

Comments for MO PSC File No. WW-2017-0283

Introduction

Attached hereto is a “markup version” of the proposed rule that is the subject of the above-noted MO PSC File, with that being created by the undersigned. General comments regarding the proposed rule, and comments regarding some of the suggested changes included in the attached “markup version” of the proposed rule, are set out below. Further, other “small company matters” that the undersigned believes deserve the Commission’s attention are also addressed below and in a related attachment.

General Comments Regarding the Proposed Rule

Two of the most favorable changes from the existing small utility rate case procedure that are included in the proposed rule are: (1) the reduction in the time for the case to be completed; and (2) the language stating that, under certain limited circumstances, normal expense items and plant-in-service and other rate base items may be estimated or may be based on less than “adequate” documentary support.

The most obvious deletion from the existing small utility rate case procedure is the removal of the arbitration provisions pertaining to the situation where the Commission staff and the utility do not reach an agreement on a full resolution of the utility’s operating revenue increase request. Though these provisions have rarely been used, the undersigned believes they should still be included as an option to the use of the evidentiary hearing process.

Comments Regarding Some of the Suggested Changes to the Proposed Rule

Note: References to provisions of the rule are to the “renumbered” provisions shown in the attached “markup version” of the rule.

Section (6) – The parties should be required to notify the assigned RLJ if they agree a local public hearing will not be needed and should do so by a specific time.

Section (8), Subsection (C) – Adding the suggested language will hopefully reduce the number of duplicate/redundant data requests that the involved utility receives from the parties.

Section (9), Subsection (C) – Adding the suggested language is consistent with the language in section (8), subsection (F) regarding the public counsel being required to provide a report of its preliminary investigation if it is conducting its own investigation of the utility’s request.

Section (11), Subsection (A), Paragraph 2. and Section (11), Subsection (D) – While adding the suggested language could be considered duplicative of the provisions of section (12), subsection (C), the suggested additions emphasize the importance of issues lists being developed and presented in a timely manner if an evidentiary hearing is being requested.

Comments Regarding Other Small Company Matters

While the small utility rate case procedure is a rule that obviously affects many small sewer and water utilities on a regular basis, there are numerous other issues that warrant Commission attention and that could/should also be addressed through the workshop process. Examples of such issues are: (1) the establishment of a PSC administered small company revolving loan program (similar to the past EIERA/PSC program, with possible funding through special PSC assessments); (2) the development of a standard set of initial Staff/OPC data requests to be used in small company rate cases (duplicative data requests from different Staff “units” and the OPC can be a burden on small companies); and (3) conducting a rulemaking process to provide for the establishment of various reserve funds (such a rule was drafted in 2007 through the use of a stakeholder working group but has never been acted upon). For a more extensive list of additional matters that are of concern to small sewer and water companies, please see the “Small Sewer & Water Company Issues List” that is attached hereto.

Respectfully Submitted,

/s/ Dale W. Johansen

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Markup Version of Proposed Rule

~~STAFF ASSISTED~~ SMALL UTILITY RATE CASE PROCEDURE

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

(A) A small utility means a gas utility serving ten thousand (10,000) or fewer customers, a water or sewer utility serving eight thousand (8,000) or fewer customers, or a steam utility serving one hundred (100) or fewer customers.

(B) A disposition agreement is a document that sets forth the signatories' proposed resolution of some or all of the issues pertaining to a small utility rate case.

(2) Notwithstanding the provisions of any other commission rule to the contrary, unless the commission orders otherwise, any rate case involving a small utility shall ~~proceed~~ be processed under the provisions of this rule.

(A) In addition to the commission's provisions regarding dismissal of a case in 4 CSR 240-2.116, the commission may dismiss a small utility rate case at any time if:

1. The utility is not current on the payment of all of its commission assessments;
2. The utility fails to submit its annual report or annual statement of operating revenue; or
3. The utility is not in good standing with the Missouri Secretary of State, if applicable.

