

**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	)	<u>File No. EX-2016-0334</u>
Efficiency Investment Act	)	

MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT
DIVISION OF ENERGY COMMENTS

COMES NOW the Missouri Department of Economic Development – Division of Energy (“DE”),¹ and for its comments on the Public Service Commission’s (“Commission”) proposed revisions to its Missouri Energy Efficiency Investment Act (“MEEIA”) rules in the above-captioned matter states as follows:

1. DE submits the attached comments on the rescissions of 4 CSR 240-3.163 and 4 CSR 240-3.164, the addition of 4 CSR 240-20.092, and the revisions to 4 CSR 240-20.093 and 4 CSR 240-20.094 as proposed by the Commission. DE appreciates the significant time and effort already invested in these changes by the Commission, its Staff, and other stakeholders. DE has participated throughout the revision process, including Commission Case No. EW-2015-0105.

2. Through these comments, DE is providing recommendations which will further the goal of MEEIA of “achieving all cost-effective demand-side savings” (Section 393.1075.4, RSMo.) while remaining mindful of the viewpoints presented by other parties.

¹ The Division of Energy was transferred from the Department of Natural Resources to the Department of Economic Development on August 29, 2013 by Executive Order 13-03. The Order transfers “[A]ll authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the Division of Energy from the Missouri Department of Natural Resources to the Missouri Department of Economic Development...”

3. DE's proposed changes are marked as "track changes" edits in the three attached documents ("DE MEEIA Rulemaking Comments 4 CSR 240-20.092," "DE MEEIA Rulemaking Comments 4 CSR 240-20.093," and "DE MEEIA Rulemaking Comments 4 CSR 240-20.094"). A detailed summary and explanation of DE's proposals is provided below.

4. Chiefly, DE's suggestions would: (a) strengthen and add detail to provisions related to the statewide technical reference manual ("TRM"); (b) promote flexible, robust discussions of potential demand-side savings opportunities, with reasonable consideration of all possible benefits; (c) ensure that cost-effectiveness testing requirements align with the provisions of the MEEIA statute; and, (d) remove requirements not based in statute which mandate the evaluation of MEEIA filings through the lens of the integrated resource plan ("IRP") process. Together, these revisions will create a streamlined, standardized, stakeholder-driven process to achieve the goal of all cost-effective demand-side savings.

Summary of Proposed Revisions to 4 CSR 240-20.092

5. Definition of "avoided cost or avoided utility cost" at (1)(C). DE proposes revising this definition to include additional categories of potential avoided costs, and the reference to the Commission's IRP process has been removed. DE does not support tying MEEIA to the IRP process; the "net present value of revenue requirement" metric used in the IRP process inherently conflicts with the MEEIA statute's indication of the total resource cost test ("TRC") as a preferred cost-effectiveness metric, and with the law's goal of achieving all cost-effective demand-side savings (Sections 393.1075.4, RSMo.). Tying MEEIA to the IRP process also limits the utility's ability to meet evolving customer demands because of the mismatched timing between potential studies, IRPs, and MEEIA filings.

6. Definition of “deemed savings” at (1)(I) and definition of “net shared benefits” at (1)(HH). DE’s proposed revisions maintain consistency with the use of a statewide TRM by modifying the references to a “TRM” or “technical resource manual.” Such edits would improve the consistency of implementing the MEEIA rules if the Commission approves a statewide TRM.

DE also adds that its understanding of the “deemed savings” definition does not preclude the use of Commission-approved custom measures. Conversely, DE notes its concern that, under the proposed “net shared benefits” definition, a “payment to customers” could preclude payments to contractors, upstream manufacturers, or other third parties involved in programs such as direct measure installation and market transformation.

7. Definition of “demand-side programs” at (1)(M). DE suggests adding “conservation voltage reduction” as an example of an eligible demand-side measure. This measure has the potential to facilitate customer-elected reductions in energy use by controlling power line voltage; it should be explicitly recognized as an eligible measure type.

8. Definitions of different types of “potential” at (1)(T), (EE), (OO), and (SS). DE proposes revising these definitions to conform to the U.S. Environmental Protection Agency’s “Guide for Conducting Energy Efficiency Potential Studies,” available at https://www.epa.gov/sites/production/files/2015-08/documents/potential_guide_0.pdf. Use of these definitions would ensure consistency between Missouri’s demand-side programs and programs in other jurisdictions. The revision of these definitions would also require changes where these types of potential appear in the Commission’s proposed rules, such as 4 CSR 240-20.094(4)(B)2.

