Staff Comments to Missouri Public Service Commission Proposed Rules
Electric Utility Resource Planning
File No. EX-2010-0254

The Electric Utility Resource Planning rules, Chapter 22, were first filed in 1992 and became effective on May 6, 1993. Since then, significant changes to the electric utility industry in Missouri have occurred, including the formation of regional transmission organizations, formation of regional power markets, consolidation of electric utilities, legislative and initiative petition passage of energy efficiency or renewable energy laws, and increased attention to climate change and other environmental issues. Some of these changes resulted in the Commission granting the electric utilities a waiver from the Chapter 22 requirements from 1999 through December 2005. During that time, the utilities significantly reduced or completely did away with their demand-side programs. Less emphasis was put on load analysis and load forecasting. For example, for one of the Missouri electric utilities, its forecast for the next 20 years was a growth of 100 megawatts (MW) every year. The first Chapter 22 filings after the waiver ended showed that the resource planning of the utilities had significantly declined. However, since the first filings after the waiver ended, Missouri utilities have gained experience with integrated resource planning techniques and developed or acquired planning models and methods. Other stakeholders have also gained experience not only with integrated resource planning techniques, but also with the implementation and performance of the Chapter 22 Electric Utility Resource Planning rules.

Just as the utilities have updated their resource planning processes, the time has come to update the Chapter 22 Electric Utility Resource Planning rules. Staff believes the draft rules filed by the Commission with the Secretary of State appropriately balance the interests of the stakeholders and will improve Missouri's electric utility resource planning process and resultant electric utility resource preferred resource plans and acquisition strategies, will help ensure that customers of Missouri investor-owned electric utilities continue to receive safe, reliable and reasonably priced utility service while allowing those utility companies to earn a reasonable return on their investment. The following Staff recommendations are structured to address the issues that face the Commission and Missouri's electric utilities in regards to updating the Chapter 22 Electric Utility Resource Planning rules.

Development of Electric Utility Resource Planning Rules

During 2009 and 2010, Staff organized a stakeholder process, including a series of four two-day workshops[1], to obtain broad stakeholder input concerning updates to the Electric Utility Resource Planning Rules and to draft revised rules. In preparing the draft rules to present to the Commission, Staff attempted to appropriately balance the interests of all the stakeholders by considering existing law and all the information provided in the workshops and in written comments along with the waiver requests filed and granted for the electric utilities filings since December 2005. Staff believes the draft rules with the changes directed by the Commission that were filed with the Secretary of State appropriately balanced the interests of the stakeholders, are within the bounds of existing law, and will improve Missouri's electric utility resource planning process and resultant resource plans.

Staff Suggested Changes to Proposed Rules

While reviewing the rules for this comment filing, Staff found eight changes that it recommends that the Commission make to the proposed rules. The changes follow in red font with additions being underlined and deletions being in strikeout.

4 CSR 240-22.020(35): Lost revenues means the reduction between rate cases in billed demand (kW) and energy (kWh) due to installed ~~demand-side~~ end-use measures, multiplied by the fixed-cost margin of the appropriate rate component.

Reason: The proposed rules use the terminology end-use measures instead of demand-side measures.

4 CSR 240-22.020(52): RTO means Regional Transmission Organization or independent transmission system operator as defined in the Federal Energy Regulatory Commission (FERC) Order 2000 and subsequent FERC orders.

[1] Stakeholder workshops were held on May 18-19, June 29-30, July 30-31 and October 19-20, 2009.

Reason: Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company and The Empire District Electric Company belong to the Southwest Power Pool Regional Transmission Organization. Union Electric Company d/b/a Ameren Missouri belongs to the Midwest Independent Transmission System Operator. For Chapter 22, they are treated as the same. The alternative would be to change to:

> RTO/ISO means Regional Transmission Organization or independent transmission system operator as defined in the Federal Energy Regulatory Commission (FERC) Order 2000 and subsequent FERC orders.

This change would require going through all of the rules and replacing "RTO" with "RTO/ISO" in multiple places.

4 CSR 240-22.020(53): Special contemporary issues means a written list of issues ~~prepared by commission staff~~ contained in a commission order with input from staff, public counsel and intervenors that are evolving new issues, which may not otherwise have been addressed by the utility or are continuations of unresolved issues from the preceding triennial compliance filing or annual update filing. Each utility shall evaluate and incorporate special contemporary issues in its next triennial compliance filing or annual update filing.

Reason: To be consistent with 4 CSR 240-22.080(4)

4 CSR 240-22.030(1)(B): To derive a data set of historical values from load research data that can be used as dependent and independent variables in the load forecasts;

Reason: The word "data" was inadvertently left out.

4 CSR 240-22.045(5): The electric utility shall identify and describe any affiliate or other relationship with transmission planning, designing, engineering, building, and/or construction management companies. Any description and documentation requirements in sections (1) through (4) also apply to any affiliate transmission planning, designing, engineering, building,

and/or construction management company or other transmission planning, designing, engineering, building, and/or construction management company currently participating in transmission works or transmission projects for and/or with the electric utility.

Reason: Staff is proposing this language so that the transmission plans of affiliated transmission companies and other transmission companies' projects that impact or may be impacted by the electric utility are described and documented.

4 CSR 240-22.045(6): The electric utility shall identify and describe any transmission projects under consideration by a RTO for the electric utility's service territory.

Reason: To provide information regarding the large and very expensive transmission construction projects are driven by the RTO\ ISO.

4 CSR 240-22.050(6)(C)2.: The impact of uncertainty concerning the cost effectiveness by identifying uncertain factors affecting which demand-side resources are cost effective. The utility shall identify how the menu of cost effective ~~demand-side~~ end-use measures changes with these uncertain factors and shall estimate how these changes affect the load impact estimates associated with the demand-side candidate resource options.

