

Administrative Rules Stamp

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APR 26 1999

SECRETARY OF STATE
ADMINISTRATIVE RULES DIVISIONREBECCA MCDOWELL COOK
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

A "SEPARATE" rule transmittal sheet must be used for EACH individual rulemaking.

- A. Rule Number 4 CSR 240-20.015
 Diskette File Name 4 CSR 240-20.015 proposed rule
 Name of Person to call with questions about this rule:
 Context Keith Thornburg Phone (573) 751-8518 FAX 751-1847
 Data Entry Judy Pope Phone (573) 751-6526 FAX 751-1847
 Interagency Mailing Address Truman Bldg., 301 W. High St., Room 530, Jefferson City, MO
-
- Statutory Provision for Rulemaking
 Authority §§ 386.250, 393.140 Provide Most Current Fiscal Year Supp. 1998
 Date Filed With the Joint Committee on Administrative Rules Exempt per section 536.024, RSMo
Supp 1998, and Executive Order No. 97-97 (June 27, 1997)
-
- B. CHECK, IF INCLUDED: FORMS, List by Mo-Form Number, # of Pages
- | | |
|--|---------------------------------------|
| <input checked="" type="checkbox"/> Cover Letter | |
| <input checked="" type="checkbox"/> Affidavit | |
| <input type="checkbox"/> Cost Statements | |
| <input checked="" type="checkbox"/> Public Entity Fiscal Note | <u>OTHER takings analysis</u> |
| <input checked="" type="checkbox"/> Private Entity Fiscal Note | <u>small business impact analysis</u> |
-
- C. RULEMAKING ACTION TO BE TAKEN
- ☐ Emergency Rulemaking, Must Specify Effective Date
- ☒ Proposed Rulemaking (New Rule)
- ☐ Order of Rulemaking (MUST complete page 2 of this transmittal)
- ☐ Withdrawal (Rule, Amendment, Rescission or Emergency)
- ☐ Rule Action Notice
- ☐ In Addition
-
- D. SPECIFIC INSTRUCTIONS: In this space indicate any special instructions (e.g., specify publication date preference, identify material incorporated by references, etc.)
-
-
-



Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
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573-751-1847 (Fax Number)
<http://www.ecodev.state.mo.us/psc/>

April 26, 1999

GORDON L. PERSINGER
Acting Executive Director
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Honorable Rebecca McDowell Cook
Secretary of State
600 West Main Street
Jefferson City, Missouri 65101

ATTENTION: Administrative Rules Division

I do hereby certify that the attached are accurate and complete copies of the Proposed Rule lawfully submitted by the Missouri Public Service Commission for filing this 26th day of April, 1999.

Both a takings analysis and a small business impact analysis have been performed. The rule does not implicate the takings clause and there is no cost to small businesses.

Rule: 4 CSR 240-20.015 Affiliate Transactions

Statutory authority: sections 386.250, RSMo Supp. 1998, and 393.140, RSMo 1994

Missouri Public Service Commission Case No.: EX-99-442

If there are any questions, please contact: Keith Thornburg, Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Room 530
Post Office Box 360
Jefferson City, Missouri 65102
(573) 751-8518

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

DHR:KT:jp

Enclosures: Proposed Rule 4 CSR 240-20.015, transmittal, affidavit and detailed fiscal analysis, private entity fiscal note, public entity fiscal note, takings analysis, and small business impact analysis: 1 original and 2 copies of the packet, and the rule on diskette in Word 6.0 format.

2

AFFIDAVIT

STATE OF MISSOURI

COUNTY OF COLE

I, Joseph L. Driskill, Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that the attached fiscal note for the Public Entity Cost of Proposed Rule 4 CSR 240-20.015 Affiliate Transactions - Electric Utilities is a reasonably accurate estimate.



JOSEPH L. DRISKILL

Director

Department of Economic Development

Subscribed and sworn to before me this 10th day of March, 19 99.
I am commissioned as a notary public within the County of Callaway, State of
Missouri, and my commission expires on 7-20-99.


