval proceeding to allow recovery of costs of approved demand-side programs with interest;

(J) Demand means the rate of electric power use measured over an hour in kilowatts (kW);

(K) Demand response means measures that decrease peak demand or shift demand to off-peak periods;

(L) 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 meter including, but not limited to, energy efficiency measures, load management, demand response, and interruptible or curtailable load;

(M) Demand-side programs investment mechanism, or DSIM, means a mechanism approved by the commission in a utility's filing for demand-side program approval to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation:

1. Cost recovery of demand-side program costs through capitalization of investments in demand-side programs;

2. Cost recovery of demand-side program costs through a demand-side program cost tracker;

3. Accelerated depreciation on demand-side investments;

4. Recovery of lost revenues; and

5. Utility incentive based on the achieved performance level of approved demand-side programs;

(N) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval proceeding or a semi-annual DSIM rate adjustment case;

(O) DSIM rate means the charge on customers' bills for the portion of the DSIM revenue requirement assigned by the commission to a rate class;

(P) DSIM revenue requirement means the sum of the DSIM cost recovery revenue requirement, DSIM utility lost revenue requirement, and the DSIM utility incentive revenue requirement, as approved by the commission in the utility's last filing for demand-side program approval;

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(Q) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval proceeding to provide the utility with a portion of annual net shared benefits based on the achieved performance level of approved demand-side programs demonstrated through energy and demand savings measured and documented through EM&V reports compared to energy and demand savings targets;

(R) DSIM utility lost revenue requirement means the component of the utility's revenue requirement approved by the commission in a utility's filing for demand-side program approval proceeding to address the recovery of lost revenue;

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Deleted: (if any)

(S) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

(T) Energy means the total amount of electric power that is used by customers over a specified interval of time measured in kilowatt-hours (kWh);

(U) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(V) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

(W) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs or rates and charges of the electric utility are considered by the commission;

(X) Lost margin or lost revenues means the reduction between rate cases in billed demand (kW) and energy (kWh) due to installed demand-side measures, multiplied by the fixed-cost margin of the appropriate rate component;

Deleted: Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V

(Y) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility decision-makers, may be imposed at some point within the planning horizon which would result in compliance costs that could have a significant impact on utility rates. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its probable environmental costs;

(Z) Program pilot means a demand-side program designed to operate on a limited basis for evaluation purposes before full implementation;

(AA) Staff means all commission employees, except the secretary of the commission, general counsel, technical advisory staff as defined by section 386.135, RSMo, hearing officer, or regulatory judge;

(BB) Statewide technical reference manual means a document that is used by electric utilities to assess energy savings and demand savings attributable to energy efficiency and demand response;

(CC) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs and avoided probable environmental cost to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program to quantify the net savings obtained by substituting the demand-side program for supply-side resources;

(DD) 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; and

(EE) Utility market potential study means an evaluation and report by an independent third party of the energy savings and demand savings available in a utility's service territory broken down by customer class and major end-uses within each customer class.

(2) Applications to establish, continue, or modify a DSIM. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility shall file an application with the commission to establish, continue, or modify a DSIM in a utility's demand-side program approval proceeding.

(A) The electric utility shall meet the filing requirements in 4 CSR 240-3.163(2) in conjunction with an application to establish a DSIM and 4 CSR 240-3.163(3) in conjunction with an application to continue or modify a DSIM.

(B) Any party to the application for demand-side program approval proceeding may support or oppose the establishment, continuation, or modification of a DSIM and/or may propose an alternative DSIM for the commission's consideration including, but not limited to, modifications to any electric utility's proposed DSIM.

(C) 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.

The utility has the right to reject any proposed modification and the Commission may only approve a proposed modification to a demand-side program if the utility accepts the modification.

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(D) In addition to any other changes in business risk experienced by the electric utility, the commission shall consider changes in the utility's business risk resulting from establishment, continuation, or modification of the DSIM in setting the electric utility's allowed return on equity in general rate proceedings.

(E) In determining to approve, modify, or continue a DSIM, the commission shall consider, but is not limited to only considering, 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.

