Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 20 – Electric Utilities

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 393.1075.11 and 393.1075.15 RSMo 2016, the commission amends a rule as follows:

4 CSR 240-20.094 **is amended**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2017 (42 MoReg 168-174). Those sections with changes are reprinted here. The proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended April 27, 2017, and the commission held a public hearing on the proposed amendment on May 4, 2016. The commission received timely written comments from The Office of the Public Counsel; Union Electric Company, d/b/a Ameren Missouri; Kansas City Power & Light Company (KCP&L) and KCP&L Greater Missouri Operations Company (GMO); Renew Missouri; the Missouri Department of Economic Development - Division of Energy; the Natural Resources Defense Council (NRDC); Walmart Stores, Inc.; the National Housing Trust; the Midwest Energy Efficiency Alliance; and the Staff of the Commission. In addition, the following people offered comments at the hearing: Martin Hyman and Barbara Meisenheimer on behalf of the Division of Energy; Andrew Linhares on behalf of Renew Missouri; Phil Fracica on behalf of Energy Efficiency for All; David Woodsmall on behalf of Walmart; Tim Opitz and Geoff Marke on behalf of the Public Counsel; Lewis Mills on behalf of the Missouri Industrial Energy Consumers (MIEC); Jim Fischer and Tim Nelson on behalf of KCP&L and GMO; Paula Johnson and Bill Davis on behalf of Ameren Missouri; and Natelle Dietrich, John Rogers, Robert Berlin, and Brad Fortson on behalf of staff. Many comments and suggested changes were offered. The commission will address those comments as they pertain to the various provisions of the rule.

COMMENT #1: In section 20.094(1) Staff would make demand-side program plural.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the change proposed by staff.

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COMMENT #2: Section 20.094(2) establishes non-binding energy and demand savings goals for utilities to strive to meet. The goals are only aspirational and the utilities will not incur any penalty if they fail to achieve the goals. The NRDC, the National Housing Trust and Renew Missouri strongly support the inclusion of the goals. The NRDC and Renew Missouri would go further and attempt to authorize the commission to impose "adverse consequences" or "penalties" on utilities that fail to achieve the established goals. Public Counsel urges the Commission to delete the savings goals entirely, contending that the goals provide little value to the MEEIA process and are not used by the utilities in evaluating their MEEIA portfolios.

RESPONSE: The commission will retain the aspirational goals. They have some value as a measuring stick for the utilities. The commission will not, however, attempt to make these goals anything more than aspirational. The MEEIA statute does not require utilities to participate, and the commission cannot change that fact.

COMMENT #3: Subsection 20.094(2)(A) establishes the energy and demand savings goals for electric utilities and explains how those savings are to be reviewed. The proposed subsection directs the commission to use the greater of the annual "realistic" amount of achievable energy savings and demand savings as determined by a market potential study, or the goals listed in the subsection to determine the utility's progress toward the goal of all cost-effective demand-side savings. The NRDC, Midwest Energy Efficiency Alliance, and Renew Missouri urge the commission to replace "realistic" savings with "maximum" savings. The Division of Energy would simply delete "realistic," and would simplify the last sentence of the subsection. Midwest Energy Efficiency Alliance also seeks clarification of whether "total annual energy" in the goals refers to the energy load served by the utility before or after customer opt-out is taken into consideration.

RESPONSE AND EXPLANATION OF CHANGE: The commission will not adopt the Division of Energy's suggestion to remove "realistic" from the description of achievable savings because the term that would remain, "achievable savings" is not a defined term. In addition, the Division of Energy's simplification of the last sentence of the subsection is appropriate and will be adopted. Total annual energy in the goals refers to the energy load served after customer opt-out is taken into consideration.

COMMENT #4: Subsection 20.094(2)(B) establishes cumulative energy and demand savings goals for electric utilities and explains how those savings are to be reviewed. Staff proposes modification of the subsection to refer to the cumulative "annual" amount of "achievable" energy and demand savings. The NRDC, Midwest Energy Efficiency Alliance, and Renew Missouri urge the commission to replace "realistic" savings with "maximum" savings. The Division of Energy would simply delete "realistic," and would simplify the last sentence of the subsection.

RESPONSE AND EXPLANATION OF CHANGE: The commission will not adopt the Division of Energy's suggestion to remove "realistic" from the description of cost-effectively achievable energy and demand savings because the term that would remain, "achievable savings" is not a defined term. In addition, the Division of Energy's simplification of the last sentence of the subsection is appropriate and will be adopted. Staff's modification will also be adopted.

COMMENT #5: Paragraph 20.094(2)(B)9 establishes a savings target for the utility's approved ninth program year and thereafter. Staff notes that a reference to the year 2020 in the paragraph should be changed to "approve ninth year" to be consistent with the rest of the paragraph.

RESPONSE AND EXPLANATION OF CHANGE: The change proposed by staff will be adopted.

COMMENT #6: Section 20.094(3) is entitled "Utility Market Potential Studies." The NRDC and Renew Missouri urge the commission to change that title to "Statewide Market Potential Study" in keeping with their proposal to require the exclusive use of the statewide market potential study by all electric utilities. The Midwest Energy Efficiency Alliance offers a general comment calling the commission's attention to recently passes legislation in Michigan that authorizes the Michigan commission to conduct a statewide energy efficiency potential study.

RESPONSE: The commission intends to continue to allow the use of utility-specific market potential studies and will not adopt the change proposed by the NRDC and Renew Missouri.

COMMENT #7: Subsection 20.094(3)(A) describes the preparation of a market potential study. The National Housing Trust supports the requirement for consideration of both primary and secondary data. It also supports the aspect of the rule that requires the utility to permit stakeholder input and review. The Division of Energy would add a long description of the purpose of a market potential study.

RESPONSE: The commission does not believe the extra details suggested by the Division of Energy are necessary. The proposed changes will not be adopted.

COMMENT #8: Regarding paragraph 20.094(3)(A)1, Public Counsel would specify various type of studies that should be incorporated in the market potential study.

RESPONSE: The commission does not believe the additional specifications proposed by Public Counsel are necessary. The proposed change will not be adopted.

COMMENT #9: Regarding paragraph 20.094(3)(A)2, Public Counsel would require utility market potential studies to be updated every three years rather than every four years.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Public Counsel that an update every three years is appropriate. The proposed change will be adopted.

COMMENT #10: Paragraph 20.094(3)(A)3 requires the utility market potential study to be prepared by an independent third party. Public Counsel would add language intended to protect the independence of the third party from undue influence by the utility. The NRDC proposes that the market potential study be procured and managed by an unidentified state entity, in keeping with its desire to compel use of a single statewide market potential study.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the additional language propose by Public Counsel to protect the independence of the contractor engaged to produce the utility market potential study. The NRDC's proposal will not be adopted as the commission wants to continue to allow for the use of utility-specific market potential studies. In addition, there is no state entity available to perform that function.

COMMENT #11: Paragraph 20.094(3)(A)4 provides that a utility market potential study must include an estimate of the achievable potential savings from low-income demand-side programs, regardless of cost-effectiveness. KCP&L and GMO suggest the first sentence of the paragraph be deleted because the phrase is not defined.

RESPONSE: The commission believes that the paragraph as proposed is appropriate and will not adopt the proposed change.

COMMENT #12: The Division of Energy and Public Counsel propose additional paragraphs that prescribe additional details that must be addressed in a utility market potential study.

RESPONSE: The commission will not adopt any of the proposed additional prescriptive requirements. Prescribing additional requirements is not necessary as it may be presumed that the experts engaged to perform the study will be able to perform an appropriate study without the imposition of inflexible standards within the regulation.

COMMENT #13: Subparagraph 20.094(3)(B) requires the utility engaging a market potential study to allow an opportunity for staff and stakeholder review and input in the planning stages of the study. The National Housing Trust strongly supports that requirement. The NRDC would insert a reference to its concept of having an unidentified state entity assume the role of the utility in eliciting input about the planning of the study.

