

**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	)	<b><u>File No. WW-2018-</u></b>
Rule for Water Corporations with 8,000 Customers or Less	)	
and/or Sewer Corporations with 8,000 Customers or Less	)	

**STAFF MOTION TO ESTABLISH WORKING CASE**

**COMES NOW** the Staff of the Missouri Public Service Commission ("Staff"), by and through Staff Counsel's Office, and moves the Commission to establish a working case, for consideration of writing a new Missouri Public Service Commission Affiliate Transactions Rule for water corporations with 8,000 customers or less and/or sewer corporations with 8,000 customers or less. The Staff concurrently is filing a separate motion to establish a working case for consideration of including as part of the rewrite of the Commission's principal Affiliate Transactions Rule a new part of the rule which covers water corporations with more than 8,000 customers; and/or sewer corporations with more than 8,000 customers. In support thereof, the Staff states as follows:

1. Pursuant to Executive Order 17-03, in the last year Staff has undertaken 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 is of the opinion that in the area of affiliate transactions there is an opportunity to make the Commission's rules easier to use. Also there is an opportunity to make the rules more consistent in their coverage. 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 and a less prescriptive rule should apply to water corporations with 8,000 customers or less

and sewer corporations with 8,000 customers or less. There is nothing that prevents the workshop from considering other size options for coverage by or exemption from the rule.

2. Staff believes that with water and sewer corporations, size varies so significantly that there should be separate working cases rather than one all-encompassing Affiliate Transactions Rules working case. Utilities-persons-entities-stakeholders would be welcome to attend or participate in either or both working cases.

3. Attachment A is the draft of the rule for consideration for water corporations with 8,000 customers or less and/or sewer corporations with 8,000 customers or less.

4. The Staff requests that the Commission issue an order requesting comments respecting consideration of this draft potential new rule on affiliate transactions to be filed within 30 days after the date of the Commission's Order establishing a working case and seeking comments.

5. The Staff requests that the Commission serve its Order Establishing Working Case on all counsel of record for water corporations with 8,000 customers or less and/or sewer corporations with 8,000 customers or less regulated by the Commission and also to the Public Counsel, and if possible, all intervenors in the most recent rate cases of these companies.

**WHEREFORE**, the Staff moves the Commission to open a working case and issue an Order requesting comments within 30 days after the date of said Order addressing consideration of the draft potential new rule on affiliate transactions

respecting water corporations with 8,000 customers or less and/or sewer corporations with 8,000 customers or less regulated by the Commission.

Respectfully submitted,

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#### **4 CSR 240-10.XXX Affiliate Transactions Respecting Small Water Corporations and Small Sewer Corporations**

PURPOSE: This rule is intended to prevent Missouri Public Service Commission (commission) small water and small sewer utilities from subsidizing an affiliate's operations (regulated and nonregulated). 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 small water corporation or small sewer corporation whenever any such entity participates in a transaction with an affiliated entity (except with regard to HVAC services as defined in section 386.754, RSMo., 2016, by the General Assembly of Missouri).

##### **(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 small water corporation or small sewer corporation. This term shall also include the nonregulated business operations of a small water corporation or small sewer corporation.

(B) Affiliate transaction means any transaction for the provision, receipt, purchase or sale of any information, asset, good or service, or portion of any good or service, between a small water corporation or small sewer corporation and an affiliated entity. Affiliate transactions as defined by this rule shall also include all transactions carried out between any nonregulated business operation of a 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) Affiliate Transactions Report means the filing that each small water corporation or small sewer corporation is required to make with the secretary of the commission no later than each May 15.

(D) 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, 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 small water corporation or small sewer corporation from rebutting the presumption that its ownership interest in an entity confers control.

(E) Corporate support means joint corporate oversight, governance, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities.

(F) Cost allocation manual (CAM) means the document which specifies the criteria, guidelines and procedures that the small water corporation or small sewer corporation will follow to be in compliance with the commission's Affiliate Transactions Rule. The CAM sets forth the small

water corporation's or small sewer corporation's cost allocation, market valuation, and internal cost methods. The frequency of the filing of the small water corporation's or small sewer corporation's CAM is addressed in section (3) of this rule.

(G) 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 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 good, 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.

(H) Financial advantage is provided by a small water corporation or small sewer corporation to an affiliated regulated or nonregulated entity if the small water or small sewer corporation:

(1) Compensates an affiliated entity for assets, goods, information or services of any kind above the lesser of –

A. The fair market price (FMP); or

B. The fully distributed cost (FDC) to the small water corporation or small sewer corporation to provide the assets, goods, information or services for itself; or

2. Transfers assets, goods, information, or services of any kind to an affiliated entity below the greater of –

A. The FMP; or

B. The FDC to the small water corporation or small sewer corporation.

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

(J) Information means any data obtained by a small water corporation or small sewer corporation that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

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

(L) Preferential position means treatment provided by the small water or small sewer corporation which places the affiliated entity at an unfair advantage over its nonaffiliated competitors.

