

Missouri Department of Natural Resources
Comments on Proposed Amendment to Chapter 22 Rules
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Preface	2
Policy Goals and Objectives - 4 CSR 240-22.010(2) and (2)A.....	2
Aggressive Demand-Side Resource Plan "Case" - 4 CSR 240-22.060(3)(A)3.....	3
Aggressive Renewable Energy Resource Plan "Case" - 4 CSR 240-22.060(3)(A)2	6
Selection of the Preferred Resource Plan - 4 CSR 240-22.070(1)(C).....	7
Commission Acknowledgment of Utility's Resource Acquisition Strategy - 4 CSR 240-22.080.....	8
Definitions - 4 CSR 240-22.020.....	12
Supply Side Resources to be Considered - 4 CSR 240-22.040(1)	12
Supply Side Forecasting of Uncertain Factors - 4 CSR 240-22.040(5).....	14
Demand Side Resources - 4 CSR 240-22.050	15
Findings of Deficiency and Concern - 4 CSR 240-22.080(6-7) and 4 CSR 240-22.020.....	16
Reports/ Reviewing Filing by Staff and Parties - 4 CSR 240-22.080(7) and (8)	17

Preface

The Missouri Department of Natural Resources (MDNR) appreciates the hard work of the Commission and its Staff throughout the workshop process and the opportunity to provide comments during this process.

MDNR is pleased to provide written comment on the Proposed Amendment of the Chapter 22 rules filed by the Public Service Commission in the Missouri Register on December 1, 2010. MDNR's discussion of each issue is followed by a proposal for specific revisions to the language in the Proposed Amendment.

The following comments and proposed revisions do not resolve MDNR's concerns related to the linkage of the Chapter 22 rules with the Public Service Commission's proposed rules to implement the Missouri Energy Efficiency Investment Act (MEEIA) (4 CSR 240-20.093, 240-20.094, 240-20.163 and 240-20.164). See additional comments under "Aggressive Demand-Side Resource Plan Case -- 4 CSR 240-22.060(3)(A)3" on page 3.

Specifically, 4 CSR 240-20.094(3)(A)3 says the Public Service Commission must approve programs that pass the total resource cost test but it adds the following condition which is not a condition for approval in Section 393.1075, RSMo, that the programs:

"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."

While it may be desirable to submit the demand-side programs to integration analysis, this should not be a condition for approval of the DSM plan. The Chapter 22 rules and the proposed rules to implement MEEIA have different policy goals and based on history, resource plans filed are unlikely to include demand-side programs that are sufficient to meet the MEEIA statutory policy goal of achieving all cost-effective demand side savings.

MDNR, along with several other stakeholders, submitted comments on the proposed rules to implement the MEEIA on December 15, 2010 in EX-2010-0368, in which we elaborated on this issue.

Policy Goals and Objectives - 4 CSR 240-22.010(2) and (2)A

MDNR comments

- (1) The statement of the fundamental goal (first sentence, 4 CSR 240-22.010(1)) should refer to "just and reasonable costs" rather than "just and reasonable rates." Customers' interest and welfare is directly and fundamentally related to the actual costs they incur in order to meet their energy needs. The appropriate policy objective is that the level and allocation of these costs be just and reasonable.
- (2) This section adds references to compliance with "legal mandates" and defines "legal mandates" in 4 CSR 20-22.020(27) as including "applicable state and federal executive orders, legislation, court decisions, and applicable state and federal administrative agency orders, rules and regulations affecting electric utility loads, resources, or resource plans." Some state policies set forth policy goals that are intended to drive

utility actions rather than precisely prescribed requirements. Because consistency with state energy and environmental policies is an important consideration in resource planning by Missouri utilities, the definition of “legal mandates” or the reference in 4 CSR 29022.010(2) should include a reference to “state energy and environmental policies”. Examples of state energy policies include the goal of achieving all cost-effective demand-side savings set forth in the Missouri Energy Efficiency Investment Act (Section 393.1075, RSMo); and the goal of developing and administering energy efficiency initiatives that reduce the annual growth in energy consumption and the need to build additional electric generation capacity, set forth in 393.1040 (RSMo). For consistency with the statement of the fundamental objective, 4 CSR 240-22.010(2)A, 4 CSR 240-22.010(2)(C)2 should require consistency with state energy and environmental policies.

- (3) For consistency with state energy policy established by 393.1075, RSMo, 4 CSR 240-22.010(2)(A) should be changed to reflect priority for demand-side resources that result in cost-effective demand-side savings. This change would also clearly establish that Missouri has met the requirements of PURPA Section 111(d)(16) and EISA Section 532(a)(16) to consider adopting policies establishing cost-effective energy efficiency as a priority resource.
- (4) Other resources should be considered and analyzed on an equivalent basis. 4 CSR 240-22.010(2)A refers to "renewable energy and supply-side resources." This paragraph should be modified to explicitly list resource retirements alongside renewable energy and supply-side resources as resources that are to be considered and analyzed on an equivalent basis. This issue of resource retirements is further discussed below in MDNR's comments on 4 CSR 240-22.040(1).

