

Missouri Public Service Commission

Commissioners
SHEILA LUMPE
Chair
HAROLD CRUMPTON
CONNIE MURRAY
ROBERT G. SCHEMENAUER
M. DIANNE DRAINER
Vice Chair

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

August 2, 1999

GORDON L. PERSINGER
Acting Executive Director
Director, Research and Public Affairs
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. KOLLIS
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

FILED

AUG 2 1999

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. EX-99-442 - Affiliate Transaction Rules for Regulated Electric Utilities

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of the **REPLY COMMENTS OF THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION.**

Thank you for your attention to this matter.

Sincerely yours,

Lera L. Shemwell
Assistant General Counsel
(573) 751-7431
(573) 751-9285 (Fax)

LLS/wf
Enclosure
cc: Counsel of Record

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

FILED

AUG 2 1999

Missouri Public
Service Commission

**In the Matter of 4 CSR 240-20.015)
Proposed Rule - Electric Utilities)
Affiliate Transactions)**

Case No. EX-99-442

**REPLY COMMENTS OF
THE STAFF OF THE
MISSOURI PUBLIC SERVICE COMMISSION**

Dana K. Joyce
General Counsel

Steven Dottheim
Chief Deputy General Counsel
Missouri Bar No. 29149

Lera L. Shemwell
Assistant General Counsel
Missouri Bar No. 43792

Attorneys for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-7431

Dated: August 2, 1999

TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF PARTIES POSITIONS	6
III. SUMMARY OF PARTIES COMMENTS	8
1. PURPOSE.....	8
2. CONSUMER WELFARE	10
3. MODERATE APPROACH.....	10
4. JURISDICTION	16
5. 4 CSR 240-20.015(1)(A) DEFINITION OF AN AFFILIATED ENTITY	18
6. 4 CSR 240-20.015(1)(B) DEFINITION OF AN AFFILIATE TRANSACTION.....	18
7. 4 CSR 240-20.015(1)(C) DEFINITION OF CONTROL	19
8. 4 CSR 240-20.015(1)(D) DEFINITION OF DERIVATIVES	21
9. 4 CSR 240-20.015(1)(E) DEFINITION OF FULLY DISTRIBUTED COST	22
10. 4 CSR 240-20.015(1)(F) DEFINITION OF PREFERENTIAL SERVICE.....	22
11. 4 CSR 240-20.015(1)(G) DEFINITION OF REGULATED ELECTRICAL CORPORATION.....	23
12. 4 CSR 240-20.015(1)(H) DEFINITION OF VARIANCE.....	24
13. ADDITIONAL DEFINITIONS.....	24
14. 4 CSR 240-20.015(2) STANDARDS	27
15. 4 CSR 240-20.015(2)(A) FINANCIAL STANDARDS.....	27
16. 4 CSR 240-20.015(2)(B) PREFERENTIAL TREATMENT.....	32
17. 4 CSR 240-20.015 (2)(C) REQUIRES ELECTRICAL CORPORATIONS TO COMPLY WITH THIS RULE	34
18. 4 CSR 240-20.015 (2)(D) REQUIRES PREFERENTIAL TREATMENT WITH RESPECT TO CUSTOMER CONTACTING THE UTILITY	34
19. PROPOSED ADDITIONAL STANDARDS	37
20. 4 CSR 240-20.015(3)(A), (B) & (C) EVIDENTIARY STANDARDS FOR AFFILIATE TRANSACTIONS ...	40
21. 4 CSR 240-20.015(3)(D) ANNUAL FILING OF A COMMISSION APPROVED COST ALLOCATION MANUAL (CAM).....	41
22. 4 CSR 240-20.015(4) RECORD KEEPING REQUIREMENTS OF THE UTILITY	42
23. 4 CSR 240-20.015(5) RECORDS OF THE AFFILIATED ENTITIES	44
24. 4 CSR 240-20.015(6) ACCESS TO RECORDS OF AFFILIATED ENTITIES	45
25. 4 CSR 240-20.015(6)(C) BURDEN OF PROOF	46
26. 4 CSR 240-20.015(7) RECORD RETENTION	46
27. 4 CSR 240-20.015(8) ENFORCEMENT	47
28. 4 CSR 240-20.015(9) VARIANCES	47
29. ADDITIONAL RECOMMENDATIONS	47

REPLY COMMENTS OF THE STAFF
OF THE MISSOURI PUBLIC SERVICE COMMISSION
CONCERNING AFFILIATE TRANSACTIONS RULES
FOR ELECTRIC UTILITIES

COMES NOW the Staff of the Missouri Public Service Commission and hereby submits its Reply Comments regarding the Missouri Public Service Commission's (Commission) proposed rules for affiliate transactions.

I. INTRODUCTION

Several commenters have challenged the need for affiliate transaction rules and others, who have not challenged the need directly, urge a moderate or "lightheaded" approach. Staff consulted with many of the entities that could be affected by affiliate transaction rules before finalizing the rules that have been proposed.

Changes in the structure of utility companies through mergers, expansions, and acquisition or development of nonregulated affiliates has changed the way monopoly utilities do business. The move of regulated utilities into nonregulated businesses increases the probability that the costs of the affiliate may be allocated to the regulated entity resulting in cross subsidization. The goal of the proposed rules is to protect utility ratepayers from paying excessive rates through misallocation of costs related to complex, ongoing affiliate transactions.

The fact that Missouri utilities are still monopolies and not operating in a competitive environment merely increases the incentive to shift costs from a non-regulated affiliate to the captive ratepayer where cost recovery is much more certain.

The proposed rule is a moderate, middle-of-the-road, measured approach designed to deal with the problems of cross-subsidization of affiliates by a regulated monopoly while not discouraging appropriate economic transactions. The objective is to reduce the occurrence of self-dealing and cross subsidization of affiliates by utilities, in order to protect monopoly ratepayers, while permitting competition in non-regulated areas. Preventing cross subsidization should encourage competition by allowing competing companies that cannot transfer costs to compete effectively and fairly.

In the recently issued Guidelines for Cost Allocations and Affiliate transactions, the National Association of Regulatory Utility Commissions (NARUC) based its pricing guides on just two concerns that give rise to the need for these proposed rules. The first concern is related to utility self-dealing where market forces do not necessarily drive prices. Second is the concern that utilities have a natural incentive to shift costs from non-regulated competitive operations to regulated monopoly operations. There are two factors that fuel this risk. First, recovery is certain with captive ratepayers unless the Commission and other parties have the information to prevent this occurrence. Second, utilities are motivated by profit growth which will result from a utility shifting its non-regulated costs to its regulated operations.

The shifting of costs can include expenses for office space, computer time and data base development, advertising, employee hiring and training, vehicles, and purchasing and warehousing. It is the utility's ability to shift costs to its ratepayers for recovery that is the central issue in the development of the Commission's proposed rules. Many of the utilities that commented on the proposed rules are fighting to control provision of information and for a costing method other than fully distributed or fully

allocated cost. It is also the reason that commenters interested in consumer protection urging the information flows and safeguards related the fully distributed cost method.

It is interesting that the commenter whose role is to represent the interests of the public, Office of the Public Counsel, is not only highly supportive of adoption of the proposed rule, but proposes that the rules be even more stringent in some areas. Concerning the need for these rules, the Office of the Public Counsel notes that the utilities' "diversification efforts" may result in unfair transfer pricing for goods and services, inequitable cost allocations, packaging or tying of utility product with essential service, an inappropriate joint advertising.

As early as 1988, the FCC promulgated affiliate transactions rules. These rules were upheld in the D.C. Court of Appeals. Southwestern Bell Corporation v. FCC 896 F2d 1378, 1378 (D.D.C. 1990). In doing so, the Court said "[d]iversified [utility] companies possess a natural incentive to shift costs to their regulated . . . service, and thereby guarantee the recovery of those costs from ratepayers. The [Commission's] responsibility . . . is to prevent prices for regulated telephone services from incorporating the costs of nonregulated activities and thus to ensure that telephone rates are 'just and reasonable.'" 47 U.S.C. § 201(b).

The court continued:

In recent years, [utility] companies have significantly diversified their businesses to envelop nonregulated activities. Since the companies' permitted rate of return on telephone service depends upon the relevant cost of providing those regulated services, the FCC must properly

allocate costs between the regulated and nonregulated businesses. Diversified [utility] companies possess a natural incentive to shift costs to their regulated telephone service, and thereby guarantee the recovery of those costs from ratepayers. The FCC's responsibility under the Communications Act is to prevent prices for regulated . . . services from incorporating the costs of nonregulated activities and thus to ensure that . . . rates are "just and reasonable." 47 U.S.C. § 201(b).

Id. at 1380.

In this case the utilities admitted that heightened regulatory scrutiny was necessary but they argued for "finely tailored" or light handed means. To quote the court:

While petitioners admit that affiliate transactions call for "heightened regulatory scrutiny," they insist that other more finely tailored means of regulatory oversight would sufficiently protect against possible cost misallocation. Even a cursory glance of the regulatory history of telephone companies, however, exposes the fallacy of this premise. Before its breakup, AT & T wholly owned the Bell Operating Companies ("BOCs"). The BOCs, in turn, purchased most of their telecommunications equipment from Western Electric Company, an affiliate of AT & T. The FCC discovered that the intracompany nature of the purchase and sale of equipment created a built-in bias in favor of

dealing with affiliates. See AT & T Co., 64 FCC 2d 1, 41 (1977). And in its antitrust case against AT & T, the government alleged that the BOCs had purchased equipment at inflated prices from Western Electric to shift costs to the telephone services. In response, the settlement decree required a structural separation of the BOCs from Western Electric, along with a prohibition against the BOCs entering certain markets like telephone equipment manufacturing.

896 F2d 1378 at 1381 (*citing* United States v. AT & T, 552 F.Supp. 131, 190-91 (D.D.C.1982)),

The Federal Energy Regulation Commission has noted some of the reasons that affiliate transactions rules are needed. The FERC in *Portland General Exchange* found that that affiliates have an incentive to engage in preferential sales by having the public utility charge the affiliate a lower price, with the affiliate charging a third party higher rates, thereby allowing the affiliate, not the public utility, to receive the majority of the profits. 51 FERC ¶ 61,108 (1990)

Such an example can be found in *Terra Comfort Corp.* in which the FERC found that Iowa Southern, a regulated utility would have been providing transmission service to its affiliate for \$7,600 in circumstances where a nonaffiliate would be assessed about \$2 million annually. 52 FERC ¶ 61,241 (1990)

The FERC promulgated its own rule, in Order No. 497 issued in June 1988. 53 FERC 22139 (June 14, 1988), 18 CFR Parts 161, 250 and 284, The FERC noted that it

was issuing its final rule to address possible abuses in the relationship between gas pipelines and their marketing affiliates. The need for such rules were challenged by the pipelines. The pipelines, like some of the Commenters (Missouri Utilities, Trigen and Ameren, among others) argued that there were few cases of anti-competitive behavior and that the “anecdotal” problems were transitory. The utilities argued that abuses were not widespread and were declining. Independent marketers wanted much more stringent rules, and argued for full structural separation or at least “divorcement.” Divorcement would mean that the utility could not do business with its marketing affiliate.

The FERC responded to this assertion that after careful consideration, they remained convinced of the need for a rule to establish standards of conduct to prevent anticompetitive abuses between the utilities and their affiliates. The FERC noted that “even some of the pipelines concede the value of having a clearly established code of conduct to rude behavior rather than operating without established standards and running the risk that pipelines practices would later be found to be unlawfully discriminatory.” 53 FERC ¶ 30,820.

Both of these regulatory agencies found the need to issue affiliate transactions rules because of the motivation of regulated entities to improperly shift costs from their nonregulated affiliates to the ratepayer, NARUC has recently issued guidelines that recommend controls that are similar to those in the Commission’s proposed rule.

II. Summary of Parties Positions

There were nine parties other than Staff that filed comments on the Commission’s proposed electric utilities affiliate transaction rule. Two of the parties, Mountain Energy and Enron are energy service companies. Ameren Corporation and Union Electric

Company filed joint comments. In the rest of this document, Ameren and Union Electric Company will be referred to as Ameren. UtiliCorp United, Inc. d/b/a Missouri Public Service and St. Joseph Light and Power Company filed comments with Associated Natural Gas Company and Laclede Gas Company. They are collectively referred to in the rest of this document as Missouri Utilities. Empire District Electric Company (EDE) and Kansas City Power and Light Company (KCPL) filed their own comments. In addition, Edison Electric Institute (EEI), a trade association of the investor-owned electric utility companies, the Missouri Industrial Energy Consumers (MIEC) and Office of the Public Counsel (OPC) filed comments.

All of the parties are concerned with how this rule will impact competition and consumer welfare. However, the parties disagree with what kind of impact the rule will have and whether or not it will meet its intended purpose.

Ameren believes that there are already numerous mechanisms in place for Ameren that will prevent subsidization. In its comments, Ameren proposed its own version of an affiliated transaction rule. Its rule incorporates what it believes are these existing legal protections. The other major difference between Ameren's proposed rule and the Commission's proposed rule is that Ameren's rule only applies to what it considers "essential services." Dr. Michael Proctor reviewed the comments of Ameren's consultant Dr. John H. Landon. Dr. Proctor's comments can be found in Attachment A.

EDE is concerned the most with the costing standards and the record keeping requirements of the Commission's proposed rule. It did not propose a modified rule.

KCPL is concerned with the definition of control and how that impacts the requirements of the rule. It too is concerned with the record keeping requirements and costing requirements. KCPL did not propose a modified rule.

Missouri Utilities do not believe that affiliate transaction rules are necessary. They did, however, propose a modified rule. It does not prohibit all subsidization. It prohibits only that subsidization that causes rates to increase. It also limits the applicability of the rule to energy related services. Missouri Utilities' proposed rule does not apply if the utility has identified and allocated to the affiliate the cost of any utility assets used by or transferred to the affiliate. This means that the rule would be applicable to very few, if any, transactions.

The comments of EEI run parallel to the utilities' comments. EEI did not propose a modified rule.

Enron, OPC, MIEC and Mountain Energy believe that affiliate transaction rules are necessary. They also recommend the inclusion of additional standards regarding preferential treatment.

III. SUMMARY OF PARTIES COMMENTS

1. Purpose

Ameren argues that they and their affiliates already have numerous mechanisms in place to prevent cross-subsidization.

Ameren's proposed rule may recognize the existing legal protections that apply to Ameren, but the Commission's proposed rule is not designed, nor would it be permissible to promulgate a rule, that applied only to single utility. This is rulemaking, the legislative process, not the adjudicatory process and the rules apply to all current and future electric

service providers. However, Ameren's claim that the goals of the proposed rulemaking are to some degree met by its existing PUHCA/SEC accounting requirements may have some merit. Under the rules, they are free to seek variances as appropriate. However, any major variances sought should be premised upon a demonstration that the SEC accounting requirements do in fact constitute an fully distributed cost (FDC) methodology which is implied but not stated directly in Ameren's comments.

The Commission should not rely on the Statement of William T. Baker, Jr. on behalf of Union Electric Company (UE) regarding the operation of the Public Utility Holding Company Act of 1935 (PUHCA) and the Commission's maintenance of its regulatory authority or jurisdiction. The Staff and Public Counsel negotiated with UE in Case No. EM-96-149 a settlement of UE's Application to merge with CIPSCO, Inc. which, as best as possible, maintains the Commission's ability to regulate the affiliated transactions of UE. Those provisions are set out in Attachment 1, pages 22 to 29 and Attachment D, to the Commission's February 1, 1997 Report And Order in Case No. EM-96-149. Also, with all do respect to the Illinois Commerce Commission, this Commission should not rely on Illinois statute, rule or procedure to regulate the Missouri operations of UE as suggested by Ameren and UE.

The language recommended by Ameren and UE in their proposed affiliate transactions rule as it relates to reliance on the United States Securities and Exchange Commission (SEC) and the United States Congress (Congress), 4 CSR 240-20.015(2)(G) and (4)(C), would constitute an unlawful delegation of State authority to the SEC and the Congress, were the Commission to adopt this language as proposed by Ameren and UE.

2. Consumer welfare

Some commenters argue that consumer welfare is maximized by regulations that lead to low prices, high quality and a diversity of service offerings. The proposed Staff rules are designed to accomplish that but not at captive ratepayer expense. Please see Appendix A for Staff's Response to Ameren's economic arguments.

Utility-affiliate transactions are anti-consumer when the transactions result in anti-consumer cross-subsidization of competitive affiliates. These utility-affiliate transactions reduce alternatives available to consumers, reduce allocative efficiency and retard the development of new products and services. These utility-affiliate transactions are detrimental to the public interest.

3. Moderate approach

Ameren and the Missouri Utilities argue that a light-handed, narrowly tailored approach would effectively prohibit all anti-consumer-welfare aspects of interaffiliate transaction but would allow and encourage the pro-consumer aspects of interaffiliate transactions. To this end, both Ameren and Missouri Utilities have proposed rules. However, close examination of Missouri utilities rule reveals that the rule would only apply to few, if any, transactions. Ameren's proposed rule limits the application of its rule to essential "services," thereby severely limiting the applicability of the rule.

The current Commission's proposed approach is a light-handed, no specific rule, approach. This has resulted in a lack of information available to the Commission to detect where inappropriate subsidization has occurred. Staff has not had the tools that it needs to get adequate information and present evidence to the Commission so that the

Commission is able to make an informed decision based on substantial evidence. The Commission cannot prevent inappropriate utility actions without information.

Ameren further argues that light-handed regulation is consistent with the current trend toward deregulation. However, the most restrictive affiliate transaction rules exist in states where restructuring has already begun. The reason for this fact is simple. The utility incentive for abuse is increased when presented the additional opportunities under deregulation.

