Missouri Public Service Commission

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August 31, 1992

Mr. Brent Stewart
Executive Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

RE: Case No. EX-92-299 -- In the matter of the Proposed Commission Rules 4 CSR 240-22.010 through 22.080.

Case No. OX-92-300 -- In the matter of the Proposed Amendments to Commission Rules 4 CSR 240-14.010 through .040 and Proposed Recission of 4 CSR 240-14.050.

Dear Mr. Stewart:

Enclosed for filing in the above captioned cases are an original and fifteen (15) conformed copies of the **REPLY COMMENTS OF THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION IN SUPPORT OF THE PROPOSED RULES, AMENDMENTS, AND RECISSION.** Because of the two dockets, an extra copy is enclosed for filing.

Copies of these Reply Comments are being mailed this date to the individuals identified on the attached service list.

Very truly yours,

Steven Dottheim
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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the Proposed Commission Rules 4 CSR 240-22.010 through 22.080	))	Case No. EX-92-299
In the matter of the Proposed Amendments to Commission Rules 4 CSR 240-14.010 through.040 and Proposed Recission of 4 CSR 240-14.050.	))))	Case No. OX-92-300

REPLY COMMENTS OF THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION IN SUPPORT OF THE PROPOSED RULES, AMENDMENTS, AND RECISSION

The Staff will endeavor in these reply comments to address the major items raised by the various entities that filed initial comments. Resource and time constraints do not permit the Staff to respond to every adverse comment. Unless the instant response states below that the Staff agrees with the language change suggested by a commentator or the Staff offers its own modification to the language in the July 1, 1992 Notice Of Proposed Rulemaking, it can be safely assumed that the Staff does not believe that there should be any change in the language that appeared in the July 1, 1992 Missouri Register.

For the most part, the Staff's Reply Comments are divided between an initial section which is a general response and a section which follows that is a point-by-point response to the suggestions of various commentators.

The Staff will abbreviate herein the names of the entities submitting comments by utilizing the first letter of each word in the entities' names.

I. REQUEST BY SMALLER UTILITIES FOR EXEMPTION STATUS

The Need for Specific Rules

Of the five utilities filing comments, the three largest utilities gave general support for the proposed resource planning rules as well as for the potential benefits coming from the rules. For example, UE points out that "it is not only appropriate but also necessary for the Commission to establish ground rules so that utilities will know in advance what the Commission's expectations and objectives are in the area of resource planning." (UE at 2). A similar comment by KCPL states "that it is appropriate for the Commission to adopt general rules which provide guidance to what is deemed acceptable resource planning." (KCPL at 1-2). MPS gives its support to "the intent of the proposed rules to provide a regulatory framework and standards for the resource planning process to be conducted by electric utilities subject to the Commission's jurisdiction." (MPS at 1). Notice that in the UE, KCPL and MPS comments a primary benefit of the resource planning rule is that it provides direction to the utilities regarding the planning process which the Commission deems to be appropriate or acceptable. Indeed, the focus of the proposed rules is on the process of electric utility resource planning.

The two smaller utilities do not see the need for rules in which the specific resource planning process is defined. EDE states that it "believes the rules are not needed to ensure the continued reliability of its operations and the provision of safe and adequate service at reasonable rates." (EDE at 3). SJLP states

that in its opinion "the proposed rules are overly burdensome and prescriptive, especially for a small utility." (SJLP at 2). Both of these utilities believe that their current resource planning processes are adequate and making the changes required by the rules will only cause them unnecessary costs without providing additional benefits to their customers. (EDE at 4; SJLP at 2). Both of the smaller utilities request across the board exemptions based on their smaller size. (EDE at 9; SJLP at 12).

The issue here does not center around the need for sound resource planning or the need for Commission rules. Instead, the issue is whether such rules should specify the basic process governing resource planning in contrast to simply setting general policy objectives and requiring utilities to file on a regular basis in order to permit a determination whether or not these policy objectives are being met. The Staff believes that since general policy statements are subject to a wide variety of interpretation, they by themselves do not provide enough specificity with respect to what constitutes a sound planning process. Phrases like "placing demand-side and supply-side resources on a level playing field" can be utilized for just about any resource planning process in which some form of demand-side resources are considered. The Staff believes that the proposed resource planning rules are specific enough to give the policy statements in 4 CSR 240-22.010 real content, but general enough to allow individual flexibility for the utilities.

B. **Waivers for Good Cause Shown Are Allowed**

Regarding an exemption for small utilities, the proposed rules include a waiver provision in 4 CSR 240-22.080(11), which allows any of the utilities to obtain a variance from any provision of the rules based on "good cause shown." Moreover, the Staff does not expect the smaller utilities or even the larger utilities to be in immediate compliance with the rules at their first "compliance filing". The real challenge is for the small utility to set its priorities in terms of how it intends to get its planning processes up to the minimal standards set out in the rules. The waiver provision also allows utilities to make the case that alternative approaches to those proposed in the rules are more cost beneficial. In this regard, the intent of the rules is to set minimum standards for the process of resource planning rather than a prescriptive set of planning methods which must be followed.

The following are two examples of language included in the proposed rules on load analysis and forecasting which provide for flexibility in planning methods, yet hold the line on planning standards:

> 4 CSR 240-22.030 Load Analysis and Forecasting
>
> (1)(A)1. Taking into account the requirement for an unbiased forecast as well as the cost of developing data at the subclass level, the utility shall determine what level of subclass detail is required for forecasting and what methods to use in gathering subclass information for each major class.
>
> . . . .
>
> (3)(A)2. For each major class and each end use, including those listed in paragraph (3)(A)1., if information is not available, the utility shall provide a schedule for acquiring this end-use information or

demonstrate that either the expected costs of acquisition were found to outweigh the expected benefits over the planning horizon or that gathering the end-use information has proven to be infeasible.

The methods involved in each of the two above examples are related to the level of aggregation at which the utility analyzes the data used to make its load forecast. The rule recognizes that the standard for load forecasting is that the methods should eliminate to the greatest extent possible any bias in the forecast caused by the load analysis occurring at too high of a level of aggregation. For example, a forecast of residential energy that ignores the difference in demand from single family dwellings compared to multi-family dwellings may not cause a bias for a service territory where the mix of dwelling types is expected to remain fairly stable. But if there has been a major shift in dwelling types and the load analysis ignores that shift, then the load forecast will not correctly incorporate the effects of the shift.

On the end-use side, if the growth in air conditioning demand has begun to level off because the service territory is becoming almost fully saturated with air conditioners or because old units are being replaced by more efficient new units, a forecast which does not include information on air conditioning saturation and efficiency will not correctly forecast the growth in air conditioning demand for electricity. For the small utility, both of these components (subclass detail and end-use detail) will require information which is not presently available. Gathering this information will require additional resources, and each utility must make a determination of what resources and associated

cost will be involved. If the utility can show that having this additional level of detail will not prove to be cost beneficial, then it should be exempt from having to gather the additional information. Therefore, what the proposed rule requires is that the utility must give careful consideration to each element of its load forecast - an internal review - and based on its evaluation make an informed judgment regarding what it is currently doing as compared to the standard set in the rules.

C. **The Proposed Rules Are Within A Reasonable Range**

Both EDE and SJLP argue or imply that it is the Commission's responsibility to make a cost benefit determination before it sets out its resource planning rules. (EDE at 4; SJLP at 2). The Staff disagrees with this approach. Indeed, if the proposed rules had gone beyond the bounds of reasonable expectations of benefits exceeding costs, then all five utilities would have had that same complaint. This did not happen, and while this does not prove that the rules are cost beneficial for all of the utilities, it does demonstrate that they are not outside the range of reasonable expectations. The Staff believes that the level of reasonableness in the rules exists in some part because of the informal workshops which helped eliminate misunderstandings as well as brought about reasonable compromise on areas where there were reconcilable differences. In essence, the workshops acted as the mechanism to eliminate what would not be cost beneficial under almost any circumstances. Therefore, there is no need for the Commission to go through a detailed and time consuming analysis of attempting to

measure the cost and benefits of every requirement in the rule. Instead, if the proposed rules are reasonable as a general matter, then the burden of showing a lack of cost effectiveness for any specific part of the rule is as it should be on the utility. It is the utility as the source of the necessary information, not the Staff or the Commission, that is uniquely positioned to make this showing. Indeed, the rules contemplate this determination in 4 CSR 240-22.070(1) where the utilities are required to calculate the "value of better information".

D. Initial Cost Estimates for Implementation Are Rough

Regarding the specific cost estimates for implementation of the proposed rule, EDE estimates $2.8 million per year and SJLP estimates $1.5 million per year, and both of these estimates are in the 2 to 2.5 percent range of gross revenues. (EDE at 4; SJLP at 5). MPS indicates that it "will incur ongoing annual costs ranging in the millions of dollars." (MPS at 2). The Staff has several comments in response to the cost estimates for implementation of the proposed rules.

First, there are essentially three areas of ongoing cost involved: (1) additional staffing and training; (2) additional computer software; and (3) additional information (data and consultants). Regarding additional staffing requirements, it is improbable that even the smallest utility will need to add more than five positions at an annual cost of approximately $300,000 per year. Regarding additional software requirements, the Electric Power Research Institute (EPRI) has developed software which covers

every area contemplated by the proposed rules. This software is available at minimal (essentially zero) cost to the electric utilities covered by the proposed rules. Thus, in order to attain a level of millions of dollars per year of ongoing cost, the cause must be the additional information (data and consultants) requirements.

The load forecasting rule requires the utilities to gather end-use data for basic end uses, where that information proves to be cost beneficial. The demand-side resource rule requires the utilities to gather information on the costs associated with demand-side measures and the costs of program implementation. The covered utilities should have been and still should be gathering this information irrespective of these proposed rules, just as they should have been gathering supply-side cost information, including fuel price forecasts. Moreover, this information is a basic component to sound integrated resource planning irrespective of specific methodological considerations. The one component of resource information that is unique to the proposed rules is that the utilities are required to estimate the probable environmental costs associated with potential future legislation. If this information is obtained from a consultant, until specific request for proposals are put out on competitive bid it is impossible to get an accurate measure of the associated costs. As the Staff has indicated in its initial comments, this information may be able to be developed as part of or in a manner similar to the MoKan pool

planning process, the costs of which are shared by the pool members in proportion to their size.

Second, the cost estimates seem to go beyond additional resources required to implement specific portions of the rules. In its review of the estimates submitted by the utilities, the Staff has seen estimates of costs for additional staffing - in the range of several times larger than the ten (10) person Department of Economic Analysis of the Commission Staff, as well as hundreds of thousands of dollars per year in ongoing consultant fees. The Staff also found that a substantial portion of these staffing positions and consultant fees were for load research and implementation of demand-side programs. Load research is required on a regular basis as a part of the Public Utilities Regulatory Policies Act of 1978 (PURPA), and the rules on resource planning do not require any additional load research. Program implementation costs are a part of the demand-side resource costs, and just as the costs of building power plants are not included as a part of the costs for the proposed resource planning rules, implementation costs for demand-side programs should not be included as costs associated with the resource planning process required by the proposed rules.

The proposed rule at no point requires what the Staff would view as load research in addition to the load research that the Staff believes should be in progress irrespective of the proposed rule, nor does the Staff believe that load research beyond what should currently be in progress at each utility for rate design

purposes is required in order to meet the requirements of the proposed rule.

Third, none of the cost estimates have encompassed the concept that full compliance with the rules could occur over time rather than with an immediate 100% compliance. For example, since the review process started with the Staff's information gathering in the first quarter of 1991, MPS has substantially turned around its planning process, and as MPS states at the beginning of its comments, "MPS has already begun acquiring and developing the technical and human resources necessary to comply with the proposed rules." (MPS at 1). While MPS would agree that it is not in full compliance, it has moved a long way in a relatively short period of time by concentrating on technical and human resources. (MPS at 1-2). The Staff believes that MPS is a model for the two smaller utilities to follow. Putting off high cost gathering of information until technical and human resources are in place to manage this information makes good sense. The proposed rules allow for such an approach through its waiver provision.

E. Resource Planning Requirements For Competitors

EDE and SJLP submitted comments that because competitors are not subject to the same proposed resource planning rules, they, EDE and SJLP, may be at a competitive disadvantage. (EDE at 7-8; SJLP at 3-5). EDE and SJLP thus state that since competitors will have knowledge of their plans, and there is no similar requirement for rural electric cooperatives (RECs) or local natural gas distribution companies (LDCs), the competition will have a

comparative advantage. EDE and SJLP also complain that these competitors will have comparatively lower costs because they will not be required to go through the same planning process.

First, with respect to release of information that would competitively disadvantage the smaller utilities, Staff would point out two things. One, irrespective of the technical content of the rule, if the utilities' plans are to be reviewed by the Commission prior to their implementation, those plans and the assumptions underlying them have to be submitted. Two, if the utility believes those plans contain certain confidential information, such information can be filed with the Commission under seal.

Second, with respect to any cost disadvantage, both EDE and SJLP make the unsupported assumptions that competitors' costs for planning are lower simply because they will not be subject to the Commission's proposed rules. At the same time their comments point out that Associated Electric Cooperative, Inc. (AEC) is "one of the largest coal-burning generating utilities in the State of Missouri" and that the cost of implementation for a large utility "will be similar" to that for a smaller utility. (SJLP at 4-5).

The Staff found in its review of the resource planning practices of the investor-owned electric utilities that the larger utilities are much closer to meeting the standards for planning set out in the proposed rules than the smaller utilities. Based on this observation, the Staff does not believe that one can assume that the planning process for AEC is not at or near the level required by the proposed rules. In fact, the Staff has attended a

resource planning workshop that was primarily for rural electric cooperatives and many of the topics covered by the instant proposed rules were presented there.

With respect to LDCs, the Staff finds it almost unbelievable that these electric utilities would argue that LDCs would not incur additional planning costs simply because they are not presently subject to Commission resource planning rules. These LDCs are facing the most massive restructuring of their industry that has every occurred. FERC Order 636 no longer allows an industry in which the pipeline can perform gas supply planning for the LDC. LDCs will have to be involved in the planning process with which they have little or no previous experience.

In summary, the Staff finds the argument that the proposed rules are anti-competitive have no substantive merit because the assumption that competitors will not have to plan on the same level is simply false.

F. **Attitudes Toward Change**

The key to a successful implementation of the rules will be whether or not utility managers are convinced that the resource planning process being proposed in the rules is of overall merit. Strategic resource planning may be a new approach for some of the utilities; one which moves beyond the old process of base line forecasting and budgeting to one of planning how the utility should react to the unexpected, but not unlikely events, that almost always cause the future to look nothing like the base line forecast. While this strategic approach to resource planning may

appear to be new to some, it has in fact been used by many electric utilities since the early 1980's. In fact, strategic planning has become an accepted part of the electric industry's approach to resource planning as indicated by this past year's second annual EPRI workshop on the application of decision analysis to strategic resource planning for electric utilities.

The general comments of EDE and SJLP imply a strong resistance to change from the old planning methods. It is the hope of the Staff that careful consideration will be given to the problems associated with the old planning methods, and EDE and SJLP will set priorities in moving toward a strategic resource planning process. The end of the following philosophical statement seems to capture what the Staff hopes will be the attitude toward change.

> Be not the first by which the new is tried,
> nc. the last to lay the old aside.
>
> (Author Unknown)

II. 4 CSR 240-22.010 PLANNING OBJECTIVE AND CRITERIA FOR SELECTING THE PREFERRED RESOURCE PLAN.

UE, KCPL, MPS, OPC, and MIEC objected to some portion of 4 CSR 240.22.010(2). UE objected (at 27-30) to the fact that cost minimization is designated as the "primary" selection criterion while the other criteria are referred to as "secondary". UE also objects to the use of the word "choosing". UE argues that this language does not allow utility decision makers enough discretion and flexibility in formulating the preferred resource plan. OPC's comments (at 3) are essentially the converse of UE's, i.e., that

allowing utility decision makers to determine the appropriate balance between cost minimization and other criteria gives them too much discretion and flexibility in choosing the preferred resource plan. This concern is consistent with OPC's view (at 2) that the Commission should provide explicit approval of the utility's resource acquisition strategy.

