

John R. Ashcroft

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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MAY 30 2018

SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-10.085

COPY

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

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Data Entry Chris Koenigsfeld Phone 573-751-4256 FAX 573-526-6010

Email address Christine.koenigsfeld@psc.mo.gov

Interagency mailing address Public Service Commission, 9th Fl., Gov. Ofc. Bldg., JC, MO

TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☒ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☐ Request for Non-Substantive Change

☐ Statement of Actual Cost Order of Rulemaking

Effective Date for the Order _____

☐ Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☐ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory
Fairness Board (DED) Stamp

SMALL BUSINESS
REGULATORY FAIRNESS BOARD

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JOINT COMMITTEE ON

MAY 30 2018

ADMINISTRATIVE RULES



Commissioners

DANIEL Y. HALL
Chairman

WILLIAM P. KENNEY

SCOTT T. RUPP

MAIDA J. COLEMAN

RYAN A. SILVEY

Missouri Public Service Commission

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

SHELLEY BRUEGGEMANN
General Counsel

MORRIS WOODRUFF
Secretary

LOYD WILSON
Director of Administration

NATELLE DIETRICH
Staff Director

May 30, 2018

John Ashcroft
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-10.085 Incentives for Acquisition of Nonviable Utilities

Dear Secretary Ashcroft,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rule lawfully submitted by the Missouri Public Service Commission.

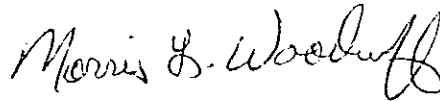
The Public Service Commission has determined and hereby certifies that this proposed rule will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 536.017, RSMo, that the proposed rule does not constitute a taking of real property under relevant state and federal law, and that the proposed rule conforms to the requirements of 1.310, RSMo, regarding user fees.

The Public Service Commission has determined and hereby also certifies that this proposed rule complies with the small business requirements of 1.310, RSMo, in that it does not have an adverse impact on small businesses consisting of fewer than fifty full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with 1.310, RSMo, by exempting any small business consisting of fewer than fifty full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Statutory Authority: section 386.040, 386.250, 393.140 and 393.146, RSMo.

If there are any questions regarding the content of this proposed rule, please contact:

Morris Woodruff, Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-2849
Morris.Woodruff@psc.mo.gov

A handwritten signature in black ink, reading "Morris L. Woodruff". The signature is written in a cursive style with a large, stylized "M" and "W".

Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures



GOVERNOR OF MISSOURI
JEFFERSON CITY
65102

ERIC R. GREITENS
GOVERNOR

P.O. Box 720
(573) 751-3222

May 8, 2018

Daniel Hall
Public Service Commission
200 Madison Street
PO Box 360
Jefferson City, MO 65102

Dear Chairman Hall:

This office has received your Order of Rulemaking of the regulations listed below. We understand these amendments have been proposed to cut red tape in Missouri.

- 4 CSR 240-10.085 – Incentives for Acquisition of Nonviable Utilities
- 4 CSR 240-10.095 – Creation of an Environmental Improvement Fund

Executive Order 17-03 requires this office's approval before state agencies release proposed regulations for notice and comment, amend existing regulations, rescind regulations, or adopt new regulations. After our review, we approve the submission of these rule amendments to JCAR and the Secretary of State.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin D. Smith".

Justin D. Smith
Deputy Counsel

**AFFIDAVIT
PUBLIC COST**

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Rob Dixon, Director of the Department of Economic Development, first being duly sworn, on my oath, state that it is my opinion that the cost of proposed rule, 4 CSR 240-10.085, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

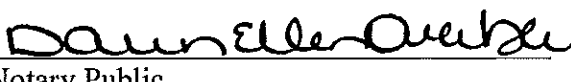


Rob Dixon
Director
Department of Economic Development

Subscribed and sworn to before me this 18th day of May, 2018 I am
commissioned as a notary public within the County of Moniteau, State of
Missouri, and my commission expires on Dec. 13, 2019



DAWN ELLEN OVERBEY
My Commission Expires
December 13, 2019
Moniteau County
Commission #15456865


Notary Public

Rules of
Department of Economic Development
Division 240 – Public Service Commission
Chapter 10 - Utilities

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ADMINISTRATIVE RULES

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4 CSR 240-10.085 Incentives for acquisition of nonviable utilities

PURPOSE: The purpose of the proposed rule is to create a process for a water or sewer utility to propose an acquisition incentive to encourage acquisition of nonviable water or sewer utilities by a water or sewer utility with the resources to rehabilitate the acquired utility within a reasonable time frame.