Deleted: 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,

(F) Any cost recovery component of a DSIM shall be based on costs of demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs. Indirect costs associated with demand-side programs, including but not limited to costs of utility market potential study and/or utility's portion of statewide technical reference manual, shall be allocated to demand-side programs and thus shall be eligible for recovery through an approved DSIM. The commission shall order any DSIM approval simultaneously with the programs approved in accordance with 4 CSR 240-20.094 or in a semi-annual DSIM rate adjustment case.

(G) Any utility lost revenue component of DSIM shall be based on energy or demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V.

1. The commission shall order any DSIM utility lost revenue requirement simultaneously with the programs approved in accordance with 4 CSR 240-20.094.

(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.

Deleted: 2. In a utility's demand-side program approval proceeding in which lost revenues are considered there is no requirement for any implicit or explicit lost revenue recovery or for a particular form of lost revenue component.¶
3. The commission may address lost revenues solely or in part, directly or indirectly, with a performance incentive mechanism.¶
4. Any explicit lost revenue component of DSIM shall be implemented on a retrospective basis and all energy and demand savings for claimed lost revenues must be measured and verified through EM&V prior to recovery. ¶

1. Annual energy and demand savings targets approved by the commission for use in the DSIM utility incentive component are not necessarily the same as the incremental annual energy and demand savings goals and cumulative annual energy and demand savings goals specified in 4 CSR 240-20.094(2).

2. The commission shall order any DSIM utility incentive revenue requirement simultaneously with the programs approved in accordance with 4 CSR 240-20.094.

(I) If the DSIM proposed by the utility includes adjustments to DSIM rates between general rate proceedings, the DSIM shall include a provision to adjust the DSIM rates every six (6) months to include a true-up for over- and under-collection of the DSIM revenue requirement as well as the impact on the DSIM cost recovery revenue requirement as a result of approved new, modified, or deleted demand-side programs.

(J) If the commission approves a DSIM utility incentive component, such utility incentive component shall be binding on the commission for the entire term of the DSIM, and such DSIM shall be binding on the electric utility for the entire term of the DSIM, unless otherwise ordered or conditioned by the commission when approved.

(K) The commission shall apportion the DSIM revenue requirement to each customer class.

(3) Application for Discontinuation of a DSIM. The commission shall allow or require a DSIM to be discontinued or any component of a DSIM to be discontinued only after providing the opportunity for a hearing.

(A) The electric utility shall meet the filing requirements in 4 CSR 240-3.163(4).

(B) Any party to the demand-side program approval proceeding may oppose the discontinuation of a DSIM or any component of a DSIM.

(C) In addition to any other changes in business risk experienced by the electric utility, the commission may take into account any change in business risk to the electric utility resulting from discontinuance of the DSIM in setting the electric utility's allowed return on equity in a general rate proceeding.

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(D) If the utility requests that cost recovery be discontinued, in its notice to customers, the electric utility shall include a commission-approved description of why it believes the cost recovery component of the DSIM should be discontinued.

(4) Requirements for Semi-Annual Adjustments of DSIM Rates, if the Commission Approves Adjustments of DSIM Rates Between General Rate Proceedings. Semi-annual adjustments to DSIM rates between general rate proceedings shall include adjustments to the DSIM revenue requirement. Adjustments to the DSIM revenue requirement may reflect new and approved demand-side programs, approved program modifications, and/or approved program discontinuations. When an electric utility files tariff sheets to adjust its DSIM rates between general rate proceedings, the staff shall examine and analyze the information filed by the electric utility in accordance with 4 CSR 240-3.163(8) and additional information obtained through discovery, if any, to determine if the proposed adjustments to the DSIM revenue requirement and DSIM rates are in accordance with the provisions of this rule, section 393.1075, RSMo, and the DSIM established, modified, or continued in the most recent demand-side program approval proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff sheets to adjust its DSIM rates. If the adjustments to the DSIM revenue requirement and DSIM rates are in accordance with the provisions of this rule, section 393.1075, RSMo, and the DSIM established, modified, or continued in the most recent demand-side program approval proceeding, the commission shall issue an interim rate adjustment order approving the tariff sheets and the adjustments to the DSIM rates shall take effect sixty (60) days after the tariff sheets were filed. If the adjustments to the DSIM revenue requirement and DSIM rates are not in accordance with the provisions of this rule, section 393.1075, RSMo, or the DSIM established, modified, or continued in the most recent demand-side program approval proceeding, the commission shall reject the proposed tariff sheets within sixty (60) days of the electric utility's filing and may instead order the filing of interim tariff sheets that implement its decision and approval.

