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**ARKANSAS
PUBLIC SERVICE COMMISSION
UTILITIES DIVISION**
1000 Center
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Little Rock, Arkansas 72203-0400
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John P. Bethel
Director
(501) 682-1794

VIA EMAIL AND U.S. Mail

December 4, 2013

Mr. Mark Martin
Secretary of State
State Capitol, Room 026
Little Rock, AR 72201-1094

RE: Amendments to the Conservation and Energy Efficiency Program Rules
Arkansas Public Service Commission, Utilities Division
State Agency # 126.03

Dear Mr. Martin:

In accordance with Ark. Code Ann. § 25-15-204 and Rule 12.05 of the Commission's *Rules of Practice and Procedure*, the Commission is filing a certified copy of the above-referenced rules as approved by the Commission's Order No. 33, Docket No. 10-101-R (November 15, 2013), and a Financial Impact Statement for the aforementioned rules. Also enclosed is the completed Arkansas Register Transmittal Sheet. The rules appear on the Commission's website at www.arkansas.gov/psc/. The rules have been submitted by email to register@sos.arkansas.gov. If you need any additional information, please feel free to contact me.

If you have any questions, you can contact me at (501) 682-5877.

Sincerely,

/s/ Ronna Abshire

Ronna Abshire
Attorney for Staff

Enclosures

ARKANSAS REGISTER

Transmittal Sheet

* Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

Mark Martin

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Little Rock, Arkansas 72201-1094

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Public Service Commission

Department Utilities Division, State Agency #126.03

Contact Ronna Abshure E-mail rabshure@psc.state.ar.us Phone 682-5877

Statutory Authority for Promulgating Rules Ark. Code Ann. § 23-2-305 and Ark. Code Ann. § 23-3-405

Rule Title: Section 11 of the Conservation and Energy Efficiency Program Rules

Intended Effective Date

(Check One)

☐ Emergency (ACA 25-15-204)

☐ 30 Days After Filing (ACA 25-15-204)

☒ Other Date of Order, 11/15/2013
(Must be more than 30 days after filing date.)

Date

Legal Notice Published 9/18/13 & 9/25/13

Final Date for Public Comment 11/1/2013

Reviewed by Legislative Council 1/8/2014

Adopted by State Agency 11/15/2013

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Ronna Abshure rabshure@psc.state.ar.us

12/4/2013

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Signature

(501)682-5782

DHeltz@psc.state.ar.us

Phone Number

E-mail Address

Secretary of The Arkansas Public Service Commission

Title

December 4th, 2013

Date

REVISED CONSERVATION & ENERGY EFFICIENCY PROGRAM RULES

Section 11: Opt Out / Self Direct Option for Qualifying Non-Residential (NR) Customers

- A. (1) An Arkansas 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 (NAICS), as it existed on January 1, 2013, may provide notice, by mail or electronic mail to the 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 Act 253 of 2013 codified as Ark. Code Ann. §23-3-405(c) through (e). Non-residential customers providing notice to opt out in accordance with Act 253 should refer to Act 253 codified as Ark. Code Ann. §23-3-405(c) through (e) for guidance. The remainder of Section 11 does not apply to customers providing notice to opt out in accordance with Act 253.
- (2) An Arkansas NR customer of an electric or natural gas public utility that is not classified within sectors 31 through 33 of the NAICS but meeting the eligibility requirements of subsection L of Section 11 at a single metered location or subsection M of Section 11 at multiple metered locations within a single utility's service territory may request approval from the Commission for a Certificate of Exemption (Certificate) allowing the customer to "opt out" of participating in utility provided EE programs and to participate instead in a Self-Directed EE Option (SD Option). To be approved for a Certificate by the Commission, an eligible customer must successfully demonstrate that it:
- (a) has implemented or invested in a measure(s) within ten years prior to the date the customer files its request for a Certificate with the Commission, or
 - (b) will implement or invest in a measure(s) within the duration of the applicable public utility's energy efficiency (EE) plan approved by the Commission pursuant to Ark. Code Ann. §23-3-405; or that it:
 - (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.
- B. The request for a Certificate shall be filed with the Commission no later than September 15 of any year in a customer-specific SD docket for verification and approval by the Commission. 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. Requests to renew a Certificate should be made in the same docket as the original request. The request shall state and shall include adequate information for the Commission to verify that:
- (1) the NR customer has implemented or invested in a measure(s), excluding any measures where the NR customer has already received an incentive from the utility as part of a utility-sponsored program, or will implement or invest in a new

measure(s) 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 Commission for the applicable program years and utility; or
(2) the NR customer 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-provided EE programs.

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 Commission.

Effective January 1, 2012, a NR customer that participates in a utility's EE program may not request a Certificate for five years following the NR customer's participation in that utility's EE program. For purposes of this bar, the phrase "participates in a utility's EE program" shall mean 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 energy efficiency measure. Attendance at educational events and receipt of marketing materials shall not constitute such participation.