NOTARY PUBLIC

KATHIE M SMITH
NOTARY PUBLIC STATE OF MISSOURI
CALLAWAY COUNTY
MY COMMISSION EXP. JULY 20, 1999

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBER

Title: 4

Division: 240 Public Service Commission

Chapter: 20 Electric Utilities

Type of Rulemaking: Proposed Rule

Rule Number and Name: 015 Affiliate Transactions

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated cost of compliance in the aggregate
Missouri Public Service Commission	\$171,198 annual aggregate first year \$154,012 succeeding years

III. WORKSHEET

1. The Missouri Public Service Commission (MoPSC) will audit utilities to assure compliance with this rule.
2. Ensuring compliance with this rule will require auditing and legal expertise.
3. This estimate is made for this rule on a stand-alone basis.
4. There are two utilities that sell electricity, gas, and steam and one utility that sells electricity and gas.
5. If the corresponding rules for gas and steam utilities are also adopted, the costs to the MoPSC for these rules would not be the total of the estimate costs for each of the different services because the effort would not be completely duplicated for utilities that supply more than one service.

IV. ASSUMPTIONS

1. Fiscal Year 2000 dollars were used to estimate costs. No adjustment for inflation has been applied.
2. Estimates assume no change in the number of regulated utilities with affiliated operations.
3. Affected entities are assumed to be in compliance with all other MoPSC rules and regulations.

**Estimated Fiscal Impact of
4 CSR 240-20.015 Affiliate Transactions
on the
Missouri Public Service Commission**

Fiscal Year 2000 Dollars

Reoccurring Costs	
<i>Personnel</i>	
Salary (1)*	\$93,094.00
Fringe benefits	\$26,094.00
<i>Total</i>	\$119,188.00
<i>Expenses</i>	
Travel and vehicle (2)*	\$17,520.00
Training and publications (3)*	\$3,337.00
Office space rental	\$7,849.00
Office supplies and equipment (4)*	\$6,118.00
<i>Total</i>	\$34,824.00
Total Reoccurring Costs	\$154,012.00

One Time Costs	
<i>Equipment</i>	
Furniture, Computers and other (5)	\$17,185.55
Total One Time Costs	\$17,185.55

Total First Year Costs	\$171,197.55
Reoccurring Costs	\$154,012.00

* Notes:

- (1) Two auditors, one of which is at least the level of an Auditor III and General Counsel will be necessary to ensure compliance with this rule.
- (2) Approx. 188 days @ \$75/day, 12,000 miles @ \$.285/mile
- (3) Professional development and training
- (4) Office supplies, telephone, copy machine rental
- (5) Also includes computer installation, printer, calculator, and other misc. equipment.

Title 4--DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 240--Public Service Commission
Chapter 20--Electric Utilities

PROPOSED RULE

4 CSR 240-20.015 Affiliate Transactions

PURPOSE: This rule is intended to prevent regulated utilities from subsidizing their non-regulated operations. In order to accomplish this objective, the rule sets forth financial standards, evidentiary standards and record-keeping requirements applicable to any Missouri Public Service Commission (commission) regulated electrical corporation whenever such corporation participates in transactions with any affiliated entity (except with regard to HVAC services as defined in section 386.754, RSMo Supp. 1998, by the General Assembly of Missouri). The rule and its effective enforcement will provide the public the assurance that their rates are not adversely impacted by the utilities' non-regulated activities.

(1) Definitions.

(A) Affiliated entity means any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county or a combination of political subdivisions which, directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated electrical corporation.

(B) Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated electrical corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated electrical corporation and the regulated business operations of an electrical corporation. An affiliate transaction for the purposes of this rule excludes HVAC services as defined in section 386.754 by the General Assembly of Missouri.

(C) Control (including the terms "controlling," "controlled by," and "common control") means the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one (1) or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule. This provision, however, shall not be construed to prohibit a regulated electric corporation from rebutting the presumption that its ownership interest in an entity confers control.

