Demand-Side Programs Investment Rule

1. Policy Objectives

PURPOSE: This rule states the public policy goals the Commission is following in implementing the Missouri Energy Efficiency Investment Act of 2009 (section 393.1075 RSMo Supp 2009) by this chapter.
DNR- This could be more direct.

A. In implementing the Missouri Energy Efficiency Investment Act of 2009 (section 393.1075 RSMo Supp 2009) in this chapter the commission is following these public policy goals:

i. Encourage more efficient energy use and cost-effective demand-side programs;
NRDC- Should say capture all cost effective energy savings per statute.

KCPL and MIEC.- If you say "all" you may be substituting more expensive demand-side resources over supply side resources.

OPC- Cost effectiveness needs to be defined better in rule. Is it cost effective compared to supply side resources? How are 5 benefit/cost tests used? Doesn't think RIM test has anything to do with it.

Janet Wheeler- Encourage whom? Utilities, 3rd parties?

ii. Have substantial justice between utilities and their customers;
OPC- This is a core function of PSC. Don't need to say it in rule.

iii. Value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs and, in doing so:

a. Provide timely cost recovery for utilities;
b. Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and
c. Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.

AUTHORITY: 393.1075, RSMo 2009

2. Definitions

PURPOSE: This rule defines terms used in the rules comprising 4 CSR 240- _________.

The following words and terms, when used in this chapter, shall have the meanings shown below:

"After-tax discount rate" means the utility's weighted cost of capital reduced by the utility's composite federal and state income tax rate multiplied by the utility's weighted cost of debt.
MIEC- Need to use whatever discount rates are in the utility's IRP.

Rich- If societal test is used at the end of the day, we may need to revisit this definition. This test usually uses a lower discount rate.

"Avoided cost" means the cost savings obtained by substituting demand-side resources for existing and new supply resources as calculated in 4 CSR 240-22.050.
AUE- Concern about reference to IRP rules directly. Could be out of date.

OPC- Means the methodology used to calculate the cost savings as calculated consistent with IRP rule. But this still may not be specific enough because utilities can apply generic definition in different ways. Methodology used in IRP should be the same used here. Should be fairly specific, but allow some discretion.

Rich- How specific does the rule need to be to capture concern but still allow some flexibility for implementation?

Noranda- This calculation is a projection of expected avoided costs. There may be a different purpose for the avoided cost here than in IRP. This may be used for the investment decision and may need to be set at a different level than in the IRP.

NRDC- Inconsistency between probable environmental costs. Doesn't think the statute gives this leeway.

EnerNoc- This definition doesn't include a transmission and distribution component. Would like this to be added or clarified.

OPC- May be a reference to transmission and distribution in avoided costs in new Ch. 22 rules.

AUE- Are we trying to define the term or outline the methodology?

"Baseline forecast" means the metric against which savings are measured. This estimates what would happen in the absence of any demand-side programs, and includes naturally occurring energy efficiency and codes and standards are in place.
Janet Wheeler- Savings of what? Dollars, kw, etc.

OPC- Should existing programs be included in the baseline? As written, looks like it would. There will be a transition period. May possibly need different definitions at different points in the process.

NRDC- Not aware of a standard practice to measure naturally occurring energy efficiency. Rules do not say how the potential study will be used and their purpose- is it to establish performance standards?

Noranda- In addition to standards that are "in place" need to think about standards that are likely to be in place. Don't want to ignore something we know is coming down the line.

DNR- This definition is important and we need to be clear what it includes.

Rich- This would be an area where it would be useful to see how other states use the baseline.

AUE- Where would 3rd party energy efficiency programs fit into this baseline forecast? Or is this just including utility sponsored programs? May influence the amount of potential we are talking about.

Rich- This is a little different issue, but important. We will discuss when we get to potential study.

"Benefit/cost ratio" means the ratio of the present value of benefits to the present value of costs.

"Cost effectiveness tests" means one of the five acceptable economic tests used to compare the present value of applicable benefits to the present value of applicable costs of a demand-side option or program. The tests are the total resource cost test, participant test, the ratepayer impact test, the societal test and utility test. An option or program passes a benefit/cost test if the benefit/cost ratio is equal to or greater than one.

NRDC- May be some confusion between all cost effective potential and cost effective programs. Statute indicates TRC test should be the cost effectiveness test.

Janet Wheeler- All tests, use the term demand-side option which is not defined. Only demand-side program is defined.

DNR- Demand-side option may be defined in new Chapter 22 rules.

"Commission" means the Public Service Commission of Missouri.

"Customer" means those who take service from an electric utility under rates in a tariff on filed with the commission.

KCPL and OPC- Taking service could mean landlords, etc. Not necessarily the ultimate customer. Not sure what the implication of this is.

FCP- Entities who make take service under a contract.

"Customer incentive" means an amount or amounts provided to or on behalf of customers for the purpose of having customers participate in demand-side programs.
Noranda- Would insert the word payment

DNR- Insert monetary incentive

OPC- Inserting this depends on how it is being used later in the rule.

Janet Wheeler- Amount of what? Dollars, kw, RECs, etc.

KCPL- There are other incentives other than monetary, ie. Thermostat program.

"Demand response" means measures that decrease peak demand or shift demand to off-peak periods.
Janet Wheeler- No definition of peak demand, only seasonal peak demand.

"Demand-side investment mechanism" may include when approved by the commission, without limitation, any combination of the following: decoupling, recovery of fixed costs (lost margin revenue), capitalization of investments in and expenditures for demand-side programs, rate design modifications, accelerated depreciation on demand-side investments, and allowing the utility to retain a portion of the net benefits of a demand-side program for its shareholders.
OPC- Rule needs to be within bounds of MO law. Doesn't think there is any legislative authority for decoupling.

DNR- Includes lost margin revenue- this term was removed from the law in its early drafting.

NRDC- Is the term earnings opportunity the same as used in statute?

"Demand-side program" means any program conducted by the electric utility to modify the net consumption of electricity on the retail customer's side of the electric meter, including, but not limited to energy efficiency measures, load management, demand response, and interruptible or curtailable load.
DNR- Use demand-side program in place of demand-side option.

OPC- Should include programs conducted by or for an electric utility. Would encompass state-wide programs utilities are jointly funding.

Rich- Rule is clearly written as if utility is the administrative entity in implementing these programs. We may want to come back to this later.

"Economic potential" means a theoretical construct that assumes all cost effective measures are adopted by customers, regardless of customer preferences.

"Electric Utility" or "Utility" means an "electrical corporation" as defined in section 386.020, RSMo.

"Energy efficiency" means measures that reduce the amount of electricity required to achieve a given end use.
AUE- Energy Efficiency should be defined as broadly as possible. Would be appropriate to apply to utility infrastructure investments. Utilities can make distribution system efficiencies beyond customer oriented efficiency programs.

NRDC- If this rule captures this, then it needs to be included in potential study and not just on the customer side.

OPC- Assuming this would include enhancements in efficiency in generation plants. Skeptical if this is the legislative intent. Wouldn't be a lost revenue issue as it would have a different incentive structure.

Rich- Waste energy issue brought up by AUE would be systems changes on customer side.

