

Rules of
**Department of Economic
 Development**
Division 240—Public Service Commission
Chapter 14—Utility Promotional Practices

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**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 240—Public Service
Commission
Chapter 14—Utility Promotional
Practices**

4 CSR 240-14.010 General Provisions

PURPOSE: This rule sets forth the general provisions of and defines the terms used in 4 CSR 240-14—Utility Promotional Practices.

(1) This rule and the other rules contained in chapter govern promotional practices of all gas and electric utilities under the jurisdiction of the Public Service Commission.

(2) On written application by a utility the commission may grant variances from the rules contained in this chapter for good cause shown. 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.

(3) Nothing contained in the rules of this chapter shall be construed to prohibit or restrict any industrial development or Missouri Community Betterment Program activities by any utility.

(4) Nothing contained in this chapter shall be construed to prohibit market research studies, pilot programs, test marketing programs or other activities to evaluate the cost-effectiveness of potential demand-side resources.

(5) Nothing contained in this chapter shall be construed to prohibit the provision of consideration that may be necessary to acquire cost-effective demand-side resources.

(6) The following terms, when used in this chapter, shall have the following meanings:

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

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

(C) 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;

(D) Cost-effective means that the present value of life-cycle benefits is greater than the present value of life-cycle costs to the provider of an energy service;

(E) Demand-side resource means any inefficient energy-related choice that can be influenced cost-effectively by a utility. The meaning of this term shall not be construed to include load-building programs;

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

(G) 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;

(H) 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;

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

(J) 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.

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

(L) 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. The term promotional practices shall not include the following activities:

1. Making any emergency repairs to appliances or equipment of customers;

2. Providing appliances or equipment incidental to demonstrations of sixty (60) days or less in duration;

3. 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. Providing appliances or equipment to an educational institution for the purpose of instructing students in the use of the appliances or equipment;

5. 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; provided that the merchandising shall not violate any prohibition contained in 4 CSR 240-14.020;

6. Inspecting and adjusting of appliances or equipment by a public utility;

7. Repairing and other maintenance to appliances or equipment by a public utility if charges are at cost or above;

8. 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. Offering to present or prospective customers by a public utility technical or engineering assistance; and

10. Advertising or publicity by a public 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.

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

AUTHORITY: sections 386.040, 386.610 and 393.140, RSMo 1986 and 386.250, RSMo Supp. 1991. Original rule filed June 28, 1971, effective July 8, 1971. Amended: Filed Sept. 15, 1972, effective Sept. 25, 1972. Amended: Filed April 1, 1988, effective June 6, 1988. Amended: Filed June 12, 1992, effective May 6, 1993.*

**Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991; 386.610, RSMo 1939; and 393.140, RSMo 1939, amended 1949, 1967.*

4 CSR 240-14.020 Prohibited Promotional Practices

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

(1) No public utility shall offer or grant any of the following promotional practices for the purpose of inducing any person to select and use the service or use additional service of the utility:

(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.

(2) Nothing contained in this rule shall be construed to prohibit 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 4 CSR 240-14.040.

*AUTHORITY: sections 386.040, 386.610 and 393.140, RSMo 1986 and 386.250, RSMo Supp. 1991. * Original rule filed June 28, 1971, effective July 8, 1971. Amended: Filed Sept. 15, 1972, effective Sept. 25, 1972. Amended: Filed June 12, 1992, effective May 6, 1993.*

**Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991; 386.610, RSMo 1939; and 393.140, RSMo 1939, amended 1949, 1967.*

4 CSR 240-14.030 Promotional Practices Standards

PURPOSE: This rule prescribes standards governing promotional practices that are not prohibited or for which a variance has been granted by the commission.

(1) 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.

(2) 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.

(3) 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.

*AUTHORITY: sections 386.040, 386.610 and 393.140, RSMo 1986 and 386.250, RSMo Supp. 1991. * Original rule filed June 28, 1971, effective July 8, 1971. Amended: Filed Sept. 15, 1972, effective Sept. 25, 1972. Amended: Filed June 12, 1992, effective May 6, 1993.*

**Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991; 386.610, RSMo 1939; and 393.140, RSMo 1939, amended 1949, 1967.*

4 CSR 240-14.040 Filing of Promotional Practices

(Rescinded April 30, 2003)

AUTHORITY: sections 386.040, 386.610 and 393.140, RSMo 1986 and 386.250, RSMo Supp. 1991. Original rule filed June 28, 1971, effective July 8, 1971. Amended: Filed Sept. 15, 1972, effective Sept. 25, 1972. Amended: Filed June 12, 1992, effective May 6, 1993. Rescinded: Filed Aug. 16, 2002, effective April 30, 2003.