In practice, four of the five utilities (UE, KCPL, MPS, and SJLP) already use cost minimization as the "primary" measure of plan performance. The extent to which it is also used as the "primary" selection criterion is not entirely clear because the decision process is not fully documented, but other criteria seem to be considered in a much more qualitative and judgmental fashion, and always with reference to the "least cost" case.

The Staff believes that the explicit allowance in subsection (C) for other considerations such as risk and rate impacts provides adequate, but not excessive, flexibility in the choice of a preferred resource plan. In the Staff's view, the arguments against designating cost minimization as the "primary" selection criterion are not persuasive. However, the Staff does agree that it may be more appropriate not to refer to the other considerations enumerated in subsection (C) as "secondary", since in particular instances these other considerations may become critical enough to motivate a different choice than the one indicated by a strict cost minimization criterion.

KCPL alleges (at 7-9) that the cost minimization criterion, together with the required modeling assumptions of 4 CSR 240-

22.060(4)(B) (annual rate adjustments consistent with Missouri law), creates a bias in favor of demand-side resources. However, KCPL suggests no alternative selection criterion or proposed changes in the language of the rule to correct this alleged defect. There is a suggestion to "ensure the equivalency of demand-side and supply-side resources by providing adequate flexibility in the rules to allow a multitude of cost recovery options".

The cost recovery issue is dealt with elsewhere in the instant Reply Comments, but it appears that KCPL's real objections are to the limitations imposed by applicable Missouri law (no CWIP in rate base, no retroactive or single-issue ratemaking), rather than to the requirements contained in the proposed rules. Whether or not there are merits to these objections, the law cannot be altered or circumvented by administrative rules, so this is not the appropriate forum for such a debate.

MPS does not argue with either the cost minimization criterion or the "primary" designation of it, but MPS states (at 3) that costs borne by participants in demand-side programs should be included along with utility costs. The idea that the sum of all costs should be minimized is theoretically valid, and is the basis for requiring the use of the total resource cost test for cost-effectiveness screening of demand-side programs (4 CSR 240-22.050(7)). As a criterion for evaluating and selecting the preferred resource plan, however, it would be very difficult to implement and, if done correctly, the end result would almost certainly be the same.

The reason it would be hard to implement is that only the costs to program participants who are not "free riders" (i.e., those who would not have implemented the end-use measures without the utility program) should be included. The estimated share of free riders before the fact is highly uncertain, and even after careful evaluation, the optimal sharing of costs between the utility and the participating customer may be hard to determine, and is likely to vary from program to program and even from measure to measure within a program.

This matter of free riders is a very important question in the context of demand-side program design and screening, but at the stage of overall resource plan evaluation and selection it is unlikely to make a significant difference because non-free-rider participant costs are likely to be very small in comparison to total utility costs. The only scenario under which it might become significant is one where a relatively inexpensive marketing effort by the utility could claim sole credit for persuading a significant fraction of customers to spend large sums of their own money to implement demand-side measures that produce relatively little energy and capacity savings. Such a demand-side program would already have been screened out by the total resource cost test and would not be included in an alternative resource plan.

MIEC argues (at 10) that rate minimization should be "equal in importance" to cost minimization. This position is apparently based on a concern that the costs of demand-side programs targeted at other customer classes will be shifted to the industrial class

in the short run, and that the long run benefits of demand-side resources may not materialize, or may accrue disproportionately to other classes through the cost allocation and ratemaking process. (MIEC at 8-10). This concern is addressed in part by subsection (1)(A) of the demand-side rule (4 CSR 240-22.050) which requires the utility to develop demand-side alternatives that are comprehensive in terms of their coverage of all customer classes.

In the short run, the benefits of demand-side programs accrue mainly to participants in the form of lower bills, but the costs are borne by both participants and nonparticipants in the form of marginally higher rates. In the long run, however, the avoided supply cost savings are realized for all customers in the form of rates that are lower than they would have been under a supply-only strategy. Thus, from a long run planning perspective, there is no conflict between the objectives of cost minimization and rate minimization.

If the utility offers demand-side programs that are appropriately designed to identify and promote cost-effective opportunities for increased industrial energy efficiency, then industrial customers will have the opportunity to share in the short term benefits by participating in these programs. With regard to the risk that demand-side program costs for other classes may be shifted to the industrials, they have both the opportunity and the means to defend their interests in rate cases and rate design proceedings where these issues are, and will continue to be, addressed.

Therefore, the Staff is not persuaded that rate minimization should be identified as a separate objective of equal importance with cost minimization. For purposes of long range resource planning, which is the subject of these proposed rules, the two objectives are not conflicting.

OPC suggests removing the word "adequately" as a modifier to the phrase "serves the public interest" (OPC at 3). Staff has no objection to this change. The following changes to 4 CSR 22.010(2) are recommended:

> (2) The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable and efficient, at just and reasonable rates, in a manner that ~~adequately~~ serves the public interest. This objective requires that the utility shall -
>
> (C) Explicitly identify and, where possible, quantitatively analyze any ~~secondary criteria or~~ other considerations which are critical to meeting the fundamental objective of the resource planning process, but which may constrain or limit the minimization of the present worth of expected utility costs. The utility shall document the process and rationale used by decision makers to assess the tradeoffs and determine the appropriate balance between minimization of expected utility costs and these other considerations in selecting the preferred resource plan and developing contingency options. These considerations shall include, but are not necessarily limited to mitigation of -

III. 4 CSR 240-22.020 DEFINITIONS

Several of the comments on other rules have implications for definitions. In a few cases, the comments relate only to the wording of or the need for particular definitions. The Staff's Reply Comments under this section will specifically address only the latter type. Issues that would require changes in definitions

will be noted here, but will be addressed substantively in the Reply Comments on the rule where the issue arises.

KCPL (at 23) argues that the definition of levelized cost 4 CSR 240-22.020(27) should be broadened to allow for an "economic carrying charge" annualization of fixed costs to reflect the impact of an assumed inflation rate in cost-effectiveness screening of demand-side measures. The Staff opposes such a change for demand-side screening. As discussed in the Staff's Initial Comments (at 24) on 4 CSR 240-22.050(4), end-use measure screening is the first of three stages of cost-effectiveness testing for demand-side resources. As such it is intended as a comparative measure that accounts for differences in the useful lifetime of measures. But it is not intended to address the timing of resource additions. The issue of timing is partially addressed at the program screening stage, and in detail in the integrated resource analysis through the use of present worth analysis. The Staff is not opposed to the use of an economic carrying charge annualization for supply-side resource screening because in that case there is only a single stage of screening prior to the integrated resource analysis.

MPS (at 3) argues that the definition of load building program 4 CSR 240-22.020(29) should be restricted only to activities that increase loads "at the time of the utility's annual system peak load." Staff emphatically disagrees with such a limitation. The subject of load building is discussed in the instant Reply Comments on 4 CSR 240-22.050(10) and 4 CSR 240-22.060(5).

UE (at 44) and MPS (at 4) object to the definition of probable environmental costs 4 CSR 240-22.020(45). The Staff is willing to make some changes to the language as shown below, and discusses the rationale under 4 CSR 240-22.040(2)(B).

> (45) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental laws, regulations, taxes or other costs that utility decision makers judge to have a ~~nonzero~~ large enough probability of being imposed at some point within the planning horizon that the cost of compliance could have a significant impact on utility rates.

MPS argues that utility costs 4 CSR 240.22.020(55) should be defined to include "DSM program costs, lost revenues, and incentives". Staff would note that demand-side program costs and incentive payments to persuade customers to participate in demand-side programs are "incurred and paid by the utility" and are therefore included by the existing definition. (See also Staff's Initial Comments (at 26-27) on 4 CSR 240-22.050(7)). Lost revenues, defined at 4 CSR 240-22.020(38), depend on the length of time between rate cases as well as the load impacts of demand-side programs. Although they may affect the utility's short term earnings, they are clearly not part of the utility's revenue requirement and should not be included in the definition of utility costs. The lost revenues issue is addressed further in the Staff's instant Reply Comments on cost recovery and on 4 CSR 240-22.080(2).

SJLP alleges (at 8-9) "there is no clear definition as to what would or would not be considered a load building program", but offers no suggestions to clarify the existing definition 4 CSR 240-22.020(29). SJLP also objects (at 29-31) to all

requirements to analyze load building programs. These objections are addressed below in the instant Reply Comments on 4 CSR 240-22.050(10) and 4 CSR 240-22.060(5).

OPC argues (at 4-6) that the definition of end-use measure 4 CSR 240-22.020(15) should include fuel substitution measures. Although the Staff agrees that this is appropriate conceptually, the Staff opposes such a change at this time because of the practical problems of imposing this requirement on the electric utilities before balanced and complementary rules are developed for gas utilities. The fuel substitution issue is discussed further in the instant Reply Comments on 4 CSR 240-22.050.

OPC suggests (at 4-5) adding the word "generated" to the definition of energy 4 CSR 240-22.020(16). The Staff agrees that such a change is appropriate.

> (16) Energy means the total amount of electric power that is generated or used over a specified interval of time measured in kilowatt-hours (kWh).

OPC argues (at 5) that the definition of inefficient price 4 CSR 240-22.020(25) should be dropped as unnecessary. The Staff believes that this definition is necessary because of the reference to "inefficient pricing of energy supplies" in the definition of market imperfection 4 CSR 240-22.020(39)(F). As OPC correctly notes, by this definition most real-world prices, including regulated utility rates, are to some extent inefficient. This does not mean, however, that the definition is unnecessary and should be dropped. On the contrary, it is exactly the reason why it should be included.

Alternatively, OPC suggests (at 5) adding a definition of the term "long run marginal cost". Because the intended meaning of this term is what would be given in any introductory economics textbook, i.e., the cost of increasing output by an additional unit (marginal), assuming that all costs of production are variable (long run), the Staff does not agree that it needs to be defined in the rules.

OPC (at 5-6) argues that the definition of load building program 4 CSR 240.22.020(29) should include utility efforts to expand their service territory geographically, and to attract new customers to the existing service territory. Based on discussions in the informal workshops, the Staff agreed to remove these activities from the definition. The substantive reasons for this choice are discussed below in the instant Reply Comments on 4 CSR 240-22.060(5).

With regard to the definition of utility discount rate 4 CSR 240-22.020(56), OPC correctly notes (at 6) that since this is defined as a nominal rate (i.e., not adjusted for inflation), all cost and benefit streams to which it is applied should also be expressed in nominal dollars. The Staff concurs and proposes to add qualifying phrases or sentences to clarify this point wherever the term is used in the rules.

The following changes are in response to OPC's comments (at 11) that there is potential confusion due to an inconsistency between the definition of screening test 4 CSR 240-22.020(49) and the language used in 4 CSR 240-22.050(7).

(44) The probable environmental benefits test is a test of the cost-effectiveness of end-use measures ~~or demand-side programs~~ that uses the sum of avoided utility costs and avoided probable environmental costs to quantify the ~~net~~ savings obtained by substituting the ~~demand-side resource~~ end-use measure for supply resources.

(49) Screening test or cost-effectiveness test means the probable environmental benefits test for demand-side measures and the total resource cost test for demand-side programs.

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

~~(54)~~ (55) The utility benefits test is a test of the cost-effectiveness of end-use measures ~~or demand-side programs~~ that uses avoided utility costs to quantify the ~~net~~ savings obtained by substituting the ~~demand-side resource~~ end-use measure for supply resources.

~~(55)~~ (56) Utility costs are the costs of operating the utility system and developing and implementing a resource plan that are incurred and paid by the utility. On an annual basis, utility cost is synonymous with utility revenue requirement.

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

~~(56)~~ (58) Utility discount rate means the post-tax rate of return on net investment used to calculate the utility's annual revenue requirements.

~~(57)~~ (59) Uncertain factor means any event, circumstance, situation, relationship, causal linkage, price, cost, value, response or other relevant quantity which can materially affect the outcome of resource planning decisions, about which utility planners and decision makers have incomplete or inadequate information at the time a decision must be made.

~~(58)~~ (60) Weather measure means a function of daily temperature data that reflects the observed relationship between electric load and temperature.

IV. 4 CSR 240-22.030 LOAD ANALYSIS AND FORECASTING

A. General Comments

In its review of the comments submitted on load analysis and forecasting by other entities, the Staff found at least two basic misunderstandings that still exist. The Staff believes that there is some value in discussing these matters before responding to the suggestion made in the comments concerning changes in the specific wording of the proposed rule.

One of the fundamental misunderstandings involves the basic concept of end-use. The portions of rule 4 CSR 240-22.030 on load analysis and forecasting dealing with end-use are found in section (3) paragraph (A), entitled "End-Use Detail." In this paragraph the logical progression begins with a list of specific end-uses, then defines general cooling and heating components as weather sensitive end-uses when appliance stock and electric use information on space heating and space cooling has yet to be developed, and ends with the difference between the major class total load and the previously defined end-uses being specified as a residual end-use. Therefore, the rule contemplates that every utility will have its load disaggregated by some form of end-use. For example, the least disaggregated levels of end-use for the residential class would be cooling, heating and residual (non-weather sensitive).

Every load forecasting method used, whether it be based on econometric or appliance stock analysis encompasses the end-use specification included in the proposed rule. It is a therefore a misinterpretation of the rule to state: "the term 'end-use' means that the utility will attempt to inventory all energy-using hardware in a class and then attempt to forecast sales by multiplying the number of appliances by some estimate of use per appliance." (SJLP at 17).

A second misconception is that when the rule requires a specific estimate of load below the annual level of detail, that the utility is being required to repeat either its basic load analysis or forecasting at that level of detail. The Staff suspects that this is the reason that some of the utilities have estimated additional costs above what they are already doing in the area of load research. They have interpreted the rule to mean that they must add hourly metering "beyond what is required for load research." (SJLP at 16). The intent of the rule was not to set out any specific method for estimating sub-annual level of detail. Moreover, each utility needs to evaluate the various methods available and make a determination of which method is the most cost effective.

Perhaps a simple example will help clarify. The utility is asked to provide demands at time of system peak for each month and for each end-use. This does not mean that the rule requires the utility to spend hundreds of thousands of dollars on end-use metering in order to obtain statistical sample data on hourly

demands for each end-use. There are numerous alternative methodological approaches which can be taken to estimate the required demand levels.

Probably the least expensive method would be the use of conditional demand studies using the kilowatt-hour metered data from a sample of customers to obtain estimates of end-use energy. The Electric Power Research Institute (EPRI) has available a software program called RELOAD to which the user inputs annual or monthly energy estimates by end-use for a class and where appropriate, daily temperatures. The program then outputs end-use hourly load shapes. Recently EPRI has offered a new software package called Load Data Analysis Workstation (LDAW). This software package will allow the full integration of normal load research data with the requirements of demand-side impact studies and end-use load profile analysis. These software packages are available at a nominal cost to EPRI members and can be applied to the problem of estimation of end-use load shapes.

The bottom line is that the proposed rule does not require high cost load research programs in order to meet the specified load requirements. The Staff anticipates that utilities that are just starting to analyze end-use load shapes will depend heavily on information already developed by the industry. As certain demand-side options look to be very cost effective, the utility may decide to devote additional resources to improve its estimates of end-use load shapes.

The Staff believes that many of the comments which were not based on the above major misconceptions were beneficial and where the Staff is in agreement with the suggested changes, the Staff has included the changes in the instant Reply Comments. What follows is a point-by-point consideration of every change proposed in the comments of the various entities. They are included in the order in which they appear in the proposed rule.

B. Staff Response Point-by-Point To Suggested Changes To 4 CSR 240-22.030

1. (1)(A)2. Subclass Detail

The suggested change by SJLP is to delete the following:

> If the utility uses subclasses which do not fit into these categories, it must explain the reasons for its choice of subclasses.

and in its place, add the following: (SJLP at 15)

> The utility shall use the subclasses that it believes best reflect the energy usage characteristics of its service area, subject to the availability of reliable data and statistical validity.