"Evaluation, measurement and verification" (EM&V) means the performance of studies and activities intended to determine the actual savings and other effects from demand-side programs and measures.

"Evaluation, measurement and verification independent evaluator" means an independent third party approved by the commission that performs EM&V tasks as assigned by the Commission
Rich- It is unclear who hires the evaluator.

"Free riders" means those program participants who would have done what a demand-side program intends to promote even without the program.
DNR- Are different levels of free riders relevant to this discussion?

Rich- We can put this off to EM&V section.

"Gross savings" means the change in energy and demand requirements for program participants.
Rich- No definition for net savings.

"Interruptible or curtailable rate" means a rate under which a customer receives a reduced charge in exchange for agreeing to allow the electric utility to withdrawal the supply of electricity under certain specified conditions.

OPC- Concern that price responsive demand fits in somewhere or it could fit in under demand response. Time of use and critical peak pricing has some effects on energy usage, not just demand.

AUE- It is clear that this is not part of demand response per statute and would fall into a different category.

"Maximum achievable potential" takes into account expected program participation, based on customer preferences resulting from ideal implementation conditions. Maximum achievable potential establishes a maximum target for demand-side savings that a utility can hope to achieve through its demand-side program and involves incentives that represent a substantial portion of the incremental cost combined with high administrative and marketing costs. It is commonly-accepted in the industry that maximum achievable potential is considered the hypothetical upper-boundary of achievable savings potential simply because it presumes conditions that are ideal and not typically observed in real-world experience.
NRDC- This definition takes into account customer preferences and so does realistic achievable potential. Not sure of the need for the realistic achievable potential if it is used in both.

"Net societal benefits" means the present value of benefits less the present value of costs as defined in the societal test.
Rich- Is this meant to be net savings? See if we need this at the end.

DNR- These seem to be different.

"Participant test" means an economic test used to compare the present value of benefits to the present value of costs over the useful life of demand-side option or program from the participant's perspective. Present values are calculated using a discount rate appropriate to the class of customers to which the demand-side option or program is targeted. Benefits are the sum of the present values of the customers' bill reductions, tax credits, and customer incentives for each year of the useful life of a demand-side option or program. Costs are the sum of present values of the customer participation costs (including initial capital costs, ongoing operations and maintenance costs, removal costs less a salvage value of existing equipment, and the value of the customer's time in arranging installation, if significant) and any resulting bill increases for each year of the useful life of the option or program. The calculation of bill increases and decreases must account for any time-differentiated rates to the customer or class of customers being analyzed.

"Pilot program" means a program or project which generally is designed as a test or trial to demonstrate the effectiveness of a full program. For purposes of this rule, a pilot program is distinct from other program designs in that it shall include explicit questions that the pilot will address; explicit evaluation, measurement and verification methods designed to address pilot questions, estimates of program costs and savings, a provisional

cost effectiveness evaluation, and shall be of limited duration until reassessment after a predetermined periods.
OPC- Pilot program is defined in promotional practices rule. Definitions should be consistent.

"Preferred resource plan" means the same definition found in 4 CSR 240-22.

"Program year" means…
Rich- Year that utility is delivering commission approved programs.

KCPL- Only concern is annual report on Dec. 31. Need to figure out timing of program year, annual report, etc.

"Ratepayer impact measure test" means an economic test used to compare the present value of the benefits to the present value of the costs over the useful life of a demand-side option or program from a rate level or electric utility's bill perspective. Present values are calculated using the utility's discount rate. Benefits are the sum of the present values of utility avoided capacity and energy costs (excluding the externality factor) and any revenue gains due to the demand-side options for each year of the useful life of the option or program. Costs are the sum of the present values of utility increased supply costs, revenue losses due to the demand-side options, utility program costs, and customer incentives for each year of the useful life of the option or program. The calculation of utility avoided capacity and energy, increased utility supply costs, and revenue gains and losses must use the utility's costing periods.

"Realistic achievable potential" represents what is considered to be realistic estimates of demand-side potential based on realistic parameters associated with demand-side program implementation (i.e. limited budgets, customer acceptance barriers, etc.)

"Seasonal peak demand" for an electric utility means the maximum hourly demand that occurred during that season.

"Societal test" means an economic test used to compare the present value of the benefits to the present value of the costs over the useful life of a demand-side option or program from a societal perspective. Present values are calculated using a 12-month average of the 10-year and 30-year Treasury Bond rate as the discount rate. The average shall be calculated using the most recent 12 months at the time the electric utility calculates its benefit/cost tests for its demand-side program plan. Benefits are the sum of the present values of the utility avoided supply and energy costs including the effects of externalities. Costs are the sum of the present values of utility program costs (excluding customer incentives), participant costs, and any increased utility supply costs for each year of the useful life of the option or program. The calculation of utility avoided capacity and energy and increased utility supply costs must use the utility costing periods.
"Spillover" means measures installed by customers independently of a demand-side program that occur due to the general influence or awareness building effects of the program.

Rich- Will deal with this later with free-rider definition. Could be a broad range.

"Technical potential" means a theoretical construct that assumes all feasible measures are adopted by customers, regardless of cost or customer preferences.

"Technical Reference Manual" or "TRM" means a deemed savings document that provides specific efficiency thresholds and formulas to use in calculating energy-efficiency savings.
Rich- This definition may not be right just yet. Mainly applies to standard offer programs and not custom programs.

NRDC- Thinks definition says when we get enough experience that savings is deemed.

AUE- Currently uses a TRM to get a better handle on evaluation risk.

NRDC- This is a useful tool especially in planning stage. The definition doesn't say that savings in TRM would be adjusted on a going forward basis.

EDE- They use in TRM in another jurisdiction and it has been helpful. Used in reporting until you have a full evaluation. For custom programs they have information based on engineering analysis. Can be useful for reporting requirements.

"Total resource cost test" or "TRC" 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. The TRC test shall be applied at the plan level rather than the component, program or measure level and shall be the deciding test to determine if a plan will be deemed cost-effective.

"Useful life" means the number of years a demand-side option will produce benefits as determined by the utility. For analysis purposes, the useful life of a demand-side option shall not exceed 20 years.
AUE- Definition would be best with last sentence removed.

MIEC- Agrees with Ameren.

OPC- Agrees with Ameren.

DNR- This is an instance in which the term option appears.

"Used for service" means a commission approved demand-side program which has been implemented and is delivering program measures to customers.

NRDC- When the program begins a lot of measures will be providing benefits right away.

"Utility cost test" means an economic test used to compare the present value of the benefits to the present value of the costs over the useful life of an energy efficiency option or program from the utility revenue requirement perspective. Present values are calculated using the utility's discount rate. Benefits
are the sum of the present values of each year's utility avoided capacity and energy costs (excluding the externality factor) over the useful life of the option or program. Costs are the sum of the present values of the utility's program costs, customer incentives, and any increased utility supply costs for each year of the useful life of the option or program.
Rich- Not supposed to use customer incentives as a cost in this test.

AUTHORITY: 393.1075, RSMo 2009

3. Filing for Approval of Demand-Side Program Plans

PURPOSE: All electric utilities shall file an application for approval by the commission of its demand-side program plans which satisfy the requirements of this rule.
OPC- Word shall is odd in purpose statement. Mandating and describing a process.

