

R8-68 INCENTIVE PROGRAMS FOR ELECTRIC PUBLIC UTILITIES AND ELECTRIC MEMBERSHIP CORPORATIONS, INCLUDING ENERGY EFFICIENCY AND DEMAND-SIDE MANAGEMENT PROGRAMS

(a) Purpose. — The purpose of this rule is to establish guidelines for the application of G.S. 62-140(c) to electric public utilities and electric membership corporations and G.S. 62-133.9 to electric public utilities that are consistent with the directives of those statutes and consistent with the public policy of this State as set forth in G.S. 62-2.

(b) Definitions.

- (1) Unless listed below, the definitions of all terms used in this rule shall be as set forth in Rule R8-67(a), or if not defined therein, then as set forth in G.S. 62-3, G.S. 62-133.8(a) and G.S. 62-133.9(a).
- (2) "Consideration" means anything of economic value paid, given, or offered to any person by an electric public utility or electric membership corporation (regardless of the source of the "consideration") including, but not limited to: payments to manufacturers, builders, equipment dealers, contractors including HVAC contractors, electricians, plumbers, engineers, architects, and/or homeowners or owners of multiple housing units or commercial establishments; cash rebates or discounts on equipment/appliance sales, leases, or service installation; equipment/appliances sold below fair market value or below their cost to the electric public utility or electric membership corporation; low interest loans, defined as loans at an interest rate lower than that available to the person to whom the proceeds of the loan are made available; studies on energy usage; model homes; and payment of trade show or advertising costs. Excepted from the definition of "consideration" are favors and promotional activities that are de minimis and nominal in value and that are not directed at influencing fuel choice decisions for specific applications or locations.
- (3) "Costs" include, but are not limited to, all capital costs (including cost of capital and depreciation expenses), administrative costs, implementation costs, participation incentives, and operating costs. "Costs" does not include utility incentives.
- (4) "Electric public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for producing, transporting, distributing, or furnishing electric service to or for the public for consumption. For purposes of this rule, "electric public utility" does not include electric membership corporations.
- (5) "Net lost revenues" means the revenue losses, net of marginal costs avoided at the time of the lost kilowatt-hour sale(s), or in the case of purchased power, in the applicable billing period, incurred by the electric public utility as the result of a new demand-side management or energy efficiency measure. Net lost revenues shall also be net of any increases in revenues resulting from any activity by the electric public utility that causes a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to this Rule R8-68.
- (6) "New demand-side management or energy efficiency measure" means a demand-side management or energy efficiency measure that is adopted and implemented on or after January 1, 2007, including subsequent changes and modifications to any such measure. Cost recovery for "new demand-side management measures" and "new energy efficiency measures" is subject to G.S. 62-133.9.
- (7) "Participation incentive" means any consideration associated with a new demand-side management or energy efficiency measure.
- (8) "Program" or "measure" means any electric public utility action or planned action that involves the offering of consideration.
- (9) "Utility incentives" means incentives as described in G.S. 62-133.9(d)(2)a-c.

(c) Filing for Approval.

- (1) Application of Rule.
 - (i) Prior to an electric public utility or electric membership corporation implementing any measure or program, the purpose or effect of which is to directly or indirectly alter or influence the decision to use the electric public utility's or electric membership corporation's service for a particular end use or to directly or indirectly encourage the installation of equipment that uses the electric public utility's or electric membership corporation's service, and prior to any electric power supplier to which Rule R8-60 applies implementing any new or modified demand-side management or energy efficiency measure, the electric public utility or the electric membership corporation, as applicable, shall obtain Commission approval,

regardless of whether the measure or program is offered at the expense of the shareholders, ratepayers, or third-party.

