

Title 23. Public Utilities and Regulated Industries
Chapter XVI. Arkansas Public Service Commission
Subchapter A. Generally
Part 460. Promotional Practices of Electric and Gas Public Utilities

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Promotional Practices of Electric and Gas Public Utilities
Administrative History

Docket	Date	Order No.	Subject Matter of Docket/Order
90-205-R	May 8, 1992	13	Promotional Practices Rules Adopted
90-205-R	July 2, 1992	14	Clarified and Amended Section 5.K
90-205-R	January 25, 1994	19	Clarified and Amended Promotional Practices Rules"

"SECTION 10 EFFECTIVE DATE

These Rules, promulgated in Arkansas Public Service Commission Docket 90-205-R by Order No. 13 entered May 8, 1992, as clarified and amended by Order No. 14 entered July 2, 1992, and Order No. 19 entered January 25, 1994, shall supersede the 1971 Rules and are to be effective on and after May 8, 1992. These Rules shall be kept on file and made available to the public in the office of the Secretary of the Commission."

Subpart 1. Generally

23 CAR § 460-101. Declaration of public policy.

(a)(1) In light of events that have occurred subsequent to the issuance of the 1971 Rules and Regulations Governing Promotional Practices of Electric and Gas Public Utilities ("1971 rules"), competition among electric and gas utilities must now exist in an era of energy conservation and integrated resource planning.

(2) As these utilities seek to maximize the use of existing generating plants and reserves, to use wisely the natural resources that provide their fuel, and, thus, to encourage their customers to conserve energy where possible, the Arkansas Public Service Commission has determined that promotional practices must:

- (A) Benefit ratepayers in the aggregate; or
- (B) Not be engaged in at all.

(b)(1) The promotion of goods or services offered the public is an inherent and important part of the economy of the state and nation.

(2) However, any electric and gas utilities desiring to engage in promotional practices have the burden of proving that the proposed practices:

(A) Are not unduly discriminatory or anticompetitive; and

(B) Are in the public interest because they serve the purposes of energy conservation pursuant to the authority granted the Arkansas Public Service Commission in the Energy Conservation Endorsement Act of 1977, Arkansas Code § 23-3-401 et seq.

(3) The laws of this state require the rates of a public utility to be just and reasonable and in conformity with the rules and orders of the Arkansas Public Service Commission.

(4) The laws prohibit a public utility from directly or indirectly demanding or receiving from anyone a greater or lesser rate for service than that specified in its tariff.

(5) The laws prohibit, with respect to rates and services:

(A) The granting of unreasonable preferences or advantages to anyone;

or

(B) Subjecting anyone to unreasonable prejudice or disadvantage.

(6) The laws grant the Arkansas Public Service Commission the authority to encourage energy conservation.

(7) Accordingly, the Arkansas Public Service Commission declares that the adoption and enforcement of this part is in the public interest because it seeks to advance the welfare of all consumers by prohibiting all promotional practices unless

approval by the Arkansas Public Service Commission has been granted after investigation and hearing.

Authority. Arkansas Code § 23-2-305.

Codification Notes. This section was promulgated as Section 1 of the Promotional Practices of Electric and Gas Public Utilities prior to codification in the Code of Arkansas Rules.

23 CAR § 460-102. Definitions.

The following words, when used in this part, shall have the following meanings unless otherwise clearly apparent from the context:

(1) "Appliance or equipment" means any:

(A) Device, including a fixture, that consumes electric or gas energy; and

(B) Ancillary device required for its operation, including computer

hardware and software;

(2) "Consideration" means any:

(A) Cash;

(B) Donation;

(C) Gift;

(D) Allowance;

(E) Rebate;

(F) Bonus;

(G) Merchandise, new or used;

(H) Property, tangible or intangible;

(I) Labor;

(J) Service;

(K) Conveyance;

(L) Commitment;

(M) Right; or

(N) Other thing of value;

(3) "Financing" includes:

