Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities

PROPOSED RULE

4 CSR 240-20.094 Demand-Side Programs

PURPOSE: This rule sets forth the definitions, requirements, and procedures for filing and processing applications for approval, modification, and discontinuance of electric utility demand-side programs. This rule also sets forth requirements and procedures related to customer opt-out, tax credits, monitoring customer incentives, and collaborative guidelines for demand-side programs.

(1) As used in this rule, the following terms mean:

(A) Annual demand savings target means the annual demand savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual demand-side savings targets are the baseline for determining the utility's demand-side programs' annual demand savings performance levels in the methodology for the utility incentive component of a demand-side programs investment mechanism (DSIM);

(B) Annual energy savings target means the annual energy savings level approved by the commission at the time of each demand-side program's approval in accordance with 4 CSR 240-20.094(3)(A). Annual energy savings targets are the baseline for determining the utility's demand-side programs' annual energy savings performance levels in the methodology for the utility incentive component of a DSIM;

(C) Annual net shared benefits means the utility's avoided costs measured and documented through evaluation, measurement, and verification (EM&V) reports for approved demand-side programs less the sum of the programs' costs including design, administration, delivery, end-use measures, incentives, EM&V, utility market potential studies, and technical reference manual on an annual basis;

(D) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from energy savings and demand savings associated with generation, transmission, and distribution facilities. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs;

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

(F) Baseline energy forecast means a reference forecast of annual energy at the class level in the absence of any new demand-side programs but including the effects of naturally-occurring energy efficiency and any codes and standards that were in place and known to be enacted at the time the forecast is completed;

(G) Customer class means major customer rate groupings such as residential, small general service, large general service, and large power service;

(H) Demand means the rate of electric power use over an hour measured in kilowatts (kW);

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

(J) Demand-side programs investment mechanism, or DSIM, means a mechanism approved by the commission in a utility's filing for demand-side program approval to encourage investments in demand-side programs. The DSIM may include, in combination and without limitation:

1. Cost recovery of demand-side program costs through capitalization of investments in demand-side programs;
2. Cost recovery of demand-side program costs through a demand-side program cost tracker;
3. Accelerated depreciation on demand-side investments;
4. Recovery of lost revenues; and
5. Utility incentive based on the achieved performance level of approved demand-side programs;

(K) Demand-side program plan means a particular combination of demand-side programs to be delivered according to a specified implementation schedule and budget;

(L) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval proceeding or a semi-annual DSIM rate adjustment case;

(M) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval proceeding to provide the utility with a portion of annual net shared benefits based on the achieved performance level of approved demand-side programs demonstrated through energy and demand savings measured and documented through EM&V reports compared to energy and demand savings targets;

(N) DSIM utility lost revenue requirement means the component of the utility's revenue requirement explicitly approved (if any) by the commission in a utility's filing for demand-side program approval proceeding to address the recovery of lost revenue;

(O) Electric utility or utility means any electric corporation as defined in section 386.020, RSMo;

(P) Energy means the total amount of electric power that is used over a specified interval of time measured in kilowatt-hours (kWh);

(Q) Energy efficiency means measures that reduce the amount of electricity required to achieve a given end-use;

(R) Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs;

(S) Interruptible or curtailable rate means a rate under which a customer receives a reduced charge in exchange for agreeing to allow the utility to withdraw the supply of electricity under certain specified conditions;

(T) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net retail kWh below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

(U) Preferred resource plan means the utility's resource plan that is contained in the resource acquisition strategy most recently adopted by the utility's decision-makers in accordance with 4 CSR 240-22;

(V) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes, or other requirements that, in the judgment of the utility's decision-makers, may be imposed at some point within the planning horizon which would result in compliance costs that could have a significant impact on utility rates. The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its probable environmental costs;

(W) Staff means all commission employees, except the secretary of the commission, general counsel, technical advisory staff as defined by section 386.135, RSMo, hearing officer, or regulatory judge;

(X) Total resource cost test, or TRC, means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs plus avoided probable environmental cost to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus utility costs to administer, deliver, and evaluate each demand-side program to quantify the net savings obtained by substituting the demand-side program for supply-side resources; and

(Y) Utility incentive component of a DSIM means the methodology approved by the commission in a utility's demand-side program approval proceeding to allow the utility to receive a portion of annual net shared benefits achieved and documented through EM&V reports.

(2) Guideline to Review Progress Toward an Expectation that the Electric Utility's Demand-Side Programs Can Achieve a Goal of all Cost-Effective Demand-Side Savings. The fact that the electric utility's demand-side programs do not meet the incremental or cumulative annual demand-side savings goals established in this section may impact the utility's DSIM revenue requirement but is not by itself sufficient grounds to assess a penalty or adverse consequence for poor performance.

(A) The commission shall use the greater of the annual realistic achievable energy savings and demand savings as determined through the utility's market potential study or the following incremental annual demand-side savings goals as a guideline to review progress toward an expectation that the electric utility's demand-side programs can achieve a goal of all cost-effective demand-side savings:

1. For 2012: three-tenths percent (0.3%) of total annual energy and one percent (1.0%) of annual peak demand;

2. For 2013: five-tenths percent (0.5%) of total annual energy and one percent (1.0%) of annual peak demand;

3. For 2014: seven-tenths percent (0.7%) of total annual energy and one percent (1.0%) of annual peak demand;

4. For 2015: nine-tenths percent (0.9%) of total annual energy and one percent (1.0%) of annual peak demand;

5. For 2016: one-and-one-tenth percent (1.1%) of total annual energy and one percent (1.0%) of annual peak demand;

6. For 2017: one-and-three-tenths percent (1.3%) of total annual energy and one percent (1.0%) of annual peak demand;

7. For 2018: one-and-five-tenths percent (1.5%) of total annual energy and one percent (1.0%) of annual peak demand;

8. For 2019: one-and-seven-tenths percent (1.7%) of total annual energy and one percent (1.0%) of annual peak demand; and

9. For 2020 and for subsequent years, unless additional energy savings and demand savings goals are established by the commission: one-and-nine-tenths percent (1.9%) of total annual energy and one percent (1.0%) of annual peak demand each year:

(B) The commission shall also use the greater of the cumulative realistic achievable energy savings and demand savings as determined through the utility's market potential study or the following cumulative demand-side savings goals as a guideline to review progress toward an expectation that the electric utility's demand-side programs can achieve a goal of all cost-effective demand-side savings:

1. For 2012: three-tenths percent (0.3%) of total annual energy and one percent (1.0%) of annual peak demand;

2. For 2013: eight-tenths percent (0.8%) of total annual energy and two percent (2.0%) of annual peak demand;

3. For 2014: one-and-five-tenths percent (1.5%) of total annual energy and three percent (3.0%) of annual peak demand;

4. For 2015: two-and-four-tenths percent (2.4%) of total annual energy and four percent (4.0%) of annual peak demand;

5. For 2016: three-and-five-tenths percent (3.5%) of total annual energy and five percent (5.0%) of annual peak demand;

6. For 2017: four-and-eight-tenths percent (4.8%) of total annual energy and six percent (6.0%) of annual peak demand;

7. For 2018: six-and-three-tenths percent (6.3%) of total annual energy and seven percent (7.0%) of annual peak demand;

8. For 2019: eight percent (8.0%) of total annual energy and eight percent (8.0%) of annual peak demand; and

9. For 2020 and for subsequent years, unless additional energy savings and demand savings goals are established by the commission: nine-and-nine-tenths percent (9.9%) of total annual energy and nine percent (9.0%) of annual peak demand for 2020, and then increasing by one-and-nine-tenths percent (1.9%) of total annual energy and by one percent (1.0%) of annual peak demand each year after 2020.

