BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSISSIPPI

MISSISSIPPI PUBLIC SERVICE COMMISSION

DOCKET NO. 2018-AD-64

IN RE: ORDER ESTABLISHING DOCKET TO INVESTIGATE THE DEVELOPMENT AND IMPLEMENTATION OF AN INTEGRATED RESOURCE PLANNING RULE

FINAL ORDER AMENDING RULE 29 TO ESTABLISH INTEGRATED RESOURCE PLANNING AND ANNUAL ENERGY DELIVERY REPORTING REQUIREMENTS

COMES NOW, the Mississippi Public Service Commission ("Commission"), pursuant to its authority under the Mississippi Public Utility Act and applicable regulations, and issues this Final Order concerning the development and implementation of an integrated resource planning rule and the related revision of Rule 29 of the Commission's Rules of Practice and Procedure. For the reasons that follow, the Commission hereby adopts the Integrated Resource Planning and Reporting Rule attached hereto as Exhibit "A."

I.

In accordance with the procedures of Mississippi Code Annotated § 77-3-45 and the Mississippi Administrative Procedures Act, Miss. Code Ann. §§ 25-43-1.101 *et seq.*, the Commission issued an Order Seeking Comments on Proposed Rule in this docket on June 11, 2019. As stated in that Order, "the Commission finds it is in the best interest of Mississippi ratepayers and utilities to proceed with the development of a comprehensive Integrated Resource Planning Rule, and to

establish reporting requirements both for long term electric planning and for annual energy delivery planning by regulated gas and electric utilities."[1] Notice was published according to applicable law and was filed with the Secretary of State in accordance with the Administrative Procedures Act. [2]

The Commission's June 11, 2019 Order directed all interested parties to file written comments on the proposed rule by August 1, 2019. However, on July 25, 2019, the Commission temporarily suspended that comment deadline in order to conduct an economic impact study pursuant to Miss. Code Ann. § 25-43-3.105.[3] Thereafter, on August 27, 2019, the Commission entered an Order Establishing Revised Deadlines, in which it published the results of the economic impact study and extended the comment period for the proposed rule to October 1, 2019.[4] The Commission also updated and refiled its Notice of proposed rule modifications with the Secretary of State in accordance with the Administrative Procedures Act.

Numerous parties intervened and filed comments on the proposed rule, including:

1. Entergy Mississippi, LLC;
2. Atmos Energy Corporation;
3. ACEEE;
4. Bryan W. Estes;
5. AT&T;
6. Southern Renewable Energy Association;
7. Rural Incumbent Local Exchange Carriers;
8. Institute for Policy Integrity;
9. Spire Mississippi, Inc.;
10. Southeast Energy Efficiency Alliance;

[1] *See* Order Seeking Comments on Proposed Rule at ¶ 3, Docket No. 2018-AD-64 (June 11, 2019).
[2] *See* Miss. Code Ann. § 25-43-3.103.
[3] *See* Order Temporarily Suspending Deadlines at ¶ 5, Docket No. 2018-AD-64 (July 25, 2019).
[4] *See* Order Establishing Revised Deadlines, Docket No. 2018-AD-64 (Aug. 27, 2019).

11. CenterPoint Mississippi;
12. Sierra Club;
13. The R Street Institute;
14. Southern Alliance for Clean Energy;
15. Mississippi Power Company;
16. 25 x '25 Alliance; and
17. The Attorney General for the State of Mississippi

After thoroughly reviewing all comments submitted, the Commission revised the proposed rule to incorporate and address certain issues raised by the parties, and published a Final Proposed Rule in this docket on November 4, 2019. Thereafter, on November 7, 2019, the Commission held a public hearing in which the Proposed Final Rule was discussed and public comments were provided. During that hearing, Central District Commissioner-Elect and 25' x 25' representative Brent Bailey requested additional time to review the Commission's final revisions and submit any remaining comments thereon. The Commission granted that request and entered a Notice of Extended Comment Period on November 7, 2019, allowing all interested parties an additional ten (10) days to file written comments on the Final Proposed Rule.[5] Seven (7) intervenors filed supplemental comments, including AT&T, the 25 x '25 Alliance, the Southern Renewable Energy Association, the R Street Institute, the Southern Alliance for Clean Energy, Bryan W. Estes, and the Southeast Energy Efficiency Alliance.