EEI argues that one risk of having affiliate transaction rules is regulatory requirements that apply only to the utility's competitive affiliate, but not to other competitors, and that the effect would be to undermine the process in which rivals continuously seek to improve the quality and lower the costs of services to win markets share.

This argument ignores the fact that the utility is with a monopoly that has 100% market share and almost unparalleled name recognition. These advantages carry a substantial competitive advantage that will be almost impossible for many prospective competitors to overcome. If there are no competitors, there are no pressure to improve quality and have prices set by the market. This will result in a situation of a monopoly that should again be regulated. See Appendix A for additional comments regarding the economic impact of the Commission's proposed rule.

EEI also suggests that the Commission should encourage affiliate transactions because of the benefits to consumers. The Commission's proposed rule does permit transactions that do benefit consumers, both regulated and unregulated.

In contrast, Enron states that affiliate rules are essential in preventing anti-competitive behavior, and that the Commission should seek to protect competition, not competitors. Enron adds that incumbent monopoly utilities can deny new or potential entrants access to essential facilities including information and access to markets by locking up the markets. Names and logos can be leveraged on and affiliates can be subsidized. Enron adds that the most significant threat to the effective development of competition is residual market power.

Kansas City Power & Light Company (KCPL) asserts that the main thrust of the rule runs counter to movement towards a competitive market. In the non-regulated market competition assures efficient allocation of resources and minimization of transaction costs. This is not true, when one supplier controls the market and has a monopoly of captive customers that can be forced to pay the costs of unregulated ventures. KCPL and the electric industry is still regulated in the state of Missouri and these rules were developed to reflect the current environment in Missouri, not the hypothetical situation argued by KCPL.

KCPL further argues that the rule will impede the growth of internal unregulated activities by regulated utilities to the detriment of consumer welfare. The argument presumes that consumers cannot benefit without the participation of the incumbent utility. Consumers will benefit from a robust competitive market not by the guarantee that a specific entity will be ensured to participate in the market. Several competitive markets exist in the United States without utilities' participation. While utilities may or may not participate in deregulated markets, the rule will ensure they only participate under

conditions where regulated consumers are protected from cross subsidization and shifting of costs from an unregulated affiliate to the captive customer is prevented.

KCPL asserts that non-jurisdictional businesses will forego opportunities to form alliances with utilities. Actually many businesses would want to align themselves with monopoly utilities if they knew that the utility can subsidize their joint efforts with ratepayer money. Adherence to the proposed rule will foster a business alliance with a utility based on sound economic reasons and not the benefit of the utility's cross-subsidization potential.

KCPL maintains that Staff seeks to place competitive handicaps on utilities. This is true to the extent that an utility's ability to cross-subsidize its non-regulated operations with its regulated activities is defined as a competitive handicap. In fact, the utilities have no actual competitive handicaps, they are monopolies and have no competitors. The utilities in Missouri are not yet in a competitive environment although some appear to be positioning themselves for such a market. A competitive environment might demand a different rule such as that developed in California. California has affiliate transaction rules.

MIEC believes that without a rule the potential exists, not only for the misallocation of costs, but also that operations could be conducted in a manner that is discriminatory and at odds with competitive market options.

Missouri Utilities assert that there is no need for the rule. The purpose of the Commission's proposed rule is "to prevent regulated utilities from subsidizing their non-regulated affiliates with ratepayer monies. Some commenters suggest that there is no need for this rule and that Staff should wait until problems occur, and perhaps numerous

problems, before proposing this rule for Commission action. This would put Staff in an impossible position of having to catch up with violators without having the information to detect the activity. This rulemaking effort started from the information problems found in the Southwestern Bell complaint cases.

The utilities' position on this point ignores the fact that utilities offering both regulated and nonregulated services have a natural and inherent incentive to use captive ratepayers to subsidize competitive nonregulated services. Such actions improve the bottom line for competitive services, while the regulated offerings are made whole through the contributions of captive customers in rates. With the incentive to cross-subsidize, an unpoliced environment will promote further violations to occur. The proposed rules are intended to provide the groundwork for effective monitoring of affiliate transactions in the future.

Additionally, the problem with the approach of waiting until additional problems occur is that without access to the records, Staff will never be able to adequately determine for the Commission the full extent of current problems, and, thus, never be unable to prevent cross-subsidization of non-regulated affiliates at ratepayer expense. This rule would allow the Staff to review the electric utilities' records (such as during a rate/overearnings investigation proceeding) in order to determine if subsidization is occurring and be able to make appropriate and adequate recommendation to the Commission. Without adequate information the Commission is prevented from making a reasoned decision based on substantial evidence. The utility opposition to providing information is motivated to protect and promote the companies opportunities to subsidize their unregulated ventures.

Assuming for the sake of argument that there have been no problems, that is no guarantee that there will not be problems in the future. The regulated utilities are merging and forming relationships with nonregulated entities at an unprecedented pace. These are exactly the types of situations that lead to cross-subsidization. Without the audit process in this rule, Staff is unable to make a determination of whether subsidization has taken place, and is unable to provide that information to the Commission. The Staff is aware of past cases in the telephone and gas industries where questions of affiliated transaction subsidization were raised but not verified due to the inability of the Staff to review the proper books and records to get evidence as to whether or not undue discrimination or preferential treatment was given.

The Staff's intention of this rule is to allow it access to the required books and records to make the determination of whether or not subsidization had occurred. This allows the Commission to make an informed decision to ensure that ratepayers are paying just and reasonable rates.

Missouri Utilities further argue that the rule imposes numerous accounting and record keeping requirements that are unnecessary to protect consumers and will drive up the cost of service. There are numerous accounting and record keeping requirements that might drive up the cost of service, but the benefits significantly outweigh the cost because these requirements were developed to prevent the cost of service to regulated ratepayers from increasing due to subsidization of affiliated entities. Without these rules cross subsidization will continue, and will be impossible to detect.

Missouri Utilities agree that Commission has the right to obtain information and the unregulated activities should not adversely affect rates. However they do not agree

that the unregulated should not be subsidized by the regulated. Please see Attachment A for response.

Office of the Public Counsel supports affiliate transactions rules and notes that the cleanest and most certain solution is to require structural separation. Second best is record keeping requirements and behavioral rules. In addressing the need for such rules OPC states that utilities will likely leverage market power to stifle or disadvantage competitors in markets that are either currently unregulated or likely to be deregulated.

4. Jurisdiction

Ameren argues that in light of the complexity and importance of the issues, the current procedures do not appear to be the most effective or desirable manner of proceeding. The Commission should move forward with a "contested case" proceeding. They further state that "contested case" proceedings are probably required under Missouri law, and refer the Commission to RSMo 386.250; 393.140, and 536.010.

The procedures in a contested case are inapplicable to the rulemaking (legislative-type or quasi-legislative) process as defined in the Missouri Administrative Procedure Act (Chapter 536 or Missouri APA). The process of promulgating the affiliate transactions rules is a quasi-legislative function, and adoption of contested case procedures now would mean invalidating the current process and beginning again.

Not only are contested case proceedings not required by statute, the Commission has, and is, following all of the procedure required by Missouri statute to promulgate this rule. Staff responded to this argument in the Motions to Adopt Contested Case procedures and will not repeat the entire argument here, but this is not a contested case

and contested case procedures are not only not required, but adoption of such procedures could delay, perhaps indefinitely, implementation of these rules.

Ameren further argues that the statutes require that the Commission conduct a hearing, therefore this is a contested case and requires the right to call witnesses, introduce exhibits, cross-examine witnesses, rebut opposing evidence, present oral arguments, and written briefs.

While it is true that $\text{§ 386.250 RSMo (Supp.1998)}$, requires the Commission to promulgate rules only after a hearing in which the Commission is to take evidence of the reasonableness of its proposed rule. As Professor Neely points out in *Missouri Practice and Procedure*, § 6.39 (1995) many statutes require that a hearing be held before a state agency may engage in rulemaking.

Ameren's argument is that, because a hearing is required by statute before the commission may exercise its authority to promulgate rules, this is a contested case. Professor Neely disagrees, saying

[t]hat such statutes require a hearing does not mean that the hearing must take the form of an adjudicatory, trial-type hearing in the nature of that in a contested case. In the absence of a clear indication of legislative intent that more is required, the presence of the mandate for hearing in a rulemaking context means only that the agency cannot promulgate the rule on the basis of an invitation for written comments on its proposal. [The agency] must meet interested members of the public face to face with an opportunity for oral presentation and comment, but the legislative quality of rulemaking assures that nothing more is expected than a legislative-

style hearing, not unlike that which a legislative committee might hold on a bill before the legislature.

There is no indication of any legislative intent to require contested case type proceedings when the Commission engages in its rulemaking function.

Ameren further argues that Sections (5) and (6) of proposed rule conflict with §393.140(12) RSMo (Supp. 1998) which precludes Commission jurisdiction over unregulated business activity engaged in by a utility. For Staff's response to this erroneous comment see Staff's Initial Comments regarding Commission jurisdiction.

5. 4 CSR 240-20.015(1)(A) Definition of an affiliated entity.

There were no comments on the definition of affiliated entity. In its proposed rule, Enron added some language, but did not clarify in its comments the significance of the change. The Missouri Utilities simplified the definition by removing the detailed list of what an affiliated entity is and replacing it with the requirement that an affiliated entity is a separate legal entity under the control of a utility. This definition would narrow the applicability of the rule. In their proposed rules, Ameren and OPC did not change this definition.

6. 4 CSR 240-20.015(1)(B) Definition of an affiliate transaction

This definition includes non-regulated transactions carried out by the regulated utility. Missouri Utilities does not believe that the rule should extend to these non-regulated services if these activities are already subject to the review of the Commission. However, the information provided through this requirements of the Commission's proposed rule would allow the Commission to make the determination of whether all

costs are appropriately allocated. Missouri Utilities' rule does not include a definition of affiliate transactions.

Enron's proposed rule changes the term affiliated entity to competitive entity. This change is not necessary given the definition of affiliated entity.

The definition of affiliate transaction in OPC rules is the same as the Commission's proposed rule.

In its definition of affiliate transaction, Ameren explained the acronym HVAC as Heating, Ventilation and Air Conditioning. Staff agrees with this and proposes that the Commission spell out the acronym HVAC in the definition of affiliate transaction of its final rule.

7. 4 CSR 240-20.015(1)(C) Definition of control

KCPL, EDE and Missouri Utilities believe that the 10% ownership control in the definition of control is too strict and that 10% ownership is not a controlling ownership in all circumstances.

KCPL suggests changing the percentage to 50%. The definition of control in Missouri Utilities proposed rule is the same as the Commission's proposed rule with the exception that the percentage that defines control is also raised to 50%

A 50% control "standard" would merely put in place an obvious benchmark for which there could be no disagreement that an entity, that in fact controls 50% or more of a company, has control over that company. Such a standard would ignore the point that entities owning less than 50% of a company may nonetheless have effective control over that company, particularly given the existence of numerous fragmented owners of that company's remaining ownership portion. The validity of the belief that "effective"

control is the relevant concern is testified to by the numerous examples cited in the Staff's initial comments of other jurisdictions' affiliate transaction rules that use a 10% control standard (or less.)

When the FERC adopted Order No. 497, they were urged to reject the 10% guideline and adopt 50% as its guideline. The FERC adopted the 10% as a rebuttable presumption and rejected the 50% urged by commenters saying:

The Commission believes that a 10-percent voting interest may create a great enough financial interest to influence a pipeline's transactions with a marketing affiliate. The Commission concludes, however, that a strictly numerical test may be too restrictive to encompass the many different kinds of corporate arrangements that result in common financial interests. It is thus adopting a definition of control which emphasizes the authority to *direct or cause the direction of the* management or policies of a business entity rather than a percentage of ownership or voting rights. A 10% voting interest, however, creates a rebuttable assumption of control.

Staff agrees that 10% ownership may not always constitute an ownership percentage and to that end Staff recommends that the Commission add a provision in this definition for allowing the utility to rebut the presumption that its ownership interest in an entity confers control. Staff proposes that the Commission change this definition to be the same as the definition of control in the Commission's HVAC Services Affiliate Transaction rule (4 CSR 240-20.017(1)(B)). That definition is as follows.

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, 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 electric corporation from rebutting the presumption that its ownership interest in an entity confers control.

8. 4 CSR 240-20.015(1)(D) Definition of derivatives

There were no comments about this definition. The definition of derivatives in the proposed rules of Ameren, OPC and Enron is the same as the Commission’s proposed rule. However, Ameren and Enron did not include the section of the rule that pertains to

the use of derivatives. Missouri Utilities proposed rule does not contain any mention of derivatives.

9. 4 CSR 240-20.015(1)(E) Definition of fully distributed cost

No one disagreed with the definition of fully distributed cost. Missouri Utilities did not include fully distributed cost in its proposed rule. Enron and OPC propose the same definition as the Commission's proposed rule. In its proposed rule, Ameren included that compliance with 17 C.F.R. 250.91 establishes fully distributed costs.

Even so, there was a lot of disagreement with the use of fully distributed cost. This will be discussed in the costing standard section below *at* _____.

10. 4 CSR 240-20.015(1)(F) Definition of preferential service

This definition was included in the proposed rules of Enron and OPC. Even so both of these parties went into great lengths in their modified rules to add standards that would more specifically define what constituted preferential treatment. Neither Ameren nor Missouri Utilities included a definition for preferential treatment in their proposed rules. Ameren did include a standard in its proposed rule that would prohibit preferential treatment but did not define what preferential treatment meant. Missouri Utilities prohibits the granting of undue or unreasonable preference, but only if it induces a person or corporation to choose its affiliate.

A definition of preferential services (or preferential treatment as used by Ameren) is crucial to any section that prohibits preferential service. In the Commission's proposed rule, it is important to note that the definition of preferential service does not include the utility providing information, treatment or actions that places the affiliated entity at an advantage over its competitors. Any entity in the competitive environment must have

some kind of advantage to survive in the market. The advantage is what sets it apart in a manner that results in consumers choosing its service or product. An advantage could be many things including price, availability or service.

The definition of preferential service is that the utility provides an unfair competitive advantage to its affiliated entity. An unfair competitive advantage is information that cannot be obtained by a competitor or can only be obtained at great cost in either time or resources. An example of the utility giving its affiliate an unfair advantage would be a utility allowing only its affiliate to advertise its services on the utility's customer's bills. For a non-affiliated entity to be able to saturate the same homes and businesses could only be done at great cost to the non-affiliated entity. It would not constitute a preferential service if the utility allowed advertising on its customers' bills by the non-affiliated entities at the same price that its affiliate paid.

Corporate support is an area where the utility is not offering a preferential service. Accounting, personnel and other corporate services can be easily obtained by non-affiliated entities.

In their comments, Enron, OPC and EEI go to great lengths to describe what they believe constitutes unfair advantage through a long list of codes of conduct. The Commission's proposed rule simply prohibits preferential service in subsection (2)(B). More discussion of this issue can be found in the section of this document that discusses subsection (2)(B) of the Commission's proposed rule.

11. 4 CSR 240-20.015(1)(G) Definition of regulated electrical corporation

The definition of regulated electrical corporation in the proposed rules of Ameren, Enron and OPC corresponds to the definition in the Commission's proposed rule.

Missouri Utilities did not include a definition of regulated electrical corporation. Instead, Missouri Utilities proposed rule applies to “energy service providers.” At this time, the Commission has authority over the electrical corporations as defined in Section 386.020 RSMo. (Supp. 1998) When, and if, the Missouri Legislature restructures the electric industry in the state of Missouri, it will decide what jurisdiction the Commission will have over other energy service providers. To include other providers in this rule at this time would be improper.

12. 4 CSR 240-20.015(1)(H) Definition of variance

The proposed rules of Ameren and OPC contain the Commission’s definition of variance. There are no allowances for variances in Enron’s or Missouri Utilities’ proposed rule so a definition is not needed in their rules. It is important that the provision for variances be included in the rule. Among other things, the variance allows the utility and its affiliates to take advantage of transactions that benefit the ratepayers.

13. Additional Definitions

Information

EDE comments that a definition for “information” is needed due to the numerous references to information in the rule. However, EDE did not propose a definition. Both Enron and OPC proposed the following definition of customer information from the California affiliate transaction rule.

Customer information means non-public information and data specific to a regulated electrical corporation’s customer which the regulated electric corporation acquired

or developed in the course of its provision of utility services.

OPC also includes in its customer information standard non-customer specific, non-public information that includes, but is not limited to, information about a utility's natural gas or electricity purchases, sales or operations or about the utility's energy-related goods or services.

If the Commission determines that a definition for information is needed, Staff recommends the following definition.

Information means any data obtained by the regulated electrical corporation that is not obtainable by non-affiliated entities or can only be obtained at great cost in either time or resources. This includes customer data and data about the regulated services provided by the regulated electrical corporation.

Commission

Enron defines Commission in its proposed rule. This definition is not necessary to this rule.

Competitive Affiliate

Enron defines competitive affiliate in its proposed rule. This definition of a competitive affiliate is more narrow than the affiliated entity defined in the Commission rule and includes providing energy-related services including telecommunications.

This definition is only necessary if the Commission were to decide to impose different requirements on affiliates that provide energy-related services or restrict the rule to only utility affiliates providing energy-related services. Currently, the Commission proposed rule does not single out certain affiliates for any different treatment.

Customer

Enron defines customer in its rule. A definition of customer is not necessary to this rule.

FERC

Enron defines the acronym FERC in its rule. The Commission's rule does not refer to FERC and if the Commission decides to put a reference to FERC in the rule, the acronym can be defined at that point.

Corporate Support

OPC defines corporate support because its rule differentiates standards for sharing of services as to whether the service is a corporate support function or not. If the Commission were to decide to make that distinction, a definition of corporate support would clarify the Commission's intent.

Below the Line

The statement "below the line" is defined by Missouri Utilities to clarify accounts that should or should not be considered for this rule. If the Commission decides to make that distinction, a definition of "below the line" would clarify the Commission's intent.

