

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY

January 3, 2000

CASE NO: EX-99-442, HX-99-443, GX-99-444, GX-99-445

Office of the Public Counsel

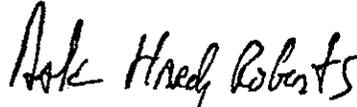
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Missouri Public Service Commission
P.O. Box 360
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Enclosed find certified copy of an **ORDER OF RULEMAKING** in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Cases No. EX-99-442, HX-99-443, GX-99-444, and
GX-99-445

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4 CSR 235-3.020 Health Service Provider Certification is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2140-2141). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The State Committee of Psychologists received one comment requesting that the board change the date in subsection (A) and (C) to December 31, 1996 and eliminate subsection (B). The committee determined that the date could not be changed because it is established in statute.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 4—Public Complaint Handling and Disposition Procedures**

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under section 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-4.030 Public Complaint Handling and Disposition Procedure is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2141-2142). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Missouri Public Service Commission
Division 240—Public Service Commission
Chapter 20—Electric Utilities**

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.250, RSMo Supp. 1999, and 393.140, RSMo 1994, the commission adopts a rule as follows:

4 CSR 240-20.015 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 1999 (24 MoReg 1340-1345). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This order of rulemaking was approved by the Missouri Public Service Commission with one dissenting opinion that has been filed with the Commission's Secretary. Extensive written comments and reply comments were submitted and public hearings were held on September 13, 14 and 15, 1999. The Commission's staff supported the proposed rule with a few suggested changes based on the other comments received. The Office of Public Counsel and others in support of

the rule advocated for more stringent provisions. Comments from the regulated utilities supported less stringent provisions or opposed adoption of the rule.

COMMENT: Comments were received from several of the commenters adverse to the jurisdiction of the Commission to promulgate these rules. The Commission's Staff anticipated these arguments in their comments and presented arguments supporting the Commission's jurisdiction.

RESPONSE: The Commission's rulemaking authority is based on proper legal authority and the Commission has jurisdiction to adopt these rules.

COMMENT: Comments were received from several of the commenters suggesting that contested case procedures should be followed in the promulgation of these rules. Related comments addressed whether witnesses at the public hearings should be sworn.

RESPONSE: The Commission has followed proper rulemaking procedures to adopt these rules.

COMMENT: A purpose of the rule is to prevent regulated utilities from subsidizing their unregulated operations. This would occur where costs of unregulated operations are shifted to ratepayers for regulated operations or where subsidies are provided to unregulated operations through preferential service or treatment, including pricing. All commenters in support of the rule agreed with the Commission's intended purpose. Commenters in support urged more stringent limits on preferential service or treatment. Most commenters in opposition expressed the view that cost shifting should be limited rather than prevented and that some limits on preferential service or treatment should be imposed but suggested that the proposed rule went too far on both types of subsidies.

RESPONSE: Generally, the rule as proposed, presents a moderate approach by the Commission. Other states that have adopted rules have taken approaches that were more stringent or approaches that were less stringent. The rulemaking record supports full, effective limitations on cost shifting. With respect to preferential service or treatment, the rulemaking record supports clarifying changes and making changes to allow more flexibility to regulated utilities. In most matters more stringent standards of conduct were not supported at this time.

COMMENT: Several commenters objected to the use of fully distributed costs (FDC) and "asymmetrical pricing" under section (2). Under the proposed rule, cost shifting and other subsidies are prohibited by application of the pricing standard under section (2). The standard uses both FDC and fair market price (FMP). FDC is a costing methodology that accounts for all costs by assigning all costs used to produce a good or service through a direct or allocated approach or a combination of direct and allocated costs. Under the standard, when a regulated utility acquires goods or services from an affiliate entity it may not pay more than the FDC for the utility to produce the good or service for itself or FMP, whichever is less. When a regulated utility transfers goods or services to an affiliate entity it must obtain the greater of FMP or FDC to the regulated utility. The term asymmetrical pricing refers to the fact that the pricing standard is reversed depending upon whether the regulated utility is buying or is selling.