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(A) An electric utility with a DSIM shall file to adjust its DSIM rates once every six (6) months.

(B) The semi-annual adjustments to the DSIM rates shall reflect a comprehensive measurement of both increases and decreases to the DSIM revenue requirement established in the most recent demand-side program approval proceeding or semi-annual DSIM rate adjustment case plus the change in DSIM revenue requirement which occurred since the most recent demand-side program approval proceeding or semi-annual DSIM rate adjustment case.

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(C) The electric utility shall be current on its submission of its Surveillance Monitoring Reports as required in section (9) and its annual reports as required in section (8) in order to increase the DSIM rates.

(D) If the staff, public counsel, or other party receives information which has not been submitted in compliance with 4 CSR 240-3.163(8), it shall notify the electric utility within ten (10) days of the electric utility's filing of an application or tariff sheets to adjust DSIM rates and identify the information required. The electric utility shall submit the information identified by the party, or shall notify the party that it believes the information submitted was in compliance with the requirements of 4 CSR 240-3.163(8), within ten (10) days of the request. A party who notifies the electric utility it believes the electric utility has not submitted all the information required by 4 CSR 240-3.163(8) and as ordered by the commission in a previous proceeding and receives notice from the electric utility that the electric utility believes it has submitted all required information may file a motion with the commission for an order directing the electric utility to produce that information, i. e., a motion to compel. While the commission is considering the motion to compel, the processing timeline for the adjustment to increase DSIM rates shall be suspended. If the commission then issues an order requiring the information be submitted, the time necessary for the information to be submitted shall further extend the processing timeline for the adjustment to increase DSIM rates. For good cause shown, the commission may further suspend this timeline. Any delay in submitting sufficient information in compliance with 4 CSR 240-3.163(8) or a commission order in a previous proceeding in a request to decrease DSIM rates shall not alter the processing timeline.

(5) Implementation of DSIM. Once a DSIM is approved, modified, or discontinued by the commission, the utility shall use deferral accounting using the utility's latest approved weighted average cost of capital until the utility's next general rate proceeding. At the time of filing the general rate proceeding subsequent to DSIM approval, modification, or discontinuance the commission shall use an interim rate adjustment order to implement the approved, modified, or discontinued DSIM.

(A) Duration of DSIM. Once a DSIM is approved by the commission, it shall remain in effect for a term of not more than four (4) years unless the commission earlier authorizes the modification or discontinuance of the DSIM, although an electric utility shall submit proposed tariff sheets to implement interim semi-annual adjustments to its DSIM rates between general rate proceedings.

(B) If the utility has an implemented DSIM, the electric utility shall file a general rate proceeding within four (4) years after the effective date of the commission order implementing the DSIM, assuming the maximum statutory suspension of the rates so filed.

(6) Disclosure on Customers' Bills. Regardless of whether or not the utility requests adjustments of its DSIM rates between general rate proceedings, any amounts charged under a DSIM approved by the commission, including any utility incentives allowed by the commission, shall be separately disclosed on each customer's bill. Proposed language regarding this disclosure shall be submitted to and approved by the commission before it appears on customers' bills.

(7) Evaluation, Measurement, and Verification (EM&V) of the Process and Impact of Demand-Side Programs. Each electric utility shall hire an independent contractor to perform and report EM&V of each commission-approved demand-side program in accordance with 4 CSR 240-20.094 Demand-Side Programs. The commission shall hire an independent contractor to audit and report on the work of each utility's independent EM&V contractor.

(A) Each utility's EM&V budget shall not exceed five percent (5%) of the utility's total budget for all approved demand-side program costs.

(B) The cost of the commission's EM&V contractor shall—

1. Not be a part of the utility's budget for demand-side programs; and
2. Be included in the Missouri Public Service Commission Assessment for each utility.

