

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

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

COMMENTS OF THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW the Office of the Public Counsel (“OPC” of “Public Counsel”) and offers the following comments on the Staff’s draft rule as follows:

4 CSR 240-20.092

OPC Draft

1. Public Counsel generally supports the inclusion of the definitions in this new section of the rules but proposes to include additional definitions. A draft rule is attached as **Appendix A.**
2. The first definition is “Hard-to-reach Customers” at section (AA). This definition is intended to provide certain parameters for customers who may qualify as “hard-to-reach.” Before establishing incentives that may be based on customer participation rates, identifying what constitutes a “hard-to-reach customer” in the rule is essential.
3. The second definition is “Local Government and Invitational Partnerships” at section (CC). This is included to define certain MEEIA programs that Public Counsel includes in its proposed revisions to 4 CSR 240-20.094.
4. A third definition is “Market Transformation Programs” at section (FF). This definition is included to define certain MEEIA programs that Public Counsel includes in its proposed revisions to 4 CSR 240-20.094.

5. Public Counsel proposes to modify the definition of “Net Shared Benefits” to include “any performance incentive paid to the utility.” The utility performance incentive is a cost to ratepayers that should be considered when evaluating the benefits of a utility MEEIA program. To the extent that a utility DSIM allows recovery of a percentage of Net Shared Benefits in the future, this cost is properly included in the calculation.

Staff’s Draft

6. (1)(E) Definition of Avoided Cost or Avoided Utility Cost should not include non-energy benefits. OPC proposes a definition in Appendix A.
7. (1)(M) Definition for Demand-side Portfolio should not be inserted into the rules. A utility can have a demand-side portfolio without having a MEEIA program.
8. (1)(O) The definition for Demand-side Portfolio Plan should not be included in the rules as amended in Staff’s draft. A utility can have a demand-side portfolio without having a MEEIA program.
9. (1)(T) The DSIM revenue requirement language should not be amended to include the throughput disincentive revenue requirement. As defined later in Staff’s draft the definition for throughput disincentive revenue requirement includes a portion of net shared benefits, which OPC does not support.
10. (1)(W) The definition for DSIM utility throughput disincentive revenue requirement as drafted in Staff’s version should not be included in the rules because it requires the Commission to provide the utility with a portion of net shared benefits.
11. (1)(X) The rules should not include a definition for “Economic Potential” because it is speculative, undefined, and unnecessary under the MEEIA rules.

12. (1)(OO) “Non-Energy Benefits” should not be included in the rules because these terms are overly general, vague, and lead to an inappropriate and illegal expansion of the scope of charges included in a ratepayer’s utility bill, which should include only amounts necessary for the provision of public utility service.
13. (1)(PP) The proposed definition for “Non-Participant Test” should not be included as drafted in Staff’s version because it does not accurately describe or include the total costs to which non-participants will be subject under a MEEIA plan.
14. (1)(QQ) The proposed definition for “Participant Test” should not be included as drafted in Staff’s version because it does not accurately describe or include the costs to which participants will be subject under a MEEIA plan.
15. (1)(SS) The proposed changes to the definition of “Probable Environmental Compliance Cost” should be rejected because the proposed change injects additional language that exposes ratepayers to increased charges for undefined, vague, and ill-understood environmental compliance costs that are difficult to quantify both now and in the future and which may never actually be incurred by the utility.
16. (1)(WW) The Proposed definition for “Societal Cost Test” should not be included because the terms included within the definition would include calculation of “societal benefits” that are not necessary or related to the provision of public utility service.
17. (1)(ZZ) “Technical Potential” should not be included in the rules because it is too broad and risks placing substantial burdens on both utilities and ratepayers.
18. (1)(CCC) “Total Resource Cost Test” should not be amended as in Staff’s draft. When evaluating costs that will ultimately be borne by ratepayers, it is inappropriate to include speculative environmental compliance costs and consideration of non-energy benefits

that are undefined and cannot be accurately attributed to a utility's MEEIA program.

OPC's preferred version of the definition is included in Appendix A.

4 CSR 240-20.093

OPC Draft

19. Public Counsel supports much of the language that has been produced in the workshop process. However, despite some agreement, Public Counsel opposes some of the changes reflected in Staff's proposed version. In addition, Public Counsel supports the inclusion of additional new language for reasons described below. A draft rule including Public Counsel's suggestions is attached as **Appendix B**.
20. At sections (2)(I)4 and 5, Public Counsel proposes new guidelines outlining additional filing requirements specific to the utility performance incentive. Should the utility request additional incentive earnings mechanisms, the Commission's review of the potential public benefit for additional incentive earnings mechanisms must include evaluation of performance standards, hard-to-reach customer targets, and the utility's success in meeting those targets. Further, if the utility proposes to collect a percentage of net-shared benefits as the utility incentive, the incentive should be included as a cost in any calculation of the benefits.
21. Staff's draft included several sections providing for the adjustment of DSIM rates. At sections (2)(J), (4), and (4)(C) Public Counsel proposes to insert language that limits the rate adjustment to once a year. Ratepayers benefit from continuity in the amounts that they are required to pay for essential public services. The DSIM line-item on their bills is already a deviation from the preferred rate case process for adjusting utility rates and as such, further rate adjustments should be limited.

Staff's Draft

22. (2)(I) This section relating to the utility disincentive component of any DSIM should not be included in the rules because it inappropriately includes the use of deemed energy and demand savings and allows cost recovery on a prospective basis. The throughput disincentive should only compensate the utility for energy and demand savings achieved after retrospective EM&V.
23. (2)(N) This section unnecessarily requires the utility to spend additional ratepayer money in order to examine programs that are not cost effective.
24. (4) The rule should not be amended to delete the language stating, "if the Commission Approves Adjustments of DSIM Rates." The rate adjustments between general rate cases are an extraordinary deviation from the preferred method of setting rates, the rule should be clear that this exception, even for MEEIA, requires a Commission determination that the adjustment is in the public interest.
25. (5)(A) and (B) Should not be amended as proposed in Staff's draft. The existing rule language appropriately limits the timeframe for recovery of MEEIA charges from ratepayers. MEEIA programs should not be allowed to continue in perpetuity without being subject to Commission review and approval for each Cycle.
26. (7)(D)1.B.III. Public Counsel proposes to require that the benefits achieved for each program and portfolio be determined using the Total Resource Cost ("TRC") methodology rather than the UCT methodology. Programs are evaluated using the TRC on the front-end prior to implementation, and so, the impact of the program should be measured against the same cost test. Absent consistent application, the utility may retain

more benefits than appropriate. Public Counsel's preferred language is included in Appendix B.

4 CSR 240-20.094

OPC Draft

27. Public Counsel supports much of the language that has been produced in the workshop process. However, despite some agreement, Public Counsel opposes some of the changes reflected in Staff's proposed version. In addition, Public Counsel supports the inclusion of additional new language for reasons described below. A draft rule including Public Counsel's suggestions is attached as **Appendix C**.

28. Section (4) lists requirements for a utility's application for a Demand-Side Program. Within that section, Public Counsel proposes to include additional filing requirements relating to pilot programs, local government and institutional partnership programs, and market transformation programs.

29. The additional language at section (4)(G), relating to pilot programs, is a necessary limitation on uncertain programs. The Staff's draft rule included a definition for pilot programs but did not include any language in the rules limiting the budget or the timeframe for evaluating the success or failure of these programs. Among other benefits, the additional language proposed by Public Counsel will ensure that ratepayers are not forced to pay, in perpetuity, for an unsuccessful program because it is labeled a "pilot program."

30. Section (4)(H) defines and limits local government and institutional partnership programs. Partnerships have the potential to create significant demand and energy savings. However, in any partnership the level of savings attributable to the utility's

program may be difficult to determine without setting up specific parameters before the program is implemented. Requiring the utility to establish guidelines for this type of program in advance will mitigate the risk that ratepayers would pay, through their electric bills, for energy or demand savings not caused by the utility's MEEIA program.

31. Section (4)(I) requires that the utility identify and describe any market transformation programs at the time it seeks to implement its MEEIA portfolio. It is difficult to quantify energy and demand savings related to market transformation, and even more difficult to determine the amount of savings attributable to a specific utility's program. The rules should require utilities seeking to claim savings from a market transformation program to identify and describe that plan in advance. Doing so will ensure that ratepayers are not required to pay increased electricity bills for claimed savings that are not attributable to the MEEIA program.

Staff's Draft

32. (3)(A)2. The rule should require the market potential study to be updated every three (3) years rather than every four (4) in order to align the timing with utility integrated resource plan filings and MEEIA applications. Public Counsel's preferred language is included in Appendix C.
33. (4)(C)1. The rule language should be modified to require examination of the cost effectiveness on a particular program rather than on a portfolio of programs.
34. (4)(C)2. The rule should not include consideration of Non-Energy Benefits.
35. (4)(G) The section on designation of pilot programs should not be included in the rules as drafted in Staff's version. OPC offers alternative language on pilot programs at section (3)(G) of Appendix C.

