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 Efficiency Investment Act	**)** **)** **)**	**File No. EX-2016-0334**

STAFF COMMENTS

COMES NOW the Staff of the Missouri Public Service Commission, by and through Staff Counsel's Office, and hereby submits as Attachment A, with supporting Appendix 1, (Proposed Rules with red-line edits), *Staff Comments* in File EX-2016-0334 on the Commission's proposed rule 4 CSR 240-20.092 and proposed amendments to rules 4 CSR 240-20.093 and 4 CSR 240-20.094 relating to the Missouri Energy Efficiency Investment Act (MEEIA).

Respectfully submitted,

/s/ Robert S. Berlin
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CERTIFICATE OF SERVICE

I hereby certify that copies of *Staff Comments* have been electronically mailed to all counsel of record this 27th day of April, 2017.

/s/ Robert S. Berlin

ATTACHMENT A

COMMENTS OF THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION REGARDING CHANGES TO PROPOSED RULE 4 CSR 240-20.092 AND PROPOSED AMENDMENTS TO 4 CSR 240-20.093 AND 4 CSR 240-20.094

Comments on 4 CSR 240-20.092

4 CSR 240-20.092(1)(B) Approved demand-side program

Staff recommends deleting the word "demand-side" between the words "or" and "program pilot".

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

Staff makes this recommendation because program pilot is a defined term.

4 CSR 240-20.092(1)(C) Avoided cost or avoided utility cost

Staff recommends deleting "same methodology" and adding in its place the language "integrated resource plan and risk analysis". Staff also recommends that the terms avoided cost and avoided utility cost be changed to their plural form.

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

Staff recommends the definition of avoided cost or avoided utility cost be modified to add clarity concerning the calculation of avoided costs as a result of the December 6, 2016 Opinion of the Missouri Court of Appeals Western District in Case No. WD79406, which stated:

> It also makes little sense to require a utility to use the same methodology underlying its most recently adopted preferred resource plan to calculate its avoided costs without also using the most recent data, as well as the formula, in calculating those costs to recover a performance incentive.

> 4 C.S.R. § 240-20.093(1)(F). … A methodology with stale data inputs will not fairly calculate the avoided costs on the basis of which periodic rate adjustments for the performance-incentive component of a DSIM are allowed.[1] …
>
> **Conclusion**
>
> The Commission's order granting Staff's motion for summary determination and requiring that Ameren use the avoided-cost data from its 2014 IRP in calculating the incentive award under its modified MEEIA plan in 2014 was supported by substantial, competent evidence on the whole record and was accordingly reasonable.[2]

As a result of this recent court opinion, Staff recommends the Commission delete "same methodology" and insert "integrated resource plan and risk analysis" in the definition to clarify that the avoided utility costs including avoided probable environmental compliance costs shall be those costs included in the integrated resource plan and risk analysis (meeting the requirements of 4 CSR 240-22.060) used in the development of the utility's most recently-adopted preferred resource plan (meeting the requirements of 4 CSR 240-22.070 and 22.080).

Staff recommends using the plural form of avoided cost and avoided utility cost to be consistent with the use of the terms throughout this subsection.

4 CSR 240-20.092(1)(D) Baseline demand forecast

Staff recommends 1) adding "and on the customer side of the meter" between the words "level" and "in", and 2) deleting the words "in the absence" and replacing them with the words "excluding the effects".

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

[1] WD79406 Opinion filed December 6, 2016, page 19.
[2] Ibid, page 25.

Staff makes this recommendation to add clarification that any baseline demand forecast is on the customer side of the meter consistent with Section 393.1075 and to clarify what is excluded and included in a baseline demand forecast.

4 CSR 240-20.092(1)(E) Baseline energy forecast

Staff recommends 1) adding "and on the customer side of the meter" between the words "level" and "in", and 2) deleting the words "in the absence" and replacing them with the words "excluding the effects".

> (E) Baseline energy forecast means a reference forecast of energy at the customer class level **<u>and on the customer side of the meter</u>** ~~in the absence~~ **<u>excluding the effects</u>** of any new demand-side programs~~,~~ but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

Staff makes this recommendation to add clarification that any baseline energy forecast is on the customer side of the meter consistent with Section 393.1075 and to clarify what is excluded and included in a baseline energy forecast.

4 CSR 240-20.092(1)(I) Deemed savings

Staff recommends 1) changing to lower case the words "Technical Resource Manual" and "Technical Reference Manual"; 2) adding a comma and deleting "or" between the words "manual" and "technical", and 3) adding "or statewide TRM" between the words "(TRM)" and "multiplied".

> (I) Deemed savings means the measure-level annual energy savings and/or demand savings documented or calculated in the approved ~~T~~**<u>t</u>**echnical ~~R~~**<u>r</u>**esource ~~M~~**<u>m</u>**anual~~,~~ ~~or~~ ~~T~~**<u>t</u>**echnical ~~R~~**<u>r</u>**eference ~~M~~**<u>m</u>**anual (TRM) **<u>or statewide TRM</u>**, multiplied by the documented measure count. The demand-side program deemed savings is the sum of the deemed savings for all measures installed in a demand-side program. The demand-side portfolio deemed savings is the sum of all demand-side program deemed savings;

Staff makes this recommendation because technical resource manual, technical reference manual or TRM is defined in the rule and because deemed savings exist in both the TRM and the statewide TRM.

4 CSR 240-20.092(1)(M) Demand-side program

Staff recommends deleting the language ", combined heat and power, and distributed generation" after the word "load" at the end of the subsection.

> (M) Demand-side program means any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the electric meter, including, but not limited to, energy efficiency measures, load management, demand response, interruptible or curtailable load~~, combined heat and power, and distributed generation~~;

Section 393.1075. 2 includes:

- Section 393.1075. 2 (2) defines "demand response" as measures that *decrease peak demand or shift demand to off-peak periods*;
- Section 393.1075. 2 (3) defines "demand-side programs" as any program conducted by the utility to *modify the net consumption of electricity on the retail customer's side of the electric meter*, including but not limited to energy efficiency measures, load management, demand response and interruptible or curtailable load; and
- Section 393.1075. 2 (4) defines "energy efficiency" as measures that reduce the amount of *electricity required to achieve a given end-use*.
  [Emphasis added]

Demand-side program is a term defined in Section 393.1075. 2 (3) and cannot be modified by Commission rule.

Under Section 393.1075. 2 (2), (3) and (4), <u>only the difference between the actual electrical consumption on the customer's side of the meter before and after the installation of a CHP system or distributed generation can be considered when valuing benefits of the CHP system or distributed generation</u>. This is not to say that CHP projects and distributed generation cannot qualify for a demand-side program. However, it should not be presumed, or codified, that all CHP and distributed generation will qualify under Section 393.1075. 2 (2), (3), and (4).

Staff makes this recommendation to be consistent with the definition of demand-side program in Subsection 393.1075.

CSR 240-20.092(1)(N) Demand-side programs investment mechanism, or DSIM

Staff recommends pluralizing the word "earning" and adding the word "component" after the word "opportunity".

> (N) Demand-side programs investment mechanism, or DSIM, means a mechanism approved by the commission in a utility's filing for demand-side program approval to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation: cost recovery component of a DSIM, throughput disincentive component of a DSIM, and earning**s** opportunity **component** of a DSIM;

Staff makes this recommendation to be consistent with the definition of earnings opportunity component of a DSIM as defined by the proposed CSR 240-20.092(1)(S).

4 CSR 240-20.092(1)(O) Demand savings target

Staff recommends deleting "at the time of each demand side portfolio's approval, or adjusted based on an approved mechanism" and adding in its place rule references "under 4 CSR 240-20.094(4)(I) or 4 CSR 240-20.094(5)(A)6".

