

**FILED****OCT 26 2010****Missouri Public  
Service Commission****Robin Carnahan  
Secretary of State****Administrative Rules Division  
Rulemaking Transmittal Receipt**

Rule ID: 12159  
Date Printed: 10/25/2010  
Rule Number: 4 CSR 240-22.080  
Rulemaking Type: Proposed Amendment  
Date Submitted to Administrative Rules Division: 10/25/2010  
Date Submitted to Joint Committee on Administrative Rules: 10/25/2010

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**Name of Person to Contact with questions concerning this rule:**

Content: Morris Woodruff	Phone: 1-2849	Email: morris.woodruff@psc.mo.gov	Fax: 6-6010
RuleDataEntry:	Phone:	Email:	Fax:

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**Included with Rulemaking:**

Cover Letter	10/25/2010
Affidavit for public cost	10/25/2010

**Print Close**

**Robin  
Carnahan**

**Secretary of State  
Administrative Rules Division**

**RULE TRANSMITTAL**

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SECRETARY OF STATE  
ADMINISTRATIVE RULES

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Rule Number 4 CSR 240-22.080

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

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Data Entry Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

Email address morris.woodruff@psc.mo.gov

Interagency mailing address Governor Office Bldg., Suite 900, 200 Madison St., Jefferson  
City, MO 65102

TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☒ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☐ Order of Rulemaking

Effective Date for the Order

☐ Statutory 30 days OR Specific date

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☐ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory  
Fairness Board (DED) Stamp  
SMALL BUSINESS  
REGULATORY FAIRNESS BOARD

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ROBERT M. CLAYTON III  
Chairman

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TERRY M. JARRETT  
KEVIN GUNN  
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## *Missouri Public Service Commission*

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Secretary/General Counsel  
KEVIN A. THOMPSON  
Chief Staff Counsel

October 25, 2010

Robin Carnahan  
Secretary of State  
Administrative Rules Division  
600 West Main Street  
Jefferson City, Missouri 65101

Re: 4 CSR 240-22.080 Filing Schedule, Filing Requirements and Stakeholder Process

Dear Secretary Carnahan,

### CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rulemaking lawfully submitted by the Missouri Public Service Commission.

The Public Service Commission has determined and hereby certifies that this proposed rulemaking will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed rulemaking does not constitute a taking of real property under relevant state and federal law, and that the proposed rulemaking conforms to the requirements of 1.310, RSMo, regarding user fees.

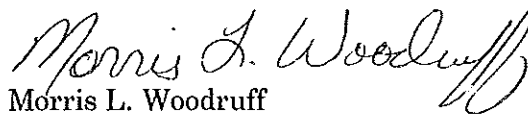
The Public Service Commission has determined and hereby also certifies that this proposed rulemaking complies with the small business requirements of 1.310, RSMo, in that it does not have an adverse impact on small businesses consisting of fewer than twenty-five full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with 1.310, RSMo, by exempting any small business consisting of fewer than twenty-five full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Statutory Authority: sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000

Robin Carnahan  
Secretary of State  
October 25, 2010  
Page Two

If there are any questions regarding the content of this proposed rulemaking, please contact:

Morris L. Woodruff, Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-2849  
[morris.woodruff@psc.mo.gov](mailto:morris.woodruff@psc.mo.gov)

A handwritten signature in black ink, reading "Morris L. Woodruff". The signature is written in a cursive style with a large, stylized "M" and "W".

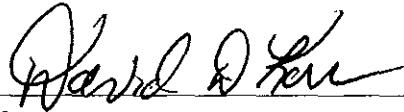
Morris L. Woodruff  
Chief Regulatory Law Judge

**AFFIDAVIT**

**PUBLIC COST**

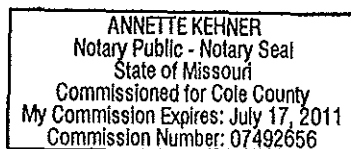
STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF COLE     )

I, David Kerr, Director, Missouri Department of Economic Development, first being duly sworn, on my oath, state that it is my opinion that the cost of the proposed amendment to rule, 4 CSR 240-22.080, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.



