

## **Title 23. Public Utilities and Regulated Industries**

### **Chapter XVI. Arkansas Public Service Commission**

#### **Subchapter A. Generally**

#### **Part 461. Rules for Conservation and Energy Efficiency Programs**

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

"RULES FOR CONSERVATION AND ENERGY EFFICIENCY PROGRAMS

ADMINISTRATIVE HISTORY

Effective Docket	Order Date	No.	Subject Matter of Docket/Order
06-004-R	1/11/2007	12	Adoption of Rules for Conservation and Energy Efficiency Programs.
06-004-R	4/12/2007	15	Amended Sections 2, 3, 5, 6, 7, and 8.
06-004-R	5/25/2007	18	Amended Sections 2, 5, and 8.
06-004-R	6/14/2011	25	Amended Section 7.
10-101-R	9/28/2012	28	Amended Section 11.
10-100-R	9/29/2011	11	Added Section 12.
10-101-R	11/15/2013	33	Amended Section 11.
06-004-R	05/20/2014	29	Amended Sections 7 and 9
10-101-R	04/20/18	37	Amended Section 11"

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#### **Subpart 1. Generally**

**23 CAR § 461-101. Purpose.**

(a)(1) In the Energy Conservation Endorsement Act of 1977, Arkansas Code § 23-3-401 et seq., the General Assembly recognized that “enormous amounts of energy are wasted by consumers of all classes and economic levels due to inadequate insulation of buildings and other inefficiencies in the use of energy.”

(2) The Energy Conservation Endorsement Act of 1977 broadly defines “energy conservation programs and measures,” and states that “energy conservation programs and measures” are broadly defined and that “[i]t shall be considered a proper and essential function of public utilities regulated by the Arkansas Public Service Commission to engage in energy conservation programs, projects, and practices which conserve, as well as distribute, electrical energy and supplies of natural gas, oil, and other fuels.”

(b)(1) Furthermore, the Energy Conservation Endorsement Act of 1977 provides the Arkansas Public Service Commission with the authority to “propose, develop, solicit, approve, require, implement, and monitor” energy efficiency programs “by utility companies” if the Arkansas Public Service Commission finds that such programs and measures “will be beneficial to the ratepayers of such public utilities and to the utilities themselves.”

(2) “At the time any such programs or measures are approved and ordered into effect” by the Arkansas Public Service Commission, the Energy Conservation Endorsement Act of 1977 requires that the affected utility also “be allowed to increase its rates or charges as necessary to recover any costs incurred by the public utility company as a result of its engaging in any such program or measure.”

(c)(1) Due to the current level and expected increases in energy prices for both infrastructure investment and commodity purchases, along with the minimal level of energy efficiency programs in Arkansas, Arkansas Public Service Commission action regarding energy efficiency is necessary.

(2) Consequently, the Arkansas Public Service Commission has developed this part.

(3) This part applies to the provision of both electricity and natural gas service subject to the jurisdiction of the Arkansas Public Service Commission.

**Authority.** Arkansas Code §§ 23-2-305, 23-3-405.

**Codification Notes.** This section was promulgated as Section 1 of the Rules for Conservation and Energy Efficiency Programs prior to codification into the Code of Arkansas Rules.

This section, as promulgated prior to codification into the Code of Arkansas Rules, contained footnotes to the following: The footnote to 23 CAR § 461-101(a)(1) cited "1 Ark. Code Ann. §§23-3-402."

The footnote to 23 CAR § 461-101(a)(2) immediately following the quoted phrase "energy conservation programs and measures," cited "2 Ark. Code Ann. §§23-3-403."

The footnote to 23 CAR § 461-101(a)(2) immediately following the quoted phrase "[i]t shall be considered a proper and essential function of public utilities regulated by the Arkansas Public Service Commission to engage in energy conservation programs, projects, and practices which conserve, as well as distribute, electrical energy and supplies of natural gas, oil, and other fuels." cited "3 Ark. Code Ann. §§23-3-404."

The footnote to 23 CAR § 461-101(b)(1) immediately following the quoted phrase "will be beneficial to the ratepayers of such public utilities and to the utilities themselves." cited "4 Ark. Code Ann. §§23-3-405(a)(1)-(2)."

The footnote to 23 CAR § 461-101(b)(2) immediately following the quoted phrase "be allowed to increase its rates or charges as necessary to recover any costs incurred by the public utility company as a result of its engaging in any such program or measure." cited "5 Ark. Code Ann. §§23-3-405(a)(3)."

## **23 CAR § 461-102. Benefits and objectives of energy efficiency**

### **programs.**

(a)(1) An overriding focus for any energy efficiency initiative should be the benefits and objectives of the initiative.

(2) The overall objectives of the initiative are to:

(A) Encourage and enable utility customers to make the most efficient use of utility capacity and energy; and

(B) Discourage inefficient and wasteful use of energy.

(3) Objectives can take the form of:

(A) Standards;

(B) Codes; or

(C) Programs.

(4) When proposing any one (1) or a combination of energy efficiency programs, standards, or codes, a utility shall describe, in qualitative and quantitative terms, how its proposal furthers or accomplishes any or all of the following objectives or ancillary benefits in support of energy efficiency that are reasonably applicable to the utility's proposal.

