

FILED<sup>3</sup>

MAR 03 2011

MEMORANDUM

Missouri Public  
Service Commission

TO: Steven C. Reed, Secretary

DATE: March 2, 2011

RE: Authorization to File Order of Rulemaking with the Office of Secretary of State

FILE NO: EX-2010-0254

The undersigned Commissioners hereby authorizes the Secretary of the Missouri Public Service Commission to file the following Order of Rulemaking with the Office of the Secretary of State, to wit:

4 CSR 240-22.010 – Amendment



Kevin D. Gunn, Chairman



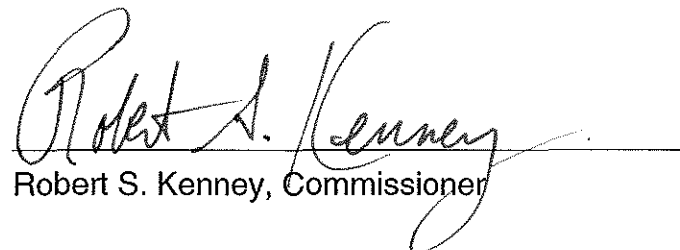
Robert M. Clayton III, Commissioner Chairman



Jeff Davis, Commissioner



Terry M. Jarrett, Commissioner



Robert S. Kenney, Commissioner

# Robin Carnahan

Secretary of State  
Administrative Rules Division

## RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-22.010

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

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Data Entry same

Phone \_\_\_\_\_

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Interagency mailing address Public Service Commission, 9<sup>th</sup> Fl, Gov.Ofc Bldg, JC, MO

### TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☐ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☒ Order of Rulemaking

Effective Date for the Order \_\_\_\_\_

☒ Statutory 30 days OR Specific date \_\_\_\_\_

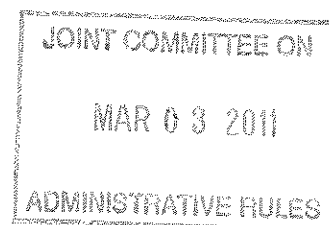
Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Sections (1) and (2) have been amended.

Small Business Regulatory  
Fairness Board (DED) Stamp

JCAR Stamp





**Commissioners**

**KEVIN GUNN**  
Chairman

**ROBERT M. CLAYTON III**

**JEFF DAVIS**

**TERRY M. JARRETT**

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***Missouri Public Service Commission***

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Robin Carnahan  
Secretary of State  
Administrative Rules Division  
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Re: 4 CSR 240-22.010 Policy Objectives

Dear Secretary Carnahan,

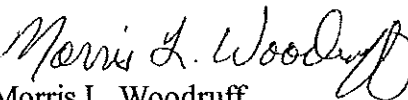
**CERTIFICATION OF ADMINISTRATIVE RULE**

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission.

Statutory Authority: sections 386.040, 386.250, 386.610 and 393.140, RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact:

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Morris L. Woodruff  
Chief Regulatory Law Judge

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT  
Division 240 – Public Service Commission  
Chapter 22 – Electric Utility Resource Planning**

**ORDER OF RULEMAKING**

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 386.610, and 393.140, RSMo 2000, the Commission amends a rule as follows:

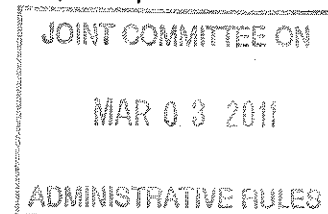
**4 CSR 240-22.010 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1737). The sections with changes are reprinted here. The proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The public comment period ended January 3, 2011, and a public hearing on the proposed rule was held January 6, 2011. Timely written comments were received from the staff of the Missouri Public Service Commission (Staff), the Office of the Public Counsel, The Empire District Electric Company (Empire), Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCPL), Union Electric Company d/b/a Ameren Missouri, the Missouri Department of Natural Resources (DNR), Dogwood Energy, LLC, Renew Missouri and Great Rivers Environmental Law Center (Renew Missouri), and from Public Service Commissioner Jeff Davis. In addition, Staff, Public Counsel, Empire, KCPL, Renew Missouri, DNR, Dogwood, KCPL, and Ameren Missouri offered comments at the hearing. The comments proposed various modifications to the amendment.

**Comments relating to the entire package of changes to Chapter 22:** The proposed amendment to this rule is part of a larger package of nine rules that comprise the proposed Chapter 22 of the Commission's rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri. Some of the submitted comments relate to the overall package in general. The Commission will address those comments first, and then will address the comments that relate specifically to this rule of Chapter 22.

**COMMENT 1 - The Rules Should Be Less Prescriptive:** Ameren Missouri, Empire, and KCPL, the electric utilities that will need to comply with Chapter 22, suggest that the entire Chapter 22 should be less prescriptive. By that, they mean the Chapter 22 rules should focus more on the end result, the preferred



resource plan, and allow the electric utilities more leeway to determine how to arrive at that result. As an alternative to the rules the Commission has proposed, they offer a set of rules prepared by the Missouri Energy Development Association (MEDA), an electric, natural gas and water utility trade organization.