(3) Commencement. A small utility rate ~~proceeding~~case may be commenced by:

(A) A ~~letter received by~~ small utility submitting a letter to the secretary of the commission ~~from a small utility~~ requesting an increase in its overall annual operating revenues;

1. Any such letter shall state the amount of the revenue increase requested but need not be accompanied by any proposed tariff revisions.

2. Upon receipt of the letter, the secretary of the commission shall cause a rate case to be opened and file a copy of the letter in that case.

3. At any time before day 150 of the timeline described in ~~subsection (4)~~ section (11) of this rule, the utility may submit to the secretary of the commission a letter withdrawing its previous request for ~~a rate~~ an increase in its operating revenues. Upon receipt of such a letter, the secretary of the commission shall close the rate case.

(B) A complaint filed by the commission staff (staff) or by any eligible entity or entities pursuant to section 386.390.1, RSMo., or section 393.260.1, RSMo.

(C) A proposed tariff stating a new rate or charge filed by a small utility pursuant to section 393.150.1, RSMo.

(4) The Sstaff shall assist a small utility in processing a small utility rate case to every extent possible consistent with the Sstaff's duties to the Commission.

(5) Timeline. Within one (1) week after a small utility rate case is opened, the staff shall file a timeline under which the case will proceed, specifying due dates for the activities required by this rule.

(A) The staff and the utility may agree in writing that the deadlines set out in ~~this~~ the rate case timeline be extended for up to thirty (30) days. If an extension is agreed upon, the staff shall file the agreement and an updated timeline reflecting the extension in the case file.

(6) Local public hearing. The regulatory law judge assigned to the small utility rate case shall schedule a local public hearing, to occur no later than sixty (60) days after the opening of the case, unless all parties ~~have agreed~~ agree a local public hearing is not necessary and so notify the assigned regulatory law judge no later than thirty (30) days after the opening of the case.

(7) Notice of local public hearing. ~~At least~~ No later than ten (10) days prior to ~~the a~~ a scheduled local public hearing, the utility shall mail a written notice to its customers. The notice must be approved by the staff and the public counsel prior to being mailed.

(A) The notice shall include:

1. The time, date, and location of the local public hearing, consistent with the order setting the hearing;

2. The amount of the increase in annual operating revenues that the utility requested in its letter to the commission.

23. A summary of the proposed rates and charges, the effect of the rates on an average residential customer's bill, and any other company requests that will affect customers, if known;

~~3~~4. An invitation to submit comments about the utility's rates and quality of service within thirty (30) days after the date shown on the notice and instructions as to how comments can be submitted electronically, by telephone, and in writing;

~~4~~5. Instructions for viewing the publicly available copies of all filings subsequently made in the case via the commission's electronic filing system.

(B) The ~~S~~staff shall file a copy of the utility's notice in the case file.

(8) Investigation and audit. After a small utility rate case is opened, the staff shall, and the public counsel may, conduct an investigation of the utility's request.

(A) This investigation may include a review of any and all information and materials related to the utility's cost of providing service and its operating revenues, the design of the utility's rates, the utility's service charges or fees, all provisions of the utility's tariffs, and any operational or customer service issues that are discovered during the investigation.

(B) The investigation may include a review of the records generated since the utility's previous rate case, the case in which the utility was granted its Certificate of Convenience and Necessity, or the utility's transfer of assets case, whichever is most recent.

(C) If an investigation of the utility's request includes the submission of data requests to the utility, copies of the data requests shall be provided to all parties to the case when they are submitted to the utility.

(D) The investigation shall include an update of the utility's rate base.

(GE) In determining the utility's cost of service, the value of normal expense items and plant-in-service and other rate base items, for which adequate documentary support is not available, may be based upon such evidence as is available or may be estimated in order to include reasonable levels of those costs. Unusual expense or rate base items or expense or rate base items for which the utility claims unusual levels of cost may require additional support by the utility. Nothing in this section diminishes the utility's obligation to adhere to the Commission's rules regarding appropriate record-keeping.

