

4 CSR 240-20.094 Demand-Side Programs

PURPOSE: This amendment...

(1) The definitions of terms used in this section can be found in 4 CSR 240-20.092 Definitions for Demand-Side Programs and Demand-Side Program Investment Mechanisms, which is incorporated by reference.

~~(2) Guideline to Review Progress Toward an Expectation that the Electric Utility's Demand-Side Programs Can Achieve a Goal of All Cost Effective Demand Side Savings. The goals established in this section are not mandatory and no penalty or adverse consequence will accrue to a utility that is unable to achieve the listed annual energy and demand savings goals.~~

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

- ~~1. For the utility's approved first program year 2012: three-tenths percent (0.3%) of total annual energy and one percent (1.0%) of annual peak demand;~~
- ~~2. For the utility's approved second program year 2013: five-tenths percent (0.5%) of total annual energy and one percent (1.0%) of annual peak demand;~~
- ~~3. For the utility's approved third program year 2014: seven-tenths percent (0.7%) of total annual energy and one percent (1.0%) of annual peak demand;~~
- ~~4. For the utility's approved fourth program year 2015: nine-tenths percent (0.9%) of total annual energy and one percent (1.0%) of annual peak demand;~~
- ~~5. For the utility's approved fifth program year 2016: one-and-one-tenth percent (1.1%) of total annual energy and one percent (1.0%) of annual peak demand;~~
- ~~6. For the utility's approved sixth program year 2017: one-and-three-tenths percent (1.3%) of total annual energy and one percent (1.0%) of annual peak demand;~~
- ~~7. For the utility's approved seventh program year 2018: one-and-five-tenths percent (1.5%) of total annual energy and one percent (1.0%) of annual peak demand;~~
- ~~8. For the utility's approved eighth program year 2019: one-and-seven-tenths percent (1.7%) of total annual energy and one percent (1.0%) of annual peak demand; and~~
- ~~9. For the utility's approved ninth and subsequent program years 2020 and for subsequent years, unless additional energy savings and demand savings goals are established by the commission: one-and-nine-tenths percent (1.9%) of total annual energy and one percent (1.0%) of annual peak demand each year.~~

For the utility's approved fourth and subsequent program years...

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

- ~~1. For the utility's approved first program year 2012: three-tenths percent (0.3%) of total annual energy and one percent (1.0%) of annual peak demand;~~
- ~~2. For the utility's approved second program year 2013: eight-tenths percent (0.8%) of total annual energy and two percent (2.0%) of annual peak demand;~~

~~3. For the utility's approved third program year 2014: one and five tenths percent (1.5%) of total annual energy and three percent (3.0%) of annual peak demand;~~
~~4. For the utility's approved fourth program year 2015: two and four tenths percent (2.4%) of total annual energy and four percent (4.0%) of annual peak demand;~~
~~5. For the utility's approved fifth program year 2016: three and five tenths percent (3.5%) of total annual energy and five percent (5.0%) of annual peak demand;~~
~~6. For the utility's approved sixth program year 2017: four and eight tenths percent (4.8%) of total annual energy and six percent (6.0%) of annual peak demand;~~
~~7. For the utility's approved seventh program year 2018: six and three tenths percent (6.3%) of total annual energy and seven percent (7.0%) of annual peak demand;~~
~~8. For the utility's approved eighth program year 2019: eight percent (8.0%) of total annual energy and eight percent (8.0%) of annual peak demand; and~~
~~9. For the utility's approved ninth and subsequent program years 2020 and for subsequent years, unless additional energy savings and demand savings goals are established by the commission: nine and nine tenths percent (9.9%) of total annual energy and nine percent (9.0%) of annual peak demand for 2020, and then increasing by one and nine tenths percent (1.9%) of total annual energy and by one percent (1.0%) of annual peak demand each year after 2020.~~

~~(2) Utility Market Potential Study. Market potential studies provide goals energy efficiency potential for utility programs and may be used as a guidelines to help the utility determine how to make review the utility's progress towards meeting the an expectation that the electric utility's demand side programs can achieve a goal of all cost effective demand side savings. A potential study is a quantitative analysis of the amount of energy savings that either exists, is cost-effective, or could be realized through the implementation of energy efficiency programs and policies~~