Rich- Some states PA and Ohio have a template that each utility uses.

OPC- These are restructured states.

A. In addition to the requirements of 4 CSR 240-2.060(1), applications for approval of demand-side programs shall include the utility's demand-side program plans, supporting testimony, supporting work papers and, if applicable, tariff sheets that comply with the requirements of this rule.
AUE- contested case setting with testimony, etc. will require a lot of effort especially following IRP process every year. A multi-year process may need to be considered, i.e. 3 year implementation plan.

DNR- IRP process is not sufficiently binding for program implementation.

OPC- Agrees with DNR's comment. The Commission does not explicitly approve IRP plan. This requires approval.

NRDC- Agrees with OPC. Most states she works in have this process every couple years, doesn't think this needs to happen every year.

KCPL- Are existing programs filed initially? Every year after? Unclear.

OPC- Doesn't think we can rely on IRP filing to determine what is being implemented today.

PSC Staff- - Filing a demand-side program plan every 3 years may not work because implementation plans change and the commission may not know what is going on.

Rich- may be able to address this issue through the modification section.

AUE- As program plans are approved, cost recovery issues for the implementation period should be resolved at the same time. Work out details with true-up at this time.

B. Each electric utility shall file with the commission its application for approval of its demand-side program plans as follows:
AUE- We already have IRP process and tariff process. Why do we need approval for a program plan?

OPC- In the tariff approval process, there are no significant guidelines of how this is going to work. Would need this if cost recovery was addressed upfront. Unless we know costs to consumers and society (lost revenues and performance incentives) we don't have a good gauge of cost-effectiveness.

AUE- Concerned that program approval process can take up to 6 months. Then EM&V due Sept. 1. Difficulty in calendar.

KCPL- Hearing a lot of comments regarding cost recovery with first filing and isn't hearing any party say this can't happen in some manner.

i. Initial applications for approval of demand-side program plans shall be filed with the commission no later than six months after this rule is effective.

a. Initial demand-side program plans shall include existing demand-side programs with approved tariffs that have been implemented and may include demand-side programs which have not been implemented but are included in the electric utility's preferred resource plan.
b. Initial plans shall include the same information for each program as specified in section E.
c. Initial demand-side program plans will include multi-year programs and thereafter, will be updated on an annual basis in the next demand-side program plan filing.

ii. Thereafter, applications for approval of demand-side program plans shall be filed with the commission each year by not later than December 31.

C. Relationship to resource plan. The process and results of the electric utility resource planning process of 4 CSR-240-22 shall serve as the primary analysis for determining what demand-side programs may be included in the electric utility's demand-side program plan. Only those demand-side programs included in a utility's preferred resource plan as a result of a triennial compliance filing or an annual update filing may be included in that utility's demand-side program plan. Demand-side programs that are

included in a utility's preferred resource plan shall be deemed to meet a statutory goal of achieving all cost-effective demand-side savings.
OPC- Links to IRP are important but need to work on all cost-effective demand-side savings. IRP rules do not state they need to include all cost effective DSM programs.

Rich- In many states, IRP process and this process are allowed to operate in parallel. Possibly say something like the program plan should be consistent with last filed IPR and have a more loose relationship.

KCPL- Tying to IRP can cause delay if they have to revise their IRP. Concerned with redundancy of work and staff required.

NRDC- Last sentence in Section C may be confusing all cost effective vs. cost effective programs.

NRDC- Doesn't want to see duplication. Would be ideal if they could take portfolio from IRP and get approval, but doesn't think IRP requires all cost effective savings.

DNR- Somewhere we need to say that IRP should reflect all cost effective demand-side savings.

Noranda- If this becomes a new rule, then it seems that IRP rules need to be consistent. Agrees with the concept that the IRP process and this process operate in parallel.

AUE- IRP rules have not been finalized. It may make more sense to go back to current IRP rules where utilities can request rate treatment.

PSC Staff- Supply side and demand side resources are supposed to be valued equal. Asking for approval of programs based on resource planning process; however, that is not the case for supply side where more specific details follow later.

KCPL- Difference comes down to a timing issue. If they were ready to buy a CT and implement they would have this more detailed information.

D. As part of its application for approval of a demand-side program plan with the commission, an electric utility may include applicable tariff sheets for demand-side programs which are not yet in the utility's approved tariff, but which, as a promotional practice, are included in the utility's demand-side program plan in compliance with the requirements of 4 CSR 240-14 Utility Promotional Practices and 4 CSR 240-3.150 Filing Requirements for Electric Utility Promotional Practices.

E. Demand-side program plan content. At a minimum, each electric utility's demand-side program plan shall include, for each program year, the following:

i. Current market/potential assessment study performed using primary data for the utility's service territory to determine the technical potential, economic potential, maximum achievable potential and realistic achievable potential relative to a baseline forecast.
Rich- are these done as needed or for each program plan?

DNR- Methodology of potential study that can withstand regular scrutiny is important.

AUE- Is the utility's demand-side plan and cost recovery plan filed at the same time as IRP? This would dramatically shorted time frame.

OPC- Thinks it is important to see the programs full cost to ratepayers including cost recovery plan.

KCPL- What constitutes primary data?

KCPL- How do we adjust for industrials that opt-out?

ii. A description of each program selected, including:
AUE- Concerned about the administrative costs related to the substantial reporting requirements and planning and design costs. They do not currently have a sophisticated data collection system. Accounting can become complex and cumbersome.

a. The name of the program;
b. The customer class to which the program is targeted;
c. The strategy and objective of the program, including what the program will do and what barriers the program may help customers overcome;
d. The demand-side measures to be promoted by the program;
e. The technique(s) proposed to promote the program;

(i.)Programs may include incentives to encourage customers to make demand-side investments, if the incentives are cost justified.
(ii). Incentives may include leasing programs, product giveaways and direct financial inducements. Financial inducements may include, but are not limited to, rebates, discounted products and services, and low interest rate financing.
(iii.) All customer incentives shall be considered in the benefit/cost tests of programs. Costs of customer incentives shall be considered direct program costs.
Rich- Customer incentives are not typically included in all benefit/cost tests. Do we want to reword where the typical test prevail?

(iv.) Incentives should not be any higher than necessary to overcome the customers' barriers to invest in the measure, and should be reduced or eliminated as the measure becomes more of a standard practice.

KCPL- Who determines this? How is this judged? Hindsight review/initial review?

Dan York- This often comes in as part of the customer evaluation process.

DNR- Perhaps reworded that it be sufficient but not more than necessary.

AUE- Does tariff process need to be changed? If incentive levels need to be changed, my be blocked from doing so due to the tariff process.

Rich- it is unusual for efficiency programs to be attached to tariff requirements.

OPC- Doesn't think the tariff process needs to be separate from DSM program plan approval.

f. The scope of implementation, e.g., systemwide, partial system, or pilot programs:

(i.) Pilot demand-side programs may be included, if justified by the utility and approved by the commission.