9. Definition of “evaluation, measurement, and verification, or EM&V” at (1)(Y). This proposed revision adds the use of a statewide TRM for EM&V once the Commission

approves a statewide TRM, consistent with the Commission's proposed changes at 4 CSR 240-20.093(7).

10. Definition of "market potential study" at (1)(CC). The proposed revision clarifies that market potential studies should be used for guiding decision-making rather than limiting program planning. The reliance on market potential studies has historically constrained MEEIA filings, so this rule revision would increase regulatory flexibility.

11. Definition of "market transformation" at (1)(DD). DE is unclear as to the need for this definition and notes that past discussions have indicated how complicated the term is. Defining it may limit how programs or portfolios may accomplish energy efficiency goals. "Market transformation" is an ongoing process which should be defined on an ongoing basis.

12. Definition of "non energy benefits" at (1)(II). DE proposes requiring the use of non-energy benefits in cost-effectiveness tests unless such benefits cannot be calculated with a reasonable degree of confidence. Although there is uncertainty about the exact values of certain non-energy benefits, reasonable estimates of many of these benefits nonetheless exist.² DE's revision ensures the proper measurement of all benefits resulting from demand-side programs; the language proposed by the Commission in its rule revisions would lead to undervaluation of these benefits and a failure to achieve the goal of all cost-effective demand-side savings. A potential approach to this issue is found at the proposal under 4 CSR 240-20.094(9)(B)1.D, through which the State-Wide Collaborative would, "Explore other opportunities, such as development of a percentage adder for non-energy benefits."

² See, for example: Skumatz, Lisa A., Ph.D. 2014, "Non-Energy Benefits / Non-Energy Impacts (NEBs/NEIs) and Their Role & Values in Cost-Effectiveness Tests: State of Maryland," http://energyefficiencyforall.org/sites/default/files/2014_%20NEBs%20report%20for%20Maryland.pdf.

13. Definition of “preferred resource plan” at (1)(LL). DE proposes striking this definition. As noted above, DE does not support tying MEEIA to the IRP process.

14. Definition of “statewide technical reference manual or statewide TRM” at (1)(RR) and definition of “technical resource manual” at (1)(TT). DE supports revising the definition of “statewide TRM” to include references to 4 CSR 240-20.093(7)(B) and 4 CSR 240-20.094(10) in order to ensure consistency between the different parts of the MEEIA rules, such as the descriptions of the instances in which the statewide TRM is to be used. DE proposes striking the “technical resource manual” definition or better defining the use of the term in order to clarify when it is appropriate to use a non-statewide (i.e., utility-specific) TRM; revising the definition would require revisions throughout the proposed rules.

15. Definition of “total resource cost test or TRC” at (1)(XX). DE proposes revising this definition to indicate that the TRC test is based on the comparison of the ratio of the net present value of long-term costs and benefits, consistent with commonly accepted cost-benefit analysis and cost-effectiveness testing methodologies.

Summary of Proposed Revisions to 4 CSR 240-20.093

16. EM&V final report requirements at (7)(D)1.B(III). DE proposes edits which indicate that EM&V reports do not need to contain an estimate of Utility Cost Test-based benefits for demand-side programs not subject to cost-effectiveness testing (e.g., low-income programs), either for the individual programs or through the inclusion of the exempted programs when performing cost-effectiveness tests for an electric utility’s aggregate MEEIA portfolio. In addition to codifying the exemptions in the MEEIA statute at Section 393.1075.4, RSMo., this revision maintains consistency with the Commission’s proposed language at (7)(D)1.B(II). DE notes that including such exempt programs in portfolio-level cost-effectiveness testing

essentially subjects these programs to an indirect cost-effectiveness test; this not only violates the explicit exemptions in the MEEIA statute, but could lower the overall cost-effectiveness of MEEIA portfolios. If portfolio cost-effectiveness scores are lowered, utilities will be pressured to further modify programs, preventing the pursuit of all cost-effective demand-side savings.

17. Requirements for electric utility EM&V contractors at (7)(E)2 pertaining to the statewide TRM. DE's proposed revisions would require electric utility EM&V contractors to use a statewide TRM to assess those measures contained in applications to establish, continue, or modify demand-side measures following Commission approval of a statewide TRM, while exempting those measures approved by the Commission prior to the Commission's approval of a statewide TRM. Additionally, the revisions indicate that measures approved using one version of a statewide TRM are to be evaluated using that version of the statewide TRM, not subsequent versions. The use of the most recent statewide TRM would apply to previously approved measures if such measures are continued or modified. DE's proposal also references 4 CSR 240-20.094(10) in order to ensure consistency between the different parts of the MEEIA rules.

