

Exhibit No.:  
Issue: Missouri Energy Efficiency Investment  
Act of 2009  
Witness: Tim M. Rush  
Type of Exhibit: Surrebuttal Testimony  
Sponsoring Party: KCP&L Greater Missouri Operations Company  
Case No.: EO-2012-0009  
Date Testimony Prepared: May 10, 2012

**MISSOURI PUBLIC SERVICE COMMISSION**

**CASE NO.: EO-2012-0009**

**SURREBUTTAL TESTIMONY**

**OF**

**TIM M. RUSH**

**ON BEHALF OF**

**KCP&L GREATER MISSOURI OPERATIONS COMPANY**

**Kansas City, Missouri  
May 2012**

**SURREBUTTAL TESTIMONY**

**OF**

**TIM M. RUSH**

**Case No. EO-2012-0009**

1   **Q:   Please state your name and business address.**

2   A:   My name is Tim M. Rush. My business address is 1200 Main Street, Kansas City,  
3       Missouri 64105.

4   **Q:   By whom and in what capacity are you employed?**

5   A:   I am employed by Kansas City Power & Light Company (“KCP&L”) as Director,  
6       Regulatory Affairs.

7   **Q:   Are you the same Tim M. Rush who provided Direct Testimony in this proceeding?**

8   A:   Yes, I am.

9   **Q:   On whose behalf are you testifying?**

10  A:   I am testifying on behalf of KCP&L Greater Missouri Operations Company (“GMO” or  
11       the “Company”) for the territories served by St. Joseph Light & Power (“L&P”) and  
12       Missouri Public Service (“MPS”).

13  **Q:   What is the purpose of your Surrebuttal Testimony?**

14  A:   The purpose of my Surrebuttal Testimony is to respond to certain Rebuttal Testimonies  
15       presented by parties in response to our original filing made back in December 2011.

16       Specifically, I will be responding to:

17       Staff witnesses:

18               John A. Rogers

19               Mark L. Oligschlaeger

1 Zephania Marevangepo

2 Hojong Kang

3 Randy S. Gross

4 Michael S. Scheperle

5 Michelle A. Bocklage

6 Office of the Public Counsel witness:

7 Ryan Kind

8 Missouri Department of Natural Resources witness:

9 Adam Bickford

10 NRDC/Sierra Club/ReNew MO witness:

11 Philip Mosenthal

12 Walmart witnesses:

13 Kenneth E. Baker

14 Steve W. Chriss

15 Missouri Industrial Energy Consumer witness:

16 Maurice Brubaker

17 **Q: Are any other Company witnesses presenting Surrebuttal Testimony in this**  
18 **proceeding?**

19 A: Yes. Company witness Joseph O'Donnell is also presenting Surrebuttal Testimony.

20 **Q: What area is Mr. O'Donnell addressing in his Surrebuttal Testimony?**

21 A: Mr. O'Donnell responds to the Rebuttal Testimony of Phillip Mosenthal by discussing  
22 GMO's rationale for use of its net-to-gross ratios, as well as, the program design of the  
23 Commercial & Industrial ("C&I") Prescriptive Rebate program. He also addresses

Staff's concerns with the MPower and Appliance Turn-in programs total resource cost ("TRC") calculations. Mr. O'Donnell also will address Staff's concerns regarding GMO's Demand-Side Management ("DSM") program implementation plan.

**JOHN A. ROGERS (STAFF)**

**Q: Please describe the Rebuttal Testimony of John A. Rogers and how you will be addressing his testimony.**

A: Mr. Rogers' Rebuttal Testimony presents an overview of all Staff witnesses' issues and concerns in the case and gives the general recommendation by Staff as to the Company's Missouri Energy Efficiency Investment Act ("MEEIA") filing.

**Q: Can you draw any general conclusions regarding Staff's recommendations?**

A: Yes. In general, Staff is supportive of the Company's filing. Staff is recommending several modifications and additional actions by the Company. The Company is agreeable to some of the modifications and actions, and opposes others. I will go through each of the proposals by Staff and address the Company's position. Mr. Rogers also goes over the variances requested by GMO and those variances which Staff believes that GMO needed to request.

**MEEIA RULES REQUIRING COMMISSION DECISION & MPSC STAFF  
RECOMMENDATIONS:**

**4 CSR 240-20.094(2) (A) and (B)**

**Issue 1:** Staff recommends the Commission reject GMO's demand-side program plan and order GMO to file an achievable, realistic and specific demand-side program plan for its DSM programs to be delivered according to a specified implementation plan and budget as required by Rule 4 CSR 240-20.094(1)(K).

1 **GMO Response:** I understand Staff's concern here to be that the Company's plan  
2 has all demand-side programs beginning on the day that GMO's MEEIA filing is  
3 approved by this Commission. Staff is essentially saying that the Company needs to  
4 provide a delivery plan for all programs that includes an implementation schedule and  
5 budget. The Company will agree to provide a new implementation schedule and budget.  
6 Company witness Joseph O'Donnell will discuss this in greater detail.

7 **Issue 2:** Staff recommends the Commission find that GMO's estimated  
8 incremental and cumulative annual energy and demand savings for the first three (3)  
9 program years demonstrates progress toward an expectation that GMO's demand-side  
10 programs can achieve a goal of all cost-effective demand-side savings.

11 **GMO Response:** The Company agrees that its plan moves toward the goal of  
12 implementation of all cost-effective demand-side savings. The Company does not  
13 believe any response is required under this issue.

14 **4 CSR 240-20.094(3)**

15 **Issue 3:** Following GMO filing an achievable, realistic and specific demand-side  
16 program plan, Staff recommends the Commission approve GMO's proposed energy  
17 efficiency and demand response programs conditioned upon:

- 18 A. GMO making a filing in this case that meets all of the requirements of  
19 Rule 4 CSR 240-3.164(2)(C) for its proposed energy efficiency and  
20 demand response programs which are also current GMO DSM programs;  
21 B. GMO filing in this case the TRC test for its MPower and Appliance Turn-  
22 In programs consistent with the definition in Rule 4 CSR 240-3.164(1)(X);  
23 and

1 C. The Commission ordering GMO to include a careful and thorough review  
2 and analysis of its MPower program as part of its currently ongoing DSM  
3 market potential study and subsequent Chapter 22 compliance filings  
4 and/or annual update filings.

5 **GMO Response:** The Company agrees to make an additional filing addressing the  
6 proposed energy efficiency and demand response programs, file a TRC test for both  
7 MPower and Appliance Turn-In programs and to address MPower in the DSM market  
8 potential study currently underway.

9 **Issue 4:** If the achievable, realistic and specific demand-side program plan GMO  
10 files includes the annual energy and demand savings for Program Years 1-3, contained in  
11 John A. Rogers Rebuttal Testimony Schedule JAR-7, Staff recommends the Commission  
12 approve the annual energy and demand savings for each DSM program in Schedule JAR-  
13 7 as the annual energy and demand savings targets for GMO's Commission-approved  
14 DSM programs.

15 **GMO Response:** As a result of agreeing to comply with Issue 1, the Company will  
16 need to reassess the overall program plans, and the outcome of Schedule JAR-7 will need  
17 to be revised to reflect the new program plans. Mr. O'Donnell will address the revised  
18 program plan in his Surrebuttal Testimony.

19 **Issue 5:** Staff recommends the Commission find that GMO has a reliable  
20 evaluation, measurement and verification ("EM&V") plan.

21 **GMO Response:** The Company agrees and believes that no additional response is  
22 necessary.

1       **Issue 6:**       Staff recommends the Commission reject GMO’s current tariff sheets for  
2       its DSM programs and demand-side investment mechanism (“DSIM”) and order GMO to  
3       file tariff sheets that comply with the Commission’s decisions following the conclusion  
4       of this case and prior to implementation of GMO’s Commission-approved DSM  
5       programs and Commission-approved DSIM.

6       **GMO Response:**   If the Company adopts the Commission-approved DSM programs  
7       and Commission-approved DSIM as ordered in this case, GMO will file tariff sheets that  
8       comply with the Commission’s decisions prior to implementation of the approved  
9       programs.

10      **Issue 7:**       Staff recommends the Commission order GMO to include as part of its  
11      tariff compliance filing DSM program tariff sheets containing information required by  
12      Commission MEEIA rules and information necessary for general ease of use and  
13      clarification.

14      **GMO Response:**   Staff requests that GMO include in each of its program tariff sheets  
15      the following:

- 16           1. Opt-out language;
- 17           2. Tax credit language;
- 18           3. Incentive/rebate amounts and the criteria to receive incentives/rebates;
- 19           4. Marketing strategy;
- 20           5. Relationship to other programs;
- 21           6. Identify Program Administrator;
- 22           7. Identify EM&V contractor; and
- 23           8. Annual energy and demand savings goals.

1 GMO disagrees with some of these items, in particular opt-out, marketing strategy,  
2 program administrator and EM&V contractor.

3 Inserting opt-out language into each program tariff could create customer  
4 confusion relating to whether they are opting-out of a specific program versus all DSM.  
5 The opt-out eligibility is for a specific group of customers and is not applicable to every  
6 proposed program tariff. GMO believes the language is best suited to the DSIM tariff.

7 Inserting the marketing strategy into each program tariff will add significantly to  
8 the tariffs. This information has been provided to the Commission in the promotional  
9 practices support and contains extensive mechanics of marketing efforts.

10 GMO has not selected program administrators and EM&V contractors and thus is  
11 unable to revise the program tariffs with this information. Additionally, these program  
12 administrators and contractors can change during a program plan. If GMO is required to  
13 include this language in the tariffs, then if a program administrator or contractor change  
14 occurs, a tariff revision would be required. GMO does not agree that this should be  
15 included in the tariffs.

16 **Issue 8:** Staff recommends the Commission require GMO to complete its current  
17 DSM market potential study and to include in its future MEEIA filings the Company's  
18 current DSM market potential study's realistic achievable potential ("RAP") portfolio.  
19 The RAP portfolio of DSM programs should be either in the preferred resource plan in  
20 the Company's most recent Chapter 22 compliance filing, or annual update filing, or have  
21 been analyzed through the integration process required by Rule 4 CSR 240-22.060 to  
22 determine the impact of the demand-side programs and program plans on the net present  
23 value of revenue requirements.



1 **GMO Response:** The Company agrees to move forward with its plan to complete its  
2 current DSM market potential study and to include in its future MEEIA filings the  
3 Company's current DSM market potential study's RAP portfolio, if complete and  
4 available. The market potential study is underway and is currently scheduled to be  
5 complete in the first quarter of 2013.

6 **4 CSR 240-20.094(3)(B)**

7 **Issue 9:** Staff recommends the Commission approve GMO's proposed Low-  
8 Income Weatherization, Home Energy Analyzer, Business Energy Analyzer, and  
9 Building Operator Certification programs.

10 **GMO Response:** The Company agrees and believes that no additional response is  
11 necessary.

12 **Issue 10:** Staff recommends the Commission approve GMO's Low-Income  
13 Weatherization and Building Operator Certification programs conditioned upon GMO  
14 making a filing in this case to satisfy all of the requirements of Rule 4 CSR 240-  
15 3.164(2)(C) for these programs.

16 **GMO Response:** As these are existing programs, that were introduced and discussed  
17 with stakeholders through the DSM Advisory Group (formerly CPAG) at the time of  
18 their creation and have been in place and approved by the Commission for a number of  
19 years, it would add little value to recreate and reintroduce all the requirements outlined in  
20 Rule 4 CSR 240-3.164(2)(C). However, the Company agrees to make some adjustments  
21 to the tariffs as outlined in Issue 6 and provide MPSC staff and other stakeholders  
22 references to previous filings where most, if not all, of this information was previously  
23 provided.

1                                   **4 CSR 240-20.094(3)(E) and 4 CSR 240-20.093(2)(C)**

2           **Issue 11:**       Staff recommends the Commission approve GMO's proposed cost  
3 recovery component of its DSIM and order that the approved cost recovery component  
4 include short-term interest on monthly under or over-recovery of DSM programs' costs.

