

RULE TRANSMITTAL (PAGE 1)

MATT BLUNT

Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

*Administrative Rules Stamp

RECEIVED

SEP 19 2003

SECRETARY OF STATE
ADMINISTRATIVE RULES

A "SEPARATE" rule transmittal sheet **MUST** be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-3.650
 Diskette File Name Proposed Rule 4 CSR 240-3.650
 Name of person to call with questions about this rule:
 Content Keith Krueger Phone 573-751-4140 FAX 573-751-9285
 Data entry Lesli Belt Phone 573-751-7499 FAX Same as above
 Email address keithkrueger@psc.state.mo.us
 Interagency mailing address Governor Office Building, 200 Madison St., 8th Floor, Jefferson City, MO
 Statutory Authority 386.250 and 393.140 Also 393.1006.10, HB 208, effective August 28, 2003 Current RSMo date 2000
 Date filed with the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo 2000, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED:

- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Incorporation by reference materials, if any |
| <input checked="" type="checkbox"/> Cover letter | <input type="checkbox"/> Authority with history of the rule |
| <input checked="" type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost |
| <input type="checkbox"/> Forms, number of pages <u> </u> | <input type="checkbox"/> Private cost |
| <input checked="" type="checkbox"/> Fiscal notes | <input type="checkbox"/> Hearing and comment period |

C. RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency rulemaking, (check one) ☐ rule ☐ amendment ☐ rescission ☐ termination
MUST include effective date
☒ Proposed Rulemaking (check one) ☒ rule ☐ amendment ☐ rescission
☐ Order of Rulemaking (check one) ☐ rule ☐ amendment ☐ rescission ☐ termination
MUST complete page 2 of this transmittal
☐ Withdrawal (check one) ☐ rule ☐ amendment ☐ rescission ☐ emergency
☐ Rule action notice
☐ In addition
☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Please indicate any special instructions (e.g., publication date preference, identify material to be incorporated by reference, or forms included herein).

JCAR Stamp

NOTE: ALL changes MUST be specified here in order for those changes to be published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.

E. ORDER OF RULEMAKING: Rule Number _____

1a. Effective Date for the Order

☒ Statutory 30 days

Specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text?

☐ YES

☐ NO

1c. If the answer is YES, please complete section F. If the answer is NO, **STOP** here.

F. Please provide a complete list of the changes in the rule text for the order of rulemaking, indicating the specific section, subsection, paragraph, subparagraph, part, etc., where each change is found. It is especially important to identify the parts of the rule that are being deleted in this order of rulemaking. This is not a reprinting of your order, but an explanation of what sections, subsections, etc. have been changed since the original proposed rule was filed.

(Start text here. If text continues to a third page, insert a continuous section break and, in section 3, delete the footer text. DO NOT delete the header, however.)



Commissioners
KELVIN L. SIMMONS
Chair
CONNIE MURRAY
STEVE GAW
BRYAN FORBIS
ROBERT M. CLAYTON III

Missouri Public Service Commission

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

ROBERT J. QUINN, JR.
Executive Director
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENGER
Director, Utility Services
DONNA M. PRENGER
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

September 19, 2003

Honorable Matt Blunt
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt:

RE: 4 CSR 240-3.650 – Water Utility Petitions for Infrastructure System Replacement
Surcharges

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 on this 19th day of September, 2003.

The Missouri Public Service Commission has determined and hereby certifies that this proposed rule will not have an economic impact on small businesses. The Missouri Public Service Commission also certifies that it has conducted an analysis of whether or not there has been a taking of real property pursuant to section 536.017, RSMo 2000, and that this proposed rule does not constitute a taking of real property under relevant state and federal law.

Statutory Authority: Sections 386.250 and 393.140, RSMo 2000, and Section 393.1006.10, HB 208, effective August 28, 2003.

September 19, 2003

Page 2

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

Keith R. Krueger, Deputy General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, Missouri 65102
(573) 751-4140
keithkrueger@psc.state.mo.us

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Dale Hardy Roberts', is written over a horizontal line.