The exemption of measures approved under different vintages of a statewide TRM is in response to a concern expressed by Kansas City Power & Light Company during a stakeholder meeting about the MEEIA rule revisions; DE's proposed edit fairly addresses this concern by not changing evaluation requirements for extant measures with successive statewide TRM revisions. Similarly, DE's proposal to exclude pre-statewide TRM measures from evaluation under the statewide TRM (absent measure modification or continuation from a previous cycle) would ensure that electric utilities are not unreasonably required to evaluate older measures using methodologies not contained in their MEEIA application.

18. Additional language under the requirements for electric utility EM&V contractors at (7)(E)3. DE proposes adding new language under (7)(E) to indicate that measure savings determined through the use of the Commission-approved statewide TRM are afforded a rebuttable presumption of accuracy, and that, in the event of a measure no longer being correctly characterized in the statewide TRM, electric utilities shall propose and justify the use of an alternative measure characterization. This change would ensure that the Commission-approved statewide TRM is the default tool for measure evaluation by electric utility EM&V contractors, unless reasonable evidence is presented to support an alternative measure characterization.

19. Information required in Demand-Side Program Annual Report at (8)(B)11. DE proposes striking the requirement to demonstrate the relationship between demand-side programs and demand-side resources in IRP filings. As noted above, DE does not support tying MEEIA to the IRP process.

Summary of Proposed Revisions to 4 CSR 240-20.094

20. Guidelines for demand-side program review at (2)(A) and (B). DE supports the inclusion of language which strengthens the Commission's review of the targets at (2)(A) and (B). Although MEEIA does not require electric utilities to offer demand-side programs, the Commission should nonetheless be empowered to scrutinize electric utility demand-side program filings by requiring electric utilities to demonstrate to the Commission why their proposed portfolios are the best portfolios possible. This scrutiny should be based on the greater of the results of the electric utilities' market potential studies or the reasonable goals included in (2)(A) and (B), with the goal of achieving all cost-effective demand-side savings.

DE also proposes striking the word "realistic" from the phrase "realistic amount of energy savings and demand savings" as found in both (2)(A) and (B). The word "realistic" is

ambiguous in this context given that it may be confused with its use in the context of “realistic potential.”

21. Description of market potential study purpose at (3)(A). DE suggests adding language to indicate that market potential studies are only estimates of potential energy efficiency opportunities at a given point in time, as opposed to binding or limiting documents. As noted above regarding the definition of “market potential study,” these studies should be used as guidelines when considering electric utility proposals, not as restrictions to electric utility efforts to achieve the goal of all cost-effective demand-side savings.

22. Additional requirements for market potential studies at (3)(A). DE suggests requiring additional components in market potential studies in order to improve the usefulness of these guidance tools. Among DE’s recommendations are the inclusion of considering programs jointly offered with other utilities, the evaluation of emerging technologies, stakeholder input, and either an assessment of non-energy benefits or the use of a study or adder resulting from the efforts of the State-Wide Collaborative per (9)(B)1.D. Although electric utilities should be afforded flexibility in their assessments of market potential, reasonable additional requirements would result in more robust assessments and provide a consistent approach to guide Commission decision-making.

23. Exemptions for programs not subject to cost-effectiveness tests at (4)(C), (4)(G), and (6)(B). DE proposes edits which indicate that demand-side programs not subject to cost-effectiveness testing per Section 393.1075.4, RSMo. (e.g., low-income programs) are not subject to cost-effectiveness-related provisions, either for the individual programs or when included as a part of an electric utility’s aggregate MEEIA portfolio. As explained above, including such exempt programs in portfolio-level cost-effectiveness testing indirectly subjects these programs

to a cost-effectiveness test. This not only violates the explicit exemptions in the MEEIA statute, but could lower the overall cost-effectiveness of MEEIA portfolios, leading to additional program modifications that would prevent the pursuit of all cost-effective demand-side savings.

24. References to the IRP process at (4)(C)3, (4)(I)3, (4)(J), and (4)(K). DE proposes striking the language in these sections related to the IRP process. As noted above, DE does not support tying MEEIA to the IRP process.

25. Removal of reference to TRC test scores below one (1) at (4)(J). As with DE's suggestions to clarify the exemption of certain programs from cost-effectiveness testing per the MEEIA statute, DE recommends removing the phrase "having a total resource cost test ratio less than one (1) for demand-side programs" from this part of the rule. Section 393.1075.4 does not provide an exclusion from cost-effectiveness testing for low-income and general education programs *only* if such programs have a TRC test score below one; rather, the statute's exemption covers *all* of these types of programs, regardless of their potential TRC test scores. DE's proposed revision would further align the MEEIA rules with statutory requirements.