Unregulated Service

Missouri Utilities define unregulated service as those activities that are recorded below the line. Missouri Utilities believe that the rule should apply to only these services.

Staff believes that the rule should apply to all unregulated activities whether they are “above” or “below” the line. Therefore, this definition is unnecessary in the Commission’s proposed rule.

14. 4 CSR 240-20.015(2) Standards

The Commission’s proposed rule sets out three basic standards. It has a very specific financial standard prohibiting a utility from providing a financial advantage to the affiliate. The next is a very broad standard regarding the provision of preferential service to the affiliate. The third deals with the provision of information to the customer regarding information about services that the utility’s affiliates provide. There was much discussion in the comments regarding all of these standards. Opinions about these standards varied from the view that more “light-handed” standards were needed to a stricter approach of very detailed preferential treatment standards.

15. 4 CSR 240-20.015(2)(A) Financial Standards

The rules proposed by OPC and Enron contain the costing standards of the Commission’s proposed rules. Mountain Energy also supports the costing standards in the Commission’s proposed rule. However, the utilities object to the standards for a variety of reasons which are noted below.

All of the utilities except for Ameren say that the costing standards, because of its asymmetrical pricing requirements, are burdensome and will increase the cost of the utilities. Staff realizes that these rules may increase the costs of transactions with affiliated entities. However, the information that this rule requires is critical in determining whether or not affiliate subsidization has occurred. The impact of subsidization on rates has the potential to be much greater than the impact of the

transaction costs. At this time adequate records do not exist to make the determination of how much subsidization is actually occurring. If these records are not kept as described, the rates of the utility could increase (or decrease a lesser amount) due to subsidization.

Missouri Utilities suggest setting the costing standard at the either the fair market value or the fully distributed cost, but not requiring a consideration of both. This would not supply the Commission with complete information that they would need to determine whether subsidization is occurring. In addition, the rule proposed by Missouri Utilities prohibits subsidization only if the subsidization increases rates or charges. No subsidization of utility affiliates should be allowed. Rates are allowed to go two directions – up and down. Subsidization should not be allowed even if it does not cause rates to increase but because it causes costs to go up. A utility could be overearning and using those overearnings to subsidize its affiliates instead of reducing its regulated rates. In an overearnings investigation, Staff needs to have the information required by this rule to see if subsidization is occurring. If Staff can not make that determination, rates may not be reduced even though the utility is overearning.

The utilities also state that the costing standards do not allow for the utility or the affiliate to take advantage of economies of scale or scope. The utility and affiliate could take advantage of the economies if the cost used was a “prudent” or “reasonable” cost. In most cases this would be the incremental cost of the utility supplying the product or service to the affiliate.

Utilities are regulated monopolies. Their consumers are captive ratepayers. Rates that collect the cost of service plus a rate of return on the utilities’ investments are determined by the Commission and the Commission is charged by statute with setting

just and reasonable rates. If the utility is receiving payment for less than the full cost of producing a good or service it is not actually the utility that is receiving less; it is the ratepayer.

The rule does not prohibit the affiliate providing a service or product to the utility at incremental cost. It just requires that the cost be less than either the fair market value or the fully distributed cost for the utility to produce the same service or product. The utility would not be subsidizing the affiliate by paying more than what it could get the same product or service for otherwise.

KCPL and Ameren were concerned with how to apply the costing standards to corporate support. OPC handled this concern by creating separate standards for corporate support. This was discussed in the workshops that Staff had with the utilities. Staff does not see this as being an obstacle. Currently corporate support costs have to be split between Missouri regulated use and other uses for recovery in rates. This rule just requires another step – the determination of fair market value. That in itself is not problematic. The fair market value of the corporate support employees is the salary that they are paid.

Ameren is also concerned with how the costing standard would be applied to a transferred employee. The rule requires that transfers of employees to be at the greater of fair market price or fully distributed cost. Again at first glance this seems difficult. However, the cost of hiring and training an employee can be calculated. OPC resolves this in its proposed rule by requiring the affiliate to pay the utility a set percentage of the employee's annual salary.

One of the ways that a utility can subsidize an affiliate is by incurring the cost of hiring an employee, training that employee at ratepayer's expense and then transferring this well-trained employee to the affiliate. There is a concern that the most skilled employees of the utilities will be transferred to the affiliate leaving the utility with the less qualified personnel. That situation can not be prevented. However, the utility and the ratepayers should be compensated by the affiliate for the hiring and training costs, whether through a calculated fully distributed cost, fair market value or a set percentage as proposed by OPC.

Ameren also asserts that this rule is in conflict with other regulatory bodies, specifically with the provisions of PUHCA. SEC rules require that transactions that have taken place between affiliates be booked at fully allocated cost. The key phrase is "transactions that have taken place." The Commission's proposed rules for affiliate transactions also require that transactions that have taken place be booked at fully allocated cost, but adds a provision that if the regulated utility is the buyer it should not pay an affiliate more than market price and if the regulated utility is the seller, it should not sell to an affiliate at less than market price. This provision is in the FCC rules for years and there have been no violation of SEC rules in the telephone industry.

The proposed Commission rule on affiliate transactions anticipates that when the utility is considering purchasing goods or services from an affiliate (e.g., accounting or financial services), if the utility can purchase those same services from the market at a lower cost, then it should do so. It would be incorrect to interpret the SEC rule as being contradictory to this good business practice. The SEC rule does not force the utility to purchase services from an affiliate when it can procure those services from the market at

a lower cost. In addition, this does not violate the concept of not allowing economies to be exploited. Indeed, if economies exist in the provision of affiliate services, then the affiliate's fully allocated cost for those services should be less than the market cost, and the utility can fully exploit the savings by buying from the affiliate. More detail on this issue can be found in Attachment A, Dr. Michael Proctor's reply to the comments of Ameren's witness, John H. Landon.

Finally, the utilities claim that these rule place requirements on them that other multi-product firms do not have to meet. Regulated utilities are not like other multi-product firms. Utilities are not in a competitive environment. They are monopolies that have virtually no risks of doing business. In determining fair and reasonable rates, the Commission allows the utility to recover from its captive ratepayers prudently incurred costs. Other multi-product firms are not guaranteed the recovery of their costs. When non-regulated firms choose to subsidize products, they evaluate the risks to determine how it will impact the other products.

Another difference is that other non-utility firms have no captive customers. Their customers can easily move to another producer if prices increase. Therefore each decision is made with the purpose of keeping and expanding their customer base. They cannot subsidize a product when it is a long-term earning detriment to another profitable product of their firm.

While similar requirements are not made on non-regulated firms, affiliate transaction rules are not unique to the state of Missouri and the utilities in Missouri. In most of the states where restructuring of the electric industry is being considered, affiliate transaction rules are also being considered. States that are farther along in the

restructuring process, such as Illinois and California, have adopted affiliate transaction rules. NARUC has adopted guidelines for affiliate transaction rules. FERC has realized the need for such rules. So even though other competitive non-regulated firms do not have these requirements, other utilities across the nation do.

16. 4 CSR 240-20.015(2)(B) Preferential treatment

The Commission's proposed rule section (2)(B) is a blanket prohibition of the provision of any preferential service to an affiliate by a utility. The utilities purport that this standard is anti-competitive. OPC, Mountain Energy, MIEC and Enron believe that this standard is necessary and that even more specific standards are necessary to clarify preferential treatment and to ensure that preferential treatment does not occur.

Ameren pointed out in its comments that this section of the rule is inconsistent with the definition of preferential service. Currently the Commission's proposed rule defines preferential service as follows:

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

Section (2)(B) of the Commission's proposed rule prohibits "preferential service, information, or treatment." Since information and treatment is included in the definition of preferential service, repeating information and treatment in this section could imply that all provision of information and treatment is prohibited. That is not the intent of this

section. To remove this redundancy and to clarify what is prohibited, Staff recommends that the Commission adopt the following language for this standard.

4 CSR 240-20.015(2)(B) The regulated electrical corporation shall conduct its business in such a way as not to provide any preferential service to an affiliated entity over another part at any time.

KCPL suggests that the term unfair advantage in the definition of preferential treatment is vague. If the Commission believes that the rule should include a definition for unfair in its final rule, Staff proposes the following definition.

Unfair advantage means an advantage that cannot be obtained by a non-utility affiliated entity or can only be obtained at great cost in either time or resources.

This definition and section (2)(B) allows for the affiliates to be able to take advantage of information or treatment of the utility given that it is obtainable by non-utility affiliates but not to information or treatment that is not. As a concrete example, consider the facilities and information related to the utility's customer information system. Because of its status as a monopoly, the utility has detailed information on its customers readily accessible in a highly sophisticated computer system. If the utility allowed an affiliate to use that information and system to send out advertisements or billings for non-regulated goods and services, then the affiliate would have a tremendous competitive advantage over companies attempting to sell the same goods and services.

The utility consumers would be disadvantaged by not having information regarding their other options. The proposed standard (2)(B) would not allow the utility to provide this service to an affiliate without making the same service available at the same cost to other competitors wanting to sell similar, non-regulated goods and services. In essence, the proposed standard (2)(B) would require that all services, information and use of facilities that are a by-product of its regulated operations not be used to give an affiliate a competitive advantage.

The utilities also claim that this section is anti-competitive and, also, place requirements on them that no other business must meet. In fact, the intended purpose of this section is to prevent anti-competitive behavior by the affiliate through preferential treatment by the utility. Without this provision, the information, goods and services obtained by the utility through its status as a regulated monopoly could be used by the affiliate to gain market power and create a barrier to the development of an effective competitive market place.

17. 4 CSR 240-20.015 (2)(C) Requires electrical corporations to comply with this rule

There were no comments on this section of the rule. Ameren and OPC included it in their proposed rules. Enron included the section but because their rule did not include an allowance for variances, it did not include the language about a variance.

18. 4 CSR 240-20.015 (2)(D) Requires preferential treatment with respect to customer contacting the utility

Only the utilities and OPC commented on this section. Enron deleted it from its proposed rule. The utilities see this section as requiring them to subsidize their competitors. It has nothing to do with the competitors of the utilities' because, as a regulated monopoly, the utility has no competitors. What this section does require is that the utility supply information to customers that call the utility for information on goods or services that its affiliate supplies to make sure that the customer knows that the good or service is available from other sources. It does not require a comprehensive, exhaustive list of other suppliers. A reference to the Yellow Pages or a trade organization would meet the requirements of this section. This section does not require the utility to do the marketing function for their competitors of the affiliate. If the customer called the utility trying to contact its affiliate, a reference to the Yellow Pages or trade organizations will not be likely to sway the customer from using its affiliate. But on the other hand, if the customer is not aware that other suppliers offer the service, not disclosing the existence of other suppliers is taking an unfair advantage of the market power of the utility. Making the customer aware of other suppliers does not imply a warrantee as Ameren claims or cause the utility to associate with competitors. Again, the utility is a regulated monopoly and this would not cause it to associate with competitors.

Staff recommends that the Commission clarify this section in the following manner.

4 CSR 240-20.015(2)(D) If a customer requests information from the regulated electrical corporation about goods or services provided by an affiliated entity, the regulated electrical corporation shall in addition to giving

information about its affiliate, inform the customer that other service providers are available (e.g. the Yellow Pages).

OPC gave the Commission two alternatives to how it could include this requirement in its proposed rules. However, both alternatives go beyond the Commission's proposal. The first alternative does not allow the utility to provide any information about its affiliate and requires the utility to direct the customer to a generally available listing. Enron's proposed rule includes similar language but does not require the provision of alternative providers. MIEC also suggested that the utility not be allowed to provide leads to its affiliate. The language proposed above by Staff would not preclude the utility from providing information to the customer about its affiliate but would require that the utility tell the customer that there are other suppliers.

The second alternative that OPC gave the Commission includes, as an alternative to the provision of information on other suppliers, that the Commission maintain a listing of service providers that would be given to customers at the request of the customer. Enron also includes this in its proposed rule. This requirement would place an incredible administrative burden on the Commission to keep a complete and accurate list of providers. If the Commission chooses to include this requirement in their final rule, Staff recommends that the Commission not be required to keep a list of providers but instead they provide a source for information to the customer when the customer makes a request. Staff does not believe that consumers will turn to the Commission for this

information but if in the future they do, Staff believes that the Commission can supply this information without it being a requirement of this rule.

19. Proposed Additional Standards

Several parties suggested additional standards in addition to the Commission's recommended standards. In many cases, these standards could be considered codes of conduct. Many of these standards were considered for inclusion in the rule that Staff presented to the Commission. Some Staff considered heavy-handed or micro-managing. Others were vague and hard to enforce. Others Staff did not consider.

A general category for most of the additional proposed standards are given below along with the parties proposing the standard and Staff's position, if any, regarding that standard.

Tying the provision of the regulated service to taking of goods from the affiliate

Ameren, Enron, MIEC and OPC suggested this standard. The basic language prohibits the tying of the provision of the regulated services to the taking of any goods or services from its affiliate. Enron, MIEC and OPC also would prohibit the availability of discounts, rates, other charges, fees, rebates or waivers of terms and conditions to the taking of goods and services from its affiliates. Ameren's proposed rule only placed this requirement on the provision of essential services.

Staff recommends that the Commission adopt a standard regarding the tying of the provision of regulated services to the taking of goods and services from an affiliate. This tying provision should prohibit not only the tying of provision of services but also to discounts, rates, rebates or waivers of terms and conditions that are tied to the taking of

goods or services from an affiliate. This standard should be applied to all services of the utility; not just essential services.

Representation that a utility customer will receive any different treatment based on the taking of goods and services from its affiliate

Ameren, Enron, MIEC and OPC all suggested a form of this standard. Ameren's proposed rule only placed this requirement on the provision of essential services. This is in Enron and OPC's proposed rule as prohibiting a utility from representing that it speaks on behalf of the affiliate and an affiliate from representing that it speaks on behalf of the utility.

Staff recommends that if the Commission adopts a standard relating to the tying of regulated services to the taking of goods or services from an affiliate, the Commission should also adopt a standard prohibiting the utility from representing that it speaks on behalf of its affiliate or that the affiliate speaks on behalf of the utility. This standard should not be limited to the provision of essential services.

Information

Ameren, Enron, MIEC, Mountain Energy and OPC all suggest standards on customer information.

Because of its status as a monopoly utility, the utility has detailed information on not only its customers but also on its own operations that would give an affiliate a tremendous competitive advantage over its competitors. If the information that the utility is not considered a preferential service, the Commission's proposed rule treats information the same as it does other goods and services – the utility can supply

information to its affiliate but it must be at the greater of fair market value or fully distributed cost.

There are many suggested prohibitions and special treatment of customer, regulated utility and non-affiliate information in the comments of Ameren, Mountain Energy, MIEC, Enron and OPC. Typically, their proposed rules prohibit the utility transferring any information to its affiliate.

Separation

The amount of separation required between the utility and the affiliate varies by party. The Commission's proposed rule does not require separation. Ameren requires separation only of the books, records and accounts. OPC, Enron and MIEC allow shared corporate support but nothing else. OPC require that the affiliates be separate legal entities and that any non-regulated service be offered only through an affiliate.

Use of Logo, Name or Trademark

The Commission's proposed rule sets no standards for the use of utility logos, names or trademarks other than its prohibition of preferential services. OPC, Enron and Mountain Energy both suggest the prohibition of logos, names and trademarks. OPC gives payment of a royalty by the affiliate as an alternative to direct prohibition along with several disclosures. MIEC suggests disclosures when a utility logo is used. Mountain Energy also prohibits use of web sites.

Advertising

The Commission's proposed rule sets no standards for advertising other than its prohibition against preferential services. Enron, MIEC and OPC would generally prohibit joint advertising. OPC gives an alternative of a list of disclosures if the

Commission allows joint advertising. OPC and MIEC also allow the affiliate to advertise on bill inserts but with the requirement that the utility to allow non-affiliates the same service.

Employees

The Commission's proposed rule sets no standards for employees other than its prohibition against preferential services. Enron, OPC and MIEC suggest standards on employee transfers. Enron and OPC would not allow the utility and the affiliate to jointly employ personnel other than for corporate support functions. MIEC would place limits on employees serving dual roles. All would restrict the transfer of employees and have concerns about the transfer of information through the transfer of employees.

20. 4 CSR 240-20.015(3)(A), (B) & (C) Evidentiary standards for affiliate transactions

The proposed rules of OPC and Enron contain the same evidentiary standards as in the Commission's proposed rules. However, the utilities and EEI believe that the evidentiary standards are burdensome and unnecessary. EEI claims that since the utilities need regulatory approval before passing on all costs to ratepayers, the Commission will have an opportunity to ensure the utility is adhering to the pricing standards and therefore evidentiary standards are not necessary.

The purpose of this section is to provide the documentation necessary to enable the Commission to enforce the pricing standards. Without these standards, the documentation will be left up to the utility and that will not necessarily result in the

information that the Commission needs. To ensure that proper and consistent documentation exists, these requirements should remain.

The utilities also view this section (3)(A) as requiring a competitive bid process for the purchase of all goods and services from an affiliate. This section does not require bids for the purchase of all goods and services but it does require documentation as to why competitive bids were neither necessary nor appropriate.

21. 4 CSR 240-20.015(3)(D) Annual Filing of a Commission approved Cost Allocation Manual (CAM)

Several parties have commented that they do not understand how an annual CAM filing would work, or do not fully understand its purpose. A CAM is simply a compilation of cost allocation procedures governing assignment of costs between all of the regulated and nonregulated operations of a utility, using fully distributed costing methods. Each utility would make an initial filing, with the Staff, OPC and other interested parties having some time to review it, make suggestions, and bring concerns to the Commission. The Commission would then approve the CAM, with or without modifications as appropriate. Each year each utility would either file a new CAM, based on new service offerings or scopes or other changes, or indicate that the existing CAM is still appropriate for use. Interested parties would again have a period of time to review the annual filings, and bring any concerns to the Commission.

