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 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.

(C) 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 on an annual basis.

(D) 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. The utility shall use the same methodology used in its most recently adopted preferred resource plan to calculate its avoided costs.

(E) 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.

(F) 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.

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

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

(I) 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 utility's filing for demand-side program approval proceeding or a semi-annual DSIM rate adjustment case.

(L) DSIM utility incentive revenue requirement means the revenue requirement approved by the commission in a utility's filing for demand-side program approval 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) DSIM utility lost revenue requirement means the component of the utility's revenue requirement explicitly approved (if any) by the commission in a utility's filing for demand-side program approval proceeding to address the recovery of lost revenue.

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

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

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

(Q) Evaluation, measurement and verification or EM&V means the performance of studies and activities intended to evaluate the process of the utility's program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness and other effects from demand-side programs.

(R) 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.

(S) Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occur when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net retail KWh below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V.

(T) 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.

(U) Probable environmental cost means the expected cost to the utility of complying with new or additional environmental legal mandates, taxes or other requirements that, in the judgment of the utility decision-makers, may be imposed at some point within the planning horizon which would result in compliance costs that could have a significant impact on utility rates. The utility shall use the same methodology used in its most recently adopted preferred resource plan to calculate its probable environmental costs.

(V) 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.

(W) Total resource cost test or TRC means the test of the cost-effectiveness of demand-side programs that compares the avoided utility costs plus avoided probable environmental cost 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 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 fact that the electric utility's demand-side programs do not meet the incremental or cumulative annual demand-side savings goals established in this section may impact the utility's DSIM revenue requirement but is not by itself sufficient grounds to assess a penalty or adverse consequence for poor performance.

(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 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 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 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 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, DSIM utility lost revenue requirement and/or if the utility intends to establish a DSIM utility incentive revenue requirement 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 (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 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 ratio 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 stated in subsection (A)2.-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.

(C) The commission shall approve demand-side programs which have a total resource cost test ratio less than one (1.0), if the commission finds the utility has met the filing and submittal requirements of 4 CSR 240-3.164(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.-3.

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

(E) 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. 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 thirty (30) 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 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 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 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 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 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 programs benefits and costs; and

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

(D) 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.

(E) 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 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 of opt-out.

(F) 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 (H), 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, 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 fourteen (14) 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.

(I) 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.

(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 253.561, 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.

(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 demand-side program 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.

(A) Utility-specific Collaboratives. Each electric utility and its stakeholders are encouraged to 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. Electric utilities and their stakeholders are encouraged to form a state-wide advisory collaborative to: (1) address the creation of a technical reference manual that includes values for deemed savings, (2) provide the opportunity for the sharing, among utilities and other stakeholders, of lessons learned from demand-side program planning and implementation, and (3) create a forum for discussing state-wide policy issues. Collaborative meetings are encouraged to occur at least once each calendar year. Staff shall provide notice of the statewide collaborative meetings and 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. 2009. Original rule filed **[date]**, effective **[date]**.*

Comment [mw1]: Placeholder: Dates will need to be inserted.

PUBLIC ENTITY COST: This proposed rule will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE ENTITY COST: This proposed rule is estimated to cost private entities ***more than $500 annually for the life of the rule.***

Comment [mw2]: Placeholder: Will need to insert cost listed in fiscal note.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, P. O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices within thirty (30) days after publication of this notice in the Missouri Register and should include a reference to Commission Case No. EX-2010-0368. Comments may also be submitted via a filing using the Commission's electronic filing and information system at http://www.psc.mo.gov/case-filing-information. A public hearing regarding this proposed rule is scheduled for ***___, 2010, at 0:00 a.m., in Room 000*** *of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.*

Comment [mw3]: Placeholder: Will need to insert public hearing information.