

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

In the Matter of the General Rate Increase                    )  
for Water and Sewer Service Provided                    )        Case No. WR-2003-0500  
by Missouri-American Water Company.                    )

**MAWC’S PROPOSED AFFILIATE TRANSACTION RULE**

COMES NOW Missouri-American Water Company (MAWC or Company), and, provides to the Missouri Public Service Commission (Commission), MAWC’s proposed affiliate transaction rule (attached hereto as **Appendix A**). In support thereof, MAWC states as follows:

**SUMMARY**

MAWC understands the concerns that may exist concerning affiliate transactions in the regulatory environment. MAWC believes that the rule it proposes herein will address those concerns, without adding unnecessary administrative requirements to the process. MAWC would further ask that the parties be provided the opportunity to respond to other proposals that may be made and to provide further comment and analysis of the relative merits of the proposals. Thereafter, the Commission may find it helpful to hold an on-the-record presentation to ask whatever questions it may have.

**INTRODUCTION**

1. On August 16, 2005, the Commission issued an Order Directing Filing wherein it directed MAWC and Staff to file, on or before September 16, 2005, their proposed affiliate transaction rules.

2. The concern to be addressed by an affiliate transaction rule, as stated in the Order Directing Filing (p. 2), is that “the expansion of regulated utilities into unregulated areas ‘gives utilities the opportunity and incentive to shift their non-regulated

costs to their regulated operations with the effect of unnecessarily increasing the rates charged to the utilities' customers.” The challenge for the Commission is to address this concern in a way that protects customers without creating overly burdensome, costly, or unrealistic requirements on the regulated entity, or otherwise impairing the utilities' ability to provide efficient, cost-effective service. MAWC believes that its proposed rule will meet this challenge.

**ADOPTION OF NATURAL GAS/ELECTRIC RULE  
NOT APPROPRIATE**

3. The Commission Staff's *Memorandum to the Commission Concerning the Affiliate Transactions Rule for Water Utilities* indicates that the Staff views water utilities to be substantially the same as utilities in other industries. Staff stated that it “began the process of negotiation with the Company using the current Commission affiliate transactions rules governing gas companies” because, it alleged, “similarly situated utilities in this state should have similar, if not identical, rules governing affiliate transactions.” *Id.* at p. 2-3. MAWC believes that while the natural gas and electric affiliate rule format may be appropriate for a starting point, blanket adoption of the provisions is inappropriate for water utilities because of important differences in the industries and the challenges they face.

4. The Commission, as the parties are aware, promulgated affiliate transaction rules for the electric and natural gas industries in the year 2000. Both in structure and in future needs, the electric and natural gas industries in the year 2000 were very different from the water industry as it exists today.

5. At the time the Missouri natural gas and electric rules were promulgated, there was a drive throughout many areas of the country to restructure the highly vertically

integrated investor-owned energy monopolies, which served about 80% of the country's population, in order to establish competition where little or none existed. These industries were also considering the possibility of new markets. In the electric industry nationally, for example, the theory was that a competitive market could be created for power generation, as opposed to transmission and distribution, and that creation of such a market would lower costs and facilitate customer choice of energy providers. The concern was that without stringent affiliate restrictions, new energy or service providers would be stifled by the power of the existing monopoly. There is no similar drive or expressed public policy in Missouri to create such competition in the investor-owned water industry.

6. The energy utilities had also achieved substantial consolidation and economies of scale, compared to the water industry, and were already strongly monopolistic in terms of energy production. Only about 15% of the population of the country is served by investor-owned water utilities compared to approximately 80% for investor-owned energy utilities. In most other areas of water resource management, such as O&M contracting, design/build/operate arrangements, engineering and planning, and watershed management, investor-owned water companies do not hold monopoly positions and there is strong competition from numerous existing sources, such as consulting, engineering and construction companies and others.

7. Stringent affiliate transaction rules for energy companies were thought by many states to be necessary for the development of truly competitive generating markets, local competition and customer choice. The perception was that if new, restructured and unregulated generating and marketing affiliates of traditional public utilities could

leverage the name recognition, customer relationships, employees, management and facilities of the regulated utility, they would possess an unfair competitive advantage over potential new market entrants, and competition and customer choice would not occur.

8. The goals of fostering competition, entry of new market participants, and customer choice are not relevant to the investor-owned water industry generally and are especially not relevant to the corporate support received by MAWC from its affiliates.