RESPONSE: FDC assures that all costs are accounted and recovered and FMP, in conjunction with FDC, assures that the regulated utilities obtain the best prices or lowest costs possible whether buying or selling or producing goods or services. Asymmetrical pricing assures that the pricing standard is always applied to the favor of regulated utility's customers. The commenters that objected to FDC and asymmetrical pricing proposed costing methodologies that would not fully account for direct costs, indirect costs and opportunity costs or that would permit

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transactions to occur at a pricing standard that was not optimized to ratepayers. The alternative proposals would allow cost shifting to occur so long as a direct cost increase did not result for ratepayers. Prices for regulated goods and services would be higher over time than if the affiliate transactions occurred using FMP, FDC and asymmetrical pricing. These opponents to the proposed standard believed that transactions reflecting economies of scope and scale would be discouraged, even to the point that the affiliate transactions would not occur at all, and that incremental or marginal benefits under a less stringent standard would be lost to ratepayers. The Commission does not find this assertion to be credible. Foregoing opportunity costs or shifting the costs of unregulated activities to ratepayers will not generally be in the interests of ratepayers, or for that matter, the longer term interests of the regulated companies. If the cost shifting occurs to enhance profits for already profitable unregulated activities then ratepayers are being victimized to obtain predatory profits. The result would be a regulatory and ratepayer backlash. If the cost shifting occurs because the costs of the regulated company and its affiliates are higher than the costs of competitors then ratepayers are again being victimized, and, in addition the Commission would be allowing the misallocation of economic resources to keep an inefficient competitor in business. The solution here is to cut costs, a move that would benefit ratepayers, shareholders and consumers. If the cost shifting occurs merely to increase the rate of return in an otherwise low margin venture that shareholders would disapprove, ratepayers are again being victimized. The solution is to select ventures that offer an acceptable rate of return and to avoid those that do not. Economies of scope and scale do not result from shifting costs or foregoing profitable pricing opportunities; they result from the efficient and maximized application of resources. A company or group of companies in exclusively competitive markets may experience circumstances where shifting costs or foregoing profitable pricing opportunities serves a business purpose but those circumstances will be tempered by competition, particularly over the long run. A company or group of companies in mixed competitive and regulated markets has incentives to shift costs or forego profitable pricing opportunities that are not tempered by competition, but by regulators. The interests of ratepayers are not served by paying the costs of producing and selling goods and services that they are not buying. Section (10) of the rule permits variances. To the extent that circumstances occur where the best interests of ratepayers would be served by permitting cost shifting to occur for a period of time a waiver could be obtained.

COMMENT: Several commenters in support of the proposed rule advocated additional and more stringent standards to be added in a new section (2) regarding access to customer information, marketing activities including use of names and logos, some degree of physical separation from affiliates, and restrictions on the transfer of employees.

RESPONSE: Generally, additional and more stringent standards are not required. The record shows that the most likely competitors to affiliates of incumbent utilities are large, national or international corporations that have similar or equivalent competitive strengths. It is not the intent or purpose of the proposed rules to handicap any competitor. Doing so would be detrimental to both ratepayers and consumers, resulting in higher costs or less information for ratepayers and consumers. In most cases, the interests of ratepayers will be best served by simply assuring that costs are not shifted to them. In a few instances preferential service or treatment derived from regulated activity or resources should be limited where an unfair advantage is provided to an affiliate entity over its competitors.

COMMENT: Several commenters asserted that the record keeping and documentation requirements for regulated utilities and their affiliates would be unduly burdensome and costly, ultimately to the detriment of ratepayers.

RESPONSE: The anticipated fiscal costs for the proposed rule appear modest and not unduly burdensome. Industry input was requested and considered to develop the estimated fiscal impact. The rulemaking record shows that without the record keeping and documentation requirements it would be either impossible to obtain the information necessary to implement the rule or even more costly to implement the rule through more elaborate and time consuming regulatory audits. Many implementation costs, such as development of cost allocation manuals (CAM), would not be reoccurring. Some utilities already have costing and documentation methodologies in place that would satisfy many of the requirements of the proposed rule. There will be additional accounting and documentation requirements as a result of this rule. However, existing systems that already provide useful information would not be duplicated. Verifying FDC and FMP could produce benefits unrelated to regulatory requirements by providing data to support more efficient market based decision making and allocation of resources by the regulated utilities. Finally, the rule allows a great deal of flexibility to customize CAMs and to obtain variances where circumstances merit. The degree and detail of record keeping and documentation can be varied so that the cost of the regulation does not outweigh the benefits afforded.

