

## **MEMORANDUM**

**To:** Public Service Commission of the State of Missouri  
**From:** Lena Mantle, Senior Analyst, Office of the Public Counsel  
**Subject:** Proposed Improvements to the Commission’s Proposed Affiliate Transactions Rule, 20 CSR 4240-10.155  
**Date:** December 6, 2024

### **I. Introduction**

Prior to my employment with the Missouri Office of the Public Counsel (the “OPC”), I worked for the Staff of the Public Service Commission of the State of Missouri (“Staff” and the “Commission,” respectively) from August 1983 until I retired as Manager of the Energy Unit in December 2012. During my employment at the Commission, I worked as an Economist, Engineer, Engineering Supervisor, and Manager of the Energy Unit.

Most pertinent for the purposes of this docket, during my tenure with Staff I was part of the Staff team that developed draft affiliate transaction rules applicable to electric utilities for the Commission’s consideration in 1998. Specifically, with input from Staff auditors and economists, I drafted electric and steam heating utility affiliate transaction rules that were the basis for 20 CSR 4240-20.015 Affiliate Transactions, 20 CSR 4240-20.017 HVAC Services Affiliate Transactions, 20 CSR 4240-80.015 Affiliate Transactions, and 20 CSR 4240-80.017 HVAC Services Affiliate Transactions. The rules I drafted with changes directed by the Commission became effective February 29, 2000.

I have reviewed the Commission’s proposed affiliate transaction rule in Case Number OX-2025-0104. Based on my nearly forty years of experience in this field, I have twenty suggested modifications to the Commission’s proposed rule in this case. I make many of these suggestions to ensure clarity and consistency in the Commission’s rule, while I suggest others to ensure that

the rule addresses challenges that have arisen through the years since the Commission promulgated its original affiliate transaction rule. I have provided a reason for each suggested change below.

## II. Suggested Modifications to the Commission's Proposed Rule

### 1. Proposed change to (1): Add a definition of "asset."

(D)<sup>1</sup> Asset means a resource with economic value that the utility owns or controls that provides benefits or is expected to provide benefits in the future. Assets may be tangible or intangible and include employee, financial, and real assets.

**Reason for change:** In the past there has been confusion as to whether or not employees were considered assets in the affiliate transaction rules. This definition would clarify what is considered an asset.

### 2. Proposed change to (1): Add a definition of covered gas utility

(H) Covered gas utility means a gas corporation as defined in section 386.020, RSMo. subject to commission regulation pursuant to Chapters 386 and 393, RSMo.

**Reason for change:** Proposed rule section (3) Nondiscrimination Standards Respecting Gas Marketing is noticeably different from the rest of the rule in that it applies to "regulated gas corporations" when the rest of the rule applies to "covered utilities." This definition would allow section (3) of the rule to use language consistent with the rest of the rule.

### 3. Proposed change to (1)(L): Change the phrase "regulated utility" to "covered utility" in the definition of Information.

(L) Information means any data obtained by a covered utility that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

**Reason for change:** Consistency with defined term.

### 4. Proposed change to (1)(M): Remove the definition of long-term.

**Reason for change:** "Long-term" is not used in the rule.

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<sup>1</sup> The addition of this definition changes the lettering of the following definitions in subsection 1. For ease of comparison, throughout this memorandum I utilize the original lettering found in the Proposed Rule as filed in the *Missouri Registrar*. Attachment C of the OPC's Comments includes updated lettering in redline changes that also show the original lettering.

**5. Proposed change to (1)(O):** Change the phrase that is being defined from “Nonregulated operations” to “Nonregulated business operations.”

- (O) Nonregulated business operations mean assets, goods, information, or services of an affiliate or a covered utility, not subject to the jurisdiction of the commission under Chapters 386 and 393, RSMo.

**Reason for change:** “Nonregulated operations” is not used in the rule. However, the definitions of “affiliate” and “affiliate transaction” include a reference to nonregulated business operations. The simplest way to fix the discrepancy is to change the phrase being defined as proposed here. The other option is to change the phrase “nonregulated business operations” in (1)(A) and (B) to “nonregulated operations.”

**6. Proposed change to (1)(Q):** Include in the definition of “preferential position” that the provision of information and the provision of assets could be giving an affiliate a preferential position.

