

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgement option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Comments of Commissioner Jeff Davis. Commissioner Jeff Davis filed written comments regarding this section of the Chapter 22 rules. Commissioner Davis explains that he originally questioned whether this new rule on transmission and distribution analysis planning was needed because it might duplicate at least some of the work going on at the Regional Transmission Organization (RTO) level. Commissioner Davis explains that he now believes the rule is necessary because events at the Southwest Power Pool (SPP), which is an RTO providing services to Empire and KCPL, have convinced him that the rule is needed to increase accountability for Missouri's electric utilities.

Davis suggests that the rule does not go far enough, and he urges the commission to expand the rule to include any transmission contemplated by any affiliate to the regulated utility, such as Union Electric's affiliate Ameren Transmission Company, as well as any projects the utility is considering assigning or "novating."

Davis also asks that the rule require the utility to provide a comprehensive list of all transmission projects the RTO is planning or considering in their respective service region or territory.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the concerns expressed by Commissioner Davis and will address those concerns along with similar concerns and suggestions by other stakeholders through the commission's responses to Comments #12, #15, #18, and #19 of this order of rulemaking.

COMMENT #7: Change to Section 4 CSR 240-22.045(1). Public counsel asks the commission to change a reference to "fundamental planning objectives" to the singular, "objective," reasoning that the rule only describes one (1) fundamental planning objective.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will modify this section accordingly.

COMMENT #8: Change to Subsection 4 CSR 240-22.045(1)(A). At the hearing, Ameren Missouri proposed to insert language from section 4 CSR 240-22.040(7) of the current rule that makes it clear that the utility is not required to make a detailed line-by-line analysis of the transmission and distribution system. Ameren Missouri believes this change is necessary so the utilities can avoid doing more analysis than is necessary.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Ameren Missouri's comment and will modify this subsection accordingly.

COMMENT #9: Change to Subsection 4 CSR 240-22.045(1)(D). At the hearing, Ameren Missouri proposed a change to this subsection that would require the utility to consider improvements to the transmission and distribution networks that incorporate technologies that are "commercially available and field-tested at the time of filing."

RESPONSE: The commission will not modify this subsection as proposed by Ameren Missouri because to do so would create an incon-

sistent approach between this rule and the supply-side analysis rule, 4 CSR 240-22.050. Subsection 4 CSR 240-22.045(1)(D) requires that the utility assess transmission and distribution improvements that may become available during the planning horizon even though these improvements may not be commercially available and field-tested at the time of the filing.

COMMENT #10: KCPL's Comments Regarding the Proper Role of RTOs. KCPL is generally concerned that the proposed rule does not adequately recognize the magnitude of the role played by RTOs in the transmission planning process of an electric utility. KCPL asks the commission to modify several sections of the rule to better recognize the primary planning role of the RTO and the limitations on the ability of the utilities to plan for transmission. Specifically, KCPL asks the commission to modify subsections (1)(C), (1)(D), (3)(B), (3)(D), (4)(A), and (4)(C) and sections (3) and (4). KCPL did not offer any specific language to resolve its concern.

RESPONSE: None of the other electric utilities expressed a similar concern and KCPL provided no specific alternative language to address its concerns either in its written comments or during its comments offered at the public hearing. The commission does not believe that any modification is necessary and will make no change to the rule as a result of this comment.

COMMENT #11: Changes to Paragraph 4 CSR 240-22.045(3)(A)1. Public counsel asks the commission to add a reference to "congestion" as a factor that a utility must assess with regard to transmission upgrades.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's comment and will modify the subsection accordingly.

COMMENT #12: Changes to Paragraph 4 CSR 240-22.045(3)(A)4. Public counsel asks the commission to add language to this section to make it clear that utilities must also analyze transmission that will be built and owned by an affiliate of the utility. Staff proposed to achieve the same result by adding similar new language at section (5). Public counsel does not oppose staff's proposed language but believes its proposal is better.

RESPONSE AND EXPLANATION OF CHANGE: The commission will address staff's proposed new language at Comment #18 to this rule. The commission agrees with public counsel's proposed additional language for this paragraph and will incorporate that language, as modified by public counsel's witness at the hearing.

COMMENT #13: Changes to Paragraph 4 CSR 240-22.045(3)(A)6. Public counsel proposes a change in this subsection to recognize that an RTO generally does not build transmission itself, but instead approves transmission projects that are built by others. At the hearing, staff agreed to the change proposed by public counsel but suggested slightly modified language. Public counsel then agreed that staff's modified language was most appropriate. Public counsel also suggested that the word "primarily" be added before "economic reasons" to ensure that this provision does not apply solely to upgrades where one hundred percent (100%) of the benefits are considered to be economic benefits.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the modified language proposed by public counsel and staff.

COMMENT #14: Changes to Paragraph 4 CSR 240-22.045(3)(B)2. Public counsel proposes to modify this paragraph to make it clear that Missouri utilities are to review RTO expansion plans to assess whether those plans are in the interests of the utility's "Missouri" customers.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's comment and will modify this paragraph accordingly.