The filing of a Commission approved CAM was suggested by Ameren at the workshops that Staff held with the utilities in order to make the rule less burdensome for both the utilities and Staff.

22. 4 CSR 240-20.015(4) Record keeping requirements of the utility

The comments on the record keeping requirements vary according to the gist of each parties point of view. The utilities say that the requirements are burdensome. Mountain Energy only suggests that sufficiently detailed records should be kept in order to verify that no subsidization occurs. Enron's proposed rules require more documentation.

One fairly consistent addition to this section is suggestion for an addition of the requirement for the books, accounts and records of the utility and affiliate to be kept separate. Staff recommends that the Commission include this requirement in the final rule with the following addition to the record keeping section of this rule.

A regulated electrical corporation shall maintain books, accounts and records separate from those of its affiliated interests.

In its comments, Ameren states that this section is redundant but does not impose any real cost so it does not object to this section. OPC adds an additional record keeping requirement of documentation of employee movement between the utility and the affiliate. The Commission's proposed rule requires the affiliate to document the employee movements between the utility and the affiliate in section (5). Staff recommends that this requirement also be placed on the utility. This would only be burdensome to the utility if a lot of employee movement occurred between the utility and affiliate. Staff recommends including the following record keeping requirement.

4CSR 240-20.015(4)(B)7. A full and complete list of the names and job descriptions of the employees that transferred to an affiliated entity.

OPC also recommended the placement of the CAM filing requirements in a separate section of the rule.

EDE took exception to the contract documentation requirements in (4)(B)3. and 4. They state that good business practice dictates when a contract is made. Staff agrees completely. That is why a contract was not required for all transactions. However, documentation is needed for the Commission to determine if subsidization occurred if a contract is not made for a transaction.

KCPL interprets the rule as requiring a formal contract for transactions that occur between KPCL and the non-regulated business divisions within KCPL. The rule does not require this. It does require documentation as to why a contract was not necessary.

The record keeping section of the Missouri Utilities proposed rule contains some of the same requirements that are in the Commission's proposed rule. It would require a list of all affiliates and a list of all contracts with affiliates as the Commission's rule does. However, in the Missouri Utilities proposed rule, the documentation of utility purchases from an affiliate is limited to (1) transactions having a value in excess of \$50,000, (2) goods and services used to provide a regulated service, and (3) the fair market value of the goods or service or the cost of the utility to provide the goods or services itself. The determination of which cost to document is at the option of the utility in the Missouri Utilities proposed rule.

Subsidization can take place in transactions that are valued at less than \$50,000 annually and the Commission should have documentation of all affiliate transactions in order to determine if subsidization has occurred.

Not defined in the Missouri Utilities' proposed rule is the cost of the utility to provide the service itself. This may range from an incremental cost to the fully distributed costs. It may be more than the fair market value and in that case the ratepayers would be subsidizing the affiliate. Without corresponding documentation of the fair market value, the Commission would not have a complete record on which to determine if subsidization occurred.

Missouri Utilities also has some different requirements for transactions from the utility to the affiliate. Again, its requirements would only apply for transactions that have a value in excess of \$50,000 a year. These record keeping requirements are intended to show the impact on rates or charges for regulated utility services. While this is a worthy objective, to have a complete record of transactions, documentation should be kept on all transactions regardless of whether the transaction impacts the rates or charges and the annual value of the transactions.

Staff recommends that the Commission not adopt the Missouri Utilities' record keeping requirements.

23. 4 CSR 240-20.015(5) Records of the affiliated entities

OPC and Enron agree with this section and Enron even adds more requirements. Most utilities believe that it is burdensome and unnecessary. Ameren states that it is redundant but does not impose any real cost, so Ameren does not object to this section.

KPCL states that this section should be removed if the determination of control stays at ten percent (10%).

Missouri Utilities comment that the requirement of documentation of employee transfers would be burdensome. This would only be burdensome if a lot of employee transfers occur in a year. The requirement of a job description should not be burdensome since it is common practice for all employees to have written job descriptions.

In its proposed rule, Ameren leaves out documentation on (1) the descriptions of services provided by corporate divisions and other centralized functions, (2) names and job descriptions of transferred employees, (3) the evaluation of the impact of the transaction on reliability, and (4) the use of derivatives. All of this documentation is necessary to determine if a problem exists in this area.

OPC changed some of the documentation requirements in its proposed rule so they would be consistent with the rest of its proposed rule.

24. 4 CSR 240-20.015(6) Access to records of affiliated entities

Again OPC and Enron agree with the Commission's proposed rule and the utilities do not. The utilities do not understand why the Commission needs access to the books of the affiliates and assert that the Commission might decide to regulate or micro-manage the affiliates. They also question the legality of this section. KPCL states that this section should be removed if the determination of control stays at ten percent (10%).

Ameren, in its proposed rule, includes a subtle but very important difference from the Commission's proposed rule. It removes the affiliated entity from subsection (6)(B)1. and 2. thus removing the Commission's authority to review the affiliates books and investigate the affiliate operations for the purpose of ensuring compliance with the rule.

The authority given in this section is necessary to enable the Commission to verify the records of the utilities. Without access to all affiliates' books and records, the Commission will be required to blindly accept many representations made by the utility. The Commission and Staff will not be micro-managing the affiliates, as some utilities assert. The Commission and Staff will just investigate the operations to insure the utility's compliance with the rule.

As to the sensitive nature of some of the records of these affiliates that the utilities comment on, the Commission and Staff deal with highly confidential and proprietary information on an ongoing basis and would continue to take all the necessary precautions with the records of the affiliate.

The legality of this section was addressed in great detail in Staff's initial comments.

25. 4 CSR 240-20.015(6)(C) Burden of proof

Ameren and OPC in their proposed rules included this subsection. Missouri Utilities have a separate section on burden of proof. Its section includes language regarding the rate making treatment of costs or revenues relating to unregulated services. This language is not necessary to the Commission's proposed rule.

26. 4 CSR 240-20.015(7) Record retention

This section is included in the proposed rules of OPC, Enron and Ameren. Missouri Utilities did not include this section in its proposed rule. There were no comments on this section.

27. 4 CSR 240-20.015(8) Enforcement

Ameren and OPC included this section in their proposed rules. Enron also has an enforcement section that includes a statement concerning the applicability of state and federal antitrust laws. The Missouri Utilities' propose rule would only be enforced when the utility requests a rate increase from the Commission. Enron adds a section on penalties that the Commission would have available that includes monetary penalties.

28. 4 CSR 240-20.015(9) Variances

Ameren's and OPC's proposed rules contain the same variance language as the Commission's proposed rule. Enron has no variance provision in its proposed rule but in several areas allows the Commission to authorize exceptions to certain standards. EEI states that if the Commission implements the changes that it suggests there will be no need for variances.

It is important to realize that the variance provision only applies to the costing standards in the Commission's proposed rule section (2)(A). Missouri Utilities' proposed rule allows for a variance for any part of the rule for good cause shown.

Missouri Utilities also express some concern that the utility would be liable for any over or under pricing of a transaction if the Commission does not grant a variance. This is a risk that the utility will have to evaluate prior to deciding to engage in a transaction that does not meet the costing standards.

29. Additional Recommendations

The parties that filed proposed rules included several additional recommendations in addition to the additional standards described previously. The following is a brief discussion of this additional language.

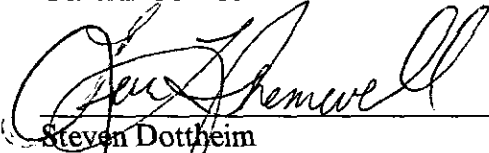
Mountain Energy suggested including language that would require the utilities to train and advise all of its personnel on the affiliate transaction rule. This type of requirement may have prevented a complaint that was filed by the Missouri Coalition for Fair Competition against AmerenUE with respect to a violation of the HVAC Services statute (section 386.756, RSMo Cum.Supp. 1998). AmerenUE responded that it “inadvertently allowed reference to a non-regulate service to appear on its bill without the disclaimer required by statute.” Therefore the Staff recommends that the following section be included in the final rule.

(9) The regulated electrical corporation shall train and advise all of its personnel as to the requirements and provisions of this rule.

Enron adds a section for third party compliance audits, compliance plans, complaint procedures and complaint logs. In an effort to stay as light-handed as possible, Staff does not see a need for these additional requirements.

Respectfully submitted,

DANA K. JOYCE
General Counsel

A handwritten signature in cursive script, appearing to read "Steven Dottheim", is written over a horizontal line.

Steven Dottheim
Chief Deputy General Counsel.
Missouri Bar No. 29149

Lera L. Shemwell
Assistant General Counsel
Missouri Bar No. 43792

Attorneys for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

(573) 751-7431 (Telephone)
(573) 751-9285 (Fax)

August 2, 1999

TABLE OF CONTENTS

ATTACHMENT A Comparison of Proposed Rules

I. NON-DISCRIMINATION STANDARDS	1
1. Provision of Goods/Services	1
2. Preferential Treatment	1
3. Discrimination	1
4. Application of Tariff Provisions.....	2
5. Offer of Discount, Rebate or Other Waiver	2
6. Processing of Requests	2
7. Independent Functioning	2
8. Sharing of Employees.....	3
9. Transfer of Employees.....	4
10. Sharing of Plant, Facilities, Equipment.....	4
11. Sharing of Information re. Goods/Services	5
12. Provision of Leads to Competitive Affiliates	5
13. Solicitation of Business on Behalf of Competitive Affiliates	5
14. Joint Purchases	6
15. New Non-Tariffed Products/Services.....	6
16. Corporate Support.....	6
17. Use of Name or Logo of Regulated Electric Corp.	7
18. Corporate Identification and Advertising in Circulated Material.....	8
19. Corporate Identification and Advertising in Correspondence.....	8
20. Joint Advertising/Joint Marketing	8
21. Tying of Tariffed Services to Taking of Affiliated Goods/Services	9
22. Sharing of Information between About Unaffiliated Entities	10
23. Sharing of Information – Proprietary Reports.....	10
24. Acquisition of Information for Competitive Affiliates.....	10
25. Representation of Independence Between Regulated Corporation and Competitive Affiliate.....	11
26. Assigning Customers to Competitive Affiliates.....	11
II. SPECIFIC CUSTOMER INFORMATION	12
1. Availability	12
2. Authorization.....	12
3. Circumvention	12
4. Information Requests from Customers.....	12
III. EVIDENTIARY STANDARDS FOR AFFILIATE TRANSACTIONS	14
1. Cost Allocation for Regulated Corp/Affiliated Entity Transactions	14
2. Competitive Bids	14
3. Documentation of Transactions.....	14
IV. RECORD-KEEPING REQUIREMENTS.....	15
1. Record-Keeping Format	15
2. Utility Record-Keeping Requirements	15

3. Maintenance of Separate Books/Records Between Regulated Corp. and Affiliated Interest	18
4. Access to Records of Competitive Affiliated Entities.....	18
5. Non-Subsidization/Financial Accounting Requirements	18
6. Legal Separation of Regulated Corporation and Competitive Affiliate(s).....	19
V. OTHER.....	19
1. Applicability	19
2. Representation of Preferential Treatment.....	19
3. Transactions Causing Subsidization of Affiliated Interests	20
4. Burden of Proof.....	20
5. Responses to Commission Inquiries re. Transactions	22
6. Filing Requirements	22
7. Commission Authority to Inspect Records.....	22
8. Commission Authority to Investigate Operations	22
9. Period Records to be Retained.....	22
10. Period Contract/Bid Records to be Retained.....	23
11. Compliance Audit.....	23
12. Compliance Plans	23
13. Complaint Procedure	23
14. Complaint Log.....	24
15. Enforcement.....	24
16. Penalties.....	24
17. Variances	26

ATTACHMENT A

Comparison of Proposed Rules

MOU – Missouri Utilities
AMEREN – Ameren and Union Electric Company
OPC – Office of Public Counsel

I. NON-DISCRIMINATION STANDARDS

1. Provision of Goods/Services

MOU (2)(A) No utility service provider shall seek to induce any person or corporation to select or use its unregulated services or the services of an affiliate, by

1. Charging, demanding, collecting or receiving from any such person or corporation a greater or less compensation in connection with any service regulated by the commission that it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions;
2. Making or granting any undue or unreasonable preference or advantage to any such person or corporation in connection with such service, or;
3. Subjecting any such person or corporation to any undue or unreasonable prejudice or disadvantage in connection with such service.

2. Preferential Treatment

AMEREN (2)(A) A regulated electrical corporation shall not provide affiliated interests or customers of affiliated interests preferential treatment or advantages relative to unaffiliated entities or their customers in connection with services provided under tariffs on file with the Missouri Public Service Commission.

ENRON (2)(A)(2) Unless otherwise authorized by the Commission or the FERC, or permitted by these rules, a regulated electrical corporation shall not, with respect to the goods or services it provides provide its competitive affiliate(s), or customers of its competitive affiliate(s), any preference (including but not limited to terms and conditions, pricing, or timing) over unaffiliated suppliers or their customers in the provision of services provided by the regulated electrical corporation.

OPC (2)(A)(2) Unless otherwise authorized by the Commission or the FERC or permitted by these rules, a regulated Electric corporation shall not with respect to the goods or services it provides provide its competitive affiliate(s), or customers of its competitive affiliate(s) any preference (including but not limited to terms and conditions, pricing or timing) over unaffiliated suppliers or their customers in the provision of services provided by the regulated Electric corporation.

3. Discrimination

ENRON (2)(B)(1) In dealings with its competitive affiliate(s), a regulated electrical corporation may not discriminate between its competitive affiliate(s) and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. A regulated electrical corporation shall contemporaneously

make any offering to its competitive affiliate(s) available to all similarly situated suppliers.

OPC (2)(B)(1) The following rules shall apply to all transactions between a regulated Electric corporation and its competitive affiliate(s) with respect to goods or services the regulated Electric corporation provides. In dealings with its competitive affiliate(s), a regulated Electric corporation may not discriminate between its competitive affiliate(s) and any other entity in the provision or procurement of goods, services, facilities and information, or in the establishment of standards. A regulated Electric corporation shall contemporaneously make any offering to its competitive affiliate(s) available to all similarly situated suppliers.

4. Application of Tariff Provisions

ENRON (2)(B)(2) A regulated electrical corporation shall apply any tariff provision that allows for discretion in its application in the same manner for its competitive affiliate(s) and unaffiliated suppliers and their respective customers. If the regulated electrical corporation has no discretion in the application of a tariff provision, then it shall strictly enforce that tariff provision.

OPC (2)(B)(2) A regulated Electric corporation shall apply any tariff provision that allows for discretion in its application in the same manner for its competitive affiliate(s) and unaffiliated suppliers and their respective customers. If the regulated Electric corporation has no discretion in the application of a tariff provision, then it shall strictly enforce that tariff provision.

5. Offer of Discount, Rebate or Other Waiver

ENRON (2)(B)(3) If a regulated electrical corporation offers its competitive affiliate(s) a discount, rebate, or other waiver of any charge or fee, the regulated electrical corporation shall contemporaneously make such discount or waiver available to all unaffiliated suppliers within its service territory.

OPC (2)(B)(3) If a regulated Electric corporation offers its competitive affiliate(s) a discount rebate, or other waiver of any charge or fee, the regulated Electric corporation shall contemporaneously make such discount or waiver available to all unaffiliated suppliers within its service territory.

6. Processing of Requests

ENRON (2)(B)(4) A regulated electrical corporation shall process requests for similar services provided by the regulated electrical corporation in the same manner and within the same time for its competitive affiliate(s) and for all other suppliers and their respective customers.

OPC (2)(B)(4) A regulated Electric corporation shall process requests for similar services provided by the regulated Electric corporation in the same manner and within the same time for its competitive affiliate(s) and all other suppliers and their respective customers.

7. Independent Functioning

OPC (2)(G) Except in relation to corporate support, a Electric utility and its affiliated entities shall function independently of each other and shall not share services, employees or facilities.

OPC (2)(G)(1) A utility and its affiliated entities shall be separate corporate entities.

8. Sharing of Employees

ENRON (4)(G) Employees: Except as permitted under "corporate support." a regulated electrical corporation and its competitive affiliate(s) shall not jointly employ the same employees. In the case of shared directors and officers, a corporate officer from the utility and, where applicable, holding company, shall verify in the utility's compliance plan the adequacy of the specific mechanisms and procedures in place to ensure that the utility is not utilizing shared officers and directors to circumvent any of these rules.

1. A regulated electrical corporation shall track and report annually to the Commission all employee movement between the regulated electrical corporation and its competitive affiliate(s).
2. Once an employee of a regulated electrical corporation becomes an employee of a competitive affiliate, the employee may not return to the regulated electrical corporation for a period of one year. This rule is inapplicable if the competitive affiliate to which the employee transfers goes out of business during the one-year period. In the event that such an employee returns to the regulated electrical corporation, such employee cannot be retransferred, reassigned, or otherwise employed by any competitive affiliate for a period of one year.
3. Any employee of a regulated electrical corporation hired by a competitive affiliate shall not remove or otherwise provide or use proprietary property or information gained from the regulated electrical corporation in a discriminatory or exclusive fashion, to the benefit of the competitive affiliate or to the detriment of other unaffiliated suppliers.
4. Transferring employees must sign a statement indicating that they are aware of and understand the restrictions set forth in the Code and the attendant consequences.
5. A regulated electrical corporation shall not make temporary or intermittent assignments or rotations of its employees to any competitive affiliate to circumvent any of these rules.

OPC (2)(G)(4) Except in relation to corporate support, a Electric utility and its affiliated entities shall not jointly employ or otherwise share the same employees.