~~(A) The market potential study shall:~~

- ~~1. Consider both Use primary and secondary data and analysis for the utility's service territory;~~
- ~~2. Use census data and/or GIS mapping data;~~
- ~~3. Include the determination of whether to conduct a market potential study for the utility's service territory or for all statewide investor-owned electric utilities shall be at the discretion of the electric utility;~~
- ~~4. Be updated with primary data and analysis no less frequently than every four (4) years. To the extent that primary data for each utility service territory is unavailable or insufficient, the market potential study may also rely on or be supplemented by data from secondary sources and relevant data from other geographic regions;~~
- ~~5. Be prepared by an independent third party;~~
- ~~6. Include a target of at least 5 percent for low income programs; and,~~
- ~~7. Include an analysis of non-energy benefits.~~

~~(B) The utility shall provide an opportunity for commission staff and stakeholder review and input in the planning stages of the potential study including review of assumptions, —and methodology, and non-energy benefits in advance of the performance of the study.~~

(3) Applications for Approval of Electric Utility Demand-Side Programs or Program Plans. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission for approval of demand-side programs or program plans.

~~(A) Prior to filing an application for approval of electric utility demand-side programs or program plans, the electric utility shall hold a stakeholder advisory meeting to receive input on the following components of its proposed DSM filing:~~

~~1. Avoided probable environmental costs;~~

~~2. Net-to-gross formula, including whether free ridership, spillover, rebound and market effects will be included in the calculation;~~

~~3. Calculation of net shared benefits;~~

~~4. Inclusion of energy efficiency programs from any source.~~

~~(B) As part of its application for approval of electric utility demand-side programs or program plans, the electric utility shall file or provide a reference to the commission case that contains any of the following information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.~~

1. A current market potential study. If the market potential study of the electric utility that is filing for approval of demand-side programs or a demand-side program plan is part of a statewide investor-owned electric utilities market potential study, the sampling methodology shall reflect each utility's service territory and shall provide statistically significant results for that utility;

A. ~~1.~~ Complete documentation of all assumptions, definitions, methodologies, sampling techniques, and other aspects of the current market potential study;

B. ~~2.~~ Clear description of the process used to identify the broadest possible list of measures and groups of measures for consideration;

2. ~~Clear~~ description of the process used to determine technical potential, economic potential, maximum achievable potential, and realistic achievable potential for a twenty (20)-year planning horizon for major end-use groups (e.g., lighting, space heating, space cooling, refrigeration, motor drives, etc.) for each customer class; and

3. Identification and discussion of the twenty (20)-year baseline energy and demand forecasts. If the baseline energy and demand forecasts in the current market potential study differ from the baseline forecasts in the utility's most recent 4 CSR 240-22 triennial compliance filing, the current market potential study shall provide a comparison of the two (2) sets of forecasts and a discussion of the reasons for any differences between the two (2) sets of forecasts. The twenty (20)-year baseline energy and demand forecasts shall account for the following:

A. Discussion of the treatment of all of the utility's customers who have opted out;

B. Changes in building codes and/or appliance efficiency standards;

C. Changes in customer combined heat and power applications; and

D. ~~Third party and other~~ naturally occurring demand-side savings.

(B) Demonstration of cost-effectiveness for each demand-side program and for the total of all demand-side programs of the utility. At a minimum, the electric utility shall include:

1. The total resource cost test and a detailed description of the utility's avoided cost calculations and all assumptions used in the calculation. To the extent that the portfolio of programs fails to meet the TRC test, the utility shall examine whether the failure persists if it considers a reasonable range of uncertainty in the assumptions used to calculate avoided costs;

2. The utility shall also include calculations for the utility cost test, the participant test, the non-participant test, and the societal cost test. All tests may include quantifiable Non Energy Benefits; and

3. The impacts on annual revenue requirements and net present value of annual revenue requirements as a result of the integration analysis in accordance with 4 CSR 240-22.060 over the twenty (20)-year planning horizon.