9. To the extent that water companies may be expanding into unregulated areas of water resource management, they are doing so with considerably less market power than restructuring energy or telephone companies and where mature competitors already exist. Highly restrictive affiliate requirements are not necessary to compensate for market dominance by monopoly utilities or to ensure survival of fledgling competitors in regard to the water industry.

#### **WATER INDUSTRY NEEDS**

10. The broader question for the Commission should be what control mechanisms are necessary or conducive to ensuring that water utilities have the resources to meet the long-term challenges they face to provide safe, reliable and cost-effective services to their customers, while at the same time ensuring that those customers do not subsidize non-utility operations. Current and future control measures should be carefully considered in light of their capacity to promote or inhibit capital attraction, technology development, consolidation and economies of scope and scale in the water industry.

11. The two most fundamental challenges in the water industry continue to be:  
1) the need to attract huge amounts of capital to fund both replacement of aging infrastructure and compliance with ever more stringent federal drinking water and clean

water standards; and, 2) the need for consolidation and integration in order to achieve economies of scope and scale, enhance technical and operating expertise, and facilitate capital attraction at reasonable cost.

12. The two primary drivers of cost in the drinking water and wastewater industries are the Safe Drinking Water Act (SDWA) and the Clean Water Act (CWA). Congress first enacted the SDWA in 1974 with the goal of improving the quality of the nation's drinking water and, to the extent feasible, detecting and removing contaminants that are potentially carcinogenic or could otherwise adversely affect human health. A significant feature of the SDWA is that it charges the USEPA with ongoing responsibilities to identify additional contaminants that could be harmful to health and to set monitoring and treatment standards for them, thus effecting continuous improvement in the nation's drinking water supplies.

13. Currently, drinking water service providers must monitor and/or treat for 98 potential contaminants, including 20 inorganic chemicals, 56 organic chemicals, nine microbiological agents and thirteen by-products of disinfection techniques. Numerous additional monitoring and treatment requirements will be finalized and implemented within the next three years. These include, for example, major new requirements relating to arsenic, groundwater and enhanced surface water treatment, disinfection by-products, radon, radionuclides, MTBE, perchlorate and endocrine disruptors.

14. Congress enacted the CWA in 1972 and established as its primary goals making the nation's navigable waters "swimmable and fishable." The Act imposes significant capital costs for wastewater collection and treatment, combined sewer overflow (CSO) correction, municipal storm water management, non point source (NPS)

pollution control, and other requirements. In addition, states must engage in an increasing number of water pollution control activities, such as developing Total Maximum Daily Loads (TMDL's) and setting certain Safe Drinking Water Act objectives that are managed on a watershed basis. Despite over 30 years of effort and much progress, the USEPA estimates that the quality of almost 40% of our rivers, streams and lakes still does not support their designated uses.

15. According to the 2002 USEPA Clean Water and Drinking Water Infrastructure Gap analysis, capital needs for drinking water over a 20-year period ending in 2019 are estimated to range from \$154 billion to \$446 billion with a point estimate of \$274 billion. The 2005 USEPA Drinking Water 20 Year Infrastructure Needs Survey and Assessment estimated that the total need for Missouri water systems is \$5.958 billion.

16. By any measure, the nation's commitment to continuous improvement in the quality of our drinking water supplies and precious water resources imposes huge capital investment challenges to those who are responsible for providing service and protecting these resources, as well as cost burdens on the public that must ultimately pay for it. The issue, however, is not simply one of capital investment. The ever-increasing quality standards require development of increasingly complex monitoring and treatment techniques that require greater operator training and expertise.

17. The structure of the water industry in the United States is hardly conducive to meeting these challenges in an efficient and cost-effective manner. The drinking water industry is highly fragmented, with approximately 54,000 community drinking water systems currently serving the public. Diverse and unconnected forms of

government ownership, such as municipalities, public water districts, rural water associations and the like serve about 85% of the population. In addition, about 94% of these systems serve less than 10,000 people, which the USEPA defines as a "small" system and many of these systems are simply not financially or technologically viable to meet current let alone future infrastructure and quality requirements. This can be compared to approximately 3,700 electric service providers and 2,700 natural gas systems, and where the ratio of public to private ownership is just about reversed.

18. These figures are supported by the experience in Missouri. In a 2001 report, the Missouri Department of Natural Resources indicated that there are 1,447 community water systems in Missouri. This Commission regulates approximately 68 investor owned water companies. Of this number, approximately 60 companies have fewer than 1,000 customers, and 52 of those have fewer than 500 customers.

