

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

In the Matter of a Proposed Rule Regarding)
Incentives for Acquisition of Nonviable Utilities) **File No. AX-2018-0240**

COMMENTS OF THE STAFF

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and hereby tenders its attached *Comments of the Staff of the Missouri Public Service Commission (Staff's Comments)*, for the Commission's consideration. Staff notes that while generally supportive of the proposed rule, it has concerns that the rule may provide unintended and/or contradictory incentives counter to the purpose of the rule. Staff also notes for the Commission's consideration that this proposed rule mirrors some key aspects of § 393.146 RSMo.

Respectfully submitted,

/s/ Jacob T. Westen

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all parties and or counsel of record on this 1st day of August, 2018.

/s/ Jacob T. Westen

Case No. AX-2018-0240

Comments of the Staff of the Missouri Public Service Commission

The Commission, as well as other public utility commissions across the nation, continues to explore options to address the many issues facing small water and sewer systems. Often, the small system operators do not have the financial means to make the improvements necessary to keep the systems viable. Proposed rule 4 CSR 240-10.085, Incentives for Acquisition of Nonviable Utilities, is one mechanism that may encourage acquisition of nonviable water or sewer utilities by entities that are better able to provide service to the public.¹ Staff generally supports the proposed rule, but offers the following overarching comments for Commission consideration.

1) Under the current regulatory structure, some utilities are currently purchasing small, troubled systems. Additional incentives may not be necessary to continue to encourage acquisitions.

2) By definition, small troubled systems will need significant capital investment to get the system to operate in a safe and adequate manner. This will require an increase in rates. Adding an incentive payment on top of the additional investment will result in customers paying a higher rate than without the incentive.

3) The Commission's current policy of valuing utility plant in service at "net original cost" already provides material incentives for acquisition of nonviable utilities. This is because troubled utility operations are very frequently purchased at a significant purchase discount, not with an acquisition premium. Utilities purchasing companies at a discount benefit under the Commission's current "net original cost" policy as they are allowed to include in rate base the differential between the original cost of the acquired property and the actual purchase price. Staff strongly endorses continuation of this ratemaking policy regarding discounted purchase prices, and notes that Section (7) of this draft rule states that acquiring utilities purchasing troubled properties at a discount may continue to seek net original cost treatment of the purchased properties under this rule.

In addition to its overarching comments, Staff provides the following specific recommendations.

Section (1) provides the meaning of various terms used in the proposed rule.

Paragraph (1) (A) 2, includes in the definition of "nonviable utility" the phrase, "within a reasonable period of time". Since this section applies to noncompliance with any order of the Commission or the Department of Natural Resources ("DNR"), , Staff recommends the "reasonable period of time" be removed from the definition. Although this language is found in Section 393.146, it is vague. Presumably, the orders of DNR and the Commission will include a timeframe for compliance and the Commission will review non-compliance as part of its

¹ *Finding of Necessity and Order Directing that Proposed Rule be Filed for Publication*. May 30, 2018.

determination as to whether to approve an application. Therefore, Staff recommends “reasonable period of time” be deleted as unnecessary.

With this recommended modification, the proposed rule reads:

(1)(A)2. A utility that has failed to comply with any order of the department of natural resources or the commission concerning the safety and adequacy of service; or...

Subsection (1)(B) Rate of Return Premiums allows additional rate of return (“ROR”) 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. It is not clear whether the ROR premium is to be included on the entire rate base of the acquiring utility or limited to the newly acquired rate base. Staff recommends the language be clarified such that the ROR premium is applied to the newly acquired rate base.

With this recommended modification, the proposed rule reads:

(1)(B) Rate of Return Premiums. Additional rate of return (“ROR”) basis points, up to 100 basis points, awarded at the Commission’s discretion to the newly acquired rate base in recognition of risks involved in acquisition of nonviable utilities and the associated system improvement cost of the acquired system.