> (O) Demand savings target means the annual demand savings level approved by the commission **under 4 CSR 240-20.094(4)(I) or 4 CSR 240-20.094(5)(A)6.** ~~at the time of each demand side portfolio's approval, or adjusted based on an approved mechanism.~~ Demand savings targets are the baseline for determining the utility's demand-side portfolio's demand savings performance levels for the earnings opportunity component of a DSIM.

Staff makes this recommendation to add clarity and consistency within the rules.

4 CSR 240-20.092(1)(R) Earnings opportunity amount

Staff recommends adding the word "case" between the words "approval" and "or".

> (R) Earnings opportunity amount means the amount approved by the commission in a utility's filing for demand-side program approval **case** or a rate adjustment case to provide the utility with an earnings opportunity amount based on the approved earnings opportunity component of a DSIM;

Staff makes this recommendation to add clarity and consistency within this subsection.

4 CSR 240-20.092(1)(X) Energy savings target

Staff recommends deleting "at the time of each demand side portfolio's approval, or adjusted by an approved mechanism" and adding in its place rule references "under 4 CSR 240-20.094(4)(I) or 4 CSR 240-20.094(5)(A)6.".

> (X) Energy savings target means the annual energy savings level approved by the commission **under 4 CSR 240-20.094(4)(I) or 4 CSR 240-20.094(5)(A)6.** ~~At the time of each demand side portfolio's approval, or adjusted by an approved mechanism.~~ Energy savings targets are the baseline for determining the utility's demand-side portfolio's energy savings performance levels for the earnings opportunity component of a DSIM;

Staff makes this recommendation to add clarity and consistency within the rules.

4 CSR 240-20.092(1)(Z) Filing for demand-side programs approval

Staff recommends replacing the word "approval" with the word "establishment" between the words "for" and ", modification".

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

Staff makes this recommendation to add clarity and consistency within this subsection.

4 CSR 240-20.092(1)(CC) Market potential study

Staff recommends replacing the words "energy efficiency" with "demand-side".

> (CC) Market potential study means a quantitative analysis of the amount of energy and demand savings that may exist, is cost-effective, and could be realized through the implementation of **demand-side** ~~energy efficiency~~ programs and policies;

Staff makes this recommendation to add clarity and consistency within the rules. Demand-side program is a defined term in Section 393.1075 and includes energy efficiency measures, load management, demand response, and interruptible or curtailable load.

4 CSR 240-20.092(1)(DD) Market transformation

Staff recommends replacing the words "energy efficiency" with "demand-side savings".

> (DD) Market transformation means the strategic process of intervening in a market to create lasting change in market behavior by removing identified barriers or exploiting opportunities to accelerate the adoption of all cost-effective **demand-side savings** ~~energy efficienc~~y as a matter of standard practice;

Staff makes this recommendation to add clarity and consistency within the rules. Demand-side saving are the savings as a result of demand-side programs which is defined term in Section 393.1075 and includes energy efficiency measures, load management, demand response, and interruptible or curtailable load.

4 CSR 240-20.092(1)(FF) Measure

Staff recommends 1) replacing the word "energy" with "electricity" after the word "less", and 2) adding the language "to achieve a given end-use" between the words "required" and "or" in subsection (FF) 1. In subsection (FF) 2, Staff recommends 1) adding the word "end-use" between the words "of" and "electricity", and 2) deleting "require less generating capacity or to allow the electric power to be supplied by more fuel-efficient units" and adding in its place the language "decrease peak demand or shift demand to off-peak periods".

> (FF) Measure means any device, technology, behavioral response mechanism, or operating procedure that makes it possible to deliver an adequate level and quality of energy service while—
>
> 1. Using less **<u>electricity</u>** ~~energy~~ than would otherwise be required **<u>to achieve a given end-use</u>**; or
>
> 2. Altering the time pattern of **<u>end-use</u>** electricity so as to **<u>decrease peak demand or shift demand to off-peak periods</u>** ~~require less generating capacity or to allow the electric power to be supplied by more fuel-efficient units~~;

Staff makes these recommendations because the definition (FF) Measure should not deviate materially from Section 393.1075. 2 (2), which uses "measure" in the context of "Demand response", measures that decrease peak demand or shift demand to off-peak periods, and Section 393.1075. 2 (4) which uses "measure" in the context of "Energy efficiency", measures that reduce the amount of electricity required to achieve a given end use.

4 CSR 240-20.092(1)(HH) Net shared benefits

Staff recommends 1) deleting the word "shared" between the words "net" and "benefits", 2) adding a comma after the words "program benefits", 3) deleting the words "or a technical reference manual for demand-side programs" and in their place adding ", TRMs and statewide TRMs", 4) deleting the "s'" on the word "programs'", and 5) deleting the words "technical resource manual" at the end of the subsection and in their place adding the words "statewide TRM or TRM and statewide TRM".

(HH) Net ~~shared~~ benefits means the program benefits**,** measured and documented through EM&V reports**, TRMs and statewide TRMs** ~~or a technical resource manual for demand-side programs~~, less the sum of the program~~s'~~ costs including design, administration, delivery, end-use measures, incentive payments to customers, EM&V, utility market potential studies, and **statewide TRM or TRM and statewide TRM** ~~technical resource manual~~;

Staff recommends deleting the word "shared" to be consistent with 1) 393.1075 which, includes a reference to net benefits; and 2) the definition of net benefits commonly used in energy efficiency and EM&V literature. The term net shared benefit (NSB) was initially defined in the Cycle 1 stipulation and agreements for Ameren Missouri, KCP&L Greater Missouri Operations Company and Kansas City Power & Light Company when defining the throughput disincentive (TD) net shared benefits share (TD-NSB Share) component of each utility's Cycle 1 DSIM.

Staff recommends deleting the words "technical resource manual" and adding in their place the words "statewide TRM or TRM and statewide TRM" for the following reasons: 1) amendment to 4 CSR 240-20.094(10) requires that utilities and stakeholders update the statewide TRM annually; 2) TRM is defined in 4 CSR 240-20.092(1)(TT) to be utility specific TRM; 3) statewide TRM is defined in 4 CSR 240-20.092(1)(RR); and 4) because MEEIA is voluntary, a utility which chooses to use its own TRM will incur cost associated with both its TRM and the statewide TRM, and both types of costs are recoverable under MEEIA.

Staff recommends the other modifications to add clarity and for consistent use of defined terms within the rule. With all the suggested changes, the recommended definition will now read:

(HH) Net benefits means the program benefits, measured and documented through EM&V reports, TRMs and statewide TRMs, less the sum of the program costs including design, administration, delivery, end-use measures, incentive payments to customers, EM&V, utility market potential studies, and statewide TRM or TRM and statewide TRM;

4 CSR 240-20.092(1)(II) Non Energy Benefits

Staff recommends that the definition of Non Energy Benefits be modified to 1) use lower case letters and a hyphenated word to define the term “non-energy benefits”, 2) remove prescriptiveness from the definition, 3) limit the use of non-energy benefits to only the societal test, and 4) require that non-energy benefits have quantifiable economic value.