(5) Should the utility determine that its proposal does not accomplish or meet one (1) or more of the listed objectives or benefits, the utility shall briefly explain why its proposal does not do so:

(A) Energy savings directly attributable to program activities;

(B) Long-term and permanent changes in behavior, attitudes, awareness, and knowledge about energy savings and use of energy-efficient technologies in order to achieve energy savings;

(C) Permanent peak electric demand reduction;

(D) Energy cost savings and cost-effectiveness;

(E) Reliability enhancements;

(F) Energy security benefits;

(G) Environmental benefits;

(H) Economic development/competitiveness benefits;

- (I) Increases in system-wide capacity;
- (J) Accelerating the commercialization of advanced or emerging technologies;
- (K) Improving affordability of energy for all customers; and
- (L) Implementing programs in an efficient manner.

(b)(1) When providing information on these objectives, utilities are directed to:

(A) Describe, in quantitative terms, the benefits and costs of these different aspects of the program, standard, or code; and

(B) Comment on:

(i) The barriers that impede accomplishment of these energy efficiency objectives; and

(ii) How to overcome these barriers.

(2) Utilities are also encouraged to provide estimates of the energy efficiency potential, including demand savings, in Arkansas associated with these options.

**Authority.** Arkansas Code §§ 23-2-305, 23-3-405.

**Codification Notes.** This section was promulgated as Section 2 of the Rules for Conservation and Energy Efficiency Programs prior to codification into the Code of Arkansas Rules.

### **23 CAR § 461-103. Definitions.**

As used in this part:

(1) "Administrator" means the entity responsible for creating and managing an energy efficiency program or portfolio of programs;

(2)(A) "Cost-effective" means a standard used to describe a net beneficial result for programs to be implemented, determined through a process that includes a review of relevant benefit/cost tests.

(B) A cost-effective program would be one that has a high probability of providing aggregate ratepayer benefits to the majority of utility customers;

(3)(A) "Deemed savings" means predetermined, validated estimates of energy and peak demand savings attributable to particular energy efficiency measures based upon:

- (i) Engineering calculations;
- (ii) Baseline studies; and/or
- (iii) Reasonable assumptions.

(B) Such savings are generally those representing the difference between standard efficiency measures and energy-efficient measures.

(C) Deemed savings values must be revised periodically to reflect new technologies and new federal, state, or local policies and codes;

(4) "Demand response" means changes in energy use by end-use customers from their normal consumption patterns in response to:

- (A) Changes in the price of energy over time; or
- (B) Incentive payments designed to induce lower energy use:
  - (i) At times of high wholesale market prices; or
  - (ii) When system reliability is jeopardized;

(5)(A) "Energy efficiency" means reducing the rate at which energy is used by equipment and/or processes while maintaining or improving the customer's existing level of comfort and end-use functionality at a lower customer cost.

(B) Reduction in the rate of energy used may be achieved by:

- (i) Substituting more advanced technology; or
- (ii) Reorganizing the process to reduce waste heat, waste cooling, or

energy.

(C) Demand response is a form of energy efficiency;

(6) "Energy efficiency savings". Energy efficiency (kW, kWh, ccf) savings are determined by:

(A) Comparing measured energy use before and after implementation of an energy efficiency measure; or

(B) Reference to a set of deemed savings approved by the Arkansas Public Service Commission;

(7) "Evaluation, Measurement, and Verification (EM&V)" means the performance of studies and activities intended to determine the actual savings and other effects from energy efficiency programs and measures;

(8)(A) "Implementer" means an entity charged by a utility to deliver programs to customers.

(B) Implementers, administrators, and utilities may be the same entity or related by a contract;

(9)(A) "Market transformation" means strategic efforts to induce lasting structural or behavioral changes in the market that result in increased adoption of energy-efficient technologies, services, and practices.

(B) Energy savings from market transformation programs must be beyond that which would be achieved through compliance with building codes and appliance and equipment efficiency standards;

(10) "Measure" means the equipment, materials, and practices that, when installed and used at a customer site, result in a measurable and verifiable reduction in either purchased energy consumption, measured energy, or peak demand, or both;

(11) "Portfolio" means the entire group of programs offered by an administrator;

(12) "Program" means a particular energy efficiency service or set of services to a particular target population;

(13) "Program plan" means a plan to deliver a portfolio of energy efficiency programs that includes:

(A) A set of benefit/cost test results;

(B) Specific objectives that can be evaluated using quantifiable measures;

and

(C) Provisions to evaluate, monitor, and verify results; and

(14)(A) "Program year" means the year in which programs are administered and delivered.

(B) For the purposes of planning and reporting, a program year shall be considered a calendar year, January 1 through December 31.

**Authority.** Arkansas Code §§ 23-2-305, 23-3-405.

**Codification Notes.** This section was promulgated as Section 3 of the Rules for Conservation and Energy Efficiency Programs prior to codification into the Code of Arkansas Rules.

"kW" means kilowatts.

"kWh" means kilowatt hours.

"ccf" means hundred cubic feet.

**23 CAR § 461-104. Administration and implementation of energy efficiency programs.**

(a)(1) All electric and gas utilities in Arkansas under the jurisdiction of the Arkansas Public Service Commission shall propose and be responsible for the administration and implementation of cost-effective energy efficiency programs within their service territories.

(2) Each utility shall file an application for approval by the Arkansas Public Service Commission of its portfolio of energy efficiency programs.

(3) The energy efficiency program portfolio of each utility shall include programs for all customer classes.

(b) **Waivers.**

(1) Exemptions from this part may be granted by the Arkansas Public Service Commission in accordance with 23 CAR § 462-102 of the Arkansas Public Service Commission's Rules of Practice and Procedure, 23 CAR pt. 462.

(2) Nothing in this part shall preclude the Arkansas Public Service Commission from modifying this part on its own initiative or in response to a party's motion and after notice and hearing.