After receiving and reviewing these supplemental written comments, and after thoughtfully evaluating the testimony presented at the November 7, 2019 public hearing, the Commission noticed and held a Special Meeting on November

[5] For ease of reference to interested parties, the Commission also published a redlined copy of the Final Proposed Rule on November 7, 2019.

22, 2019 to address the adoption of the final Integrated Resource Planning and Reporting Rule attached hereto as Exhibit "A". As discussed below, all revisions made and accepted by the Commission have been drawn directly from the comments and testimony submitted in this docket.

II.

Mississippi Code Annotated § 77-3-45 empowers this Commission to "prescribe, issue, amend and rescind such reasonable rules and regulations as may be reasonably necessary or appropriate to carry out the provisions of this chapter."[6] As set forth in Miss. Code Ann. § 77-3-2, moreover, the Commission's rules and regulations should advance the following public policy declarations which, among others, expressly underlie the Public Utility Act:

> (a) To provide fair regulation of public utilities in the interest of the public;
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> ...
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> (c) To promote adequate, reliable and economical service to all citizens and residents of the state;
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> (d) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with the long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;
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> ...
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> (f) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of service needed for the protection of public health and safety and for the promotion of the general welfare....[7]

[6] Miss. Code Ann. § 77-3-45.
[7] Miss. Code Ann. § 77-3-2(1).

In addition, the Legislature has granted the Commission broad authority with respect to rate-regulated utilities, encouraging the Commission "to take every opportunity to advance the economic development of the state" when carrying out its statutory directives.[8] For the reasons that follow, the Integrated Resource Planning and Reporting Rule attached as Exhibit "A" serves these legislative directives, as well as a number of other key policy interests.

Over thirty (30) states require regulated electric utilities to file publicly available integrated resource plans. As stated in the comments of the 25 x '25 Alliance, "While the requirements and processes for developing and evaluating these plans vary from state to state, changing technologies, volatile fuel prices and shifts in regulatory constructs have reinforced the need for resource planning to ensure utilities can provide reliable, cost-competitive electric service to their customers."[9]

Additionally, one of the Commission's primary motivations for adopting a formal IRP rule has been and continues to be the desire to provide Mississippi ratepayers with more transparency regarding their utilities' long-term planning processes. A high degree of transparency provides important protection for the Commission and ratepayers against potentially unnecessary and costly capital expenditures and long-term operational costs. As a result, adoption of an IRP Rule is "consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy," and it "foster[s] the

[8] *See* Miss. Code Ann. § 77-3-2(1)(i).
[9] *See* Comments of the 25 x '25 Alliance, Docket No. 2018-AD-64 (Aug. 2, 2018).

continued service of public utilities on a well-planned and coordinated basis."[10] It also helps fulfill the Commission's statutory directive under Miss. Code Ann. § 77-3-14(2) to, "develop, publicize and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in Mississippi...."

Nevertheless, to truly further the policy declarations enumerated above, comprehensive IRP should encompass more than traditional resource planning, which historically has focused on supply-side resources. The Commission recognizes that the way consumers use and consume energy is changing in light of evolving technologies that allow energy efficiencies and load management on the supply-side through grid modernization. The way utilities plan for, produce and deliver the energy that customers rely on should continue to evolve as well. Advanced grid technology and other emerging enabling technologies are becoming more and more instrumental in the design and delivery of demand-side management and energy efficiency programs. IRP should therefore be holistic and should include a thorough evaluation of all energy delivery processes, including demand response efforts, distributed energy resources, and energy efficiency programs in addition to traditional supply-side resources.

Unlike current Rule 29, which fails to unite and integrate energy efficiency and long-term resource planning, the attached Rule folds the broader umbrella of distributed energy resources and demand-side management efforts (which include energy efficiency) into the resource planning process and explicitly recognizes and

[10] Miss. Code Ann. § 77-3-2(1).

values them as resources for planning and cost-recovery purposes.[11] By doing so, the Commission aims to incentivize utilities to approach and incorporate demand-side resource options like any other traditional supply-side resource. Indeed, allowing utilities an opportunity to earn a return on demand-side management investments places those resources on equal footing with other supply-side and infrastructure investments, and addresses the inherent conflict between the goals of demand-side management (i.e. the avoidance of energy usage) and utilities' traditional cost-of-service rate structures.