(C) EM&V draft reports from the utility's contractor for each approved demand-side program shall be delivered simultaneously to the utility and to parties of the case in which the demand-side program was approved.

(D) EM&V final reports from the utility's contractor of each approved demand-side program shall—

1. Be completed by the EM&V contractor on a schedule approved by the commission at the time of demand-side program approval in accordance with 4 CSR 240-20.094(3); and
2. Be filed with the commission and delivered simultaneously to the utility and the parties of the case in which the demand-side program was approved.

(E) Electric utility's EM&V contractors shall use, if available, a commission approved statewide technical reference manual when performing EM&V work.

(8) Demand-Side Program Annual Report. Each electric utility with one (1) or more approved demand-side programs shall file an annual report by no later than sixty (60) days after the end of each calendar year in the form and having the content provided for by 4 CSR 240-3.163(5) and serve a copy on each party to the case in which the programs were last established, modified, or continued. Interested parties may file comments with the commission concerning the content of the utility's annual report within sixty (60) days of its filing.

(9) Submission of Surveillance Monitoring Reports. Each electric utility with an approved DSIM shall submit to staff, public counsel, and parties approved by the commission a Surveillance Monitoring Report in the form and having the content provided for by 4 CSR 240-3.163(6).

(A) The Surveillance Monitoring Report shall be submitted within fifteen (15) days of the electric utility's next scheduled United States Securities and Exchange Commission (SEC) 10-Q or 10-K filing with the initial submission within fifteen (15) days of the electric utility's next scheduled SEC 10-Q or 10-K filing following the effective date of the commission order establishing the DSIM.

(B) If the electric utility also has an approved environmental cost recovery mechanism or a fuel cost adjustment mechanism, the electric utility shall submit a single Surveillance Monitoring Report for all mechanisms.

(C) Upon a finding that a utility has knowingly or recklessly provided materially false or inaccurate information to the commission regarding the surveillance data prescribed in 4 CSR 240-3.163(6), after notice and an opportunity for a hearing, the commission may suspend a DSIM or order other appropriate remedies as provided by law.

(10) Prudence Reviews. A prudence review of the costs subject to the DSIM shall be conducted no less frequently than at twenty-four (24)-month intervals.

(A) All amounts ordered refunded by the commission shall include interest at the electric utility's short-term borrowing rate.

(B) The staff shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred ~~sixty~~ (160) days after the staff initiates its prudence audit. The timing and frequency of prudence audits for DSIM shall be established in the utility's demand-side program approval proceeding in which the DSIM is established. The staff shall file notice within ten (10) days of starting its prudence audit. The commission shall issue an order not later than two hundred ten (210) days after the staff commences its prudence audit if no party to the proceeding in which the prudence audit is occurring files, within one hundred ninety (190) days of the staff's commencement of its prudence audit, a request for a hearing.

1. If the staff, public counsel, or other party auditing the DSIM believes that insufficient information has been supplied to make a recommendation regarding the prudence of the electric utility's DSIM, it may utilize discovery to obtain the information it seeks. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the

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commission. While the commission is considering the motion to compel, the processing timeline shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown, the commission may further suspend this timeline.

2. If the timeline is extended due to an electric utility's failure to timely provide sufficient responses to discovery and a refund is due to the customers, the electric utility shall refund all imprudently incurred costs plus interest at the electric utility's short-term borrowing rate.

(11) Tariffs and Regulatory Plans. The provisions of this rule shall not affect—

(A) Any adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism that was approved by the commission and in effect prior to the effective date of this rule; and

(B) Any experimental regulatory plan that was approved by the commission and in effect prior to the effective date of this rule.

(12) Nothing in this rule shall preclude a complaint case from being filed, as provided by law.

(13) Variances. Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.