> (II) Non**-e**~~E~~nergy **b**~~B~~enefits means—
>
> ~~1. Direct~~ benefits to participants**,** ~~in utility demand side pro- grams, including, but not limited to, increased property values, increased productivity, decreased water and sewer bills, reduced operations and maintenance costs, improved tenant satisfaction, and increases to the comfort, health, and safety of participants and their families;~~
>
> ~~2. Direct benefits to~~ utilities, ~~including, but not limited to, reduced arrearage carrying costs, reduced customer collection calls/notices, reduced termination/reconnection costs, and reduced bad debt write-offs;~~ or
>
> ~~3. Indirect benefits to~~ society at large~~, including, but not limited to, job creation, economic development, energy security, public safe- ty, reduced emissions and emission related health care costs, and other environmental benefits;~~
>
> ~~4. Non Energy Benefits~~ **which are separate and distinct from avoided utility costs,** ~~may~~ **shall only** be included in **the societal** cost~~-effectiveness~~ test~~s~~ and must **have a quantifiable economic value** ~~unless they cannot be calculated with a reasonable degree of confidence~~;

To be clear, Staff’s recommended modifications to this subsection will result in the following definition:

> (II) Non-energy benefits means benefits to participants, utilities, or society at large which are separate and distinct from avoided utility costs, shall only be included in the societal cost test and must have a quantifiable economic value;

Section 393.1075. 4 states:

> 4. 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.

> *Recovery for such programs shall not be permitted unless the programs are approved 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. The commission shall consider the total resource cost test a preferred cost-effectiveness test.* Programs targeted to low-income customers or general education campaigns do not need to meet a cost-effectiveness test, so long as the commission determines that the program or campaign is in the public interest. Nothing herein shall preclude the approval of demand-side programs that do not meet the test if the costs of the program above the level determined to be cost-effective are funded by the customers participating in the program or through tax or other governmental credits or incentives specifically designed for that purpose. [Emphasis added]

Non-energy benefits by definition are not energy or demand savings. Non-energy benefits do not allow the utility to recover costs for demand-side programs because Section 393.1075. 4. sets out specific and clear requirements for program cost recovery. The requirements for program cost recovery must include the following provisions: (1) programs be approved by the commission, (2) programs result in energy or demand savings and (3) programs 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. The word "Benefits" is a general term that includes within its broad meaning the more specific "energy or demand savings" required for the recovery of program costs as set out in 393.1075.4. There is no language in the statute permitting avoided savings or costs associated with "non-energy" benefits to be utilized when valuing a utility's demand-side programs for purposes of cost recovery. The statute further states that the commission will consider the total resource cost test as a preferred cost effectiveness test. Total resource cost test or TRC is defined by 393.1075. 2 (6) and does not include "non-energy benefits": "Total resource cost test", a test that compares the sum of avoided utility costs and avoided probable environmental compliance cost to the sum of all incremental costs of end-use measures that are implemented due to the program, as defined by the commission in rules. Avoided utility cost[s] and probable environmental compliance cost[s] are defined in proposed 4 CSR 240-20.092(1)(C) and (MM), respectively, and do not include non-energy benefits.

4 CSR 240-20.092(1)(JJ) Non-participant test

Staff recommends 1) using the plural form of "avoided cost" and 2) adding the language "and the costs of statewide TRM or TRM and statewide TRM" after the word "program" at the end of the subsection.

(JJ) Non-participant test (sometimes referred to as the ratepayer impact test or RIM test) is a measure of the difference between the change in total revenues paid to a utility and the change in total cost incurred by the utility as a result of the implementation of demand- side programs. The benefits are the avoided cost**s** as a result of implementation. The costs consist of incentives paid to participants, other costs incurred by the utility, and the loss in revenue as a result of diminished consumption. Utility costs include the costs to administer, deliver, and evaluate each demand-side program **and the costs of statewide TRM or TRM and statewide TRM**;

Staff makes this recommendation for clarity and consistency within 4 CSR 240-20.092, in particular, consistency with subsections (HH) and (XX).

4 CSR 240-20.092(1)(MM) Probable environmental compliance cost

Staff recommends 1) using the plural form of "probable environmental compliance cost", 2) deleting the language "the likely expected, or anticipated" between "means" and "cost", 3) using the plural form of the word "cost" after the deletion, and 4) deleting the language "which would result in environmental compliance costs that could have a significant impact on utility rates. In estimating its avoided probable environmental compliance costs, the utility shall consider factors including, but not limited to, reductions in risks, liabilities, and other costs under the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, Clean Power Plan, and related federal and state laws and regulation" at the end of the subsection" and adding in its place the language "are included in the integrated resource plan and risk analysis used in its most recently-adopted preferred resource plan".

(MM) Probable environmental compliance cost**s** means the ~~likely, expected, or anticipated~~ cost**s** to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility's decision-makers, may be reasonably expected to be incurred by the utility and **are included in the integrated resource plan and risk analysis used in its most recently-adopted preferred resource plan** ~~which would result in environmental compliance costs that could have a significant impact on utility rates. In estimating its avoided probable environmental compliance costs, the utility shall consider factors including, but not limited to, reductions in risks, liabilities, and other costs under the~~

> ~~Clean Air Act, the Clean Water Act, the Endangered Species Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, Clean Power Plan, and related federal and state laws and regulation~~;

Similar to Staff's recommendation concerning the definition of avoided cost[s] or avoided utility cost[s] in proposed subsection 4 CSR 240-20.092(1)(C), Staff recommends the definition of probable environmental compliance costs be modified to have added clarity as a result of the December 6, 2016 Opinion of the Missouri Court of Appeals Western District in Case No. WD79406. Inserting "integrated resource plan and risk analysis" in the definition will clarify that the avoided probable environmental costs shall be those costs included in the integrated resource plan and risk analysis (meeting the requirements of 4 CSR 240-22.060) used in the utility's most recently-adopted preferred resource plan (meeting the requirements of 4 CSR 240-22.070 and 22.080). The inclusion of specific environmental regulations in proposed subsection 4 CSR 240-20.092(1)(MM) is not necessary or recommended since electric utilities must identify, evaluate and quantify the impact of current and probable environmental regulations when meeting the minimum requirements of 4 CSR 240-22.040 Supply-Side Resource Analysis, 22.050 Demand-Side Resource Analysis, 22.060 Integrated Resource Plan and Risk Analysis, and 22.070 Resource Acquisition Strategy Selection. Finally, 4 CSR 240-22.020(47) already defines probable environmental costs:

> (47) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility decision-makers, may be imposed at some point within the planning horizon which would result in compliance costs that could have a significant impact on utility rates.

4 CSR 240-20.092(1)(PP) Societal cost

Staff recommends 1) replacing the word "or" between the words "environmental" and "economic" with a comma, and 2) adding the words "or non-energy" between the words "economic" and "benefits".

> (PP) Societal cost test means the total resource cost test with the addition of societal benefits (externalities such as, but not limited to, environmental**,** ~~or~~ economic **or non-energy** benefits) to the total benefits of the total resource cost test;

Staff makes this recommendation to add non-energy benefits to the societal test.

4 CSR 240-20.092(1)(RR) Statewide technical reference manual or statewide TRM

Staff recommends 1) deleting the language “statewide collaborative and approved by the commission that is used by all electric utilities to” and adding in its place the language “utilities and stakeholders which provides parameters for”, and 2) adding “ing” to the word “quantify”.

> (RR) Statewide technical reference manual or statewide TRM means a document developed by the **utilities and stakeholders which provides parameters for** ~~statewide collaborative and approved by the commission that is used by all electric utilities to~~ quantify**ing** energy savings and demand savings attributable to energy efficiency and demand response;

Staff recommends the definition of statewide technical reference manual or statewide TRM be modified such that a statewide TRM is developed by utilities and stakeholders (not by the statewide collaborative). The statewide collaborative is defined in proposed 4 CSR 240-20.094(9)(B) to include electric utilities and their stakeholders; the statewide TRM should be developed by electric, gas and water utilities and their stakeholders consistent with proposed 4 CSR 240-20.094(10)(A). Deleting the language “and approved by the commission that is used by all electric utilities” is recommended for consistency with the proposed edits to 4 CSR 240-20.094(10)(E).