COMMENT: Some commenters, both in support and in opposition, suggested a change to the rule to establish a defined dollar threshold for an exemption from certain compliance requirements.

RESPONSE: This type of exception can be addressed through individual variances under the rule. Companies will vary greatly in size, activities and the methods of implementing compliance systems.

COMMENT: Comments were received suggesting that a definition be provided for the term "corporate support" in order to allow greater flexibility to obtain economies in certain areas.

RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1). Subsection (2)(B) has been modified to provide greater flexibility in that standard.

COMMENT: Comments were received suggesting that a definition be provided for the term "information" since certain standards limit the provision of "preferential" "information" to affiliates and the meaning or scope is not clear.

RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1).

COMMENT: Comments were received suggesting that a definition be provided for the term "unfair advantage" since certain definitions and standards use this term and the meaning or scope is not clear.

RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1).

COMMENT: Comments were received suggesting the definition of "affiliate entity" posed Hancock Amendment issues and that the definition was not clear as to its application to departments within utilities.

RESPONSE: The Commission does not agree with these comments and did not change this definition.

COMMENT: Comments were received regarding the definition of "control" and particularly regarding the presumption of control based on the beneficial ownership of ten percent or more of voting securities or partnership interest. Comments either supported this presumption or criticized it and offered a presumption only at the fifty percent level.

RESPONSE: The Commission has not changed this definition. The record supports the reasonableness of the presumption as a general measure of an effective controlling interest. This presumption will aid in reducing regulatory burdens and costs. The presumption is not absolute and it is expressly rebuttable. A fifty percent presumption would not serve any efficient regulatory purpose since, in almost every case, it would represent both effective and absolute control.

COMMENT: Comments were received regarding the appropriateness of limiting employee transfers between regulated utilities and affiliates and the application of the pricing standards to these transfers under section (2). Several commenters noted the difficulty of pricing an employee or trained employee services. One commenter suggested simply establishing a fixed fee.

RESPONSE AND EXPLANATION OF CHANGE: Commenters offering explanations of how an employee or trained employee would be valued were not consistent or clear. Commenters acknowledged that valued employees could go to work for a non-affiliated competitor and there would be no payment to the regulated utility at all. Under these circumstances any payment appears to be more of a penalty or a handicap to an incumbent utility and its affiliate entities than a means to prevent cost shifting or unfair preferential treatment. The standards are properly directed at preventing cost shifting and subsidies. This purpose can be accomplished by focusing on the pricing of information and providing fair access to information. Employee transfers do not have to be restricted, penalized or compensated to accomplish this purpose. The Commission has deleted the descriptive list that included the term "trained employees" from paragraph (2)(A)2.

COMMENT: Comments were received from several commenters regarding section (2) concerning the provision of information to consumers and referrals for services provided by a regulated utility regarding an affiliate entity or its competitors. Some commenters proposed that the regulated utility provide information and referrals for competitors or references to marketing or referral services. Some commenters opposed any additional requirements and still others opposed any forced marketing on the behalf of competitors.

RESPONSE AND EXPLANATION OF CHANGE: The rule is not intended to handicap incumbent utilities or their affiliated entities. Maintaining a referral list would be an undue and costly burden. Even referral to commercial marketing resources or listings is unfair in that competitors will not be under any reciprocal requirement. As noted previously, competitors are most likely to be large national and international companies with their own marketing capabilities. The abuse or potential abuse to guard against is the possible perception that regulated services and unregulated goods or services are tied or are both regulated services. The Commission has made clarifying changes to this provision and added a subsection to assure that consumers are aware that affiliate entity services are not regulated services.