RESPONSE: The commission thanks the National Housing Trust for its comment. The commission has not accepted the NRDC's proposal to use a state entity to procure a market potential study and will not adopt the proposed change to this subsection.

COMMENT #14: Section 20.094(4) allows an electric utility to apply for approval of a demand-side portfolio. Staff proposes insertion of an missing "a" as a grammatical correction. Ameren Missouri proposes the use of "portfolio" to replace "program plans" in the first sentence of the section.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt both proposed changes.

COMMENT #15: Among other things, subsection 20.094(4)(B) requires the utility to provide certain workpapers with all formulas intact. Staff would add that links must also be provided intact. The NRDC would insert a reference to market potential documents prepared by an undefined state entity.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the change proposed by staff. The commission will not adopt NRDC's proposal to designate a state agency to prepare a statewide market potential study and, therefore, will not adopt the change proposed by the NRDC.

COMMENT #16: Staff proposes a change to paragraph 20.094(4)(B)1 to ensure that the market potential study that the utility must submit contains information specific to the service territory of that utility.

RESPONSE AND EXPLANATION OF CHANGE: Staff's proposed change is appropriate and will be adopted.

COMMENT #17: KCP&L and GMO suggest that paragraphs 20.094(4)(B)1 through 20.094(4)(B)3 are requirements for a market potential study that are more properly moved to section 20.094(3), which relates to market potential studies.

RESPONSE: The commission disagrees with KCP&L and GMO. The requirements are related to the market potential study, but the paragraphs require the utility to provide information that the commission needs to see in relation to the utility's application for approval of its demand-side programs or portfolio. The requirements are appropriately included in this section and KCP&L and GMO's proposed change will not be adopted.

COMMENT #18: Paragraph 20.094(4)(B)2 requires an electric utility's application for approval of demand-side programs to include a description of the process and assumptions used to determine technical potential, economic potential, maximum achievable potential and realistic achievable potential for each customer class. The NRDC suggests the requirement to describe realistic achievable potential be deleted from the paragraph.

RESPONSE: The commission believes a description of the way that the realistic achievable potential was determined will be helpful. The commission will not adopt the proposed change.

COMMENT #19: Subparagraph 20.094(4)(B)3.C requires an electric utility's application for approval of demand-side programs to include a twenty (20) year baseline energy and demand forecast that includes an account of changes in customer combined heat and power applications. Staff would modify that requirement to refer only to "naturally occurring" customer applications to be consistent with the definition of baseline demand forecast and baseline energy forecast elsewhere in these rules. Public Counsel would delete the subparagraph as unnecessary.

RESPONSE AND EXPLANATION OF CHANGE: The commission believes the information required will be useful and will not delete the subparagraph. The change proposed by staff will be adopted.

COMMENT #20: Subsection 20.094(4)(C) requires an electric utility's application for approval of demand-side programs to include a demonstration of the cost-effectiveness of the proposed demand-side programs. The paragraphs under that subsection describe the items to be included in that demonstration. The NRDC suggests the utility be required to provide all workpapers related to its demonstration. The Division of Energy would specifically exclude programs targeted to low-income customers, which do not need to be demonstrated to be cost-effective as provided in section 393.1075.4, RSMo.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the proposal offered by the NRDC and it will be adopted. The Division of

Energy correctly points out that programs targeted to low-income customers do not need to be demonstrated to be cost effective. However, for analysis purposes it is preferable to be able to see the cost-effectiveness of the utility's entire portfolio, including programs targeted to low-income customers. The change proposed by the Division of Energy will not be adopted.

COMMENT #21: Paragraph 20.094(4)(C)1 requires an electric utility to include a description of its calculation of its total resource cost test (TRC) and its avoided costs calculations. Staff would make the word cost plural. Public Counsel would add a reference to the utility's earnings opportunity.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the change proposed by staff. Public Counsel's additional reference would vary from the statutory definition of TRC and will not be adopted.

COMMENT #22: Paragraph 20.094(4)(C)2 contains a reference to the "non-participant test." The definition of "non-participant test" found in subsection 20.092(1)(JJ) has been replaced with a definition of "ratepayer impact measure (RIM) test" in subsection 20.092(1)(NN). The reference in this paragraph should be changed accordingly.

RESPONSE AND EXPLANATION OF CHANGE: The commission will make the necessary change.

COMMENT #23: Paragraph 20.094(4)(C)3 requires an electric utility to include a description of impact on revenue requirements resulting from the integration analysis performed as part of the utility's integrated resource planning under Chapter 22 of the commission's rules. The Division of Energy would delete this requirement because it opposes the linkage of the MEEIA process with the Chapter 22 integrated resource planning process.

RESPONSE: As previously indicated, the commission believes the linkage with the Chapter 22 integrated resource planning process is appropriate and necessary. The commission will not adopt the change proposed by the Division of Energy.

COMMENT #24: Staff proposes to create a new paragraph 20.094(4)(C)4 that would require an electric utility to include a description of the impact on annual earnings opportunity of postponement of new supply side resources and the early retirement of existing supply side resources as a result of all demand-side programs included in the application.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff that the additional information will be helpful. The proposed change, using slightly different language, will be adopted.

COMMENT #25: Subsection 20.094(4)(D) requires an electric utility to include a description of each proposed demand-side program. Multiple paragraphs within that subsection then set out the details of what must be included in that description. The NRDC suggests the utility be required to provide all workpapers related to its description.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the NRDC and will adopt the proposed change.

COMMENT #26: Public Counsel proposes a change to paragraph 20.094(4)(D)2 that would clarify that the description of each proposed demand-side program include individual measures and program-specific TRC ratios.

RESPONSE AND EXPLANATION OF CHANGE: Requiring that level of description for individual programs is unnecessary and unduly onerous. Measure level cost-effectiveness will be contained in the market potential studies. The commission will not adopt the change proposed by Public Counsel.

COMMENT #27: Public Counsel proposes a change to paragraph 20.094(4)(D)3 that would require a description of "customer incentives ranges" rather than "customer incentives."

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Public Counsel that the change will help clarify the requirements of the paragraph. The proposed change will be adopted.

COMMENT #28: Paragraph 20.094(4)(D)6 requires the utility to provide a description of projected gross and net annual energy savings for each proposed demand-side program. The NRDC recommends the paragraph be expanded to require a description of lifetime energy savings as well. It argues that lifetime energy savings most closely correlates with the value of benefits to the economy and to ratepayers. Public Counsel recommends the paragraph be deleted for clarity.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the NRDC that lifetime energy savings should also be described. That change will be adopted. Public Counsel does not explain why deleting the paragraph will improve clarity, and that change will not be adopted.

COMMENT #29: Paragraph 20.094(4)(D)7 requires the utility to provide a description of proposed annual and cumulative energy savings targets. Staff would simplify that requirement to just proposed energy savings targets.

Staff indicates the change is needed to be consistent with the definition of energy savings target found in subsection 20.092(1)(X).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff and will adopt the proposed change.

COMMENT #30: Paragraph 20.094(4)(D)8 requires the utility to provide a description of projected gross and net annual demand savings. Public Counsel recommends the paragraph be deleted for clarity.

RESPONSE: Public Counsel does not explain why deleting the paragraph will improve clarity, and that change will not be adopted.

COMMENT #31: Paragraph 20.094(4)(D)9 requires the utility to provide a description of proposed annual demand savings targets and cumulative demand savings targets. Staff would simplify that requirement to just proposed demand savings targets to be consistent with the definition of demand savings target found in subsection 20.092(1)(O).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff and will adopt the proposed change.

COMMENT #32: Paragraph 20.094(4)(D)10 requires the utility to provide a description of net-to-gross factors. Public Counsel would limit that description of those factors to just free ridership and spillover.

RESPONSE: Public Counsel does not explain why the description of net-to-gross factors should be limited to just those two factors. The commission will not adopt the proposed change.