(3) Applications for Approval of Electric Utility Demand-Side Programs or Program Plans. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission for approval of demand-side programs or program plans by filing information and documentation required by 4 CSR 240-3.164(2). Any existing demand-side program with tariff sheets in effect prior to the effective date of this rule shall be included in the initial application for approval of demand-side programs if the utility intends for unrecovered and/or new costs related to the existing demand-side program be included in the DSIM cost recovery revenue requirement, DSIM utility lost revenue requirement, and/or if the utility intends to establish a DSIM utility incentive revenue requirement for the existing demand-side program. The commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of demand-side program plans within one hundred twenty (120) days of the filing of an application under this section only after providing the opportunity for a hearing. In the case of a utility filing an application for approval of an individual demand-side program, the commission shall approve, approve with modification acceptable to the electric utility, or reject applications within sixty (60) days of the filing of an application under this section only after providing the opportunity for a hearing.

(A) For demand-side programs and program plans that have a total resource cost test ratio greater than one (1), the commission shall approve demand-side programs or program plans, and annual demand and energy savings targets for each demand-side program it approves, provided it finds that the utility has met the filing and submission requirements of 4 CSR 240-3.164(2) and the demand-side programs and program plans—

1. Are consistent with a goal of achieving all cost-effective demand-side savings;

2. Have reliable evaluation, measurement, and verification plans; and

3. Are included in the electric utility's preferred plan or have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility.

(B) The commission shall approve demand-side programs having a total resource cost test ratio less than one (1) for demand-side programs targeted to low-income customers or general education campaigns, if the commission determines that the utility has met the filing and submission requirements of 4 CSR 240-3.164(2), the program or program plan is in the public interest, and meets the requirements stated in paragraphs (3)(A)2.–3.

1. If a program is targeted to low-income customers, the electric utility must also state how the electric utility will assess the expected and actual effect of the program on the utility's bad debt expenses, customer arrearages, and disconnections.

(C) The commission shall approve demand-side programs which have a total resource cost test ratio less than one (1), if the commission finds the utility has met the filing and submission requirements of 4 CSR 240-3.164(2) and the costs of such programs above the level determined to be cost-effective are funded by the customers

participating in the programs or through tax or other governmental credits or incentives specifically designed for that purpose and meet the requirements as stated in paragraphs (3)(A)2. and 3.

(D) Utilities shall file and receive approval of associated tariff sheets prior to implementation of approved demand-side programs.

(E) The commission shall simultaneously approve, approve with modification acceptable to the utility, or reject the utility's DSIM proposed pursuant to 4 CSR 240-20.093.

(4) Applications for Approval of Modifications to Electric Utility Demand-Side Programs. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility shall file an application with the commission for modification of demand-side programs by filing information and documentation required by 4 CSR 240-3.164(4) when there is a variance of twenty percent (20%) or more in the approved demand-side program annual budget and/or any program design modification which is no longer covered by the approved tariff sheets for the program. The commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of modification of demand-side programs within thirty (30) days of the filing of an application under this section, subject to the same guidelines as established in subsections (3)(A) through (C), only after providing the opportunity for a hearing.

(A) For any program design modifications approved by the commission, the utility shall file for and receive approval of associated tariff sheets prior to implementation of approved modifications.

(5) Applications for Approval to Discontinue Electric Utility Demand-Side Programs. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission to discontinue demand-side programs by filing information and documentation required by 4 CSR 240-3.164(5). The commission shall approve or reject such applications for discontinuation of utility demand-side programs within thirty (30) days of the filing of an application under this section only after providing an opportunity for a hearing.

(6) Provisions for Customers to Opt-Out of Participation in Utility Demand-Side Programs.

(A) Any customer meeting one (1) or more of the following criteria shall be eligible to opt-out of participation in utility-offered demand-side programs:

1. The customer has one (1) or more accounts within the service territory of the electric utility that has a demand of the individual accounts of five thousand (5,000) kW or more in the previous twelve (12) months;

2. The customer operates an interstate pipeline pumping station, regardless of size; or

3. The customer has accounts within the service territory of the electric utility that have, in aggregate across its accounts, a coincident demand of two thousand five hundred (2,500) kW or more in the previous twelve (12) months, and the customer has a comprehensive demand-side or energy efficiency program and can demonstrate an achievement of savings at least equal to those expected from utility-provided programs.

A. For utilities with automated meter reading and/or advanced metering infrastructure capability, the measure of demand is the customer coincident highest billing demand of the individual accounts during the twelve (12) months preceding the opt-out notification.

(B) Written notification of opt-out from customers meeting the criteria under paragraph (6)(A)1. or 2. shall be sent to the utility serving the customer. Written notification of opt-out from customers meeting the criteria under paragraph (6)(A)3. shall be sent to the utility serving the customer and the manager of the energy resource analysis section of the commission or submitted through the commission's electronic filing and information system (EFIS) as a non-case-related filing. In instances where only the utility is provided notification of opt-out from customers meeting the criteria under paragraph (6)(A)3., the utility shall forward a copy of the written notification to the manager of the energy resource analysis section of the commission and submit the notice of opt-out through EFIS as a non-case-related filing.

(C) Written notification of opt-out from customer shall include at a minimum:

1. Customer's legal name;

2. Identification of location(s) and utility account number(s) of accounts for which the customer is requesting to opt-out from demand-side program's benefits and costs; and

3. Demonstration that the customer qualifies for opt-out.

(D) For customers filing notification of opt-out under paragraph (6)(A)1. or 2., notification of the utility's acknowledgement or plan to dispute a customer's notification to opt-out of participation in demand-side programs shall be delivered in writing to the customer and to the staff within thirty (30) days of when the utility received the written notification of opt-out from the customer.

(E) For customers filing notification of opt-out under paragraph (6)(A)3., the staff will make the determination of whether the customer meets the criteria of paragraph (6)(A)3. Notification of the staff's acknowledgement or disagreement with customer's qualification to opt-out of participation in demand-side programs shall be delivered to the customer and to the utility within thirty (30) days of when the staff received the written notification of opt-out.

(F) Timing and Effect of Opt-Out Provisions. A customer notice shall be received by the utility no earlier than September 1 and not later than October 30 to be effective for the following calendar year. For that calendar year and each successive calendar year until the customer revokes the notice pursuant to subsection (6)(H), none of the costs of approved demand-side programs of an electric utility offered pursuant to 4 CSR 240-20.093, 4 CSR 240-20.094, 4 CSR 240-3.163, and 4 CSR 240-3.164 or by other authority and no other charges implemented in accordance with section 393.1075, RSMo, shall be assigned to any account of the customer, including its affiliates and subsidiaries listed on the customer's written notification of opt-out.