5           **GMO Response:**     GMO agrees to include short-term interest on monthly under or  
6 over-recovery of DSM program costs.

7           **Issue 12:**       Staff recommends the Commission reject GMO's proposed shared  
8 benefits incentive component of its DSIM and approve a mechanism to book a regulatory  
9 asset equal to GMO's proposed shared benefit incentive component to be trued-up based  
10 on measured and verified annual net shared benefits as a result of EM&V.

11          **GMO Response:**     This is one of the most significant issues of the case. The  
12 Company established the shared benefits incentive component to keep the Company  
13 whole on a financial basis and to recover those costs contemporaneous with program cost  
14 recovery. In order for GMO to be able to book a regulatory asset, an assurance of the  
15 amount to be recovered is necessary. Staff's recommendation does not provide adequate  
16 assurance of recovery because the recording of a regulatory asset cannot be done until the  
17 EM&V is completed. The EM&V will not be completed until several years after  
18 implementation of the MEEIA programs. Because the EM&V findings are subjective, it  
19 is quite possible that parties may disagree with the outcome of the EM&V and  
20 subsequently dispute the level of shared benefits to be booked for recovery. As a result  
21 of this uncertainty, the Company would be unable to book the net shared benefits as a  
22 regulatory asset under existing accounting standards.

1           The Company must follow certain accounting standards (i.e. Accounting  
2 Standards Codifications (“ASC”)) in order to recognize additional revenues in a  
3 regulatory asset. In the case of the Company’s DSM programs, ASC 980-605-25,  
4 “Alternative Revenue Programs” would apply. GMO would not be allowed to recognize  
5 revenues from alternative revenue programs, including programs designed to adjust  
6 billings to compensate the Company for DSM initiatives, unless three specific  
7 requirements are met. These requirements are:

- 8           • First, the DSM program must be established by an order from the  
9 Commission that allows for automatic adjustment of future rates.
- 10          • Second, the amount of additional revenues for the period must be  
11 objectively determinable and recovery must be probable.
- 12          • Third, the additional revenues must be collected within twenty-four (24)  
13 months following the end of the annual period in which they are  
14 recognized.

15           Staff’s recommended approach does not meet these three requirements since there  
16 would be no Commission approved adjustment of future rates, and there would be no  
17 assurance of recovery. Measured and verified annual net shared benefits at the  
18 conclusion of EM&V is projected to occur in the fourth year after benefits would be  
19 recorded in Staff’s proposal. This does not provide adequate assurance of recovery under  
20 existing accounting guidance for the Company to record the benefits to a regulatory asset  
21 over the period of benefit. As a result, the additional revenues could not be objectively  
22 determined. In addition, the additional revenues must be collected within twenty-four  
23 (24) months following the end of the annual period in which they are recognized. I do

1 not believe that the collection of these revenues within 24 months will necessarily occur  
2 under Staff's proposal. Since the Staff's proposal would not allow the Company to book  
3 these revenues under existing accounting rules, the Staff's proposal is not workable or  
4 reasonable since an inability to record benefits as achieved does not align with the goals  
5 of MEEIA and the Company would not be able to invest in substantial DSM programs if  
6 Staff's approach was adopted.

7 All existing programs have already been tested through an EM&V, which was the  
8 basis for the determination of the program outcome and goals. The EM&V was used in  
9 the development of the programs and should be the basis for the determination of the  
10 shared benefits. For the new programs where an EM&V has not been completed, the  
11 determination of the program outcomes was developed from the best available  
12 information consistent with evaluation by other independent reviewers.

13 The Company opposes Staff's proposal and recommends the original proposal  
14 filed by the Company.

15 **Issue 13:** Staff recommends GMO and the parties continue to analyze the impacts of  
16 a variance from Rule 4 CSR 240-20.093)(2)(H),<sup>11</sup> which is required for approval of  
17 GMO's proposed shared benefits component of its DSIM.

18 **GMO Response:** GMO believes that it has demonstrated the need for recovery of the  
19 net shared benefit, the need to meet the overall objectives of the legislation, and the need  
20 to implement energy efficiency projects which are not financially detrimental to the  
21 Company.

22 **Issue 14:** Staff recommends the Commission reject GMO's performance incentive  
23 component and approve an alternative performance incentive component for GMO.

1 **GMO Response:** GMO's proposal is designed to provide a reasonable return on the  
2 expenditures and commitment by the Company. Staff has limited the incentive  
3 component to be insufficient for recovery of a reasonable investment. Staff's incentive  
4 level does not provide a reasonable return to encourage the investment. Staff's incentive  
5 proposal should be rejected.

6 **Issue 15:** If the Commission approves GMO's lost revenue component, Staff  
7 recommends the Commission order GMO to define lost revenues consistent with the  
8 definition in Schedule JAR-6 to help remove any uncertainty concerning the definition of  
9 lost revenue in Rule 4 CSR 240-20.093(1)(Y).

10 **GMO Response:** GMO agrees to add to the definition of lost revenues to be  
11 consistent with John A. Rogers Rebuttal Testimony Schedule JAR-6.

12 **Issue 16:** Staff recommends the Commission order GMO to comply with Section  
13 393.1075.10 RSMo. and Rule 4 CSR 240-20.094(6)(J), and allow customers who opt-out  
14 of participating in the Company's DSM programs to participate in interruptible or  
15 curtailable rate schedules or tariffs offered by GMO, including GMO's Energy Optimizer  
16 and MPower programs.

17 **GMO Response:** As filed in my Direct Testimony included in the GMO filing,  
18 GMO opposes allowing customers who are not paying for energy efficiency and demand  
19 response programs to be able to participate in DSM programs included in the MEEIA  
20 program portfolio. Because customers that "opt-out" are permitted to participate in other  
21 interruptible or curtailable programs, GMO's program complies with the MEEIA statute  
22 and rules.

1 **4 CSR 240-20.093(2)(D)**

2 Staff makes no recommendation.

3 **4 CSR 240-20.093(2)(E)**

4 **Issue 17:** Staff recommends the Commission reject GMO's proposed lost revenue  
5 component of its DSIM, because the Company will recover any lost revenue through  
6 Staff's proposed mechanism for GMO to book a regulatory asset equal to GMO's  
7 proposed shared benefit incentive component to be trued-up based on measured and  
8 verified shared benefits as a result of EM&V.

9 **GMO Response:** Given the Company's issues and concerns regarding Staff's  
10 regulatory asset proposal (Issue 12), it seems unlikely that Staff's position will allow  
11 GMO to recover lost revenue. Additionally, given that the MEEIA rules allow the  
12 recovery of lost revenues (as defined therein) with specific criteria to be met by the  
13 Company, it is unnecessarily restrictive to eliminate recovery of lost revenues (or the  
14 ability to request such recovery) should the Company need to exercise that right in the  
15 future.

16 **4 CSR 240-20.093(2)(K)**

17 **Issue 18:** Staff recommends the Commission approve in this case a DSIM rate of  
18 \$0.00220 per kWh for residential customers and a DSIM rate of \$0.00100 per kWh for  
19 C&I customers.

20 **GMO Response:** GMO disagrees with having differing rates for residential and C&I  
21 customers. The programs have been designed on a portfolio-basis. Several of the  
22 programs are offered to both residential and C&I customers. Additionally, GMO has  
23 conducted research through its potential studies which show DSM is beneficial to all

1 customers. Program administration also crosses customer classes. Unbundling these  
2 costs would prove difficult and GMO does not see a clear benefit to customers.

3 The following example shows why Staff's position does not make sense. Assume  
4 that a power plant is necessary because each of the classes (i.e. residential and C&I) are  
5 experiencing load growth that necessitates the need to build a new plant in five years.  
6 However, by implementing energy efficiency programs for residential customers only,  
7 the Company can delay the construction by three years. Under this scenario, the delay in  
8 the power plant is the result of residential customer programs only. Although the  
9 residential customers are providing the ability to delay the power plant's construction, the  
10 benefits are experienced by all customer classes. It is the Company's opinion that all  
11 classes should pay equally for the programs.

#### 12 4 CSR 240-20.093(6)

13 **Issue 19:** Staff recommends the Commission reject GMO's proposed wording to  
14 identify the separate DSIM charge on each customer bill and order GMO to use either  
15 "Energy Efficiency Pgm Charge xxx kWh @ \$0.xxxxx" or "Demand-Side Investment  
16 Charge xxx kWh @ \$0.xxxxx" to identify the separate DSIM line item charge. However,  
17 should the Commission approve GMO's proposed line description of "DSIM xxx kWh @  
18 \$0.xxxxx," the Staff recommends that the Commission order GMO to include the  
19 wording, "This bill includes a DSIM charge effective [date] allowing recovery of costs  
20 and incentives for investments in demand-side programs," on each customer's bill; and

21 **GMO Response:** GMO does not oppose the inclusion of wording that says  
22 "Demand-Side Investment Charge xxx kWh @ \$0.xxxxx".

1       **Issue 20:**       Staff recommends the Commission approve GMO's proposed language to  
2       disclose the change to customers' bills for the DSIM on the condition that GMO also  
3       seek and receive Commission approval of the DSIM Rider insert referred to in the  
4       language: Message Board – Demand-Side Program Investment Mechanism Rider – This  
5       month you will notice a new charge on your monthly bill that allows KCP&L to recover  
6       costs associated with the development of energy efficiency programs on behalf of  
7       Missouri customers. By helping customers save energy, KCP&L is able to better manage  
8       regional energy demand and keep costs affordable, proactively support environmental  
9       initiatives and defer the costs of constructing new power plants and generation units. For  
10      more information, please read the enclosed DSIM Rider insert or visit  
11      [www.kcpl.com/about/moERate.pdf](http://www.kcpl.com/about/moERate.pdf).

12      **GMO Response:**   GMO agrees to ask Commission approval for the proposed  
13      language. Concerning the variances requested by GMO, Staff recommends:

14           **Variance 1:**   The Commission reject GMO's request for a variance from Rule 4  
15           CSR 240-20.093(2)(H)(3) which requires that all energy and demand savings  
16           used to determine a DSIM utility incentive revenue requirement be measured and  
17           verified through EM&V, because GMO has not yet attempted to show good cause  
18           - through quantitative analysis - why the prospective recovery of its shared benefit  
19           component of its DSIM is superior to a baseline DSIM that does comply with the  
20           requirements of 4 CSR 240-.093(2)(H)(3);

21           **Variance 2:**   The Commission grant GMO a variance from Rule 4 CSR 240-  
22           20.093(4)(A) which requires that DSIM rates be adjusted once every six (6)  
23           months, because approval of this variance does not introduce unnecessary risk to



1 customers or to the Company until more experience is gained and can be used to  
2 evaluate the impact, if any, from making DSM rate adjustments annually; and

3 **Variance 3:** The Commission reject GMO's request for a variance from Rule 4  
4 CSR 240-20.094(6)(J) which allows customers that elect to opt-out of  
5 participation in DSM programs to participate in interruptible or curtailable rate  
6 schedules offered by the utility, because the Commission does not have the  
7 authority to grant a variance from the statutory language of the MEEIA.

8 **Variances which are required, but GMO did not request**

9 **Variance 4:** The Commission grant GMO a variance from Rule 4 CSR 240-  
10 20.094(3)(A)(3) on the condition that GMO include all proposed DSM programs  
11 in the preferred resource plan in its April 1, 2012 Chapter 22 compliance filing, or  
12 if not in the preferred resource plan, GMO should file in this case the results of its  
13 analysis of the DSM programs through integrated analysis required by 4 CSR  
14 240-22.060; and

15 **Variance 5:** The Commission grant GMO a variance from Rule 4 CSR 240-  
16 3.164(2)(A), since GMO has engaged Navigant to perform a DSM market  
17 potential study for its service territory. This work has started and is expected to be  
18 completed in early 2013 for use by the Company in its future MEEIA filings and  
19 its future Chapter 22 analyses and filings.