(c) **Independent administrator.** The Arkansas Public Service Commission may designate an administrator independent of the utilities, although the utility will ultimately retain responsibility for compliance with this part.

**Authority.** Arkansas Code §§ 23-2-305, 23-3-405.

**Codification Notes.** This section was promulgated as Section 4 of the Rules for Conservation and Energy Efficiency Programs prior to codification into the Code of Arkansas Rules.

**23 CAR § 461-105. Plan filing requirements.**

(a) **General requirements.**

- (1) Administrators shall propose:
  - (A) General program designs;
  - (B) Specific programs; and
  - (C) Specific measures.
- (2) Administrators may propose programs and/or measures in any combination.
- (3) All programs should include the following general elements:
  - (A) A showing of high probability of providing aggregate ratepayer benefits to the majority of ratepayers;
  - (B) The identification of the specific objectives of the program; and
  - (C) The identification of the specific EM&V procedures that will be used to determine whether the program has achieved its stated objectives.

(b) **Portfolio description and support.** Each plan filing shall address the following:

- (1) Demonstration that the scope of programs serves all customer classes;
- (2) Plan benefit/cost analysis listing total costs and benefits, including expected savings goals for the portfolio of programs;
- (3) Cost recovery proposal; and

(4) Any additional supporting information the administrator may propose.

(c) **Program description and support.** Each program filing shall address the following:

- (1) Services to be provided;
- (2) Target population;
- (3) All barriers being addressed and how they are being addressed;
- (4) Proposed customer incentives, if any;
- (5) An evaluation, measurement, and verification plan using an industry-accepted protocol approved by the Arkansas Public Service Commission;
- (6) Timeframe if the program term is limited;
- (7) A plan for addressing oversubscription to the program;
- (8) An analysis demonstrating that the program or measure is beneficial, including the prescribed cost/benefit analyses;
- (9) Estimated energy and peak demand savings and the basis for these savings estimates, which may include deemed savings as approved by the Arkansas Public Service Commission; and
- (10) Any additional analyses the administrator may propose.

(d) **Uniformity of programs.**

(1) Programs addressing both electric and gas customers shall be coordinated to the extent reasonable.

(2) Fuel-switching and load-building programs not otherwise authorized under the Arkansas Public Service Commission's Promotional Practices of Electric and Gas Utilities, 23 PSC pt. 460, shall not be included as energy efficiency programs.

(e) **Customer incentives.**

(1) Programs may include incentives to encourage customers to make energy-efficient investments if the incentives are cost-justified and are a component of a program that has a high probability of providing aggregate ratepayer benefits to the majority of utility customers.

(2)(A) Incentives may include:

- (i) Information;

- (ii) Technical assistance;
- (iii) Leasing programs;
- (iv) Product giveaways; and
- (v) Direct financial inducements.

(B) Financial inducements may include but are not limited to:

- (i) Rebates;
- (ii) Discounted products and services; and
- (iii) Low-rate financing.

(3)(A) All customer incentives shall be considered in the benefit/cost testing of programs.

(B) Costs of customer incentives shall be considered a direct program cost.

(4) Incentives:

(A) Should not be any higher than necessary to overcome the customers' barriers to invest in the measure; and

(B) Should be reduced or eliminated as the measure becomes more of a standard practice.

**(f) Statewide programs.**

(1) The Arkansas Public Service Commission, after notice and hearing, may direct utilities to offer uniform statewide energy efficiency and conservation programs if it determines such standardization to be the most cost-effective result and in the public interest.

(2) Utilities may request approval to offer statewide or region-wide programs for which public messages, commercial terms and conditions, and customer reception are best served by such an approach.

**(g) Pilot and Quick Start programs.**

(1)(A) The Arkansas Public Service Commission may approve pilot energy efficiency programs.

(B) A pilot program design is distinct from Quick Start and other program designs in that it shall:

(i) Include:

- (a) Explicit questions that the pilot will address;
- (b) Explicit EM&V designed to address pilot questions;
- (c) Estimates of program costs and savings; and
- (d) A provisional benefit/cost evaluation; and

(ii) Be of limited duration until reassessment after a predetermined period.

(C) Pilot programs shall have characteristics from among the following:

- (i) Addressing a new end use; and
- (ii) Applying a new technology or a new delivery method.

(2)(A) Quick Start programs are programs that are limited in nature and that in other jurisdictions have been shown to have a high probability of providing aggregate ratepayer benefits to the majority of utility customers.

(B) Although estimates of program costs must be included in proposals to implement all initial plan Quick Start programs, Quick Start programs are exempt from the requirement to provide cost-effectiveness showings under the benefit-cost tests of 23 CAR § 461-106.

(C) Estimated energy and demand savings and an explicit EM&V program must be included for all Quick Start programs except the statewide education program.

(3) Programs that are neither pilots nor Quick Start programs must comply with all of the plan filing requirements of this section.

(4) All costs for pilot, Quick Start, and other programs shall be considered eligible for cost recovery.

**(h) Program filing procedures and schedule.**

(1) A program filed under this part shall not be implemented until an Arkansas Public Service Commission order is issued expressly approving the program.

(2) The period from the filing date to the date of the Arkansas Public Service Commission order shall be no more than one hundred eighty (180) days, which will permit investigation, analysis, and adjudication of the program.

(3) The Arkansas Public Service Commission shall establish a procedural schedule for the review of each program filing.

**Authority.** Arkansas Code §§ 23-2-305, 23-3-405.

**Codification Notes.** This section was promulgated as Section 5 of the Rules for Conservation and Energy Efficiency Programs prior to codification into the Code of Arkansas Rules.