(G) Dispute Notices. If the utility or staff provides notice that a customer does not meet the opt-out criteria to qualify for opt-out, the customer may file a complaint with the commission. The commission shall provide notice and an opportunity for a hearing to resolve any dispute.

(H) Revocation. A customer may revoke an opt-out by providing written notice to the utility and commission fourteen (14) to sixteen (16) months in advance of the calendar year for which it will become eligible for the utility's demand-side program's costs and benefits.

(I) A customer who participates in demand-side programs initiated after August 1, 2009, shall be required to participate in program funding for a period of three (3) years following the last date when the customer received a demand-side incentive or a service.

(J) A customer electing not to participate in an electric utility's demand-side programs under this section shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs offered by the electric utility.

(7) Tax Credits and Monetary Incentives.

(A) Any customer of an electric utility who has received a state tax credit under sections 135.350 through 135.362, RSMo, or under sections 253.545 through 253.561, RSMo, shall not be eligible for participation in any demand-side program offered by a utility if such program offers the customer a monetary incentive to participate.

(B) As a condition of participation in any demand-side program offered by an electric utility under this section, when such program offers a monetary incentive to the customer, the customer shall attest to non-receipt of any tax credit listed in subsection (7)(A) and acknowledge that the penalty for a customer who provides false documentation is a class A misdemeanor. The electric utility shall maintain documentation of customer attestation and acknowledgement for

the term of the demand-side program and three (3) years beyond.

(C) The electric utility shall maintain a database of participants of all demand-side programs offered by the utility when such programs offer a monetary incentive to the customer including the following information:

1. The name of the participant, or the names of the principals if for a company;
2. The service property address; and
3. The date of and amount of the monetary incentive received.

(D) Upon request by the commission or staff, the utility shall disclose participant information in subsections (7)(B) and (C) to the commission and/or staff.

(8) Collaborative Guidelines.

(A) Utility-Specific Collaboratives. Each electric utility and its stakeholders are encouraged to form a utility-specific advisory collaborative for input on the design, implementation, and review of demand-side programs as well as input on the preparation of market potential studies. This collaborative process may take place simultaneously with the collaborative process related to demand-side programs for 4 CSR 240-22. Collaborative meetings are encouraged to occur at least once each calendar quarter.

(B) State-Wide Collaboratives. Electric utilities and their stakeholders are encouraged to form a state-wide advisory collaborative to: 1) address the creation of a technical reference manual that includes values for deemed savings, 2) provide the opportunity for the sharing, among utilities and other stakeholders, of lessons learned from demand-side program planning and implementation, and 3) create a forum for discussing state-wide policy issues. Collaborative meetings are encouraged to occur at least once each calendar year. Staff shall provide notice of the statewide collaborative meetings and interested persons may attend such meetings.

(9) Variances. Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.

(10) Rule Review. The commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

AUTHORITY: sections 393.1075.11 and 393.1075.15, RSMo Supp. 2009. Original rule filed Oct. 4, 2010.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule is estimated to cost affected private entities $1,920,000 in year one, $1,320,000 in year two, $1,320,000 in year three, and $1,320,000 in year four.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after publication of this notice in the ***Missouri Register*** *and should include a reference to Commission Case No. EX-2010-0368. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed rule is scheduled for Monday, December 20, 2010, at 10:00 a.m., in Room 310 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions.*

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

FISCAL NOTE
PRIVATE COST

I. Department Title: **Missouri Department of Economic Development**
Division Title: **Missouri Public Service Commission**
Chapter Title: **Chapter 20 - Electric Utilities**

Rule Number and Title:	4 CSR 240-20.094 Demand-Side Programs
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the first year cost of compliance with the rule by the affected entities:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities (years 2-4):
4	Investor-owned electric utilities	$1,920,000	$3,960,000

III. WORKSHEET

1. Estimated aggregate cost of compliance is based on information provided by the four (4) investor-owned electric utilities.
2. The estimated aggregate cost to Missouri electric utilities is provided for the first four (4) years as the rule contains language stating that the commission shall complete a review of the effectiveness of this rule no later than four (4) years after the effective date of this rule.
3. 2010 dollars were used to estimate costs. No adjustment for inflation is applied.

IV. ASSUMPTIONS

If adopted, this proposed rule (along with proposed rules 4 CSR 240-3.163, 4 CSR 240-3.164 and 4 CSR 240-20.093) will enact the provisions of the Missouri Energy Efficiency Investment Act established by SB 376 (2009).

This rule sets forth the definitions, requirements and procedures for filing and processing applications for approval, modification, and discontinuance of electric utility demand-side programs. This rule also sets forth requirements and procedures related to customer opt-out, tax credits, monitoring customer incentives and collaborative guidelines for demand-side programs.

1. Kansas City Power and Light Company and KCP&L Greater Missouri Operations Company (KCPL/GMO) stated that the estimated fiscal impact includes an estimate of the costs associated with implementation of SB 376 excluding program costs of the demand-side programs. It is expected that the programs will be those programs defined in the company's Integrated Resource Plan filing made with the Missouri Public Service Commission. Costs attributable to this rule include opt-out administration, state-wide technical reference manual, accounting systems, and customer bill revisions.

2. Empire District Electric Company stated that they are providing a conservative estimate for the implementation of SB 376 as it relates to the Proposed Rule 4 CSR 240-20.094. Costs attributable to this rule include litigation and outside consultants, and database management.

3. AmerenUE estimates a cost of approximately $1 million per year. However, AmerenUE notes that there will be additional costs in the programming, legal, accounting and regulatory departments that are hard to quantify at this time. AmerenUE will have to make additional filings, develop accounting systems and an additional line item will need to be placed on the post card bill.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Consideration and Implementation of Section 393.1075, the Missouri Energy Efficiency Investment Act	)))	Case No. EX-2010-0368

DISSENTING OPINION OF COMMISSIONER TERRY M. JARRETT

The Public Service Commission ("Commission") has voted to transmit to the Secretary of State proposed rules regarding Senate Bill 376, codified at Section 393.1075, RSMo Cum. Supp. 2009, and known as the Missouri Energy Efficiency Investment Act ("MEEIA" or "Act"). MEEIA represents a positive step forward in promoting energy efficiency. However, transmitting proposed rules to the Secretary of State at this time is premature because some of the provisions are either unconstitutional or unlawful. These legal concerns should be addressed before formal rulemaking begins. Therefore, I dissent.

Portions of the proposed rules unlawfully exceed the scope of the Act and can only result in rules that are unlawful, unjust, arbitrary, and capricious. The rules as currently drafted reflect regulatory policy choices that are detrimental to electric utilities and the customers they serve – rather than enhancing the opportunities for electric utilities to develop effective energy efficiency programs as anticipated by the Act.

Following the law and promulgating rules that are within the grant of authority given to the Commission is critical to achieving the goals set out in MEEIA. Making policy choices that exceed the scope of the Act will not serve Missouri's citizens; rather, it will cause the rules implementing this important piece of energy legislation to be snarled in expensive, time-

consuming and unnecessary legal entanglements. Even worse, the proposed rules as written will not encourage electric utilities to implement energy efficiency programs.

This Commission should propose lawful rules that will not only withstand the scrutiny of notice and comment, but also JCAR and the courts of this state. The proposed rules do not.

