

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

In the Matter of Application and Petition of the)	
Office of the Public Counsel Requesting the)	<u>File No. WX-2019-0380</u>
Commission Promulgate Rules Pertaining to the)	
Affiliate Transactions of Water Corporations)	

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Commission”), by and through counsel, and in response to the Commission’s June 5, 2019 *Order Directing Staff to Investigate and File Recommendation*, states:

1. Staff began reviewing the Commission’s affiliate transactions rules¹ as part of its review of the Commission’s rules, pursuant to the Governor’s Executive Order 17-03.²

2. Per Staff’s request, on July 11, 2018 the Commission opened three working cases (File Nos. AW-2018-0393, AW-2018-0394, and WW-2018-0392) to review its affiliate transactions rules.³

¹ 4 CSR § 240-20.015 (electric affiliate transactions); 4 CSR § 240-40.015 (gas affiliate transactions), 4 CSR § 240-80.015 (heating affiliate transactions); 4 CSR § 240-40.016 (gas marketing affiliate transaction); 4 CSR § 240-20.017 (electric with HVAC service affiliate transactions); 4 CSR § 240-40.017 (gas with HVAC service affiliate transactions); 4 CSR § 240-80.017 (heating with HVAC service affiliate transactions).

² Exec. Order 17-03 (Jan. 10, 2017), <https://www.sos.mo.gov/library/reference/orders/2017/eo3> (in which Governor Greitens ordered state agencies to review and streamline their regulations).

³ Missouri Public Service Commission, *Order Opening a Working Case to consider a New Rule Regarding the Treatment of Customer Information*, AW-2018-0393 (July 11, 2018); Missouri Public Service Commission, *Order Opening a Working Case to Consider New and Revised Rules Regarding Affiliate Transactions and HVAC Affiliate Transactions*, AW-2018-0394 (July 11, 2018); Missouri Public Service Commission, *Order Opening a Working Case to Consider a New Affiliate Transaction Rule for Small Water and Sewer Corporations*, WW-2018-0392 (July 11, 2018).

3. On June 4, 2019, the Office of the Public Counsel (“OPC”) petitioned the Commission to open this rulemaking docket to explore promulgating a water utility affiliate transactions rule, as proposed in attachment OPC-1 of its petition.⁴

4. On June 5, 2019 the Commission directed Staff to investigate OPC’s petition and by July 5, 2019 file a recommendation whether the Commission should proceed with a rulemaking docket.⁵

5. Staff’s comments and recommendations are discussed in the Memorandum, attached as Appendix A to this pleading. Staff recommends that if the Commission intends to promulgate a water affiliate transactions rule, it direct Staff to continue pursuing Staff’s recommendations in File Nos. AW-2018-0393, AW-2018-0394, and WW-2018-0392. Staff’s approach is consistent with the Governor’s Executive Order 17-03 to streamline regulations, and it addresses affiliate transactions rules in a comprehensive, holistic manner. Additionally, numerous stakeholders submitted comments to Staff’s proposed rules, and Staff held workshops. Staff is reviewing comments and incorporating them into drafts. Staff continues the internal review process and could produce final drafts in the next few months.

WHEREFORE, Staff respectfully submits this *Staff Recommendation* for the Commission’s information and consideration.

⁴ Office of the Public Counsel, *Application and Petition for Promulgation of Rules*, WX-2019-0376 (June 3, 2019).

⁵ Missouri Public Service Commission, *Order Directing Staff to Investigate and File Recommendation*, WX-2019-0380 (June 5, 2019).

Respectfully submitted,

/s/ Karen E. Bretz

Karen E. Bretz
Senior Counsel
Missouri Bar No. 70632
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-5472 (Voice)
573-751-9285 (Fax)
Karen.Bretz@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been electronically mailed to all parties and/or counsel of record on this 27th day of June, 2019.

/s/ Karen E. Bretz

MEMORANDUM

TO: Missouri Public Service Commission

FROM: Staff of the Missouri Public Service Commission

FILE NO.: WX-2019-0380

SUBJECT: Recommendation to Continue Pursuing Affiliate Transactions Rule Amendments and Promulgations As Proposed in Working Cases

DATE: June 26, 2019

Overview

Staff began reviewing the Commission's affiliate transactions rules as part of its year-long review of all the Commission's rules, pursuant to the Governor's Executive Order 17-03.¹ Currently, the Commission has separate rules for affiliate transactions respecting electric, gas, and heating utilities;² gas utilities with gas marketing operations;³ and electric, gas, and heating utilities with HVAC affiliates.⁴ It has no affiliate transactions rules for water or sewer utilities.⁵

As part of its review, Staff requested the Commission open three working cases to review its affiliate transactions rules.⁶ In two of these cases, Staff recommended the Commission consider consolidating and clarifying the current affiliate transactions rules, as well as create rules for water and sewer utilities.⁷ Staff notes that the affiliate transactions rules appear in different chapters but essentially repeat the same language. Staff suggests they be consolidated into one rule for electric,

¹ Exec. Order 17-03 (Jan. 10, 2017), <https://www.sos.mo.gov/library/reference/orders/2017/eo3> (in which Governor Greitens ordered state agencies to review and streamline their regulations).