OPC (4)(G) Except as permitted under "corporate support." a regulated Electric corporation and its competitive affiliate(s) shall not jointly employ the same employees. In the case of shared directors and officers, a corporate officer from the utility and, where applicable, holding company, shall verify in the utility's compliance plan the adequacy of the specific mechanisms and procedures in place to ensure the utility is not utilizing shared officers and directors to circumvent any of these rules.

1. A regulated Electric corporation shall track and report annually to the Commission all employee movement between the regulated Electric corporation and its competitive affiliate(s).
2. Once an employee of a regulated Electric corporation becomes an employee of an affiliate that employee may not return to the regulated Electric corporation for a period of one year. This rule is inapplicable if the competitive affiliate to which the employee transfers goes out of

business during the one-year period. In the event that such an employee returns to the regulated Electric corporation, such employee cannot be retransferred, reassigned, or otherwise employed by any competitive affiliate for a period of one year.

3. Any employee of a regulated Electric corporation hired by a competitive affiliate shall not remove or otherwise provide or use proprietary property or information gained from the regulated Electric corporation in a discriminatory or exclusive fashion, to the benefit of the competitive affiliate or to the detriment of other unaffiliated suppliers.
4. Transferring employees must sign a statement indicating that they are aware of and understand the restrictions set forth in the Code and the attendant consequences.
5. A regulated Electric corporation shall not make temporary or intermittent assignments or rotations of its employees to any competitive affiliate to circumvent any of these rules.

9. Transfer of Employees

OPC (3)(H)(Second D) When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment (i.e., credited to cost of service in future rate proceedings).

OPC (3)(H)(E) Once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of two years. In the event that such an employee returns to the utility after the two-year period has ended, such employee cannot be re-transferred, reassigned, or otherwise employed by the affiliate for a period of two years. Employees transferring from the utility to the affiliate are expressly prohibited from using information gained from the utility in a discriminatory or exclusive fashion, to the benefit of the affiliate or to the detriment of the other unaffiliated service providers. Transferred employees shall sign an affidavit attesting to the fact that they will not release to the affiliate privileged information gained while in the employment of regulated utility affiliate transaction

10. Sharing of Plant, Facilities, Equipment

ENRON (4)(C) A regulated electrical corporation shall not share office space, office equipment, services, and systems with its affiliate(s), nor shall a regulated electrical corporation access the computer or information systems of its affiliate(s) or allow its affiliate(s) to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under this section.

OPC (2)(G)(3) A utility shall not share office space, office equipment services, and systems with its affiliated entities, nor shall a utility access the computer or information systems of its affiliated entities or allow its affiliated entities to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under Section (H) of these Rules. Physical separation required by this rule shall be accomplished preferably by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access. This provision does not preclude a utility

from offering a joint service provided this service is authorized by the Commission and is available to all non-affiliated service providers on the same terms and conditions (e.g., joint billing services).

OPC (4)(C) A regulated Electric corporation shall not share office space, office equipment services, and systems with its affiliate(s) nor shall a regulated Electric corporation access the computer or information systems of its affiliate(s) or allow its affiliate(s) to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under this section.

11. Sharing of Information re. Goods/Services

ENRON (3)(C) Except in conjunction with the provision of corporate support services permitted below, information which is not specific to a customer but relates to the activities of the regulated electrical corporation's tariff, including but not limited to information about a regulated electrical corporation's electricity-related goods or services, shall be available to the regulated electrical corporation's competitive affiliate(s) only if the regulated electrical corporation makes that information contemporaneously available to all other suppliers on the same terms and conditions, and keeps the information open to public inspection.

OPC (3)(C) Except in conjunction with the provision of corporate support services permitted below, information which is not specific to a customer but relates to the activities of the regulated Electric corporation's tariff including but not limited to information about a regulated Electric corporation's Electric-related goods or services, shall be available to the regulated Electric corporation's competitive affiliate(s) only if the regulated Electric corporation makes that information contemporaneously available to all other suppliers on the same terms and conditions, and keeps the information open to public inspection.

OPC (2)(A)(2) A utility shall make non-customer specific non-public information, including but not limited to information about a utility's natural Electric or electricity purchases, sales, or operations or about the utility's energy-related goods or services, available to the utility's affiliated entities only if the utility makes that information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection.

12. Provision of Leads to Competitive Affiliates

ENRON (2)(B)(7)(a) Except as otherwise provided by these rules, a regulated electrical corporation shall not provide leads to its competitive affiliate(s).

OPC (2)(B)(1)(A) Except as otherwise provided by these Rules, a utility shall not provide leads to its affiliated entities.

OPC (2)(B)(7)(a) Except as otherwise provided by these rules, a regulated electric corporation shall not provide leads to its competitive affiliate(s).

13. Solicitation of Business on Behalf of Competitive Affiliates

ENRON (2)(B)(7)(b) Except as otherwise provided by these rules, a regulated electrical corporation shall not solicit business on behalf of its competitive affiliate(s).

OPC (2)(B)(1)(B) Except as otherwise provided by these rules, a utility shall not solicit business on behalf of its competitive affiliate(s).

OPC (2)(B)(7)(b) Except as otherwise provided by these rules, a regulated electric corporation shall not solicit business on behalf of its competitive affiliate(s).

14. Joint Purchases

ENRON (4)(D) A regulated electrical corporation may not make joint purchases with its affiliate(s) of any goods or services associated with the marketing of the commodity of electricity to customers, including, without limitation, electricity for resale to customers, electric transmission, or energy-related goods/services for sale to customers. The regulated electrical corporation must ensure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the regulated electrical corporation and affiliate portions of such purchases, and in accordance with applicable Commission allocation and reporting rules.

OPC (4)(D) A regulated Electric corporation may not make joint purchases with its affiliate(s) of any goods or services associated with the marketing of the commodity of Electric to customers, including, without limitation, Electric for resale to customers, transportation, capacity, or energy-related goods/services for sale to customers. The regulated Electric corporation must ensure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the regulated Electric corporation and affiliate portions of such purchases and in accordance with applicable Commission allocation and reporting rules.

15. New Non-Tariffed Products/Services

OPC (2)(G)(2) All new non-tariffed products and services shall be offered by an affiliate of the regulated Electric corporation except where the non-tariffed product or service utilizes a portion of a utility asset or capacity where such asset or capacity has been acquired for the purpose of, and is necessary and useful in providing tariffed utility service.

16. Corporate Support

ENRON (4)(E) As a general principle, a regulated electrical corporation, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliate(s) joint corporate oversight, governance, support systems, and personnel. Any shared support shall be priced, reported, and conducted in accordance with these rules, as well as other applicable Commission pricing and reporting requirements. As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the regulated electrical corporation to the affiliate(s), create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.

OPC (2)(H)(1) As a general principle, a utility, its parent holding company or a separate affiliate created solely to perform corporate support services may share with its affiliated entities joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with the Standards set forth in this rule.

OPC (4)(E) As a general principle, a regulated Electric corporation, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliate(s) joint corporate oversight, governance, support systems, and personnel. Any shared support shall be priced, reported, and conducted in accordance with these rules, as well as other applicable Commission pricing and reporting requirements. As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the regulated Electric corporation to the affiliate(s), create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.

OPC (2)(H)(2) As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliated entity, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliated entities. In the annual CAM China a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.

OPC (2)(H)(3) Services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, legal, and pension management.

OPC (2)(H)(4) Services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services. Electric and Electric purchasing for resale, purchasing of Electric transportation and storage capacity, system operations, regulatory affairs, lobbying, and marketing.

17. Use of Name or Logo of Regulated Electric Corp.

OPC (2)(C)(1) An affiliate of a regulated Electric utility shall not assume or share the same name, trademark or logo of the regulated Electric utility.

OPC (2)(C)(2) An affiliate of a regulated Electric utility shall not assume or share a name, trademark or logo that is similar to, or that could be reasonably associated with, the regulated Electric company.

OPC Alternative (2)(C)(1) If an affiliate assumes or shares an exact or similar name, logo or trademark of the regulated utility, the affiliate shall prominently display and announce in every product advertisement and offering that:

- A. The affiliate does not receive preferential treatment from the regulated utility relative to the treatment of the affiliate's competitors
- B. The utility and affiliate are separate entities.
- C. The affiliate is not regulated by the Missouri Public Service Commission

OPC Alternative (2)(C)(2) If an affiliate elects to assume or share an exact or similar name, logo or trademark of the regulated utility, the affiliate shall pay the regulated utility a recurring royalty' equivalent to three percent (3.0%) of gross revenues received. The

royalties received by the regulated utility will be deferred on the regulated utility's books and records for crediting to ratepayers in future rate proceedings. The reasonableness of the application of the three percent (3.0%) royalty fee will be a rebuttable presumption, with the burden of proof for any deviation from such three percent (3.0%) royalty fee being placed upon the party proposing the deviation.

[Note — the following provisions in section (2)(D) which requires that certain disclaimers be made when joint advertising occurs would only be necessary if the Commission rejects OPC's proposal for section (2)(C) since OPC's proposed section (2)(C) would prohibit joint advertising in any form. If the Commission accepts OPC's proposed alternate section (2)(C) or rejects both OPC's proposed section (2)(C) and OPC's proposed alternate section (2)(C), then OPC recommends that the Commission incorporate OPC's proposed section (2)(D) in its final rule.]

18. Corporate Identification and Advertising in Circulated Material

ENRON (4)(F)(1) A competitive affiliate of a regulated electrical corporation shall not trade upon, promote, or advertise its affiliation with the regulated electrical corporation, nor use the name or logo of the regulated electrical corporation in any material circulated.

OPC (4)(F)(1) A competitive affiliate of a regulated Electric corporation shall not trade Upon, promote, or advertise its affiliation with the regulated Electric corporation. nor use the name or logo of the regulated Electric corporation in any material circulated.

19. Corporate Identification and Advertising in Correspondence

ENRON (4)(F)(2) A competitive affiliate of a regulated electrical corporation shall not use any space in any correspondence of the regulated electrical corporation with existing or potential customers or unaffiliated suppliers for the purpose of advertising its services.

OPC (4)(F)(2) A competitive affiliate of a regulated Electric corporation shall not use any space in any correspondence of the regulated Electric corporation with existing or potential customers or unaffiliated suppliers for the purpose of advertising its services.

20. Joint Advertising/Joint Marketing

OPC (2)(D)(1) A utility shall not trade upon, promote, or advertise its affiliated entity's affiliation with the utility, nor allow the utility name or logo to be used by the affiliated entity or in any material circulated by the affiliated entity, unless it discloses in plain legible or audible language, on the first page or at the first point where the utility name or logo appears that:

- A. the affiliated entity "is not the same company as the utility [i.e. Laclede, MGE, the Electric Company, etc.];
- B. the affiliated entity is not regulated by the Missouri Public Service Commission; and
- C. you do not have to buy [the affiliated entity's] products in order to continue to receive quality regulated services from the utility."

The application of the name/logo disclaimer is limited to the use of the name or logo in Missouri.

OPC (2)(E) 1 Except as provided in subsection (2)(E) 2 of this rule joint marketing of services and/or facilities with an affiliated entity is prohibited.

2. A utility shall not offer or provide to its affiliated entities advertising space in utility billing envelopes or any other form of utility customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.

ENRON (4)(F)(4) A regulated electrical corporation shall not participate in joint advertising or joint marketing with its competitive affiliate(s). This prohibition means that regulated electrical corporations may not engage in activities which include, but are not limited to the following:

- a. A regulated electrical corporation shall not, within its service territory, participate with its competitive affiliate(s) in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers. At a customer's unsolicited request, a regulated electrical corporation may participate in non-sales meetings with its competitive affiliate(s) to discuss technical or operational subjects regarding the regulated electrical corporation's provision of distribution service to the customer, but only in the same manner and to the same extent it does so with unaffiliated suppliers and their customers.
- b. A regulated electrical corporation shall not share or subsidize costs, fees, or payments with its competitive affiliate(s) associated with research and development activities or investment in advanced technology research.

OPC (4)(F)(4) A regulated Electric corporation shall not participate in joint advertising or joint marketing with its competitive affiliate(s). This prohibition means that regulated Electric corporations may not engage in activities which include, but are not limited to the competitive affiliate(s) in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers. At a customer's unsolicited request, a regulated Electric corporation may participate in non-sales meetings with its competitive affiliate(s) to discuss technical or operational subjects regarding the regulated Electric corporation's provision of distribution service to customer, but only in the same manner and to the same extent it does so with unaffiliated suppliers and their customers.

(a) A regulated Electric corporation shall not, within its service territory, participate with its

(b) A regulated Electric corporation shall not share or subsidize costs, fees, or payments with its competitive affiliate(s) associated with research and development activities or investment in advanced technology research.

21. Tying of Tariffed Services to Taking of Affiliated Goods/Services

AMEREN (2)(C) A regulated electrical corporation shall not tie, as defined by State and federal anti-trust laws, the provision of any tariffed services to the taking of any goods and services from the electric utility's affiliated interests.

ENRON (2)(B)(5) A regulated electrical corporation shall not condition or tie the provision of any services provided by the regulated electrical corporation, nor the availability of discounts, rates, other charges, fees, rebates, or waivers of terms and conditions to the taking of any goods or services from its competitive affiliate(s).

OPC (2)(F) Electric utilities shall not tie or otherwise condition the provision of any services, discounts, rebates, fee waivers, or waivers of the Electric utilities' ordinary terms and conditions of service, including but not limited to tariff provisions, to the taking of any goods and services from the Electric utility's affiliated entity.

OPC (2)(B)(5) A regulated Electric corporation shall not condition or tie the provision of any services provided by the regulated Electric corporation, nor the availability of discounts, rates, other charges, fees, rebates, or waivers of terms and conditions to the taking of any goods or services from its competitive affiliate(s).

22. Sharing of Information between About Unaffiliated Entities

ENRON (3)(B) Regulated electrical corporations shall not disclose to their competitive affiliate(s) any information which a regulated electrical corporation receives from an existing or potential unaffiliated customer or unaffiliated supplier, or their agent or contractor.

OPC (3)(B) Regulated Electric corporations shall not disclose to their competitive affiliate(s) any information which a regulated Electric corporation receives from an existing or potential unaffiliated customer or unaffiliated supplier, or their agent or contractor.

AMEREN (2)(E) A regulated electrical corporation shall treat as confidential all information related to the transmission or distribution of electric energy received from unaffiliated energy marketers and shall not share such information with its affiliates.

23. Sharing of Information – Proprietary Reports

ENRON (2)(B)(7)(d) Except as otherwise provided by these rules, a regulated electrical corporation shall not share market analysis reports or any other types of proprietary or non-publicly available reports including but not limited to market, forecast, planning or strategic reports, with its competitive affiliate(s).

OPC (2)(B)(1)(D) Except as otherwise provided by these rules, a utility shall not share market analysis reports or any other types of proprietary or non-publicly available reports including but not limited to market, forecast, planning or strategic reports, with its affiliated entities.

OPC (2)(B)(7)(d) Except as otherwise provided by these rules, a regulated electric corporation shall not share market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its competitive affiliate(s).

24. Acquisition of Information for Competitive Affiliates

ENRON (2)(B)(7)(c) Except as otherwise provided by these rules, a regulated electrical corporation shall not acquire information on behalf of or to provide to its competitive affiliate(s).

OPC (2)(B)(1)(C) Except as otherwise provided by these Rules, a utility shall not acquire information on behalf of or to provide to its affiliated entities.

OPC (2)(B)(7)(c) Except as otherwise provided by these rules, a regulated electric corporation shall not acquire information on behalf of or to provide to its competitive affiliate(s).

25. Representation of Independence Between Regulated Corporation and Competitive Affiliate

ENRON (2)(B)(7)(f) Except as otherwise provided by these rules, a regulated electrical corporation shall not give the appearance that the regulated electrical corporation speaks on behalf of its competitive affiliate(s) or that the customer will receive preferential treatment as a consequence of conducting of conducting business with the competitive affiliate(s).

OPC (2)(B)(1)(F) Except as otherwise provided by these rules, a utility shall not give the appearance that the utility speaks on behalf of its competitive affiliate(s) or that the customer will receive preferential treatment as a consequence of conducting of conducting business with the affiliated entities.

ENRON (2)(B)(7)(g) Except as otherwise provided by these rules, a regulated electrical corporation shall not give any appearance that any competitive affiliate speaks on behalf of the regulated electrical corporation.

OPC (2)(B)(1)(G) Except as otherwise provided by these rules, a utility shall not give any appearance that the affiliated entity speaks on behalf of the utility.

OPC (2)(B)(7)(f) Except as otherwise provided by these rules, a regulated electric corporation shall not give the appearance that the regulated electric corporation speaks on behalf of its competitive affiliate(s) or that the customer will receive preferential treatment as a consequence of conducting business with the competitive affiliate(s).

OPC (2)(B)(7)(g) Except as otherwise provided by these rules, a regulated electric corporation shall not give any appearance that the competitive affiliate speaks on behalf of the regulated Electric corporation.

26. Assigning Customers to Competitive Affiliates

ENRON (2)(B)(6) A regulated electrical corporation shall not assign customers to which it currently provides services to any of its competitive affiliate(s), whether by default, direct assignment, option or by any other means, unless that means is equally available to all unaffiliated suppliers.

OPC (2)(B)(6) A regulated Electric corporation shall not assign customers to which it currently provides services to any of its competitive affiliate(s), whether by default, direct assignment, option or by any other means, unless that means is equally available to all unaffiliated suppliers.

II. SPECIFIC CUSTOMER INFORMATION

1. Availability

AMEREN (2)(D) Specific customer information shall be made available to affiliated or unaffiliated companies only upon consent of the customer or as otherwise provided by law or Commission Rule and upon payment of reasonable charges incurred in producing such information. General or aggregated customer information may be made available to affiliated or unaffiliated companies or persons alike upon payment of reasonable charges incurred in producing such information.

