

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

In the Matter of a Working Case to Review)
The Commission's Missouri Energy)
Efficiency Investment Act (MEEIA) Rules) File No. EW-2015-0105
4 CSR 240-3.163, 4 CSR 240-3.164,)
4 CSR 240-20.093, and 4 CSR 240-20.094.)

**MISSOURI DIVISION OF ENERGY'S COMMENTS
REGARDING THE MEEIA RULE**

COMES NOW the Missouri Department of Economic Development –
Division of Energy¹ (“DE”) and submits the following comments² regarding the Commission’s
rules implementing the Missouri Energy Efficiency Investment Act (“MEEIA”)³:

1. Cost effectiveness tests. The MEEIA statute stipulates that the total resource cost
test (TRC) is a preferred test for evaluating the cost effectiveness of programs. However, in 4
CSR 240-3.164(2)(B)2, the rules state that the “utility shall also include calculations for the
utility cost test, the participant test, the non-participant test, and the societal cost test [SCT].” The
Division of Energy (DE) would like to see some language inserted here directing the
Commission to consider other cost-effectiveness tests such as the SCT. As the language currently
stands, the utilities are required to provide the results of the SCT, but the purpose of doing so is
left ambiguous. At the very least, DE would like to see some provision that the Commission
should consider non-energy benefits. There are a number of positive externalities (e.g., economic
and environmental benefits) associated with energy efficiency programs that are not adequately

¹ Effective August 29, 2013, Executive Order 13-03 transferred “all authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the Division of Energy from the Missouri Department of Natural Resources to the Missouri Department of Economic Development”

² Some of the comments below draw upon the joint comments submitted by the Missouri Department of Natural Resources – Division of Energy, Natural Resources Defense Council, Sierra Club, Renew Missouri, and Great Rivers Environmental Law Center in EX-2010-0368, filed on December 15th, 2010. (“Comments of MDNR, NRDC, Sierra Club, Renew Missouri and GRELC on Proposed Order of Rulemaking”).

³ § 393.1075 RSMo.

captured by the TRC, resulting in understated benefits and the exclusion of good programs from the market. Further, using the SCT will factor positive externalities into the cost-effectiveness screening, which will render more initiatives cost effective. This, in turn, can play a role in helping Missouri achieve compliance with the EPA's forthcoming 111(d) standards. The EPA has itself cited non-energy benefits as one justification for the Clean Power Plan. The utilities are already required to calculate cost effectiveness using the SCT; this proposed change merely gives purpose to this requirement.

2. Statewide TRM. Throughout the MEEIA rules, there are multiple allusions to a statewide technical resource manual (STRM): 4 CSR 240-20.093(1)(CC), 4 CSR 240-20.093(2)(F), 4 CSR 240-20.093(7)(E). The last of these stipulates that “[e]lectric utility’s [sic] EM&V contractors shall use, if available, a commission-approved statewide technical resource manual when performing EM&V work.” The rules therefore already give preference to an STRM. DE supports the development of an STRM, which would bring about some degree of standardization for Missouri utilities when evaluating the energy and demand savings associated with demand-side management (DSM) programs. A common TRM would make for more efficient program design and evaluation processes. Further, an STRM would ensure that utilities are “on the same page” as it were (i.e., inconsistencies among different utilities’ program designs and evaluations would be reduced). DE believes that an appropriate forum for the development of an STRM is the statewide collaborative (see 4 CSR 240-20.094(8)(B)). This rule already provides that “[e]lectric utilities and their stakeholders shall form a state-wide advisory collaborative to: 1) address the creation of a technical resource manual that includes values for deemed savings.” DE supports the insertion of stronger language here, to the effect that an STRM must be developed.

3. Combined heat and power (CHP). 4 CSR 240-3.164(F) defines demand-side program as “any program conducted by the utility to modify the net consumption of electricity on the retail customer’s side of the meter including, but not limited to, energy efficiency measures, load management, demand response, and interruptible or curtailable load.”

DE has concerns about the current practice of interpreting this language in a manner that fails to properly recognize the energy savings associated with CHP generating units. A CHP customer is able to recoup the waste heat associated with his or her electrical generation. This heat can then be utilized, thereby eliminating the need to purchase electricity or other fuel from a utility for heating or other purposes.

The MEEIA rules should be clarified to recognize the energy saving associated with CHP by explicitly directing that energy savings from CHP be considered in terms of kWh or a kWh equivalent for purposes of determining the impact on “net consumption of electricity on the retail customer’s side of the meter.” Inclusion of CHP in a utility’s DSM program portfolio is fully consistent with the goal of achieving all cost-effective demand- side savings.

4. Link to IRP. 4 CSR 240-20.094(3)(A)3 provides that Commission-approved DSM programs and program plans must be “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.” For a number of reasons, this regulatory link between the MEEIA rules and the IRP rules is inappropriate. The IRP rules require consideration of alternative resource plans (ARPs), which constitute combinations of demand- and supply-side resources. Accordingly, a very cost-effective DSM portfolio could fail the IRP test if it were packaged with supply-side resources that were lacking in cost-effectiveness. ARPs also have to

“meet at least the projected load growth and resource retirements” (4 CSR 240-22.060(3)(A)). Note that this is insufficient to meet the “all cost-effective” goal of MEEIA. ARPs should rather be required to meet the “all cost-effective” goal of MEEIA, which would in practice ensure that they “meet at least the projected load growth and resource retirements” as outlined in the IRP rule. Further, the IRP rules require consideration of a number of factors—lowest present-value revenue requirement, IRP policy objectives and performance measures, critical uncertain factors, and decision-makers’ judgment—that are not included in MEEIA. Finally, the preferred plan is always subject to change.