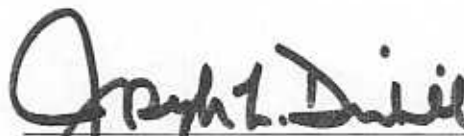
Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission

Enclosures: Proposed Rule 4 CSR 240-3.650 – Water Utility Petitions for Infrastructure System Replacement Surcharges, Rule Transmittal, Affidavit and Private Entity Fiscal Note

AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Joseph L. Driskill, Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that the cost of the *Proposed Rule 4 CSR 240-3.650, Water Utility Petitions for Infrastructure System Replacement Surcharges*, is less than five hundred dollars (\$500) in the aggregate to this agency, any other agency of state government or any political subdivision thereof.



Joseph L. Driskill
Director
Department of Economic Development

Subscribed and sworn to before me this 10th day of September, 2003. I am
commissioned as a notary public within the County of Cole, State of Missouri,
and my commission expires on April 29, 2006.


NOTARY PUBLIC

KIMBERLEY BRANDT SPRENGER
NOTARY PUBLIC STATE OF MISSOURI
COLE COUNTY
MY COMMISSION EXP. APR. 29, 2006

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 3 – Filing and Reporting Requirements

PROPOSED RULE

RECEIVED

SEP 19 2003

SECRETARY OF STATE
ADMINISTRATIVE RULES

4 CSR 240-3.650 Water Utility Petitions for Infrastructure System Replacement Surcharges

PURPOSE: This rule sets forth the definitions, parameters and procedures relevant to the filing and processing of petitions pertaining to an infrastructure system replacement surcharge (ISRS), including the information that an eligible water utility must provide when it files a petition and associated rate schedules to establish, change or reconcile an ISRS.

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

(A) Appropriate pretax revenues - the revenues necessary to:

1. Produce net operating income equal to the eligible water utility's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements that are included in a currently effective ISRS;

2. Recover state, federal, and local income or excise taxes applicable to such income; and

3. Recover all other ISRS costs;

(B) Eligible infrastructure system replacements - water utility plant projects that:

1. Replace or extend the useful life of existing infrastructure;

2. Are in service and used and useful;

3. Do not increase revenues by directly connecting the infrastructure replacement to new customers;

4. Were not included in the eligible water utility's rate base in its most recent general rate case; and

5. Were made in a county with a charter form of government and with more than one million inhabitants;

(C) Eligible water utility - a water corporation as defined in section 386.020(58), RSMo, that provides service to more than ten thousand customers in a county with a charter form of government and with more than one million inhabitants;

(D) ISRS - infrastructure system replacement surcharge;

(E) ISRS costs - depreciation expenses, and property taxes that will be due within twelve months of the ISRS filing;

(F) ISRS revenues - revenues produced through an ISRS, exclusive of revenues from all other rates and charges;

(G) Water utility plant projects - projects that consist only of the following:

1. Mains, and associated valves and hydrants, installed as replacements for existing facilities that have worn out or are in deteriorated condition;

2. Main cleaning and relining projects; and

3. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state or another entity having the power of eminent domain; provided that the costs related to such projects have not been reimbursed to the eligible water utility.

(2) Pursuant to the provisions of this rule and sections 393.1000 to 393.1006, RSMo, an eligible water utility may file a petition with the commission to establish or change ISRS rate schedules that will allow for the adjustment of its rates and charges to provide for the recovery of costs for eligible infrastructure system replacements; provided that an ISRS, on an annualized basis, must produce ISRS revenues of at least one million dollars but not in excess of ten percent of the subject utility's base revenue level approved by the commission in the utility's most recent general rate proceeding.

(3) An ISRS, and any future changes thereto, shall be calculated and implemented in accordance with the provisions of this rule and sections 393.1000 to 393.1006, RSMo.

