Summary of Informal Stakeholder Comments on SB 376 Rules (EX-2010-0368)

Item #	Item Description	Rule Section	MEDA	Great Rivers Environmental Law Center, KCP&L, DNR, RenewMO & Sierra Club	Other Stakeholders	Staff
1	***Cost Effectiveness and Prudency***	*4 CSR 240-3.163(7)(B)2.B.*	The Proposed Rule would allow the mere fact that a program proves not to be cost effective to be sufficient grounds for disallowing cost recovery. It is possible that the utility would take all prudent action and the program turn out to be not cost effective. In that situation, there is no imprudence and those costs should not be disallowed. MEDA suggested a slight modification to 4 CSR 240-3.163(7)(B)2.B. to make this distinction clearer. MEDA Language suggests the following change, "The fact that a program proves not to be cost effective is not ~~necessarily~~ by itself sufficient grounds for disallowing cost recovery."			Agree-intent of workshop discussions
2	***Definition of Technical Potential, Economic Potential, Realistic Achievable Potential, and Maximum Achievable Potential***	*4 CSR 240-3.164(1)(T), (H), (Q), and (M)*		The definitions of Technical Potential, Economic Potential, Realistic Achievable Potential, and Maximum Achievable Potential should be replaced with the nationally recognized definitions developed through a public-private partnership of experts and contained in the National Action Plan for Energy Efficiency.		Staff does not object to this proposal
3	***Definition of Measure***	*4 CSR 240-3.164(1)(N)*			**OPOWER-** In order to further clarify this subsection, OPOWER suggests that subsection 1 of the definition be changed. This change would make certain that the word "measure" encompasses initiatives which can be considered conservation or energy efficiency, such as behavior based programs.	Rules are not intended to encompass conservation, but utility demand-side savings.

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4	***Review of Potential Study Methodology by Stakeholders***	*4 CSR 240-3.164(2)(A)*		It is important that the potential study be conducted in a collaborative way that provides confidence in its results. 4 CSR 240-3.164(2)(A) should be revised so that the last sentence of the first full paragraph would read; "The current market potential study shall be prepared by an independent third party, with opportunities for the commission and stakeholder review and input in the planning stages of the analysis including review of assumptions and methodology in advance of the performance of the study…"		Suggested change is consistent with workshop discussions and language for collaboratives in 4 CSR 240-20.094
5	***RIM Test***	*4 CSR 240-3.164(2)(B)2.*			**MIEC-** It is very clear in the law and rules that the TRC test is a preferred test. Understands the concern if the RIM test is used to limit the amount of DSM. The TRC test is the right test to evaluate implementing a particular DSM program or measure. MIEC believes that the Participant and RIM tests are useful in program design and cost recovery decisions. Thinks the decision maker would benefit by knowing both the bill savings benefits to the participant and the effect on rates for any customers not participating in the program or measure, but who are being required to fund it.	The draft is silent on the use of the RIM & Participant tests. Nothing precludes their use if the Commission requests the analyses or a party puts them forth for consideration.

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6	***Annual Energy and Demand Savings Targets***	*4 CSR 240-20.093(2)(G)*		Recommends that the same targets used to approve a demand-side program plan be used to determine whether the utility has earned a performance incentive. Further, the rule should clarify that the guidelines in 4 CSR 240-20.094(2) are, in fact, the same targets that will be used to measure the utility's performance to determine whether and how much of a performance incentive should be awarded.		There is a difference between the annual demand savings targets and annual energy savings targets as defined in 4 CSR 240-20.094 versus the incremental annual energy and demand savings goals and cumulative annual energy and demand savings goals specified in 4 CSR 240-20.094(2). The goals specified in 4 CSR 240-20.094(2) are not tied to the utility incentive component of a DSIM. In addition, the goals in 4 CSR 240-20.094(2) are not a mandate and may be informed by the utility's DSM market potential study. They merely provide guidance to the utility for planning purposes and represent reasonable progress towards achieving a statutory goal of achieving all cost effective demand-side savings. There are no incentives or penalties tied to the goals in 4 CSR 240-20.094(2). The annual demand savings targets and annual energy savings targets as defined in 4 CSR 240-20.094(1)(A) & (C) are approved by the commission at the time of each demand-side program's approval (4 CSR 240-20.094(3)(A)). These targets are used in determining the utility's performance levels for the utility incentive component of a DSIM. The annual demand savings goals and annual energy savings goals provide a benchmark for reviewing progress toward a goal of all cost – effective demand-side savings and should not be seen as a mandate.