David Kerr  
Director  
Department of Economic Development

Subscribed and sworn to before me this 7<sup>th</sup> day of Oct, 2010. I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on 17 JULY 2011.



Title 4-Department of Economic Development  
Division 240-Public Service Commission  
Chapter 22-Electric Utility Resource Planning

PROPOSED AMENDMENT

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ADMINISTRATIVE RULES

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**4 CSR 240-22.080 Filing Schedule [and], Filing Requirements and Stakeholder Process.** Changes have been made throughout this rule to update the filing and procedural requirements and the information provided by the utility.

*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 [stated in 4 CSR 240-]of chapter 22.[010(2)(A)--(C)] This rule also establishes a mechanism for the utility to solicit and receive stakeholder input to its resource planning process.*

*PURPOSE: This proposed rule sets out updated filing requirements and time lines. The rule requires annual filings by the utilities and includes a way for Commissioners and other stakeholders identify contemporary issues for the utilities to address in their annual filings.*

(1) Each electric utility which sold more than one (1) million megawatt-hours to Missouri retail electric customers for calendar year [1991]2009 shall make a filing with the commission every three (3) years [that demonstrates compliance with the provisions of this chapter. The utility's filing shall include at least the following items:

(A) Letter of transmittal;

(B) Summary information and any press release related to the filing;

(C) Reports and information required by 4 CSR 240-22.030(8), 4 CSR 240-22.040(9), 4 CSR 240-22.050(11), 4 CSR 240-22.060(6) and 4 CSR 240-22.070(11);

(D) A narrative description and summary of the reports and information referred to in subsection (on April 1)(C). The narrative shall specifically show that the resource acquisition strategy contained in the filing has been officially approved by the utility and that the methods used and the procedures followed by the utility in formulating the resource acquisition strategy comply with the provisions of this chapter;

(E) A request for a protective order from the commission if the utility seeks to protect anything contained in the filing as trade secrets, or as confidential or private technical, financial or business information; and

(F) Tariff sheets as required by 4 CSR 240-14.040(2) for demand-side programs that are promotional practices as defined by 4 CSR 240-14.010(6)(L).

(2) The electric utility's compliance filing may also include a request for nontraditional accounting procedures and information regarding any associated ratemaking treatment to be sought by the utility for demand-side resource costs. If the utility desires to make any such request, it must be made in the utility's compliance filing pursuant to this rule and not at some subsequent time. If the utility desires to continue any previously authorized nontraditional

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accounting procedures beyond the three (3)-year implementation period, it must request reauthorization in each subsequent filing pursuant to this rule. Any request for initial authorization or reauthorization of these nontraditional accounting procedures must--

(A) Be limited to specific demand-side programs that are included in the utility's implementation plan; and

(B) Include specific proposals that contain at least the following information:

1. An explanation of the specific form and mechanics of implementing the proposed accounting procedure and any associated ratemaking treatment to be sought;

2. A discussion of the rationale and justification of the need for a nontraditional treatment of these costs;

3. An explanation of how the specific proposal meets this need for nontraditional treatment; and

4. A quantitative comparison of the utility's estimated earnings over the three (3)-year implementation period with and without the proposed nontraditional accounting procedures and any associated ratemaking treatment to be sought.

(3)]. Companies submitting their triennial compliance filings on the same schedule may file them jointly. The electric utilities shall [make their initial compliance filings on a staggered basis in order of decreasing size of gross annual Missouri operating revenues from retail electric sales for calendar year 1991. The electric utility with the largest gross annual Missouri operating revenues shall make its initial filing seven (7) months (December 1993) after the effective date of this chapter (May 5, 1993). The remaining electric utilities shall make]submit their [initial] triennial compliance filings [in successive increments of seven (7) months from the effective date of this chapter (May 5, 1993).] on the following schedule:

(A) Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, or their successors, on April 1 of 2012 and every third year thereafter;

(B) The Empire District Electric Company, or its successor, on April 1 of 2013 and every third year thereafter; and

(C) Union Electric Company d/b/a AmerenUE, or its successor, on April 1 of 2014 and every third year thereafter.