(ii.) A pilot demand-side program design is distinct from other program designs in that it shall include explicit questions that the pilot will address; explicit evaluation, measurement and verification methods designed to address pilot questions, estimates of program costs and savings, a provisional cost effectiveness evaluation, and shall be of limited duration until reassessment after a predetermined periods.

g. The estimated annual energy and demand savings for each year the demand-side program is anticipated to produce benefits. After it is established, electric utilities shall use an approved statewide Technical Reference Manual to determine the deemed energy and demand savings for each year.

AUE- These administrative costs would be substantial.

DNR- Thinks many states overstate cost of TRM.

NRDC- The reason why you invest in DSM is for lifetime savings, not annual.

h. The implementation dates for initiating the program and a schedule of dates for reporting, evaluating, and concluding the program.

i. The budget for each program for each year of implementation or for each of the next five years of implementation, whichever is less, itemized by proposed costs related to each program. The proposed costs shall be identified as either direct charges or indirect charges. The total program budget shall be categorized into:

(i.) Planning and design costs;
(ii.) Administrative costs;
(iii) Advertising and promotional costs;
(iv.) Customer incentive costs;
(v.) Equipment costs;
(vi.) Installation costs;
(vii.) Monitoring and evaluation costs;
(viii.) Miscellaneous costs; and
(ix.) Cost allocation of company staff versus contractor staff.

j. A statement that a program is targeted to low-income customers or general education campaigns, if it is so targeted, in which case the program is not required to meet a cost-effectiveness test; however, to determine the program or campaign is in the public interest, the commission must determine the program or campaign meets the societal test. If the program is targeted to low-income customers, the electric utility must also state how the electric utility will assess the effect of the program on issues affecting low-income customers, including, but not limited, to arrearages and/or disconnections.
With regard to market transformation programs—

AUE- Thinks they should go through cost-effectiveness tests.

NRDC- Would be okay with it not passing TRC if it was part of a cost effective portfolio.

k. A detailed description of the utility's avoided cost calculations and all underlying assumptions used in those calculations.
ECS- Does avoided cost include transmission and distribution? Thinks it should include transmission and distribution. Also, doesn't see in rule a section that reserves for a 3rd party to sign up customers for a energy efficiency program. Thinks this should be in the rule somewhere.

(i.) For assumptions involving uncertainty, the electric utility shall identify a range of values with, at a minimum, a high, base, and low case
AUE- Most utilities use DSMore which calculates weather and price risk. If we are talking about technology or price risk , they will need to figure out some other way to do this. Assign arbitrary values and acquire new tools to do this. As detailed in (i.) or (ii.) this would be something new.

DNR- doesn't think this is entirely new. Already determine uncertain risks in IRP.

(ii.) To the extent that any identified measure, program or the portfolio fails to meet the total resource cost test, the electric utility shall examine whether the failure persists if it considers uncertainty in the calculation of avoided cost.

l. The electric utility's estimations of its annual earnings each year of the demand-side programs, with and without the implementation of demand-side programs.

OPC- Also important is how to these earnings change with the company's proposal of cost recovery. Perhaps mesh plan approval with cost recovery as AUE previously mentioned.

KCPL- Individual program or portfolio of programs? Need to clarify. Makes sense for it to be a portfolio of programs.

m. The electric utility's estimations of the rate impacts and average bill impacts on its customers resulting from the electric utility's implementation of demand-side programs;

n. A description of each strategy, if any, used to minimize free riders.

o. A description of each strategy if any used to maximize spillover;

p. The proposed performance goals for peak demand and energy savings from utility implementation of cost-effective demand-side programs. The utility shall provide annual and total goals, by demand-side program, for three years subsequent to the year of the filing;

NRDC- Thinks the commission should establish performance goals. Not sure this needs to be established every year.

MIEC- Thinks they should all stay in. They all provide good information. Legislation does not say that TRC is the preferred test, but a preferred test.

q. Complete documentation of the following for each program:

(i.) Technical potential;
(ii.) Economic potential;
(iii.) Maximum achievable potential;
(iv.) Realistic achievable;
(v.) Total resource cost test;
(vi.) Utility cost test;
(vii.) Ratepayer impact measure test;
(viii.) Participant test; and
(ix.) Societal test.

NRDC- Not sure why analysis for every test should be performed if it meets TRC test. Maybe other tests should be performed if it doesn't meet TRC test.

r. A description of any efforts to coordinate programs with other utilities or between gas and electric utilities where a measure or program results in both gas and electric savings;
OPC- Reword to coordinate or jointly implement programs with other utilities.

AUTHORITY: 393.1075, RSMo 2009

4. Review of Demand-Side Program Plans

PURPOSE: Stakeholder advisory group participation in development of and Commission review and approval of a utility's demand-side program plan shall be governed by the following procedures:

A. Stakeholder advisory group. Each electric utility shall offer those interested the opportunity to participate as a member of its stakeholder advisory group concerning development of its demand-side program plan. At a minimum, the stakeholder advisory group shall meet quarterly. The electric utility shall provide all members of the stakeholder advisory group the opportunity to offer suggestions and comment on a draft of each demand-side program plan the utility proposes to file, and to review and comment on an existing approved plan.
AUE- What value does this add to the process where there is already annual plans and filing?

KCPL- Not opposed to this if it isn't in addition to the utility's current stakeholder groups. If open to all those who are interested may be hard to control. May need some guidelines.

OPC- Could probably comply with this by referencing a current process. Likes this in the rule.

Rich- Some states provide guidelines such as geography and/or customer class.

PSC Staff- We haven't found too many participants to be a problem in other advisory groups.

DNR- Perhaps there should be two processes. Technical group and then another opportunity for wider public to provide input.

NRDC- May think about statewide stakeholder process rather than utility specific groups.

B. Contested case proceeding. AUE- “Contested” has specific meaning. Only contested if hearing is required. SB 376 doesn’t require hearing. Also, then do you have to file testimony? If not contested, then don’t need to file testimony. The filing of an application for approval of a demand-side program plan shall initiate a contested case proceeding. All testimony, exhibits, and workpapers shall be filed with each application for approval of a demand-side program plan before the commission. Likewise, an application to modify an approved demand-side program plan shall initiate a contested case proceeding before the commission. All supporting testimony, exhibits, and workpapers filed by any party must be cross-referenced to the demand-side program plan requirements. Any portion of any plan, application, testimony, exhibit, or workpaper which is based upon or derived from a computer program shall when filed include the name and description of the computer program, and all reasonably necessary data inputs and outputs associated with each such portion in hard copy and electronic format.
Noranda- Thinks there is a good chance that we would go through this process and it would be contested.

AUE- Not saying it wouldn’t be contested, but contested proceeding has a specific meaning.

OPC- Would have a hard time approving plans and cost recovery outside of contested case proceedings. If we received cost recovery proposal as part of plan, then we should be reviewing this plan here.

Janet Wheeler- Because this requires a tariff filing as part of the process. Is this becoming a rate proceeding? Are we bound to consider all relevant factors? Are we carving out ratemaking outside of a rate case?

C. Procedural schedule. To facilitate completion of the contested case proceeding within six months from the date the application to approve or modify a demand-side program is of filed by an electric utility, a procedural schedule based on the following guidelines shall be established:
OPC- Likes procedural schedule in the rule.

