

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

In the Matter of the Establishment of a            )  
Working Case for the Review and                )  
Consideration of a Rewriting and Writing        )  
of Existing and New Affiliate Transaction        )  
Rules and HVAC Affiliate Transaction            )  
Rules    )

Case No. AW-2018-0394

**PUBLIC COUNSEL’S RESPONSE TO STAFF’S SEPTEMBER 16, 2019,  
DRAFT AFFILIATE TRANSACTIONS AND HVAC AFFILIATE SERVICES RULES**

COMES NOW the Office of Public Counsel (Public Counsel) and responds to Staff’s draft affiliate transactions and HVAC rules filed on September 16, 2019, as follows:

1. Staff filed its most recent draft affiliate transactions and HVAC affiliate services rules on September 16, 2019, in response to the Commission’s July 17, 2019, *Order Directing Staff To File A Draft Rule* respecting the treatment of affiliate transactions by and among heating companies, and electrical, gas, water (with more than 8,000 customers), and sewer (with more than 8,000 customers) corporations, and HVAC affiliate services transactions by and among electrical corporations, gas corporations, and heating companies.

2. While Public Counsel filed a petition for rulemaking on June 4, 2019, that petition only sought to require water corporations with over 8,000 customers to comply with the same affiliate transactions requirements as those in the Commission’s existing affiliate transactions rules (which are applicable to electric and gas corporations, and heating companies). The Commission docketed that petition as Case No. WX-2019-0380, but denied it on July 17, 2019, because of pending working cases, including this one.

3. Staff’s September 16, 2019, draft rules are far different than the current rules and the draft rules Staff proposed on June 27, 2018, that opened this working docket. Interested parties,

including Public Counsel, filed comments regarding those initiating draft rules on August 10, 2018, and interested parties attended a workshop the Staff held on October 9, 2018.<sup>1</sup>

4. Of marked significance, without explanation, the Staff's latest draft rules eliminate from the purpose of the affiliate transactions rule the following language found in the current rules: *"The rule and its effective enforcement will provide the public the assurance that their rates are not adversely impacted by the utilities' nonregulated activities."*

5. Further, Staff provides no explanation for its other numerous, material proposed changes, not only from the current rules, but also from the draft rules it proposed on June 27, 2018. Attached is a comparison that shows the differences between the June 27, 2018, and September 16, 2019, draft rules in tracked changes (as additions and deletions to the June 27, 2018, version).

6. At this time neither Public Counsel, nor to Public Counsel's knowledge, information and belief, has anyone else had the opportunity to weigh in on Staff's September 16, 2019, draft rules. Almost exactly a year has passed since Staff's workshop on its June 27, 2018, draft rules.

7. Public Counsel recommends to the Commission that, for each of its proposed changes, the Commission order its Staff to provide its rationale for the proposed change within 30 days, that it direct anyone interested to file comments within 60 days stating their proposed changes and/or response to Staff's proposed changes, with the commenter's rationale for the change and/or response. Further, Public Counsel recommends the Commission order its Staff to hold a workshop after the comment period—likely in December of 2019, with the objective of reaching a consensus among those participating as to what, if any, changes should be made to the current rules, and with

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<sup>1</sup> Although Mark Oligschlaeger is shown on the sign-in sheet for the workshop as being affiliated with Public Counsel, he was then, and is now, an employee of the Commission's Staff.

a goal of providing rules, or alternative rules, to the Commission by Friday, February 28, 2020, for its consideration for a formal rulemaking.

Respectfully,

/s/ Nathan Williams

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 9<sup>th</sup> day of October 2019.

/s/ Nathan Williams