4 CSR 240-20.092(1)(XX) Total resource cost test or TRC

Staff recommends 1) adding the word “utility” between the words “avoided” and “costs”, 2) adding the language “including avoided probable environmental compliance costs” between the words “costs” and “to”, 3) adding a hyphen between “end” and “use” in the first sentence, 4) deleting the language “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 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”, 5) adding a hyphen between “demand” and “side”, 6) adding the language “and costs of TRM and/or statewide TRM” after “demand-side program”, and 7) deleting “In estimating its avoided probable environmental compliance costs and non-energy benefits, the utility shall consider factors including, but not limited to: reductions in emissions liability under the Clean Air Act; reduction in transmission and distribution costs; reductions in the utility’s load factor or peak load; reductions in fuel costs, health and safety improvements, etc;” at the end of the subsection.

(XX) Total resource cost test or TRC means a test that compares the sum of avoided **utility** costs **including avoided probable environmental costs** to the sum of all incremental costs of end**-**use measures 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 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 **and costs of statewide TRM or TRM and statewide TRM**~~. In estimating its avoided probable environmental compliance costs and non-energy benefits, the utility shall consider factors including, but not limited to: reductions in emissions liability under the Clean Air Act; reduction in transmission and distribution costs; reductions in the utility's load factor or peak load; reductions in fuel costs, health and safety improvements, etc~~;

Staff makes this recommendation because the definition (XX) Total resource cost test or TRC is defined by 393.1075. 2 (6) "Total resource cost test", a test that compares the sum of avoided utility costs and avoided probable environmental compliance cost[s] to the sum of all incremental costs of end-use measures that are implemented due to the program, as defined by the commission in rules. Related to Staff's comments on this definition are Staff's comments concerning 1) proposed subsection 4 CSR 240-20.092(1)(C) avoided cost[s] or avoided utility cost[s], 2) proposed subsection 4 CSR 240-20.092(1)(II) non-energy benefits, and 3) proposed subsection 4 CSR 240-20.092(1)(MM) probable environmental compliance cost[s]. In Staff's opinion, non-energy benefits and specific environmental regulations are not necessary or recommended in the definition of TRC. Further, Staff's proposed revision to the definition of "Societal Cost test" is a variation of the TRC that includes externalities such as, but not limited to, environmental, economic, or non-energy benefits. Including non-energy benefits and specific environmental regulations in the TRC would result in duplicate tests.

Staff's recommendation to add the language "and costs of statewide TRM or TRM and statewide TRM" after "demand-side program" is made consistent with Staff's similar recommendation concerning subsections (HH) and (JJ).

With Staff's recommended changes, the definition will read:

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

<u>Comments on 4 CSR 240-20.093</u>

4 CSR 240-20.093(1)

Staff recommends using the plural form of the word "Program" before the word "Investment".

> (1) The definitions of terms used in this section can be found in 4 CSR 240-20.092 Definitions for Demand-Side Programs and Demand-Side Programs Investment Mechanisms.

Staff makes this recommendation to remain consistent with the title of 4 CSR 240-20.092.

4 CSR 240-20.093(2)(A)

Staff recommends adding the language "with all models and spreadsheets provided" between the words "submitted" and "as" and adding the words "links and" between the words "all" and "formulas".

> (A) An application to establish a DSIM shall include the following supporting information as part of, or in addition to, its direct testimony. Supporting workpapers shall be submitted **<u>with all models and spreadsheets provided</u>** as executable versions in native format with all **<u>links and</u>** formulas intact.

Staff makes this recommendation to remain consistent with the language used in 4 CSR 240-20.093.

4 CSR 240-20.093(2)(A)4.

Staff recommends adding the language "of net benefits" between the words "value" and "over".

> 4. Estimates of the effect of the DSIM and all other impacts of the demand-side program spending, in aggregate, on customer rates and average bills for each of the next five (5) years, and as a net present value **<u>of net benefits</u>** over the lifetime of the demand-side program impacts, for each rate class;

Staff makes this recommendation to add clarity to the subsection.

4 CSR 240-20.093(2)(A)8.

Staff recommends 1) adding the language "throughput disincentive component of a DSIM and any" between the words "any" and "earning", and 2) using the plural form of the word "earning".

> 8. A proposal for how the commission can determine if any **<u>throughput disincentive component of a DSIM and any</u>** earning**<u>s</u>** opportunity component of a DSIM is aligned with helping customers use energy more efficiently;

Section 393.1075 3 states:

> 3. 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. In support of this policy, the commission shall:
>
> (1) Provide timely cost recovery for utilities;
>
> (2) *Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and*
>
> (3) Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.
> [Emphasis added]

Staff makes this recommendation to add clarity to the subsection and to require that the utility describe how the Commission can determine that the throughput disincentive component of a DSIM and the earnings opportunity component of a DSIM are in compliance with Section 393.1075. 3.

4 CSR 240-20.093(2)(A)9.

Staff recommends adding the word "and" after the semi-colon at the end of 4 CSR 240-20.093(2)(A)9.

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

Staff makes this recommendation in order to indicate that all of the subsections are necessary in an application to establish a DSIM.

4 CSR 240-20.093(2)(A)10.

Staff recommends replacing the words "approved new" with the word "established".

> 10. If the utility proposes to adjust the DSIM amount between general rate proceedings, a complete explanation of how the DSIM rates shall be established and how they will be adjusted for any over- and/or under-recovery amounts, as well as the impact on the DSIM amount as a result of ~~approved new~~ **established**, modified, or discontinued demand-side programs.

Staff makes this recommendation to remain consistent with the language used in the subsection.

4 CSR 240-20.093(2)(C)

Staff recommends 1) removing the words "Both the utility and", 2) capitalization of "The" after the deletion, 3) adding "s" to the end of the word "retain", and 4) replacing the word "accept" with the words "acceptable to the utility".

> (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 t~~ **T**he commission retain**s** the authority to approve, ~~accept~~ **acceptable to the utility**, or reject any proposed establishment, continuation, or modification of a DSIM or any proposed alternative DSIM.

Staff makes this recommendation in order to better clarify the authority of the commission and the utility. This recommendation results in authority language which is consistent with the authority language in proposed amendment 4 CSR 240-20.094(4)(H), (4)(M), and (5)(A)6.

4 CSR 240-20.093(2)(F)

Staff recommends adding the language "a request to establish" between the words "approve" and "modify".

> (F) In determining to approve **<u>a request to establish</u>**, modify, or continue a DSIM, the commission may consider, but is not limited to only considering, the expected magnitude of the impact of the utility's approved demand-side programs on the utility's costs, revenues, and earnings, the ability of the utility to manage all aspects of the approved demand-side programs, the ability to measure and verify the approved demand-side programs' impacts, any interaction among the various components of the DSIM that the utility may propose, and the incentives or disincentives provided to the utility as a result of the inclusion or exclusion of DSIM components as defined in 4 CSR 240-20.092(N). In this context the word "disincentives" means any barrier to the implementation of a DSIM. There is no penalty authorized in this section.

Staff makes this recommendation for clarity and consistency within the rule.

4 CSR 240-20.093(2)(H)

Staff recommends adding the words "energy and" between the words "or" and "demand savings" and adding the words "and demand" between the words "energy" and "savings".

> (H) Any throughput disincentive component of DSIM shall be based on energy or **<u>energy and</u>** demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and will be determined as a result of energy **<u>and demand</u>** savings determined through EM&V.

Staff makes this recommendation to avoid confusion about the meaning of this subsection. A throughput disincentive component of a DSIM shall be based on energy savings or on energy and demand savings but cannot be based on only demand savings.

4 CSR 240-20.093(2)(H)1.

Staff recommends replacing "Portfolio" with "Programs".

> 1. The commission shall order any throughput disincentive component of a DSIM simultaneously with the demand-side pro- grams approved in accordance with 4 CSR 240-20.094 Demand- Side **<u>Programs</u>** ~~Portfolio~~.

