

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
June 2, 1999**


CASE NO: EX-99-442

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Enclosed find certified copy of a PROPOSED RULE in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive style with a large initial "D".

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

Uncertified Copy:

**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 nonregulated 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' nonregulated 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 heating, ventilating and air conditioning (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 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; or

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 nonaffiliated 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 benchmarking 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 15 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 nonassignment 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 nonregulated 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 nonregulated 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 paragraph (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 noncomplying 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 noncomplying 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 noncomplying affiliate transaction, any party shall have the right to request a hearing regarding the noncomplying 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 noncomplying 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 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 in succeeding years.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: 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 copies. To be considered, initial comments must be received at the above address within thirty days after publication of this 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 days after publication of this notice in the Missouri Register. A public hearing will be held at 10:00 a.m., on September 14, 1999. The public hearing will be held at the Truman State Office Building, Room 520B, 301 W. High St., Jefferson City, Missouri, for interested persons to appear and respond to commissioner questions. Commenters wishing to be heard should submit written requests, at least seven 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 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.

**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.

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.

**STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson
City,**

Missouri, this 2ND day of JUNE, 1999.

Dale Hardy Roberts

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

