
Rules of
Department of Economic
Development
Division 240—Public Service Commission
Chapter 80—Steam Heating Utilities

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**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 240—Public Service
Commission
Chapter 80—Steam Heating Utilities**

4 CSR 240-80.010 Rate Schedules
(Rescinded April 30, 2003)

AUTHORITY: section 393.290, RSMo 1986. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed May 29, 1986, effective Oct. 27, 1986. Rescinded: Filed Aug. 16, 2002, effective April 30, 2003.

4 CSR 240-80.015 Affiliate Transactions

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

(1) Definitions.

(A) Affiliated entity means any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county or a combination of political subdivisions which, directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated heating company.

(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 heating company and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated heating company and the regulated business operations of a heating company. An affiliate transaction for the purposes of this rule excludes heating, ventilating and air conditioning (HVAC) services as defined in section 386.754, RSMo by the General Assembly of Missouri.

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

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

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

(I) Regulated heating company means every heating company 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 heating company shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated heating company 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 heating company to provide the goods or services for itself; and

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 heating company.

(B) Except as necessary to provide corporate support functions, the regulated heating company 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 heating company 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 heating company 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 heating company about goods or services provided by an affiliated entity, the regulated heating company 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 heating company may provide reference to other service providers or to commercial listings, but is not required to do so. The regulated heating company 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.

(3) Evidentiary Standards for Affiliate Transactions.

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

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

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

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

(D) In transactions involving the purchase of goods or services by the regulated heating

company from an affiliated entity, the regulated heating company will use a commission-approved CAM which sets forth cost allocation, market valuation and internal cost methods. This CAM can use benchmarking practices that can constitute compliance with the market value requirements of this section if approved by the commission.

(4) Record Keeping Requirements.

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

(B) Each regulated heating company 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 heating company) 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 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; and
6. The basis used (e.g., fair market price, FDC, etc.) to record each type of affiliate transaction.

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

1. Records identifying the basis used (e.g., fair market price, FDC, etc.) to record all affiliate transactions; and
2. Books of accounts and supporting records in sufficient detail to permit verification of compliance with this rule.

(5) Records of Affiliated Entities.

(A) Each regulated heating company 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 heating company;

2. Documentation of the methods used to allocate and/or share costs between affiliated entities including other jurisdictions and/or corporate divisions;

3. Description of costs that are not subject to allocation to affiliate transactions and documentation supporting the nonassignment of these costs to affiliate transactions;

4. Descriptions of the types of services that corporate divisions and/or other centralized functions provided to any affiliated entity or division accessing the regulated heating company's contracted services or facilities;

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

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

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

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

(6) Access to Records of Affiliated Entities.

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

(B) The commission shall have the authority to—

1. Review, inspect and audit books, accounts and other records kept by a regulated heating company or affiliated entity for the sole purpose of ensuring compliance with this rule and making findings available to the commission; and

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

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

(7) Record Retention.

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

(8) Enforcement.

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

(9) The regulated heating company 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 paragraph (10)(A)1. or (10)(A)2. The granting of a variance to one regulated heating company does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated heating company 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 heating company 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 heating company 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 hear-

ing 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 heating company's annual CAM filing the regulated heating company shall provide to the secretary of the commission a listing of all noncomplying affiliate transactions which occurred between the period of the last filing and the current filing. Any affiliate transaction submitted pursuant to this section shall remain interim, subject to disallowance, pending final commission determination on whether the noncomplying affiliate transaction resulted in the best interests of the regulated customers.

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

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

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

4 CSR 240-80.017 HVAC Services Affiliate Transactions

PURPOSE: This rule prescribes the requirements for HVAC services affiliated entities and regulated heating companies when such regulated heating companies participate in affiliated transactions with an HVAC affiliated entity as set forth in sections 386.754, 386.756, 386.760, 386.762 and 386.764, RSMo by the General Assembly of the State of Missouri.

(1) Definitions.

(A) Affiliated entity means any entity not regulated by the Public Service Commission which is owned, controlled by or under common control with a utility and is engaged in HVAC services.

