

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

In the Matter of the Establishment of a Working)	
Case for the Consideration of Writing a New)	
Affiliate Transaction Rule for Water Corporations)	<u>File No. WW-2018-0392</u>
With 8,000 Customers or Less and/or Sewer)	
Corporations with 8,000 Customers or Less)	

STAFF DRAFT AFFILIATE TRANSACTIONS RULE

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through Staff Counsel's Office, and files a draft Affiliate Transactions Rule to apply to water corporations and sewer corporation with 8,000 or fewer customers, in response to the Commission's July 17, 2019, *Order Directing Staff To File A Draft Rule* in the above captioned docket. In support of its response, Staff states as follows:

2. Pursuant to Executive Order 17-03, Staff recently undertook a review of all of the Commission's rules, and identified areas where the Commission's rules could be consolidated, streamlined, or otherwise improved for user-friendliness. Staff was of the opinion that in the area of affiliate transactions there was an opportunity to make the Commission's rules easier to use, and to make the rules more consistent in their coverage. Currently, the Commission's rules regarding affiliate transactions do not apply to water and sewer utilities. Staff believes that the Commission's principal Affiliate Transactions Rule should cover water corporations with more than 8,000 customers and/or sewer corporations with more than 8,000 customers, but a less prescriptive rule should apply to water corporations with 8,000 customers or less and sewer corporations with 8,000 customers or less.

3. Staff, last year, initially submitted a draft new affiliate transactions rule applicable to water and sewer corporations with 8,000 or fewer customers, and asked

that the Commission issue an Order requesting comments to be filed within 30 days after the date of the Commission's Order establishing a working case and seeking comments on the draft potential new rule. Comments were filed by two (2) persons or entities in the instant proceeding on August 10, 2018.

4. On July 17, 2019, the Commission issued its *Order Directing Staff to File a Draft Rule*, directing Staff to file another draft affiliate transaction rule to apply to water corporations and sewer corporations with 8,000 or fewer customers. After further internal consideration, and based on the comments filed in this docket, Staff has revised the original draft rule it filed in this proceeding on July 11, 2018.

5. Staff requests that the Commission consider choosing one of three (3) possible courses of proceeding respecting a rulemaking: (1) continue this working case and issue an Order requesting comments from stakeholders within 30 days after the date of said Order addressing the consideration of the attached draft rule; (2) engage in an Order of Proposed Rulemaking utilizing the attached draft rule; or (3) in an Agenda or Agendas utilize the attached draft rules to produce an Order of Proposed Rulemaking with changes of the Commissioners to the attached draft affiliate transaction rule to apply to water corporations and sewer corporations with 8,000 or fewer customers. In each of the three (3) preceding options the Order of Proposed Rulemaking would apply to water corporations with 8,000 or fewer customers, and sewer corporations with 8,000 or fewer customers regulated by the Commission.

WHEREFORE, the Staff prays the Commission accept its new draft affiliate transaction rule to apply to water corporations and sewer corporations with 8,000 or fewer customers; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Mark Johnson

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record this 16th day of September, 2019.

/s/ Mark Johnson

20 CSR 4240-10.XXX Affiliate Transactions for Small Water and Small Sewer Corporations

PURPOSE: This rule is intended to prevent a Missouri Public Service Commission (commission) regulated small water or small sewer utility from subsidizing its nonregulated operations, or its nonregulated affiliates. In order to accomplish this objective, the rule sets forth standards of conduct, financial standards, evidentiary standards, access requirements, training requirements and record-keeping requirements applicable to any commission regulated small water corporation or small sewer corporation whenever such corporation participates in transactions with any affiliate (except with regard to HVAC services as defined in section 386.754, RSMo 2016, by the General Assembly of Missouri).

(1) Definitions.

(A) Affiliate 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 small water corporation or small sewer corporation. This term shall also include the nonregulated business operations of a regulated small water corporation or small sewer corporation.

(B) Affiliate transactions as defined by this rule shall include all transactions carried out between a small water corporation or small sewer corporation and an affiliate. Affiliate transactions as defined by this rule shall also include all transactions carried out between

any nonregulated business operation of a regulated small water corporation or small sewer corporation and the regulated business operations of a small water corporation or small sewer 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 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, affiliates, 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 small water corporation or small sewer corporation from rebutting the presumption that its ownership interest in an entity confers control.