SJLP does not believe that the utility must explain the reasons that its choice of subclasses are different from those listed in the rule.

The Staff disagrees. The subclasses listed in the rule were chosen because of the aggregation bias that may occur in the forecast if these subclasses are not used. Therefore, if the utility does not use the subclasses listed it must show that it has looked at the aggregation bias issue and concluded that in their service territory another set of subclasses will do better to eliminate any bias in the forecast.

2. (1)(B) Load Data Detail

Suggested changes in the language have been proposed by SJLP and UE for purposes of clarification. (SJLP at 16 and UE at 32). The Staff agrees with these suggested changes. The changes are as follows:

> 1. For each jurisdiction ~~for~~ under which the utility ~~makes forecasts~~ has rates established and for which it prepares customer and energy forecasts, each major class, and to the extent data is required to support the detail specified in paragraph (1)(A)1., for each subclass, actual monthly energy usage and number of customers and weather-normalized monthly energy usage ~~and number of customers~~;
>
> 2. For each major class, estimated actual and weather-normalized demands at the time of monthly system peaks; and

3. (1)(C)1. Typical Units for the Major Classes

The proposed change by SJLP is to delete the following:

> If the utility uses a different unit measure, it must explain the reason for choosing different units.

and in its place, add the following: (SJLP at 17)

> The utility shall use those [subclasses - wrong term, should be] units that it believes best reflect the energy usage characteristics of its service area subject to the availability of reliable data and statistical validity.

The Staff does not believe that the additional language adds any clarification to the rule. While the utility might use units that "best reflect the energy usage characteristics of its service area", that may not be the only or even the primary reason for its choice. The Staff sees no reason to restrict the rule to include the SJLP language as the only reason. Allowing the utility to simply explain the reason for choosing the specific units gives it a greater degree of flexibility.

4. (1)(C)2. The Effects of Actual and Normal Weather

The proposed change by UE is to delete the following:

> The utility shall develop and implement a procedure to routinely measure and regularly update estimates of the effect of both actual and normal weather on class and system electric loads.

and in its place, add the following: (UE at 33)

> The utility shall develop and implement a procedure to routinely measure and regularly update estimates of the effect of weather on class and system electric loads.

UE argues that the inclusion of the words "both actual and normal" to this portion of the rule would require the utility to "disaggregate actual loads into weather and non-weather related loads", and that a more appropriate requirement would be to determine the difference between loads "under actual versus normal weather." (UE at 32-33).

The Staff does not believe that this paragraph of the proposed rule requires the utility to disaggregate actual loads into weather and non-weather related components. Nor does the Staff believe that the suggested change to the proposed language conveys the concept that the utility should look at the difference in loads caused by the difference between actual and normal weather. Since there seems to be a potential misinterpretation in the proposed language that disaggregation is required, the Staff believes that the following change would help to clarify that disaggregation is not required:

> The utility shall develop and implement a procedure to routinely measure and regularly update estimates of the effect of ~~both actual and~~ departures from normal weather on class and system electric loads.

5. (1)(C)2.B Weather and Non-Weather Sensitive Component of Load

The proposed change by UE is to delete the following: (UE at 33).

> For at least the base year of the forecast, the utility shall estimate the cooling, heating and nonweather-sensitive components of the weather-normalized major class loads.

The argument is made that an equivalent requirement is set out in paragraph (3)(A)3. (UE at 33).

The Staff agrees that paragraph (3)(A)3 does define cooling, heating and non-weather sensitive loads as end-uses if the utility has not specifically set out space cooling or space heating as end-uses. Paragraph (3)(B)2 requires the utility to estimate energy and monthly system peak demands for each end-use and these estimates must be calibrated to weather-normalized energies and monthly system peak demands for each major class. Therefore, the requirements of (1)(C)2.B and (3)(B)2 are consistent, and are duplicative for the utility which has not performed the detailed space cooling and space heating end-use analysis. However, for the utility performing detailed end-use load analysis, (1)(C)2.B would require that utility to categorize which of the end-uses it believes are cooling, heating and non-weather sensitive.

Since the Staff believes that specific end-use categories are of higher priority than the more general cooling, heating and non-weather sensitive load categories, the Staff agrees that the elimination of (1)(C)2.B would not affect the substantive content of the load analysis required by the proposed rule. However, the

Staff also believes that having (1)(C)2.B helps make clear to the utility that is not performing appliance stock load analysis that it must clearly separate its class loads into the three basic components. Thus, for the sake of clarity and at the risk of duplication, the Staff recommends that the Commission not remove (1)(C)2.B as suggested by UE.

6. (1)(C)2.C Documentation of Methods Used in Weather Normalization

OPC suggests that the phrase "tests of statistical significance" should be changed to "all relevant test statistics." (OPC at 6). The OPC states that the reason for the change is that "there are other important statistical tests that should be made in addition to significance tests." (OPC at 6). The Staff agrees with the OPC point, however, the rule already requires that the statistical results of the models be included. The "tests of statistical significance" phrase was added to emphasize that along with estimates of the model parameters, the utility should include measures of whether or not these estimates are statistically significant. In order to take into account the OPC suggestion that all relevant statistical results should be included, the word "relevant" could be added as a modifier, in which case the rule would read:

> The utility shall document the methods used to develop weather measures and the methods used to estimate the effect of weather on electric loads. If statistical models are used, the documentation shall include at least: the functional form of the models; the estimation techniques employed; the data used to estimate the models, including the development of model input data from basic data; and the relevant statistical results of

the models, including parameter estimates and tests of statistical significance; and

7. (1)(D)1. **Length of Data Base for Energy**

The proposed change by KCPL is to remove the following wording related to the time period requirements on the data base for energy:

> start from January of 1982 or for the period of time used as the basis for the utility's forecast of these loads, whichever is longer;

and substitute the following time period requirements: (KCPL at 18)

> be provided for the three calendar years preceding the utility's date of filing as required by these rules.

The Staff disagrees with this suggested change. First, it is crucial that the data set used as the basis for the utility's forecast be maintained. This is simply a matter of sound documentation for the forecast. In its comments, KCPL is seeking to limit the initial filing to a three year period, but agrees that over time the utility would maintain up to a ten year period of historical data. (KCPL at 17). However, the proposed language changes did not do this, instead it limits the data base to three years.

The Staff also disagrees with the idea that only three years of weather normalized data need to be maintained. KCPL argues that to perform ten years of weather normalization of loads as compared to three years is a "a misallocation of KCPL forecasting resources" if the purpose for this is only to use the trends from the weather-normalized loads as a "sanity check" for the load forecast. (KCPL at 16). A primary purpose for requiring a longer period of weather

normalized loads is that errors in weather normalization procedures may not show up over a short time period, particularly if the errors are themselves weather related. It is the Staff's experience that once the weather normalization procedures are established, the application of those procedures to a single year versus multiple years requires few additional resources. Because the weather analysis of a single year's loads will not find weather related errors in the estimation procedure (e.g., poor weather measures, incorrect separation of seasonal and day-to-day weather variations), the Staff believes that the benefits of applying the procedure to previous years is well worth the additional effort.

8. (1)(D)2. Length of Data Base for Demands

The proposed change by KCPL is to remove the following wording related to the time period requirements on the data base for energy:

> start from January of 1990 or for the period of time used as the basis for the utility's forecast of these loads, whichever is longer;

and substitute the following time period requirements: (KCPL at 18)

> be provided for the three calendar years preceding the utility's date of filing as required by these rules.

The Staff disagrees with this suggested change for the same reasons given as a response to the similar suggested change to (1)(D)1.

A proposed change by SJLP to this paragraph would add the following words: (SJLP at 17)

> Estimated actual and weather-normalized class and system monthly demands at the time of the system peak and weather-normalized hourly system loads shall start from

January of 1990 , if available, or for the period of time used as the basis for the utility's forecast of these loads, whichever is longer;

The Staff agrees with the addition of the word "estimated," but disagrees with the addition of the words "if available." The words "if available" are not appropriate modifiers for the rule because it allows the utility that does not want to develop these estimates to simply say that since they had not performed the estimation, the estimates are not available.

9. (2)(A) Choice of Driver Variable

The proposed change by UE is to substitute the word "assumptions" for "factors": (UE at 34)

> The utility shall identify appropriate driver variables as predictors of the number of units for each major class or subclass. The critical ~~factors~~ assumptions that influence the driver variables shall also be identified.

The Staff agrees with this proposed substitution of words.

10. (2)(C) Subclass Shares

The proposed change by UE is: (UE at 35)

> Where the utility has modeled the relationship between the number of units and the driver variables for a major class, it shall ~~identify the factors which affect the~~ consider how a change in subclass shares of major class units~~, and shall explain how those factors were used to predict the subclass shares of the total number of units for the major class.~~ could impact the major class forecast.

The alternative wording captures the intent of the rule using simpler language and fewer words. Therefore, the Staff agrees with this proposed change in wording.

11. (3) Analysis of Use Per Unit:

The suggested changes by SJLP are to add the words "if available" and delete the words "by end use": (SJLP at 18)

> For each major class, the utility shall analyze historical, and if available, use per unit ~~by end use~~.

The Staff disagrees with the suggested changes. SJLP has failed to recognize that "end use" as specified in the rule does not mean that the utility will "inventory all energy-using hardware in a class." (SJLP at 17). As stated at the beginning of the Staff's response to comments on load analysis and forecasting, end use may simply be the separation of cooling, heating and non-weather sensitive loads, and the requirement to perform load analysis at this level if fundamental to any type of load forecasting effort.

12. (3)(A)1 End-Use Types

The suggested changes by KCPL are to add the words "process equipment" and delete the words "motor drives": (KCPL at 19)

> Where applicable for each major class, end-use information shall be developed for at least lighting, ~~motor drives~~ process equipment, space cooling, space heating, water heating and refrigeration.

The Staff agrees with the suggested changes.

SJLP wants to add after the words "where applicable", the phrase "and cost justified." (SJLP at 18)

The Staff disagrees with these suggested additions. Paragraph (3)(A)2 specifically deals with the issue of cost justification, and the suggested phrase does not need to be added in (3)(A)1.

13. (3)(A)3 General End-Use Classification

SJLP suggests that the word "yet" and the phrase "by disaggregating the load into its cooling, heating and nonweather-sensitive components" be deleted from the proposed rule. (SJLP at 18). The reason given by SJLP is that it believes the paragraph "presumes that if end-use data does not exist at the current time, it will at some future time whether it is cost-justified and appropriate or not."

The basic problem is that SJLP has totally misinterpreted the meaning of paragraph (3)(A)3. This paragraph does not presume anything about whether the appliance stock approach to end-use is cost justified. This paragraph simply states that if (for whatever reasons) the utility has not yet performed an appliance stock load analysis for space cooling or space heating, it is required to disaggregate its load into cooling, heating and non-weather sensitive components.

SJLP also suggests that the words "or both" be added after the phrase "the cooling or heating components." The Staff does not object to this addition, but does not believe that it is required.

14. (3)(B) Data Base and Historical Analysis for End-Use

SJLP suggests that the words "If the utility finds it cost effective to develop and utilize end-use data" be inserted at the front of this subsection. (SJLP at 19).

The Staff disagrees. As stated at the beginning of the Staff's response to comments on load analysis and forecasting, end use may simply be the separation of cooling, heating and non-

weather sensitive loads. Therefore, the utility may not have developed end-use data in the sense of appliance stock analysis, but this part of the rule would still apply to the utility's econometric analysis of loads.

15. (3)(B)2 Estimates of End-Use Energies and Demands

The suggested change by MPS is to substitute the word "annual" for the word "monthly": (MPS at 4)

> Estimates of end-use energy and demand. For each end use, the utility shall estimate end-use energies and demands at time of ~~monthly~~ annual system peaks, and shall calibrate these energies and demands to equal the weather-normalized ~~monthly~~ annual energies and demands at time of ~~monthly~~ annual peaks for each major class for the most recently available data.

MPS argues that the requirement for monthly estimates instead of annual estimates will impose an undue burden on the utility.

As pointed out in the opening responses for load forecasting, this is a misinterpretation of what the proposed rules would require. In its review of the language in the rule, the Staff noticed that the word "monthly" as a modifier for "energies" was omitted in the first sentence. That modifier should be added as follows:

> Estimates of end-use energy and demand. For each end use, the utility shall estimate end-use monthly energies and demands at time of monthly system peaks, and shall calibrate these energies and demands to equal the weather-normalized monthly energies and demands at time of monthly peaks for each major class for the most recently available data.

16. (5) Base Case Load Forecast

UE suggests the following additions to the language used to describe the utility's base case forecast: (UE at 36-37)

The utility's base-case load forecast shall be based on projections of the major economic and demographic driver variables that utility decision makers believe to be most likely. All components of the base-case forecast shall be based on the assumption of normal weather conditions. The load impacts of implemented demand-side programs shall be incorporated in the base-case load forecast ~~and~~ but the load impacts of proposed demand-side programs ~~should~~ shall not be included in the base-case forecast.

The Staff agrees with the suggested changes.

17. (5)(B) Load Component Detail

SJLP suggests adding the phrase "where appropriate" to the requirement for a separate forecast for number of units and use per unit. (SJLP at 19). The basis for the suggestion is that for the lighting class it is not appropriate to maintain records on the number of lighting fixtures and be required to forecast out these numbers.

The Staff disagrees. Our disagreement comes simply from the fact that if number of units are not specified for the lighting class how then will the utility take into account the possibility that more efficient lights may be installed by customers to either replace old less efficient lights or as new lights. In addition, if the utility does not have a measure of the use per unit for existing lights, how can it evaluate the effectiveness of a demand-side program in which old lights are replaced by more efficient ones? The heart of the issue of separate forecasts for number of units and use per unit is the determination of efficiency of use, and it is therefore always appropriate to separate these two components.

18. (5)(B)1.A Forecasts of Driver Variables for Number of Units

SJLP would remove the following language from the proposed rule: (SJLP at 20).

> These forecasts shall be compared to historical trends, and significant differences between the forecasts and long-term and recent trends shall be analyzed and explained.

SJLP interprets weather to be a driver variable and argues that the treatment of weather is different from the treatment of other types of driver variables such as household income or non-manufacturing employment.

The Staff does not understand how weather could possibly be a driver variable for the number of units. In section (2), driver variables for number of units are specified as "the economic or demographic factors (driver variables) that affect the number of units." Therefore, the Staff disagrees with the suggested removal of the language.

19. (5)(B)1.B Comparison of Forecasted Units to Trends

SJLP suggests removing the language requiring the comparison of the utility's forecast of number of units to trends and simply requiring that the utility document its forecasts. (SJLP at 20). The argument is that forecasts can be "presented and evaluated in a number of different ways depending on the nature of the data," and it is not appropriate to "specify a single approach to all forecast of number of units." (SJLP at 20).

SJLP provides no examples of these various methods, but it really does not matter because the rule does not state that the

comparison and analysis required are the only or best way for "presenting and evaluating" forecasts. The rule simply requires that as a part of what the utility does with respect to providing information for regulatory review, it shall compare the forecast to historical trends and analyze and explain significant differences.

20. (5)(B)2.A Forecast of Monthly Energy Use per Unit

MPS suggests that the rule be changed to require only annual forecasts of energy use per unit. The Staff disagrees for the same reasons given in Staff's response to comments in regard to (3)(B)2.

21. (5)(B)2.A Forecast if Driver Variables for Use Per Unit

SJLP suggests that the word "documented" be substituted for the word "specified," and the following sentence be removed from the proposed rule: (SJLP at 21)

> The utility shall document how the forecast of use per unit has taken into account the effects of real prices of electricity, real prices of competitive energy sources, real incomes and any other relevant economic and demographic factors.

SJLP argues that the driver variables should not be listed in the rule because it may be impossible to determine the separate effects of each. (SJLP at 21).

The Staff disagrees with the suggested change. The proposed rule does not require the utility to determine the "separate effects" of each of the driver variables. However, the rule does imply that there are specific driver variables which are important to consider. To remove the proposed language would in essence say that there are no particular driver variables of importance for the utility to consider. This is not the case, and SJLP did not

indicate that it believed the list of driver variables was somehow incorrect.

