

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Proposed Amendments)
to the Missouri Public Service Commission's)
Rules Relating to the Missouri Energy) **File No. EX-2016-0334**
Efficiency Investment Act)

NRDC Comments on Proposed MEEIA Rules

The Natural Resources Defense Council offers these comments on the Proposed Rule published in the Missouri Register of February 1, 2017. Proposed changes are indicated by strike-throughs and underlining, and the rationale follows each proposed change.

20.092 Definitions:

(W) Energy efficiency means measures that reduce the amount of electricity, or total primary Btus of energy, required to achieve a given end-use;

Rationale: Some electric programs are offered jointly or in coordination with gas efficiency efforts, and often there are cost-effective fuel switching opportunities. This change puts all fuels on an equal footing.

(EE) Maximum achievable potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation ~~and ideal implementation conditions~~. Maximum achievable potential establishes a best estimate of the maximum target for all cost-effective demand-side savings that a utility can expect to achieve through its demand-side programs and often involves incentives that represent a very high portion of total program costs and very short customer payback periods. ~~Maximum achievable potential is considered the hypothetical upper boundary of achievable demand-side savings potential, because it presumes conditions that are ideal and not typically observed;~~

Rationale: Maximum achievable potential does not presume anything like "ideal" conditions, nor does it represent a hypothetical upper boundary that can only be achieved under "ideal" conditions. Rather, maximum achievable potential reflects the analyst's best estimate of what a program or set of programs would achieve under a given set of defined parameters. It always recognizes real world barriers to achievement unlike economic or technical potential. Further, MEEIA states: "The commission shall permit electric corporations to implement commission-

approved demand-side programs proposed pursuant to this section with **a goal of achieving all cost-effective demand-side savings** [emphasis added].¹ Therefore, the MEEIA goal is by definition to pursue maximum achievable potential. For more information see: U.S. EPA, *Guide for Conducting Energy Efficiency Potential Studies: A Resource of the National Action Plan for Energy Efficiency*, November 2007, produced by Optimal Energy for U.S. EPA.

(OO) Completely Delete Section (OO) and any references to realistic achievable potential, or at a minimum the following edits:

Realistic achievable potential means energy savings and demand savings relative to a utility's baseline energy forecast and baseline demand forecast, respectively, resulting from expected program participation ~~and realistic implementation conditions under a budget and program-design constrained program portfolio that is less aggressive than one that would pursue all cost-effective achievable efficiency. Realistic achievable potential establishes a realistic target for demand-side savings that a utility can expect to achieve through its demand-side programs and involves incentives that represent a moderate portion of total program costs and longer customer payback periods when compared to those associated with maximum achievable potential;~~

Rationale: Because maximum achievable potential is what is achievable when pursuing maximum cost-effective efficiency, by definition anything less represents a constrained program scenario that pursues less than the maximum achievable cost-effective efficiency. Maximum achievable potential already considers "realistic implementation conditions" in that it is the analyst's best estimate of what would actually occur when pursuing all cost-effective achievable efficiency. Further, as originally written, the PSC is imposing a subjective definition of what it considers "realistic," which is in direct contradiction to the MEEIA statute that expresses a goal of achieving maximum cost-effective efficiency savings.

NRDC would actually advocate complete elimination of any discussion of "Realistic achievable potential" in the MEEIA Rules because the concept that only something less than maximum achievable cost-effective efficiency savings is somehow deemed "realistic" is never stated or implied in the MEEIA Statute, and is inconsistent with the legislature's goal as stated in the Statute.

(XX) Total resource cost test or TRC means a test that compares the sum of ~~avoided costs all incremental benefits~~ to the sum of all incremental costs of end use measures, ~~programs or portfolios that are implemented due to the program~~, as defined by the commission in rules. Benefits include the avoided costs, avoided probable environmental compliance costs, other avoided resource benefits (e.g., oil, natural gas, water), and other benefits that accrue to

¹ Section 393.1075.4, RSMo

Missourians, including non-energy benefits as defined by the commission. Costs include 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. In estimating its avoided probable environmental compliance costs and non-energy benefits, the utility shall consider factors include, but not limited to: reductions in emissions liability under the Clear Air Act; reduction in transmission and distribution costs; reduction in the utilities load factor or peak load; reductions in fuel costs, health and safety improvements, etc; and

Rationale: A TRC test compares costs and benefits. The initial definition of benefits as “the sum of avoided costs” contradicts the balance of the definition, which clearly identifies numerous other benefits that should be counted (*e.g.*, health and safety improvements, environmental compliance costs, water savings, etc.). The addition of “programs or portfolios” addresses the fact that the TRC test is used by utilities not only to assess individual measure cost-effectiveness but also full program and portfolio cost-effectiveness.