36. (4)(I) The sentence describing negative net-shared benefit screen should not be included in the rules. A net-shared benefit screen is not necessary, especially for low-income programs because the MEEIA statute provides that low-income programs need not be cost effective.
37. (5)(A) The rule should continue to require the utility to seek Commission approval before modifying its demand-side programs. Having applied for and undertaken a MEEIA program, and subjecting ratepayers to the associated costs, the utility should be required to continue offering that program until the Commission has found it is no longer in the public interest.
38. (9) The Collaborative guidelines in the rule should be modified to provide clear direction for the Collaborative and ensure that the general public has access to and benefits from the process. Rather than adopt the language and format proposed in the Staff's draft, OPC offers its own modifications to the Collaborative guidelines at section (9) of Appendix C.

WHEREFORE Public Counsel submits these Comments and draft rules attached as Appendices A, B, and C.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 13th day of July 2015:

/s/ Tim Opitz

4 CSR 240-20.092 Definitions for Demand-Side Programs and Demand-Side Program Investment Mechanisms

***PURPOSE:** This rule incorporates definitions for all terms used in 4 CSR 240-20.093 Demand-Side Programs Investment Mechanisms (DSIM) and 4 CSR 240-20.094 Demand-Side Programs.*

(1) As used in 4 CSR 240-20.093 and 4 CSR 240-20.094, the following terms mean:

(A) “Achievable Potential” means the amount of energy use that efficiency can be expected realistically 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). Achievable potential takes into account barriers to convincing end-users to adopt efficiency measures, the non-measure costs of delivering programs (for administration, marketing, tracking systems, monitoring and evaluation, and so on), and the capability of programs and administrators to ramp up program activity over time;

(B) “Annual Report” means a report of information concerning a utility’s demand-side programs having the content described in 4 CSR 240.093(8);

(C) “Approved Demand-Side Program” means a demand-side program or demand-side program pilot which is approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs;

(D) “Avoided Cost” or “Avoided Utility Cost” means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include, but are not limited to, avoided utility costs resulting from demand-side programs’ energy savings and demand savings associated with plant in service, operations and maintenance, administrative, general expenses, generation, transmission, and distribution facilities including avoided probable environmental compliance costs. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(E) “Baseline Demand Forecast” means a reference forecast of summer and winter demand at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(F) “Baseline Energy Forecast” means a reference forecast of energy at the class level in the absence of any new demand-side programs, but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(G) “Cost Recovery Component” of a DSIM means the methodology approved by the commission in a utility’s filing for demand-side program approval to allow the utility to receive recovery of costs of approved demand-side programs with interest;

(H) “Customer Class” means major customer rate groupings such as residential, small general service, large general service, and large power service;

(I) “Demand” means the rate of electric power use over an hour measured in kilowatts (kW);

(J) “Demand Response” means measures that decrease peak demand or shift demand to off-peak periods;

(K) “Demand-side Program” means any program conducted by the utility to modify the net consumption of electricity on the retail customer’s side of the electric meter including, but not limited to, energy efficiency measures, load management, demand response, interruptible or curtailable load;

(L) “Demand-side Program Plan” means a particular combination of demand-side programs to be delivered according to a specified implementation schedule and budget;

(M) “Demand-side Programs Investment Mechanism”, or DSIM, means a mechanism approved by the commission in a utility’s filing for demand-side program approval to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation:

1. Cost recovery of demand-side program costs through capitalization of investments in demand-side programs;
2. Cost recovery of demand-side program costs through a demand-side program cost tracker;
3. Accelerated depreciation on demand-side investments;
4. Recovery of lost revenues; and
5. Utility incentive based on the achieved performance level of approved demand-side programs;

(N) “Demand Savings Target” means the annual demand savings level approved by the commission at the time of each demand-side portfolio’s approval, or adjusted based on an approved mechanism. Demand-side savings targets are the baseline for determining the utility’s demand-side portfolio’s demand savings performance levels (in the methodology for the utility incentive component of a demand-side portfolios investment mechanism (DSIM));

(O) “DSIM Cost Recovery Revenue Requirement” means the revenue requirement approved by the commission in a utility’s filing for demand-side program approval or a DSIM rate adjustment case to provide the utility with cost recovery of demand-side program costs based on the approved cost recovery component of a DSIM;

(P) “DSIM Rate” means the charge on customers’ bills for the portion of the DSIM revenue requirement assigned by the commission to a rate class;

(Q) “DSIM Revenue Requirement” means the sum of the DSIM cost recovery revenue requirement, DSIM utility lost revenue requirement, and DSIM utility incentive revenue requirement;

(R) “DSIM Utility Incentive Revenue Requirement” means the revenue requirement approved by the commission to provide the utility with a portion of net shared benefits based on the approved utility incentive component of a DSIM;

(S) “DSIM Utility Lost Revenue Requirement” means the revenue requirement explicitly approved (if any) by the commission to provide the utility with recovery of lost revenue based on the approved utility lost revenue component of a DSIM;

(T) “Electric Utility” or “Utility” means any electric corporation as defined in section 386.020, RSMo;

(U) “Energy” means the total amount of electric power that is used over a specified interval of time measured in kilowatt-hours (kWh);

(V) “Energy Efficiency” means measures that reduce the amount of electricity required to achieve a given end-use;

(W) “Energy Savings Target” means the annual energy savings level approved by the commission at the time of each demand-side portfolio’s approval, or adjusted by an approved mechanism. Energy savings targets are the baseline for determining the utility’s demand-side portfolio’s energy savings performance levels (in the methodology for the utility incentive component of a DSIM);

(X) “Evaluation, Measurement, and Verification”, or “EM&V”, means the performance of studies and activities intended to evaluate the process of the utility’s program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

(Y) “Filing for Demand-side Program Approval” means a utility’s filing for approval, modification, or discontinuance of demand-side program(s) which may also include a simultaneous request for the establishment, modification, or discontinuance of a DSIM;

(Z) “General Rate Proceeding” means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs or rates and charges of the electric utility are considered by the commission;

(AA) “Hard-to-reach Customers” means customers who are generally not offered energy efficiency measures in a competitive environment, or for whom traditional incentive payments alone are an insufficient inducement to invest in energy efficiency measures. Those customers who do not have easy access to program information or generally do not participate in energy efficiency programs due to income, housing type, geographic, or home ownership (split incentive) barrier. These barriers are defined as:

1. Income – those customers whose income may not exceed 200% of the federal poverty guidelines.
2. Housing type – multi-family and mobile home tenants, and/or
3. Geographic – businesses in designated distressed counties, and/or

(BB) “Interruptible or Curtailable Rate” means a rate under which a customer receives a reduced charge in exchange for agreeing to allow the utility to withdraw the supply of electricity under certain specified conditions;

(CC) “Local Government and Institutional Partnerships (LGIPs)” means agreements between a utility and a city or county for the purpose of engaging local governments in leadership in demand-side management.

(DD) “Lost Revenue” means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net system retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(EE) “Market Potential Study” means a quantitative analysis of the amount of energy and demand savings that exists, is cost-effective, and can be realized through the implementation of energy efficiency programs and policies.

(FF) “Market Transformation Programs” are strategic efforts, including, but not limited to, incentives and education designed to reduce market barriers for energy efficient technologies and practices;

(GG) “Net Shared Benefits” means the program benefits measured and documented through evaluation, measurement, and verification (EM&V) reports or a technical resource manual for approved demand-side programs less the sum of the programs’ costs including design, administration, delivery, end-use measures, incentive payments to customers, any performance incentive paid to the utility, EM&V, utility market potential studies, and technical resource manual;

(HH) “Preferred Resource Plan” means the utility’s resource plan that is contained in the resource acquisition strategy most recently submitted by the utility’s decision-makers in accordance with 4 CSR 240-22;

(II) “Probable Environmental Compliance Cost” means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility’s decision-makers, may be imposed at some point within the planning horizon which would result in environmental compliance costs that could have a significant impact on utility rates;

(JJ) “Program Pilot” means a demand-side program designed to operate on a limited basis for evaluation purposes before full implementation;

(KK) “Program Potential” refers to the efficiency potential possible given specific program funding levels and designs. Program potential studies can consider scenarios ranging from a single program to a full portfolio of programs. A typical potential study may report a range of results based on different program funding levels;

(LL) “Staff” means all personnel employed by the commission, whether on a permanent or contract basis, except: commissioners; commissioner support staff, including technical advisory staff; personnel in the secretary’s office; and personnel in the general counsel’s office, including personnel in the adjudication department. Employees in the staff counsel’s office are members of the commission’s staff;

(MM) “Statewide Technical Resource Manual” means a document developed by the state-wide collaborative and approved by the commission that is used by all electric utilities to assess energy savings and demand savings attributable to energy efficiency and demand response;

(NN) “Technical Resource Manual”, or “TRM,” means a document used to assess energy savings and demand savings attributable to energy efficiency and demand response programs within its territory;

(OO) “Throughput Disincentive” means the electric utility’s lost margin revenues that result from decreased retail sales volumes due to its demand-side programs;

(PP) “Total Resource Cost Test”, or “TRC,” means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program;

(QQ) “Utility Cost Test” means the test that compares the avoided utility costs to the sum of all incentive payments to the customer, plus utility costs to administer, deliver, and evaluate each demand-side program to quantify the net savings obtained by substituting the demand-side program for supply-side resources;

(RR) “Utility Incentive Component of a DSIM” means the methodology approved by the commission in a utility’s filing for demand-side program approval to allow the utility to receive a portion of annual net shared benefits achieved and documented through EM&V reports;

(SS) “Utility Lost Revenue Component of a DSIM” means the methodology approved by the commission in a utility’s filing for demand-side program approval to allow the utility to receive recovery of lost revenue; and

(TT) “Utility Throughput Disincentive Component of a DSIM” means the methodology approved by the commission in a utility’s filing for a demand-side program approval to allow the utility to receive recovery of Throughput Disincentive.