Proposed revision

(2) The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable and efficient, at just and reasonable costs, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies. The fundamental objective requires that the utility shall:

(A) Consider and analyze demand-side resources as priority resources and consider and analyze renewable energy and supply-side resource additions and retirements on an equivalent basis, subject to compliance with all legal mandates and to consistency with all state energy and environmental policies that may affect the selection of utility electric energy resources, in the resource planning process;

Aggressive Demand-Side Resource Plan "Case" - 4 CSR 240-22.060(3)(A)3

The following comments and revisions do not resolve MDNR's concerns related to the additional requirement in the Public Service Commission's proposed rules to implement the Missouri Energy Efficiency Investment Act (4 CSR 240-20.093, 240-20.094, 240-20.163

and 240-20.164) that demand side programs must go through the integration process in 4 CSR 240-22-060.

Specifically, 4 CSR 240-20.094(3)(A)3 says the Public Service Commission must approve programs that pass the total resource cost test but it adds the following condition which is not a condition for approval in Section 393.1075, RSMo, that the programs:

“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.”

While it may be desirable to submit the demand-side programs to integration analysis, this should not be a condition for approval of the DSM plan. The Chapter 22 rules and the proposed rules to implement MEEIA have different policy goals and the MEEIA rules should take precedence where demand-side programs are concerned since it is set out by legislation as a policy goal to achieve all cost-effective savings. This differs from the goals and the outcome of a long-term resource planning process. Also based on history, resource plans filed are unlikely to include demand-side resources that are sufficient to meet the MEEIA statutory policy goal of achieving all cost-effective demand side savings, unless guided by that policy.

MDNR, along with several other stakeholders, submitted comments on the proposed rules to implement the MEEIA on December 15, 2010 in EX-2010-0368, in which we elaborated on this issue.

MDNR comments on References to Missouri Energy Efficiency Investment Act in 4 CSR 240-22.050

The Proposed Amendment acknowledges the "goal of achieving all cost-effective demand-side savings" in the Purpose statement for 4 CSR 240-22.050 and in 4 CSR 240-22.050(1)(B):

4 CSR 240-22.050 PURPOSE: This rule specifies the principles by which potential demand-side resource options shall be developed and analyzed for cost-effectiveness, with the goal of achieving all cost-effective demand-side savings...

4 CSR 240-22.050(1)(B) To fulfill the goal of achieving all cost-effective demand-side savings, the utility shall design highly effective potential demand-side programs pursuant to section (A) that broadly cover the full spectrum of cost-effective end-use measures for all customer market segments;

MDNR supports the inclusion of language that acknowledges the state energy policy goal established by 393.1075, RSMo. However, in MDNR's view, the language in the Proposed Amendment does not sufficiently incorporate that policy goal. In the context of integrated analysis, the state policy goal presumes that the utility will diligently seek out demand-side measures, identify those that are cost effective and formulate aggressive implementation strategies to achieve all cost-effective savings. The Proposed Amendment states the policy clearly but does not include provisions that assure utility diligence in these efforts.

Specifically, 4 CSR 240-22.050(1)(B) includes very little that was not already in the current rules. The primary change from the current rule is that the current rule requires the utility to "provide broad coverage of... all major end uses, including at least lighting, refrigeration, space cooling, space heating, water heating and motive power" (4 CSR 240-22.050(1)(C) whereas the Proposed Amendment requires the utility to consider demand-side resources "that broadly cover the full spectrum of cost-effective end-use measures."

This is a useful but limited change in rule language. It lessens the likelihood that a utility's screening analysis will completely ignore an entire category of end uses. However, the language change only partially assures that the utility's effort to identify measures for screening will be diligent and comprehensive and does nothing to assure that the utility will formulate aggressive implementation strategies.

In MDNR's view, this result cannot be achieved by adding prescriptive language to 4 CSR 240-22.050. However, it can be improved by establishing a yardstick at the integration phase that encourages utility diligence in these efforts. Such a yardstick is proposed in the Public Service Commission's Proposed Rulemaking to implement the Missouri Energy Efficiency Investment Act and it would be appropriate to refer to the energy savings goals as such a yardstick in the provisions of 4 CSR 240-22.060(3)(A)³ that require the utility to identify and analyze "aggressive" demand side cases (see below).

MDNR comments on aggressive demand-side cases and the Missouri Energy Efficiency Investment Act

The current Staff draft requires the utility, when developing and analyzing alternative resource plans, to include several specific "cases," including an "aggressive demand-side case." In general, MDNR supports this approach, which is intended to assure that the utility analyzes the relative performance of a diverse set of alternative resource plans with respect to the planning objectives identified in 4 CSR 240-22.010(2).