COMMENT: Several commenters suggested an additional standard to prohibit tying. One commenter noted that existing state and federal antitrust laws already address this matter.

RESPONSE: A standard expressly prohibiting tying is not required. An addition to the rule discussed below assures that state and federal antitrust laws remain applicable.

COMMENT: Several commenters suggested a specific standard related to providing information about customers.

RESPONSE AND EXPLANATION OF CHANGE: The rule as proposed addresses pricing and preferential access for information. However, the suggested standard would incorporate reasonable consumer and ratepayer protections and is desirable. This additional standard has been incorporated into the rule in an additional subsection in section (2).

COMMENT: Comments were received that suggested that approval of a CAM addressing certain matters should suffice for later ratemaking purposes concerning the same matters. The commenters also suggested that information presented in a CAM should be limited to Missouri operations and that non-regulated activities constituting less than ten percent of revenues should be treated as regulated activity and exempted from the rule requirements.

RESPONSE: The Commission does not anticipate that there will be significant cases where ratemaking treatment will be inconsistent with a CAM. However, a CAM addresses or anticipates many issues in a prospective fashion. Additional information may often come to light and be considered in a ratemaking proceeding. In a ratemaking proceeding the CAM does not bind the regulated utility or the Commission. This flexibility does not harm any interest. The rule allows for variances should it be desirable to grant them.

COMMENT: Two commenters recommended that the regulated utility maintain its books, accounts and records separate from those of its affiliates.

RESPONSE AND EXPLANATION OF CHANGE: This change would assist implementation of the rule and has been added to section (4).

COMMENT: A commenter suggested that section (4) include a record keeping requirement to list employee movement between the regulated utility and affiliated entities.

RESPONSE: This is a burdensome requirement that is not necessary based on the information presented in this rulemaking proceeding.

COMMENT: Some commenters suggested exempting small regulated utilities from the rule.

RESPONSE: This is a matter that could be taken up under a variance request.

COMMENT: Some commenters expressed uncertainty as to the permissible scope of variances under the rule.

RESPONSE AND EXPLANATION OF CHANGE: This section has been renumbered from (9) to (10). The scope and terms of variances, whether partial or complete, under section (10) will be determined by the facts and circumstances found in support of the application. Section (10) has been clarified.

COMMENT: Some commenters suggested that regulated utilities should train and advise their employees concerning the requirements of this rule.

RESPONSE AND EXPLANATION OF CHANGE: This change would assist in successfully implementing the rule. An additional section has been added to the rule for this change.

COMMENT: Some commenters referred to antitrust provisions and compared antitrust concepts to the proposed rules in their statements. The proposed rules address similar competitive and monopoly power issues.

RESPONSE AND EXPLANATION OF CHANGE: Under the Missouri Antitrust Law activities or arrangements expressly approved or regulated by a regulatory body of the state may be exempted from the antitrust law. It is not the Commission's intent to create any exemptions. An additional section has been added to the rule to clarify the Commission's intent.

4 CSR 240-20.015 Affiliate Transactions

(1) Definitions.

(A) Affiliated entity means any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county or a

combination of political subdivisions which, directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated electrical corporation.

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

(C) Control (including the terms "controlling," "controlled by," and "common control") means the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one (1) or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule. This provision, however, shall not be construed to prohibit a regulated electric corporation from rebutting the presumption that its ownership interest in an entity confers control.

(D) Corporate support means joint corporate oversight, governance, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities.

(E) Derivatives means a financial instrument, traded on or off an exchange, the price of which is directly dependent upon (i.e., "derived from") the value of one (1) or more underlying securities, equity indices, debt instruments, commodities, other derivative instruments or any agreed-upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates). Derivatives involve the trading of rights or obligations based on the underlying product, but do not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for a fixed rate of return.

(F) Fully distributed cost (FDC) means a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated (e.g., general and administrative) must also be included in the FDC calculation through a general allocation.

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

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

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

(J) Unfair advantage means an advantage that cannot be obtained by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

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

(2) Standards.

(A) A regulated 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; or

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

A. The fair market price; or

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

(B) Except as necessary to provide corporate support functions, 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.

