

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Establishment of a Working)
Case for the Review and Consideration of a) Case No. AW-2018-0385
Rewrite of the Existing Electric and Gas Promotional)
Practices Rule Into One Rule)

**EVERGY METRO’S AND EVERGY MISSOURI WEST’S
SUPPLEMENTAL COMMENTS ON PROPOSED RULES REGARDING ELECTRIC
UTILITY AND NATURAL GAS UTILITY PROMOTIONAL PRACTICES**

COMES NOW, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“Evergy Metro”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“Evergy Missouri West”)(collectively, “Evergy”) hereby responds to the Staff (“Staff”) for the Missouri Public Service Commission’s (“Commission”) *Request for Additional Comments and Notice of Workshop* filed in this docket on January 30, 2020, and states as follows:

**OPC’S PROPOSAL TO ELIMINATE
PROMOTIONAL PRACTICE RULES IS NOT REASONABLE**

1. To Evergy, it appears that the Promotional Practices rule has served its purpose reasonably well over the years by preventing wasteful competition between energy service providers seeking to obtain growth in use of the service they provide. Evergy believes that the objective of preventing wasteful competition between energy service providers – namely, electric and gas utilities – continues to be reasonable and therefore opposes the idea raised by the Office of the Public Counsel (“OPC”) during the workshop held on January 21, 2020, of largely eliminating restrictions on utility promotional practices while simultaneously banning rate recovery of costs incurred by utilities on initiatives designed to promote growth in use of the service they provide. The consequences of adopting this idea raised by OPC are uncertain even when viewed in the most favorable light. But when viewed from a more realistic perspective, adoption of this idea raised by OPC seems all but certain to give rise to widespread perceptions,

and likely allegations, of unduly discriminatory treatment of customers by energy utilities. This is because, no longer having the obligation to commit their promotional practices to provisions set forth in tariff sheets approved by the Commission and available for open review by all customers and the public generally, energy utilities would be free to offer any particular promotion they deem warranted in a given situation with the only regulatory stricture being that the associated costs could not be included in utility rates. Although additional unfavorable outcomes are likely to result from adoption of this OPC idea, the resultant increase in perceptions and allegations of discriminatory treatment alone makes that idea unreasonable. Moreover, this idea raised by OPC is also based on the false notion that load building can only benefit utility shareholders. As discussed in more detail below, when properly structured, load-building can be beneficial to numerous constituencies and, in so doing, advance the public interest. Under such circumstances, a strict prohibition on rate recovery of costs incurred for beneficial load-building initiatives – which is how Evergy understands one element of OPC’s idea – would be counter-productive.