(DE) Not later than ninety (90) days after a small utility rate case is opened, the staff shall provide a report of its preliminary investigation, audit or analysis to all parties. The public counsel, if conducting its own investigation, shall do the same.

This report shall include:

1. An evaluation of the utility's record-keeping practices.
2. An itemized list of unusual cost of service items for which additional support was required.

(9) Settlement proposals.

(A) Staff's confidential settlement proposal. Not later than one hundred twenty (120) days after a small utility rate case is opened, the staff shall provide a confidential settlement proposal to the utility, the public counsel, and any other parties to the case.

1. The Sstaff's settlement proposal shall include the staff's recommended changes to:

- A. The utility's annual operating revenues;
- B. The utility's customer rates;
- C. The utility's service charges and fees;
- D. The utility's plant depreciation rates;
- E. The utility's tariff provisions;
- F. The operation of the utility's systems; and
- G. The management of the utility's operations.

2. The staff shall also provide the following with its settlement proposal:

- A. Draft revised tariff sheets reflecting ~~the staff's~~ its settlement proposal;
- B. A draft disposition agreement reflecting ~~the staff's~~ its settlement proposal;
- C. ~~Staff's~~ its audit workpapers;
- D. ~~Staff's~~ its rate design workpapers; and
- E. Any other documents supporting ~~the staff's~~ its settlement proposal.

3. Any settlement proposal, including any draft disposition agreement, and all supporting documents attached thereto are strictly intended for settlement negotiations only. If the staff and the utility are unable to reach a full or partial settlement via disposition agreement, the staff ~~is~~ will not be bound to any position stated or implied by the settlement proposal, draft disposition agreement, or supporting documents provided.

(B) Not later than ten (10) days after the staff provides its settlement proposal, the public counsel, the utility, and any other parties to the case shall notify the staff whether they agree with the proposal or, if not, they shall provide any suggested changes and the reasoning for those changes to the staff and the other parties. The **P**ublic counsel shall provide to the staff, the utility, and all other parties to the case any audit workpapers, rate design workpapers, or other documents in its possession that support its recommendations.

(C) The public counsel, if conducting its own investigation, shall provide a settlement proposal to the other parties consistent with the provisions of this section that are applicable to the staff's settlement proposal, and the other provisions of this section shall also apply to such a settlement proposal.

(10) At any time prior to the filing of ~~the~~a disposition agreement, any party may request the assigned regulatory law judge meet with the participants and mediate discussions to assist them in reaching at least a partial agreement.

(11) Disposition agreement.

(A) Not later than one hundred fifty (150) days after a small utility rate case is opened, the staff shall file one of the following:

1. A disposition agreement between at least the staff and the utility providing for a full resolution of the small utility rate case;

2. A disposition agreement between at least the staff and the utility providing for a partial resolution of the small utility rate case and a motion ~~asking~~requesting that the case proceed to an evidentiary hearing, with such motion including a list of issues proposed to be the subject of the hearing; or

3. A motion stating that agreements cannot be reached on any of the issues related to the small utility rate case and ~~asking~~[requesting](#) that the case proceed to an evidentiary hearing.

(B) If the disposition agreement filed by the staff provides for a full resolution of the small utility rate case and is executed by all parties, the utility shall submit to the commission, within five [\(5\)](#) business days of the staff's filing, new and/or revised tariff sheets bearing an effective date of not fewer than thirty (30) days later, to implement the agreement.

(C) If the disposition agreement filed by the staff provides for a full resolution of the small utility rate case but is not executed by all parties, the utility shall submit to the commission, concurrent with the staff's filing, new and/or revised tariff sheets, bearing an effective date that is not fewer than forty-five (45) days after they are filed, to implement the agreement.