**RESPONSE:** The MEDA rules, a copy of which was attached to the comments filed by both Ameren Missouri and KCPL, has the virtue of being much shorter than the Commission's rule, but that brevity comes with a cost. As Staff explained in its testimony, it and other interested stakeholders cannot properly evaluate a utility's resource plan unless they know what went into development of the plan. A preferred resource plan may look entirely reasonable when presented by the utility, but unless the reviewer knows the assumptions and processes that were used to determine the plan; the review is of little value.

An analogy can be made to a weather forecast offered by the weather bureau. The forecaster may offer an opinion that it will rain tomorrow, but unless the reviewer knows the basis of that forecast, the reviewer has little more to go on than trust. Staff, other interested stakeholders, and the Commission need to be able to base their evaluation of the plans submitted by the utilities on more than just trust.

Furthermore, while the electric utilities would prefer a less-prescriptive rule, they will be able to comply with the rules the Commission has proposed. At the public hearing, Ameren Missouri commented: "We have concerns about how much the process can get in the way of getting to a good result. But in the end we will do it." Also in the public hearing, in response to Commissioner Jarrett's questions about the experience in other states, Empire commented: "... we're able to do a total company IRP. And since the Missouri rule is the more onerous ... what we do in Missouri, as far as the IRP, in those other jurisdictions. And we are all on the same three-year filing cycle in all three states, which makes it nice for us."

The rules the Commission has proposed strike a proper balance between the utilities' interest in freedom of action and the Commission's need to know the basis for their proposed plans. The Commission will not adopt the rules proposed by MEDA.

**COMMENT 2 - Linkage with the MEEIA Rules:** Renew Missouri and the Department of Natural Resources are concerned about the interrelationship of these rules with the rules the Commission has proposed to implement the Missouri Energy Efficiency Investment Act of 2009, Section 393.1075, RSMo, (MEEIA). In particular, they cite a provision in the MEEIA rules that directs electric utilities to assemble comprehensive demand-side portfolios that are subject to approval and cost recovery under the MEEIA. Before that is done, the MEEIA rules require that the utility's demand-side programs or program plans are either included in the electric utility's preferred resource plan or have been analyzed through the integration analysis process required by Chapter 22 to determine the impact of the demand-side programs or program plans on the net present value of revenue requirements of the electric utility. Renew Missouri and

DNR worry that the integration analysis under Chapter 22 would introduce elements into the demand-side portfolios that would be inconsistent with the requirements of the MEEIA rules. Their solution to this problem is to suggest that the definitions and requirements of these Chapter 22 rules be made as consistent as possible with the definitions and requirements of the MEEIA rules.

**RESPONSE:** The Commission is mindful of the concerns expressed by Renew Missouri and DNR, but it is unwilling to make the Chapter 22 rules subservient to the MEEIA rules in the manner they propose. The goal of MEEIA is to achieve all cost-effective demand-side savings. The fundamental objective of these rules is to provide the public with energy services that are safe, reliable, and efficient at just and reasonable rates. To accomplish that fundamental objective, these rules require the utility to consider and analyze demand-side resources and supply-side resources on an equivalent basis.

The proposed policy rule incorporates the MEEIA rule by requiring the resource planning process to be in compliance with all legal mandates. This language is flexible in that it incorporates the MEEIA requirements and all future federal and state legal mandates. For that reason the Commission has included language regarding compliance with legal mandates in section (2) of the rule as proposed.

**COMMENT 3 - Preapproval of Large Projects:** The electric utilities, through the MEDA rules, advocate for the option of requesting preapproval of large investments as part of a utility's Chapter 22 compliance filing. Ameren Missouri asserts that preapproval is a way for the utility to seek determination of ratemaking treatment on a major project before the project begins. It also points out that the Missouri Energy Efficiency Investment Act (MEEIA) provides for preapproval of demand side resources. Ameren Missouri claims that it is a logical extension to provide a preapproval option for large supply-side investments, if preapproval is requested by the utility.

Staff and Public Counsel oppose an option for preapproval of large projects. They argue that utilities already have authority to request additional regulatory certainty by requesting a regulatory plan or some other form of preapproval. The utilities have utilized both of these approaches in the past, and it is unnecessary and inappropriate to include a preapproval process in the Chapter 22 rules.

Dogwood suggests the Commission open a new separate rulemaking process to consider proposals to develop a procedure by which electric utilities may seek preapproval from the Commission for certain large projects.

**RESPONSE:** The Commission agrees with its Staff and Public Counsel that there are other more appropriate alternatives for preapproval and will not include a provision for preapproval of large investments in its Chapter 22 rules. The Commission is open to further discussion on the preapproval question, but will not undertake a rulemaking on the subject at this time.

**COMMENT 4 - Illegal Infringement on the Right to Manage the Utility:** Ameren Missouri contends the proposed rules go beyond the Commission's statutory authority by intruding on the day-to-day management prerogatives of the utility.

