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July 1, 1999

BY FACSIMILE AND BY FEDERAL EXPRESS

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Truman Building, Fifth Floor
301 West High Street
Jefferson City, MO 65101

FILED
JUL 1 1999
Missouri Public
Service Commission

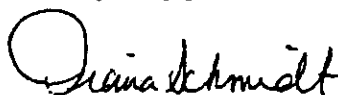
Re: Proposed Rule on Affiliate Transactions, Docket Nos. EX-99-442,
GX-99-444 and GX-99-445

Dear Mr. Roberts:

Enclosed for filing with the Commission are an original and fourteen (14) copies of the Comments of the Missouri Industrial Energy Consumers ("MIEC") in the above-referenced dockets.

Please "file-stamp" the additional copy and mail it back to me in the enclosed, self-addressed stamped envelope. Thank you for your assistance in bringing this filing to the attention of the Commission, and please call me if you have any questions.

Very truly yours,



Diana M. Schmidt

DMS/dv

Attachments

cc: Parties of record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

JUL 1 1999

Proposed Rule on Affiliate Transactions

) Docket Nos. EX-99-442, GX-99-444 and
GX-99-445

Missouri Public
Service Commission

**Comments of the Missouri Industrial Energy Consumers on the
Proposed Rule Regarding Electric Utility Affiliate Transactions**

The Missouri Industrial Energy Consumers (MIEC)¹ appreciates the opportunity to file these comments concerning the above-captioned rule concerning Affiliate Transactions for electric utilities.

While they always have been important, appropriate affiliate transaction and relationship rules are even more important today. In an effort to broaden their business activities and to gain profit from alternate endeavors, many utilities have extended their operations into other areas. These include investments in un-related ventures both domestically and globally; the provision of energy efficiency services; the provision of infrastructure investment and management; the supply of home security services; marketing of energy products; and many other activities. To the extent that these activities are performed by parent, subsidiary or sister companies or divisions of the regulated electric utility there exists the potential for the mis-allocation of costs as well as the conduct of operations in a manner that is discriminatory and at odds with competitive market operations - which would be to the detriment of the retail electric consumer as well as to competitors in the various markets.

MIEC supports a strong and enforceable rule to govern affiliate transactions. These rules are important as the industry stands today, and will become even more important as competition becomes more prevalent. These issues must be addressed now because utilities are in the process of "gearing

¹Participating MIEC member companies include: ALCOA Foil Products, Anheuser-Busch Companies, Inc., The Boeing Company, Ford Motor Company, General Motors Corporation, HBE Inc., Holnam, Inc., Hussmann Refrigeration, ISP Minerals, Inc., Mallinckrodt, Inc., M.E.M.C. Electronic Materials, Inc., Monsanto Company, Procter & Gamble Manufacturing Company, and Ralston Purina Company.

up" for operation in competitive retail markets. Advertising, marketing and business structure are all at issue. It is important to address these matters prior to the time that retail competition is actually in place, in order to prevent utilities from utilizing funds that are provided by consumers, through the regulated tariffs to develop brand recognition, relationships and business structures that position them to be stronger competitors.

Specific Suggestions

Rather than offering specific language changes, MIEC will provide comments and outline concepts relating to those aspects of the proposed rule that need to be modified or expanded in order to adequately address the issues. The aspects which require strengthening or expansion, in MIEC's opinion, are in the areas of assurance of nondiscriminatory conduct, provisions surrounding shared corporate services, rules governing employee transfers, and provision for regulatory oversight. We comment on each of these below and offer our recommendations. These recommendations are drawn from rules that have been adopted in other states, especially California.

Nondiscriminatory Conduct

It is essential that there be a level playing field for both affiliated and non-affiliated competitors. This is necessary not only to avoid having regulated retail sales subsidize the utility's ventures, but also to assure that there is a reasonable opportunity for competitors to enter the market. If there are no rules, or if the rules provide an inherent advantage to the regulated incumbent utility, then it will be virtually impossible for new entrants to participate in the market. The result will be that a competitive market does not develop, prices do not reflect competitive market conditions, the variety of services that would be expected in a competitive market will not be offered, and consumers will suffer. MIEC submits that the following provisions are essential and should be incorporated into the rule.

- A regulated electric corporation shall not provide to its affiliates, or customers of its affiliates any preference over non-affiliated suppliers or their customers in the provision of services provided by the regulated electrical corporation.