Reason: The proposed rules use end-use measures instead of demand-side measures.

4 CSR 240-22.060(3)(A)6.: Any other plan specified by the ~~staff~~commission as a special contemporary issue pursuant to 4 CSR 240-22.080(4);

Reason: To be consistent with 4 CSR 240-22.080(4)

4 CSR 240-22.080(1): Each electric utility which sold more than one (1) million megawatt-hours to Missouri retail electric customers for calendar year 2009 shall make a filing with the commission every three (3) years on April 1. ~~Companies submitting their triennial compliance~~

~~filings on the same schedule may file them jointly.~~ The electric utilities shall submit their triennial compliance filings on the following schedule:

Reason: This sentence can be interpreted different ways. Staff's interpretation is that the two filings, i.e., one filing for each company, can be in the same case file. It may be interpreted that the two companies can only file one resource plan compliance filing. Staff does not agree with this interpretation. As long as the companies are two legal entities, it is Staff's position that the two companies each are required to separately file in compliance with Chapter 22.

4 CSR 240-22.080(8): Also within one hundred twenty (120) days after an electric utility's triennial compliance filing pursuant to this rule, the public counsel and any intervenor may file a report or comments. The report or comments, based on a limited review, may identify any deficiencies or concerns which the public counsel or intervenor believes could prevent the utility's resource acquisition plan from effectively fulfilling the objectives of the electric resource planning rules. Public counsel or intervenors shall make a good faith effort to provide at least one (1) suggested remedy for each identified deficiency or concern. Public counsel or any intervenor shall provide its workpapers related to each deficiency or concern to all parties within ten (10) days of the date its report is filed.

Reason: While Staff understands the desire to make stakeholders more accountable for their participation, Staff is concerned that requiring the Public Counsel and intervenors to develop at least one suggested remedy for each deficiency or concern identified may prove detrimental. First, intervenors may not have the resources to conduct the often complex and sophisticated analyses to develop a suggested remedy. Second, if the rule is interpreted as allowing the utilities to disregard alleged deficiencies and concerns if the commenter does not provide a remedy, then potentially valid comments will be dismissed. Third, being able to identify a problem does not necessarily imply being able to develop a solution. The owner of a car that dies at every stop sign would be able to easily identify that there is a problem. The proposed rule as written is analogous to the owner having to tell the car repair shop how to fix the problem before the car was allowed to be serviced. Staff is concerned that the rule as currently written

will have a chilling effect on stakeholder comments and input to the electric utility resource plans and may lead to unbeneficial recalcitrance from the utilities.

Overview of Changes to the Current Rules

A brief overview of the purpose of each of the nine proposed rules follows. The reporting requirements in rules 4 CSR 240-22.030 through 4 CSR 240-22.080 are necessary to ensure that data is compiled and reported consistently, to ensure that data integrity is maintained across utilities, and, over time, to enable stakeholders to efficiently review and analyze the utility filings.

- **4 CSR 240-22.010 Policy Objectives:** Sets forth the fundamental objectives of electric utility resource planning. In 2008, renewable energy standards were passed for the investor-owned electric utilities by voter initiative in the State of Missouri. The 2009 Legislature passed and the Governor signed the Missouri Energy Efficiency Investment Act (MEEIA) which sets a goal of the electric utilities implementing demand-side programs that acquire all cost-effective demand-side savings (393.1075.4 RSMo 2009). Because of these new statutory requirements, the proposed rule retained the fundamental objectives of the existing rule, but generalized the language to reflect all legal mandates affecting resource planning rather than only environmental laws.

- **4 CSR 240-22.020 Definitions:** Sets forth the revised definitions. Some existing definitions were clarified, others deleted because they were no longer needed due to changes in other rules in Chapter 22 and elsewhere. Some new definitions were added to reflect new sections in the other rules.

- **4 CSR 240-22.030 Load Analysis and Forecasting:** Sets forth the purposes to be achieved by load analysis and by load forecasting and minimum standards for documentation of inputs, methods, and data maintenance. The proposed rule is far less prescriptive than the existing rule regarding the analytical methods the utilities shall use, allowing multiple methods and leaving more discretion to the utilities to choose the methods by which they achieve the stated purposes. However the rule does include

minimum requirements including requiring the use of end-use information where available to ensure that certain elements remain a part of the resource planning process.

There is one new element in the proposed rule. In 4 CSR 240-22.030(8) the proposed rule states:

> (B) The utility shall estimate the sensitivity of system peak load forecasts to extreme weather conditions. This information shall be considered by utility decision-makers to assess the ability of alternative resource plans to serve load under extreme weather conditions when selecting the preferred resource plan pursuant to 4 CSR 240-22.070(1).

Staff is aware that the reserve requirements imposed on the utilities by their regional transmission organization (RTO) / independent transmission system operator (ISO) are there to cover, among other things, extreme weather conditions. However, this is an analysis that each of the utilities told the stakeholder group that it already conducted. Therefore, requiring this analysis in Chapter 22 is not asking the utilities to conduct any additional analysis. It is merely asking them to report the results of that analysis to the Commission.

- **4 CSR 240-22.040 Supply-Side Resource Analysis:** Sets forth the minimum requirements to ensure utility consideration and documentation of a comprehensive set of supply-side resources. This rule has the least amount of revisions. It requires the identification and screening of a variety of supply-side resources including distributed generation and utility scale renewable resources. The proposed rule requires documentation regarding how the potential resources were analyzed and narrowed to identify supply-side candidate resource options to advance to the integration analysis. The proposed rule is less prescriptive than the existing rule in that the proposed rule provides more flexibility regarding the type of analysis and characteristics analyzed to identify supply-side candidate resource options.

