

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

In the Matter of an Investigation of the Effects)
of Rate Design Modifications Associated with)
Demand-Side Cost Recovery)

File No. EW-2011-0372

**STAFF'S WRITTEN ARGUMENT IN SUPPORT OF
PROPOSED REGULATORY LANGUAGE**

COMES NOW Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and files this Written Argument in support of its proposed regulatory language with the Missouri Public Service Commission ("Commission") stating the following:

Background

The last sentence of Section 393.1075.5, RSMo (Supp. 2012) of the Missouri Energy Efficiency Investment Act ("MEEIA") states, "Prior to approving a rate design modification associated with demand-side cost recovery, the commission shall conclude a docket studying the effects thereof and promulgate an appropriate rule." On May 13, 2011, Staff filed a motion to open a docket to explore the meaning of the last sentence of Section 393.1075.5, RSMo (Supp. 2010), and how the Commission could best carry out the legislative directive contained therein. On May 26, 2011, the Commission established this case "...as a repository for documents and comments regarding the effects of rate design modifications associated with demand-side cost recovery." On January 11, 2013, after several discussions and meetings with the participants, as well as review of the filed comments, Staff filed its *Staff Report* in this matter.

On January 30, 2013, the Commission issued its *Order Directing Filings and Scheduling A Conference* allowing interested utilities and other stakeholders to

“...submit specific proposed regulatory language to assist the Commission in meeting the [MEEIA] statute’s requirement to promulgate an appropriate rule or rules, accompanied by written arguments in support of their proposed regulatory language.” While Staff is only a facilitator in this matter, Staff files this Response to assist the Commission in the rulemaking process.

On various occasions, Staff has provided the Commission updates and memoranda on the status of the workshops and comments related to this process. In one of its Agenda meetings, the Commission correctly alluded to the fact that one can interpret the last sentence of Section 393.1075.5 many ways, and that reasonable minds can come to different conclusions on its meaning. One only has to look at the *Staff Report* to view many different possible interpretations of the meaning. Some stakeholders suggest the Commission has done all that is necessary to meet the MEEIA rate design modification statutory requirements, except perhaps modify its rule to acknowledge this understanding. Others have indicated the Commission must still study the effects of various rate design modifications and promulgate a rule adopting each studied and approved modification. Staff continues to propose a hybrid approach.

Staff’s Proposed Language

In its various memoranda to the Commission, Staff has suggested the Commission could identify rate design proposals that have been previously studied and incorporate those in a rulemaking, then conduct further study of rate design modification proposals that have not yet been fully vetted. Staff suggests the Commission could include rate design modifications that it believes it has studied sufficiently and include the following regulatory language to add a new rule, Rule 4 CSR 240-20.095 to state:

The Commission has concluded a docket studying the effects of, and approved, the following rate design modifications for use with demand-side cost recovery that an electric utility may propose in conjunction with its application for approval or modification of DSM programs under rules 4 CSR 240-3.164 and 4 CSR 240-20.094: [*Commission determines what rate design modifications to include here*].

Should the Commission adopt Staff's suggestion, Staff recommends the Commission also adopt minimum filing requirements as part of a new rule Rule 4 CSR 240-20.095. The minimum filing requirements could include the minimum filing requirements as set out in Rule 4 CSR 240-3.163 (2)-(6), and (8)-(12) for Electric Utility Demand-Side Programs Investment Mechanisms Filing and Submission. Staff recommends the Commission include the filing requirements as part of the new rule 4 CSR 240-20.095, instead of creating a new filing requirements rule specifically for rate design modifications or amending the Commission's Rule 4 CSR 240-3.163 to include filing requirements for rate design modifications. A new filing requirements rule specifically for rate design modifications is not necessary and opening up Rule 4 CSR 240-3.163 for these types of amendments would allow anyone to propose amendments to the Commission's recently established filing requirements for Demand-Side Programs Investment Mechanisms.