20 **GMO Response:**

21 **Variance 1:** The Company disagrees with Staff that the Company has not  
22 attempted to show good cause for the variance. In addition to the original filing  
23 document, Schedule TMR-5, and extensive explanation provided in the testimony

1 provided by myself and Company witness Kevin Bryant, GMO has provided  
2 copious quantitative analysis presented to stakeholders through the weekly  
3 technical conferences that further clarifies GMO's need and reasons for the  
4 variance request. Over twenty different financial scenarios were modeled and  
5 presented to stakeholders in an attempt to clarify and answer questions. In  
6 addition to the weekly technical conferences and the normal data request process,  
7 GMO held various calls and responded to numerous email requests to answer any  
8 and all questions posed by stakeholders. The Company has provided this degree  
9 of transparency and cooperation since the summer of 2011 in an effort to enable  
10 collaboration with all parties.

11 It is unlikely that Staff's recommendation and utilization of a deferral  
12 mechanism could be another method acceptable to the Company that may help  
13 ensure earnings are kept whole. The complication with the Staff approach is that  
14 a level of assurance and compliance with all the accounting rules and standard  
15 requirements outlined in Issue 12 is necessary to be able to utilize Staff's deferral  
16 mechanism. However, assuming that further analysis doesn't reveal a financial  
17 hardship that can't be mitigated and assuming we can address the assurance issue;  
18 this may be an acceptable alternative which would not require a variance. The  
19 Company believes this method would be workable only if deemed savings were  
20 utilized and would most likely increase program costs as annual EM&V would be  
21 required to meet the 24 month accounting requirement for recovery. I believe that  
22 given the complex accounting issues that would need to be addressed, in its

1 current state Staff's proposal is most likely unworkable. Therefore, GMO  
2 reaffirms its need for a variance.

3 **Variance 2:** GMO supports this variance recommendation by Staff.

4 **Variance 3:** See above under Issue 18 for the Company's response to the  
5 reasonableness of Staff's proposed pricing mechanism. With regard to the legal  
6 argument which Staff believes prohibits GMO from excluding customers from  
7 participation, the Company's legal counsel disagrees. As previously stated, the  
8 Company provides customers who elect to opt-out the option to participate in a  
9 number of interruptible and curtailable rate programs offered by the Company  
10 which are not a part of the DSIM program portfolio.

11 **Variance 4:** The Company filed its IRP plan on April 9, 2012, and included all  
12 DSIM plans as filed in this proceeding in the preferred resource plan.

13 **Variance 5:** The Company supports the position of the Staff.

14 **RYAN KIND (OFFICE OF PUBLIC COUNSEL ("OPC"))**

15 **Q: Please address Mr. Kind's rebuttal testimony and discuss your response to his**  
16 **issues.**

17 **A:** Mr. Kind outlines four specific issues starting on page 3 of his rebuttal testimony. I will  
18 address each issue.

19 **OPC Issue 1:** Shared benefits mechanism would allow GMO to recover "lost revenues"  
20 above level defined in 4 CSR 240-20.093(1)(Y). DSIM proposal is designed to over  
21 collect lost revenues because it includes a lost revenue recovery mechanism provided in 4  
22 CSR 240-20.093(2)(G) in addition to the shared benefits.

1 **GMO Response:** GMO's shared benefits mechanism is not designed to recover "lost  
2 revenues," as defined in 4 CSR 240-20.093(1)(Y). Instead, the shared benefits  
3 mechanism is designed to keep the Company financially balanced. Contrary to Mr.  
4 Kind's Rebuttal Testimony, it is not the intent of GMO to over recover revenues. The  
5 Company's proposed DSIM shared benefits component of the incentive mechanism is  
6 intended to keep GMO financially whole based on the program initiatives. The lost  
7 revenue component, as defined by 4 CSR 240-20.093(1)(Y), does not address the  
8 financial detriment (i.e. throughput disincentive) that would occur with the program  
9 implementation, but instead addresses lost revenues, if sales fall below the last rate case  
10 sales level and are directly attributable to the energy efficiency programs.

11 **OPC Issue 2:** GMO's shared benefits incentive is redundant with its performance  
12 incentive and is thus unnecessary.

13 **GMO Response:** I am not sure how Mr. Kind can state that the shared benefits  
14 incentive is redundant with the performance incentive. Each incentive has its own  
15 specific use and is calculated distinctly from each other. The performance incentive is  
16 the only component of the recovery mechanism where the Company is attempting to earn  
17 a "return" for successful implementation of program plans and the accomplishment of  
18 certain levels of demand and energy savings. The inclusion of a performance incentive  
19 helps to ensure that the Company's financial incentives are properly aligned to increase  
20 the likelihood of success of DSM programs and facilitates valuing demand-side  
21 investments equal to traditional supply and delivery infrastructure investments, as  
22 outlined in section three of the MEEIA statute. As outlined in the statute, the goal of  
23 valuing demand-side investments equal to other traditional investments is the policy of

1 the state and a fundamental objective in the MEEIA rules that attempt to provide a  
2 framework for allowing recovery, as well as opportunities for a return. As such,  
3 eliminating the performance incentive works against those goals and the spirit of the  
4 original legislation.

5 **OPC Issue 3:** Total amount of revenues requested is excessive and results in almost a  
6 doubling of the total costs needed to support DSM programs.

7 **GMO Response:** I am not sure how Mr. Kind can make this statement. The DSIM  
8 plan filed by the Company provides for a financial analysis of the overall plan as can be  
9 seen on Schedule TMR-5, outlining the deterioration in earnings attributable to the  
10 reduction in revenues as a result of the programs less the variable fuel costs of over \$16  
11 million over the first three years of the programs. Program costs are an additional \$39  
12 million. The Company's proposed DSIM results essentially in a financial position for the  
13 Company equal to financial position had they not implemented any energy efficiency  
14 programs. The only potential reward or earnings potential to the Company is if we meet  
15 certain targets where the Company could receive a performance incentive verified  
16 through EM&V. The Company feels strongly that its position is consistent with the  
17 spirit, intent and framework of the MEEIA statute.

18 **OPC Issue 4:** GMO is requesting incentives dramatically higher, on a normalized basis,  
19 than the level of shareholder incentives provided to most other utilities.

20 **GMO Response:** See analysis of other state information below.

21 **Q: Would you address some of the other states' incentive mechanisms:**

22 **A:** While it may be relevant and useful to benchmark DSIM recovery mechanisms and  
23 incentives against other utilities in the nation, it is important that such comparisons be

1 done on an equal, “apples to apples” basis. Specifically, if there will be comparisons of  
2 specific components (i.e. shared benefits, cost recovery, performance incentive) of the  
3 recovery mechanism, it is important that there is some consistency as to how each bucket  
4 is defined. If not, true comparability is not possible and/or such comparisons may  
5 facilitate drawing inaccurate conclusions.

6 For example, OPC references data that compares state performance incentives  
7 with designated thresholds and triggers, implying that GMO’s performance incentive is  
8 overly generous (Kind Rebuttal Testimony, pp. 11-12). However, such comparisons are  
9 not appropriate if they do not provide a complete picture of a utility’s DSIM recovery.  
10 For example, many of the states compared in OPC and other stakeholders’ benchmarking  
11 data, do not include or make clear that many utilities used in the comparison are gas  
12 utilities that are fully or partially decoupled. The state data also does not include  
13 representation of how a utility’s throughput disincentive is addressed, usually through a  
14 separate disincentive offset or lost margin recovery. Currently, 22 states have approved  
15 lost revenue, lost margin or decoupling mechanisms, and 11 other states have cases  
16 pending.<sup>1</sup> The support document cited in the footnote below is attached to my Direct  
17 Testimony as Schedule TMR-8.

18 OPC further relies on an American Council for an Energy Efficient Economy  
19 (“ACEEE”) Report, “Carrots for Utilities: Providing Financial Returns for Utility  
20 Investments in Energy Efficiency.” Mr. Kind’s Rebuttal Testimony does not include  
21 page 10 of the report, which states:

22 Most states with incentives also permit some form of remuneration to  
23 utilities from sales that are lost due to decreased demand resulting from

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<sup>1</sup> The Edison Foundation Institute for Electric Efficiency, “State Electric Efficiency Regulatory Frameworks”, June 2011.

1 efficiency improvements. Both decoupling and lost revenue recovery  
2 mechanisms are common....

3 Some of the utilities with favorable recovery mechanisms encouraging energy efficiency  
4 investments are:

5 **Oklahoma Gas & Electric (“OG&E”):**

6 OG&E has concurrent recovery of direct costs via a rider with a built-in lost revenue  
7 adjustment (projected annually and collected through the year). Additionally, it has an  
8 incentive mechanism where it receives shared benefits for achieving savings goals,  
9 calculated on a measure-by-measure basis. The utility may earn up to 25% for each  
10 measure where the TRC is greater than 1 and up to 15% for each measure where the TRC  
11 is less than 1.

12 **Public Service Colorado (“PSCo”):**

13 PSCo has concurrent recovery of program costs through a rider. A conditional portion of  
14 the performance incentive mechanism in Colorado allows the utility to recover a \$2  
15 million per year after-tax “disincentive offset” payment for achieving greater than 80% of  
16 the annual energy savings goal. Performance incentives for surpassing “modest” goals;  
17 for each 1% of goal reached beyond 80%, the utility earns an additional 0.2% of net  
18 economic benefits, up to 10% at 130% of goal attainment, up to 12% at 150% of goal  
19 attainments. Incentives are allowed via an annually trued-up DSM Cost Adjustment and  
20 are capped at 20% of total annual DSM expenditures.

21 **Duke Energy Carolinas and Ohio (Save-a-Watt program)**

22 Duke receives 50% of the net present value of avoided costs for energy conservation and  
23 75% of the net present value for demand response. Demand response programs are  
24 viewed by parties as having a useful life of one year; energy conservation programs have

1 useful lives of up to 15 years. This virtual power plant model combines cost recovery,  
2 lost revenue recovery and incentives into an avoided cost charge.

3 According to the ACEEE, incentive mechanisms help level the playing field  
4 between traditional capital investments and investments in energy efficiency, but do little  
5 to address other negative financial impacts that result in improving customer efficiency.<sup>2</sup>  
6 GMO's shared benefits recovery proposal is critical in mitigating the negative financial  
7 impacts that are currently present for utility investment in demand response and energy  
8 efficiency programs.

### 9 **OPC RECOMMENDATIONS**

10 **OPC Issue 1:** OPC agrees with variance request [4 CSR 240-20.093(4)(A)] to adjust  
11 rates annually rather than semi-annually but only for program cost recovery – not lost  
12 revenues or incentive.

13 **GMO Response:** GMO is appreciative that OPC supports the recovery on an annual  
14 basis of program costs. However, OPC's opposition to recovery of lost revenues or  
15 incentives, as allowed in the MEEIA rules, is not acceptable to the Company and should  
16 be rejected by the Commission.

17 **OPC Issue 2:** OPC disagrees with variance request [4 CSR 240-20.093(2)(H)(3)] to  
18 allow prospective incentive recovery.

19 **GMO Response:** GMO opposes OPC on this issue.

20 **OPC Issue 3:** OPC disagrees with variance request [4 CSR 240-20.094(6)(J)] to refuse  
21 participation in interruptible or curtailable rate schedules to customers electing to opt-out.

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<sup>2</sup> Hayes, Nadel, Kushler, York, *Carrots for Utilities: Providing Financial Returns for Utility Investments in Energy Efficiency*, ACEEE, Report U111, January 2011.



1 **GMO Response:** GMO opposes OPC on this issue for the same reasons as stated in  
2 opposition to Staff and Walmart.