COMMENT #15: Changes to Paragraphs 4 CSR 240-22.045(3)(B)3., 4., and 5. Public counsel proposes to add additional language to ensure that necessary analysis is performed to assess the impact on planning objectives of transmission built and owned by an affiliate of the utility.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's comment and will modify this subsection accordingly.

COMMENT #16: Changes to Paragraph 4 CSR 240-22.045(3)(D)5. This subsection requires the planning utility to estimate the estimated total cost of each transmission upgrade and "estimated congestion costs." KCPL argues that it would be very difficult for a utility to estimate congestion costs and to do so would entail substantial cost and produce minimal value in the Integrated Resource Planning (IRP) process. For that reason, KCPL asks the commission to remove the requirement to estimate congestion costs from the paragraph.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the proposed change, but for a different reason. The subsection refers to transmission projects "needed to interconnect generation, facilitate power purchases and sales, and otherwise maintain a viable transmission network," instead of economic projects, where congestion cost analysis would be more valuable. For that reason, the commission will remove the requirement to estimate congestion costs from the paragraph.

COMMENT #17: Changes to Subsection 4 CSR 240-22.045(4)(C). Public counsel proposes changes to this subsection that would ensure that incremental benefits were calculated by comparing the benefits of one (1) approach to the benefits of another approach.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's comment and will modify the subsection accordingly.

COMMENT #18: New Section 4 CSR 240-22.045(5). Staff proposed to add a new section to require the utility to describe the transmission plans of affiliated transmission companies, as well as other transmission company projects that impact or that may be impacted by the electric utility.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff's proposed addition and will add this new section to the rule.

COMMENT #19: New Section 4 CSR 240-22.045(6). Staff proposes to add a new section that will require the utility to identify and describe any transmission projects under consideration by an RTO for the utility's service territory.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff's proposed addition and will add this new section to the rule.

4 CSR 240-22.045 Transmission and Distribution Analysis

(1) The electric utility shall describe and document its consideration of the adequacy of the transmission and distribution networks in fulfilling the fundamental planning objective set out in 4 CSR 240-22.010. Each utility shall consider, at a minimum, improvements to the transmission and distribution networks that—

(A) Reduce transmission power and energy losses. Opportunities to reduce transmission network losses are among the supply-side resources evaluated pursuant to 4 CSR 240-22.040(3). The utility shall assess the age, condition, and efficiency level of existing transmission and distribution facilities and shall analyze the feasibility and cost effectiveness of transmission and distribution network loss-reduction measures. This provision shall not be construed to require a detailed line-by-line analysis of the transmission and distribution systems, but is intended to require the utility to identify and analyze

opportunities for efficiency improvements in a manner that is consistent with the analysis of other supply-side resource options;

(3) Transmission Analysis. The utility shall compile information and perform analyses of the transmission networks pertinent to the selection of a resource acquisition strategy. The utility and the Regional Transmission Organization (RTO) to which it belongs both participate in the process for planning transmission upgrades.

(A) The utility shall provide, and describe and document, its—

1. Assessment of the cost and timing of transmission upgrades to reduce congestion and/or losses, to interconnect generation, to facilitate power purchases and sales, and to otherwise maintain a viable transmission network;

2. Assessment of transmission upgrades to incorporate advanced technologies;

3. Estimate of avoided transmission costs;

4. Estimate of the portion and amount of costs of proposed regional transmission upgrades that would be allocated to the utility, and if such costs may differ due to plans for the construction of facilities by an affiliate of the utility instead of the utility itself, then an estimate, by upgrade, of this cost difference;

5. Estimate of any revenue credits the utility will receive in the future for previously built or planned regional transmission upgrades; and

6. Estimate of the timing of needed transmission and distribution resources and any transmission resources being planned by the RTO primarily for economic reasons that may impact the alternative resource plans of the utility.

(B) The utility may use the RTO transmission expansion plan in its consideration of the factors set out in subsection (3)(A) if all of the following conditions are satisfied:

1. The utility actively participates in the development of the RTO transmission plan;

2. The utility reviews the RTO transmission overall expansion plans each year to assess whether the RTO transmission expansion plans, in the judgment of the utility decision-makers, are in the interests of the utility's Missouri customers;

3. The utility reviews the portion of RTO transmission expansion plans each year within its service territory to assess whether the RTO transmission expansion plans pertaining to projects that are partially- or fully-driven by economic considerations (i.e., projects that are not solely or primarily based on reliability considerations), in the judgment of the utility decision-makers, are in the interests of the utility's Missouri customers;

4. The utility documents and describes its review and assessment of the RTO overall and utility-specific transmission expansion plans; and

5. If any affiliate of the utility intends to build transmission within the utility's service territory where the project(s) are partially- or fully-driven by economic considerations, then the utility shall explain why such affiliate-built transmission is in the best interest of the utility's Missouri customers and describe and document the analysis performed by the utility to determine whether such affiliate-built transmission is in the interest of the utility's Missouri customers.