(14) Rule Review. The commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

AUTHORITY: section 393.1075.11, RSMo Supp. 2009. Original rule filed Oct. 4, 2010.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule is estimated to cost affected private entities nine hundred five thousand dollars (\$905,000) in year one, three hundred forty-two thousand five hundred dollars (\$342,500) in year two, four hundred fifty-five thousand dollars (\$455,000) in year three, and four hundred fifty-five thousand dollars (\$455,000) in year four.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after publication of this notice in the **Missouri Register** and should include a reference to Commission Case No. EX-2010-0368. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/case-filing-information>. A public hearing regarding this proposed rule is scheduled for Monday, December 20, 2010, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions.*

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities**

PROPOSED RULE

4 CSR 240-20.094 Demand-Side Programs

PURPOSE: This rule sets forth the definitions, requirements, and procedures for filing and processing applications for approval, modification, and discontinuance of electric utility demand-side programs. This rule also sets forth requirements and procedures related to customer opt-out, tax credits, monitoring customer incentives, and collaborative guidelines for demand-side programs.

(1) As used in this rule, the following terms mean:

(A) Annual demand savings target means the annual demand savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual demand-side savings targets are the baseline for determining the utility's demand-side programs' annual demand savings performance levels in the methodology for the utility incentive component of a demand-side programs investment mechanism (DSIM);

(B) Annual energy savings target means the annual energy savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual energy savings targets are the baseline for determining the utility's demand-side programs' annual energy savings performance levels in the methodology for the utility incentive component of a DSIM;

(C) Annual net shared benefits means the utility's avoided costs, less the sum of the programs' costs including design, administration, delivery, end-use measures, incentives, EM&V, utility market potential studies, and technical reference manual on an annual basis;

(D) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from energy savings and demand savings associated with generation, transmission, and distribution facilities. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(E) Baseline demand forecast means a reference forecast of annual summer and winter peak demand at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(F) Baseline energy forecast means a reference forecast of annual energy at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(G) Customer class means major customer rate groupings such as residential, small general service, large general service, and large power service;

(H) Demand means the rate of electric power use over an hour measured in kilowatts (kW);

(I) 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 meter including, but not limited to, energy efficiency measures, load management, demand response, and interruptible or curtailable load;

(J) Demand-side programs investment mechanism, or DSIM, means a mechanism approved by the commission in a utility's filing for demand-side program approval to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation:

1. Cost recovery of demand-side program costs through capitalization of investments in demand-side programs;

2. Cost recovery of demand-side program costs through a demand-side program cost tracker;

3. Accelerated depreciation on demand-side investments;

4. Recovery of lost revenues; and

5. Utility incentive based on the achieved performance level of approved demand-side programs;

(K) Demand-side program plan means a particular combination of demand-side programs to be delivered according to a specified implementation schedule and budget;

(L) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval proceeding or a semi-annual DSIM rate adjustment case;

(M) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval proceeding to provide the utility with a portion of annual net shared benefits based on the achieved performance level of approved demand-side programs demonstrated

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through energy and demand savings measured and documented through EM&V reports compared to energy and demand savings targets;

(N) DSIM utility lost revenue requirement means the component of the utility's revenue requirement as approved by the commission in a utility's filing for demand-side program approval proceeding to address the recovery of lost revenue;

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(O) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

(P) Energy means the total amount of electric power that is used over a specified interval of time measured in kilowatt-hours (kWh);

(Q) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(R) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

(S) 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;

(T) Lost margin or lost revenues means the reduction between rate cases in billed demand (kW) and energy (kWh) due to installed demand-side measures, multiplied by the fixed-cost margin of the appropriate rate component;

Deleted: Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net retail kWh below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V

(U) Preferred resource plan means the utility's resource plan that is contained in the resource acquisition strategy most recently adopted by the utility's decision-makers in accordance with 4 CSR 240-22;

(V) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility's decision-makers, may be imposed at some point within the planning horizon which would result in compliance costs that could have a significant impact on utility rates. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its probable environmental costs;

(W) Staff means all commission employees, except the secretary of the commission, general counsel, technical advisory staff as defined by section 386.135, RSMo, hearing officer, or regulatory judge;

(X) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs plus avoided probable environmental cost to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program to quantify the net savings obtained by substituting the demand-side program for supply-side resources; and

(Y) 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.