3 **OPC Issue 4:** OPC believes that the Commission should reject GMO's shared benefits  
4 incentive because it is designed to collect lost revenues, is based on total shared benefits  
5 rather than net shared benefits and is redundant with the proposed performance incentive.

6 **GMO Response:** GMO opposes OPC on this issue. The Company's proposed  
7 DSIM shared benefits component is designed to maintain a financial position for the  
8 Company equal to the financial position had they not implemented any energy efficiency  
9 programs. The Company's proposed performance incentive is designed as a reasonable  
10 earnings opportunity if the Company achieves 50% or higher of its goals.

11 OPC's position on variance requests 1, 2 and 3 listed above does not allow the  
12 Company to align its financial incentives with helping customers to use energy more  
13 efficiently. By rejecting GMO's shared benefit and performance incentive proposal,  
14 OPC is ignoring the differences between supply side and demand side investments and  
15 not allowing GMO to value those investments equally. Without the shared benefit and  
16 performance incentive components, it will be difficult for the Company to move forward  
17 with the DSM plan as contained in its MEEIA filing.

18 **ADAM BICKFORD (MISSOURI DEPARTMENT**  
19 **OF NATURAL RESOURCES ("MDNR"))**

20 **Q: Please discuss MDNR witness Adam Bickford's Rebuttal Testimony.**

21 A: MDNR's testimony focuses on the scope and content of GMO's DSM program plan and  
22 the structure of the DSIM. He proposes an alternative incentive structure.

- 23 • Mr. Bickford supports the portfolio of programs as filed by GMO and states that it is  
24 comprehensive. MDNR fully supports GMO's program plan as new programs will

1 work together to support robust energy savings and will provide substantial savings to  
2 GMO customers.

- 3 • Mr. Bickford expresses concerns with three parts of the incentive structure: (1)  
4 definition of “shared benefits; (2) prospective collection of benefits; and (3) structure  
5 of the fixed benefits recovery and performance bonus.

6 Mr. Bickford’s concerns with “shared benefits” are that gross benefits include  
7 program costs – costs that are recovered under the cost recovery provisions of the rule.  
8 GMO could recover a portion of its program costs twice.

9 MDNR also discusses concerns with recovering a fixed percentage of benefits as  
10 recovery of lost margins and believes this is outside the scope of the rules. Mr. Bickford  
11 states that the rules allow for recovery of lost revenues due to DSM programs – not lost  
12 margins. However, despite its concerns, MDNR notes that GMO should have the  
13 opportunity to recover the losses in sales resulting from its energy efficiency efforts.  
14 Although MDNR would prefer to see another solution to address the throughput  
15 disincentive, ideally through a performance incentive that provides an increasing  
16 percentage of net shared benefits as performance improves, MDNR supports GMO’s  
17 proposal. Mr. Bickford proposes to split the prospective recovery of the shared benefits  
18 into existing and new programs. He states that since the existing programs have been  
19 evaluated, those benefits (with verified program savings) could be recovered  
20 prospectively and the new programs could be recovered after evaluation.

21 Mr. Bickford expresses concerns with the performance bonus in that it is not a  
22 “portion of annual net shared benefits” – it is a fixed dollar award that varies across tiers

1 of performance. Award amounts have no relationship to the benefits created by the  
2 programs and tiers begin to award GMO at 50% of goal.

3 MDNR provides an alternative proposal: An incentive structure based on  
4 program performance relative to overall savings goals. Mr. Bickford recommends  
5 granting 16% of net shared benefits but not awarding any performance incentive until  
6 70% of savings goal is reached – with a ceiling at 150% of target.

7 **Q: Do you have any comments or opinions regarding MDNR's view of GMO's**  
8 **proposed DSM plan?**

9 A: Yes. GMO appreciates MDNR's recognition of the extensive work and planning put into  
10 building a comprehensive and aggressive DSM plan. GMO has attempted to create a  
11 well rounded plan that provides energy efficiency, demand response, and educational  
12 programs to its customers in an effort to meet aggressive demand savings and energy  
13 goals that will amount to significant benefits.

14 **Q: Do you agree with MDNR's position regarding the DSIM recovery mechanism,**  
15 **specifically "net shared benefits"?**

16 A: Mr. Bickford expresses concern with the utilization of gross shared benefits. GMO's  
17 DSIM recovery structure allows for transparency of each component tracked: program  
18 costs, shared benefits, and the performance incentive. Program costs will be trued-up on  
19 annual basis and will be compared on an ongoing basis against established budgets. A  
20 majority of the shared benefits were calculated utilizing prior completed EM&V reports  
21 and will also be trued-up based on actual performance of established metrics/participants.  
22 It is the Company's understanding that the 16% of net shared benefits recommended by  
23 MDNR was developed prior to the implementation plan prepared by GMO in response to

1 Staff's request and it is our determination that this percentage would change as a result of  
2 the implementation plan. The performance incentive will be awarded based on  
3 successfully hitting energy and demand targets.

4 Given how each component is tracked separately and that the shared benefits do  
5 not include any program costs (only gross benefits), GMO does not believe that it would  
6 be possible for the Company to double recover program costs.

7 Finally, since the recovery of shared benefits is meant to be calculated in a  
8 manner to keep the Company financially whole, MDNR's recommended approach may  
9 be a workable solution to address any concerns with deviations from the MEEIA rules  
10 pertaining to the calculation of shared benefits, while still addressing GMO's financial  
11 risks and concerns.

12 **Q: Do you agree with MDNR's position regarding the utilization of a fixed percentage**  
13 **of shared benefits and the prospective recovery?**

14 **A:** GMO agrees that it attempted to create a DSIM structure that would not put the Company  
15 in a situation where it would be financially harmed, but would allow it to implement a  
16 DSM plan that could bring significant benefits to its customers. The Company  
17 appreciates MDNR's attempt to find a workable solution and agrees that their  
18 recommendation for prospective recovery of a portion of the net shared benefits might be  
19 a way to resolve the issue. The Company states that delaying recovery of new programs  
20 would be a financial detriment to the Company in the early years and there would need to  
21 be certainty as to measurement. Additionally, this method would need to comply with  
22 the accounting standards discussed herein.

1 **Q: Please discuss MDNR's alternative proposal relating to the Company's proposed**  
2 **performance incentive.**

3 A: MDNR's alternative proposal relating to an incentive structure based on program  
4 performance relative to overall savings goals, in particular, 16% of net shared benefits  
5 with no award of a performance incentive until 70% of savings goal is reached – with a  
6 ceiling at 150% of target is again the agency's attempt to find a workable solution. The  
7 Company appreciates these efforts and believes this alternative proposal might be a way  
8 to resolve the issue if appropriately adjusted for with the implementation plan and if the  
9 method complies with the appropriate accounting standards.

10 **Q: Do you have any other comments?**

11 A: GMO believes MDNR has attempted to look at the Company's proposal in a big picture  
12 view and with an attempt to resolve issues to move the filing forward. GMO appreciates  
13 MDNR's positive comments regarding the Company's concerted efforts to work with the  
14 various stakeholders to be sure parties understood all components of the MEEIA filing.  
15 In turn, MDNR has attempted to balance interests and arrive at a reasonable, workable  
16 solution.

17 **PHILLIP MOSENTHAL (NATIONAL RESOURCE DEFENSE COUNCIL**  
18 **("NRDC")/SIERRA CLUB/RENEW MISSOURI))**

19 **Q: Please discuss the Rebuttal Testimony provided by Phillip Mosenthal.**

20 A: Mr. Mosenthal supports the overall structure of GMO's incentive mechanism as well as  
21 the proposed DSM targets for the three year program plan period. He is supportive of the  
22 variance request to change from semi-annual to annual adjustments. He is also  
23 supportive of GMO's variance regarding MPower participants being restricted from

1       opting-out. Mr. Mosenthal, however, expresses concerns with a few specifics of GMO's  
2       proposal.

3   **Q:   Please explain Mr. Mosenthal's concerns.**

4   A:   He does not believe it is appropriate to lock in the DSIM analysis factors *a priori* and  
5       believes some of the proposed factors are not used appropriately. He believes the  
6       incentive should be based on the actual performance of the portfolio, using best estimates  
7       of net-to-gross values and tracked data on measure savings and load shapes.

8   **Q:   Please respond to these concerns.**

9   A:   The Company has utilized factual, EM&V values that provide estimates of savings  
10      achieved over several years along with estimates of NTG ratios. For additional  
11      information, please refer to the Surrebuttal Testimony filed by Company witness Joseph  
12      O'Donnell.

13   **Q:   Does Mr. Mosenthal have any other concerns?**

14   A:   Mr. Mosenthal believes the lost revenue component of the DSIM should be eliminated as  
15      it is unnecessary since the shared benefits component is designed to recover lost margins  
16      and could be problematic if it were triggered. Additionally, Mr. Mosenthal supports the  
17      additional performance incentive but believes it should be modified to only reward GMO  
18      for excellent performance – first trigger occurring with 75% of goal achievement.

19   **Q:   Please discuss your response to these recommendations.**

20   A:   As discussed earlier in my testimony, given the fact that the MEEIA rules allow the  
21      recovery of lost revenues (as defined therein) with specific criteria to be met by the  
22      Company, it would seem unnecessarily restrictive to remove allowance of such recovery

1 (or the ability to request such recovery) should the Company need to exercise that right in  
2 the future.

3 The Company disagrees with Mr. Mosenthal's recommendation to modify the  
4 first trigger of the performance incentive to 75% of goal achievement. If the Commission  
5 decides to modify GMO's original proposal of greater than 50% being the first trigger,  
6 Staff and MDNR have recommended 70%.

7 **MISSOURI INDUSTRIAL ENERGY CONSUMERS ("MIEC") AND WAL-MART**  
8 **STORES EAST, L.P. AND SAM'S EAST, INC. ("WALMART")**

9 **Q: Are there any other issues you wish to address in your Surrebuttal Testimony?**

10 A: Yes. I want to address the rebuttal testimonies of MIEC and Walmart. I'll begin with  
11 MIEC witness Maurice Brubaker who argues that there is no justification for spreading  
12 the costs of DSM programs across all customers. He believes costs associated with  
13 residential programs should be charged to residential customers and costs associated with  
14 C&I programs should be charged to C&I customers. He also states that GMO should  
15 begin maintaining records of DSM costs by rate schedule rather than the broad C&I  
16 category, and as the information becomes available should transition its cost recovery  
17 mechanism so that there is a separate charge for each rate schedule.

18 **Q: Do you agree with Mr. Brubaker?**

19 A: No. As I discussed earlier in my testimony, GMO disagrees with differing rates for  
20 residential and C&I customers. The programs have been designed on a portfolio-basis.  
21 Several of the programs cross customer classes. Additionally, GMO has conducted  
22 research through its potential studies which show DSM beneficial to all customers.

23 **Q: What issues will you be addressing regarding Walmart's witnesses?**

24 A: The MPower opt-out issue and other interruptible/curtailable rates.

1 **Q: Walmart witness Baker argues that the intent of the MEEIA statute (393.1075**  
2 **RSMo) is to allow participation of large customers that “opt-out” in all**  
3 **interruptible/curtailable programs including MPower. Do you agree?**

4 A: No. I believe that the MEEIA statute itself permits the Commission to make a  
5 determination that it is unfair for a large customer to receive benefits from a program  
6 such as MPower and letting all other residential and commercial customers pay for that  
7 program. Section 393.1075.10 requires that customers that have opted out are “allowed  
8 to participate in interruptible or curtailable rate schedules offered by the electric  
9 corporation.” GMO’s proposal is consistent with the statute in that a customer that elects  
10 not to participate in demand side programs can still participate in interruptible or  
11 curtailable GMO rate schedules, just not the MPower program. GMO has other  
12 interruptible or curtailable programs outside the MPower program which are available to  
13 customers that have elected not to participate in GMO’s demand-side programs. Thus,  
14 the Commission would not violate the MEEIA statute by adopting GMO’s position.