(D) The utility shall provide a report for consideration in 4 CSR 240-22.040(3) that identifies the physical transmission upgrades needed to interconnect generation, facilitate power purchases and sales, and otherwise maintain a viable transmission network, including:

1. A list of the transmission upgrades needed to physically interconnect a generation source within the RTO footprint;

2. A list of the transmission upgrades needed to enhance deliverability from a point of delivery within the RTO including requirements for firm transmission service from the point of delivery to the utility's load and requirements for financial transmission rights from a point of delivery within the RTO to the utility's load;

3. A list of transmission upgrades needed to physically interconnect a generation source located outside the RTO footprint;
4. A list of the transmission upgrades needed to enhance deliverability from a generator located outside the RTO including requirements for firm transmission service to a point of delivery within the RTO footprint and requirements for financial transmission rights to a point of delivery within the RTO footprint;
5. The estimated total cost of each transmission upgrade; and
6. The estimated fraction of the total cost and amount of each transmission upgrade allocated to the utility.

(4) Analysis Required for Transmission and Distribution Network Investments to Incorporate Advanced Technologies.

(C) The utility shall describe and document its optimization of investment in advanced transmission and distribution technologies based on an analysis of—

1. Total costs and benefits, including:
 - A. Costs of the advanced grid investments;
 - B. Costs of the non-advanced grid investments;
 - C. Reduced resource costs through enhanced demand response resources and enhanced integration of customer-owned generation resources; and
 - D. Reduced supply-side production costs;
2. Cost effectiveness, including:
 - A. The monetary values of all incremental costs of the energy resources and delivery system based on advanced grid technologies relative to the costs of the energy resources and delivery system based on non-advanced grid technologies;
 - B. The monetary values of all incremental benefits of the energy resources and delivery system based on advanced grid technologies relative to the costs and benefits of the energy resources and delivery system based on non-advanced grid technologies; and
 - C. Additional non-monetary factors considered by the utility;
3. Societal benefit, including:
 - A. More consumer power choices;
 - B. Improved utilization of existing resources;
 - C. Opportunity to reduce cost in response to price signals;
 - D. Opportunity to reduce environmental impact in response to environmental signals;
4. Any other factors identified by the utility; and
5. Any other factors identified in the special contemporary issues process pursuant to 4 CSR 240-22.080(4) or the stakeholder group process pursuant to 4 CSR 240-22.080(5).

(5) The electric utility shall identify and describe any affiliate or other relationship with transmission planning, designing, engineering, building, and/or construction management companies that impact or may be impacted by the electric utility. Any description and documentation requirements in sections (1) through (4) also apply to any affiliate transmission planning, designing, engineering, building, and/or construction management company or other transmission planning, designing, engineering, building, and/or construction management company currently participating in transmission works or transmission projects for and/or with the electric utility.

(6) The electric utility shall identify and describe any transmission projects under consideration by an RTO for the electric utility's service territory.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.050 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1753-1761). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed amendment was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.

RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it."

Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

This rule is much less prescriptive than the previous rule. The utility is allowed to determine the approach it will take to develop demand-side programs for screening. It does not require that demand-side programs be developed for a wide spectrum of customers and end-uses. It also removes the detailed description of how the utility should calculate avoided costs. It does prescribe what costs should be taken into account and requires that the utility carefully document its processes and results.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.

RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

This rule requires the utility to use the total resource cost test to screen demand-side resources. All resources, that have passed the screening, (both supply-side and demand-side), are further evaluated through integrated resource analysis. The integrated resource analysis is followed by a risk analysis and a strategic selection by the utility's decision-makers. Demand-side programs that survive this rigorous screening should be the programs for which the utility requests the commission's approval for non-traditional rate-making treatment.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request

additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Section 4 CSR 240-22.050(1). Renew Missouri asks the commission to modify this section to increase the likelihood that a comprehensive demand-side portfolio will emerge from the Integrated Resource Planning (IRP) process.

RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri, but is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. Section 3 of MEEIA states that it is the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure. Therefore, supply-side resources and demand-side resources should be evaluated on an equivalent basis in Chapter 22 and the resulting resource plan should be in the best interest of the customer and the shareholder. The commission will not modify this section.

COMMENT #7: Changes to Subsection 4 CSR 240-22.050(1)(B). The Department of Natural Resources asks the commission to "establish a yardstick" at the integration phase that encourages utility diligence in efforts to identify measures for screening of all major end uses and to formulate aggressive implementation strategies.

RESPONSE: The commission does not agree that the "yardstick" suggested by DNR should be established in 4 CSR 240-22.060(3)(A)3. (see Comment #12 for Order of Rulemaking for 4 CSR 240-22.060) and, therefore, will not modify this subsection of this rule.

COMMENT #8: Changes to Paragraph 4 CSR 240-22.050(1)(A)4. Renew Missouri contends this subsection is inconsistent with the MEEIA definitions of "demand-side program" that reduces "net consumption of electricity" and "energy efficiency," which means "measures that reduce the amount of electricity required to achieve a given end use." Renew Missouri suggests the paragraph be deleted for that reason.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Renew Missouri and will delete this paragraph.

