

John R. Ashcroft
Secretary of State / Administrative Rules
RULE TRANSMITTAL

1307

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SEP 25 2024
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ADMINISTRATIVE RULES
JCAR Stamp

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By JCAR at 4:30 pm, Sep 25, 2024

Rule Number 20 CSR 4240-10.165
Use a SEPARATE rule transmittal sheet for EACH individual rulemaking.

Name of person(s) Administrative Rules can contact with questions about this rule:
Content Nancy Dippell Phone 573-751-8518 Fax 573-526-6010
Email address Nancy.Dippell@psc.mo.gov

Data Entry Kayla Kliethermes Phone 573-751-4256 Fax 573-526-6010
Email address Kayla.Kliethermes@psc.mo.gov

Interagency mailing address Public Service Commission, 9th Floor Gov. Office Bldg, JC, MO

TYPE OF RULEMAKING ACTION TO BE TAKEN
 Emergency Rulemaking > Rule Amendment Rescission Termination
Effective date for the emergency _____

X Proposed Rulemaking > X Rule Amendment Rescission

- Rule Action Notice
- In Addition
- Rule Under Consideration
- Request for Non-Substantive Change
- Statement of Actual Cost

Order of Rulemaking > Withdrawal Adoption Amendment Rescission
Effective date for the order _____
 Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? NO
 YES—LIST THE SECTIONS/SUBSECTIONS WITH CHANGES:



Missouri Public Service Commission

MAIDA J. COLEMAN
Commissioner

KAYLA HAHN
Chair

JASON R. HOLSMAN
Commissioner

GLEN KOLKMEYER
Commissioner

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://psc.mo.gov>

JOHN P. MITCHELL
Commissioner

September 25, 2024

John Ashcroft
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 20 CSR 4240-10.165 HVAC Services Affiliate Transactions

Dear Secretary Ashcroft,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rule lawfully submitted by the Missouri Public Service Commission.

The Public Service Commission further certifies it has conducted an analysis of whether or not there has been a taking of real property pursuant to section 536.017, RSMo, that the proposed rule does not constitute a taking of real property under relevant state and federal law.

The Public Service Commission has determined and hereby also certifies that if the proposed rule does affect small business pursuant to sections 536.300 to 536.310, RSMo, a small business impact statement has been filed as required by those sections. If no small business impact statement has been filed the proposed rule either does not affect small business or the small business requirements do not apply pursuant to section 536.300.4, RSMo.

Statutory Authority: *sections 386.760.1 and 393.140, RSMo 2016.*

If there are any questions regarding the content of this proposed rule, please contact:

Nancy Dippell
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-8518
Nancy.Dippell@psc.mo.gov



Nancy Dippell

Nancy Dippell
Secretary

Enclosures



Missouri Public Service Commission

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Commissioner

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Chair

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JOHN P. MITCHELL
Commissioner

September 25, 2024

Sarah Schappe
Director
Joint Committee on Administration Rules
State Capitol, Room B8A
Jefferson City, Missouri 65101

Re: 20 CSR 4240-10.165 HVAC Services Affiliate Transactions

Dear Director Schappe,

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Nancy Dippell

Nancy Dippell
Secretary

Enclosures

STATE CAPITOL
201 W. CAPITOL AVENUE, ROOM 216
JEFFERSON CITY, MISSOURI 65101



(573) 751-3222
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Michael L. Parson

GOVERNOR
STATE OF MISSOURI

September 17, 2024

Ms. Kayla Hahn
Public Service Commission
PO Box 360
Jefferson City, MO 65102

Dear Ms. Hahn:

This Office has received your Proposed Rule and Proposed Rescission for the following regulations:

- 20 CSR 4240-10.165 HVAC Services Affiliate Transactions.
- 20 CSR 4240-20.017 HVAC Services Affiliate Transactions.
- 20 CSR 4240-40.017 HVAC Services Affiliate Transactions.
- 20 CSR 4240-80.017 HVAC Services Affiliate Transactions.

Executive Order 17-03 requires this Office's approval before state agencies release proposed regulations for notice and comment, amend existing regulations, rescind regulations, or adopt new regulations. After our review, we approve the submission to the Joint Committee on Administrative Rules and the Secretary of State.

Sincerely,

A handwritten signature in black ink, appearing to read "Evan Rodriguez".