4 CSR 240-20.093 Demand-Side Programs Investment Mechanisms

PURPOSE: This rule allows the establishment and operation of Demand-Side Programs Investment Mechanisms (DSIM), which allow periodic rate adjustments related to recovery of costs and utility incentives for investments in 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 Program Investment Mechanisms, which is incorporated by reference. [As used in this rule, the following terms mean:]

[(A) Annual demand savings target means the annual demand savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual demand-side savings targets are the baseline for determining the utility's demand-side programs' annual demand savings performance levels in the methodology for the utility incentive component of a demand-side programs investment mechanism (DSIM);

(B) Annual energy savings target means the annual energy savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual energy savings targets are the baseline for determining the utility's demand-side programs' annual energy savings performance levels in the methodology for the utility incentive component of a DSIM;

(C) Annual net shared benefits means the utility's avoided costs measured and documented through evaluation, measurement, and verification (EM&V) reports for approved demand-side programs less the sum of the programs' costs including design, administration, delivery, end-use measures, incentives, EM&V, utility market potential studies, and technical resource manual on an annual basis;

(D) Annual report means a report of information concerning a utility's demand-side programs having the content described in 4 CSR 240-3.163(5);

(E) Approved demand-side program means a demand-side program or demand-side program pilot which is approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs;

(F) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(G) Baseline demand forecast means a reference forecast of summer and winter demand at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(H) Baseline energy forecast means a reference forecast of energy at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(I) Cost recovery component of a DSIM means the methodology approved by the commission in a utility's filing for demand-side program approval to allow the utility to receive recovery of costs of approved demand-side programs with interest;

(J) Demand means the rate of electric power use over an hour measured in kilowatts (kW);

(K) Demand response means measures that decrease peak demand or shift demand to off-peak periods;

(L) Demand-side program means 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;

(M) Demand-side programs investment mechanism, or DSIM, means a mechanism approved by the commission in a utility's filing for demand-side program approval to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation:

1. Cost recovery of demand-side program costs through capitalization of investments in demand-side programs;

2. Cost recovery of demand-side program costs through a demand-side program cost tracker;

3. Accelerated depreciation on demand-side investments;

4. Recovery of lost revenues; and

5. Utility incentive based on the achieved performance level of approved demand-side programs;

(N) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval or a semi-annual DSIM rate adjustment case to provide the utility with cost recovery of demand-side program costs based on the approved cost recovery component of a DSIM;

(O) DSIM rate means the charge on customers' bills for the portion of the DSIM revenue requirement assigned by the commission to a rate class;

(P) DSIM revenue requirement means the sum of the DSIM cost recovery revenue requirement, DSIM utility lost revenue requirement, and DSIM utility incentive revenue requirement;

(Q) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission to provide the utility with a portion of annual net shared benefits based on the approved utility incentive component of a DSIM;

(R) DSIM utility lost revenue requirement means the revenue requirement explicitly approved (if any) by the commission to provide the utility with recovery of lost revenue based on the approved utility lost revenue component of a DSIM;

(S) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

(T) Energy means the total amount of electric power that is used over a specified interval of time measured in kilowatt-hours (kWh);

(U) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(V) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

(W) Filing for demand-side program approval means a utility's filing for approval, modification, or discontinuance of demand-side program(s) which may also include a simultaneous request for the establishment, modification, or discontinuance of a DSIM;

(X) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs or rates and charges of the electric utility are considered by the commission;

(Y) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net system retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(Z) Probable environmental compliance cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility's decision-makers, may be imposed at some point within the planning horizon which would result in environmental compliance costs that could have a significant impact on utility rates;

(AA) Program pilot means a demand-side program designed to operate on a limited basis for evaluation purposes before full implementation;

(BB) Staff means all personnel employed by the commission, whether on a permanent or contract basis, except: commissioners; commissioner support staff, including technical advisory staff; personnel in the secretary's office; and personnel in the general counsel's office, including personnel in the adjudication department. Employees in the staff counsel's office are members of the commission's staff;

(CC) Statewide technical resource manual means a document that is used by electric utilities to assess energy savings and demand savings attributable to energy efficiency and demand response;

(DD) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program;

(EE) Utility incentive component of a DSIM means the methodology approved by the commission in a utility's filing for demand-side program approval to allow the utility to receive a portion of annual net shared benefits achieved and documented through EM&V reports;

(FF) Utility lost revenue component of a DSIM means the methodology approved by the commission in a utility's filing for demand-side program approval to allow the utility to receive recovery of lost revenue; and

(GG) Utility market potential study means an evaluation and report by an independent third party of the energy savings and demand savings available in a utility's service territory broken down by customer class and major end-uses within each customer class.]

(2) Applications to establish, continue, or modify a DSIM. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility shall file an application with the commission to establish, continue, or modify a DSIM in a utility's filing for demand-side program approval.

(A) *[The electric utility shall meet the filing requirements in 4 CSR 240-3.163(2) in conjunction with a]* **An application to establish a DSIM shall include the following supporting information as part of, or in addition to, its direct testimony. Supporting workpapers shall**

be submitted as executable versions in native format with all formulas intact. *[and 4 CSR 240-3.163(3) in conjunction with an application to continue or modify a DSIM.]*

1. The notice provided to customers describing how the proposed DSIM will work, how any proposed DSIM rate will be determined, and how any DSIM rate will appear on customer bills.

2. An example customer bill showing how the proposed DSIM will be identified separately on affected customers' bills.

3. A complete description and explanation of the design, rationale, and intended operation of the proposed DSIM.

4. Estimates of the effect of the DSIM and all other impacts of the program spending, in aggregate, on customer rates and average bills for each of the next five (5) years, and as a net present value over the lifetime of the program impacts, for each rate class. These estimates will take into account the net present value of all lifetime benefits from the efficiency programs accruing to the utility system and consumers, including any price effect impacts resulting from reduced electric demand.

5. Estimates of the effect of the utility incentive component of DSIM on utility earnings and key credit metrics for each of the next three (3) years which shows the level of earnings and credit metrics expected to occur for each of the next three (3) years with and without the utility incentive component of DSIM.

6. A complete explanation of all the costs that shall be considered for recovery under the proposed DSIM and the specific account used for each cost item on the electric utility's books and records.

7. A complete explanation of any change in business risk to the electric utility resulting from implementation of a utility incentive related to the DSIM in setting the electric utility's allowed return on equity, in addition to any other changes in business risk experienced by the electric utility.

8. Information permitting the commission to determine if any utility incentives component of a DSIM is aligned with helping customers use energy more efficiently.

9. If the utility proposes to adjust its DSIM rates between general rate proceedings, proposed DSIM rate adjustment clause tariff sheets.

10. If the utility proposes to adjust the DSIM revenue requirement between general rate proceedings, a complete explanation of how the DSIM rates shall be established and adjusted to reflect over-collections or under-collections as well as the impact on the DSIM revenue requirement as a result of approved new, modified, or discontinued demand-side programs.

11. If net shared benefits are to be determined as part of the DSIM, the method proposed, and assumptions for calculation of the net shared benefits to be used throughout the life of the approved DSIM.

(B) If an electric utility files to modify its approved DSIM, the electric utility shall file with the commission and serve upon parties, as provided in section (14) below, the following supporting information as part of, or in addition to, direct testimony. Supporting workpapers shall be submitted with all models and spreadsheets provided as executable versions in native format with all formulas intact. *[Any party to the application for a utility's filing for demand-side program approval may support or oppose the establishment, continuation, or modification of a DSIM and/or may propose an alternative DSIM for the commission's consideration including, but not limited to, modifications to any electric utility's proposed DSIM.]*

Both the utility and the commission retain the authority to approve, accept, or reject any proposed establishment, continuation, or modification of a DSIM or any proposed alternative DSIM.]

