

**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 240-10.095

**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

Email address morris.woodruff@psc.mo.gov

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, 9<sup>th</sup> 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

MAY 30 2018

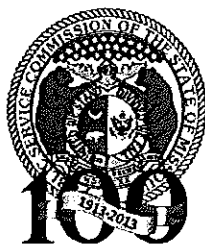
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JOINT COMMITTEE ON

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 240-10.095 Environmental Improvement Contingency Fund

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 393.270, 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, appearing to read "Morris L. Woodruff". The signature is written in a cursive, flowing style.

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,

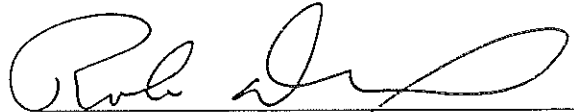
A handwritten signature in black ink, appearing to read "Justin D. Smith".

Justin D. Smith  
Deputy Counsel

**AFFIDAVIT  
PUBLIC COST**

**STATE OF MISSOURI )  
                                  )  
COUNTY OF COLE     )**

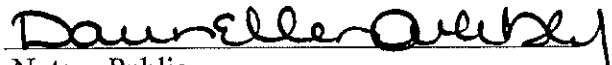
I, Rob Dixon, Director of the Department of Economic Development, first being duly sworn, on my oath, state that it is my opinion that the cost of proposed rule, 4 CSR 240-10.095, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

  
\_\_\_\_\_  
Rob Dixon  
Director  
Department of Economic Development

Subscribed and sworn to before me this 18<sup>th</sup> 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 240-10.095 ENVIRONMENTAL IMPROVEMENT CONTINGENCY FUND**

*PURPOSE: This rule provides parameters and procedures for small water and/or sewer utilities to request a special fund to collect revenue from customers to make improvements necessitated by environmental regulations.*

- (1) For the purposes of this rule only, a water or sewer utility serving 8,000 or fewer customers shall be considered a small utility.
- (2) A small utility or commission staff may request establishment of an Environmental Improvement Contingency Fund (EICF) during the course of a rate case, whether filed pursuant to 4 CSR 240-10.075 or 393.150.
- (3) Following the request for an EICF, the Staff will–
  - (A) Investigate the small utility's financial resources and its ability to finance capital improvements;
  - (B) Conduct a managerial audit to determine the quality of the small utility's management; and
  - (C) Conduct a comprehensive review of the necessary improvements at the small utility.
- (4) An EICF may only go into effect if, at the conclusion of the rate case where the small utility or commission staff requests an ECIF, the commission approves the following items:
  - (A) A list of necessary improvements.
    1. The list of necessary improvements may only include those improvements that:
      - a. are directly related to environmental rules, regulations, or orders of the Missouri Department of Natural Resources (DNR), the United States Environmental Protection Agency (EPA), or other regulatory authority, including but not limited to federal, state or local authorities, city ordinances, and the state attorney general; and
      - b. are reasonably anticipated to be completed within five (5) years of the effective date of new rates, although, for good cause shown, the commission may consider projects that require longer to complete.
    2. During the rate case, upon request by the small utility or by direction of the commission, staff will assist the utility in identifying a list of necessary improvements.

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ADMINISTRATIVE RULES

- (B) An estimated amount of funds necessary for the improvements in the list described in (4)(A).
    - 1. Staff and the small utility will submit the estimated amount of funds necessary for the improvements, which may include costs for preliminary engineering reports related to those improvements.
    - 2. The percentage of the estimated amount collectable through an EICF will be based on an analysis of the needs of the small utility and its ability to secure financing through normal debt or equity sources. The commission may give special consideration to requests that do not require full funding of the estimated amount collectible.
    - 3. If a requested EICF includes funds for a preliminary engineering report, the report must be completed and submitted to the commission prior to the first disbursement from the EICF account.
  - (C) A schedule for completion of the (4)(A) list of improvements. Upon request by the small utility or by direction of the commission, staff will assist the small utility in preparing such a schedule.
- (5) The EICF must be collected as a part of the customer charge on customers' bills.
  - (A) Revenues collected must be recorded by the small utility and placed into a commission-approved account specifically segregated from all other utility accounts, for the explicit purpose of regulatory review and tracking.
  - (B) 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.
  - (C) Disbursements from the EICF account shall only be made after notice to staff and public counsel.
    - 1. The notice must be sent to staff and public counsel at least thirty (30) days prior to a disbursement.
    - 2. If any party objects to the proposed disbursement, detailed objections must be filed in the official case file in which the EICF was approved no later than ten (10) days after receiving the disbursement notice. The commission may then determine whether or not to approve the requested disbursement of the funds.
    - 3. If no timely objection is raised or staff and public counsel notify the small utility they agree to the disbursement, the small utility may make the disbursement described in its notice no later than the date specified in that notice.
    - 4. The commission will resolve any dispute regarding the proposed disbursements prior to the specified disbursement date.
- (6) Every quarter after receiving commission approval of an EICF, the small utility shall submit documentation to staff and public counsel reporting:
  - (A) Monthly EICF funds received from customers;
  - (B) Monthly EICF deposits to the escrow account;
  - (C) Monthly EICF expenditures; and
  - (D) End-of-month balance of the EICF account.



(7) After an EICF is established, the small utility shall file a subsequent rate request no later than five (5) years after the effective date of the EICF, during which:

(A) Any monies expended from the fund shall be treated as contributions-in-aid-of-construction for purposes of setting rates for the small utility. The EICF will be trued-up and will be reviewed to determine if it should:

1. Remain in effect at the current rate; or
2. Remain in effect at a different rate; or
3. Be terminated.

(8) Staff or the public counsel may, at their discretion, bring before the commission a complaint against the small utility seeking both civil penalties and direction from the commission to promptly stop all collection of an EICF if, upon review of documentation described in section (6) above, staff, public counsel, or another regulatory authority has indication that the small utility has used EICF funds for any purpose other than as approved by the Commission. Nothing in this rule shall prohibit civil or criminal action by any state or federal authority against the small utility for misuse of customer funds.

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

*AUTHORITY: sections 386.040, 386.250, 393.140 and 393.270, 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 393.270 RSMo 1939, amended 1949, 1967.*

*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-2018-0241. 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 2:00 p.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 240-10.095

**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).*

Small water and sewer utilities are often faced with significant investments or improvements as a result of environmental rules, regulations, directives of the Missouri Department of Natural Resources, the United States Environmental Protection Agency or other regulatory authorities. The rulemaking provides opportunity for the small water and sewer utilities to request an environmental improvement contingency fund to help provide a source of funding for these projects since it is often difficult for these entities to obtain financing.

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

Small businesses were not included in the drafting of the rule, but the Commission Staff reached out to financing entities for input on the proposal.

**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 funding for small water and sewer environmental investments. It is anticipated to provide a net benefit to small business ratepayers since small water and sewer utilities will be able to obtain funds for

investments that otherwise may not be made, ultimately 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.**

Small water and sewer utilities that request the environmental contingency fund will be required to comply with the provisions of the rule. 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.*