(4) ISRS revenues shall be subject to refund based upon a finding and order of the commission, to the extent provided in subsections 5 and 8 of section 393.1006, RSMo.

(5) The commission shall not approve an ISRS for an eligible water utility that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past three years, unless that utility has filed for or is the subject of a new general rate proceeding.

(6) In no event shall an eligible water utility collect an ISRS for a period exceeding three years unless it has filed for or is the subject of a new general rate proceeding; provided that the ISRS may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding, or until the subject general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established.

(7) Upon the filing of a petition seeking to establish or change an ISRS, the commission will provide notice of the filing.

(8) The eligible water utility shall provide the following notices to its customers:

(A) An initial, one-time notice to all potentially affected customers, with such notice to be sent to customers no later than when customers will receive their first bill that includes an ISRS, explaining the subject utility's infrastructure system replacement program, explaining how it will calculate its ISRS, explaining how its ISRS will be applied to its various customer classes and identifying the statutory authority under which it is implementing its ISRS;

(B) An annual notice to affected customers each year that an ISRS is in effect explaining the continuation of its infrastructure system replacement program and the resulting ISRS; and

(C) A line-item surcharge description on all affected customer bills, which will identify the existence and amount of the ISRS on the bills.

(9) Within twenty (20) days of the eligible water utility's filing of a petition to establish an ISRS, the subject utility shall submit the following to the commission for approval:

(A) An example of the initial, one-time notice required by subsection (8)(A) of this rule;

(B) An example of the annual notice required by subsection (8)(B) of this rule; and

(C) An example customer bill showing how the ISRS will be separately identified on affected customers' bills in accordance with subsection (8)(C) of this rule.

(10) When an eligible water utility files a petition pursuant to the provisions of this rule, the commission shall conduct an examination of the proposed ISRS.

(11) The staff of the commission may examine information of the eligible water utility to confirm that the underlying costs are in accordance with the provisions of this rule and sections 393.1000 to 393.1006, RSMo, and to confirm proper calculation of the proposed ISRS, and may submit a report regarding its examination to the commission not later than sixty days after the eligible water utility files its petition. The staff shall not examine any other revenue requirement or ratemaking issues in its consideration of the petition or associated proposed rate schedules.

(12) The commission may hold a hearing on the petition and the associated proposed rate schedules, and shall issue an order to become effective not later than one hundred twenty days after the eligible water utility files the petition.

(13) If the commission finds that a petition complies with the requirements of this rule and sections 393.1000 to 393.1006, RSMo, the commission shall enter an order authorizing the eligible water utility to impose an ISRS that is sufficient to recover appropriate pretax revenues, as determined by the commission.

(14) An eligible water utility may effectuate a change in an ISRS no more often than two times during every twelve-month period, with the first such period beginning on the effective date of the rate schedules that establish an initial ISRS. For the purposes of this section, an initial ISRS is the first ISRS granted to the subject utility or an ISRS established after an ISRS is reset to zero pursuant to the provisions of section (16) of this rule.

(15) At the end of each twelve-month period that an ISRS is in effect, the eligible water utility shall reconcile the differences between the revenues resulting from the ISRS and the appropriate pretax revenues as found by the commission for that period, and shall submit the reconciliation and proposed ISRS rate schedule revisions to the commission for approval to recover or refund the difference, as appropriate.

(16) An eligible water utility that has implemented an ISRS shall file revised ISRS rate schedules to reset the ISRS to zero when new base rates and charges become effective following a commission order establishing customer rates in a general rate proceeding that incorporates eligible costs previously reflected in an ISRS into the subject utility's base rates.

(17) Upon the inclusion of eligible costs previously reflected in an ISRS in an eligible water utility's base rates, the subject utility shall immediately thereafter reconcile any previously unreconciled ISRS revenues as necessary to ensure that

revenues resulting from the ISRS match, as closely as possible, the appropriate pretax revenues as found by the commission for that period.

