

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Working Case to)
Consider Policies to Improve) **File No. EW-2016-0313**
Electric Utility Regulation)

**MISSOURI DIVISION OF ENERGY’S RESPONSE TO MISSOURI PUBLIC SERVICE
COMMISSION STAFF REPORT**

COMES NOW the Missouri Division of Energy (“DE”), by and through the undersigned counsel, and for its *Response to Missouri Public Service Commission Staff Report* in the above-captioned matter, states:

1. On June 8, 2016, the Missouri Public Service Commission (“Commission”), in its *Order Opening a Working Case to Consider Policies to Improve Electric Utility Regulation* (“Order”), opened a working case to facilitate stakeholder discussions regarding possible policies intended to improve the way in which the Commission regulates Missouri’s investor-owned electric utilities. In its Order, the Commission invited interested stakeholders to submit written comments by July 8, 2016.

2. On June 22, 2016, Chairman Hall, in his *Notice of Policy Initiatives for Stakeholder Consideration*, submitted draft language regarding electric utility rate case adjustment procedures, grid modernization incentives, low-income utility rates, and rate case expense sharing for stakeholder consideration.

3. On July 8, DE filed initial comments in this docket.¹ DE filed replies to the comments of other parties on August 8.²

¹ Missouri Public Service Commission Case No. EW-2016-0313, *In the Matter of a Working Case to Consider Policies to Improve Electric Utility Regulation*, Department of Economic Development – Division of Energy: Policy Recommendations to Address Electric Utility Regulatory Challenges, July 8, 2016.

² Missouri Public Service Commission Case No. EW-2016-0313, *In the Matter of a Working Case to Consider*

4. Commission Staff (“Staff”) hosted a workshop on September 13th, at which DE presented on the regulatory reform initiatives underway in Minnesota and New York.³

5. On October 17, following additional comments by stakeholders, Staff filed its report in this case.⁴

6. After reviewing Staff’s report, DE offers the comments below for the Commission’s consideration.

7. **Commission Staff recommendations to address regulatory lag.** DE appreciates Staff’s candid responses to the issues raised by stakeholders. Staff’s report considers a number of potential changes to the current regulatory system and concludes that the Commission should maintain control of its processes while taking advantage of a larger suite of tools to address regulatory lag. Reducing regulatory lag by streamlining the rate case process consistent with certain Staff recommendations would be a beneficial step in addressing regulatory lag.

Discussions during the Comprehensive State Energy Plan process were consistent with Staff’s suggestions to address the regulatory lag associated with rate cases by shortening rate case processing times, establishing additional information to be submitted with rate case filings, and reducing data request response times. DE also recognizes the merits of Staff’s suggestion that utilities provide additional reporting information on an ongoing basis such that more information is known prior to commencing rate cases.⁵ Other suggestions by Staff, such as

Policies to Improve Electric Utility Regulation, Department of Economic Development – Division of Energy: Response to Comments Addressing Electric Utility Regulatory Challenges, August 8, 2016.

³ Missouri Public Service Commission Case No. EW-2016-0313, *In the Matter of a Working Case to Consider Policies to Improve Electric Utility Regulation*, Division of Energy, Regulatory Reform: Processes in Other States, September 13, 2016.

⁴ Missouri Public Service Commission Case No. EW-2016-0313, *In the Matter of a Working Case to Consider Policies to Improve Electric Utility Regulation*, Missouri Public Service Commission Staff Report, October 17, 2016.

⁵ *Ibid*, page 72.

allowing trackers on a case-by-case basis,⁶ setting standards for interim rate processing and evaluation,⁷ using partially forecasted test years,⁸ implementing an electric utility Infrastructure System Replacement Surcharge (“ISRS”)⁹ (discussed further below), and a decisional pre-approval process with post-construction review¹⁰ are policies which would better align utility interests with modernizing grid facilities and reducing risk in utility revenues. A decisional preapproval process would provide greater certainty to utilities that investments in non-traditional supply-side options and enhancements (such as utility-scale solar farms, distributed generation projects, and grid modernization beyond traditional types of investment) are prudent in principle, but would still allow parties to evaluate the level of expenses incurred for these investments. As outlined in the DE’s initial comments, consideration of these options should be coupled with requirements for utilities to provide demonstrable benefits to customers through adoption of policies establishing meaningful targets for energy efficiency savings, increasing the amount of renewable energy in their generation portfolios, enhancing resiliency, energy security, and energy independence through portfolio diversification, integrating new and higher levels of distributed generation, and establishing microgrid interconnection standards consistent with best practices.

