

MEMORANDUM

FILED³

MAR 08 2011

**Missouri Public
Service Commission**

TO: Steven C. Reed, Secretary

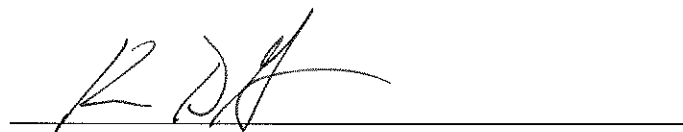
DATE: March 2, 2011

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

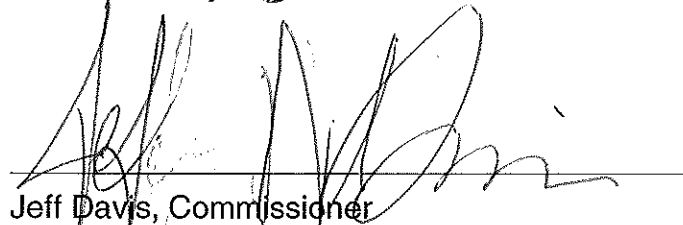
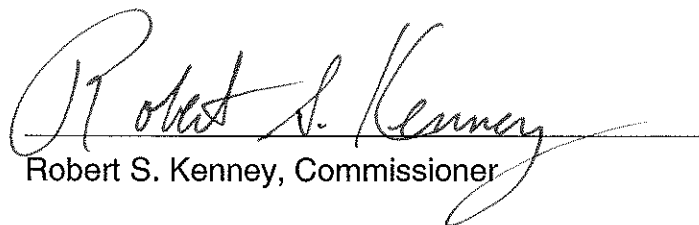
FILE NO: EX-2010-0254

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 240-22.040 – Amendment



Kevin D. Gunn, Chairman


Robert M. Clayton III, Commissioner-Chairman
Jeff Davis, Commissioner
Terry M. Jarrett, Commissioner
Robert S. Kenney, Commissioner



Commissioners

KEVIN GUNN
Chairman

ROBERT M. CLAYTON III

JEFF DAVIS

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Chief Staff Counsel

Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-22.040 Supply-Side Resources Analysis

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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A handwritten signature in cursive script that reads "Morris L. Woodruff".

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:

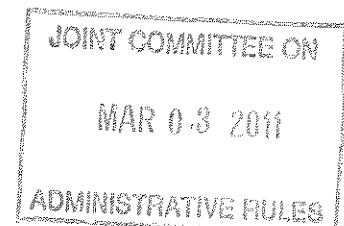
4 CSR 240-22.040 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2010 (35 MoReg 1746). 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 rule is also less prescriptive in some areas. For example, it no longer lists the attributes of supply-side options that the utility must consider. It is more prescriptive in other areas: for example with regard to supply-side option's interconnection agreements. 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.

This rule requires a screening of supply-side resources that are further evaluated, along with demand-side resources, through an integrated resource analysis. The integrated resource analysis is followed by a risk analysis and a strategic selection by the utility's decision-makers.

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 - The Role of RTOs in Transmission Planning for Supply-Side Analysis: KCPL raises a general concern that the rule fails to recognize the important role regional transmission organizations play in transmission planning for the electric utilities. KCPL is concerned that it is not feasible to conduct a fully integrated supply-side analysis without recognizing that transmission to secure delivery of the electricity can only be developed with the cooperation of the RTOs. KCPL suggests that the Commission modify the rule to better recognize the role of the RTOs

RESPONSE: The Commission recognizes that regional transmission organizations play an important part in transmission planning for the electric utilities. However, the Commission also recognizes that the utilities themselves also play an important role in determining transmission planning for their utility. The Commission does not believe that this rule requires the utility to take each of the supply-side options to its RTO to get a detailed estimate of the transmission necessary for each option. However, the Commission does expect the utility to have the experience and expertise to be able to provide a reasonable estimate for each option as required by the rule. The Commission will not make any changes to the rule based on this comment.