COMMENT #33: Paragraph 20.094(4)(D)12 requires the utility to provide a description of certain market transformation elements. Staff recommends some clarifications to the requirement. Public Counsel would delete the entire paragraph for clarification.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the clarifications proposed by staff. Public Counsel does not explain why deleting the paragraph will clarify the rule. That proposed change will not be adopted.

COMMENT #34: Paragraph 20.094(4)(D)13 requires the utility to provide a description of its EM&V plan. Public Counsel would delete the entire paragraph for clarification.

RESPONSE: Public Counsel does not explain why deleting the paragraph will clarify the rule. The proposed change will not be adopted.

COMMENT #35: Paragraph 20.094(4)(D)15 requires the utility to provide a description of all strategies used to minimize free riders. Public Counsel would delete the entire paragraph for clarification.

RESPONSE: Public Counsel does not explain why deleting the paragraph will clarify the rule. The proposed change will not be adopted.

COMMENT #36: Paragraph 20.094(4)(D)16 requires the utility to provide a description of all strategies used to maximize spillover. Public Counsel would delete the entire paragraph for clarification.

RESPONSE: Public Counsel does not explain why deleting the paragraph will clarify the rule. The proposed change will not be adopted.

COMMENT #37: Public Counsel would add a paragraph to subsection 20.094(4)(D) that would require the utility to describe a detailed notification plan to inform customer classes and trade allies when the utility's portfolio budget will be exhausted.

RESPONSE: The commission does not believe the sharp restrictions on the utility's portfolio budget proposed by Public Counsel are necessary or appropriate. The proposed change will not be adopted.

COMMENT #38: Subsection 20.094(4)(E) requires a utility to demonstrate and explain how its proposed demand-side programs will progress toward the statutory goal of achieving all cost-effective demand-side savings. The subsection also requires the utility to explain any shortfall from the non-binding goals established in section 20.094(2). Public Counsel would delete the requirement to explain any shortfall, as it also proposes to delete the non-binding goals established in section 20.094(2).

RESPONSE: The commission has not deleted the non-binding goals established in section 20.094(2). While those goals are not binding on the utilities, the commission believes that an explanation should be given if those goals are not met. The commission will not adopt the proposed change.

COMMENT #39: Subsection 20.094(4)(G) concerns the utility's designation of program pilots; demand-side programs that are designed to operate on a limited basis for evaluation purposes. Public Counsel would add an explicit reference to research and development as an alternative to program pilots. It explains the change is necessary to reflect Cycle II program considerations regarding research and development. The Division of Energy would modify the consideration given to program pilots targeted to low-income customers by exempting them from demonstrating cost-effectiveness because they do not need to be shown to be cost-effective as provided in section 393.1075.4, RSMo.

RESPONSE AND EXPLANATION OF CHANGE: Public Counsel's proposed change to include research and development in the subsection appears to reflect a change in preferred terminology. However research and development fits easily within the term program pilot. Cluttering the subsection by adding the alternative terminology is not necessary. The commission will not adopt Division of Energy's proposal regarding cost-effectiveness testing. While programs targeted to low-income customers do not need to pass a cost-effectiveness test to be approved, there is value to the commission in knowing whether such programs are cost-effective.

COMMENT #40: Staff proposes a change to subsection 20.094(4)(H) to remove a redundant definition of Demand-Side Program Investment Mechanism (DSIM).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff and will adopt the proposed change.

COMMENT #41: Subsection 20.094(4)(I) discusses the demand-side programs and program plans that may be approved. Staff proposes to add "budget" to the list of items that must be approved by the commission. Also, the subsection references "annual" demand and energy savings targets. The definitions of demand savings targets and energy savings targets at 20.092(1)(O) and 20.092(1)(X) have been changed to remove "annual" so this reference to those terms must also be changed. The National Housing Trust supports the subsection's designation of the TRC as a preferred cost-effectiveness test.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the change proposed by staff.

COMMENT #42: Paragraph 20.094(4)(I)3 requires that to be approved, a demand-side program must have been considered in the utility's integrated resource planning (IRP) process to determine the impact of the programs on the net present value of revenue requirements of the utility. The Division of Energy would delete the entire paragraph to avoid the linkage of MEEIA with the IRP process.

RESPONSE: The commission believes that the IRP provides an essential baseline for evaluating the impact of demand-side programs. The Division of Energy's proposal to delete the paragraph will not be adopted.

COMMENT #43: Subsection 20.094(4)(J) establishes the circumstances in which the commission will approve demand-side programs targeted to low-income customers or general education campaigns. Staff proposes minor wording changes to clarify the rule and to correct an incorrect rule citation. The Division of Energy proposes to delete the portion of the rule that refers to demand-side programs that have a total resource cost test ratio of less than one for programs targeted to low-income customers or for general education campaigns. The Division of Energy explains that the MEEIA statute, section 393.1075(4), provides that such programs do not need to meet a cost-effectiveness test so long as the commission finds them to be in the public interest.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the clarification proposed by staff. Also, the Division of Energy is correct, demand-side programs targeted to low-income customers or for general education campaigns do not need to meet any cost-effectiveness test. The commission will adopt the proposed change. The commission also notes that subsection (J) includes a paragraph 1, but not any subsequent paragraphs. To avoid having a single paragraph, the existing paragraph 1 will be incorporated into subsection (J).

COMMENT #44: Staff recommends the correction of a rule reference in subsection 20.094(4)(K).

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the change proposed by staff.

COMMENT #45: Subsection 20.094(4)(M) indicates the commission shall approve, approve with modifications acceptable to the utility, or reject the utility's DSIM proposal at the same time it acts on the utility's application for approval of its demand-side programs. The NRDC urges the commission to delete the requirement that any modifications in the programs must be acceptable to the utility.

RESPONSE: Utility participation in MEEIA is optional. The commission has no authority to force any changes in the program on the utility. If the utility does not approve of the modifications it has the option of refusing to participate in MEEIA. Of course, if the utility chooses not to implement programs acceptable to the commission, it loses out on the benefits it would receive from that participation. But that choice belongs to the utility. The commission will not adopt the proposed change.

COMMENT #46: Paragraph 20.094(5)(A)1 specifies when a utility must file an application for modification of its demand-side programs to address overruns in its budget for implementation of those programs. The proposed rule requires such an application be filed if there is a variance of forty (40) percent or more from the approved budget. Staff would reduce that to a twenty (20) percent variance. Staff also proposes some language changes to clarify the paragraph. Public Counsel would eliminate the variance allowance entirely and require the utilities to strictly adhere to their approved budgets.

RESPONSE AND EXPLANATION OF CHANGE: The commission believes that utilities need to have some flexibility in their adherence to approved budgets. Otherwise, they will have a strong incentive to be unduly conservative in their decisions about which programs they will agree to offer. The commission will reduce the allowed variance to twenty (20) percent as proposed by staff and will make the clarifying changes proposed by staff.

COMMENT #47: Paragraph 20.094(5)(A)2 requires a utility to file an application to modify its demand-side programs under certain circumstances. Staff, KCP&L and GMO, and Ameren Missouri urge the commission to delete this paragraph because it unduly restricts the utilities' ability to manage their approved demand-side programs. The Division of Energy also believes the paragraph is unduly restrictive, but suggests it could be retained if the "shall" file an application is changed to "may" file an applications.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees the paragraph is unduly restrictive and will delete it. The remaining paragraphs in that subsection are renumbered accordingly.

COMMENT #48: Paragraph 20.094(5)(A)3 requires a utility's application to modify demand-side programs to include an explanation of the proposed changes. Ameren Missouri suggests that the requirement of a "complete" explanation be replaced with a "reasonably detailed" explanation, reasoning that a "complete" description is unattainable. The paragraph requires the utility to provide certain workpapers with all formulas intact. Staff would add that links must also be provided intact.