MDNR has substantive concerns with current Staff draft requirement for the "aggressive" demand-side resource plan, which are formulated in 4 CSR 240-22.060(3)(A)2 as follows:

"The utility shall examine cases that:

3. Utilize only demand-side resources, up to the maximum technical potential of demand-side resources in each year of the planning horizon, if that results in more demand-side resources than the minimally compliant plan. This constitutes the aggressive demand-side resource plan for planning purposes..."

MDNR's primary concerns with this draft language are that it fails to consider the implications of state energy policy established by Section 393.1075, RSMo.

The draft language requires only that the utility identify and analyze a case that is based on the "maximum technical potential"¹ for demand-side measures and programs that the utility has identified through its screening process. As discussed in the previous section,

¹ Because only resources that passed cost-effectiveness screening are included, their technical potential is also their economic potential.

the requirements of the screening process are not sufficient to assure that the utility's effort to identify measures for screening will be diligent and comprehensive or that the utility will formulate aggressive implementation strategies.

In MDNR's view, the formulation of the "aggressive" demand-side cases should be based on state energy policy established by Section 393.1075, RSMo. Implicit in this state energy policy is that utilities should diligently identify all opportunities for cost-effective demand-side savings and aggressively pursue programs and strategies to achieve these savings.

The "aggressive" demand side case requirements should embody this policy by driving the utility to diligently seek out demand-side measures, identify those that are cost effective and formulate aggressive implementation strategies to achieve all cost-effective savings.

In MDNR's view, this is best achieved by including in 4 CSR 240-22.060(3)(A)3 a yardstick to assure utility diligence in these efforts as established in 4 CSR 240-20.094(2), the energy savings goals set out in the Public Service Commission's proposed rulemaking to implement the Missouri Energy Efficiency Investment Act. MDNR anticipates that this would result in an iterative approach to demand-side analysis in which the utility tests the results of its screening and implementation strategy efforts through integration analysis and returns to its screening and implementation strategy efforts if the initial effort to identify "aggressive" cases falls short of the yardstick.

Proposed revision

4 CSR 240.22(060)(3)(A)...The utility shall examine cases that...

3. utilize sufficient demand-side resources to achieve all cost-effective demand-side savings, consisting of two or more cases that collectively constitute the aggressive demand-side resource cases that are consistent with 4 CSR 240-20.094(2).

Aggressive Renewable Energy Resource Plan "Case" - 4 CSR 240-22.060(3)(A)2

MDNR comments

In addition to an "aggressive" demand-side case, 4 CSR 240.22(060)(3)(A)2 requires the utility to develop and analyze an "aggressive" renewable energy case. MDNR agrees that there should be an aggressive renewable energy case but has concerns with its formulation in the current Staff draft.

This requirement for the "aggressive" renewable energy case is formulated in 4 CSR 240-22.060(3)(A)2 as follows:

"The utility shall examine cases that:

...2. Utilize only renewable energy resources, up to the maximum potential capability of renewable resources in each year of the planning horizon, if that results in more renewable energy resources than the minimally compliant plan. This constitutes the aggressive renewable energy resource plan for planning purposes;"

In MDNR's view, this formulation places an unnecessary burden on the "aggressive renewable energy case" that would likely distort the analytic results of integration analysis. It simply does not make sense to develop an alternative resource plan whose resources consist exclusively of renewable generation resources. For example, the "aggressive renewable energy case" formulated in the current Staff draft could not include any of the following types of resources:

- demand-side resources to which the utility is currently committed
- refurbishment or retirement of non-renewable generating resources
- addition of non-renewable resources intended to meet peak demand requirements

With respect to the final point, some potential renewable generation resources (e.g. biomass) may be suitable to meet new peaking requirements but many of the most cost-effective resources are suitable primarily to meet baseload or intermediate load requirements because of their intermittent nature. Requiring all energy and demand requirements to be met by renewable resources would place an unnecessary burden on the renewable resources included in the aggressive renewable energy case and would probably result in a misleading estimate of NPVRR.

For these reasons, the requirements for the aggressive renewable energy case should be refined by removing the requirement that only renewable energy resources may be included in the resource plan, permitting the utility to continue current commitments to demand-side resources and requiring that baseload or intermediate energy requirements that result from load growth or resource retirements be met by renewable energy sources. In MDNR's view, the proposed revision will result in more informative analysis of the costs and benefits of aggressively pursuing renewable energy generation.

Proposed revision

4 CSR 240.22(060)(3)(A).. The utility shall examine cases that...

2. Utilize only demand-side resources to which the utility is already committed and utilize only renewable energy resource additions to meet baseload or intermediate load energy requirements resulting from load growth or resource retirements, up to the maximum potential capability of renewable resources in each year of the planning horizon, if that results in more renewable energy resources than the minimally compliant plan. This constitutes the aggressive renewable energy resource plan for planning purposes.

Selection of the Preferred Resource Plan - 4 CSR 240-22.070(1)(C)

MDNR comments

In MDNR's view, one factor that utility decisions makers must weight heavily when selecting a preferred resource plan is whether the plan is consistent with the statutory goal of "achieving all cost-effective demand-side savings" in Section 393.1075, RSMo.