Ultimately, the evidence submitted in this docket not only highlighted the need to establish clear reporting requirements for long-term resource planning, it revealed the need for a more streamlined process that integrates not only energy efficiency but all demand-side management and energy delivery efforts into the resource planning process. The Integrated Resource Planning and Reporting Rule attached as Exhibit "A" satisfies these needs. It establishes a workable framework for resource planning that can be tailored to the specific needs of Mississippi customers, while allowing both regulators and stakeholders to remain engaged and informed during the planning process. The Rule also supports effective Commission and utility decision-making by providing accurate, comprehensive and forward-looking information about anticipated resource needs and the options available to meet those needs, while including and integrating what the Commission expects to be a robust demand-side management portfolio. Moreover, the Rule establishes a

[11] The current Rule 29, in contrast, simply mandates that utilities offer energy efficiency programs and allows direct recovery of such program costs through various energy efficiency riders.

transparent process that allows stakeholders a reasonable opportunity to participate and that fosters the development of a sound administrative record.

III.

AT&T and other telecommunications intervenors have argued that the Commission lacks jurisdiction to implement Section 107.5 of the attached Rule, which pertains to investments in enabling technology and fiber optic infrastructure that may be used to enhance regulated utilities' communications, reliability and service offerings. Although AT&T commended the Commission for revising this portion of the Rule in response to its previously-filed comments,[12] it nevertheless contends that the Rule itself must "identify the substantive statutory authority on which it relies, not just general legislative policy statements. This is necessary to ensure there is a legal authority for the Rule and that the Rule's scope is properly limited to matters regarding public utilities and the provision of public utility service."[13] AT&T further contends that, despite the Commission's revisions, the language of Section 107.5 still presents a risk "that rate-regulated utilities could seek to ... have ratepayers subsidize their entry into the unregulated broadband market...."[14]

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[12] *See* Supplemental Comments of AT&T at p. 2, Docket No. 2018-AD-64 (Nov. 18, 2019) ("The revised version ... restrict[s] it to investments in fiber-optic infrastructure and limit[s] the recoverable amount to $10 million per year. The revised version also appears to focus the Rule on investments in public utility networks for the purpose of modernizing or improving public utility service."). These written comments reflect the oral testimony presented by AT&T at the November 7, 2019 Public Hearing in this docket.

[13] *See id.*

[14] *See id.* at p. 3.

The Commission understands and appreciates AT&T's supplemental comments but disagrees. Nothing in the Public Utility Act or the Administrative Procedures Act requires a state agency like the Commission to identify the statutory basis for a rule/regulation in the text of rule/regulation itself. Indeed, no other Commission Rule of Practice and Procedure – including the remaining sections of the attached IRP Rule – contains specific references to enabling legislation within the actual rule. Instead, the Administrative Procedures Act and the Secretary of State – via its own Rules and Regulations – require the Commission to identify the statutory basis for a rule when publishing Notice of the proposed rule adoption via Secretary of State Form 001.[15] The Commission did so in this rulemaking when it refiled Notice of this proceeding in the Administrative Bulletin on August 26, 2019.[16] As stated in that Notice, Miss. Code Ann. § 77-3-45 authorizes the promulgation of this Rule. That statute provides:

> The commission shall prescribe, issue, amend and rescind such reasonable rules and regulations as may be reasonably necessary or appropriate to carry out the provisions of this chapter.
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> ...
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> The commission shall, in the exercise of its power to promulgate rules and regulations, adopt standard practices and procedures:
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> ...
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> (h) To provide for any other rules and regulations deemed by the commission to be appropriate for carrying out the provisions of this chapter.

[15] *See* Miss. Code Ann. § 25-43-3.103; Rule 4.1 of the Administrative Procedures Act Rules.
[16] *See* https://www.sos.ms.gov/adminsearch/ACProposed/00024374a.pdf. This statutory basis was also identified in the Commission's original Administrative Procedures Notice Filing, which was published on June 11, 2019. *See* https://www.sos.ms.gov/adminsearch/ACProposed/00024170a.pdf.

"The provisions of this chapter" include the express authority to regulate public utilities in furtherance of the Legislature's stated policy declarations.[17] Indeed, the Commission's jurisdiction is at its zenith when it adopts policy-based rules that speak directly to utility reliability, service quality and economic development.

Section 107.5 of the Rule authorizes, but does not require, rate-regulated gas and electric utilities to make certain investments in enabling technology and fiber optic infrastructure for the purpose of modernizing or improving their respective public utility services. Not only does enhanced service allow customers greater optionality for service offerings, it also ensures greater system resiliency. Including this provision in the Rule therefore represents a policy declaration by the Commission that these types of investments serve the public interest and have value for utilities and ratepayers alike.