RESPONSE AND EXPLANATION OF CHANGE: The commission understands Ameren Missouri's concern, but the requirement of a "complete" description should not be weakened to the extent that a utility would be able to hide any aspect of its proposed modification. The commission will alter the paragraph to require a "complete, reasonably detailed" description. The commission will make the same change in paragraph 20.094(6)(A)1. The commission will adopt the change proposed by staff.

COMMENT #49: Staff recommends a rule reference correction in paragraph 20.094(5)(A)6.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the proposed change.

COMMENT #50: Subsection 20.094(6)(A) requires the utility to provide certain workpapers with all formulas intact. Staff would add that links must also be provided intact.

REPONSE AND EXPLANATION OF CHANGE: The commission will adopt the proposed change.

COMMENT #51: Paragraph 20.094(6)(A)2 requires the utility applying to discontinue demand-side programs to provide the EM&V reports for the demand-side program in question. KCP&L and GMO explain that such EM&V report might not yet be available at the time the application is filed. They suggest the paragraph be modified to recognize that fact.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the proposed change.

COMMENT #52: Subsection 20.094(6)(B) describes steps an electric utility must take if demand-side program subject to the TRC is determined to be not cost-effective. The Division of Energy would modify the subsection to clarify that it does not apply to demand-side programs directed to low-income customers or general education campaigns that are not subject to a cost-effectiveness test under the MEEIA statute. Ameren Missouri would modify the subsection to achieve the same purpose as the Division of Energy, but using different language. Public Counsel would delete the entire subsection as unnecessary and unduly burdensome on the utilities.

RESPONSE AND EXPLANATION OF CHANGE: The commission believes that the information to be provided in this subsection will be helpful in determining why the existing demand-side program failed and how a more successful program can be implemented. It is not unduly burdensome on the utilities and none of the utilities that filed comments indicated any such concern. The commission agrees with the concerns raised by the Division of Energy and Ameren Missouri. The language proposed by Ameren Missouri best resolves the concern and will be adopted.

COMMENT #53: Section 20.094(7) deals with large utility customers that the MEEIA statute allows to opt-out of participation in MEEIA. Subsection 20.094(7)(A) reiterates the statute's listing of three types of customers who may opt-out of MEEIA. Paragraph 20.094(7)(A)1 allows a customer who has "one (1) or more accounts within the service territory of the electric utility that has a demand of the individual accounts of five thousand (5,000) kW or more in the previous twelve (12) months." Under the statute, section 393.1075.7(1), the qualifying customer need only inform the utility that it is opting-out of MEEIA and thereby avoid paying any MEEIA related costs that must be paid by the utility's other customer. Walmart - which has multiple accounts that total well more than 5,000 kW, but which does not have any individual accounts reaching that total - asks the commission to clarify paragraph 20.094(7)(A)1 to allow it to qualify for opt-out under that provision.

RESPONSE AND EXPLANATION OF CHANGE: The commission understands Walmart's concern. But what Walmart is asking the commission to do is a modification of the clear words of the statute, which allows opt-out under the first threshold only for a customer who has "one or more accounts within the service territory of the electrical corporation that has a demand of five thousand kilowatts or more." The commission cannot modify the words of the statute to meet Walmart's request.

In considering Walmart's request, the commission notes that the existing language of the rule varies from the language of the statute. The commission will modify paragraph 20.094(7)(A)1 to track the language of the statute.

COMMENT #54: Paragraph 20.094(7)(A)3 regards large customers who have accounts within the utility's service territory that have, in aggregate, a demand of two thousand five hundred (2,500) or more kW. Walmart meets this criteria. Unlike customers who can opt-out under the five thousand (5,000) kW threshold, customers who qualify under this threshold must also demonstrate an "achievement of savings at least equal to those expected from utility-provided programs." Renew Missouri suggests that the large customers who seek to qualify for opt-out under this threshold be required to make the documentation supporting their claim publicly available on the commission's website. Walmart and the Missouri Industrial Energy Consumers (MIEC) adamantly opposed the public disclosure of their energy efficiency efforts because the details of those efforts are competitively sensitive and should not be publically disclosed. The Midwest Energy Efficiency Alliance is also concerned about the documentation opt-out customers must provide to meet the third threshold and suggest they provide an EM&V report that adheres to the same guidelines and level of rigor required of utility-provided demand-side savings programs.

Walmart and Renew Missouri also express concern that there is no clear standard to determine whether a customer seeking to opt-out under the third threshold has met the required level of savings. KCP&L and GMO proposed the establishment of five percent (5%) of the customer annual kilowatt hour usage as the standard to be met. Walmart pointed out that such standard is arbitrary, and might be unfair if the utility's actual savings were either more or less than that amount. Walmart suggests that staff make an explicit statement in its approval of each utility's MEEIA programs as to the level of savings that can be expected from utility-provided programs. That would then be the standard by which opt-out customers are measured.

RESPONSE AND EXPLANATION OF CHANGE: The commission will not require that customer documentation be made available to the public. The commission does not regulate the customers of the electric utilities and any public interest in seeing the documentation they submit is outweighed by the customer's interest in protecting that information from disclosure to competitors. The question of establishing a standard that opt-out customers must meet is difficult and none of the commenters offered an acceptable solution. KCP&L and GMO's suggestion of a five percent standard is arbitrary and potentially unfair. There really is no good solution for this problem. The comments acknowleged that staff is currently doing a good job evaluating opt-out decisions without a clear standard. It will have to continue to do so. The commission will modify the paragraph by deleting the "catch-all provision in subparagraph D as unnecessary.

COMMENT #55: Paragraph 20.094(7)(A)4 provides that opt-outs under the third threshold are valid only for the term of the MEEIA cycle approved by the commission. With each new cycle, the opt-out customers would again need to apply. Walmart opposes the limitation of the opt-out period for two reasons. First, the term of the MEEIA cycle is unlikely correspond to the window for submission of opt-out requests established in the rule. Second, Walmart contends any limitation of the effectiveness of an opt-out should be tied to the statutory comparison of achieved savings. So long as the customer's savings meet or exceed the savings anticipated from the utility's program, the customer should be able to remain opted-out. KCP&L and GMO would make the time limited opt-out apply to customer's opting-out under all three thresholds. It would also base the opt-out periods on calendar years, rather than MEEIA cycles to avoid the conflict with the opt-out window. Ameren Missouri would tie the opt-out period to the implementation period rather than the MEEIA cycle.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the commenters that the length of a MEEIA cycle is not an appropriate limitation on an opt-out. The need to reapply frequently would be burdensome on the customers wishing to opt-out and would ignore the fact that many energy saving measures do not expire in a short amount of time. It is also appropriate to set a time for opt-out customers under the first and second thresholds to reaffirm their notice to opt-out. The commission will require all opt-out customers to reaffirm their opt-out at least once every ten years.

COMMENT #56: Ameren Missouri commented that paragraph 20.094(7)(A)4 would be better denominated as subparagraph 20.094(7)(A)3.G.

RESPONSE AND EXPLANATION OF CHANGE: After reviewing the make-up of section (7), the commission concludes that a more extensive renumbering is needed. Subparagraph 20.094(7)(A)3.E and F are better denominated as new subsections (B) and (C). Paragraph 20.094(7)(A) 4 will then be denominated as subsection (D). All subsequent subsections will be renumbered accordingly.

COMMENT #57: Staff recommends a change in subsection 20.094(7)(B) to use a corrected title for the portion of the commission's staff to whom written notification of opt-out is to be submitted.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the proposed change.

COMMENT #58: Paragraph 20.094(7)(F)1 establishes a period between September 1 and October 30 of each year in which opt-out notices can be submitted by customers. The paragraph provides that such notices are to be effective for the next program year. Ameren Missouri and KCP&L and GMO advise the commission to change program year to calendar year.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees and will adopt the proposed change.