One of the areas that has changed the most since the current Chapter 22 was written is transmission and distribution. The proposed rule clarifies the consideration of

transmission and distribution requirements for each supply-side resource to ensure that the full cost of each resource type is factored into the analysis. The proposed rule explicitly requires the consideration of transmission constraints in the screening process.

- **4 CSR 240-22.045 Transmission and Distribution Analysis:** Sets forth the minimum standards for the scope and level of detail required for transmission and distribution system analysis and reporting. This is a new rule, prompted in part, by the changes in federal law that can affect electric utility resource planning and resource viability (e.g., advent of Regional Transmission Organizations (RTOs), development of regional power markets, implementation of Smart Grid technologies). The proposed rule does not prescribe how analyses are to be done, but allows a utility to conduct its own analyses or adopt the RTO or Independent Transmission System Operator (ISO) transmission plan. It does require documentation of the RTO/ISO transmission projects. The proposed rule requires the electric utility to review transmission and distribution for the reduction of power losses, interconnection of new generation facilities, facilitation of sales and purchases and incorporation of advanced technologies for the optimization of investment in transmission and distribution resources.

- **4 CSR 240-22.050 Demand-Side Resource Analysis:** Sets forth the minimum requirements to ensure utility consideration and documentation of a comprehensive set of demand-side resources broadly covering the utilities' customers. The proposed rule identifies the objectives to be achieved by the demand-side programs and portfolios, and gives each utility the option of developing them from the top down (starting with a program design and filling in the cost-effective energy efficiency measures) or the bottom up (starting with screening a comprehensive menu of measures and ending with a program design).

While the current rule does require the electric utilities to screen rate design as part of its demand-side analysis, the Chapter 22 compliance filings since December 2005 have included very little with respect to screening rate design to influence customer usage.

Therefore, the proposed rule clarifies the distinction between demand-side programs and demand-side rates and places more emphasis on demand-side rates.

The proposed rule is much less prescriptive than the existing rule in that it does not specify how the screening analysis is to be conducted or how the avoided costs are to be calculated. It does include the use of the calculation of the Total Resource Cost (TRC) test which meets the requirement of the MEEIA (§393.1075.4 RSMo 2009 Cum. Supp.). The proposed rule requires documentation regarding how the potential resources were analyzed and screened to identify demand-side candidate resource options to advance to the integration analysis.

The requirements for the evaluation of demand-side programs that are in the current demand-side analysis were removed from the proposed demand-side analysis rule. Evaluation requirements are in the proposed 4 CSR 240-22.070 Resource Acquisition Strategy Selection rule.

- **4 CSR 240-22.060 Integrated Resource Plan and Risk Analysis:** Sets forth the minimum standards and reporting requirements to ensure that supply-side and demand-side resources are equivalently evaluated. One of the major differences between the current rule and the proposed rule is that all of the risk analysis is contained in the proposed 4 CSR 240-22.060 rule. In the current Chapter 22, the risk analysis is spread across 4 CSR 240-22.060 Integrated Resource Analysis and 4 CSR 240-22.070 Risk Analysis and Strategy Selection. Therefore, the proposed 4 CSR 240-22.060 is titled Integration and Risk Analysis.

  The proposed rule rectifies an inadequacy in the existing Chapter 22 rules that permitted utilities to comply without meaningful analysis of energy efficiency and renewable energy resources by requiring the utilities to develop cases for analysis that maximize reliance on energy efficiency and renewable energy resources (and any future resources) and then develop optimal cases. The proposed rule requires the development of

alternative resource plans based on normal conditions, as well as assessing the robustness of the plans under more extreme conditions (high and low cases).

The proposed rule is less prescriptive than the existing rule in that it does not specify the analytical methods and it does not require the utilities to perform a specific decision tree analysis to evaluate risk. The proposed rule requires documentation of the methods, analyses, judgments and data the utilities choose.

In light of the Kansas City Power & Light Company's and The Empire District Electric Company's regulatory plans to build the Iatan 2 plant and recent legislative efforts to change the construction work in progress (CWIP) law, another change in the integration and risk analysis is the explicit requirement to analyze the impact of the financial markets on the resource choices. The proposed rule adds the requirement for the utility to include performances measures of present worth of utility revenue requirements, with and without any financial performance incentives the utility is planning to request. Also, in the proposed rule there is much more emphasis on the consideration of future interest rate levels and other credit market conditions that can affect the utility's cost of capital and access to capital. For each alternative resource plan, the proposed rule requires analysis of financial parameters and, if required, description of any changes in legal mandates and cost recovery mechanisms necessary for the utility to maintain an investment grade credit rating.

Lastly the current 4 CSR 240-22.060 rule include a requirement for an analysis of the impact of the utility's load building programs. This analysis is part of the proposed 4 CSR 240-22.070 Resource Acquisition Strategy Selection rule.

- **4 CSR 240-22.070 Resource Acquisition Strategy Selection:** Sets forth the minimum standards that a preferred resource plan shall meet, as well as the reporting requirements to document the utilities' judgments regarding the risks of different alternative resource plans. It includes an evaluation of demand-side programs, demand-side rates and load building programs in the strategy selection process. It also clarifies the existing rule

requirement that utilities identify and develop implementation plans and contingency plans.

The proposed rule gives the utility the flexibility to exercise its judgment to strike the appropriate balance between the planning objectives. Even so, it requires the selection of preferred resource plan by utility decision makers that invests in advanced transmission and distribution technologies, includes demand-side programs that meet legal requirements, and includes sufficient resources to serve load forecasted under extreme weather conditions.

Due to the lack of information provided by the utilities regarding their resource acquisition strategies under the current rules, the proposed rule requires each utility to officially adopt a preferred resource plan, contingency plans and resource acquisition strategy. It also requires that the utility adopt a resource acquisition strategy and specifies that a resource acquisition strategy consists of a preferred resource plan, an implementation plan and a set of contingency plans. In addition, due to the lack of information regarding implementation plans with the current rules, the proposed rule specifies the information necessary to describe an implementation plan.

