

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

In the Matter of the Revenue Effects)
Upon Small Missouri Water and Sewer)
Utilities of the Tax Cuts and Jobs)
Act of 2017)

Case No. AW-2018-_____

STAFF’S MOTION TO OPEN A WORKING DOCKET

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Motion to Open A Working Docket*, states as follows:

Introduction

1. This matter concerns the effect on small Missouri water and sewer utilities and their ratepayers of a tax reform recently enacted by the Congress of the United States.

Jurisdiction

2. The Commission’s jurisdiction extends to all public utilities in Missouri, including water corporations and sewer corporations. Sections 386.020 and 386.250, RSMo.

Facts

3. On December 22, 2017, President Trump signed the *Tax Cuts and Jobs Act of 2017*, a significant amendment to the *Internal Revenue Code of 1986*, which provides for the reduction of the federal tax rate on corporate income from 35 percent to 21 percent. The *Act* also affected pass-through entities such as S Corporations, LLCs and partnerships and made various other changes to the code.

4. The effective date of the new federal tax rates was January 1, 2018.

5. Though a few small water and/or sewer utilities are “C Corporations” and pay the corporate tax rate, many of them are either “Subchapter S” companies, Limited Liability Corporations (“LLCs”), or partnerships. Essentially, these tax structures result in the utility’s owner or owners paying a personal income tax rate on their proportionate share of utility profits. Accordingly, for Subchapter S corporations and LLCs, the effect of the TCJA on personal income tax rates and rules is relevant, not the changes to the corporate tax rates and rules.

6. For those small Missouri utilities with a C corporation structure, prior to 2018, income taxes were levied using tiered tax rates, starting at 15% for taxable income amounts less than \$50,000 and escalating up to the flat 35% rate. Under the TCJA, all corporate income will be taxed at a flat 21% rate. This means that, for some small utilities, the impact of the TCJA will be to increase the cost of service.

7. Regarding Subchapter S and LLC utilities, in many cases these companies may not currently have any income tax allowance reflected in their customer rates because the general ratemaking practice has been not to incorporate in rates amounts associated with personal income tax returns. For these companies, the TCJA will have no immediate rate impact, and any reflection of income tax expense in their cost of service in the future will mean higher revenue requirements.

8. At this time, Staff lacks information as to the current tax status of most small water and sewer utilities, some of which have not filed a rate case in years. For this reason, and to allow for a more thorough examination of how the TCJA may change the tax liabilities for small utilities, Staff now moves the Commission to open a generic investigatory docket to examine TCJA issues specifically applicable to the small water

and sewer companies. Staff further moves the Commission to order the small utilities to respond to several questions regarding income tax expense:

- 1) For purposes payment of income taxes, is your company: (a) a C Corporation, (b) a Subchapter S Corporation, (c) a Limited Liability Corporation, (d) a partnership, or (e) other?
- 2) If you know, does your company currently collect income tax expense in customer rates? If so, how much?
- 3) Have you or your financial advisors or consultants performed any analysis of the likely impact of the TCJA on your cost of service and customer rates? If so, please provide such analysis.
- 4) Generally speaking, when do you expect your company to seek a change in customer rates from the Commission?

9. Based upon the responses to these questions and its own research, Staff will compile information for each small water and/or sewer company regarding its current tax structure, and, if possible, whether or not funds are currently included in their rates for income tax expense and, if so, how much. This data base will allow Staff to determine what further action to take with respect to each small water and/or sewer utility regarding TCJA impacts.

WHEREFORE, Staff prays that the Commission will, giving such notice as is appropriate to all small Missouri water and/or sewer public utilities, expeditiously open a generic working docket for the purpose of determining the actual impact of the

Tax Cuts and Jobs Act of 2017 upon them and their ratepayers; make each of them a party hereto; direct them to file responses within fifteen (15) days to the questions set out above; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

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