My concerns are not limited to those items outlined here, but the issues identified below are unlawful and do not merit transmittal to the Secretary of State. Senate Bill 376 stated unequivocally that it is the "***policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs***." Section 393.1075.3. The portions of the rules that concern me are at odds with this stated policy.

1. **Rules are not mandatory.** Section 393.1075.11 provides: "The commission shall provide oversight and ***may*** adopt rules and procedures and approve corporation-specific settlements and tariff provisions, independent evaluation of demand-side programs, as necessary, to ensure that electric corporations can achieve the goals of this section." (emphasis added). The use of the word "may" by the General Assembly means that this Commission is not required to adopt any rules. The Act is sufficient standing alone to implement its purposes. Rather than adopt rules, the Commission could choose to exercise its oversight in other proceedings, such as rate cases. It follows that if this Commission chooses to adopt rules, it should take great care to ensure that such rules do not go beyond the scope of the law. Unfortunately, the proposed rules go beyond the scope of the law in at least two important respects.

2. **Energy and demand "savings goals."** 4 CSR 240-20.094 (2)(A) and (B) establish energy and demand savings goals, increasing for each year between 2012 and 2020. Interested persons in the workshop and rulemaking process did not and cannot show that these

goals have any scientific basis or facts to support them, or are in any way relevant to Missouri's electric utilities. Instead, the percentages—by admission of the Commission staff—are based on statutory choices made in other states, rules or policy announcements. These other states do not have the same statutory or regulatory structure that we have in Missouri, so the goals do not translate to Missouri and our electric utilities.

This Commission is an agency of limited jurisdiction and authority, and the lawfulness of its actions depends entirely upon whether or not it has statutory authority to act. The General Assembly could have adopted set percentages of demand-side savings for each individual Missouri electric utility or it could have instructed the Commission to set such targets as part of its rulemaking authority (other states' statutes have done one or the other). Our General Assembly did neither. Instead, it stated simply that the programs need to be "cost-effective." There is no express or implied authority for the Commission to adopt standard savings goals in the regulations implementing MEEIA. These two subsections should be removed from the proposed rule altogether.

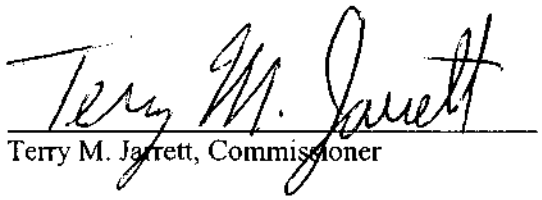
3. **Penalties.** 4 CSR 240-20.094 (2) establishes that if a participating electric utility does not meet the energy savings goals discussed above, then the electric utility may be subject to a penalty or other, undefined, adverse consequences. The Act provides no express or implied authorization for the imposition of penalties or adverse consequences; to the contrary, the Act is designed to incent electric utilities to create programs which result in decreased sales. This unlawful provision negates the positive attributes of the Act. Cost recovery and incentives fail to outweigh the wide ranging risks of incurring the penalties or adverse consequences possible from an electric utility participating under the Act. Why would an electric utility spend a large amount of money to implement an energy efficiency program when it would face the risk of a

penalty or other adverse consequences (such as negative treatment in a rate case) if arbitrary and unscientific goals are not achieved? The risk of penalties or adverse consequences stifle experimentation, creativity and innovation, three things that the Act was designed to encourage. The current language in 4 CSR 240-20.094 (2) goes beyond the Commission's statutory authority, works against the General Assembly's mandate to incent electric utilities to implement energy efficiency programs, and should be stricken from the rule.

Conclusion

The proposed rules as currently written do not enable or encourage electric utilities to achieve the purposes of the Act. They need more work to bring them into compliance with the law. Therefore, they should not be transmitted to the Secretary of State until the unlawful provisions have been removed.

Sincerely,



Terry M. Jarrett, Commissioner

Submitted this 28th day of September, 2010

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Consideration and)
Implementation of Section 393.1075, the) **File No. EX-2010-0368**
Missouri Energy Efficiency Investment Act.)

DISSENT OF COMMISSIONER JEFF DAVIS TO PUBLISH RULES IMPLEMENTING THE MISSOURI ENERGY EFFICIENCY INVESTMENT ACT

I dissent fully with my colleagues in the reasoning and decision to transmit the proposed "energy efficiency" rules to the Secretary of State. My disagreement is not with what my colleagues are trying to do, but with the way they are going about it.

There are three major issues with regard to this rulemaking: (1) the presence of "energy and demand 'savings goals'" in 4 CSR 240-20.094(2)(A) and (B); (2) the penalty language prescribed in 4 CSR 240-20.094(2); and (3) the legality of the cost recovery mechanism.

I. The discussion of energy and demand savings goals...

With regard to the energy and demand "savings goals" outlined in 4 CSR 240 20.094(2)(A) and (B), it is my opinion that these goals are not supported by competent and substantial evidence.

I am not opposed to this Commission establishing energy and demand savings goals. I must oppose adopting a standard based on the standards set by other states around us without competent and substantial evidence adduced in the hearing process to support the goals we have adopted and further approving language that could be used to penalize utilities for failure to meet those targets beginning in 2012.

When establishing goals of this nature and attaching a penalty thereto for non-compliance, we need to take evidence in support of those goals and the parties supplying that evidence need to be subject to cross-examination. A one-size fits all goal might be fine for an entity like the state of Missouri, but it may not be feasible for an individual utility. A wide range of factors, especially weather, can affect a utility's ability to meet these goals. An evidentiary hearing would be the only way to get to the truth of the matter by establishing an appropriate record on which standards could be based. Now, utilities are going to be put in the unenviable task of having to prove themselves innocent in front of the Commission if they are unable to comply with goals established without hearing or evidence, but they'll sure "sound good" when we read them in the newspaper.

Of equal or even greater concern to me is the stakeholder process by which the PSC Staff assembled these rules. More interest groups and parties are intervening in PSC cases and taking positions in rulemakings than ever before. Public concern for the environment and rising rates in a weak economy is understandable, but we also have to be wary that many of these special interest groups have their own agendas that include selling products and services as well as achieving certain environmental goals that are not necessarily aligned with keeping the rates low or the lights on.

Throughout the stakeholder process in developing these rules, the utilities did not appear to be on equal footing with the other stakeholder groups. As an observer of the process, it was my impression that all a stakeholder had to do to get something in the rule was convince a majority of the other stakeholders to vote with them. The effect is to send the wrong message to intervenors and participants – just get a bunch of your

buddies to come in, support your position no matter how absurd it may be and you'll get something out of the deal.

That's my impression of what happened here. When the utilities opposed a proposal, the PSC Staff would attempt to split the difference between the two factions. The PSC Staff is in a tough spot and performed admirably in this regard, but the problem is the same one that has been manifesting itself in rate cases for the last several years – "splitting the difference" between two positions often causes parties to take increasingly outrageous positions in an effort to gain a more favorable outcome.

It's important to remember that utilities are the ones responsible for keeping the lights on and delivering heat to people's homes. As such, they are not entitled to preferential treatment by this Commission; however, they should be entitled to due process including the ability to present evidence and cross-examine witnesses regarding the goals we are setting for them.

