

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

In the Matter of the Establishment of a Working Case)
for the Review and Consideration of a Rewriting and) File No. AW-2018-0394
Writing of Existing and New Affiliate Transaction)
Rules and HVAC Affiliate Transaction Rules)

COMMENTS OF SPIRE MISSOURI INC.

COMES NOW Spire Missouri Inc. (“Spire” or “Company”), on behalf of itself and its operating units, Spire East and Spire West, and submits its comments in response to the revisions proposed by the Commission Staff (“Staff”) to the Commission’s Affiliate Transactions Rules.

In support thereof, Spire states as follows:

BACKGROUND

1. On June 27, 2018, the Staff filed a motion to establish a working case for the purpose of reviewing and considering potential changes to the Commission’s Affiliate Transactions Rules. In its Motion, the Staff stated that, pursuant to Executive Order 17-03, it has undertaken a review of all of the Commission’s rules, and identified areas where those rules “could be consolidated, streamlined, or otherwise improved for user friendliness.”¹ As a result of this review, the Staff proposes to reduce from seven to three the number of Commission rules currently applicable to affiliate transactions. Staff proposes to achieve this goal by combining the separate, industry-specific rules for electric, gas and heating companies, into one rule for affiliate transactions and one rule for HVAC affiliate transactions, with water and/or sewer corporations with 8000 or more customers included in the former rule for the first type. The third rule would, for the first time, apply affiliate transactions requirement to water and/or sewer corporations with fewer than 8000 customers.

¹Staff Motion, pp. 2-3.

COMMENTS

2. Spire applauds those aspects of the Staff's initiative that seek to streamline and consolidate the Commission's rules in this area. Such action is a commendable first step towards advancing the stated goals of Executive Order 17-03, which includes reducing "ineffective, unnecessary, or unduly burdensome regulations," especially those regulations whose costs exceed their benefits. Spire would accordingly urge the Staff and the Commission to move forward on an expeditious basis with those revisions that are, in fact, designed to reorganize and simplify its rules in this area.

3. It is clear from a review of the proposed rule revisions, however, that a number of the modifications proposed by Staff go well beyond a mere reorganization of the rules and would establish new requirements of a substantive nature. Among others, these include:

- The explicit extension of the rules to cover not only transactions between Missouri public utilities and their unregulated affiliates, but also between Missouri utilities and their utility affiliates that are regulated by other regulatory commissions.²
- The establishment of a new requirement that the Cost Allocation Manual ("CAM") used by a utility to charge and/or allocate costs and revenues between affiliates in compliance with the rules be approved by the Commission not just initially, but every three years.³ The utility would also be required to seek Commission approval of any change to the CAM within 60 days that might be occasioned by one of a number of factors, including the commencement of a new unregulated business, a change in cost allocation methodology or the divestment by the utility of an existing business.⁴

²See proposed rule 4 CSR 240-10.XXX(1)(J) & (O)

³See proposed rule 4 CSR 240-10.XXX (5)(A)

⁴See proposed rule 4 CSR 240-10.XXX (5)(B)

- establishment of other new requirements relating to the transfer of employees to an affiliate, the use of marketing materials, and the use of customer information.

4. Spire respectively submits that these new proposed requirements are not mere clarifications of the existing rules but instead are provisions that could impose potentially significant, unnecessary and counterproductive regulatory burdens on the affected utilities. Accordingly, prior to considering them for inclusion in a proposed rule, Spire recommends that the Commission hold a series of workshops so that interested parties can obtain a better understanding of the purposes of these new requirements, discuss concerns regarding such requirements, and potentially consider more effective alternatives that could be implemented in their place. Spire believes that such an approach is appropriate for a number of reasons.