1. **Information as required by subsection (2)(A), above;**
2. **Explanation of any proposed modification to the DSIM and why the proposed modification is being requested;**
3. **A complete explanation of any change in business risk to the electric utility resulting from modification of a utility incentive related to the DSIM in setting the electric utility's allowed return on equity, in addition to any other changes in business risk experienced by the electric utility; and**
4. **Any additional information the commission orders to be provided.**

(C) Any party to the application for a utility's filing for demand-side program approval may support or oppose the establishment, continuation, or modification of a DSIM and/or may propose an alternative DSIM for the commission's consideration including, but not limited to, modifications to any electric utility's proposed DSIM. Both the utility and the commission retain the authority to approve, accept, or reject any proposed establishment, continuation, or modification of a DSIM or any proposed alternative DSIM. [The commission shall approve the establishment, continuation, or modification of a DSIM and associated tariff sheets if it finds the electric utility's approved demand-side programs are expected to result in energy and demand savings and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers and will assist the commission's efforts to implement state policy contained in section 393.1075, RSMo, to—]

(D) The commission shall approve the establishment, continuation, or modification of a DSIM and associated tariff sheets if it finds the electric utility's approved demand-side programs are expected to result in energy and demand savings and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers and will assist the commission's efforts to implement state policy contained in section 393.1075, RSMo, to—

1. **Provide the electric utility with timely recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs;**
2. **Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and**
3. **Provide timely earnings opportunities associated with cost-effective measurable and/or verifiable energy and demand savings.**

(E/D)] In addition to any other changes in business risk experienced by the electric utility, the commission shall consider changes in the utility's business risk resulting from establishment, continuation, or modification of the DSIM in setting the electric utility's allowed return on equity in general rate proceedings.

(F/E)] In determining to approve, modify, or continue a DSIM, the commission may consider, but is not limited to only considering, the expected magnitude of the impact of the utility's approved demand-side programs on the utility's costs, revenues, and earnings, the ability of the utility to manage all aspects of the approved demand-side programs, the ability to measure and verify the approved program's impacts, any interaction among the various components of the DSIM that the utility may propose, and the incentives or disincentives provided to the utility as a

result of the inclusion or exclusion of **DSIM components as defined in 4 CSR 240-20.092(M)** *[of cost recovery component, utility lost revenue component, and/or utility incentive component in the DSIM]*. In this context the word “disincentives” means any barrier to the implementation of a DSIM. There is no penalty authorized in this section.

(G[F]) Any cost recovery component of a DSIM shall be based on costs of demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs. Indirect costs associated with demand-side programs, including but not limited to costs of utility market potential study and/or utility’s portion of statewide technical resource manual, shall be allocated to demand-side programs and thus shall be eligible for recovery through an approved DSIM. The commission shall approve any cost recovery component of a DSIM simultaneously with the programs approved in accordance with 4 CSR 240-20.094 Demand-Side Programs.

(H[G]) Any utility lost revenue component of DSIM shall be based on energy or demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V.

1. A utility cannot recover revenues lost due to utility demand-side programs unless it does not recover the fixed cost as set in the last general rate case, i.e., actual annual billed system kWh is less than the system kWh used to calculate rates to recover revenues as ordered by the commission in the utility’s last general rate case.

2. The commission shall order any utility lost revenue component of a DSIM simultaneously with the programs approved in accordance with 4 CSR 240-20.094 Demand-Side Programs.

3. In a utility’s filing for demand-side program approval in which a utility lost revenue component of a DSIM is considered, there is no requirement for any implicit or explicit utility lost revenue component of a DSIM or for a particular form of a lost revenue component of a DSIM.

4. The commission may address lost revenues solely or in part, directly or indirectly, with a performance incentive mechanism through a utility incentive component of DSIM.

5. Any explicit utility lost revenue component of a DSIM shall be implemented on a retrospective basis and all energy and demand savings to determine a DSIM utility lost revenue requirement must be measured and verified through EM&V prior to recovery.

(I[H]) Any utility incentive component of a DSIM shall be based on the performance of demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and shall include a methodology for determining the utility’s portion of *[annual]* net shared benefits achieved and documented through EM&V reports for approved demand-side programs. Each utility incentive component of a DSIM shall define the relationship between the utility’s portion of *[annual]* net shared benefits achieved and documented through EM&V reports, *[annual]* energy savings achieved and documented through EM&V reports as a percentage of *[annual]* energy savings targets, and *[annual]* demand savings achieved and documented through EM&V reports as a percentage of *[annual]* demand savings targets.

1. *[Annual]* E[e]nergy and demand savings targets approved by the commission for use in the utility incentive component of a DSIM are not necessarily the same as the incremental *[annual]* energy and demand savings goals and cumulative *[annual]* energy and demand savings goals specified in 4 CSR 240-20.094(2).

2. The commission shall order any utility incentive component of a DSIM simultaneously with the programs approved in accordance with 4 CSR 240-20.094 Demand-Side Programs.

3. Any utility incentive component of a DSIM shall be implemented on a retrospective basis and all energy and demand savings used to determine a DSIM utility incentive revenue requirement must be measured and verified through EM&V.

4. A utility incentive cannot exceed 5% of program spending, except that, upon a commission determination that to do so is in the public benefit. Additional incentive earning mechanisms may be proposed which allows the utility to earn up to an additional 2% of program spending. The Commission's review of the potential public benefit for additional incentive earnings mechanisms must include evaluation of performance standards, for hard-to-reach customer targets, and the utility's success in meeting those targets.

5. If a utility proposes to collect a percentage of the net shared benefits as the utility incentive:

A. The utility incentive must be included as a cost in any calculation of net shared benefits;

B. The utility incentive must include rebates paid to identify free riders as costs in the calculation of net shared benefits;

C. The utility incentive must be subject to a full EM&V review.

(J/I) If the DSIM proposed by the utility includes adjustments to DSIM rates between general rate proceedings, the DSIM shall include a provision to adjust the DSIM rates **annually** *[every six (6) months]* to include a true-up for over- and under-collection of the DSIM revenue requirement as well as the impact on the DSIM cost recovery revenue requirement as a result of approved new, modified, or deleted demand-side programs.

(K/J) If the commission approves utility incentive component of a DSIM, such utility incentive component shall be binding on the commission for the entire term of the DSIM, and such DSIM shall be binding on the electric utility for the entire term of the DSIM, unless otherwise ordered or conditioned by the commission when approved.

(L/K) The commission shall apportion the DSIM revenue requirement to each customer class.
(3) Application for Discontinuation of a DSIM. The commission shall allow or require a DSIM to be discontinued or any component of a DSIM to be discontinued only after providing the opportunity for a hearing.

(A) When submitting an application to discontinue a DSIM, the electric utility shall file with the commission and serve on parties as provided in section (14), the following supporting information as part of, or in addition to, direct testimony. Supporting workpapers shall be submitted with all models and spreadsheets provided as executable versions in native format with all formulas intact *[The electric utility shall meet the filing requirements in 4 CSR 240-3.163(4)].*

1. An example of the notice to be provided to customers.
2. If the utility's DSIM allows adjustments of the DSIM rates between general rate proceedings, a complete explanation of how the over-collection or under-collection of the DSIM revenue requirement that the electric utility is proposing to discontinue shall be handled.
3. A complete explanation of why the DSIM is no longer necessary to provide the electric utility a sufficient opportunity to recover demand-side programs costs, lost revenues, and/or to receive a utility incentive.
4. A complete explanation of any change in business risk to the electric utility resulting from discontinuation of a utility incentive related to the DSIM in setting the electric utility's

allowed return on equity, in addition to any other changes in business risk experienced by the electric utility.

5. Any additional information the commission orders to be provided.

(B) Any party to the utility's filing for demand-side program approval may oppose the discontinuation of a DSIM or any component of a DSIM.

(C) In addition to any other changes in business risk experienced by the electric utility, the commission may take into account any change in business risk to the electric utility resulting from discontinuance of the DSIM in setting the electric utility's allowed return on equity in a general rate proceeding.

(D) If the utility requests that cost recovery be discontinued, in its notice to customers, the electric utility shall include a commission-approved description of why it believes the cost recovery component of the DSIM should be discontinued.

(4) Requirements for *[Semi-Annual]* Adjustments of DSIM Rates, if the Commission Approves Adjustments of DSIM Rates Between General Rate Proceedings. *[Semi-annual a]* Adjustments to DSIM rates between general rate proceedings shall **occur annually, and may [only]** include adjustments to the DSIM cost recovery revenue requirement, *[and shall not include any adjustments to]* the DSIM utility lost revenue requirement or the DSIM utility incentive revenue requirement. *[Adjustments to the DSIM cost recovery revenue requirement may reflect new and approved demand-side programs, approved program modifications, and/or approved program discontinuations. When an electric utility files tariff sheets to adjust its DSIM rates between general rate proceedings, the staff shall examine and analyze the information filed by the electric utility in accordance with 4 CSR 240-3.163(8) and additional information obtained through discovery, if any, to determine if the proposed adjustments to the DSIM cost recovery revenue requirement and DSIM rates are in accordance with the provisions of this rule, section 393.1075, RSMo, and the DSIM established, modified, or continued in the most recent filing for demand-side program approval. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff sheets to adjust its DSIM rates. If the adjustments to the DSIM cost recovery revenue requirement and DSIM rates are in accordance with the provisions of this rule, section 393.1075, RSMo, and the DSIM established, modified, or continued in the most recent filing for demand-side program approval, the commission shall issue an interim rate adjustment order approving the tariff sheets and the adjustments to the DSIM rates shall take effect sixty (60) days after the tariff sheets were filed. If the adjustments to the DSIM cost recovery revenue requirement and DSIM rates are not in accordance with the provisions of this rule, section 393.1075, RSMo, or the DSIM established, modified, or continued in the most recent filing for demand-side program approval, the commission shall reject the proposed tariff sheets within sixty (60) days of the electric utility's filing and may instead order the filing of interim tariff sheets that implement its decision and approval.]*

(A) **The electric utility shall file tariff sheets to adjust its DSIM rates accompanied by supporting testimony, and shall file at least the following supporting information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.** *[An electric utility with a DSIM shall file to adjust its DSIM rates once every six (6) months.]*

1. Amount of revenue that it has over-collected or under-collected through the most recent recovery period by rate class.