19. The water industry is fragmented not only with regard to the number of providers and ownership structures, but also in terms of various factors that can and do affect the delivery and cost of water service to end use customers. For example, economic regulation by state public utility commissions, where it exists, is separate from water quality regulation (USEPA and state primary agencies).

20. In addition, the source of supply, treatment and distribution chain, as well as the cost to end use customers, is directly affected by other water resource-related issues, such as watershed protection and management, reuse, wastewater treatment, storm water control, and disposal, and competing uses – such as for agriculture, habitat and ecosystem protection, human consumption and recreation. Each of these areas is often affected by oversight from numerous different government entities and the competing

interests of many stakeholders, which usually operate with little cohesion or consistent policy. Unlike the energy and telecommunications industries, there is no national, integrated transmission network in the water industry, nor is there a national economic regulatory authority, such as the FCC for the telecommunications industry or the FERC for the energy industry. This obviously makes development of a coherent and integrated water policy more difficult.

21. All of this points to a great need for consolidation and a more integrated approach in the water industry to achieve economies of scale and facilitate capital attraction, as well as technological and financial viability, if the challenges of the future are to be met at all, let alone in an efficient and cost-effective manner. It also places greater responsibility on existing stakeholders to play their part in promoting a more holistic and rational approach to water resource management.

22. Consolidation, however, should be viewed in a broad context that includes more than just acquisition or merger of systems or regionalization of authorities. Consolidation should be viewed as a policy that facilitates leveraging use of the resources of all service providers, regulatory authorities and other stakeholders, regardless of ownership structure or whether they are regulated or unregulated by state utility commissions, to solve problems and achieve a more integrated approach to water resource management.

23. Investor-owned water systems have much to offer in terms of promoting consolidation, operating efficiencies and technological expertise. A number of companies have regulated and unregulated operations that span numerous states, and which can provide a host of water related services that can bear directly on the quality



and cost of water services. These include, for example, engineering and planning, operations management, design/build/operate scenarios, underground rehabilitation, residuals management, and others.

24. Investor-owned companies that operate in many states and possess extensive capabilities to address diverse issues and challenges related to water resource management can facilitate capital attraction and economic efficiencies as well as technical and operating expertise over areas that transcend local or regional boundaries. For example, although the transmission and distribution facilities of such companies in various states may not be interconnected, they can nonetheless minimize redundant management, facilitate mass purchasing and procurement, consolidate business support services, and promote knowledge sharing and best practices that can help hold down costs and improve service.

25. Utilizing both the regulated and unregulated resources of investor-owned systems can provide a vehicle for addressing some of the more intransigent problems most state commissions face with regard to financially and technologically non-viable small systems. The potential for consolidation of such systems is clearly there. Of the thousands of systems the USEPA defines as "small", 86% are located within 5 miles of another system, and 100% lie within 20 miles of another system. However, although such systems may lie in proximity to a regulated utility owned by a major investor-owned company, acquisition of the assets of the non-viable system may not be feasible, for a number of reasons. The owners of the non viable system may not be willing to sell at a reasonable price; due to poor record keeping and management, there may be hidden environmental or other compliance problems which could become a liability to the

acquiring utility; major system improvements may be necessary, etc. Nonetheless, the non-viable system remains a headache for the commission and a hazard to its customers.

### **IMPLICATIONS FOR COMMISSION**

26. Regulatory flexibility and minimization of unnecessary and costly administrative requirements should be a goal of rulemaking for the water industry in order to best equip the industry to meet current and future challenges. Realizing the potential for consolidation requires regulatory flexibility. In this regard, application to the water industry of rigid affiliate rules designed to restructure the energy industry and facilitate competition, new market entrants, and retail customer choice may be counterproductive to solving real problems and prevent harnessing the full potential of the water industry to meet these challenges.

27. It is as important to craft protective mechanisms in a manner that permits and encourages leveraging all resources to effectively meet the challenges facing the utility and its customers, as it is to insulate the utility to protect it from potential abuse.

### **PROPOSED RULE**

28. MAWC's proposed water utility affiliate rule is attached hereto as **Appendix A**. MAWC has attempted to take the above factors into account in preparing this affiliate rule for Commission consideration. In particular, MAWC seeks a rule that will not act as a disincentive to capital attraction, appropriate consolidation, economies of scale and cost effective service, while avoiding cross-subsidization by utility customers.

29. MAWC's rule proposes to achieve these goals in part by differentiating between "corporate support" necessary to provide utility service and other forms of affiliate transactions. American Water Works Service Company, Inc. and American

Water Capital Corp currently provide MAWC's corporate support functions. These entities also provide services to all other regulated subsidiaries of American Water. Actual costs are charged to the regulated companies, without the inclusion of any "profit," and without discrimination among the parties making use of these services.