COMMENT #9: Maximum Achievable Potential Substituted for Technical Potential. Public counsel asks the commission to substitute the term maximum achievable potential for the term technical potential at several points in this rule. Public counsel suggests the assessment of maximum achievable potential is more meaningful for planning purposes than an assessment of technical potential. In its comments, staff expressed support for adding a definition for maximum achievable potential to the rule, but does not support deleting the term technical potential entirely from the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission will not delete the term technical potential entirely from the rule. The commission will add a definition of maximum achievable potential that matches the definition of that term from its MEEIA rules. That new definition has been added as 4 CSR 240-22.020(40). The commission will also add maximum achievable potential to the purpose statement and section (2) of this rule and will substitute "maximum achievable potential" for "technical potential" in subparagraphs (3)(G)5.B. and (4)(D)5.A. of this rule.

COMMENT #10: Addition of "Customer" Classes. Public counsel asks the commission to add the word "customer" before "class or classes" at several points in the rule to improve clarity.

RESPONSE: The commission will not modify its rule as suggested by public counsel because each of the places public counsel would add the word "customer" is between the words "major class" and major class is defined in the rule as a cost-of-service class of the utility. Thus the modification is unnecessary.

COMMENT #11: Changes to Subsection 4 CSR 240-22.050(3)(E). Public counsel asks the commission to add the term "such as rebates, financing, and direct installations" as examples of the types of multiple approaches referenced in the subsection.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel that providing these examples adds clarity to the subsection and will modify the subsection accordingly.

COMMENT #12: Changes to Subsection 4 CSR 240-22.050(3)(F). Public counsel asks the commission to add the term "describe and document the feasibility, cost-reduction potential and potential benefits of" to provide guidance on the type of analysis needed in this area.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will modify this subsection accordingly.

COMMENT #13: Changes to Subparagraph 4 CSR 240-22.050(3)(G)5.B. Public counsel asks the commission to add the concept of financing cost to this subsection to ensure that the costs associated with using financing to encourage customer participation in demand-side programs are included in the utility's calculation of the cost of incentives.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will modify this subparagraph accordingly.

COMMENT #14: Changes to Subsection 4 CSR 240-22.050(4)(F). Public counsel asks the commission to add language to this subsection to add guidance on the manner in which demand-side rates are considered by the utility's Regional Transmission Organization (RTO).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's suggestion except for the words "and any other considerations." Those words are unnecessary because section (4) requires the utility to describe and document its demand-side rate planning and design process and to, at the least, include specific activities and elements. Thus, the rule sets out the minimum standard; other considerations may be taken into account.

COMMENT #15: Changes to Paragraph 4 CSR 240-22.050(5)(A)2. Public counsel would add the word "other" to this subsection to reflect the fact that fuel costs and emission allowance costs are within the broad category of costs referred to as "variable operating and maintenance costs."

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will make the suggested change.

COMMENT #16: Changes to Paragraph 4 CSR 240-22.050(5)(B)4. The Department of Natural Resources would add language to this subsection to clarify that costs identified in this subsection are to be counted only to the extent they are intended to recover incremental costs other than lost revenues or utility incentive payments to customers.

Public counsel would address the same concern by moving this paragraph to .050(5)(C) as a new paragraph 3. because the costs of incentive payments to ratepayers by the utility are not a net increase in the cost to society so they should be included in the utility cost test described in subsection (5)(C).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with DNR and public counsel. Public counsel's suggestion to delete paragraph .050(5)(B)4. and move it to a new paragraph (5)(C)3. will best deal with the concern and the commission will do so.

COMMENT #17: Changes to Section 4 CSR 240-22.050(6). Renew Missouri asks the commission to modify this section to increase the likelihood that a comprehensive demand-side portfolio will emerge from the IRP process.

RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri, but is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. Section

3 of MEEIA states that it is the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure. Therefore, supply-side resources and demand-side resources should be evaluated on an equivalent basis in Chapter 22 and the resulting resource plan should be in the best interest of the customer and the shareholder. The commission will not modify this section.

COMMENT #18: Changes to Paragraphs 4 CSR 240-22.050(6)(C)1. and 2. Public counsel would add the term "achievable potential to each demand-side candidate resource option or portfolio and the likelihood of occurrence for the different customer participation levels" to both paragraphs to make it clear that both the range of possible outcomes plus the likelihood of outcomes at different points in the range is necessary to estimate "the impact of uncertainty."

RESPONSE AND EXPLANATION OF CHANGE: The commission does not believe the clarifying edits provided by public counsel on these paragraphs are necessary and will not modify the paragraphs to add the suggested language. However, the commission will modify paragraph (6)(C)1. to delete the word "technical" and substitute the words "maximum achievable" to increase the usefulness of the information derived from the subsection during the electric utility resource planning process.

COMMENT #19: Changes to Subsection 4 CSR 240-22.050(6)(C)2. Staff advises the commission to change the term "demand-side" to "end-use" measures to be consistent with usage in other parts of the rule. Public counsel supports that change.

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

COMMENT #20: Additional Edits Proposed by Public Counsel. As part of its comments, public counsel submitted a red-line version of the proposed rule that incorporated several proposed changes to the rule. Public counsel specifically commented on most of those changes, but also included a few edits that were not otherwise explained in its comments.

RESPONSE AND EXPLANATION OF CHANGE: The commission has reviewed these additional edits and found them to be appropriate. The commission has incorporated those edits in section (2), subsections (1)(B) and (4)(D), and subparagraph (4)(D)5.A.