UE suggests that the word "considered" be substituted for the words "taken into account." (UE at 37). UE argues that the requirement for the utility to show how the listed driver variables are "taken into account" implies that those variables would be implicitly defined as driver variables, whether they were or were not in a given case. (UE at 37).

The Staff disagrees with UE's interpretation of the meaning of "taken into account." The Staff believes that the correct interpretation is that the utility has specifically analyzed the potential impact of the driver variables listed and has either found them to be significant or not. The word "considered" would certainly apply to those cases where the utility found that certain driver variables were not significant. In the cases where these driver variables have proven to be significant, the requirement to show how the driver variables have been taken into account would imply more than a simple listing of such variables. It would mean at least a descriptive account of how the driver variables cause use per unit to change, and where appropriate a quantification of that change.

22. (5)(B)2.B End-Use Detail of the Load Forecast

SJLP suggests using the phrase "for which the utility has adequate data available" to modify the classes and end-uses for which they must forecast loads. (SJLP at 22). SJLP incorrectly

interprets the proposed rule to require each utility to forecast for "all possible end uses for each major class." (SJLP at 21).

The Staff disagrees. SJLP either makes this interpretation because it did not correctly understand what the words "end use" mean at this point in the proposed rule, or this is an argument which improperly takes words out of context and applies them to an extreme. Even ignoring what the rule has specified prior to this paragraph and therefore making an extreme interpretation, SJLP's suggestion that the words "and for each end use" be removed leaves a rule entitled "End-use Detail" having no reference to end use in the body of what the rule says.

23. (5)(B)2.C Forecast of the Stock of Energy Using Capital Goods

UE suggests two changes be made to the proposed language involving the requirement to forecast the stock of energy using capital goods. (UE at 38-39). The first suggestion is the addition of the phrase "and where the utility has determined that end-use forecasting methods are appropriate." The Staff agrees with the content of UE's argument, although there is some doubt that the utility would or should be making expenditures on information which it has determined is not cost effective. The Staff would modify UE's suggested language to give specific recognition to the cost benefit and feasibility language already used in (3)(A)2.

> The stock of energy using capital goods. For each end use for which the utility has developed measures of the stock of energy using capital goods, and where the utility has determined that forecasting the use of electricity associated with these energy using capital goods is cost effective and feasible, it shall forecast those measures and document the relationship between the

forecasts of the measures to the forecasts of end-use energy and demands at time of the summer and winter system peaks. The values of the driver variables used to generate forecasts of the measures of the stock of energy using capital goods shall be specified and clearly documented.

The Staff believes that the changes suggested above capture UE's concern about measuring stocks of appliances that are not used in the forecast as well as provide a link back to language that has already been used to describe the conditions under which the utility is required to perform appliance stock end-use forecasting.

The second change suggested by UE is that the phrase "and demands at time of the summer and winter system peaks" be removed from the language in the proposed rule. (UE at 39). UE correctly argues that "forecasted demands could come from day-type load shape analysis and energy usage forecast, rather than from demand relationships to measures of energy using capital goods." However the Staff disagrees with UE's argument that the inclusion of the word "demands at the time of summer and winter peaks" would preclude the use of the day-type load shape analysis. Moreover, the use of end-use load shapes is what the Staff expects to occur, and the rule simply asks the utility to document the methods being used.

24. (5)(B)2.D Comparison of Forecasts to Historical Trends

SJLP suggests that the language requiring a comparison of the base line forecast to historical trends be eliminated in favor of simply requiring the utility to document its forecast. (SJLP at 22). SJLP repeats the previous argument from (5)(B)1.b that

comparisons to historical trends are not the only approach to presenting and evaluating a forecast. (SJLP at 22).

The Staff does not claim that comparisons to historical trends are the only way to present or evaluate a forecast, but explaining differences from historical trends certainly has merit as a method that is easily understood. The Staff's primary concern in requiring a comparison to historical trends is that non-experts in load forecasting have a basis for understanding the assumptions that have gone into the base case forecast. Therefore, the Staff disagrees with the wording change suggested by SJLP.

KCPL suggests that the term "historical" trends be substituted for the phrase "long term and recent" trends. (KCPL at 18). The reason for this suggestion seems to be connected to KCPL's proposal to reduce the period over which the utility is required to keep historical data from 10 years to only 3 years.

The Staff believes that it is important that both recent and long term trends be taken into account. Recent trends can be short run aberrations caused by an economic recession which is not expected to last over the long run. Therefore, the Staff disagrees with KCPL's suggested change.

25. (6) Sensitivity Analysis

SJLP suggests the substitution of the words "that it believes to be subject to unusually high levels of fluctuation" for the list of drivers included in the proposed language. (SJLP at 23). SJLP argues that sensitivity analysis should only be performed for those variables that have a "statistically significant impact on the data

being forecast." (SJLP at 22). The Staff agrees with SJLP on this point, but we believe that it is covered by the language in the proposed rule where it states that "the utility shall analyze the sensitivity of the components of the base-case forecast for each major class to variations in the key driver variables ..." (emphasis added). SJLP then argues that not all driver variables "warrant an in-depth analysis of sensitivity." (SJLP at 22). The Staff is unsure what SJLP means by this, because a sensitivity analysis is performed in order to determine which "significant" or "key" driver variables do have a substantial impact on the forecast and which do not. Subsequent to the sensitivity analysis an more in-depth analysis of those driver variables that do have a substantial impact can be performed, but the rule does not address that question.

The Staff also disagrees with SJLP's suggested language because it assumes that a driver variable with low levels of fluctuation will not have a substantial impact on the load forecast. The purpose of sensitivity analysis is to make the determination whether or not an assumed relevant range (small or large) of variation in a key driver variable has a substantial impact on the load forecast.

26. (8)(H) Filing Requirements - Description of Methods

SJLP suggests that all language requiring the utility to explain why it has not used end-use methods be stricken from this section. (SJLP at 23).

The Staff disagrees because the language involving an explanation of why the utility has not used end-use methods is consistent with the language in (3)(A)2 where the utility is allowed a waiver on developing information for specific end-use due to costs outweighing benefits or infeasibility. If the utility does not have to file such information, it cannot be determined whether or not the utility is in compliance with the proposed rule.

In addition, SJLP suggests that the word "annotated" be removed. (SJLP at 23). SJLP gives no reason for removing this word, but the Staff believes that it is very important from its perspective that the utility be required to state where in its filing it has complied with the specific requirements of the proposed rule. The Staff in its review of the filing should not have to guess which part of the utility's filing is supposed to meet the requirements.

OPC suggests that the phrase "an explanation" be replaced by "a satisfactory explanation." (OPC at 7). OPC states that the addition of the modifier "satisfactory" will "require the utility to base its decision not to use end-use forecasting methods on solid reasoning." (OPC at 7). The Staff does not know whether the addition of the modifier "satisfactory" would place any additional requirement on the utility to use solid reasoning, but since the rule already requires the reason for exemption in (3)(A)3, the Staff sees no reason to add this modifier.

V. 4 CSR 240-22.040 SUPPLY-SIDE RESOURCE ANALYSIS

UE (at 44-45) objects to the terminology "nonzero probability" in the definition of probable environmental cost (4 CSR 240-22.020(45)) and in paragraph (2)(B)1 on the grounds that a literal interpretation would require the utility to estimate expected costs for any pollutant with even an infinitesimal probability of being subject to future additional regulation. UE suggests substituting "significant" for "nonzero". MPS (at 4-5) also objects to the term "nonzero" but suggests substituting "fifty percent".

The Staff is sympathetic to the concern, but believes that MPS's suggestion of "fifty percent" shows why it would be unwise to use UE's term "significant". The potential risk depends on both the probability of new regulations and the cost of complying with them. For pollutants with a very high cost of mitigation, a ten percent probability could pose a major financial risk. Since it is the degree of risk that is important, the Staff would propose to remove any reference to a level of probability and focus instead directly on the risk. Such a change is appropriate in the definition of probable environmental cost 4 CSR 240-22.020(45) and in paragraph (2)(B)1 in 4 CSR 240-22.040. It is not necessary in paragraph (2)(B)2. because there "nonzero probability" refers to the level of mitigation required assuming that some new regulation is imposed, not to the likelihood of any new regulation whatsoever.

> (2) Each of the supply-side resource options referred to in section (1) shall be subjected to a preliminary screening analysis. The purpose of this step is to provide an initial ranking of these options based on their relative annualized utility costs as well as their probable environmental costs, and to eliminate from further consideration those options that

have significant disadvantages in terms of utility costs, environmental costs, operational efficiency, risk reduction or planning flexibility, as compared to other available supply-side resource options. All costs shall be expressed in nominal dollars.

(A) Cost rankings shall be based on estimates of the installed capital costs plus fixed and variable operation and maintenance costs levelized over the useful life of the resource using the utility discount rate. In lieu of levelized cost, the utility may use an economic carrying charge annualization in which the annual dollar amount increases each year at an assumed inflation rate and for which a stream of these amounts over the life of the resource yields the same present value.

(B) The probable environmental costs of each supply-side resource option shall be quantified by estimating the cost to the utility of mitigating the environmental impacts of the resource to comply with additional environmental laws or regulations that ~~are likely to~~ may be imposed at some point within the planning horizon.

1. The utility shall identify a list of environmental pollutants for which ~~there is~~, in the judgment of utility decision makers, ~~a nonzero probability that~~ additional laws or regulations ~~will~~ may be imposed at some point within the planning horizon which would result in compliance costs that could have a significant impact on utility rates.

2. For each pollutant identified pursuant to paragraph (2)(B)1., the utility shall specify at least two (2) levels of mitigation ~~beyond~~ that are more stringent than existing requirements which are judged to have a nonzero probability of being imposed at some point within the planning horizon.

Subparagraphs 4 CSR 240-22.040(8)(A)1.A-G of the proposed rule on supply-side resource analysis recognize that in the planning of new supply side resources (i.e., generating facilities and bulk power purchases), the cost of fuel is one of the most critical elements. A review of utility expansion plans in the past by the Staff has shown that most fuel forecasts used in these plans turned out to be incorrect. Fuel prices are difficult to forecast correctly, especially in the long run because, among other things, they are subject to the effect of national policy and international

events. The Staff understands and appreciates that even if the rather minimal requirements of the supply-side resource analysis proposed rule are followed scrupulously, the development of a fuel forecast that turns out to be correct is far from assured. However, the proposed rule does require the utility to look into the factors that can affect the long term prices of fuel, especially reserves, usage rates and potential government actions. For example, a tax on CO2 production would penalize the burning of coal more severely than the burning of gas, and could trigger a large scale switch to burning gas to produce electricity. Would the gas supply be sufficient in the short term and in the long term and what would be the effect on gas prices? The proposed rule requires consideration of these types of questions.

UE has objected to this portion of the proposed rule on supply-side resource analysis and has proposed an alternative procedure. (UE at 40-43). Part of UE's objection seems to rest on a misinterpretation of what the Staff believes is the clear language and intent of the rule. No other commentator has indicated a similar misunderstanding of these sections. The Staff's objection to UE's proposed changes to the rule center on the unsuitability of the proposed changes to the prediction of fuel prices in the long run. UE has proposed appropriate procedures for planning fuel purchases a few years in advance, and its proposal probably accords with its current practice in buying fuel. However, the intent of the proposed rule is to set minimum requirements for strategic planning. For strategic planning for

future fuel supplies, the planners should not concentrate on individual suppliers, as UE seems to interpret the proposed rule as requiring, but instead consider the entire industry as a whole. To use the same example cited above, consideration should be given to whether the infrastructure will be in place to rapidly discover and develop new gas supplies if a large segment of the electric utility industry rapidly converts from coal to gas in order to fuel generating stations.

KCPL objects to parts of these sections of the proposed rule for different reasons. (KCPL at 20-21). KCPL takes exception to the section of the proposed rule that requires the utility to consider the previous record of accuracy when the utility selects a vendor to perform the fuel price forecast. The reason for KCPL's objection is not clear enough to the Staff to permit discussion herein. However, the intent of this provision of the proposed rule is simply to require the utility to apply appropriate criteria to the selection process. It is common practice to select a consultant partly on the basis of his/her prior performance. Indeed, this is the reason for the requirement in a solicitation for consultant services for references to be supplied by the vendor.

The balance of KCPL's objection seems to be based on its prediction of what some future forecaster might do to bias his/her forecast in some direction. The Staff does not share KCPL's concern in this matter, but if indeed KCPL's fear should turn out to be the case, KCPL has the option of providing instructions to

its expert to prevent this bias from occurring and to reject the work if it does occur. KCPL's suggested alternative language is so vague in the Staff's view as to render this section of the rule meaningless if KCPL's alternative language were to be adopted by the Commission.

SJLP has proposed changes to two sections of this rule. (SJLP at 24-25). In accordance with the Staff's belief that cooperative arrangements among utilities can reduce the cost burden on individual utilities and improve the quality of the planning, the Staff supports SJLP's proposed changes to both the first sentence of section (1) and the language addition to section (3) in accordance with SJLP's Initial Comments.

VI. 4 CSR 240-22.050 DEMAND-SIDE RESOURCE ANALYSIS

UE notes (at 46) that the implicit definition of load building program contained in section (10) of 4 CSR 240-22.050 is inconsistent with the explicit definition at 4 CSR 240-22.020(29) and suggests that the phrase in section (10) should be deleted. The Staff agrees that the explicit definition is the intended one and that there is no need for a modifying phrase to implicitly define the term in section (10). Staff suggests the following changes:

> (10) Demand-side programs and load building programs shall be ~~separately~~ designed and administered, and ~~demand-side program~~ all costs shall be ~~separately~~ classified so as to permit a clear distinction between ~~these demand-side program~~ costs and the costs of load-building programs ~~to promote increased sales, attract new customers or induce customers to switch to electricity from other forms of energy supply for the provision of end-use energy services~~. The costs of demand-

side ~~activities~~ resource development that also serve other functions shall be allocated between the functions served.

MPS objects (at 3) to the proposed definition of load building program because it is not limited strictly to efforts to increase on-peak loads. MPS argues that without this limitation "DSM programs that have the potential to reduce system peak load requirements, improve system load factor, and defer the need for new capacity may not be fairly evaluated in the resource planning process." Also (at 6), MPS states that "Separate classification of 'load management' DSM program costs and load impacts that do not contribute to on-peak system demand should not be required by the rules".

Apparently MPS is confused about the difference between "energy-management measure" as defined at 4 CSR 240-22.020(18) and "demand-side program" as defined at 4 CSR 240-22.020(11). Neither "load management", "demand-side management", nor "DSM" (an abbreviation for Demand-Side Management) are terms that are defined or used in the proposed rules.

The definition of load building program is intended to include promotional efforts that are primarily designed to sell more electricity, regardless of whether these load increases occur during on-peak or off-peak hours. It is absolutely essential that the definition include off-peak load building (sometimes called "valley filling") because in the long run such load increases add to the need for new supply-side resources.

Of course, off-peak load increases are preferable to on-peak load increases because a larger share of off-peak energy is

supplied from low-running-cost baseload capacity. But these are short term benefits that accrue mainly to shareholders in the form of higher earnings (between rate cases), and to some extent to ratepayers (by offsetting increased expenses and deferring the need for rate increases). While off-peak load increases do "improve annual system load factor", they certainly do not "defer the need for new capacity".

While it may be that some energy-management measures (thermal storage technologies, for example) may result in somewhat greater total energy consumption, they are primarily designed to shift energy consumption from on-peak to off-peak hours, not to increase sales. The term load building program is not intended to include energy-management measures that are included in demand-side programs, nor is section (10) intended to require that the costs and load impacts of energy management measures must be separately classified.

What these provisions are intended to require is that load building programs and demand-side programs be separately designed and administered, and that the costs of these activities be separately classified. The Staff's suggested changes to the wording of section (10) are intended to clarify this point. As discussed in the Staff's Initial Comments (at 28), without such a separation it would be impossible to properly carry out the demand-side program cost-effectiveness screening test required by section (7) of 4 CSR 240-22.050 or the analysis of alternative resource

plans with and without load building programs required by 4 CSR 240-22.060(4)-(5).