(1) As used in this rule, the following terms mean:

(A) Nonviable utility–

1. A utility that is in violation of statutory or regulatory standards that affect the safety and adequacy of the service provided, including but not limited to the public service commission law, the federal clean water law, the federal Safe Drinking Water Act, as amended, and the regulations adopted under these laws; or
2. A utility that has failed to comply, within a reasonable period of time, with any order of the department of natural resources or the commission concerning the safety and adequacy of service; or
3. A utility that is not reasonably expected to furnish and maintain safe and adequate service and facilities in the future; or
4. A utility that is insolvent.

(B) Rate of return premiums. Additional rate of return basis points, up to 100 basis points, awarded at the Commission's discretion in recognition of risks involved in acquisition of nonviable utilities and the associated system improvement costs.

(C) Debit acquisition adjustment. Adjustments to an acquiring utility's rate base to reflect a portion or all of the excess acquisition cost over depreciated original cost of the acquired system.

(D) Plant-in-service study. A report detailing a determination of the value of the original costs of the property of a public utility that requires the acquiring utility to accumulate the records and accounting details in order to support reasonable plant, reserve and contributions in aid of construction balances.

(2) An application for an acquisition incentive in the form of a rate of return premium and/or debit acquisition adjustment must be filed at the beginning of a case seeking authority under sections 393.190 or 393.170, RSMo. If the commission determines the request for an acquisition incentive is in the public interest, it shall grant the request. The commission may apply a rate of return premium and/or debit acquisition adjustment in the applicant's next rate case proceeding following acquisition of a nonviable utility if the commission determines it will not result in unjust or unreasonable rates.

(3) Filing Requirements–

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(A) An application for an acquisition incentive to acquire a nonviable utility shall include the following:

- 1. A statement as to whether the nonviable utility is related to the operation of another utility (for example, a water or sewer system providing service to the same or similar service area) and whether the related utility operation is part of the transaction;**
- 2. Records related to the original cost of the nonviable utility. The acquiring utility must exercise due diligence and make reasonable attempts to obtain from the seller documents related to original cost. In particular, as part of its exercise of due diligence, the acquiring utility shall request from the seller, for purposes of conducting the plant-in-service study, records relating to the original cost of the assets being acquired and records relating to contributions in aid of construction (CIAC) amounts, including:**
 - A. Accounting records and other relevant documentation, and agreements of donations of contributions, services, or property from states, municipalities or other government agencies, individuals, and others for construction purposes.**
 - B. Records of un-refunded balances in customer advances for construction (CAC).**
 - C. Records of customer tap-in fees and hook-up fees.**
 - D. Prior original cost studies.**
 - E. Records of local, state, and federal grants used for construction of utility plant.**
 - F. Relevant commission records.**
 - G. A summary of the depreciation schedules from all filed Federal tax returns.**
 - H. Other accounting records supporting plant-in-service.**
- 3. If the system to be acquired is part of a larger transaction involving multiple systems of which some do not qualify as non-viable, a detailed revenue and rate base plan describing how the acquiring utility will only apply the sought acquisition adjustment to the non-viable system(s) within the larger transaction.**

(B) If any of the items required under (3)(A)2 are unavailable at the time the application is filed, they shall be furnished by the acquiring utility prior to the next rate case;

(C) The failure of a seller to provide cost-related documents, after reasonable attempts to obtain the data, will not be a basis for the acquiring utility to provide incomplete information about the value of the acquired system's assets in its proposed rate base. Any information not available from the seller shall be estimated by the acquiring utility, along with documentation supporting the reasonableness of the estimates developed.