- (ii) This requirement shall also apply to measures and programs that are administered, promoted, or funded by the electric public utility's or electric membership corporation's subsidiaries, affiliates, or unregulated divisions or businesses if the electric public utility or electric membership corporation has control over the entity offering or is involved in the measure or program and an intent or effect of the measure or program is to adopt, secure, or increase the use of the electric public utility's public utility services.
 - (iii) Any application for approval by an electric public utility or electric membership corporation of a measure or program under this rule shall be made in a unique sub-docket of the electric public utility's or electric membership corporation's docket number.
- (2) Filing Requirements. — Each application for the approval shall include:
- (i) Cover Page. — The electric public utility or electric membership corporation shall attach to the front of an application a cover sheet generally describing:
 - a. the measure or program;
 - b. the consideration to be offered;
 - c. the anticipated total cost of the measure or program;
 - d. the source and amount of funding to be used; and
 - e. the proposed classes of persons to whom it will be offered.
 - (ii) Description. — The electric public utility or electric membership corporation shall provide a description of each measure and program, and include the following:
 - a. the program or measure's objective;
 - b. the duration of the program or measure;
 - c. the targeted sector and eligibility requirements;
 - d. examples of all communication materials to be used with the measure or program and the related cost for each program year;
 - e. the estimated number of participants;
 - f. the impact that each measure or program is expected to have on the electric public utility or electric membership corporation, its customer body as a whole, and its participating North Carolina customers; and
 - g. any other information the electric public utility or electric membership corporation believes is relevant to the application, including information on competition known by the electric public utility or the electric membership corporation.
 - (iii) Additionally, an electric public utility shall include or describe:
 - a. the measure's proposed marketing plan, including a description of market barriers and how the electric public utility intends to address them;
 - b. the total market potential and estimated market growth throughout the duration of the program;
 - c. the estimated summer and winter peak demand reduction by unit metric and in the aggregate by year;
 - d. the estimated energy reduction per appropriate unit metric and in the aggregate by year;
 - e. the estimated lost energy sales per appropriate unit metric and in the aggregate by year; and
 - f. the estimated load shape impacts.
 - (iv) Costs and Benefits. — The electric public utility or electric membership corporation shall provide the following information on the costs and benefits of each proposed measure or program: (a) the estimated total and per unit cost and benefit of the measure or program to the electric public utility or electric membership corporation, reported by type of benefit and expenditure (e.g., capital cost expenditures; administrative costs; operating costs; participation incentives, such as rebates and direct payments; and communications costs, and the costs of measurement and verification) and the planned accounting treatment for those costs and benefits; (b) the type, the maximum and minimum amount of participation incentives to be made to any party, and the reason for any participation incentives and other consideration and to whom they will be offered, including schedules listing participation

incentives and other consideration to be offered; and (c) service limitations or conditions planned to be imposed on customers who do not participate in the measure. With respect to communications costs, the electric public utility or electric membership corporation shall provide detailed cost information on communications materials related to each proposed measure or program. Such costs shall be included in the Commission's consideration of the total cost of the measure or program and whether the total cost of the measure or program is reasonable in light of the benefits.

- (v) **Cost-Effectiveness Evaluation.** — The electric public utility or electric membership corporation shall provide the economic justification for each proposed measure or program, including the results of all cost-effectiveness tests. Cost-effectiveness evaluations performed by the electric public utility or electric membership corporation should be based on direct or quantifiable costs and benefits and should include, at a minimum, an analysis of the Total Resource Cost Test, the Participant Test, the Utility Cost Test, and the Ratepayer Impact Measure Test. In addition, an electric public utility shall describe the methodology used to produce the impact estimates as well as, if appropriate, methodologies considered and rejected in the interim leading to the final model specification.
 - (vi) **Commission Guidelines Regarding Incentive Programs.** — The electric public utility or electric membership corporation shall provide the information necessary to comply with the Commission's Revised Guidelines for Resolution of Issues Regarding Incentive Programs, issued by Commission Order on March 27, 1996, in Docket No. M-100, Sub 124, set out as an Appendix to Chapter 8 of these rules.
 - (vii) **Integrated Resource Plan.** — When seeking approval of a new demand-side management or new energy efficiency measure, the electric public utility shall explain in detail how the measure is consistent with the electric public utility's integrated resource plan filings pursuant to Rule R8-60.
 - (viii) **Other.** — Any other information the electric public utility or electric membership corporation believes relevant to the application, including information on competition known by the electric public utility or the electric membership corporation.
- (3) **Additional Filing Requirements.** — In addition to the information listed in subsection (c)(2), an electric public utility filing for approval of a new or modified demand-side management or energy efficiency measure shall provide the following:
- (i) **Costs and Benefits.** — The electric public utility shall describe:
 - a. any costs incurred or expected to be incurred in adopting and implementing a measure or program to be considered for recovery through the annual rider under G.S. 62-133.9;
 - b. estimated total costs to be avoided by the measure by appropriate capacity, energy and measure unit metric and in the aggregate by year;
 - c. estimated participation incentives by appropriate capacity, energy, and measure unit metric and in the aggregate by year;
 - d. how the electric public utility proposes to allocate the costs and benefits of the measure among the customer classes and jurisdictions it serves;
 - e. the capitalization period to allow the utility to recover all costs or those portions of the costs associated with a new program or measure to the extent that those costs are intended to produce future benefits as provided in G.S. 62-133.9(d)(1).
 - f. The electric public utility shall also include the estimated and known costs of measurement and verification activities pursuant to the Measurement and Verification Reporting Plan described in paragraph (ii).
 - (ii) **Measurement and Verification Reporting Plan for New Demand-Side Management and Energy Efficiency Measures.** — The electric public utility shall be responsible for the measurement and verification of energy and peak demand savings and may use the services of an independent third party for such purposes. The costs of implementing the measurement and verification process may be considered as operating costs for purposes of Commission Rule R8-69. In addition, the electric public utility shall:
 - a. describe the industry-accepted methods to be used to evaluate, measure, verify, and validate the energy and peak demand savings estimated in (2)(iii)c and d above;