4 CSR 240-22.070(1) in the Proposed Amendment sets forth conditions that must be satisfied when selecting its preferred resource plan. One of these conditions is that the preferred resource plan must "utilize demand-side resources to the maximum amount that comply with legal mandates and, in the judgment of the utility decision makers are

consistent with the public interest and achieve state energy policies." [4 CSR 240-22.070(1)(C)].

The Proposed Amendment assigns all aspects of the decision in 4 CSR 240-22.070(1)C to the judgment of utility decision makers - including not only whether the plan is consistent with Section 393.1075, RSMo, but also whether Section 393.1075, RSMo is state energy policy.

In MDNR's view, if demand-side screening and integrated analysis occurs as proposed in the Proposed Amendment as modified by MDNR's proposed revisions, the determination whether a plan is consistent with the state energy policy established by Section 393.1075, RSMo, should be susceptible to determination on objective grounds. It should not be a determination that requires the subjective judgment of utility decision makers.

Furthermore, the question of determining whether Section 393.1075, RSMo and other policies are state energy policies should not be a determination that requires the judgment of utility decision makers. If there is an issue concerning which state policies are to be considered "applicable" in the context of integrated resource planning, the Commission should intervene to settle the issue. If the Commission does not already have authority to do this, provisions should be added to 4 CSR 240-22.080 to establish that authority.

Proposed revision

4 CSR 240-22.070(1) The utility shall select a preferred resource plan from among the alternative resource plans...The preferred resource plan shall satisfy at least the following conditions:...

(C) Utilize demand-side resources to the maximum amount that comply with legal mandates, achieve state energy and environmental policies, including but not necessarily limited to those identified by the Commission, and in the judgment of the utility decision makers are consistent with the public interest [and achieve state energy policies];

Commission Acknowledgment of Utility's Resource Acquisition Strategy - 4 CSR 240-22.080

MDNR comments

MDNR's recommendation for increasing the Commission's authority in the context of integrated resource planning has been motivated by MDNR's desire to make the resource planning process more meaningful and consistent with a utility's business plan. The Commission's limited authority of determining compliance with the rule's provisions has been retained in the Proposed Amendment. However, a new section has been added in 4 CSR 240-22.080(17) that MDNR believes is a positive step in the direction of making the resource planning process more meaningful by requiring a utility to certify that requested actions in future cases are substantially consistent with the preferred resource plan specified in the most recent triennial compliance filing or annual update report. If the requested action is not substantially consistent, the utility must provide a detailed explanation.

MDNR continues to recommend that the Commission should have the authority to "acknowledge" that the substance of a utility's long-term resource planning is "reasonable." MDNR's proposed revision would not require the Commission to acknowledge a plan but would authorize the Commission to do so. This authority would provide an avenue for the Commission to consider the substance of a filing as well as its adherence to the requirements of Chapter 22 and for utilities to benefit from the consistency of their actions with an acknowledged resource plan or acquisition strategy.

Additional features of MDNR's concept and formulation of "acknowledgment" include the following:

- The authority to acknowledge will add weight and consequence to Commission review of the substance of the utility's IRP filing. As formulated by MDNR, it will also add weight and consequence to substantive concerns expressed in intervenors' comments.
- The authority to acknowledge is, importantly, the authority not to acknowledge. As formulated by MDNR, compliance with Chapter 22 requirements is a necessary but not a sufficient condition for acknowledgment. The Commission will have authority to "return with comments" portions of the utility's resource plan or acquisition strategy that the Commission finds not to be reasonable.
- In rate cases or other cases to which long-term resource planning is relevant, the utility may benefit from consistency of its actions with an "acknowledged" resource plan or acquisition strategy but also must explain any inconsistencies in its actions. It will be the utility's responsibility to demonstrate that its actions are consistent with the acknowledged resource plan or acquisition strategy. Thus, utilities will be encouraged to align business planning with long-term resource planning.

To incorporate these concepts into Chapter 22, MDNR proposes to add two definitions to Chapter 22 and revise several provisions of 4 CSR 240-22.080.

Proposed Revisions

(1) Definitions: MDNR proposes to add the following definitions to 4 CSR 240-22.020:

Acknowledgement is an action that the Commission may take with respect to the officially adopted resource acquisition strategy or any element of the resource acquisition strategy including the preferred resource plan. Acknowledgment means that the Commission finds the plan or strategy to be reasonable at a specific date, typically the date of the filing or the date that acknowledgment is given. Acknowledgment may be given in whole or in part. Acknowledgment is not a finding of prudence. Prudence findings are limited to rate cases. In proceedings in which the reasonableness of resource acquisitions is considered, such as rate cases, energy planning cases and regulatory planning procedures, consistency with an acknowledged resource plan or acquisition strategy may be used as supporting evidence. Furthermore, in these cases, the utility bears the burden of proof that past or proposed actions are consistent with an acknowledged resource plan or acquisition strategy and must explain and justify why it took any actions inconsistent with an acknowledged resource plan or acquisition strategy.