(D) Derivatives means a financial instrument, traded on or off an exchange, the price of which is directly dependent upon (i.e., "derived from") the value of one (1) or more underlying securities, equity indices, debt instruments, commodities, other derivative instruments or any agreed-upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates). Derivatives involve the trading of rights or obligations based on the underlying product, but do not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for a fixed rate of return.

(E) Fully Distributed Cost (FDC) means a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach.

Costs that cannot be directly assigned or indirectly allocated (e.g., general and administrative) must also be included in the FDC calculation through a general allocation.

(F) Preferential service means information or treatment or actions by the regulated electrical corporation which places the affiliated entity at an unfair advantage over its competitors.

(G) Regulated electrical corporation means every electrical corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to chapter 393, RSMo.

(H) Variance means an exemption granted by the commission from any applicable standard required pursuant to this rule.

(2) Standards.

(A) A regulated electrical corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated electrical corporation shall be deemed to provide a financial advantage to an affiliated entity if:

1. It compensates an affiliated entity for goods or services above the lesser of:

- A. The fair market price; or

- B. The fully distributed cost to the regulated electrical corporation to provide the goods or services for itself.

2. It transfers information, assets, goods or services of any kind (including, but not limited to, land, patents, trained employees, research, employee training, etc.) to an affiliated entity below the greater of:

- A. The fair market price; or

- B. The fully distributed cost to the regulated electrical corporation.

(B) The regulated electrical corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

(C) The regulated electrical corporation shall not participate in any affiliate transactions which are not in compliance with this rule except as otherwise provided in section (9) of this rule.

(D) If a customer requests information from the regulated electrical corporation about goods or services provided by an affiliated entity, the regulated electrical corporation shall provide information to the customer regarding the availability of other non-affiliated entities that provide the same goods or services. The regulated electrical corporation shall include in its annual Cost Allocation Manual (CAM), the criteria, guidelines, and procedures it will follow to be in compliance with this rule.

(3) Evidentiary Standards for Affiliate Transactions.

(A) When a regulated electrical corporation purchases information, assets, goods or services from an affiliated entity, the regulated electrical corporation shall either obtain competitive bids for such information, assets, goods or services or demonstrate why competitive bids were neither necessary nor appropriate.

(B) In transactions that involve either the purchase or receipt of information, assets, goods or services by a regulated electrical corporation from an affiliated entity, the regulated electrical corporation shall document both the fair market price of such information, assets, goods and services and the FDC to the regulated electrical corporation to produce the information, assets, goods or services for itself.

(C) In transactions that involve the provision of information, assets, goods or services to affiliated entities, the regulated electrical corporation must demonstrate that it:

1. Considered all costs incurred to complete the transaction;

2. Calculated the costs at times relevant to the transaction;

3. Allocated all joint and common costs appropriately; and

4. Adequately determined the fair market price of the information, assets, goods or services.

(D) In transactions involving the purchase of goods or services by the regulated electrical corporation from an affiliated entity, the regulated electrical corporation will use a commission-approved CAM which sets forth cost allocation, market valuation and internal cost methods. This CAM can use bench marking practices

that can constitute compliance with the market value requirements of this section if approved by the commission.

(4) Record-Keeping Requirements

(A) Each regulated electrical corporation shall maintain the following information in a mutually agreed-to electronic format (i.e., agreement between the staff, Office of the Public Counsel and the regulated electrical corporation) regarding affiliate transactions on a calendar year basis and shall provide such information to the commission staff and the Office of the Public Counsel on, or before, March 15th of the succeeding year:

1. A full and complete list of all affiliated entities as defined by this rule;
2. A full and complete list of all goods and services provided to or received from affiliated entities;
3. A full and complete list of all contracts entered with affiliated entities;
4. A full and complete list of all affiliate transactions undertaken with affiliated entities without a written contract together with a brief explanation of why there was no contract;
5. The amount of all affiliate transactions by affiliated entity and account charged; and
6. The basis used (e.g., fair market price, FDC, etc.) to record each type of affiliate transaction.