Staff makes this recommendation to remain consistent with the title of 4 CSR 204-20.094.

4 CSR 240-20.093(2)(I)1.

Staff recommends deleting the word “section” and replacing it with “4 CSR 240-20.094”.

> 1. Energy and demand savings targets approved by the commission for use in the earnings opportunity component of a DSIM are not necessarily the same as the incremental energy and demand savings goals and cumulative energy and demand savings goals specified in **4 CSR 240-20.094**~~section~~ (2).

Staff makes this recommendation to correctly reference the incremental energy and demand savings goals and cumulative energy and demand savings goals in another rule.

4 CSR 240-20.093(2)(J)

Staff recommends 1) deleting the words “cost recovery” between the acronym “DSIM” and the word “amount”, and 2) replacing the word “deleted” with the word “discontinued”.

> (J) If the DSIM proposed by the utility includes adjustments to DSIM rates between general rate proceedings, the DSIM shall include a provision to adjust the DSIM rates not less than annually to include a true-up for over- and under-recovery of the DSIM amount as well as the impact on the DSIM ~~cost recovery~~ amount as a result of approved new, modified, or **discontinued** ~~deleted~~ demand-side programs

Staff makes this recommendation to add clarity to this subsection and to maintain consistency within the amended rule. “DSIM amount” is a defined term in 4 CSR 240-20.092(1)(P) and means the sum of the cost recovery amount, throughput disincentive amount, and earnings opportunity amount.

4 CSR 240-20.093(4)(A)2.

Staff recommends 1) adding the words “positive or negative” between the words “proposed” and “adjustments”, and 2) deleting the words “or refunds”.

> 2. Proposed **positive or negative** adjustments ~~or refunds~~ by rate class.

Staff makes this recommendation because an adjustment to the DSIM amount can be either positive or negative and the word refund is an inaccurate description of the adjustment.

4 CSR 240-20.093(4)(D)

Staff recommends 1) deleting the words “change in” and adding in their place the words “increases and decreases to the” and 2) removing the words “filing for” between the words “recent” and “demand-side”.

> (D) Adjustments to the DSIM rates shall reflect a comprehensive measurement of both increases and decreases to the DSIM amount established in the most recent demand-side program approval or DSIM rate adjustment case plus the **increases and decreases to the** ~~change in~~ DSIM amount which occurred since the most recent ~~filing for~~ demand-side program approval or DSIM rate adjustment case. All DSIM rate adjustments shall include a true-up of past DSIM collections based on the latest EM&V results where applicable. Any over-/under-recovered amounts will be accounted for in the going forward DSIM rates.

In 4 CSR 240-20.092(1)(P) "DSIM amount" means the sum of the cost recovery amount, throughput disincentive amount, and earnings opportunity amount. Staff makes this recommendation to improve clarity between the increases and decreases to the DSIM amount established in the most recent demand-side program approval case or DSIM rate adjustment case used to establish DSIM rates prior to an adjustment to the DSIM rates and the increases and decreases in the DSIM amount which occurred since the most recent demand-side program approval case or DSIM rate adjustment case, e. g., Commission approval of an earnings opportunity amount or Commission ordered adjustment as the result of a prudence review.

4 CSR 240-20.093(4)(F)

Staff recommends replacing the words "receives information which has not been submitted in compliance with" with the words "believes the electric utility has not met the filing requirements of".

> (F) If the staff, public counsel, or other party ~~receives information which has not been submitted in compliance with~~ **believes the electric utility has not met the filing requirements of** subsection (4)(A), it shall notify the electric utility within ten (10) days of the electric utility's filing of an application or tariff sheets to adjust DSIM rates and identify the information required. The electric utility shall submit the information identified by the party, or shall notify the party that it believes the information submitted was in compliance with the requirements of subsection (4)(A), within ten (10) days of the request. A party who notifies the electric utility it believes the electric utility has not submitted all the information required by subsection (4)(A) and as ordered by the commission in a previous proceeding and receives notice from the electric utility that the electric utility believes it has submitted all required information may file a motion with the commission for an order directing the electric utility to produce that information, i.e., a motion to compel. While the commission is considering the motion to compel, the processing timeline for the adjustment to increase DSIM rates shall

> be suspended. If the commission then issues an order requiring the information be submitted, the time necessary for the information to be submitted shall further extend the processing timeline for the adjustment to increase DSIM rates. For good cause shown, the com- mission may further suspend this timeline. Any delay in submitting sufficient information in compliance with subsection (4)(A) or a commission order in a previous proceeding in a request to decrease DSIM rates shall not alter the processing timeline.

Staff makes this recommendation to provide clarity and to account for any instance when information is not submitted and, therefore, could not have been received.

4 CSR 240-20.093(5)

Staff recommends 1) deleting the word "approved" and replacing it with the word "established", 2) deleting the words "by the commission" and replacing them with the words "in lieu of contemporaneous rate recovery", 3) inserting the words "use of" between the words "request" and "deferral", 4) inserting the words "for MEEIA financial impacts" between the words "accounting" and "using", 5) inserting the words "cut-off date for cost recognition ordered in the" between the words "until the" and "utility's", and 6) deleting the entire second sentence.

> (5) Implementation of DSIM. Once a DSIM is **established** ~~approved~~, modified or discontinued ~~by the commission~~, **in lieu of contemporaneous rate recovery** the utility may request **use of** deferral accounting **for MEEIA financial impacts** using the utility's latest approved weighted average cost of capital until the **cut-off date for cost recognition ordered in the** utility's next general rate proceeding. ~~At the time to filing the general rate proceeding subsequent to DSIM approval, modification or discontinuance the commission shall use an interim rate adjustment order to implement the approved, modified or discontinued DSIM.~~

Staff interprets this section as allowing a utility to seek authority to "defer" on its balance sheet MEEIA-related financial impacts for future rate recovery in lieu of contemporaneous rate recovery of MEEIA financial impacts through a DSIM. The edits suggested for the first sentence of this section are intended to make this interpretation clearer. The second sentence of this section directs that an "interim rate adjustment" be used to (presumably) incorporate MEEIA costs into rates at the time of the utility's next general rate filing. Staff is unsure what the term "interim rate adjustment" means in this context; the term is nowhere defined in the rule, and this type of mechanism has never been used in the context of MEEIA ratemaking to date. Staff recommends that the second sentence be deleted and that the first sentence be revised so that any deferral authority for MEEIA financial impacts granted pursuant to this section continue until the cut-off date for cost recognition ordered in the utility's next general rate proceeding (i.e., the end of the test year, test year update period, or true-up period, as applicable). The ratemaking treatment for deferred MEEIA financial impacts, as well as the financial impacts that will be incurred prospectively, can be fully considered in the general rate proceeding. The effect of these modifications as a whole would be to make the practices of the Commission regarding deferral treatment of MEEIA financial impacts substantively identical to other deferral accounting situations addressed by the Commission in the past.

4 CSR 240-20.093(7)(D)1.B.(III)

Staff recommends adding the word "net" between the words "the" and "benefits" and changing Utility Cost Test to lower case letters.

> (III) Determine the **<u>net</u>** benefits achieved for each demand-side program and portfolio using the **<u>u</u>**~~U~~tility **<u>c</u>**~~C~~ost **<u>t</u>**~~T~~est (UCT) methodology;

Staff makes this recommendation to specify that "net benefits" and not "benefits" are to be determined. The utility cost test is a defined term in proposed 4 CSR 240-20.092(1)(YY).

4 CSR 240-20.093(7)(E)2.

Staff recommends deleting the subsection in its entirety and replacing it with "Utilize either the TRM or statewide TRM which is included in the case in which the commission granted approval of the utility's demand-side programs.