- (Q) Preferential position means treatment, information, or actions provided by a covered utility that offers an affiliate an advantage that cannot be obtained by nonaffiliates, or can only be obtained at a competitively prohibitive cost in either time or resources.

**Reason for change:** The current electric affiliate transaction rule’s definition of “preferential service” is “information or treatment or actions by the regulated electrical corporation which places the affiliated entity at an unfair advantage over its competitors” 20 CSR 4240-20.015(1)(H). Failing to include information and actions in this new rule will be seen as removing the provision of information and assets from being preferential, leaving the nebulous “treatment” as the only type of action that is considered preferential. While it could be said that “treatment” includes information and assets, it could also be argued that it does not. For clarity the rule needs to specify that the provision of information and assets, along with treatment can be considered providing preferential treatment to affiliates.

**7. Proposed changes in (1)(R):** With adding a definition for covered gas utility, “regulated gas corporation” in this definition should be changed to “covered gas utility.”

- (R) Shippers means all current and potential transportation customers on a covered gas utility's natural gas distribution system.

**Reason for change:** Consistency with the rest of the rule.

**8. Proposed change to (1)(S):** Remove the definition of short-term.

**Reason for change:** “Short-term” is not used in the rule.

**9. Proposed changes in (1)(T):** With adding a definition for covered gas utility, “gas corporation” and “regulated gas corporation” in this definition should be changed to “covered gas utility.”

(T) Transportation means the receipt of natural gas at one point on a covered gas utility’s system and the redelivery of an equivalent volume of natural gas to the retail customer of the gas at another point on the covered gas utility’s system including, without limitation, scheduling, balancing, peaking, storage, and exchange to the extent such services are provided pursuant to the covered gas utility’s commission tariff, and includes opportunity sales.

**Reason for change:** Consistency with the rest of the rule.

**10. Proposed change to (2)(B):** Add the commission proposed language of section (2)(F) to the end of (2)(B)

(B) A covered utility shall conduct its business in such a way as to not provide any preferential position to an affiliate over another entity at any time. This subsection shall not apply to or prohibit any of the following unless found by the commission, after notice and a hearing, that such practice is contrary to the purposes and intent of the Affiliate Transaction Rule:

1. The joint provision of corporate support services, at FDC, between or among a covered utility and any affiliate. This includes joint provision of corporate support services by an affiliated service company; and
2. The provision, at FDC, of goods, information, or services of any kind between or among a covered utility and an affiliate regulated by the commission or other state utility commission.

**Reason for change:** See Attachment B.

**11. Proposed change to (2)(E):** Add a requirement for the electronic distribution of marketing materials, information, or advertisements.

(E) All forms of marketing materials, information, or advertisements, including, but not limited to, those in electronic or digital form, distributed to Missouri residents by an affiliate entity that shares an exact or similar name, logo, or trademark of the covered utility shall clearly display or announce that the affiliate entity is not regulated by the “Missouri Public Service Commission.”

**Reason for change:** Most advertising is now done electronically, such as on the internet in social media and through email. The current and proposed rule set requirements on marketing material that is distributed, which could be interpreted as hard copies. The addition of electronic in this standard would make it clear that the affiliate must also identify itself as not being regulated by

the Commission in all of its marketing and advertising. Also, the font size requirement may not be appropriate for all types of media and in all circumstances (i.e. a billboard).

**12. Proposed Change to (2)(F):** Delete this subsection.

**Reason for change:** Not needed. Language moved to (2)(B). See Attachment B.

**13. Proposed changes in (3):** With the proposed addition of a definition for covered gas utility, “regulated gas corporation” in this section should be changed to “covered gas utility.” Reference to “regulated gas corporation” is found in (3)(B) through (O).

**Reason for change:** Consistency with the rest of the rule.

**14. Proposed change to (3)(H)1:** Replace the specification for filing with the Secretary of the Commission and providing copies with a requirement to file in EFIS.

1. File in the commission’s electronic filing information system (EFIS) for approval of the transaction;

**Reason for change:** Update the rule to require filing in EFIS. When a case is filed in EFIS, notification is provided to the Office of the Public Counsel and it is made available to the general public. This would reduce the requirements placed on the gas utility.