2. Proposed adjustments or refunds by rate class.

3. Electric utility's short-term borrowing rate.
4. Proposed adjustments to the current DSIM rates.
5. Complete documentation for the proposed adjustments to the current DSIM rates.
6. Any additional information the commission ordered to be provided.

(B) The staff shall examine and analyze the information filed by the electric utility and additional information obtained through discovery, if any, to determine if the proposed adjustments to the DSIM revenue requirement and DSIM rates are in accordance with the provisions of this rule, section 393.1075, RSMo, and the DSIM established, modified, or continued in the most recent filing for demand-side program approval. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff sheets to adjust its DSIM rates. If the adjustments to the DSIM rates are in accordance with the provisions of this rule, section 393.1075, RSMo, and the DSIM established, modified, or continued in the most recent filing for demand-side program approval, the commission shall issue an interim rate adjustment order approving the tariff sheets and the adjustments to the DSIM rates shall take effect sixty (60) days after the tariff sheets were filed. If the adjustments to the DSIM cost recovery revenue requirement and DSIM rates are not in accordance with the provisions of this rule, section 393.1075, RSMo, or the DSIM established, modified, or continued in the most recent filing for demand-side program approval, the commission shall reject the proposed tariff sheets within sixty (60) days of the electric utility's filing and may instead order the filing of interim tariff sheets that implement its decision and approval. *[The semi-annual adjustments to the DSIM rates shall reflect a comprehensive measurement of both increases and decreases to the DSIM cost recovery revenue requirement established in the most recent demand-side program approval or semi-annual DSIM rate adjustment case plus the change in DSIM cost recovery revenue requirement which occurred since the most recent demand-side program approval or semi-annual DSIM rate adjustment case.]*

(C) An electric utility with a DSIM shall file to adjust its DSIM rates annually. *[The electric utility shall be current on its submission of its Surveillance Monitoring Reports as required in section (9) and its annual reports as required in section (8) in order to increase the DSIM rates.]*

(D) Adjustments to the DSIM rates shall reflect a comprehensive measurement of both increases and decreases to the DSIM revenue requirement established in the most recent demand-side program approval or DSIM rate adjustment case plus the change in DSIM revenue requirement which occurred since the most recent demand-side program approval or DSIM rate adjustment case. All DSIM rate adjustments shall include a true up of past DSIM collections based on the latest EM&V results where applicable. Any over/under collections will be accounted for in the going forward DSIM rates. *[If the staff, public counsel, or other party receives information which has not been submitted in compliance with 4 CSR 240-3.163(8), it shall notify the electric utility within ten (10) days of the electric utility's filing of an application or tariff sheets to adjust DSIM rates and identify the information required. The electric utility shall submit the information identified by the party, or shall notify the party that it believes the information submitted was in compliance with the requirements of 4 CSR 240-3.163(8), within ten (10) days of the request. A party who notifies the electric utility it believes the electric utility has not submitted all the information required by 4 CSR 240-3.163(8) and as ordered by the commission in a previous proceeding and receives notice from the electric*

utility that the electric utility believes it has submitted all required information may file a motion with the commission for an order directing the electric utility to produce that information, i.e., a motion to compel. While the commission is considering the motion to compel, the processing timeline for the adjustment to increase DSIM rates shall be suspended. If the commission then issues an order requiring the information be submitted, the time necessary for the information to be submitted shall further extend the processing timeline for the adjustment to increase DSIM rates. For good cause shown, the commission may further suspend this timeline. Any delay in submitting sufficient information in compliance with 4 CSR 240-3.163(8) or a commission order in a previous proceeding in a request to decrease DSIM rates shall not alter the processing timeline.]

(E) The electric utility shall be current on its submission of its Surveillance Monitoring Reports as required in section (9) and its annual reports as required in section (8) in order to increase the DSIM rates.

(F) If the staff, public counsel, or other party receives information which has not been submitted in compliance with section (4)(A), it shall notify the electric utility within ten (10) days of the electric utility's filing of an application or tariff sheets to adjust DSIM rates and identify the information required. The electric utility shall submit the information identified by the party, or shall notify the party that it believes the information submitted was in compliance with the requirements of section (4)(A), within ten (10) days of the request. A party who notifies the electric utility it believes the electric utility has not submitted all the information required by section (4)(A) and as ordered by the commission in a previous proceeding and receives notice from the electric utility that the electric utility believes it has submitted all required information may file a motion with the commission for an order directing the electric utility to produce that information, i.e., a motion to compel. While the commission is considering the motion to compel, the processing timeline for the adjustment to increase DSIM rates shall be suspended. If the commission then issues an order requiring the information be submitted, the time necessary for the information to be submitted shall further extend the processing timeline for the adjustment to increase DSIM rates. For good cause shown, the commission may further suspend this timeline. Any delay in submitting sufficient information in compliance with section (4)(A) or a commission order in a previous proceeding in a request to decrease DSIM rates shall not alter the processing timeline.

(5) Implementation of DSIM. Once a DSIM is approved, modified, or discontinued by the commission, the utility may request deferral accounting using the utility's latest approved weighted average cost of capital until the utility's next general rate proceeding. At the time of filing the general rate proceeding subsequent to DSIM approval, modification, or discontinuance, the commission shall use an interim rate adjustment order to implement the approved, modified, or discontinued DSIM.

(A) Duration of DSIM. Once a DSIM is approved by the commission, it shall remain in effect for a term of not more than four (4) years unless the commission earlier authorizes the modification or discontinuance of the DSIM, although an electric utility shall submit proposed tariff sheets to implement interim semi-annual adjustments to its DSIM rates between general rate proceedings.

(B) If the utility has an implemented DSIM, the electric utility shall file a general rate proceeding within four (4) years after the effective date of the commission order implementing the DSIM, assuming the maximum statutory suspension of the rates so filed.

(6) Disclosure *[on Customers' Bills]*. Regardless of whether or not the utility requests adjustments of its DSIM rates between general rate proceedings, any amounts charged under a DSIM approved by the commission, including any utility incentives allowed by the commission, shall be separately disclosed on each customer's bill. Proposed language regarding this disclosure shall be submitted to and approved by the commission before it appears on customers' bills. **The disclosure shall also appear on the utility's websites.**

(7) Evaluation, Measurement, and Verification (EM&V) of the Process and Impact of Demand-Side Programs. Each electric utility shall hire an independent contractor to perform and report EM&V of each commission-approved demand-side program in accordance with 4 CSR 240-20.094 Demand-Side Programs. The commission shall hire an independent contractor to audit and report on the work of each utility's independent EM&V contractor. **The commission staff shall provide oversight and guidance to the independent commission contractor, but shall not influence the independent contractor's audit(s). Staff counsel shall provide legal representation to the independent contractor in the event the independent contractor is required to testify before the commission.**

(A) Each utility's EM&V budget shall not exceed five percent (5%) of the utility's total budget for all approved demand-side program costs.

(B) The cost of the commission's EM&V contractor shall—

1. Not be a part of the utility's budget for demand-side programs; and
2. Be included in the Missouri Public Service Commission Assessment for each utility.

(C) EM&V draft reports from the utility's contractor for each approved demand-side program shall be delivered simultaneously to the utility and to parties of the case in which the demand-side program was approved.

(D) EM&V final reports from the utility's contractor of each approved demand-side program shall—

1. Document, include analysis, and present any applicable recommendations for at least the following. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact:

A. Process evaluation and recommendations, if any; and

B. Impact evaluation—

I. The lifetime and annual gross and net demand savings and energy savings achieved under each program, and the techniques used to estimate annual demand savings and energy savings; and

II. For programs subject to cost-effectiveness tests, include total resource cost test, societal cost test, utility cost test, participant cost test, and nonparticipant cost test of each program.

III. Determine the benefits achieved for each program and portfolio using the TRC methodology.

[Be completed by the EM&V contractor on a schedule approved by the commission at the time of demand-side program approval in accordance with 4 CSR 240-20.094(3); and]

2. Be completed by the EM&V contractor on a schedule approved by the commission at the time of demand-side program approval in accordance with 4 CSR 240-20.094(3); and
[Be filed with the commission and delivered simultaneously to the utility and the parties of the case in which the demand-side program was approved.]

3. Be filed with the commission in the case in which the utility's demand-side program approval was received and delivered simultaneously to the utility and the parties of the case in which the demand-side program was approved.

(E) Electric utility's EM&V contractors shall: *[use, if available, a commission-approved statewide technical resource manual when performing EM&V work.]*

1. Include specific methodology for performing EM&V work, in place of a statewide technical resource manual, until a statewide technical resource manual is approved by the commission.

