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Executive Director

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Docket Control

FROM: Dawn A. Wilson *daw*  
Paralegal, Legal Division

DATE: December 1, 2010

RE: NOTICE OF ATTORNEY GENERAL APPROVAL OF FINAL RULES AND ADMINISTRATIVE REGISTER PUBLICATION OF NOTICE OF FINAL RULEMAKING (DOCKET NO. RE-00000C-09-0427) (ELECTRIC ENERGY EFFICIENCY RULES)

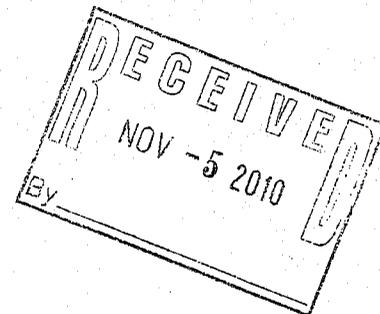
Attached is the Attorney General's approval letter of the final Electric Energy Efficiency Rules. Also attached is the Notice of Final Rulemaking that was published in the Administrative Register on November 26, 2010 and which references a January 1, 2011 effective date for the rules.

Arizona Corporation Commission  
DOCKETED

DEC 1 2010

DOCKETED BY *[Signature]*

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2010 DEC -1 A 9:56  
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OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

November 1, 2010

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LEGAL DIV.  
ARIZ. CORPORATION COMMISSION

Ernest G. Johnson  
Executive Director  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007-2927

Re: A.G. Rule No. R10-0004; A.A.C. R14-2-2401 through -2419

Dear Mr. Johnson:

We have reviewed the above-referenced rule adopted by the Arizona Corporation Commission. We have determined that the rule is in proper form, is clear, concise and understandable, within the power of the agency to adopt and within legislative standards, and was adopted in compliance with appropriate procedures.

Accordingly, pursuant to A.R.S. § 41-1044, I have affixed my signature to the original Approval of Final Rules and have forwarded it together with the original rule, notice of final rulemaking, and economic, small business, and consumer impact statement and four copies of each to the Secretary of State.

We have enclosed a copy for your reference.

Sincerely,

Terry Goddard  
Attorney General

PROTECTING ARIZONA

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

### NOTICE OF FINAL RULEMAKING

#### TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

#### CHAPTER 2. CORPORATION COMMISSION FIXED UTILITIES

*Editor's Note: The following Notice of Final Rulemaking was exempt from Laws 2010, Ch. 287, § 18 (see text on page 2287) and Laws 2009, 3rd Special Session, Ch. 7, § 28 (15 A.A.R. 1942, November 20, 2009).*

[R10-161]

#### PREAMBLE

#### **1. Sections Affected**

Article 24  
R14-2-2401  
R14-2-2402  
R14-2-2403  
R14-2-2404  
R14-2-2405  
R14-2-2406  
R14-2-2407  
R14-2-2408  
R14-2-2409  
R14-2-2410  
R14-2-2411  
R14-2-2412  
R14-2-2413  
R14-2-2414  
R14-2-2415  
R14-2-2416  
R14-2-2417  
R14-2-2418  
R14-2-2419

#### **Rulemaking Action**

New Article  
New Section  
New Section

#### **2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: Arizona Constitution Article XV § 3; A.R.S. §§ 40-202, 40-203, 40-321, 40-322, 40-281, 40-282  
Implementing statute: Arizona Constitution Article XV § 3; A.R.S. §§ 40-202, 40-203, 40-321, 40-322, 40-281, 40-282

#### **3. The effective date of the rules:**

January 1, 2011

#### **4. A list of all previous notices appearing in the *Register* addressing the final rule:**

Notice of Rulemaking Docket Opening: 16 A.A.R. 137, January 15, 2010  
Notice of Proposed Rulemaking: 16 A.A.R. 90, January 15, 2010

#### **5. The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Maureen A. Scott, Esq.  
Attorney, Legal Division, Arizona Corporation Commission

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Address: 1200 W. Washington St.  
Phoenix, AZ 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

E-mail: mscott@azcc.gov

or

Name: Barbara Keene  
Public Utilities Analyst Manager, Arizona Corporation Commission

Address: 1200 W. Washington St.  
Phoenix, AZ 85007

Telephone: (602) 542-0853

Fax: (602) 364-2270

E-mail: bkeene@azcc.gov

**6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The purpose of electric energy efficiency standards is for affected utilities to achieve energy savings through cost-effective energy-efficiency programs in order to ensure electric service at reasonable rate and costs.

Cost effective energy efficiency is less expensive than generating electricity and provides less impact on the environment.

By December 31, 2020, the proposed rules would require affected utilities to achieve cumulative annual energy savings equivalent to at least 22 percent of the affected utility's retail electric energy sales for 2019.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The Summary of the economic, small business, and consumer impact:**

**B. Economic, Small Business and Consumer Impact Statement**

**1. Identification of the proposed rulemaking.**

The rules are new Sections under Title 14, Chapter 2 - Corporation Commission, Fixed Utilities. Rules R14-2-2401 through R14-2-2419 require affected utilities, by December 31, 2020, to achieve cumulative annual energy savings, measured in kilowatt-hours, equivalent to at least 22 percent of the affected utility's retail electric energy sales for calendar year 2019.

The purpose of Electric Energy Efficiency Standards is for affected utilities to achieve energy savings through cost-effective energy efficiency programs in order to ensure reliable electric service at reasonable rates and costs. Energy efficiency means the production or delivery of an equivalent level and quality of end-use electric service using less energy, or the conservation of energy by end-use customers.

Requiring affected utilities to achieve energy savings through cost-effective energy efficiency programs is an essential part of the Commission's efforts to meet its constitutional obligation to "prescribe just and reasonable rates and charges to be made and collected ... by public service corporations within the state for service rendered therein because the amount of energy consumed by an affected utility's customers, and the pattern of peak usage of those customers, directly impacts the physical assets that an affected utility must have in place as well as the affected utility's operating expenses. Reducing the overall consumption of energy can reduce fuel costs, purchased power costs, new capacity costs, transmission costs, distribution costs, and adverse environmental impacts (such as water consumption and air emissions). Even reducing peak demand without reducing overall consumption can reduce fuel costs, purchased power costs, and new capacity costs because not as much plant or purchased power is needed at peak times to meet customers' needs.

Energy efficiency is a reliable energy resource that costs less than other resources for meeting the energy needs of utility ratepayers. Increasing energy efficiency to meet the Energy Efficiency Standard set forth in the Electric Energy Efficiency Standards rules will reduce the total cost of energy for affected utilities' ratepayers. Increasing energy efficiency will result in less air pollution, reduced carbon emissions, less consumption of water, and fewer other adverse environmental impacts than would occur if energy efficiency is not increased. Increasing energy efficiency will reduce affected utilities' costs of compliance with current and future environmental regulations.

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Increasing energy efficiency will reduce load growth, diversify energy resources, and enhance the reliability of the electric grid, thereby reducing the pressure on and costs of electric distribution and transmission.

The Rules apply to affected utilities, as defined in the Rules. The public service corporations to whom the proposed Electric Energy Efficiency Standards rules apply, because they are affected utilities classified as Class A under A.A.C. R14-2-103(A)(3)(q) and are not electric distribution cooperatives with fewer than 25 percent of their customers in Arizona, are Arizona Public Service Company, Graham County Electric Cooperative, Mohave Electric Cooperative, Morenci Water and Electric, Navopache Electric Cooperative, Sulphur Springs Valley Electric Cooperative, Tucson Electric Power Company, Trico Electric Cooperative, and UNS Electric. None of these entities is a small business under A.R.S. § 41-1001.

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.
  - a. the public at large;
  - b. consumers of electric service in Arizona;
  - c. electric public service corporations;
  - d. Arizona Corporation Commission;
  - e. manufacturers, distributors, and installers of energy efficiency measures; and
  - f. public entities, such as schools, cities, counties, and state agencies.
3. Cost-benefit analysis.
  - a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

Probable costs to the Commission of the proposed rulemaking would include costs associated with reviewing filings, and participating in meetings and hearings.

To the extent that the implementing agency and other agencies are customers of affected utilities and install energy efficiency measures, probable costs will include initial costs for the measures. Benefits will include lower utility bills than without these rules.

- b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

To the extent that political subdivisions are customers of affected utilities and install energy efficiency measures, probable costs will include initial costs for the measures. Benefits will include lower utility bills than without these rules. Political subdivisions may also benefit by increased sales tax revenues resulting from sales of energy efficient products.

- c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

Affected utilities may incur additional costs of complying with program development, program implementation, and reporting activities. Although some of the affected utilities are now engaging in some of the required activities, they may incur additional costs of complying with the rules. Payroll expenditures of affected utilities may be increased. These costs may be recovered through the affected utilities' rates to customers. Other costs may include penalties that may be imposed for failing to comply with the rules. Revenues of affected utilities may be reduced temporarily. Affected utilities will benefit from reduced costs for generation or procurement of electricity.

Arizona currently has a monopoly market structure for electric utilities. The Commission generally sets rates for the electric utilities using the following formula:  $(\text{Rate Base} \times \text{Rate of Return}) + \text{Expenses} = \text{Revenue Requirement}$ . "Rate Base" is the dollar value of the physical assets prudently acquired and used and useful in the provision of utility service. "Rate of Return" is the authorized return on the utility's rate base and is expressed as a percentage. "Expenses" are the reasonable and prudent costs of service that cannot be capitalized, such as purchased power costs, fuel costs, salaries, and taxes. The resulting "Revenue Requirement" is the amount that a utility is authorized to collect from its customers through its rates and that the rates adopted by the Commission are designed to produce. Thus, the rates that a utility is authorized to charge its customers are inextricably related to the amount of physical assets (such as generation plant facilities) used by the utility and the costs of service incurred by the utility (such as costs of purchasing power to meet peak load and the costs of the fuel sources used to generate electricity).