(2) The utility's triennial compliance filings shall demonstrate compliance with the provisions of this chapter, and shall include at least the following items:

(A) Letter of transmittal expressing commitment to the approved preferred resource plan and resource acquisition strategy and signed by an officer of the utility having the authority to bind and commit the utility to the resource acquisition strategy;

(B) If the preferred resource plan is inconsistent with the utility's business plan, an explanation of the differences and why the differences exist;

(C) Technical volume(s) that fully describe and document the utility's analysis and decisions in selecting its preferred resource plan and resource acquisition strategy.

1. The technical volume(s) shall include all documentation and information specified the rules 4 CSR 240-22.030 through 4 CSR 240-22.070 and any other information considered by the utility to analyze and select its resource acquisition strategy.

2. The technical volume(s) shall be organized by chapters corresponding to the rules CSR 240-22.030 through 240-22.070.

3. A separate chapter shall be designated in the technical volume(s) to address special contemporary issues pursuant to 4 CSR 240-22.080(4) and input from the

stakeholder group pursuant to 4 CSR 240-22.080(5). The chapter shall identify the issues raised, how the utility addressed them, and where in the technical volumes(s) the reports, analyses and all resulting actions are presented.

(D) The highly confidential form of the capacity balance spreadsheet completed in the specified format for the preferred resource plan and each candidate resource plan considered by the utility;

(E) An executive summary, separately bound and suitable for distribution to the public in paper and electronic formats. The executive summary shall be an informative non-technical description of the preferred resource plan and resource acquisition strategy. This document shall summarize the contents of the technical volume(s) and shall be organized by chapters corresponding to the rules CSR 240-22.030 through 240-22.070. The executive summary shall include:

1. A brief introduction describing the utility, its existing facilities, existing purchase power arrangements, existing demand-side programs, existing demand-side rates, and the purpose of the resource acquisition strategy;

2. For each major class and for the total of all major classes, the base load forecasts for peak demand and for energy for the planning horizon, with and without utility demand-side resources and a listing of the economic and demographic assumptions associated with each base load forecast;

3. A summary of the preferred resource plan to meet expected energy service needs for the planning horizon, clearly showing the demand-side resources and supply-side resources (both renewable and non-renewable resources), including additions and retirements for each resource type;

4. Identification of critical uncertain factors affecting the preferred resource plan;

5. For existing legal mandates and approved cost recovery mechanisms, the following performance measures of the preferred resource plan for each year of the planning horizon:

- A. Estimated annual revenue requirement;

- B. Estimated impact on retail rates; and

- C. Estimated company financial ratios;

6. If the estimated company financial ratios in (2)(E)5.C. of this rule are below investment grade in any year of the planning horizon, a description of any changes in legal mandates and cost recovery mechanisms necessary for the utility to maintain an investment grade credit rating in each year of the planning horizon and the resulting performance measures of the preferred resource plan;

7. Actions and initiatives to implement the resource acquisition strategy prior to the next triennial compliance filing;

8. A description of the major research projects and programs the utility will continue or commence during the implementation period; and

(F) Such other information or format as the commission may determine.

(3) Beginning in 2012, on or about April 1 of every year in which the utility is not required to submit a triennial compliance filing, each electric utility shall host an annual update workshop with the stakeholder group. The utility at its discretion may host additional update workshops when conditions warrant. Any additional update workshops shall follow the same procedures as the annual update workshop.



(A) The purpose of the annual update workshop is to ensure that members of the stakeholder group have the opportunity to provide input and to stay informed regarding the:

1. Utility's current preferred resource plan;
2. Status of the identified critical uncertain factors;
3. Utility's progress in implementing the resource acquisition strategy;
4. Analyses and conclusions regarding any special contemporary issues that may have been identified pursuant to 4 CSR 240-22.080(4);
5. Resolution of any deficiencies or concerns pursuant to 4 CSR 240-22.080(16); and
6. Changing conditions generally.