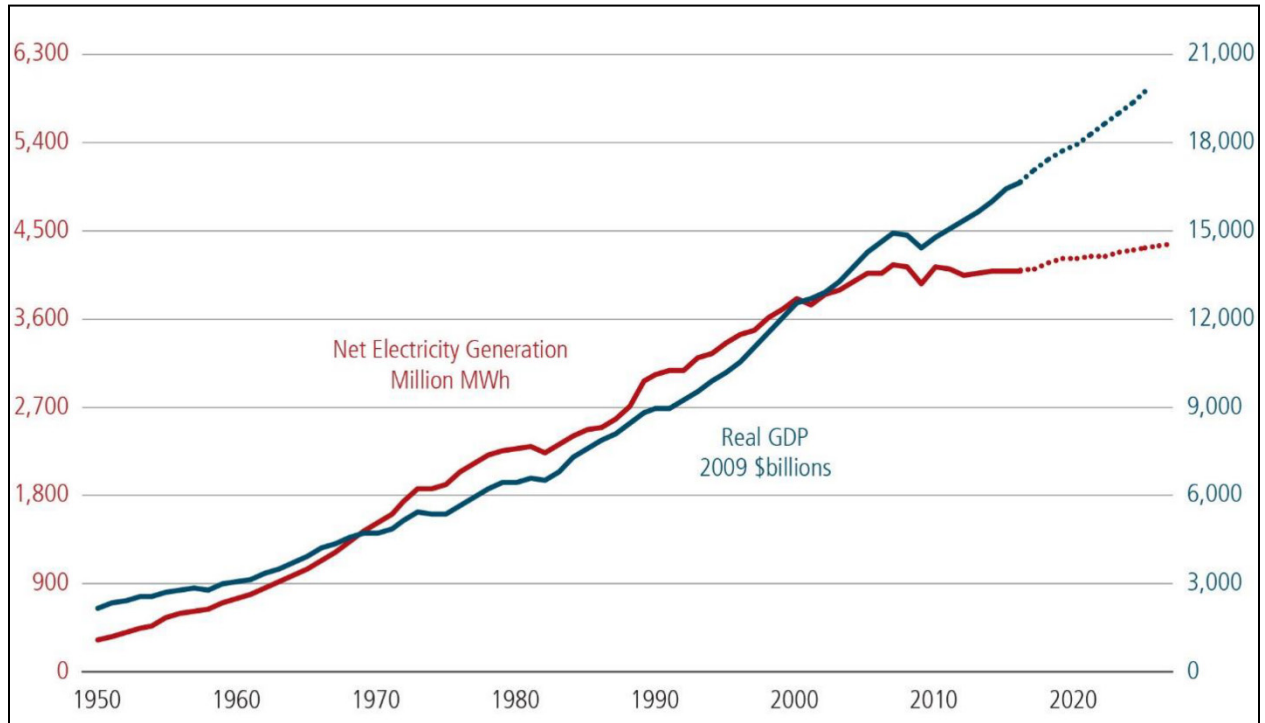
**THE DRAFT RULE SHOULD BE AMENDED
TO ENCOURAGE BENEFICIAL LOAD-BUILDING**

2. Although Evergy supports retention of a rule to prevent wasteful competition between energy service providers, and the Draft Rule generally achieves that end, Evergy further believes that significant changes which have occurred in the industry since the Promotional Practices rule was first promulgated in the 1970s require that the Draft Rule be changed and supplemented by adding provisions which encourage beneficial load-building by energy service providers in order to best serve the public interest.

3. For well over a century, demand for electricity grew year over year in a manner generally consistent with overall economic trends. As can be seen in the chart below, electricity

demand (represented in the chart as net electricity production) grew in lockstep with gross domestic product (“GDP”).

*Gross Domestic Product and Net Electricity Production
Historical (1950-2016) and Projected (2017-2027)**