The proposed Electric Energy Efficiency Standards rules will impact an affected utility's revenues, at least in the interim period before the affected utility's next rate case, because demand-side management ("DSM") measures and DSM programs must be designed to accomplish energy efficiency (which reduces energy consumption), load management (which reduces peak demand or improves system operating efficiency), or demand response (which affects the timing or quantity of customer demand and usage and thus can reduce energy consumption). Cur-

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rently, affected utilities' rate schemes rely heavily upon volumetric rates, meaning that the amount a customer is billed by the affected utility is based in large part upon the level of energy (kWh) consumed by the customer during the billing period. If that amount is reduced by the customer's decreased consumption resulting from DSM measures/DSM programs, the affected utility's revenues will be impacted accordingly. Rule R14-2-2410(I) requires that this impact be addressed in an affected utility's rate case, if the affected utility requests to have it addressed and provides documentation/records supporting its request.

If an affected utility is permitted to recover the costs of compliance with the proposed Electric Energy Efficiency Standards rules through ratemaking (because the costs of compliance are included as reasonable and prudent expenses and are consistent with the requirements imposed under Rule 2410(A)), the affected utility's revenue requirement will be impacted. Likewise, if an affected utility is permitted to recover its fixed costs and/or its net lost income/revenue resulting from Commission-approved DSM programs (as contemplated under R14-2-2410(I)), the affected utility's revenue requirement will be impacted. When an affected utility's revenue requirement is impacted, the rates charged to its customers are also impacted.

4. Probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.

The Commission and affected utilities may need additional employees or contractors. Manufacturers, distributors, and installers of energy efficiency measures may add employees. No impact on employment in political subdivisions is expected.

5. Probable impact of the proposed rulemaking on small businesses.

a. Identification of the small businesses subject to the proposed rulemaking.

To the extent that small businesses are customers of affected utilities and install energy efficiency measures, probable costs will include initial costs for the measures. Benefits will include lower utility bills than without these rules.

Only public service corporations that have annual operating revenue exceeding \$5,000,000 (Class A electric utilities) will be required to comply with the rules. These entities are unlikely to be small businesses.

b. Administrative and other costs required for compliance with the proposed rulemaking.

None

c. A description of the methods that the agency may use to reduce the impact on small businesses.

Not applicable

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The public at large will benefit from increased energy efficiency because energy efficiency reduces the need for electric generation. This results in fewer adverse impacts on air, land, and water than producing electricity.

The reduction in overall energy consumption that will result from the rules should result in long-term cost savings to the affected utilities and thus to their customers because of decreased demand for generation and increased electric grid reliability and cost stability. In addition, the reduction in overall energy consumption will result in decreased adverse environmental impacts, such as air emissions, coal ash, nuclear waste, and water consumption, which should result in benefits to the public at large that cannot be adequately quantified at this time. The rules' requirement for each DSM program to be cost-effective will help to ensure that the programs adopted under the rules will result in long-term incremental benefits to all impacted groups.

6. Probable effect on state revenues.

There may be an increase in state revenues from sales taxes on energy efficiency products. However, there may be a decrease in revenues from sales taxes on electricity bills as customers reduce their consumption. There may also be increases in income taxes resulting from revenue increases of Arizona manufacturers, distributors, and installers of energy efficiency measures.

7. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The Commission is unaware of any alternative methods of achieving the purpose of the rulemaking that would be less intrusive or less costly.

8. If for any reason adequate data are not reasonably available to comply with the requirements of subsection (B) of this Section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.

The data used to compile the information set forth in subsection B are reasonably adequate for these purposes.

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**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

In addition to grammatical and punctuation corrections, the following non-substantial changes were made for the purpose of clarification:

Rule 2401 is modified by the additions of the following definitions:

“Fuel-neutral” means without promoting or otherwise expressing bias regarding a customer’s choice of one fuel over another.

“Thermal envelope” means the collection of building surfaces, such as walls, windows, doors, floors, ceilings, and roofs, that separate interior conditioned (heated or cooled) spaces from the exterior environment.

Rule 2404(A) is revised to read as follows: “Except as provided in R14-2-2418, in order to ensure reliable electric service at reasonable ratepayer rates and costs, by December 31, 2020, an affected utility shall, through cost-effective DSM energy efficiency programs, achieve cumulative annual energy savings, measured in kWh, equivalent to at least 22% of the affected utility’s retail electric energy sales for calendar year 2019.”

Rule 2404(B) is revised to read as follows: “An affected utility shall, by the end of each calendar year, meet at least the cumulative annual energy efficiency standard listed in Table 1 for that calendar year. An illustrative example of how the required energy savings would be calculated is shown in Table 2. An illustrative example of how the standard could be met in 2020 is shown in Table 4.”

Rule 2404(B) is further revised by adding the heading “Table 1. Energy Efficiency Standard” and by replacing “in” with “by the End of” in the heading for the second column. Rule 2404(B) is further revised by adding a new Table 2 to provide an illustrative example of how the required savings would be calculated.

Rule 2404(C) is revised by adding the following at the end of the subsection: “The measured reductions in peak demand occurring during a calendar year after the effective date of this Article may be counted for that calendar year even if the demand response or load management program resulting in the reductions was implemented prior to the effective date of this Article.”

Rule 2404(D) is revised by replacing “as follows” in the third sentence with “as listed in Table 3, Column A.” The Table in Rule 2404(D) is revised by adding the heading “Table 3. Credit for Pre-Rules Energy Savings”; by reversing the columns for clarity; by adding column labels “A” and “B”; and by replacing the word “Pre-Standard” with “Pre-Rules” where it appears in the headings for the columns. The words “energy efficiency” is inserted between “pre-rules” and “programs.”

Rule 2404(I) is revised by adding a new Table 4 to provide an illustrative example of how the 22% standard could be met in 2020.

Rule 2407(B) is revised by deleting “annual” before “implementation plan.”

Rule 2407(E) is revised by inserting “DSM” before “programs” and “program” and by inserting “affected” before “utilities.”

Rule 2409(A)(4)(g) is revised to read “The environmental benefits realized, including reduced emissions and water savings;

Rule 2410(A)(3) is revised by inserting “pursuant to R14-2-2415” after “cost-effectiveness.”

Rule 2413(a) and (c) are revised by inserting “the” before “baseline.”

Rule 2414(I) is revised by replacing the language “if requested to do so by the affected utility in its rate case and the affected utility provides documentation/records supporting its request in the rate application” with “if an affected utility requests such review in its rate case and provides documentation/records supporting its request in its rate application.”

Rule 2415(B) is revised by inserting “DSM” before “program planning” and “program improvement.”

Rule 2419(B) is modified by changing “The affected utility” to read “An affected utility.”

**11. A summary of the comments made regarding the rule and the agency response to them:**

The written and oral comments received by the Commission concerning the Notice of Proposed Rulemaking, after its publication date, are included in the following table, along with the Commission response to each.

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<b>Comments on Notice of Proposed Rulemaking</b>		
<b>Section</b>	<b>Public Comment</b>	<b>Commission Response</b>
Proposed EEE Rules Generally	WRA expressed support for the proposed EEE rules and urged the Commission to adopt them, stating that they will save ratepayers money by lowering the overall cost for electric energy services; decrease emissions of various pollutants into the atmosphere (thereby reducing Arizona's contributions to climate change, health impacts caused by emissions, damage to wildlife and plants, and utilities' costs to comply with environmental regulations); make Arizona more energy efficient; enable utilities to recover program costs in a timely manner and to address adverse revenue effects in rate cases; allow utilities to earn performance incentives; and keep the Commission and the public informed about efficiency program progress and cost-effectiveness.	The Commission acknowledges the supportive comments. No change is needed in response to these comments.
	EnerNOC applauded Commission Staff for its efforts and attentiveness to interested parties' comments.	The Commission acknowledges the supportive comment. No change is needed in response to this comment.
	EnerNOC requested that the Commission explicitly include third parties or energy service companies, including demand response providers such as EnerNOC, as a means for a utility to satisfy its DSM targets.	The proposed EEE rules allow an affected utility to use reductions in peak demand resulting from cost-effective demand response programs to meet a portion of the energy efficiency ("EE") standard and allow an affected utility to use an energy service company or other external resource to implement a DSM program or DSM measure. The Commission considers EnerNOC to be an external resource. No change is needed in response to this comment.
	OPOWER stated that, in this docket, the Commission shows a firm commitment to driving significant energy reductions in the state by establishing aggressive efficiency goals for utilities and defining DSM measures broadly, ensuring that utilities may use innovative and proven programs to meet their energy savings targets.	The Commission acknowledges the supportive comment. No change is needed in response to this comment.

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<p>TEP/UNS stated that the proposed EEE rules should be aligned with any federally mandated EE standard, at least being consistent with federal requirements as to measurement methodology and definitions.</p>	<p>Federal law (16 U.S.C. 46 ("PURPA")) currently requires each state regulatory authority, such as the Commission, to consider each standard set forth therein and determine whether or not to implement the standard. One PURPA standard, added in the Energy Independence and Security Act of 2007, would require each electric utility to integrate EE resources into utility, state, and regional plans and adopt policies establishing cost-effective EE as a priority resource. (16 U.S.C. 2621(d)(16).) The Commission has committed to considering this standard in the pending Incentives Docket, E-00000J-08-0314 et al. ("Incentives Docket").<sup>1</sup> The Commission is unaware of any manner in which the proposed EEE rules conflict with PURPA or any other existing or proposed federal requirements,<sup>2</sup> and no citations to conflicting provisions have been provided. This issue will be dealt with in the Incentives Docket, and the Commission will ensure that the Commission's standards do not conflict with any applicable federal law.</p> <p>No change is needed in response to this comment.</p>
<p>TEP/UNS initially requested that the Commission clarify its authority to promulgate the proposed EEE rules, but later clarified that they are not challenging the Commission's authority to adopt the rules.</p>	<p>The Commission set forth its authority for this rulemaking in the Notice of Proposed Rulemaking published in this matter.</p> <p>No change is needed in response to this comment.</p>
<p>The Cooperatives<sup>3</sup> asserted that the proposed EEE rules should not include a requirement for utilities to submit information regarding environmental externalities and societal benefits and savings because the Cooperatives will likely be unable to provide any meaningful information regarding assumptions, calculations, and amounts for environmental externalities or societal benefits and savings and would incur significant costs in trying to quantify these societal benefits and savings and because the Commission will already receive this type of information through its Resource Planning Rules.</p>	<p>It is important for an affected utility to estimate and consider societal benefits and savings and environmental externalities when determining which EE programs to propose. Staff believes that this information is readily available and will not be burdensome to acquire and provide. (Tr. at 19-20.) Because incremental benefits are a key consideration in determining cost-effectiveness, the Commission believes that this information is crucial for the utility and the Commission to have.</p> <p>No change is needed in response to this comment.</p>