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7	***Duration of DSIM***	*4 CSR 240-20.093(5)*			**EnerNOC-** The draft rules would create a sunset provision that would limit the term of a DSIM to four years and a requirement that a utility with an approved DSIM file a general rate case with effective dates for new rates at least every four years to receive a Commission Order approving a DSIM. EnerNOC opposes the adoption of a four year term for a DSIM and the four year general rate proceeding requirement. The draft regulation creates a presumption that programs will be discontinued after four years. EnerNoc is concerned about unintended consequences which may limit DSM programs or cause utilities to file for rate cases more frequently than they may have otherwise.	This requirement is similar to the FAC. Programs will not be discontinued; however, the revenue requirement associated with the methodology of recovery will be reviewed.
8	***Auditor Budget***	*4 CSR 240-20.093(7)(B)3.*	MEDA provided a suggested budgetary limit of not to exceed $500,000 on the commission's evaluation, measurement and verification (EM&V) contractor. It is not the intention to limit the oversight of the Commission but rather to protect customers from additional administration costs.			

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9	***Prudence Reviews***	*4 CSR 240-20.093(10)*	MEDA has recommended italicizing and underlining this section as it is only necessary if the Commission determines that MEEIA authorizes a rider where rates may be adjusted outside of a rate case. If the Commission determines that MEEIA does not provide for adjustment of rates outside a rate case, this additional prudence language is not necessary and those costs would be reviewed in a rate case just as other costs are reviewed at that time.			Agree

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10	***Energy and Demand Savings Goals***	*4 CSR 240-20.094(2)(A) and (B)*	MEDA's recommendations remove the annual and cumulative targets from 4 CSR 240-20.094 and any accompanying references throughout the rules stating the MEEIA contains no express authorization for the imposition of any standard savings targets.	Agrees with the draft rule that both the DSM market potential studies, along with a set of gradually increasing targets that are based on the experience of leading states and utilities, should be the basis for setting the performance goals and approval of the plans. There are remaining concerns that the current draft will not ensure that the performance goals and targets are set in a clear, transparent and consistent way at appropriate levels to ensure reasonable progess toward the "all cost-effective" efficiency goal. a. Suggests language clarify "total annual energy" refers to actual electric utility retail sales, either in the immediately preceding year, or an average of sales over previous 3 years. b. Notes there is an apparent drafting error in 4 CSR 240-094(2)(B)9. related to the cumulative goal.	**OPOWER-**OPOWER believes that Missouri utilities can achieve the proposed targets cost effectively- if Missouri encourages innovation in energy efficiency. **EnerNoc-** EnerNoc supports the annual demand savings targets codified in the regulation and further supports establishing the utility guideline as the greater of the market potential study finding or the percentages listed in the regulation. **MIEC-** Neither Section 393.1075 RSMo, or any other provision of law, authorizes the Commission to adopt such targets. The targets are completely arbitrary and without foundation. Finally, it is completely arbitrary and without foundation to establish a target that is the greater of the results of the utility-specific market potential study or some arbitrary targets that have no basis in fact. **Joint Comments from AmerenUE, MIEC, MEG and EDE-** 4 CSR 240-20.094(2)(A) and (B) exceed the Commission's statutory authority. **OPC**- Public Counsel supports including savings goals in the rule and believes the goals will help encourage utilities to achieve the "goal of all cost-effective demand-side savings" which is articulated in MEEIA. However, OPC is concerned that the ramp up rate of these annual energy and peak demand savings goals may be too steep in years two (2013) through four (2015) and recommends that the rate be decreased in these years. OPC has a couple of additional	Please see Staff explanation listed above in the Annual Energy and Demand Savings Targets section. The energy and demand savings goals in 4 CSR 240-20.094(2) are designed to provide guidance on a utility's progress toward meeting goals. Staff has drafted changes to further clarify (4 CSR 240-20.094(2)) Staff agrees with Great Rivers et al that there is a drafting error in 4 CSR 240-094(2)(B)9., which has now been corrected

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11	***Programs must be beneficial to all customers***	*4 CSR 240-20.094(3)(A)3.*		SB 376 conditions cost recovery for demand-side programs on such programs being "beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers." In contrast, the draft 4 CSR 240-20.094(3) states that the commission shall approve demand-side programs and program plans themselves based on this condition, among others. As this condition for program approval is not required by the enabling legislation, 4 CSR-240-20.094(3)(A)3. should not be included in the rule.		Agree with commenters. Language should be removed from 4 CSR 240-20.094 (3)(A)3 and added to 4 CSR 240-20.093(2)(C)
12	***Relationship to IRP***	*4 CSR 240-20.094(3)(A)4.*		The IRP process may not result in a set of DSM resources that are adequate to meet the MEEIA goal of all cost-effective potential, and, therefore, the IRP results should not be a limiting factor in the approval of the DSM plans submitted under the final rule.		
13	***Use of the term "coincident demand"***	*4 CSR 240-20.094(6)(A)3.*			**MEG-** Recommends deleting the words "coincident demand" and replace with "maximum measured demands totaling" in 4 CSR 240-20.094(6)(A)3. Also, recommends deleting the words "customer coincident highest billing demand" and replace with "maximum measured demands."	