COMMENT #59: Paragraph 20.094(7)(F)2 describes the effective date of and possible cancellation of a customer's opt-out. Staff proposes some clarifying changes to the paragraph. Ameren Missouri and KCP&L and GMO would change program year to calendar year. KCP&L and GMO would also expand the paragraph to include customers seeking opt-out under the first and second thresholds as well.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that program year should be changed to calendar year. To be consistent with other changes to the rule, this paragraph will be made to apply to customers seeking opt-out under thresholds one and two as well as three.

COMMENT #60: Subsection 20.094(7)(H) concerns an opt-out customers revocation of its decision to opt-out. Ameren Missouri and KCP&L and GMO propose that program year be changed to calendar year.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the proposed change.

COMMENT #61: The National Housing Trusts supports the updated language in subsection 20.094(8)(A) regarding state tax credit recipients.

RESPONSE: The commission thanks the National Housing Trust for its comment. However, SB112, which was passed in the last legislative session, eliminated the statutory language regarding state tax credit recipients. As a result, all of subsections 20.094(8)(A) and (B) must be eliminated as contrary to the revised statute. If SB112 is vetoed and does not become law, the subsections merely repeat the statute and are not necessary. The remaining subsection will be renumbered accordingly.

COMMENT #62: Subsection 20.094(8)(B) requires a utility to obtain an attestation from each customer who receives a monetary incentive to participates in a demand-side program. The customer must attest that the customer has not received a tax credit listed in subsection 20.094(8)(A), and must acknowledge that the penalty for providing false information is a class A misdemeanor. Ameren Missouri claims this requirement is too difficult to fulfill and suggests that as an alternative, the utility put a notice of the tax credit restrictions in the Terms and Conditions of the application customers would submit to participate in the program.

RESPONSE: Because of the passage of SB112, the entire subsection will be deleted.

COMMENT #63: Section 20.094(9) requires the electric utilities and their stakeholders to form collaboratives to provide input on design, implementation and review of demand-side programs and market potential studies. Ameren Missouri offers a general comment describing its concern that the primary responsibility for the collaboratives remain with the utility.

RESPONSE: The commission agrees with Ameren Missouri. The utilities' participation in MEEIA is voluntary, so the collaboratives must work with the utilities rather than attempt to dictate to them.

COMMENT #64: Subsection 20.094(9)(B) requires electric utilities and their stakeholders to form a statewide collaborative to consider statewide issues and concerns. Renew Missouri and the National Housing Trust indicates their strong support for the strengthening of the statewide collaborative. The Midwest Energy Efficiency Alliance also supports the strengthening of the statewide collaborative. It does not suggest any specific changes to the proposed rule, but offers several suggestions on ways the workings of the collaborative can be improved.

RESPONSE: The commission agrees the statewide collaborative can be a useful tool. The rule can provide a framework for the operations of that collaborative. The specific suggestions on how the collaborative is to function are best addressed by the collaborative as circumstances develop rather than being rigidly established in the text of the rule.

COMMENT #65: Subparagraph 20.094(9)(B)1.A directs the statewide collaborative to create and implement statewide protocols for evaluation, measurement and verification to energy efficiency savings by July 1, 2018.

Staff recommends a grammatical correction. Ameren Missouri would revise the subparagraph to recognize that utility participation in MEEIA is optional and that no statewide protocol can be forced on the utilities. Public Counsel would delete this subparagraph entirely, arguing that current EM&V practices vary widely between utilities depending upon whether it has deployed AMI.

RESPONSE AND EXPLANATION OF CHANGE: While EM&V practices may vary widely at this time, the development of statewide protocols can still be helpful. Ameren Missouri is correct that the idea that the statewide collaborative can implement statewide protocols implies the collaborative has more authority than it does. The commission will change "create and implement statewide protocols" to "develop statewide protocols" in recognition that the statewide collaborative does not have authority to dictate to the electric utilities. Because the effective date of these rules has been delayed, the commission will change the due date for statewide protocols to December 31, 2018.

COMMENT #66: Subparagraph 20.094(9)(B)1.D directs the statewide collaborative to explore other opportunities, such as development of a percentage adder for non-energy benefits. Staff urges the commission to delete the direction to pursue the development of a percentage adder. Public Counsel would delete the entire subparagraph because it believes consideration of non-energy benefits is beyond the scope of the MEEIA statute.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff that the general direction to the statewide collaborative to explore other opportunities is sufficient. There is no need to specify the possible development of a percentage adder. The commission will adopt the change proposed by staff.

COMMENT #67: Paragraph 20.094(9)(B)3 directs the statewide collaborative to create a semi-annual forum for discussion of statewide policy issues. The NRDC would require those forums to be held quarterly.

RESPONSE: The commission believes mandating two forums per year is sufficient. If the statewide collaborative decides that more frequent forums are needed it is free to schedule as many as it likes.

COMMENT #68: Section 20.094(10) concerns a statewide technical reference manual, a TRM. Public Counsel suggests the entire section be deleted as a statewide TRM is no longer needed in the current regulatory, policy and technological environment. The National Housing Trust expresses strong support for the statewide TRM.

RESPONSE: The Commission believes a statewide TRM still has value and will not delete the section.

COMMENT #69: Subsection 20.094(10)(A) directs utilities and stakeholders to create and implement a statewide TRM. Staff suggests this subsection be deleted as the statewide TRM has already been developed. KCP&L and GMO suggest a sentence be added to the end of the subsection to require that deemed values be used in calculations.

RESPONSE AND EXPLANATION OF CHANGE: The statewide TRM now exists and the direction to create it is unnecessary. The commission will delete the subsection and renumber the remaining subsections.

COMMENT #70: Paragraph 20.094(10)(B)2 indicates what is to be done if the commission rejects the proposed statewide TRM. Staff proposes changes to the paragraph to emphasize the responsibility of stakeholders to develop solutions to the problems that led the commission to reject the proposed statewide TRM. KCP&L and GMO would change "shall" to "may" to recognize that the stakeholders may decide they no longer want to submit a statewide TRM if the one they proposed is rejected by the commission.

RESPONSE AND EXPLANATION OF CHANGE: The changes proposed by staff, as well as that proposed by KCP&L and GMO, help to clarify the paragraph. Both will be adopted.

COMMENT #71: Subsection 20.094(10)(C) concerns the creation of an electronic platform to facilitate updated of the statewide TRM. Ameren Missouri proposes a change that would allow the commission to direct the statewide collaborative to begin the process of securing a vendor to provide that electronic platform.

RESPONSE AND EXPLANATION OF CHANGE: Ameren Missouri's proposal to allow the commission to further involve the statewide collaborative in the development of the electronic platform will not be adopted because the vendor must be hired through a state contract, with an RFP initiated by the commission.

COMMENT #72: Paragraph 20.094(10)(C)1 addresses the funding for the electronic platform authorized by this section. The Division of Energy proposes to modify this paragraph by exempting investor-owned utilities from the assessment if the statewide TRM does not include any measures that apply to that utility.

RESPONSE: The Division of Energy's proposal would needlessly complicate the funding provision and will not be adopted.

COMMENT #73: The Division of Energy recommends the creation of a new paragraph 20.094(10)(C)2 that would direct the statewide collaborative to recommend the amount of funding to be provided for the electronic platform and annual updates.

RESPONSE AND EXPLANATION OF CHANGE: The commission is open to suggestions from the statewide collaborative, but is unwilling to relinquish control over its budgeting decisions. The Division of Energy's proposal to further involve the collaborative will not be adopted.

COMMENT #74: KCP&L and GMO recommend the creation of a new paragraph that would say "use of the TRM is limited to funding participants."

RESPONSE: The proposed statement is vague and unenforceable. The commission can certainly determine how it uses the TRM and how it can be applied to the utilities it regulates, but it cannot control how others may choose to use the TRM. The proposed change will not be adopted.

COMMENT #75: Subsection 20.094(10)(D) concerns the annual updates of the statewide TRM. Ameren Missouri proposes the firm date of December 31 of each year be replaced with a more flexible requirement that the update occur annually. The process and schedule for the update would then be developed through the statewide collaborative process.