8. **Electric utility ISRS.** Staff does not oppose an appropriately designed ISRS mechanism. The Division of Energy agrees that an Infrastructure System Replacement Surcharge-style mechanism is among the appropriate options to address grid modernization concerns, and suggests that such a mechanism would need to be expanded beyond a simple “infrastructure

⁶ *Ibid*, page 73.

⁷ *Ibid*, page 74.

⁸ *Ibid*, page 75.

⁹ *Ibid*, page 77.

¹⁰ *Ibid*, pages 79-80.

replacement” to include initiatives such as grid automation. To that end, DE suggests that an ISRS-style electric utility mechanism should be broader in potential applications than the ISRS mechanisms for water and natural gas utilities currently authorized under Sections 393.1000 through 393.1015, RSMo., and should clearly identify and define which types of costs are eligible for recovery.

9. **Effects of regulatory reform on Missourians.** In its discussion of public comments on this docket, Staff provides a map of territories served by investor-owned electric utilities as evidence that, in Staff’s words, “... large portions of the State will remain unaffected by regulatory reform.”¹¹ Staff is correct if only geographic area is considered. However, data from the U.S. Energy Information Administration shows that, in 2014, investor-owned electric utilities sold over 21.5 million MWh of electricity to almost 1.7 million residential customers; these totals represent nearly 60.2 percent of total residential sales in Missouri and over 61.9 percent of the state’s total residential customer count.¹² Based on this data, it is fair to say that a majority of Missouri’s residential customers will be affected by regulatory reform; balanced regulatory reform is required to avoid adverse rate impacts on residential customers, who ultimately support Missouri’s economy with their purchases of goods and services. An “overcorrection” or “under-correction” of the current regulatory framework could have a broader negative impact on Missouri’s economy, since commercial and industrial customers often depend on the purchasing power of residential customers.

It is also important to consider the potential impacts of regulatory reform on businesses. Nationally, 10 percent of small-business owners have indicated that their highest expenditures

¹¹ *Ibid*, page 22.

¹² U.S. Energy Information Administration. 2015. “Retail sales of electricity to ultimate customers – By state and utility: Residential sector.” <http://www.eia.gov/electricity/data.cfm#sales>.

are on energy, with another 25 percent ranking energy amongst their top three expenditures. Thirty percent of office buildings' operational costs are estimated to be energy-related, comprising the largest expense for most properties. One third of total national primary energy consumption is used by industrial consumers, with consumption in this sector projected to increase through 2040 faster than in other sectors. Although Missouri's manufacturers pay 10 percent less per kWh than the national average, energy costs still constitute a significant portion of most small private sector employers in Missouri. A gradual change in the cost of energy is more readily adapted to for businesses than substantial changes.¹³ As a result, costs and benefits of regulatory reform mechanisms should be considered for all customers.

10. **Discussions of revenue decoupling and revenue stabilization mechanisms.** In its discussion of current Commission authority, Staff states that – per its report in another proceeding – straight-fixed variable rates and higher customer charges are examples of revenue decoupling.¹⁴ Shortly thereafter, Staff discusses various reforms requiring legislative revisions or greater Commission flexibility, noting the Missouri Energy Development Association's comments suggesting that the high fixed charges of some Missouri gas companies are a form of decoupling.¹⁵ However, DE cautions that higher fixed charges would not promote energy efficiency or the ability for customers to control their bills by reducing consumption.¹⁶ For this reason, straight-fixed variable rates and higher customer charges in general are not customer-benefiting methods of decoupling.¹⁷

¹³ Missouri Department of Economic Development – Division of Energy. 2015. "Missouri Comprehensive State Energy Plan." <https://energy.mo.gov/energy/docs/MCSEP.pdf>. Pages 165-166.