(B) In addition, each regulated electrical corporation shall maintain the following information regarding affiliate transactions on a calendar year basis:

1. Records identifying the basis used (e.g., fair market price, FDC, etc.) to record all affiliate transactions; and
2. Books of accounts and supporting records in sufficient detail to permit verification of compliance with this rule.

(5) Records of Affiliated Entities.

(A) Each regulated electrical corporation shall ensure that its parent and any other affiliated entities maintain books and records that include, at a minimum, the following information regarding affiliate transactions:

1. Documentation of the costs associated with affiliate transactions that are incurred by the parent or affiliated entity and charged to the regulated electrical corporation;
2. Documentation of the methods used to allocate and/or share costs between affiliated entities including other jurisdictions and/or corporate divisions;
3. Description of costs that are not subject to allocation to affiliate transactions and documentation supporting the non-assignment of these costs to affiliate transactions;
4. Descriptions of the types of services that corporate divisions and/or other centralized functions provided to any affiliated entity or division accessing the regulated electrical corporation's contracted services or facilities;
5. Names and job descriptions of the employees from the regulated electrical corporation that transferred to a non-regulated affiliated entity;
6. Evaluations of the effect on the reliability of services provided by the regulated electrical corporation resulting from the access to regulated contracts and/or facilities by affiliated entities;
7. Policies regarding the availability of customer information and the access to services available to non-regulated affiliated entities desiring use of the regulated electrical corporation's contracts and facilities; and
8. Descriptions of and supporting documentation related to any use of derivatives that may be related to the regulated electrical corporation's operation even though obtained by the parent or affiliated entity.

(6) Access to Records of Affiliated Entities.

(A) To the extent permitted by applicable law and pursuant to established commission discovery procedures, a regulated electrical corporation shall make available the books and records of its parent and any other affiliated entities when required in the application of this rule.

(B) The commission shall have the authority to:

1. Review, inspect and audit books, accounts and other records kept by a regulated electrical corporation or affiliated entity for the sole purpose of ensuring compliance with this rule and making findings available to the commission; and

2. Investigate the operations of a regulated electrical corporation or affiliated entity and their relationship to each other for the sole purpose of ensuring compliance with this rule.

(C) This rule does not modify existing legal standards regarding which party has the burden of proof in commission proceedings.

(7) Record Retention.

(A) Records required under this rule shall be maintained by each regulated electrical corporation for a period of not less than six (6) years.

(8) Enforcement

(A) When enforcing these standards, or any order of the commission regarding these standards, the commission may apply any remedy available to the commission.

(9) Variances

(A) A variance from the standards in this rule may be obtained by compliance with paragraphs (9)(A)1. or (9)(A)2. The granting of a variance to one regulated electrical corporation does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated electrical corporation to comply with the standards.

1. The regulated electrical corporation shall request a variance upon written application in accordance with commission procedures set out in 4 CSR 240-2.060 (11), or;

2. A regulated electrical corporation may engage in an affiliate transaction not in compliance with the standards set out in subsection (2) (A) of this rule, when to its best knowledge and belief, compliance with the standards would not be in the best interests of its regulated customers and it complies with the procedures required by subparagraphs (9)(A)2.A. and (9)(A)2.B. of this rule.

A. All reports and record retention requirements for each affiliate transaction must be complied with, and;

B. Notice of the non-complying affiliate transaction shall be filed with the secretary of the commission and the Office of the Public Counsel within ten (10) days of the occurrence of the non-complying affiliate transaction. The notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of subsection (2) (A), and shall provide a detailed explanation of how the affiliate transaction was in the best interests of the regulated customers. Within thirty (30) days of the notice of the non-complying affiliate transaction, any party shall have the right to request a hearing regarding the non-complying affiliate transaction. The commission may grant or deny the request for hearing at that time. If the commission denies a request for hearing, the denial shall not in any way prejudice a party's ability to challenge the affiliate transaction at the time of the annual CAM filing. At the time of the filing of the regulated electrical corporation's annual CAM filing the regulated electrical corporation shall provide to the secretary of the commission a listing of all non-complying affiliate transactions which occurred between the period of the last filing and the current filing. Any affiliate transaction submitted pursuant to this section shall remain interim, subject to disallowance, pending final commission determination on whether the non-complying affiliate transaction resulted in the best interests of the regulated customers.