2. All applications to establish, continue or modify a DSIM filed after a statewide technical resource manual is approved by the commission shall require EM&V contractors to use the most current statewide technical resource manual. Applications approved before the statewide technical resource manual is approved shall utilize the methodology approved with the application.

(8) Demand-Side Program Annual Report. Each electric utility with one (1) or more approved demand-side programs shall file an annual report by no later than **ninety** *[sixty]* **(90[60])** days after the end of each **program** *[calendar]* year, *[in the form and having the content provided for by 4 CSR 240-3.163(5)]* and serve a copy on each party to the case in which the programs were last established, modified, or continued. Interested parties may file comments with the commission concerning the content of the utility's annual report within **ninety** *[sixty]* **(90[60])** days of its filing. **Annual reports shall include at a minimum the following information, and all models and spreadsheets shall be provided as executable versions in native format with all formulas intact:**

(A) An affidavit attesting to the veracity of the information;

(B) A list of all approved demand-side programs and the following information for each approved demand-side program:

1. Actual amounts expended by year, including customer incentive payments;

2. Peak demand and energy savings impacts and the techniques used to estimate those impacts;

3. A comparison of the estimated actual annual peak demand and energy savings impacts to the level of annual peak demand and energy savings impacts that were projected when the program was approved;

4. For market transformation programs, a quantitative and qualitative assessment of the progress being made in transforming the market;

5. A comparison of actual and budgeted program costs, including an explanation of any increase or decrease of more than twenty percent (20%) in the cost of a program;

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

7. The estimated cost-effectiveness of the demand-side program and a comparison to the estimates made by the utility at the time the program was approved;

8. The estimated net economic benefits and net shared benefits of the demand-side portfolio;

9. For each program where one (1) or more customers have opted out of demand-side programs pursuant to section 393.1075.7, RSMo, a listing of the customer(s) who have opted out of participating in demand-side programs;

10. As part of its annual report, the electric utility shall file or provide a reference to the commission case that contains a copy of the EM&V report for the most recent annual reporting period; and

11. Demonstration of relationship of the demand-side program to demand-side resources in latest filed 4 CSR 240-22 compliance filing; and

(9) Submission of Surveillance Monitoring Reports. Each electric utility with an approved DSIM shall submit to staff, public counsel, and parties approved by the commission a Surveillance Monitoring Report *[in the form and having the content provided for by 4 CSR 240-3.163(6)]*. **Each electric utility with a DSIM shall submit as page 6 of the Surveillance Monitoring Report a quarterly progress report in a format determined by the staff, and all models and spreadsheets shall be provided as executable versions in native format with all formulas intact. The report shall be submitted to the Staff, Public Counsel, and parties approved by the commission.**

(A) The Surveillance Monitoring Report shall be submitted within fifteen (15) days of the electric utility's next scheduled United States Securities and Exchange Commission (SEC) 10-Q or 10-K filing with the initial submission within fifteen (15) days of the electric utility's next scheduled SEC 10-Q or 10-K filing following the effective date of the commission order establishing the DSIM.

(B) If the electric utility also has an approved environmental cost recovery mechanism or a fuel cost adjustment mechanism, the electric utility shall submit a single Surveillance Monitoring Report for all mechanisms.

(C) Upon a finding that a utility has knowingly or recklessly provided materially false or inaccurate information to the commission regarding the surveillance data prescribed in **section nine (9) [4 CSR 240-3.163(6)]**, after notice and an opportunity for a hearing, the commission may suspend a DSIM or order other appropriate remedies as provided by law.

(10) Prudence Reviews. A prudence review of the costs subject to the DSIM shall be conducted no less frequently than at twenty-four (24)-month intervals.

(A) All amounts ordered refunded by the commission shall include interest at the electric utility's short-term borrowing rate.

(B) The staff shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred fifty (150) days after the staff initiates its prudence audit. The timing and frequency of prudence audits for DSIM shall be established in the utility's filing for demand-side program approval in which the DSIM is established. The staff shall file notice within ten (10) days of starting its prudence audit. The commission shall issue an order not later than two hundred ten (210) days after the staff commences its prudence audit if no party to the proceeding in which the prudence audit is occurring files, within one hundred sixty (160) days of the staff's commencement of its prudence audit, a request for a hearing.

1. If the staff, public counsel, or other party auditing the DSIM believes that insufficient information has been supplied to make a recommendation regarding the prudence of the electric utility's DSIM, it may utilize discovery to obtain the information it seeks. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel, the processing timeline shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown, the commission may further suspend this timeline.

2. If the timeline is extended due to an electric utility's failure to timely provide sufficient responses to discovery and a refund is due to the customers, the electric utility shall refund all imprudently incurred costs plus interest at the electric utility's short-term borrowing rate.

(11) Tariffs and Regulatory Plans. The provisions of this rule shall not affect—

(A) Any adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism that was approved by the commission and in effect prior to the effective date of this rule; and

(B) Any experimental regulatory plan that was approved by the commission and in effect prior to the effective date of this rule.

(12) Nothing in this rule shall preclude a complaint case from being filed, as provided by law.

(13) Variances. Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.

(14) **Party status and providing to other parties affidavits, testimony, information, reports, and workpapers in related proceedings subsequent to the utility's filing for demand-side program approval modifying, or continuing a DSIM.** *[Rule Review. The commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.]*

(A) A person or entity granted intervention in a utility's filing for demand-side program approval in which a DSIM is approved by the commission shall have the right to be a party to any subsequent related periodic rate adjustment proceeding without the necessity of applying to the commission for intervention; however, such person or entity shall file a notice of intention to participate within the intervention period. In any subsequent utility's filing for demand-side program approval, such person or entity must seek and be granted status as an intervenor to be a party to that proceeding. Affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent related semi-annual DSIM rate adjustment proceeding or utility's filing for demand-side program approval to modify, continue, or discontinue the same DSIM shall be served on or submitted to all parties from the prior related demand-side program approval proceeding and on all parties from any subsequent related periodic rate adjustment proceeding or utility's filing for demand-side program approval to modify, continue, or discontinue the same DSIM, concurrently with filing the same with the commission or submitting the same to the manager of the energy resource analysis section of the staff and public counsel.

(B) A person or entity not a party to the utility's filing for demand-side program approval in which a DSIM is approved by the commission may timely apply to the commission for intervention, pursuant to 4 CSR 240-2.075(2) through (4) of the commission's rule on intervention, respecting any related subsequent periodic rate adjustment proceeding or, pursuant to 4 CSR 240-2.075(1) through (5), respecting any subsequent utility's filing for demand-side program approval to modify, continue, or discontinue the same DSIM.

(15) MEEIA Rate Design Modifications

(1) An electric utility may request modification of its rate design for demand-side cost recovery by filing tariff schedule(s) with the Commission as part of —

(A) An application for approval of demand-side programs or a demand-side program plan and a DSIM; or

(B) A general rate case proceeding

(2) Any request for modification of a rate design shall include with the filing supporting documentation for the request, including but not limited to workpapers, data, computer model documentation, analysis, and other supporting information to support and explain the modification of the rate design. All information shall be labeled and all spreadsheets shall have all formulas intact.

(3) Right to Discovery Unaffected. In addressing certain discovery matters and the provision of certain information by electric utilities, this rule is not intended to restrict the discovery rights of any party.

AUTHORITY: section 393.1075.11, RSMo Supp. 2010. Original rule filed Oct. 4, 2010, effective May 30, 2011.*

**Original authority: 393.1075, RSMo 2009.*

4 CSR 240-20.094 Demand-Side Programs

PURPOSE: This rule sets forth the definitions, requirements, and procedures for filing and processing applications for approval, modification, and discontinuance of electric utility demand-side programs. This rule also sets forth requirements and procedures related to customer opt-out, tax credits, monitoring customer incentives, and collaborative guidelines for demand-side programs.