**23 CAR § 461-106. Benefit/cost tests.**

(a)(1) Administrators shall present sufficiently detailed calculations, sensitivity analyses, and supporting testimony of the effect of the proposed conservation and energy efficiency program using each of the following tests set forth in the California Standard Practice Manual: Economic Analysis of Demand-Side Programs and Projects (State of California, Governor's Office of Planning and Research, July 2002):

- (A) The Participant Test;
- (B) The Ratepayer Impact Measure Test;
- (C) The Total Resource Cost Test; and
- (D) The Program Administrator Cost Test.

(2)(A) The Arkansas Public Service Commission will rely on the formulae found in the manual.

(B) However, the Arkansas Public Service Commission may rely on some inputs contained in the manual and not on others.

(C) Furthermore, the costs and benefits contained in the manual are suggestions and are not endorsed by the Arkansas Public Service Commission for every program.

(D) For this reason, the Arkansas Public Service Commission will not limit the costs and benefits that can be considered in the benefit/cost tests to those listed therein.

(3) Cost-effectiveness results shall be presented on both a program and portfolio basis.

(4) Administrators may submit additional economic analyses and benefit/cost test information in support of a proposed program.

(b)(1) A utility shall use an evaluation period of either ten (10) years (a gas utility may use an evaluation period of fifteen (15) years), or the actual measure lives for each measure in a program to evaluate a program or program portfolio.

(2) Results of the tests shall be presented:

(A) Consistent with the descriptions shown in Table I; or

(B) By other means as approved by the Arkansas Public Service Commission.

**TABLE I - Cost-Effectiveness Tests  
with Primary and Secondary Means of Expressing Test Results**

<i>Participant Test</i>	
Primary	Secondary
Net present value (all participants)	Discounted payback (years) Benefit-cost ratio ("BCR") Net present value (average participant)
<i>Ratepayer Impact Measure</i>	
Lifecycle revenue impact per Unit of energy (kWh or therm) or demand customer (kW)  Net present value	Lifecycle revenue impact per unit Annual revenue impact (by year, per kWh, kW, ccf, or customer) First-year revenue impact (per kWh, kW, ccf, or customer) BCR
<i>Total Resource Cost</i>	

Net present value (NPV)	BCR Levelized cost (cents or dollars per unit of energy or demand) Societal (NPV, BCR)
<i>Program Administrator Cost</i>	
Net present value	BCR Levelized cost (cents or dollars per unit of energy or demand)

**Authority.** Arkansas Code §§ 23-2-305, 23-3-405.

**Codification Notes.** This section was promulgated as Section 6 of the Rules for Conservation and Energy Efficiency Programs prior to codification into the Code of Arkansas Rules.

**23 CAR § 461-107. Cost recovery.**

(a)(1) Cost recovery of conservation and energy efficiency programs shall be in accordance with the provisions of the Energy Conservation Endorsement Act of 1977, Arkansas Code § 23-3-401 et seq.

(2) Cost recovery:

(A) Shall be limited to the incremental costs of providing the program that are not already included in the then-current rates of the utility; and

(B) May include:

- (i) Direct program costs;
- (ii) Lost contributions to fixed costs; and
- (iii) Utility energy efficiency incentives.

(b)(1) A utility may request cost recovery through a surcharge or rider.

(2) If a utility requests cost recovery through a surcharge or rider, the cost recovery through that mechanism:

(A) Shall be limited to the incremental costs of providing the program that are not included in the then-current rates of the utility; and

(B) May include:

(i) Direct program costs;

(ii) Lost contributions to fixed costs; and

(iii) Utility energy efficiency incentives.

(c)(1) A utility may request that direct program costs and lost contribution to fixed costs from approved program budgets be included in the rider.

(2) A utility may request contemporaneous recovery of these costs via such rider.

(d)(1) Demand response programs that involve rates, e.g., interruptible service, curtailment, off-peak service, time-of-use rates, shall not be included in any surcharge or rider.

(2) The rates for those mechanisms will be established through utility-specific rate or tariff proceedings.

(e)(1) If a utility is recovering conservation and energy efficiency program costs through a surcharge or rider, the utility shall file, contemporaneous with the annual report under 23 CAR § 461-109, a redetermined Energy Efficiency Cost Rate (EECR).

(2) In support of this redetermined rate, the utility shall file a schedule of:

(A) Actual program costs for the reporting period;

(B) Actual amounts collected under the rider for the reporting period; and

(C) Approved program budgets for the next calendar year.

(3) In addition, if the utility seeks Arkansas Public Service Commission approval to recover lost contributions to fixed costs and/or utility energy efficiency incentives and the utility seeks to recover these costs through a surcharge or rider, the utility shall incorporate these costs into the supporting schedule.

(4) Any incentive calculations shall be based on the reporting year.

(5) The EECR shall be adjusted to reflect a reconciliation of:

- (A) Any over-recovery or under-recovery for the prior year; and
- (B) The approved budget for the next calendar year.

**Authority.** Arkansas Code §§ 23-2-305, 23-3-405.

**Codification Notes.** This section was promulgated as Section 7 of the Rules for Conservation and Energy Efficiency Programs prior to codification into the Code of Arkansas Rules.

**23 CAR § 461-108. Program plans.**

(a)(1) Program plans:

- (A) Shall cover at least one (1) year; and
- (B) May cover up to three (3) years.

(2) All programs filed by gas and electric utilities should be consistent and should be fuel-neutral, i.e., they should be compliant with the Arkansas Public Service Commission's Promotional Practices of Electric and Gas Utilities, 23 CAR pt. 460, including restrictions on fuel-substitution and load-building programs.