(B) The utility shall prepare an annual update report with both a public version and a highly confidential version to document the information presented at the annual update workshop and shall file the annual update reports with the commission no less than 20 days prior to the annual update workshop. The depth and detail of the annual update report shall generally be commensurate with the magnitude and significance of the changing conditions since the last filed triennial compliance filing or annual update filing. If the current resource acquisition strategy has changed from that contained in the most recently filed triennial compliance filing or annual update filing, the annual update report shall describe the changes and provide updated capacity balance spreadsheets required pursuant to 4 CSR 240-22.080(2)(D). If the current resource acquisition strategy has not changed, the annual update report shall explicitly verify that the current resource acquisition strategy is the same as that contained in the most recently filed triennial compliance filing or annual update filing.

(C) The utility shall prepare a summary report that shall list and describe any action items resulting from the workshop to be undertaken by the utility prior to next triennial compliance filing or annual update filing. The summary shall be filed within ten (10) days following the workshop. If there are no changes as a result of the workshop, the utility is required to file a notice that it will not be making any changes to its annual update report.

(D) Stakeholders may file comments with the commission concerning the utility's annual update report and summary report within 30 days of the utility's filing of the summary report.

(4) It is the responsibility of each utility to keep abreast of evolving electric resource planning issues and to consider and analyze these issues in a timely manner in the triennial compliance filings and annual update reports. An order containing a list of special contemporary issues shall be issued by the commission for each utility to analyze and document in its next triennial compliance filing or next annual update report. The purpose of the special contemporary issues lists is to ensure that evolving regulatory, economic, financial, environmental, energy, technical or customer issues are adequately addressed by each utility in its electric resource planning. Each special contemporary issues list will identify new and evolving issues, but may also include other issues such as unresolved deficiencies or concerns from the preceding triennial compliance filing. To develop the list of special contemporary issues:

(A) No later than September 15, staff, public counsel and parties to the last triennial compliance filing of each utility may file suggested special contemporary issues for each utility to consider;

**(B)** Not later than October 1, the utilities, staff, public counsel and parties to the last triennial compliance filings may file comments regarding the special contemporary issues filed on September 15; and

**(C)** No later than November 1, an order containing a list of special contemporary issues shall be issued by the commission for each utility to analyze and document in its next triennial compliance filing or annual update report. The commission shall not be limited to only the filed suggested special contemporary issues. If the Commission determines that there are no special contemporary issues for a utility to analyze, a order shall be issued by the commission stating that there are no special contemporary issues.

**(5)** Each electric utility shall convene a stakeholder group to provide the opportunity for public input into electric utility resource planning in a timely manner that may affect the outcome of the utility resource planning efforts. The utility may choose to not incorporate some, or all, of the stakeholder group input in its analysis and decision-making for the triennial compliance filing.

**(A)** The utility shall convene at least one meeting of the stakeholder group prior to the triennial compliance plan filing to present a draft of the triennial compliance filing corresponding 4 CSR 240-22.030 through 4 CSR 240-22.050 and to present an overview of its proposed alternative resource plans and intended procedures and analyses to meet the requirements of 4 CSR 240-22.060 and 4 CSR 240-22.070. The stakeholders shall make a good faith effort to provide comments on the information provided by the utility, to identify additional alternative resource plans and to identify where the utility's analyses and intended approaches may not meet the objectives of the rules.

**(B)** Within thirty (30) days of the last stakeholder group meeting pursuant to section (5)(A) of this rule, any stakeholder may provide the utility and other stakeholders with a written statement summarizing any potential deficiencies in or concerns with the utility's proposed compliance with the electric resource planning rules. The utility has the opportunity to address the potential deficiencies or concerns identified by any stakeholder in its preparation of the triennial compliance filing.

**(C)** Any stakeholder input through the process described in section (5) of this rule does not preclude the stakeholder from filing reports in accordance with section (7) or section (8) of this rule.

**(6)** The commission will establish *[a docket]* dockets for the purpose of receiving the triennial compliance filings. Unless the commission specifies otherwise, the docket of the triennial compliance filing of each affected *[electric]* utility shall remain open to receive annual update reports including workshop summary reports, notifications of changes to the preferred plan, and other relevant documents submitted between triennial compliance filings. The commission will issue *[an order]* orders that establish*[es]* an intervention deadline, *sets an early prehearing conference* and provide*[s]* for notice.