(1) *[As used in this rule, the following terms mean:] 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 Program Investment Mechanisms, which is incorporated by reference.*

[(A) Annual demand savings target means the annual demand savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual demand-side savings targets are the baseline for determining the utility's demand-side programs' annual demand savings performance levels in the methodology for the utility incentive component of a demand-side programs investment mechanism (DSIM);

(B) Annual energy savings target means the annual energy savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual energy savings targets are the baseline for determining the utility's demand-side programs' annual energy savings performance levels in the methodology for the utility incentive component of a DSIM;

(C) Annual net shared benefits means the utility's avoided costs measured and documented through evaluation, measurement, and verification (EM&V) reports for approved demand-side programs less the sum of the programs' costs including design, administration, delivery, end-use measures, incentives, EM&V, utility market potential studies, and technical resource manual on an annual basis;

(D) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

(E) Baseline demand forecast means a reference forecast of annual summer and winter peak demand at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(F) Baseline energy forecast means a reference forecast of annual energy at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(G) Customer class means major customer rate groupings such as residential, small general service, large general service, and large power service;

(H) Demand means the rate of electric power use over an hour measured in kilowatts (kW);

(I) Demand-side program means 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;

(J) Demand-side programs investment mechanism, or DSIM, means a mechanism approved by the commission in a utility's filing for demand-side program approval to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation:

- 1. Cost recovery of demand-side program costs through capitalization of investments in demand-side programs;*
- 2. Cost recovery of demand-side program costs through a demand-side program cost tracker;*
- 3. Accelerated depreciation on demand-side investments;*
- 4. Recovery of lost revenues; and*
- 5. Utility incentive based on the achieved performance level of approved demand-side programs;*

(K) Demand-side program plan means a particular combination of demand-side programs to be delivered according to a specified implementation schedule and budget;

(L) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval or a semi-annual DSIM rate adjustment case to provide the utility with cost recovery of demand-side program costs based on the approved cost recovery component of a DSIM;

(M) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission to provide the utility with a portion of annual net shared benefits based on the approved utility incentive component of a DSIM;

(N) DSIM utility lost revenue requirement means the revenue requirement explicitly approved (if any) by the commission to provide the utility with recovery of lost revenue based on the approved utility lost revenue component of a DSIM;

(O) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

(P) Energy means the total amount of electric power that is used over a specified interval of time measured in kilowatt-hours (kWh);

(Q) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(R) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

(S) Filing for demand-side program approval means a utility's filing for approval, modification, or discontinuance of demand-side program(s) which may also include a simultaneous request for the establishment, modification, or discontinuance of a DSIM;

(T) Interruptible or curtailable rate means a rate under which a customer receives a reduced charge in exchange for agreeing to allow the utility to withdraw the supply of electricity under certain specified conditions;

(U) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net system retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(V) Preferred resource plan means the utility's resource plan that is contained in the resource acquisition strategy most recently adopted by the utility's decision-makers in accordance with 4 CSR 240-22;

(W) Probable environmental compliance cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility's decision-makers, may be imposed at some point within the planning horizon which would result in environmental compliance costs that could have a significant impact on utility rates;

(X) Staff means all personnel employed by the commission, whether on a permanent or contract basis, except: commissioners; commissioner support staff, including technical advisory staff; personnel in the secretary's office; and personnel in the general counsel's office, including personnel in the adjudication department. Employees in the staff counsel's office are members of the commission's staff;

(Y) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program; and

(Z) Utility incentive component of a DSIM means the methodology approved by the commission in a utility's demand-side program approval proceeding to allow the utility to receive a portion of annual net shared benefits achieved and documented through EM&V reports.]

(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 the [utility's] market potential study or the following incremental annual demand-side savings goals as a guideline to review **and approve a demand-side plan, and** progress toward an expectation that the electric utility's demand-side programs can achieve a goal of all cost-effective demand-side savings:

1. For [2012:] **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 [2013:] **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 [2014:] **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 *[2015:]* **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 *[2016:]* **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 *[2017:]* **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 *[2018:]* **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 *[2019:]* **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** *[2020 and for subsequent 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 realistic **amount of** *[achievable]* energy savings and demand savings **that is** *[as]* determined **to be cost-effectively achievable** through *[the utility's]* a market potential study or the following cumulative demand-side savings goals as a guideline to review **and approve a demand-side plan, and** progress toward an expectation that the electric utility's demand-side programs can achieve a goal of all cost-effective demand-side savings:

1. For *[2012:]* **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 *[2013:]* **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 *[2014:]* **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 *[2015:]* **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 *[2016:]* **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 *[2017:]* **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 *[2018:]* **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 *[2019:]* **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 and subsequent program years** *[2020 and for subsequent 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 2020, 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 *[after 2020]*.

(3) Utility Market Potential Study. Market potential studies provide goals for utility programs and may be used as a guideline to assess a utility's progress toward achieving an all cost-effective demand-side savings.

(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 also may 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;

(B) Utility market potential studies shall be utilized until a statewide market potential study is created in accordance with 4 CSR 240-20.094(9)(B), after which electric utilities shall utilize the statewide potential study in subsequent MEEIA applications.

*(4/3/) Applications for Approval of Electric Utility Demand-Side Programs or Program Plans. 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 demand-side **portfolio** [programs] or **portfolio** [program] plans. [by filing information and documentation required by 4 CSR 240-3.164(2). 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 cost recovery revenue requirement and/or if the utility intends to establish a utility lost revenue component of a DSIM or a utility incentive component of a DSIM for the existing demand-side program. 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.]*

(A) Prior to filing an application for approval of electric utility demand-side programs or program plans, the electric utility shall hold a stakeholder advisory meeting to receive input on the following components of its proposed DSM filing.

1. Avoided probable environmental costs;

2. Net-to-gross formula, including whether free ridership, spillover, rebound effect, market effects, and any subsets of these terms will be included in the calculation;

3. Calculation of net shared benefits, if applicable;

[For demand-side programs and program plans that have a total resource cost test ratio greater than one (1), the commission shall approve demand-side programs or program plans, and annual 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 4 CSR 240-3.164(2) and the demand-side programs and program plans—

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.]

(B) As part of its application for approval of electric utility demand-side programs or program plans, 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 formulas intact. *[The commission shall approve demand-side programs having a total resource cost test ratio less than one (1) for 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 4 CSR 240-3.164(2), the program or program plan is in the public interest, and meets the requirements stated in paragraphs (3)(A)2. and 3.]*

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 program plan is part of a statewide investor-owned electric utility's market potential study, the sampling methodology shall reflect each 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 customer combined heat and power applications;

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

E. The increasing efficiency of advanced technologies.

[If a 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 program on the utility's bad debt expenses, customer arrearages, and disconnections.]

(C) Demonstration of cost-effectiveness for each demand-side program and for the total of all demand-side programs of the utility, excluding programs that are not subject to a cost-effectiveness test under Section 393.1075.4, RSMo. At a minimum, the electric utility shall include: *[The commission shall approve demand-side programs which have a total resource cost test ratio less than one (1), if the commission finds the utility has met the filing and submission requirements of 4 CSR 240-3.164(2) and the costs of such programs above the level determined to be cost-effective are funded by the customers participating in the programs or through tax or other governmental credits or incentives specifically designed for that purpose and meet the requirements as stated in paragraphs (3)(A)2. and 3.]*

1. The total resource cost test and a detailed description of the utility's avoided cost calculations and all assumptions used in the calculation. To the extent that a program fails to meet the TRC test, the utility shall examine whether the failure persists if it considers the addition of or modifications to the program that reflect best practices from other successful demand-side programs, a reasonable range of uncertainty in the assumptions used to calculate avoided costs and other recommendations from stakeholders;

2. The utility shall also include calculations for the utility cost test, the participant test, the non-participant test, and the societal cost test; and

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.

(D) Detailed description of each proposed demand-side program to include at least: *[Utilities shall file and receive approval of associated tariff sheets prior to implementation of approved demand-side programs.]*

1. Customers targeted;

2. Measures and services included;

3. Customer incentives;

4. Proposed promotional techniques;

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

6. Projected gross and net annual energy savings;

7. Proposed annual energy savings targets and cumulative energy savings targets;

8. Projected gross and net annual demand savings;

9. Proposed annual demand savings targets and cumulative 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 program and an EM&V plan for estimating, measuring, and verifying the energy and capacity 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. Program incentive costs;

C. Program implementation costs not including customer incentives;

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

E. EM&V costs; and

F. 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 and leakage;

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.

(E) Demonstration and explanation in quantitative and qualitative terms how the utility's demand-side programs are expected to make progress towards a goal of achieving

all cost-effective demand-side savings over the life of the programs. Should the expected demand-side savings fall short of the incremental annual demand-side savings levels and/or the cumulative demand-side savings levels used to review the utility's plan, the utility shall provide an explanation detailing why the incremental annual demand-side savings levels and/or the cumulative demand-side savings levels cannot be expected to be achieved, and the utility shall bear the burden of proof. *[The commission shall simultaneously approve, approve with modification acceptable to the utility, or reject the utility's DSIM proposed pursuant to 4 CSR 240-20.093.]*

(F) Identification of demand-side programs which are supported by the electric utility and at least one (1) other electric or gas utility (joint demand-side programs).

(G) Identification of pilot programs.

1. Each proposed pilot program should contain the following elements:

- A. A statement of the programmatic gap the pilot program seeks to address;**
- B. A detailed budget and timeframe to complete the project and obtain results within a portfolio cycle;**
- C. Details of project outcomes to be measured;**

(H) Identification of local government and institutional partnerships (LGIPs).

1. Each LGIP should contain the following elements:

- A. A specific statement of the programmatic gap the LGIP seeks to address;**
- B. A detailed budget and timeframe to complete the project and obtain results within a portfolio cycle;**
- C. Details of project outcomes to be measured;**

(I) Identification of market transformation programs.

1. Utility-specific market transformation programs shall be filed for commission review and approval.

2. To qualify as a market transformation program, the program must meet the following criteria:

- A. Be cost-effective under the total resource cost test and be part of a filed portfolio;**
- B. Include an explanation of current market barriers, the estimated baseline and projected time period under which the program will take place;**
- C. Be designed to achieve energy and demand savings or lasting changes in the way energy efficient goods or services are distributed, purchased, installed or used;**
- D. Include a description of how the program will facilitate its transition from intervention activities to a free market; and**
- E. Include a detailed budget and timeframe.**

(J) 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 cost recovery revenue requirement and/or if the utility intends to establish a utility lost revenue component of a DSIM or a utility incentive component of a DSIM for the existing demand-side program. 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.

