4 CSR 240-13.055, and the utility shall separately report on the information listed below for customers receiving energy assistance and customers who are affected by 4 CSR 240-13.055 and not known to be receiving energy assistance. All information submitted shall be considered public information; however, no customer-specific information shall be reported or made public. Utilities providing both electric and gas service shall report the information separately for their gas-only territory:

(A) How many customers were:

1. Disconnected at the end of the period;

2. Of those disconnected, how many customers had service discontinued for non-payment during the period;

3. Of those discontinued during the period, how many customers were restored to service during the period.

(C) Of those customers reconnected during the period:

1. How many customers received energy assistance (pledged or paid) from:

A. Low Income Home Energy Assistance Program (LIHEAP);

B. Energy Crisis Intervention Program (ECIP);

C. Other sources known to the utility.

2. How much energy assistance was provided by:

A. LIHEAP;

B. ECIP;

C. Other sources known to the utility;

D. Customer.

(G) For how many customers during the period did the utility receive:

1. LIHEAP;

2. ECIP;

3. Other assistance known to the utility.

(H) How much cash did the utility receive on behalf of customers during the period from:

1. LIHEAP;

2. ECIP;

3. Others known to the utility.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 40—Gas Utilities and Gas Safety Standards

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250 and 393.140, RSMo 2000, the Public Service Commission adopts a rule as follows:

4 CSR 240-40.018 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 2, 2003 (28 MoReg 1032). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held July 10, 2003, and the public comment period ended July 3, 2003. At the public hearing, Warren Wood, Manager of the Energy Department of the Public Service Commission of Missouri, explained the development of the proposed rule and presented the Staff's responses to all written comments that had been provided to the Commission regarding the proposed rule through an exhibit that was marked Exhibit No. 1 and entered into the record. Jim Busch—an economist with the Office of the Public Counsel; Scott Glaeser—manager of natural gas supply and transportation for Ameren Energy Fuels and Services Company; Sean Gillespie—director of gas supply planning and operations for the southern region of Aquila; Rob Hack—attorney for Missouri Gas Energy; Mike Pendergast—attorney for Laclede Gas Company; and Anita Randolph—director of the Department of Natural Resources' Energy Center all presented oral comments regarding the proposed rule at the public hearing.

COMMENT: Douglas E. Micheel, Esq., Senior Public Counsel, Office of the Public Counsel, on behalf of the Office of the Public Counsel, endorsed the proposed rule.
RESPONSE: No changes have been made to the proposed rule as a result of this comment.

COMMENT: Jim Busch, Economist for the Office of the Public Counsel, on behalf of the Office of the Public Counsel, endorsed the proposed rule. Mr. Busch also responded to some recommended changes that other parties would like to see made to the proposed rule. Mr. Busch expressed opposition to changing or removing the word "upward" regarding upward price volatility, the recommendation of adding index pricing to the proposed rule and that of adding NYMEX to section (2)(F) of the proposed rule where it lists futures contracts. Mr. Busch also expressed concern over adding energy efficiency to the rule since this rule is really structured as a supply side rule, and energy efficiency is a demand side concern. Also, in response to questions from the administrative law judge, Mr. Busch noted that "usage" as listed in the rule associated with usage volatility should remain in the proposed rule.
RESPONSE: No changes have been made to the proposed rule as a result of these comments.

COMMENT: Dean L. Cooper, Attorney, as attorney for Aquila, Inc. d/b/a Aquila Networks—MPS and Aquila Networks—L&P, endorsed the proposed rule. Aquila did note agreement with "technical drafting issues raised by other Missouri gas utilities," but did not recommend any specific changes to the rule.
RESPONSE: No changes have been made to the proposed rule as a result of this comment.

COMMENT: Sean Gillespie, director of gas supply planning and operations for the southern region of Aquila, on behalf of Aquila, endorsed the proposed rule and the comments that were provided by the other utilities, especially those of Ameren. Mr. Gillespie specifically endorsed the addition of NYMEX and OTC clarifications to the proposed rule, since there are a lot of tools available. Mr. Gillespie also noted that Aquila believes that adding energy efficiency to the rule is not appropriate since this rule deals with the supply side and not the demand side, but did note that they would be in support of a separate rulemaking. Mr. Gillespie also noted that weather hedges should be added to the rule, to remove any ambiguity.
RESPONSE: No changes have been made to the proposed rule as a result of these comments. The comments of AmerenUE, and the Commission's responses to those comments, are addressed below. The Commission has considered the addition of weather hedges to the proposed rule and believes that this tool is covered under the last provision of section (2) of the rule.