(4) When submitting an application for an acquisition incentive to acquire a nonviable utility, the acquiring utility has the burden of proof and shall demonstrate the following:

- (A) The acquiring utility is not a nonviable utility and will not be materially impaired by the acquisition;**
- (B) The acquiring utility maintains the managerial, technical and financial capabilities to safely and adequately operate the system to be acquired;**
- (C) The system to be acquired is a nonviable utility;**
- (D) The purchase price and financial terms of the acquisition are fair and reasonable and have been reached through arm's length negotiations;**
- (E) Any plant improvements necessary to make the utility viable will be completed within a period of time no longer than three (3) years after the effective date of acquisition;**
- (F) How managerial or operational deficiencies that can be corrected without capital improvements will be corrected within six (6) months of the acquisition;**
- (G) How capital improvements and operational changes planned within the next three (3) years will correct deficiencies;**
- (H) The acquisition is in the public interest; and**
- (I) The acquisition would be unlikely to occur without the probability of obtaining an acquisition incentive.**

(5) If the acquisition incentive is approved by the commission, the utility shall file a rate case no later than twelve (12) months after commission approval of the acquisition or within the period of time as ordered by the commission in the section 393.190 or section 393.170 case, unless the utility requests and the commission otherwise approves. Rate impacts of the approved incentive mechanism will go into effect upon order of the commission at the conclusion of that first rate case proceeding. If the acquisition incentive is approved in the section 393.190 or section 393.170 case, prior to its next rate case, the acquiring utility, shall—

- (A) Book contributions that were properly recorded on the books of the acquired system as CIAC. If evidence supports other CIAC that was not booked by the seller, the acquiring utility shall make an effort, supported with documentation, to determine the actual CIAC and record the contributions for ratemaking purposes, such as lot sale agreements or capitalization vs. expense of plant-in-service on tax returns;**
- (B) Identify all plant retirements and plant no longer used and useful, and complete the appropriate accounting entries; and**
- (C) If the records are not available from the acquired system to complete subsection (5)(A) or (5)(B), on a going-forward basis, create and maintain documentation of (5)(A) and (5)(B) from the date of acquisition.**

(6) If a debit acquisition adjustment is approved, in its next rate case proceeding, an acquiring utility shall file a plant-in-service study to support the amount of its requested acquisition adjustment addition to its rate base. The acquiring utility shall reconcile and explain any discrepancies between the acquiring utility's plant-in-service study of original cost valuation and the commission's records, to the extent reasonably known and available

to the acquiring utility, at the same time the supporting documentation for the study is filed. Any disputes regarding the acquiring utility's plant-in-service study will be resolved in that first subsequent rate case proceeding.

(7) Nothing in the rule precludes an acquiring utility that pays less than the depreciated original cost of the acquired system from seeking to include in rate base an amount up to the depreciated original cost of the acquired system.

(8) Provisions of this rule may be waived by the commission for good cause shown.

*AUTHORITY: sections 386.040, 386.250, 393.140 and 393.146, RSMo 2016.**

**Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 393.140, RSMo 1939, amended 1949, 1967; 393.290, RSMo 1993, amended 1967; and 393.146 RSMo 2006.*

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rule with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, 200 Madison Street. P.O. Box 360, Jefferson City MO 65102-0360. To be considered, comments must be received at the commission's offices on or before August 1, 2018, and should include a reference to Commission Case No. AX-2018-0240. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing is scheduled for August 7, 2018 at 10:00 a.m., in Room 305 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs, as addressed by the Americans with Disabilities Act, should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

Small Business Regulator Fairness Board Small Business Impact Statement

Date: March 8, 2018

Rule Number: 4 CSR 240-10.085

**Name of Agency Preparing Statement: Missouri Public Service
Commission**

Name of Person Preparing Statement: Natelle Dietrich

Phone Number: 573-751-7427

Email: natelle.dietrich@psc.mo.gov

Name of Person Approving Statement: Natelle Dietrich

Please describe the methods your agency considered or used to reduce the impact on small businesses *(examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique).*

The proposed rule provides an incentive for viable utilities to acquire non-viable utilities. Representatives from entities that typically express interest in acquiring non-viable utilities and entities that serve as receivers for small water and sewer utilities participated in a workshop and provided feedback that was incorporated in the proposed rule.

Please explain how your agency has involved small businesses in the development of the proposed rule.

Workshops were open to all interested stakeholders. Representatives of entities that acquire non-viable small water and sewer companies participated.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

It is anticipated the proposed rule, will result in a net benefit to small businesses since it is designed to provide an incentive for viable utilities to acquire non-viable utilities. Many of the non-viable utilities require major investments. Absent the acquisition, the non-viable utility often lacks funds or resources for those investments, likely resulting resulting in unsafe or inadequate service.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

No adverse impact is expected.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

None identified.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Small utilities regulated by the Commission, business owners that are ratepayers of those utilities.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes___ No_X__

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.