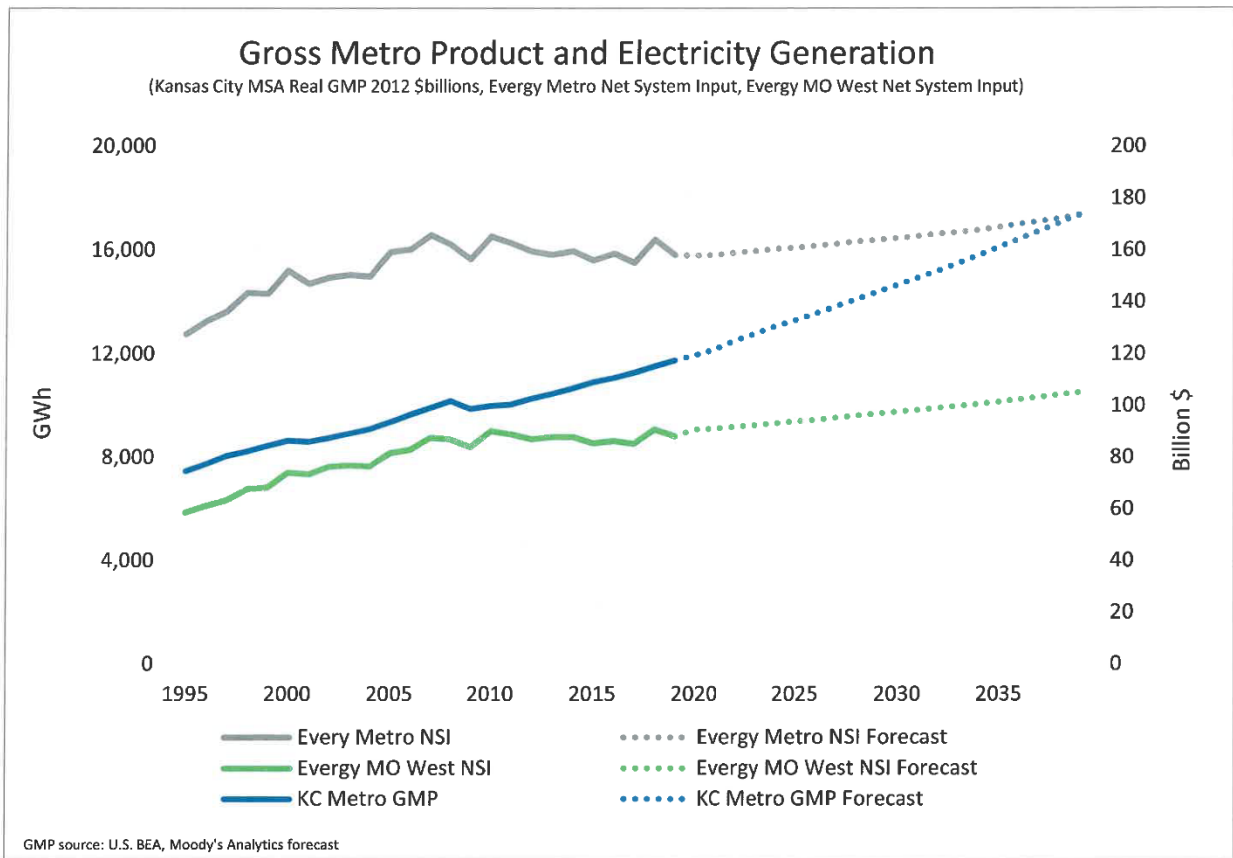


*U.S Department of Energy Staff Report to the Secretary on Electricity Markets and Reliability (August 2017); p. 54, Figure 3.29

This growth in demand for electricity, combined with traditional rate design practices which recovered a disproportionate amount of fixed costs through volumetric (i.e., per kWh) rate elements, proved a reliable way to finance system expansion and other electric infrastructure needs while maintaining rates at reasonable levels. Although rate increases were necessary periodically, they were generally accepted by customers without significant discontent except for periods of high inflation (such as the early 1980s) and when monolithic investments (such as nuclear stations) were placed into rate base.

4. In more recent years, however, the landscape has changed dramatically. During and after the “Great Recession” we now see that growth in demand for electricity has become “de-

coupled” from GDP growth. Year over year growth in demand, which had been in the 2-3% range for decades, has flattened to almost 0% and in some years, has actually been negative. This trend has occurred nationally, as can be seen from the chart above, and in the service territory of Evergy Metro and Evergy Missouri West, as can be seen from the second chart below.



5. There are many reasons and explanations for this de-coupling of growth in demand for electricity and GDP, some of which have greater or lesser relevance depending on the characteristics of a particular utility’s service territory. Those reasons and explanations include:

- Increasing efficiency levels of major appliances resulting from changes in federal standards;
 - Improved construction practices resulting in tighter and better insulated buildings;
- and

- Increased deployment of energy efficiency and conservation initiatives whether resulting from environmental concerns, general rate increase fatigue or other factors.

When combined with significant non-revenue producing rate base additions required in recent years by environmental regulations as well as the need to replace and upgrade aging electric infrastructure, this flattened growth in demand for electricity has resulted in greater rate increases than would have occurred if historical load growth had continued after 2008. This, in turn, has provided a feedback loop inspiring greater interest in energy efficiency and conservation and further demand destruction.

6. Evergy believes that growth in demand for electricity can be beneficial in terms of economics, environmental impacts and/or management of the electric grid. Given that flattened growth in demand for electricity appears to be the new normal and has contributed to increasing customer rates, identification, development and implementation of programs that promote beneficial load growth can benefit all customers and serve the broader public interest.