5. First, it is not at all clear that the adoption of these requirements would be consistent with the goals of the executive order that led to their development. As previously noted, the primary purpose of Executive Order 17-03, which is attached hereto, was to reduce or eliminate “ineffective, unnecessary, or unduly burdensome regulations,” with the end goal of removing regulatory barriers that “reduce jobs, stifle entrepreneurship, limit innovation, or impose costs far in excess of their benefits.” A number of the proposed requirements appear to head in the opposite direction. For example:

(a) The proposal to apply the rule to transactions involving other regulated utilities, (rather than limiting them to transactions with unregulated entities), would impose costs with little or no benefit. The current rule recognizes that the protections in the affiliate transactions rules are primarily aimed at ensuring that a utility does not subsidize or otherwise unduly favor an affiliate that is not subject to the kind of regulatory scrutiny applicable to public utilities. That is

not a concern, however, when it comes to transactions with other regulated utilities since the entities on both sides of the transaction are subject to pervasive regulatory oversight. In fact, the Commission has for decades successfully addressed how transactions between regulated utilities located in different jurisdictions should be reasonably and fairly allocated to Missouri utility customers through its long-standing regulation of jurisdictional allocations. As a result, explicitly extending the reach of the rules to these inter-utility transactions would accomplish little, other than to potentially expand the need to seek variances from the asymmetrical pricing and other provision of the rules that, the Commission has already recognized, would otherwise produce detrimental results for utility customers.⁵

(b) The same is true of the proposed requirement relating to the filing and approval of a utility's CAM every three years. Under the current rule, utilities must already file a CAM report every year detailing the affiliate transactions it has undertaken during the prior year. In addition, because of the existing requirement that utilities file a general rate case every three or four years in order to use the FAC and ISRS mechanisms, there is also an additional venue for interested parties to examine a utility's CAM on a regular basis. Given these current opportunities, adding yet another, duplicative layer of CAM review would only increase regulatory costs for all participating stakeholders without any discernable benefit. Such a result is the antithesis of what was contemplated by Executive Order 17-03. The requirement to obtain Commission approval for any update to the CAM occasioned by an affiliate engaging in a new unregulated business venture, or the utility's divestment of an existing business, would likewise impose additional costs. Moreover, by requiring Commission approval when such events occur, such a provision could also

⁵ See e.g. the variance granted KCPL in Case No. EM-2018-0012 so that the asymmetrical pricing and other provisions of the rules would not frustrate its ability to achieve synergies and reduce costs for its utility customers through the integration of its operations with Westar.

potentially interfere with and even prevent the timely execution of unregulated business activities that are normally beyond the regulatory jurisdiction of the Commission. *See* Section 393.140(12) RSMo. Again, such a result would frustrate rather than advance the goals of Executive Order 17-03.

(c) Other changes, such as those mentioned above, that could also add additional complexity to, and potential burdens on, the ability of utilities to conduct business in a cost efficient and effective way.

6. Second, adopting such new requirements without first undertaking a workshop process would be inconsistent with the kind of robust, interactive process that was employed to initially develop these rules. When the affiliate transactions rules were first developed, the Commission held a series of workshops and meetings at which stakeholders were able to discuss and suggest alternatives to the various rule provisions being considered. Given the far-reaching and consequential nature of the new requirements being proposed here, Spire suggests that something more than the opportunity to provide one set of comments after a few weeks of review should be afforded by the Commission.

7. Finally, Spire would note that it, Ameren Missouri, Empire District Electric Company and Liberty Utilities are currently engaged in the process of collaborating on the development or refinement of a CAM to govern their affiliate transactions. Given the challenges already presented by these ongoing efforts to structure a CAM that is fully consistent with the Commission's affiliate transactions rules, this seems to be a particularly inopportune time to make substantive, midstream changes to these rules.

CONCLUSION

8. In conclusion, Spire strongly supports the Staff's efforts to reorganize, consolidate and simplify the Commission's rules in this area and would recommend that the Staff move forward with those efforts on an expeditious basis. At the same time, Spire does not believe the Staff should continue to pursue additional, substantive changes to these rules until or unless workshops are held to discuss their implications and obtain additional input from interested stakeholders.

Respectfully submitted,

SPIRE MISSOURI INC.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the General Counsel of the Staff of the Missouri Public Service Commission, and the Office of the Public Counsel, on this 10th day of August, 2018 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/ Rick Zucker _____