(2) 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. The fact that the electric utility's demand-side programs do not meet the incremental or cumulative annual demand-side savings goals established in this section may impact the utility's DSIM incentive revenue requirement if adopted as targets defined in this rule;

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(A) The commission shall use the greater of the annual realistic achievable energy savings and demand savings as determined through the utility's market potential study or the following incremental annual 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:

1. For 2012: three-tenths percent (0.3%) of total annual energy and one percent (1.0%) of annual peak demand;

2. For 2013: five-tenths percent (0.5%) of total annual energy and one percent (1.0%) of annual peak demand;

3. For 2014: seven-tenths percent (0.7%) of total annual energy and one percent (1.0%) of annual peak demand;

4. For 2015: nine-tenths percent (0.9%) of total annual energy and one percent (1.0%) of annual peak demand;

5. For 2016: one-and-one-tenth percent (1.1%) of total annual energy and one percent (1.0%) of annual peak demand;

6. For 2017: one-and-three-tenths percent (1.3%) of total annual energy and one percent (1.0%) of annual peak demand;

7. For 2018: one-and-five-tenths percent (1.5%) of total annual energy and one percent (1.0%) of annual peak demand;

8. For 2019: one-and-seven-tenths percent (1.7%) of total annual energy and one percent (1.0%) of annual peak demand; and

9. For 2020 and for subsequent years, unless additional energy savings and demand savings goals are established by the commission: one-and-nine-tenths percent (1.9%) of total annual energy and one percent (1.0%) of annual peak demand each year;

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

1. For 2012: three-tenths percent (0.3%) of total annual energy and one percent (1.0%) of annual peak demand;
2. For 2013: eight-tenths percent (0.8%) of total annual energy and two percent (2.0%) of annual peak demand;
3. For 2014: one-and-five-tenths percent (1.5%) of total annual energy and three percent (3.0%) of annual peak demand;
4. For 2015: two-and-four-tenths percent (2.4%) of total annual energy and four percent (4.0%) of annual peak demand;
5. For 2016: three-and-five-tenths percent (3.5%) of total annual energy and five percent (5.0%) of annual peak demand;
6. For 2017: four-and-eight-tenths percent (4.8%) of total annual energy and six percent (6.0%) of annual peak demand;
7. For 2018: six-and-three-tenths percent (6.3%) of total annual energy and seven percent (7.0%) of annual peak demand;
8. For 2019: eight percent (8.0%) of total annual energy and eight percent (8.0%) of annual peak demand; and
9. For 2020 and for subsequent years, unless additional energy savings and demand savings goals are established by the commission: nine-and-nine-tenths percent (9.9%) of total annual energy and nine percent (9.0%) of annual peak demand for 2020, and then increasing by one-and-nine-tenths percent (1.9%) of total annual energy and by one percent (1.0%) of annual peak demand each year after 2020.

(3) Applications for Approval of Electric Utility Demand-Side Programs or Program Plans. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission for approval of demand-side programs or program plans by filing information and documentation required by 4 CSR 240-3.164(2). Any existing demand-side program with tariff sheets in effect prior to the effective date of this rule shall be included in the initial application for approval of demand-side programs if the utility intends for unrecovered and/or new costs related to the existing demand-side program be included in the DSIM cost recovery revenue requirement, DSIM utility lost revenue requirement, and/or if the utility intends to establish a DSIM utility incentive revenue requirement for the existing demand-side program. The commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of demand-side program plans within one hundred twenty (120) days of the filing of an application under this section only after providing the opportunity for a hearing. In the case of a utility filing an application for approval of an individual demand-side program, the commission shall approve, approve with modification acceptable to the electric utility, or reject applications within sixty (60) days of the filing of an application under this section only after providing the opportunity for a hearing.

(A) For demand-side programs and program plans that have a total resource cost test ratio greater than one (1), the commission shall approve demand-side programs or program plans, and establish annual demand and energy savings targets for each demand-side program it approves, giving significant weight to the utility's latest market potential study and provided it finds that the utility has met the filing and submission requirements of 4 CSR 240-3.164(2) and the demand-side programs and program plans—

1. Are consistent with a goal of achieving all cost-effective demand-side savings;
2. Have reliable evaluation, measurement, and verification plans; and
3. Are included in the electric utility's preferred plan or have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility.