Several parties were quick to point out that there is a wealth of information on this issue available, but other than comparing what is being published to what other states have enacted, there was no evidence in the record to support the goals being transmitted to the Secretary of State for publication are appropriate for the affected utilities. Further, there is no support whatsoever for the language contained in Sections 4 CSR 240-20.094(2)(A)(9) and (2)(B)(9) that contain annual default percentage goal reductions after the year 2020.

In conclusion, I am fine with setting goals for energy and demand savings by the respective utilities, but they need to be based on this Commission's findings and not findings in another state. Those goals should be established in an actual case here at

the PSC where all interested parties have an opportunity to have witnesses present evidence under oath and be subject to cross-examination. It is the only way to know whether we're getting truly honest answers from the parties. Anything less than that, particularly where there are penalties attached, is arbitrary and capricious.

II. Penalties for failure to comply with Section 4 CSR 240-20.094(2):

Section 4 CSR 240-20.094(2) states in pertinent part:

> The fact that the electric utility's demand-side programs do not meet the incremental or cumulative annual demand-side savings goals established in this section may impact the utility's DSIM revenue requirement but is not by itself sufficient grounds to assess a penalty or adverse consequence for poor performance.

Alternatively, I read this sentence to say: "The fact that the electric utility's demand-side programs do not meet the incremental or cumulative annual demand-side savings goals established in this section may be combined with any other factor to assess a penalty or impose adverse consequences on a utility for performance."

I was shocked and troubled that no utility offered any comment on this last-minute piece of wordsmithing. Arguably, the language is better than some of the other language that was proposed; however, it still leaves much to be desired.

It is important to remember that the PSC is a creature of statute and the case law is clear our powers are only those expressly conferred or clearly implied by statute. Section 393.1075 does not give us the authority to establish demand reduction and energy savings goals. Arguably, we might have that authority under other sections of law, but those sections are not being cited in this case. More importantly, Section 393.1075 contains no support for "penalties" or "adverse consequences."

Section 393.1075 contains only one reference to any kind of penalty that can be imposed pursuant to the statute. In Section 393.1075.14(3), the statute provides "The penalty for a customer who provides false documentation under subdivision (2) of this subsection shall be a class A misdemeanor." The express language of this provision emphasizes the point that if the legislature had wanted to penalize utilities for failing to comply with this act, they had ample opportunity to do so and affirmatively chose not to act.

Further, this language is inconsistent with the positive language used by the Missouri General Assembly in Section 393.1075.3, which states the purpose of the legislation:

> **It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs. In support of this policy, the commission shall:**
>
> **(1) Provide timely cost recovery for utilities;**
>
> **(2) Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and**
>
> **(3) Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.**

One must presume the legislature knew what it was doing when enacting this law. This section clearly lays out the purpose of the act and clearly emphasizes positive financial incentives for utilities: "timely cost recovery," "ensuring that utility financial incentives are aligned with helping customers" and "provid[ing] timely earnings opportunities." The use of the term "incentives" by the General Assmebly evidences the

fact that they know how to provide "incentives" as well as "disincentives", but for whatever reason did not provide any disincentives for failure to act by the utility itself, probably because the act is in and of itself voluntary in nature.

Section 393.1075.4 further evidences the lack of a mandate for any kind of Commission-imposed penalty language by stating "The commission shall permit electric corporations to implement commission-approved demand-side programs proposed pursuant to this section with a goal of achieving all cost-effective demand-side savings." Had the legislature wanted to require electric utilities to implement demand response programs, they would have made the language mandatory for the electric utilities to offer such programs instead of being permissive.

Thus, in addition to having "goals" not supported by competent and substantial evidence, we have an unlawful provision containing a "penalty" or "adverse consequence." The only penalty authority we have is that expressly given us in Section 386.570 and any reference to the contrary should be removed.

III. Questions Regarding Cost Recovery:

From the consumer perspective, the most hotly contested issue in this rulemaking is the presence of the cost recovery language. Section 393.1075.3(1) unequivocally states that the commission shall provide utilities with "timely cost recovery" in support of valuing demand-side utility investments equal to traditional investments in supply and delivery infrastructure.

What does "timely cost recovery" mean? Here, the dispute is not over the concept of "cost recovery," but what is "timely" in the context of cost recovery? Consumer advocates argued we are somehow violating the Supreme Court's ban on single-issue ratemaking. The electric utilities would have preferred a surcharge mechanism similar to the "Infrastructure System Replacement Surcharge" (ISRS) used by gas utilities and one water company in St. Louis County. In the end, the Commission did include cost recovery language patterned after the fuel adjustment surcharge.

This is one part of the rule that I actually support. I would have preferred the ISRS approach because it would have provided the utilities with more timely cost recovery, but I can live with it going forward and did not find the briefs of the opposing parties persuasive on the single-issue ratemaking point.

To me, this issue hinges on the definition of the word "timely." The word is not defined by case law, statute or rule, so we're left with the Canons of Statutory Construction. The Canons say to give words their plain and ordinary meaning as found in the dictionary. Merriam-Webster's On-line Dictionary offered several definitions of the word "timely." When using the term as an adjective as used by the legislature in this case, two definitions jumped off the page: "coming early or at the right time" and "appropriate under the circumstances."

As the legislature is often want to do, they have given the PSC wide latitude to decide how best to implement their directive. In this case, we've been instructed to phase in cost recovery for programs approved pursuant to Section 393.1075. Had they

wanted us to implement these charges in a rate case proceeding or by a tariff filing, they could have said so either expressly or implicitly. They didn't.

All relevant factors have to be considered in setting rates that are both just and reasonable. That being said I didn't find anything filed by the consumer advocates in this case to be persuasive on their point that what the Commission has done constitutes single-issue ratemaking. Likewise, I was not persuaded by the arguments of Ameren UE (now Ameren Missouri) and other parties in that company's previous rate case that in order to consider all relevant factors you have to spend eleven months analyzing three rounds of pre-filed testimony, two weeks of live testimony and two or three more rounds of briefings with an update to consider all relevant factors. Thus, based on the comments provided so far in this proceeding, I can find no evidence to persuade me that the Commission's chosen method of cost recovery in this rulemaking is unlawful. It's simply not the mechanism I would have chosen and I have grave concerns that removing these provisions would, in fact, violate Section 393.1075.3(1), which states the Commission "shall provide timely cost recovery for utilities" when approving these programs.

IV. Conclusion:

For the reasons set out above, I dissent with the Commission's decision to send these rules to the Secretary of State for publication. We should strip out the goals and have real proceedings for each of the affected utilities to determine what their energy and demand savings goals are. The penalty language associated with these goals is inconsistent with the statute and should be removed. Finally, the rate adjustment

mechanism used to implement these programs appears to be lawful, although not my favorite. "Timely cost recovery" is not meant to be instantaneous, but it shouldn't take11 months or longer as some parties have suggested.

Respectfully submitted,

Jeff Davis, Commissioner

Dated at Jefferson City, Missouri
On this 4th day of October 2010.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 123—Modular Units

PROPOSED AMENDMENT

4 CSR 240-123.080 Code for Modular Units. The commission is amending section (3).

PURPOSE: The amendment establishes the new codes for modular units.