COMMENT: Brenda Wilbers, Program Director, Department of Natural Resources—Policy and Planning, on behalf of the Department recommended that section (2) of the rule be expanded to include energy efficiency programs and that a separate workgroup and rule be established to address energy efficiency programs.
RESPONSE: The Commission has considered these comments and notes that the second comment does not relate to a recommended change to this rule and will therefore not be addressed in this response. The first comment relates to broadening the language in section (2) of the proposed rule to include energy efficiency programs. The stated purpose of this rule is to provide "a statement of Commission policy that natural gas local distribution companies should undertake diversified natural gas purchasing activities as part

of a prudent effort to mitigate upward natural gas price volatility and secure adequate natural gas supplies for their customers." While the Commission is generally supportive of the issues noted by the Department in its comments, this rule is structured to address supply side planning whereas energy efficiency is a demand side consideration. No changes to the proposed rule have been made as a result of these comments.

COMMENT: Anita Randolph, director of the Department of Natural Resources' Energy Center, on behalf of the Department, stated that the proposed rule would benefit from the inclusion of the energy efficiency.
RESPONSE: No changes to the proposed rule have been made as a result of this comment. The issue addressed by Mrs. Randolph mirrors that of Mrs. Wilbers of the Department of Natural Resources and the Commission's response to this issue is provided in the response to Mrs. Wilbers' comments.

COMMENT: Warren Wood, Manager, Energy Department of the Public Service Commission, stated that the Staff has been very supportive of weatherization programs, energy conservation programs and low-income assistance programs that were structured appropriately. Further, Staff is supportive of initiatives for addressing energy efficiency programs. Staff cannot, however, recommend that the rule be expanded to include "Energy Efficiency Programs" as an option that natural gas utilities should pursue in their efforts "to minimize the impacts of market price spikes and provide a level of stability of delivered natural gas prices." Staff does not believe that adding energy efficiency to section (2) of the rule is appropriate since this rule is directed at supply side planning issues and not demand side remedies.
RESPONSE: No changes to the proposed rule have been made as a result of these comments.

COMMENT: James M. Fischer, Attorney, as attorney for Union Electric Company d/b/a AmerenUE, endorsed the proposed rule, thanked the Commission for the opportunity to participate in the development of the proposed rule and suggested several changes. AmerenUE suggested that the following changes to the proposed rule would be appropriate:

1. That the rule specify that cash gains or losses associated with instruments used to mitigate price volatility be flowed through the PGA mechanism;
2. That "NYMEX" be inserted in front of "Futures Contracts" in section (2) of the proposed rule;
3. That section (2) of the proposed rule be expanded to include "Financial Swaps and Options from OTC Markets";
4. That the pricing structures listed in section (2) of the proposed rule be expanded to include indexed contracts; and
5. That wherever "upward" appears in subsection (1)(C) of the proposed rule it should be replaced with the word "price."

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the comments made by AmerenUE and agrees that some changes to the proposed rule are appropriate.

AmerenUE's first comment relates to specifically permitting a pass through of cost associated with natural gas price mitigation efforts in the PGA. The Commission agrees that this clarification is an appropriate addition to the rule and will add a sentence to the end of section (1)(B).

AmerenUE's second comment relates to placing NYMEX in front of "Futures Contracts" in subsection (2)(F). The Commission cannot support this change to the rule as it could act to exclude other futures contracts that may currently be available or will develop in the market.

AmerenUE's third recommended change was to add "Financial Swaps and Options from OTC Markets" to the options listed in section (2) of the rule. The Commission agrees that this is an appropriate addition to the rule and will change the list of options in section (2) of the proposed rule.

AmerenUE's fourth recommended change is that the list of pricing structures, mechanisms and instruments in section (2) of the proposed rule should be expanded to include indexed contracts. The Commission has considered this recommendation and cannot support this change to the rule since section (2) of the rule is intended to provide a list of pricing structures, mechanisms and instruments that natural gas utilities should consider in developing purchasing plans that consider natural gas price volatility mitigation. The Commission's exclusion of indexed contracts from the list in the rule under section (2) does not imply that index contracts are imprudent and/or inappropriate in a well-structured purchasing portfolio, just that the Commission does not consider them a purchasing mechanism for attempting to address upward price volatility.

AmerenUE's fifth comment was that "upward" should be replaced with "price" where upward volatility is noted in subsection (1)(C). The Commission has considered this recommendation and cannot support this change to the rule since its purpose is to provide a clear "statement of Commission policy that natural gas local distribution companies should undertake diversified natural gas purchasing activities as part of a prudent effort to mitigate *upward* natural gas price volatility and secure adequate natural gas supplies for their customers" *(emphasis added)*. Changing "upward" to "price" as recommended by AmerenUE is not consistent with the purpose of this rule. The Commission clarifies language in subsection (1)(C) by adding "price."