Argument

Staff's interpretation of the last sentence of Section 393.1075.5 is meant neither to be onerous, nor to discourage investment in demand side programs. In fact, if the stakeholders fully participate in this docket, the stakeholder group can study many of

the rate design modifications of which the utilities may wish to avail themselves to in the future and propose the Commission promulgate a rule that includes them.

There is no prior Missouri case law or opinions to consult for the Legislature's intent with this sentence. Therefore, as directed by the Legislature in Section 1.090, RSMo 2000, and the Courts by common law, Staff took a somewhat literal view of the sentence based on the plain meaning of the words therein. Of particular importance to interpreting this statutory sentence are the underlined words: Prior to approving a rate design modification associated with demand-side cost recovery, the commission shall conclude a docket studying the effects thereof and promulgate an appropriate rule.

Prior

According to the American Heritage Dictionary, "prior" means "preceding in time or order." Prior modifies the rest of the sentence in that the Commission shall do certain things before approving a rate design modification associated with demand-side cost recovery. The statute indicates the Commission shall conclude a docket studying the effects of rate design modification associated with demand-side cost recovery and then promulgate an appropriate rule, with all of this occurring prior to approving the use of a rate design modification.

Rate Design Modification

The statute does not define this term, but this term can mean any change in the way a utility collects the cost associated with demand-side programs. The National Regulatory Research Institute (NRRI)¹ has listed the following as different ratemaking

¹ Adam Pollock and Evgenia Shumilkina, *How to Induce Customers to Consume Energy Efficiently: Rate Design Options and Methods*, January 2010, http://www.nrri.org/pubs/electricity/NRRI_inducing_energy_efficiency_jan10-03.pdf. See also Ken Costello, *Aligning a Utility's Interests with the Promotion of Energy Efficiency: How Should State*

mechanisms that encourage energy efficiency: Revenue decoupling², Straight fixed-variable rate design, Rate of return adder, Cost-recovery rider, System benefits charge, Inverted and non-declining rate structure, Real-time pricing, Time of use rates, Critical Peak Pricing and Seasonal rates. While the NRRI lists these examples as rate design modifications, the Commission has not yet determined whether some of these mechanisms, including decoupling utility revenues from sales volumes, are legal under Missouri's statutory structure.

The Public Utilities Regulatory Policies Act (PURPA), Section 532, Standard (17)(B), provides that the Commission shall consider "... (iv) Adopting rate designs that encourage energy efficiency for each customer class; [and] (v) allowing timely recovery of energy efficiency-related costs..." While no definition exists, one can use the NRRI and PURPA references as a framework to develop a reasonable meaning of rate design modification associated with demand-side cost recovery.

Additionally, the Commission held a training on March 30, 2012, during which Dr. Michael R. Schmidt provided the presentation *Electric Rate Design Modifications Associated With Demand-Side Cost Recovery*. The presentation covered the rate design modifications of flat block rates, straight fixed variable, fixed cost recovery charge, inclining block rates and declining block rates, customer class specific rate structures, promotional rates, time of use rates, seasonal rates, real time pricing, decoupling, performance awards and commodity generation incentives.

Commissions Choose among the Several Ratemaking Alternatives?, July 19, 2009, http://www.narucmeetings.org/Presentations/Costello_Gas_072009.pdf.

² NRRI lists this modification as "revenue decoupling rider". Revenue decoupling can occur in different forms, not just as a rider.

In allowing certain rate design modifications, the Commission and all interested parties should keep in the mind MEEIA's requirement in Section 393.1075.13 that "Charges attributable to demand-side programs under this section shall be clearly shown as a separate line item on bills to the electrical corporation's customers."