SJLP objects (at 27) to the requirement to include distribution capacity benefits in demand-side measure and program screening (sections (4) and (7), respectively). The Staff maintains that it is appropriate to include such benefits at the screening level. While it may be true that some measures or programs would provide less benefit than the screening test would reflect, it is also likely that some would provide substantially more. These differences can and should be accounted for in the integrated resource analysis that follows program screening.

SJLP also objects (at 27) to the requirement (subsection (4)(G)) to perform the utility benefits test. The Staff believes that although the probable environmental benefits test determines whether a measure is passed on to the program stage, it is useful and worthwhile to look at measures that pass this test from the utility perspective. All of the cost and benefit components required to perform the utility benefits test are already developed, so the additional effort required is small, and the information can be helpful in the design of demand-side programs and alternative resource plans.

OPC suggests (at 9) adding the word "incremental" at the beginning of paragraph (4)(C)2. The Staff agrees with this change.

> (4) Cost-Effectiveness Screening of End-Use Measures. The utility shall evaluate the cost-effectiveness of each end-use measure identified pursuant to section (1) using the probable environmental benefits test. All costs and benefits shall be expressed in nominal dollars.

(C) Annualized costs per installation for each end-use measure shall be calculated as the sum of the following components:

2. Incremental ~~Annual~~ operation and maintenance costs (regardless of who pays these costs) levelized over the life of the measure using the utility discount rate; and

OPC also notes (at 9) that since avoided probable environmental costs are excluded from the benefit side of the utility cost test, they should also be excluded from the enumerated costs. The Staff agrees, and proposes to change subsection (4)(G) accordingly.

(G) For each end-use measure that passes the probable environmental benefits test, the utility shall also perform the utility benefits test for informational purposes. This calculation shall include the cost components identified in ~~subsection (4)(C)~~ paragraphs (3)(C)1. and 2.

OPC points out (at 11) that section (7) of 4 CSR 240.22.050 on demand-side program cost-effectiveness screening might be confusing and could be interpreted as inconsistent with the screening test definition at 4 CSR 240-22.020(49). The Staff agrees, and proposes modifications to make it clear that the total resource cost test is the intended measure of cost-effectiveness for demand-side programs, and that the utility cost test is for comparative and informational purposes.

This clarification involves modifications to existing sections 4 CSR 240-22.020(44), (49), and (54), as well as adding new definitions for total resource cost test (54) and utility cost test (57) and renumbering from existing (54) onward. It also requires the following changes to 4 CSR 240-22.050(7):

(7) Cost-Effectiveness Screening of Demand-Side Programs. The utility shall evaluate the cost-effectiveness of each potential demand-side program developed pursuant to section

(6) using ~~the utility cost test and~~ the total resource cost test. ~~The utility cost test shall also be performed for purposes of comparison. All costs and benefits shall be expressed in nominal dollars.~~ The following procedure shall be used to perform these tests:

OPC suggests (at 9-10) a new subsection (6)(E) that defines the terms "cream skimming, lost opportunities, and free riders" and requires that they "shall be considered when programs are designed". A new section (7) is also suggested (at 10-11) which requires the utility to "consider the applicability of different types of utility actions to achieve optimum market penetration" of demand-side programs. The proposed section then goes on to enumerate a number of customer incentives and marketing methods.

While the Staff agrees that good research, marketing and evaluation techniques are essential to the appropriate design and successful development of demand-side resources, the Staff does not believe that it is necessary or advisable to try to include in the rule an exhaustive list of such activities that the utility must "consider". The general requirements of sections (5), (6) and (9) are intended to indicate the required type and scope of such activities, and the Staff believes that these provisions are sufficient. Nevertheless, the Staff is willing to add a sentence to section (5) to emphasize the purpose and importance of such activities.

OPC (at 4 and 8), LGC (at 5-7), and WR (at 3-9) all object to the fact that fuel substitution options are not included in the definition of end-use measure 4 CSR 240-22.020(15) or in the

required scope of end-use measures that must be identified and screened for cost-effectiveness (4 CSR 240-22.050(1)).

The rationale for including fuel substitution is that the fundamental objective of the resource planning process (4 CSR 240-22.020(2)) is to provide "energy services" rather than a particular form of energy supply. Thus, if a certain type of energy service can be provided more efficiently by another form of energy, the electric utility should be required to promote the alternative form of energy for the provision of that energy service in order to conserve electricity for other uses.

The issue here is not whether fuel switching should be considered, rather it is a question of who should be performing the evaluation of which fuels are the most cost effective in terms of overall resource allocation. In order for demand-side options to be considered as relevant to the overall process of resource planning, there needs to be a showing that market imperfections have somehow prevented the true resource cost from being manifest to the customer. This is a fundamental issue of rate design. If indeed, the price for electricity at the time of the summer peak does not reflect the true resource cost of providing the service, then the natural gas utilities have every right to argue that since they cannot compete on the basis of market prices, they should be allowed to promote load building by offering incentives to customers for natural gas air conditioning. To further argue that the Commission should require the electric utilities to include natural gas air conditioning as a demand-side resource fails to

answer the question of which utility will most effectively be able to implement the program. In effect, the promotion of natural gas air conditioning is a load building program for the natural gas utility and a fuel substitution program for the electric utility.

For the natural gas utility, the addition of natural gas air conditioning means more sales over which it can spread its fixed distribution system costs, while for the electric utility, the lost sales may mean fewer units over which it can spread its fixed costs. On the other hand, if the electric utility is able to avoid incremental fixed costs which are greater than its loss in contribution to embedded fixed cost, then the fuel switching will result in lower rates for its customers and reduced risk for its stockholders. The fundamental problem is one of who should pay the immediate costs of fuel switching programs, particularly when the benefits may not occur for several years into the future. The natural gas utility obtains the immediate benefits of higher sales, yet if the fuel switching program is solely an effort of the electric utility, the natural gas utility does not incur any of the costs of the program.

The Staff agrees with the need to analyze fuel substitution as a resource option and did include it as a requirement in the initial draft of the proposed rules. The subject was debated at length in the informal workshops. The question arises whether the electric utilities should be required to consider such options while competing natural gas utilities are subject to no such complementary requirement. It is this asymmetry of requirements

for competing utilities that caused the Staff to not include such requirements in the proposed rules. The Staff recommends that the Commission not include any requirements for the electric utilities to treat fuel switching as demand-side resource options until the natural gas utilities are also required to perform detailed demand-side resource planning as a part of natural gas resource planning rules. Those rules should deal with the issue of fuel switching, including any proposed amendments to the electric resource planning rules. Such proposals should give serious consideration to the question of sharing fuel switching program costs based on both immediate and long term benefits, and whether it makes more sense to allow one type of utility to engage in cost effective load building than to require another type of utility to promote fuel switching.

OPC argues (at 8) that these provisions should be included in Chapter 22, with the understanding that electric utilities will be granted waivers from these provisions until similar rules for gas utilities are in place. In the Staff's view this approach would offer no advantage, and would have the drawback of adding to the administrative task of implementing the proposed rules. In addition, none of the entities proposing the inclusion of fuel switching have addressed the question of matching costs with the benefits for the electric and natural gas utilities. Amending Chapter 22 when similar rules for gas utilities are adopted would be more appropriate and straightforward.

VII. 4 CSR 240-22.060 INTEGRATED RESOURCE ANALYSIS

OPC (at 12) suggests that the word "objectives" should be substituted for the word "goals" in section (2) of 4 CSR 240-22.060 to be consistent with the terminology used in 4 CSR 240-22.010(2). The Staff agrees with this change.

> (2) Specification of Performance Measures. The utility shall specify a set of quantitative measures for assessing the performance of alternative resource plans with respect to identified planning objectives. These measures shall include at least the following: present worth of utility revenue requirements, present worth of probable environmental costs, present worth of out-of-pocket costs to participants in demand-side programs, levelized annual average rates and maximum single-year increase in annual average rates. All present worth and levelization calculations shall use the utility discount rate and all costs and benefits shall be expressed in nominal dollars. Utility decision makers may also specify other measures that they believe are appropriate for assessing the performance of resource plans relative to the planning ~~goals~~ objectives identified in 4 CSR 240-22.010(2).

MPS (at 7) argues that the alternative resource plans required by section (3) "should include cost-effective 'load management' DSM programs that reduce on-peak system demand." As discussed above in relation to MPS's objections to 4 CSR 240-22.050(10), this comment reflects a confusion with regard to terminology. Alternative resource plans developed pursuant to section (3) may include energy management measures (4 CSR 240-22.020(18)) that are included in demand-side programs (4 CSR 240-22.020(11)). They may not include load building programs (4 CSR 240-22.020(29)).

KCPL (at 8) and SJLP (at 29) object to the modeling assumption of annual rate adjustments required by subsection (4)(B). KCPL offers no alternative language. SJLP proposes to delete the entire subsection (4)(B) because the use of annual rate adjustments is

"not realistic and may not be appropriate when analyzing the elasticity of rates". As noted in the Staff's Initial Comments (at 29-30), the intention of this provision is not to require a "realistic" simulation of the decision to file actual rate cases.

The purpose of the analysis required by section (4) is to compare the performance of alternative resource plans over the twenty-year (20) planning horizon. In order to do this, some straightforward convention must be adopted. The assumption of annual rate adjustments may underestimate price elasticity impacts as SJLP suggests, and it will certainly attenuate the effects (both positive and negative) of "regulatory lag" as KCPL implies. These are potentially important considerations, but the appropriate place to address them is not at this stage of the analysis. The purpose at hand is a comparative analysis of alternative resource plans. For this purpose, the Staff continues to believe that the assumption of annual rate adjustments is appropriate.

The requirement to develop and analyze alternative resource plans initially without load building programs (sections (3)-(4)) and subsequently including them (section (5)) was the subject of much debate in the informal workshops. There are two controversial aspects to the issue. First, the types of activities that should be covered, specifically, whether geographical expansion of the service territory and efforts to attract new customers should be included in the definition. Second, the scope and extent of the impacts that must be considered, specifically, whether the utility

should be required to analyze the impacts on competing energy suppliers.

From one perspective, it is generally argued that geographic expansion and "economic development" should be excluded because (1) they are subject to many other influences besides the utility's effort (including regulatory review) and (2) the load impacts of these activities would be practically impossible to quantify. From another perspective, it is generally argued that the financial and rate impacts on competing energy suppliers should be analyzed, but the question arises whether the companies of the competing industry have access to the information that would be required to perform the analysis.

In its Initial Comments, OPC maintains (at 5) that territorial expansion and efforts to attract new customers should be included in the definition. The Staff is convinced, however, that this is not advisable. Territorial changes transfer customers from one electric supplier to another, and may involve offsetting purchases and sales of capacity. Such transactions are not typically a major factor in long range resource planning and in any case are subject to regulatory review so that such concerns can be addressed in particular cases if warranted.

So-called "economic development" activities are usually undertaken in conjunction with local regional, county, or municipal agencies, and while the utility may be an important player in these programs, the decision to locate a new facility seldom hinges solely or primarily on the terms of electric utility service.

Also, many of the advertised benefits of these activities have to do with the "multiplier effect" of new payroll dollars on the local economy. These impacts are beyond the scope of the cost-effectiveness tests required for both supply-side and demand-side resources and performance measures required for alternative resource plans. If such benefits are significant enough to warrant serious consideration in particular cases, they may be addressed under subsection (5)(D).

SJLP (at 9 and 29) and EDE (at 6) are the only electric utilities to continue to object to the load building provisions contained in the proposed rules. Both allege that it is "futile to attempt" to quantify the load impacts of such programs. SJLP also maintains that such an analysis is "unduly prescriptive, onerous, and unneeded", and that the requirement to analyze load building programs "smacks of a no-growth scenario and an anti-economic development philosophy". SJLP proposes to delete the definition of load building (4 CSR 240-22.020(29)) and all references to it in the rules.

The intent of these provisions is certainly not to promote "a no-growth scenario". Nothing in the rules suggests that utilities cannot or should not seek to increase loads under any circumstances. All that is required is to analyze such efforts from a long run planning perspective rather than strictly from a short run earnings perspective. Even in the short term, if the utility has no idea of the impact of such efforts, as these comments seem to imply, these efforts may not actually increase

earnings. In the long run such efforts, to the extent that they are successful, add to the need for supply-side resources. The purpose of these requirements is to ensure that the utility adequately analyzes whether these long term costs are offset by the short term benefits.

LGC suggests (at 4-5) that electric utilities should be required to analyze the impact of load building programs on "competing providers of energy services and their customers". This suggestion is based on the assertion that "most ratepayers are both electric and natural gas users". While this is probably true in the major urban centers, it is far less likely to be true in rural areas where the "competing providers" are likely to be propane and fuel oil dealers, or firewood suppliers.

As LGC notes (at 3), load building programs that involve the payment of incentives or other consideration are, and will remain prohibited promotional practices under the provisions of Chapter 14 of the Commission's rules. Since natural gas companies may intervene in any request for a variance from the prohibitions imposed by Chapter 14, they have both the opportunity and the means to defend their interests against any load building effort by electric utilities that involves such incentives.

With regard to load building programs that do not include prohibited promotional practices, the gas utilities may file comments on any electric utility's filing pursuant to Chapter 22 if they believe that such activities are not in the public interest. The Staff believes that the gas utilities have ample opportunities

to protect the interests of their shareholders and ratepayers and that it would be unreasonable to require the electric utilities to estimate the financial and rate impacts of their load building programs on all competing providers of energy services.

VIII. 4 CSR 240 - 22.070 RISK ANALYSIS AND STRATEGY SELECTION

A. General Comments and Small Utility Exemption

There were few specific changes suggested to this portion of the proposed rules. Before addressing specific comments, the Staff believes that it is important to understand that the primary purpose of this proposed rule is to require the covered utility to quantify its judgments about the uncertainty which it faces in planning based on unknown future events, including such major components to its decision making such as load forecasts, fuel price forecasts, capital costs, demand-side program effectiveness and future environmental requirements. Based on the utility's quantification of these uncertainties, this part of the proposed rules requires the utility to evaluate the riskiness of what it believes to be its top candidates for a preferred resource plan. In addition, the utility is required to map out a strategy that will allow it to navigate through the uncertain future by responding in an effective way to unexpected, but not improbable events.

The Staff points out these basic thoughts concerning this portion of the rules because these are the fundamentals from which the Staff will respond to the suggestions to change or allow

exemption from this proposed rule. Specifically, SJLP has requested exemption from several sections and paragraphs of this rule, and the Staff is opposed to giving an exemption to small utilities because the Staff believes that it is just as important for the management of a small utility to quantify its risk as it is for a large utility. In addition, because of its smaller size, it is likely to be of greater importance for the small utility to diversify its risk than it is for the large utility. For example, the addition of a new base load plant for a large utility will not be nearly as a large a percentage of existing capacity as it is for the small utility. The small utility should give serious consideration to joint ownership of a large plant when it looks at the risk of building a plant on its own.

B. Staff Response Point-By-Point to Suggested Changes To 4 CSR 240-22.070

1. (1) Methods of Formal Decision Analysis

SJLP suggests either that it be given a small utility exemption from this rule or that the requirement "to quantify the value of better information concerning the critical uncertain factors" be stricken. (SJLP at 31). SJLP argues that the level of detail required by this requirement will result in costs which in its opinion "far exceed the incremental benefit which the more rigorous analysis may provide." (SJLP at 31).

The Staff disagrees with SJLP for a very simple reason: the quantification of the value of better information is the only method for quantifying the fundamental issue raised throughout SJLP's comments to the proposed rules - do the costs of gathering

additional information outweigh the benefits. Moreover, neither SJLP nor EDE have proposed any method for measuring the benefits from gathering additional information to be used in the planning process. Now, when given the specific opportunity to relate the costs of that information to a measure of benefits that is directly related to what SJLP's decision makers believe to be the "critical uncertain factors," SJLP requests an exemption. The Staff believes that SJLP's position is one of simply asserting that improvements in the planning process will not provide enough additional benefits to outweigh the costs, but do not require SJLP to quantify its assertion, just believe it.