COMMENT 7 - Changes to Section .040(1) and .040(4): The Department of Natural Resources asks the Commission to modify these two sections to explicitly require electric utilities to include retirement of existing generating plants and other supply-side resources as potential supply-side resource options and supply-side candidate resource options as part of their supply-side analysis..

RESPONSE: The Commission cannot see how retiring an existing supply-side resource is a resource option. However, the Commission expects the utilities to include analysis of retiring existing supply-side resources as an integral part of electric utility resource planning. In addition, the rule requires screening of all supply-side options. There is no need to change the rule in the manner requested by DNR.

COMMENT 8 - Changes to Section .040(2)(A): Dogwood suggests this subsection be modified to ensure that cost rankings of potential supply-side options take into account the additional costs that will be incurred to assure reliable integration of intermittent or uncontrollable supply sources, such as solar and wind power. Dogwood claims that if such costs are disregarded, the utility's analysis will be incomplete. To correct this problem, Dogwood asks the Commission to add an additional sentence to the end of this subsection.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with Dogwood's suggestion and will modify this subsection accordingly.

COMMENT 9 - Changes to Section .040(3)(A): Dogwood is concerned that the Commission has inadvertently limited the scope of the analysis required by this subsection by including a specific list of six supply-side options. Dogwood suggests the Commission remove the specific list and instead include a more general requirement that the utility "provide an adequate foundation of basic information for decisions about supply-side resource alternatives."

RESPONSE AND EXPLANATION OF CHANGE: The Commission believes the specific list of six supply-side options should remain in the rule. However, it agrees that the utility's analysis should not be limited to those six options. To correct the problem, the Commission will retain the list, but will add language to the end of .040(3)(A) stating that the utility is to provide "an adequate foundation of basic information for decisions to include, but not be limited to the following:"

COMMENT 10 - Changes to Section .040(5): The Department of Natural Resources urges the Commission to modify this section to establish more specific criteria by which the electric utility is to forecast critical uncertain factors that affect forecasted values and probabilities.

RESPONSE: The Commission does not believe the added prescriptiveness proposed by DNR is necessary and will not modify the section.

4 CSR 240-22.040 Supply-Side Resource Analysis.

(2) The utility shall describe and document its analysis of each potential supply-side resource option referred to in section (1). The utility may conduct a preliminary screening analysis to determine a short list of preliminary supply-side candidate resource options, or it may consider all of the potential supply-side resource options to be preliminary supply-side candidate resource options pursuant to subsection (2)(C). All costs shall be expressed in nominal dollars.

(A) Cost rankings of each potential supply-side resource option shall be based on estimates of the installed capital costs plus fixed and variable operation and maintenance costs leveled over the useful life of the potential supply-side resource option using the utility discount rate. The utility shall include the costs of ancillary and/or back-up sources of supply required to achieve necessary reliability levels in connection with intermittent and/or uncontrollable sources of generation (i.e. wind and solar).

(3) The utility shall describe and document its analysis of the interconnection and any other transmission requirements associated with the preliminary supply-side candidate resource options identified in subsection (2)(C).

(A) The analysis shall include the identification of transmission constraints, as estimated pursuant to 4 CSR 240-22.045(3), whether within the Regional Transmission Organization's (RTO's) footprint, on an interconnected RTO, or a transmission system that is not part of an RTO. The purpose of this analysis shall be to ensure that the transmission network is capable of reliably supporting the preliminary supply-side candidate resource options under consideration, that the costs of the transmission system investments associated with preliminary supply-side candidate resource options, as estimated pursuant to 4 CSR 240-22.045(3), are properly considered and to provide an adequate foundation of basic information for decisions to include, but not be limited to the following:

1. Joint ownership or participation in generation construction projects;
2. Construction of wholly-owned generation facilities;
3. Participation in major refurbishment, life extension, upgrading, or retrofitting of existing generation facilities;

4. Improvements on its transmission and distribution system to increase efficiency and reduce power losses;
5. Acquisition of existing generating facilities; and
6. Opportunities for new long-term power purchases and sales, and short-term power purchases that may be required for bridging the gap between other supply options, both firm and nonfirm, that are likely to be available over all or part of the planning horizon.