4 CSR 240-14.050 Compliance

(Rescinded May 6, 1993)

AUTHORITY: section 393.140(11), RSMo 1986. Original rule filed June 28, 1971, effective July 8, 1971. Amended: Filed Sept. 15, 1972, effective Sept. 25, 1972. Rescinded: Filed June 12, 1992, effective May 6, 1993.

State ex. rel. Hoffman v. Public Service Commission. 550 SW2d 875 (Mo. App. 1977). Contract between gas company and



builder where gas company was to make promotional payments for apartment complex was sufficient to constitute a "substantial legal detriment" and therefore met the requirements of an exception to PSC rule which prohibited promotional payments.



The commission will give consistent assistance as it can in this respect, but the fact that the receipt of a rate schedule or a supplement to a rate schedule is acknowledged by the commission, or the fact that a rate schedule or supplement to a rate schedule is in the files of the commission, will not serve or operate to excuse the electrical corporation or municipality from its responsibility or liability for any violation of the law or of any ruling lawfully made which may have occurred in connection thereunder with the construction of filing of a rate schedule or supplement.

(24) Thirty (30) days' notice to the commission is required as to every publication relating to electrical rates or service except where publications are made effective on less than statutory notice by permission, regulation or requirement of the commission.

(25) Except as is otherwise provided, no schedule or supplement will be accepted for filing unless it is delivered to the commission free from all charges or claims for postage, the full thirty (30) days required by law before the date upon which the schedule or supplement is stated to be effective. No consideration will be given to or for the time during which a schedule or supplement may be held by the post office authorities because of insufficient postage. When a schedule or a supplement is issued and as to which the commission is not given the statutory notice, it is as if it had not been issued and a full statutory notice must be given of any reissue. No consideration will be given to telegraphic notices in computing the thirty (30) days' notice required. In these cases the schedule will be returned to the sender and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which that schedule or supplement was received and the date of the attempted correction. For rate schedules and supplements issued on short notice under special permission of the commission, literal compliance with the requirements for notice named in any order, regulation or permission granted by the commission will be exacted.

(26) When a schedule is rejected by the commission as unlawful, the records will so show and that schedule should not in the future be referred to as canceled, amended or otherwise except to note on the publication issued in lieu of that rejected schedule, "In lieu of _____, rejected by the commission;" nor shall the number which it bears be used again.

(27) Rates, charges or rentals or regulations relating to them, prescribed by the commis-

sion in its decisions and orders, after hearings upon formal complaints, shall in every instance be promulgated by the electrical corporation against which those orders are entered, in duly published and filed rate schedules, supplements or revised pages or sheets of schedules, and notice shall be sent to the commission that its order in Case No. _____ has been complied with in item _____, page _____, of schedule PSC Mo. No. _____; or supplement to schedule PSC Mo. No. _____; or reissued page or sheet No. _____ to schedule PSC Mo. No. _____.

(28) Schedules and supplements shall be filed in numerical order of PSC numbers. If in any instance this procedure is not observed as required by these rules, a memorandum must accompany the schedule so filed with the commission explaining omission of missing number(s).

(29) Electrical corporations are directed, in filing schedules, to transmit one (1) copy of each rate schedule, supplement or other charges or regulations for the use of the commission. Schedules sent for filing must be addressed to Public Service Commission, PO Box 360, Jefferson City, MO 65102.

(30) All schedules filed with the commission shall be accompanied by a letter of transmittal, in duplicate if receipt is desired, which shall be prepared consistent with the format designated by the commission.

AUTHORITY: sections 386.250 and 393.140, RSMo 2000.* Original rule filed Aug. 16, 2002, effective April 30, 2003.

*Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996 and 393.140, RSMo 1939, amended 1949, 1967.

4 CSR 240-3.150 Filing Requirements for Electric Utility Promotional Practices

PURPOSE: Electric utilities with promotional practices must meet the filing requirements in this rule prior to offering a promotional practice.

(1) Any promotional practices offered by an electric utility must meet the requirements set out in the commission's rules regarding utility promotional practices (4 CSR 240-14).

(2) No electric 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 utility providing the same or competing utility service in any portion of the service area of the filing utility.

(A) 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. Other information relevant to a complete understanding of the promotional practice.

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

(A) A description of the advertising or publicity to be employed with respect to the promotional practice;

(B) 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; and

(C) 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.

AUTHORITY: section 386.250, RSMo 2000.* Original rule filed Aug. 16, 2002, effective April 30, 2003.

*Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996.

4 CSR 240-3.155 Requirements for Electric Utility Cogeneration Tariff Filings

PURPOSE: This rule defines the requirements of electric utilities pertaining to the filing of tariffs regarding purchasing electricity generated by small power producers and