Substantive concern means any issue that, while not rising to a deficiency in meeting requirements of Chapter 22, might be a substantive consideration in determining whether the electric utility's preferred resource plan or resource acquisition strategy is reasonable at the time of review.

(2) Purpose Statement: MDNR proposes to revise the purpose statement of 4 CSR 240-22.080 as follows:

" PURPOSE: This rule specifies the requirements for electric utility filings to demonstrate compliance with the provisions of this chapter. The purpose of the compliance review required by this chapter is not commission approval of the substantive findings, determinations or analyses contained in the filing. The purpose of the compliance review required by this chapter is to determine whether the utility's resource acquisition strategy meets the requirements of chapter 22. However, if the commission determines that the filing substantially meets these requirements, the commission may further acknowledge that the preferred resource plan or resource acquisition strategy seems reasonable in whole or in part at the time of the finding. This rule also establishes a mechanism for the utility to solicit and receive stakeholder input to its resource planning process."

(3) Authority to acknowledge: MDNR proposes to revise 4 CSR 24-022.080(16) by adding a new paragraph (B). Subsequent paragraphs in 4 CSR 24-022.080(16) should be renumbered accordingly.

(16) The commission will issue an order which contains its findings regarding at least one of the following options:

(A) That the electric utility's filing pursuant to this rule either does or does not demonstrate compliance with the requirements of this chapter, and that the utility's resource acquisition strategy either does or does not meet the requirements stated in 4 CSR 240- 22.

(B) If the Commission finds that the filing achieves substantial compliance with the requirements outlined in (A), the Commission may acknowledge the utility's resource acquisition strategy in whole, in part or with exceptions; may return the preferred resource plan or resource acquisition strategy to the utility with comments related to acknowledgment; or may take no further action.

(4) Review Schedule: MDNR proposes the following revisions to the review schedule to accommodate additional review that may be required to accommodate issues related to the potential Commission acknowledgment:

(7) The staff shall conduct a limited review each triennial compliance filing required by this rule and shall file a report not later than [one hundred twenty (120) days] one hundred fifty (150) days after each utility's scheduled triennial compliance filing date. The report shall identify any deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter and any other deficiencies and shall provide at least one (1) suggested remedy for each identified deficiency. Staff may also identify concerns with the utility's triennial compliance filing, may identify substantive concerns as defined in this rule related

to the substantive reasonableness of the preferred resource plan or resource acquisition strategy and shall provide at least one (1) suggested remedy for each identified concern. Staff shall file its workpapers related to each deficiency or concern to all parties within ten (10) days of the date its report is filed. If the staff's limited review finds no deficiencies or no concerns, the staff shall state that in the report. A staff report that finds that an electric utility's filing is in compliance with this chapter shall not be construed as acceptance or agreement with the substantive findings, determinations or analysis contained in the electric utility's filing.

(8) Also within [one hundred twenty (120)] one hundred fifty (150) days after an electric utility's triennial compliance filing pursuant to this rule, the public counsel and any intervenor may file a report or comments. The report or comments, based on a limited review, may identify any deficiencies [or concerns which the public counsel or intervenor believes could prevent the utility's resource acquisition plan from effectively fulfilling the objectives of the electric resource planning rules.] in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter and any other deficiencies. The report may also identify concerns with the utility's triennial compliance filing, may identify substantive concerns as defined in this rule related to the substantive reasonableness of the preferred resource plan or resource acquisition strategy. Public counsel or intervenors shall provide at least one (1) suggested remedy for each identified deficiency or concern. Public counsel or any intervenor shall provide its workpapers related to each deficiency or concern to all parties within ten (10) days of the date its report is filed. (Note: this revision also incorporates language to provide the Public Counsel and other intervenors with the same scope of review as Staff. See pg. 16-17.)

(9) If the staff, public counsel or any intervenor finds deficiencies in or concerns with a triennial compliance filing, it shall work with the electric utility and the other parties to reach, within [forty-five (45)] sixty (60) days of the date that the report or comments were submitted, a joint agreement on a plan to remedy the identified deficiencies and concerns. The parties may also confer concerning any substantive concerns as defined in this Chapter that were noted in the reports filed by staff, public counsel or intervenors. If full agreement cannot be reached, this should be reported to the commission through a joint filing as soon as possible, but no later than [forty-five (45)] sixty (60) days after the date on which the report or comments were submitted. The joint filing should set out in a brief narrative description those areas on which agreement cannot be reached. If any substantive concerns are resolved during this period, their resolution shall also be noted in the joint filing.

