

In the Matter of a Proposed Rule)
Regarding An Environmental Improvement) **File No. AX-2018-0241**
Contingency Fund.)

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that the Missouri Public Service Commission may not create a fuel adjustment clause and accompanying customer surcharge without express statutory authority).

If the Commission does not believe that an interim rate will achieve the proposed rule's intended goals, then Public Counsel alternatively offers existing statutory and regulatory mechanisms for periodic rate adjustments. Subsection 2 of section 386.266, RSMo of Missouri statutes already enable water corporations to apply for an environmental cost adjustment mechanism (ECAM) outside of general proceedings to incorporate expenditures in furtherance of compliance with environmental laws. Note, however, that an ECAM has a 2.5% cap as well as other requirements not contained in the EICF proposed rule. The Commission has also already promulgated rules under this section in 4 CSR 240.50.050. Before we create new rules to enable water utilities to "make improvements necessitated by environmental regulation", perhaps we should consider existing tools achieving the same result. Especially since the ECAM is explicitly authorized by statute, whereas there is no specific legal authority supporting the environmental improvement contingency fund (EICF).

In addition to the predominant recommendations above, Public Counsel provides the following additional comments in the form of a chart below.

#	Current Language	OPC Recommendation
1	No language	OPC recommends that the applicant who is requesting to use this EICF mechanism must show that using an EICF would meet an objective standard, like best interest of its customers. The applicant should also have to meet standards similar to §386.266 or standards similar to an interim rate adjustment, which would require the utility to show that their utility is experiencing a "deteriorating financial situation which constitutes a threat to the company's ability to render safe and adequate service." <i>State ex rel. Laclede Gas Co. v. Public Serv. Comm'n</i> , 535 S.W.2d 561, 56-68 (Mo. Ct. W.D. 1976). Standards, such as these, should be added to the rule.
2	No language	OPC recommends language to permit a refund of unused EICF funds.
3	4 CSR 240-10.095(2) may only be initiated by a small utility or commission staff	OPC recommends that this mechanism may be petitioned by other parties to a proceeding, the utility or by those parties listed in § 393.146.12, RSMo (staff, opc, mayor, board of alderman, majority of council, commission, legislative bodies, 25+ customers)
4	4 CSR 240-10.095(4)	Same Comment as to who requests an EICF
5	4 CSR 240-10.095(4) limits the scope of an EICF to complying existing environmental rules, and 4 CSR 240-10.095(2) suggests that a surcharge would be added to a customer's bill during a rate case.	OPC questions whether a surcharge is the proper mechanism for implementing this rule. OPC notes the existence of 386.266.2 and <i>State ex rel. Laclede Gas Co. v. Public Serv. Comm'n</i> , 535 S.W.2d 561, 56-68 (Mo. Ct. W.D. 1976) as better frameworks for this rule.
6	4 CSR 240-10.095(4)(A)1.B states, "Are reasonably anticipated to be completed within five (5) years of the effective date of new rates..."	If there is an interim rate for not more than 1-2 years, then the struggling/financially distressed utility could obtain an interim rate to cover debt obligations it could not have otherwise secured without an EICF up until implementation of permanent rates. A 5 year surcharge devoted to future plant investments seems legally questionable.
7	4 CSR 240-10.095(4)(A)2.(B) states, "An estimated amount of funds necessary for the improvements in the list described in subsection (4)(A).	Add language indicating that the party's "estimated amount of funds" must be reasonable and supported by competent and substantial evidence

8	4 CSR 240-10.095(4)(C) refers to a schedule to complete improvements that will be prepared with the assistance of staff.	OPC does not object to staff's assistance with the plan, but OPC recommends that the DNR, EPA, or the "other regulatory authority" be the appropriate agency to craft the compliance schedule. Under 393.146.8, a utility submits a compliance plan that includes a timetable and DNR or other agencies receive a copy of the plan and are given an "adequate opportunity to comment on the plan."
9	4 CSR 240-10.095(5) refers to an EICF as being collected "as a part of the customer charge on customers' bills"	This is confusing as to whether this will be a line item sub-part of the customer charge, a hidden adder within the fixed customer charge, or a surcharge.
10	4 CSR 240-10.095(5)(B) states, "Funds held in the EICF account shall only be disbursed to pay for projects approved during the rate case as noted in section (4) above."	OPC is unclear as to whom would receive payment "for projects approved during the rate case." For example, would funds be paid exclusively to the vendors of a project? Or, could the utility receive external equity/debt infusions from which it would dip into the ECIF for repayment of the cost of equity/debt? If the latter, there probably needs to be additional restrictions
11	4 CSR 240-10.095(6) states, "Every quarter after receiving commission approval of an EICF..."	The phrase "every quarter" does not make it clear as to when during the quarter the subject reporting is due. This wording can be made clearer by using the phrase, "At the end of every quarter."
12	4 CSR 240-10.095(7) provides, "The EICF will be trued-up and will be reviewed to determine if it should- 1. Remain in effect at the current rate . . . "	This includes unnecessary verbiage, and can be accomplished by instead stating "...if it should be discontinued, or continued at the current or different rate."
13	4 CSR 240-10.095 under the Authority section	The authority section should cite to 393.150 and 386.266.

WHEREFORE, Public Counsel requests that the Commission adopt the comments and recommendations provided herein.

Respectfully submitted,

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**ATTORNEYS FOR THE OFFICE
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on August 1, 2018 to all counsel of record.

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