(3) The structure shall be manufactured in accordance with and meet the requirements of the following building codes: **except as provided in subsections (A) and (B) below,** *International Building Code-[2006]**2009**; International Plumbing Code-[2006]**2009**; International Mechanical Code-[2006]**2009**; International Residential Code-[2006]**2009**; International Fuel Gas Code-[2006]**2009**;* and *National Electric Code NFPA-[2005]**2008***. Manufacturers will have six (6) months in which to update to the new code after the effective date of this rule as notified by the director for all units built on or after that date. The referenced codes do not include any later amendments or additions. (For a copy of the *[2006]* **2009** International Code publication, contact the International Code Council, Publications, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795. **For a copy of the *National Electric Code*, contact the National Fire Protection Association, One Batterymarch Park, Quincy, Massachusetts 02169-7471.**)

(A) The requirement under section R313.2 of the 2009 *International Residential Code* requiring one (1)- and two (2)-family dwellings to be constructed with an automatic fire protection system shall not be mandatory; and

(B) Effective January 1, 2011, every dealer or manufacturer who sells a modular home to be placed in Missouri shall be required to have the purchaser of such modular unit sign and date an acknowledgement that the dealer or manufacturer has offered the fire sprinkler system in conjunction with the sale of the home. Such acknowledgement shall be contained in or attached to the purchase agreement or sales contract. The acknowledgement must be signed by both the purchaser and the dealer or manufacturer or his/her legal representative. The purchaser of a modular unit is responsible for the cost of any fire sprinkler system installed in the home.

*AUTHORITY: section[s] 700.010, **RSMo Supp. 2009** and **section** 700.040, RSMo 2000. Original rule filed Aug. 16, 1979, effective Dec. 15, 1979. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Oct. 4, 2010.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, Missouri 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 125—Manufactured Home Installers

PROPOSED RULE

4 CSR 240-125.090 Dispute Resolution

PURPOSE: To establish, pursuant to section 700.689, RSMo, a manufactured housing dispute resolution program to promote the timely resolution of disputes among manufacturers, dealers, and installers of manufactured homes.

(1) After completion of an initial inspection of a manufactured home, a dispute resolution process may be initiated in order to resolve disputes between the manufacturer, the dealer, and the installer of the home. This process may be initiated at the request of the director, or upon a manufacturer, dealer, or installer having submitted to the director a written request within fourteen (14) days after receipt of the director's initial inspection report.

(2) All dispute resolutions shall be conducted at the site of the manufactured home, unless determined by the director to be unreasonable or impracticable to do so. Upon the decision to initiate the dispute resolution process or upon receipt of a written request to do so, the director shall notify in writing all parties of the time and place of the dispute resolution. In attempting to schedule the dispute resolution, the director shall make a good faith effort to consider the input of the parties, provided that in any case where a deficiency is determined by the director to be an imminent safety hazard or to constitute a serious structural defect, an immediate hearing may be scheduled at the sole discretion of the director. The homeowner shall have the right to attend the dispute resolution, to provide input at the request of the director, and to be informed of the outcome.

(3) The manufacturer, dealer, and installer shall be required to attend the dispute resolution at the time and place determined by the director. Any party who fails to attend the dispute resolution shall be deemed to have waived its right to provide input in the process.

(4) Each inspection item in dispute shall be discussed at the dispute resolution. All parties shall be given the opportunity to present their position in respect to disputed items. The parties shall also discuss with the director a timeline for completion of any disputed items and work to reach an agreement thereon.

(5) Within ten (10) days of the dispute resolution, the director shall send to the parties a final inspection report that identifies which party has been determined by the director to be responsible for repairing the items originally in dispute. This final inspection report shall also include a date by which the required repairs shall be completed.

(6) Reasonable extensions to the required completion dates may be granted by the director under circumstances including, but not limited to, impracticability due to weather or the ability of a party to obtain engineering or permit approvals.

(7) If the repairs are not completed by the original or duly-extended deadline, the director may file a formal complaint with the commission.

AUTHORITY: section 700.689, RSMo Supp. 2009. Original rule filed Oct. 4, 2010.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement including reference to Case No. MX-2011-0064 in support of or in opposition to this proposed rule with the Public Service Commission,

Steve C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, Missouri 65102. Comments may also be submitted by using the commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax

PROPOSED RESCISSION

12 CSR 10-3.868 Not-for-Profit Civic, Social, Service or Fraternal Organizations—Criteria for Exemption. This rule set forth the criteria which must be met by an organization in order to claim sales tax exemption as a not-for-profit civic, social, service, or fraternal organization.

PURPOSE: This rule is being rescinded because it has been incorporated in or superseded by 12 CSR 10-110.955 Sales and Purchases—Exempt Organizations.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Jan. 16, 1990, effective June 28, 1990. Rescinded: Filed Oct. 7, 2010.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rescission with the Missouri Department of Revenue, Legal Services Division, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax

PROPOSED RESCISSION

12 CSR 10-3.884 Basic Steelmaking Exemption—Sales Tax. This rule explained the circumstances under which the purchases of electricity and gas by basic steelmakers are exempt from sales/use tax and the procedure for obtaining a basic steelmaking exemption.

PURPOSE: This rule is being rescinded because section 144.036, RSMo has expired (L. 2007 S.B. 613 Revision).

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Nov. 15, 1990, effective June 10, 1991. Rescinded: Filed Oct. 7, 2010.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rescission with the Missouri Department of Revenue, Legal Services Division, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax

PROPOSED RESCISSION

12 CSR 10-3.886 Exemption For Construction Materials Sold to Exempt Entities. This rule interpreted the sales tax law as it applied to construction materials sold to certain exempt entities pursuant to section 144.062, RSMo.

PURPOSE: This rule is being rescinded because it has been replaced with 12 CSR 10-112.010 Contractors.

AUTHORITY: sections 144.062 and 144.270, RSMo 1994. Emergency rule filed Oct. 16, 1991, effective Oct. 26, 1991, expired Feb. 22, 1992. Original rule filed June 18, 1991, effective Jan. 13, 1992. For intervening history, please consult the ***Code of State Regulations****. Rescinded: Filed: Oct. 7, 2010.*

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rescission with the Missouri Department of Revenue, Legal Services Division, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax

PROPOSED RESCISSION

12 CSR 10-3.896 Auctioneers, Brokers and Agents. This rule interpreted the sales tax law as it applied to sales of tangible personal property where an auctioneer, broker, or agent is involved in the sale.

PURPOSE: This rule is being rescinded because it has been replaced with 12 CSR 10-103.210 Auctioneers and Other Agents Selling Tangible Personal Property.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 28, 1995, effective May 30, 1996. Rescinded: Filed: Oct. 7, 2010.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rescission with the Missouri Department of Revenue, Legal Services Division, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 30—Child Support Enforcement
Chapter 2—Performance Measures

PROPOSED AMENDMENT

13 CSR 30-2.010 Prosecuting Attorneys' Performance Standards. The department is amending subsections (1)(B) and (1)(C) and sections (2) and (5).

PURPOSE: This amendment redefines the state agency as the Family Support Division of the Missouri Department of Social Services as opposed to the Division of Child Support Enforcement and establishes new standards by which the performance of the office of each county prosecuting attorney will be evaluated in determining whether sanctions affecting cooperative agreements between the county and the Missouri Department of Social Services, Family Support Division shall be imposed.