KCPL- Thinks time schedule is reasonable. Doesn’t address revenue recovery just approval of plan. Would like this to be a parallel process.

OPC- Perhaps at this time the company should spell out their proposal for cost recovery. Establish a regulatory asset account and handle in next rate case. Doesn’t think it is lawful for rates to be set outside of rate case.

MIEC- Should include the ability of other parties to respond to each other and also consideration of lengthening the normal 20 day period for data requests.

i. Prepared direct testimony, exhibits, and work papers in support of the filing—date of initial filing.

ii. Testimony, exhibits, and work papers of all other parties—filed not later than seven weeks from the date of the initial filing.
DNR- Does program plan include implementation information? Otherwise, it will be difficult for parties to develop comments.

iii. Electric utility response to proposals—filed not later than 11 weeks from the date of the initial filing. OPC- Also thinks we should have response to proposals from other parties as well.

iv. Hearing (cross-examination of all testimony)—initiated not later than 14 weeks after the initial filing.

v. Briefs of all parties—filed not later than 17 weeks after the initial filing.

vi. Reply briefs of all parties—filed not later than 18 weeks after the initial filing.

vii. Additional time may be granted a party upon a showing of good cause for the delay including, but not limited to:

a. Delay of completion of a previous procedural step.
b. Delays in responding to discovery requests.
c. Conflicts

viii. Settlements.

D. Commission Approval.

i. The commission shall approve, modify or reject the utility's demand-side program plan and any applicable demand-side program tariff sheets. If the commission rejects the demand-side program plan, it shall issue an order in which it states the reasons for rejecting the plan and set a schedule by which the electric utility will file a new plan addressing the reasons for rejection. If the commission modifies a plan, it shall issue an order in which it outlines the modifications.

ii. A program filed under these rules shall not be implemented until the commission issues an order expressly approving the program.

iii. The commission may approve utility specific settlements and tariff provisions to ensure that electric utilities can achieve the state goal of capturing all cost effective demand –side savings.

E. Modified plan—refiling. If the commission rejects or modifies a utility's demand-side program plan, the commission may require the electric utility to file a modified plan and may specify the minimum acceptable contents of the modified plan.
AUE- If the utility has to modify their plan can it build on the same case rather than have to start process again from the beginning?

F. Variances. Upon request and for good cause shown, the commission may grant a variance from any demand-side program plan requirement imposed by this section. If the variance request is granted, the utility shall file a copy of the commission order with the utility's demand-side program plan.

G. Prudence reviews. The commission may conduct a contested case to evaluate the reasonableness and prudence of the utility's implementation of its demand-side program plan. The burden shall be on the electric utility to prove it has taken all reasonable actions to implement its approved demand-side program plan.
AUE- Not sure what last sentence is requiring them to demonstrate. Not sure about what the universe of all reasonable is. Not sure what this means.

Rich- Should there be any difference in the typical prudence standard for utilities and should it be in the rule at all?

OPC- Would envision cost recovery to take place in a rate case and would envision that is where prudence would be addressed. Could just say prudence will be addressed in next rate case where cost recovery is addressed. Important to distinguish between implementation prudence in rule.

AUTHORITY: 393.1075, RSMo 2009

5. Modification of Demand-Side Programs
AUE- How does tariff filing work with modification of plans? No timeline built in for approval, modification or rejection.

DNR- We need to look at streamlining process as much as possible and not having so many administrative hurdles. Shouldn't have cumbersome administrative process if small changes are needed.

Rich- Rigidity is going to impact the initial program plan that is filed.

A. After an electric utility's demand-side program plan has been approved by the commission, the demand-side program plan may subsequently be modified during implementation, if the modification is approved by the commission. The electric utility may file an application for modification. The commission, on its own motion, may consider modification of the demand-side program plan and budget.

i. The electric utility may constrain or accelerate projected utility implementation of a program based on the utility's assessment of market potential. The utility may consider market factors including, but not limited to, market barriers to implementation of the program, the effects of rate impacts, lost opportunities which decrease future implementation of measures or programs, the non-energy benefits and detriments of programs, the strategic value of demand-side programs to the electric utilities, and other market factors it deems relevant.

B. The electric utility shall file an application to modify its demand-side program plan if any one of the following conditions occurs during the implementation of its plan:

i. The annual budget changes by a factor of at least plus or minus ten percent; KCPL- 10% is very tight. Is this per program or entire portfolio? If you get too detailed, you may not get anything done and would be filing all of the time.

Rich- Often, idea of 10% is applied to entire portfolio or entire classes. Need to think about practically in terms of who would get upset.

Dan York- One consideration would be what cost overruns would get the commission's attention on the supply side?

Rich- First sentence seems to imply that any changes would require approval by the commission. Perhaps add: except as described in the following section.

Rich- Asked that program administrators come next time with some things that will work and meet their expectations.

ii. The percent of annual budget per customer class or grouping has changed by a factor of at least plus or minus ten percent;

iii. The implementation schedule of a program has changed by three months or more; or

iv. An approved program is eliminated or the utility desires to add a new program to the plan.

C. All applications to modify shall be filed in the same case in which the commission approved the demand-side program plan. Janet Wheeler- It is not a case unless it is a contested case. Also wouldn't have parties unless there is a case. All parties to the case in which the demand-side program plan was approved shall be parties to the modification request, shall be served copies of the application to modify and shall have 14 days to file their objection to the modification; failure to file a timely objection shall be deemed agreement to the modification.

D. In addition to the requirements of 4 CSR 240-2.060(1), each application to modify an approved demand-side program plan shall include:

i. A statement of the proposed modification and the party's interest in the modification;

ii. An analysis supporting the requested modification;

iii. An estimated implementation schedule for the modification; and

iv. A statement of the effect of the modification on projected costs and benefits.

AUTHORITY: 393.1075, RSMo 2009

6. Customer Participation & Opt-Out Provisions

Wal-Mart- Rule as proposed seems to impose some conditions on opting out that are not in statute. In statute customer has elected not to participate. In the rule the customer asks permission to opt-out. In Section A. iii. The word "coincident" demand is not in statute.

Rich- He interprets coincident with the utility peak.

Wal-mart- Doesn't read the statute to link the customers peak with the utility's peak.

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

i. The customer has one or more accounts within the service territory of the electric utility that has a demand of five thousand kilowatts or more;

ii. The customer operates an interstate pipeline pumping station, regardless of size; or

iii. The customer has accounts within the service territory of the electric utility that have, in aggregate, a coincident demand of two thousand five hundred kilowatts or more, and the customer has a comprehensive demand-side or energy efficiency program and can demonstrate an achievement of savings at least equal to those expected from utility-provided programs.

AUE- Can have customer or system coincident demand. This is ambiguous, but SB 376 is ambiguous too, just says demand. There needs to be some type of schedule to opt out by a certain date for practical reasons.

Rich- Some states have a stay out time frame.

AUE- If they are opting out, are they opting out of benefits as well with regard to cost allocation?

KCPL- Confusion regarding why are we notifying commission, etc. Once they are out, they are out. There is some confusion of how to charge customers due to timing of when customers opt out between rate cases.