20.093 Demand-Side Programs Investment Mechanisms:

(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~~ The commission retains the sole authority to approve, accept, or reject any proposed establishment, continuation, or modification of a DSIM or any proposed alternative DSIM.

Rationale: The MEEIA Statute is clear that “It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs.”² In addition, the statute states “a goal of achieving all cost-effective demand-side savings.”³ Finally, the statute directs, “The commission **shall** provide oversight and may adopt rules and procedures and approve corporation-specific settlements and tariff provisions, independent evaluation of demand-side programs, **as necessary, to ensure that electric corporations can achieve the goals of this section**”⁴ [emphasis added].

While participation in MEEIA is voluntary, once a utility decides to offer programs it is subject to Commission approval of such programs “with a goal of achieving all cost-effective demand-side savings. **Recovery for such programs shall not be permitted unless** the programs are approved

² Section 393.1075.3, RSMo

³ Section 393.1075.4

⁴ Section 393.1075.11

by the commission, result in energy or 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”⁵ [emphasis added]. The Commission thus has ultimate authority to approve or disapprove a DSIM.

The above sections of the Statute clearly direct the commission to consider energy efficiency an energy resource on an equal footing with supply. The commission already has responsibility to ensure that utilities serve the public interest and provide energy services at the lowest reasonable cost, given other reliability, environmental and policy constraints. As such, it is entirely within the commission’s authority to direct a utility to “approve, accept, or reject” any efficiency plans that pursue cost-effective efficiency. Further, Section 393.1075.11 makes clear the legislature has endowed the commission with the responsibility to take steps “**as necessary, to ensure that electric corporations can achieve the goals of this section.**”

20.094 Demand-Side Programs:

(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, except where ordered by the commission.

Rationale: While the specific goals referenced may be modified, if the commission approves a plan and issues an order accepting a DSIM which includes specific goals and an earnings opportunity based on performance as exists currently, then failure to achieve the specific goals would clearly result in an “adverse consequence” in that it would reduce the utility shareholder earnings. Further, the commission retains the authority to mandate specific goals and/or penalties or rewards consistent with the authority provided in the MEEIA Statute and its general obligations. MEEIA provides that “the commission may develop cost recovery mechanisms,”⁶ and it is too broad to say that these may not include what could be considered “adverse consequences.” There may be consequences in the form of reduced rewards or incentives for failing to meet the energy and demand savings goals of programs or portfolios, or to make progress toward the ultimate goal of all cost-effective demand-side savings. And while MEEIA does not provide for penalties in the form of fines, these adverse consequences could be interpreted as penalties.

⁵ Section 393.1075.4

⁶ [Section 393.1075.5](#)

(A) The commission shall use the greater of the annual ~~realistic-maximum~~ amount of achievable energy savings and demand savings as determined through a market potential study or the following incremental annual demand-side savings goals as a guideline to review progress toward an expectation that the electric utilities demand-side programs can achieve a goal of all cost-effective demand-side savings:

And:

(B) The commission shall use the greater of the cumulative ~~realistic-maximum~~ amount of energy savings and demand savings that is determined to be cost-effectively achievable through a market potential study or the following cumulative demand-side savings goals as a guideline to review progress toward an expectation that the electric utilities demand-side programs can achieve a goal of all cost-effective demand-side savings:

Rationale: The last sentences in paragraphs (A) and (B) are clear that the goal should lead “toward an expectation that the electric utilities demand-side programs can achieve a goal of all cost-effective demand-side savings.” Achieving all cost-effective demand-side savings is by definition quantified as the maximum achievable potential. “Realistic” is clearly a reduced, constrained amount of cost-effective savings that is lower than all cost-effective savings, and therefore lower than the goals envisioned by this rule and the MEEIA Statute.

Comments to 20.094(3) Utility Market Potential Studies.

(3) ~~Utility-Statewide~~ Market Potential Studies.

(3)(A)3: Be procured and managed by [INSERT APPROPRIATE STATE ENTITY HERE] and prepared by an independent third party; and

(3)(B): The [INSERT APPROPRIATE STATE ENTITY HERE]~~utility~~ shall provide an opportunity for commission staff, utility and stakeholder review and input in the planning states of the potential study including review of assumptions, methodology in advance of the performance of the study.