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	<p>Katie Morales, an individual ratepayer, urged the Commission to require Arizona utilities to invest more ratepayer dollars into EE and to increase EE requirements to at least 20% by 2020, because EE is one of the most effective energy cost management tools; is supported by numerous studies; and will help residents to save money, save energy, and protect the environment. Ms. Morales asserted that although EE measures may result in slightly higher rates, with proper implementation, they will result in declining electric bills and declining aggregate demand for electricity, which will reduce the total cost of electric energy services over the long run because utilities will reduce their fuel and generation costs.</p>	<p>The Commission acknowledges and agrees with the supportive comments.          No change is needed in response to these comments.</p>
	<p>SWEEP strongly supports the proposed EEE rules and asserts that they are in the public interest. SWEEP asserts that the rules will reduce the total energy costs for affected utilities' ratepayers because DSM programs and measures must be cost-effective to be approved; will reduce other costs, including environmental costs, water costs, and environmental compliance costs because of reductions in air pollution, carbon emissions, and environmental impacts; will increase the reliability of the electric grid by reducing load growth, diversifying energy resources, and reducing the pressure on and costs of electric distribution and transmission; and will enable the Commission to ensure reliable electric service at reasonable rates and costs for ratepayers. SWEEP further asserts that the rules will create jobs and improve the Arizona economy.</p>	<p>The Commission acknowledges and agrees with the supportive comments. Staff agreed with SWEEP's assertions regarding why the proposed EEE rules are in the public interest and the benefits to be derived from them. (Tr. at 28.)          No change is needed in response to these comments.</p>
	<p>APS stated that it supports the efforts to develop EE standards and rules for Arizona; that it was actively involved in the workshops that took place in 2009; and that, as a leading provider of EE and DSM programs for the past several years, it is committed to expanding its EE programs going forward.</p>	<p>The Commission acknowledges the supporting comment.          No change is needed in response to this comment.</p>
<p>Rule 2404</p>	<p>EnerNOC supports the inclusion of demand response as a means of achieving the overall consumption reduction of 22%, which EnerNOC said is aggressive but achievable. EnerNOC asserted that demand response results in a number of benefits, including system security, deferral of new investment, protecting consumers from price spike during peak periods, and reducing emissions during peak periods.</p>	<p>The Commission acknowledges the supportive comment.          No change is needed in response to this comment.</p>

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<p>EnerNOC requested that the rule be modified either to increase the cap on demand response from 2% to 5% or a range of 2 to 5% or to implement a separate peak-load reduction target of 5% and an EE standard of 17% or a requirement that the 22% reduction include a peak-load reduction of 5%.</p>	<p>The 2% cap is appropriate because affected utilities otherwise may choose to implement more demand response programs that shift time of usage instead of EE programs that will reduce usage. Demand response programs reduce affected utilities' costs without reducing revenues, but do not reduce overall consumption. The Commission desires to see a reduction in overall consumption.</p> <p>No change is needed in response to this comment.</p>
<p>APS explained that it understands 2404 to allow the effects of EE programs implemented before the rules to count for up to 4% toward the 22% standard, but not to allow demand response program results to count toward the 22% standard (and the 2% cap on demand response) unless the results occur after the rules take effect (although the demand response program could have been implemented before the rules). APS explained that because EE and demand response programs have different aims, 2404 distinguishes between the results from each.</p>	<p>The Commission appreciates APS's explanation of its understanding of these provisions in 2404.</p> <p>No change is needed in response to this comment.</p>
<p>EnerNOC requested that the Commission clarify whether the peak-load reduction of 2% is for existing or only new incremental peak-load reduction measures.</p>	<p>The proposed EEE rules allow an affected utility to count peak demand reductions that occur after the effective date of the rules, even if the demand response or load management program that caused the reductions was implemented before the effective date of the rules. The restriction in 2404(D) applies only to EE programs, not to demand response and load management programs.</p> <p>The Commission is adding language to clarify this in 2404(C) in the text for the Notice of Final Rulemaking.</p>

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<p>EnerNOC stated that it has previously expressed concerns at the workshops about converting demand reductions in to energy and vice versa because the conversions may not produce real, measurable, and verifiable results. EnerNOC explained that EE measures reduce consumption in kWh, whereas demand response reduces peak demand. EnerNOC stated that these may not be easily exchanged for one another. EnerNOC stated that it has previously suggested adoption of a percentage reduction of 0.5% per year, resulting in a total peak demand reduction of 5% in 2020. EnerNOC provided a list of other ways to design a demand response target and included references to regulatory actions taken and/or pending by the federal government and the governments of several states. EnerNOC stated that it hopes the Commission will carefully consider the many various ways in which states have adopted demand reduction policies and adopt a policy that is most suitable for Arizona. EnerNOC also requested that the Commission examine the implications of the 50% load factor to reducing the opportunity for peak-load reductions and that the Commission hold workshops and determine baseline methodology before utilities submit their DSM program plans.</p>	<p>The Commission believes that it is necessary and appropriate to establish a standard load factor to be used in determining the annual energy savings equivalent for peak demand reductions. However, if an affected utility determines that the standard impedes its ability to receive credit for actual peak load reductions, the Commission encourages the affected utility to petition the Commission for a waiver of the standard load factor under 2419(B). The Commission believes that it is not necessary or appropriate at this time to include a mandatory peak demand reduction standard for affected utilities to meet, as the Commission's primary goal with these rules is to increase energy efficiency.</p> <p>No change is needed in response to this comment.</p>
<p>OPOWER expressed its support for the EE targets in the proposed EEE rules, stating that it is wise for the Commission to set aggressive efficiency targets to reduce the state's energy consumption and that the targets are necessary and achievable. OPOWER also affirmed its understanding that utilities may use behavior-based programming to meet their annual savings goals.</p>	<p>The Commission acknowledges the supportive comments and confirms that there is nothing in the proposed EEE rules that would prohibit an affected utility from using a cost-effective behavior-based DSM measure or program toward meeting the EE standard.</p> <p>No change is needed in response to this comment.</p>
<p>TEP/UNS stated that although they support the principle of EE, and the proposed EEE rules are a step in the right direction, the proposed EEE rules are not in the public interest because the targets should be established based on studies and utility-specific and perhaps even service-area-specific analyses. TEP/UNS asserted that the 22% standard and ramp-up schedule are unsupported by testimony or analytical studies. TEP/UNS listed several sources that TEP/UNS assert argue against imposition of the 22% standard.<sup>4</sup> TEP/UNS further stated that the Commission should examine the existing studies in additional hearings and only adopt a five-year standard for now, with longer term standards to be adopted after additional examination. TEP/UNS stated that the EE savings for the first few years should not be too difficult to achieve, as these programs will be "low-hanging fruit," but that accomplishing the required savings in the later years will be more difficult.</p>	<p>The Commission has determined that an aggressive long-term EE standard (as opposed to a set of divergent standards for different affected utilities) is necessary and appropriate to implement now to ensure that Arizona consumers have a reliable and reasonably priced electric supply available for the long term. The Commission does not believe that aspirations should be set low or that additional delay would result in a more effective standard. If TEP/UNS determine that the EE standard cannot be met at some point, despite their best efforts, the proposed EEE rules allow them to petition for a waiver under 2419(B). The Commission is taking action now, during this period of slowed growth, to avert energy shortages and increased costs later and to protect the environment.</p> <p>No changes are necessary in response to these comments.</p>

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<p>TEP/UNS stated that utilities should be able to exchange renewable energy credits and efficiency standard requirements to meet both the Renewable Energy Standards and the proposed EEE rules in an economical manner.</p>	<p>The proposed EEE rules allow an affected utility to count energy savings from combined heat and power installations that do not qualify under the Renewable Energy Standards and Tariff ("REST") rules, but otherwise do not speak to the REST rules. While the REST rules and the proposed EEE rules share the goals of ensuring reliable and reasonably priced electric service and protecting the environment, their means of achieving those goals are different. The REST rules are designed to achieve those goals by having affected utilities use different energy sources, and the proposed EEE rules achieve those goals by having affected utilities take action to reduce peak loads and overall energy consumption. In light of the different approaches, it would be inappropriate to treat the progress achieved under each standard interchangeably.</p> <p>No change is needed in response to this comment.</p>
<p>TEP/UNS stated that they are concerned about the impact of the proposed EEE rules because selling less power will result in less revenue unless the Commission authorizes recovery of that lost revenue somehow. TEP/UNS characterized the rules as producing a de facto rate decrease (equal to 1.0% to 1.2% for each 2% decrease in kWh sold), which will not be remedied until a subsequent rate case, and pointed out that TEP cannot file a rate case until 2012. TEP/UNS acknowledged that Rule 2410(1) speaks to cost recovery in a rate case, but expressed concern about having to use an accounting order and about the delay in recovery. TEP/UNS also acknowledged that the Commission has another pending docket concerning decoupling and incentives, but stated that it is unclear what will come out of that docket.</p>	<p>The Commission is addressing disincentives and fixed cost recovery in the Incentives Docket. The Commission has been holding workshops on decoupling in that docket and intends to determine how to resolve those issues in that docket. If that is not possible before an affected utility's next rate case, the proposed EEE rules require the Commission to consider the issue upon request in an affected utility's rate case, if the affected utility provides supporting records/documentation. In addition, an affected utility can, in the meantime, request approval for an accounting order.</p> <p>No change is needed in response to this comment.</p>

