

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

**PROPOSED RULE**

**4 CSR 240-20.094 Demand-Side Programs**

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

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

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

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

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

(DE) Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include: avoided utility costs resulting from energy cost savings and demand cost savings associated with generation, transmission and distribution facilities and avoided probable environmental costs.

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

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

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

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

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

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

(K) DSIM cost recovery revenue requirement means the revenue requirement approved by the commission in a general rate proceeding or a semi-annual DSIM rate adjustment case to allow recovery of costs of demand-side programs with interest.

(L) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission in a general rate proceeding to provide the utility with a portion of annual net shared benefits based on the achieved performance level of approved demand-side programs demonstrated through energy and demand savings measured and documented through EM&V reports compared to energy and demand savings targets.

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

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

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

(P) Evaluation, measurement and verification or EM&V means the performance of studies and activities intended to evaluate the process of and to estimate the energy and demand savings and other effects from demand-side programs.

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

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

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

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

(2) Guideline to demonstrate review progress toward an expectation that ~~thean~~ electric utility's demand-side programs ~~canare expected to~~ achieve a goal of all cost-effective demand-side savings.

(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 demonstrate review progress toward an expectation that the electric utility's demand-side programs ~~canare expected to~~ achieve a goal of all cost-effective demand-side savings.

1. For 2012: 0.3% of total annual energy and 1.0% of annual peak demand;
2. For 2013: 0.5% of total annual energy and 1.0% of annual peak demand;
3. For 2014: 0.7% of total annual energy and 1.0% of annual peak demand;
4. For 2015: 0.9% of total annual energy and 1.0% of annual peak demand;
5. For 2016: 1.1% of total annual energy and 1.0% of annual peak demand;
6. For 2017: 1.3% of total annual energy and 1.0% of annual peak demand;
7. For 2018: 1.5% of total annual energy and 1.0% of annual peak demand;
8. For 2019: 1.7% of total annual energy and 1.0% of annual peak demand; and
9. For 2020 and for subsequent years, unless additional energy savings and demand savings goals are established by the commission: 1.9% of total annual energy and 1.0% of annual peak demand each year.

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

1. For 2012: 0.3% of total annual energy and 1.0% of annual peak demand;
2. For 2013: 0.8% of total annual energy and 2.0% of annual peak demand;
3. For 2014: 1.5% of total annual energy and 3.0% of annual peak demand;
4. For 2015: 2.4% of total annual energy and 4.0% of annual peak demand;
5. For 2016: 3.5% of total annual energy and 5.0% of annual peak demand;
6. For 2017: 4.8% of total annual energy and 6.0% of annual peak demand;
7. For 2018: 6.3% of total annual energy and 7.0% of annual peak demand;
8. For 2019: 8.0% of total annual energy and 8.0% of annual peak demand; and
9. For 2020 and for subsequent years, unless additional energy savings and demand savings goals are established by the commission: 9.9% of total annual energy and 9.0% of annual peak demand each year for 2020, and then increasing by 1.9% of total annual energy and by 1.0% of annual peak demand each year after 2020.

(3) Applications for approval of electric utility demand-side programs or program plans. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission for approval of demand-side programs or program plans by filing information and documentation required by 4 CSR 240-3.164(2). Any existing demand-side program with tariff sheets in effect prior to the effective date of this rule shall be included in the initial application for approval of demand-side programs if the utility intends for unrecovered and/or new costs related to the existing demand-side program be included in the DSIM cost recovery revenue requirement and/or if the utility intends to establish a DSIM utility incentive revenue requirement for the existing demand-side program.

~~Demand-side program plans shall be filed by the utility no less than every three (3) years.~~—The commission shall approve, approve with modification acceptable to the electric utility or reject such applications for approval of demand-side program plans within one hundred twenty (120) days of the filing of an application under this section only after providing the opportunity for a hearing. In the case of a utility filing an application for approval of an individual demand-side program, the commission shall approve, approve with modification acceptable to the electric utility or reject applications within sixty (60) days of the filing of an application under this section only after providing the opportunity for a hearing.