(4)(B) As part of its application for approval of demand-side programs, the electric utility shall file or provide a reference to the commission case or to the market potential documents and workpapers already made available by [INSERT APPROPRIATE STATE ENTITY HERE] that contains any of the following information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact:

(4)(B)2: Clear description of the process and assumptions used to determine technical potential, economic potential, and maximum achievable potential, ~~and realistic ash 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

Rationale: Each utility performing its own potential study is neither necessary nor desirable. A single statewide study (with separate utility-specific reporting) would save ratepayers substantial costs and reduce efforts by all stakeholders, while providing for a greater level of independence and objectivity. In the past, development and use of utility-procured potential studies has been contentious and resulted in significant disagreement among stakeholders. In addition, these studies have been very expensive and time consuming for all parties involved. Development of a single statewide TRM, procured and managed by the Division of Energy, has provided significant benefit to Missouri by ensuring greater levels of consistency, reduced effort and cost, and greater independence and support from stakeholders. Similarly, development of a single statewide potential study, overseen by a neutral state body but still funded by utility efficiency funds, would provide a more streamlined, efficient, and cheaper alternative. It would also result in greater support and buy-in by non-utility stakeholders, reduce stakeholder and utility time commitments, ensure a level of consistency in approaches and results across utility territories, and be more independent and objective. We note that legislation was recently passed in Michigan (Senate Bill No. 437) which authorizes the Michigan Public Service Commission to conduct a statewide potential study, and even “establish the modeling scenarios and assumptions each electric utility should include in developing its integrated resource plan...”⁷

(4)(B)2: Clear description of the process and assumptions used to determine technical potential, economic potential, and 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

Rationale: To preserve consistency with above proposed changes.

(4)(C): Demonstrations of cost-effectiveness for each demand-side program and for the total of all demand-side programs of the utility. At a minimum, the electric utility shall ~~include~~ provide all workpapers, with all models and spreadsheets provided as executable versions in native format with all formulas intact, and include:

(4)(D): Detailed description of each proposed demand-side program, with all workpapers, with all models and spreadsheets provided as executable versions in native format with all formulas intact, to include at least:

⁷ Section 6t. <http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0341.pdf>

Rationale: Provides consistency with (3). While workpapers for the potential study are important and useful, the utilities should also provide all workpapers supporting the quantitative aspects of their efficiency plans for Staff and stakeholder review.

Relationship of MEEIA to Chapter 22:

20.093(8)(B)11: ~~Demonstration of relationship of the demand-side program to demand-side resources in latest filed 4 CSR 240-22 compliance filing. [DELETE ENTIRETY OF 20.093(8)(B)11]~~

And:

20.094(4)(C)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.~~

Rationale: NRDC does not support requiring a MEEIA energy efficiency plan to be tied specifically to the 4 CSR 240-22 compliance filing for several reasons. First, the IRP's primary criterion is to identify the lowest present value revenue requirement. This is not consistent with the MEEIA requirement to pursue all cost-effective efficiency based on the TRC test. Second, the IRP analysis may not have included the most appropriate energy efficiency scenario, assessing the maximum achievable potential. Third, a utility and stakeholders may reach consensus on certain aspects of a plan that had not been formally modeled in the IRP, but for which all parties are supportive of as helping to meet the goal of capturing all cost-effective efficiency. Finally, because the timing of the IRP compliance filing and MEEIA filings are not the same, new information or changing circumstances may exist that justify diverging from the IRP in the MEEIA plan. We also note that the revenue requirements analysis in the IRP may no longer be valid because the amount of opt-out load may not have been known at the time of the IRP process.

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(4)(D)6: Projected gross and net annual and lifetime energy savings;

Rationale: Lifetime energy savings most directly correlates with the value of benefits to the economy and to ratepayers, as well as the impact on the forecasted utility loads, and is therefore an important primary metric to consider when assessing the merits of any efficiency portfolio.

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

Rationale: Maintains consistency with the above proposed edit to 4 CSR 240-20.093(2). See above for explanation of rationale.

(9)(B)3: Collaborative meetings shall occur at least ~~semi-annually~~quarterly. Additional meetings or conference calls will be scheduled as needed. Staff shall schedule the meetings, provide notice of the meetings and any interested persons may attend such meetings.

Rationale: Typically, statewide and utility collaboratives that meet only semi-annually or less frequently are not effective at creating significant value. Ideally, collaborative meetings should occur monthly, but at a minimum quarterly. This would align the statewide collaborative with the Missouri utility collaboratives, as well as stakeholder processes in other Midwest states.