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<p>The Cooperatives asserted that while they can increase the amount and scope of cost-effective EE programs, they believe that the standard in the proposed EEE rules may not be realistic, measurable, or achievable. They echoed TEP/UNS's comments regarding setting the standard based on studies and analyses and further asserted that they cannot meet the 22% standard by 2020 or the annual ramp-up standards and that one standard based on reductions in kWh sales is not appropriate for all utilities. The Cooperatives assert that only SWEEP, which is not subject to the proposed EEE rules, actively supported an EE standard as high as 20%; that the standard should be based on studies; that studies support standards that are significantly lower than the proposed 22% standard; and that a goal/target based on member/customer participation in proven EE programs would be more appropriate than a standard based on percentage reductions in kWh.</p>	<p>The Commission determined, after the Cooperatives previously expressed their concerns regarding the standard, that it would be appropriate to allow them to meet a reduced standard. The reduced standard was included in the proposed EEE rules. The Commission reiterates its response to the similar comments of TEP/UNS regarding setting an aggressive uniform standard for utilities.</p> <p>No change is needed in response to these comments.</p>
<p>The Cooperatives assert that a utility should be able to count any and all DSM/EE measures invested in since 2005 toward meeting the EE standard, without caps or disallowances, and that not allowing the use of DSM or of delivery system efficiency improvements to meet the EE standard "severely handicaps" the Cooperatives in meeting the EE standard. The Cooperatives supported EnerNOC's comments that the demand response cap should be raised.</p>	<p>The Commission has capped the amount of pre-rules EE program impact that can be counted each year because the Commission desires to increase the cost-effective EE programs implemented by affected utilities. The Commission reiterates the reasons stated previously regarding the cap for demand response programs. Through the rules, the Commission desires to see a reduction in overall electric consumption. Delivery system efficiency does not reduce consumption. The proposed EEE rules do allow the use of DSM. EE is a form of DSM.</p> <p>No change is needed in response to these comments.</p>
<p>APS expressed support for the Commission's efforts to develop EE standards and rules, stated that the 22% savings by 2020 is very aggressive and will take a lot of hard work and considerable money to achieve, and expressed support for the proposed EEE rules' flexibility in meeting the 22% goal by 2020 (counting of historical results, of results from demand response programs, and of a portion of results from improved codes and standards).</p>	<p>The Commission acknowledges the supportive comment.</p> <p>No change is needed in response to this comment.</p>
<p>APS explained its understanding of the 22% EE standard, which it stated means that in the year 2020, the sales for a utility will be 22% lower than they would have been if the utility had never implemented any EE programs. APS explained that the savings would not all have been achieved in 2020—rather, they would be the savings accrued since the utility began implementing EE programs, built up incrementally over the years. APS stated that it is useful to look at the incremental goals for each year, but that it is the cumulative number that matters.</p>	<p>The Commission appreciates APS's explanation of its understanding of these provisions in 2404.</p> <p>No change is needed in response to this comment.</p>

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<p>Arizona PIRG Education Fund ("PIRG"), on behalf of itself and 187 listed individuals, expressed support for an EE requirement of at least 20% by 2020. PIRG expressed support for the proposed EEE rules, stating that EE is a proven, immediate, and effective way to save ratepayers money. PIRG stated that it wants to ensure that the hundreds of other citizens, organizations, and businesses who previously urged the Commission to adopt an EE standard of at least 20% by 2020<sup>5</sup> are counted as supporters of the proposed EEE rules. PIRG stated that there is recognition and support across the state to raise rates for an increase of effective EE programs that ultimately will save consumers and businesses money on their monthly electric bills. PIRG stated that increasing EE to at least 20% by 2020 tops the list for achieving its three Principles for the Electric System: (1) Access to safe, reliable, affordable electricity service; (2) Balance of the long-term and short-term needs of consumers as well as the interests of various classes of consumers; and (3) Consumers being assured that the public interest guides all decisions with regard to the electric system.</p>	<p>The Commission acknowledges the supportive comments. No change is needed in response to these comments.</p>
<p>Arizona Consumers Council ("Council") submitted comments on its own behalf and on behalf of its more than 1,000 members, many of whom it stated are APS customers. The Council thanked the Commission for focusing on EE, asserting that EE benefits consumers both in the short run by saving them money and in the long run by reducing environmental impacts. The Council asserted that EE may also reduce the need for utilities to make capital expenditures, thus reducing one source of upward pressure on rates. The Council cited a Consumer Federation of America study, which stated that "energy efficiency is the cornerstone to ensuring affordable energy for American households in the decades ahead ... [because] [i]t costs so much less to save energy than it does to produce it."<sup>6</sup> The Council expressed support for an EE standard of 20% by 2020, for availability of a wide variety of EE programs suitable for different customer classes, and for customers of all classes to have access to clear and understandable information tailored to their own needs as well as technical assistance. The Council stated that programs to help low-income customers are especially important and that innovative programs to help other customers finance more expensive EE methods should also be available.</p>	<p>The Commission acknowledges the supportive comments. No change is needed in response to these comments.</p>

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<p>William Scown, an individual consumer, expressed support for the 22% standard in the proposed EEE rules, stating that he is willing to pay a little more in rates for EE programs that will make the total energy bill go down. Mr. Scown stated that the proposed EEE rules will help cap production of global warming gases, displace fossil fuels, and create Arizona green jobs. Mr. Scown asserted that Arizona's peak demand for electricity doubled between 1990 and 2005 and that the current "economic hiccup" provides an opportunity to deal with future growth, which had been forecasted to result in another doubling of peak demand between 2006 and 2025 and would have necessitated a great deal of new plant capacity, thus increasing costs to consumers, consuming scarce water resources, and contributing to air pollution and global warming. Mr. Scown asserted that 56% of electricity used in Arizona comes from coal-fired and natural gas-fired power plants, with all of the natural gas being imported from other states, which results in Arizonans spending nearly \$1 billion per year to import out-of-state energy resources. Mr. Scown asserted that the cleanest, cheapest, and fastest way to avert a crisis is to improve efficiency, which will meet the growing energy needs of the state at an affordable price, will conserve water, and will protect air quality.</p>	<p>The Commission acknowledges the supportive comments. No change is needed in response to these comments.</p>
<p>WRA suggested that "The environmental savings realized, including emissions and water savings" be changed to read "The environmental benefits realized, including reduced emissions and water savings" because "environmental benefits" is defined and thus clearer.</p>	<p>The Commission agrees that this change is appropriate and will make the rule clearer. The Commission will make this change in 2409(A)(4)(g) of the text for the Notice of Final Rulemaking.</p>

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	<p>TEP/UNS stated that EE rules should not interfere with or diminish a utility's right to recover its costs and opportunity to earn a reasonable return on its investments and that the rules should include a mechanism through which utilities can be compensated for lost revenue resulting from a decline in volumetric sales due to EE measures. TEP/UNS stated that 11 states have adopted decoupling, that eight states have decoupling cases pending, that seven more states have adopted lost revenue adjustment mechanisms (LRAMs), and that one state has an LRAM case pending. TEP/UNS proposed the following language be added to the proposed EEE rules so that the EE standard will not place a financial burden on utilities, and the interests of utilities and their customers will be aligned:</p> <p>"An affected utility shall file within 90 days of approval of this standard a Fixed Cost Recovery Rate supporting the per kWh cost recovery shortfall created by reduced kWh sales due to DSM/EE programs. This Fixed Cost Recovery Rate will be equal to the non-fuel-related variable rate approved by the [Commission] in the Utility's most recent rate case. The Fixed Cost Recovery Deficiency calculation shall multiply the Fixed Cost Recovery Rate by the cumulative kWh sales reductions due to DSM/EE since the Utility's last rate case. Both the Fixed Cost Recovery Rate and the cumulative DSM/EE sales reductions shall be reset coincident with the effective date of applicable changes to the Utility's rates. The affected utility shall recover the Fixed Cost Recovery Deficiency through the annual true-up of the affected utility's DSM adjustor mechanism."</p>	<p>The Commission is addressing disincentives to EE in its Incentives Docket and has been holding workshops on decoupling, which is one method to allow a utility to recover fixed costs in spite of reduced sales due to EE. In addition, the proposed EEE rules require the Commission to review and address financial disincentives, recovery of fixed costs, and recovery of net lost income/revenue in an affected utility's rate case if the utility requests such consideration and provides supporting records/documentation. In the absence of a more global resolution of the issue, the Commission believes that a rate case is the most appropriate venue to resolve these issues for an affected utility, as it gives the Commission the opportunity to conduct a full examination of the impacts of approved DSM programs in the context of examining a utility's complete revenues and expenses. Additionally, nothing in the proposed EEE rules would prevent an affected utility from requesting approval of an accounting order to defer unrecovered fixed costs for consideration in its next rate case.</p> <p>No change is needed in response to these comments.</p>
<p>Rule 2409(A)(4)(g)</p>	<p>SWEEP asserts that the Commission has been considering and addressing issues regarding disincentives to utilities' supporting EE, cost recovery, and performance incentives in parallel proceedings in a separate docket and thus need not resolve them in this rulemaking.</p>	<p>The Commission agrees with this supportive comment.</p> <p>No change is needed in response to this comment.</p>
<p>Rule 2410</p>	<p>The Cooperatives disagreed with SWEEP's assertion that the rules do not need to resolve utility fixed cost recovery and support the proposals made by utilities to allow utilities to recover fixed costs associated with the kWh saved from EE programs.</p>	<p>The Commission reiterates its response to TEP/UNS's similar comment.</p> <p>No change is needed in response to this comment.</p>

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<p>Rules 2410 &amp; 2411</p>	<p>APS agreed with TEP/UNS that the financial disincentives issue must be addressed to make the EE standard goals sustainable going forward, but disagreed that the regulatory disincentives problem needs to be resolved in this rulemaking, stating that it should instead be viewed in the full context of certain commitments made within the proposed EEE rules themselves and in other proceedings pending before the Commission. APS pointed out that Rule 2410(I) requires the Commission to review and address financial disincentives, recovery of fixed costs, and recovery of net lost income/revenue due to Commission-approved DSM programs in an affected utility's rate case if the affected utility requests such consideration and provides documentation/records supporting its request in its rate application. APS agreed with SWEEP that the Commission has been reviewing and considering issues regarding disincentives, cost recovery, and performance incentives in parallel proceedings; stated that it will continue to work with the Commission and other interested parties in the workshop process to devise appropriate means of addressing these issues; and expressed confidence that the Commission is committed to addressing the issue and will adopt the policies that will evolve from the workshops no later than an affected utility's next rate case.</p>	<p>The Commission acknowledges the supportive comment.          No change is needed in response to this comment.</p>
<p>Rule 2411</p>	<p>The Cooperatives stated that they do not support a profit-related performance incentive, instead desiring the regulatory flexibility to collect necessary expenses in an efficient, cost-effective, and timely manner.</p>	<p>The Commission understands that the Cooperatives are different than the other affected utilities in that they are member/customer owned and not operated for profit. As stated previously, the Commission is addressing financial disincentives in the Incentives Docket and, upon request, in rate cases.          No change is needed in response to this comment.</p>
<p>Rule 2413(A) and (C)</p>	<p>WRA suggested that "the" should be inserted before "baseline" to make the rule clearer.</p>	<p>The Commission agrees that this change is appropriate and will make the rule clearer. The Commission is making this change in the text for the Notice of Final Rulemaking.</p>