¹⁴ Staff report, pages 56-57.

¹⁵ *Ibid*, pages 58-59.

¹⁶ DE reply comments, page 3.

¹⁷ The Regulatory Assistance Project states that, "There are many ways to address revenue stability issues, and high monthly fixed charges are probably the worst option from a customer impact perspective." Lazar, Jim. 2015. "Smart Rate Design for a Smart Future, Appendix D: The Specter of Straight Fixed/Variable Rate Designs and the Exercise

DE suggests that, if revenue decoupling or a revenue stabilization mechanism is pursued, the Commission look towards rate designs that align utility and consumer interests. An example would be rate designs which encourage utilities to support additional customer energy efficiency without reducing the price signal received by customers or the opportunity for utilities to earn their revenue requirements. Rate designs with low fixed charges and flat or inclining energy charges (or time-based charges) would aid in sending appropriate price signals to customers to use energy efficiently, thereby reducing the need for and costs of future utility plant investment. Decoupling would be most effective if implemented for the residential and small commercial classes; these classes generally have weather-driven demand requirements, as well as less predictable annual energy use as compared to industrial customers. A method of decoupling that includes a low fixed charge coupled with energy rates that are periodically adjusted to reflect changes from the most recent rate case in the average billing units per customer could result in more predictable utility revenues while also promoting energy efficiency and grid modernization. This type of true-up structure would still provide utilities with an incentive to minimize costs between rate cases. Any movement towards decoupling should also be accompanied by strong programs for energy efficiency and customer options for lower off-peak rates. In addition to producing savings on annual energy bills, lower off-peak and/or higher peak rates would provide customers with greater incentives and added capability to reduce energy use during periods that have the greatest impacts on utility costs.

11. **Missouri Energy Efficiency Investment Act (“MEEIA”).** First, DE wishes to clarify its comments on cost-effectiveness testing. Staff states that, “DE ... recommends that cost-effectiveness testing not be used in Missouri to determine achievement of all cost-effective

of Monopoly Power.” The Regulatory Assistance Project. <http://www.raonline.org/wp-content/uploads/2016/05/appendix-d-smart-rate-design-2015-aug-31.pdf>. Page D-9

savings at the portfolio level”¹⁸ However, DE’s recommendation was that, “...cost-effectiveness testing not be used to **limit** the achievement of all cost-effective savings at the portfolio level (**i.e., through requiring test scores greater than 1.0**) because of the **exclusion of low-income and educational programs from cost-effectiveness testing in the MEEIA statute ...**” (emphases added).¹⁹ DE’s comments in this regard were intended to recommend 1) full observance of the statutory goal to achieve *all* cost-effective demand-side savings, not just demand-side savings that achieve the highest cost-effectiveness scores; and, 2) giving full weight to Section 393.1075.4, RSMo. by not subjecting low-income and educational programs to cost-effectiveness test requirements – including at the portfolio level. This latter concern involves removing such programs from portfolio scoring to maintain consistency with the provision at Section 393.1075.4, RSMo. that, “Programs targeted to low-income customers or general education campaigns do not need to meet a cost-effectiveness test, so long as the commission determines that the program or campaign is in the public interest.”

More broadly, DE is concerned with Staff’s outright opposition to a mandatory energy efficiency portfolio standard.²⁰ Staff’s stated reason for its opposition is that the integrated resource planning process under 4 CSR 240-22, “... optimizes the use of demand-side and supply-side resource through integrated resource analysis of alternative plans with diverse and robust set of alternative resource plans.”²¹ However, the integrated resource planning (“IRP”) process does not lead to sufficient evaluation of demand-side resources, as they are not ultimately analyzed on an equivalent basis as supply-side resources. Furthermore, this application of the IRP process contradicts the requirement at Section 393.1075.3, RSMo. that, “It

¹⁸ Staff report, page 64.

¹⁹ DE initial comments, page 17.

²⁰ Staff report, page 81.

²¹ Staff report, page 81.

shall be the policy of the state to 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.”