PURPOSE: This rule establishes [the] ***additional*** *standards by which the performance of the office of each county prosecuting attorney will be evaluated in determining whether sanctions affecting cooperative agreements between the county and the Missouri [Division of Child Support Enforcement]* ***Family Support Division*** *shall be imposed.*

(1) Definitions. As used in this regulation—

(B) Division means the *[Division of Child Support Enforcement (DCSE)]* **Family Support Division**;

(C) Director means the person serving as director of the Missouri *[Division of Child Support Enforcement]* **Family Support Division**;

(2) Performance Requirements Standards for All Counties on Cases Referred by the Division.

(A) *[Upon the receipt of a status report request from the division, the prosecuting attorney shall furnish the requested information regarding the status of the case within fifteen (15) calendar days from the date the prosecuting attorney receives the request; provided, however, if the prosecuting attorney's response requires additional information from the division, the prosecuting attorney shall furnish the requested information within fifteen (15) calendar days of receipt of the required additional information from the division. No response shall be required earlier than sixty (60) calendar days from receipt of the initial referral by the prosecuting attorney or from a previous status report request.]* **The county shall complete all necessary actions and achieve successful completion of all requested actions as defined by subsections (1)(G), (1)(I), and (1)(M) of this rule within sixty (60) calendar days after the county accepts any referral from the division. A failure to comply with the terms contained in subsections (1)(G), (1)(I), or (1)(M) shall be deemed a failure to comply with this subsection (2)(A) only.**

(B) *[The prosecuting attorney shall notify the division of the conclusion of all legal action in a referred case within fifteen (15) calendar days of the conclusion. The sending of the legal documents filed in the case will constitute sufficient notification.]* **In all cases needing support order establishment, regardless of whether paternity has been established, the county shall complete action to establish support orders from the date of service of process to the time of disposition within one (1) year. The term "disposition," as used herein, shall include an order of support or genetic exclusion of all alleged fathers referred.**

(C) *[The prosecuting attorney shall complete all necessary actions and achieve successful completion of all requested actions within sixty (60) calendar days after the prosecuting attorney receives the referral from the division.]* **The time frames contained in subsection (2)(A) of this rule shall be tolled for those time periods during which the prosecuting attorney has requested information from the division that is essential to the successful completion of the requested action; or time periods in which the custodian does not cooperate with the prosecuting attorney and the client's cooperation is essential to the successful completion of the requested action, provided the prosecuting attorney has documented the date the noncooperation occurred and the reason for determination of noncooperation in the Missouri Automated Child Support System (MACSS). Tolling due to noncooperation shall terminate only upon the custodian's affirmative action that is essential to the successful completion of the requested action. The prosecuting attorney (PA) shall document the date the affirmative action occurred and the reason for determination of cooperation in MACSS.**

(D) *[In all cases needing support order establishment, regardless of whether paternity has been established—*

1. The prosecuting attorney shall complete action to establish support orders from the date of service of process to the time of disposition within the following time frames:

A. Seventy-five percent (75%) in six (6) months; and

B. Ninety percent (90%) in twelve (12) months; and

2. The case may be counted as a success within the six (6)-month tier of the time frame, regardless of when disposition occurs in the twelve (12)-month period following service of process, in cases in which the prosecuting attorney uses long-arm jurisdiction and disposition occurs within twelve (12) months of service of process on the alleged father or noncustodial parent.] **If a support order needs to be established in a case and an order is established in accordance with Missouri Supreme Court Rule 88.01 during the audit period, the county will be considered to have taken appropriate action in that case for audit purposes regardless of whether the requirements of subsection (A) of this section have been met.**

(E) *[The prosecuting attorney shall return any referral to the division immediately upon discovery that there exists a potential or actual conflict of interest between the prosecuting attorney and any party to the case. The return of the referral by the prosecuting attorney under this subsection shall constitute a successful completion.]* **If the requested action is an enforcement action and an action is taken, in addition to a federal and state income tax refund offset, which results in a collection during the audit period, the county will be considered to have taken appropriate action in the case for audit purposes regardless of whether the requirements of subsection (A) of this section have been met.**

(F) *[The prosecuting attorney shall return a referral to the division within fifteen (15) calendar days after receiving the division's request for return.]* **In all petitions filed with the court for the establishment of child support orders, the prosecuting attorney shall request an order for medical support.**

(G) *[In all cases where the prosecuting attorney has obtained blood testing paid for by the division, either directly or through county reimbursement, the prosecuting attorney, in addition to obtaining a declaration of paternity and order for child support, shall seek judgment against the noncustodial parent for recovery of the amounts paid for the blood testing except in cases where the putative father has been excluded.]* **If a prosecuting attorney determines that no appropriate legal remedy is available on a case, that case shall be**

dropped from the audit sample of a compliance review conducted based on the requirements of 13 CSR 30-2.010(2).

(H) *[In all cases in which the court or administrative authority dismisses a petition for a support order without prejudice, the prosecuting attorney, at the time of dismissal, shall examine the reasons for dismissal and determine when it would be appropriate to seek an order in the future. The prosecuting attorney will notify the division of this determination within fifteen (15) calendar days.]* **The prosecuting attorney shall notify the division of the conclusion of all requested actions by documenting the conclusion in the Missouri Automated Child Support System and sending to the division any supporting documentation that provides information regarding the disposition of the referral within twenty (20) calendar days of the supporting documentation being received by the PA.**

[(I) In all cases in which enforcement attempts have been unsuccessful, at the time an attempt to enforce fails, the prosecuting attorney shall examine the reason the enforcement attempt failed and determine when it would be appropriate to take an enforcement action in the future and document the case file accordingly. If the referral subsequently is returned to the division, the prosecuting attorney shall notify the division of the determination.

(J) In all cases where the prosecuting attorney is seeking to establish a support obligation, s/he shall apply the child support guidelines as stated in Supreme Court Rule 88.01. The prosecuting attorney shall notify the division of any deviation from the guidelines.

(K) In all cases requiring that a petition be filed in another state under the Uniform Interstate Family Support Act (UIFSA), the prosecuting attorney shall file the UIFSA petition within fourteen (14) calendar days after receiving the referral from the division and, if appropriate, receipt of any necessary information needed to process the case.

(L) The time frames contained in subsections (2)(C) and (K) of this rule shall be tolled for those time periods during which the client does not cooperate with the prosecuting attorney, provided the prosecuting attorney has documented the noncooperation in the file.

(M) In all cases involving a modification of a judicial order for child support, the prosecuting attorney shall initiate action within sixty (60) calendar days of the receipt of the referral from the division and after that shall proceed with due diligence. Initiate action means any substantive action by the prosecuting attorney reasonably calculated to further a significant purpose on the referred case.

(N) Notwithstanding the time frames contained in subsection (2)(C) of this rule—

1. If a support order needs to be established in a case and an order is established in accordance with Missouri Supreme Court Rule 88.01 during the audit period the prosecuting attorney will be considered to have taken appropriate action in that case for audit purposes; and

2. If the requested action is an enforcement action and an action is taken, in addition to federal and state income tax refund offset, which results in a collection received during the audit period, the prosecuting attorney will be considered to have taken appropriate action in the case for audit purposes.