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Rule 2416	<p>APS explained that it understood that a third-party administrator would only be used if it was proven that the third-party administrator would be more efficient and effective in implementing a program. APS believes that it should implement its own programs because it is a trusted source of information for its customers and has implemented programs successfully in the past. APS explained that even with a third-party administrator, the fixed cost issue for utilities would not go away. APS asserted that one study found no correlation between the amount of savings achieved and who administered a program and further asserted that other states have effective programs run by both. APS stated that an affected utility would pass the cost of an independent program administrator on to rate-payers as a program cost.</p>	<p>The Commission appreciates APS's explanation of its understanding of these provisions in 2416.</p> <p>No change is needed in response to this comment.</p>
Rule 2418	<p>The Cooperatives proposed that each Cooperative be permitted to file and have its own Commission-approved EE standard by eliminating the language in Rule 2418(C) that requires the EE goal set forth in a Cooperative's implementation plan to be an EE goal for each year "of at least 75% of the savings requirement specified in R14-2-2404."</p>	<p>As stated previously, the Commission believes that it is appropriate to set a uniform standard to be met, as opposed to having affected utilities set their own, possibly very low, standards. The Commission included a reduced standard for the Cooperatives in the proposed EEE rules, in recognition of their being different from the other affected utilities, but does not believe that it would be appropriate to eliminate the standard altogether and leave it to the discretion of each Cooperative.</p> <p>No change is needed in response to this comment.</p>
Rule 2419(B)	<p>WRA suggested that "The affected utility" be changed to "An affected utility" to make the rule clearer.</p>	<p>The Commission agrees that this change is appropriate and will make the rule clearer. The Commission is making this change in the text for the Notice of Final Rulemaking.</p>
<p><sup>1</sup> See Staff Memorandum (Dec. 18, 2008) (filed in Incentives Docket).  <sup>2</sup> See Tr. at 23.  <sup>3</sup> Duncan Valley Cooperative, Inc.; Graham County Electric Cooperative, Inc.; Mohave Electric Cooperative, Inc.; Navopache Electric Cooperative, Inc.; Trico Electric Cooperative, Inc.; and Sulphur Springs Valley Electric Cooperative, Inc. had comments submitted on their behalf by Grand Canyon State Electric Cooperative Association.  <sup>4</sup> TEP/UNS cited The Energy Efficiency Task Force Report (January 2006) produced as part of the Clean and Diversified Energy Initiative for the Western Governors' Association; the EPA's Guide to Resource Planning with Energy Efficiency (November 2007); The Institute for Electric Efficiency's ("IEE's") State Energy Efficiency Regulatory Frameworks (January 2010); and IEE's White Paper entitled "Assessment of Electricity Savings in the U.S. Achievable through New Appliance Equipment Efficiency Standards and Building Efficiency Codes (2010-2020)" (December 2009).  <sup>5</sup> PIRG stated that these supporters include hundreds of citizens from Winslow to Eloy, more than 25 organizations from the Coconino Coalition for Children &amp; Youth in Flagstaff to the American Council of Consumer Awareness in Tucson, and more than 50 businesses from Living Systems Sustainable Architecture in Prescott to the Downtown Deli in Phoenix.  <sup>6</sup> Mark Cooper, Consumer Federation of America, <i>Building on the Success of Energy Efficiency Programs to Ensure an Affordable Energy Future: State-by-State Savings on Residential Utility Bills from Aggressive Energy Efficiency Policies</i> (February 2010), at 1.</p>		

The written comments received by the Commission concerning Staff's recommended revisions to the proposed rules (included in Staff's filing made on April 16, 2010) are included in the following table, along with the Commission response to each.

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<b>Comments on Staff's Recommended Revisions to the Proposed Rules (April 16, 2010)</b>		
<b>Section</b>	<b>Public Comment</b>	<b>Commission Response</b>
Rule 2404(A) and (B)	In response to Staff's recommended changes to Rule 2404(A), which would have eliminated the reference to the affected utility's retail electric energy sales for the prior calendar year (2019), and to Rule 2404(B), which would have added a column including an annual energy efficiency standard to the table therein, APS stated that the elimination of the reference to the prior calendar year 2019 would cause uncertainty regarding to what value the 22% applies. APS stated that the 22% requirement lies at the very core of the proposed rules and is vague unless it is stated as 22% of an identified, known, or measurable value and further stated that the proposed language should be retained. APS stated that Staff's revised table in 2404(B) properly identified the columns of Annual Energy Savings and Cumulative Energy Savings and thus provided some of the clarity that the revised text lacks, but that the original text of 2404(A) should be retained. APS also stated that conforming changes should be made to the first paragraph in Section B.1 of Staff's Economic, Small Business, and Consumer Impact Statement.	In its filing made on June 24, 2010, Staff revised its recommendations for both Rule 2404(A) and (B). Staff now recommends that Rule 2404(A) be revised by replacing "for the prior calendar year (2019)" with "for calendar year 2019" and that Rule 2404(B) be revised by replacing the original proposed language with the following: "An affected utility shall, by the end of each calendar year, meet at least the cumulative annual energy efficiency standard listed in Table 1 for that calendar year. An illustrative example of how the required energy savings would be calculated is shown in Table 2. An illustrative example of how the standard could be met in 2020 is shown in Table 4." Staff further recommends that the table in 2404(B) be labeled Table 1, that the heading for the EE standard clarify that the standard is to be met by the end of each calendar year, and that new Tables 2 and 4 be added. The Commission believes that Staff's new recommended changes are appropriate and that they address APS's concern that the 22% standard would be vague if not tied to a particular year.  The Commission is making Staff's new recommended changes in the text for the Notice of Final Rulemaking.
Rule 2404(A)	WRA stated that Staff's recommended change states that the cumulative energy efficiency savings should be 22% by December 31, 2020, but does not state to what the 22% is to be applied. WRA recommended that no change be made to the original 2404(A).	The Commission believes that Staff's new recommended changes, described above, are appropriate and that they address WRA's concern that the 22% standard is unclear if not tied to a particular year.  The Commission is making Staff's new recommended changes in the text for the Notice of Final Rulemaking.
	SWEEP stated that Staff's recommended elimination of the reference to the prior calendar year (2019) results in wording that is unclear. SWEEP stated that the original language is clear, accurate, and appropriate; that it is the language adopted by the Commission; and that it should be retained.	The Commission believes that Staff's new recommended changes, described above, are appropriate and that they address SWEEP's concern that the 22% standard is unclear if not tied to a particular year.  The Commission is making Staff's new recommended changes in the text for the Notice of Final Rulemaking.

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<p>Rule 2404(B)</p>	<p>WRA stated that Staff's recommended changes present the standard as an annual standard instead of a cumulative standard and that the sum of the proposed annual standards is not the same as the cumulative standard in Decision No. 71436. WRA included tables showing that when the two different standards (cumulative versus annual) are applied to the same retail sales figures for five calendar years, the annual and cumulative savings diverge somewhat. WRA recommended that no change be made to 2404(B).</p>	<p>The Commission believes that Staff's new recommended changes, described above, are appropriate and that they address WRA's concern that Staff's prior recommended changes would have resulted in an annual standard as opposed to a cumulative standard. Staff's new recommended changes retain the cumulative annual EE standard (as opposed to the annual incremental standard recommended in Staff's prior recommended changes) and, by adding Tables 2 and 4, clarify how it is to be calculated.</p> <p>The Commission is making Staff's new recommended changes in the text for the Notice of Final Rulemaking.</p>
	<p>SWEEP stated that the Energy Efficiency Standard as proposed and as adopted by the Commission in Decision No. 71436 is a cumulative standard and should not be changed to an annual standard. SWEEP asserted that the level of energy savings resulting from the Staff-recommended language would not be the same as the savings under the cumulative standard included in the proposed rule. SWEEP stated that it supports the comments and analysis of WRA on this issue and that no change should be made to 2404(B).</p>	<p>The Commission believes that Staff's new recommended changes, described above, are appropriate and that they address SWEEP's concern that Staff's prior recommended changes would have resulted in an annual standard as opposed to a cumulative standard. Staff's new recommended changes retain the cumulative annual EE standard (as opposed to the annual incremental standard recommended in Staff's prior recommended changes) and, by adding Tables 2 and 4, clarify how it is to be calculated.</p> <p>The Commission is making Staff's new recommended changes in the text for the Notice of Final Rulemaking.</p>
<p>Rule 2414(A)</p>	<p>In response to Staff's recommendation to replace the requirement for ratepayer-funded DSM to be developed and implemented in a fuel-neutral manner with a prohibition on ratepayer-funded DSM programs and measures that promote the replacement of existing appliances that use one fuel source with similar appliances that use another fuel source or the installation of new appliances that use another fuel source, unless the new appliance results in reduced overall energy use, APS stated that Staff's recommended change expands and provides additional detail regarding this requirement and would result in a substantive change. APS agreed with Staff's statement in the oral proceeding herein that "Fuel neutral means that ratepayer funds should not be used to promote one fuel over another," but stated that the recommended revision would allow DSM-funded fuel switching if the new appliance results in reduced overall energy use. APS stated that this would reverse the intent of the rule and that the original wording should be restored or, alternatively, the revised wording used if the language about new appliances resulting in reduced overall energy use were deleted.</p>	<p>In its filing made on June 24, 2010, Staff revised its recommendations for Rule 2414(A). Staff now recommends that Rule 2414(A) be revised to read "Ratepayer-funded DSM programs shall be developed and implemented in a fuel-neutral manner, meaning that an affected utility as an administrator of DSM programs should not bias the customer's fuel choice (such as electricity or gas) toward the fuel that the affected utility provides."</p> <p>The Commission believes that it is appropriate to retain the original proposed language of Rule 2414(A) and to adopt the following definition of "fuel-neutral" in Rule 2401: "Fuel-neutral' means without promoting or otherwise expressing bias regarding a customer's choice of one fuel over another." These changes will be made by the Commission in the text for the Notice of Final Rulemaking.</p>