OPC (2)(A)(1) Customer information shall be made available without preference to affiliated entities or their customers. Electric utilities shall not provide any preferences to affiliated entities in requesting authorization for the release of customer information. Customer information shall be made available only with prior affirmative customer written consent.

2. Authorization

OPC (3)(A) A regulated Electric corporation shall provide customer information to its competitive affiliate(s) and unaffiliated suppliers on a strictly nondiscriminatory basis and only with prior affirmative customer written consent.

ENRON (3)(A) A regulated electrical corporation shall provide customer information to its competitive affiliate(s) and unaffiliated suppliers on a strictly nondiscriminatory basis, and only with prior affirmative customer written consent.

ENRON (2)(B)(7)(e) Except as otherwise provided by these rules, a regulated electrical corporation shall not request authorization from its customers to pass on customer information exclusively to its competitive affiliate(s).

OPC (2)(B)(1)(E) Except as otherwise provided by these rules, a utility shall not request authorization from its customers to pass on customer information exclusively to its affiliated entities.

3. Circumvention

ENRON (2)(B)(7)(h) Except as otherwise provided by these rules, a regulated electrical corporation shall not circumvent this rule by using another affiliate as a conduit to provide customer information to or preferential treatment of a competitive affiliate.

OPC (2)(B)(7)(h) Except as otherwise provided by these rules, a regulated electric corporation shall not circumvent this rule by using another affiliate as a conduit to provide customer information to or preferential treatment of a competitive affiliate.

4. Information Requests from Customers

OPC (3)(H)(first D) If a customer requests information from the regulated Electric corporation about goods or services provided by an affiliated entity, the regulated Electric corporation shall provide information to the customer regarding the availability of other non affiliated entities that provide the same goods or services. The regulated Electric 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.

OPC (2)(H)(D) If a customer requests information from the regulated Electric corporation about goods or services provided by an affiliated entity, the regulated Electric corporation shall provide information to the customer.

ENRON (3)(D) Unless specifically authorized by the Commission, a regulated electrical corporation shall not provide customers or potential customers with any list of suppliers. Any list provided directly by the Commission or authorized by the Commission to be provided by a regulated electrical corporation shall include the names, addresses, telephone numbers, fax numbers, and internet addresses (if any) of all suppliers. The list shall be prepared in a manner that does not identify any affiliate relationship or emphasize any particular supplier in any way.

OPC (3)(D) Unless specifically authorized by the Commission, a regulated Electric corporation shall not provide customers or potential customers with any list of suppliers. Any list provided directly by the Commission or authorized by the Commission to be provided by a regulated Electric corporation shall include the names, addresses, telephone numbers, fax numbers, and internet addresses (if any) of all suppliers. The list shall be prepared in a manner that does not identify any affiliate relationship or emphasize any particular supplier in any way.

ENRON (3)(E) Except as provided in these rules, a regulated electrical corporation shall not offer or provide customers or potential customers with advice or assistance of any kind with regard to any competitive affiliate or unaffiliated suppliers.

OPC (3)(E) Except as provided in these rules, a regulated Electric corporation shall not offer or provide customers or potential customers with advice or assistance of any kind with regard to any competitive affiliates or unaffiliated suppliers.

OPC (2)(A)(2) A utility shall not provide its customers with any verbal or written list of service providers, which includes or identifies the utility's affiliates, regardless of whether such list also includes or identifies the names of unaffiliated entities. If a customer inquires about a good or services provided by an affiliate, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages).

OPC Alternative (2)(A) Except upon request by a customer or as otherwise authorized by the Commission, a utility shall not provide its customers with any list of service providers, which includes or identifies the utility's affiliates, regardless of whether such list also includes or identifies the names of unaffiliated entities.

OPC Alternative (2)(B) If a customer requests information about any affiliated service provider, the utility shall provide a list of all providers in its service territory, including its affiliates. The Commission shall authorize, by a filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain on file with the Commission a copy of the most updated lists of service providers which have, been created to disseminate to a customer upon a customer's request. Any service provider may request that it be included on such list, and, barring Commission direction, the utility shall honor such request. Where maintenance of such list would be unduly burdensome due to the number of service providers, subject to Commission approval by advice letter

filing, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages). In such cases, no list shall be provided. The list of service providers should make clear that the Commission does not guarantee the financial stability or service quality of the service providers listed by the act of approving this list.

III. EVIDENTIARY STANDARDS FOR AFFILIATE TRANSACTIONS

1. Cost Allocation for Regulated Corp/Affiliated Entity Transactions

AMEREN (3) In transactions involving the purchase of goods or services by the regulated electrical corporation from an affiliated entity, the regulated electrical corporation will use a commission-approved Cost Allocation Manual (CAM) and Service Agreement, as described in Section 2(G), above, 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 requirement of this section.

ENRON (5)(D) In transactions involving the purchase of goods or services by the regulated electrical corporation from an affiliated entity, the regulated electrical 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.

2. Competitive Bids

ENRON (5)(A) When a regulated electrical corporation purchases information, assets, goods or services from an affiliated entity, the regulated electrical corporation shall either obtain competitive bids for such information, assets, goods or services or demonstrate why competitive bids were neither necessary nor appropriate.

MOU (3)(C) A utility service provider shall be deemed to be in compliance with the requirements of this section (3) to the extent its purchase, sale, transfer or use of goods, services or utility assets to or from an affiliate or in connection with an unregulated service is made or performed pursuant to a tariff or rate approved by a state or federal regulatory authority or is the result of a competitive bidding process.

3. Documentation of Transactions

ENRON (5)(B) In transactions that involve either the purchase or receipt of information, assets, goods or services by a regulated electrical corporation from an affiliated entity, the regulated electrical corporation shall document both the fair market price of such information, assets, goods and services and the FDC to the regulated electrical corporation to produce the information, assets, goods or services for itself.

ENRON (5)(C) In transactions that involve the provision of information, assets, goods or services to affiliated entities, the regulated electrical 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.

IV. RECORD-KEEPING REQUIREMENTS

1. Record-Keeping Format

ENRON (6)(A) Each regulated electrical corporation shall maintain its books, accounts and records in accordance with applicable Uniform System and Accounts (USOA) and Generally Accepted Accounting Principles (GAAP). Affiliates of a regulated electrical corporation shall maintain their books, accounts and records in a manner that allows the Commission to verify compliance with these affiliate rules.

OPC (4)(B) A regulated Electric corporation shall maintain its books, accounts and records separate from its affiliate(s) and they shall be kept in accordance with applicable Uniform System and Accounts (USOA) and Generally Accepted Accounting Principles (GAAP). Transactions between the regulated Electric corporation and its affiliate(s) shall be recorded in separate sub-accounts. Affiliates of a regulated Electric corporation shall maintain their separate books, accounts, and records in a manner that allows the Commission to verify compliance with these affiliate rules.

2. Utility Record-Keeping Requirements

AMEREN (4)(A) Each regulated electrical 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 electrical 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, May 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, PVC, etc.) to record each type of affiliate transaction.

ENRON (6)(B) In addition each regulated electrical corporation shall maintain contemporaneous records documenting all affiliate transactions, including, but not limited to, the following information in a mutually agreed to electronic format (i.e., agreement between the Staff, Office of Public Counsel and the regulated electrical corporation) 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 15th 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
6. The basis used (e.g., fair market price, FDC, etc.) to record each type of affiliate transaction;
7. All waivers of tariff or contract provisions:
8. All discounts:
9. The name of the party involved in the transaction
10. The time period over which the transaction applies; and
11. The terms and conditions involved in the transaction.

MOU (4) To ensure compliance with this rule, each utility service provider shall maintain and, if requested pursuant to normal commission discovery and confidentiality procedures, provide:

- (A) A full and complete list of all affiliates of the utility service provider.
- (B) A full and complete list of all currently effective contracts between the utility service provider and affiliated companies.
- (C) The number and amount of any single transaction or continuing service relationship between the utility service provider and affiliate with a value in excess of \$50,000 per year, by affiliate.
- (D) For those transactions or continuing service relationships which have a value in excess of \$50,000 per year and which involve the purchase of goods or services by a utility service provider from an affiliate for use in providing a service regulated by this commission, information showing the fair market value of such goods and services or, alternatively at the option of the utility service provider, information showing the cost to the utility service provider to furnish such goods or services for itself.
- (E) For those transactions or continuing service relationships which have a value in excess of \$50,000 per year and which involve the use or transfer of utility assets to carry out unregulated services or affiliate activities, cost information showing the impact of such use or transfer on the rates or charges for the utility service provider's regulated utility services. For purposes of complying with this subsection 4(E), the utility service provider shall provide information sufficient to:
 1. Identify the specific utility assets used or transferred in connection with such activities;
 2. Identify or estimate the amount of time such utility assets were or are being used in connection with such activities;
 3. Identify the costs of such utility assets, including related overhead costs, that are currently being recovered in the utility service provider's rates for regulated service;

4. Quantify or estimate what portion of the costs identified in paragraph (4)(E) 3, if any, could be avoided by the utility service provider if it were not engaged in the unregulated service or affiliate activities;
5. Use of a commission-approved cost allocation procedure shall constitute compliance with Section (4) for all transactions or continuing service relationships addressed by such procedure.

AMEREN (4)(B) In addition, each regulated electrical 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.

AMEREN (4)(C) For purposes of this Rule, reports made on Form U-S-S and U-13-60 pursuant to the Public Utility Holding Company Act of 1933, or any successor legislation or rules, will be deemed to satisfy this provision.

AMEREN (5)(A) Each regulated electrical 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 electrical 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; and
4. Policies regarding the availability of customer information and the access to services available to nonregulated affiliated entities desiring use of the regulated electrical corporation's contracts and facilities.

ENRON (7)(A) Each regulated electrical corporation shall ensure that its parent and any other competitive affiliates maintain separate 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 competitive affiliate and charged to the regulated electrical 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 non-assignment of these costs to affiliate transactions;
4. Names and job descriptions of the employees from the regulated electrical corporation that transferred to a non-regulated affiliated entity;

3. Maintenance of Separate Books/Records Between Regulated Corp. and Affiliated Interest

AMEREN (2)(H) A regulated electrical corporation shall maintain books, accounts, and records separate from those of its affiliated interests.

ENRON (6)(E) Each regulated electrical corporation shall maintain books of accounts and supporting records separate from its affiliates and in sufficient detail to permit verification of compliance with this rule on a calendar year basis.

ENRON (4)(B) A regulated electrical corporation shall maintain its books, accounts and records separate from its affiliate(s) and they shall be kept in accordance with applicable Uniform System and Accounts (USOA) and Generally Accepted Accounting Principles (GAAP). Transactions between the regulated electrical corporation and its affiliate(s) shall be recorded in separate sub-accounts. Affiliates of a regulated electrical corporation shall maintain their separate books, accounts, and records in a manner that allows the Commission to verify compliance with these affiliate rules.

MOU (2)(B)(6) No utility shall fail to keep its books and records separate from those of its marketing affiliate

4. Access to Records of Competitive Affiliated Entities

AMEREN (6)(A) To the extent permitted by applicable law and pursuant to established commission discovery procedures, a regulated electrical corporation shall make available the books and records of its parent and any other affiliated entities when required in the application of this rule.

ENRON(8)(A) To the extent permitted by applicable law and pursuant to established Commission discovery procedures, a regulated electrical corporation shall make available the books and records of its parent and any other competitive affiliate when required in the application of this rule.

ENRON (6)(C) The regulated electrical corporation shall make such records available for third party review upon 72 hours written notice, or at a time mutually agreeable to the regulated electrical corporation

5. Non-Subsidization/Financial Accounting Requirements

MOU (3) (A) A utility service provider may only include in the rates and charges for any utility service regulated by the commission a reasonable level of cost associated with the purchase of goods or services from an affiliate. If the recovery or attempted recovery of such costs is challenged by any party to a rate proceeding, the utility service provider shall, at its option, either provide an analysis showing the fair market value of such goods or services or provide other information showing the cost to the utility service provider to furnish such goods or services for itself.

(B) No utility service provider shall subsidize its unregulated service activities or

the activities of an affiliate, by using or transferring its utility assets in a manner that increases its rates or charges for regulated utility services above the rates or charges that would be in effect if the provider or its affiliate had not or was not engaged in such activities.

(C) A utility service provider shall be deemed to be in compliance with the requirements of this section (3) to the extent its purchase, sale, transfer or use of goods, services or utility assets to or from an affiliate or in connection with an unregulated service is made or performed pursuant to a tariff or rate approved by a state or federal regulatory authority or is the result of a competitive bidding process.

6. Legal Separation of Regulated Corporation and Competitive Affiliate(s)

ENRON (4)(A) A regulated electrical corporation and its competitive affiliate(s) shall be separate legal entities.

OPC (4)(A) A regulated Electric corporation and its affiliate(s) shall be separate legal entities.

V. OTHER

1. Applicability

MOU (6) This rule shall not apply to any affiliate transactions or unregulated service activities which involve or facilitate the warranty, sale, lease, rental, installation, construction, modernization, retrofit, maintenance or repair of heating, ventilating and air-conditioning equipment. This rule shall also not apply to transactions or continuing service relationships between a utility service provider and an affiliate if the affiliate does not carry on any business which is similar in nature to the provision of electric utility service or the marketing of goods or services related to electric utility service, the affiliate does not provide any services or goods to the utility service provider which are utilized by it in the provision of a utility service regulated by the commission, or the utility service provider has identified and allocated to the affiliate the cost of any utility assets used by or transferred to the affiliate.

2. Representation of Preferential Treatment

AMEREN (2)(B) A regulated electric corporation and its affiliated interests shall not notify potential or actual customers, either directly or indirectly, that the electric corporation provides any advantages relating to the scheduling, transmission or distribution of electricity to affiliated interests or their customers relative to unaffiliated entities and their customers.

ENRON (2)(A)(1) Unless otherwise authorized by the Commission or the FERC, or permitted by these rules, a regulated electrical corporation shall not, with respect to the goods or services it provides represent that, as a result of the affiliation with the regulated electrical corporation, its competitive affiliate(s) or customers of its competitive affiliate(s) will receive any different treatment by the regulated electrical corporation than the treatment the regulated electrical corporation provides to other, unaffiliated suppliers or their customers.

ENRON (4)(F)(3) A regulated electrical corporation, through action or words, shall not represent that, as a result of the competitive affiliate's affiliation with the regulated electrical corporation, its competitive affiliate(s) will receive any different treatment than other unaffiliated suppliers.

OPC (4)(F)(3) A regulated Electric corporation, through action or words, shall not represent that as a result of the competitive affiliate's affiliation with the regulated Electric corporation its competitive affiliate(s) will receive any different treatment than other retail Electric suppliers.

MOU (2)(B)(4) No utility service provider shall communicate to any customer, supplier or third parties that any advantage may accrue to such customer, supplier or third party in the use of its services as a result of that customer, supplier or third party dealing with its marketing affiliate or give any appearance that it speaks on behalf of its affiliate.

OPC (2)(A)(1) Unless otherwise authorized by the Commission or the FERC or permitted by these rules, a regulated Electric corporation shall not with respect to the goods or services it provides represent that, as a result of the affiliation with the regulated Electric corporation its competitive affiliate(s) or customers of its competitive affiliate(s) will receive any different treatment by the regulated Electric corporation than the treatment the regulated Electric corporation provides to other, unaffiliated suppliers or their customers.

3. Transactions Causing Subsidization of Affiliated Interests

AMEREN (2)(F) Transactions between an electrical corporation and its affiliated interests shall not be allowed to subsidize the affiliated interests.

4. Burden of Proof

ENRON (4)(H) In all proceedings, filings, complaints or investigations relating to this subsection, the regulated electrical corporation shall have the burden of proof in establishing the fair market value.

A regulated electrical corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated electrical 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 electrical corporation to provide the goods or services for itself.
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 electrical corporation.

The regulated electrical 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.

The regulated electrical corporation shall not participate in any affiliate transactions which are not in compliance with this rule except as otherwise provided in section (9) of this rule.

OPC (2)(H) In all proceedings, filings, complaints or investigations relating to this subsection, the regulated Electric corporation shall have the burden of proof in establishing the fair market value.

A regulated Electric corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated Electric 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 Electric corporation to provide the goods or services for itself

2. It transfers information, assets, goods or services of any kind (including, but not limited to, land, patents, trained employees, research, employee training to an affiliated entity below the greater of:

A. The fair market price; or

C. The fully distributed cost to the regulated Electric corporation.

(B)—The regulated Electric 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)—The regulated Electric 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

OPC (3)(H)(A) A regulated corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated Electric corporation shall be deemed to provide a financial advantage to an affiliated entity if 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 Electric corporation to provide the goods or services for itself

2. It transfers information, assets, goods or services of any kind (including, but not limited to, land, patents, trained employees, research, employee training, etc.) to an affiliated entity below the greater of:

A. The fair market price; or

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

(B) Except as necessary to provide corporate support functions, the regulated Electric 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) The regulated Electric 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.

AMEREN (6)(C) This rule does not modify existing legal standards regarding which party has the burden of proof in commission proceedings.

ENRON (8)(C) This rule does not modify existing legal standards regarding which party has the burden of proof in Commission proceedings.

MOU (5) Nothing in this rule shall be construed as modifying existing legal standards regarding which party has the burden of proof in commission proceedings or as resolving whether fully distributed cost, incremental cost or some other costing or valuation method is required or should be used for purposes of determining the ratemaking treatment of costs or revenues relating to unregulated services and affiliate activities

5. Responses to Commission Inquiries re. Transactions

AMEREN (2) (I) Upon request of the Commission, electrical corporations shall make personnel available who are competent to respond to the Commission's inquiries regarding the nature of any transactions that have taken place between the electric utility and its affiliated interests, including but not limited to the goods and services provided, the prices, terms and conditions, and other consideration given for the goods and services provided.