(B) The commission shall approve demand-side programs having a total resource cost test ratio less than one (1) for demand-side programs targeted to low-income customers or general education campaigns, if the commission determines that the utility has met the filing and submission requirements of 4 CSR 240-3.164(2), the program or program plan is in the public interest, and meets the requirements stated in paragraphs (3)(A)2.–3.

1. If a program is targeted to low-income customers, the electric utility must also state how the electric utility will assess the expected and actual effect of the program on the utility's bad debt expenses, customer arrearages, and disconnections.

(C) The commission shall approve demand-side programs which have a total resource cost test ratio less than one (1), if the commission finds the utility has met the filing and submission requirements of 4 CSR 240-3.164(2) and the costs of such programs above the level determined to be cost-effective are funded by the customers participating in the programs or through tax or other governmental credits or incentives specifically designed for that purpose and meet the requirements as stated in paragraphs (3)(A)2. and 3.

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(D) Utilities shall file and receive approval of associated tariff sheets prior to implementation of approved demand-side programs.

(E) The commission shall simultaneously approve, approve with modification acceptable to the utility, or reject the utility's DSIM proposed pursuant to 4 CSR 240-20.093.

(4) Applications for Approval of Modifications to Electric Utility Demand-Side Programs. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility shall file an application with the commission for modification of demand-side programs by filing information and documentation required by 4 CSR 240-3.164(4) when there is a variance of twenty percent (20%) or more in the approved demand-side ~~plan, three-year~~ budget and/or any program design modification which is no longer covered by the approved tariff sheets for the program. The commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of modification of demand-side programs within thirty (30) days of the filing of an application under this section, subject to the same guidelines as established in subsections (3)(A) through (C), only after providing the opportunity for a hearing.

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(A) For any program design modifications approved by the commission, the utility shall file for and receive approval of associated tariff sheets prior to implementation of approved modifications.

(5) Applications for Approval to Discontinue Electric Utility Demand-Side Programs. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission to discontinue demand-side programs by filing information and documentation required by 4 CSR 240-3.164(5). The commission shall approve or reject such applications for discontinuation of utility demand-side programs within thirty (30) days of the filing of an application under this section only after providing an opportunity for a hearing.

(6) Provisions for Customers to Opt-Out of Participation in Utility Demand-Side Programs.

(A) Any customer meeting one (1) or more of the following criteria shall be eligible to opt-out of participation in utility-offered demand-side programs:

1. The customer has one (1) or more accounts within the service territory of the electric utility that has a demand of the individual accounts of five thousand (5,000) kW or more in the previous twelve (12) months; or
2. The customer operates an interstate pipeline pumping station, regardless of size; or
3. The customer has accounts within the service territory of the electric utility that have, in aggregate across its accounts, a coincident demand of two thousand five hundred (2,500) kW or more in the previous twelve (12) months, 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.

A. For utilities with automated meter reading and/or advanced metering infrastructure capability, the measure of demand is the customer coincident highest billing demand of the individual accounts during the twelve (12) months preceding the opt-out notification.

(B) Written notification of opt-out from customers meeting the criteria under paragraph (6)(A)1. or 2. shall be sent to the utility serving the customer. Written notification of opt-out from customers meeting the criteria under paragraph (6)(A)3. shall be sent to the utility serving the customer and the manager of the energy resource analysis section of the commission or submitted through the commission's electronic filing and information system (EFIS) as a non-case-related filing. In instances where only the utility is provided notification of opt-out from customers meeting the criteria under paragraph (6)(A)3., the utility shall forward a copy of the written notification to the manager of the energy resource analysis section of the commission and submit the notice of opt-out through EFIS as a non-case-related filing.

(C) Written notification of opt-out from customer shall include at a minimum:

1. Customer's legal name;
2. Identification of location(s) and utility account number(s) of accounts for which the customer is requesting to opt-out from demand-side program's benefits and costs; and
3. Demonstration that the customer qualifies for opt-out.