RESPONSE: The commission believes a firm date of December 31 each year is appropriate. If that date does not work, a variance from the rule may be requested.

COMMENT #76: The Division of Energy and staff propose the same change to paragraph 20.094(10)(D)1, to emphasize that staff will coordinate the annual update rather than perform that duty by itself. Ameren Missouri would go further and make the utilities responsible for the annual update through the statewide collaborative process.

RESPONSE AND EXPLANATION OF CHANGE: The commission will continue to coordinate the TRM process. The TRM contractor will likely facilitate the TRM update stakeholder meetings. The change proposed by staff will be adopted, but Ameren Missouri's change will not be adopted.

COMMENT #77: Ameren Missouri proposes a change to subparagraph 20.094(10)(D)1.A. The proposed subparagraph requires staff to convene stakeholder meetings no later than July 1 of each year to seek input on revisions to the TRM. Ameren Missouri would modify the requirement to remove the firm deadline to allow the utilities, rather than staff, to convene one or more stakeholder meetings.

RESPONSE AND EXPLANATION OF CHANGE: The commission will retain the authority to convene stakeholder meetings. Ameren Missouri's proposed change will not be adopted.

COMMENT #78: Paragraph 20.094(10(D)2 concerns the submission of proposed annual updates to the statewide TRM and the commission's approval or rejection of those updates. Ameren Missouri would remove the firm September 1 deadline from the rule consistent with its earlier comments. The Division of Energy would create a detailed process by which the commission or a designated regulatory law judge could consider proposed annual update changes. Staff suggests changes to emphasis the responsibility of stakeholders to propose solutions to problems identified by the commission.

RESPONSE AND EXPLANATION OF CHANGE: The detailed procedures proposed by the Division of Energy are already available to the commission and do not need to be included in the rule. The September 1 deadline will remain in the rule, a variance can be requested if necessary. Staff's changes will be adopted.

COMMENT #79: Subsection 20.094(10)(E) allows the commission to consider the appropriateness of using an approved statewide TRM in each utility's application for approval of demand-side programs. The Division of Energy would expand that provision to reference addition, modification, or continuance of demand-side programs or measures.

RESPONSE AND EXPLANATION OF CHANGE: The clarification proposed by the Division of Energy is unnecessary and will not be adopted.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities

4 CSR 240-20.094 Demand-Side Programs.

(1) The definitions of terms used in this section can be found in 4 CSR 240-20.092 Definitions for Demand-Side Programs and Demand-Side Programs Investment Mechanisms.

(2) Guideline to Review Progress Toward an Expectation that the Electric Utility's Demand-Side Programs Can Achieve a Goal of All Cost-Effective Demand-Side Savings. The goals established in this section are not mandatory and no penalty or adverse consequence will accrue to a utility that is unable to achieve the listed annual energy and demand savings goals.

(A) The commission shall use the greater of the annual realistic amount of achievable energy savings and demand savings as determined through a market potential study or the following incremental annual demand-side savings goals as a guideline to review and determine whether the utility's demand-side programs can achieve a goal of all cost-effective demand-side savings:

1. For the utility's approved first program year: three-tenths percent (0.3%) of total annual energy and one percent (1.0%) of annual peak demand;

2. For the utility's approved second program year: five-tenths percent (0.5%) of total annual energy and one percent (1.0%) of annual peak demand;

3. For the utility's approved third program year: seven-tenths percent (0.7%) of total annual energy and one percent (1.0%) of annual peak demand;

4. For the utility's approved fourth program year: nine-tenths percent (0.9%) of total annual energy and one percent (1.0%) of annual peak demand;

5. For the utility's approved fifth program year: one-and-one-tenth percent (1.1%) of total annual energy and one percent (1.0%) of annual peak demand;

6. For the utility's approved sixth program year: one-and-three-tenths percent (1.3%) of total annual energy and one percent (1.0%) of annual peak demand;

7. For the utility's approved seventh program year: one-and-five-tenths percent (1.5%) of total annual energy and one percent (1.0%) of annual peak demand;

8. For the utility's approved eighth program year: one-and-seven-tenths percent (1.7%) of total annual energy and one percent (1.0%) of annual peak demand; and

9. For the utility's approved ninth and subsequent program years, unless additional energy savings and demand savings goals are established by the commission: one-and-nine-tenths percent (1.9%) of total annual energy and one percent (1.0%) of annual peak demand each year.

(B) The commission shall also use the greater of the cumulative annual realistic amount of achievable energy savings and demand savings as determined through a market potential study or the following cumulative demand-side savings goals as a guideline to review and determine whether the utility's demand-side programs can achieve a goal of all cost-effective demand-side savings:

1. For the utility's approved first program year: three-tenths percent (0.3%) of total annual energy and one percent (1.0%) of annual peak demand;

2. For the utility's approved second program year: eight-tenths percent (0.8%) of total annual energy and two percent (2.0%) of annual peak demand;

3. For the utility's approved third program year: one-and-five-tenths percent (1.5%) of total annual energy and three percent (3.0%) of annual peak demand;

4. For the utility's approved fourth program year: two-and-four-tenths percent (2.4%) of total annual energy and four percent (4.0%) of annual peak demand;

5. For the utility's approved fifth program year: three-and-five-tenths percent (3.5%) of total annual energy and five percent (5.0%) of annual peak demand;

6. For the utility's approved sixth program year: four-and-eight-tenths percent (4.8%) of total annual energy and six percent (6.0%) of annual peak demand;

7. For the utility's approved seventh program year: six-and-three-tenths percent (6.3%) of total annual energy and seven percent (7.0%) of annual peak demand;

8. For the utility's approved eighth program year: eight percent (8.0%) of total annual energy and eight percent (8.0%) of annual peak demand; and

9. For the utility's approved ninth year and subsequent program years, unless additional energy savings and demand savings goals are established by the commission: nine-and-nine-tenths percent (9.9%) of total annual energy and nine percent (9.0%) of annual peak demand for the approved ninth year, and then increasing by one-and-nine-tenths percent (1.9%) of total annual energy and by one percent (1.0%) of annual peak demand each year thereafter.

(3) Utility Market Potential Studies.

(A) The market potential study shall—

1. Consider both primary data and secondary data and analysis for the utility's service territory;

2. Be updated with primary data and analysis no less frequently than every three ((3) years. To the extent that primary data for each utility service territory is unavailable or insufficient, the market potential study may also rely on or be supplemented by data from secondary sources and relevant data from other geographic regions;

3. Be prepared by an independent third party. The utility shall provide oversight and guidance to the independent market potential contractor, but shall not influence the independent market potential study contractor's reports; and

4. Include an estimate of the achievable potential, regardless of cost-effectiveness, of energy savings from low-income demand-side programs. Energy savings from multifamily buildings that house low-income households may count toward this target.

(4) Applications for Approval of Electric Utility Demand-Side Programs or Portfolio. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission for approval of a demand-side portfolio.