- **4 CSR 240-22.080 Filing Schedule, Filing Requirements and Stakeholder Process:** Sets forth the filing schedule and requirements and a filing and review process. The proposed rules differ from the existing rules in two fundamental ways as a result of input received at the stakeholder workshops. First, the proposed rule establishes a triennial compliance filing with more informal annual plan updates during the years between the full triennial compliance filings. The annual plan update is coupled with a stakeholder workshop to informally communicate changing conditions and utility plans.

  Second, the proposed rule establishes a more collaborative approach among stakeholders to developing, reviewing and updating plans. While the electric utilities are responsible for developing resource plans, the Commission, with input from the stakeholders, will identify special contemporary issues for the utilities to analyze in their planning efforts.

The utilities will convene a stakeholder group meeting to present their preliminary plans and receive input regarding potential concerns and deficiencies. Once the plans are filed, stakeholders again have the opportunity to identify potential concerns and deficiencies and meet with the utility to resolve them. The annual plan updates and associated workshops provide additional opportunity for stakeholder input.

In an effort to make the resource planning process more meaningful, the proposed rule requires action from the utility if its business plan or acquisition strategy becomes inconsistent with the latest adopted preferred resource plan filed by the utility. In addition, the proposed rule requires certification that any request of action from the Commission is consistent with the utility's adopted preferred resource plan. Staff provides additional comments regarding this provision later in these comments.

An additional change in the proposed rule is that the utilities are required to provide workpapers within two days of their triennial compliance and annual update filings. The current rule includes the requirement for the utility to keep its workpapers, but they were not provided until requested. Staff supports this change because some utilities would require a data request to get these workpapers, delaying much of the review of the filing for up to twenty days after the request for workpapers.

Because the resource planning process required by Chapter 22 requires significant resources, the proposed rule allows Missouri's smallest investor-owned utility, The Empire District Electric Company, to only file a full filing every six years if it has resolved all the deficiencies identified in its previous full filing.

STAFF SUPPORTED LANGUAGE

The Staff supports the proposed Electric Utility Resource Planning Rules, but will outline a few areas of support in the following comments. As many of the issues are intertwined, the Staff comments will address all nine of the above-mentioned rules.

Level of Prescriptiveness

During the workshops, stakeholder discussions and Commission Agenda meeting discussions, the Missouri Energy Development Association (MEDA) asserted that the proposed rules were too prescriptive and offered alternative rules. Staff appreciates the draft rules that MEDA provided. Staff gave careful and thorough consideration to MEDA's draft rules, but in the end concluded that the proposed rules strike an appropriate balance between providing the utilities with flexibility to plan as they wish and ensuring that the utilities' analyses are complete and comprehensive and that the decisions of utility decision-makers are documented and available to the Commission and the stakeholders.

The proposed rules reflect the integrated resource planning experience gained by the utilities and other stakeholders under the existing rules. The proposed rules are less prescriptive than the current rules relative to required analytical methods and approaches. The proposed rules no longer specify what types of forecasting models must be used, how the forecasting data must be structured, the sequence of steps used to screen supply-side resources, the sequence of steps used to screen demand-side resources, how to calculate avoided costs, or how to set up a decision tree model to conduct probabilistic risk assessments, to name a few areas where the proposed rules are less prescriptive than the current rules. The Commission's proposed rules do assume that Missouri utilities and other stakeholders have gained sufficient experience with integrated resource planning and allow the utilities to determine how best to conduct it. The proposed rules instead identify policy and planning objectives and give the utilities more flexibility in how to accomplish those objectives.

The proposed rules remain appropriately prescriptive with regard to the reporting requirements to ensure that utility methods, analyses, and decisions are described, documented, and available to the Commission, stakeholders and other interested persons. Staff has learned from the utilities' Chapter 22 filings since December 2005, that if something is not specifically addressed in a rule, the utilities are not likely to cover the item and provide the item to Staff and other stakeholders. It is also appropriate that the reporting requirements are quite specific to ensure that the data and information presented is consistent across utilities and over time. Explicit reporting requirements also permit stakeholders to efficiently navigate the filings when reviewing them. In many respects, the prescriptiveness of the proposed reporting requirements are similar to the

prescriptiveness of non-Chapter 22 reporting requirements – imagine how difficult it would be to assess and compare costs across utilities and over time if each utility could file the FERC Form 1 or Securities And Exchange Commission data in whatever format it wanted.

The Staff devoted the July 30-31, 2009 workshop to consider MEDA's suggestions regarding the purpose of and approach to the Electric Utility Resource Planning Rules, particularly to address the complexity and prescriptiveness of the draft rules. It is MEDA's position that it is the results of the planning process that matter and therefore the draft rules that it provided emphasize the results not the analysis itself. While Staff does agree that the results are very important, establishing a proper planning process is fundamental and the knowledge gained in the planning process helps the utility better understand its customers. A proper planning process allows the utility to make better decisions when circumstances change and the chosen plan is no longer relevant. In addition, generally speaking, all of the stakeholders other than the utilities were adamant about the rules remaining rather prescriptive, especially regarding the reporting requirements, because of difficulties they had experienced in getting information regarding the utilities' plans and documentation. Most of the stakeholders had examples of situations in which a utility refused to supply relevant information, because it was not expressly addressed or required under the existing rules. Instances were raised, where utilities submitted as workpapers in compliance with the existing rules graphs containing information that was not labeled, that had no units on the axes, and that were not cross referenced against any text or table – in other words a line on a paper meaningless to anyone other than the utility employee that created it, as examples of why the rules needed to be prescriptive. The filing met the letter of the rules but the graph did not provide any useful information to the stakeholder.