15 **Q: Mr. Baker states that the interruptible/curtailable programs besides MPower**  
16 **provide uncertain benefits and have limited availability. How do you respond?**

17 A: Mr. Baker is correct in that the Voluntary Load Reduction Rider (“VLRR”) does not  
18 specify the payment amount of curtailments. It is also limited to nonresidential  
19 Customers that have a peak demand in the past twelve (12) months exceeding five  
20 hundred (500) kW.



1   **Q:   Is this the only option GMO offers for customers who wish to participate in an**  
2       **interruptible/curtailable program but require more structure and certainty?**

3   A:   No, GMO also has a Curtailable Demand Rider (“CDR”) tariff with a defined rate paid,  
4       defined number of curtailments, and defined length of curtailments. Its availability is  
5       limited to customers with a demonstrated capability of curtailing two hundred (200) kW  
6       or more.

7   **Q:   Should a customer considering exercising its right to opt-out of the Demand Side**  
8       **Management programs as allowed in the MEEIA rules be concerned about the size**  
9       **limitations in the VLRR and CDR tariffs?**

10  A:   The MEEIA rules regarding opt-out more than likely would only apply to Customers  
11       large enough to qualify for either the VLRR or CDR. Customers who opt-out could  
12       participate in either the VLRR or CDR if they wish and the Company has the need for  
13       additional curtailment resources, even if they could not participate in MPower.

14  **Q:   Does GMO offer any other rates that would allow a Customer to manage their load**  
15       **that are not part of this MEEIA filing?**

16  A:   Yes, GMO offers Time-of-Day rates and a Real-Time Price rate that Customers can take  
17       advantage of as well.

18  **Q:   Does that conclude your testimony?**

19  A:   Yes, it does.





# State Electric Efficiency Regulatory Frameworks

June 2011

## Contents

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Lost Revenue Recovery Mechanisms/Revenue Decoupling	4
Performance Incentives	10

Spending and budgets for utility-administered electric efficiency programs continue to grow, due in part to the evolution of state policies that allow utilities to pursue efficiency as a sustainable business. **This latest review by IEE staff summarizes ongoing and the most recent policies that promote program cost recovery, lost revenue recovery, and performance incentive mechanisms for electric utilities on a state-by-state basis.**

- Rhode Island, and Montana are the latest jurisdictions to have their commissions allow revenue decoupling in the electric sector (state summary & map, p. 4). Arizona, Hawaii, the District of Columbia, Idaho, Massachusetts, Michigan, Oregon, Wisconsin and Vermont have also approved decoupling measures in the past two years. Delaware, New Hampshire, New Jersey, New Mexico, and Minnesota are considering some form of decoupling. Lost revenue adjustment mechanisms were recently approved in Arkansas and Indiana as part of larger cost recovery mechanisms.

- Twenty-one states currently have incentives in place, with another seven states pending (p. 10). Georgia, Indiana, Michigan, Minnesota, New Mexico, North Carolina, Oklahoma, South Carolina, and South Dakota have approved new or modified incentive mechanisms in the last two years; Arkansas, Florida, Idaho, Kansas, Montana, New York, and Utah are each considering some form of performance incentive for efficiency.
- Duke Energy's "virtual power plant" model, which combines cost recovery, lost revenue recovery and incentives into an avoided cost charge, has recently been approved in North Carolina and South Carolina. The Ohio Commission approved the VPP program in 2008. Duke has proposed similar mechanisms in Indiana. ■



INSTITUTE FOR  
**Electric Efficiency**

*Advancing energy efficiency and  
demand response among electric utilities.*

Schedule TMR-8

## State Regulatory Framework Summary Table

State	Direct Cost Recovery			Fixed Cost Recovery		Performance Incentives	Virtual Power Plant
	Rate Case	System Benefits Charge	Tariff Rider/Surcharge	Decoupling	Lost Revenue Adjustment Mechanism		
Alabama	Yes						
Alaska							
Arizona		Yes	Yes	Pending		Yes	
Arkansas			Yes		Pending	Pending	
California	Yes	Yes	Yes	Yes		Yes	
Colorado	Yes		Yes		Yes	Yes	
Connecticut		Yes		Yes		Yes	
Delaware	Yes			Pending			
District of Columbia	Yes	Yes		Yes			
Florida			Yes			Pending	
Georgia	Yes		Yes			Yes	
Hawaii	Yes			Yes		Yes	
Idaho			Yes	Yes		Pending	
Illinois			Yes				
Indiana			Yes		Yes	Yes	Pending
Iowa			Yes				
Kansas	Yes					Pending	
Kentucky			Yes		Yes	Yes	
Louisiana	Yes						
Maine		Yes					
Maryland			Yes	Yes			
Massachusetts		Yes		Yes		Yes	
Michigan			Yes	Yes		Yes	
Minnesota	Yes		Yes	Pending		Yes	
Mississippi	Yes						
Missouri	Yes						
Montana		Yes		Pending	Yes	Pending	
Nebraska							
Nevada	Yes			Yes			
New Hampshire		Yes		Pending		Yes	
New Jersey		Yes		Pending			

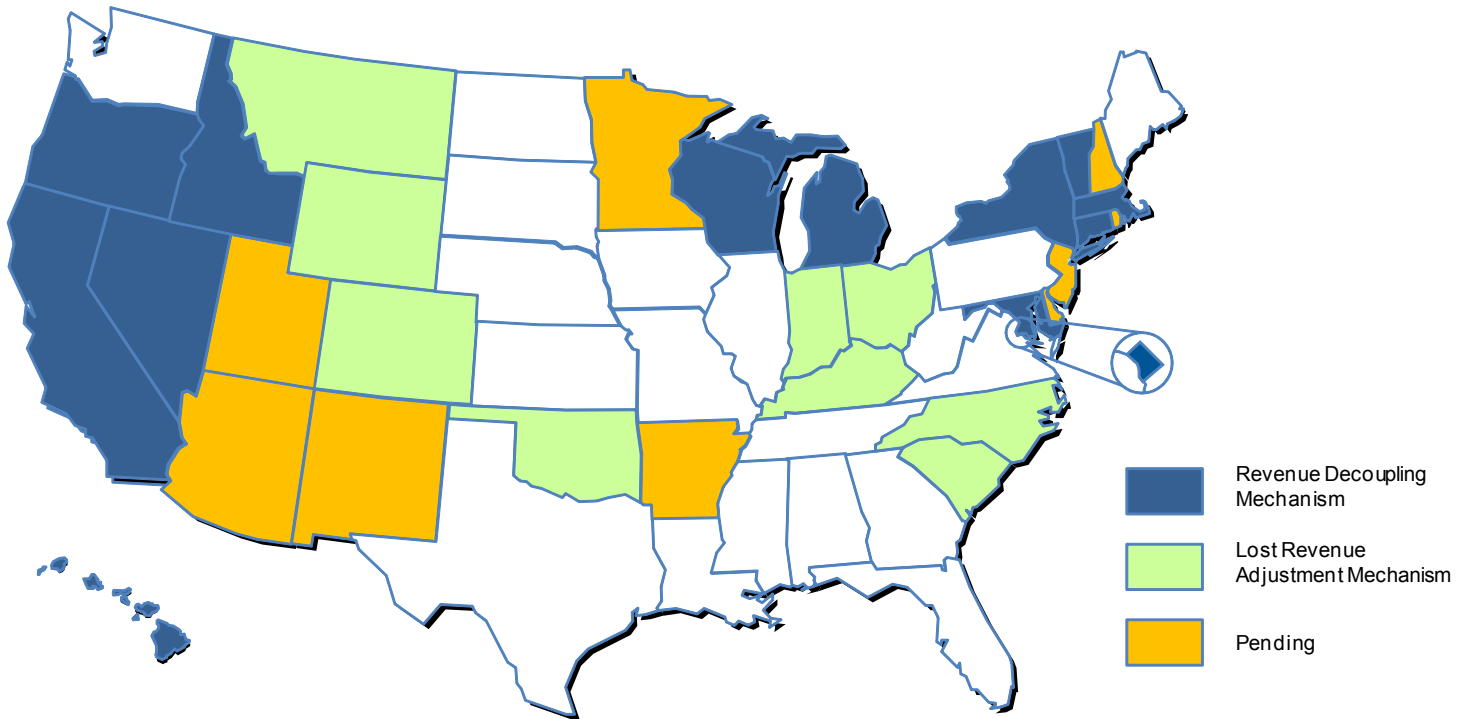
State	Direct Cost Recovery			Fixed Cost Recovery		Performance Incentives	Virtual Power Plant
	Rate Case	System Benefits Charge	Tariff Rider/Surcharge	Decoupling	Lost Revenue Adjustment Mechanism		
New Mexico			Yes	Pending		Yes	
New York		Yes		Yes		Pending	
North Carolina			Yes		Yes	Yes	Yes
North Dakota							
Ohio			Yes		Yes		Yes
Oklahoma			Yes		Yes	Yes	
Oregon		Yes		Yes			
Pennsylvania	Yes		Yes				
Rhode Island		Yes		Pending		Yes	
South Carolina		Yes			Yes	Yes	Yes
South Dakota			Yes			Yes	
Tennessee							
Texas	Yes		Yes			Yes	
Utah	Yes		Yes	Pending	Pending	Pending	
Vermont		Yes		Yes		Yes	
Virginia							
Washington		Yes	Yes				
West Virginia							
Wisconsin	Yes		Yes	Yes		Yes	
Wyoming			Yes		Yes (MDU)		

Summary of State Regulatory Frameworks: June 2011			
Energy Efficiency Incentive Mechanism		Number of States	Pending
Fixed-Cost Recovery Mechanisms	Lost Revenue Recovery	9	2
	Revenue Decoupling	13	9
Performance Incentives		21	7
Virtual Power Plant		3	1

Please note that although information in this document was compiled from primary sources, readers are encouraged to verify the most recent developments by contacting the appropriate commission or regulatory agency.

For inquiries, please contact Adam Cooper, Manager, Electric Efficiency, at [acooper@edisonfoundation.net](mailto:acooper@edisonfoundation.net). For further information, please visit <http://www.edisonfoundation.net/IEE/>.

## Lost Revenue Adjustment & Revenue Decoupling Mechanisms for Electric Utilities by State



State	Description	Status	Codes, Orders & Resources
Arizona	In 2008, the Arizona Corporation Commission opened an investigatory docket to explore incentives for gas and electric utilities under current rate-of-return regulation to determine if those incentives produce behavior consistent with the Commission's policy goals. In 2010, the Commission held workshops focused on exploring decoupling issues. In December 2010, the Commission released a policy statement recommending a revenue per customer decoupling, adoption of decoupling not as a pilot, rather an initial three-year review period should be utilized, and collars or caps on decoupling adjustments. A utility may file a proposal for decoupling in its next general rate rate case.	Pending	Dockets E-00000J-08-0314 & G-00000C-08-0314; Final ACC Policy Statement