It is undisputed that the Commission has authority over how utilities build, acquire, and manage their assets to provide and improve service and reliability. This includes, in one aspect, utility communications networks. Those networks are used to run a variety of critical functions necessary to deliver energy safely, reliably and efficiently. For instance, both Entergy and Mississippi Power Company have obtained approval to install and operate advanced metering infrastructure (AMI), which provides for two-way data transfer between the company and the meter. The

[17] *See* Miss. Code Ann. § 77-3-2(2).

ability to communicate remotely with and receive data from advanced meters is essential for optimizing the customer and operational benefits of AMI. Indeed, inferior quality or reliability of the connection to smart devices limits the quality and reliability of the technology, thereby driving down the true value of a smart grid.

Authorizing the extension of fiber optic infrastructure increases connectivity, thereby improving the viability of utility communication networks. This serves the public policy of "promot[ing] adequate, reliable and economic service to all citizens and residents of the state."[18] It also fosters economic development "to positively impact or in some manner promote the sale of electric energy or natural gas within [a utility's] certificated area."[19] As governments compete for investment from the private sector, grid reliability and a robust utility communication infrastructure are strong components of any pitch to attract new businesses. Regions with utilities boasting smart grid infrastructure have an advantage in attracting new industry, thereby furthering the Legislature's stated policy interest in "advanc[ing] the economic development of the state"[20] through public utility service.

In addition, the energy grid is moving from what historically has involved primarily unidirectional energy flows into a more fully integrated energy network, where energy flows bi-directionally between retail customers and utilities. Delivery efficiency and maintaining adequate reliability become increasingly important and

[18] Miss. Code Ann. § 77-3-2(1)(c).
[19] Miss. Code Ann. § 77-3-44.
[20] *See* Miss. Code Ann. § 77-3-2(1)(i).

also face new challenges as the energy system becomes more complex. Allowing utilities to modernize their systems through various types of enabling technology, fiber optic infrastructure and enhanced communications networks support the greater deployment of emerging demand-side management options, distributed energy resources, and other technologies. The investments authorized in Section 107.5 thus create value for customers through enhanced reliability, operational efficiencies, and increased access to new products and services.

Although AT&T contends the Rule, even as revised, presents a risk "that rate-regulated utilities could seek to ... have ratepayers subsidize their entry into the unregulated broadband market,"[21] the Commission disagrees. While the Rule notes that some utility communication technologies may carry a secondary benefit of enabling internet access,[22] nothing in the Rule authorizes regulated gas or electric utilities to enter into the broadband market or provide any other type of utility service. To the contrary, the Rule itself provides that a utility's rate recovery of enabling technology investments is contingent upon Commission approval via the formula rate plan (FRP). As discussed below, that annual FRP review includes an analysis of whether utility investments are prudently incurred and are used and useful to the utility's service.

In addition, the 25 x '25 Alliance expresses "deep concerns ... over the exemption" of these and other expenditures "from prudency reviews or cost/benefit

[21] *See* Supplemental Comments of AT&T at p. 3.
[22] *See* IRP Rule at Section 107.5.

analyses."[23] To alleviate those concerns, the Commission clarifies and reiterates that nothing in this Order or the IRP Rule relieves a regulated utility from its obligation to demonstrate the prudence of its investments prior to actually recovering those investments from Mississippi ratepayers. To that end, the text of Section 107.5 states that investments in enabling technology "shall be recorded to a regulatory asset to be included in the utility's rate base, ***subject to Commission approval in the utility's annual formula rate plan***...."[24] Thus, while the Commission is not requiring submission of a cost/benefit analysis before the utility makes the investment, the prudence of the actual costs spent will in fact be reviewed and either approved or disallowed via the utility's annual formula rate plan.

For all of these reasons, the inclusion of Section 107.5 in the attached IRP Rule represents a proper exercise of the Commission's statutory authority and legislative directive under the Public Utility Act.

IV.

As demonstrated in Section I, *supra*, the Rule attached as Exhibit "A" represents the culmination of a lengthy and thorough public rulemaking process. It also incorporates and reflects the input of nearly every party to this docket. Indeed, numerous intervenors acknowledged and commended the Commission for its careful consideration of party comments and for its inclusion of several recommendations in

[23] *See* Comments of the 25x'25 Alliance at pp. 3-4, Docket No. 2018-AD-64 (Nov. 18, 2019).
[24] *See* IRP Rule at Section 107.5 (emphasis added).

the proposed final draft.[25] For clarity and for all parties' ease of reference, the Commission presents the following summary and explanation of the additional substantive revisions that are reflected in the attached Rule.