7. A simple example, briefly described below, may help illustrate Evergy's concept of beneficial load growth.

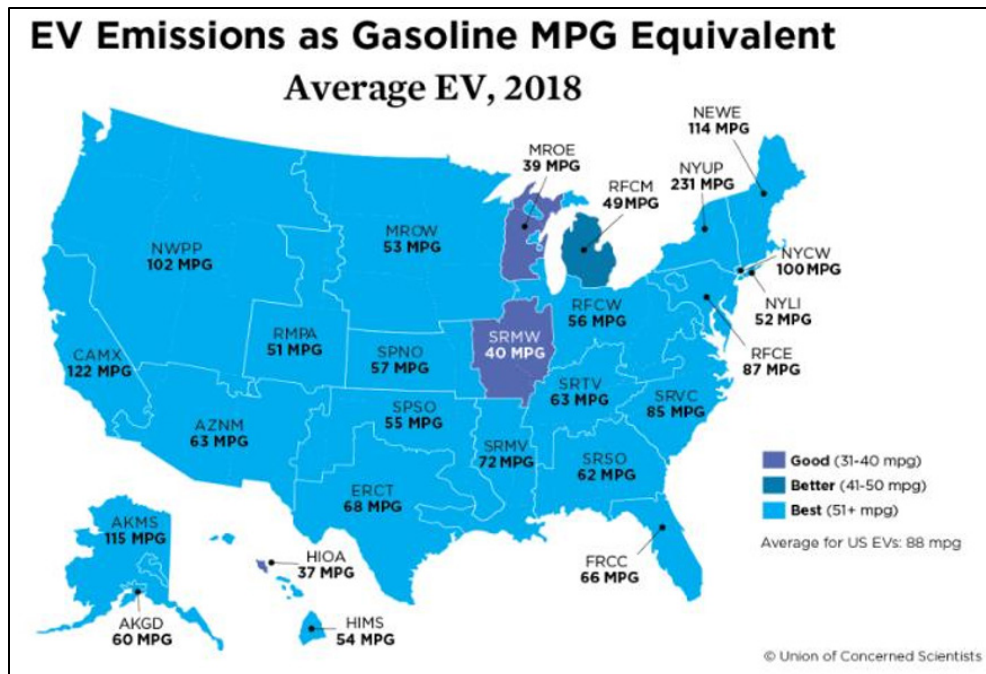
- Transportation is the last major sector of the United States economy that has not been substantially electrified.
- Evergy has seen meaningful growth in electric vehicle ("EV") adoption in its service territory compared to other cities across the country, largely due to the roll-out of the Clean Charge Network and the resulting reduction in range anxiety, but there is more that could be worth doing. The potential growth in kWh sales from EV charging is substantial.

- Advances in rate design practices (time-of-use rates, for example) and technology (devices that allow time-specific charging or remote curtailment of appliances like EV chargers) seem likely to enable EV charging at home (for passenger vehicles) or elsewhere (for commercial fleet vehicles) that could increase kWh sales during off-peak (or even super off-peak) periods without increasing peak demand.
- Those increased kWh sales from EV charging would contribute to fixed cost recovery that would result in lower rates for all customers than would otherwise be possible.
- Providing customers with EV charging stations on a discounted basis, whether through rebates or other means, may well prove to be a cost-effective way to stimulate beneficial long-term load growth. For example:
 - EVs store energy for later use and set idle for long periods, making EV charging a flexible load that can be accommodated without significant expansion of the utility electric system. The charging of EVs off-peak makes the utility electric system more efficient and spreads the cost of the grid over a higher volume of sales, resulting in downward pressure on electric rates for all customers.
 - The flexibility of EV charging also can be an asset to the electric utility system and provide additional utility benefits as a grid-management resource used to balance loads and minimize the need for grid expansion. Future bi-directional electric flows using the EV's battery in vehicle-to-grid (V2G) applications may provide additional enhanced grid support services. Additionally, EVs provide benefits to EV drivers as they cost far less to operate than conventional internal combustion engine ("ICE") vehicles. In addition to electricity being less

expensive as a fuel cost than gasoline on a per mile traveled basis, EVs have less maintenance as electric motors have fewer moving parts, no radiator, alternator, water pump or transmission and require no oil changes, spark plugs, tune-ups, and brake pads last longer as the regenerative braking systems transfers a majority of the braking energy back into the battery instead of friction and heat.

- Further, EVs provide significant environmental benefits over traditional ICE vehicles. Emissions from ICE vehicles have become the nation's largest source of climate change pollution. As can be seen in the map below, a recent study by the Union of Concerned Scientists shows that in 2018 the emissions for an average EV in the Southwest Power Pool territory was equivalent to an ICE vehicle that got 57 miles per gallon¹, a significant increase from 35 mpg in 2009. As the proportion of fossil-fueled electricity shrinks, the environmental benefit of transportation electrification further increases. Electric transportation is also better for the environment due to the long list of additional tailpipe pollutants produced by ICE vehicles.