4 CSR 240-22.050 Demand-Side Resource Analysis

PURPOSE: This rule specifies the principles by which potential demand-side resource options shall be developed and analyzed for cost-effectiveness, with the goal of achieving all cost-effective demand-side savings. It also requires the selection of demand-side candidate resource options that are passed on to integrated resource analysis in 4 CSR 240-22.060 and an assessment of their maximum achievable potentials, technical potentials, and realistic achievable potentials.

(1) The utility shall identify a set of potential demand-side resources from which demand-side candidate resource options will be identified for the purposes of developing the alternative resource plans required by 4 CSR 240-22.060(3). A potential demand-side resource consists of a demand-side program designed to deliver one (1) or more energy efficiency and energy management measures or a demand-side rate. The utility shall select the set of potential demand-side resources and describe and document its selection—

(A) To provide broad coverage of—

1. Appropriate market segments within each major class;
2. All significant decision-makers, including at least those who choose building design features and thermal integrity levels, equipment and appliance efficiency levels, and utilization levels of the energy-using capital stock; and
3. All major end uses, including at least the end uses which are

to be considered in the utility's load analysis as listed in 4 CSR 240-22.030(4)(A)1.;

(B) To fulfill the goal of achieving all cost-effective demand-side savings, the utility shall design highly effective potential demand-side programs consistent with subsection (1)(A) that broadly cover the full spectrum of cost-effective end-use measures for all customer market segments;

(2) The utility shall conduct, describe, and document market research studies, customer surveys, pilot demand-side programs, pilot demand-side rates, test marketing programs, and other activities as necessary to estimate the maximum achievable potential, technical potential, and realistic achievable potential of potential demand-side resource options for the utility and to develop the information necessary to design and implement cost-effective demand-side programs and demand-side rates. These research activities shall be designed to provide a solid foundation of information applicable to the utility about how and by whom energy-related decisions are made and about the most appropriate and cost-effective methods of influencing these decisions in favor of greater long-run energy efficiency and energy management impacts. The utility may compile existing data or adopt data developed by other entities, including government agencies and other utilities, as long as the utility verifies the applicability of the adopted data to its service territory. The utility shall provide copies of completed market research studies, pilot programs, pilot rates, test marketing programs, and other studies as required by this rule and descriptions of those studies that are planned or in progress and the scheduled completion dates.

(3) The utility shall develop potential demand-side programs that are designed to deliver an appropriate selection of end-use measures to each market segment. The utility shall describe and document its potential demand-side program planning and design process which shall include at least the following activities and elements:

(E) Design a marketing plan and delivery process to present the menu of end-use measures to the members of each market segment and to persuade decision-makers to implement as many of these measures as may be appropriate to their situation. When appropriate, consider multiple approaches such as rebates, financing, and direct installations for the same menu of end-use measures;

(F) Evaluate, describe, and document the feasibility, cost-reduction potential, and potential benefits of statewide marketing and outreach programs, joint programs with natural gas utilities, upstream market transformation programs, and other activities. In the event that statewide marketing and outreach programs are preferred, the utilities shall develop joint programs in consultation with the stakeholder group;

(G) Estimate the characteristics needed for the twenty (20)-year planning horizon to assess the cost effectiveness of each potential demand-side program, including:

1. An assessment of the demand and energy reduction impacts of each stand-alone end-use measure contained in each potential demand-side program;

2. An assessment of how the interactions between end-use measures, when bundled with other end-use measures in the potential demand-side program, would affect the stand-alone end-use measure impact estimates;

3. An estimate of the incremental and cumulative number of program participants and end-use measure installations due to the potential demand-side program;

4. For each year of the planning horizon, an estimate of the incremental and cumulative demand reduction and energy savings due to the potential demand-side program; and

5. For each year of the planning horizon, an estimate of the costs, including:

A. The incremental cost of each stand-alone end-use measure;

B. The cost of incentives paid by the utility to customers or

utility financing to encourage participation in the potential demand-side program. The utility shall consider multiple levels of incentives paid by the utility for each end-use measure within a potential demand-side program, with corresponding adjustments to the maximum achievable potential and the realistic achievable potential of that potential demand-side program;

C. The cost of incentives to customers to participate in the potential demand-side program paid by the entities other than the utility;

D. The cost to the customer and to the utility of technology to implement a potential demand-side program;

E. The utility's cost to administer the potential demand-side program; and

F. Other costs identified by the utility;

(4) The utility shall develop potential demand-side rates designed for each market segment to reduce the net consumption of electricity or modify the timing of its use. The utility shall describe and document its demand-side rate planning and design process and shall include at least the following activities and elements:

(D) Estimate the input data and other characteristics needed for the twenty (20)-year planning horizon to assess the cost effectiveness of each potential demand-side rate, including:

1. An assessment of the demand and energy reduction impacts of each potential demand-side rate;

2. An assessment of how the interactions between multiple potential demand-side rates, if offered simultaneously, would affect the impact estimates;

3. An assessment of how the interactions between potential demand-side rates and potential demand-side programs would affect the impact estimates of the potential demand-side programs and potential demand-side rates;