A. General Edits for Clarification

Multiple parties commented that the original draft rule did not clearly identify which utilities were required to comply with which provisions of the Rule. In response to that feedback, the Commission revised the Rule to separately define electric utilities and gas utilities, and to clarify that only investor-owned, rate-regulated electric utilities are responsible for filing the IRP and Mid-Point Supply-Side Updates. The Commission further revised the Rule to clarify that both investor-owned, rate-regulated electric utilities, and investor-owned, rate-regulated gas utilities with more than 10,000 customers are responsible for filing the Annual Energy Delivery Plans. Thus, only those utilities with formulary rate plans are subject to the provisions of the attached Rule.

In addition, Section 105 of the Rule was revised to provide further clarity and specificity regarding the specific procedure utilities and stakeholders must follow when conducting the IRP cycle and filing the required reports.

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[25] *See, e.g.,* Nov. 18, 2019 Comments of the Southern Alliance for Clean Energy at p. 1 ("[S]everal intervenor recommendations have already been meaningfully incorporated into the most recent set of draft rules, leading to key improvements in the procedural schedule and enhancing treatment of energy efficiency resources."); Nov. 18, 2019 Supplemental Comments of AT&T at p. 2 ("AT&T commends and thanks the Commission for making these important changes."); Nov. 18, 2019 Comments of the R Street Institute at p. 2 ("R Street believes the proposed final draft shows a regulatory process that works for stakeholders and Mississippi's customers."); and Nov. 18, 2019 Comment by the Southern Renewable Energy Association at p. 1 ("Based on the final IRP text, it is clear that the Commission aims to create a high standard for stakeholder engagement.").

B. Stakeholder Involvement

The issue that received the most feedback in the filed comments was how much stakeholder involvement should be permitted throughout the resource planning process. On one side, industry group stakeholders advocated that stakeholders should be fully involved not only "in deciding and scrutinizing the preferred resource portfolio," but also "in developing key inputs, assumptions and scenarios to be analyzed by the utility."[26] On the other hand, utilities recommended that stakeholder involvement be limited to the submission of written comments after the IRP report has been filed.

The Commission agrees that "A key benefit of establishing an IRP process is the ability to develop a resource plan that reflects the interests of a broad range of stakeholders – not just the utility," and that the process must "include meaningful participation options for these stakeholders to provide input into the resource plan's development."[27] In addition, open stakeholder involvement supports the Commission's goal of increasing public transparency in the utility planning process. Nevertheless, The Commission finds that the ultimate responsibility for resource planning decisions must remain with the utility. Moreover, the Commission does not believe the public interest is best served by establishing an overly prescriptive stakeholder process, which could become protracted, inefficient, and unnecessarily

[26] *See* Comments by the Sierra Club on Proposed Rule at p. 6, Docket No. 2018-AD-64 (Oct. 1, 2019).
[27] *See* Comments of the 25 x '25 Alliance Regarding the Development and Adoption of a Rule Defining an Integrated Resource Planning Process at p. 2, Docket No. 2018-AD-64 (Aug. 1, 2018).

costly for customers. For these reasons, the Commission revised and expanded the stakeholder participation process for IRP in the following ways:

1. The Commission clarified the text of the Rule to specifically state that interested parties can and should execute nondisclosure agreements as soon as possible once a utility has filed its Notice of IRP cycle.

2. The Commission added two mandatory public stakeholder meetings to the IRP schedule in order to allow open discussion of inputs, assumptions, and resource options. The first workshop is to be conducted within thirty (30) days of the utility filing its Notice of IRP Cycle. The second workshop, which is a technical conference, must take place at least forty-five (45) days before the utility files its IRP report. The technical conference will only be open to those stakeholders that have executed nondisclosure agreements with the utility.

3. The Commission also added opportunities for stakeholders to file written comments within twenty-five (25) days of each workshop, provided the commenting party actually attended the workshop.

4. The Commission finally extended the applicable deadlines for party comment and discovery. Stakeholders now have sixty (60) days to file comments on the filed IRP report. The Mississippi Public Utilities Staff ("Staff") may file comments on the IRP report within eighty (80) days of the report's submission. All interested parties shall have thirty (30) days from the date of IRP filing to serve initial data requests, and utilities shall have one hundred (100) days from the date of filing to respond to written comments on their respective IRP reports.