¹ <https://blog.ucsusa.org/dave-reichmuth/are-electric-vehicles-really-better-for-the-climate-yes-heres-why>



8. Evergy therefore recommends that the Draft Rule be revised to include provisions that expressly permit and encourage beneficial load-building. The revisions recommended by Evergy are shown in red-line in the Draft Rule attached hereto as **Exhibit A**. Summarized, the revisions recommended by Evergy are as follows:

- (1)(A)1 – This new provision makes it clear that the offering of Commission-approved energy efficiency programs does not constitute a promotional practice. This reflects Evergy’s understanding of long-standing Commission practice.
- (1)(A)2 – This new provision makes it clear that the provision of educational materials and information regarding energy alternatives does not constitute a promotional practice. Evergy understands that the Commission has recognized the value of energy-related education materials and information provided by utilities.
- (1)(E) – This new provision defines beneficial load building to mean the use of additional utility service that achieves at least one of three following criteria without adversely affecting the others: 1. Saves customers money over the long-

term; 2. Reduces environmental impacts; 3. Enables more efficient utilization, and better management, of utility infrastructure. This provision can be applied to both electric and gas utilities. In addition, and this definition of beneficial has been advocated by the Regulatory Assistance Project.²

- (1)(F) – These revisions to the definition of “Cost-effective” are intended to provide the Commission with more flexibility to assess cost-effectiveness by considering all tests utilized in the industry for such purposes, including the Total Value Test, which has been developed relatively recently and has been recognized by the Electric Power Research Institute.³
- (1)(G) – These revisions to the definition of “Demand-side resource” are intended to make the definition of this phrase in this rule more consistent with the definition of this phrase in the Commission’s IRP and MEEIA rules.
- (1)(J) – The elimination of the definition of “Inefficient energy-related choice” from the Draft Rule is needed to reflect the revisions recommended to the definition of “Demand-side resource” discussed immediately above.
- (3) – The insertion of this new language is intended to expressly recognize that the Commission may authorize load-building programs that are likely to be beneficial and cost-effective.
- (4)(A), (B), (C) and (D) – These revisions are intended to restore language from the current rule to make it clear that the specified activities (industrial development or Missouri Community Betterment Program activities; market research studies, pilot

² Farnsworth D., Shipley, J., Sliger, J., and Lazar, J. (2019, January). *Beneficial Electrification of Transportation*. Montpelier, VT: Regulatory Assistance Project.

³ The Brattle Group (2019, August). *The Total Value Test: A Framework for Evaluating the Cost-Effectiveness of Efficient Electrification*. Electric Power Research Institute.

programs, test marketing programs or other activities to evaluate cost-effectiveness of potential demand-side resources; or consideration necessary for utility acquisition of cost-effective demand-side resources) are not prohibited or restricted by the Draft Rule.

WHEREFORE, Evergy respectfully requests that the Commission consider these supplemental comments.

Respectfully submitted,

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**Attorneys for Evergy Metro and Evergy
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 20th day of March 2020.

/s/ Roger W. Steiner

Roger W. Steiner

**Title 4 — DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 240 — Public Service Commission
Chapter 10 — Utilities**

PROPOSED RULE

4 CSR 240-10.XXX Promotional Practices

PURPOSE: This rule prescribes standards governing promotional practices of electric and gas utilities and sets forth promotional practices which are prohibited by the Public Service Commission.

(1) Definitions:

(A) For purposes of this rule promotional practices shall mean any consideration offered or granted by a public utility or its affiliate to any person for the purpose, express or implied, of inducing the person to select and use the service or use additional service of the utility or to select or install any appliance or equipment designed to use the utility service, or for the purpose of influencing the person's choice or specification of the efficiency characteristics of appliances, equipment, buildings, utilization patterns or operating procedures; but does not include the following activities:

1. Offering energy efficiency programming through a commission-approved energy efficiency plan;
2. Providing education materials and information regarding energy alternatives;
- ~~1-3.~~ Making any emergency repairs to appliances or equipment of customers;
- ~~2-4.~~ Providing appliances or equipment for demonstrations of sixty (60) days or less;
- ~~3-5.~~ Providing light bulbs, street or outdoor lighting service, wiring, service pipe or other service equipment or appliances, in accordance with tariffs filed with and approved by the commission;
- ~~4-6.~~ Providing appliances or equipment to an educational institution for the purpose of instructing students in the use of the appliances or equipment;
- ~~5-7.~~ Merchandising appliances or equipment at retail and, in connection therewith, the holding of inventories, making and fulfillment of reasonable warranties against defects in material and workmanship existing at the time of delivery and financing;
- ~~6-8.~~ Inspecting and adjusting of appliances or equipment by an electric or gas utility;
- ~~7-9.~~ Repairing and other maintenance to appliances or equipment by an electric or gas utility if charges are at cost or above;
- ~~8-10.~~ Providing free or below-cost energy audits or other information or analysis regarding the feasibility and cost-effectiveness of improvements in the efficiency characteristics of appliances, equipment, buildings, utilization patterns or operating procedures;
- ~~9-11.~~ Offering to present or prospective customers by an electric or gas utility technical or engineering assistance; and
- ~~10-12.~~ Advertising or publicity by an electric or gas utility which is under its name and on its behalf and which does not in any manner, directly or indirectly, identify, describe, refer to, mention or relate to any architect, builder, engineer, subdivider, developer or other similar person, or which mentions no less than three (3) existing projects, developments or subdivisions.