- C. The request for a Certificate from a NR customer shall include the following minimum information:
- (1) an estimate of the expected life of the measure(s) or investment(s);
 - (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(s) or investment(s), 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 L or M, 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(s) or investment(s), may include allowances for any reasonably known and measurable changes in operations, changes in output, or production level changes at the qualifying customer location(s);
 - (7) 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. 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; 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.
- D. The Commission, the Commission General Staff, and the Attorney General may request additional information from the customer if such additional information is necessary to verify that the measure(s) implemented or to be implemented, or investment(s) 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 Commission for the applicable program years and utility. Any such further information that is the basis of testimony or comments by General Staff or by the Attorney General before the Commission, and that is reasonably necessary to substantiate such testimony or comments, shall be filed in the appropriate docket;
- E. 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.
- F. Either on its own motion or at the customer's request, the Commission may schedule a hearing to consider the request for a Certificate, or the Commission may without a hearing issue its determination regarding the request based upon the filings addressing the customer's request. A customer requesting a hearing shall file notice of such request in the customer specific docket within five calendar days after Staff's filing of recommendations regarding the Application. The 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 Commission.
- G. 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. Upon approving the request for a Certificate under Section 11, the Commission shall notify the appropriate public utility of the exemption. The customer receiving the Certificate shall be exempt from charges billed through a surcharge or rider for EE programs and measures approved by the Commission pursuant to Ark. Code Ann. §23-3-405(a)(3) for that utility, including any lost

contributions to fixed costs or utility incentives approved by the Commission. Beginning with the customer's January billing cycle in the year following the filing of the request and upon Commission approval of the Certificate, the utility shall cease billing the customer for any such charges. A customer receiving a Certificate shall not be eligible to participate in any programs or measures offered by the utility pursuant to Ark. Code Ann. §23-3-405.

- H. A Certificate approved by the Commission under Section 11 shall continue for the duration of the public utility's EE plan approved by the Commission pursuant to Ark. Code Ann. §23-3-405 unless a different duration is approved by Commission order.
- I. The customer who requested a Certificate pursuant to subsection B(1) above shall file a report presenting the measurement and verification of the achievement of the estimated EE savings supporting the request for a Certificate.
 - (1) In the case of a current Certificate holder seeking a new Certificate, the report shall be filed as part of the new Application. 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.
 - (2) 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.
- J. 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 Commission pursuant to Ark. Code Ann. §23-3-405. The Commission may consider the customer's previous EE savings results as compared to goal in approving a subsequent request for a new Certificate.
- K. A customer seeking to withdraw its Certificate shall notify the Commission of such withdrawal by November 15 of any year. Upon notification of withdrawal under this subsection, the Commission shall promptly notify the appropriate public utility of the withdrawal. 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 Commission pursuant to Ark. Code Ann. §23-3-405(a)(3), including any lost contributions to fixed costs and utility incentives approved by the Commission, and the customer shall become eligible to participate in any programs or measures offered by the utility pursuant to Ark. Code Ann. §23-3-405.
- L. To be eligible for a Certificate under Section 11, the customer's facility at a single metered location must meet the following respective requirements for electricity or natural gas:
 - (1) Have a minimum peak electrical demand of greater than one megawatt (1 MW) at that location based upon the prior 12 months billing history at the time of the application, or

- (2) Have an annual natural gas consumption of greater than seventy thousand MMBtu or Mcf (70,000 MMBtu or Mcf) at that location.
- M. To be eligible for a Certificate of Exemption under Section 11 for multiple facilities with identical ownership within a single utility's service territory, the customer's facilities at two or more metered locations within that service territory must meet the following requirements for electricity or natural gas:
- (1) Have 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 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) Have an annual natural gas consumption of greater than fourteen thousand MMBtu or Mcf (14,000 MMBtu or Mcf) at each location and a minimum combined annual natural gas consumption of seventy thousand MMBtu or Mcf (70,000 MMBtu or Mcf) when aggregating the customer's facilities listed in the application and within that service territory.
- N. The customer-specific verification information submitted to the Commission pursuant to subsections C and I of Section 11 by the applicant for a Certificate shall be protected from public disclosure by the Commission as proprietary facts or trade secrets pursuant to the provisions of Ark. Code Ann. §23-2-316.
- O. Each utility affected by a customer receiving a Certificate shall:
- (1) reduce the level of energy sales in kWh for electricity or MMBtu or Mcf for natural gas by the amount of the exempted customer's usage during the base year established by the Commission for the purpose of establishing the EE savings goals for that utility,
 - (2) 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 Commission pursuant to Ark. Code Ann. §23-3-405, and
 - (3) at the utility's option, the utility may choose to seek approval from the Commission to revise its last approved EE plan to reflect the impact, if any, of adjustments resulting from customers being approved for "opt-out".

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Public Service Commission
DIVISION Utilities Section
PERSON COMPLETING THIS STATEMENT Ronna Abshire
TELEPHONE NO. 5016825877 **FAX NO.** 5016825864 **EMAIL:** rabshire@psc.state.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Conservation and Energy Efficiency Program Rules, Section 11

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☒ No ☐
2. Does this proposed, amended, or repealed rule affect small businesses? Yes ☒ No ☐
If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.
This rulemaking consists of amendments to existing rules to substantially codify and incorporate changes to state law during the 2013 legislative session; therefore, the section does not apply.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

Because of the number of utilities and their commercial and industrial customers affected and the significant differences in the effect on each entity, any financial impact estimate would be highly speculative. Since it is unknown what financial impact on the cost of each entity's operations, the Commission is simply unable to provide a financial impact statement which would not be highly speculative.

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

General Revenue	<u>NA</u>
Federal Funds	<u>NA</u>
Cash Funds	<u>NA</u>
Special Revenue	<u>NA</u>
Other (Identify)	<u>NA</u>
Total	<u>NA</u>

Next Fiscal Year

General Revenue	<u>NA</u>
Federal Funds	<u>NA</u>
Cash Funds	<u>NA</u>
Special Revenue	<u>NA</u>
Other (Identify)	<u>NA</u>
Total	<u>NA</u>

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ Unknown

Next Fiscal Year

\$ Unknown

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

Current Fiscal Year

\$ Minimal

Next Fiscal Year

\$ Minimal

The incremental cost to the Arkansas Public Service Commission is minimal and not subject to accurate assessment at this time. It is anticipated that the only incremental cost to the agency will be the cost of mailings, a court reporter for the hearing, and publication of the notice of hearing.