Ultimately, the Commission finds that these revisions strike an appropriate balance that allows stakeholders to provide substantive input and feedback both during the IRP planning cycle and after the submission of the IRP report, while providing the utility sufficient flexibility to identify and present the resource portfolios that best-fit the utility's specific needs.

C. Strategic Load Growth, Promotional Practices and Fuel Switching as DSM

Atmos and CenterPoint both objected to the Commission's inclusion of strategic load growth efforts and promotional practices that encourage fuel switching from gas to electric under the umbrella of reasonable DSM programs. CenterPoint argues that, "fuel switching and load building promotional practices ... have resulted in inefficient and increased energy use at higher costs," and that "the 'strategic load growth' provisions of the proposed IRP Rule ... have the potential to significantly exacerbate [these] problems...."[28] According to Atmos, the reason for those inefficiencies is that "the direct use of natural gas is the most efficient and cost effective means of delivering energy."[29] Thus, the gas utilities requested that the Commission exclude from DSM portfolios "financial inducements that influence the customer to make a decision to switch from using natural gas to using electricity,"[30] and instead consider "policies which encourage conversion from

[28] *See* Comments of CenterPoint Mississippi at p. 3, Docket No. 2018-AD-64 (Oct. 1, 2019).
[29] *See* Written Comments of Atmos Energy Corp. at p. 7, Docket No. 2018-AD-64 (Feb. 19, 2019).
[30] *See* Oct. 1, 2019 Comments of CenterPoint Mississippi at p. 3.

electric to gas usage in homes and businesses ... as part of the Energy Delivery Plan of utilities."[31]

The Commission declines to incorporate any provision in the IRP Rule that either encourages or prohibits the conversion of one fuel type to another. The Public Utility Act precludes the Commission from taking any policy position that shows undue preference or advantage for a particular public utility service or that establishes "unfair or destructive competitive practices" for public utilities.[32] The Commission finds that the revisions Atmos and CenterPoint request would show an improper preference for gas service and unfairly disadvantage electric service. As such, all references to fuel switching and promotional practices within the Annual Energy Delivery Plan section of the attached Rule have been deleted.

Other parties, such as SEEA, have commented that the Commission should clarify the criteria strategic load growth programs must satisfy to ensure that the programs actually benefit customers without increasing utility system costs in a manner that undermines the energy efficiency goals of the Rule. The 25 x '25 Alliance similarly commented that, "Any reference to strategic load growth in the IRP process should not be associated with an increase in peak load."[33] The Commission finds that these comments are well-taken. Accordingly, Section 107.1(a) of the attached Rule has been revised to require that utilities seek commission approval of any strategic load growth programs in order to ensure that

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[31] *See* Feb. 19, 2019 Written Comments of Atmos Energy Corp. at p. 7.
[32] Miss. Code Ann. § 77-3-2(d).
[33] *See* Comments of the 25 x'25 Alliance at p. 11, Docket No. 2018-AD-64 (Oct. 1, 2019).

such programs are beneficial to all customers and do not conflict with the policy goals of energy efficiency.

D. Cost-Effectiveness Evaluations for DSM and Third Party EM&V

Multiple parties expressed concerns that the draft Rule failed to specify the requirements for cost-effectiveness testing and evaluation, measurement, and verification (EM&V) of utility DSM programs. The commenters argued that such provisions are necessary "to ensure that demand-side managements are, in fact, saving more money than they cost."[34] The Commission generally agrees with these comments. Therefore, under the attached Rule, utilities must demonstrate that they have evaluated the cost-effectiveness of their DSM programs at the portfolio level and they must include such analyses as an exhibit to their filed Annual Energy Delivery Plans. Moreover, Staff retains the right to recommend the imposition of savings targets if the information being submitted indicates a lack of cost-effectiveness.[35]

The Commission does not, however, agree that only third-party evaluators should be used to conduct EM&V. The attached Rule requires utilities:

> ...to provide [the] analyses used in evaluating demand-side management investments to the Staff and any public witnesses in conjunction with the Evaluation of Demand-Side Management Offerings. ***Where a utility chooses not to make its analyses available, the utility shall contract with an independent third-party vendor to conduct EM&V***, utilizing accepted industry standards, and shall file the report of the third-party vendor with the Commission.[36]

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[34] *See* Comments of Southeast Energy Efficiency Alliance at p. 4, Docket No. 2018-AD-64 (Oct. 1, 2019).
[35] *See* Integrated Resource Planning and Reporting Rule at Sec. 107.6 (attached as Exhibit "A").
[36] *See id.* at Sec. 107.1(c) (attached as Exhibit "A") (emphasis added).