(B) Affiliate shall include any person who, directly or indirectly, controls or is controlled by or is under common control with a public utility;

(C) Appliance or equipment shall mean any device which consumes electric or gas energy and any ancillary device required for its operation;

(D) Consideration shall be interpreted in its broadest sense and shall include any cash, donation, gift, allowance, rebate, discount, bonus, merchandise (new or used), property (real or personal), labor, service, conveyance, commitment, right or other thing of value;

(E) Beneficial load building shall mean the use of additional utility service that achieves at least one of the following criteria without adversely affecting the others:

1. Saves customers money over the long-term;
2. Reduces environmental impacts;
- ~~3.~~ Enables more efficient utilization, and better management, of utility infrastructure.

(F) Cost-effective means that the present value of life-cycle benefits is greater than the present value of life-cycle costs ~~is~~ determined by the commission on the basis of its analysis of the results of one or more benefit-cost tests utilized in the energy industry, including but not limited to the Total Resource Cost Test, the Societal Cost Test, the Ratepayer Impact Measure, the Utility Cost Test, 4 CSR 240-20.092(1)(XX), the Total Value Test or other such benefit-cost tests that may be developed in the future;

(G) Demand-side resource means any program conducted by the utility to modify the net consumption of energy 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, but not including deprivation of service or low-income weatherization. ~~inefficient energy related choice other than those choices approved by the Commission under its Missouri Energy Efficiency Investment Act rules that can be influenced cost effectively by a utility. The meaning of this term shall not be construed to include load building programs;~~

(H) Energy service means the need that is served or the benefit that is derived by the ultimate consumer's use of energy;

(I) Financing shall include acquisition of equity or debt interests, loans, guarantees of loans, advances, sale and repurchase agreements, sale and leaseback agreements, sales on open account, conditional or installment sales contracts or other investments or extensions of credit;

~~(J) Inefficient energy related choice means any decision that causes the life cycle cost of providing an energy service to be higher than it would be for an available alternative choice;~~

~~(K)~~(J) Life-cycle means the expected useful lifetime of appliances, equipment or buildings;

~~(L)~~(K) Load-building program means an organized promotional effort by a utility to persuade energy-related decision makers to choose the form of energy supplied by that utility instead of other forms of energy for the provision of energy service or to persuade customers to increase their use of that utility's form of energy, either by substituting it for other forms of energy or by increasing the level or variety of energy services used. This term is not intended to include the provision of technical or engineering assistance, information about filed rates and tariffs or other forms of routine customer service.

~~(M)~~(L) Person shall include any individual, group, firm, partnership, corporation, association or other organization;

~~(N)~~(M) Public utility or utility shall mean any electrical corporation or gas corporation as defined in section 386.020, RSMo;

(2) Filing Requirements:

(A) Any promotional practices offered by an electric or gas utility must meet the promotional practices requirements set out in this rule.

(B) No electric or gas utility or its affiliate shall offer or grant any additional promotional practice or vary or terminate any existing promotional practice, directly or indirectly, or in concert with others, or by any means whatsoever, until a tariff filing showing the addition or variation or termination in the form prescribed by this rule has been made with the commission and a copy furnished to each other electric or gas utility providing the same or competing utility service in any portion of the service area of the filing utility.

(C) The utility shall provide the following information on the tariff sheets:

1. The name, number or letter designation of the promotional practice;
2. The class of persons to which the promotional practice is being offered or granted;
3. Whether the promotional practice is being uniformly offered to all persons within that class;
4. A description of the promotional practice and a statement of its purpose or objective;
5. A statement of the terms and conditions governing the promotional practice;
6. If the promotional practice is offered or granted, in whole or in part, by an affiliate or other person, the identity of the affiliate or person and the nature of their participation; and

7. Any other information relevant to a complete understanding of the promotional practice.

(D) The utility shall provide the following supporting information for each promotional practice:

1. A description of the advertising or publicity to be employed with respect to the promotional practice;
2. For promotional practices that are designed to evaluate the cost-effectiveness of potential demand-side resources, a description of the evaluation criteria, the evaluation plan and the schedule for completing the evaluation;
3. For promotional practices that are designed to acquire demand-side resources, documentation of the criteria used and the analysis performed to determine that the demand-side resources are cost-effective; and
4. The utility filing the application shall show proof of service of a copy of the application on each public utility providing the same or competing utility service in all or any portion of the service area of the filing utility.
5. On written application by a utility the commission may grant variances from the rules contained in this chapter for good cause shown.