(O) In all petitions filed with the court for the establishment of child support orders, the prosecuting attorney shall request an order for medical support.]

(5) Performance Requirements.

(A) The following are mandatory requirements by which prosecuting attorneys' actions on referred cases shall be evaluated:

1. *[The prosecuting attorney shall provide services and take all appropriate actions on referred cases according to current division policy and procedures. Waivers of this provision may be granted by the director but are not effective unless granted in writing and are not effective retroactively unless specifically set forth by the director as being permissibly applied retroactively for a specified time period;]* **The county shall provide services on referred cases according to federal and state statutes and regulations, and cooperative agreement requirements, including those related to financial reimbursement for services provided on referred cases. Failure to do so shall be deemed failure to comply with this rule and this provision. Waivers of this provision may be granted by the division director but are not effective unless granted in writing and are not effective retroactively unless specifically set forth by the director as being permissibly applied retroactively for a specified time period;**

2. *[The prosecuting attorney must achieve substantial compliance with the performance requirements set forth in this rule concerning actions taken on referred cases, transmittal of required notices and information to the division, return of case referrals and meeting time requirements in so doing. Substantial compliance means that the prosecuting attorney has achieved the same case quality standards for those activities for which s/he is contractually responsible, as are required by the division of the state-administered child support enforcement offices;]* **The county shall cooperate with compliance reviews conducted by the division pursuant to the requirements of 13 CSR 30-2.010(2), which will occur no more frequently than semi-annually. Upon completion of the compliance review, the division shall submit a draft compliance review results summary to the county. The county shall have the right to submit written rebuttals of this review to the manager of the division compliance review section within thirty (30) days of receiving the review results. The division shall then have sixty (60) days in which to submit, in writing, its decision on each and every case rebutted to the county. The county shall then have fifteen (15) days to submit, in writing, the division's rebuttal decisions for review *de novo* by the division's deputy director of field operations. After review *de novo*, the final decision of the division shall be issued within thirty (30) days. Either party may request in writing an extension of the time frames contained herein;**

3. *[The prosecuting attorney must allow and cooperate with a semi-annual case review by the division. In cases where this review cannot be performed by the division due to lack of adequate documentation, the prosecuting attorney shall be considered to have failed to comply with this provision;]* **The division will otherwise retain authority to conduct special audits and take appropriate action based on the special audit. The division will also retain the authority to discuss with the prosecuting attorney the actions taken in all cases that have been referred to the county and take other remedies as the division determines is appropriate; and**

4. *[The prosecuting attorney shall comply with all duties and responsibilities set forth in the county cooperative agreement. Failure to do so shall be deemed failure to comply with this rule and this provision; and]* **The county shall achieve substantial compliance with the performance requirements set forth in this regulation concerning actions taken on referred cases and meeting time requirements in so doing. Substantial compliance means that the county has achieved the same case quality standards for those activities for which it is responsible, as are required by the division of its child support offices.**

[5. The prosecuting attorney shall comply with all federal and state laws and regulations in the performance of the services requested by the division, including those related to financial reimbursement for the services provided on referred cases. Failure to comply with applicable federal and state laws and regulations shall be deemed a violation of this rule

and this provision.]

AUTHORITY: section 454.400.2(5), RSMo 2000. Original rule filed Oct. 18, 1988, effective Jan. 13, 1989. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Oct. 15, 2010.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Family Support Division, Alyson Campbell, Director, 615 Howerton Court, PO Box 2320, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 1—General Rules

PROPOSED AMENDMENT

20 CSR 2234-1.050 Fees. The board is proposing to add subsection (4)(C).

PURPOSE: This amendment establishes the exam fee.

(4) The following miscellaneous fees are established as follows:

(C) Exam fee **$ 80**

AUTHORITY: sections 324.1102 and 324.1132, RSMo Supp. [2008] ***2009****. Original rule filed June 26, 2009, effective Jan. 30, 2010. Amended: Filed Oct. 8, 2010.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately three thousand eight hundred twenty-nine dollars and forty-one cents to three thousand eight hundred thirty-eight dollars and seventeen cents ($3,829.41–$3,838.17) biennially for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed amendment will cost private entities approximately eight thousand dollars ($8,000) biennially for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Private Investigator Examiners, PO Box 1335, Jefferson City, MO 65102, by facsimile at 573-751-0878, or via email at pi@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

PUBLIC FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2234 - Board of Private Investigator Examiners
Chapter 1 - General Rules
Proposed Amendment - 20 CSR 2234-1.050 Fees
Prepared March 18, 2010 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance	
Board of Private Investigator Examiners		$3,829.41 to $3,838.17
	Total Biennial Cost of Compliance for the Life of the Rule	**$3,829.41 to $3,838.17**

III. WORKSHEET

The Senior Office Support Assistant provides support to the Executive Director, performs complex clerical functions and supervises staff. The Executive Director serves as the senior executive officer of the licensing agency.

Personal Service Dollars

STAFF	ANNUAL SALARY RANGE	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE	TIME PER APPLICATION	COST PER APPLICATION	NUMBER OF ITEMS	TOTAL COST
Executive Director	$51,156 to $53,292	$76,095 to $79,272	$36.58 to $38.11	$0.61 to $0.64	2 minutes	$1.22 to $1.27	125 Applicants	$152.43 to $158.80
Senior Office Support Assistant	$24,576 to $25,380	$36,557 to $37,753	$17.58 to $18.15	$0.29 to $0.30	2 minutes	$0.59 to $0.61	125 Applicants	$73.23 to $75.63
						Total Personal Service Costs		**$225.66 to $234.42**

Expense and Equipment Dollars

Item	Cost	Quantity	Total Cost Per Item
Application Mailing	$7.35	125	$918.75
Exam Development (one time fee)	$2,685.00	1	$2,685.00
	Total Expense and Equipment Costs		**$3,603.75**

IV. ASSUMPTION

1. Employees' salaries were calculated using the annual salary multiplied by 48.75% for fringe benefits and then divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute. The cost per minute was then multiplied by the amount of time individual staff spent on the processing of applications or renewals. The total cost was based on the cost per application multiplied by the estimated number of applications.
2. An Application Mailing includes a 2 page application, 1 instruction sheet, law book, envelope, and postage.
3. It is anticipated that the total costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTE: The division is statutorily obligated to enforce and administer the provisions of sections 324.1100 to 324.1148, RSMo. Pursuant to section 324.1102, RSMo, the division is responsible for establishing fees by rule so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the division for administering the provisions of sections 324.1100 to 324.1148, RSMo.

PRIVATE FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2234 - Board of Private Investigator Examiners
Chapter 1 - General Rules
Proposed Amendment - 20 CSR 2234-1.050 Fees
Prepared March 18, 2010 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated cost savings of compliance with the amendment by affected entities:
100	Applicants Required to sit for the Examination for Licensure (Exam Fee @ $80.00)	$8,000.00
	Estimated Biennial Cost of Compliance for the Life of the Rule	**$8,000.00**

III. WORKSHEET

See Table Above

IV. ASSUMPTION

1. The figures reported above are based on FY10 actuals.
2. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

NOTE: The private entity fees are set at a level so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the division of administering the provisions of sections 324.110-324.1148, RSMo.