State	Description	Status	Codes, Orders & Resources
Arkansas	In 2008 the Arkansas Public Service Commission opened a docket "for the purpose of exploring and considering possible innovative approaches to traditional ratebase rate of return regulation". This docket includes examination of decoupling/lost revenues that result from decreases in power usage based on successful energy efficiency and demand response efforts. In December 2010, the Commission approved a joint proposal by the EE utilities, allowing them to submit applications within the annual EE tariff filing process to collect "lost contributions to fixed costs" (LCFC) contemporaneously with program implementation. LCFC shall be based on the best available data, which may include deemed savings, to be followed by an annual EM&V true-up calculation.	Pending (LR)	Docket 08-137-U, Order No. 14, Order No. 17
California	California has had some form of decoupling since 1982. The current "decoupling plus" program is a revenue decoupling program combined with performance incentives for meeting or exceeding energy efficiency targets (performance-based rates). Revenue requirements are adjusted for customer growth, productivity, weather, and inflation on an annual basis with rate cases every three or four years (varies by utility). The incentive structure caps penalties/earnings for energy efficiency programs at \$450M.	Approved (Decoupling "Plus" approved in 2007)	Code Sec. 9 Section 739(3) and Sec. 10 Section 739.10 as amended by A.B. XI 29; Decisions 98-03-063 & 07-09-043
Colorado (LR)	A conditional portion of the performance incentive mechanism in Colorado (see p. 12) allows for Xcel to recover a \$2M after-tax, "disincentive offset" payment for achieving greater than 80% of the annual energy savings goal.	Approved (2007)	HB-07-1037; Decision C08-560, Docket 07A-420E
Connecticut	As of 2007, all electric and gas utilities must include a decoupling proposal as a part of their individual rate cases. The type of decoupling is assigned on a utility-by-utility basis. United Illuminating is using a full decoupling mechanism, adjusted annually as a pilot, with a \$1 million under/over-recovery bandwidth. Connecticut Light & Power was denied a full decoupling mechanism in its last rate case and will continue decoupling through rate design.	Approved (2007)	Public Act No. 07-242; Docket No.08-07-04RE02; Docket No. 09-12-05
Delaware	The Delaware Commission has recognized decoupling as a possible solution for promoting energy efficiency, but no plans have yet been approved for Delaware utilities. Delmarva Power submitted their decoupling plan in their 2009 rate case. The proposed decoupling method is a fixed variable rate design and Docket 09-276T will remain open for the purpose of conducting rate design implementation workshops during 2011.	Pending	Docket 59; Docket 09-276T
District of Columbia	The DC Public Service Commission approved PEPCO's Bill Stabilization Adjustment (BSA) in October 2009. Like the BSA approved for Maryland, an RPC mechanism is employed which adjusts quarterly.	Approved (2009)	PSC Order 1053-E-549

# IEE STATE ELECTRIC EFFICIENCY REGULATORY FRAMEWORKS

State	Description	Status	Codes, Orders & Resources
Hawaii	The Hawaii PUC approved decoupling as a policy in February 2010, but a final order is pending. The utilities have submitted a proposed mechanism which allows for decoupling of revenues from sales, rate base adjustments for O&M costs and planned capital additions, and a mechanism for sharing earnings with rate payers should a company exceed their allowed ROE. True-ups occur annually.	Approved - Pending Final Order	Docket 2008-0274
Idaho	A three year pilot for a fixed-cost adjustment (an RPC decoupling program) has been instituted and is currently employed by Idaho Power Company. The Commission has extended the pilot program for an additional 2 years. Sales are adjusted for weather and rate increases are capped at 3% over the previous year. The mechanism is only applied to residential and small general service customers.	Approved - Pilot (2007-2010, extended 2010-2012)	Case No. IPC-E-09-07, Order No. 30829; Case No. IPC-E-09-28, Order No. 31063
Indiana (LR)	The Utility Regulatory Commission approved Indiana Michigan Power Company's request to recover lost revenues due to the implementation of a DSM program. Duke Energy Indiana, Northern Indiana Power & Light, and Indianapolis Power & Light have lost margin recovery mechanisms proposals pending before the Commission.	Approved	Cause No. 43827; Cause No. 43955; Cause No. 43912; Cause No. 43960
Kentucky (LR)	Lost revenue recovery mechanisms are determined on a case-by-case basis, but all electric utilities in Kentucky have DSM proposals in place that include similar lost revenue (LR) recovery due to DSM programs. For these utilities, LR is calculated using the marginal rate, net of variable costs, times the estimated kWh savings from a DSM measure over a three-year period.	Approved (2006)	Statute Ch. 278, Title 285; Docket 2007-00477; 2008-00473
Maryland	A plan to employ revenue decoupling for Maryland utilities under an RPC mechanism was approved in 2007, which adjusts quarterly. The mechanism is similar to the BSA approved for Washington, DC.	Approved (2007)	PSC Case No. 9093; Order 81518; Case No. 9154
Massachusetts	Gas and electric utilities in Massachusetts must include a decoupling proposal in their next rate case. Target revenues are determined on a utility-wide basis (full decoupling) and can be adjusted for inflation or capital spending requirements if necessary. The Massachusetts DPU expects that all utilities will have fully operational decoupling plans by 2012. In May 2009, National Grid was the first utility to submit a revenue decoupling ratemaking plan (RDR), which proposes an RPC mechanism that adjusts annually.	Approved (2008), full implementation by 2012	Docket 07-50; Docket 09-39
Michigan	Act 295 mandates that the Commission consider decoupling mechanisms proposed by the state's electric utilities. Consumers Energy and Detroit Edison have included decoupling proposals in the rate cases currently before the Commission. A decision in each case is expected in late 2009 or early 2010.  Detroit Edison's proposal for a revenue decoupling mechanism was approved by the Commission in January 2010. The mechanism normalizes lost revenues for weather and have separate adjustments for each customer class.	Approved (2010)	Act 295; Case U-15768 and U-15751



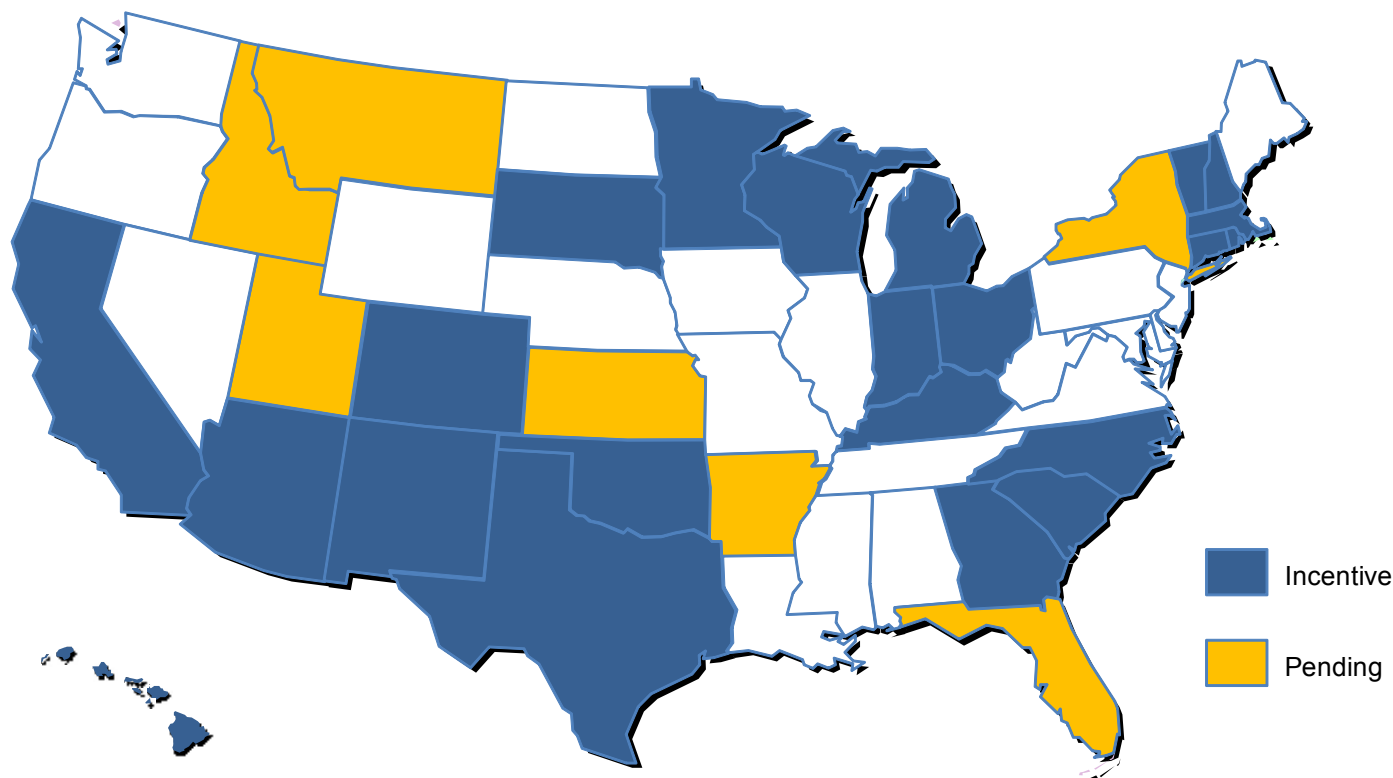
State	Description	Status	Codes, Orders & Resources
Minnesota	A decoupling statute was passed in 2007 that allows for electric and gas utilities to implement decoupling pilot programs of no more than three years. Under the order, utilities intending to implement decoupling programs are required to file a decoupling pilot plan to the state PUC (none submitted to date). Annual status reports are to be given to the state legislature once the programs are in place.	Pending	Statute 216B.2412
Montana (LR, D)	<p>In December 2005, the MT PSC approved Northwestern Energy's petition for a lost transmission and distribution revenue recovery mechanism.</p> <p>Under the mechanism, lost revenues due to DSM acquisition efforts are factored into rates monthly as part of Northwestern's default supply cost tracker. The estimated lost T&amp;D revenue amount is then trued-up annually based on actual program activity following a comprehensive program evaluation and independent verification of actual savings, which must be filed with the Commission. NWE must consult with its advisory committee on the selection of an independent contractor to evaluate DSM programs and the scope of work.</p> <p>In December 2010, the Commission granted NorthWestern Corp. a decoupling mechanism as part of its electric rate case. NorthWestern filed a motion for reconsideration, leaving the docket open and the implementation of decoupling pending further action.</p>	<p>Approved (LR, 2005)</p> <p>Pending (D, 2010)</p>	<p>Dockets D2004.6.90 and D2010.5.50</p> <p>Dockets D2009.9.129</p>
Nevada	In June 2010, the Nevada PUC approved NV Energy's proposal for a decoupling mechanism to recover lost revenues. Approved to implement the legislative directives of S.B. 358 (section 11.3), the mechanism calls for monthly lost revenue trackers with an annual true-up subject to measurement and verification of effects on utility revenue caused or created by energy efficiency and conservation programs.	Approved (2010)	Docket 09-07016 and S.B. 358
New Hampshire	The New Hampshire PUC concluded in a January 2009 order that existing rate mechanisms are a barrier to energy efficiency. It has ordered that future rate mechanisms be tailored to individual utilities and be normalized for changes in weather, while not specifying the parameters of those mechanisms.	Pending	Docket DE 07-064, Order No. 24,934
New Jersey	Atlantic City Electric has proposed a RPC mechanism, or Bill Stabilization Agreement (BSA) as proposed, for their service territory. It is an RPC mechanism that calls for monthly true-ups with changes capped at 10% of previous fixed revenue amounts.	Pending	Docket Eo09010056