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14	***Statewide Collaborative***	*4 CSR 240-20.094(8)*	Recommends expanding the collaborative guidelines to encourage both utility-specific and statewide collaborative.	Currently, all of the investor-owned utilities in MO conduct utility-specific stakeholder collaboratives to review progress toward the energy savings goals for which ratepayer funds have been or will be allocated. Believes that there would be benefits to creating a parallel statewide collaborative. Therefore, this rule should strongly encourage the electric utilities to participate in a statewide collaborate.	**OPC**- In addition to utility-specific collaboratives, there should be a greater emphasis on creating a statewide collaborative to: (1) address the creation of a technical resource manual that includes values for deemed savings, (2) provide the opportunity for the sharing, among utilities and other stakeholders, of lessons learned from demand-side program implementation, and (3) create a forum for discussing the creation of statewide electric demand-side programs and joint electric and gas energy efficiency programs.	Staff supports MEDA's proposed clarification.
15	***Throughput Disincentive or Lost Revenue Recovery***	*This item is not explicitly addressed in the rules; however, if it were included it would have scattered references throughout the Demand-Side Programs Investment Mechanism Rules in 4 CSR 240-3.163 and 4 CSR 240-20.093*	There are three key areas that must be addressed to properly align utility financial incentives with helping customers use energy more efficiently. The Proposed Rules are missing one of those key elements, lost revenues.	The statutory direction to the Commission to align utility incentives such that utilities are encouraged to support energy efficiency investments that save customers money is rendered meaningless if this powerful disincentive is not addressed in a meaningful and timely manner in this rulemaking.	**EnerNOC-** EnerNOC believes that the rules do not adequately address the throughput incentive which inhibits demand-side resource investment. Without removal of the throughput incentive, utilities will not be fully financially motivated to make DSM investments. EnerNOC therefore believes that the rules need to create an explicit mechanism for eliminating the throughput incentive for utilities.	The rules are silent on the throughput disincentive. Recovery of lost revenues is not specifically addressed in the rule; however, utilities are also not prohibited from including it in their request to establish a DSIM. Ultimately, the Commission will approve or disapprove the establishment of the proposed DSIM based on the merits of the request, not a rule.

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16	***Simultaneous Program and DSIM Approval***	*Scattered references throughout 4 CSR 240-3.163, 4 CSR 240-20.093 and 4 CSR 240-20.094*	MEDA does not believe it is good practice for a utility to commit to the implementation of demand-side programs without knowing what type of recovery mechanism (DSIM) will be allowed by the Commission. Recommends the Commission approves a utility's DSIM at the time it approves a utility's demand-side programs. This is appropriate even if the Commission does not believe MEEIA allows for rate adjustments outside of a rate case. In the event that the Commission approves the DSIM at the time of program approval, the DSIM would not go into effect until the utility's next rate case.			
17	***Cost Recovery***	*Scattered references throughout 4 CSR 240-3.163, 4 CSR 240-20.093 and 4 CSR 240-20.094*		Echoes the June 25 joint comments of DNR, NRDC, KCP&L (EW-2010-0265) in urging that the rules specify that cost recovery be accomplished using either direct expense recovery or an average of three years projected.	**EnerNOC-**One potential method for cost recovery is direct expense recovery. Other viable methods include the average of three year projected and/or historic expenses suggested in the KCP&L, NRDC, DNR joint filing or AmerenUE's option of utilizing "a short amortization period (three years or less), with unamortized balanced receiving a return equal to the return allowed for the utility's rate base.	These methods of cost recovery are not specifically addressed in the rule; however, utilities are also not prohibited from including them in their request to establish a DSIM. Ultimately, the Commission will approve or disapprove the establishment of the proposed DSIM based on the merits of the request, not a rule.

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18	***Adjustments of DSIM Rate between General Rate Proceedings***	*Scattered references throughout 4 CSR 240-3.163, 4 CSR 240-20.093 and 4 CSR 240-20.094*			**MIEC-** Portions of 4 CSR 240-20.093, 240-20.094 and 240-3.163 contain language which would allow for utilities to adjust rates in between general rate proceedings in response to changes in the level of costs associated with operating their demand-side management (DSM) programs. Prior to the passage of Section 393.1075 RSMo there was nothing in the law to authorize utilities to change their rates in between general rate cases as a result of DSM programs. Nothing in Section 393.1075 RSMo changed that fact. **OPC**- Public Counsel's position on the lawfulness of the rate adjustments between rate cases that are included in italics in the most recent draft of the proposed rule is consistent with the position stated by the Missouri Industrial Energy Consumers (MIEC). Public Counsel adopts the above referenced comments of MIEC and recommends that all italicized provisions in the proposed rule be deleted.	If it is determined that semi-annual adjustments of DSIM rates between general rate proceedings are unlawful, the words in italic and underlined font should be deleted from the rules.