6. Filing Requirements

OPC (11)(A) The regulated Electric utility shall file its CAM with the Commission within 60 days of the effective date of this rule and on, or before March 15 of each succeeding year.

7. Commission Authority to Inspect Records

AMEREN (6)(B)(1) The commission will have the authority to review, inspect and audit books, accounts and other records kept by a regulated electrical corporation for the purpose of ensuring compliance with this rule and making findings available to the commission.

ENRON (8)(B)(1) The Commission shall have the authority to review, inspect and audit books, accounts and other records kept by a regulated electrical corporation or competitive affiliated entity for the sole purpose of ensuring compliance with this rule and making findings available to the Commission

8. Commission Authority to Investigate Operations

AMEREN (6)(B)(2) The commission will have the authority to investigate the operations of a regulated electrical corporation for the purpose of ensuring compliance with this rule.

ENRON (8)(B)(2) The Commission shall have the authority to investigate the operations of a regulated electrical corporation or competitive affiliate and their relationship to each other for the sole purpose of ensuring compliance with this rule.

9. Period Records to be Retained

AMEREN (7) Records required under this rule shall be maintained by each regulated electrical corporation for a period of not less than six (6) years.

ENRON (9) Records required under this rule shall be maintained by each regulated electrical corporation for a period of not less than six years.

OPC (72)(A) Records required under this rule shall be maintained by each regulated electric corporation for a period of not less than six years.

10. Period Contract/Bid Records to be Retained

ENRON (6)(D) The regulated electrical corporation shall maintain, for a minimum of six Years, a record of all contracts and related bids for any transaction between it and a competitive affiliate relating to the provision of work, products or services.

11. Compliance Audit

ENRON (6)(F) No later than one year after promulgation of these affiliate rules and at a minimum, every third year thereafter, the regulated electrical corporation shall have an audit prepared by independent auditors that verifies that the regulated electrical corporation is in compliance with these affiliate rules. The regulated electrical corporation shall file this audit with the Commission no later than one year after promulgation of these rules, and serve it on all parties to this proceeding. The audits shall be at shareholder expense.

12. Compliance Plans

ENRON (10) Each regulated electrical corporation shall file with the Commission a compliance plan conforming to the terms and conditions set forth in these affiliate rules. Upon the creation of a new competitive affiliate, the regulated electrical corporation shall immediately file a compliance plan for such affiliate.

OPC (10) Each regulated Electric corporation shall file with the Commission a compliance plan conforming to the terms and conditions set forth in these affiliate rules. Upon the creation of a new affiliate, the regulated Electric corporation shall immediately file a compliance plan for such affiliate

13. Complaint Procedure

ENRON (11) Regulated electrical corporations shall establish and file with the Commission a complaint procedure. All complaints, whether written or verbal, shall be referred to a designated officer of the regulated electrical corporation. The designated officer shall verbally acknowledge such complaint within five working days of receipt. The designated officer shall prepare a written statement of the complaint which shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and the specific claim.

The designated officer shall provide a copy of the statement to the complainant and shall communicate the results of the preliminary investigation to the complainant in writing within ~~thi~~ days after the complaint was received including a description of any course of action which will be taken. In the event the regulated electrical corporation and the complainant are unable to resolve the complaint the complainant may address the complaint to the Commission. If the Commission determines that probable cause exists for the complaint, it shall order a hearing, give notice of the hearing and conduct the hearing as it would any other hearing.

OPC (11) Regulated Electric corporations shall establish and file with the Commission a complaint procedure. All complaints, whether written or verbal, shall be referred to a designated officer of the regulated Electric corporation. The designated officer shall

verbally acknowledge such complaint within five working days of receipt. The designated officer shall prepare a written statement of the complaint which shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and the specific claim. The designated officer shall provide a copy of the statement to the complainant and shall communicate the results of the preliminary investigation to the complainant in writing within thirty days after the complaint was received including a description of any course of action which will be taken. In the event the regulated Electric corporation and the complainant are unable to resolve the complaint, the complainant may address the complaint to the Commission. If the Commission determines that probable cause exists for the complaint it shall order a hearing, give notice of the hearing and conduct the hearing as it would any other hearing.

14. Complaint Log

ENRON (12) Complaint Log: Each regulated electrical corporation shall maintain a log of all new, resolved and pending complaints. The log shall be available to the public upon request and shall be filed annually with the Commission. The log shall include, at a minimum, a written statement of the complaint and the resolution of the complaint or an explanation why the complaint is still pending.

OPC (12) Each regulated Electric corporation shall maintain a log of all new, resolved and pending complaints. The log shall be available to the public upon request and shall be filed annually with the Commission. The log shall include, at a minimum, a written statement of the complaint and the resolution of the complaint or an explanation why the complaint is still pending.

15. Enforcement

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

ENRON (13)(A) When enforcing these standards, or any order of the Commission regarding these standards, the Commission may apply any remedy available to the Commission.

OPC (13)(A) When enforcing these standards, or any order of the Commission regarding these standards, the Commission may apply any remedy available to the Commission.

ENRON (13)(B) No provision of these affiliate rules shall preclude the application of state and federal antitrust laws.

OPC (13)(B) When enforcing these standards, or any order of the Commission regarding these standards, the Commission may apply any remedy available to the Commission.

16. Penalties

ENRON (14) In addition to other penalties available under the Commission's rules and regulations, the Commission shall have the authority to do any of the following: (i) terminate the transaction: (ii) prospectively limit or restrict the amount, percentage,

or value of transactions entered into between a regulated electrical corporation and its competitive affiliate(s) as a remedy for a violation of these standards: (iii) assess such penalties as described in subsections (A) and (B) of this section: or (iv) apply any other remedy available to the Commission.

(A) Penalties shall reflect the actual or potential injury or both to ratepayers and competitors, and the gravity of the violation. Repeated violations will require more severe penalties.

(B) If any regulated electrical corporation found by the Commission to have violated these rules fails to perform a duty imposed on it or fails neglects or refuses to obey an order, regulation directive or requirement of the Commission such regulated electrical corporation shall be subject to a penalty of no less than \$5,000 nor more than \$20,000 for each separate violation, in addition to any other penalties assessed by the Commission. The Commission may deem a violation which continues for more than one day to be separate violations for each day a violation described herein continues.

(C) Any penalties assessed by the Commission will in no manner preclude a party's rights to pursue damages in a court of competent jurisdiction.

(D) If the Commission, in two separate orders, finds that a regulated electrical corporation has violated these standards more than twice in a period of twelve months, such finding will trigger a prohibition for one year on the regulated electrical corporation's entry into any transactions with the competitive affiliate involved in such violations. In the event that such prohibition is not honored, the Commission may consider extension of the prohibition period as appropriate or may permanently preclude the regulated electrical corporation from dealing with the competitive affiliate in the regulated electrical corporation's service territory. The mandatory penalties set forth in subsection(B) of this section do not preclude any other penalties set forth in these rules or this state's statutes.

(E) For each violation of these rules, the regulated electrical corporation will be obligated to place in one monthly billing packet a notice, written by the Commission, which informs the public of the substance of the violation and explains how similar violations can be reported by members of the public.

OPC (14) In addition to other penalties available under the Commission's rules and regulations, the Commission shall have the authority to do any of the following: (i) terminate the transaction: (ii) prospectively limit or restrict the amount, percentage, or value of transactions entered into between a regulated Electric corporation and its competitive affiliate(s) as a remedy for a violation of these standards:

(iii) assess such penalties as described in subsections (A) and (B) of this section: or (iv) apply any other remedy available to the Commission.

(A) Penalties shall reflect the actual or potential inquiry, or both, to ratepayers and competitors, and the gravity of the violation. Repeated violations will require more severe penalties.

(B) If any regulated Electric corporation found by the Commission to have violated these rules fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, regulation, directive, or requirement of the Commission, such regulated Electric corporation shall be subject to a penalty of no less than \$5,000 nor more than \$20,000 for each separate violation, in addition to any other penalties assessed by the Commission. The Commission may deem a violation which continues for more than

one day to be separate violations for each day a violation described herein continues.

- (C) Any penalties assessed by the Commission will in no manner preclude a parties' rights to pursue damages in a court of competent jurisdiction.
- (D) If the Commission, in two separate orders, finds that a regulated Electric corporation has violated these standards more than twice in a period of twelve months, such finding will trigger a prohibition for one year on the regulated Electric corporation's entry into any transactions with the competitive affiliate(s) involved in such violations. In the event that such prohibition is not honored, the Commission may consider extension of the prohibition period as appropriate or may permanently preclude the regulated Electric corporation from dealing with the competitive affiliate in the regulated Electric corporation's service territory. The mandatory penalties set forth in subsection (B) of this section do not preclude any other penalties set forth in these rules or this state's statutes.
- (D) For each violation of these rules, the regulated Electric corporation will be obligated to place in one monthly billing packet a notice, written by the Commission, which informs the public of the substance of the violation and explains how similar violations can be reported by members of the public.

17. Variances

AMEREN (9)(A) A variance from the standards in this rule may be obtained by compliance with paragraph (9)(A) 1 or (9)(A) 2. The granting or a variance to one regulated electrical corporation does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated electrical corporation to comply with the standards

1. The regulated electrical 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 electrical corporation may engage in an affiliate transaction not in compliance with the standards set out in sub-section (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 (9)(A)2.A. and (9XA)2.B. of this rule—
 - A. All reports and record retention requirements for each affiliate transaction must be complied with; and
- D. 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 non-complying affiliate transaction. The notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of subsection (2XA), 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 electrical corporation's annual CAM filing the regulated electrical corporation shall provide to the secretary of the commission a list of all non-complying affiliate transactions which occurred between the period of the last filing and the current filing. Any affiliates 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.

OPC (p. 5) The Notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of Section (2) (A), and shall provide a detailed explanation of how the affiliate transaction was in the best interests of the regulated customers. Within 30 days of the notice of the non-complying affiliate transaction, any party shall have the right to request a hearing regarding the non-complying 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 Electric corporation's annual CAM filing the regulated Electric corporation 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 non-complying affiliate transaction resulted in the best interests of the regulated customers.

MOU (7) Any utility service provider may apply for a waiver from the requirements of this rule, which waiver may be granted for good cause shown.

ATTACHMENT B

STAFF REPLY TO AMEREN WITNESS -John Landon

A. Fundamental Principle For The Commission's Affiliate Transaction Rules.

Ameren's witness John H. Landon states that the overarching goal of the Commission's rules on Affiliated Transactions should be to "improve consumer welfare." [p.2] This happens when "consumers can consume a greater quantity or higher quality of services at lower prices." [p.2] While Staff agrees with this principal, Mr. Landon's application of that principle to the affiliate transaction rules causes concern. In applying the consumer welfare maximization principle, Mr. Landon states that "all competitors should be able to exploit their legitimate competitive advantages so they can be effective in the marketplace." [p.3] According to Mr. Landon, legitimate competitive advantage comes from economies of scale and economies of scope, irrespective of how the utility or its affiliates have obtained these economies. He argues that: "[e]liminating the cost savings from these economies will make the utility and its affiliates less efficient and will reduce consumer welfare through increased prices," and "[c]onsumers will be harmed if regulators establish rules that prevent firms from exploiting economies of scale and scope." [p.4] Mr. Landon then sites three examples of how these economies would be eliminated by affiliate transaction rules: (1) "forced separation of integrated units;" (2) restricting the expansion of utilities into unregulated areas;" and (3) "prohibiting the sharing of overhead expenses such as accounting, legal and finance through service affiliates." [p. 5] It should be pointed out that none of these three measures are included in the proposed Missouri affiliate transaction rules for electric, natural gas or steam. In addition, the Staff disagrees with the unconditional statement that consumer welfare will be harmed if a utility is prevented from "exploiting economies of scale and scope." [p. 4]

To "exploit" means to take advantage of a situation for one's own advantage. One way in which economies are exploited is to increase profits by lowering costs. A second way economies are exploited is to lower price as a barrier to entry to competitors. Neither of these exploitations of economies have the long-run benefit of maximizing consumer welfare. Even with lower prices in the short run, when the lower price effectively keeps competitors out of the market, consumers are not benefited in the long run. When, in the long run, lower costs through economies of scale and scope can only be obtained for a single producer of goods and services, this is the case of a natural monopoly whose price should be regulated.

In his comments, Mr. Landon has ignored the possibility of the utility having gained its competitive advantage (economies of scale and scope) because of its unique status as a regulated monopolist. If the utility's competitive advantage either cannot be obtained by a non-utility competitor or can only be obtained at great cost in either time or resources, then the utility has an *unfair competitive advantage*. If nothing were done to prevent this unfair competitive advantage, then regulators would not meet the criteria that Mr. Landon professes as a goal for the Commission:

The goal of the Commission should be to ensure that the playing field is level and that all competitors have the opportunity to succeed or fail based on their own competitive merit.

The Staff agrees with the level playing field principle, and believes that the proposed rule meets this standard by not allowing a utility to have an unfair competitive advantage because of its monopoly status as a utility. Examples to illustrate this principle are presented in the following two sections, where the problems of cross-subsidization and discrimination are discussed.

B. Cross-Subsidization: Potential Conflicts With Other Regulatory Bodies

Section 2A of the proposed Missouri rules on affiliate transactions deals with the issue of cross-subsidization. Mr. Landon correctly states that cross-subsidization can result in “illegitimate advantage.” [p. 6] He is also correct where he states that cross-subsidies occur when utilities sell goods and services or share facilities with an affiliate at “below cost,” or where the utility buys goods and services from an affiliate at “above-market prices.” [p. 7] Where Mr. Landon and the Staff disagree is in the potential conflicts that might occur in the application of the rules proposed for Missouri when compared to other rules respecting cross-subsidization which apply to Ameren from the Securities and Exchange Commission (SEC).

For example, Mr. Landon states that “prices between entities in a holding company are established at fully allocated costs as approved by the SEC.” [p.12] The exact language of the most relevant portion of the SEC rules is as follows:

Sec. 250.91 Determination of cost.

(c) Any expense (including the price paid for goods) incurred in a transaction with an associate company of the performing or selling company (directly or through one or more other associate companies thereof), to the extent that it exceeds the cost of such transaction to such associate company, shall not be included in determining cost to such performing or selling company.

What this rule indicates is that when a transaction takes place between affiliates, the cost of the goods and services will be booked at fully allocated cost.¹ Mr. Landon goes on to state that the “cross-subsidy concerns are adequately addressed by the requirements of the SEC under PUHCA,” and “the financial standard set under Section A is inconsistent with that embodied in SEC’s regulations and inconsistent with the service company format that the SEC requires.”

¹ Parts 250.91 (a) and (b) to the SEC rule specifies the details of what is meant by the word “cost” used in part (c). These specifications make it clear that “cost” should be what the proposed Missouri affiliate transactions rule define as fully allocated costs.

[pp. 14-15] Further, Mr. Landon asserts that “the provisions of Section A go well beyond those necessary to ensure that cross-subsidy is averted by setting a financial standard that serves to undermine advantages a competitive affiliate could realize in the market.” [p. 15]

The Staff respectfully disagrees with Mr. Landon’s conclusions. The Staff agrees that SEC rules require that transactions that have taken place between affiliates be booked at fully allocated cost. The key phrase is “transactions that have taken place.” Section 2A of the proposed Missouri rules for affiliate transactions also requires that transactions that have taken place be booked at fully allocated cost, but adds a provision that if the regulated utility is the buyer it should not pay an affiliate more than market price and if the regulated utility is the seller, it should not sell to an affiliate at less than market price.

The proposed Missouri rule on affiliate transactions anticipates that when the utility is considering purchasing goods or services from an affiliate (e.g., accounting or financial services), if the utility can purchase those same services from the market at a lower cost, then it should do so. It would be incorrect to interpret the SEC rule as being contradictory to this good business practice. The SEC rule does not force the utility to purchase services from an affiliate when it can procure those services from the market at a lower cost. In addition, this does not violate Mr. Landon’s concept of not allowing economies to be exploited. Indeed, if economies exist in the provision of affiliate services, then the affiliate’s fully allocated cost for those services should be less than the market cost, and the utility can fully exploit the savings by buying from the affiliate.

The proposed Missouri rule anticipates that when the utility is selling goods or services to an affiliate (e.g., energy from regulated sources²), if these goods and services can be sold in the market at a price that is greater than fully allocated cost, then the profits from these sales would be booked to the utility, not to the affiliate. Notice that when the utility is the seller, it books its costs and the revenues that it receives from the sale. The difference is profits. If the sale to the affiliate is being considered at fully allocated cost, but a sale in the market is at a higher price, the proposed Missouri rule anticipates that the utility should sell to the market at the higher price. Again, to interpret that the SEC rule forces the utility to sell to an affiliate at a below market price is a misreading of that rule. In addition, if the regulated utility enjoys economies in the provision of these goods and services, it is more fully allowed to “exploit” those economies by selling where it can receive the highest price.