In addition, "If Staff believes the use of consultants is necessary or helpful in its review of a utility's EM&V analyses, the utility shall be required to pay for the cost of such consultants and allowed to recover said costs in rates."[37] The Commission finds this to be a balanced approach that will ensure that EM&V analyses remain unbiased, without unnecessarily driving up costs for consumers.

E. Mechanism for Enforcement of IRP

Multiple parties commented that the proposed IRP rule lacked a meaningful enforcement mechanism to ensure that utilities' ultimate resource acquisitions accurately reflect the portfolios they identify in their IRP reports. Parties also suggested that the Commission incorporate a strict process by which it would formally adopt or reject a utility's filed IRP plan.

As a preliminary matter, Section 105.9 of the Rule plainly allows the Commission to "require the utility to re-evaluate and resubmit its Integrated Resource Plan for the current planning cycle to address any concerns raised in the comments or expressed by the Staff or Commission." In addition, the Commission has the option to retain consultants to assist in its review of any IRP reports. However, as the Rule itself notes, the Commission is not interested in using IRP as a way to circumvent the existing requirements for certificate proceedings or prudency reviews. Doing so would contradict existing statutory directives of the Public Utility Act and supporting law.

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[37] *See id.*

The Commission finds that the public interest is better-served when utilities retain some flexibility so they can respond to unforeseen circumstances or pursue different resource options if new information arises that warrants or requires such a change. It is for this reason that the Commission included a mandatory Mid-Point Supply-Side Update in the Rule, which requires that, "[a]ny previously undisclosed capacity needs that are identified in the Mid-Point Supply Side Update ***shall*** be supported by good cause explanation."[38]

In addition to presenting this "good cause explanation," utilities must continue to go through the full process of obtaining a Certificate of Public Convenience and Necessity before they actually obtain new resources. Those certificate proceedings allow the Commission yet another opportunity to carefully review whether the resource(s) sought best serve the public interest. Nevertheless, the Commission takes this opportunity to reiterate that it fully expects utilities subject to Rule to produce IRP filings in good faith, as planning tools that will in fact guide future resource decisions. The Commission also reserves its right to hold any utility accountable if the record suggests that the utility has presented one resource acquisition strategy in IRP, but then pursues a wholly different plan via a separate docket because it better-serves the utility's business interests.

F. Definition of Distributed Energy Resources

Three (3) of the seven (7) parties that submitted supplemental comments requested that the Commission revise the definition of Distributed Energy

[38] *See* Integrated Resource Planning and Reporting Rule at Section 106 (attached as Exhibit "A") (emphasis added).

Resources (DER) to reflect the definition used by the National Association of Regulatory Utility Commissioners (NARUC) in its DER Rate Design and Compensation Manual. As explained by the R Street Institute, "The definition [originally] proposed by the Commission appears to limit DER to only those resources owned or under the control of the monopoly utility. By restricting the types of DER to those owned by the utility, [the definition] limits the broader use of DER in the context of a utility's resource management program."[39] The Commission finds this suggestion to be well-taken. Accordingly, the definition of DER in the attached Rule has been revised to read as follows:

> A DER is a resource sited close to customers that can provide all or some of their immediate electric power needs and can also be used by the system to either reduce demand (such as energy efficiency) or provide supply to satisfy energy, capacity, or ancillary service needs of the distribution grid. The resources, if providing electricity or thermal energy, are small in scale, connected to the distribution system, and close to load. Examples of different types of DER include solar photovoltaic (PV), wind, combined heat and power (CHP), energy storage, demand response (DR), electric vehicles, microgrids, and energy efficiency (EE). For purposes of this Rule, DER also includes utility-owned or controlled equipment (i.e. physical assets) used to generate, adjust, store, or sometimes deliver energy performed by a variety of devices at the distribution system-level.

The Commission notes that the use of this definition for utility planning proposes under the attached IRP Rule is not intended to modify or affect a utility's treatment of Renewable Energy Net Metered Interconnection Customers (RENMICs) under the Mississippi Renewable Energy Net Metering Rule.

[39] *See* Comments by the R Street Institute at p. 2, Docket No. 2018-AD-64 (Nov. 18, 2019).