> (E) Electric utility's EM&V contractors shall –
> 1. Include specific methodology for performing EM&V work; and
> 2. **<u>Utilize either the TRM or statewide TRM which is included in the case in which the commission granted approval of the utility's demand-side programs.</u>** ~~All applications to establish, continue or modify a DSIM filed after a statewide technical reference manual is approved by the commission shall require EM&V contractors to use the most current statewide technical reference manual. Applications approved before the statewide technical reference manual is approved shall utilize the methodology approved with the application~~.

Staff makes this recommendation because the proposed subsection requires the utility to use the commission-approved statewide TRM. However, because MEEIA is voluntary, the commission cannot order a utility to use a particular TRM. The TRM to be used by the utility's EM&V contractor shall be the TRM or statewide TRM which is acceptable to the utility and which is approved by the Commission in the utility's demand-side programs case.

4 CSR 240-20.093(8) Demand-Side Program Annual Report.

Staff recommends replacing words "ninety (90)" with the words "thirty (30)".

> (8) Demand-Side Program Annual Report. Each electric utility with one (1) or more approved demand-side programs shall file an annual report by no later than ninety (90) days after the end of each program year, and serve a copy on each party to the case in which the demand-side programs were last established, modified, or continued. Interested parties may file comments with the commission concerning the content of the utility's annual report within **thirty (30)** ~~ninety (90)~~ days of its filing. Annual reports shall include at a minimum the following information, and all models and spreadsheets shall be provided as executable versions in native format with all **links and** formulas intact:

Staff recommends that parties be allowed to make comments on demand-side program annual reports within thirty (30) days of the filing of each annual report. The proposed amendment allows ninety (90) days for comments by parties which would result in comments being filed a full half year after the completion of each program year. Parties should be able to file comments within thirty (30) days of each annual report filing given the fact that most, if not all, parties who may wish to file comments also participate in the utility's quarterly demand-side management advisory group (DSMAG) meetings during which the information contained in the annual report is presented and discussed for each completed quarter and for cumulative totals during each MEEIA cycle.

4 CSR 240-20.093(8)(B)3.

Staff recommends replacing the words "level of annual peak demand and energy savings impacts that were projected when the demand-side program was approved" with the words "annual demand and energy savings targets approved by the Commission under 4 CSR 240-20.094(4)(I) or 4 CSR 240-20.094(5)(A)6."

> 3. A comparison of the estimated actual annual peak demand and energy savings impacts to the **annual demand and energy savings targets approved by the Commission under 4 CSR 240-20.094((4)(I) or 4 CSR 240-20.094(5)(A)6** ~~level of annual peak demand and energy savings impacts that were projected when the demand-side program was approved~~;

Staff makes this recommendation to add clarity and consistency within 4 CSR 240-20.093.

4 CSR 240-20.093(8)(B)8.

Staff recommends 1) deleting the words “net economic benefits and” between the words “estimated” and “net”, 2) deleting the word “shared” between the words “net” and “benefits”, and 3) adding the words “each demand-side program and” between the words “of” and “the”.

> 8. The estimated ~~net economic benefits and~~ net ~~shared~~ benefits of <u>**each demand-side program and**</u> the demand-side portfolio;

Staff makes this recommendation to add clarity to the subsection by specifying estimated net benefits which is defined in 4 CSR 240-20.092(1)(HH). Staff is uncertain of the meaning of net economic benefits. Staff recommends that the net benefits be estimated for each demand-side programs in addition to the demand-side portfolio.

4 CSR 240-20.093(8)(B)11.

Staff recommends using the plural form of the word “program”.

> 11. Demonstration of relationship of the demand-side program<u>**s**</u> to demand-side resources in latest filed 4 CSR 240-22 compliance filing.

Staff makes this recommendation to remain consistent with language used throughout 4 CSR 240-240-20.093.

4 CSR 240-20.093(14)(A)

Staff recommends 1) removing the word “semi-annual” between the word “related” and the acronym “DSIM”, 2) replacing the words “energy resource analysis section” with the words “energy resources department”.

> (A) A person or entity granted intervention in a utility’s filing for demand-side program approval in which a DSIM is approved by the commission shall have the right to be a party to any subsequent related periodic rate adjustment proceeding without the necessity of applying to the commission for intervention; however, such person or entity shall file a notice of intention to participate within the intervention period. In any subsequent utility’s filing for demand-side program approval, such person or entity must seek and be granted status as an intervenor to be a party to that proceeding. Affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent related ~~semi-annual~~ DSIM rate adjustment proceeding or utility’s filing for demand-side

> program approval to modify, continue, or discontinue the same DSIM shall be served on or submitted to all parties from the prior related demand-side program approval proceeding and on all parties from any subsequent related periodic rate adjustment proceeding or utility's filing for demand-side program —approval to modify, continue, or discontinue the same DSIM, concurrently with filing the same with the commission or submitting the same to the manager of the **energy resources department** ~~energy resource analysis section~~ of the staff and public counsel.

Staff makes this recommendation to remain consistent with the language of 4 CSR 240-20.093(4), and to correct the reference "energy resource analysis section" to "energy resources department".

4 CSR 240-20.093(15)(A)

Staff recommends 1) adding the acronym "DSIM" between the words "its" and "rate", 2) using the plural form of the word "rate", and 3) removing "design for demand-side cost recovery"

> (A) An electric utility may request modification of its **DSIM** rate**s** ~~design for demand-side cost recovery~~ by filing tariff schedule(s) with the commission as part of —

Staff makes this recommendation to add clarity and to remain consistent with the language of 4 CSR 240-20.093.

4 CSR 240-20.093(15)(B)

Staff recommends replacing the words "have all" between the words "shall" and "formulas" with the language "be provided as executable versions with all links and".

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

Staff makes this recommendation to remain consistent with the language used in 4 CSR 240-20.093.

<u>Comments on 4 CSR 240-20.094</u>

4 CSR 240-20.094(1)

Staff recommends using the plural form of "Demand-Side Program".

> (1) The definitions of terms used in this section can be found in 4 CSR 240-20.092 Definitions for Demand-Side Programs and Demand-Side Program**<u>s</u>** Investment Mechanisms.

Staff makes this recommendation to correct the reference to 4 CSR 240-20.092.

4 CSR 240-20.094(2)(B)

Staff recommends 1) adding the word "annual" between the words "cumulative" and "realistic"; 2) adding the word "achievable" between the words "of" and "energy"; 3) deleting the words "that is" and replacing them with "as"; and 4) deleting the words "to be cost effectively achievable."

> (B) The commission shall also use the greater of the cumulative **<u>annual</u>** realistic amount of **<u>achievable</u>** energy savings and demand savings **<u>as</u>** ~~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 utility's demand-side programs can achieve a goal of all cost-effective demand-side savings:

Staff makes this recommendation to add clarity and to be consistent with 4 CSR 240-20.094(2)(A).

4 CSR 240-20.094(2)(B)9.

Staff recommends replacing "2020" with the words "the approved ninth year".

> 9. For the utility's approved ninth year and subsequent program years, unless additional energy savings and demand savings goals are established by the commission: nine-and-nine- tenths percent (9.9%) of total annual energy and nine percent (9.0%) of annual peak demand for the **<u>approved ninth year</u>**~~2020~~, and then increasing by one-and- nine-tenths percent (1.9%) of total annual energy and by one percent (1.0%) of annual peak demand each year thereafter.

Staff makes this recommendation for consistency with the language in this subsection.

4 CSR 240-20.094(4)

Staff recommends adding the word "a" between the words "of" and "demand-side."

> (4) Applications for Approval of Electric Utility Demand-Side Programs or Program Plans. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission for approval of **<u>a</u>** demand-side portfolio.

Staff makes this recommendation as a grammatical correction.