**15. Proposed change to (3)(H)2:** Make this a requirement of the filing in (3)(H)1.

- A. Disclose in the filing whether the marketing affiliate of the covered gas utility is the gas supplier or broker serving the shipper;

**Reason for the change:** As it stands, there is no specification on where this disclosure is made. If it is not intended to be in the filing for approval of a transaction to provide a discount for transportation to any shipper using a marketing affiliate, then the Commission needs to specify when and how this information is to be disclosed.

**16. Proposed change to (3)(H)3:** Replace the specification for filing with the secretary of the Commission and providing copies to a requirement to file in EFIS. If the intent is not to open a case quarterly, then the rule needs to state that it be submitted to the Commission.

3. Submit quarterly public reports in EFIS that provide the aggregate periodic and cumulative number of transportation discounts provided by the covered gas utility; and

**Reason for change:** The rule needs to clarify if it is a filing that opens a case four times per year or a non-case related submission in EFIS, which does not open a new case. If it is intended to be a submission, then the first word should be “Submit” instead of “File.”

**17. Proposed change to (3)(H)4:** Make this a requirement of the submission required in (3)(H)3.

- A. Provide the aggregate number of such agreements which involve shippers for whom the covered gas utility’s marketing affiliate is or was at the time of the granting of the discount the gas supplier or broker.

**Reason for change:** It is unclear how and where this provision of information is to be made. If it is intended to be part of the filing for Commission approval of a transportation discount, then it should be moved to 1.B. If it is part of what the Commission wants provided in 3, then it should be 3.A.

**18. Proposed change to (3)(M):** Reduce the amount of time allowed for the recording of a complaint and tie the start of this time period to when the complaint was received. Also add a provision for updates to the log and the amount of time the covered gas utility has to provide the record when requested by Staff or OPC.

- (M) A covered gas utility shall maintain records when it is made aware of any marketing complaint against an affiliate. The records should contain a log detailing the date the complaint was received by the covered gas utility, the name of the complainant, and a brief description of the complaint. If the complaint has not been recorded by the covered gas utility within three (3) days, an explanation for the delay must be recorded. Updates on the status of the complaint or how the complaint has been resolved should be recorded every 15 days. This record shall be provided within five (5) days after a request from the commission staff or the Office of the Public Counsel.

**Reason for change:** Update of the rule. This record should be electronic and available for gas utility personnel to update via the internet at any time thus negating the need for thirty days before recording. A requirement for updates has also been added. Again, this should be electronic negating any claim that more time should pass between updates.

While a requirement for the provision of the record is not necessary, the number of days for the provision of the record is. We do not know if a covered gas utility has not promptly responded to the provision of the record in the past but that does not preclude a delayed response in the future.

**19. Proposed change to (5)(B):** Set a “not to exceed” time for covered utilities to review their CAMs.

- (B) Each covered utility shall file a CAM for approval by the commission as part of its first general rate case after the effective date of this rule, or in a separate filing no later than two (2) years after the effective date of this rule. Each covered utility shall conduct reviews of its cost allocation, market valuation, and internal cost methods no less frequently than every twelve (12) months and shall update its CAM accordingly.

**Reason for change:** Periodically, as used in the proposed rule, is open to interpretation and could mean monthly or every decade. By adding a specific time period, it is clear how often a utility must update its CAM.

**20. Proposed change to (6)(B):** Require a submission not a filing of the affiliate transaction report to be consistent with current practice. Remove requirement for copies to be served.

- (B) Each covered utility shall maintain the following information in a mutually agreed-to electronic format (i.e., agreement between the commission staff, the Office of the Public Counsel, and the covered utility) regarding affiliate transactions with affiliates on a calendar year basis and shall submit such information in the form of an Affiliate Transactions Report in the commission's electronic filing and information system (EFIS) no later than May 15 of the succeeding year:

**Reason for change:** Currently affiliate transaction reports are submitted in EFIS. To file a report could mean that the utility must open a case file. This change makes the rule consistent with current practice, which is to submit the filing as a non-case related submission. Also, there is no need to require the utility to provide Staff and OPC a copy if it is submitted on a timely basis in EFIS.