(3) Program plans shall reflect the effects of all energy efficiency programs in the electric resource plans or natural gas procurement plans of the electric and natural gas utilities respectively.

(4) Furthermore, all energy efficiency programs shall be consistent with each utility's current electric resource plans or natural gas procurement plans.

**(b) Initial plan filings.**

(1)(A)(i) The initial filings of energy efficiency programs will cover program years 2007 – 2009.

(ii) Program year 2007 will be a partial calendar year, while 2008 and 2009 will be full calendar years.

(B) They should initially include energy efficiency measures that can be implemented on a relatively quick start and/or pilot basis.

(C) The initial programs should be limited in nature in order to enable implementation in the 2007 program year.

(D) Proposed Quick Start or pilot programs for program year 2007 shall be filed not later than July 1, 2007, with review to be completed and implementation to occur not later than October 1, 2007.

(E) Electric and gas utilities should file energy efficiency programs choosing individual programs from within the following general list of initial program categories:

(i) Education.

*(a)* This would include the education of customers of all classes on energy efficiency and conservation.

*(b)* It should, to the greatest extent possible, be a consistent statewide group of messages.

*(c)* It should include education of builders and installers of equipment.

*(d)* All messages should be fuel-neutral.

*(e)* The messages should encourage the efficient use of electricity and gas.

*(f)* The messages should increase awareness of opportunities to use electricity and natural gas more efficiently.

*(g)* This category of programs would apply to all customer classes;

(ii) Energy audits and evaluations leading to savings.

*(a)* This would include:

*(1)* Home and commercial energy audits; and

*(2)* Audits of commercial and industrial processes and equipment.

*(b)* The audits and evaluations would produce recommendations for opportunities to implement site-specific efficiency and conservation measures.

(c) Programs would be designed for audits to lead to savings results, and could include cost-effective and economically justified customer incentives to encourage the implementation of site-specific measures.

(d) This category of programs would apply to all customer classes.

(e) A training component to increase the number and quality of auditors will be needed;

(iii) Inspection and tune-up of heating and air conditioning systems.

(a) This would be applicable to residential, commercial, and industrial systems.

(b) This category of programs would apply to all customer classes;

(iv) Lighting.

(a) Improved lighting for residential, commercial, and industrial customers.

(b) This category of programs would apply to all customer classes;

(v) Increased deployment of demand response programs.

(a) Many programs already exist.

(b) This would look for additional opportunities to offer demand response programs including interruptible service, curtailment service, off-peak service, etc.

(c) In the near term, this category of programs would apply to commercial and industrial customer classes and may eventually extend to residential customers;

(vi) Weatherization.

(a) A residential weatherization program that would be based solely on efficiency criteria, targeting least efficient homes first.

(b) The program should establish clear criteria to target the least efficient homes first.

(c) This category of programs would apply to the residential customer class.

(d) An example of such a program is the Quick Start program and comprehensive Severely Energy Inefficient Homes (SEIH) program which the Arkansas Public Service Commission has directed all investor-owned gas and electric utilities to offer, using either the existing State Weatherization Assistance Program Network model or a substantially equivalent alternative implementation method chosen by the utility, provided the alternative method ensures that the SEIH program and all other residential programs are effectively available to all customers consistent with the timeframe for initial program plan filings; and

(vii) Commercial and industrial prescriptive incentive programs. These programs offer a fixed-dollar incentive for multiple defined prescriptive measures, i.e., lighting, HVAC replacements, occupancy sensors, motors, etc.

(2)(A) All programs filed from the above category list should have a high probability of providing ratepayer benefits to the majority of customers.

(B) Program plans for program years 2008 and 2009 may contain additional programs beyond those included in the above category list.

**(c) Comprehensive plan filings.**

(1) Beginning April 1, 2009, each electric and gas utility shall file a comprehensive set of program plans for program years 2010 and later unless administration of programs has been previously delegated by the Arkansas Public Service Commission, in which case each administrator shall file a comprehensive set of program plans by that date.

(2) The programs proposed may continue to include, but are not limited to, the Quick Start and/or pilot programs contained in the list of initial program categories.

**Authority.** Arkansas Code §§ 23-2-305, 23-3-405.

**Codification Notes.** This section was promulgated as Section 8 of the Rules for Conservation and Energy Efficiency Programs prior to codification into the Code of Arkansas Rules.

This section, as promulgated prior to codification into the Code of Arkansas Rules, contained a footnote to the following:

The footnote to 23 CAR § 461-108(b)(1)(F)(vi)(d) immediately following the phrase "State Weatherization Assistance Program Network model" provided as follows: "6 Appendix D, pp. D-9 and 10, and Appendix E, pp. E-3 through 6 of the Report of Richard Sedano to the Commission on the Collaborative Stakeholder Process in Docket No. 06-004-R, with errata, dated November 2, 2006"

**23 CAR § 461-109. Annual reporting requirements.**

(a) By May 1 annually, each electric and gas utility shall file an annual report addressing the performance of all approved conservation and energy efficiency programs.

(b) The report shall:

(1) Present the:

(A) Results of the prescribed EM&V measures for each program;

(B) EM&V measures for the utility's portfolio;

(C) Amounts spent on each conservation and energy efficiency program;

and

(D) Total amounts spent on all programs; and

(2) Include a measure of each program's savings.

**Authority.** Arkansas Code §§ 23-2-305, 23-3-405.

**Codification Notes.** This section was promulgated as Section 9 of the Rules for Conservation and Energy Efficiency Programs prior to codification into the Code of Arkansas Rules.