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<p>SWEEP stated that Staff's recommended clarification replaces language on fuel-neutrality with language on fuel switching, which SWEEP sees as a related but distinct and thus additional issue. SWEEP stated that developing and implementing DSM programs in a fuel-neutral manner means that a utility should remain neutral regarding the customer's fuel choice and should not bias customer decisions toward the fuel the utility provides or is associated with. SWEEP recommended that no change be made to 2414(A). SWEEP also asserted that the proper place to review specific DSM programs and the use of DSM funding is in the Commission's review of implementation plans.</p>	<p>The Commission believes that it is appropriate to retain the original proposed language of Rule 2414(A) and to adopt the following definition of "fuel-neutral" in Rule 2401: "Fuel-neutral" means without promoting or otherwise expressing bias regarding a customer's choice of one fuel over another." These changes will be made by the Commission in the text for the Notice of Final Rulemaking.</p>
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**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously made as an emergency rule?**

No

**15. The full text of the rules follows:**

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;  
SECURITIES REGULATION**

**CHAPTER 2. CORPORATION COMMISSION  
FIXED UTILITIES**

**ARTICLE 24. ELECTRIC ENERGY EFFICIENCY STANDARDS**

Section

<u>R14-2-2401.</u>	<u>Definitions</u>
<u>R14-2-2402.</u>	<u>Applicability</u>
<u>R14-2-2403.</u>	<u>Goals and Objectives</u>
<u>R14-2-2404.</u>	<u>Energy Efficiency Standards</u>
<u>Table 1.</u>	<u>Energy Efficiency Standard</u>
<u>Table 2.</u>	<u>Illustrative Example of Calculating Required Energy Savings</u>
<u>Table 3.</u>	<u>Credit for Pre-Rules Energy Savings</u>
<u>Table 4.</u>	<u>Illustrative Example of How the Energy Standard Could Be Met in 2020</u>
<u>R14-2-2405.</u>	<u>Implementation Plans</u>
<u>R14-2-2406.</u>	<u>DSM Tariffs</u>
<u>R14-2-2407.</u>	<u>Commission Review and Approval of DSM Programs and DSM Measures</u>
<u>R14-2-2408.</u>	<u>Parity and Equity</u>
<u>R14-2-2409.</u>	<u>Reporting Requirements</u>
<u>R14-2-2410.</u>	<u>Cost Recovery</u>
<u>R14-2-2411.</u>	<u>Performance Incentives</u>
<u>R14-2-2412.</u>	<u>Cost-effectiveness</u>
<u>R14-2-2413.</u>	<u>Baseline Estimation</u>
<u>R14-2-2414.</u>	<u>Fuel Neutrality</u>
<u>R14-2-2415.</u>	<u>Monitoring, Evaluation, and Research</u>
<u>R14-2-2416.</u>	<u>Program Administration and Implementation</u>
<u>R14-2-2417.</u>	<u>Leveraging and Cooperation</u>
<u>R14-2-2418.</u>	<u>Compliance by Electric Distribution Cooperatives</u>
<u>R14-2-2419.</u>	<u>Waiver from the Provisions of this Article</u>

**ARTICLE 24. ELECTRIC ENERGY EFFICIENCY STANDARDS**

**R14-2-2401. Definitions**

In this Article, unless otherwise specified:

1. "Adjustment mechanism" means a Commission-approved provision in an affected utility's rate schedule allowing the affected utility to increase and decrease a certain rate or rates, in an established manner, when increases and decreases in specific costs are incurred by the affected utility.
2. "Affected utility" means a public service corporation that provides electric service to retail customers in Arizona.
3. "Baseline" means the level of electricity demand, electricity consumption, and associated expenses estimated to occur in the absence of a specific DSM program, determined as provided in R14-2-2413.
4. "CHP" means combined heat and power, which is using a primary energy source to simultaneously produce electrical energy and useful process heat.
5. "Commission" means the Arizona Corporation Commission.
6. "Cost-effective" means that total incremental benefits from a DSM measure or DSM program exceed total incremental costs over the life of the DSM measure, as determined under R14-2-2412.
7. "Customer" means the person or entity in whose name service is rendered to a single contiguous field, location, or facility, regardless of the number of meters at the field, location, or facility.
8. "Delivery system" means the infrastructure through which an affected utility transmits and then distributes electrical energy to its customers.
9. "Demand savings" means the load reduction, measured in kW, occurring during a relevant peak period or periods as a direct result of energy efficiency and demand response programs.
10. "Demand response" means modification of customers' electricity consumption patterns, affecting the timing or quantity of customer demand and usage, achieved through intentional actions taken by an affected utility or customer because of changes in prices, market conditions, or threats to system reliability.
11. "Distributed generation" means the production of electricity on the customer's side of the meter, for use by the customer, through a process such as CHP.
12. "DSM" means demand-side management, the implementation and maintenance of one or more DSM programs.
13. "DSM measure" means any material, device, technology, educational program, pricing option, practice, or facility alteration designed to result in reduced peak demand, increased energy efficiency, or shifting of electricity consumption to off-peak periods and includes CHP used to displace space heating, water heating, or another load.
14. "DSM program" means one or more DSM measures provided as part of a single offering to customers.
15. "DSM tariff" means a Commission-approved schedule of rates designed to recover an affected utility's reasonable and prudent costs of complying with this Article.
16. "Electric utility" means a public service corporation providing electric service to the public.
17. "Energy efficiency" means the production or delivery of an equivalent level and quality of end-use electric service using less energy, or the conservation of energy by end-use customers.
18. "Energy efficiency standard" means the reduction in retail energy sales, in percentage of kWh, required to be achieved through an affected utility's approved DSM programs as prescribed in R14-2-2404.
19. "Energy savings" means the reduction in a customer's energy consumption directly resulting from a DSM program, expressed in kWh.
20. "Energy service company" means a company that provides a broad range of services related to energy efficiency, including energy audits, the design and implementation of energy efficiency projects, and the installation and maintenance of energy efficiency measures.
21. "Environmental benefits" means avoidance of costs for compliance, or reduction in environmental impacts, for things such as, but not limited to:
  - a. Water use and water contamination,
  - b. Monitoring storage and disposal of solid waste such as coal ash (bottom and fly),
  - c. Health effects from burning fossil fuels, and
  - d. Emissions from transportation and production of fuels and electricity.
22. "Fuel-neutral" means without promoting or otherwise expressing bias regarding a customer's choice of one fuel over another.
23. "Incremental benefits" means amounts saved through avoiding costs for fuel, purchased power, new capacity, transmission, distribution, and other cost items necessary to provide electric utility service, along with other improvements in societal welfare, such as through avoided environmental impacts, including, but not limited to, water consumption savings, air emission reduction, reduction in coal ash, and reduction of nuclear waste.
24. "Incremental costs" means the additional expenses of DSM measures, relative to baseline.
25. "Independent program administrator" means an impartial third party employed to provide objective oversight of energy efficiency programs.
26. "kW" means kilowatt.
27. "kWh" means kilowatt-hour.

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28. "Leveraging" means combining resources to more effectively achieve an energy efficiency goal, or to achieve greater energy efficiency savings, than would be achieved without combining resources.
29. "Load management" means actions taken or sponsored by an affected utility to reduce peak demands or improve system operating efficiency, such as direct control of customer demands through affected-utility-initiated interruption or cycling, thermal storage, or educational campaigns to encourage customers to shift loads.
30. "Low-income customer" means a customer with a below average level of household income, as defined in an affected utility's Commission-approved DSM program description.
31. "Market transformation" means strategic efforts to induce lasting structural or behavioral changes in the market that result in increased energy efficiency.
32. "Net benefits" means the incremental benefits resulting from DSM minus the incremental costs of DSM.
33. "Non-market benefits" means improvements in societal welfare that are not bought or sold.
34. "Program costs" means the expenses incurred by an affected utility as a result of developing, marketing, implementing, administering, and evaluating Commission-approved DSM programs.
35. "Self-direction" means an option made available to qualifying customers of sufficient size, in which the amount of money paid by each qualifying customer toward DSM costs is tracked for the customer and made available for use by the customer for approved DSM investments upon application by the customer.
36. "Societal Test" means a cost-effectiveness test of the net benefits of DSM programs that starts with the Total Resource Cost Test, but includes non-market benefits and costs to society.
37. "Staff" means individuals working for the Commission's Utilities Division, whether as employees or through contract.
38. "Thermal envelope" means the collection of building surfaces, such as walls, windows, doors, floors, ceilings, and roofs, that separate interior conditioned (heated or cooled) spaces from the exterior environment.
39. "Total Resource Cost Test" means a cost-effectiveness test that measures the net benefits of a DSM program as a resource option, including incremental measure costs, incremental affected utility costs, and carrying costs as a component of avoided capacity cost, but excluding incentives paid by affected utilities and non-market benefits to society.

**R14-2-2402. Applicability**

This Article applies to each affected utility classified as Class A according to R14-2-103(A)(3)(q), unless the affected utility is an electric distribution cooperative that has fewer than 25% of its customers in Arizona.

**R14-2-2403. Goals and Objectives**

**A.** An affected utility shall design each DSM program:

1. To be cost-effective, and
2. To accomplish at least one of the following:
  - a. Energy efficiency,
  - b. Load management, or
  - c. Demand response.

**B.** An affected utility shall consider the following when planning and implementing a DSM program:

1. Whether the DSM program will achieve cost-effective energy savings and peak demand reductions;
2. Whether the DSM program will advance market transformation and achieve sustainable savings, reducing the need for future market interventions; and
3. Whether the affected utility can ensure a level of funding adequate to sustain the DSM program and allow the DSM program to achieve its targeted goal.

**C.** An affected utility shall:

1. Offer DSM programs that will provide an opportunity for all affected utility customer segments to participate, and
2. Allocate a portion of DSM resources specifically to low-income customers.