(D) For customers filing notification of opt-out under paragraph (6)(A)1. or 2., notification of the utility's acknowledgement or plan to dispute a customer's notification to opt-out of participation in demand-side programs shall be delivered in writing to the customer and to the staff within thirty (30) days of when the utility received the written notification of opt-out from the customer.

(E) For customers filing notification of opt-out under paragraph (6)(A)3., the staff will make the determination of whether the customer meets the criteria of paragraph (6)(A)3. Notification of the staff's acknowledgement or disagreement with customer's qualification to opt-out of participation in demand-side programs shall be delivered to the customer and to the utility within thirty (30) days of when the staff received the written notification of opt-out.

(F) Timing and Effect of Opt-Out Provisions. A customer notice shall be received by the utility no earlier than September 1 and not later than October 30 to be effective for the following calendar year. For that calendar year and each successive calendar year until the customer revokes the notice pursuant to subsection (6)(H), none of the costs of approved demand-side programs of an electric utility offered pursuant to 4 CSR 240-20.093, 4 CSR 240-20.094, 4 CSR 240-3.163, and 4 CSR 240-3.164 or by other authority and no other charges implemented in

accordance with section 393.1075, RSMo, shall be assigned to any account of the customer, including its affiliates and subsidiaries listed on the customer's written notification of opt-out.

(G) Dispute Notices. If the utility or staff provides notice that a customer does not meet the opt-out criteria to qualify for opt-out, the customer may file a complaint with the commission. The commission shall provide notice and an opportunity for a hearing to resolve any dispute.

(H) Revocation. A customer may revoke an opt-out by providing written notice to the utility and commission fourteen (14) to sixteen (16) months in advance of the calendar year for which it will become eligible for the utility's demand-side program's costs and benefits.

(I) A customer who participates in demand-side programs initiated after August 1, 2009, shall be required to participate in program funding for a period of three (3) years following the last date when the customer received a demand-side incentive or a service.

(J) A customer electing not to participate in an electric utility'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 utility.

(7) Tax Credits and Monetary Incentives.

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

(B) As a condition of participation in any demand-side program offered by an electric utility 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 (7)(A) and acknowledge that the penalty for a customer who provides false documentation is a class A misdemeanor. The electric utility shall maintain documentation of customer attestation and acknowledgement for the term of the demand-side program and three (3) years beyond.

(C) The electric utility shall maintain a database of participants of all demand-side programs offered by the utility when such programs offer a monetary incentive to the customer including the following information:

1. The name of the participant, or the names of the principals if for a company;
2. The service property address; and
3. The date of and amount of the monetary incentive received.

(D) Upon request by the commission or staff, the utility shall disclose participant information in subsections (7)(B) and (C) to the commission and/or staff.

(8) Collaborative Guidelines.

(A) Utility-Specific Collaboratives. Each electric utility and its stakeholders are encouraged to form a utility-specific advisory collaborative for input on the design, implementation, and review of demand-side programs as well as input on the preparation of market potential studies. This collaborative process may take place simultaneously with the collaborative process related to demand-side programs for 4 CSR 240-22. Collaborative meetings are encouraged to occur at least once each calendar quarter.

(B) State-Wide Collaboratives. Electric utilities and their stakeholders are encouraged to form a state-wide advisory collaborative to: 1) address the creation of a technical reference manual that includes values for deemed savings, 2) provide the opportunity for the sharing, among utilities and other stakeholders, of lessons learned from demand-side program planning and implementation, and 3) create a forum for discussing state-wide policy issues. Collaborative meetings are encouraged to occur at least once each calendar year. Staff shall provide notice of the statewide collaborative meetings and interested persons may attend such meetings.

(9) Variances. Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.

(10) Rule Review. The commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

AUTHORITY: sections 393.1075.11 and 393.1075.15, RSMo Supp. 2009. Original rule filed Oct. 4, 2010.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule is estimated to cost affected private entities \$1,920,000 in year one, \$1,320,000 in year two, \$1,320,000 in year three, and \$1,320,000 in year four.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after publication of this notice in the **Missouri Register** and should include a reference to Commission Case No. EX-2010-0368. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/case-filing-information>. A public hearing regarding this proposed rule is scheduled for Monday, December 20, 2010, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions.*

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.