MEG- Thinks we need more information about this. Also, who decides Section A. iii. and is it dollars or kWh,. etc.. Thinks an independent 3rd party (EMV contractor) could evaluate that. Does a customer have to demonstrate that they have energy efficiency programs at all of their locations in order to opt-out?

DNR- Doesn't include verification that customers are eligible to opt-out. Wonders if the commission is interested in who is opting out.

Rich- Two ways to do this. Could also do quarterly reporting.

MIEC- Important that the rules reflect that the ability to opt-out is a right under SB 376. Section B. i. gives the impression that utility's can have an impact over who can opt-out. Need a place to go if there is a dispute. SB 376 is self certifying. Not really a negotiation between the utility and the customer. If the utility doesn't think they are eligible, the utility should have the burden of proof and should have to come to the commission. Objective 3rd party should exist and that should be the commission. Thinks there need to be detailed rules/schedule if you opt out, when you can opt back in. Also, some customers have already opted out and there needs to be some recognition that some have already opted out. Also, should have some recognition of the effective date of Aug 2009.

AUE- Thinks commission procedure already says what to do if there is disagreement. File a case. Doesn't think we need to put in rule.

Noranda- Thinks opting out prevents benefits from going to the customers. Are there other benefits he is envisioning? For larger customers energy efficiency is a way of life and benefits have been accrued to them and the system as a whole. Ought not to ignore benefits that have accrued to the system historically by those that have engaged in energy efficiency.

OPC- Should these benefits be shared with non-participants? If it were not for this program, would acquire another CT and we would all share in that cost. Should that reduction in cost be shared with non-participants?

MIEC- Have to recognize that the large customers who are opting out are the ones that have already done the most in terms of energy efficiency. Dollars spent by industrials on energy efficiency is going to go a lot further than dollars spent by the utility. Industrial processes are unique. These customers have already contributed a lot of benefits to the system. Nothing in statute to suggest that they shouldn't get reduction in cost.

MIEC- The issue of system benefits is not in the statute. If you go into this area, going way beyond the statute.

OPC- Doesn't agree we can assume that they have already provided benefit to the system. Thinks we would have to see the numbers. Residential customers are also under pressure to be efficient. Some residential customers have environmental concerns and go beyond cost effective energy savings.

MIEC- i. and ii are pretty clear. iii. could need rules and may have some dispute.

ECS- Section A. iii. should acknowledge that there could be market based programs through RTO/ISOs similar to New Jersey or New York. Written as if it is a utility driven program. Need to determine how this may play out if it is RTO/ISO program (i.e. a curtailment program that MISO develops.)

B. The utility shall make available standard notification forms requesting all relevant information to determine customer eligibility to opt-out of participation in demand-side programs.

i The utility shall notify the customer and commission of its acceptance, or rejection of a customer's notification to opt-out of participation in demand-side programs within 10 days of when the customer notifies the utility of its election to opt out, unless the customer, withdraws its election before then.
Wal-Mart- Does not seem to be consistent with statute. What if there is a disagreement, ie. Customer applies to opt out and utility rejects, then what happens?

ii. Customers of a utility who opt-out of participation in demand-side programs offered by the utility shall be charged none of the costs for demand-side programs of the utility in accordance with the Missouri Energy Efficiency Investment Act (section 393.1075, RSMo 2009 Supp.) or this rule, nor shall any of the costs be assigned to any account of the customer or its affiliates and subsidiaries.
MIEC- Should add, "or other programs instituted under other authority", not just programs that came to be after SB 376.

iii. Customers who opt-out of participating in the demand-side programs of a utility shall still be allowed to participate in interruptible or curtailable rate schedules or tariff provisions offered by the electric utility.

iv. Any customer who opts out shall continue to be allocated costs until all costs have been recovered from any programs the customer was eligible to participate prior to opting out.
MIEC- This may be contrary to 393.1075.9

v. Customers that have opted out of participation in demand-side programs shall not subsequently be eligible to participate in demand-side programs except… *under guidelines established by the commission in rulemaking.*

AUTHORITY: 393.1075, RSMo 2009

7. Annual Demand-Side Program Reporting

PURPOSE: This rule establishes standards for annual reporting on an approved demand-side program plan by electric utilities.

A. Each electric utility shall file an annual report with the commission on December 31 of each year. At the minimum, the annual demand-side program report shall include:

i. If applicable, actual revenues collected under each demand-side investment mechanism;
AUE- Clarify "actual revenues."

OPC- Can track things on an ongoing basis, deferred expenses, etc.

ii. Actual amounts expended under each demand-side program, including incentive payments;
OPC- Could also mean the same thing as expenses booked to regulatory asset account.

iii. A demonstration that the allocation of costs among customer classes did not unreasonably burden any particular customer class;
KCPL- Who defines unreasonably burden?

iv. The avoided costs and the techniques used to estimate those costs;

v. The net economic benefits of the demand-side programs; and
AUE- This is from statute. No definition of net economic benefits.

Rich- May be monetary and kw too.

vi. For each program where one or more customers have opted out of the program pursuant to Section 393.1075.7, RSMo Supp 2009, a listing of the customer(s) who have opted out of participating in the program.
AUE- Need to clarify if they have subsidiaries, do they need to list all of the account numbers, what classes those account numbers belong to?

KCPL- Not sure why they need to list the customers.

B. The annual report shall be the format in which the utility informs the commission when each demand-side program is used for service and is eligible for inclusion in the demand-side investment mechanism as described in sections 9-12 of this rule. The annual demand-side program report and independent evaluation, measurement and verification shall be a basis upon which the commission relies in a general rate case to determine when a utility may be authorized a demand-side investment mechanism.
DNR- Does this imply that there are annual evaluation studies? If so, this seems impractical.

Dan York- Some programs you may not be able to evaluate for several years. There is a way to regularly report and track deemed savings.

OPC- In a situation where a utility is asking for lost revenues, need to have some handle on the savings that year. A utility may not request a demand-side investment mechanism in a general rate case until at least one annual demand-side program report and independent, evaluation, measurement and verification has been completed. AUE- Last sentence seems to be contrary to timely recovery requirement in SB 376.

C. Variances. Upon request and for good cause shown, the commission may grant a variance from any annual demand-side program reporting requirement imposed by this section. If the variance request is granted, the utility shall file a copy of the commission order with the utility's annual demand-side program report.

AUTHORITY: 393.1075, RSMo 2009

8. Evaluation, Measurement and Verification
AUE- Curious of commission controlling this process. Also, unclear of how EM&V work will be done at the same time, for all utilities all across the state. May wish to have evaluator involved in the program design process.

DNR- Agrees with commission appointed evaluator, but thinks there should be rigorous standards.

OPC is generally supportive of evaluation section. Thinks independent evaluation is important especially when you consider lost revenues and performance incentives. There is an obvious conflict of interest issue when the utility is hiring the contractor and controlling the process of what they will be evaluating. There needs to be protection for customers to ensure that they are not paying for savings that doesn't occur.

AUE- Regarding perception of independence of evaluators, the evaluators do have their reputation on the line.

AUE- Takes their responsibility of having an independent evaluator very seriously. If there is an appointed evaluator, would expect to see quarterly meetings with things like what there assumptions are, etc.