# IEE STATE ELECTRIC EFFICIENCY REGULATORY FRAMEWORKS

State	Description	Status	Codes, Orders & Resources
New Mexico	<p>HB 305, the Energy Efficiency Bill, was signed into law in 2008, requiring that all utilities “include all cost-effective energy efficiency and load management programs in their energy resource portfolios, and that regulatory disincentives to public utility development of cost-effective energy efficiency and load management be removed.”</p> <p>As a result, the NM Public Regulation Commission is considering proposals for a lost revenue adjustment mechanism that would compensate the utilities based on lost margins through 2010, at which time the PRC may act to remove disincentives to EE through decoupling or other mechanisms. An order was issued in Case 08-00024-UT in April 2010 that provides incentives but does not adopt a decoupling or other lost revenue mechanism (see the incentives summary for more information on the incentive mechanism). The implementing rules were effective May 2010. Two parties have appealed this order.</p> <p>In its electric rate case filed on June 1, 2010, PNM proposed a decoupling mechanism that was subsequently removed in a stipulation agreement.</p>	Pending	HB 305 (2008); Dockets 08-00024-UT and 10-00086-UT
New York	Following an April 2007 order, electric and gas utilities must file proposals for true-up based decoupling mechanisms in ongoing and new rate cases. Proposals have been approved for Consolidated Edison and Orange & Rockland utilities, both for revenue-per-class mechanisms. True-ups occur annually.	Approved (2007)	Cases 03-E-0640, 07-E-0949, & 07-E-0523
North Carolina (LR)	<p>The Commission approved a proposed lost revenue adjustment mechanism for Progress Energy Carolinas as part of their cost recovery mechanism. Net lost revenues for each annual period are recovered over 3 years and determined by multiplying lost sales by a net lost revenue rate, which is the difference between the average retail rate applicable to the customer class impacted by the measure and (1) the related customer charge component of that rate, (2) the fuel component of the rate, and (3) the incremental variable O&amp;M rate. True-ups occur annually.</p> <p>The Commission also approved a similar mechanism for Duke Energy Carolinas in December 2009 for energy efficiency measures only, coinciding with the approval of the utility’s virtual power plant mechanism.</p>	Approved (2009)	Docket E-2, Sub 931; Docket E-7, Sub 831
Ohio (LR)	As with Kentucky, lost revenue recovery mechanisms are determined on a case-by-case basis. Duke Energy Ohio recovers lost revenues resulting from their portfolio of EE programs through the DSM rider. LR is calculated as the amount of kWh sales lost due to the DSM programs times the energy charge for the applicable rate schedule, less variable costs, divided by the expected kilowatt-hour sales for the upcoming 12 month period. They are collected over a 36 month period. DP&L currently has a case pending. AEP Ohio chose not to seek LR in their prior rate case.	Approved (2007)	ORC §4928.143(B)(2)(h); 06-0091-EL-UNC

State	Description	Status	Codes, Orders & Resources
Oklahoma (LR)	OG&E has direct lost revenue adjustment ("Class Lost Revenue Factor") built in to the approved demand program rider (DPR) structure, which includes a shared savings mechanism (see p. 15). As the name implies, LR amounts are examined by customer class.	Approved (2009)	Cause No. PUD 200800059, Order 556179
Oregon	Portland General Electric was approved for a two year pilot employing an RPC decoupling mechanism. True-ups will occur annually.	Approved - Pilot (2009)	Order 09-020
Rhode Island	Narragansett Electric Co., a subsidiary of National Grid Group Plc. filed a request with the Rhode Island Public Utilities Commission to implement revenue decoupling mechanisms for its electric and gas operations. Decision slated for June 2011.	Pending	Docket No. 4206
South Carolina (LR)	The Commission approved a proposed lost revenue adjustment mechanism for Progress Energy Carolinas as part of their cost recovery mechanism. Net lost revenues for each annual period are recovered over 3 years and determined by multiplying lost sales by a net lost revenue rate, which is the difference between the average retail rate applicable to the customer class impacted by the measure and (1) the related customer charge component of that rate, (2) the fuel component of the rate, and (3) the incremental variable O&M rate. True-ups occur annually.	Approved (2009)	Docket 200-251-E
Utah	HJR 9 was passed into law (March 2009), which includes language supporting decoupling: "[T]he legislature expresses support for regulator mechanisms, which might include performance-based incentives, decoupling fixed cost recovery from sales volume, and other rate designs intended to help remove utility disincentives and create incentives to increase efficiency and conservation... "	Pending - Law passed, mechanisms yet to be proposed	HJR009
Vermont	An RPC decoupling program was approved for Green Mountain Power under the Alternative Regulation Plan. Rates can be adjusted up to four times per year with an annual reconciliation on allowed earnings. Changes in base rates cannot exceed ~2% per year. CVPS was also approved for decoupling in 2008.	Approved (2007)	Dockets 7175, 7176 & 7336
Wisconsin	Decoupling was approved for WPSC in December 2008 (specified as a "Revenue Stabilization Mechanism"), allowing the utility to pursue a four-year pilot program. WPSC is required to pursue three community-based pilots, which will be regularly reviewed (at 2, 12, 24, and 30 months). True-ups occur annually and over- or under-collection is capped at approximately \$14 million.	Approved - Pilot (2008)	Dockets 6680-UR-116 (WPL) & 6690-UR-119 (WPSC)
Wyoming (LR)	A tracking adjustment mechanism that includes direct lost revenue recovery was approved for a small service territory covered by Montana Dakota Utilities. The adjustment applies to all MDU customers to recover costs and lost revenues for load management programs only.	Approved (2007)	Docket No. 20004-65-ET-06

## Performance Incentives for Electric Efficiency by State



State	Performance Incentive Description	Status	Relevant Statute, Code or Order
Arizona	Arizona Public Service (APS) has performance incentives in place under a shared savings mechanism, set at 10% of DSM program net economic benefits and capped at 10% of total DSM expenditures. An APS proposal to modify the incentive mechanism in 2008 requesting recovery of net lost revenues as well as removal of the cap on the incentive was denied.	Approved (2005)	Decision 67744, Docket E-01345A-05-0816, et al
Arkansas	In 2008 the Arkansas Public Service Commission opened a docket "for the purpose of exploring and considering possible innovative approaches to traditional ratebase rate of return regulation". This docket includes examination of performance incentives for utility energy efficiency and demand response efforts. In 2010, the Commission issued Order No. 15, approving performance incentives through a shared savings of net benefits approach. 10% of net benefits will be awarded to a utility for achievement above 80% of the savings goal. Total incentive rewards are capped at 5% of proposed budget for achievement between 80% and 100% of goal; 7% of budget for achievement between 100% and 110% of goal. Net benefits shall be based on a TRC test. EE program portfolio goals as a percentage of 2010 energy sales are: 2011: 0.25%, 2012: 0.50%, 2013: 0.75%	Pending	Docket 08-137-U, Order No. 15

State	Performance Incentive Description	Status	Relevant Statute, Code or Order
California	<p>California utilities earn an incentive on energy efficiency programs under a shared savings mechanism called an energy efficiency risk-reward incentive mechanism. Revenue from eligible energy efficiency programs is the product of the Earnings Rate (ER) and net benefits. The ER is 12% if the utility achievement towards CPUC goals is greater than 100%, 9% if the goal achievement is between 85 and 100% and 0% if the goal achievement is between 65 and 85%; if the achievement of goals is less than 65%, the utility pays a penalty. Net benefits are calculated as two-thirds of the TRC Net Benefit and one-third of the PAC Net Benefit.</p> <p>In January 2009, the CPUC instituted a rule making (09-01-019) to examine and reform the EE incentive mechanism.</p>	Approved (2007)	R.06-04-010; 09-01-019
Colorado	<p>HB 07-1037 (C.R.S. §40-3.2-104) requires investor-owned electric utilities to achieve at least 5% percent reduction of retail energy sales and capacity savings by 2018, based on 2006 sales. The law further states that the Commission shall allow electric DSM investments an opportunity to be more profitable to the utility than any other utility investment that is not already subject to an incentive.</p> <p>The Commission approved the following incentive package to Public Service Colorado:</p> <ul style="list-style-type: none"> <li>- A "disincentive offset" of \$2m/year (after tax) for each year approved DSM plan implemented to offset lost margins; if &lt; 80% of yearly energy goal achieved, the offset may be reduced.</li> <li>- Performance incentives for surpassing "modest" goals; for each 1% of goal reached beyond 80%, company to earn additional 0.2% of net economic benefits, up to 10% at 130% of goal attainment, up to 12% at 150% of goal attainment. Incentives adjusted for 2009 to reflect least-cost planning commitments.</li> <li>- Incentives are allowed via annually trued up DSM Cost Adjustment and are capped at 20% of total annual DSM expenditures.</li> </ul>	Approved (2007)	HB-07-1037; Decision C08-560, Docket 07A-420E
Connecticut	The CT PUC requires annual hearings for utilities, where the past year's results for energy savings are reviewed and a performance incentive is determined, which ranges from 1% to 8% of program costs. The minimum threshold of 70% of goals earns the minimum (1%) incentive. Reaching 100% of goals earns 5%, and for reaching 130% of goals earns 8%.	Approved (first in 1988, mechanism changes over time)	Dockets 07-10-03; 08-10-03; 09-10-03
Florida	The Florida Public Service Commission (FPSC) has the authority (given in the Florida Energy Efficiency and Conservation Act, FEECA) to allow an investor-owned utility an additional return on equity of up to 50 basis points for exceeding 20 percent of their annual load-growth through energy efficiency and conservation measures. The additional return shall be established by the FPSC in a limited proceeding. As of June 2011 no IOU has filed for the additional return.	Pending	HB 7135 (2008); Sec. 38-39

# IEE STATE ELECTRIC EFFICIENCY REGULATORY FRAMEWORKS

State	Performance Incentive Description	Status	Relevant Statute, Code or Order
Georgia	<p>Georgia Power will receive an additional sum of 10% of the NPV of the actual net benefits of gross kWh savings (as determined by the Program Administrator test) from certified DSM programs, if they achieve annual incremental kWh savings of more than 50% of projections.</p> <p>If programs achieve less than 50% of projected kWh savings, the additional sum is 0.5% of NPV of net benefits for demand response measures and 3% of NPV of net benefits for energy efficiency measures.</p> <p>There is no cap to the incentive payments, however, if the incentive sum exceeds program costs, the portion of the total that exceeds the program cost is 5% of NPV of actual net benefits of gross kWh savings from the certified DSM programs (as determined by the Program Administrator test).</p>	Approved (2010)	Order Docket 31082
Hawaii	As part of the state's transition plan to establish a third-party administrator for efficiency programs, the HECO companies are responsible for administering their own DSM programs until the transition date. HECO may earn a shared percentage of savings of 1%-5% with an incentive cap of \$2M.	Approved (2008)	Docket & Order 23258, Docket 2007-0323
Idaho	<p>Idaho Power (IPC) was approved for a three-year pilot beginning in January 2007 and ending in December 2009. Under the pilot, the Company receives an incentive payment if the market share of homes constructed under the ENERGY STAR Homes Northwest program exceeds a target percentage of new homes constructed. IPC earns an incentive if the program exceeds the market share goal (7% in 2007, 9.8% in 2008, 11.7% in 2009). Incentives are capped at 10% of program net benefits. Penalties are levied if IPC does not meet a minimum market share percentage.</p> <p>On May 14, 2009, it was ordered that Idaho Power neither earn an incentive nor incur a penalty for the ENERGY STAR related program and that the pilot program be discontinued retroactively as of January 1, 2009. Idaho Power intends to explore the development of a performance incentive mechanism that can be applied to the company's entire portfolio of DSM programs.</p>	Approved - Pilot (2007); Discontinued (Jan. 1, 2009)	IPC-E-06-32, Order 30268; IPC-E-09-04, Order No. 30806
Indiana	The state statute allows for either shared savings or adjusted/bonus ROE mechanisms as DSM incentives. To meet mandatory energy efficiency goals, Indiana utilities have developed "Core Plus" DSM programs. Indianapolis Power & Light and Southern Indiana Gas & Electric Company received approval for a tiered structure shareholder performance incentives, and Indiana Michigan Power Company received approval for a shared benefits approach. Other cases currently pending before the Commission related to energy efficiency programs and performance incentives include No. 43955 (Duke Energy), No. 43938 (Vectren Energy Indiana), No. 43912 (Northern Indiana Public Service Company), and No. 43960 (Indianapolis Power and Light).	Approved (2010)	Administrative Code, Title 170, Art. 4; Cause No. 43374; Cause No. 43427; Cause No. 43618; Cause 43623; Cause No.43827; Cause No. 43938; Cause No. 43912; Cause No. 43960; Cause No. 43955