(K) The total resource cost test shall be the preferred screening test for demand-side programs. For demand-side programs and program plans that have a total resource cost test ratio greater than one (1), the commission shall approve demand-side programs or program plans, and annual 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 and program plans;

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.

(L) The commission shall approve demand-side programs having a total resource cost test ratio less than one (1) for 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 program or program plan is in the public interest, the portfolio of programs is beneficial to all customers within the customer class, and meets the requirements stated in paragraphs (4)(C) 2. and 3. If a 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 program on the utility's bad debt expenses, customer arrearages, and disconnections.

(M) The commission shall approve demand-side programs which have a total resource cost 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 programs above the level determined to be cost-effective are funded by the customers participating in the programs or through tax or other governmental credits or incentives specifically designed for that purpose and meet the requirements as stated in paragraphs (4)(C) 2. and 3.

(N) Utilities shall file and receive approval of associated tariff sheets prior to implementation of approved demand-side programs.

(O) The commission shall simultaneously approve, approve with modification acceptable to the utility, or reject the utility's DSIM proposed pursuant to 4 CSR 240-20.093.

(5[4]) Applications for Approval of Modifications to 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 shall file an application with the commission for modification of demand-side programs by filing information and documentation required by 4 CSR 240-3.164(4) when there is a variance of twenty percent (20%) or more in the approved demand-side plan three (3)-year budget and/or any program design modification which is no longer covered by the approved tariff sheets for the program. 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 thirty (30) days of the filing of an application under this section, subject to the same guidelines as established in subsections (3)(A) through (C), only after providing the opportunity for a hearing.]

(A) Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility shall: *[For any 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.]

1. Shall file an application with the commission for modification of demand-side programs when there is a variance of twenty percent (20%) or more in the approved demand-side plan three (3)-year budget and/or any program design modification which is no longer covered by the approved tariff sheets for the program.

2. Shall file an application with the commission for modification of demand-side programs, including but not limited to the following:

A. Reallocation of funds among programs;

B. Changes in program budget allocation based on contract implementers' input.

C. Changes in incentive amounts paid to customers.

3. The application shall include a complete explanation for and documentation of the proposed modifications to each of the filing requirements in section (4). All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

4. The electric utility shall serve a copy of its application to Public Counsel and all other parties to the case under which the Demand-Side Programs were approved.

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

6. If no objection is raised within 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 section (4).

7. If objections to the application are raised, the Commission shall provide the opportunity for a hearing.

8. For any 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[5]) 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. [by filing information and documentation required by 4 CSR 240-3.164(5). 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.]

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

1. Complete 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.

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

(B) 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[6]) 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 the individual accounts of five thousand (5,000) kW or more in the previous twelve (12) months;

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 programs. **The customer shall submit to commission Staff sufficient documentation to demonstrate compliance with this criteria, including the amount of energy savings. Examples of documentation could include, but are 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.;** *[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.]*

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

- C. **Invoices and payment requisition papers; or**

- D. **Other information which documents compliance with this rule.**

- E. **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.**

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

4. Opt-out in accordance with subsection (7)(A)(3) shall be valid for the term of the MEEIA cycle approved by the commission. Customers who opt-out consistent with subsection (7)(A)(3) may apply to opt-out again in successive MEEIA cycles, consistent with the requirements of subsection (7)(A)(3).

(B) Written notification of opt-out from customers meeting the criteria under paragraph (7/6)(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 (7/6)(A)3. shall be sent to the utility serving the customer and the manager of the energy resource analysis section 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 (7/6)(A)3., the utility shall forward a copy of the written notification to the manager of the energy resource analysis section of the commission and submit the notice of opt-out through EFIS as a non-case-related filing.

(C) 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.

(D) For customers filing notification of opt-out under paragraph (7[6])(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.

(E) For customers filing notification of opt-out under paragraph (7[6])(A)3., the staff will make the determination of whether the customer meets the criteria of paragraph (7[6])(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 the **complete documentation of compliance with (7)(A)3** *[written notification of opt-out]*.

(F) Timing and Effect of Opt-Out Provisions. *[A customer notice 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. For that calendar year and each successive calendar year until the customer revokes the notice pursuant to subsection (6)(H), 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, 4 CSR 240-3.163, and 4 CSR 240-3.164 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.]*

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 program year.

2. A new customer whose account is created outside of the opt-out notice period may apply for provisional opt-out approval. This approval will be valid until the following September 1st, at which time a new customer notice will be required per (7)(F)1.

3. For that calendar year in which the customer receives acknowledgement of opt-out and each successive program year until the customer revokes the notice pursuant to subsection (7)(H), the customer's opt-out expires at the end of a MEEIA cycle or the customer is notified that it no longer satisfies the requirements of Section (7)(A)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.

(G) 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.

(H) 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 **program** *[calendar]* year for which it will become eligible for the utility's demand-side program's costs and benefits. Any customer revoking an opt-out to participate in a program will be required to remain in the program for the number of years over which the cost of that program is being recovered, or until the cost of their participation in that program has been recovered.

(I) A customer who participates in demand-side programs initiated after August 1, 2009, shall be required to participate in program 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.**

(J) 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[7]) Tax credits and monetary incentives.

(A) Any customer of an electric utility who has received a state tax credit under sections 135.350 through 135.362, RSMo, or under sections 253.545 through 253.561, RSMo, shall not be eligible for participation in any demand-side program offered by a utility if such program offers the customer a monetary incentive to participate. **The provisions of this subsection shall not apply to any low-income customer who would otherwise be eligible to participate in a demand-side program that is offered by a utility to low-income customers.**

(B) As a condition of participation in any demand-side program offered by an electric utility under this section, when such program offers a monetary incentive to the customer, the customer shall attest to non-receipt of any tax credit listed in subsection (8[7])(A) and acknowledge that the penalty for a customer who provides false documentation is a class A misdemeanor. The electric utility shall maintain documentation of customer attestation and acknowledgement for the term of the demand-side program and three (3) years beyond.

(C) The electric utility shall maintain a database of participants of all demand-side programs offered by the utility when such 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.

(D) Upon request by the commission or staff, the utility shall disclose participant information in subsections (7)(B) and (C) to the commission and/or staff.

(9[8]) Collaborative Guidelines.

(A) Utility-Specific Collaboratives. Each electric utility and its stakeholders shall form a utility-specific advisory collaborative for input on the design, implementation, and review of demand-side programs as well as input on the preparation of market potential studies. This collaborative process may take place simultaneously with the collaborative process related to demand-side programs for 4 CSR 240-22. Collaborative meetings are encouraged to occur at least once each calendar quarter. **In order to provide appropriate and informed input on the design, implementation, and review of demand-side programs the stakeholders will be provided drafts of all plans and documents prior to meeting with adequate time to review and provide comments. In addition, all stakeholders will be provided opportunity to inform and suggest agenda items for each meeting and to present presentations and proposal. All participants shall be given a reasonable period to propose agenda items and prepare for any presentations.**

(B) State-Wide **Energy Efficiency Collaboratives.** **The commission shall initiate a forum for quarterly consultation on energy efficiency issues, to be referred to as the Statewide Energy Efficiency Collaborative (Statewide Collaborative). Participation in the Statewide Collaborative is voluntary and open to all parties who have an interest in the program. To this end, the Statewide Collaborative may:** *[Electric 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, 2) provide the opportunity for the sharing, among*

utilities and other stakeholders, of lessons learned from demand-side program planning and implementation, and 3) create a forum for discussing statewide policy issues. Collaborative meetings are encouraged to occur at least once each calendar year. Staff shall provide notice of the statewide collaborative meetings and interested persons may attend such meeting.]

- 1. Address the creation of a technical resource manual that includes values for deemed savings;**
- 2. Provide the opportunity for the sharing, among utilities and other stakeholders, of lessons learned from demand-side program planning and implementation;**
- 3. Create a forum for discussing statewide policy issues;**
- 4. Participate in the development of statewide standard offer programs or jointly delivered programs;**
- 5. Participate in the identification and design of market transformation programs;**
- 6. Participate in the development of a statewide market potential study;**
- 7. Participate in the development of a publically viewable statewide website as a repository for including, but not limited to, utility potential studies, annual-demand side reports, annual EM&V reports, and collaborative meeting minutes (both individual and statewide);**
- 8. Participate in the development of dynamic pricing options and consumer education;**
- 9. Participate in the development of an auction mechanism for energy efficiency credits;**
- 10. Participate in the development and encouragement of energy efficiency financing programs;**
- 11. Participate in an annual review of the avoided cost methodology and inputs; and**
- 12. Engage in activities as requested by the commission.**

(10[9]) Variances. Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.

[(10) Rule Review. The commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.]

AUTHORITY: sections 393.1075.11 and 393.1075.15, RSMo Supp. 2010.* Original rule filed Oct. 4, 2010, effective May 30, 2011.

**Original authority: 393.1075, RSMo 2009.*