4 CSR 240-20.094(4)(B)1.

Staff recommends adding the language "encompasses more than just the utility's service territory" between the words "portfolio" and "the" and replacing the word "each" with the word "the".

> 1. A current market potential study. If the market potential study of the electric utility that is filing for approval of demand- side programs or a demand-side portfolio **<u>encompasses more than just the utility's service territory</u>**, the sampling methodology shall reflect **<u>the</u>** ~~each~~ utility's service territory and shall provide statistically significant results for that utility:

Staff makes this recommendation to ensure that the utility's potential study that is filed is specific to the service territory of that utility.

4 CSR 240-20.094(4)(B)3.C.

Staff recommends adding the words "naturally occurring" between the words "in" and "customer."

> C. Changes in **<u>naturally occurring</u>** customer combined heat and power applications;

Staff makes this recommendation to be consistent with the definitions of baseline demand forecast and baseline energy forecast found in 4 CSR 240-20.092(1)(D) and (E), respectively.

4 CSR 240-20.094(4)(C)1.

Staff recommends using the plural form of the word "cost" in "avoided cost".

> 1. The total resource cost (TRC) test and a detailed description of the utility's avoided cost**s** calculations and all assumptions used in the calculation;

Similar to its recommendation concerning proposed 4 CSR 240-20.092(1)(C), Staff recommends using the plural form of avoided cost and avoided utility cost, because avoided costs may result from energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs.

4 CSR 240-20.094(4)(D)7.

Staff recommends deleting the words "annual energy savings targets and cumulative."

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

Staff makes this recommendation to be consistent with the definition of energy savings target found in 4 CSR 240-20.092(1)(X).

4 CSR 240-20.094(4)(D)9.

Staff recommends deleting the words "annual demand savings targets and cumulative."

> 9. Proposed ~~annual demand savings targets and cumulative~~ demand savings targets;

Staff makes this recommendation to be consistent with the definition of demand savings target found in 4 CSR 240-20.092(1)(O).

4 CSR 240-20.094(4)(D)12.

Staff recommends 1) changing the "E" in "Evaluation" to lower-case; and 2) replacing the word "capacity" with "demand."

> 12. Any market transformation elements included in the demand-side program and an ~~E~~**e**valuation, measurement, and verification (EM&V) plan for estimating, measuring, and verifying the energy and **demand** ~~capacity~~ savings that the market transformation efforts are expected to achieve;

Staff makes this recommendation as a grammatical correction to the word evaluation and to be consistent with the use of the word "demand" as it is defined in 4 CSR 240-20.092(1)(J), and with Section 393.1075 4. … Recovery for such programs shall not be permitted unless the programs are approved 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. [Emphasis added]

4 CSR 240-20.094(4)(H)

Staff recommends 1) deleting "Demand-Side Program Investment Mechanisms (DSIM) cost recovery amount and/or if the utility intends to establish a throughput disincentive component of a DSIM or an earnings opportunity component of a DSIM for the existing demand-side program" and replacing the deletion with the acronym "DSIM".

> (H) Any existing demand-side program with tariff sheets in effect prior to the effective date of this rule shall be included in the initial application for approval of demand-side programs if the utility intends for unrecovered and/or new costs related to the existing demand-side program be included in the <u>**DSIM**</u> ~~Demand-Side Program Investment Mechanisms (DSIM) cost recovery amount and/or if the utility intends to establish a throughput disincentive component of a DSIM or an earnings opportunity component of a DSIM for the existing demand-side program~~. The commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of demand-side program plans within one hundred twenty (120) days of the filing of an application under this section only after providing the opportunity for a hearing. In the case of a utility filing an application for approval of an individual demand-side program, the commission shall approve, approve with modification acceptable to the electric utility, or reject applications within sixty (60) days of the filing of an application under this section only after providing the opportunity for a hearing.

Staff makes this recommendation since DSIM is previously defined in subsection 4 CSR 240-20.092(1)(N) and a cost recovery component, throughput disincentive component, and earnings opportunity component are included in that definition.

4 CSR 240-20.094(4)(I)

Staff recommends adding the word "budgets" followed by a comma after the word "plans".

> (I) The commission shall consider the TRC test a preferred cost-effectiveness test. For demand-side programs and program plans that have a TRC test ratio greater than one (1), the commission shall approve demand-side programs or program plans, **budgets,** and annual demand and energy savings targets for each demand-side program it approves, provided it finds that the utility has met the filing and submission requirements of this rule and the demand-side programs—

Staff makes this recommendation to clarify that demand-side program budgets are also to be approved by the commission.

4 CSR 240-20.094(4)(J)

Staff recommends 1) using the plural form of "demand-side program" in two places; 2) replacing the word "is" with the word "are"; 3) deleting an "s" from the word "meets"; and 4) deleting the words "paragraphs (3)(G)2. and 3" and replacing them with the words "subsection (4)(I)".

> (J) The commission shall approve demand-side programs having TRC test ratio less than one (1) for demand-side programs targeted to low-income customers or general education campaigns, if the commission determines that the utility has met the filing and submission requirements of this rule, the demand-side program**s** **are**~~is~~ in the public interest, and the demand-side program**s** meet~~s~~ the requirements stated in **subsection (4)(I)**~~paragraphs (3)(G)2. and 3~~.

Staff makes this recommendation as grammatical corrections and a rule reference correction.

4 CSR 240-20.094(4)(K)

Staff recommends deleting the words "paragraphs (3)(G)2. and 3" and replacing them with the words "subsection (4)(I)".

> (K) The commission shall approve demand-side programs which have a TRC test ratio less than one (1), if the commission finds the utility has met the filing and submission requirements of this rule and the costs of such demand-side programs above the level determined to be cost-effective are funded by the customers participating in the demand-side programs or through tax or other governmental credits or incentives specifically designed for that purpose and meet the requirements as stated in **subsection (4)(I)**~~paragraphs (3)(G)2. and 3~~.

Staff makes this recommendation as a rule reference correction.

4 CSR 240-20.094(5)(A)1 and 2

Concerning subsection (5)(A)1, Staff recommends 1) deleting "forty" and adding in its place "twenty", 2) deleting "(40%)" and adding in its place "(20%)", 3) deleting the language "approved demand-side plan three (3) year", and 4) adding the words "approved by the commission under subsection (4)(I) or other commission order(s)" following the word "budget". Staff recommends deleting the proposed subsection 4 CSR 240-20.094(5)(A)2 in its entirety and updating the numbering that follows within the (5)(A) subsection.

> (A) Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility—
>
> 1. Shall file an application with the commission for modification of demand-side programs when there is a variance of **twenty** ~~forty~~ percent **(20%)** ~~(40%)~~ or more in the ~~approved demand-side plan three (3) year~~ budget **approved by the commission under subsection (4)(I) or other commission order(s)** and/or any demand-side program design modification which is no longer covered by the approved tariff sheets or other commission order(s) for the demand-side program;
>
> ~~2. Shall file an application with the commission for modification of demand-side programs including, but not limited to, the following:~~
>
> ~~A. Reallocation of funds among demand-side programs;~~
>
> ~~B. Changes in allocation based on contract implementers input, such as if a demand-side program is performing below expectations;~~
>
> ~~C. Changes in incentive amounts paid to customers;~~

Concerning subsection 4 CSR 240-20.094(5)(A)1, Staff recommends the budget variance level, which dictates when a utility shall file an application to modify its Commission-approved demand-side programs, be reduced from forty percent (40%) in the proposed amendment to twenty percent (20%). The twenty percent (20%) variance is in the currently effective rule and has been found to be reasonable for this purpose. The Commission-approved budget may be for any duration of time and may be the result of Commission approval under proposed subsection (4)(I) or other Commission order.