The MEEIA statute should take precedence over Chapter 22 regulations. MEEIA programs are statutorily required to meet the TRC (excluding educational and low-income programs). When a portfolio meets the criteria of MEEIA, the portfolio should become part of the preferred plan, not vice-versa. In short, Chapter 22 must be subordinated to MEEIA, and removing the regulatory link between the two will accomplish this.

5. Definitions of four types of “potential”. 4 CSR 240-3.164(1) contains definitions of “economic potential”, “maximum achievable potential”, “realistic achievable potential”, and “technical potential”. DE recommends the definitions of these four different types of potential be changed so that they are consistent with nationally-recognized definitions, which can be found in the National Action Plan for Energy Efficiency (NAPEE) document “Guide for Conducting Energy Efficiency Potential Studies” (page 2-4).⁴ Note that the four types of “potential” in the NAPEE document are labeled “technical potential”, “economic potential”, “achievable potential”, and “program potential”.

⁴ National Action Plan for Energy Efficiency, “Guide for Conducting Energy Efficiency Potential Studies: A Resource of the National Action Plan for Energy Efficiency”, November, 2007. (http://www.epa.gov/cleanenergy/documents/suca/potential_guide.pdf).

Of specific interest are the definitions of “achievable potential” and “program potential”. According to NAPEE, “achievable potential” is “the amount of energy use that efficiency can realistically be expected to displace assuming the most aggressive program scenario possible (e.g., providing end-users with payments for the entire incremental cost of more efficiency equipment).” NAPEE defines “program potential” as “the efficiency potential possible given specific program funding levels and designs.” Note that given these definitions, “program potential” and “achievable potential” are interrelated. That is, for a set level of expected program participation, “achievable potential” will change based on different levels of funding and implementation from the utility. In other words, “achievable potential” is partly a function of “program potential”. There exists an interplay between “achievable potential” and “program potential” that is not captured with the definitions in current rules.

The current definitions of “maximum achievable potential” and “realistic achievable potential” (the analogs in current rules to “achievable potential” and “program potential”, respectively) raise two problems: (1) a company can assume a given level of funding and initiative, thereby artificially limiting the Commission’s view of potential for cost-effective demand-side savings, and (2) a single level of “realistic achievable potential” could be the goal of future potential studies. This would not allow for flexibility when considering different levels of program funding or aggressiveness.

6. Opt-outs. 4 CSR 240-20.094(6)(A)3 states that a customer may opt-out of participation in utility-offered DSM programs if it “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 programs.” A provision in the rules requires the Commission staff to determine whether the potential opt-out customer meets this provision. However, there is no language outlining the method by which this is to be determined. DE recommends consideration of two revisions in the rules. First, the rules should contain more detailed guidance on how opt-out eligibility pursuant to 4 CSR 240-20.094(6)(A)3 shall be determined by the Commission staff. Second, those customers wishing to maintain their opt-out status (pursuant to 4 CSR 240-20.094(6)(A)3) should be subject to some requirement to periodically verify that they still qualify for opt-out.

7. Savings targets: DE would like to see the savings targets in 4 CSR 240-20.094(2) evaluated and increased. DE proposes that increases in savings targets be informed by desired Missouri policy as well as recent experience in Missouri and other Midwestern states. According to the Midwest Energy Efficiency Alliance (MEEA), Illinois set annual energy savings goals of 2%, to be achieved by the end of the decade. However, indications are that Illinois for example is exceeding its current savings goal now, with projections for additional potential. And according to the American Council for an Energy-Efficient Economy (ACEEE), in 2013 utilities in Michigan achieved electricity savings of over 1.5% in 2013. By way of comparison, as the MEEIA rules currently stand, targeted annual energy savings are 0.9% for 2014 and increase by 0.2% each year until 2020 (when the target is 1.9%, which remains the target for subsequent years). The MEEIA rule’s modest savings targets should be reconsidered, especially in light of the statutory policy of achieving all cost-effective energy savings.

DE emphasizes here that bold targets do not merely constitute a goal, but can also function as a strong incentive for utilities to achieve increasing levels of energy and demand savings. The targets should not be viewed as “hard targets”, but rather as a safeguard against a

utility underestimating available savings potential. Note that these targets are connected to utilities' potential studies; therefore, the proposed revisions concerning the definitions of "potential" will factor in here. Specified targets will become less important if our concerns (stated above) with these definitions are addressed.

8. Variances in MEEIA stipulations. The MEEIA rule review process should consider the variances to the MEEIA rules that were part of the stipulation and agreements that were approved by the Commission for Ameren, KCP&L-GMO and KCP&L. Particular emphasis should be focused on the variances related to timing and calculation of recovery of net shared benefits as these were key to the success of MEEIA implementation to date.

Respectfully submitted,

/s/ Jeremy Knee

JEREMY D. KNEE

Missouri Bar No. 64644

Associate General Counsel

Missouri Department of
Economic Development

P.O. Box 1157

Jefferson City, Missouri 65102

Phone: 573-522-3304

Fax: 573-526-7700

Attorney for Missouri DED

Division of Energy