(M) 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) customers or less, and is covered by this rule, but is not covered by 4 CSR 240-10.XXX.

(N) 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) customers or less and is covered by this rule, but is not covered by 4 CSR 240-10.XXX.

(O) Unfair advantage means an advantage that cannot be obtained by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(P) Variance means an exemption granted by the commission from any applicable standard required pursuant to this rule.

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

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

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

(C) A small water corporation or small sewer corporation shall maintain records of all affiliated transactions, as described in section (4) of this rule, and make such records available in accordance with section (5) of this rule.

(D) Except as necessary to provide corporate support functions, a small water corporation or small sewer corporation shall conduct its business in such a way as not to provide any financial advantage or preferential position to an affiliated entity over another entity at any time.

(E) A small water corporation or small sewer corporation shall not participate in any affiliated transactions which are not in compliance with this rule, except as otherwise provided in section (8) of this rule.

(3) Cost Allocation Manuals

(A) Each small water corporation and small sewer corporation shall file with the commission for its approval a CAM every three (3) years on or before May 15. The commission may accept, reject, or modify such CAM.

(B) All affected sections and pages of a small water corporation's and small sewer corporation's CAM shall be updated and filed with the commission for its approval within 60 days of any of the following conditions:



1. A new nonregulated operation is commenced or acquired, or an existing nonutility operation is eliminated or divested, by the small water corporation or small sewer corporation;
2. A change in the small water corporation's or small sewer corporation's allocation methodology;
3. An affiliate relationship of the small water corporation or small sewer corporation changes; or
4. Operations affecting nonregulated operations change sufficiently to warrant a new allocation methodology.

(4) Records of Affiliated Entities.

(A) Each small water corporation and small sewer 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 small water corporation and small sewer 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 small water corporation's and small sewer corporation's contracted services or facilities;

5. Names and job descriptions of officers and managers and the job descriptions of such other employees from the small water corporation and small sewer corporation that transferred or were to an affiliated regulated or nonregulated entity;
6. Evaluations of the effect on the reliability of services provided by the small water corporation and small sewer corporation resulting from the access to regulated contracts and/or facilities by affiliated entities;
7. Policies regarding the access to services available to nonregulated affiliated entities desiring use of the small water corporation and small sewer corporation's contracts and facilities; and
8. Descriptions of and supporting documentation related to any use of derivatives that may be related to the small water corporation and small sewer corporation's operation even though obtained by the parent or affiliated entity.

(5) Access to Records of Affiliated Entities.

(A) To the extent permitted by applicable law and pursuant to established commission discovery procedures, a small water corporation and small sewer 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 small water corporation and small sewer 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 small water corporation and small sewer corporation or affiliated entity and their relationship to each other for the sole purpose of ensuring compliance with this rule.

(6) Record Retention.

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

(7) Training

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

(8) Variances.

(A) A variance from the standards in this rule may be obtained by compliance with paragraphs (8)(A)1. or (8)(A)2. The granting of a variance to one small water corporation or small sewer corporation does not constitute a waiver respecting or otherwise affect the required compliance of any other small water corporation and small sewer corporation to comply with the standards. The scope of a variance will be determined based on the facts and circumstances found in support of the application.

1. A small water corporation and small sewer corporation may request a variance upon written application in accordance with commission procedures set out in 4 CSR 240-2.060(4) but it may not engage in such an affiliate transaction not in compliance with the standards set out in

subsection (2)(A) of this rule unless it is first granted the variance or waiver by the commission for good cause shown; or

2. A small water corporation and small sewer corporation may engage in an affiliate transaction not in compliance with the standards set out in subsection (2)(A) of this rule, on an interim basis, 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 (8)(A)2.A. and (8)(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 a copy served upon the commission staff counsel and the Public Counsel within ten (10) days of the occurrence of the non-complying 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 small water corporation or small sewer corporation's customers. Within thirty (30) days of the notice of the noncomplying affiliate transaction, any person, entity, or association 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 person's, entity's, or association's ability to challenge the affiliate transaction at the time of the filing of the annual Affiliate Transactions Report. Requesting a hearing regarding the noncomplying affiliate transaction within thirty (30) days of the small water corporation's or small sewer corporation's initial notice of the noncomplying affiliate transaction, is not a

prerequisite for a person, entity, or association challenging the affiliate transaction within thirty (30) days of the filing of the annual Affiliate Transactions Report. (Section 386.550 RSMo., applies to the commission's determinations after granting a request for a hearing filed within thirty (30) days of the initial notice of the noncomplying affiliate transaction.) At the time of the filing of the small water corporation's or small sewer corporation's annual Affiliate Transactions Report filing, the small water corporation or small sewer corporation shall file with 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 small water corporation or small sewer corporation's customers, if the commission did not grant a request for a hearing if notice of the occurrence of the non-complying affiliate transaction had been provided within ten (10) days of the occurrence.

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.