COMMENT: Scott Glaeser, manager of natural gas supply and transportation for Ameren Energy Fuels and Services Company, on behalf of AmerenUE, noted that the rule should address the rate recovery of financial instrument in the PGA. Mr. Glaeser also noted that NYMEX should be added to the rule associated with futures contracts since this is the primary futures market for natural gas trading in the United States and Canada. Mr. Glaeser further recommended that over-the-counter markets (OTC) should be referenced in the proposed rule. Mr. Glaeser's last comment was that energy efficiency is a demand side component and that this rulemaking is based on supply side price mitigation.
RESPONSE: No changes to the proposed rule have been made as a result of these comments. The issues addressed by Mr. Glaeser mirror those of Mr. Fischer that were provided on behalf of AmerenUE and the Commission's responses to these issues are provided in the responses to AmerenUE's comments.

COMMENT: Warren Wood, Manager, Energy Department of the Public Service Commission stated that the Staff is not opposed to providing clarification in the proposed rule regarding the pass through of cost related to volatility mitigation efforts in the PGA. Further, Staff is not opposed to adding financial swaps and options to section (2) of the rule. Staff believes that both of these recommended changes would provide clarification without distracting attention away from the focus of the proposed rule, which is to consider upward price volatility mitigation in purchasing strategies. Staff is, however, opposed to adding NYMEX to the reference to Futures Contracts in section (2) of the rule to avoid excluding other possible futures contracts that may currently be available or may be developed in the market in the future. Staff is also opposed to replacing "upward" with "price" wherever it appears in the rule. Staff believes that one of the primary concerns of customers being served by an LDC is that of high natural gas prices and/or sudden upward spikes in prices. The Policy Statement of the Natural Gas Commodity Price Task Force created after the winter of 2000–2001 confirms that the focus of this rule should be that of addressing upward price volatility, any efforts to change or dilute that purpose should be resisted by the Commission. Finally, Staff is also opposed to adding index contracts to section (2) of the rule since index contracts are generally not considered effective in addressing upward

price volatility, in fact they are the very contracts that tend to bring upward price volatility into an LDC's purchasing portfolio.
RESPONSE AND EXPLANATION OF CHANGE: In response to the recommended changes of AmerenUE, the Commission will change the proposed rule in a manner that addresses the Staff's comments.

COMMENT: James M. Fischer, Attorney, as attorney for Atmos Energy Corporation, Laclede Gas Company, and Missouri Gas Energy or "Missouri Gas Utilities," noted general support of the proposed rule and suggested several changes. The Missouri Gas Utilities suggested that the following changes to the proposed rule would be appropriate:

1. That the word "upward" should be removed from purpose clause and subsections (1)(A) and (1)(C) of the proposed rule;
2. That the rule specify that cost associated with instruments used to mitigate price volatility be flowed through the PGA mechanism;
3. That the pricing structures listed in section (2) of the proposed rule be expanded to include indexed contracts; and
4. That the reference to "management of price and/or usage volatility" under section (2) of the proposed rule either be revised to not include "usage volatility" or that usage volatility be better defined.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the comments made by the Missouri Gas Utilities and agrees that some changes to the proposed rule are appropriate.

Missouri Gas Utilities' first comment is that "upward" should be removed from the purpose clause and subsection (1)(A) and (1)(C) of the proposed rule. The Commission has considered this recommendation and cannot support this change to the rule since its purpose is to provide a clear "statement of Commission policy that natural gas local distribution companies should undertake diversified natural gas purchasing activities as part of a prudent effort to mitigate *upward* natural gas price volatility and secure adequate natural gas supplies for their customers" *(emphasis added)*. Removing "upward" as recommended by the Missouri Gas Utilities is not consistent with the purpose of this rule or the Policy Statement of the Natural Gas Commodity Price Task Force that it is modeled after. The Commission clarifies the language in subsection (1)(C) by adding, "price".

Missouri Gas Utilities' second comment relates to specifically permitting a pass through of cost associated with natural gas price mitigation efforts in the PGA. The Commission agrees that this clarification is an appropriate addition to the rule and will add a sentence to the end of subsection (1)(B).

