

Exhibit No. 4

Staff – Exhibit 4
Staff Comments Filed December 10, 2024, in OX-2025-0104
and December 9, 2024 in OX-2025-0105, and OX-2025-0106
File No. OX-2025-0104, OX-2025-0104, OX-2025-0106

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

In the Matter of the Commission’s)
Proposed Rule 20 CSR 4240-10.155)
And Proposed Rescissions of 20 CSR 4240-20.015,)
40.015, 40.016, and 80.015 Relating to Affiliate Transactions)
for Electrical Corporations, Gas Corporations,) **File No. OX-2025-0104**
Heating Companies, Certain Water Corporations)
and Certain Sewer Corporations)

STAFF COMMENTS

COMES NOW the Staff of the Missouri Public Service Commission and states as follows:

1. Staff supports the proposed rule of 20 CSR 4240-10.155 published in the Missouri Register dated November 25, 2024, with some possible revisions as detailed in the attached Staff Comment. This rule is intended to prevent a Missouri Public Service Commission regulated electrical corporation, gas corporation, heating company, water corporation (with more than 8,000 customers) or sewer corporation (with more than 8,000 customers) from subsidizing its nonregulated operations or if 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 of these commission regulated utilities whenever any such entity participates in a transaction with an affiliate (except with regard to HVAC services as defined in section 386.754, RSMo, by the General Assembly of Missouri.

2. The proposed rule language has been rewritten to consolidate four Affiliate Transaction rules from Chapters 20, 40, and 80 into one rule and moved to Chapter 10, Utilities. The previous rules that are being consolidated are: 20 CSR 4240-20.015, 20 CSR 4240-40.015, 20 CSR 4240-40.016, and 20 CSR 4240-80.015.

3. On November 27, 2024, Summit Natural Gas of Missouri, Inc. (“Summit”) filed written comments with the Commission.

4. On December 5 and 6, 2024, several other entities filed written comments with the Commission. These entities included: Spire Missouri Inc. (“Spire”); Missouri American Water Company (“MAWC”); the Office of Public Counsel (“OPC”); Evergy Metro, Inc. (“Evergy”); Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”); and Tower Grove Community Development Corporation (“Tower Grove”).

5. Each entity submitted comments and suggested changes to the proposed rule. Staff has consolidated these comments and suggested changes into the attached Staff Comment.

6. Staff is opposed and not opposed to some of the suggested changes, which are outlined in the attached Staff Comment.

WHEREFORE, Staff respectfully submits Staff’s Comments for the Commission’s consideration and supports the proposed rule of 20 CSR 4240-10.155.

Respectfully submitted,

/s/ J. Scott Stacey

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**ATTORNEY FOR STAFF OF THE
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been transmitted by electronic mail to counsel of record this 10th day of December, 2024.

/s/ J. Scott Stacey

Missouri Public Service Commission Staff's Responsive Comments

Case No. OX-2025-0104

20 CSR 4240-10.155

(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 covered utility. This term shall also include the nonregulated business operations of a covered utility.

(B) Affiliate transaction means any transaction between a covered utility and an affiliate. Affiliate transactions as defined by this rule shall also include all transactions carried out between any nonregulated business operation of a covered utility and the regulated business operations of a covered utility. 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 covered utility is required to make with the secretary of the commission no later than each May 15, providing the information identified below in section (6) of this rule, Record Keeping Requirements.

Stakeholder Recommendations

Spire Missouri, Inc. ("Spire") is concerned whether the new rule would affect existing cost allocation manuals that have been drafted and approved by the Commission. Spire is looking for clarification from Staff or in the alternative they propose the following edit:

Affiliate Transactions Report means the filing that each covered utility is required to make with the secretary of the commission no later than each May 15, **unless a different date has been agreed to between the Commission and the utility within its CAM**, providing the information identified below in section (6) of this rule, Record Keeping Requirements.

Missouri Public Service Commission Staff's ("Staff") Response

Staff is not opposed to Spire's proposed edit.

(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, 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 covered utility from rebutting the presumption that its ownership interest in an entity confers control.

(E) Corporate support means those functions dedicated to supporting the joint operations of a covered utility and some or all of its affiliates, including, but not limited to, the areas of corporate oversight, governance, support systems and personnel, 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, supply chain, regulatory affairs, facilities management, security, and community relations.

(F) Cost allocation manual (CAM) means the document which specifies the criteria, guidelines and procedures that the covered utility will follow to be in compliance with the commission's Affiliate Transactions Rule. The CAM sets forth the covered utility's cost allocation, market valuation, and internal cost methods.

(G) Covered utility means, for purposes of this rule, 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, or a water corporation as defined in section 386.020, RSMo., subject to commission regulation pursuant to Chapters 386 and 393, RSMo., with more than eight thousand (8,000) customers or a sewer corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapters 386 and 393, RSMo, with more than eight thousand (8,000) customers.

(H) Derivatives means a financial instrument with a value that is directly dependent upon or derived from an underlying factor. This underlying factor can be financial assets, real assets, indices, securities, debt instruments, commodities, other derivative instruments, any agreed upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates) or the composition of these factors. Derivatives involve the trading of rights or obligations based on the underlying good, but may not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for a fixed rate of return.

Stakeholder Recommendations:

Spire seeks more clarity regarding the definition of derivatives by proposing the following language:

Derivatives means a financial instrument with a value, **realized or unrealized**, that is directly dependent upon or derived from an underlying factor. This underlying factor can be financial assets, real assets, indices, securities, debt instruments, commodities, other derivative instruments, any agreed upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates) or the composition of these factors. Derivatives **can** involve the trading of rights or obligations based on the underlying good, but may not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for a fixed rate of return **or vice versa**.

Staff's Response

Staff is not opposed to Spire's proposed edit.

(I) Financial advantage means an advantage provided by a covered utility to an affiliate when the covered utility:

1. **Compensates an affiliate 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 covered utility to provide the assets, goods, information or services for itself; or**
2. **Transfers assets, goods, information, or services of any kind to an affiliate below the greater of –**
 - A. **The FMP; or**
 - B. **The FDC to the covered utility.**

Stakeholder Recommendations:

Missouri-American Water Company ("MAWC") proposed the following edit:

Transfers assets, goods, information, or services of any kind to an affiliate ~~below the greater of—~~ for **less than the FDC to the covered utility**:
~~A. The FMP; or~~
~~B. The FDC to the covered utility.~~

Staff's Response:

Staff is opposed to MAWC's edit. Removing FMP would allow the covered utility to charge its fully distributed costs regardless if the service can be obtained else at a lower cost. This is the principal behind the affiliate transactions rule in that the utility is not providing a benefit or receiving a benefit that a unrelated third party would not also receive.

- (J) **Fair Market Price (FMP)** means a price determined by a covered utility 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 covered utility shall make such determination based on competitive bids, if feasible. If not feasible, surveys, third party studies, specific price inquiries, benchmarking, or any other reasonable method may be employed for this purpose. For goods or services for which there is no readily available comparative market price, the price shall be the fully distributed cost of the entity supplying the goods or services. The covered utility 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.
- (K) **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.
- (L) **Information** means any data obtained by a regulated electrical corporation that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

Stakeholder Recommendations:

In lieu of Union Electric Company d/b/a Ameren Missouri's ("Ameren") proposed edit to 20 CSR 10.015(2)(F)2, Ameren proposes the following edit:

Information means any commercially marketable data possessed ~~obtained~~ by a covered utility that is not obtainable by nonaffiliated entities or can only be obtained by nonaffiliates at a competitively prohibitive cost in either time or resources. As used in this definition, such data is "commercially marketable" only if it is expected to generate annual profits in excess of a sum equal to one tenth of one percent (.001) of the covered utility's Missouri jurisdictional operating revenues, as reported by the covered utility in its most recent annual report submitted to the commission.

OPC has proposed changing "regulated utility" to "covered utility."

Staff's Response

Staff supports OPC's proposed change. Staff is opposed to Ameren proposed edit. Defining information as commercially marketable would limit what is considered information.

(M) Long-term means a transaction in excess of thirty-one (31) days.

Stakeholder Recommendations:

OPC recommends removing this definition

Staff's Response

Staff is in support of OPC's removal of this definition.

(N) Marketing affiliate means an affiliate which engages in or arranges a commission-related sale of any natural gas service or portion of natural gas service to a shipper.

(O) Nonregulated 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.

Stakeholder Recommendations:

OPC has proposed changing the phrase "Nonregulated operations" to "Nonregulated business operations."

Staff's Response

Staff is not opposed to OPC's proposed edits.

(P) Opportunity sales means sales of unused contract entitlements necessarily held by a gas corporation to meet the daily and seasonal swings of its system customers and are intended to maximize utilization of assets that remain under regulation.

(Q) Preferential position means treatment provided by a covered utility which 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.

Stakeholder Recommendations:

OPC is proposing the following edit:

Preferential position means treatment, **information or actions** provided by a covered utility which 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.

Staff's Response

Staff is not opposed to OPC's edit.

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

Stakeholder's Recommendations:

OPC proposes changing the wording "regulated gas corporation" to "covered gas utility."

Staff's Response

Staff is not opposed to OPC's edit.

- (S) **Short-term means a transaction of thirty-one (31) days or less.**

Stakeholder Recommendations:

OPC recommends removing this definition.

Staff Response

Staff is in support of OPC's recommendation.

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

Stakeholder Recommendations:

OPC recommends changing the wording "gas corporation" and "regulated gas corporation" to "covered gas utility."

Staff Response

Staff is support of OPC's proposed edits.

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

Stakeholder Recommendations:

Spire recommends including language concerning variances with the following edit:

Variance means an exemption granted by the commission from any applicable standard required pursuant to this rule. **Any variances granted to 20 CSR 4240-40.015 shall continue as a variance under this rule.**

Staff's Response

Staff is not opposed to Spire's edit.

Office of the Public Counsel's ("OPC") Proposed Addition No. 1

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.

Staff's Response

Staff is opposed to the second sentence in OPC's proposed addition.

Office of the Public Counsel's ("OPC") Proposed Addition No. 2

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.

Staff's Response

Staff is opposed OPC's proposed addition. Gas corporation is included in 10.155(1)(G).

(2) Standards.

(A) A covered utility shall not provide a financial advantage to an affiliate.

(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.

Stakeholder Recommendations:

OPC recommends including section (2)(F) to the end of (2)(B).

Staff Response

Staff does not believe it is necessary to include this section (2)(F) to (2)(B). Service Companies are common within utility structures containing multiple regulated entities, as this type of affiliate provides the benefits of economies of scale for the provision of goods and service for regulated utilities compared to the cost of each regulated utility providing the good or service for itself on a stand-alone basis. The service company structure can be reasonably assumed to be less costly in most situations than arrangements in which the utility receives goods and services from unaffiliated entities

at market value. The expected lower costs associated with the provision of service company goods and services are due to the inherent economies of scale available in the offering of centralized services to multiple entities; a requirement to transact with a service company at FDC ensures these transactions will not include a profit margin for the charges associated with provision of its goods and services, unlike the case of unaffiliated/independent third party vendors.

- (C) **A covered utility shall not participate in any affiliate transactions which are not in compliance with this rule, except as otherwise provided in the variance section (11) of this rule.**
- (D) **If a customer requests information from the covered utility about goods or services provided by an affiliate, the covered utility may provide information about the affiliate but must inform the customer that regulated services are not tied to the use of an affiliate provider and that other service providers may be available. The covered utility may provide reference to other service providers or to commercial listings, but is not required to do so.**
- (E) **Marketing materials, information, or advertisements 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 in a font size no smaller than the 10-point font or announce that the affiliate entity is not regulated by the “Missouri Public Service Commission.”**

Stakeholder Recommendations:

MAWC proposes the following edit:

Marketing materials, information, or advertisements distributed to ~~Missouri residents~~ **a covered utility’s customers** by an affiliate entity that shares an exact or similar name, logo or trademark of the covered utility shall clearly display in a font size no smaller than the 10-point font or announce that the affiliate entity is not regulated by the “Missouri Public Service Commission.”

OPC proposes the following edit:

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 in a font size no smaller than the 10-point font or announce that the affiliate entity is not regulated by the “Missouri Public Service Commission.”

Staff Response

Staff is not opposed to MAWC's edit and OPC's edit.

- (F) **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 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.**
 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.**

Stakeholder Recommendations:

Ameren proposes the following edits to allow the sharing of "operational" information with its affiliates:

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, **provided that a covered utility may share information with such an affiliate as part of its day-to-day communications with such an affiliate for the process of improving service, operations, or efficiency.**

OPC recommends moving this section to (2)(B)

Staff's Response

Staff is not opposed to Ameren's proposed edit. Staff does not believe OPC's edit is necessary.

(3) Nondiscrimination Standards Respecting Gas Marketing.

(A) **Nondiscrimination standards under this section apply in conjunction with all the standards under this rule and control when a similar standard overlaps.**

(B) **A regulated gas corporation shall apply all tariff provisions relating to transportation in the same manner to customers similarly situated whether they use affiliated or nonaffiliated marketers or brokers.**

(C) **A regulated gas corporation shall uniformly enforce its tariff provisions for all shippers. (D) A regulated gas corporation shall not, through a tariff provision or otherwise, give its marketing affiliate and/or its customers any preference over a**

customer using a nonaffiliated marketer in matters relating to transportation or curtailment priority.

(E) A regulated gas corporation shall not give any customer using its marketing affiliate a preference, in the processing of a request for transportation services, over a customer using a nonaffiliated marketer, specifically including the manner and timing of such processing of a request for transportation services.

(F) A regulated gas corporation shall not disclose or cause to be disclosed to its marketing affiliate or any nonaffiliated marketer any information that it receives through its processing of requests for or provision of transportation.

(G) If a regulated gas corporation provides information related to transportation which is not readily available or generally known to other marketers to a customer using a marketing affiliate, it shall provide that information (electronic format, phone call, facsimile, etc.) contemporaneously to all nonaffiliated marketers transporting on its distribution system.

(H) A regulated gas corporation shall not condition or tie an offer or agreement to provide a transportation discount to a shipper to any service in which the marketing affiliate is involved. If the regulated gas corporation seeks to provide a discount for transportation to any shipper using a marketing affiliate, the regulated gas corporation shall, subject to an appropriate protective order--

1. File for approval of the transaction with the secretary of the commission and provide a copy to the commission staff counsel and the Office of the Public Counsel;

Stakeholder Recommendations:

OPC has proposed the following edit:

File in the commission's electronic filing information system (EFIS) for approval of the transaction ~~with the secretary of the commission and provide a copy to the commission staff counsel and the Office of the Public Counsel;~~

Staff's Response

Staff supports OPC's proposed edit.

2. Disclose whether the marketing affiliate of the regulated gas corporation is the gas supplier or broker serving the shipper;

Stakeholder Recommendations:

OPC proposes the following edit:

Disclose **in the filing** whether the marketing affiliate of the **covered** ~~regulated~~ gas ~~corporation~~ **utility** is the gas supplier or broker serving the shipper;

Staff's Response

Staff supports OPC's proposed edit.

3. **File quarterly public reports with the secretary of the commission which provide the aggregate periodic and cumulative number of transportation discounts provided by the regulated gas corporation; and**

Stakeholder Recommendations:

OPC proposes the following edit:

~~File~~ **Submit** quarterly public reports ~~in EFIS with the secretary of the commission which~~ **that** provide the aggregate periodic and cumulative number of transportation discounts provided by the **covered** ~~regulated~~-gas ~~corporation~~ **utility**; and

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

Staff's Response

Staff is in support of OPC's proposed edit.

4. **Provide the aggregate number of such agreements which involve shippers for whom the regulated gas corporation's marketing affiliate is or was at the time of the granting of the discount the gas supplier or broker.**

Stakeholder Recommendations:

OPC recommends moving (3)(H)4 to (3)(H)3

Staff's Response

Staff is not opposed to OPC's edit.

- (I) **A regulated gas corporation shall not make opportunity sales directly to a customer of its marketing affiliate or to its marketing affiliate unless such supplies and/or capacity are made available to other similarly situated customers using nonaffiliated marketers on an identical basis given the nature of the transactions.**

(J) A regulated gas corporation shall not condition or tie agreements (including prearranged capacity release) for the release of interstate or intrastate pipeline capacity to any service in which the marketing affiliate is involved under terms not offered to nonaffiliated companies and their customers.

(K) A regulated gas corporation shall maintain its books of account and records completely separate and apart from those of the marketing affiliate.

(L) A regulated gas corporation is prohibited from giving any customer using its marketing affiliate preference with respect to any tariff provisions that provide discretionary waivers or variances.

(M) A regulated gas corporation shall maintain records when it is made aware of any marketing complaint against an affiliate--

- 1. The records should contain a log detailing the date the complaint was received by the regulated gas corporation, the name of the complainant, a brief description of the complaint and, as applicable, how it has been resolved. If the complaint has not been recorded by the regulated gas corporation within thirty (30) days, an explanation for the delay must be recorded.**

Stakeholder Recommendations:

OPC proposes the following language:

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, 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 the request from the commission Staff or the Office of the Public Counsel.

Staff's Response

Staff does not object to OPC's proposed edit.

(N) A regulated gas corporation will not communicate to any customer, supplier or third parties that any advantage may accrue to such customer, supplier or third party in the use of the regulated gas corporation's services as a result of that customer, supplier or third party dealing with its marketing affiliate and shall refrain from giving any appearance that it speaks on behalf of its affiliate.

(O) If a customer requests information about a marketing affiliate, the regulated gas corporation may provide the requested information but shall also provide a list of all marketers operating on its system.

Stakeholder Recommendations

OPC recommends changing the wording “regulated gas corporation” to “covered gas utility” in (3)(B) through (O).

Staff Response

Staff supports OPC’s proposed edit.

(4) Evidentiary Standards for Affiliate Transactions.

(A) When a covered utility purchases information, assets, goods or services from an affiliate, other than those listed in Section (2)(F) of this Rule, the covered utility shall either determine a FMP for such information, assets, goods or services or demonstrate why no reasonable FMP can be determined.

(B) In transactions that involve either the purchase or receipt of information, assets, goods or services by a covered utility from an affiliate, other than those listed in Section (2)(F) of this Rule, the covered utility shall document both the FMP of such information, assets, goods and services and the FDC to the covered utility to produce the information, assets, goods or services for itself.

(C) In transactions that involve the sale or provision of information, assets, goods or services to affiliates, other than those listed in Section (2)(F) of this Rule, the covered utility must demonstrate that it--

1. Considered all costs incurred to complete the transaction;
2. Calculated the costs at times relevant to the transaction;
3. Charged, assigned, or allocated all joint and common costs appropriately; and
4. Adequately determined the FMP of the information, assets, goods or services.

Stakeholder Recommendations:

MAWC proposes the following edits to further refine the evidentiary standard for affiliate transactions:

In transactions that involve the sale or provision of information, assets, goods or services to affiliates, other than those listed in Section (2)(F) of this Rule, the covered utility **bears the burden to establish** ~~must demonstrate~~ that it ~~reasonably~~ --

2. Considered all material costs incurred to complete the transaction;
3. Calculated the material costs at times **in which the costs are actually incurred or anticipated to occur** ~~relevant to the transaction~~;
4. Charged, assigned, or allocated all material joint and common costs appropriately; and
5. ~~Adequately~~ Determined the FMP of the information, assets, goods or services.

Staff's Response

Staff is opposed to MAWC's proposed edit. Nowhere in the rule is material defined.

(D) In transactions involving the receipt or purchase of information, assets, goods or services by the covered utility from an affiliate, the covered utility will use a commission-approved CAM.

(5) Cost Allocation Manuals (CAM)

(A) Each covered utility shall maintain a CAM which sets forth cost allocation, market valuation, and internal cost methods and specifies the criteria, guidelines and procedures that the covered utility will follow to be in compliance with the commission's Affiliate Transactions Rule.

(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 periodic reviews of its cost allocation, market valuation, and internal cost methods, and shall update its CAM accordingly.

Stakeholder Recommendations:

OPC proposes the following edit:

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 ~~periodic~~ 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.

Staff's Response

Staff does not support OPC's proposed edit. The review of the information every 12 months is too frequent. Staff would support a review every 3 years, or some other reasonable time period.

(C) Each covered utility shall file its CAM with the commission on or before May 15 each year as part of the covered utility's Affiliate Transaction Report. Included in the report should be a list of all affiliates regardless if services are provided to or services were obtained from the affiliate. The commission may, at any time, direct its staff to conduct an audit or review of a covered utility's CAM.

Stakeholders Recommendations:

Spire Missouri, Inc. (“Spire”) is concerned whether the new rule would affect existing cost allocation manuals that have been drafted and approved by the Commission. Spire is looking for clarification from Staff or in the alternative they propose the following edit:

Each covered utility shall file its CAM with the commission on or before May 15 each year, **unless a different date has been agreed to between the Commission and the utility within its CAM**, as part of the covered utility’s Affiliate Transaction Report. Included in the report should be a list of all affiliates regardless if services are provided to or services were obtained from the affiliate. The commission may, at any time, direct its staff to conduct an audit or review of a covered utility’s CAM.

Staff’s Response

Staff is not opposed to Spire’s proposed edit.

(6) Record Keeping Requirements.

(A) A covered utility shall maintain books, accounts and records separate from those of its affiliates.

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

- 1. A full and complete list of all affiliates as defined by this rule;**
 - 2. A full and complete list of all assets, goods, information and services sold or provided to, or purchased or received from, affiliates;**
 - 3. A full and complete list of all contracts entered with affiliates;**
 - 4. A full and complete list of all affiliate transactions undertaken with affiliates without a written contract together with a brief explanation of why there was no contract;**
 - 5. The amount of all affiliate transactions by affiliate and account charged;**
 - 6. The basis used (e.g., FMP, FDC, etc.) to record each type of affiliate transaction, and a description of the method used by the covered utility to determine FMP;**
 - 7. A list of all affiliate transactions for which the covered utility could not determine a reasonable FMP, with explanations as to why a reasonable FMP was unobtainable; and 8. A full and complete listing of all affiliate transactions made pursuant to Section**
- (11)(A)2.B. of this Rule.**

Stakeholder Recommendations:

MAWC asserts it is not the controlling entity of its parent or any of its affiliates and does not have the authority to direct their business practices, specifically, the maintenance of records. MAWC proposes the following edits:

Except for the transactions detailed in Section (2)(F) of this rule, each ~~Each~~ covered utility shall maintain the following information in a ~~mutually agreed to~~ **reasonable** electronic format ~~(i.e., agreement between the commission staff, Public Counsel and the covered utility)~~ regarding affiliate transactions with affiliates on a calendar year basis and shall file such information in the form of an Affiliate Transactions Report with the secretary of the commission in EFIS and serve a copy on commission staff counsel and the Public Counsel by no later than May 15 of the succeeding year:

1. A full and complete list of all affiliates as defined by this rule;
2. A full and complete list of ~~all~~ **the types of** assets, goods, information and services sold or provided to, or purchased or received from, affiliates;
3. A full and complete list of all contracts entered with affiliates;
- ~~4. A full and complete list of all affiliate transactions undertaken with affiliates without a written contract together with a brief explanation of why there was no contract;~~
5. The amount of all affiliate transactions by affiliate and account charged;
6. The basis used (e.g., FMP, FDC, etc.) to record each type of affiliate transaction, and a description of the method used by the covered utility to determine FMP;
7. A list of all affiliate transactions for which the covered utility could not determine a reasonable FMP, with explanations as to why a reasonable FMP was unobtainable; and
8. A full and complete listing of all affiliate transactions made pursuant to Section (11)(A)2.B. of this Rule.

OPC proposes removing the requirement that copies be served.

Staff's Response

Staff is opposed to MAWC's proposed edit.

Staff supports OPC's proposed edit.

(C) In addition, each covered utility shall maintain the following information regarding affiliate transactions on a calendar year basis:

1. **Records identifying the basis used (e.g., FMP, FDC, etc.) to record all affiliate transactions; and**
2. **Books of accounts and supporting records in sufficient detail to permit verification of compliance with this rule.**

(7) Records of Affiliates.

(A) Each covered utility shall ensure that its parent and any other affiliates 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 affiliate and charged to the covered utility;**
- 2. Documentation of the methods used to allocate and/or share costs between affiliates 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 affiliate or division accessing the covered utility's contracted services or facilities;**
- 5. Names and job descriptions of the officers and managers, and only the job descriptions of such other employees that transferred or were transferred from the covered utility to an affiliate;**
- 6. Evaluations of the effect on the reliability of services provided by the covered utility resulting from the access to regulated contracts and/or facilities by affiliates;**
- 7. Policies regarding the access to services available to nonregulated affiliates desiring use of the covered utility's contracts and facilities; and**
- 8. Descriptions of and supporting documentation related to any use of derivatives that may be related to the covered utility's operation even though obtained by the parent or affiliate.**

Stakeholder Recommendations:

MAWC asserts it is not the controlling entity of its parent or any of its affiliates and does not have the authority to direct their business practices, specifically, the maintenance of records. MAWC proposes the following edits:

Each covered utility shall ~~ensure~~ request that ~~its parent and any other affiliates~~ an affiliate it contracts with for goods or services maintains 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~~ affiliate and charged to the covered utility;
2. Documentation of the methods used to allocate and/or share costs between affiliates 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 affiliate or division accessing the covered utility's contracted services or facilities;

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

Staff's Response

Staff is opposed to MAWC's proposed edit.

(8) Access to Records of Affiliates.

(A) To the extent permitted by applicable law and pursuant to established commission discovery procedures, a covered utility shall make available the books and records of its parent and any other affiliates when required in the application of this rule.

Stakeholder Recommendations

Summit Natural Gas of Missouri (Summit) has proposed the following edit:

To the extent permitted by applicable law and pursuant to established commission discovery procedures, a covered utility shall make available the books and records of its parent and any other affiliates when required in the application of this rule. **Access to affiliate books and records shall be limited to information reasonably required to ensure compliance with these rules and shall not extend to information unrelated to the affiliate's transactions with the covered utility.**

MAWC asserts it is not the controlling entity of its parent or any of its affiliates and does not have the authority to direct their business practices, specifically, the maintenance of records. MAWC proposes the following edits:

To the extent permitted by applicable law and pursuant to established commission discovery procedures, **and to the extent** a covered utility **has access to** ~~shall make available~~ the books and records of its parent and any other affiliates, **the covered utility shall make available the books and records of its parent and affiliates upon request** ~~when required~~ in the application of this rule.

Staff's Response

Staff is opposed to Summit's and MAWC's proposed edits. These entities are trying to limit the Commission's authority in this affiliate transaction rule, which has been litigated previously. The Missouri Supreme Court found that "the PSC's authority to require utilities to maintain records so that it may determine whether utilities are following their obligations under section 393.130.2 is firmly established. Likewise, the PSC has authority to extend the reach of the rules to a utility's affiliate where the affiliate is 'substantially kept separate and apart' from the business of the utility...that section also states that the PSC shall have the right to inquire as to, and prescribe the apportionment of, capitalization, debts, and expenses fairly and justly to be awarded or borne by the ownership, operation, management or control of such gas plant, electric plant...Sec. 393.140(12)," etc. *State ex rel. Atmos Energy Corp. v. PSC*, 103 S.W.3rd 753, 764 (2003). Commission has the authority to propose rules on affiliate transactions and authority to seek the information sought.

(B) The commission shall have the authority to--

- 1. Review, inspect and audit books, accounts and other records kept by a covered utility 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 covered utility or affiliate and their relationship to each other for the sole purpose of ensuring compliance with this rule.**

Stakeholders Recommendations:

MAWC asserts it is not the controlling entity of its parent or any of its affiliates and does not have the authority to direct their business practices, specifically, the maintenance of records. MAWC proposes the following edits:

The commission shall have the authority to--

1. Review, inspect and audit books, accounts and other records kept by a covered utility or **affiliate transaction records kept by an** affiliate for the sole purpose of ensuring compliance with this rule and making findings available to the commission; and
2. Investigate the **transactions between** ~~operations of~~ a covered utility ~~or~~ **and** affiliate and their relationship to each other for the sole purpose of ensuring compliance with this rule.

Staff's Response

Staff is opposed to MAWC's proposed edit. Same response as above.

(9) Record Retention.

(A) Records required under this rule shall be maintained by each covered utility for a period of not less than six (6) years.

(10) Training

(A) The covered utility shall train and advise its personnel as to the requirements and provisions of this rule at least every two years, or more often if appropriate, to ensure compliance.

(11) Variances.

(A) A variance from the standards in this rule may be obtained by compliance with paragraphs (11)(A)1. or (11)(A)2.

1. A covered utility may request a variance upon written application in accordance with commission procedures set out in 20 CSR 4240-2.060(4) but, except as provided for in subsection 2 of this section, it may not engage in such an affiliate transaction until the commission grants the variance for good cause shown; or

2. A covered utility 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 following procedures:

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, the Public Counsel, and any person or entity granted intervention in the covered utility's most recent general rate proceeding, within ten (10) days of the occurrence of the noncomplying 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 regulated customers. Upon the filing of a covered utility's notice of the noncomplying affiliate transaction, the commission shall prescribe an intervention period, and order any interested party to file a request for a hearing regarding the noncomplying affiliate transaction within forty-five (45) days of the notice of the noncomplying affiliate transaction. Any affiliate transaction for which a variance is requested 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 regulated customers.