(A) For demand-side programs and program plans that have a total resource cost test ratio greater than one (1.0), 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 submittal requirements of 4 CSR 240-3.164(2) and the demand-side programs and program plans:

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

(B) The commission shall approve demand-side programs having a total resource cost test less than one (1.0) 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 submittal requirements of 4 CSR 240-3.164(2), the program or program plan is in the public interest, and meets the requirements ~~as~~ stated in subsection (A)2.-4.

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

(C) The commission shall approve demand-side programs which have a total resource cost test less than one (1.0), if the commission finds the utility has met the filing and submittal requirements of 4 CSR 240-3.163(2) and the costs of such programs above the level determined to be cost-effective are funded by the customers participating in the programs or through tax or other governmental credits or incentives specifically designed for that purpose and meet the requirements as stated in subsection (A)2.-4.

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

(4) Applications for approval of modifications to electric utility demand-side programs. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility shall file an application with the commission for modification of demand-side programs by filing information and documentation required by 4 CSR 240-3.164(4) when there is a variance of twenty percent (20%) or more in the approved demand-side program annual budget and/or any program design modification which is no longer covered by the approved tariff sheets for the program. The commission shall approve, approve with modification acceptable to the electric utility or reject such applications for approval of modification of demand-side programs within sixty (60) days of the filing of an application under this section, subject to the same guidelines as established in section (3)(A) through (C), only after providing the opportunity for a hearing.

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

(5) Applications for approval to discontinue electric utility demand-side programs. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission to discontinue demand-side programs by filing information and documentation required by 4 CSR 240-3.164(5). The commission shall approve, ~~approve with modification acceptable to the electric utility~~ or reject such applications for discontinuation of utility demand-side programs within sixty (60) 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 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 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 months;

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

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

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

(B) Written notification of opt-out from customers meeting the criteria under section (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 section (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 submit the notice of opt-out 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 section (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/or submit the notice of opt-out through ~~the commission's electronic filing and information system (EFIS)~~ as a non-case related filing.

~~(C) Upon receipt by staff of written notification of opt-out from customers meeting the criteria under section (6)(A)3., staff shall make a non-case related filing in EFIS.~~

~~(CD)~~ 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 programs benefits and costs; and

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

~~(DE)~~ For customers filing notification of opt-out under section (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.



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

(~~FG~~) Timing and effect of opt-out provisions. A customer notice shall be received by the utility no earlier than September 1 and not later than October 30 to be effective for the following calendar year. For that calendar year and each successive calendar year until the customer revokes the notice pursuant to subsection (I), 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.

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

(~~HI~~) Revocation. A customer may revoke an opt-out by providing written notice to the utility and commission ~~not less than~~ fourteen ~~twelve~~ (1~~4~~2) to sixteen (16) months in advance of the calendar year for which it will become eligible for the utility's demand-side programs costs and benefits.

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

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

(7) Tax credits and monetary incentives.

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

(B) As a condition of participation in any demand-side program offered by an electric utility under this section, when such program offers a monetary incentive to the customer, the customer shall attest to non-receipt of any tax credit listed in subsection (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 opt-out period and three 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 subsection (7)(B) and (C) to the commission and/or staff.

(8) Collaborative guidelines. Each electric utility and its stakeholders are encouraged to form an utility-specific advisory collaborative for the design, implementation and review of demand-side programs as well as the preparation of market potential studies ~~design and implementation of a statewide technical reference manual~~. This collaborative process may take place simultaneously with the collaborative process related to demand-side programs for 4 CSR 240-22 ~~and may also include statewide collaborative meetings~~. Collaborative meetings are encouraged to occur at least once each calendar quarter.

The electric utilities are also encouraged to meet on a statewide basis bi-annually in order to share program successes and challenges, discuss program design and development, and to make recommendations on statewide policy issues, including a technical reference manual. The electric utilities shall inform all demand side program stakeholders of the statewide collaborative meetings and such stakeholders 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: section 393.1075, RSMo 2009*