(C) Detailed description of each proposed demand-side program to include at least:

1. Customers targeted;
2. Measures included;
3. Customer incentives;
4. Proposed promotional techniques;
5. Specification of whether the program will be administered by the utility or a contractor;
6. Projected gross and net annual energy savings;
7. Proposed annual energy savings targets and cumulative energy savings targets;
8. Projected gross and net annual demand savings;
9. Proposed annual demand savings targets and cumulative demand savings targets;
10. Net-to-gross factors;
11. Size of the potential market and projected penetration rates;
12. Any market transformation elements included in the program and an EM&V plan for estimating, measuring, and verifying the energy and capacity savings that the market transformation efforts are expected to achieve;
13. EM&V plan including at least the proposed evaluation schedule and the proposed approach to achieving the evaluation goals pursuant to 4 CSR 240-20.093(7);
14. Budget information in the following categories:
 - A. Administrative costs listed separately for the utility and/or program administrator;
 - B. Program incentive costs;
 - C. Estimated equipment costs;
 - D. Estimated installation costs;
 - E. EM&V costs; and
 - F. Miscellaneous itemized costs, some of which may be an allocation of total costs for overhead items such as the market potential study or the statewide technical reference manual;
15. Description of any strategies used to minimize free riders;
16. Description of any strategies used to maximize spillover; and
17. For demand-side program plans, the proposed implementation schedule of individual demand-side programs.

(D) Demonstration and explanation in quantitative and qualitative terms of how the utility's demand-side programs are expected to make progress towards a goal of achieving all cost-effective demand-side savings over the life of the programs. Should the expected demand-side savings fall short of the incremental annual demand-side savings levels and/or the cumulative demand-side savings levels used to review the utility's progress, the utility shall provide detailed explanation of why the incremental annual demand-side savings levels and/or the cumulative demand-side savings levels cannot be expected to be achieved, and the utility shall bear the burden of proof.

~~(E) Identification of demand-side programs which are supported by the electric utility and at least one (1) other electric or gas utility (joint demand-side programs).~~

(3) Designation of Program Pilots. For programs designed to operate on a limited basis for evaluation purposes before full implementation (program pilot), the utility shall provide as much of the information required under subsections (2)(C) through (E) of this rule as is practical and shall include explicit questions that the program pilot will address, the means and methods by which the utility proposes to address the questions the program pilot is designed to address, a provisional cost-effectiveness evaluation, the proposed geographic area, and duration for the program pilot.

(F) Any existing demand-side program with tariff sheets in effect prior to the effective date of this rule shall be included in the initial application for approval of demand-side programs if the utility intends for unrecovered and/or new costs related to the existing demand-side program be included in the DSIM cost recovery revenue requirement and/or if the utility intends to establish a utility lost revenue component of a DSIM or a utility incentive component of a DSIM for the existing demand-side program. The commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of demand-side program plans within one hundred ~~twenty-eighty~~ (128) days of the filing of an application under this section only after providing the opportunity for a hearing. In the case of a utility filing an application for approval of an individual demand-side program, the commission shall approve, approve with modification acceptable to the electric utility, or reject applications within sixty (60) days of the filing of an application under this section only after providing the opportunity for a hearing.

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

1. Are consistent with a goal of achieving all cost-effective demand-side savings;
2. Have reliable evaluation, measurement, and verification plans; and
3. Are included in the electric utility's preferred plan or have been analyzed through the integration process required by 4 CSR 240-22.060 to determine the impact of the demand-side programs and program plans on the net present value of revenue requirements of the electric utility.

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

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

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

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

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

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

(4) Applications for Approval of Modifications to Electric Utility Demand-Side Programs. (A) Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility

1. s shall file an application with the commission for modification of demand-side programs by ~~filing information and documentation required by 4 CSR 240-3.164(4)~~ when there is a variance of twenty percent (20%) or more in the approved demand-side plan three (3)-year budget and/or any program design modification which is no longer covered by the approved tariff sheets for the program.

2. May file an application with the commission for modification of demand-side programs as follows:

A. Reallocation of funds among programs;

B. Changes in allocation based on contract implementers input, such as if a program is not working.

3. The application shall include a complete explanation for and documentation of the proposed modifications to each of the filing requirements in section (3). All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

4. The electric utility shall serve a copy of its application to the Office of Public Counsel and all other parties to the case under which the Demand-Side Programs were approved.

5. The parties shall have thirty (30) days from the date of filing of an application to object to the application to modify.

6. If no objection is raised within 30 days, the commission shall approve, approve with modification acceptable to the electric utility, or reject such applications for approval of modification of demand-side programs within ~~thirty~~forty-five (3045) days of the filing of an application under this section, subject to the same guidelines as established in ~~subsections (3)(A) through (C),~~

7. If objections to the application are raised, the Commission shall only after providing the opportunity for a hearing.

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

(5) Applications for Approval to Discontinue Electric Utility Demand-Side Programs. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission to discontinue demand-side programs.