(B) As part of its application for approval of demand-side programs, the electric utility shall file or provide a reference to the commission case that contains any of the following information. All models and spreadsheets shall be provided as executable versions in native format with all links and formulas intact:

1. A current market potential study. If the market potential study of the electric utility that is filing for approval of demand-side programs or a demand-side portfolio encompasses more than just the utility's service territory, the sampling methodology shall reflect the utility's service territory and shall provide statistically significant results for that utility:

A. Complete documentation of all assumptions, definitions, methodologies, sampling techniques, and other aspects of the current market potential study;

B. Clear description of the process used to identify the broadest possible list of measures and groups of measures for consideration;

2. Clear description of the process and assumptions used to determine technical potential, economic potential, maximum achievable potential, and realistic achievable potential for a twenty- (20-) year planning horizon for major end-use groups (e.g., lighting, space heating, space cooling, refrigeration, motor drives, etc.) for each customer class; and

3. Identification and discussion of the twenty- (20-) year baseline energy and demand forecasts. If the baseline energy and demand forecasts in the current market potential study differ from the baseline forecasts in the utility's most recent 4 CSR 240-22 triennial compliance filing, the current market potential study shall provide a comparison of the two (2) sets of forecasts and a discussion of the reasons for any differences between the two (2) sets of forecasts. The twenty- (20-) year baseline energy and demand forecasts shall account for the following:

A. Discussion of the treatment of all of the utility's customers who have opted out;

B. Future changes in building codes and/or appliance efficiency standards;

C. Changes in naturally occurring customer combined heat and power applications;

D. Third party and other naturally occurring demand-side savings; and

E. The increasing efficiency of advanced technologies.

(C) Demonstration of cost-effectiveness for each demand-side program and for the total of all demand-side programs of the utility. At a minimum, the electric utility shall provide all workpapers, with all models and spreadsheets provided as executable versions in native format with all links and formulas intact, and include:

1. The total resource cost (TRC) test and a detailed description of the utility's avoided costs calculations and all assumptions used in the calculation;

2. The utility shall also include calculations for the utility cost test, the participant test, the RIM test, and the societal cost test; 3. The impacts on annual revenue requirements and net present value of annual revenue requirements as a result of the integration analysis in accordance with 4 CSR 240-22.060 over the twenty- (20-) year planning horizon; and

4. The impacts from all demand-side programs included in the application on any postponement of new supply-side resources and the early retirement of existing supply-side resources, including annual and net present value of any lost utility earnings related thereto.

(D) Detailed description of each proposed demand-side program, including all workpapers with all models and spreadsheets provides as executable versions in native format with all links and formulas intact, to include at least:

1. Customers targeted;

2. Measures and services included;

3. Customer incentives ranges;

4. Proposed promotional techniques;

5. Specification of whether the demand-side program will be administered by the utility or a contractor;

6. Projected gross and net annual and lifetime energy savings;

7. Proposed energy savings targets;

8. Projected gross and net annual demand savings;

9. Proposed demand savings targets;

10. Net-to-gross factors;

11. Size of the potential market and projected penetration rates;

12. Any market transformation elements included in the demand-side program and an evaluation, measurement, and verification (EM&V) plan for estimating, measuring, and verifying the energy and demand savings that the market transformation efforts are expected to achieve;

13. EM&V plan including at least the proposed evaluation schedule and the proposed approach to achieving the evaluation goals pursuant to 4 CSR 240-20.093(7);

14. Budget information in the following categories:

A. Administrative costs listed separately for the utility and/or program administrator;

B. Demand-side program incentive costs;

C. Estimated equipment and installation costs, including any customer contributions;

D. EM&V costs; and

E. Miscellaneous itemized costs, some of which may be an allocation of total costs for overhead items such as the market potential study or the statewide technical reference manual;

15. Description of all strategies used to minimize free riders;

16. Description of all strategies used to maximize spillover; and

17. For demand-side program plans, the proposed implementation schedule of individual demand-side programs.

(G) Designation of Program Pilots. For demand-side programs designed to operate on a limited basis for evaluation purposes before full implementation (program pilot), the utility shall provide as much of the information required under subsections (2)(C) through (E) of this rule as is practical and shall include explicit questions that the program pilot will address, the means and methods by which the utility proposes to address the questions the program pilot is designed to address, a provisional cost-effectiveness evaluation if the program is subject to a cost-effectiveness test under section 393.1075.4, RSMo, the proposed geographic area, and duration for the program pilot.

(H) Any existing demand-side program with tariff sheets in effect prior to the effective date of this rule shall be included in the initial application for approval of demand-side programs if the utility intends for unrecovered and/or new costs related to the existing demand-side program be included in the DSIM.. The commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of demand-side program plans within one hundred twenty (120) days of the filing of an application under this section only after providing the opportunity for a hearing. In the case of a utility filing an application for approval of an individual demand-side program, the commission shall approve, approve with modification acceptable to the electric utility, or reject applications within sixty (60) days of the filing of an application under this section only after providing the opportunity for a hearing.

(I) The commission shall consider the TRC test a preferred cost-effectiveness test. For demand-side programs and program plans that have a TRC test ratio greater than one (1), the commission shall approve demand-side programs or program plans, budgets, and demand and energy savings targets for each demand-side program it approves, provided it finds that the utility has met the filing and submission requirements of this rule and the demand-side programs—

1. Are consistent with a goal of achieving all cost-effective demand-side savings;

2. Have reliable evaluation, measurement, and verification plans; and

3. Are included in the electric utility's preferred plan or have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility.

(J) The commission shall approve demand-side programs targeted to low-income customers or general education campaigns, if the commission determines that the utility has met the filing and submission requirements of this rule, the demand-side programs are in the public interest, and the demand-side programs meet the requirements stated in subsection (4)(I).If a demand-side program is targeted to low-income customers, the electric utility must also state how the electric utility will assess the expected and actual effect of the demand-side program on the utility's bad debt expenses, customer arrearages, and disconnections.

(K) The commission shall approve demand-side programs which have a TRC test ratio less than one (1), if the commission finds the utility has met the filing and submission requirements of this rule and the costs of such demand-side programs above the level determined to be cost-effective are funded by the customers participating in the demand-side programs or through tax or other governmental credits or incentives specifically designed for that purpose and meet the requirements as stated in subsection (4)(I).

(5) Applications for Approval of Modifications to Electric Utility Demand-Side Programs.

(A) Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility—

1. Shall file an application with the commission for modification of demand-side programs when there is a variance of twentypercent (20%) or more in the budget approved by the commission under subsection (4)(I) or other commission order(s) and/or any demand-side program design modification which is no longer covered by the approved tariff sheets for the demand-side program;

2. The application shall include a complete, reasonably detailed, explanation for and documentation of the proposed modifications to each of the filing requirements in section (3). All models and spreadsheets shall be provided as executable versions in native format with all links and formulas intact;

3. The electric utility shall serve a copy of its application to all parties to the case under which the demand-side programs were approved;

4. The parties shall have thirty (30) days from the date of filing of an application to object to the application to modify;

5. If no objection is raised within thirty (30) days, the commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of modification of demand-side programs within forty-five (45) days of the filing of an application under this section, subject to the same guidelines as established in subsection (4)(I);

6. If objections to the application are raised, the commission shall provide the opportunity for a hearing.

(B) For any demand-side program design modifications approved by the commission, the utility shall file for and receive approval of associated tariff sheets prior to implementation of approved modifications.

(6) Applications for Approval to Discontinue Electric Utility Demand-Side Programs. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission to discontinue demand-side programs.

(A) The application shall include the following information. All models and spreadsheets shall be provided as executable versions in native format with all links and formulas intact.

1. Complete, reasonably detailed explanation for the utility's decision to request to discontinue a demand-side program.

2. EM&V reports for the demand-side program in question, if available.

3. Date by which a final EM&V report for the demand-side program in question will be filed.

(B) If the TRC calculated for a demand-side program not targeted to low-income customers or a general education campaign is not cost-effective, the electric utility shall identify the causes why and present possible demand-side program modifications that could make the demand-side program cost-effective. If analysis of these modified demand-side program designs suggests that none would be cost-effective, the demand-side program may be discontinued. In this case, the utility shall describe how it intends to end the demand-side program and how it intends to achieve the energy and demand savings initially estimated for the discontinued demand-side program. Nothing here-in requires utilities to end any demand-side program which is subject to a cost-effectiveness test deemed not cost-effective immediately. Utilities proposal for any discontinuation of a demand-side program should consider, but not be limited to: the potential impact on the market for energy efficiency services in its territory; the potential impact to vendors and the utilities relationship with vendors; the potential disruption to the market and to customer outreach efforts from immediate starting and stopping of demand-side programs; and whether the long term prospects indicate that continued pursuit of a demand-side program will result in a long-term cost-effective benefit to ratepayers.