30. MAWC has utilized consolidated corporate support functions for many years and these costs have been reviewed in numerous rate cases. Corporate support functions provided to MAWC do not, therefore, represent an expansion into non-regulated areas. The sharing of these functions instead represents an opportunity for consolidation of services and costs that is rare in the water industry as a whole. The issue here is primarily one of cost allocations to prevent customers from subsidizing other regulated or unregulated enterprises.

31. The corporate support transactions have been monitored. In Commission Case No. WR-2000-844, St. Louis County Water Company, which later merged with MAWC, agreed to prepare a cost allocation manual (CAM) concerning its corporate support services and to provide the CAM to the Staff and Public Counsel. MAWC filed a CAM with the Commission for the first time in Case No. WR-2003-0500. It later provided the 2005 CAM to the Staff and Public Counsel on March 15, 2005.

32. Differentiating corporate support functions from other activities is extremely important from an administrative burden standpoint. The existing Missouri rules concerning natural gas and electric affiliate transactions require a utility to maintain a "full and complete list of all goods and services provided to or received from affiliated entities" on a calendar basis. *See* 4 CSR 240-20.015(4)(B)2. Additionally, the rule appears to require evidence of the fair market price and fully distributed cost for each

transaction and records to support these determinations. *See* 4 CSR 240-20.015(4)(B)6 and 4 CSR 240-20.015(5)(A).

33. In the case of MAWC's corporate support functions, this would amount to individual record keeping for approximately 299,000 transactions on an annual basis. Maintaining individual transaction information of the type the electric and natural gas rules appear to require for each of these transactions would be a monumental, and unnecessary, undertaking.

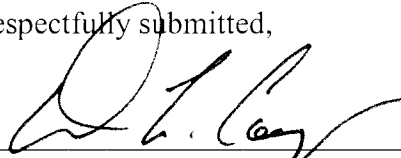
34. This does not mean that the transactions will go without review. MAWC's proposed rule provides that these transactions will be recorded at the actual cost (allocated where appropriate) of the affiliate. They then will be subject to review for prudence and reasonableness in MAWC rate proceedings. This approach has provided the Commission in the past with the ability to ensure that the ratepayer is protected, while avoiding unnecessary and costly record keeping. This process will continue to work in the future.

### **HOW TO PROCEED**

35. MAWC cannot be certain as to the precise content of the Staff's final, proposed rule, and any proposed rule that may be filed by the Public Counsel, until September 16, 2005. Accordingly, MAWC requests that it be given an opportunity (45 – 60 days) to respond to any proposed rules that are filed and to provide further comment and analysis of the relative merits of the proposals. Additionally, because of the nature of this matter, the Commission may find it helpful to address and discuss this matter with an on-the-record presentation. MAWC requests that the Commission schedule such a presentation, if the Commission believes it would be of assistance.

WHEREFORE, MAWC respectfully requests that the Commission consider this response to the Commission's Order Directing Filing, and MAWC's proposed rule attached hereto.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or electronic mail on this 16<sup>th</sup> day of September, 2005, to the following:

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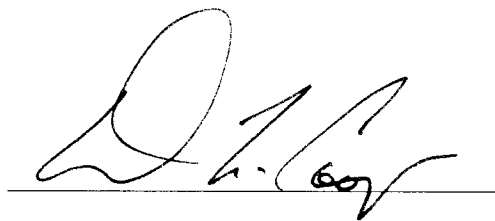
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A handwritten signature in black ink, appearing to read 'M. W. Comley', is written over a horizontal line.

## Suggested Water Utility Affiliate Rule

### (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 water utility.

(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 water corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operations of a water corporation, except those involving corporate support.

(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 along, 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 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 prevent a regulated water corporation from rebutting the presumption that its ownership interest in an entity confers controls.

(D) Corporate support means joint corporate oversight, governance, support systems and personnel, involving, engineering and construction management, water quality and purification, laboratory and testing services, water research, water transmission and distribution, customer service, financial management, internal auditing, budgeting, accounting, taxes, rates and regulatory, legal, procurement, human resources management, information technology, communications, risk management, short and long term financing services, cash management or other corporate support services.

(E) 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.

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

(G) Preferential service means information or treatment or actions by the regulated water utility, which places the affiliated entity at an undue advantage over its competitors.