It is an unfortunate reality, but it is only appropriate for the reporting requirements to remain prescriptive and detailed. That is the balance between the utilities' desire for flexibility and the stakeholders' ability to request and receive necessary information. MEDA's draft rule leaves too much to the discretion of the utility and too little information and too little recourse for the non-utility stakeholders.

It is particularly ironic that MEDA's push for a more flexible and less prescriptive approach (for the utilities) comes at a time that MEDA is also pushing for more recognition of responsibility for planning on the Commission and the stakeholders. By seeking a process by which the Commission would "acknowledge" the plan, MEDA is upping the ante for thorough plan review while at the same time trying to minimize the amount of information that is available for the Commission to make that determination. Similarly, MEDA's draft rules require that any stakeholder identifying a concern or deficiency provide at least one suggested remedy increases the burdens on the non-utility stakeholders. So in effect the MEDA approach is suggesting more responsibility and accountability for the Commission and the stakeholders while providing less information and less recourse to obtain information.

The electric utilities during workshops and Commission on-the-record and agenda discussions have compared the number of words and number of pages in the proposed rules to MEDA's draft rules. That is not an appropriate comparison as MEDA's draft rules require the stakeholders to rely on the utilities to do a reasonable analysis and provide adequate documentation. There is little recourse for the stakeholder if the utility does not act with eminent good will, and despite the professed intentions of the current utility personnel, there is no assurance that future utility employees will have the same commitment. As a result, the Commission may find it useful to view the rules as a contract governing the actions of each electric utility and the information provided to the stakeholders. A rule is essentially the equivalent of a contract between the utility and the public. If MEDA's arguments for less prescriptive and shorter rules applied to purchasing power from a wind farm, one could argue that a one page contract stating that the utility agreed to purchase and the supplier agreed to provide some amount of output at market prices is better than a contract that spells out the many details (e.g., who gets the Renewable Energy Credits, the delivery path, who is responsible if the windmill cannot produce electricity, etc.). In the unreservedly trusting, flexible, and short style, one might expect even at least a 10 page contract to secure electric transmission services. In reality, when the utility and the counterparty each have interests they wish to protect, the contracts are much longer (150 pages would not be unusual for a wind generator contract and the Open Access Tariff of the Southwest Power Pool is 2,460 pages in length). The point is that a longer contract is necessary to protect

the interests of all the parties, and in this case, longer rules with details regarding deliverables are appropriate.

For these reasons, Staff believes the decreased level of prescriptiveness regarding analysis contained in the proposed rules, and the increased level of prescriptiveness regarding the reporting requirements, is appropriate. For example, the proposed 4 CSR 240-22.030 Load Analysis and Forecasting rule allows the utility to choose the methodology to conduct the load forecast and the description and documentation requirements provides the data necessary for the stakeholders to understand the utility's analysis.

Definitions of Deficiency and Concern

Staff supports the definition of deficiency and concern as contained in the proposed rules. Even though the current rules do not specifically designate the identification of what Staff characterizes as "concerns," Staff, in its previous Chapter 22 review reports, has noted areas of "concern" where while the utility may have technically met the requirements of the rules, the results were of "concern" to Staff. Staff has not just indicated that there was a concern, but has explained what the concern is. For example, 4 CSR 240-22.030 Load Analysis and Forecasting requires the provision of plots of data used for forecasting peak load. If a utility provides a plot, but data points for half of the historical period are missing, the utility technically meets the rule's reporting requirements, so no deficiency exists. However, missing data points for half of the historical period would lead to serious concern regarding the forecast that was developed using this data. Therefore, even though the utility met the requirement of the rule, Staff would raise a matter such as this as a concern and explain the concern.

Proposed rule 4 CSR 240-22.020(8) defines "deficiency" as "anything that would cause the electric utility's resource acquisition strategy to fail to meet the requirements identified in chapter 22." Proposed rule 4 CSR 240-22.020(5) defines "concern" as "anything that, while not rising to the level of a deficiency, may prevent the electric utility's resource acquisition strategy from effectively fulfilling the objectives of chapter 22." Using these definitions, a stakeholder would assess whether an issue he/she identified would rise to the level of the resource acquisition strategy failing to meet the requirements. The burden of making a showing would lie with the

stakeholder to show that the resource acquisition strategy would fail to meet the Chapter 22 requirements. It would be a relatively objective assessment and determination. If the stakeholder was unable to make the showing that the resource acquisition strategy failed to meet the requirements, the issue would be downgraded to an expression of concern that a matter may prevent the resource acquisition plan from fulfilling the objectives of Chapter 22.

MEDA suggested a definition of deficiency as being a noncompliance, the consequence of which is substantial enough to cause the electric utility to select an alternative resource plan as its preferred resource plan. Conversely, a concern is a noncompliance, the consequence of which is not substantial enough to cause the electric utility to select an alternative resource plan as its preferred resource plan. MEDA's suggestion is subjective and places a very high burden of showing on the stakeholder to allege a deficiency. If a stakeholder alleges that some noncompliance is a deficiency, he/she would also have to show that the noncompliance would have caused the utility to select an alternative plan as its preferred resource plan. Since the utility's preferred resource plan must "in the judgment of the utility decision-makers, strike an appropriate balance between the various planning objectives" (4 CSR 240-22.070(1)(A)), a stakeholder would have to show that the judgment of the utility decision maker would change as a result of the noncompliance. That is a subjective and seemingly almost impossible burden to meet. If the stakeholder alleges a deficiency, the utility can downgrade it to a concern simply by asserting that the noncompliance would not have changed the decision.