**RESPONSE:** The Commission certainly is not interested in managing the utility companies, and these rules do not attempt to do so. Rather, the rules are designed to ensure that the electric utilities implement an effective and thorough integrated resource planning process to ensure that their ratepayers continue to receive safe and reliable service at just and reasonable rates.

**COMMENT 5 - Acknowledgment:** The Department of Natural Resources urges the Commission to modify the Chapter 22 rules to authorize the Commission to "acknowledge" the reasonableness of the electric utility's resource acquisition strategy. DNR believes this acknowledgment would increase the Commission's authority over integrated resource planning by making the process more meaningful and consistent with the utility's business plan. The electric utilities, through the MEDA rules, make a similar suggestion. Ameren Missouri contends, "acknowledgment is a way to give value to all the work of the parties involved by acknowledging that the plan is reasonable at the time it was developed."

Staff is opposed to acknowledgment of the reasonableness of the electric utility's resource acquisition strategy in these rules. Staff points out that currently the Commission's 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," 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 its cost recovered, if the investment was prudent, reasonable, and 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). Further, Staff is greatly concerned that stakeholders lack the resources to review and conduct prudence/reasonableness/benefit-to-Missouri-retail-ratepayers level analysis of all the resources necessary early in the planning stages if an acknowledgment determination is being made by the Commission.

**RESPONSE:** The Commission does not wish to move down the path toward preapproval of projects as part of the resource planning process. However, it is important to emphasize the importance of that planning process by giving the Commission authority to acknowledge that the officially adopted resource acquisition strategy, or any element of that strategy, is reasonable at a particular date. The Commission will adopt modified language that defines acknowledgment in a manner that will make it clear that acknowledgment is not preapproval and will not bind a future commission in any future case. In addition, the Commission will adopt other elements of DNR's proposal for implementation of an acknowledgment option, except for the inclusion of a definition of

"substantive concern.". The specific changes that will be made to the proposed rules are described in detail in comments relating to the specific rule provisions.

**Comments relating to this particular rule of Chapter 22:**

**COMMENT 6 - Changes to Section .010(1):** Ameren Missouri takes issue with the section that states the Commission's policy goal in promulgating this Chapter. The existing rule states that the chapter establishes a resource planning process "to ensure that the public interest is adequately served." The amendment would add "with a view to the public welfare, efficient facilities, and substantial justice between patrons and public utilities."

Ameren Missouri is concerned that the added terms are unclear, undefined, and unnecessary. Ameren Missouri suggests the new phrase simply be removed from the amendment. Alternatively, Ameren Missouri suggests the Commission add "utility shareholders" to the list of considerations that make up the public interest.

In its comments at the hearing, Staff explained that the new language is taken directly from Section 386.610, RSMo 2000, which states that the provisions of the statute that establish the Public Service Commission should be "liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities."

**RESPONSE AND EXPLANATION OF CHANGE:** In promulgating the rule changes regarding Chapter 22, the Commission did not intend to modify its objective to protect the public interest. The new language quoting the statutory provision is therefore unnecessary and can only confuse future interpretation of the rule. Therefore, the Commission will remove the new language from section .010(1).

**COMMENT 7 - Changes to Section .010(2) – "rates" to "costs":** The Department of Natural Resources suggests that the reference in section (2) to just and reasonable "rates" be changed to just and reasonable "costs", reasoning that "costs" is a more accurate description of the factor that has a direct effect on customers.

**RESPONSE:** The Commission has statutory authority to set rates for the services provided by the utilities it regulates. Customers ultimately determine their costs for utility services based upon their personal decisions in response to the utility's service offerings. The Commission will not change "rates" to "costs" in this section.

**COMMENT 8 - Changes to Section .010(2) – consistent with other policies:** The Department of Natural Resources suggests that language be added indicating that the fundamental objective of the resource planning process should be consistent with state energy and environmental policies.



**RESPONSE:** The Commission agrees with DNR and will modify the section accordingly.

**COMMENT 9 - Changes to Subsection .010(2)(A):** The Department of Natural Resources suggests that the subsection should be modified to reflect a priority for demand-side resources that result in all cost-effective demand-side savings. DNR further suggests that the subsection be modified to specifically include analysis of renewable energy and supply-side additions and retirements on an equivalent basis.

**RESPONSE:** The Commission does not agree that demand-side resources should be given priority over supply-side resources. Section 393.1075.3 RSMo establishes that it is the policy of this state to value demand-side investments equally to traditional investments in supply and delivery infrastructure. Therefore, supply-side resources and demand-side resources should be evaluated on an equivalent basis in Chapter 22. The Commission will not make the change proposed by DNR.

#### **4 CSR 240-22.010 Policy Objectives.**

(1) The commission's policy goal in promulgating this chapter is to set minimum standards to govern the scope and objectives of the resource planning process that is required of electric utilities subject to its jurisdiction in order to ensure that the public interest is adequately served. Compliance with these rules shall not be construed to result in commission approval of the utility's resource plans, resource acquisition strategies, or investment decisions.

(2) The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies. The fundamental objective requires that the utility shall—