C. The Fallacy Of Limiting Discriminatory Access To “Non-Essential” Information and Facilities.

Section (2)(B) of the proposed Missouri rules for affiliate transactions deals with the issue of limiting discriminatory (preferential) access to information and facilities, as well as providing affiliates with preferential service or treatment. Mr. Landon asserts that lack of preferential access, service or treatment should be limited to “essential” information, services or facilities. Mr. Landon defines “essential” services and facilities as *“primarily ... those that cannot be practicably or efficiently duplicated by each competing firm in the market.”* [p. 7] As examples, Mr. Landon includes only the utility’s transmission and distribution facilities. Mr. Landon defines “essential” information as *“exclusive information of competitive significance about a utility’s regulated operations that a utility acquires by virtue of its status as a regulated*

² For electric, this would be electricity from plants built to provide electricity to the utility’s electric customers. For steam, this would be steam from plants built to provide steam to the utility’s steam customers. For natural gas, this would be gas from storage that was purchased to serve the utility’s natural gas customers.

monopoly in a service area." [p. 8] As examples, Mr. Landon includes "aggregated, non-customer-specific information necessary to use essential facilities," and "regulated customer information and contacts." [p. 8] Mr. Landon goes on to state that "information that does not relate to essential facilities or services, in most cases, is information that the utility should not be compelled to share with non-affiliated suppliers." [p. 9] As examples of such services, Mr. Landon includes "corporate support, human resources, internal policies of the utility, and marketing of the utility's competitive services" ("such as new products that the utility is planning to offer or segments of the market that it plans to target"). [p. 9] Mr. Landon states that the proposed Missouri rules "appear to be broader in scope than necessary and will tend to dampen the efficiency of competitive markets that affiliate companies participate in." [p. 13] It appears that Mr. Landon's statement is based on the omission of the word "essential," as he states, "[l]egitimate preferential service concerns should be limited to those relating to access to essential facilities and information." [p. 13]

As a concrete example, consider the facilities and information related to the utility's customer information system. Because of its status as a monopoly utility, the utility has detailed information on its customers readily accessible in a highly sophisticated computer system. If the utility allowed an affiliate to use that information and system to send out advertisements or billings for non-regulated goods and services, then the affiliate would have a tremendous competitive advantage over companies attempting to sell the same goods and services. The proposed standard (2)(B) would not allow the utility to provide this service to an affiliate without making the same service available to other competitors wanting to sell similar, non-regulated goods and services. In essence, the proposed standard (2)(B) would require that all services, information and use of facilities that are a by-product of its regulated operations not be used to

give an affiliate a competitive advantage. Mr. Landon would restrict this prohibition to what he defines as "essential" services, information and facilities.

In the above example, customer information and the facilities to access individual customers with advertising and billing appear not to fit under Mr. Landon's definition of "essential." Clearly, Mr. Landon did not include customer information facilities as an example of "essential" facilities. Also, in Ameren's proposed rule on affiliate transactions, it only includes customer information (Ameren's section 2D) and omits customer information facilities (Ameren's sections 2B and 2E). Thus, it appears that under Ameren's proposal, the customer information facilities are not included as "essential" facilities, even though those facilities are available because of the utility's need for them as a regulated monopolists and the ability and cost to duplicate these facilities would be a major barrier to entry for competitors.

This illustrates the major difference between Ameren's approach and the approach set out in the proposed Missouri rules on affiliate transactions. Ameren wants to minimize the categories of facilities and information that would be covered by the preferential treatment prohibition. In theory, Ameren would limit those to "essential" services, information and facilities, but in practice the rule would include a list of: essential services (i.e., "services provided under tariffs on file with the Missouri Public Service Commission – Ameren's proposed 2A); access to essential facilities (i.e., "scheduling, transmission or distribution of electricity" – Ameren's proposed 2B); and essential information (i.e., "customer information" – Ameren's proposed 2D). This listing approach to "essential" services, facilities and information requires that the Commission make an up-front decision about specific services, facilities and information that are deemed to be "essential." The risk in this approach is that critical items are

likely to be missing from such a list. Apparently, this is consistent with what Mr. Landon calls “light-handed” regulation.

In contrast, the proposed Missouri rules on affiliate transactions prohibit any preferential service, information or treatment to an affiliated entity over another party at any time. Preferential services, information or treatment are limited to those actions by the regulated utility that would result in the affiliated entity having an unfair advantage over its competitors (Section (1)(F) of the proposed Missouri rules on affiliate transactions). Instead of listing specific services, facilities and information, the rule limits the application to what would properly be termed level playing field issues. Violations of this rule would occur on a complaint basis, where the Commission could hear specific evidence as to whether or not the service, access to facilities or information provided would result in an unfair advantage for the affiliated entity. The Staff does not consider this to be “heavy-handed” regulation. Instead, this is a very reasonable approach in which the utility must make an internal decision about whether provision of a service, access to the use of a facility or information would result in a competitive advantage for an affiliate.

Indeed, beyond the method of application, at the heart of the disagreement between Staff and Ameren is whether the standard should be a level playing field or use of essential facilities and information. In part, it appears that Mr. Landon agrees with the level playing field standard where he states: “[t]he goal of the Commission should be to ensure that the playing field is level and that all competitors have the opportunity to succeed or fail based on their own competitive merits.” [p. 6] However, Mr. Landon then limits “unfair” advantage to apply only to essential facilities. The Staff believes that any competitive advantage that is gained because of the utility’s status as a regulated monopoly is an unfair competitive advantage. Moreover, the types

of "legitimate competitive advantages" that a holding company can gain is through shared activities among affiliates due to the presence of common buyers, channels, technologies, and other factors, rather than activities in which non-regulated affiliates are allowed to exclusively leach from the by-products of the regulated utility.

D. The Issue of Employee Transfers

Mr. Landon would restrict the affiliate transaction rules to be limited to "employees that may have competitively sensitive knowledge or information." [p. 13] He argues: (1) "[e]mployees' training and experience belongs to them, not to the regulated utility," (2) "it is difficult to see how the Staff's requirement to consider market and fully allocated cost in setting prices would apply in the case of employees;" and (3) "this requirement places an asymmetrical burden on the utility's competitive affiliate" because "[r]egulated utility employees are free to seek employment with the affiliate's competitors without commensurate payment requirements." [p. 13] The Staff agrees with these comments. However, the Staff is still very much concerned with a situation in which the regulated utility lends or shares the services of its employees to an affiliate. In these cases, the regulated utility should be compensated fairly for those employee services. To cover this concern, the rule could be modified in section (2)(A)2 to change "trained employees" to "trained employee services."

ATTACHMENT C

A BRIEF SYNOPSIS OF WHAT OTHER STATES HAVE DONE

The Ohio, Kentucky & Indiana Commissions use these affiliate guidelines as developed from the PSI Energy & Cincinnati Gas & Electric:

1. They use the 10 % control doctrine the same as our rules.
2. They require that all affiliate contracts be filed with the Commissions as well as the SEC.
3. The Commissions have access to the affiliates of PSI and Cinergy.

The Pennsylvania Commission highlights:

1. 5% ownership of the Company is deemed as having control.
2. The LDC should apply tariffs in a nondiscriminatory manner to its affiliate its own marketing division and any non-affiliate.
3. They talk about not allowing preferential treatment.
4. The marketing codes of conduct are the same or similar to the Commission's proposed rules. Customer information is essential and the PA Commission does not allow the affiliate to have preferential treatment with this information.
5. They also have a separation of employees between a LDC and its affiliate.

The Arizona Commission highlights:

1. The definition of affiliate is similar to the Commission's proposed rule
2. The affiliate must provide access to the Commission for review.

The New York Commission highlights:

1. 5% ownership of the Company is deemed as having control.
2. The requirement of LDCs to account for and furnish all transactions between the LDC and its affiliates.
3. Customer information cannot be only be revealed to the affiliate.
4. The NY Staff has access to the books & records of the LDCs affiliated companies.
5. The LDCs must set up a complaint procedure and that should be responded to within 20 days written response.
6. They indorse the separation of employees between an affiliate and a LDC
7. There is to be an annual filing of annual reports to the Commission.
8. Transferred employees from the LDC to a unregulated subsidiary will be compensated in an amount equal to 25% of the employees prior years annual salary.
9. They follow fully allocated costs (FDC).
10. There shall be no preferential terms, nor such terms are available exclusively to customers who purchase goods or services from, or sell goods and services to, an affiliate of the Company.
11. Any customer information received by the LDC must be made available to its affiliate's competitors on a simultaneous and comparable basis.
12. The LDC and its unregulated affiliates will have separate operating employees.

Ohio's code of conduct for Columbia Gas of Ohio highlights:

- 1) Columbia must apply any tariff provision relating to transportation services in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.
- 2) Columbia must strictly enforce a tariff provision for which there is no discretion in the application of the provision.
- 3) Columbia may not, through a tariff provision or otherwise, give any Marketer or any Marketer's customers preference in matters, rates, information, or charges relating to transportation service including, but not limited to, scheduling, balancing, metering, storage, standby service or curtailment policy. For purposes of Columbia's CHOICE Program, any ancillary service provided by Columbia not tariffed, will be priced uniformly for all Marketers and available to all equally.
- 4) Columbia must process all similar requests for transportation in the same manner and within the same approximate period of time.
- 5) Columbia shall not disclose any customer information to any affiliate unless such customer authorizes disclosure of such information.
- 6) If a customer requests information about Marketers, Columbia should provide a list of all Marketers operating on its system, but shall not endorse any Marketer nor indicate that any Marketer will receive a preference.
- 7) Before making customer lists available to any Marketer, Columbia will use electronic mail to provide notice to all Marketers of its intent to make such

customer list available. The notice shall describe the date the customer list will be made available to all Marketers.

- 8) To the maximum extent possible, Columbia's operating employees and the operating employees of its marketing affiliate must function independently of each other. Complete separation of gas procurement activities from its affiliated marketing procurement activities.
- 9) No conditioning or tying of agreements for gas supply.
- 10) They must maintain separate books of accounts and records.
- 11) No communication shall occur where the use of a marketing affiliate will procure an advantage.
- 12) Shall establish a complaint procedure concerning compliance of standards of conduct.
- 13) The marketing affiliate cannot use the LDC's logo in its promotional material, unless the promotional material discloses in plain, legible or audible language, on the the 1st page or at the 1st point where Columbia Gas of Ohio's name or logo appears, that its marketing affiliate is not the same company as Columbia Gas.

The Delaware Commission highlights:

1. Uses a CAM in place for affiliated transactions.
2. Customer information is treated the same as other states, where the customer must give written authorization for release of their information.
4. The use of bill inserts, promotions within the bill envelope shall be available to affiliates and non-affiliates alike, on the same terms and conditions.

5. There shall be a prohibition of advantages by utility affiliation.
6. Delaware has an annual requirement of filing for affiliated companies that includes,
 - 1) All contracts entered into with affiliated companies, and all transactions undertaken with affiliates without a written contract.
 - 2) The amount of affiliate transactions by affiliate by account charged.
 - 3) The basis used to record affiliate transactions (i.e., book value, fmV, fdc).
 - 4) Total costs allocated or charged back to each business unit, and the allocation of infrastructure costs to each business unit. And,
 - 5) Updates of the allocation factors used for each infrastructure cost center.
7. Delaware also indicates that the books and records of the parent company and other affiliates when required in the application of Company's Code of Conduct and CAM should be made available.
8. The books and records should be maintained in sufficient detail to maintain verification and compliance of the rules, and continue to submit all reports currently filed with the Commission. Delaware has the use of the CAM
9. Delaware allocates costs under FDC.

The Georgia Commission highlights:

1. LDC's must be required to apply the same delivery terms and conditions in the same manner to all similarly situated shippers, whether affiliated or not.
2. Affiliates must not enjoy preferential treatment
3. Cross subsidies between the utility and its affiliate marketer must be avoided

4. All information made available to a marketing affiliate must be made available to all marketers at the same time to ensure non-discriminatory access to information, service, and unused capacity and/or supply
5. Standards for reserve margins for gas supply and capacity must be established
6. LDC's and marketing affiliates must keep separate records and files open for Commission review
7. All gas purchase activity must be conducted separately by a utility and its marketing affiliate
8. A complaint procedure must be established to address potential abuse of the affiliate relationship

The Maryland Commission highlights:

1. Costing methodology is FDC
2. They use asymmetric pricing principles which are similar to the Commission's proposed rules
3. Separation of Employees between the LDC and its affiliate
4. Physically separate locations between LDC and its affiliate
5. No preferential treatment
6. No appearance that the marketing affiliate is part of the LDC's operations
Customer information, discounts, rebates, waivers, etc. shall be offered on a contemporaneously basis to affiliates and non-affiliates alike

The New Jersey Commission highlights:

1. No preferential treatment
2. Separation of Employees between the LDC and its affiliate
3. Customer information, gas supplies or capacities shall be offered on a contemporaneously basis to affiliates and non-affiliates alike
4. Costing methodology is FDC
5. Separate books and records
6. Complaint procedure

The Wisconsin Commission highlights:

1. Provide access to LDC information, services & unused capacity to all market participants
2. No preferential treatment
3. Separation of employees between the LDC and its affiliate
4. Maintain separate books and records
5. Maintain detailed records for each affiliate transaction
6. The establishment of a complaint procedure

Washington Commission Highlights:

1. RCW 81.16.010. Definition of "affiliated interest" uses five percent or more of voting securities as a determination of ownership.
2. WAC 480-146-240. Has a waiver clause.
3. WAC 480-146-320. A report on affiliated transactions for the year is due on June 1 to the commission.

4. RCW 80.16.020. Utilities must file contracts or arrangements with affiliated interests before they take affect.
5. WAC 480-146-320. Annual report to include a description of the procedure for allocating costs between the utility and its affiliates.

Connecticut Commission highlights:

1. Section 16-xxx-1. Rules are for electric distribution companies and their generation affiliates.
2. Section 16-xxx-5-(i). Shared or joint costs shall be allocated based on actual embedded costs.
3. Section 16-xxx-5-(i). Distribution company shall pay fair market value for all goods and services produced by the affiliated entities.
4. Section 16-xxx-3-(a). Prevent preference to generation affiliate over non-affiliated entities, or allow employee, officer, etc. access to information of the distribution company's customers or system that is not available on a equivalent basis to non affiliated entities.
5. Section 16-xxx-3-(e). Electric distribution companies shall not solicit business for the affiliate, acquire information on behalf of the affiliate, provide referral to the affiliate, give the appearance of speaking on the behalf of or represents the affiliate, or give the appearance that the affiliate speaks for the company.
6. Section 16-xxx-4-(b). Distribution company shall make non-customer specific non-public information available to the affiliate only if the company makes

the information available on the same terms and conditions to all other entities.

7. Section 16-xxx-5-(b). The books and records of the affiliate shall be open for examination by the DPUC with respect to transactions between the company and the affiliates.
8. Section 16-xxx-5-(d). Physical separation of company and affiliate.
9. Section 16-xxx-5-(h)-(2). No joint employees between company and affiliate. Company will track employee transfers between company and affiliates. If employee transfers to the affiliate the employee may not transfer back for a period of one year.
10. Section 16-xxx-7. Compliance plan to be filed by July 1, 1999.
11. Section 16-xxx-7-(d). DPUC will assess civil penalties.

Rhode Island Commission highlights:

1. Section II. Rules are for gas marketers.
2. Section IV(A). Use of shared employees shall be minimized. Use of a company employee by the affiliate is not allowed if employee will be exposed to market sensitive information.
3. Section IV(B). Affiliate shall have physically separated facilities.
4. Section IV(C). The utility may not disclose aggregated information or non-customer information to affiliate without making it equally accessible to other interested parties.

Illinois Commission highlights:

1. Section 450.30. Electric utilities shall not preferential treatment, any services offered to the affiliate shall be made to all non-affiliated entities.
2. Section 450.50. Employees of the electric utility affiliates shall not have preferential access to any delivery service information that is not available to nonaffiliated entities.
3. Section 450.100. Except in relation to corporate support and emergency support, electric utilities and their affiliates shall function independently of each other, and shall not share services or facilities.
4. Section 450.110. Except in relation to corporate support and emergency support, electric utilities and their affiliates shall not share employees.
5. Section 450.120. Costs associated with transfer of goods and services between an electric utility and its affiliate shall be priced as specified in, and allocated as per the Commission approved services and facilities agreement.
6. Section 450.160. Penalties can be imposed for violations of these provisions.

Iowa Commission highlights:

1. Must maintain separate records
2. LDCs and their affiliates must allow the Commission access to books, records, accounts, documents, and other data and information which the Commission finds necessary to effectively implement and effectuate the provisions of this rule.
3. An exemption or waiver is allowed

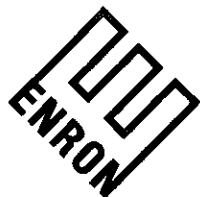
4. There is to be an annual filing relating to affiliated transactions
5. They use FDC.

California Commission highlights:

1. 5% ownership of the Company is deemed as having control.
2. They use FDC
3. They have a variance
4. No preferential treatment financial and non-financial
5. They have similar record keeping requirements
6. Separation of books and records
7. Separation of employees between LDC and its affiliates. Transferred employees from the LDC to the affiliate shall have the affiliate compensate the LDC 25% of the employee's base annual compensation, unless LDC can demonstrate a lesser percentage (equal to at least 15%) is appropriate for the class of employee included
8. They have an annual compliance filing as it relates to the affiliated transactions conducted over the course of the year.

The Nevada Commission highlights:

1. Separation of books and records between LDC and the affiliate
2. Separation of employees
3. No preferential treatment financial and non-financial
4. They use asymmetric pricing
5. They have a complaint procedure



Enron Corp.

400 Metro Place North
Dublin, OH 43017-3375

August 2, 1999

FILED

AUG 2 1999

BY FACSIMILE AND FEDERAL EXPRESS

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Truman Building, Fifth Floor
301 West High Street
Jefferson City, MO 65101

Missouri Public
Service Commission

Re: Proposed Rule on Affiliate Transactions, Dock Nos. EX-99-442,
GX-99-444 and GX-99-445

Dear Mr. Roberts:

Enclosed for filing with the Commission are an original and fourteen (14) copies of the Reply Comments of Enron Energy Services (Enron) in the above-referenced dockets.

Please file-stamp the additional copy and mail it back to me in the enclosed, self-addressed stamped envelope. Thank you for your assistance in bringing this filing to the attention of the Commission, and please call me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "T. S. Reichelderfer". The signature is fluid and cursive.

Thomas S. Reichelderfer
Manager, State Government Affairs

/lck
Enclosure

Natural gas. Electricity. Endless possibilities.