(A) The application shall include the following information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

1. Complete explanation for the utility's decision to request to discontinue a demand-side program.

2. EM&V reports for the demand-side program in question.

3. Date by which a final EM&V report for the demand-side program in question will be filed.

~~by filing information and documentation required by 4 CSR 240-3.164(5).~~

(B) The commission shall approve or reject such applications for discontinuation of utility demand-side programs within thirty (30) days of the filing of an application under this section only after providing an opportunity for a hearing.

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

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

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

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

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

A. Lists of all energy efficiency measures with all work papers to show energy savings and demand savings. This includes engineering studies, cost benefit analysis, etc.;

B. Documentation of anticipated lifetime of installed energy efficiency measures; and

C. Invoices and payment requisition papers.

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

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

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

1. Customer's legal name;

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

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

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

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

(F) Timing and Effect of Opt-Out Provisions.

1. A customer notice of opt-out shall be received by the utility no earlier than September 1 and not later than October 30 to be effective for the following calendar year.

2. A customer who has received acknowledgement of opt-out pursuant to Section (6)(A)3 shall file, no earlier than September 1 and not later than October 30 of the third year from which the most recent acknowledgement was received, a renewal notice to continue opt-out. Such renewal notice shall include a demonstration of continued compliance consistent with the requirements of Section (6)(A)3.

3. For that calendar year in which the customer receives acknowledgement of opt-out and each successive calendar year until the customer either revokes the notice pursuant to subsection (6)(H), or is notified the customer no longer satisfies the requirements of Section (6)(A)3, none of the costs of approved demand-side programs of an electric utility offered pursuant to 4 CSR 240-20.093, 4 CSR 240-20.094, ~~4 CSR 240-3.163, and 4 CSR 240-3.164~~ or by other authority and no other charges implemented in accordance with section 393.1075, RSMo, shall be assigned to any account of the customer, including its affiliates and subsidiaries listed on the customer's written notification of opt-out.

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

(H) Revocation. A customer may revoke an opt-out by providing written notice to the utility and commission two to four (2-4) months in advance of the calendar year for which it will become eligible for the utility's demand-side program's costs and benefits. Any customer revoking an opt-out to participate in a program will be required to remain in the program for the number of years over which the cost of that program is being recovered, or until the cost of their participation in that program has been recovered.

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

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

(7) Tax Credits and Monetary Incentives.

(A) Any customer of an electric utility who has received a state tax credit under sections 135.350 through 135.362, RSMo, or under sections 253.545 through 253.559~~61~~, RSMo, shall not be eligible for participation in any demand-side program offered by a utility if such program offers the customer a monetary incentive to participate. The provisions of this subsection shall not apply to any low income customer who would otherwise be eligible to participate in a demand-side program that is offered by a utility to low income customers.

(B) As a condition of participation in any demand-side program offered by an electric utility under this section, when such program offers a monetary incentive to the customer, the customer shall attest to non-receipt of any tax credit listed in subsection (7)(A) and acknowledge that the penalty for a customer who provides false documentation is a class A misdemeanor. The electric utility shall maintain documentation of customer attestation and acknowledgement for the term of the demand-side program and three (3) years beyond.

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

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

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

(8) Collaborative Guidelines.

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

(B) State-Wide Collaboratives.

1. Electric utilities and their stakeholders shall form a state-wide advisory collaborative to:

~~1) A. Create a statewide technical resource manual that includes values for deemed savings;~~

~~2) B. Create a statewide market potential study;~~

~~3) C. provide the opportunity for the sharing, among utilities and other stakeholders, of lessons learned from demand-side program planning and implementation, and~~

~~4) D. create a forum for discussing statewide policy issues.~~

2. Within sixty (60) days of the effective date of this rule, commission staff shall file, with the commission, a charter for the statewide advisory collaborative.

3. Collaborative meetings ~~are encouraged to~~ shall occur at least ~~once each calendar year~~ semi-annually. Additional meetings or conference calls will be scheduled as needed and approved by a majority of the voting members of the collaborative. Staff shall schedule the meetings, provide notice of the statewide collaborative meetings and any interested persons may attend such meetings.

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

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

AUTHORITY: sections 393.1075.11 and 393.1075.15, RSMo Supp. 2010. Original rule filed Oct. 4, 2010, effective May 30, 2011.*

**Original authority: 393.1075, RSMo 2009.*