AUTHORITY: sections 386.250, RSMo Supp. 1998, and 393.140, RSMo 1994. Original rule filed: April 26, 1999.

PUBLIC ENTITY COST: This proposed rule is expected to result in a fiscal impact to the Missouri Public Service Commission of \$171,198 annually and \$154,012 in succeeding years. The Office of the Public Counsel expects no fiscal impact. No other public entity is expected to have any fiscal impact.

PRIVATE ENTITY COST: This proposed rule will cost private entities more than \$500.00 in the aggregate. The cost for electric utilities is estimated to be an aggregate of \$500,000 the first year and an aggregate of \$375,000 succeeding years.

*NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file initial and reply comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, P.O. Box 360, Jefferson City, MO 65102. All comments should refer to Case No. EX-99-442, and be filed with an original and fourteen (14) copies. To be considered, initial comments must be received at the above address within thirty (30) days after publication of the notice in the **Missouri Register**. Reply comments in response to the initial comments may be filed by sending them to Dale Hardy Roberts at the address above. To be considered, reply comments must be received within sixty (60) days after publication of the notice in the **Missouri Register**. A public hearing will be held at 10:00 a.m., on Sept. 14, 1999. The public hearing will be held at the Truman State Office Building, Room 520B, 301 W. High St., Jefferson City, MO, for interested persons to appear and respond to Commissioner questions. Commenters wishing to be heard should submit written requests, at least seven (7) days prior to the hearing, to Dale Hardy Roberts at the address above.*

SPECIAL NEEDS: Anyone with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days before the hearing at one of the following numbers: Consumer Services Hotline 1-800-392-4211, or TDD Hotline 1-800-829-7541.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBER

Title: 4

Division: 240 Public Service Commission

Chapter: 20 Electric Utilities

Type of Rulemaking: Proposed Rule

Rule Number and Name: 015 Affiliate Transactions

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated cost of compliance in the aggregate
Missouri Public Service Commission	\$171,198 annual aggregate first year
	\$154,012 succeeding years

III. WORKSHEET

1. The Missouri Public Service Commission (MoPSC) will audit utilities to assure compliance with this rule.
2. Ensuring compliance with this rule will require auditing and legal expertise.
3. This estimate is made for this rule on a stand-alone basis.
4. There are two utilities that sell electricity, gas, and steam and one utility that sells electricity and gas.
5. If the corresponding rules for gas and steam utilities are also adopted, the costs to the MoPSC for these rules would not be the total of the estimate costs for each of the different services because the effort would not be completely duplicated for utilities that supply more than one service.

IV. ASSUMPTIONS

1. Fiscal Year 2000 dollars were used to estimate costs. No adjustment for inflation has been applied.
2. Estimates assume no change in the number of regulated utilities with affiliated operations.
3. Affected entities are assumed to be in compliance with all other MoPSC rules and regulations.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 4

Division: 240 Public Service Commission

Chapter: 20 Electric Utilities

Type of Rulemaking: Proposed Rule

Rule Number and Name: 015 Affiliate Transactions

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
5	Electric Utility Company	\$500,000 annual aggregate first year \$375,000 succeeding years

III. WORKSHEET

1. The Missouri Public Service Commission (MoPSC) sent a letter to all the regulated electric utility companies in the state asking for the fiscal impact of this rule on their operations.
2. Four of the five electric utility companies replied.
3. One company responded that it could not estimate impacts because of the cost accounting method specified in the rule.
4. One company replied that its costs would be the same as for the complete deregulation of its company as required in another state.
5. Two companies replied with considered estimates.
6. This estimate is made for this rule on a stand-alone basis.
7. There are two utilities that also sell electricity, gas, and steam and one utility that sells electricity and gas.
8. If the corresponding rules for gas and steam utilities are also adopted the costs for these utilities would not be the sum of the estimated costs for each of the different services because the effort would not be duplicated for each service.