- A regulated electric corporation shall not represent that, as a result of the affiliation with the regulated electrical corporation, its affiliates or customers of any affiliates will receive any different treatment than the treatment provided to other, non-affiliated companies or their customers.
- A regulated electrical corporation shall provide access to information, services and unused capacity or supply on the same terms for all similarly situated market participants. If a regulated electrical corporation provides supply, capacity, services or information to its affiliates, it shall contemporaneously make the same offering available to all similarly situated market participants, including all competitors serving the same market area.
- If a regulated electrical corporation offers a discount or waives all or any part of any other charge or fee to its affiliates, or offers a discount or waiver for a transaction in which its affiliates are involved, the regulated electrical corporation shall contemporaneously make such discount or waiver available to all similarly situated market participants.
- If a tariff provision allows for discretion in its application, a regulated electrical corporation shall apply that tariff provision in the same manner to its affiliates and other market participants and their respective customers.
- A regulated electrical corporation shall process requests for similar services provided by it in the same manner and within the same time frame for its affiliates and for all other market participants and their respective customers.
- A regulated electrical corporation shall not condition or otherwise tie the provision of any services provided by it, nor the availability of discounts of rates or other charges or fees, rebates or waivers or terms and conditions of any service provided by it, to the taking of any goods or services from its affiliates.
- A regulated electrical corporation shall not assign customers to which it currently provides service to any of its affiliates, whether by default, direct assignment, option or by any other means, unless that means is equally applicable to all competitors.
- A regulated electric corporation may not provide business leads to its affiliates, solicit business on behalf of its affiliates, acquire information on behalf of or to provide to its affiliates, share market analysis reports or any other types of proprietary or non-publicly available reports with its affiliates, request authorization from its customers to pass on customer information exclusively to its affiliates, give the appearance that it speaks on behalf of its affiliates, state that the customer will receive preferential treatment as a consequence of conducting business with the affiliates, or give any appearance that the affiliate speaks on behalf of the utility.

Shared Services

Regulated electrical corporations and their affiliates should be entitled to share corporate services, provided that the shared services do not include any services that are provided competitively or which affect the provision of competitive services, and provided further that the provision of services on a shared basis does not become an opportunity for sharing competitive information or behaving in a manner that is discriminatory to market competitors. To this end, MIEC suggest that the following considerations should be incorporated in the rule.

- A regulated electrical corporation, its parent holding company, or a separate entity created solely to perform corporate services may share only certain services with its affiliates. These broadly involve joint corporate oversight, governance, support systems and personnel. These services include payroll, taxes, shareholder services, insurance, financial planning and reporting, accounting, security, pension plan and other benefit management services, and government compliance. Services that may not be shared include employee recruiting, engineering, hedging and financial derivatives and arbitrage services, purchasing of commodities for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, marketing, regulatory affairs, lobbying and legal services.
- Such joint utilization of services shall not permit or provide an opportunity for the transfer of confidential information from the regulated electrical corporation to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, cause customer confusion or create opportunities for cross-subsidization.
- A regulated electric corporation shall not capitalize upon, promote or advertise its affiliate's relationship with the regulated electric corporation, nor allow the name or logo of the regulated electric corporation to be used by the affiliate in any material circulated by the affiliate unless it discloses that the affiliate is a different company, is not regulated by the Commission, and that it is not necessary to purchase the affiliate's products in order to continue to receive regulated services from the regulated electrical corporation.
- The regulated electrical corporation shall not provide to its affiliates advertising space in or on utility billing envelopes or cards, or any other form of written communications unless similar access is provided to non-affiliated competitors on the same terms and conditions.
- A regulated electrical corporation shall not participate in joint advertising or joint marketing with its affiliates.

Employee Transfers

Employees of the regulated electric utility, who have been trained at the expense of utility consumers, are an extremely valuable asset. Transfer of these employees to competitive affiliates can be disadvantageous to customers of the regulated electrical corporation unless appropriate safeguards are implemented. MIEC submits that the rule should include the factors listed below.

- The rule should include appropriate limitations preventing utility management from serving in dual roles in both regulated and unregulated affiliated corporations or functions.
- All transfers of employees among the regulated electrical corporation and its affiliates should be tracked and documented and reported monthly to the Missouri Public Service Commission and the Office of Public Counsel.
- There should be limitations on how soon an employee that transfers to an affiliate may return to the regulated electrical corporation, and vice-versa.
- There should be limitations on the nature of information that a utility employee transferring from the regulated electrical corporation to an affiliate is permitted to convey to the affiliate.
- When an employee of the regulated electrical corporation is transferred to an affiliate, there should be required compensation to the regulated electrical corporation which reflects the value of the training received by the employee, and the potential cost to the regulated electrical corporation of replacing the employee with one having comparable skills.

Regulatory Oversight

The rule should provide for appropriate regulatory oversight. This includes not only filing of compliance plans, but also periodic audits. MIEC suggests the following:

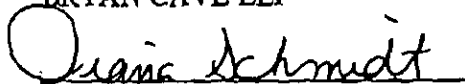
- No later than 90 days following the adoption of the final rule, each regulated electrical corporation should file a compliance plan demonstrating how it is implementing procedures that will ensure compliance with the rule. The compliance plan will be subject to comment by participants in this proceeding.
- No later than the end of the first full fiscal year of each utility following the adoption of the final rule, an audit should be conducted, by an independent auditor, of the utility's operations during that fiscal year. The purpose of the audit is to verify compliance with the rule. The audit shall be conducted at shareholder expense and shall be filed with the Commission. Notice of the availability of the audit shall be given to all other participants in this proceeding.

Conclusion

MIEC submits that the above additions/modifications to the proposed rule are essential to ensure that there are no cross subsidies, that utility customers are not charged inappropriately for costs that should be borne by the utility stockholders, and to facilitate the development of competitive markets.

Respectfully submitted,

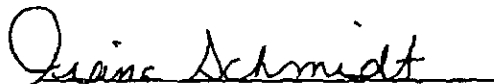
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of the Missouri Industrial Energy Consumers has been served on all parties of record by first-class United States Mail, postage prepaid, this 1st day of July, 1999.



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