- (A) Acquisition of equity or debt interests;
- (B) Loans;
- (C) Guarantee of loans;
- (D) Advances;
- (E) Sale and repurchase agreements;
- (F) Sale and leaseback agreements;
- (G) Sales on open account;
- (H) Conditional or installment sales contracts; or
- (I) Other investments or extensions of credit;

(4) "Person" includes any:

- (A) Individual;
- (B) Group;
- (C) Firm;
- (D) Partnership;
- (E) Corporation;
- (F) Cooperative;
- (G) Association; or
- (H) Other organization;

(5) "Promotional practices" means any consideration offered by a public utility to any person for the purpose, express or implied, of inducing such person to select or use the service or additional service or to conserve the use of service of such or any utility, or to select or install any appliance or equipment designed to use such or any utility service, provided that the words "promotional practices":

(A) Shall include but not be limited to the following activities of a public utility:

(i)(a) Merchandising of appliances or equipment unless such activity is operated as a nonutility business as provided at subdivision (5)(B)(i) of this section.

(b) Merchandising activities that are not completely segregated from public utility activities and property shall be deemed promotional practices;

(ii) The financing of the acquisition of any appliance or equipment, unless such activity is operated as a nonutility business as provided at subdivision (5)(B)(i), at a rate of interest or on terms significantly more favorable than those generally applicable to sales by nonutility dealers in such appliances or equipment;

(iii) The financing of land or the construction of any building when same is not owned or otherwise possessed by the utility;

(iv) The furnishing of consideration to any person for work done or to be done on property not owned or otherwise possessed by the utility;

(v) The acquisition from any person of any tangible or intangible property or service for a consideration in excess of the value thereof, or the furnishing to any person of any tangible or intangible property or service for a consideration of less than the value thereof;

(vi) The furnishing of consideration to any person for the sale, installation, or use of appliances or equipment;

(vii) The guaranteeing of the maximum cost of electric or gas utility service;

(viii) The furnishing of distribution and service facilities to any area or customer under terms and conditions different from those applicable to any other area or customer receiving the particular class of service involved;

(ix) The furnishing of consideration by a utility to any person who, on behalf of the utility, performs any promotional practice as otherwise defined in this section; and

(x) Special rate contracts between a utility and an individual customer; and

(B) Shall not include the following activities of a public utility:

(i) Merchandising or financing of appliances or equipment if such activity is operated as a nonutility business, i.e., the activities must be completely segregated from public utility activities and must meet the following requirements:

Codification Notes. This section was promulgated as Section 2 of the Promotional Practices of Electric and Gas Public Utilities prior to codification in the Code of Arkansas Rules.

23 CAR § 460-103. Prohibition of promotional practices.

(a) A public utility shall not, without first obtaining the approval of the Arkansas Public Service Commission, engage in any promotional practices.

(b) Any public utility engaging in promotional practices after the effective date of this part without approval of such practices by the Arkansas Public Service Commission will be subject to penalty under Arkansas Code § 23-1-103, except as allowed under 23 CAR § 460-109.

Authority. Arkansas Code §§ 23-1-103, 23-2-305.

Codification Notes. This section was promulgated as Section 3 of the Promotional Practices of Electric and Gas Public Utilities prior to codification in the Code of Arkansas Rules.

23 CAR § 460-104. Standards governing promotional practices.

The following standards shall govern the utility's promotional practices:

(1)(A) A promotional practice must be in the public interest.

(B) In determining whether a practice is in the public interest, the Arkansas Public Service Commission shall consider the following:

(i) Cost efficiency of the proposed promotional practice using the:

(a) Total Resource Cost Test;

(b) Participant Test; and

(c) Utility Cost Test; and

(ii) Ratepayer impact of the proposed promotional practices using the Ratepayer Impact Measure Test;

(2)(A) No public utility shall directly or indirectly in any manner or by any device whatsoever offer to any person any form of promotional practice except such as is uniformly and contemporaneously extended to all persons in a reasonably defined class.

(B) No public utility shall, in the offering of a promotional practice:

(i) Give any undue preference or advantage to any person; or

(ii) Subject any person to any undue prejudice or disadvantage.

(C) No public utility shall establish or maintain any unreasonable difference in the offering of promotional practices either as between localities or as between classes to whom promotional practices are offered.