**23 CAR § 461-110. Records.**

(a) All energy efficiency measures are subject to inspection by the Arkansas Public Service Commission.

(b)(1) All records of energy efficiency programs shall be maintained in sufficient detail to permit a thorough audit and evaluation of all program costs and program performance.

(2) This section does not limit the existing authority of the Arkansas Public Service Commission.

**Authority.** Arkansas Code §§ 23-2-305, 23-3-405.

**Codification Notes.** This section was promulgated as Section 10 of the Rules for Conservation and Energy Efficiency Programs prior to codification into the Code of Arkansas Rules.

**23 CAR § 461-111. Opt-out/self-direct option for qualifying nonresidential business customers.**

**(a) Opt-out customers.**

(1) An Arkansas nonresidential (NR) customer of an electric or natural gas public utility that is classified within sectors 31 through 33 of the North American Industry Classification System as it existed on January 1, 2013, or a state-supported institution of higher education may provide notice by mail or electronic mail to the Arkansas Public Service Commission on or before September 15 of any year of its decision to opt out of utility-sponsored energy conservation programs and measures and direct its own energy conservation programs and measures if the NR customer

satisfies the criteria set forth in Acts 2013, No. 253, as amended, codified as Arkansas Code § 23-3-405(c) – (e).

(2) The Arkansas Public Service Commission will provide and update as necessary instructions and forms on its official website to provide guidance to qualifying NR customers that desire to opt out of utility-sponsored energy conservation programs and measures under Arkansas Code § 23-3-405(c) – (e).

(3) The remainder of this section does not apply to customers providing notice to opt out in accordance with Acts 2013, No. 253, as amended.

(b) **Self-direct customers.**

(1) An Arkansas NR customer of an electric or natural gas public utility that is not eligible to opt out under subsection (a) of this section that meets the eligibility requirements of subsection (m) of this section at a single metered location or subsection (n) of this section at multiple metered locations within a single utility's service territory may request approval from the Arkansas Public Service Commission for a Certificate of Exemption allowing the customer to:

(A) Opt out of participating in utility-provided energy efficiency (EE) programs; and

(B) Participate instead in a Self-Directed EE Option (SD Option).

(2) To be approved for a certificate by the Arkansas Public Service Commission, an eligible customer must successfully demonstrate that it:

(A) Has implemented or invested in a measure or measures within ten (10) years prior to the date the customer files its request for a certificate with the Arkansas Public Service Commission;

(B) Will implement or invest in a measure or measures within the duration of the applicable public utility's EE plan approved by the Arkansas Public Service Commission pursuant to Arkansas Code § 23-3-405; or

(C) Has exhausted its opportunity to conduct further meaningful cost-effective EE programs and to participate in, or to realize benefits through participation in, its utility's EE programs.

(c)(1) The request for a certificate shall be filed with the Arkansas Public Service Commission no later than September 15 of any year in a customer-specific SD docket for verification and approval by the Arkansas Public Service Commission.

(2) All customer and party filings related to a request for a certificate, including requests to extend the initial filing deadline, should be made in a customer-specific SD docket.

(3) Requests to renew a certificate should be made in the same docket as the original request.

(4) The request shall state and shall include adequate information for the Arkansas Public Service Commission to verify that the NR customer has:

(A) Implemented or invested in a measure or measures, excluding any measures in which the NR customer has previously received an incentive from the utility as part of a utility-sponsored program, or will implement or invest in a new measure or measures designed to provide EE savings at the customer's facility in an amount equal to or greater than the most current EE goals or standards established by the Arkansas Public Service Commission for the applicable program years and utility; or

(B)(i) Exhausted its opportunity to conduct further meaningful cost-effective EE programs and to participate in or to realize meaningful benefits through participation in its utility-provided EE programs.

(ii) If the customer claims that it has exhausted its opportunity to participate in or to realize meaningful benefits through participation in its utility-funded EE programs, then the public utility at issue may be made a party to the proceeding by order of the Arkansas Public Service Commission.

(5)(A) An NR customer that participates in a utility's EE program may not request a certificate for five (5) years following the NR customer's participation in that utility's EE program unless the NR customer has returned to an applicable public utility through a separate payment to the public utility or through payment of rates approved under 23 CAR § 461-107 any amount received from an applicable public utility calculated from the date of the installation of the last energy conservation program or measure, including any interest and directly attributable rate effects for:

(i) The installation of any energy conservation programs and measures by the applicable public utility; or

(ii) Financing or direct monetary compensation in the form of a rebate or incentive to enable the installation of any energy conservation programs and measures by the applicable public utility.

(B)(i) For purposes of this subdivision (c)(5), the phrase "participates in a utility's EE program" means accepting from the utility direct installation of an EE measure or financing or direct monetary compensation in the form of an incentive or rebate to enable installation of an EE measure.

(ii) Attendance at educational events and receipt of marketing materials shall not constitute such participation.