*[(5)]*

**(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 after each utility's scheduled triennial compliance filing date*[ that identifies]*. 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 [*which, in its limited review, the staff determines would cause the electric utility's resource acquisition strategy to fail to meet the requirements*] **and shall provide at least one suggested remedy for each identified** [*in 4 CSR 240-22.010(2)(A)--(C).*] **deficiency. Staff may also identify concerns with the utility's triennial compliance filing and shall provide at least one suggested remedy for each identified concern. Staff shall provide 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.

**(/6/8)** Also within one hundred twenty (120) days after an electric utility's **triennial** compliance filing pursuant to this rule, the [*office of*] public counsel and any intervenor may file a report or comments. **The report or comments, based on a limited review** [*that*], **may identify any deficiencies** [*in the electric utility's compliance with the provisions of this chapter, any deficiencies in the methodologies or analyses required to be performed by this chapter, and any other deficiencies*] **or concerns** which the public counsel or intervenor believes [*would cause*] **could prevent** the utility's resource acquisition [*strategy to fail to meet the requirements identified in 4 CSR 240-22.010(2)(A)--(C).*] **plan from effectively fulfilling the objectives of the electric resource planning rules. Public counsel or intervenors shall provide at least one 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.**

**(/7)** *All workpapers, documents, reports, data, computer model documentation, analysis, letters, memoranda, notes, test results, studies, recordings, transcriptions and any other supporting information relating to the filed resource acquisition strategy within the electric utility's or its contractors' possession, custody or control shall be preserved and made available in accordance with any protective order to the staff, public counsel and any intervenor for use in its review of the periodic filings required by this rule. Each electric utility shall retain at least one (1) copy of the officially adopted resource acquisition strategy and all supporting information for at least ten (10) years.*

**(8)**

**(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) days of the date that the report or comments were submitted, a joint agreement on a plan to remedy the identified deficiencies **and concerns**. 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) 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.

**(/9)**

**(10)** If full agreement on remedying deficiencies **or concerns** is not reached, then within sixty (60) days from the date on which the staff, public counsel or any intervenor submitted a report or comments relating to the electric utility's **triennial** compliance filing, the electric utility may file a response and the staff, public counsel and any intervenor may file comments in response to

each other. The commission will issue an order which indicates on what items, if any, a hearing will be held and which establishes a procedural schedule.

**([10]11)** All workpapers, documents, reports, data, computer model documentation, analysis, letters, memoranda, notes, test results, studies, recordings, transcriptions and any other supporting information relating to the filed resource acquisition strategy within the electric utility's or its contractors' possession, custody or control shall be preserved and submitted within two (2) days of its triennial compliance or annual update filings in accordance with any protective order to the staff and public counsel, and to any intervenor within two (2) days of the intervenor signing and filing a confidentiality agreement, for use in its review of the periodic filings required by this rule. All information shall be labeled to reference the sections of the technical volumes(s) to which it is related, and all spreadsheets shall have all formulas intact. Each electric utility shall retain at least one (1) readable copy of the officially adopted resource acquisition strategy and all supporting information for at least the prior three (3) triennial compliance filings.

**(12)** If, between triennial compliance filings, the utility's business plan or acquisition strategy becomes materially inconsistent with the preferred resource plan, or if the utility determines that *[circumstances have changed so that]* the preferred resource plan or acquisition strategy is no longer appropriate, either due to the limits identified pursuant to 4 CSR 240-22.070([10](C)2) being exceeded or for other reasons, the utility, in writing, shall notify the commission within sixty (60) days of the utility's determination. *[If the utility decides to implement any of the contingency options identified pursuant to 4 CSR 240-22.070(10)(D), the utility shall file for review in advance of its next regularly scheduled compliance filing a revised implementation plan.]* The notification shall include a description of all changes to the preferred plan and acquisition strategy, the impact of each change on the present value of revenue requirement and all other performance measures specified in the last filing pursuant to 4 CSR 240-22.080, and the rationale for each change.