KCPL- Agrees with AUE on evaluator and are contracting with them to be independent. If there is a commission appointed evaluator, the company should have the opportunity to work with them because sometimes assumptions are incorrect in a first draft of a report and require clarification.

A. The commission shall designate an independent contractor to perform evaluation, measurement and verification of the implementation of all approved programs included in each electric utility's demand-side program plan.

B. The selected evaluation, measurement and verification independent evaluator shall report evaluation results to the commission and to stakeholders on behalf of the electric utility;

C. The selected evaluation, measurement and verification independent evaluator shall be funded by…

D. The evaluation budget shall not exceed 5% of the total budgeted for all demand-side programs;

Rich- Is this total commission EM&V expenditures of commission + utility expenditures?

E. The commission shall establish:

i. Evaluation goals;

a. Processes evaluation;

b. Program evaluation:

DNR- Seems that this is impact evaluation.) (i.) may be envisioning a certain type of program and is not considering market transformation programs, or programs that provide benefit in the aggregate such as smart grid where customers do not have a choice. Would like to see a much broader set of studies contemplated.

(i.) Lifetime gross and net peak demand and energy savings achieved under each program, and the techniques used to estimate savings impacts;

AUE- Is there an opportunity to include net to gross estimates in the TRM. Not expressly stated. Over which horizon will cost effectiveness me measured, 20 years?

Rich- This would not be unusual.

(ii.) A demonstration that the plan achieved all cost-effective energy savings potential

AUE- How do you demonstrate that?

DNR- Would compare the programs implemented to the potential study to determine whether there is more potential. Is there an objective standard other than IRP?

NRDC- There may be some confusion between all cost effective potential and cost effective programs.

Rich- Seems as if the utility should be measured against the plan. Need to have the right expectation at the right stage.

(a.) If a program is determined to be not cost-effective the electric utility shall identify the causes why and make the appropriate program modifications in its next demand-side program plan filing. The fact that a program proves not to be cost-effective shall not be grounds for disallowing cost recovery.

AUE- Encouraged to see this.

OPC- May need some rewording. Need something else regarding imprudence in the way it was implemented in addition to not cost effective.

ii. An evaluation schedule;
iii. An evaluation methodology, including approaches for calculating gross and net energy savings.

F. Each utility shall interface and coordinate with the commission approved EM&V independent evaluator and provide necessary data for all approved programs included in each electric utility's demand-side program plan.

G. The EM&V independent evaluator shall report its findings related to the previous program year to the commission on behalf of the utility no later than September 1 each year.

H. Variances. Upon request and for good cause shown, the commission may grant a variance from any evaluation, measurement and verification requirement imposed by this section. If the variance request is granted, a copy of the commission order shall be files with the evaluation, measurement and verification.

AUTHORITY: 393.1075, RSMo 2009

9. Demand-Side Investment Mechanism - General Provisions
OPC- Rule should be within the bounds of the law. Don't see anything in SB 376 to allow periodic rate adjustments between rate cases. This section seems to be written to imply this. Specifically, section C. Need to have a lot more discussion regarding the lawfulness of this.

AUE- Is the statutory authority for the mechanism SB 376 or SB 179?

AUE- Appears that there is a contingency with EM&V. Would prefer to take care of upfront.

A. In order for a program to qualify for inclusion in a demand-side investment mechanism, the program:

i. Shall be approved by the commission prior to implementation;
a. Program-related costs incurred prior to the electric utility's initial demand-side program plan shall not be included in the demand-side investment mechanism.
AUE- May have unintended consequences. The utility may have a problem with what they spend on programs between today and when rules go into effect.

ii. Shall be implemented in accordance with the approved demand-side program plan and tariff sheets;

iii. Shall have been shown in an annual demand-side program report that it has been used for service and is delivering measures to customers;

iv. Shall have efficiency and/or demand savings capable of measurement and verification and shall result in energy or demand savings and are beneficial to all customers in the customer class in which the program is proposed;

v. Shall be monitored and evaluated for cost-effectiveness;

a. If a program is determined to be not cost-effective the electric utility shall identify the causes why. That a program is not cost-effective shall not be sufficient grounds alone for disallowing cost recovery. However, the electric utility shall propose modification or termination of a program that fails to meet expected results.
Noranda- Some programs aren't required to be cost effective. Last sentence- doesn't necessary mean that it was implemented imprudently. Doesn't think this sentence needs to be there.

Janet Wheeler- We don't currently have a customer class for low-income. Will need to square this up at some time.

DNR- Need to define customer class.

vi. Shall have undergone an evaluation by a commission approved EM&V independent evaluator.

B. After meeting the requirements established in paragraph A of this section, an electric utility may request in a general rate case that the commission approve a demand-side investment mechanism.

i. As part of the general rate case as discussed in Section B, the commission may approve a demand-side investment mechanism for demand-side programs that value demand-side investments at least equal to traditional investments in supply and delivery infrastructure.
AUE- There is no guidance on how equal valuation would be determined.

ii. In setting rates, the commission shall apportion the costs and benefits of demand-side programs to each customer class.

a. (possibly- allocate costs to the customer class in which program is designed and using a demand allocator for demand response programs or with an energy allocator for energy efficiency programs; or the allocators decided by the commission in a rate case?) MIEC supports this. However, there has been no agreement yet on what are appropriate allocators for demand.

iii. In a general rate case proceeding, the commission may, when in the public interest, reduce or exempt the allocation of demand-side program costs to low income classes, as a subclass of residential service.

iv. All charges attributable to demand-side programs approved by the commission shall clearly be shown as a separate line item on bills to the utility's customers.

C. Duration of demand-side investment mechanism and requirement for general rate case. Once a demand-side investment mechanism is approved by the commission, it shall remain in effect for a term of not more than four (4) years unless the commission earlier authorizes the modification, extension, or discontinuance of the demand-side investment mechanism in a general rate proceeding, although an electric utility may submit proposed rate schedules to implement periodic adjustments to its demand-side investment mechanism between general rate proceedings.

i. If the commission approves a demand-side investment mechanism for an electric utility, the electric utility must file a general rate case with the effective date of new rates to be no later than four (4) years after the effective date of the commission order implementing the demand-side investment mechanism, assuming the maximum statutory suspension of the rates so filed.

ii. The four (4)-year period shall not include any periods in which the electric utility is prohibited from collecting any charges under the demand-side investment mechanism, or any period for which charges collected under the mechanism must be fully refunded. In the event a court determines that the demand-side investment mechanism is unlawful and all moneys collected are fully refunded as a result of such a decision, the electric utility shall be relieved of any obligation to file a rate case.

AUTHORITY: 393.1075, RSMo 2009

10. Demand-Side Investment Mechanism - Cost Recovery
AUE- Not sure how this will work out in timeline.

A. Utilities may recover their actual costs expended to implement and evaluate demand-side programs that the commission approves and the utility implements.

i. Costs incurred after a demand-side program plan is approved and before the program costs are included in a commission-approved demand-side investment mechanism shall be charged to a regulatory asset account and incur a carrying charge before they are recovered. The carrying charge shall be the allowance for funds used during construction rate the commission last approved for the utility;
AUE- Is this envisioned as one time or every year?