Definitions - 4 CSR 240-22.020

MDNR comments and proposed revisions

In addition to the definitions of "acknowledgment" and "substantive concern" proposed in the previous section, MDNR proposes revising the definition of "realistic achievable potential":

(1) Realistic achievable potential [4 CSR 240-22.020(46)]

4 CSR 240-22.020(46): "Realistic achievable potential of a demand-side candidate resource option or portfolio is an estimate of the load impact that would occur if that resource option or portfolio were implemented in amounts consistent with the most aggressive cost-effective implementation of the resource option or portfolio considered by the utility."

This definition fails to indicate that determination of the implementation level is not simply an arbitrary choice by the utility decision makers but depends on objective factors.

The following proposed definition draws from the National Action Plan for Energy Efficiency (NAPEE) manual on best practices for analyzing demand side potential. It identifies the specific considerations that the utility should take into account when identifying the implementation level associated with realistic achievable potential:

"Realistic achievable potential of a demand-side candidate resource option or portfolio is an estimate of the load impact that would occur if that resource option or portfolio were implemented in amounts consistent with the most aggressive cost-effective implementation of the resource option or portfolio possible (e.g., providing end-users with payments for the entire incremental cost of more efficient equipment). Realistic achievable potential takes into account real-world barriers to convincing end-users to adopt efficiency measures, the non-measure costs of delivering programs (for administration, marketing, tracking systems, monitoring and evaluation, etc.), and the capability of programs and administrators to ramp up program activity over time."

Supply Side Resources to be Considered - 4 CSR 240-22.040(1)

MDNR comments

In MDNR's view, the treatment of resource retirements requires special attention in the revision of the Chapter 22 rules. As MDNR discussed in its comments on 4 CSR 240-22.010(2)(A), utilities should consider and analyze supply-side additions and retirements on an equivalent basis. Moreover, a combination of factors - the aging of existing power plants, the impact on load of pursuing all cost-effective demand side savings and the prospect of more stringent federal energy and environmental policies - probably justify consideration of resource retirements as a special contemporary issue.

The Proposed Amendment does not require utilities to consider resource retirements in the supply side screening, even though screening is necessary for resource retirements to qualify as "supply-side candidate resource options" that can be included in candidate resource plans. [See 4 CSR 240-22.040(1)]

To enter screening, resource retirements must be included in the menu of resources that are subjected to supply-side analysis. However, 4 CSR 240-22.040 related to the supply side analysis includes no reference to resource retirements. The Proposed Amendment omits even the meager reference to resource retirements that appears in 4 CSR 240-22.040(6)(A) of the current rule.

For these reasons, the revised Chapter 22 rules should explicitly and consistently require that resource retirements be considered and analyzed in the same way that renewable resources and other supply side resources are considered and analyzed.

As proposed below, 4 CSR 240-22.040(1) and 4 CSR 240-22.040(4) should be revised to include resource retirements as "potential supply-side resource options" and "supply side candidate resource options" to be considered by the utility in its supply side analysis. A related change to the definition of resource planning was proposed in the previous section discussing revisions to 4 CSR 240-22.020.

Proposed revisions

4 CSR 240-22.040(1): The utility shall evaluate all existing supply-side resources and identify a variety of potential supply-side resource options which the utility can reasonably expect to develop, implement, or acquire, and, for purposes of integrated resource planning, all such supply-side resources shall be considered as potential supply-side resource options. These potential supply-side resource options include full or partial ownership of new plants using existing generation technologies; full or partial ownership of new plants using new generation technologies, including technologies expected to become commercially available within the twenty (20) year planning horizon; renewable energy resources on the utility-side of the meter, including a wide variety of renewable generation technologies; technologies for distributed generation; life extension and refurbishment at existing generating plants; retirement of existing generating plants or other supply-side resources; enhancement of the emission controls at existing or new generating plants; purchased power from bi-lateral transactions and from organized capacity and energy markets; generating plant efficiency improvements which reduce the utility's own use of energy; and upgrading of the transmission and distribution systems to reduce power and energy losses. The utility shall collect generic cost and performance information sufficient to fairly analyze and compare each of these potential supply-side resource options, including at least those attributes needed to assess capital cost, fixed and variable operation and maintenance costs, probable environmental costs and operating characteristics.

4 CSR 240-22.040(4): (4) All preliminary supply-side candidate resource options which are not eliminated shall be identified as supply-side candidate resource options. The supply-side candidate resource options that the utility passes on for further evaluation in the integration process shall represent a wide variety of supply-side resource addition and retirement options with diverse fuel and generation technologies,

including a wide range of renewable technologies and technologies suitable for distributed generation.

Supply Side Forecasting of Uncertain Factors - 4 CSR 240-22.040(5)

MDNR comments

Both the current supply side rule and the Proposed Amendment contain a section requiring the utility to "develop, describe and document, ranges of values and probabilities for uncertain factors related to" supply-side candidate resource options. The Proposed Amendment contains a list of "required elements" such as fuel prices and the cost of emission allowances that is essentially unchanged from that in the current rule. However, in other respects, Proposed Amendment is much less prescriptive than the current rule with respect to how the forecast analysis is to be conducted.