Utilities and Staff also emphasize the part of 4 CSR 240-22.010(2) which requires the consideration of “*least-cost*” as the primary plan evaluation criterion while giving too little weight to the parts of the rule which require the consideration of other factors (such as rate increases associated with resource plans and risks associated with new legal mandates) that would support a *best-cost* plan. The analysis of “least-cost” plans involves the minimization of the net present value of the utility’s revenue requirement, a measure similar to the utility cost test; however, this conflicts with the provisions at Section 393.1075.4, RSMo. One provision of this section of the MEEIA law refers to the, “... goal of achieving **all** cost-effective demand-side savings” (emphasis added); this goal cannot be accomplished by restricting the analysis of potential MEEIA programs to those that minimize utility revenue requirements. Such a restriction is inconsistent with the statutory provision at Section 393.1075.4, RSMo. that, “The commission shall consider the total resource cost test a preferred cost-effectiveness test.” Subjecting programs which are otherwise deemed cost-effective to additional testing vis-à-vis minimizing utility revenue requirements imposes an analytic threshold in contradiction of Missouri law, artificially reducing or eliminating potential demand-side options. Finally, DE notes that the IRP process is not binding on any party, including utilities – the Commission only makes a finding that a utility’s preferred plan is compliant with the rules (and may acknowledge the plan as reasonable at a particular point in time), but does not require strict adherence to that plan.²² For all of these reasons, the IRP process is not an adequate means to encourage demand-

²² 4 CSR 240-22.080(16) and (17).

side management programs. Selections of what energy efficiency programs a utility should pursue should not be coupled to the IRP process because the constraints on integrated resource planning prevent full realization of MEEIA's goals.

12. **Net Metering, Renewable Energy Standard (“RES”), and Microgrids.** Staff does not oppose revising net metering requirements²³ or strengthening the requirements of the RES,²⁴ and states that it has no opinion regarding microgrid interconnection requirements.²⁵ However, in all three instances, Staff expresses concerns about the impacts of recovering costs related to such initiatives from the general body of ratepayers, even though such statements are contrary to the evidence in this docket. As DE pointed out in its reply to the Missouri Energy Development Association's comments, evaluations of the relative costs and benefits of distributed generation should be based on thorough analyses, such as a “value of solar” quantification. DE also noted in its reply comments that, in fact, many value of solar studies have shown a net positive value of solar.²⁶ Staff's concerns are worth exploring in this broader context, as well as in the context of state policy supporting increased diversity of energy supply.²⁷

13. **Electric vehicle charging stations (“EVCSs”).** In its discussion of EVCSs, Staff repeats a recommendation from its report in EW-2016-0123 that, “IOUs consider mandatory [time-of-use] rates for all public charging stations and for [electric vehicle] owners” if EVCS costs are recovered from the general body of ratepayers.²⁸ In its reply to Staff's report, DE indicated that time-of-use rates should not be mandatory for electric vehicle drivers alone, since

²³ Staff report, page 80.

²⁴ *Ibid*, page 81.

²⁵ *Ibid*, page 82.

²⁶ DE reply comments, pages 6-7.

²⁷ See the third overarching recommendation regarding diversity of supply in the Comprehensive State Energy Plan, page 227.

²⁸ Staff report, page 81.

this would be impractical and potentially discriminatory. Instead, DE recommended that all end-uses should be covered by peak-shifting rate designs, starting with optional residential rates.²⁹

14. **Low-income and alternative rate designs.** DE noted in its initial comments that the Commission already has the authority to order low-income rates and, consistent with Comprehensive State Energy Plan recommendation 2.4,³⁰ such authority should be made explicit.³¹ Staff's report indicates that it does not oppose providing the Commission with explicit statutory authority in this regard,³² but the report does not note the Commission's current authority under Sections 393.130.2 and 3 in its discussions of low-income rates.³³ DE requests that the Commission note the finding of Comprehensive State Energy Plan recommendation 2.4 when considering this aspect of the Staff's report.