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

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

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

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

(4) Record Keeping Requirements.

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

(B) 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, March 15 of the succeeding year:

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

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

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

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

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

6. The basis used (e.g., fair market price, FDC, etc.) to record each type of affiliate transaction.

(C) In addition, each regulated 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.

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

(10) Variances.

(A) A variance from the standards in this rule may be obtained by compliance with paragraphs (10)(A)1. or (10)(A)2. The granting of a variance to one regulated 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. The scope of a variance will be determined based on the facts and circumstances found in support of the application.

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 subsection (2)(A) of this rule, when to its best knowledge and belief, compliance with the standards would not be in the best interests of its regulated customers and it complies with the procedures required by subparagraphs (10)(A)2.A. and (10)(A)2.B. of this rule—

A. All reports and record retention requirements for each affiliate transaction must be complied with; and

B. Notice of the noncomplying affiliate transaction shall be filed with the secretary of the commission and the Office of the Public Counsel within ten (10) days of the occurrence of the noncomplying affiliate transaction. The notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of subsection (2)(A), and shall provide a detailed explanation of how the affiliate transaction was in the best interests of the regulated customers. Within thirty (30) days of the notice of the noncomplying affiliate transaction, any party shall have the right to request a hearing regarding the noncomplying affiliate transaction. The commission may grant or deny the request for hearing at that time. If the commission denies a request for 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 listing of all noncomplying affiliate transactions which occurred between the period of the last filing and the current filing. Any affiliate transaction submitted pursuant to this section shall remain interim, subject to disallowance, pending final commission determination on whether the noncomplying affiliate transaction resulted in the best interests of the regulated customers.

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

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

ORDER OF RULEMAKING Gx-99-444

By the authority vested in the Missouri Public Service Commission under sections 386.250, RSMo Supp. 1999, and 393.140, RSMo 1994, the commission adopts a rule as follows:

4 CSR 240-40.015 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 1999 (24 MoReg 1346-1351). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This order of rulemaking was approved by the Missouri Public Service Commission with one dissenting opinion that has been filed with the Commission's Secretary. Extensive written comments and reply comments were submitted and public hearings were held on September 13, 14 and 15, 1999. The Commission's Staff supported the proposed rule with a few suggested changes based on the other comments received. The Office of Public Counsel and others in support of the rule advocated for more stringent provisions. Comments from the regulated utilities supported less stringent provisions or opposed adoption of the rule.

COMMENT: Comments were received from several of the commenters adverse to the jurisdiction of the Commission to promulgate these rules. The Commission's Staff anticipated these arguments in their comments and presented arguments supporting the Commission's jurisdiction.

RESPONSE: The Commission's rulemaking authority is based on proper legal authority and the Commission has jurisdiction to adopt these rules.

COMMENT: Comments were received from several of the commenters suggesting that contested case procedures should be followed in the promulgation of these rules. Related comments addressed whether witnesses at the public hearings should be sworn.

RESPONSE: The Commission has followed proper rulemaking procedures to adopt these rules.

COMMENT: A purpose of the rule is to prevent regulated utilities from subsidizing their unregulated operations. This would occur where costs of unregulated operations are shifted to ratepayers for regulated operations or where subsidies are provided to unregulated operations through preferential service or treatment, including pricing. All commenters in support of the rule agreed with the Commission's intended purpose. Commenters in support urged more stringent limits on preferential service or treatment. Most commenters in opposition expressed the view that cost shifting should be limited rather than prevented and that some limits on preferential service or treatment should be imposed but suggested that the proposed rule went too far on both types of subsidies.

RESPONSE: Generally, the rule as proposed, presents a moderate approach by the Commission. Other states that have adopted rules have taken approaches that were more stringent or approaches that were less stringent. The rulemaking record supports full, effective limitations on cost shifting. With respect to preferential service or treatment, the rulemaking record supports clarifying changes and making changes to allow more flexibility to regulated utilities. In most matters more stringent standards of conduct were not supported at this time.

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

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 3rd day of January 2000.

Dale Hardy Roberts

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