4. For each year of the planning horizon, an estimate of the incremental and cumulative demand reduction and energy savings due to the potential demand-side rate; and

5. For each year of the planning horizon, an estimate of the costs of each potential demand-side rate, including:

A. The cost of incentives to customers to participate in the potential demand-side rate paid by the utility. The utility shall consider multiple levels of incentives to achieve customer participation in each potential demand-side rate, with corresponding adjustments to the maximum achievable potential and the realistic achievable potentials of that potential demand-side rate;

B. The cost to the customer and to the utility of technology to implement the potential demand-side rate;

C. The utility's cost to administer the potential demand-side rate; and

D. Other costs identified by the utility;

(F) Evaluate how each demand-side rate would be considered by the utility's Regional Transmission Organization (RTO) in resource adequacy determinations, eligibility to participate as a demand response resource in RTO markets for energy, capacity, and ancillary services; and

(5) The utility shall describe and document its evaluation of the cost effectiveness of each potential demand-side program developed pursuant to section (3) and each potential demand-side rate developed pursuant to section (4). All costs and benefits shall be expressed in nominal dollars.

(A) In each year of the planning horizon, the benefits of each potential demand-side program and each potential demand-side rate shall be calculated as the cumulative demand reduction multiplied by the avoided demand cost plus the cumulative energy savings multiplied by the avoided energy cost. These calculations shall be performed both with and without the avoided probable environmental costs. The utility shall describe and document the methods, data, and assumptions it used to develop the avoided costs.

1. The utility avoided demand cost shall include the capacity cost of generation, transmission, and distribution facilities, adjusted to reflect reliability reserve margins and capacity losses on the transmission and distribution systems, or the corresponding market-based equivalents of those costs. The utility shall describe and document how it developed its avoided demand cost, and the capacity cost chosen shall be consistent throughout the triennial compliance filing.

2. The utility avoided energy cost shall include the fuel costs, emission allowance costs, and other variable operation and maintenance costs of generation facilities, adjusted to reflect energy losses on the transmission and distribution systems, or the corresponding market-based equivalents of those costs. The utility shall describe and document how it developed its avoided energy cost, and the energy costs shall be consistent throughout the triennial compliance filing.

3. The avoided probable environmental costs include the effects of the probable environmental costs calculated pursuant to 4 CSR 240-22.040(2)(B) on the utility avoided demand cost and the utility avoided energy cost. The utility shall describe and document how it developed its avoided probable environmental cost.

(B) The total resource cost test shall be used to evaluate the cost effectiveness of the potential demand-side programs and potential demand-side rates. In each year of the planning horizon—

1. The costs of each potential demand-side program shall be calculated as 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 potential demand-side program;

2. The costs of each potential demand-side rate shall be calculated as the sum of all incremental costs that are due to the rate (including both utility and participant contributions) plus utility costs to administer, deliver, and evaluate each potential demand-side rate; and

3. For purposes of this test, the costs of potential demand-side programs and potential demand-side rates shall not include lost revenues or utility incentive payments to customers.

(C) The utility cost test shall also be performed for purposes of comparison. In each year of the planning horizon—

1. The costs of each potential demand-side program and potential demand-side rate shall be calculated as the sum of all utility incentive payments plus utility costs to administer, deliver, and evaluate each potential demand-side program or potential demand-side rate;

2. For purposes of this test, the costs of potential demand-side programs and potential demand-side rates shall not include lost revenues; and

3. The costs shall include, but separately identify, the costs of any rate of return or incentive included in the utility's recovery of demand-side program costs.

(6) Potential demand-side programs and potential demand-side rates that pass the total resource cost test including probable environmental costs shall be considered as demand-side candidate resource options and must be included in at least one (1) alternative resource plan developed pursuant to 4 CSR 240-22.060(3).

(C) The utility shall describe and document its assessment of the potential uncertainty associated with the load impact estimates of the demand-side candidate resource options or portfolios. The utility shall estimate—

1. The impact of the uncertainty concerning the customer participation levels by estimating and comparing the maximum achievable potential and realistic achievable potential of each demand-side candidate resource option or portfolio; and

2. The impact of uncertainty concerning the cost effectiveness by identifying uncertain factors affecting which end-use resources are cost effective. The utility shall identify how the menu of cost-effective end-use measures changes with these uncertain factors and shall estimate how these changes affect the load impact estimates associated with the demand-side candidate resource options.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 22—Electric Utility Resource Planning**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-22.060 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1761-1766). The sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and Public Service Commissioner Jeff Davis. In addition, staff, public counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

Comments relating to the entire package of changes to Chapter 22: The proposed amendment to this rule is part of a larger package of nine (9) rules that comprise the proposed Chapter 22 of the commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The commission will address those comments first and then will address the comments that relate specifically to this rule of Chapter 22.

COMMENT #1: The Rules Should Be Less Prescriptive. Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas, and water utility trade organization.

RESPONSE: The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, have the virtue of being much shorter than the commission's rule, but that brevity comes with a cost. As staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility; but unless the reviewer knows the assumptions and processes that were used to determine the plan, the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow; but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other inter-

ested stakeholders, and the commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire explained that it also files IRPs in Arkansas and Oklahoma. Because Missouri's IRP rule is more comprehensive, it is able to file the Missouri IRP, with minor modifications, in those other states.