(D) Corporate support means those functions dedicated to supporting the operations of a small water corporation or sewer corporation or its affiliates, including, but not limited to, joint corporate oversight, governance, support systems and personnel, involving payroll, shareholder services, financial services, financial planning and management support, , human resources, employee records, pension management, legal services, research and

development, information technology, accounting services, environmental services, internal audit, and community relations.

(E) Fair Market Price (FMP) means a price determined by a small water corporation or small sewer corporation as the amount it would pay or receive for receiving or providing a good or service in an affiliate transaction based on comparisons of similar transactions with, or the price of similar goods and services available from, unrelated third parties. A small water corporation or small sewer corporation may make such determination based on surveys, third party studies, specific price inquiries, benchmarking, competitive bids, or any other reasonable method. The small water corporation or small sewer corporation shall have the burden of demonstrating its method of determining FMP is reasonable, and/or that there is no readily available comparative market price for a given good or service.

(F) 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 or indirectly charged or assigned (e.g., general and administrative) must also be included in the FDC calculation through a general allocation.

(G) Financial advantage means an advantage provided by a regulated small water corporation or small sewer corporation to an affiliate when the regulated small water or small sewer corporation:

1. Compensates an affiliate for assets, goods, information or services of any kind above the FMP of the assets, goods, information or services; or

2. Transfers assets, goods, information, or services of any kind to an affiliate below the FMP of the assets, goods, information or services.

(H) Information means any data with competitive value obtained by a regulated small water corporation or small sewer corporation that is not obtainable by affiliates or can only be obtained at a competitively prohibitive cost in either time or resources.

(I) Nonregulated operations means nonregulated assets, goods, information, or services of a nonregulated affiliate or a regulated affiliate of a regulated small water corporation or small sewer corporation, not subject to the jurisdiction of Chapters 386 and 393, RSMo.

(J) Small sewer corporation means a sewer corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapters 386 and 393, RSMo. with eight thousand (8,000) or fewer customers.

(K) Small water corporation means a water corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapters 386 and 393, RSMo. with eight thousand (8,000) or fewer customers.

(2) Standards, Evidentiary Standards, and Record Keeping Requirements for Small Water Corporations and Small Sewer Corporations.

(A) A regulated small water corporation or sewer corporation shall not provide a financial advantage to an affiliate.

(B) A regulated small water corporation or small sewer corporation shall maintain books, accounts and records separate from those of its affiliates.

(C) A regulated small water corporation or small sewer corporation shall maintain records of all affiliate transactions, including documentary support demonstrating that all assets, goods, information and services were transferred between the regulated and

nonregulated affiliates in accordance with section (2)(A). The regulated small water corporation or small sewer corporation shall make such records available in accordance with section (3) of this rule.

(D) A regulated small water corporation or small sewer corporation shall not participate in any affiliate transactions which are not in compliance with this rule, except as otherwise provided in section (6) of this rule.

(E) This section shall not apply to or prohibit any of the following unless found by the commission, after notice and hearing, that such practice is contrary to the purposes and intent of the Affiliate Transactions for Small Water and Small Sewer Corporations Rule:

1. The provision of corporate support services, at FDC, between or among a small water corporation or small sewer corporation and any affiliate, including a service company.
2. The provision, at FDC, of goods, information, or services of any kind between or among a small water corporation or small sewer corporation and a rate-regulated affiliate.

(3) Access to Records.

(A) To the extent permitted by applicable law and pursuant to established commission discovery procedures, a regulated small water corporation and small sewer corporation shall make available the books and records of its parent and any other affiliates 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 small water corporation and small sewer corporation or affiliate 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 small water corporation and small sewer corporation or affiliate and their relationship to each other for the sole purpose of ensuring compliance with this rule.

(4) Record Retention.

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

(5) Training.

(A) The regulated small water corporation and small sewer corporation shall train and advise its personnel as to the requirements and provisions of this rule as appropriate.

(6) Variances.

(A) A variance from the standards in this rule may be obtained from the commission for good cause shown.

AUTHORITY: sections 386.250, RSMo Supp. 1998, and 393.140, RSMo 1994.* Original rule filed April 26, 1999, effective Feb. 29, 2000; *State ex rel. Atmos Energy Corp. v. Public Serv. Comm'n*, 103 S.W.3d 753 (Mo.banc 2003); *Office of the Public Counsel v. Public Serv. Comm'n*, 409 S.W.3d 371 (Mo.banc 2013).

*Original authority: 386.250, RSMo 1963, amended 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996 and 393.140, RSMo 1939, amended 1949, 1967.