(H) Regulated water utility means every water utility as defined in section 386.020, RSMo, subject to regulation pursuant to Chapter 393, RSMo.

(I) Undue 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.

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

### (2) Standards.

(A) As to affiliate transactions, a regulated water utility shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated water utility shall be deemed to provide a financial advantage to an affiliate entity if –

1. It compensates an affiliated entity for goods or services below the fully distributed cost to the regulated water utility 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

fully distributed cost to the regulated water utility.
(B) The regulated water utility shall conduct its business as to affiliate transactions in such a way as not to provide any preferential service or treatment to an affiliated entity over another party at any time.
(C) A regulated water utility shall compensate an affiliated entity for corporate support functions provided by such affiliated entity at the actual cost, or allocated actual cost, of the affiliated entity, so long as such corporate support functions are provided to the regulated water utility upon terms and conditions similar to those provided to other entities. Compensation for corporate support functions shall remain subject to review for prudence and reasonableness in appropriate rate proceedings.
(D) General or aggregated customer information (to include blocks of customer names and addresses) shall be made available to affiliated or unaffiliated entities upon terms and conditions available to both affiliated and unaffiliated entities.
(E) If a customer requests information from the regulated water utility about goods or services provided by an affiliated entity, the regulated water utility 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 water utility may provide reference to other service providers or to commercial listings, but is not required to do so.
(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.
<b>(3) Evidentiary Standards for Affiliate Transactions.</b>
(A) In affiliate transactions that involve either the purchase or receipt of information, assets, goods or services by a regulated water utility from an affiliated entity, the water utility shall document the fully distributed cost to the regulated water utility to produce the information, assets, goods or services for itself.
(B) In affiliate transactions that involve the provision of information, assets, goods or services to affiliate entities, the regulated water utility must demonstrate that it— <ol style="list-style-type: none"> <li>1. Considered all costs incurred to complete the transaction;</li> <li>2. Calculated the costs at times relevant to the transaction;</li> <li>3. Allocated all joint and common costs appropriately; and</li> <li>4. Otherwise covers the fully distributed costs of the information, assets, goods or services.</li> </ol>
(C) In affiliate transactions involving the purchase of goods or services by the regulated water utility from an affiliated entity, the regulated water utility will use a cost allocation manual (CAM) which sets forth cost allocation methodologies..
<b>(4) Record Keeping Requirements.</b>
(A) A regulated water utility shall maintain books, accounts and records separate from those of its affiliates.
(B) Except for corporate support functions, each regulated water utility 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 water utility) 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, May 1 of the succeeding year: <ol style="list-style-type: none"> <li>1. A full and complete list of all affiliated entities with which the utility had transactions as defined by this rule;</li> <li>2. A full and complete list of all goods and services provided to or received from affiliated entities;</li> <li>3. A full and complete list of all contracts entered with affiliated entities;</li> <li>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;</li> <li>5. The amount of all affiliate transactions by affiliated entity and account charged; and</li> <li>6. The basis used to record each type of affiliate transaction.</li> </ol>
<b>(5) Records of Affiliated Entities.</b>
(A) Each regulated water utility shall ensure that any affiliated entity with which the utility has any transactions will maintain books and records that include, at a minimum, the following



information regarding affiliate transactions and corporate support functions:

1. Documentation of the costs associated with affiliate transactions that are incurred by the affiliated entity and charged to the regulated water utility;
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; and
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 water utility's contracted service or facilities.

**(6) Access to Records of Affiliated Entities.** To the extent permitted by applicable law and pursuant to established commission discovery procedures, a regulated water corporation shall make available to the commission relevant information related to regulated water utility transactions with affiliated entities.

**(7) Record Retention.** Records required under this rule shall be maintained by each regulated water utility for a period of not less than three (3) years.

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

**(9) Training.** The regulated water utility 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 water utility does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated water utility 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 water utility shall request a variance upon written application in accordance with commission procedures with commission procedures set out in 4 CSR 240-2.060(11).

2. A regulated water utility 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 or the public interest and otherwise 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 non-complying affiliate transaction. The notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of subsection (2)(A), and shall provide a detailed explanation of how the affiliate transaction was in the best interests of the 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 water utility's annual CAM filing the regulated water utility shall provide to the secretary of the commission a listing of all non-complying affiliate transactions which occurred between the period of the last filing and the current filing. Any affiliate transaction submitted pursuant to this section shall remain interim, subject to disallowance pending final commission determination on whether the noncomplying affiliate transaction resulted in the best interests of the regulated customers.

**(11) Antitrust.** 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.