² 4 CSR § 240-20.015 (electric affiliate transactions); 4 CSR § 240-40.015 (gas affiliate transactions); and 4 CSR § 240-80.015 (heating affiliate transactions).

³ 4 CSR § 240-40.016 (gas marketing affiliate transactions).

⁴ 4 CSR § 240-20.017 (electric with HVAC service affiliate transactions); 4 CSR § 240-40.017 (gas with HVAC affiliate transactions); 4 CSR § 240-80.017 (heating with HVAC affiliate transactions).

⁵ See *Staff Motion to Establish Working Case*, AW-2018-0393, AW-2018-0394 and WW-2018-0392.

⁶ *In the Matter of the Establishment of a Working Case for the Writing of a New Rule on the Treatment of Customer Information by Commission Regulated Electric, Gas, Steam Heating, Water, and Sewer Utilities and Their Affiliates and Nonaffiliates*, AW-2018-0393 (2018); *In the Matter of the Establishment of a Working Case for the Review and Consideration of a Rewriting and Writing of Existing and New Affiliate Transaction Rules and HVAC Affiliate Transaction Rules*, AW-2018-0394; *In the Matter of the Establishment of a Working Case for the Consideration of Writing a New Affiliate Transaction Rule for Water Corporations with 8,000 Customers or Less and/or Sewer Corporations with 8,000 or Less*, WW-2018-0392.

⁷ See *Staff Motion to Establish Working Case*, AW-2018-0394; WW-2018-0392.

gas, steam, and water and sewer utilities with more than 8,000 customers, another rule streamlined for water and sewer utilities with 8,000 or fewer customers,⁸ and a third rule for customer information.⁹

In the third working case, Staff suggests the Commission combine the four rules intended to protect customer information when utilities contract with affiliates and nonaffiliates¹⁰ into a single, stand-alone rule. Staff opines that because the content of this rule does not differ by industry, it is appropriate to have one rule covering all utilities, including water and sewer utilities.¹¹

The Commission opened these three working cases. Staff requested comments in each, and workshops were held in two. The last rounds of comments were filed in November and December 2018, and Staff is reviewing comments and amending the rule drafts. Staff continues the internal review process and could produce final drafts within the next few months, if the Commission is inclined to pursue Staff's recommendations.

Comments on OPC's Petition

OPC filed its *Application and Petition for Promulgation of Rules* on June 4, 2019 petitioning the Commission to open a rulemaking docket and initiate a rulemaking workshop with the goal of promulgating a water utility affiliate transactions rule. OPC suggests that the Commission use the current affiliate transactions rules for electric, gas, and steam heat as a model for a new water affiliate transaction rule.¹² OPC does not include changes Staff or other stakeholders recommended in the three working cases dedicated to reviewing the affiliate transactions rules.

⁸ Staff believes that the range of water and sewer utilities lends itself to separate affiliate transactions rules, differentiated by size. Staff suggests that smaller systems with 8,000 or fewer customers have less prescriptive rules. Staff is open to considering other size options. *See Staff Motion to Establish Working Case*, WW-2018-0392 ¶ 1-2 (2018).

⁹ *See Staff Motion to Establish Working Case*, AW-2018-0394 and WW-2018-0392, and AW-2018-0393.

¹⁰ *See* 4 CSR § 240-20.015(2)(C) (electric affiliate transactions); 4 CSR § 240-40.015(2)(C) (gas affiliate transactions); 4 CSR § 240-80.015(2)(C) (heating affiliate transactions); 4 CSR § 240-40.016(3)(C) (gas marketing affiliate transactions).

¹¹ *See Staff Motion to Establish Working Case*, AW-2018-0393.

¹² Office of the Public Counsel, *Memorandum*, WX-2019-0380 p. 1, (May 16, 2019) (attached to Application and Petition for Promulgation of Rules, WX-2019-0380).

On June 5, 2019 the Commission ordered Staff to investigate OPC's petition and by July 5, 2019 file a recommendation whether the Commission should proceed with a rulemaking in this OPC docket.

Recommendation

Staff recommends that if the Commission intends to promulgate an affiliate transactions rule for water utilities, the Commission direct Staff to continue pursuing Staff's recommendations in File Nos. AW-2018-0394, AW-2018-0393, and WW-2018-0392. Staff's approach is consistent with the Governor's Executive Order 17-03 to streamline regulations, while OPC proposes a new regulation and does not address consolidating redundant regulations. Furthermore, Staff's working dockets address affiliate transactions rules in a comprehensive, holistic manner. In contrast, OPC's petition does not address sewer utilities and does not address any distinction between sewer or water utilities with more than 8,000 customers and sewer or water utilities with 8,000 or fewer customers.¹³

¹³ Office of the Public Counsel, *Proposed 4 CSR § 240-50.015(I)* (June 4, 2019) (attached as OPC-1 to Application and Petition for Promulgation of Rules, WX-2019-0380).