MPS suggests that the definition of the "expected value of better information" be described both in this portion of the rules as well as in the definitions section. (MPS at 7). MPS does not provide us with what it believes to be the definition that should be included, but does cite EPRI's "End-Use Technical Assessment Guide, Volume 4: Fundamentals and Methods (CU-7111 V4)" as providing a definition. (MPS at 7).

In its course on Decision Analysis, EPRI representatives defined the "value of perfect information" to be "the increase in expected value it produces." (Second Annual Decision Analysis Seminar/Workshop; November 18-22, 1991; Kansas City, Mo.; Applied Decision Analysis Inc.) The course materials go on to state that the "value of imperfect information is similar, except that the accuracy of the information must be considered." In this case, since the utility's primary objective is the minimization of

expected present worth of revenue requirements, the value of better information would be the decrease in expected present worth of revenue requirements having given consideration to the accuracy of the information being considered.

The Staff believes that the concept of the value of better information is well documented in the decision analysis literature and does not need to be added to the definitions as a part of these rules.

2. (5) Computation of Cumulative Probability Distribution

SJLP suggest that the words "determine the relative risk impacts of the factors ... in a narrative format" be substituted for the requirement to "compute the cumulative probability distribution of the values of each performance measure." (SJLP at 32). SJLP agrees that it is "reasonable to attempt to quantify the risk associated with various resource plans", but it argues that the "rigorous method proposed by the Staff may not be cost effective for a utility the size of SJLP." (SJLP at 32). SJLP also suggests that subsections (5)(A) and (5)(B) be deleted. (SJLP at 32). These subsections specify the measures of expected performance and risk.

SJLP's suggestion really amounts to removing the requirement for its managers to have to quantify their judgments regarding the critical uncertainties. Specifically, given the quantification of uncertainties, there is virtually no additional cost to computing the cumulative probability distributions required by the proposed rule. The Staff does not understand why or how this calculation

imposes any additional cost on the utility, nor does the Staff understand how this cost is somehow related to the size of the utility.

3. (7)(A) Balance of Planning Objectives

The OPC suggests that the phrase "in the judgement of utility decision makers" be removed as a condition for striking an appropriate balance among the various planning objectives. (OPC at 13). The OPC states the reason for its removal is that "its inclusion allows utilities too much discretion to choose plans that do not meet the primary selection criteria", and that this discretion could result in a resource plan that is not in the public interest since "a utility's interests can diverge from those of the public".

The Staff disagrees with the OPC's suggestion to remove this language because the Staff believes that it is crucial that the Commission be aware of what utility decision makers believe to be the appropriate balance of the various planning objectives. The wording of the rule is not meant as a flexibility that is somehow being granted the utility to use its judgment. Instead, the wording is a requirement that the preferred resource plan shall indeed reflect the judgment of utility decision makers and the utility should make clear how the alternative planning objects were taken into account in its decision.

4. (10)(C) Resource Acquisition Strategy - Quantification

SJLP requests that it be exempted from the requirement that it quantify the ranges for its critical uncertain variables in which

the preferred resource plan is judged to be appropriate. (SJLP at 34). SJLP does not want to have to state what the limits are to the viability of its preferred plan because this will be "overly difficult and time consuming." (SJLP at 33).

The Staff does not believe that making a determination of how well the utility's preferred resource plan will stand up against variations from the utility's base case forecast should be an optional exercise. Moreover, the Staff does not understand why SJLP decision makers would not want to have this kind of information, and would consider the provision of this information to be a burden for its staff.

5. (10)(E) Moving to Contingency Options

SJLP suggests that it be exempted from this portion of the rule on the basis that it requires SJLP to "continually report at a microscopic level on how it manages its business." (SJLP 34).

The Staff disagrees that this portion of the rule requires SJLP or any other utility to report anything to the Commission. The rule simply requires the utility to set up a "process" through which "significant changes" will be reported to the utility's own decision makers relating to events that would cause these decision makers to move to a "contingency option" in the implementation phase of its resource plan.

6. (11) Reporting Requirements

SJLP requests exemption from having to report respecting any item for which it requests an exemption in the previous sections of this rule. (SJLP at 34). These include subsections (B), (C) and

(E) of section (11). Since the Staff does not believe SJLP should be exempted from any of the requirements of the previous sections of this rule, the Staff does not believe that SJLP should be exempted from the filing requirements.

IX. 4 CSR 240-22.080 FILING SCHEDULE AND REQUIREMENTS

The response of the Staff to the comments filed in this area will address each proposed change, as well as the general comments received respecting the treatment of demand-side management (DSM) cost recovery as proposed in the rule. DSM cost recovery is addressed in 4 CSR 240-22.080(2), where the rule states that the utility's compliance filing with the rule may also include a request for nontraditional accounting procedures and information regarding any associated ratemaking treatment which the utility would be seeking for DSM resources included in its three year implementation plan.

A. Demand-Side Cost Recovery

1. Guaranteed Recovery of DSM Costs

UE and MPS both contend that the Commission must allow full recovery of DSM costs, whether incurred within or outside of a rate case "test year", to give utilities the necessary incentives to incur DSM costs. (UE at 22; MPS at 9-10). Both UE and MPS note that if a utility incurs DSM costs outside of a rate case test year, and these costs have not previously been reflected in base rates, such costs will not be fully recovered by utilities. (Id.) These statements are misleading.

A utility fully recovers its costs when its revenues are sufficient to allow recovery of its expenses, plus allow a reasonable return to be earned. If an expense level for an item such as DSM increases over the level previously reflected in rates, that does not necessarily mean that the increased costs are not recovered in rates.

One must examine the concurrent level of revenues and rate base, as well as other expenses, in order to determine whether the increased costs are not being recovered in rates. It is possible that increasing revenue levels, a declining rate base and/or declining other expenses will offset all or a part of any earnings shortfall related to increasing DSM expenditures. This is why it is theoretically incorrect to isolate one element of the ratemaking process, such as DSM, for guaranteed cost recovery, without reference to all relevant factors impacting the rate setting process, such as revenues, rate base, and other expenses. Such isolated treatment of DSM costs may also constitute "one-issue ratemaking", a practice prohibited in Missouri.

Another problem arises if revenue levels are sufficient to allow current recovery of DSM costs deferred per a utility's request. Under those circumstances, to allow guaranteed recovery of such costs in future rate cases will constitute double recovery. The potential for some utilities to recover all or part of their DSM costs without the need for increased rates or nontraditional ratemaking mechanisms is more than just a theoretical concern of the Staff, as recent history has shown respecting several Missouri

electric utilities which have been earning at or above their authorized returns for lengthy periods of time. Nontraditional methodologies may be necessary in some instances; however, the need for such should be demonstrated by each utility, not presumed in advance.

The Staff would also note that contrary to UE's assertion that utilities have been "allowed to recover all prudently incurred costs" related to capital expenditures (UE at 22), there is no guarantee of full recovery of capital costs under Missouri regulation, at least in the sense that cost recovery through rates may not be concurrent with the asset being placed in service. Therefore, requests for guaranteed full recovery of DSM expenditures (including protection from regulatory lag) are a radical departure from traditional ratemaking, and are not consistent with long-standing ratemaking practices for either capital or expense items.

2. Intent to Allow Cost Recovery

Both KCPL and UE request that contrary to past Commission practice, specific language be added to the rule expressing the Commission's intent to allow for future rate recovery of all prudently incurred costs which are deferred by any authorized nontraditional accounting procedure. (KCPL at 14; UE at 26). What KCPL and UE are proposing is tantamount to utilizing rules for ratemaking. KCPL cites the requirements of Statement of Financial Accounting Standards No. 71 (FAS 71), as necessitating such a statement in order to ensure that any deferred costs will be

treated as a regulatory asset. UE has similar comments, but adds that in Case No. EO-92-179, the Staff recommended similar language expressing the Commission's general intent to allow future recovery of prudently incurred costs. The language proposed by KCPL and UE is identical. (Id.)

The Staff would note that the provisions of FAS 71 clearly do not require a "guarantee" by the Commission that amounts booked as regulatory assets will be given future rate recovery. FAS 71 requires only an indication that such future recovery is "probable." It has been the Staff's experience that external auditors do not necessarily have a consistent standard by which to assess whether future recovery of a regulatory asset can be deemed "probable." Accordingly, any wording used by the Commission in this rule in a generic sense may not satisfy the concerns of all external auditors as to whether the provisions of FAS 71 have been met, or alternatively may go beyond what external auditors would require.

Therefore, the Staff believes that the specific order granting a nontraditional accounting procedure for a particular utility is the proper place for the Commission to include any appropriate language as to its intent to allow future rate recovery of prudently incurred deferred costs. Besides, in Case Nos. EO-91-358 and EO-91-360, the Staff recommended to the Commission specific criteria for granting AAOs, but the Commission chose to proceed on a case-by-case basis. In fact, MPS in these cases recommended to the Commission that it continue its past practice of addressing the

questions raised by requests for AAOs on a case-by-case basis rather than adopt generic criteria. Re Missouri Public Service, Case Nos. EO-91-358 and EO-91-360, 129 PUR4th 381, 385 (MoPSC 1991). Also, it is highly questionable whether the Commission may lawfully make ratemaking determinations by generic rulemakings rather than on a case-by-case basis.

UE makes specific references to the Commission's recent Order in Case No. EO-92-179, which was UE's accounting authority order (AAO) application in regard to post retirement benefit expense other than pensions (OPEBs). (UE at 21, 23-24). UE cites in its comments the language used by the Commission in that Order respecting the Commission's future "intent" to allow recovery of OPEBs as also being applicable to deferred DSM costs. The Staff disagrees that Case No. EO-92-179 is a meaningful precedent for DSM costs.

Based on their initial comments in this rulemaking, the covered electric utilities will use AAOs as a mechanism to obtain recovery in future rate cases of not only test year DSM expenses, but also all or a portion of prior years' DSM expenditures that have been deferred. The AAO sought by UE in Case No. EO-92-179 allows UE to book to expense OPEBs on a "pay as you go" basis, consistent with past ratemaking practice, but in contravention to current financial accounting standards. The presumed intent of the Commission in the Case No. EO-92-179 Order was to allow UE to recover its annualized test year level of OPEB expense in rates in future rate cases, as calculated on a "pay as you go" basis. There

is no intent to allow UE in the Order in Case No. EO-92-179 to recover prior year "pay as you go" OPEB amounts in future rate cases, in addition to annualized test year "pay as you go" OPEB levels.

It should be noted that UE has greatly overstated the significance of Case No. EO-92-179 to the instant proceeding. Case No. EO-92-179 was an anomaly, but UE has left the impression that it was a routine AAO case. The Commission indicated in its Order that (1) Case No. EO-92-179 was unlike other AAO cases, (2) OPEB ratemaking issues were to be left to a rate case determination, and (3) its general intent to allow recovery of prudently incurred OPEB costs would not bind the Commission prospectively:

> . . . In recent cases before the Commission, discussion regarding accounting authority orders has centered on whether certain expenditures should be considered "extraordinary items" and thus deferred on the books for possible future recovery in rates, in contravention of normal accounting and ratemaking practice. In the Staff's opinion, the emphasis behind this accounting authority order request is somewhat different from those cases. UE is requesting authority to maintain its booking for PBOPs in accordance with past ratemaking treatment by the Commission. In short, UE is seeking to maintain the status quo financial reporting for PBOPs until ratemaking treatment is afforded. . . .

(Re Union Electric Co., Case No. EO-92-179, Accounting Authority Order, mimeo at 2 (June 12, 1992)).

. . . .

> . . . The Staff believes that such questions should be thoroughly examined by the Commission, through evidence presented to it by interested parties in a rate case format, before the Commission embarks on any implied or explicit acceptance of FAS 106 accrual methodology for ratemaking purposes. Until a thorough examination of PBOP ratemaking issues in light of FAS 106 is made, the Staff sees benefit to allowing utilities to maintain

> pay-as-you-go accounting for PBOPs through use of accounting authority orders.
>
> . . . .
>
> The Commission finds Staff's recommendation to be a reasonable approach in dealing with the implementation of FAS 106. . . .

(Id. at 4).

. . . .

> . . . It should be noted that the Commission's expression of a general intent to allow recovery of this item on a pay-as-you-go basis in the future does not preclude the Commission from examining the reasonableness or the prudence of future pay-as-you-go PBOP cash outlays, or limit the Commission's authority at a later time to determine that an accrual basis for calculating PBOPs is appropriate for ratemaking purposes.

(Id. at 5).

Also, it should not be forgotten that the Commission generally states in AAOs that nothing therein should be considered a finding of the Commission of the reasonableness of the expenditures involved, the value for ratemaking purposes of the properties involved, or an acquiescence in the value placed on the costs by the utility, and that the Commission reserves the right to consider the ratemaking treatment to be accorded the expenditures in any later proceeding.

It should not be forgotten that it is not sufficient to permit recovery solely on the basis that costs were prudently incurred. The costs must be reasonable in addition to being prudently incurred. See State ex rel. Laclede Gas Co. v. Public Serv. Comm'n, 600 S.W.2d 222, 228-29 (Mo. App. 1980), appeal dismissed, 449 U.S. 1072, 101 S. Ct. 848, 66 L.Ed.2d 795 (1981); State ex rel. Southwestern Bell Tel. Co. v. Public Serv. Comm'n, 645 S.W.2d 44, 55-56 (Mo. App. 1982). However, the Commission should not bind

itself in a rule to guaranteeing future recovery of deferred DSM costs in addition tc test year DSM expenses, which is the result desired by the utilities in their comments. Such a finding is only appropriate in the context of a rate proceeding, where all relevant factors are considered by the Commission before such nontraditional ratemaking is effectuated.

3. The Need for More Options to Levelize the Playing Field

KCPL argues that nontraditional accounting procedures are the only option allowed in the rule for maintaining a level playing field between demand-side and supply-side options. (KCPL at 7-8). KCPL believes that the Commission should give "adequate flexibility in the rules to allow a multitude of cost recovery options." (KCPL at 8). KCPL then includes descriptive names of a list of options which it believes should be considered, and states that it is impossible to address any additional options that "are yet to be discovered." (Id.) The problem here is one of interpretation of the words "nontraditional accounting procedures and information regarding any associated ratemaking treatment." The Staff believes that these words are general enough to cover any of the options mentioned by KCPL in its comments. These words should not be interpreted to mean only AAOs. The purpose of the proposed language was to be general enough to allow a variety of options, and in fact, specific options were not addressed for two important reasons: (1) the best options may vary depending on the specific demand-side programs; and (2) to provide for innovative ratemaking proposals, the Commission and the utilities should not be

restricted to only a specific list of options included in the rules.

4. Inclusion of Specific Language on Lost Revenues

EDE states that the proposed rules are "essentially silent" on the recovery of the cost of implementing demand-side programs and the revenues lost to conservation. (EDE at 6). The Staff disagrees with this statement because the rule contemplates that both of these issues may be subjects of the utility's request for nontraditional accounting/ratemaking treatment for demand-side resources.

5. Performance Incentives

MPS believes that the rules should include performance incentives that will both "offset the uncertainties and risks associated with DSM programs" and "promote rigorous implementation of cost-effective DSM programs by utilities." (MPS at 10). If it were possible to devise a genuine incentive mechanism which could apply to all demand-side resource programs, then it would have been considered by the Staff for inclusion in the proposed rules. No bona fide incentive mechanism is known to the Staff, and no such mechanism was presented at the informal meetings or in the comments submitted in this docket. However, even in MPS's comments, there are no specific proposals for performance incentives. Moreover, the Staff believes that all proposals should be presented at the time the utility is ready to implement specific demand-side resources. Incentives for covering uncertainties and risks seemingly would be specific to the perceived uncertainties

associated with a specific demand-side program. It is hard to imagine that the utility's perspective of the uncertainties will not change over time as the utility obtains experience with various programs. Therefore, it is the Staff's view that it would be unwise and unwieldy to set out specific incentive plans in the rulemaking.