**[(11)(A)]** If the utility decides to implement any of the contingency resource plans identified pursuant to 4 CSR 240-22.070(4), the utility shall file for review a revised resource acquisition strategy.

**(B)** If the utility decides to implement a resource plan not identified pursuant to 4 CSR 240-22.070(4) or changes its acquisition strategy, it shall give a detailed description of the revised resource plan or acquisition strategy and why none of the contingency resource plans identified in 4 CSR 240-22.070(4) were chosen.

**(13)** Upon written application made at least twelve (12) months prior to a triennial compliance filing, and after notice and an opportunity for hearing, the commission may waive or grant a variance from a provision of *[this chapter]* rules 4 CSR 240-22.030 through 4 CSR 240-22.070 for good cause shown.

**(A)** The granting of a variance to one (1) electric utility which waives or otherwise affects the required compliance with a provision of this chapter does not constitute a waiver respecting, or otherwise affect, the required compliance of any other electric utility with a provision of these rules.

**(B)** The commission will not waive or grant a variance from this chapter in total.

(14) An electric utility which sells less than seven million (7,000,000) megawatt-hours to Missouri retail electric customers for the previous calendar year may apply for a waiver allowing it to conduct an annual update workshop pursuant to section (3) of this rule in place of its scheduled triennial compliance filing pursuant to section (1) of this rule, if the utility has no unresolved deficiencies or concerns from its prior triennial plan filing or annual update filing that materially affect its resource acquisition strategy. Upon written application made at least twelve (12) months prior to a triennial compliance filing, and after notice and an opportunity for hearing, the commission may allow the utility to conduct the annual update workshop process in lieu of submitting its triennial compliance filing. No more than one such waiver may be granted consecutively between triennial compliance filings.

(15) The commission may extend or reduce any of the time periods specified in this rule for good cause shown.

(13/16) The commission will issue an order which contains its findings *[that]* 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[-]chapter 22.[010(2)(A)--(C), and which addresses any utility requests pursuant to section (2) for authorization or reauthorization of nontraditional accounting procedures for demand-side resource costs].

(B) That the commission approves or disapproves the joint filing on the remedies to the plan deficiencies or concerns developed pursuant to section (9) of this rule;

(C) That the commission understands that full agreement on remedying deficiencies or concerns is not reached and pursuant to section (10) of this rule, the commission will issue an order which indicates on what items, if any, a hearing(s) will be held and which establishes a procedural schedule; and

(D) That the commission establishes a procedural schedule for filings and a hearing(s), if necessary, to remedy deficiencies or concerns as specified by the commission.

(17) In all future cases before the commission which involve a requested action that is affected by electric utility resources, preferred resource plan, or resource acquisition strategy, the utility must certify that the requested action is 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 with the preferred resource plan, the utility shall provide a detailed explanation.

*AUTHORITY: sections 386.040, 386.250, 386.610 and 393.140, RSMo 2000. \* Original rule filed June 12, 1992, effective May 6, 1993.*

*\*Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991; 386.610, RSMo 1939; and 393.140, RSMo 1939, amended 1949, 1967.*

*PUBLIC COST: Adoption of this proposed amendment will not cost affected state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE COST: Adoption of this proposed amendment will cost affected private entities \$284,400 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Steve Reed, Secretary of the Commission, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices on or before January 3, 2011, and should include a reference to Commission File No. EX-2010-0254. Comments may also be submitted via a filing using the Commission's electronic filing and information system (EFIS). A public hearing regarding this proposed rule is scheduled for January 6, 2011, at 9:00 a.m. in the commission's offices in the Governor Office Building, 200 Madison Street, Room 305, 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 amendment, and may be asked to respond to commission questions. 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.*

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of a Proposed Rulemaking )  
Regarding Revision of the Commission's )  
Chapter 22 Electric Utility Resource )  
Planning Rules )

File No. EX-2010-0254

## DISSENT OF COMMISSIONER JEFF DAVIS TO THE PROPOSED RULEMAKING REVISING THE COMMISSION'S CHAPTER 22 ELECTRIC UTILITY RESOURCE PLANNING RULES

I respectfully dissent from my colleagues' order to promulgate these rules as they are currently written.