The issue of prescriptive rules has been extensively discussed in the stakeholder workshops. One distinction that has been put forth by MDNR and other parties is between requirements that prescribe particular analytic methods (which may become outdated or otherwise inappropriate) and requirements that prescribe minimum considerations that the utility should take into account when pursuing an analysis. Therefore it follows that it is reasonable to remove the former (prescriptions of particular methodology) but that the latter should be retained (prescriptions of what the utility should consider). A corollary is that the utility should transparently report both the factors that it considered in the analysis and the methodology used to do the analysis.

In MDNR's view, the following requirements, which appear in 4 CSR 240-22.040(8) of the current rules but have been deleted from 4 CSR 240-22.040(5) in the Proposed Amendment, prescribe factors to be considered in the forecast and transparent reporting of the analytic method and results rather than specific methodology:

4 CSR 240-22.040(8)(1)(G)2 "The provider of each fuel price forecast shall be required to identify the critical uncertain factors that drive the price forecast and to provide a range of forecasts and an associated subjective probability distribution that reflects this uncertainty"

4 CSR 240-22.040(8)(2)(B)2 "The provider of the estimate shall be required to identify the critical uncertain factors that may cause the capital cost estimates to change significantly and to provide a range of estimates and an associated subjective probability distribution that reflects this uncertainty"

4 CSR 240-22.040(8)(2)(C)2 "The critical uncertain factors that affect these [O&M] cost estimates shall be identified and a range of estimates shall be provided, together with an associated subjective probability distribution that reflects this uncertainty"

4 CSR 240-22.040(8)(2)(D)2 "The provider of the forecast shall be required to identify the critical uncertain factors that may cause the value of allowances to change significantly and to provide a range of forecasts and an associated subjective probability distribution that reflects this uncertainty"

In MDNR's view, any forecast of future values of an uncertain factor, regardless of the identity of the forecaster, should consider [to paraphrase the current rule] critical uncertain factors that may cause the value of a factor to change significantly and may affect the upper and lower bounds of the probability distribution. The language of the current rule appropriately assumes that it is a standard forecasting practice. However, even with prescriptive language in place, MDNR has noted instances in which utility considerations and reporting appear to fall short of the requirements of the current rule.

MDNR also proposes that a forecast over the planning horizon should be uniformly required for all the uncertain factors analyzed.

For these reasons, MDNR proposes that 4 CSR 240-22.040(5) in the Proposed Amendment be revised as follows.

Proposed Revision

4 CSR 240-22.040(5) (5) The utility shall develop, and describe and document, a forecast across the 20-year time horizon for ranges of values and probabilities for several important uncertain factors related to supply-side candidate resource options identified in section (4). Critical uncertain factors that affect the forecasted values and probabilities shall be identified and considered in these forecasts. The utility shall identify the critical uncertain factors that were identified, describe how they were accounted for and provide a range of estimates with an associated subjective probability distribution that reflects this uncertainty, and provide a description of the statistical and methodological steps taken to develop the estimated values of both the critical factors and the subjective probabilities. These cost estimates shall include at least the following elements, as applicable to the supply-side candidate resource option:

Demand Side Resources - 4 CSR 240-22.050

The definition of Total resource cost test in 4 CSR 240-22.020 (58) lists the costs included in the denominator as " the sum of all incremental costs related to the end-use measures that are implemented due to the program or related to the rates (including both utility and participant contributions), plus utility costs to administer, deliver and evaluate each demand-side program or demand-side rate to quantify the net savings obtained by substituting the demand-side program or demand-side rate for supply-side resources." The description of the TRC test in 4 CSR 240-22.050(5)(A)3(B)3 states "the costs of potential demand-side programs and potential demand-side rates shall not include lost revenues or utility incentive payments to customers." To be consistent with the above two quotes, 4 CSR 240-22.050(5)(A)3(B)4 should be revised as follows: "The costs shall include, but separately identify, the costs of any rate of return or incentive included in the utility's recovery of incremental demand-side program costs only to the extent that the rate of return or incentive are intended to recover incremental costs other than lost revenues or utility incentive payments to customers. In this calculation, utilities shall take care not to double-count utility costs to administer, deliver and evaluate each demand-side program."

Findings of Deficiency and Concern - 4 CSR 240-22.080(6-7) and 4 CSR 240-22.020

MDNR Comments

The current rule directs the parties reviewing a filing (Staff, OPC and interveners) to identify "deficiencies" in their review of a utility's filing. The current rule does not define "deficiency" but in MDNR's reading of the current rule, 4 CSR 240-22.080(5) and (6) sets forth three basic types of a deficiency finding, which MDNR would label as follows:

- (1) Prescriptive deficiency - a failure to comply with a specific provision of the Chapter 22 rules
- (2) Methodological deficiency - a "major" deficiency in methodologies or analyses that the utility is required to perform
- (3) Substantive deficiency - "other deficiencies which... would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in 4 CSR 240-22.010(2)(A)–(C)."