6. DSM Ratemaking Determined Before Request for Cost Recovery

SJLP argues that cost recovery should be addressed directly in the rules rather than on a case-by-case basis. (SJLP at 6). SJLP states that the utilities should know the ratemaking treatment to be accorded by the Commission for DSM before the "the first rate case where cost recovery is requested." (Id.) The Staff would point out that the request for nontraditional accounting treatment is generally required before the utility implements its resource plan and before it files a rate case requesting cost recovery in rates. Specifically, the utility files its request for nontraditional accounting treatment when it files its three year implementation plan, not when it files its rate case to collect the revenues associated with the cost of demand-side resources.

7. Deletion of the Requirement for Estimated Earnings Comparisons

As presently drafted, the rule requires the utilities to present as a part of their filings for nontraditional accounting treatment a three-year comparison of earnings with and without the nontraditional accounting treatment which they intend to seek are seeking. UE objects to this requirement, stating that projected

earnings are extremely sensitive in nature, and the provision of such estimates might be unlawful under Rule 10b-5 of the Securities and Exchange Commission (SEC). (UE at 24-25). SJLP also seeks to have the requirement for comparison of estimated earnings removed from the proposed rules. (SJLP at 37).

The Staff believes that this information is needed to determine: (1) the relative materiality of the DSM expenditures for which nontraditional treatment is or will be sought; and (2) whether the utilities' expected earnings levels will be sufficient to recover the cost of DSM expenditures without the need for nontraditional treatment. As discussed previously, there is no reason to automatically assume that nontraditional treatment is necessary in all cases in order to allow utilities a reasonable opportunity to recover DSM costs. The three year projected earnings data will be helpful to the Commission in assessing whether the magnitude of a utility's projected DSM expenditures and/or the impact of the expenditures on the utility's earnings level justify the use of nontraditional ratemaking methods. UE's suggestion that earnings levels be ignored in considering nontraditional incentives for treatment of DSM costs (UE at 25) is flawed in that intuitively the level of earnings expected by utilities will affect whether and to what extent that utility will "need" incentives to make DSM expenditures.

As in any proceeding before the Commission, and as provided in proposed 4 CSR 240-22.080 (i)(e), if the utility believes that the information is sensitive or that it would be in violation of SEC

rules to publicly divulge this information, such information can be filed with the Commission under seal. See State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n, 562 S.W.2d 688, 695-96 (Mo. App.), cert. denied, 439 U.S. 866, 99 S. Ct. 439, 58 L.Ed.2d 177 (1978). This Court of Appeals decision dispenses with UE's argument that this information can be withheld because to provide this information, even under seal or by in camera proceedings, would constitute a violation of federal law or regulations.

Regarding UE's suggestion that the regulations of the Securities and Exchange Commission (SEC) may prohibit UE's disclosure of projected earnings which is required by proposed 4 CSR 249-22.080(2)(B)4, (UE at 25), the Commission has heard a similar argument before. In that particular case, the Missouri Court of Appeals, St. Louis District, held that the Commission erred when it sustained an objection respecting cross-examination concerning UE's projected not operating income:

> . . . Appellant inquired about the specific amounts and the timing of future rate increases and the projected net operating income of the Company [UE]. The Company objected on the ground that public disclosure of the figures was prevented by the Securities Act of 1933, 15 U.S.C.A. § 77e(c), since the Company had registered an issuance of securities with the Securities and Exchange Commission. The objection was sustained. As with the proprietary information, the Commission erred in sustaining this objection. . . .

State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n, 562 S.W.2d 688, 695-96 (Mo. App.), cert. denied, 439 U.S. 866, 99 S.Ct. 192, 58 L.Ed.2d 177 (1978). The Court of

Appeals suggested that sensitive information could be protected by means of in camera proceedings. Id. at 694 n. 13.

In this instance UE makes the same argument but cites 17 C.F.R. § 240.10b-5. Rule 10b-5 prohibits the use of fraud, deceit, misrepresentation or omissions in connection with the purchase or sale of securities. The United States Supreme Court has held that no one can be liable under Rule 10b-5 without knowing or intentional misconduct. See Aaron v. SEC, 446 U.S. 680, 689-91, 100 S.Ct. 1945, 64 L.Ed.2d 611 (1980) and cases cited therein. Therefore, UE's concerns appear to be groundless.

There is one other Commission case of direct relevance. In the early 1980's, the Staff discovered that the larger utilities regulated by the Commission make regular presentations to the financial rating agencies, e.g., Standard & Poor's and Moody's, in which financial projections, such as projected earnings, are provided. In Case No. ER-82-66, KCPL's 1982 rate increase case, the Staff sought to review copies of said materials presented to the rating agencies by KCPL. Edited copies were provided to the Staff for its review. The Staff advised KCPL that the rating agency presentations were deemed by the Staff to be supportive of certain Staff adjustments in KCPL's pending rate case and that the Staff might have a later need for these documents. The rating agency materials were returned to KCPL by the Staff. KCPL subsequently informed the Staff that the rating agency presentations would not be provided to the Staff again without a determination by the Commission respecting the Staff's power to

review, and use in a contested proceeding, documents that KCPL asserted to be proprietary and confidential.

KCPL asserted the following in its Response To Motion For Production Of Documents And Motion For Protective Order:

> 6. The documents sought are not Company records kept in the ordinary course of business, and are prepared by, at present, two Company officials for the purpose of presentation of said individuals' insight into certain financial indicators of the Company, as they may exist in the future, based upon certain assumptions and predictions. The documents, therefore, contain "insider information" of the sort which must be protected from public disclosure, and is therefore confined in its presentation to a very limited group of analysts for the rating agencies who cannot deal in, or advise concerning dealing in, Company securities. Included in the data sought are the predictions by two KCPL officials of the timing and amount of rate relief expected from regulatory commissions, including specifically their prediction of the amount of rate relief to be granted by this Commission in the instant proceeding. Other financial indicators, including earnings per share, interest and preferred dividend coverage ratios, internal generation of cash as a percent of cash construction requirements, return on common equity, and common dividend adjustments are included, the calculations of which are based upon the predicted level of rate relief in this and subsequent proceedings. The Staff is equally capable of making its own assumptions/predictions of rate relief, based on data publicly available.
>
> 7. Because the Commission must determine in the instant proceeding the lawfulness and reasonableness of KCPL's rate levels, and, therefore, the amount of deficiency supporting a general rate increase, public and Commission disclosure of said information would be highly prejudicial to KCPL, and of no real value to the Commission or to any party.

On April 15, 1982, the Commission issued an Order in Case No. ER-82-66, and stated therein that under the powers of the Commission and its Staff:

> (1) KCPL could not refuse access to its books, contracts, records, documents, and papers;

(2) the Commission would not countenance the authority of it and its Staff being circumvented, as KCPL had attempted;

(3) KCPL was ordered to provide to the Staff complete and unedited copies of the documents;

(4) OPC shall have access to the documents;

(5) the Commission, its Staff, and OPC are covered by Section 386.480 RSMo; and

(6) All other parties would have access to the documents on the condition that they sign a nondisclosure agreement.

Thus, UE may address any concern it may have about confidentiality by petitioning the Commission for a protective order and in camera proceedings pursuant to proposed 4 CSR 240-22.080(1)(E).

8. Allocation of Demand-Side Cost

MPS argues that the rules should include methods for allocating DSM costs, lost revenues and incentives to the various classes in such a way as to minimize inequitable treatment of nonparticipants. (MPS at 10). The question of the allocation of DSM costs, lost revenues and incentives to various classes of service should not be addressed in a resource planning rulemaking. Because of the complexity of the issue, and the issue being a ratemaking issue, allocation of DSM costs should be addressed as a part of class cost-of-service studies as those studies are raised in rate cases, complaints or other dockets devoted to the specific question of cost allocation.

9. Delay the Rules Until Study Completed on DSM Ratemaking

SJLP has requested that the Commission delay the implementation of the rules until a study is completed on ratemaking for DSM. (SJLP at 7, 10). The Staff believes that a study would accomplish very little because it would be static and would not deal with specific present and future demand-side programs which the utilities would be proposing to implement. Other than achieving delay, there is no reason to postpone the adoption of electric utility resource planning rules in order to go through a series of hypothetical examples in an attempt to resolve every possible type of ratemaking treatment for every possible type of demand-side program.

B. Commission Approval of the Resource Acquisition Strategy

1. Introduction.

MPS, KCPL, SJLP, and UE ask the Commission to establish a procedure to "approve" their resource acquisition strategies, the definition and components of which are set out at proposed 4 CSR 240-22.020(46) and 22.070(10). (MPS at 11; KCPL at 3-7; SJLP at 8; UE at 6-21). UE further asks that the Commission, in granting such approval, relieve a utility of the burden of proving subsequently that it acted prudently when it decided to implement an approved strategy. (UE at 9-12). KCPL apparently wants approval to preclude any claim that a utility acted imprudently by following its resource acquisition strategy. (KCPL at 4).

KCPL and UE at the very outset of their Initial Comments boast of their activities in the resource planning area stating, respectively, as follows:

> . . . The Company presented its most recent integrated resource plan completed in September 1991 "KCPLAN Integrated Resource Plan: 1991-2010" to the Commission and Staff in November 1991. The September 1991 integrated resource plan is the third update of the original October 1, 1991, KCPLAN. KCPLAN has matured over the past ten years to where it is no longer a study but has become an integrated resource planning process. . . .

(KCPL at 1).

> UE has already been complying with much--but not all--of what the proposed rules would require. In particular, the Company has developed several "Energy Resource Plans" (ERPs). Each of these plans is somewhat similar to a "resource acquisition strategy" defined in the proposed rules.

(UE at 3). Both companies then provide a litany of reasons why the resource acquisition strategy required from each by the proposed rules should be approved by the Commission. Based upon the rationales that they provide for the necessity for Commission approval, it is incredible that either company has been willing to engage in any resource planning to date without Commission approval of the substance of their activities.

MIEC asks the Commission not to grant approval to resource acquisition strategies. MIEC at 2-10. MIEC seeks new and altered language to ensure that no one could construe the proposed rules to compel the Commission to approve the utilities' resource acquisition strategies.

MIEC objects to the last sentence in the "PURPOSE" section of proposed 4 CSR 240-22.080. MIEC is concerned that this sentence in

the "PURPOSE" section of 4 CSR 240-22.080 may be construed to result in pre-approval because it measures the utility's resource acquisition strategy against "[t]he fundamental objective of the resource planning process" of "provid[ing] the public with energy services that are safe, reliable and efficient, at just and reasonable rates, in a manner that adequately serves the public interest", which language appears in 4 CSR 240-22.010(2). The offending language in the preceding sentence from 4 CSR 240-22.010(2) is not referenced in the "PURPOSE" section of 4 CSR 240-22.080. MIEC's concern was anticipated and the "PURPOSE" section of 4 CSR 240-22.080 references 4 CSR 240-22.010(2)(A)-(C), not 4 CSR 240-22.010(2). As published in the July 1, 1992 Missouri Register, proposed Chapter 22 Electric Utility Resource Planning is not intended to result in Commission approval or pre-approval of the resource acquisition strategies of the electric utilities covered by Chapter 22.

To further address the concern of MIEC, the Staff proposes the following changes in proposed 4 CSR 240-22.080:

> PURPOSE: This rule specifies the requirements for electric utility filings to demonstrate compliance with the provisions of this chapter of rules. The purpose of the compliance review required by this chapter of rules is not commission approval of the substantive findings, determinations or analyses contained in the filing. The purpose of the compliance review required by this chapter is to determine whether the utility's resource acquisition strategy meets ~~the planning objectives~~ requirements stated in 4 CSR 240-22.010(2)(A) - (C).

(5) The staff shall review each compliance filing required by this rule and shall file a report not later than one hundred twenty (120) days after each utility's scheduled filing date that identifies any deficiencies in the electric utility's compliance with the provisions of this chapter, any major deficiencies in the

methodologies or analyses required to be performed by this chapter, and any other deficiencies which in its limited review the staff determines would cause the electric utility's resource acquisition strategy to fail to meet the ~~planning objectives~~ requirements identified in 4 CSR 240-22.010(2)(A) - (C). If the staff's limited review finds no deficiencies, the staff report shall state that in the report. A staff report that finds that an electric utility's filing is in compliance with this chapter of rules shall not be construed as acceptance or agreement with the substantive findings, determinations or analysis contained in the electric utility's filing.

(6) Also within one hundred twenty (120) days after an electric utility's compliance filing pursuant to this rule, the office of public counsel and any intervenor may file a report or comments based on a limited review that identify any deficiencies in the electric utility's compliance with the provisions of this chapter of rules, any deficiencies in the methodologies or analyses required to be performed by this chapter of rules, and any other deficiencies which the public counsel or intervenor believes would cause the utility's resource acquisition strategy to fail to meet the ~~planning objectives~~ requirements identified in 4 CSR 240-22.010(2)(A) - (C).

(13) The commission will issue an order which contains findings that the electric utility's filing pursuant to this rule either does or does not demonstrate compliance with the requirements of this chapter of rules, and that the utility's resource acquisition strategy either does or does not meet the ~~planning objectives~~ requirements stated in 4 CSR 240-22.010(2)(A) - (C), and which addresses any utility requests pursuant to section (2) for authorization or reauthorization of nontraditional accounting procedures for demand-side resource costs.

In a recent order in Case No. EO-92-250, the Commission addressed some aspects of the issue in this proceeding respecting whether the Commission should approve the resource acquisition strategies. On August 26, 1992, in Case No. EO-92-250, the Commission issued its Order Establishing Jurisdiction and Clean Air Act Workshops. While the Commission spoke in the context of compliance with the Clean Air Act Amendments of 1990 (CAAA) rather than strategic resource planning, the policy rationales are similar:

> The Commission recognizes that compliance with the CAAA and participation in the allowance trading market create unique and complex pressures on a utility. The Commission also recognizes that the traditional ratemaking prudence review procedures may inhibit the development of the most cost-effective and efficient compliance plan. . . .
>
> The Commission, though, also recognizes the problems inherent in preapproval. As noted by the NRRI report [Public Utility Commission Implementation of the Clean Air Act's Allowance Trading Program, National Regulatory Research Institute, 1992], there are four problems with preapproval or a periodic review process of a utility's decisions. The first problem is the potential for the shifting of technology and demand risks from the shareholders to the ratepayers. The second problem is the significant resources preapproval or periodic approval would require of the Commission. The third problem . . . is, preapproval is likely to lock the utility into the plan approved by the Commission. The fourth problem is that, once approved, a utility may have less incentive to closely scrutinize its costs.
>
> The NRRI report recommends that rather than engage in preapproval or periodic approval of utility decisions, state commissions issue clear guidelines detailing the Commission's regulatory approach toward CAA compliance. . . .
>
> The Commission is generally in agreement with the approach proposed by these two reports. In addition, the Commission is of the opinion that review of individual decisions of a utility as they are making those decisions could involve the Commission in the management of the utility. Decisions concerning how best to meet the requirements of the CAAA are management decisions and it is management which should do the appropriate analyses and weigh the risks. Part of the risk that management must consider is the regulatory risk, i.e., the risk associated with Commission review.

(Mimeo at 8-9).

Advocates for "approval" address three issues in general. First, UE argues that the Commission has legal authority to approve a utility's resource acquisition strategy. (UE at 14-15). Second, KCPL, SJLP and UE argue that the Commission has sufficient resources to evaluate a utility's resource acquisition strategy. (KCPL at 4; SJLP at 8; UE at 8-9). Third, MPS, KCPL, SJLP and UE

argue that approval would promote certainty, efficiency, harmony, and other desirable ends. (MPS at 11; KCPL at 3-7; SJLP at 8; UE at 6-14).