Docket

One could view the general term "docket" as either a workshop docket, rate case docket, or another case type before the Commission. But, when taken in the context of the entirety of the bill with which this statutory sentence was enacted, it is Staff's position that "docket" could only mean a workshop or rulemaking docket, as other case dockets do not culminate in rulemakings. The advantage of using a workshop docket over using exclusively a rulemaking docket is that it gives you more time and flexibility to investigate the issues and recommend positions. Such recommendation would then go on to a rulemaking docket. The Commission has previously discussed in the context of other cases that to implement a rule of general applicability, such needs to occur through a rulemaking, not through an order by the Commission.

Studying the Effects Thereof

Without some type of proposed rate design modification before it, the Commission cannot study the effects thereof. The Commission will see that in *Staff's Report*, some stakeholders believe a specific utility proposal must be before the Commission prior to any rulemaking and approval. Staff has not taken such an onerous and granular position and, instead, Staff supports a more general study of rate design modifications. Should a utility present in the context of a rate case or a MEEIA filing a unique proposal never studied before or included in the rulemaking, Staff believes the

unique proposal must be reviewed and then included in the rule before it can be considered for use as an acceptable rate design modification.

With full stakeholder participation, the rate design modifications utilities may wish to use in the future may be studied prior to a rulemaking. For instance, the utilities may propose rate design modifications they are considering for their MEEIA filings³ or rate design modifications that utilities in other states have tried or considered. They may also propose other rate design modifications consultants have suggested in studies. There is no restriction on the rate design modifications the stakeholders may study in this docket. If the Commission decides it has already studied certain rate design modifications sufficiently, the Commission could include those rate design modifications in the promulgated rule.

Staff believes the suggested process is not onerous because such stakeholder suggestions would capture most, if not all types of rate design modifications available today. The stakeholders could study the effects of the modification on hypothetical situations. Such a study would produce the same effect as if one were using an existing utility situation. And should some new type of rate design modification be proposed in the future, Section 393.1075.5, RSMo Supp. 2012, requires the Commission study the modification prior to approving it. Therefore, it would be appropriate to study such new rate design modification proposals and include them in an amendment to the appropriate section(s) of the MEEIA rules prior to the Commission approving their use.

Rule

In the context of the sentence in question, Staff recommends the Commission publish a rule that includes each of the rate design modifications studied within this

³ 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094

workshop docket that it approves for use with demand-side cost recovery. The Commission has recently discussed in the context of other cases that a rule of general applicability needs to be done through a rulemaking, not through an order by the Commission. As stated above, should some new type of rate design modification be proposed in the future, Section 393.1075.5 requires the Commission study the modification prior to approving it. Under Staff's interpretation of the statutory language, it would be appropriate to study such new rate design modification proposals and then include them in a subsequent rule modification prior to the Commission approving their use. With full participation in the current workshop docket, the stakeholders could study many of the types of rate design modifications associated with demand-side cost recovery to minimize the need for future associated rulemakings for that type of modification.

Summary

Staff believes Section 393.1075.5 requires the Commission to promulgate a rule including broad categories of rate design modifications it has studied and approves for use prior to an electric utility's use of such rate design modification. Staff recommends the Commission promulgate a new rule, Rule 4 CSR 240-20.095, to include the following regulatory language: The Commission has concluded a docket studying the effects of, and approved, the following rate design modifications for use with demand-side cost recovery that an electric utility may propose in conjunction with its application for approval or modification of DSM programs under rules 4 CSR 240-3.164 and 4 CSR 240-20.094: [*Commission determines what rate design modifications to include here*]. Staff also recommends the Commission also adopt minimum filing requirements

as part of a new Rule 4 CSR 240-20.095. The minimum filing requirements could include the minimum filing requirements as set out in Rule 4 CSR 240-3.163 (2)-(6), and (8)-(12) for Electric Utility Demand-Side Programs Investment Mechanisms Filing and Submission.

Respectfully submitted,

/s/Jennifer Hernandez

Jennifer Hernandez
Senior Staff Counsel
Missouri Bar No. 59814

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751- 8706 (Telephone)
(573) 751-9285 (Fax)
jennifer.hernandez@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically on this **3rd day of April 2013**, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/Jennifer Hernandez