The rules the commission has proposed strike a proper balance between the utilities' interest in freedom of action and the commission's need to know the basis for their proposed plans. The commission will not adopt the rules proposed by MEDA.

COMMENT #2: Linkage with the MEEIA Rules. Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, section 393.1075, RSMo (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.

RESPONSE: The commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

This rule requires the utility to model both demand-side and supply-side resources and complete risk analysis on demand-side and supply-side resource implementation. If a demand-side program is part of the utility's preferred resource plan, many of the requirements necessary for the commission to approve MEEIA demand-side programs will be met through the requirements of this rule. The utility will use the integration model of its most recent preferred plan to screen demand-side programs that are not part of the utility's preferred plan to show that it is cost-effective as one of the requirements to acquire commission approval of a demand-side program.

COMMENT #3: Pre-approval of Large Projects. The electric utilities, through the MEDA rules, advocate for the option of requesting pre-approval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that pre-approval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for pre-approval of demand-side resources. Ameren Missouri claims that it is a logical extension to provide a pre-approval option for large supply-side investments, if pre-approval is requested by the utility.

Staff and public counsel oppose an option for pre-approval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a pre-approval process in the Chapter 22 rules.

Dogwood suggests the commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek pre-approval from the commission for certain large projects.

RESPONSE: The commission agrees with its staff and public counsel that there are other more appropriate alternatives for pre-approval and will not include a provision for pre-approval of large investments in its Chapter 22 rules. The commission is open to further discussion on the pre-approval question, but will not undertake a rulemaking on the subject at this time.

COMMENT #4: Illegal Infringement on the Right to Manage the Utility. Ameren Missouri contends the proposed rules go beyond the commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

RESPONSE: The commission certainly is not interested in managing the utility companies and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

COMMENT #5: Acknowledgment. The Department of Natural Resources urges the commission to modify the Chapter 22 rules to authorize the commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the commission's decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service," and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and its cost recovered, if the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Further, staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the commission.

RESPONSE: The commission does not wish to move down the path toward pre-approval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not pre-approval and will not bind a future commission in any future case. In addition, the commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition for "substantive concern." The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

Comments relating to this particular rule of Chapter 22:

COMMENT #6: Changes to Subsection 4 CSR 240-22.060(2)(A). Public counsel suggested several wording changes to this subsection that it believes would clarify the meaning of the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and will incorporate the suggested edits.

COMMENT #7: Question About Subsection 4 CSR 240-22.060(2)(B). KCPL indicates it is unsure of the intended meaning of this subsection's use of the term "levelized," indicating its understanding that the term means "a simple average and not discounted."

RESPONSE: The commission does not agree with KCPL that "levelized" means a simple average, because proposed 4 CSR 240-22.020(28) defines levelized costs to mean the dollar amount of a fixed annual payment for which a stream of those payments over a specified period of time is equal to a specified present value based on a specified rate of interest. Therefore, the commission will not modify this subsection.

COMMENT #8: Changes to Section 4 CSR 240-22.060(3). Public counsel suggests that the phrase "and variation in the timing or resource acquisition" be added to this section to stress the importance of the timing of acquisition in alternative resource plans to help determine an optimal plan. Public counsel proposes a similar change to subsection (3)(A) for the same reason.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and believes this change will require the utility to think outside the box when developing its list of alternative resource plans. The commission will change this section as public counsel suggests.

COMMENT #9: Changes to Paragraph 4 CSR 240-22.060(3)(A)1. This subsection requires a utility's resource plan to minimally comply with "legal mandates for demand-side resources, renewable energy resources, and other mandated energy resources." KCPL contends this paragraph is unnecessary as compliance with legal mandates is a given.

RESPONSE: The commission does not agree with KCPL because the purpose of this paragraph is to develop a "compliance benchmark resource plan for planning purposes." The commission will not change the paragraph.

COMMENT #10: Changes to Paragraphs 4 CSR 240-22.060(3)(A)2., 3., and 4. Public counsel proposes to add the phrase "an optimal combination of" renewable energy resources, demand-side resources, and other energy resources in the various paragraphs. Public counsel argues this change is necessary to stress the concept of optimization.

RESPONSE AND EXPLANATION OF CHANGE: The commission will not add the phrase "an optimal combination of" in these paragraphs, because to do so would materially change the intent of these paragraphs from assessing the range of options to somehow pre-determining the optimal combination of resources which cannot be known when formulating the alternative resource plan in section (3). However, in paragraph (3)(A)3., the commission will change "technical potential" to "maximum achievable potential" to assess a more meaningful range of demand-side resources.

COMMENT #11: Aggressive Renewable Energy Resource Plan Case in Paragraph 4 CSR 240-22.060(3)(A)2. The Department of Natural Resources asks the commission to remove the requirement that only renewable energy resources may be included in the resource plan, permit the utility to continue current commitments to demand-side resources, and require that baseload or intermediate energy requirements that result from load growth or resource retirements be met by renewable energy sources.