(C) The commission shall approve or reject such applications for discontinuation of utility demand-side programs within thirty (30) days of the filing of an application under this section only after providing an opportunity for a hearing.

(7) Provisions for Customers to Opt-Out of Participation in Utility Demand-Side Programs.

(A) Any customer meeting one (1) or more of the following criteria shall be eligible to opt-out of participation in utility-offered demand-side programs:

1. The customer has one (1) or more accounts within the service territory of the electric utility that has a demand of five thousand (5,000) kW or more;

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

3. The customer has accounts within the service territory of the electric utility that have, in aggregate across its accounts, a coincident demand of two thousand five hundred (2,500) kW or more in the previous twelve (12) months, 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 demand-side programs. The customer shall submit, to commission staff, sufficient documentation to demonstrate compliance with these criteria, including but, not limited to:

A. Lists of all energy efficiency measures with work papers to show energy savings and demand savings. This can include engineering studies, cost benefit analysis, etc.;

B. Documentation of anticipated lifetime of installed energy efficiency measures;

C. Invoices and payment requisition papers;

(B). For utilities with automated meter reading and/or advanced metering infrastructure capability, the measure of demand is the customer coincident highest billing demand of the individual accounts during the twelve (12) months preceding the opt-out notification.

(C) Any confidential business information submitted as documentation shall be clearly designated as such in accordance with 4 CSR 240-2.135.

(D) Opt-out in accordance with paragraphs (7)(A)1,2 and 3. shall be in effect for ten years, beginning with the calendar year subsequent to the submission of the opt-out.

(E) Written notification of opt-out from customers meeting the criteria under paragraph (7)(A)1. or 2. shall be sent to the utility serving the customer. Written notification of opt-out from customers meeting the criteria under paragraph (7)(A)3. shall be sent to the utility serving the customer and the manager of the energy resources department of the commission or submitted through the commission's electronic filing and information system (EFIS) as a non-case-related filing. In instances where only the utility is provided notification of opt-out from customers meeting the criteria under paragraph (7)(A)3., the utility shall forward a copy of the written notification to the manager of the energy resources department of the commission and submit the notice of opt-out through EFIS as a non-case-related filing.

(F) Written notification of opt-out from customer shall include at a minimum:

1. Customer's legal name;

2. Identification of location(s) and utility account number(s) of accounts for which the customer is requesting to opt-out from demand-side program's benefits and costs; and

3. Demonstration that the customer qualifies for opt-out.

(G) For customers filing notification of opt-out under paragraph (7)(A)1. or 2., notification of the utility's acknowledgement or plan to dispute a customer's notification to opt-out of participation in demand-side programs shall be delivered in writing to the customer and to the staff within thirty (30) days of when the utility received the written notification of opt-out from the customer.

(H) For customers filing notification of opt-out under paragraph (7)(A)3., the staff will make the determination of whether the customer meets the criteria of paragraph (7)(A)3. Notification of the staff's acknowledgement or disagreement with customer's qualification to opt-out of participation in demand-side programs shall be delivered to the customer and to the utility within thirty (30) days of when the staff received complete documentation of compliance with paragraph (7)(A)3.

(I) Timing and Effect of Opt-Out Provisions.

1. A customer notice of opt-out shall be received by the utility no earlier than September 1 and not later than October 30 to be effective for the following calendar year.

2. For that calendar year in which the customer receives acknowledgement of opt-out and each successive calendar year until the customer revokes the notice pursuant to subsection (7)(K), or the customer is notified that it no longer satisfies the requirements of paragraph (7)(A)1,2 or 3., none of the costs of approved demand-side programs of an electric utility offered pursuant to 4 CSR 240-20.093, 4 CSR 240-20.094, or by other authority and no other charges implemented in accordance with section 393.1075, RSMo, shall be assigned to any account of the customer, including its affiliates and subsidiaries listed on the customer's written notification of opt-out.

(J) Dispute Notices. If the utility or staff provides notice that a customer does not meet the opt-out criteria to qualify for opt-out or renewal of opt-out, the customer may file a complaint with the commission. The commission shall provide notice and an opportunity for a hearing to resolve any dispute.

(K) Revocation. A customer may revoke an opt-out by providing written notice to the utility and commission two to four (2–4) months in advance of the calendaryear for which it will become eligible for the utility's demand-side programs' costs and benefits. Any customer revoking an opt-out to participate in demand-side programs will be required to remain in the demand-side program(s) for the number of years over which the cost of that demand-side program(s) is being recovered, or until the cost of their participation in the demand-side program(s) has been recovered.

(L) A customer who participates in demand-side programs initiated after August 1, 2009, shall be required to participate in demand-side programs funding for a period of three (3) years following the last date when the customer received a demand-side incentive or a service. Participation shall be determined based on premise location regardless of the ownership of the premise.

(M) A customer electing not to participate in an electric utility's demand-side programs under this section shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs offered by the electric utility.

(8)Database of Participants.

(A) The electric utility shall maintain a database of participants of all demand-side programs offered by the utility when such demand-side programs offer a monetary incentive to the customer including the following information:

1. The name of the participant, or the names of the principals if for a company;

2. The service property address; and

3. The date of and amount of the monetary incentive received.

(B) Upon request by the commission or staff, the utility shall disclose participant information in subsections (8)(A) to the commission and/or staff.

(9) Collaborative Guidelines.

(B) State-Wide Collaborative.

1. Electric utilities and their stakeholders shall formally establish a state-wide advisory collaborative. The collaborative shall—

A. Develop statewide protocols for evaluation, measurement, and verification of energy efficiency savings, no later than December 31, 2018, and update those protocols annually thereafter;

B. Establish individual working groups to address the creation of the specific deliverables of the collaborative; and

C. Create a semi-annual forum for discussing and resolving statewide policy issues, wherein utilities may share lessons learned from demand-side program planning and implementation, and wherein stakeholders may provide input on how to implement the recommendations of the individual working groups;

D. Explore other opportunities.

2. Within sixty (60) days of the effective date of this rule, commission staff shall file, with the commission, a charter for the statewide advisory collaborative.

3. Collaborative meetings shall occur at least semi-annually. Additional meetings or conference calls will be scheduled as needed. Staff shall schedule the meetings, provide notice of the meetings and any interested persons may attend such meetings.

(10) Statewide Technical Reference Manual (statewide TRM).

(A) The statewide TRM shall be submitted to the commission for review.

1. The commission may either approve or reject the proposed statewide TRM.

2. If the commission rejects the proposed statewide TRM, stakeholders may propose solutions to address the commission concerns and, the commission may approve the solution(s) that shall be incorporated in the statewide TRM. Stakeholders may submit a revised statewide TRM within ninety (90) days of an order providing direction on the solution(s) to be incorporated in the statewide TRM.

(B) Upon approval of the initial statewide TRM, the commission may begin the process of securing a vendor to provide an electronic, web-based platform that will facilitate annual updates and the tracking of the updates.

1. Funding for the electronic platform and annual updates shall be provided by investor-owned utilities without MEEIA programs through their Public Service Commission assessment and by investor-owned utilities with MEEIA programs through their cost recovery component of a DSIM.

(C) The statewide TRM shall be updated by December 31 of each year following commission approval of the initial statewide TRM.

1. Staff shall be responsible for coordinating the process to update the statewide TRM—

A. No later than July 1 of each year, staff shall convene one (1) or more stakeholder meetings to seek input on revisions to the TRM.

2. Annual updates shall be submitted to the commission for review no later than September 1 of each year.

A. The commission may either approve or reject the proposed revisions no later than October 1 of each year.

B. If the commission rejects the proposed statewide TRM, stakeholders shall propose solutions to address the commission concerns and, the commission may approve the solution(s) that shall be incorporated in the annual update. Stakeholders shall submit a revised statewide TRM within thirty (30) days of an order providing directions on the solution(s) to be incorporated in the annual update.

(D) The commission may consider the appropriateness of using an approved statewide TRM in each utility's application for approval of demand-side programs.