**R14-2-2404. Energy Efficiency Standards**

**A.** Except as provided in R14-2-2418, in order to ensure reliable electric service at reasonable ratepayer rates and costs, by December 31, 2020, an affected utility shall, through cost-effective DSM energy efficiency programs, achieve cumulative annual energy savings, measured in kWh, equivalent to at least 22% of the affected utility's retail electric energy sales for calendar year 2019.

**B.** An affected utility shall, by the end of each calendar year, meet at least the cumulative annual energy efficiency standard listed in Table 1 for that calendar year. An illustrative example of how the required energy savings would be calculated is shown in Table 2. An illustrative example of how the standard could be met in 2020 is shown in Table 4.

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**Table 1. Energy Efficiency Standard**

<b>CALENDAR YEAR</b>	<b>ENERGY EFFICIENCY STANDARD</b> (Cumulative Annual Energy Savings by the End of Each Calendar Year as a Percentage of the Retail Energy Sales in the Prior Calendar Year)
<b>2011</b>	1.25%
<b>2012</b>	3.00%
<b>2013</b>	5.00%
<b>2014</b>	7.25%
<b>2015</b>	9.50%
<b>2016</b>	12.00%
<b>2017</b>	14.50%
<b>2018</b>	17.00%
<b>2019</b>	19.50%
<b>2020</b>	22.00%

**Table 2. Illustrative Example of Calculating Required Energy Savings**

<b>CALENDAR YEAR</b>	<b>A</b> <b>RETAIL SALES</b> (kWh)	<b>B</b> <b>ENERGY</b> <b>EFFICIENCY</b> <b>STANDARD</b>	<b>C</b> <b>REQUIRED</b> <b>CUMULATIVE</b> <b>ENERGY SAVINGS</b> (B of current year × A of prior year)
<b>2010</b>	100,000,000		0
<b>2011</b>	100,750,000	1.25%	1,250,000
<b>2012</b>	101,017,500	3.00%	3,022,500
<b>2013</b>	101,069,925	5.00%	5,050,875
<b>2014</b>	100,915,646	7.25%	7,327,570
<b>2015</b>	100,821,094	9.50%	9,586,986
<b>2016</b>	100,517,711	12.00%	12,098,531
<b>2017</b>	100,293,499	14.50%	14,575,068
<b>2018</b>	100,116,043	17.00%	17,049,895
<b>2019</b>	99,986,628	19.50%	19,522,628
<b>2020</b>	99,902,384	22.00%	21,997,058

- C.** An affected utility's measured reductions in peak demand resulting from cost-effective demand response and load management programs may comprise up to two percentage points of the 22% energy efficiency standard, with peak demand reduction capability from demand response converted to an annual energy savings equivalent based on an assumed 50% annual load factor. The credit for demand response and load management peak demand reductions shall not exceed 10% of the energy efficiency standard set forth in subsection (B) for any year. The measured reductions in peak demand occurring during a calendar year after the effective date of this Article may be counted for that calendar year even if the demand response or load management program resulting in the reductions was implemented prior to the effective date of this Article.
- D.** An affected utility's energy savings resulting from DSM energy efficiency programs implemented before the effective date of this Article, but after 2004, may be credited toward meeting the energy efficiency standard set forth in subsection (B). The total energy savings credit for these pre-rules energy efficiency programs shall not exceed 4% of the affected utility's retail energy sales in calendar year 2005. A portion of the total energy savings credit for these pre-rules energy efficiency programs may be applied each year, from 2016 through 2020, as listed in Table 3, Column A.

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**Table 3. Credit for Pre-Rules Energy Savings**

<b>CALENDAR YEAR</b>	<b>A CREDIT FOR THE PRE-RULES ENERGY SAVINGS APPLIED IN EACH YEAR</b> <i>(Percentage of the Total Eligible Pre-Rules Cumulative Annual Energy Savings That Shall Be Applied in the Year)</i>	<b>B CUMULATIVE APPLICATION OF THE CREDIT FOR THE PRE-RULES ENERGY SAVINGS IN 2016-2020</b> <i>(Percentage of the Total Eligible Pre-Rules Cumulative Annual Energy Savings That Are Credited by the End of Each Year)</i>
<b>2016</b>	7.5%	7.5%
<b>2017</b>	15.0%	22.5%
<b>2018</b>	20.0%	42.5%
<b>2019</b>	25.0%	67.5%
<b>2020</b>	32.5%	100.0%

- E.** An affected utility may count toward meeting the standard up to one third of the energy savings, resulting from energy efficiency building codes, that are quantified and reported through a measurement and evaluation study undertaken by the affected utility.
- F.** An affected utility may count the energy savings from combined heat and power (CHP) installations that do not qualify under the Renewable Energy Standard toward meeting the energy efficiency standard.
- G.** An affected utility may count a customer's energy savings resulting from self-direction toward meeting the standard.
- H.** An affected utility's energy savings resulting from efficiency improvements to its delivery system may not be counted toward meeting the standard.
- I.** An affected utility's energy savings used to meet the energy efficiency standard will be assumed to continue through the year 2020 or, if expiring before the year 2020, to be replaced with a DSM energy efficiency program having at least the same level of efficiency.

**Table 4. Illustrative Example of How the Energy Standard Could Be Met in 2020**

	<b>2020 Energy Efficiency Standard</b>	<b>2019 Retail Sales (kWh)</b>	<b>Required Cumulative Annual Energy Savings (kWh)</b>
<b>Total</b>	22.00%	99,986,628	21,997,058
<b>Breakdown of Savings and Credits Used To Meet 2020 Standard:</b>			
		<b>Cumulative Annual Energy Savings or Credit (kWh)</b>	
<b>Demand Response Credit</b> R14-2-2404(C)	Up to 2.00%	1,999,733	
<b>Pre-rules Savings Credit</b> R14-2-2404(D)		1,100,000*	
<b>Building Code</b> R14-2-2404(E)		1,000,000	
<b>CHP</b> R14-2-2404(F)		500,000	
<b>Self-Direction</b> R14-2-2404(G)		100,000	
<b>Energy Efficiency</b> R14-2-2404(A)		17,297,325	
<b>Total</b>		21,997,058	
* The total pre-rules savings credit is capped at 4% of 2005 retail energy sales, and the total credit is allocated over five years from 2016 to 2020. The credit shown above represents an estimate of the portion of the total credit that can be taken in 2020, or 32.5% of the total credit allowed.			

**R14-2-2405. Implementation Plans**

- A.** Except as provided in R14-2-2418, on June 1 of each odd year, or annually at the election of each affected utility, each affected utility shall file with Docket Control, for Commission review and approval, an implementation plan describing

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how the affected utility intends to meet the energy efficiency standard for the next one or two calendar years, as applicable, except that the initial implementation plan shall be filed within 30 days of the effective date of this Article.

- B.** The implementation plan shall include the following information:
1. Except for the initial implementation plan, a description of the affected utility's compliance with the requirements of this Article for the previous calendar year;
  2. Except for the initial implementation plan, which shall describe only the next calendar year, a description of how the affected utility intends to comply with this Article for the next two calendar years, including an explanation of any modification to the rates of an existing DSM adjustment mechanism or tariff that the affected utility believes is necessary;
  3. Except for the initial implementation plan, which shall describe only the next calendar year, a description of each DSM program to be newly implemented or continued in the next two calendar years and an estimate of the annual kWh and kW savings projected to be obtained through each DSM program;
  4. The estimated total cost and cost per kWh reduction of each DSM measure and DSM program described in subsection (B)(3);
  5. A DSM tariff filing complying with R14-2-2406(A) or a request to modify and reset an adjustment mechanism complying with R14-2-2406(C), as applicable; and
  6. For each new DSM program or DSM measure that the affected utility desires to implement, a program proposal complying with R14-2-2407.
- C.** An affected utility shall notify its customers of its annual implementation plan filing through a notice in its next regularly scheduled customer bills.
- D.** The Commission may hold a hearing to determine whether an affected utility's implementation plan satisfies the requirements of this Article.
- E.** An affected utility's Commission-approved implementation plan, and the DSM programs authorized thereunder, shall continue in effect until the Commission takes action on a new implementation plan for the affected utility.

**R14-2-2406. DSM Tariffs**

- A.** An affected utility's DSM tariff filing shall include the following:
1. A detailed description of each method proposed by the affected utility to recover the reasonable and prudent costs associated with implementing the affected utility's intended DSM programs;
  2. Financial information and supporting data sufficient to allow the Commission to determine the affected utility's fair value, including, at a minimum, the information required to be submitted in a utility annual report filed under R14-2-212(G)(4);
  3. Data supporting the level of costs that the affected utility believes will be incurred in order to comply with this Article; and
  4. Any other information that the Commission believes is relevant to the Commission's consideration of the tariff filing.
- B.** The Commission shall approve, modify, or deny a tariff filed pursuant to subsection (A) within 180 days after the tariff has been filed. The Commission may suspend this deadline or adopt an alternative procedural schedule for good cause.
- C.** If an affected utility has an existing adjustment mechanism to recover the reasonable and prudent costs associated with implementing DSM programs, the affected utility may, in lieu of making a tariff filing under subsection (A), file a request to modify and reset its adjustment mechanism by submitting the information required under subsections (A)(1) and (3).

**R14-2-2407. Commission Review and Approval of DSM Programs and DSM Measures**

- A.** An affected utility shall obtain Commission approval before implementing a new DSM program or DSM measure.
- B.** An affected utility may apply for Commission approval of a DSM program or DSM measure by submitting a program proposal either as part of its implementation plan submitted under R14-2-2405 or through a separate application.
- C.** A program proposal shall include the following:
1. A description of the DSM program or DSM measure that the affected utility desires to implement.
  2. The affected utility's objectives and rationale for the DSM program or DSM measure.
  3. A description of the market segment at which the DSM program or DSM measure is aimed.
  4. An estimated level of customer participation in the DSM program or DSM measure.
  5. An estimate of the baseline.
  6. The estimated societal benefits and savings from the DSM program or DSM measure.
  7. The estimated societal costs of the DSM program or DSM measure.
  8. The estimated environmental benefits to be derived from the DSM program or DSM measure.
  9. The estimated benefit-cost ratio of the DSM program or DSM measure.
  10. The affected utility's marketing and delivery strategy.
  11. The affected utility's estimated annual costs and budget for the DSM program or DSM measure.
  12. The implementation schedule for the DSM program or DSM measure.
  13. A description of the affected utility's plan for monitoring and evaluating the DSM program or DSM measure, and
  14. Any other information that the Commission believes is relevant to the Commission's consideration of the tariff filing.