Comparison of Utility's Preferred Resource Plan to its Business Plan and Requirements for Notification When Different

One of the objectives of the revision of Chapter 22 is to make the process and the results more meaningful. To that end, the Staff supports the language of the proposed 4 CSR 240-22.080(12) which requires the utility's business plan or acquisition strategy to be materially consistent with its preferred resource plan. If the utility determines that the business plan or acquisition strategy is materially inconsistent with the preferred resource plan, the utility is required to notify the Commission including a description of the changes to the preferred resource plan to make it and the business plan or acquisition strategy consistent. MEDA expressed concern that this requirement could result in constantly changing preferred resource plans.

The Staff believes that the proposed language which requires notification only when the utility concludes that the business plans are "materially inconsistent with the preferred resource plan" will prevent the endless notification and updating of the preferred resource plan which MEDA fears.

On the other hand, if the utility's business plans are changing rapidly and are materially inconsistent with the utility's preferred resource plan, a notification and update of the preferred resource plan is entirely reasonable and appropriate. If that is not done, the preferred resource plan, and indeed the electric resource planning process, becomes meaningless – an out of date snapshot that bears no relation to what the utility is actually doing.

If the proposed rules are modified to remove the requirement that the utilities provide notification when their business plans are materially inconsistent with their filed preferred resource plans, the net result will be to keep the Commission and the stakeholders in the dark about the utilities actual business and preferred plans. Therefore, Staff recommends that the Commission adopt the current proposed language.

Acknowledgement of Utility Preferred Resource Plan as Part of Commission Order

The Staff supports the language of the proposed 4 CSR 240-22.080(16) which requires the Commission to issue an order containing findings whether or not the utility filing demonstrated compliance with the requirements of Chapter 22, as well as approval or disapproval of the joint stakeholder filing on remedies to plan deficiencies or concerns, as well as a process for developing remedies to any remaining deficiencies or concerns. The proposed rule does not call for an approval or acknowledgement of the preferred resource plan or resource acquisition strategy, any specific resources within the preferred resource plan or resource acquisition strategy, or the prudence of investments made in resources to be implemented according to the preferred resource plan or resource acquisition strategy.

MEDA and the Missouri Department of Natural Resources (MDNR) are suggesting that the Commission "acknowledge" the preferred resource plan in an order following the review of the

plan filing. They intend "acknowledgement" to be a Commission finding that the preferred resource plan seems reasonable at the time the "acknowledgement" is given. They have previously stated that "acknowledging" a preferred resource plan is not a pre-approval of any resource decision, in an apparent recognition that pre-approval would be contrary to the Commission's long-standing regulatory practice. They have also indicated that "acknowledgement" is not intended to operate as a shifting of the burden of proof from the utility to other parties.

The Staff believes that MEDA / MDNR's attempted distinctions among pre-approval, shifting of the burden of proof, and acknowledgement are distinctions that MEDA / MDNR have not adequately addressed, because MEDA / MDNR are not able to adequately address distinctions that do not exist in reality. Pre-approval of preferred resource plans is desired by the utilities because it could be used to ensure cost recovery for whatever resource(s) were part of the "acknowledged" preferred resource plan. It reduces regulatory risk of recovery. Currently, the Commission decision whether to allow the cost of a resource to be recovered in rates occurs after the resource is "fully operational and used for service" (§393.135 RSMo. 2000), and the utility has requested that it be added to the utility's rate base. A resource can be added to the rate base, and costs recovered, if the investment was prudent, reasonable, of benefit to Missouri retail ratepayers (a finding that has historically been made in Missouri after the resource has been constructed and after it is fully operational and used for service). Pre-approval would make the determination that the investment was prudent, reasonable, and of benefit to Missouri retail ratepayers before its construction or operation. The reasonable care standard is based on whether persons (management), given all the surrounding circumstances, exercised due diligence in addressing all relevant factors in making the decision(s) based on information known or available at the time the decision(s) was(were) made. A Commission acknowledgement that the plan seems reasonable at the time the "acknowledgement" is given will be argued by the utility as in fact a Commission determination that the preferred plan for resources is prudent, reasonable, and otherwise appropriate, since "acknowledgement" is Commission verification that the plan is reasonable at the time of decision. It would be extremely difficult to make a showing that a resource was not prudent, reasonable, or of benefit to Missouri ratepayers once the Commission "acknowledged" it. Also, if a utility obtains "acknowledgement," it would be less

likely to change its preferred resource plan regardless of how clear indications were that changes should be made. Thus "acknowledgement" in effect guarantees that the utility will be allowed to recover the costs of any "acknowledged" resource, i.e., the decision to invest is prudent, reasonable, and of benefit to Missouri retail customers, although it leaves open the question of whether the decision was prudently, reasonably, or otherwise appropriately implemented. Staff would note that there is no legal requirement of a showing by a party or finding by the Commission of "imprudence," "bad faith," or "abuse of discretion" for the Commission to disallow costs. Lack of benefit to Missouri ratepayers is a basis for the Commission to disallow utility expense. *State ex rel. Laclede Gas Co. v. Public Serv. Comm'n*, 600 S.W.2d 222, 228-29 (Mo.App. W.D. 1980), *appeal dismissed,* 449 U.S. 1072, 101 S.Ct. 848, 66 L.Ed.2d 795 (1981); *State ex rel. Southwestern Bell Tel. Co. v. Public Serv. Comm'n,* 645 S.W.2d 44, 55-56 (Mo.App. W.D. 1982).

The Staff further has a great concern regarding the probable lack of resources of the stakeholders to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analyses of all the resources necessary early in the planning stages if an acknowledgement determination is being made by the Commission. Imprudence, unreasonableness, lack of benefit to Missouri retail ratepayers arguments carry a large burden for the stakeholders, and the acknowledgement process would shift these issues from rate cases to the electric utility resource planning cases. To properly assess those issues in the electric utility resource planning cases would require more time, more information, more opportunity to conduct formal discovery, and more litigated proceedings.