RESPONSE: The commission will not modify this paragraph as requested by DNR, because the utility's current commitment to demand-side resources is accounted for in the utility load forecasts per 4 CSR 240-22.050(7). Further, this paragraph as written is intended to assess the aggressive renewable resource plan for planning purposes.

COMMENT #12: Changes to Paragraph 4 CSR 240-22.060(3)(A)3. Public counsel asks the commission to substitute the term maximum achievable potential for the term technical potential. Public counsel suggests the assessment of maximum achievable potential is more meaningful for planning purposes than an assessment of technical potential. The Department of Natural Resources proposes a more extensive rewrite of this paragraph to establish a yardstick by which utilities measure whether they have utilized sufficient demand-side resources to achieve all cost-effective demand-side savings consistent with 4 CSR 240-20.094(2), the MEEIA rules.

In its comments, staff expressed support for adding a definition of maximum achievable potential to the rule, but does not support deleting the term technical potential from the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission will not delete the term technical potential from its rule, but will add the definition of maximum achievable potential taken from its MEEIA rules in 4 CSR 240-22.020. Defining the aggressive demand-side resource plan as the maximum achievable plan should also reduce DNR's perceived need to establish a "yardstick."

COMMENT #13: Addition of "Demand-Side" Rate. Public counsel asks the commission to add the word "demand-side" before "rate" at several points in the rule to improve clarity.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify the rule as public counsel suggests.

COMMENT #14: Changes to Paragraph 4 CSR 240-22.060(3)(A)6. Staff and public counsel ask the commission to change the word "staff" to "commission" to be consistent with 4 CSR 240-22.080(4) in recognition that it is the commission rather than staff that will be specifying a special contemporary issue.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel and its staff and will modify the paragraph accordingly.

COMMENT #15: Changes to Paragraph 4 CSR 240-22.060(3)(C)2. Public counsel suggests the commission add the words "and other retrofits" to the existing term "equipment" in describing additions to generation plants to meet environmental requirements.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with public counsel's suggestion and will modify the paragraph accordingly.

COMMENT #16: Changes to Paragraph 4 CSR 240-22.060(4)(B)3. Public counsel and KCPL both proposed changes to this paragraph to modify the subsections reference to measuring capacity "at the customer's meter." KCPL suggests that phrase be changed to "capacity supplied to the transmission grid." At the hearing, public counsel changed its recommended language to that proposed by KCPL.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the paragraph as KCPL suggests.

COMMENT #17: Changes to Paragraph 4 CSR 240-22.060(4)(B)6. KCPL proposes a change to this subsection that would replace the phrase "energy at the customer's meters" with the phrase "energy supplied to the transmission grid, less losses." KCPL explains this change is necessary because physical energy cannot be assigned to an individual customer or group of customers.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the paragraph as KCPL suggests.

COMMENT #18: Changes to Subsection 4 CSR 240-22.060(4)(C). Public counsel would add the phrase "for demand-side resources" to better describe the utility financial incentives that are to be analyzed.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the subsection as public counsel suggests.

COMMENT #19: Changes to Subparagraph 4 CSR 240-22.060(4)(C)1.B. Public counsel suggests the phrase "impact on retail rates" be changed to "percentage increase in the average rate from the prior years."

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the subparagraph as public counsel suggests.

COMMENT #20: Changes to Subparagraph 4 CSR 240-22.060(4)(C)1.C. Public counsel suggests the addition of the phrase "and credit metrics."

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the subparagraph as public counsel suggests.

COMMENT #21: Changes to Paragraph 4 CSR 240-22.060(4)(C)2. Public counsel would add a reference to legal mandates to be consistent with the change to the definition of legal mandates it proposed for section 4 CSR 240-22.020(27).

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will modify the paragraph as public counsel suggests.

COMMENT #22: Changes to Sections 4 CSR 240-22.060(5), (6), and (7) Relating to Critical Uncertain Factors. Public counsel would make changes to these three (3) sections to help clarify the distinction between "uncertain factors" and "critical uncertain factors" so that the process of determining which "uncertain factors" are deemed to be "critical uncertain factors" is easier to follow.

RESPONSE: The commission does not believe public counsel's suggestions constitute a material change that would improve the rule. Furthermore, no other stakeholder suggested changing these sections. The commission will not make the changes suggested by public counsel.

COMMENT #23: New Section 4 CSR 240-22.060(8) Relating to Covariant Risk Analysis. Dogwood would add a new section that would require utilities to take into account the interrelationship between risk factors through a covariant risk analysis. At the hearing, staff supported the concept of covariant risk analysis, but suggested the same result could be obtained by inserting language into section (6) of this rule that would require the utility to describe its assessment of the impacts "and inter-relationship" of critical uncertain factors.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Dogwood's emphasis about covariant risk analysis. However, it agrees with staff that Dogwood's purpose can be accomplished by inserting language into section (6) of this rule and does not require the addition of a new section. The commission will modify section (6) of this rule as suggested by staff.

4 CSR 240-22.060 Integrated Resource Plan and Risk Analysis

(2) Specification of Performance Measures. The utility shall specify, describe, and document a set of quantitative measures for assessing the performance of alternative resource plans with respect to resource planning objectives.

(A) These performance measures shall include at least the following: