

Case No(s) 68-2001-388Date 3-11-01Rptr 18

**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT**
Division 240—Public Service Commission
Chapter 40—Gas Utilities and
Gas Safety Standards

4 CSR 240-40.010 Rate Schedules

PURPOSE: This rule prescribes the forms and procedures for filing and publishing schedules of rates of all gas utilities under the jurisdiction of the Public Service Commission.

(1) Every gas corporation engaged in the manufacture, furnishing or distribution of gas of any nature whatsoever for light, heat or power, within the state of Missouri, is directed not later than October 15, 1913, to have on file with this commission and keep open for public inspection, schedules showing all rates and charges in connection with such service of whatever nature made by the gas corporations for each and every kind of service which it renders as were in force on April 15, 1913, together with proper supplements covering all changes in the rate schedules authorized by this commission, if any, since April 15, 1913.

(2) All such rate schedules now on file with the commission not in accordance with this rule shall be issued in the form and manner prescribed by this rule and all rate schedules issued after April 15, 1913, must conform to this rule.

(3) Rate schedules shall be drawn up substantially in accordance with Form No. 14 and shall be plainly printed or typewritten on good quality of paper of size eight and one-half inches by eleven inches (8 1/2" × 11") in book, sheet or pamphlet form. A loose-leaf plan may be used so changes can be made by reprinting and inserting a single leaf. When the loose-leaf plan is used, all sheets, except the title page sheet, must show in the marginal space at the top of the page the name of the gas corporation issuing, the PSC number of schedule and the number of the page. In the marginal space at the bottom of sheet should be shown—the date of issue, the effective date and the name, title and address of the officer by whom the schedule is issued. All schedules shall bear a number with the prefix PSC Mo. _____. Schedules shall be numbered in consecutive serial order beginning with number 1 for each gas corporation. If a schedule or part of a schedule is cancelled, a new schedule or part thereof (sheet(s) if loose-leaf) will refer to the schedule canceled by its PSC number; thus: PSC

Mo. No. _____ cancelling PSC Mo. No. _____.

(4) Each schedule shall be accompanied by a letter of transmittal, in duplicate if receipt is desired, in the following form:

LETTER OF TRANSMITTAL

(Name of gas corporation) _____

(Date) _____

To the Public Service Commission, State of Missouri, Jefferson City:

Accompanying schedule issued by the _____ is sent you for filing in compliance with the requirements of the Public Service Commission Law.

PSC Mo. No. _____
Sup. No. _____ to PSC Mo. No. _____
Effective, _____, 19 _____.

(Signature and title of filing officer) _____

(5) All proposed changes in rates, charges or rentals or in rules that affect rates, charges or rentals filed with the commission shall be accompanied by a brief summary, approximately one hundred (100) words or less of the effect of the change on the company's customers. A copy of any proposed change and summary shall also be served on the public counsel and be available for public inspection and reproduction during regular office hours at the general business office of the utility.

(6) Thirty (30) days' notice to the commission is required as to every publication relating to gas rates or service except where publications are made effective on less than statutory notice by permission, rule or requirement of the commission.

(7) Except as is otherwise provided, no schedule or supplement will be accepted for filing unless it is delivered to the commission free from all charges or claims for postage, the full thirty (30) days required by law before the date upon which the schedule or supplement is stated to be effective. No consideration will be given to or for the time during which a schedule or supplement may be held by the post office authorities because of insufficient postage. When a schedule or a supplement is issued and as to which the commission is not given the statutory notice, it is as if it had not been issued and a full statutory notice must be given of any rescission. No consideration will be given to telegraphic notices in computing the thirty (30) days' notice required. In those cases the

schedule will be returned to the sender and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which the schedule or supplement was received and the date of the attempted correction. For rate schedules and supplements issued on short notice under special permission of the commission, literal compliance with the requirements for notice named in any order, rule or permission granted by the commission will be exacted.

AUTHORITY: section 393.140(II), RSMo 1986. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed May 16, 1977, effective Dec. 11, 1977. Amended: Filed May 29, 1986, effective Oct. 27, 1986.*

**Original authority 1939, amended 1949, 1967.*

4 CSR 240-40.015 Affiliate Transactions

PURPOSE: This rule is intended to prevent regulated utilities from subsidizing their non-regulated operations. In order to accomplish this objective, the rule sets forth financial standards, evidentiary standards and record keeping requirements applicable to any Missouri Public Service Commission (commission) regulated gas corporation whenever such corporation participates in transactions with any affiliated entity (except with regard to HVAC services as defined in section 386.754, RSMo Supp. 1998, by the General Assembly of Missouri). The rule and its effective enforcement will provide the public the assurance that their rates are not adversely impacted by the utilities' nonregulated activities.

(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 regulated gas corporation.

(B) Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated gas corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated gas corporation and

the regulated business operations of a gas corporation. An affiliate transaction for the purposes of this rule excludes heating, ventilating and air conditioning (HVAC) services as defined in section 386.754, RSMo by the General Assembly of Missouri.

(C) 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 regulated gas corporation from rebutting the presumption that its ownership interest in an entity confers control.

(D) 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.

(E) 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 product, but do not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for fixed rate of return.

(F) 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.

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

(H) Preferential service means information or treatment or actions by the regulated gas corporation which places the affiliated entity at an unfair advantage over its competitors.

(I) Regulated gas corporation means every gas corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapter 393, RSMo.

(J) 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.

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

(2) Standards.

(A) A regulated gas corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated gas corporation shall be deemed to provide a financial advantage to an affiliated entity if—

1. It compensates an affiliated entity for goods or services above the lesser of—

A. The fair market price; or

B. The fully distributed cost to the regulated gas corporation to provide the goods or services for itself; or

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—

A. The fair market price; or

B. The fully distributed cost to the regulated gas corporation.

(B) Except as necessary to provide corporate support functions, the regulated gas corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

(C) Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. General or aggregated customer information shall be made available to affiliated or unaffiliated entities upon similar terms and conditions. The regulated gas corporation may set reasonable charges for costs incurred in producing customer information. Customer information includes information provided to the regulated utility by affiliated or unaffiliated entities.

(D) The regulated gas corporation shall not participate in any affiliated transactions which are not in compliance with this rule, except as otherwise provided in section (10) of this rule.

(E) If a customer requests information from the regulated gas corporation about goods or services provided by an affiliated entity, the regulated gas corporation may provide information about its 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 regulated gas corporation may provide reference to other service providers or to commercial listings, but is not required to do so. The regulated gas corporation shall include in its annual Cost Allocation Manual (CAM), the criteria, guidelines and procedures it will follow to be in compliance with the rule.

(F) Marketing materials, information or advertisements by an affiliate entity that share an exact or similar name, logo or trademark of the regulated utility shall clearly display or announce that the affiliate entity is not regulated by the Missouri Public Service Commission.

(3) Evidentiary Standards for Affiliated Transactions.

(A) When a regulated gas corporation purchases information, assets, goods or services from an affiliated entity, the regulated gas corporation shall either obtain competitive bids for such information, assets, goods or services or demonstrate why competitive bids were neither necessary nor appropriate.

(B) In transactions that involve either the purchase or receipt of information, assets, goods or services by a regulated gas corporation from an affiliated entity, the regulated gas corporation shall document both the fair market price of such information, assets, goods and services and the fully distributed cost to the regulated gas corporation to produce the information, assets, goods or services for itself.

(C) In transactions that involve the provision of information, assets, goods or services to affiliated entities, the regulated gas corporation must demonstrate that it—

1. Considered all costs incurred to complete the transaction;

2. Calculated the costs at times relevant to the transaction;

3. Allocated all joint and common costs appropriately; and

4. Adequately determined the fair market price of the information, assets, goods or services.

(D) In transactions involving the purchase of goods or services by the regulated gas corporation from an affiliated entity, the regulated gas corporation will use a commission-approved CAM which sets forth cost allocation, market valuation and internal cost methods. This CAM can use benchmarking practices that can constitute compliance with the market value requirements of this section if approved by the commission.

(4) Record Keeping Requirements.

(A) A regulated gas corporation shall maintain books, accounts and records separate from those of its affiliates.

(B) Each regulated gas corporation shall maintain the following information in a mutually agreed-to electronic format (i.e., agreement between the staff, Office of the Public Counsel and the regulated gas corporation) regarding affiliate transactions on a calendar year basis and shall provide such information to the commission staff and the Office of the Public Counsel on, or before, March 15 of the succeeding year:

1. A full and complete list of all affiliated entities as defined by this rule;
2. A full and complete list of all goods and services provided to or received from affiliated entities;
3. A full and complete list of all contracts entered with affiliated entities;
4. A full and complete list of all affiliate transactions undertaken with affiliated entities without a written contract together with a brief explanation of why there was no contract;
5. The amount of all affiliate transactions, by affiliated entity and account charged; and
6. The basis used (e.g., fair market price, FDC, etc.) to record each type of affiliate transaction.

(C) In addition each regulated gas corporation shall maintain the following information regarding affiliate transactions on a calendar year basis:

1. Records identifying the basis used (e.g., fair market price, 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.

(5) Records of Affiliated Entities.

(A) Each regulated gas 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 regulated gas 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 regulated gas corporation's contracted services or facilities;

5. Names and job descriptions of the employees from the regulated gas corporation that transferred to a nonregulated affiliated entity;

6. Evaluations of the effect on the reliability of services provided by the regulated gas corporation resulting from the access to regulated contracts and/or facilities by affiliated entities;

7. Policies regarding the availability of customer information and the access to services available to nonregulated affiliated entities desiring use of the regulated gas corporation's contracts and facilities; and

8. Descriptions of, and supporting documentation related to, any use of derivatives that may be related to the regulated gas corporation's operation even though obtained by the parent or affiliated entity.

(6) Access to Records of Affiliated Entities.

(A) To the extent permitted by applicable law, and pursuant to established commission discovery procedures, a regulated gas 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 regulated gas corporation or affiliated entity for the sole purpose of ensuring compliance with this rule and make findings available to the commission; and

2. Investigate the operations of a regulated gas corporation or affiliated entity and their relationship to each other for the sole purpose of ensuring compliance with this rule.

(C) That this rule does not modify existing legal standards regarding which party has the burden of proof in commission proceedings.

(7) Record Retention.

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

(8) Enforcement.

(A) When enforcing these standards, or any order of the commission regarding these standards, the commission may apply any remedy available to the commission.

(9) The regulated gas corporation shall train and advise its personnel as to the requirements and provisions of this rule as appropriate to ensure compliance.

(10) Variances.

(A) A variance from the standards in this rule may be obtained by compliance with paragraphs (10)(A)1. or (10)(A)2. The granting of a variance to one regulated gas corporation does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated gas 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. The regulated gas corporation shall request a variance upon written application in accordance with commission procedures set out in 4 CSR 240-2.060(11); or

2. A regulated gas corporation may engage in an affiliate transaction not in compliance with the standards set out in subsection (2)(A) of this rule, 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 (10)(A)2.A. and (10)(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 the Office of the Public Counsel 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. Within thirty (30) days of the notice of the noncomplying affiliate transaction, any party 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

ing, the denial shall not in any way prejudice a party's ability to challenge the affiliation transaction at the time of the annual CAM filing. At the time of the filing of the regulated gas corporation's annual CAM filing the regulated gas corporation shall provide to the secretary of the commission a listing of all noncomplying 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 regulated customers.

(11) Nothing contained in this rule and no action by the commission under this rule shall be construed to approve or exempt any activity or arrangement that would violate the antitrust laws of the state of Missouri or of the United States or to limit the rights of any person or entity under those laws.

AUTHORITY: sections 386.250, *RSMo Supp. 1998*, and 393.140, *RSMo 1994*. * *Original rule filed April 26, 1999, effective Feb. 29, 2000.*

*Original authority: 386.250, *RSMo 1939*, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996 and 393.140, *RSMo 1939*, amended 1949, 1967.

4 CSR 240-40.016 Marketing Affiliate Transactions

PURPOSE: This rule sets forth standards of conduct, financial standards, evidentiary standards and record keeping requirements applicable to all Missouri Public Service Commission (commission) regulated gas corporations engaging in marketing affiliate transactions (except with regard to HVAC services as defined in section 386.754, *RSMo Supp. 1998*, 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 regulated gas corporation. It shall also include any person or entity that is under common control with the regulated gas corporation.

and all unregulated business operations of a regulated gas corporation.

(B) **Affiliate transaction** means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated gas corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated gas corporation and the regulated business operations of a gas corporation. An affiliate transaction for the purposes of this rule excludes heating, ventilating and air conditioning (HVAC) services as defined in section 386.754, *RSMo* by the General Assembly of Missouri.

(C) **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 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 regulated gas corporation from rebutting the presumption that its ownership interest in an entity confers control.

(D) **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.

(E) **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 (1) 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 product, 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.

(F) **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.

(G) **Information** means any data obtained by a regulated gas corporation that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

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

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

(J) **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.

(K) **Preferential service** means information, treatment or actions by the regulated gas corporation which places the affiliated entity at an unfair advantage over its competitors.

(L) **Regulated gas corporation** means every gas corporation as defined in section 386.020, *RSMo*, subject to commission regulation pursuant to Chapter 393, *RSMo*.

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

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

(O) **Transportation** means the receipt of gas at one point on a regulated gas corporation's system and the redelivery of an equivalent volume of gas to the retail customer of the gas at another point on the regulated 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 tariff, and includes opportunity sales.

(P) **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.

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

(2) Nondiscrimination Standards.

(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.

(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 commission and provide a copy to the Office of the Public Counsel;

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

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

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.

(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.

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

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.

(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 affiliated entity.

(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.

(3) Standards.

(A) A regulated gas corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated gas corporation shall be deemed to provide a financial advantage to an affiliated entity if—

1. It compensates an affiliated entity for information, assets, goods or services above the lesser of—

- A. The fair market price; or

- B. The fully distributed cost to the regulated gas corporation to provide the information, assets, goods or services for itself; or

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—

- A. The fair market price; or

- B. The fully distributed cost to the regulated gas corporation.

(B) Except as necessary to provide corporate support functions, the regulated gas corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

(C) Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. General or aggregated customer information shall be made available to affiliated or unaffiliated entities upon similar terms and conditions. The regulated gas corporation may set reasonable charges for costs incurred in producing customer information. Customer information includes information provided to the regulated utility by affiliated or unaffiliated entities.

(D) The regulated gas corporation shall not participate in any affiliated transactions which are not in compliance with this rule, except as otherwise provided in section (11) of this rule.

(E) If a customer requests information from the regulated gas corporation about goods or services provided by an affiliated entity, the regulated gas corporation 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. Except with respect to affiliated and nonaffiliated gas marketers which are addressed in section (2) of this rule, the regulated gas corporation may provide reference to other service providers or to commercial listings, but is not required to do so. The regulated gas corporation shall include in its annual Cost Allocation Manual (CAM), the criteria, guidelines and procedures it will follow to be in compliance with the rule.

(F) Marketing materials, information or advertisements by an affiliate entity that share an exact or similar name, logo or trademark of the regulated utility shall clearly display or

announce that the affiliate entity is not regulated by the Missouri Public Service Commission.

(4) **Evidentiary Standards for Affiliate Transactions.**

(A) When a regulated gas corporation purchases information, assets, goods or services from an affiliated entity, the regulated gas corporation shall either obtain competitive bids for such information, assets, goods or services or demonstrate why competitive bids were neither necessary nor appropriate.

(B) In transactions that involve either the purchase or receipt of information, assets, goods or services by a regulated gas corporation from an affiliated entity, the regulated gas corporation shall document both the fair market price of such information, assets, goods and services and the fully distributed cost to the regulated gas corporation to produce the information, assets, goods or services for itself.

(C) In transactions that involve the provision of information, assets, goods or services to affiliated entities, the regulated gas corporation must demonstrate that it—

1. Considered all costs incurred to complete the transaction;
2. Calculated the costs at times relevant to the transaction;
3. Allocated all joint and common costs appropriately; and
4. Adequately determined the fair market price of the information, assets, goods or services.

(D) In transactions involving the purchase of information, assets, goods or services by the regulated gas corporation from an affiliated entity, the regulated gas corporation will use a commission-approved CAM which sets forth cost allocation, market valuation and internal cost methods. This CAM can use benchmarking practices that can constitute compliance with the market value requirements of this section if approved by the commission.

(5) **Record Keeping Requirements.**

(A) A regulated gas corporation shall maintain books, accounts and records separate from those of its affiliates.

(B) Each regulated gas corporation shall maintain the following information in a mutually agreed-to electronic format (i.e., agreement between the staff, Office of the Public Counsel and the regulated gas corporation) regarding affiliate transactions on a calendar year basis and shall provide such information to the commission staff and the Office of the Public Counsel on, or before, March 15 of the succeeding year:

1. A full and complete list of all affiliated entities as defined by this rule;

2. A full and complete list of all goods and services provided to or received from affiliated entities;

3. A full and complete list of all contracts entered with affiliated entities;

4. A full and complete list of all affiliate transactions undertaken with affiliated entities without a written contract together with a brief explanation of why there was no contract;

5. The amount of all affiliate transactions, by affiliated entity and account charged; and

6. The basis used (e.g., market value, book value, etc.) to record each type of affiliate transaction.

(C) In addition each regulated gas corporation shall maintain the following information regarding affiliate transactions on a calendar year basis:

1. Records identifying the basis used (e.g., fair market price, fully distributed cost, 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.

(6) **Records of Affiliated Entities.**

(A) Each regulated gas 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 affiliate and charged to the regulated gas 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 regulated gas corporation's contracted services or facilities;

5. Names and job descriptions of the employees from the regulated gas corporation that transferred to a nonregulated affiliated entity;

6. Evaluations of the effect on the reliability of services provided by the regulated gas corporation resulting from the access to regulated contracts and/or facilities by affiliated entities;

7. Policies regarding the availability of customer information and the access to services available to nonregulated affiliated entities desiring use of the regulated gas corporation's contracts and facilities; and

8. Descriptions of, and supporting documentation related to, any use of derivatives that may be related to the regulated gas corporation's operation even though obtained by the parent or affiliated entity.

(7) **Access to Records of Affiliated Entities.**

(A) To the extent permitted by applicable law, and pursuant to established commission discovery procedures, a regulated gas 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 regulated gas corporation or affiliated entity for the sole purpose of ensuring compliance with this rule and make findings available to the commission; and

2. Investigate the operations of a regulated gas corporation or affiliated entity and their relationship to each other for the sole purpose of ensuring compliance with this rule.

(C) This rule does not modify existing legal standards regarding which party has the burden of proof in commission proceedings.

(8) **Record Retention.**

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

(9) **Enforcement.**

(A) When enforcing these standards, or any order of the commission regarding these standards, the commission may apply any remedy available to the commission.

(10) The regulated gas corporation shall train and advise its personnel as to the requirements and provisions of this rule as 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. The granting of a variance to one regulated gas corporation does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated gas 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. The regulated gas corporation shall request a variance upon written application in accordance with commission procedures set out in 4 CSR 240-2.060(11); or

2. A regulated gas corporation may engage in an affiliate transaction not in compliance with the standards set out in subsection (2)(A) of this rule, 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 (11)(A)2.A. and (11)(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 the Office of the Public Counsel 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. Within thirty (30) days of the notice of the noncomplying affiliate transaction, any party 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 party's ability to challenge the affiliate transaction at the time of the annual CAM filing. At the time of the filing of the regulated gas corporation's annual CAM filing the regulated gas corporation shall provide to the secretary of the commission a listing of all noncomplying 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 regulated customers.

(12) Nothing contained in this rule and no action by the commission under this rule shall be construed to approve or exempt any activity or arrangement that would violate the antitrust laws of the state of Missouri or of the United States or to limit the rights of any person or entity under those laws.

AUTHORITY: sections 386.250, RSMo Supp. 1998 and 393.140, RSMo 1994.* *Original rule filed April 26, 1999, effective Feb. 29, 2000.*

*Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996 and 393.140, RSMo 1939, amended 1949, 1967.

4 CSR 240-40.017 HVAC Services Affiliate Transactions

PURPOSE: *This rule prescribes the requirements for HVAC services affiliated entities and regulated gas corporations when such gas corporations 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 by the General Assembly of the State of Missouri.*

(1) Definitions.

(A) Affiliated entity means any entity not regulated by the Public Service 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 regulated gas corporation from rebutting the presumption that its ownership interest in an entity confers control.

(C) Fully distributed cost means a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. Fully distributed cost 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 fully distributed cost calculation through a general allocation.

(D) HVAC services means the warranty, sale, lease, rental, installation, construction, modernization, retrofit, maintenance or repair of heating, ventilating and air conditioning (HVAC) equipment.

(E) Regulated gas corporation means a gas corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapter 393, RSMo.

(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 regulated gas corporation to engage in or assist any entity in engaging in HVAC services, but does not include employees of a regulated gas corporation.

(2) A regulated gas corporation may not engage in HVAC services, except by an affiliated entity, or as provided in sections (8) and (9) of this rule.

(3) No affiliated entity or utility contractor may use any vehicles, service tools, instruments, employees, or any other regulated gas corporation assets, the cost of which are recoverable in the regulated rates for regulated gas corporation service, to engage in HVAC services unless the regulated gas corporation is compensated for the use of such assets at the fully distributed cost to the regulated gas corporation.

(A) The determination of a regulated gas corporation's cost in this section is defined in subsection (1)(D) of this rule.

(4) A regulated gas corporation may not use or allow any affiliated entity or utility contractor to use the name of such regulated gas corporation to engage in HVAC services unless the regulated gas corporation, 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.

(5) A regulated gas corporation 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 regulated gas corporation, affiliated entity or utility contractor to the extent of changing the rates or charges for the regulated gas corporation's services above or below the rates or charges that would be in effect if

the regulated gas corporation were not engaged in or assisting any affiliated entity or utility contractor in engaging in such activities.

(6) Any affiliated entities or utility contractors engaged in HVAC services shall maintain accounts, books and records separate and distinct from the regulated gas corporation.

(7) 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 the regulated gas corporation providing regulated services in the state of Missouri or any other state.

(8) A regulated gas corporation 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 regulated gas corporation five (5) years prior to August 28, 1998.

(A) To qualify for this exemption, the regulated gas corporation shall file a pleading before the commission for approval.

1. The commission may establish a case to determine if the regulated gas corporation qualifies for an exemption under this rule.

(9) The provisions of this section shall not be construed to prohibit a regulated gas corporation 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, *RSMo Supp. 1998* and 393.140, *RSMo 1994*. *Original rule filed Dec. 17, 1998, effective Aug. 30, 1999.

*Original authority 386.710.1, *RSMo 1998* and 393.140, *RSMo 1939*, amended 1949, 1967.

4 CSR 240-40.020 Incident, Annual and Safety-Related Condition Reporting Requirements

PURPOSE: This rule prescribes requirements and procedures for reporting certain gas-related incidents and safety-related conditions, and for filing annual reports. It applies to gas systems subject to the safety jurisdiction of the Public Service Commission.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law. This rule is similar to the Minimum Federal Safety Standards contained in 49 CFR part 191, Code of Federal Regulations. Parallel citations to part 191 are provided for gas operator convenience and to promote public safety. RSPA Forms referenced in this rule are available in both the Office of the Secretary of State and the Gas Safety Section, Missouri Public Service Commission.

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(1) Scope. (191.1)

(A) This rule prescribes requirements for the reporting of incidents, safety-related conditions and annual pipeline summary data by operators of gas pipeline facilities located in Missouri and under the jurisdiction of the commission.

(B) This rule does not apply to gathering of gas on private property outside of—

1. An area within the limits of any incorporated or unincorporated city, town or village; or

2. Any designated residential or commercial area such as a subdivision, business or shopping center or community development.

(2) Definitions. (191.3) As used in this rule and in the RSPA Forms referenced in this rule—

(A) Administrator means the administrator of the RSPA or any person to whom authority in the matter concerned has been delegated by the Secretary of the United States Department of Transportation;

(B) Commission means the Public Service Commission, Designated commission personnel means the Pipeline Safety Program Manager at the address contained in section (5) (191.7) for required correspondence and means the list of staff personnel supplied to the operators for required telephonic notices;

(C) Federal incident means any of the following events:

1. An event that involves a release of gas from a pipeline or of liquefied natural gas (LNG) or gas from an LNG facility and—

A. A death or personal injury necessitating inpatient hospitalization; or

B. Estimated property damage, including cost of gas lost, of the operator or others, or both, of fifty thousand dollars (\$50,000) or more;

2. An event that results in an emergency shutdown of an LNG facility; or

3. An event that is significant, in the judgment of the operator, even though it did

not meet the criteria of paragraphs (2)(C)1. or 2.;

(D) Gas means natural gas, flammable gas, manufactured gas or gas which is toxic or corrosive;

(E) LNG facility means a liquefied natural gas facility as defined in 193.2007 of 49 CFR part 193;

(F) Master meter system means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, for instance, by rents;

(G) Municipality means a city, village or town;

(H) Operator means a person who engages in the transportation of gas;

(I) Person means any individual, firm, joint venture, partnership, corporation, association, county, state, municipality, political subdivision, cooperative association or joint stock association, and includes any trustee, receiver, assignee or personal representative of them;

(J) Pipeline or pipeline system means all parts of those physical facilities through which gas moves in transportation including, but not limited to, pipe, valves and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies;

(K) RSPA means the Research and Special Programs Administration of the United States Department of Transportation; and

(L) Transportation of gas means the gathering, transmission or distribution of gas by pipeline, or the storage of gas in or affecting interstate or foreign commerce.

(3) Telephonic Notice of Federal Incidents. (191.5)

(A) At the earliest practicable moment following discovery, each operator shall give notice, in accordance with subsection (3)(B), of each federal incident as defined in section (2) (191.3).

(B) Each notice required by subsection (3)(A) shall be made by telephone to 800-424-8802 and shall include the following information:

1. Names of operator and person making report and their telephone numbers;

2. Location of the incident;

3. Time of the incident;