Further, Staff recommends deleting proposed amendment 4 CSR 240-20.094(5)(A)2 in its entirety, since the amendment's prescriptive list is overly restrictive and inconsistent with having 1) flexibility to respond to changes in the marketplace and 2) a budget variance of twenty percent (20%) prior to filing for demand-side program modification.

If the Commission decides to delete 4 CSR 240-20.094(5(A)2 in its entirety and to renumber the remaining subsections in 4 CSR 240-20.094(5)(A), then any and all references to 4 CSR 240-20.094(5)(A)6 in the following Staff recommended modifications should be changed to 4 CSR 240-20.094(5)(A)5:

- 4 CSR 240-20.092(1)(O) Demand savings target;
- 4 CSR 240-20.092(1)(X) Energy savings target; and
- 4 CSR 240-20.093(8)B)3.

4 CSR 240-20.094(5)(A)6.

Staff recommends replacing the words “section (3)” with the words “subsection (4)(I)”.

> 5. If no objection is raised within thirty (30) days, the commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of modification of demand-side programs within forty-five (45) days of the filing of an application under this section, subject to the same guidelines as established in **<u>subsection</u>** **<u>(4)(I)</u>** ~~section (3)~~;

Staff makes this recommendation as a rule reference correction.

4 CSR 240-20.094(7)(B)

Staff recommends 1) adding an “s” to “resource” in two places in this subsection; 2) adding the word “department” in two places in this subsection; and 3) deleting the words “analysis section” from two places in this subsection.

> (B) Written notification of opt-out from customers meeting the criteria under paragraph (7)(A)1. or 2. shall be sent to the utility serving the customer. Written notification of opt-out from customers meeting the criteria under paragraph (7)(A)3. shall be sent to the utility serving the customer and the manager of the energy resource**<u>s</u>** **<u>department</u>** ~~analysis section~~ of the commission or submitted through the commission’s electronic filing and information system (EFIS) as a non-case-related filing. In instances where only the utility is provided notification of opt-out from customers meeting the criteria under paragraph (7)(A)3., the utility shall forward a copy of the written notification to the manager of the energy resource**<u>s</u>** **<u>department</u>** ~~analysis section~~ of the commission and submit the notice of opt-out through EFIS as a non-case-related filing.

Staff makes this recommendation as an update to the name of the department within the Commission Staff that is responsible for reviewing customer opt-out requests under subsection (7)(A)3.

4 CSR 240-20.094(7)(F)2

Staff recommends 1) deleting the words "calendar year in which the customer receives acknowledgement of opt-out" and adding in their place "following program year", and 2) changing "subsection (6)(H)" to "subsection (7)(H)".

> 2. For that **following program year** ~~calendar year in which the customer receives acknowledgement of opt-out~~ and each successive program year until the customer revokes the notice pursuant to subsection (**7**~~6~~)(H), or the customer is notified that it no longer satisfies the requirements of paragraph (7)(A)3., none of the costs of approved demand-side programs of an electric utility offered pursuant to 4 CSR 240-20.093, 4 CSR 240-20.094, or by other authority and no other charges implemented in accordance with section 393.1075, RSMo, shall be assigned to any account of the customer, including its affiliates and subsidiaries listed on the customer's written notification of opt-out.

Staff makes this recommendation so that subsection (7)(F)2 is consistent with subsection (7)(F)2 and to correctly reference subsection (7)(H).

4 CSR 240-20.094(9)(B)1.A.

Staff recommends changing "updated" to present tense.

> A. Create and implement statewide protocols for evaluation, measurement, and verification of energy efficiency savings, no later than July 1, 2018, and update~~d~~ annually thereafter;

Staff makes this recommendation as a grammatical correction.

4 CSR 240-20.094(9)(B)1.D.

Staff recommends deleting ", such as development of a percentage adder for non-energy benefits" from this subsection.

> D. Explore other opportunities~~, such as development of a percentage adder for non-energy benefits.~~

Staff makes this recommendation to be consistent with the proposed definition of Non-Energy Benefits found in 4 CSR 240-20.092(1)(II).

4 CSR 240-20.094(10)(A)

Staff recommends deleting this subsection in its entirety. Following the deletion, the numbering throughout 4 CSR 240-20.094(10) should be updated accordingly.

> ~~(A) Utilities and stakeholders will work to create and implement a statewide TRM that includes values and formulas for deemed savings and includes commonly used measures for all utility sectors.~~

Staff makes this recommendation since a statewide TRM has already been developed.

4 CSR 240-20.094(10)(B)2.

Staff recommends 1) adding the words "propose solutions to" between the words "shall" and "address", 2) adding the language ", the commission may approve the solution(s) that shall be incorporated in the statewide TRM. Stakeholders shall" between the words "and" and "submit", and 3) replacing the word "rejecting" with the language "providing direction on the solution(s) to be incorporated in the statewide TRM".

> 2. If the commission rejects the proposed statewide TRM, stakeholders shall **<u>propose solutions to</u>** address the commission concerns and**<u>, the commission may approve the solution(s) that shall</u>** **<u>be incorporated in the statewide TRM. Stakeholders shall</u>** submit a revised statewide TRM within ninety (90) days of an order ~~rejecting~~ **<u>providing direction on the solution(s) to be incorporated in the statewide TRM</u>**.

Staff makes this recommendation to clarify the process for providing the commission with a revised statewide TRM following any Commission rejection of a proposed statewide TRM and to remove the circular process in the proposed amendment.

4 CSR 240-20.094(10)(D)1.

Staff recommends replacing the word "updating" with the language "coordinating the process to update".

> 1. Staff shall be responsible for **<u>coordinating the process to update</u>** ~~updating~~ the statewide TRM—

Staff makes this recommendation to clarify Staff's role during the annual updating of the statewide TRM.

4 CSR 240-20.094(10)(D)2.B.

Staff recommends 1) deleting the words "utilities and" between the acronym "TRM" and the word "stakeholders", 2) adding the language "propose solutions to" between the words "shall" and "address", 3) adding the language ", the commission may approve the solution(s) that shall be incorporated in the annual update. Stakeholders shall" between the words "and" and "submit", and 4) replacing the word "rejecting" with the language "providing direction on the solution(s) to be incorporated in the annual update".

> B. If the commission rejects the proposed statewide TRM, ~~utilities and~~ stakeholders shall **propose solutions to** address the commission concerns and**, the commission may approve the solution(s) that shall be incorporated in the annual update. Stakeholders shall** submit a revised statewide TRM within thirty (30) days of an order ~~rejecting~~ **providing direction on the solution(s) to be incorporated in the annual update**.

Staff makes this recommendation to clarify the process for providing the commission with a revised statewide TRM following any Commission rejection of an updated statewide TRM and to remove the circular process in the proposed amendment.…

Additional recommended modifications to proposed rule 4 CSR 240-20.092, and proposed amendments 4 CSR 240-20.093 and 20.094

All models and spreadsheets provided as executable versions in native format with all links and formulas intact

Staff recommends that the following language be included in eleven (11) separate places in the proposed rule and proposed amendments to ensure transparency and to help assure efficient and effective review by all parties who may have an interest in doing so:

> …. all models and spreadsheets provided as executable versions in native format with all **links and** formulas intact.

The nine (9) rule subsections containing this recommended language include:

- 4 CSR 240-20.093(2)(B), 20.093(3)(A), 20.093(4)(A), 20.093(7)(D)1, 20.093(8), 20.093(9); and
- 4 CSR 240-20.094(4)(B), 20.094(5)(A)3, and 20.094(6)(A).

Appendix 1 contains all of Staff's recommended modifications in red-line format to proposed rule 4 CSR 240-20.092, and proposed amendments 4 CSR 240-20.093 and 20.094.