

807 KAR 5:016. Advertising.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040, 278.190(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.190(3) provides that at any hearing involving a rate or charge of a utility for which an increase is sought, the burden of proof shall be on the utility to show that the increased charge or rate is just and reasonable. This administrative regulation specifies what advertising expenses of a utility will be allowable as a cost to the utility for rate-making purposes.

Section 1. General. The purpose of this administrative regulation is to insure that no direct or indirect expenditures may be includable in a gas or electric utility's cost of service for rate-making purposes which are for promotional advertising, political advertising or institutional advertising. It is also the purpose of the administrative regulation to insure that no direct or indirect expenditures may be includable in a telephone, water, or sewage utility's cost of service for rate-making purposes which are for political advertising or institutional advertising. "Advertising" means the commercial use of any media, including newspaper, printed matter, radio and television, in order to transmit a message to a substantial number of members of the public or to utility consumers.

Section 2. Advertising Allowed. (1) No advertising expenditure of a utility shall be taken into consideration by the commission for the purpose of establishing rates unless such advertising will produce a material benefit for the ratepayers.

(2) As used in this administrative regulation, advertising expenditures shall include costs of advertising directly incurred by the public utility and those costs of advertising incurred by contribution to third parties, including parent and affiliated companies.

Section 3. Material Benefit. (1) Advertising expenditures by gas or electric utilities which produce a "material benefit" include, but are not limited to the following:

(a) Advertising limited exclusively to demonstration of means for ratepayers to reduce their bills or conserve energy;

(b) Advertising conveying safety information in the direct use of utility equipment;

(c) Advertising which furnishes factual and objective data programs to educational institutions on the subject of energy technology;

(d) Advertising providing information to the public regarding potential safety hazards associated with construction or a utility's maintenance program;

(e) Legal advertising notices to ratepayers required by statute, rule or order of the commission;

(f) Advertising which explains a utility's proposed or existing rate structure, its energy-related problems and its public programs and activities, provided such reference includes a description of how a consumer benefits from or is affected by same.

(2) Advertising expenditures by telephone, water, or sewage utilities which produce a "material benefit" include, but are not limited to the following:

(a) Advertising limited exclusively to demonstration of means for ratepayers to reduce their bills or conserve energy;

(b) Advertising promoting competitive or other services which would have the effect of holding down the cost of providing basic service;

(c) Advertising conveying safety information in the direct use of utility equipment;

(d) Advertising promoting off-peak usage of existing facilities;

(e) Advertising which explains the use, cost, applicability or availability of new or existing utility equipment and other utility services where energy consumption would either be reduced or not materially increased;

(f) Advertising which furnishes factual and objective data programs to educational institutions on the subject of water, sewer or communications technology;

(g) Advertising providing information to the public regarding potential safety hazards associated with construction or a utility's maintenance program;

(h) Legal advertising notices to ratepayers required by statute, rule or order of the commission.

Section 4. Advertising Disallowed. (1) Advertising expenditures for political, promotional, and institutional advertising by electric or gas utilities shall not be considered as producing a material benefit to the ratepayers and, as such, those expenditures are expressly disallowed for rate-making purposes.

(a) "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(b) "Promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an energy utility, or the selection or installation of any appliance or equipment designed to use such utility's service.

(c) "Institutional advertising" means advertising which has as its sole objective the enhancement or preservation of the corporate image of the utility and to present it in a favorable light to the general public, investors, and potential employees.

(d) The terms "political advertising," "promotional advertising," and "institutional advertising" do not include:

1. Advertising which informs utility customers how they can conserve energy;
2. Advertising required by law or administrative regulation;
3. Advertising regarding service interruption, safety measures, or emergency conditions;
4. Advertising concerning current employment opportunities;
5. Advertising which promotes the use of energy efficient appliances, equipment, or services.

(2) Advertising expenditures for political and institutional advertising by telephone, water, or sewage utilities shall not be considered as producing a material benefit to the ratepayers and, as such, these expenditures are expressly disallowed for rate-making purposes.

(a) "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(b) "Institutional advertising" means advertising which has as its primary objective the enhancement or preservation of the corporate image of the utility and to present it in a favorable light to the general public, investors, and potential employees.

(c) The terms "political advertising" and "institutional advertising" do not include:

1. Advertising which informs utility customers how they can conserve energy;
2. Advertising required by law or administrative regulation;
3. Advertising regarding service interruption, safety measures, or emergency conditions;
4. Advertising concerning current employment opportunities;
5. Advertising which promotes the use of energy efficient appliances, equipment, or services.

Section 5. Burden of Proof. The utility shall have the burden of proving that any advertising cost or expenditures proposed for inclusion in its operating expenses for rate-making purposes within a given test year fall within the categories enumerated in Section 3 of this administrative regulation or that such advertising is otherwise of material benefit to its ratepayers. (8 Ky.R. 802; eff. 4-7-82.)