Evan Rodriguez
General Counsel

Title 20—DEPARTMENT OF COMMERCE AND INSURANCE
Division 4240—Public Service Commission
Chapter 10—Utilities
PROPOSED RULE

20 CSR 4240-10.165 HVAC Services Affiliate Transactions

PURPOSE: This rule prescribes the requirements for HVAC services respecting affiliated entities and regulated electrical corporations, gas corporations, and heating companies (covered utilities) when such covered utilities participate in affiliated transactions with an HVAC affiliated entity as set forth in sections 386.754, 386.756, 386.760, 386.762 and 386.764, RSMo.

(1) Definitions.

- (A) Affiliated entity means any entity not regulated by the Public Service Commission (commission) which is owned, controlled by or under common control with a utility and is engaged in HVAC services.
- (B) 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 (1) 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 more than ten percent (10%) of voting securities or partnership interest of an entity confers control for purposes of this rule. This provision, however, shall not be construed to prohibit a covered utility from rebutting the presumption that its ownership interest in an entity confers control.
- (C) Covered utility means an electrical corporation, gas corporation, or heating company as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapters 386 and 393, RSMo, and covered by this rule.
- (D) 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 charged or assigned (e.g., general and administrative) must also be included in the FDC calculation through a general allocation.
- (E) HVAC services means the warranty, sale, lease, rental, installation, construction, modernization, retrofit, maintenance, or repair of heating, ventilating, and air conditioning (HVAC) equipment.
- (F) Utility contractor means a person, including an individual, corporation, firm, incorporated or unincorporated association or other business or legal entity, that contracts, whether in writing or not in writing, with a covered utility to engage in or

assist any entity in engaging in HVAC services, but does not include employees of a covered utility.

(2) Standards

- (A) A covered utility may not engage in HVAC services, except by an affiliated entity, or as provided in subsection (2)(G) or (2)(H) of this rule.
- (B) No affiliated entity or utility contractor may use any vehicles, service tools, instruments, employees, or any other covered utility's assets, the cost of which are recoverable in the regulated rates for a covered utility service, to engage in HVAC services unless the covered utility is compensated for the use of such assets at the FDC to the covered utility.
 - 1. The determination of a covered utility's cost in this section is defined in subsection (1)(D) of this rule.
- (C) A covered utility may not use or allow any affiliated entity or utility contractor to use the name of such covered utility to engage in HVAC services unless the covered utility, affiliated entity or utility contractor discloses, in plain view and in bold type on the same page as the name is used on all advertisements or in plain audible language during all solicitations of such services, a disclaimer that states the services provided are not regulated by the commission.
- (D) A covered utility may not engage in or assist any affiliated entity or utility contractor in engaging in HVAC services in a manner which subsidizes the activities of such covered utility, affiliated entity, or utility contractor to the extent of changing the rates or charges for the covered utility's services above or below the rates or charges that would be in effect if the covered utility were not engaged in or assisting any affiliated entity or utility contractor in engaging in such activities.
- (E) Any affiliated entities or utility contractors engaged in HVAC services shall maintain accounts, books, and records separate and distinct from the covered utility's regulated operations.
- (F) The provisions of this rule shall apply to any affiliated entity or utility contractor engaged in HVAC services that is owned, controlled or under common control with a covered utility providing regulated services in the state of Missouri or any other state.
- (G) A covered utility engaging in HVAC services in the state of Missouri five (5) years prior to August 28, 1998, may continue providing, to existing as well as new customers, the same type of services as those provided by the covered utility five (5) years prior to August 28, 1998.
 - 1. To qualify for this exemption, the covered utility shall file a pleading before the commission for approval.
 - A. The commission may establish a case to determine if the covered utility qualifies for an exemption under this rule.

(H)The provisions of this section shall not be construed to prohibit a covered utility from providing emergency service, providing any service required by law, or providing a program pursuant to an existing tariff, rule, or order of the commission.

*AUTHORITY: sections 386.760.1 and 393.140, RSMo 2016. * Original rule filed ____ 2024, effective _____.*

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions in excess of five hundred dollars (\$500.00) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities in excess of five hundred dollars (\$500.00) in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Nancy Dippell, Secretary of the Commission, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before December 1, 2024, and should include a reference to Commission File No. OX-2024-0105. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed rule is scheduled for December 6, 2024, at 10 a.m., in Room 139 of the James C. Kirkpatrick Building, 600 W. Main St., Jefferson City, MO. Interested persons may appear at this hearing to submit additional comments and/or testimony in support or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.