Missouri Gas Utilities' third recommended change is that the list of pricing structures, mechanisms and instruments in section (2) of the proposed rule should be expanded to include indexed contracts. The Commission has considered this recommendation and cannot support this change to the rule since section (2) of the rule is intended to provide a list of pricing structures, mechanisms and instruments that natural gas utilities should consider in developing purchasing plans that consider natural gas price volatility mitigation. The Commission's exclusion of indexed contracts from the list in the rule under section (2) does not imply that index contracts are imprudent and/or inappropriate in a well-structured purchasing portfolio, just that the Commission does not consider them a purchasing mechanism for attempting to address upward price volatility.

Missouri Gas Utilities fourth recommended change is that the reference to "management of price and/or usage volatility" under section (2) of the proposed rule either be revised to not include "usage volatility" or that usage volatility be better defined. The Commission has considered this recommendation and believes that the rule's purpose is best served by not changing this referenced language in section (2) of the proposed rule. The referenced provision in the rule is intended to be broad to be inclusive of any tools that now exist or may be developed to address price and/or usage volatility. When customers, and the utility that serves them, are impacted by price volatility they are often also being impacted by usage volatility. The current language in the rule will permit utilities to consider the usage factor during the usage spikes that often accompany price spikes. Furthermore, making the language of the rule more specific in this area could result in excluding future mechanisms that may be developed in the market. For these reasons the Commission will not change the proposed rule's provisions in this area.

COMMENT: Warren Wood, Manager, Energy Department of the Public Service Commission stated that the staff is not opposed to providing clarification in the proposed rule regarding the pass through of cost related to volatility mitigation efforts in the PGA. Staff believes that this recommended change will provide clarification to the proposed rule. Staff is however opposed to removing references to "upward" wherever price volatility is discussed in the rule. Staff believes that one of the primary concerns of customers being served by an LDC is that of high natural gas prices and/or sudden upward spikes in prices. The Policy Statement of the Natural Gas Commodity Price Task Force created after the winter of 2000-2001 confirms that the focus of this rule should be that of addressing upward price volatility, any efforts to change or dilute that purpose should be resisted by the Commission. Staff is also opposed to adding index contracts to section (2) of the rule since index contracts are generally not considered effective in addressing upward price volatility, in fact they are the very contracts that tend to bring upward price volatility into an LDC's purchasing portfolio. Staff's final opposition to the Missouri Gas Utilities' comments relates to their recommendation to remove "usage volatility" from the provisions of section (2) of the proposed rule. Staff has considered this comment and believes that the intent of the reference to "Other tools utilized in the market for cost-effective management or price and/or usage volatility" is that this be a "catch all" for other tools that may exist now or be developed in the market for addressing volatility—both price and usage. Staff is currently aware of hedging contracts that are keyed off of weather indicators (i.e. Heating Degree-Days). This provides a means to address a portion of the usage volatility that can result from abnormally cold weather. When customers are impacted by price volatility they are often also being impacted by usage volatility. Staff believes the rule should include a reference to usage volatility provisions that gas utilities may be able to consider that would help them deal with this factor during price and/or usage spikes. Staff does not recommend that the language in (2)(G) be made more specific as this could result in the rule being too narrow and no longer applying to market instruments that may be developed in the future.
RESPONSE AND EXPLANATION OF CHANGE: In response to the recommended changes of the Missouri Gas Utilities', the Commission will change the proposed rule in a manner that addresses the Staff's comments.

COMMENT: Janet E. Wheeler, Attorney, as attorney for the Missouri Energy Development Association or "MEDA," noted MEDA's general support of the proposed rule, endorsed the comments filed by various utilities and noted that the proposed rule does not go as far as it could in providing the degree of firm regulatory guidance that may be necessary to produce the sort of benefits described.
RESPONSE: The Commission has responded to each of the suggested changes by the various utilities in the Commission's responses to each of those utilities' comments. No changes have been made to the proposed rule as a result of MEDA's comments.

COMMENT: Rob Hack, attorney for Missouri Gas Energy, clarified that weather derivatives are really designed to protect the margin revenue side of things and not the PGA. They are designed to protect revenue, not bills for customers. Mr. Hack does not see

weather derivatives as a real viable alternative to help the price volatility to customers.
RESPONSE: No changes to the proposed rule have been made to the proposed rule as a result of this comment.

COMMENT: Mike Pendergast, attorney for Laclede Gas Company, in regard to Mr. Hack's comments, noted that weather derivatives are primarily used for margin rather than for going out and trying to protect customers from unusually cold weather and that if this is to be addressed, it ought to be the subject of a separate proceeding. Mr. Pendergast also noted that simply putting the term "usage" in the rule does not adequately address the issue.
RESPONSE: No changes to the proposed rule have been made to the proposed rule as a result of these comments. The recommendation to remove "usage" from section (2) of the rule has been addressed above.