Staff's recommendation regarding low-income rates also discusses, "[a]n enhanced energy residential class... designed to address customers that want and are willing to pay the costs of receiving such options as renewable energy choices and net metering."³⁴ DE agrees in principle with allowing utilities to offer rates for customers choosing to purchase additional renewable energy beyond that currently provided in basic utility service. However, DE is concerned with Staff's support for a rate option which would separate customers willing to pay for net metering and renewable energy broadly from the general body of ratepayers. As above, DE suggests that a change to the compensation provided under net metering should be based on a

²⁹ Missouri Public Service Commission Case No. EW-2016-0123, *In the Matter of a Working Case Regarding Electric Vehicle Charging Facilities*, Missouri Division of Energy's Response to the *Corrected Staff Report Regarding Electric Vehicle Charging Facilities*, October 5, 2016, pages 3-5.

³⁰ Comprehensive State Energy Plan, pages 224-225.

³¹ DE initial comments, page 11.

³² Staff report, page 82.

³³ *Ibid*, pages 66 and 82.

³⁴ *Ibid*, page 82.

full cost-benefit analysis. It is also important to note that, under Section 386.890.3(2), RSMo, utilities must:

Offer to the customer-generator a tariff or contract that is identical in electrical energy rates, rate structure, and monthly charges to the contract or tariff that the customer would be assigned if the customer were not an eligible customer-generator but shall not charge the customer-generator any additional standby, capacity, interconnection, or other fee or charge that would not otherwise be charged if the customer were not an eligible customer-generator

15. **Aging workforce.** Staff's report concludes by rejecting a suggestion from IBEW Local 1439 to require utilities to train the next generation of utility workers.³⁵ Staff states that a policy to the end suggested by the IBEW, "... is outside the Commission's purview, and could be viewed as 'micro-managing' the utility."³⁶ While DE agrees that it is important to avoid controlling day-to-day utility operations, DE supports the concept of collaboration between the Commission, utilities, IBEW, and other stakeholders to design a worker training program,³⁷ consistent with CSEP recommendation 5.7.³⁸ Potential avenues to pursue this collaboration include federal programs such as ApprenticeshipUSA and the POWER Initiative.

16. In closing, DE thanks the Staff and the Commission for their consideration of the issues raised by the parties to this docket. Although there have been assertions by some stakeholders that no change is required to the current regulatory environment in order to provide safe, reliable, and adequate service at just and reasonable rates, DE notes that the electric utility

³⁵ Missouri Public Service Commission Case No. EW-2016-0313, *In the Matter of a Working Case to Consider Policies to Improve Electric Utility Regulation*, Policy Recommendation of Michael Walter Submitted on Behalf of IBEW Local 1439, July 8, 2016, page 2, lines 29-32.

³⁶ Staff report, page 83.

³⁷ DE reply comments, page 5.

³⁸ Comprehensive State Energy Plan, pages 244-245.

industry is evolving with respect to these service and rate criteria. Providing “safe, reliable, and adequate” service now includes meeting new demands from customers, such as enhanced information about usage, time-differentiated rates, energy efficiency programs, and the ability to purchase renewable energy. Providing enhanced service to these customers is critical not only for meeting their needs, but ensuring the continued provision of affordable electricity service in an inclining cost environment. With the increased availability of distributed generation, utilities face greater pressure to meet evolving customer demands. If state policy fails to account for the need to transition to a modern utility business model, then utilities will lose customers as they adopt ever-less-expensive self-generation options. This drop in customer counts and usage would raise bills for those remaining on the utilities’ systems. Grid modernization and other activities must be supported to provide Missourians with more choices and greater benefits. While some of this support can be obtained from changes to existing regulations and administrative practices (e.g., shortening discovery timeframes during rate case proceedings), statutory codification of some regulatory reforms will be needed to provide regulatory continuity and certainty for stakeholders.

WHEREFORE, DE respectfully files its *Response to Missouri Public Service Commission Staff Report* in the above-captioned matter for the Commission’s and stakeholders’ information and consideration.

Respectfully submitted,

/s/ Alexander Antal

Alexander Antal
Associate General Counsel
Missouri Bar No. 65487
Department of Economic Development
P.O. Box 1157
Jefferson City, MO 65102
Phone: 573-522-3304

Fax: 573-526-7700
alexander.antal@ded.mo.gov
Attorney for Missouri Division of Energy

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 21st day of November, 2016.

/s/ Alexander Antal

Alexander Antal