(D) No public utility shall classify the persons to whom its promotional practices are offered except to the extent permitted by the laws of this state; and

(3) All advertising associated with a promotional practice shall be truthful and not misleading or deceptive.

Authority. Arkansas Code § 23-2-305.

Codification Notes. This section was promulgated as Section 4 of the Promotional Practices of Electric and Gas Public Utilities prior to codification in the Code of Arkansas Rules.

23 CAR § 460-105. Filing of proposed promotional practices.

(a)(1) After the effective date of this part, any utility wishing to engage in any promotional practice must file an application for approval by the Arkansas Public Service Commission.

(2) All applications for approval of a promotional practice shall be assigned a "P" docket designation by the secretary of the Arkansas Public Service Commission.

(3) Any application filed pursuant to this part shall also be governed by the Arkansas Public Service Commission's Rules of Practice and Procedure, 23 CAR pt. 462.

(b)(1) Upon application of the utility, the Arkansas Public Service Commission shall:

- (A) Conduct an investigation of the proposed promotional practice; and
- (B) Make a determination whether it is in the public interest.

(2) The application shall include a schedule for each proposed promotional practice setting forth:

- (A) The name, number, or letter designation of each promotional practice;
- (B) The class of persons to which the promotional practice is being offered;

(C) Whether the promotional practice is being uniformly offered to the persons within a class;

(D) A description of the promotional practice that shall include a statement of the terms and conditions governing the same;

(E) A description of the advertising or publicity employed with respect to the utility's promotional practice, and the proposed methodology for accounting for these costs;

(F) If the promotional practice is offered, in whole or in part, by some other person, the identity of such person and the nature of such person's participation;

(G) The objectives of the promotional practice;

(H) The expected beginning and ending dates of the promotional practice;

(I) An estimate of the number of persons who are potential participants in the promotional practice;

(J) The proposed accounting for the costs and benefits of the promotional practice;

(K) Sufficiently detailed calculations, sensitivity analysis, and supporting testimony of the effect of the promotional practice using each of the applicable tests, as determined by the California Standard Practice Manual, Economic Analysis of Demand-Side Management Programs and Projects, and an explanation of why any particular test is not applicable to the proposed promotional practice;

(L) A description of the relevant competing energy resources in the service area where the promotional practice will be offered, and the extent to which they are considered in the calculations in the tests; and

(M) Any other information relevant to a complete understanding of the promotional practice.

Authority. Arkansas Code § 23-2-305.

Codification Notes. This section was promulgated as Section 5 of the Promotional Practices of Electric and Gas Public Utilities prior to codification in the Code of Arkansas Rules.

23 CAR § 460-106. Approval by the Arkansas Public Service Commission.

(a) A proposed promotional practice filed pursuant to this part may be implemented by the applicant thirty (30) days after the date of filing unless the Arkansas Public Service Commission, upon its own motion or the motion of any party, issues an order suspending the implementation of the proposed promotional practice pending further investigation.

(b) However, the suspension shall not be for a longer period than one hundred fifty (150) days beyond the time when the proposed promotional practice would otherwise go into effect.

(c) Any order initially suspending a proposed promotional practice shall set an appropriate procedural schedule and a specific date for the commencement of a public hearing inquiring into the proposed promotional practice unless waived by the applicant.

Authority. Arkansas Code § 23-2-305.

Codification Notes. This section was promulgated as Section 6 of the Promotional Practices of Electric and Gas Public Utilities prior to codification in the Code of Arkansas Rules.

23 CAR § 460-107. Notices.

(a)(1) The secretary of the Arkansas Public Service Commission shall establish a promotional practices reporting docket that shall serve as a repository for all:

(A) Notices filed pursuant to this section; and

(B) Biennial reports filed pursuant to 23 CAR § 460-108.

(2) Said promotional practices reporting docket shall be designated by the secretary of the Arkansas Public Service Commission as a "PR" docket.