(d) The request for a certificate from an NR customer shall include the following minimum information:

(1) An estimate of the expected life of the measure or measures or investment or investments;

(2) An estimate of expected EE savings or evidence of the actual EE savings realized or to be realized, which can be linked to a specific measure or measures or investment or investments, stated in kilowatts (kW) or kilowatt hours (kWh) for electricity and in million British thermal units (MMBtu) or thousand cubic feet (Mcf) for natural gas;

(3) An explanation of how the estimate of expected EE savings or actual EE savings realized was calculated, including supporting workpapers;

(4) The name, title, company, and contact information for the person responsible for calculating the expected EE savings;

(5) The historical annual usage and peak load information necessary to verify eligibility pursuant to subsection (m) or subsection (n) of this section, and a list of account numbers for all qualifying facilities;

(6) The estimate of expected EE savings or evidence of the actual EE savings realized, which can be linked to a specific measure or measures or investment or investments, may include allowances for any reasonably known and measurable

changes in operations, changes in output, or production level changes at the qualifying customer location or locations;

(7)(A) In addition, a customer alleging that it has exhausted its opportunity to conduct further meaningful cost-effective EE programs and to participate in or to realize meaningful benefits through participation in its utility's EE programs shall provide an explanation of how the customer has exhausted its opportunity to conduct further meaningful cost-effective EE programs and how the customer is unable to realize benefits through participation in its utility's EE programs including a description of any measures implemented or investments made by the customer that support that conclusion.

(B) The request shall include an analysis of the cost-effectiveness of the equipment or facilities that have been improved or that might be improved that is based upon the full life cycle of the equipment or facilities.

(C) The customer also may submit alternative cost-effectiveness analysis;

(8) A description of the steps the customer has taken or will take to measure and verify the achievement of the estimated EE savings supporting the request for a certificate; and

(9) An affidavit certifying the accuracy of the information provided from a registered professional engineer or a company official authorized to bind the customer.

(e)(1) The Arkansas Public Service Commission, the Arkansas Public Service Commission's General Staff, and the Attorney General may request additional information from the customer if such additional information is necessary to verify that the measure or measures implemented or to be implemented or investment or investments made or to be made are designed to provide EE savings at the customer's facility in an amount equal to or greater than the most current EE goals or standards established by the Arkansas Public Service Commission for the applicable program years and utility.

(2) Any such further information that is the basis of testimony or comments by General Staff or by the Attorney General before the Arkansas Public Service Commission

and that is reasonably necessary to substantiate such testimony or comments shall be filed in the appropriate docket.

(f) General Staff shall, and other parties to the applicable docket may, review the request for a certificate and file findings and recommendations regarding the request for a certificate by November 15 of the year in which the request for a certificate was filed.

(g)(1) Either on its own motion or at the customer's request, the Arkansas Public Service Commission may schedule a hearing to consider the request for a certificate, or the Arkansas Public Service Commission may without a hearing issue its determination regarding the request based upon the filings addressing the customer's request.

(2) A customer requesting a hearing shall file notice of such request in the customer-specific docket within five (5) calendar days after General Staff's filing of recommendations regarding the application.

(3) The Arkansas Public Service Commission shall issue its order either approving or denying a customer's request for a certificate by December 15 of the year in which the request is filed unless such date is waived by the customer or extended by the Arkansas Public Service Commission.

(h)(1) The request, if approved, shall be effective for the duration of the applicable utility's EE plan, beginning January 1 of the year following the year in which the request was filed.

(2) Upon approving the request for a certificate under this section, the Arkansas Public Service Commission shall notify the appropriate public utility of the exemption.

(3) The customer receiving the certificate shall be exempt from charges billed through a surcharge or rider for EE programs and measures approved by the Arkansas Public Service Commission pursuant to Arkansas Code § 23-3-405(a)(3) for that utility, including any lost contributions to fixed costs or utility incentives approved by the Arkansas Public Service Commission.

(4) Beginning with the customer's January billing cycle in the year following the filing of the request and upon Arkansas Public Service Commission approval of the certificate, the utility shall cease billing the customer for any such charges.

(5) A customer receiving a certificate shall not be eligible to participate in any programs or measures offered by the utility pursuant to Arkansas Code § 23-3-405.

(i) A certificate approved by the Arkansas Public Service Commission under this section shall continue for the duration of the public utility's EE plan approved by the Arkansas Public Service Commission pursuant to Arkansas Code § 23-3-405 unless a different duration is approved by Arkansas Public Service Commission order.

(j)(1) The customer who requested a certificate pursuant to subdivision (b)(1)(A) of this section shall file a report presenting the measurement and verification of the achievement of the estimated EE savings supporting the request for a certificate.

(2)(A) In the case of a current certificate holder seeking a new certificate, the report shall be filed as part of the new application.

(B) The certificate holder shall use best efforts to report results for the greatest number of months available at the time the report is filed beginning with the first month covered by the certificate.

(3) If a certificate holder is not seeking a new certificate, the report shall be filed no later than February 15 of the year following the expiration of the certificate.

(k)(1) The customer must request and receive approval for a new certificate applicable to each new program plan filed by the utility and the associated goals subsequently approved by the Arkansas Public Service Commission pursuant to Arkansas Code § 23-3-405.

(2) The Arkansas Public Service Commission may consider the customer's previous EE savings results as compared to goal in approving a subsequent request for a new certificate.

(l)(1) A customer seeking to withdraw its certificate shall notify the Arkansas Public Service Commission of such withdrawal by November 15 of any year.

(2) Upon notification of withdrawal under this subsection, the Arkansas Public Service Commission shall promptly notify the appropriate public utility of the withdrawal.

(3) Beginning with the customer's January billing cycle in the year following the notice of withdrawal, the utility shall begin billing the customer for any costs recovered through a surcharge or rider approved by the Arkansas Public Service Commission pursuant to Arkansas Code § 23-3-405(a)(3), including any lost contributions to fixed costs and utility incentives approved by the Arkansas Public Service Commission, and the customer shall become eligible to participate in any programs or measures offered by the utility pursuant to Arkansas Code § 23-3-405.