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- D.** In determining whether to approve a program proposal, the Commission shall consider:
1. The extent to which the Commission believes the DSM program or DSM measure will meet the goals set forth in R14-2-2403(A), and
  2. All of the considerations set forth in R14-2-2403(B).
- E.** Staff may request modifications of on-going DSM programs to ensure consistency with this Article. The Commission shall allow affected utilities adequate time to notify customers of DSM program modifications.

**R14-2-2408. Parity and Equity**

- A.** An affected utility shall develop and propose DSM programs for residential, non-residential, and low-income customers.
- B.** An affected utility shall allocate DSM funds collected from residential customers and from non-residential customers proportionately to those customer classes to the extent practicable.
- C.** The affected utility costs of DSM programs for low-income customers shall be borne by all customer classes, except where a customer or customer class is specifically exempted by Commission order.
- D.** DSM funds collected by an affected utility shall be used, to the extent practicable, to benefit that affected utility's customers.
- E.** All customer classes of an affected utility shall bear the costs of DSM programs by payment through a non-bypassable mechanism, unless a customer or customer class is specifically exempted by Commission order.

**R14-2-2409. Reporting Requirements**

- A.** By March 1 of each year, an affected utility shall submit to the Commission, in a Commission-established docket for that year, a DSM progress report providing information for each of the affected utility's Commission-approved DSM programs and including at least the following:
1. An analysis of the affected utility's progress toward meeting the annual energy efficiency standard;
  2. A list of the affected utility's current Commission-approved DSM programs and DSM measures, organized by customer segment;
  3. A description of the findings from any research projects completed during the previous year; and
  4. The following information for each Commission-approved DSM program or DSM measure:
    - a. A brief description;
    - b. Goals, objectives, and savings targets;
    - c. The level of customer participation during the previous year;
    - d. The costs incurred during the previous year, disaggregated by type of cost, such as administrative costs, rebates, and monitoring costs;
    - e. A description and the results of evaluation and monitoring activities during the previous year;
    - f. Savings realized in kW, kWh, therms, and BTUs, as appropriate;
    - g. The environmental benefits realized, including reduced emissions and water savings;
    - h. Incremental benefits and net benefits, in dollars;
    - i. Performance-incentive calculations for the previous year;
    - j. Problems encountered during the previous year and proposed solutions;
    - k. A description of any modifications proposed for the following year; and
    - l. Whether the affected utility proposes to terminate the DSM program or DSM measure and the proposed date of termination.
- B.** By September 1 of each year, an affected utility shall file a status report including a tabular summary showing the following for each current Commission-approved DSM program and DSM measure of the affected utility:
1. Semi-annual expenditures compared to annual budget, and
  2. Participation rates.
- C.** An affected utility shall file each report required by this Section with Docket Control, where it will be available to the public, and shall make each such report available to the public upon request.
- D.** An affected utility may request within its implementation plan that these reporting requirements supersede specific existing DSM reporting requirements.

**R14-2-2410. Cost Recovery**

- A.** An affected utility may recover the costs that it incurs in planning, designing, implementing, and evaluating a DSM program or DSM measure if the DSM program or DSM measure is all of the following:
1. Approved by the Commission before it is implemented.
  2. Implemented in accordance with a Commission-approved program proposal or implementation plan, and
  3. Monitored and evaluated for cost-effectiveness pursuant to R14-2-2415.
- B.** An affected utility shall monitor and evaluate each DSM program and DSM measure, as provided in R14-2-2415, to determine whether the DSM program or DSM measure is cost-effective and otherwise meets expectations.
- C.** If an affected utility determines that a DSM program or DSM measure is not cost-effective or otherwise does not meet expectations, the affected utility shall include in its annual DSM progress report filed under R14-2-2409 a proposal to modify or terminate the DSM program or DSM measure.

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- D. An affected utility shall recover its DSM costs concurrently, on an annual basis, with the spending for a DSM program or DSM measure, unless the Commission orders otherwise.
- E. An affected utility may recover costs from DSM funds for any of the following items, if the expenditures will enhance DSM:
  - 1. Incremental labor attributable to DSM development.
  - 2. A market study.
  - 3. A research and development project such as applied technology assessment.
  - 4. Consortium membership, or
  - 5. Another item that is difficult to allocate to an individual DSM program.
- F. The Commission may impose a limit on the amount of DSM funds that may be used for the items in subsection (E).
- G. If goods and services used by an affected utility for DSM have value for other affected utility functions, programs, or services, the affected utility shall divide the costs for the goods and services and allocate funding proportionately.
- H. An affected utility shall allocate DSM costs in accordance with generally accepted accounting principles.
- I. The Commission shall review and address financial disincentives, recovery of fixed costs, and recovery of net lost income/revenue, due to Commission-approved DSM programs, if an affected utility requests such review in its rate case and provides documentation/records supporting its request in its rate application.
- J. An affected utility, at its own initiative, may submit to the Commission twice-annual reports on the financial impacts of its Commission-approved DSM programs, including any unrecovered fixed costs and net lost income/revenue resulting from its Commission-approved DSM programs.

**R14-2-2411. Performance Incentives**

In the implementation plans required by R14-2-2405, an affected utility may propose for Commission review a performance incentive to assist in achieving the energy efficiency standard set forth in R14-2-2404. The Commission may also consider performance incentives in a general rate case.

**R14-2-2412. Cost-effectiveness**

- A. An affected utility shall ensure that the incremental benefits to society of the affected utility's overall DSM portfolio exceed the incremental costs to society of the DSM portfolio.
- B. The Societal Test shall be used to determine cost-effectiveness.
- C. The analysis of a DSM program's or DSM measure's cost-effectiveness may include:
  - 1. Costs and benefits associated with reliability, improved system operations, environmental impacts, and customer service;
  - 2. Savings of both natural gas and electricity; and
  - 3. Any uncertainty about future streams of costs or benefits.
- D. An affected utility shall make a good faith effort to quantify water consumption savings and air emission reductions, while other environmental costs or the value of environmental improvements shall be estimated in physical terms when practical but may be expressed qualitatively. An affected utility, Staff, or any party may propose monetized benefits and costs if supported by appropriate documentation or analyses.
- E. Market transformation programs shall be analyzed for cost-effectiveness by measuring market effects compared to program costs.
- F. Educational programs shall be analyzed for cost-effectiveness based on estimated energy and peak demand savings resulting from increased awareness about energy use and opportunities for saving energy.
- G. Research and development and pilot programs are not required to demonstrate cost-effectiveness.
- H. An affected utility's low-income customer program portfolio shall be cost-effective, but costs attributable to necessary health and safety measures shall not be used in the calculation.

**R14-2-2413. Baseline Estimation**

- A. To determine the baseline, an affected utility shall estimate the level of electric demand and consumption and the associated costs that would have occurred in the absence of a DSM program or DSM measure.
- B. For demand response programs, an affected utility shall use customer load profile information to verify baseline consumption patterns and the peak demand savings resulting from demand response actions.
- C. For installations or applications that have multiple fuel choices, an affected utility shall determine the baseline using the same fuel source actually used for the installation or application.

**R14-2-2414. Fuel Neutrality**

- A. Ratepayer-funded DSM shall be developed and implemented in a fuel-neutral manner.
- B. An affected utility shall use DSM funds collected from electric customers for electric DSM programs, unless otherwise ordered by the Commission.
- C. An affected utility may use DSM funds collected from electric customers for thermal envelope improvements.

**R14-2-2415. Monitoring, Evaluation, and Research**

- A. An affected utility shall monitor and evaluate each DSM program and DSM measure to:

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1. Ensure compliance with the cost-effectiveness requirements of R14-2-2412;
2. Determine participation rates, energy savings, and demand reductions;
3. Assess the implementation process for the DSM program or DSM measure;
4. Obtain information on whether to continue, modify, or terminate a DSM program or DSM measure; and
5. Determine the persistence and reliability of the affected utility's DSM.

**B.** An affected utility may conduct evaluation and research, such as market studies, market research, and other technical research, for DSM program planning, product development, and DSM program improvement.

**R14-2-2416. Program Administration and Implementation**

**A.** An affected utility may use an energy service company or other external resource to implement a DSM program or DSM measure.

**B.** The Commission may, at its discretion, establish independent program administrators who would be subject to the relevant requirements of this Article.

**R14-2-2417. Leveraging and Cooperation**

**A.** An affected utility shall, to the extent practicable, participate in cost sharing, leveraging, or other lawful arrangements with customers, vendors, manufacturers, government agencies, other electric utilities, or other entities if doing so will increase the effectiveness or cost-effectiveness of a DSM program or DSM measure.

**B.** An affected utility shall participate in a DSM program or DSM measure with a natural gas utility when doing so is practicable and if doing so will increase the effectiveness or cost-effectiveness of a DSM program or DSM measure.

**R14-2-2418. Compliance by Electric Distribution Cooperatives**

**A.** An electric distribution cooperative that is an affected utility shall comply with the requirements of this Section instead of meeting the requirements of R14-2-2404(A) and (B) and R14-2-2405(A).

**B.** An electric distribution cooperative shall, on June 1 of each odd year, or annually at its election:

1. File with Docket Control, for Commission review and approval, an implementation plan for each DSM program to be implemented or maintained during the next one or two calendar years, as applicable; and
2. Submit to the Director of the Commission's Utilities Division an electronic copy of its implementation plan in a format suitable for posting on the Commission's web site.

**C.** An implementation plan submitted under subsection (B) shall set forth an energy efficiency goal for each year of at least 75% of the savings requirement specified in R14-2-2404 and shall include the information required under R14-2-2405(B).

**R14-2-2419. Waiver from the Provisions of this Article**

**A.** The Commission may waive compliance with any provision of this Article for good cause.

**B.** An affected utility may petition the Commission to waive its compliance with any provision of this Article for good cause.

**C.** A petition filed pursuant to this Section shall have priority over other matters filed under this Article.