26. Revision of "shall" to "may" at (5)(A)2. DE appreciates the Commission's proposal to increase the flexibility for electric utility demand-side program spending, per (5)(A)1. While DE agrees that electric utilities should file applications to modify their demand-side programs in certain instances (such as the reallocation of funds between programs per (5)(A)2.A), DE suggests that the scope of instances contemplated at (5)(A)2 is so broad as to present an unreasonable burden on electric utilities and does not appear to be consistent with the increased flexibility in (5)(A)1. For example, (5)(A)2.C would require formal Commission filings even for changes to incentive payments, regardless of whether or not the Commission previously approved a range of potential incentive payments. Other potential delays could occur

in light of the language reading “including but not limited to the following” at (5)(A)2, as that provision could be read to cover numerous minor program modifications. To avoid unnecessary burdens on electric utilities, as well as delays resulting from mandated filings for even minor program modifications, DE proposes changing the word “shall” at (5)(A)2 to “may.”

27. Statewide TRM funding process at (10)(C). DE proposes language which would exempt investor-owned utilities from the funding requirement at (10)(C)1 if the statewide TRM does not include measure characterizations that could apply to the utility’s current or potential future demand-side programs. The statewide TRM process to date has been inclusive of many utilities, including those not covered under the MEEIA statute; through the initial statewide TRM process, DE envisioned that the statewide TRM would be useful not only for investor-owned electric utilities regulated under the MEEIA statute, but other entities as well (e.g., rural electric cooperatives and municipal utilities). Additionally, a future version of the statewide TRM could include measures applicable to water utilities; the statewide TRM already includes measure characterizations for determining natural gas savings where there are also electric savings. However, until the statewide TRM is used, or could be utilized, by a particular investor-owned utility (electric or otherwise), that investor-owned utility should not be required to pay for activities related to the statewide TRM.

DE also suggests adding language at (10)(C)2 through which the utilities and stakeholders engaged in statewide TRM updates would recommend funding amounts for activities related to the statewide TRM; the Commission would approve the funding level. The recommendations would be based on prior funding amounts and funding levels observed in other states and other considerations deemed relevant by the Commission. This process will promote greater utility and stakeholder involvement and input in statewide TRM activities. In an effort to

respond to Commission Staff concerns, DE's proposed language does not require funding recommendations every year in order to allow for the procurement of multi-year contracts for an electronic platform vendor and a third party statewide TRM update facilitator.

28. Statewide TRM update process at (10)(D). As a part of its revisions to (1)(D), DE proposes that Staff be responsible for coordinating updates to the statewide TRM, rather than bearing sole responsibility for the updates. The use of a third party will foster a collaborative stakeholder process through which utilities and interested parties can reach agreement as to statewide TRM updates. This potential has already been demonstrated through DE's use of the Vermont Energy Investment Corporation as a contractor in the initial statewide TRM process.

DE also proposes a process at (10)(D)3 to address portions of the statewide TRM updates upon which utilities and stakeholders cannot agree. Under the proposal, the Commission – or a regulatory law judge designated by the Commission at the recommendation of utilities and stakeholders – would help parties resolve disputed issues. This additional update mechanism would enhance the ability of utilities and stakeholders to update the statewide TRM in the event of potential disagreements. The ability to use a regulatory law judge can help to expedite the resolution of contested issues. Regulatory law judges have served to resolve disputes between parties before the Commission in the past.

29. Consideration of using approved statewide TRM at (10)(E). Under DE's proposed revisions, the Commission would “consider the appropriateness of using an approved statewide TRM” in individual electric utility MEEIA filings. The revisions would ensure that such consideration is consistent with DE's proposed changes to 4 CSR 240-20.093(7)(B), i.e., that electric utility EM&V contractors use the statewide TRM for measure evaluation unless an alternative measure characterization is shown to be reasonable. DE appreciates the significant

time and effort contributed by Commission Staff, the Office of the Public Counsel, utilities, and other stakeholders in creating the first version of the statewide TRM; DE strongly recommends language in the rules to ensure that the Commission's approval of a statewide TRM results in its use.

WHEREFORE, DE respectfully submits its comments in the above-captioned matter for consideration by the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 27th day of April, 2017.

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/s/ Brian Bear

Brian Bear