- b. provide a schedule for reporting the savings to the Commission;
 - c. describe the methodologies used to produce the impact estimates, as well as, if appropriate, the methodologies it considered and rejected in the interim leading to final model specification; and
 - d. identify any third party and include all of the costs of that third party, if the electric public utility plans to utilize an independent third party for purposes of measurement and verification.
- (iii) Cost recovery mechanism. — The electric public utility shall describe the proposed method of cost recovery from its customers.
 - (iv) Tariffs or rates. — The electric public utility shall provide proposed tariffs or modifications to existing tariffs that will be required to implement each measure or program.
 - (v) Utility Incentives. — When seeking approval of new demand-side management and energy efficiency measures, the electric public utility shall indicate whether it will seek to recover any utility incentives, including, if appropriate, net lost revenues, in addition to its costs. If the electric public utility proposes recovery of utility incentives related to the proposed new demand-side management or energy efficiency measure, it shall describe the utility incentives it desires to recover and describe how its measurement and verification reporting plan will demonstrate the results achieved by the proposed measure. If the electric public utility proposes recovery of net lost revenues, it shall describe estimated net lost revenues by appropriate capacity, energy and measure unit metric and in the aggregate by year. If the electric public utility seeks recovery of utility incentives, including net lost revenues, apart from its recovery of its costs under G.S. 62-133.9, it shall file estimates of the utility incentives and the net lost revenues associated with the proposed measure for each year of the proposed recovery. If the electric public utility seeks only the recovery of net lost revenues apart from its recovery of combined costs and utility incentives, it shall file estimates of net lost revenues for each year of the proposed recovery period.

(d) Procedure.

- (1) Automatic Tariff Suspension. — If an electric public utility files a proposed tariff or tariff amendment in connection with an application for approval of a measure or program, the tariff filing shall be automatically suspended pursuant to G.S. 62-134 pending investigation, review, and decision by the Commission.
- (2) Service and Response. — The electric public utility or electric membership corporation filing for approval of a measure or program shall serve a copy of its filing on the Public Staff; the Attorney General; the natural gas utilities, electric public utilities, and electric membership corporations operating in the filing electric public utility's or electric membership corporation's certified territory; and any other party that has notified the electric public utility or electric membership corporation in writing that it wishes to be served with copies of all filings. If a party consents, the electric public utility or electric membership corporation may serve it with electronic copies of all filings. Those served, and others learning of the application, shall have thirty (30) days from the date of the filing in which to petition for intervention pursuant to Rule R1-19, file a protest pursuant to Rule R1-6, or file comments on the proposed measure or program. In comments, any party may recommend approval or disapproval of the measure or program or identify any issue relative to the program application that it believes requires further investigation. The filing electric public utility or electric membership corporation shall have the opportunity to respond to the petitions, protests, or comments within ten (10) days of their filing. If any party raises an issue of material fact, the Commission shall set the matter for hearing. The Commission may determine the scope of this hearing.
- (3) Notice and Schedule. — If the application is set for hearing, the Commission shall require notice, as it considers appropriate, and shall establish a procedural schedule for prefiled testimony and rebuttal testimony after a discovery period of at least 45 days. Where possible, the hearing shall be held within ninety (90) days from the application filing date.

(e) Scope of Review. — In determining whether to approve in whole or in part a new measure or program or changes to an existing measure or program, the Commission may consider any information it determines to be relevant, including any of the following issues:

- (1) Whether the proposed measure or program is in the public interest and benefits the electric public utility's or electric membership corporation's overall customer body;

- (2) Whether the proposed measure or program unreasonably discriminates among persons receiving or applying for the same kind and degree of service;
- (3) Evidence of consideration or compensation paid by any competitor, regulated or unregulated, of the electric public utility or electric membership corporation to secure the installation or adoption of the use of such competitor's services;
- (4) Whether the proposed measure or program promotes unfair or destructive competition or is inconsistent with the public policy of this State as set forth in G.S. 62-2 and G.S. 62-140; and
- (5) The impact of the proposed measure or program on peak loads and load factors of the filing electric public utility or electric membership corporation, and whether it encourages energy efficiency.

(f) Cost Recovery for New Measures. — Approval of a program or measure under Commission Rule R8-68 does not constitute approval of rate recovery of the costs of the program or measure. With respect to new demand-side management and energy efficiency measures, the costs of those new measures, approved by application of this rule, that are found to be reasonable and prudently incurred shall be recovered through the annual rider described in G.S. 62-133.9 and Rule R8-69. The Commission may consider in the annual rider proceeding whether to approve the inclusion of any utility incentive pursuant to G.S. 62-133.9(d)(2)a-c. in the annual rider.

(NCUC Docket No. E-100, Sub 113, 2/29/08; NCUC Docket No. E-100, Sub 113, 3/13/08; NCUC Docket No. E-100, Subs 113 & 121, 1/31/11; NCUC Docket No. M-100, Sub 140, 12/03/13.)