Anyone who has ever been involved in the integrated resource planning (IRP) process knows these rules have desperately needed revision for years. It's taken a long time to get where we are. These rules are an improvement in some respects, but something important is missing: accountability for the Public Service Commission and the PSC Staff for any outcome in these IRP proceedings. It may seem like an antiquated note, but I think we need to take responsibility for the decisions we make – or in this case – fail to make.

Both the Missouri Energy Development Association (MEDA) and the Missouri Department of Natural Resources (MDNR) offered language whereby the Commission would at least "acknowledge" the utility's resource plan. "Acknowledgement" of the plan would enhance the process because it would force the parties and the staff to focus on outcomes as well as the process by which those outcomes were determined. After all, outcomes should be the purpose of the IRP process. More importantly, electric utilities could use the acknowledgement process to establish the prudence of making--or not making--certain large capital expenditures that are going to amount to billions of dollars over the next decade (e.g.

– whether to shut down and decommission one or more coal plants or to continue retrofitting all of them) before they get to a rate case and have to argue over imprudence or lack thereof.

Whether and how we address IRP decisions will definitely impact customer rates for years to come. Failing to act on the substance of IRPs constitutes a decision in and of itself. The Commission's failure sends a message of uncertainty to the utilities we regulate, their investors and Wall Street saying either "we want to be free to disavow your plan and disallow the expenses later" or "we are afraid to be criticized for acknowledging a plan that later failed."

Ultimately, our failure to address the substance of utility resource plans increases financing costs for capital investment projects as well as litigation costs in future rate cases because parties will litigate the issue in future cases and knowing the Commission may disallow expenses, lenders and investors will want higher returns. That uncertainty will assuredly cause Missouri investor-owned electric utilities to place the least possible amount of investment capital at risk short-term. This is important because the cheapest plan today will not likely be the cheapest plan over the next one to five years, and even less likely over the long-term (from 30 to 50 years). Thus, the ratepayers could end up paying higher rates long-term so the utility can consistently save a few dollars on the front end, or because the utility opted for cheaper, less reliable technology.

The importance of this issue is best illustrated by the decisions the Commission faces regarding our aging fleet of coal plants. In September, Wood Mackenzie's North American power research group issued a startling report that almost 60 gigawatts of coal-fired electric plants could be retired over the next decade. Independent verification of that estimate comes from Ellen Lapson, Managing Director of Corporate Ratings for Fitch Rating Agency. On



September 30, 2010, at the Financial Research Institute, Director Lapson said that Wood Mackenzie's number was a reasonable number. At least two Commissioners were present at that meeting.

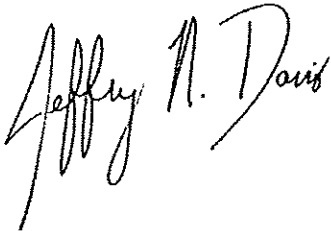
The findings of the Wood Mackenzie report ought to send a shiver down the spine of everyone here at the PSC as well as anyone employed by a Missouri utility. More than 80% of the electricity consumed in this state is fueled by coal. Collectively, Missouri utilities probably own around 10,000 megawatts of coal-fired generation, if not more. Ameren Missouri is the largest Missouri utility and owns several thousand megawatts of coal-fired generation all by itself, but everyone including the utilities who've camouflaged themselves as being leaders in the green revolution have similar risks. So, when the Wall Street analysts say "Coal is in the crosshairs" they mean pretty much every Missouri utility, but especially Ameren because they own the most coal plants, and that ultimately every utility customer in the state is in the crosshairs. Each and every one of our investor-owned electric utilities is going to make significant investment decisions regarding the retirement or retrofitting of a large fleet of coal plants averaging more than 40 years or older as well as the addition of new resources to replace these retiring coal plants, meet growing demand and comply with government mandates for utilities to buy certain amounts of "renewable" electricity.