(3) Prohibited promotional practices. Unless authorized by the commission as likely to foster beneficial load building on a cost-effective basis which the commission encourages, No utility may offer the following activities:

(A) The financing of real property, including the construction of any building, when the property is not owned or otherwise possessed by the utility or its affiliate;

(B) The furnishing of consideration to any architect, builder, engineer, subdivider, developer or other person for work done or to be done on property not owned or otherwise possessed by the utility or its affiliate, except for studies to determine comparative capital costs and expenses to show the desirability or feasibility of selecting one (1) form of energy over another;

(C) The acquisition from any builder, subdivider, developer or other person of any easement, right-of-way, license, lease or other property for consideration in excess of the reasonable cost or value;

(D) The furnishing of consideration to any dealer, architect, builder, engineer, subdivider, developer or other person for the sale, installation or use of appliances or equipment;

(E) The provision of free, or less than cost or value, wiring, piping, appliances or equipment to any other person; provided, that a utility, engaged in an appliance merchandising sales program, shall not be precluded from conducting legitimate closeouts of appliances, clearance sales and sales of damaged or returned appliances;

(F) The provision of free, or less than cost or value, installation, operation, repair, modification or maintenance of appliances, equipment, wiring or piping of any other person;

(G) The granting of a trade-in allowance on the purchase of any appliance or equipment in excess of the market value of the trade-in as well as the granting of an allowance for the appliance or equipment when the allowance varies by the type of energy consumed in the appliance or equipment;

(H) The financing of the acquisition of any appliance or equipment at a rate of interest or on terms more favorable than those generally applicable to sales by nonutility dealers in the appliances or equipment, except sales to company employees;

(I) The furnishing of consideration to any person for any advertising or publicity purpose of that person, except for payments not exceeding one-half (1/2) of the reasonable cost or value for joint advertising or publicity with a dealer in appliances or equipment for the sale or other provision of same if the utility is prominently identified as a sponsor of the advertisement; and

(J) The guaranteeing of the maximum cost of electric or gas utility service, except the guaranteeing of the cost of space heating or cooling for a single season, when the cost is at or above the cost of providing service and when the guarantee is for the purpose of improving the utility's off-peak season load factor.

(4) Nothing contained in this rule shall be construed to prohibit or restrict:

(A)—~~a~~Any activity, practice or business otherwise allowed by statute and particularly those businesses exempt from the jurisdiction of this commission as provided under section 393.140(12), RSMo or employee benefit programs approved by the commission and consistent with the provisions of this

rule:-

- (B) Any industrial development or Missouri Community Betterment Program activities by any utility;
- (C) Market research studies, pilot programs, test marketing programs or other activities to evaluate the cost-effectiveness of potential demand-side resources; or
- ~~(A)~~(D) Consideration that may be necessary for the utility to acquire cost-effective demand-side resources.

(5) No public utility or its affiliate, directly or indirectly, in any manner or by any device whatsoever, shall offer or grant to any person any form of promotional practice except as is uniformly and contemporaneously extended to all persons in a reasonable defined class. No public utility or its affiliate, in the granting of a promotional practice, shall make, offer or grant any undue or unreasonable preference or advantage to any person or subject any person to any undue or unreasonable prejudice or disadvantage. No public utility or its affiliate shall establish or maintain any unreasonable difference in the offering or granting of promotional practices either as between localities or as between classes to whom promotional practices are offered or granted.

(6) All promotional practices of a public utility or its affiliate shall be just and reasonable, reasonable as a business practice, economically feasible and compensatory and reasonably calculated to benefit both the utility and its customers.

(7) The promotional practices of a public utility or affiliate shall not vary the rates, charges and rules of the tariff pursuant to which service is rendered to a customer. No new promotional practice which has not been previously filed with the commission shall be made or offered unless first filed on a tariff with the commission.