(m) To be eligible for a certificate under this section, the customer's facility at a single metered location shall have:

(1) A minimum peak electrical demand of greater than one megawatt (1 MW) at that location based upon the prior twelve (12) months' billing history at the time of the application; or

(2) An annual natural gas consumption of greater than seventy thousand million British thermal units (70,000 MMBtu) or seventy thousand million cubic feet (70,000 Mcf) at that location.

(n) To be eligible for a certificate under Subpart 5 of this part for multiple facilities with identical ownership within a single utility's service territory, the customer's facilities at two (2) or more metered locations within that service territory shall have:

(1) A minimum peak electrical demand of greater than two hundred kilowatts (200 kW) at each location and a minimum combined peak electrical demand of one megawatt (1 MW), based upon the prior twelve (12) months' billing history at the time of the application, when aggregating the customer's facilities listed in the application and within that service territory; or

(2) An annual natural gas consumption of greater than fourteen thousand million British thermal units (14,000 MMBtu) or fourteen thousand million cubic feet (14,000 Mcf) at each location and a minimum combined annual natural gas consumption of seventy thousand million British thermal units (70,000 MMBtu) or

seventy thousand million cubic feet (70,000 Mcf) when aggregating the customer's facilities listed in the application and within that service territory.

(o) The customer-specific verification information submitted to the Arkansas Public Service Commission pursuant to subsections (d) and (j) of this section by the applicant for a certificate shall be protected from public disclosure by the Arkansas Public Service Commission as proprietary facts or trade secrets pursuant to the provisions of Arkansas Code § 23-2-316.

(p) Each utility affected by a customer receiving a certificate:

(1) Shall reduce the level of energy sales in kilowatt hours (kWh) for electricity or million British thermal units (MMBtu) or thousand cubic feet (Mcf) for natural gas by the amount of the exempted customer's usage during the base year established by the Arkansas Public Service Commission for the purpose of establishing the EE savings goals for that utility;

(2) Shall exclude the consumption of that customer from the calculation of any EE savings for the duration of the public utility's EE plan approved by the Arkansas Public Service Commission pursuant to Arkansas Code § 23-3-405; and

(3) At the utility's option may choose to seek approval from the Arkansas Public Service Commission to revise its last approved EE plan to reflect the impact, if any, of adjustments resulting from customers being approved for opt-out.

**Authority.** Arkansas Code §§ 23-2-305, 23-3-405.

**Codification Notes.** This section was promulgated as Section 11 of the Rules for Conservation and Energy Efficiency Programs prior to codification into the Code of Arkansas Rules.

### **23 CAR § 461-112. Evaluation, Measurement, and Verification.**

(a)(1) All aspects of utility-sponsored energy efficiency efforts, including but not limited to measures, programs, and reports, are potentially subject to Evaluation, Measurement, and Verification (EM&V).

(2) All EM&V activities undertaken as part of a utility-sponsored program, including but not limited to estimation of energy efficiency savings and process evaluations, shall be conducted consistent with:

(A) The Arkansas Technical Reference Manual (TRM); and

(B) National best program evaluation practices as established by:

(i) The National Action Plan for Energy Efficiency;

(ii) The State & Local Energy Efficiency Action (SEE Action) Network;

(iii) The International Performance Measurement and Verification

Protocol; or

(iv) Other similar nationally or internationally accepted EM&V

standards.

(3)(A) The TRM shall set forth protocols for EM&V activities.

(B) An organization selected by a program administrator to conduct EM&V activities shall be independent of the organization or organizations involved in the particular energy efficiency (EE) program design, management, and implementation, such that the verification professionals conducting or reviewing evaluations have no financial stake, beyond the evaluation contract itself, in the program or program components being evaluated.

**(b) Duty to follow procedures in the Arkansas Technical Reference Manual.**

(1) EM&V activities shall be performed in a manner consistent with the applicable TRM provisions.

(2) If the TRM does not specify provisions for an EM&V activity, the utility shall conduct its EM&V activity with a level of effort consistent with the provisions of the TRM.

**(c) Amendment of the Arkansas Technical Reference Manual.**

(1) The Arkansas Public Service Commission shall maintain a docket or dockets for consideration of TRM amendments.

(2) Except for good cause shown, any petition to intervene in a docket for consideration of a TRM amendment shall be filed within fifteen (15) days of the filing of a TRM amendment.

(3)(A) Unless otherwise provided in an Arkansas Public Service Commission order, within twenty (20) days of the date upon which a proposed TRM amendment has been filed, General Staff shall, and the other parties may, file appropriate responsive testimony or request suspension of the proposed amendment.

(B) If a timely objection to an amendment is filed, or if the Arkansas Public Service Commission acts on its own to suspend the proposed amendment:

(i) The amendment will be suspended; and

(ii) An appropriate procedural schedule will be established.

(4)(A) At the request of a party or on its own motion, the Arkansas Public Service Commission may schedule a hearing to consider a suspended amendment.

(B) If no party requests a hearing within fifteen (15) days following suspension, the hearing shall be deemed waived.

(C) No suspended amendment may become effective prior to a hearing or waiver of hearing.

(5) The date of any Arkansas Public Service Commission order approving a TRM amendment becomes the effective date for that amendment, unless otherwise provided in an Arkansas Public Service Commission order.

(d) **Arkansas Technical Reference Manual availability.** The TRM shall:

(1) Be available for inspection in the secretary of the Arkansas Public Service Commission's office; and

(2) Also be available on the Arkansas Public Service Commission's website.

**Authority.** Arkansas Code §§ 23-2-305, 23-3-405.

**Codification Notes.** This section was promulgated as Section 12 of the Rules for Conservation and Energy Efficiency Programs prior to codification into the Code of Arkansas Rules.