State	Performance Incentive Description	Status	Relevant Statute, Code or Order
Kansas	The State Corporation Commission found that it has “broad authority to provide incentives for energy efficiency” in 2007, but did not specify a mechanism in that order. Kansas Statute 66-117 allows a return of 0.5% to 2% on energy efficiency investments above the allowed rate of return. No plans have yet been approved for any utilities.	Pending; law in place, no programs approved	Docket 08-GIMX-441-GIV; Statute 66-117
Kentucky	State law allows for shareholder incentives through the DSM statute, specifically “incentives designed to provide positive financial rewards to a utility to encourage implementation of cost-effective demand-side management programs.” Incentive mechanisms are approved on a case-by-case basis and both Duke Energy and Kentucky Power (AEP) have a shared savings mechanism in place where they receive an incentive of up to 10% of program costs for exceeding goals.	Approved (2007)	Rev. Stat. 278.285(1) (c); Docket 2008-00473; 2007-00477
Massachusetts	The incentive allows utilities to earn about 5% of program costs for energy efficiency programs that meet established program goals. The incentive structure is determined on a program-by-program basis but generally utilizes a three-tiered structure. The first “design performance” level is defined as performance that a Program Administrator expects to achieve in implementing its energy efficiency programs. The second “threshold performance” level is 75% of the design level. The third “exemplary performance” level is 125% of the design level. Incentives are awarded only if a program achieves the threshold level or above.	Approved (2000)	Docket 04-11; Order 98-100
Michigan	The Commission approved DTE’s energy optimization plan in 2009, which includes an incentive mechanism that allows the utility to earn up to 15% of program spending (a cap mandated by PA 295) if they reach 125% of their savings goals. An incentive payment is applied only if DTE exceeds its savings goal.  PA 295 contains two provisions authorizing utilities to receive an economic incentive for energy efficiency programs. To be eligible, utilities must request that appropriate energy efficiency program costs be capitalized and earn a normal rate of return. Utilities can request a performance incentive mechanism to provide additional earnings to shareholders if they exceed the annual energy savings target. Incentives are capped at 15% of the total program cost.	Approved (2009)	PA 295 (2008); U-15806
Minnesota	The PUC revised the performance incentive originally approved in 1999. Under the new agreement, utilities retain a portion of net benefits based on the level of achievement, measured as a percent of retail sales. The award scale for this modified shared savings mechanism is calibrated to award \$0.09/kWh at 1.5% of sales (e.g. if a utility achieves savings equal to 1.5% of sales, it will receive \$0.09 for every kWh saved. The order was approved in January 2010.	Approved (1999); Revised mechanism (2010)	Docket CI-08-133, Statute 216B.241
Montana	MT statute allows for the Public Service Commission to add 2% to the authorized rate of return for DSM investments. It has not yet been approved for a specific utility.	Passed into law, but not implemented by utility	Code 69-3-712

# IEE STATE ELECTRIC EFFICIENCY REGULATORY FRAMEWORKS

State	Performance Incentive Description	Status	Relevant Statute, Code or Order
New Hampshire	<p>There are two separate incentives in NH. The cost-effectiveness incentive is awarded for programs that achieve a cost effectiveness ratio of 1.0 or higher. The incentive is calculated as 4% of the planned EE budget times the ratio of actual to planned cost effectiveness.</p> <p>The energy savings incentive is awarded when actual lifetime kWh savings are greater than or equal to 65% of projected savings. The incentive is 4% of the planned EE budget times the ratio of actual to planned energy savings. Target incentive amounts are calculated separately for residential and commercial/industrial sectors and are capped at 12% of the planned sector budgets.</p>	Approved (2000)	Order 23.574
New Mexico	<p>In April 2010, the PSC approved a rule making that allows utilities to receive an incentive of between \$.01 and \$.005 per kWh saved and \$10 per kW saved for EE. Utilities must file rate designs and ratemaking methods to remove regulatory disincentives to energy efficiency acquisition by July 2010.</p> <p>May 2011 stipulated agreement for El Paso Electric is pending before the Commission. Terms of the agreement include payment of \$.0045 per kWh saved and \$20 per annual kW saved. Payments are calculated on a calendar year basis using projected savings for EPE's programs, subject to true up. PNM's 2010 EE filing is pending before the</p> <p>Additionally, HB 305 was passed in 2008 which requires all utilities to "include all cost-effective energy efficiency and load management programs in the energy resource portfolios, and that regulatory disincentives to public utility development of cost-effective energy efficiency and load management be removed."</p>	Approved (2010)	Case 08-00024-UT; Case 10-00266-UT; CASE 10-00280-UT; NM HB 305
New York	New York has recently allowed for performance incentives to be included in utility rate cases and the Commission is in the process of reviewing energy efficiency plans of several NY utilities. The order caps the aggregate incentives at \$40M per year statewide and target megawatt-hours will be set for each year at the time of review for the EE plans.	Pending	Case 07-M-0548
North Carolina	<p>North Carolina state law states that a utility may propose incentives for demand side management or energy efficiency programs to the Commission for consideration. The commission approved Progress Energy Carolina's incentive mechanism that allows for an incentive of 8% of NPV of benefits from DSM programs and 13% of NPV from EE programs. The Commission is considering an avoided cost recovery mechanism submitted by Duke Energy.</p> <p>The Commission issued a notice of decision approving Duke Energy Carolinas' Save-a-Watt program in December 2009 with a full decision to follow in January 2010. The program is similar to that in Ohio, where Duke will receive 50% of the net present value (NPV) of the avoided costs for conservation and 75% of the NPV for demand response.</p>	Approved - Progress Energy Carolinas (2009), Duke Energy (2009)	Docket E-2, sub 931; Docket E-7, Sub 831



State	Performance Incentive Description	Status	Relevant Statute, Code or Order
Ohio	Duke Energy received approval in December of 2008 for its proposed "Save-a-Watt" program, where the utility will receive 50% of the NPV of the avoided costs for energy conservation and 75% of the NPV of the avoided costs for demand response. Demand response programs are viewed by the parties as having a useful life of 1 year, while energy conservation programs have useful lives of up to 15 years.	Approved (2008)	Docket 08-920-EL-SSO
Oklahoma	A shared savings program has been approved for Public Service Oklahoma (AEP) which allows for two different returns: an incentive of 25% of net savings for programs for which savings can be estimated and 15% of the costs for other programs (e.g. education and marketing programs). OG&E also has an incentive mechanism where they receive shared benefits for achieving savings goals, calculated on a measure-by-measure basis. The utility may earn up to 25% for each measure where the TRC > 1.0 and up to 15% for each measure where the TRC < 1.0.	Approved - PSO (2008), OG&E (2009)	Cause No. PUD 200700449, Order 555302; Cause No. PUD 200800059, Order 556179
Rhode Island	The shareholder incentive mechanism includes two components: performance-based metrics for specific program achievements, and kWh savings targets by sector. The program performance metrics are established for each individual program, such as achieving specific savings or a certain market share for the targeted energy-efficient technology. If Narragansett (d/b/a National Grid) achieves the savings goal, it receives 4.4% of the eligible budget. The threshold performance level is 60% of the savings goal. Once the threshold level has been reached, the utility has the ability to earn an additional incentive per kWh saved up to 125% of target savings. Incentive rates change by customer class.	Approved (2005)	Docket 3635, Order 18152
South Carolina	South Carolina law stipulates that the PSC "may adopt procedures that encourage electrical utilities [...] to invest in cost-effective energy efficient technologies and energy conservation programs." The commission approved Progress Energy Carolina's incentive mechanism that allows for an incentive of 8% of NPV of benefits from DSM programs and 13% of NPV from EE programs. Duke Energy's original avoided cost mechanism was rejected, but the Commission approved the re-submission in January 2010. The mechanism is similar to the Save-a-Watt models in OH and NC, where Duke will receive 50% of the net present value (NPV) of the avoided costs for conservation and 75% of the NPV for demand response.	Approved for Progress Energy Carolinas (2009); Approved for Duke Energy (2010)	Title 58. Public Utilities, Services And Carriers, Chapter 37. Energy Supply And Efficiency; Dockets 2008-251-E (Progress Energy), 2007-358-E, & 2008-251-E (Duke Energy)

# IEE STATE ELECTRIC EFFICIENCY REGULATORY FRAMEWORKS

State	Performance Incentive Description	Status	Relevant Statute, Code or Order
South Dakota	<p>In 2006, the SD Commission began soliciting the state's utilities to offer SD ratepayers energy efficiency programs similar to those offered in other states, indicating a willingness to provide performance incentives. As a result, four utilities (OtterTail, MidAmerican, Montana-Dakota Utilities, and Xcel) filed for Commission approval of energy efficiency riders including incentive mechanisms.</p> <p>In 2008, OtterTail Power received approval for its energy efficiency programs, with a flat-rate bonus if the utility met its efficiency goals. In 2009, the Commission approved a similar mechanism for MidAmerican Energy. In 2010, MidAmerican's incentive was amended to a straight return based on a percentage of the program budget. MDU has a similar mechanism.</p>	Approved for Otter Tail Power (2008); Approved for MidAmerican Energy (2009, amended 2010); Approved for Montana-Dakota Utilities.	Dockets EL07-011, EL07-015, GE10-001, and GE09-001
Texas	<p>Texas state code specifies that a utility may be awarded a performance bonus (a share of the net benefits) for exceeding established demand reduction goals that do not exceed specified cost limits. Net benefits are the total avoided cost of the eligible programs administered by the utility minus program costs. The performance bonus is based on the utility's energy efficiency achievements for the previous calendar year.</p> <p>If a utility exceeds 100% of its demand reduction goal, the bonus is equal to 1% of the net benefits for every 2% that the demand reduction goal has been exceeded, up to a maximum of 20% of the utility's program costs. A utility that meets at least 120% of its demand reduction goal with at least 10% of its savings achieved through Hard-to-Reach programs receives an additional bonus of 10% of the bonus calculated.</p>	Approved (2008)	PUC of Texas Substantial Rule §25.181(h); CenterPoint Energy Houston Electric 2008 Energy Plan & Report, Project No. 35440
Utah	HJR 9 was approved in March 2009 and includes language supporting incentives: "[T]he legislature expresses support for regulator mechanisms, which might include performance-based incentives, decoupling fixed cost recovery from sales volume, and other rate designs intended to help remove utility disincentives and create incentives to increase efficiency and conservation..."	Pending - Law passed but no mechanisms proposed	UT HJR009

State	Performance Incentive Description	Status	Relevant Statute, Code or Order
Vermont	The operator of Efficiency Vermont, VEIC, is eligible to receive a performance incentive for meeting or exceeding specific goals established in its contracts. There is also a holdback in the compensation received by VEIC, pending confirmation that contractual goals for savings and other performance indicators have been achieved. The initial contract (2000-2002) allowed incentives of up to 2% of the overall energy efficiency budget over the three-year contract period. Incentives increased to 3.5% of the EE budget for the 2006-2008 period.	Approved (2000)	Contract 0337956, Attachment C
Wisconsin	As of 2008, Wisconsin Power & Light (Alliant Energy) may earn the same rate-of-return on its investments in energy efficiency made through its "shared savings" program for commercial and industrial customers as it earns on other capital investments.  Utilities may propose incentives as part of their rate cases, but there have been no proposals from other utilities under the most recent version of performance incentives. [Note: Wisconsin dropped performance incentives in the 1990s.]	Approved (2008)	Docket 6680-UR-114

## Summary of Incentive Mechanisms

Approach	State
Earn a percentage of program costs for achieving savings target	CO, CT, KY, MA, MI, NH, RI, SD, TX, VT
Earn a share of achieved savings	AZ, CA, GA, HI, MN, OK, NM
Earn a percentage of the NPV of avoided costs	NC, OH, SC
Altered rate of return for achieving savings targets	FL, WI

Note: Information on lost revenue recovery mechanisms and electric efficiency performance incentives for electric utilities was compiled using the latest public data available as of June 1st, 2011. Readers are encouraged to verify the most recent developments by contacting the appropriate commission or regulatory agency. Other resources used in the preparation of this report were ACEEE's State Energy Efficiency Program Database, documents from EPA's National Action Plan on Energy Efficiency, and resources from the Regulatory Assistance Project.

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