IV. ASSUMPTIONS

1. Fiscal Year 2000 dollars were used to estimate costs. No adjustment for inflation has been applied.
2. Estimates assume no change in the number of regulated utilities with affiliated operations.
3. Affected entities are assumed to be in compliance with all other MoPSC rules and regulations.
4. Estimates assume that the amount of fiscal impact is not proportional to the size of the utility. The fiscal impact is approximately the same for each utility with the exception of cost-of-living levels across the state.
5. Costs will be higher the first year to set up book keeping and programming requirements and personnel training. Estimate is \$100,000 per electric utility.
6. An estimate of \$75,000 for succeeding years is assumed for each utility.
7. This estimate is for one additional position and overheads at each utility. An additional full-time position may not be necessary. A utility may be able to use existing resources in order to comply with this rule.



Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

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Vice Chair

Missouri Public Service Commission

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March 30, 1999

GORDON L. PERSINGER
Acting Executive Director
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
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Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: 4 CSR 240-20.015 Affiliate Transactions - Electric Utilities Proposed Rule

Dear Mr. Roberts:

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rule or regulation in light of the United States Supreme Court decision in *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992). Pursuant to the order, I have completed a "takings analysis" of the above referenced proposed new rule. In *Lucas*, the Court held that state regulation that deprived an owner of real property of all beneficial economic use of that property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U. S. Constitution, for which the owner must be compensated..

The proposed new rule prescribes the procedures to be used and records to be kept when a regulated electric utility engages in affiliate transactions. Nothing in this proposed rule deprives a regulated utility of all beneficial economic use of real property. Thus, the proposed new rule does not implicate the takings clause of the U. S. Constitution, since it does not involve the deprivation of economically beneficial use of real property.

Please let me know if you have any questions concerning this proposed rule.

Sincerely yours,

Lera L. Shemwell
Assistant General Counsel



Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

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April 6, 1999

GORDON L. PERSINGER
Acting Executive Director
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

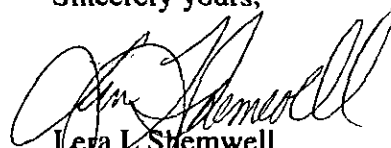
Re: Proposed Rule 4 CSR 240-20.015 Affiliate Transactions - Electric Utilities
Small Business Analysis

Dear Mr. Roberts:

Executive Order 96-18 requires state agencies to determine whether a proposed rulemaking will have an economic impact on small business of five hundred dollars or more in the aggregate. A small business is defined in the Executive Order as an independently owned and operated business entity that employs 50 or fewer full time employees.

None of the utility companies that may be affected by this rule fall within this definition of a small business. Please let me know if you have any questions concerning this matter.

Sincerely yours,


Lera L. Shemwell
Assistant General Counsel



Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER
Vice Chair

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April 7, 1999

GORDON L. PERSINGER
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Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

FILED

APR 7 1999

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Proposed Rule - Electric Utilities

EX-99-442

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and two (2) conformed copies of a **PROPOSED RULE, 4 CSR 240-20.015, ELECTRIC UTILITIES, AFFILIATE TRANSACTIONS.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Lera L. Shemwell
Assistant General Counsel
(573) 751-43792
(573) 751-9285 (Fax)

Enclosure
cc: Counsel of Record

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: March 30, 1999


RE: Authorization to File Proposed Rule 4 CSR 240-20.015 Affiliate Transactions - Electric Utilities with the Office of Secretary of State

CASE NO:

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the attached Proposed Rule with the Office of Secretary of State, to wit:

4 CSR 240.20.015 - Affiliate Transactions - Electric Utilities


Sheila Lumpe, Chair


Harold Crumpton, Commissioner


Connie Murray, Commissioner


Robert Schemenauer, Commissioner


M. Dianne Drainer, Vice Chair