(B) Control (including the terms "controlling," "controlled by," and "common control") means the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one (1) or more

other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of more than ten percent (10%) of voting securities or partnership interest of an entity confers control for purposes of this rule. This provision, however, shall not be construed to prohibit a regulated heating company from rebutting the presumption that its ownership interest in an entity confers control.

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

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

(E) Heating company means a heating company as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapter 393, RSMo.

(F) Utility contractor means a person, including an individual, corporation, firm, incorporated or unincorporated association or other business or legal entity, that contracts, whether in writing or not in writing, with a regulated heating company to engage in or assist any entity in engaging in HVAC services, but does not include employees of a regulated heating company.

(2) A regulated heating company may not engage in HVAC services, except by an affiliated entity, or as provided in section (8) or (9) of this rule.

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



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

(4) A regulated heating company may not use or allow any affiliated entity or utility contractor to use the name of such regulated heating company to engage in HVAC services unless the regulated heating company, affiliated entity or utility contractor discloses, in plain view and in bold type on the same page as the name is used on all advertisements or in plain audible language during all solicitations of such services, a disclaimer that states the services provided are not regulated by the commission.

(5) A regulated heating company may not engage in or assist any affiliated entity or utility contractor in engaging in HVAC services in a manner which subsidizes the activities of such regulated heating company, affiliated entity or utility contractor to the extent of changing the rates or charges for the regulated heating company's services above or below the rates or charges that would be in effect if the regulated heating company were not engaged in or assisting any affiliated entity or utility contractor in engaging in such activities.

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

(7) The provisions of this rule shall apply to any affiliated entity or utility contractor engaged in HVAC services that is owned, controlled or under common control with a regulated heating company providing regulated services in the state of Missouri or any other state.

(8) A regulated heating company engaging in HVAC services in the state of Missouri five (5) years prior to August 28, 1998, may continue providing, to existing as well as new customers, the same type of services as those provided by the regulated heating company five (5) years prior to August 28, 1998.

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

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

(9) The provisions of this section shall not be construed to prohibit a regulated heating company from providing emergency service, providing any service required by law or pro-

viding a program pursuant to an existing tariff, rule or order of the commission.

AUTHORITY: sections 386.760.1, RSMo Supp. 1998 and 393.140, RSMo 1994. Original rule filed Dec. 17, 1998, effective Aug. 30, 1999.*

**Original authority: 386.760.1, RSMo 1998 and 393.140, RSMo 1939, amended 1949, 1967.*

4 CSR 240-80.020 Uniform System of Accounts—Heating Companies

PURPOSE: This rule prescribes a uniform system of accounts for all steam heating companies regulated by the Public Service Commission. Additional requirements regarding this subject matter and the filing annual reports are found at 4 CSR 240-3.435.

(1) The uniform system of accounts for steam heating companies with the text pertaining thereto, embodied in printed form, prescribed for the use of heating companies engaged in manufacturing and distributing and selling, for distribution or distributing hot or cold water, steam or currents of hot or cold air for motive power, heating, cooking or for any public use or service, in any city, town or village in the state of Missouri and every heating company within the state not engaged in operation. Each heating company shall be required to keep all accounts in conformity therewith.

(2) The uniform system of accounts for heating companies is arranged so that it contains only the necessary accounts which those utilities must keep. It consists of—balance sheet accounts; fixed asset accounts; operating revenue accounts; operating expense accounts; and instructions pertaining to deductions from gross income.

(3) The uniform system of accounts for heating companies shall become effective on January 1, 1915.

(4) Each heating company shall have and keep an office in this state, in which all accounts, records, memoranda, books and papers carried in pursuance of any requirements of law shall be kept. No such accounts, records, memoranda, books or papers shall at any time be removed from this state, except upon such conditions as may be prescribed by the commission.

AUTHORITY: sections 386.250, 393.140 and 393.290, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed April 26, 1976, effective*

Sept. 11, 1976. Amended: Filed Aug. 16, 2002, effective April 30, 2003.

**Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1996; 393.140, RSMo 1939, amended 1967 and 393.290, RSMo 1939, amended 1967.*