(18) At the time that an eligible water utility files a petition with the commission seeking to establish, change or reconcile an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules and its supporting documentation. The subject utility's supporting documentation shall include workpapers showing the calculation of the proposed ISRS, and shall include, at a minimum, the following information:

(A) The state, federal, and local income or excise tax rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those tax rates;

(B) The regulatory capital structure used in calculating the proposed ISRS, and an explanation of the source of and the basis for using that capital structure;

(C) The cost rates for debt and preferred stock used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those cost rates;

(D) The cost of common equity used in calculating the proposed ISRS, and an explanation of the source of and the basis for using that equity cost;

(E) The property tax rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those tax rates;

(F) The depreciation rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those depreciation rates;

(G) The net original cost of the infrastructure system replacements (total cost less net book value of any related facility retirements), and the amount of related ISRS costs, that are eligible for recovery during the period in which the ISRS will be in effect, and a breakdown of those eligible replacements identified by work order or cost center for each of the following project categories:

1. Mains, and associated valves and hydrants, installed as replacements for existing facilities that have worn out or are in deteriorated condition;

2. Main cleaning and relining projects;

3. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States;

4. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of this state;

5. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of a political subdivision of this state; and

6. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of an entity other than the United States, this state or a political subdivision of this state, having the power of eminent domain;

(H) The applicable customer class billing determinants used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those billing determinants;

(I) An explanation of how the customers to whom the proposed ISRS will apply are benefiting from the water utility plant projects that will be recovered through the ISRS;

(J) An explanation of how the proposed ISRS is being prorated between affected customer classes, if applicable;

(K) An explanation of how the proposed ISRS is being applied in a manner consistent with the customer class cost-of-service study recognized by the commission in the subject utility's most recent general rate proceeding, if applicable; and

(L) An explanation of how the proposed ISRS is being applied consistent with the rate design methodology utilized to develop the subject utility's rates resulting from its most recent general rate proceeding;

(M) An explanation of the efforts to quantify and seek reimbursement for any costs incurred for facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state or another entity having the power of eminent domain, which could offset the requested ISRS revenues; and

(N) An explanation of how the projects associated with the ISRS are being funded, including the amount of any short-term debt and the interest rate on that debt.

(19) In addition to the information required by section (18) of this rule, the eligible water utility shall also provide the following information when it files a petition with the commission seeking to establish, change or reconcile an ISRS:

(A) A description of all information posted on the subject utility's website regarding the infrastructure system replacement surcharge and related infrastructure system replacement projects; and

(B) A description of all instructions provided to personnel at the subject utility's call center regarding how those personnel should respond to calls pertaining to the ISRS.

AUTHORITY: sections 386.250 and 393.140, RSMo 2000, and section 393.1006.10, HB208, effective August 28, 2003.

PUBLIC COST: This proposed rule would not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rule is estimated to have an initial cost of \$10,000 and an annual on-going cost of \$195,000 for the affected private entity.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices on or before December 4, 2003, and should include a reference to Commission Case No. WX-2004-0093. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for December 12, 2003, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, 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.

**FISCAL NOTE
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name:	4 CSR 240-3.650 Water Utility Petitions for Infrastructure System Replacement Surcharges
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
One water utility	Missouri Public Service Commission-regulated water utilities in St. Louis County	\$198,333 per year over the first three years of the rule.

III. WORKSHEET

Utility	Initial Implementation Cost	Ongoing Annual Cost
Missouri-American Water Company	\$10,000	\$195,000

IV. ASSUMPTIONS

The conclusions in this fiscal note are based on a letter response received from Missouri-American Water Company, which is the only business entity that will be affected by the rule. Missouri-American's response and this fiscal note assume that Missouri-American will make two ISRS filings per year, and that it will notify each of its 335,000 St. Louis County customers of the filing by way of a separate mailing to the customers. The dollar amounts in section III above detail initial implementation cost and ongoing annual cost. The total dollar amounts for compliance with the rule in the first three (3) years are added together and divided by three (3) to arrive at the dollar amounts given in section II above.