Pre-approval Option for Large Investments

Staff supports the proposed rules which do not explicitly allow the utilities to request pre-approval of the resource acquisition strategy or any sub-component of it. MEDA suggested including a pre-approval provision in the resource planning rules in case the utility required additional regulatory certainty (cost recovery) to implement its resource acquisition strategy. Staff opposes MEDA's suggestion. Pre-approval of a resource occurred in the regulatory plan filings of Kansas City Power & Light Company (KCPL), Case No. EO-2005-0329, and The Empire District Electric Company (Empire), Case No. EO-2005-0263. Contingent upon an

agreement on the prudence of the decision to build Iatan 2 were specifics on rate increase case filings, demand-side programs, and financial parameters and metrics respecting KCPL and Empire. It also included class cost-of-service parameters and criteria for the determination of when the plant would be considered fully operational and used for service.

While none of this may be necessary for pre-approval of a resource, based on the experience of Case No. EO-2005-0329 and Case No. EO-2005-0263, Staff does not want to restrict the pre-approval of a resource to what is included in a Chapter 22 filing. In addition, the utilities already have the authority to request additional regulatory certainty by requesting a regulatory plan or some other form of pre-approval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to codify it in the electric utility resource planning rules.

Certification that Utility Requests are Consistent with its Preferred Resource Plan

Staff supports the language of the proposed 4 CSR 240-22.080(17) which requires the utility certify that a requested action from the Commission (typically in a case before the Commission) is substantially consistent with the preferred resource plan specified in the triennial compliance filing or annual plan update filing. Staffs' reasoning is the same as described above in its discussion in "Comparison of Utility's Preferred Resource Plan to its Business Plan and Requirements for Notification When Different." If the preferred resource plan is to be relevant and meaningful, it must be kept current. The corollary is that any utility applications to the Commission that affect its preferred resource plan should be consistent with the preferred resource plan.

Staff does not believe that this requirement as proposed imposes any significant burden on the utility. The utility would first certify whether the requested action is affected by the utility's electric resources, preferred resource plan or resource acquisition strategy. If it was affected, the utility would then certify that the requested action is substantially consistent with the preferred resource plan. It should require no more than a couple of sentences, unless the requested action is substantially inconsistent with the preferred resource plan. That should at most be an

infrequent occurrence[2], but should it occur, it is appropriate that the utility explain to the Commission why its requested action is not consistent with its preferred resource plan.

MEDA suggests that this provision has no meaning unless the rule contains a provision for acknowledgement. Staff disagrees. The issue is whether the utility's requested action is consistent with the utility's preferred resource plan and resource acquisition strategy. It would be enlightening, and disturbing, to know that the utility's requested action did not follow the utility's preferred resource plan. That would suggest that the preferred resource plan was not relevant and meaningful to the utility. Staff would not expect this to be a frequent occurrence, especially in light of the notification required if the utility's business plan is materially inconsistent with its preferred resource plan.

Pre-integration Review of Utility Analysis

Staff supports the language of the proposed 4 CSR 240-22.080(5) which requires each utility to convene a stakeholder group meeting to present a draft of its filing in response to 4 CSR 240-22.040 through 4 CSR 240-22.050. This rule provision is in response to comments received during the rulemaking workshops and is intended to increase the opportunity for stakeholder input into the planning process. By providing for stakeholder input on the resource building blocks prior to the integration phase, stakeholders can influence the scope of resources considered by the utilities and their characteristics. Stakeholders will also preview the utilities preliminary alternative plans prior to when the utility conducts its risk analysis using those building blocks. Stakeholders can identify potential concerns and deficiencies before the Chapter 22 triennial compliance filing, giving the utilities the opportunity to address and resolve them in their filings.

The proposed rule permits stakeholders to provide the utility and other stakeholders with a written statement of potential concerns and deficiencies within 30 days of the last stakeholder group meeting. MEDA suggested that the Staff be required to review the pre-integration filing and prepare a written report indicating the results of that review within 60 days of the pre-

[2] Especially in light of proposed rule 4 CSR 240-22.080(12) which requires the utility to notify the Commission whenever the utility's business plan or acquisition strategy is materially inconsistent with the preferred resource plan.

integration filing. Staff believes that MEDA's suggestion is unnecessary and inappropriate. First, the utility is not required to incorporate any, or all, of the stakeholder group input – it is entirely the utility's decision. The opportunity for stakeholder input should help the utility identify and avoid potential deficiencies or concerns. Thus, requiring a formal Staff report does not result in any more useful information, nor does it increase the obligation of the utility to consider it. Second, creating a formal obligation for a Staff report runs counter to the approach to providing input to the utilities regarding the development of their plans based on the more informal stakeholder group meeting. Third, MEDA's proposal shifts the emphasis from getting broad-based stakeholder input to getting Staff input. All the stakeholders have the opportunity to file alleged deficiencies and concerns once the utility files pursuant to 4 CSR 240-22.080(7) and 4 CSR 240-22.080(8), and it does not make sense to elevate the Staff role in the pre-integration review.

Transmission and Distribution Analysis

Staff supports the language of the proposed 4 CSR 240-22.045 which creates a new rule to address transmission and distribution plans. There have been many changes in the electric industry since the existing rules were promulgated that necessitate additional assessment of the transmission and distribution systems. These include the organization and evolution of RTO/ISOs to promote and implement open access to adequate transmission networks, as well as the development of power markets that affect wholesale power prices and coordinate regional dispatch of generation resources. In addition, federal requirements for advanced technologies (Smart Grid) are potentially affecting not only the ability of the transmission network to deliver power but also the ability of the utility to shape load and to deliver demand–side resources. The proposed rule requires the electric utilities to consider the effects of the regional entities and advanced technologies on their electric utility resource plans.