G. Cost Recovery of DSM Investments

In their original comments on the first draft Rule, the Southeast Energy Efficiency Association (SEEA) commented, "If utilities may earn both a financial incentive *and* a higher overall rate of return through a performance-based rate adjustment, it could potentially result in utility overearning and unnecessarily high costs to consumers."[40] The Commission appreciates this observation and accordingly deleted the language in Section 107.1(c) that gave utilities the additional option of proposing DSM as a metric to their performance-based rate adjustments.

The Commission finds that utilities are appropriately incentivized to implement strong DSM programs when they are given the opportunity to earn a return on the cost of those programs. Treating demand-side management as a resource both for purposes of earning a fair return and recovering program costs through a single mechanism (formulary rate plans), places DSM on equal footing with supply-side investments. Nevertheless, safeguards are needed to ensure that utilities do not attempt to manipulate or unfairly account for their DSM expenses. Therefore, the Commission further revised the cost-recovery provisions of the Annual Energy Delivery Plan[41] in the following ways:

1. The Commission added a sentence noting that reduced revenues from energy efficiency measures are already addressed in formulary rate plans.

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[40] *See* Comments of Southeast Energy Efficiency Alliance at p. 7, Docket No. 2018-AD-64 (Oct. 1, 2019).

[41] *See* Integrated Resource Planning and Reporting Rule at Section 107.1(c) (attached as Exhibit "A).

2. The Commission added a requirement that utilities identify the DSM investments they wish to capitalize, along with the proposed amortization period for each, when they file their Annual Energy Delivery Plan.

3. The Commission built in an additional option for Staff to review and comment on the utilities' DSM cost-recovery mechanisms every three (3) years; and

4. The Commission added language that gives Staff the ability to retain consultants to assist with EM&V review if needed.

The Commission finds that these changes strike an appropriate balance that will both incentivize utilities to implement effective DSM programs, while providing sufficient safeguards for utility customers. As the Southern Alliance for Clean Energy correctly observed in its supplemental comments, the revisions to Section 107.1(c) aim to ensure that "DSM resources are truly optimized within the IRP and [that] costs to customers are accounted for fairly."[42]

V.

Several parties have recommended that the Commission conduct an automatic review of the attached Rule at some specified point following the completion of the first full resource planning cycle. The Commission agrees that automatic reopeners of new rulemakings can be useful. Therefore, on the sixth anniversary of the enactment of this Rule, and after the completion of two (2) full integrated resource planning cycles, the Commission shall reopen this docket to

[42] *See* Nov. 18, 2019 Comments of the Southern Alliance for Clean Energy at p. 2.

consider the efficacy and fairness of the Integrated Resource Planning and Reporting Rule, and to revise or modify that Rule to the extent necessary.

VI.

Having considered the law, the comments filed, the testimony presented at the hearing, and the entirety of the record, the Commission finds that the Final Proposed Rule attached as Exhibit "A" provides fair regulation within the interest of the public. In addition to providing public transparency regarding electric utilities' long-term resource planning processes, the attached rule establishes a workable framework for resource planning that can be tailored to the specific needs of Mississippi customers, while allowing both regulators and stakeholders to remain engaged and informed during the planning process.

IT IS THEREFORE ORDERED that the attached Integrated Resource Planning and Reporting Rule is hereby adopted as modified. The revisions to Rule 29 shall be included in the next bound publication of the Public Utility Rules of Practice and Procedure. The Executive Secretary is directed to transmit a copy of this Final Order to the Secretary of State's Office in accordance with the Mississippi Administrative Procedures Act. The Executive Secretary is also directed to transmit a copy of this Final Order to any known parties of interest and shall publish notice of same according to applicable law.

IT IS FURTHER ORDERED that this Order and the attached Rule shall become effective thirty (30) days after filing with the Secretary of State's Office and shall be deemed issued on the day it is served upon the intervening parties of record

by the Executive Secretary of this Commission who shall note the service date in the file of this Docket.

SO ORDERED, this the 22nd day of November, 2019.

Chairman Brandon Presley voted aye; Vice Chairman Cecil Brown voted aye; Commissioner Samuel F. Britton voted NO.

MISSISSIPPI PUBLIC SERVICE COMMISSION

BRANDON PRESLEY, CHAIRMAN

CECIL BROWN, VICE CHAIRMAN

SAMUEL F. BRITTON, COMMISSIONER

ATTEST: A TRUE COPY

KATHERINE COLLIER
Executive Secretary

Effective this, the 22nd day of November, 2019