Presidents and governors don't punt and this Commission shouldn't punt either. Hundreds of millions, if not billions, of dollars are at stake when our electric utilities make these decisions and customer rates are hanging in the balance. We owe it to the ratepayers and to the utilities we regulate to be decisive and thereby meet this Commission's statutory obligation to assure safe and adequate service for consumers at a just and reasonable rate. It's silly and unconscionable to spend a couple of years working on more than 60 pages of

rules that force the utility to think of every scenario, to document how every calculation is made, to check to see if the work was performed correctly and then do nothing with such documents except hold them, waiting to whip them out on some unsuspecting utility executive for not following a plan we don't intend to make them follow until the day they deviate from it.

In conclusion, a Commission majority that has shown a willingness to micro-manage electric utilities by requiring them to undertake low-income assistance programs and make our utilities buy Missouri wind-generated electricity ought not have a problem "acknowledging" whether an electric utility's preferred resource plan seems like a good or a bad one.

Respectfully submitted,

A handwritten signature in black ink, reading "Jeffery N. Davis". The signature is written in a cursive, flowing style with a large initial "J" and "D".

Jeff Davis, Commissioner

Dated at Jefferson City, Missouri  
On this 25<sup>th</sup> day of October, 2010.

**FISCAL NOTE  
PRIVATE COST**

- I. Department Title:** Missouri Department of Economic Development  
**Division Title:** Missouri Public Service Commission  
**Chapter Title:** Chapter 22 - Electric Utility Resource Planning

<b>Rule Number and Title:</b>	4 CSR 240-22.080  Filing Schedule, Filing Requirements and Stakeholder Process
<b>Type of Rulemaking:</b>	Rule Revision

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the first year cost of compliance with the rule by the affected entities:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities (years 2-4):
4	Investor-owned electric utilities	\$284,400	\$284,400

**III. WORKSHEET**

1. KCPL estimated an increase in additional labor due to this rule of \$79,400 and an annual cost for consultants of \$200,000.
2. Empire estimates an additional \$30,000 cost due to increase report writing
3. AmerenUE did not include any fiscal impact due to changes to this rule.

**IV. ASSUMPTIONS**

- The estimates given by KCPL are for both KCP&L and KCP&L Greater Missouri Operations Company. Annual cost for each utility is  $(\$79,400 + \$200,000)/2$  or \$139,700.
- Changes to filing frequency for Empire result in Empire having to meet the full rule requirements every six years instead of the current requirement of every 3 years, annual cost for Empire is estimated at \$5,000
- *Therefore, the total cost for compliance with this proposed rule is estimated to be \$284,400.*

# Small Business Regulatory Fairness Board

## Small Business Impact Statement

Date: 9-13-2010

Rule Number: 4 CSR 240-22.080

Name of Agency Preparing Statement: Public Service Commission

Name of Person Preparing Statement: Lena Mantle

Phone Number: 573-751-520

Email: Lena.Mantle@psc.mo.gov

Name of Person Approving Statement:

**Please describe the methods your agency considered or used to reduce the impact on small businesses** (*examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique*).

Not applicable, no small businesses impacted. Only directly impacts the four investor-owned utility companies in the state.

**Please explain how your agency has involved small businesses in the development of the proposed rule.**

Not applicable, no small businesses impacted. Only directly impacts the four investor-owned utility companies in the state. However, the MoPSC held stakeholder workshops where any interested entity could participate in the process.

**Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.**

This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

No additional fees will be collected specifically associated with this rulemaking.

**Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.**

Not applicable, no small businesses impacted. Only directly impacts the four investor-owned utility companies in the state.

**Please list direct and indirect costs (in dollars amounts) associated with compliance.**

Not applicable, no small businesses impacted. Only directly impacts the four investor-owned utility companies in the state.

**Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.**

The four investor-owned electric utilities in the state.

**Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?**

Yes\_\_\_ No\_X\_

**If yes, please explain the reason for imposing a more stringent standard.**

*For further guidance in the completion of this statement, please see §536.300, RSMo.*