During the rulemaking workshops, MEDA suggested that a new separate transmission and distribution rule is either (1) not needed because the relationships between the utilities and the regional organizations are well-defined and well-established, rendering anything required by the electric utility resource planning rules to be superfluous (because the analyses are already being done) or (2) misplaced because the regional transmission organizations / independent

transmission system operators, not the electric utilities, are the responsible parties. Staff disagrees. The electric utilities are responsible for their planning decisions, and those planning decisions must take into account the effects of the regional transmission organizations / independent transmission system operators. The proposed rules hold the electric utilities responsible for considering the effects of the RTO/ISO on the analyses and resource plans of the electric utilities. The proposed rules allow the utilities to adopt and incorporate the analyses and plans of the RTO/ISO. The proposed rules provide a mechanism for the utilities to describe and document their consideration of regional transmission factors in their resource planning process.

MEDA also suggested that transmission and distribution considerations would be best addressed in the supply-side analysis in 4 CSR 240-22.040. Staff disagrees. First, the existing rule included transmission and distribution considerations as part of the supply-side analysis. Yet, the utility Chapter 22 filings have not adequately reflected or reported on the evolving transmission systems. Highlighting the transmission and distribution analyses in a dedicated rule will focus more attention on these areas, thus causing issues related to transmission and distribution to be more directly and thoroughly assessed. Second, there are numerous issues associated with advanced transmission and distribution technologies that affect demand-side resources, especially the rate design analysis that the proposed rules put more emphasis on. In addition to the avoided transmission and distribution costs affecting the cost effectiveness of demand-side resources relative to supply-side, the advanced technologies can also affect the utilities' ability to deliver demand-side resources. Thus, putting transmission and distribution analyses in a separate rule better reflects and highlights both the supply- and demand-side issues.

Filing of Reports as Part of an Annual Update Process

Staff supports the language of the proposed 4 CSR 240-22.080(3) which requires the utility to prepare an annual update report to give the Commission and stakeholders current and meaningful information regarding the utilities' preferred resource plan and acquisition strategy. Based on stakeholder input at the rulemaking workshops, the proposed process is less formal and focused on the changes rather than the methods. To reach a balance between having a dialog and having a written record of any changed circumstances, the annual update process calls for the utility to prepare a brief written report that is filed before the annual update workshop. The utility then

presents its report to stakeholders at the workshop. During the presentation and discussion, stakeholders may raise questions and issues. In keeping with the informal nature of the update, the stakeholders may identify steps to resolving those issues. Following the workshop, the utility will summarize the action items the utility agrees to undertake as a result of the workshop. Stakeholders are given the opportunity to provide written comments on the utility's update and the summary of action items. The annual update report, summary report and stakeholder comments would all be filed with the Commission giving the Commission the opportunity to better understand the resource planning of the utilities and the status of the preferred resource plan and resource acquisition strategy. Staff believes that this approach is a good balance of informal information exchange and written documentation.

MEDA suggested an annual workshop along with the provision to require notification of changes to the implementation plan, but not to require filing of reports as a result of the annual update process. Staff disagrees because MEDA's proposal would not result in any written documentation of changes to the utilities' preferred plans and resource acquisition strategies. If the annual updates are strictly verbal, there will be no filed record of up-to-date preferred plans and acquisition strategies, which will lead to differing interpretations and confusion. In addition, and this is significant, verbal updates to stakeholders will not provide information to the Commissioners.

In addition to the annual updates, notifications of changes as required by 4 CSR 240-22.080(12) may occur at any time during the year and not necessarily on the schedule of the annual updates. If one or more notifications of change have been issued by the utility, these can be easily integrated into the annual update report.

As written, the proposed rules contemplate a full snapshot every three years in the triennial compliance filing[3], a much smaller and narrowly focused snapshot every year in the annual update report, and an ongoing and notification of material changes filed whenever and as often as

[3] The proposed 4 CSR 240-22.080 rule allows Empire to skip a triennial filing if it resolves all deficiencies in the previous triennial filing.

they occur. Together, they serve to keep the resource acquisition strategy and preferred resource plan up to date and meaningful.

Using Tests Other than Total Resource Cost and Utility Cost Tests

During the course of the rulemaking workshops, the Missouri Industrial Energy Consumers (MIEC) suggested using tests other than the total resource cost and utility cost tests, specifically the rate impact measure (RIM) test, to evaluate demand-side resources. The existing and proposed rules both call for the evaluation of the average rate, or cost per kWh, over time, based on a system level analysis after integration is completed. The average rate is one of the performance measures upon which alternative system plans will be evaluated. The average rate is a more complete and thorough assessment of the rates that would result from alternative resource plans than the RIM test.

The Staff supports the language of the proposed 4 CSR 240-22.050(5)(E) which requires the utility to provide the results of the total resource cost and utility cost tests. These tests can be helpful in designing programs, but because of the approximations and estimates used to establish avoided costs and long term rates, are not as accurate as the entire analyses required under the Chapter 22 rules. The total resource cost test is used to identify demand-side candidate resources for further analysis in the integration phase. Staff supports the language of the proposed 4 CSR 240-22.050(5)(F) which requires the utility to provide the results of the other cost tests if the utility calculates them. Many of the commercial analytical tools used by electric utilities calculate other tests, including the RIM test, as set out in the California Standard Procedures Manual,

ENERGY INDEPENDENCE AND SECURITY ACT (EISA) STANDARDS

The Commission has three working group files open to consider the Federal Energy Independence and Security Act (EISA) standards. In its filings in these working group files, Staff has stated its position that the Commission had met some of the standards through its current resource planning rules and could meet more in revised rules. Attachment A to this document is a table that gives the EISA standards and sub-standards and which of the proposed rules would meet the standards and sub-standards.