2. Whether the Commission has legal authority to approve a utility's resource acquisition strategy?

UE first argues that if the Commission has the authority, pursuant to the proposed rules, to approve or disapprove the resource acquisition process required by the rules, then the Commission must have the authority to approve or disapprove the substance of the resource acquisition strategy. Next UE finds in Chapters 386 and 393, an implied grant of "broad discretion". UE finds in the Commission's "broad discretion" the Commission's authority to approve, disapprove, or modify a utility's resource acquisition strategy. (UE at 14-15). UE avoids asking itself the questions which it displays no willingness to commit itself on. For example, what is the Commission's authority if a utility decides to pursue a resource acquisition strategy which the Commission has disapproved? Does the Commission have the authority to rescind authorization to construct generating facilities or disapprove financing applications the purpose of which is to fund the construction of disapproved generating facilities? The Staff's comments are not intended to refute any assertion that the Commission does have such powers, nor are the Staff's comments intended to imply that the Staff questions that the Commission is so empowered. The Staff raises these matters because it believes that the utilities' comments in this area are far from complete.

a. Managerial Discretion.

Missouri courts have addressed the area of managerial discretion which is an item that generally has been ignored by the utilities that are advocating that the Commission approve their resource acquisition strategies. Missouri courts have found this to be a considerable area of latitude left to the utilities:

> . . . It is obvious that the P.S.C. has no authority to take over the general management of any utility. . . .

(600 S.W.2d at 228).

> . . . [I]t must be kept in mind that the commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business. The company has a lawful right to manage its own affairs and conduct its business in any way it may choose, provided that in so doing it does not injuriously affect the public. The customers of a public utility have a right to demand efficient service at a reasonable rate, but they have no right to dictate the methods which the utility must employ in the rendition of that service. . . .

State ex rel. City of St. Joseph v. Public Serv. Comm'n, 325 Mo. 209, 30 S.W.2d 8, 14 (Mo. banc 1930). See State ex rel. Kansas City Transit, Inc. v. Public Serv. Comm'n, 406 S.W.2d 5, 11 (Mo. banc 1966).

> . . . The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare. [Citations omitted].

State ex rel. Harline v. Public Serv. Comm'n, 343 S.W.2d 177, 182 (Mo. App. 1960).

In developing a resource acquisition strategy, management must exercise a certain degree of discretion. The proposed rules call upon management to identify criteria for consideration in the planning process. (4 CSR 240-22.010(2)(C)). They call upon management to determine the appropriate level of detail when acquiring information for making forecasts, and the appropriate means for securing that information. (4 CSR 240-22.030(1)(A)(1)). They call upon management to predict the impact of future environmental regulation. (4 CSR 240-22.040(2)(B)). They call upon management to estimate a probability distribution for various uncertain events. See, for example, 4 CSR 240-22.040(8). They call upon management to make trade-offs between various considerations, such as cost and reliability.

Arguably, the Commission is not able to approve the substance of a utility's resource acquisition strategy without substituting its own judgment for that of the utility's management. The MIEC has properly noted the Commission's decision in Case No. GO-85-264, In the matter of the investigation of developments in the transportation of natural gas and their relevance to the regulation of natural gas corporations in Missouri. (MIEC at 7). The Commission stated in its Report And Order in that case that "a company's choice of the appropriate mix of gas to procure is a management decision and is properly left to the company. The Commission may review for prudency the management decisions made in connection with said procurement as it does other management decisions, in the company's rate cases". Re Natural Gas

Transportation Investigation, 29 Mo.P.S.C.(N.S.) 137, 143 (1987). As noted hereinabove, a showing of bad faith or an abuse of management discretion is not necessary in denying recovery of certain operating costs. The Commission may deny recovery of operating costs that do not benefit all ratepayers. 600 S.W.2d at 228-29.

b. Stare Decisis, Res Judicata, and Collateral Estoppel.

The Commission is well aware that this institution is generally not bound by stare decisis, res judicata, and collateral estoppel. This poses problems for the utilities that seek certainty by Commission approval of their resource acquisition strategies. The Staff will not drag the Commission and others through a long discourse but will merely cite the relevant Commission and decisional case law. Re Kansas City Power & Light Co., Case Nos. EO-85-185 and EO-85-224, 28 Mo.P.S.C.(N.S.) 228, 282, 376-378 (1986); State ex rel. Chicago, Rock Island & Pac. R.R. Co. v. Public Serv. Comm'n, 312 S.W.2d 791, 796 (Mo. banc 1958); State ex rel. General Tel. Co. v. Public Serv. Comm'n, 537 S.W.2d 655, 661-62 (Mo. App. 1976); State ex rel. Associated Natural Gas Co. v. Public Serv. Comm'n, 706 S.W.2d 870, 880 (Mo. App. 1985); Re Home Telephone Co., 18 PUR(NS) 448, 459 (Mo.P.S.C. 1937).

c. Burden of Proof.

UE's proposal that Commission approval of a resource acquisition strategy shall constitute a rebuttable presumption as to the reasonableness and prudence of the decisions to implement the resources contained in the strategy is nothing more than an

effort to shift the statutory burden of proof. (UE at 9). In any rate case, the General Assembly placed the burden of proof unambiguously upon whoever seeks to increase rates.

> 1. Whenever there shall be filed . . . any schedule stating a new rate or charge, or any new form of contract or agreement, or any new rule, regulation or practice relating to any rate, charge or service or to any general privilege or facility, the commission shall have, and is hereby given, authority . . . to enter upon a hearing concerning the propriety of such rate, charge, form of contract or agreement, rule, regulation or practice. . . .
>
> 2. In any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the . . . electrical corporation. . . .

(Section 393.150 RSMo 1986). UE attempts to shift the burden of proof, makes the playing field is anything but level as will be further noted below.

3. Whether the Commission has the resources to evaluate the prudence of a utility's resource acquisition strategy?

KCPL, SJLP and UE argue that the proposed rules will give the Commission all the information it needs--indeed, all the information it could ask for--to analyze the prudence of utility plans. (KCPL at 4; SJLP at 8; UE at 8-9). Therefore, the utilities assert that the Commission will have everything it needs to judge the prudence of the resource acquisition strategies. The Commission will not have everything it needs for these projects, however. It will need more time, more resources, and more of the relevant experience and expertise.

The Staff will have insufficient time to review and prepare a report on the substance of each utility's resource acquisition

strategy if approval is the intended result. Whereas the proposed rules provide each utility three years to prepare each resource acquisition strategy after the initial compliance filing (4 CSR 240-22.080(1)), the proposed rules provide the Staff with only 120 days to review the utility's resource acquisition strategy and prepare a report. (4 CSR 240-22.080(5)). The consequences of this disparity in time available to the utility and to the Staff is acceptable if the Staff is performing a compliance review. The consequences of this disparity in time is unacceptable if the Staff must review the strategy for purposes of recommending substantive approval by the Commission. There is a disparity of time even with the first proposed filings because even by UE's and KCPL's admission, they presently are well along in complying with the proposed rules. The Staff would have insufficient resources to review and prepare a report on the substance of each resource acquisition strategy, while continuing to execute its other functions. The rules provide that no utility shall have to submit more than one resource acquisition strategy every three years. (4 CSR 240-22.080(1)). The rules direct the Staff to review five reports in that same period. (4 CSR 240-22.080).

In addition to strategic resource planning, the Commission Staff, in some manner, must address all filings with and inquiries to the Commission. Unlike any other entity that appears before the Commission, the possibility of the Staff opting out of reviewing and investigating, in some manner, every filing with the Commission is not real. Other entities generally have considerable freedom to

pick and choose which proceedings to participate in. This is not the case with the Staff. The Commission does have funding for professional and technical services which are utilized to supplement the Staff when it does not have adequate resources available. However, these funds are limited and would be quickly exhausted if they are needed to cover outside consultant fees for approval audits of electric utility resource planning in addition to the Staff's other needs. Furthermore, it should be remembered that by statute the Commission is required to give to the hearing and deciding of requests for increased rates "preference over all other questions pending before it and decide the same as speedily as possible." Section 393.150.2 RSMo 1986.

4. **Whether Commission approval of a utility's resource acquisition strategy would promote certainty, efficiency, harmony, and other desirable ends?**

a. **Certainty.** Given present statutes and decisional law, it cannot be assumed that the issue of prudence can be resolved by means of a proposed Chapter 22 hearing. There may be no gain in litigation efficiency. The Staff finds ironic the utilities' suggestion that approval of a utility's resource acquisition strategy would minimize relitigation. First, there is the assumption, but no clear statement from the utilities, that the utilities would not relitigate resource acquisition strategy issues. Second, the great concern asserted in the utilities' comments for the inefficiency of relitigating issues has not caused them to offer not to relitigate ratemaking issues. There are ratemaking issues that these utilities litigate over and over again

no matter how clear the Commission policy is and regardless of how many times the utilities have not prevailed on these issues. Thus, the utilities' crying for a "level playing field" is bogus. (See also prior section on **Stare Decisis, Res Judicata, and Collateral Estoppel.**)

b. Other Jurisdictions. KCPL and UE observe that some authors have advocated, and some state commissions have adopted, the relatively new practice of "rolling prudence" reviews. (KCPL at 5-6; UE at 9, 11). UE cites a draft report and information provided by David Dworzak, Senior Regulatory Analyst at the Edison Electric Institute, for the proposition that twelve state commission formally approve utility resource plans. (UE at 11-12). Fourteen states and the District of Columbia have resource planning without formal approval, according to Mr. Dworzak. This list includes Arizona, Connecticut, Idaho, Kentucky, Maine, Minnesota, New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, Vermont and Virginia.

The Staff observes that some authors have disparaged, and some state commissions have declined to adopt, rolling prudence reviews. See, for example, Draft Committee Comments of Richard Cowart, NARUC Energy Conservation Committee Working Group on Prudence Review, July 18, 1991. There is no consensus about the relative merits of rolling prudence versus traditional prudence reviews. Significantly, the NARUC Committee on Electricity tabled the discussion of "Prudence Reviews for Utility Construction of Major Generating Facilities," which endorsed rolling prudence. Minutes

of NARUC Committee on Electricity, July 22-23, 1991, San Francisco, California, p. 5. There is no record of the resolution being reintroduced.

X. CHAPTER 14 PROMOTIONAL PRACTICES

UE supports the proposed amendments. UE further "notes that all of its promotional practices have already been set forth on tariffs which have been approved by the Commission. UE therefore assumes that it has already complied with" the proposed amendment to 4 CSR 240-14.040(1) (UE at 2). The Staff does not believe that UE "has already complied". Although two of UE's current promotional practices are set forth on tariffs, the remainder of their promotional practices are described on schedules which are similar in appearance and format to tariffs, but which are not officially part of the company's tariffs.

The proposed amendment requires all utilities that have existing promotional practices on file (including UE) to submit these practices as formal tariff filings within forty-five days of the effective date of these amendments. The review process for these filings will be limited to a determination of whether the language of the newly-filed tariffs accurately reflects what is contained in the previously-filed "schedules".

EDE supports the proposed amendments, but complains that they "do not alleviate the present competitive imbalance with unregulated utilities" (EDE at 1). The Staff would note that these rules have always allowed requests for variances. Originally, the only condition for which a variance could be granted was to meet

unregulated competition. In 1988 the rules were amended to allow variances to be granted "for good cause shown". This remedy continues to be available to EDE.

SJLP expresses a concern that the process for implementing a demand-side resource that involves a nonprohibited promotional practice "involves two hearings" (SJLP at 1-2). The Staff points out that although the process does require two filings (a compliance filing and a tariff filing), these filings are simultaneous, and neither one will necessarily involve a hearing. Although dissenting parties may request hearings, it is up to the Commission whether to grant such a request.

LGC is concerned that the exception from designation as prohibited promotional practices for activities designed to evaluate and acquire demand-side resources is "overly broad and vague" and that "load-building programs, which, in effect, 'buy' load from competing utilities" may qualify for this exemption on the basis of the electric utility's assertion that they are demand-side resources (LGC at 1-2). LGC "strenuously believes" that the existing provisions for waivers for good cause shown are sufficient to allow the promotion of legitimate demand-side programs and opposes any revision to Chapter 14. As an alternative, LGC proposes to add a new section (6) to 4 CSR 240-14.010 which states that the exceptions contained in sections (4) and (5) for demand-side resources do not apply to load building programs, and to add a definition of load-building program to the existing section (6) of 4 CSR 240-14.010 (LGC at 15-16).

The Staff strongly supports amendments to Chapter 14 that avoid the need for variances for every demand-side program that involves any use of incentive payments or other consideration. On the other hand, the Staff is well aware of the potential for abuse of any blanket exemptions that contain no requirement other than a unilateral assertion by the utility that some activity is designed to evaluate or acquire a "demand-side resource".

This concern was the reason that under the proposed amendments such activities continue to come under the definition of "promotional practices", which will require a tariff filing. But these activities are not "prohibited promotional practices" which would require a variance. If a gas utility believes that such a program, as described in the electric utility's resource planning and tariff filings, is actually "load building" masquerading as a "demand-side resource" it will have the opportunity to raise those concerns and request that the tariff be suspended and the matter set for hearing.

However, to make it abundantly clear that the exception for demand-side resource development does not extend to load building, the Staff has no objection to the substance of LGC's proposal to add a definition of load building program and other appropriate language to clarify this point. The Staff would suggest that rather than add a new section (6) to 4 CSR 240-14.010 as LGC suggests, it would be more straightforward to add a sentence to the definition of demand-side resource to indicate that the term shall not be construed to include load building programs.

GS is concerned that without some express limitation as to what constitutes a pilot program or market research study "there is a real possibility that full blown marketing efforts will be made under the guise" of such activities (GS at 2). GS suggests specifying a limit of fifty (50) participants in any such study. The Staff opposes such a change because there is no necessary relationship between the number of participants and the legitimacy of a research study. For some customer classes and some types of studies fifty participants may be too small a sample to give statistically meaningful results. For some customer classes at some utilities an entire customer class may consist of fewer than fifty customers. Any arbitrary designation such as this is inadvisable because the appropriate experimental design depends completely on the information being sought.

The Staff would reiterate that even a pilot program or other research study will require a resource plan filing pursuant to 4 CSR 240-22.050(11)(E) and, if it involves payment of consideration, a tariff filing pursuant to 4 CSR 240-14.040(2). If a gas utility believes that such a program is actually a "full blown marketing effort" it will have the opportunity to raise those concerns and request that the matter be set for hearing.

GS also suggests modifying the definition of cost-effective at 4 CSR 240-14.010(6)(D) to indicate that the costs and benefits referred to are those that are incurred by or accrue to "electric and/or gas utilities" (GS at 3-4). The Staff disagrees with this suggestion because it makes the definition less clear rather than

more so. The intention is that the perspective of the cost-effectiveness determination shall be that of the utility that provides the energy service.

GS also is concerned that the addition of the term "discount" to the definition of consideration at 4 CSR 240-14.010(6)(C) will cause its tariffed "flex rates" to come under the definition of prohibited promotional practices and thus require a variance (GS at 3). The Staff does not intend such an interpretation of this term. As GS notes, the authority to flex rates downward to retain load has been granted by the Commission in docketed rate cases and language to implement this authority is included in the company's filed tariffs. Consequently the Staff does not believe that the use of the term "discount" in the definition of consideration calls this authority into question or requires a variance from the provisions of Chapter 14 to exercise such authority.

The Staff suggests the following changes to the proposed amendments to Chapter 14:

> (6) The following terms, when used in chapter 14, shall have the following meanings:
>
> (D) Cost-effective means that the present value of life-cycle benefits is greater than the present value of life-cycle costs ~~of providing~~ to the provider of an energy service;
>
> (E) Demand-side resource means any inefficient energy-related choice that can be influenced cost-effectively by a utility. The meaning of this term shall not be construed to include load building programs;
>
> (J) Load building program means an organized promotional effort by a utility to persuade energy-related decision makers to choose the form of energy supplied by that utility instead of other forms of energy for the provision of energy service, or to persuade customers to increase their use of that utility's form of energy, either by substituting it for other

forms of energy or by increasing the level or variety of energy services used. This term is not intended to include the provision of technical or engineering assistance, information about filed rates and tariffs, or other forms of routine customer service.

Respectfully submitted,

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