The Proposed Amendment directs the parties to identify both "deficiencies" and "concerns" and provides the following definitions for these terms:

4 CSR 240-22.020(8): Deficiency means anything that would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in Chapter 22.

4 CSR 240-22.020(5) Concern means anything that, while not rising to the level of a deficiency, may prevent the electric utility's resource acquisition strategy from effectively fulfilling the objectives of Chapter 22.

MDNR identifies the following issues related to the definition of "deficiency" and associated provisions of 4 CSR 240-22.080(7) and (8).

- (1) The phrase "requirements identified in Chapter 22" can be narrowly interpreted to limit review to prescriptive deficiencies - the failure to comply with requirements that are specifically prescribed in the rule. Because the Proposed Amendment removes many of the prescriptive elements from current Chapter 22 rules, a narrow interpretation of the definition proposed would result in severely circumscribed scope for any finding of a deficiency. In MDNR's view, if the proposed definition is not revised, it is likely that some parties will advance a narrow interpretation of what constitutes a deficiency.
- (2) There is tension between the definition in 4 CSR 240-22.020(8) and the provisions of 4 CSR 240-22.080(7) which state that the staff report "shall identify any deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter and any other deficiencies..." A narrow interpretation of the definition implies that there is one type of deficiency- a failure "to meet the requirements identified in

Chapter 22" - whereas the phrase in 4 CSR 240-22.080(7) implies that there are other types of deficiencies that fall outside the scope of the definition.

MDNR identifies the following issues related to the proposed definition of "concern" in 4 CSR 240-22.020(5):

(1) If the scope of findings of a deficiency is severely circumscribed, many issues that now are treated as "deficiencies" would be treated as "concerns" under the new rules. MDNR would have no problem with that result if "concerns" are given equal weight to "deficiencies" in the determination of remedies and in the Commission's review of unresolved issues. However, it appears that "concerns" will not be given equal weight, for the following reasons:

1. The definition states that a concern "does not rise to the level of a deficiency."
2. Furthermore, the term "concern" as used in recent filings has not given as much weight to "concerns" as to "deficiencies".

Proposed Revision

To resolve these issues, MDNR proposes a revision of the definitions of "deficiency" and "concern." The following proposed definition of "deficiency" is based on the provisions of 4 CSR 240-22.080(5) and (6) in the current rule:

4 CSR 240-22.080(8) Deficiency means a failure to comply with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter or any other deficiency which the reviewing party determines would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in 4 CSR 240-22.010(2)(A)–(C).

The following revised definition of "concern" eliminates any implication that a concern, because it is a concern, is less important than a deficiency:

4 CSR 240-22.020(5) Concern means anything that, while not falling within the definition of a deficiency, may prevent the electric utility's resource acquisition strategy from effectively fulfilling the objectives of Chapter 22.

Reports/ Reviewing Filing by Staff and Parties - 4 CSR 240-22.080(7) and (8)

MDNR comment

In the current rule, 4 CSR 240-22.080(5)-(6) provide essentially identical parameters for the review of utility filings by the Staff and other parties. Key phrases describing what is to be reviewed use identical wording.

In the Proposed Amendment, the parameters of review by parties appear to be more limited than that by Staff. As written, the language of 4 CSR 240-22.080(8) appears to limit parties' ability to consider deficiencies in methodology or analysis and appears to limit parties' consideration of

deficiencies to those that "could prevent the utility's resource acquisition plan from effectively fulfilling the objectives of the electric resource planning rules."

Reasons for limiting review by parties compared to review by Staff were not discussed in stakeholder workshops; furthermore, no rationale for the differences in language is apparent to MDNR. To retain comparable parameters for the review of utility filings among all parties, MDNR proposes the following revision to 4 CSR 240-22.080(8).

Proposed Revision

As in the current rule, the key phrases describing what is to be reviewed use identical wording to that in 4 CSR 240--22.080(7). This proposed revision also incorporates revisions to permit the Public Counsel and other intervenors to comment on "substantive concerns" identified on pages 9-10. Note: the change from 120 to 150 days is consistent with a previous comment.

- (8) Also within [one hundred twenty (120)] one hundred fifty (150) days after an electric utility's triennial compliance filing pursuant to this rule, the public counsel and any intervenor may file a report or comments. The report or comments, based on a limited review, may identify any deficiencies [or concerns which the public counsel or intervenor believes could prevent the utility's resource acquisition plan from effectively fulfilling the objectives of the electric resource planning rules.] in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the methodologies or analyses required to be performed by this chapter and any other deficiencies. The report may also identify concerns with the utility's triennial compliance filing, may identify substantive concerns as defined in this rule related to the substantive reasonableness of the preferred resource plan or resource acquisition strategy. Public counsel or intervenors shall provide at least one (1) suggested remedy for each identified deficiency or concern. Public counsel or any intervenor shall provide its workpapers related to each deficiency or concern to all parties within ten (10) days of the date its report is filed.