4 CSR 240-40.018 Natural Gas Price Volatility Mitigation

(1) Natural Gas Supply Planning Efforts to Ensure Price Stability.
(A) As part of a prudent planning effort to secure adequate natural gas supplies for their customers, natural gas utilities should structure their portfolios of contracts with various supply and pricing provisions in an effort to mitigate upward natural gas price spikes, and provide a level of stability of delivered natural gas prices.
(B) In making this planning effort, natural gas utilities should consider the use of a broad array of pricing structures, mechanisms, and instruments, including, but not limited to, those items described in (2)(A) through (2)(H), to balance market price risks, benefits, and price stability. Each of these mechanisms may be desirable in certain circumstances, but each has unique risks and costs that require evaluation by the natural gas utility in each circumstance. Financial gains or losses associated with price volatility mitigation efforts are flowed through the Purchased Gas Adjustment (PGA) mechanism, subject to the applicable provisions of the natural gas utility's tariff and applicable prudence review procedures.
(C) Part of a natural gas utility's balanced portfolio may be higher than spot market price at times, and this is recognized as a possible result of prudent efforts to dampen upward price volatility.

(2) Pricing Structures, Mechanisms and Instruments:
(A) Natural Gas Storage;
(B) Fixed Price Contracts;
(C) Call Options;
(D) Collars;
(E) Outsourcing/Agency Agreements;
(F) Futures Contracts;
(G) Financial Swaps and Options from Over the Counter Markets; and
(H) Other tools utilized in the market for cost-effective management of price and/or usage volatility.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-6.110 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 16, 2003 (28 MoReg 1095–1105). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program (Air Program) received comments on the proposed amendment from thirteen sources: Armstrong Teasdale LLP, Associated General Contractors of Missouri, Inc. (AGC), Associated Industries of Missouri (AIM), Kansas City Health Department Air Quality Program, Springfield-Greene County Health Department Air Quality Control Program, City of St. Louis Air Pollution Control Program, Missouri Limestone Producers Association (MLPA), Patrick O'Driscoll—citizen, Regulatory Environmental Group for Missouri (REGFORM), Sierra Club of Missouri, St. Louis County Department of Health, St. Louis Regional Chamber & Growth Association (RCGA), and U.S. Environmental Protection Agency.

Due to the similarity in the following thirteen (13) comments, one (1) response that addresses these comments can be found at the end of these thirteen (13) comments.

COMMENT: Armstrong Teasdale LLP believes the Commission should fully evaluate the Program's financial situation in light of the recent budget reductions before authorizing an emission fee increase. If the Commission does authorize an emission fee increase, it should be limited to 2004 with a return to thirty-one dollars ($31) in 2005.
COMMENT: The Kansas City Health Department Air Quality Program supports an emission fee increase. The emission fees provide a substantial portion of the funding for Kansas City Air Program activities. Emission fees are also important because federal funds have been essentially flat for the past few years with the federal government expecting funding to be acquired through regulated industry.
COMMENT: The U.S. Environmental Protection Agency supports an emission fee increase that is necessary to maintain the quality, bare bones operating permit program that industry expects and is entitled to. Without the fee increase, the Air Program may not meet its federal obligations.
COMMENT: REGFORM supports an emission fee increase to thirty-four dollars ($34) which recognizes the Missouri Emission Inventory System credit of one dollar ($1) collected for calendar year 2002. The pledge to support a thirty-four dollar ($34) per ton emission fee is contingent upon the department working closely with regulated entities and their representatives to look at changes that can be made in the Program to bring the fee back down for the next year.
COMMENT: St. Louis Regional Chamber & Growth Association (RCGA) does not challenge an emission fee increase for 2003.
COMMENT: AIM discussed the emission fee situation, agreed with the position of RCGA, acknowledged REGFORM's position, and desired to be identified with the Armstrong Teasdale communications.
COMMENT: The Springfield-Greene County Health Department Air Quality Control Program supports an emission fee increase and the process used to establish the emission fee.
COMMENT: The City of St. Louis Air Pollution Control Program supports an emission fee increase to maintain current levels of protection and service.
COMMENT: The St. Louis County Department of Health supports an emission fee increase to maintain service delivery expected by the public.
COMMENT: The Sierra Club of Missouri supports an emission fee increase. In addition, they commented that the budget reductions incurred by the Missouri Department of Natural Resources and the Air Program have resulted in a leaner organization and that further funding reductions would impair the department's and Air Program's abilities to protect Missouri air quality. Also, all parties interested in breathing clean air need to work together to make a better case to