(b) After a promotional practice has been approved by the Arkansas Public Service Commission, the utility engaging in the practice shall file a notice in the promotional practices reporting docket, referencing the docket in which the promotional practice was approved, whenever any of the following events occur:

(1) Commencement of the practice;

(2) Material variance in the number of participants or the cost or benefits of the practice that alters the results of the tests presented in the utility's application; and

(3) Cancellation of the practice.

Authority. Arkansas Code § 23-2-305.

Codification Notes. This section was promulgated as Section 7 of the Promotional Practices of Electric and Gas Public Utilities prior to codification in the Code of Arkansas Rules.

23 CAR § 460-108. Biennial report.

(a) After approval by the Arkansas Public Service Commission of any public utility's promotional practices, each public utility engaging in approved promotional practices shall file with the Arkansas Public Service Commission every two (2) years beginning June 30, 1994, in the promotional practices reporting docket, a report of the promotional practices offered by such public utility during the period covered by such report.

(b) The report shall include a certificate signed by an officer of the utility that contains the following information for its approved promotional practices:

- (1) The promotional practices currently engaged in, referencing the docket in which each specific promotional practice was approved;
- (2) The number of customers participating in each promotional practice by class;
- (3) Any promotional practices terminated since the last report and an explanation of why they were terminated;
- (4) Total expenditures incurred by the utility for each promotional practice, by category, e.g., general and administrative, sales, plant, etc.;
- (5) Analyses of each promotional practice incorporating the most current data in the relevant tests;
- (6) A description of the advertising or publicity employed with respect to the utility's promotional practices;
- (7) An attestation of compliance with this part; and
- (8) An attestation that all of the utility's promotional practices are on file with the Arkansas Public Service Commission.

Authority. Arkansas Code § 23-2-305.

Codification Notes. This section was promulgated as Section 8 of the Promotional Practices of Electric and Gas Public Utilities prior to codification in the Code of Arkansas Rules.

23 CAR § 460-109. Transition period.

(a)(1) Pursuant to 23 CAR § 460-103, all promotional practices of electric and gas utilities are prohibited unless approval has been granted by the Arkansas Public Service Commission.

(2) In order to provide an orderly transition from the 1971 Rules and Regulations Governing Promotional Practices of Electric and Gas Public Utilities to this part, the Arkansas Public Service Commission hereby establishes a transition period for the filing and approval of:

(A) Promotional practices currently engaged in by a utility that are not defined as a promotional practice in the 1971 rules; and

(B)(i) Tariffs and other programs approved by the Arkansas Public Service Commission before May 8, 1992, that meet the definition of promotional practices embodied herein.

(ii) Such promotional practices must be filed in accordance with 23 CAR § 460-105 at least one hundred eighty (180) days before the end of the transition period.

(iii) The transition period will expire January 25, 1995.

(iv) By the end of the transition period, any utility wishing to continue such practices must have secured Arkansas Public Service Commission approval for such practices pursuant to this part or cease such practices.

(b) Notwithstanding any provision of this part, a public utility may perform lawful commitments concerning promotional practices entered into prior to the effective date of this part, or entered into pursuant to a tariff that was approved prior to the effective date of this part, if a detailed description of such commitments is filed with the Arkansas Public Service Commission by January 25, 1995, describing the nature of each commitment and the reasons for which the commitment has been incurred, provided that:

(1) Such a commitment may be hereafter terminated by the Arkansas Public Service Commission:

(A) After notice;

(B) After opportunity for hearing; and

(C) For good cause shown; and

(2)(A) Such a commitment is not prohibited by the 1971 rules.

(B) Any determination by the Arkansas Public Service Commission allowing these lawful commitments to be honored by a public utility shall not constitute approval of the promotional practice.

(C) Arkansas Public Service Commission approval of any such promotional practice must be sought pursuant to the provisions of this part.

Authority. Arkansas Code § 23-2-305.

Codification Notes. This section was promulgated as Section 9 of the Promotional Practices of Electric and Gas Public Utilities prior to codification in the Code of Arkansas Rules.

Appendix A. California Standard Practice Manual - Economic Analysis of Demand-Side Programs and Projects

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/211/23CARpt.460Appendix.pdf>