AUE- Earnings and cash flow are very important to his company. To the extent that a mechanism provides earnings support, but not cash support, it is an inferior solution to them. Illinois has a rider.

MIEC- Even with a 20 year amortization process, they would recover cash faster than supply side. This is superior to supply side earnings. Doesn't think 20 years is appropriate, but 3 isn't either. Life of DSM assets is at least 10 years with some being 15-20. Not sure that we need to put a specific number of years for amortization in the rule.

AUE- Only expenditures are marketing mainly not capital assets.

DNR- Capitalization method is at odds with what is going on in the mid-west.

OPC- Section C. ii.. reference to automatic rate adjustment mechanism bring up the recovery between rate case issue. Is this a surcharge? Thinks timing of amortization period is too short. Would be comfortable with not stating anything or would suggest replacing 3 years with no more than 6 years.

DNR- The reason why other states in mw have gone to expensing is because they want to go further with energy efficiency. Also, would like to see some performance targets.

Wal-Mart- Statute specifically says that demand side resources shall be valued equal with supply side and should provide the same type of earnings opportunities. The statute then goes on to say that the commission may develop some other mechanisms. This may be an area where we have option A and option B and where we may not have consensus.

Rich- States that are doing regulatory asset are also paying attention to what wall street is saying.

AUE- Unclear of how to deal with the section in the statue- prior to approving a rate design modification the commission should conclude a docket… what do we think constitutes a rate design modification- is this decoupling? Does what we are doing meet this requirement?

ii. Costs will remain in the regulatory asset account until the program costs are included in a commission-approved demand-side investment mechanism. At that time the costs in the regulatory asset account will be amortized over a period of three years and recovered in rates over three years.

B. Utilities shall maintain accounting plans and procedures to account for all demand-side program costs in accordance with generally accepted accounting principles.

C. In the general rate case, as discussed in Section 9(b), each utility shall file the costs it proposes to recover in the demand-side investment mechanism. Costs proposed to be included in the cost recovery portion of the demand-side investment mechanism will be the total of:

i. The costs the electric utility expects to incur in the subsequent 12-month period in implementation of its demand-side program; AUE – forward looking.

ii. The positive or negative difference, over the past 12-month period under the automatic adjustment mechanism, between the actual revenues collected and the actual cost incurred, including carrying charges accrued on the balance; and

iii. Excluding any previously recovered costs that, in a prudence review as described in section 4 of this rule the commission has determined were imprudently incurred.

AUTHORITY: 393.1075, RSMo 2009

11. Demand-Side Investment Mechanism - Lost Revenues

AUE- Add definition of lost revenues. Included a definition in MEDA draft outline.

DNR- Need definition of lost revenues.

A. In the general rate case, as discussed in Section 9(b), each utility may file an application to include, as part of its demand-side investment mechanism, a means to eliminate its incentive to increase sales between rate cases and ensure that the success of its demand-side program does not cause it financial harm;

i. Recovering lost revenues is an allowable track if decoupling is not allowed by the commission.

OPC- Shouldn't include decoupling.

AUE- May be read to say that lost revenue recovery is allowed only if commission affirmatively says decoupling is not allowed. Not clear how this operates? How would this interact with shared savings approach?

B. Lost revenues should be determined through the independent EM&V process as established by the commission;

KCPL- This is after the fact. If we are to move this forward it could be the outcome of the IRP process and then could true-up with EM&V process.

Rich- EM&V describes quantity but we need to determine cost of quantity.

Wal-Mart- Need to be clear that lost revenues shouldn't be recovered for decline in customers and should be as a result of demand-side investment.

OPC- Agrees with last statement. This is another reason why definition of lost revenues is important. Revenues lost solely due to utilities investment in energy efficiency.

C. The proposed demand-side investment mechanism may not diminish in any respect current customer incentives to undertake effort or investment to increase the efficiency with which they use energy; and
Noranda- If you do this, it is pretty hard to give lost revenue at all.

D. Minimum requirements for application…
AUE- There are already a lot of requirements in other sections and can't think of anything else we may need.

AUTHORITY: 393.1075, RSMo 2009

12. Demand-Side Investment Mechanism - Performance Incentives
AUE- Perhaps this whole section is something that should be determined at the time the commission approves a cost recovery mechanism.

DNR- Believes there should be a statewide standard for performance and not decided on a utility basis. Also, thinks there should be a penalty for poor performance. Should also be an incentive for improved performance/continous performance. Likes shared savings approach. They have noticed that rate increases are not extremely big in other states until the utilities extremely exceed goals (ie 400%).

OPC- There should be some consequences for poor performance.

A. Utilities have an opportunity to produce earnings

i. Based on the value created by their efforts under an approved demand-side program, as indicated by achieving the energy and demand savings in an approved plan per the actual costs and benefits following the results of evaluation, measurement and verification.

ii. For strong performance compared to applicable goals

a. With no earnings available for achieved savings less than 75% of the greater of the default targets above or the plans goals; and
b. With greater reward for increasing benefits beyond planning estimates.

iii. At a level comparable to that available for investment in supply-side resources, as adjusted for the differing risks of the two types of resources.
OPC- Has a concern that this is subject to misinterpretation. Statute is to encourage demand side investments, but still need to have rates that are basically based on costs in order to have just and reasonable rates. Accelerated depreciation already is placing demand-side ahead of supply-side.

AUE- From his perspective the risks are very different. Does PSC staff believe demand-side resources are more risky than demand-side resources? The idea that you wouldn't receive something if performance is under a certain % is a penalty within itself.

KCPL- Agrees that evaluation for this purpose should be after the fact, but would like cost recovery sooner. Doesn't think should be restricted to 75%.

B. Penalty for poor performance?

C. In the general rate case, as discussed in Section 9(b) each utility may file an application to include, as part of its proposed demand-side investment mechanism a process to improve its earnings opportunity for achievements under its demand-side program plan consistent with the commission's policy.

AUTHORITY: 393.1075, RSMo 2009

13. Tax Credits and Disclosures

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

B. As a condition of participation in any demand-side program offered by an electric utility under this section when such program offers a monetary incentive to the customer, the customer shall attest to non-receipt of any tax credit listed in subsection (A) of this section and acknowledge that the penalty for a customer who provides false documentation is a class A misdemeanor.

C. The electric utility shall maintain a database of participants enrolled in all demand-side programs offered by the utility when such program offers a monetary incentive to the customer including the following information: the name of the participant or the names of the principles if for a company, the property address and the amount of the monetary incentive received. Upon request, by the commission, the utility shall disclose participant information to the commission.

AUE- This doesn't seem to contemplate a market transformation program.

AUE- Regarding this tax credit issue, haven't tried to factor this in to market potential study, but it is going to have an impact.

AUTHORITY: 393.1075, RSMo 2009

14. Records

AUE- Is this section needed?

A. All demand-side programs are subject to inspection and audit by the commission and commission staff.

B. All records of demand-side programs shall be maintained in sufficient detail to permit a thorough audit and evaluation of all program costs and program performance.

C. Nothing in this rule limits the existing authority of the Public Service Commission of Missouri.

AUTHORITY: 393.1075, RSMo 2009