(D) No later than five (5) working days after the filing of a full or partial disposition agreement that is not executed by all parties, each non-signatory party shall file a pleading stating its position regarding the disposition agreement and the related tariff revisions and providing the reasons for its position. If the non-signatory party intends to ask that the case be resolved by evidentiary hearing, it must do so in this pleading [and shall include a list of issues it believes should be the subject of the hearing in the pleading.](#)

(E) If any party requests an evidentiary hearing where the disposition agreement filed by the staff provides for a full resolution of the small utility rate case and is executed by at least the utility and the staff, either the utility or [the](#) staff shall bear the burden of proving the disposition agreement is reasonable.

1. If the utility elects to not participate as a party in an evidentiary hearing, representatives of the utility may still be called as witnesses by other parties.

(12) Evidentiary hearing procedures.

(A) Any party may file a request for an evidentiary hearing.

(B) Once such a request is filed, the regulatory law judge shall issue a procedural schedule designed to resolve the case in the time remaining in the small utility rate case process, consistent with the requirements of due process and fairness to the parties and the utility's customers.

(C) A request for an evidentiary hearing shall include a specified list of issues that the requesting party believes should be the subject of the hearing.

(D) The utility's pending tariff revisions, if any, shall be suspended pending completion of the hearing.

(13) Submission to the commission. The small utility rate case must be submitted to the commission for decision not later than eight (8) months after the small utility rate case is opened, and the commission's report and order regarding the case shall be issued and effective not later than nine (9) months after the small utility rate case is opened.

(14) The commission shall set just and reasonable rates, which may result in a revenue increase more or less than the increase originally sought by the utility, or which may result in a revenue decrease.

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

Small Sewer & Water Company Issues List

Small Sewer & Water Company Issues List

(Except for items 1, 2 & 3, the items listed are not presented in any particular order of preference.)

1. Establishment of a PSC administered small company revolving loan program (similar to the past EIIRA/PSC program, with possible funding through special PSC assessments)
2. Development of a standard set of initial Staff/OPC data requests (duplicative data requests from different Staff “units” and the OPC can be a burden on small companies);
3. Conduct a rulemaking process to promulgate a rule providing for the establishment of various types of reserve funds (such a rule was drafted in 2007 through the use of a stakeholder working group but has never been acted upon);
4. Add the “rate design worksheet” from the EMS program to the Excel version of the Annual Report form (use assumed 50/50 debt/equity ratio and 8% WACC to calculate interest expense and return on equity);
5. Inclusion of appropriate salaries for owners/investors that work for the company should not be adversely affected by the existence of return on equity monies;
6. Inconsistencies in the establishment of pay rates for officers, managers, field personnel and office personnel (need consistency of data sources to use, positions to use and in updating data source studies);
7. Establishment of “baseline” management fee allowance with “excess hours” paid extra (similar to what has been done for some receivership situations);
8. Inconsistencies between PSC auditors/departments/units regarding what constitutes “acceptable” records for work hours, vehicle mileage, plant costs, etc.;
9. Allowance for the use of “estimated if not known” standard for determining plant-in-service and rate base balances in the absence of “acceptable” records;
10. Allowance for the use of “estimated if not known” standard for establishing amounts of normal operating and maintenance expenses in the absence of “acceptable” records;
11. Establishment and use of accelerated asset recovery/economic depreciation rates;
12. Establishment and use of “standardized” hours for analyzing/annualizing payroll in the absence of “acceptable” records;
13. Establishment and use of “standardized” mileage for analyzing/annualizing vehicle expense in the absence of “acceptable” records;
14. Treatment of direct company expenses and personnel time as rate case expense;
15. Treatment of all company personnel labor as an expense;

16. Amortization of rate case expense (instead of normalization);
17. Amortization or capitalization of certificate case expense (instead of normalization);
18. Treating owners' personal security for company loans as equity in capital structure;
19. Application of capacity adjustments (when to do);
20. Calculation of capacity adjustments (how to do);
21. Calculation of depreciation reserves when capacity adjustments are applied (how to do);
22. Income tax allowance for S corps & LLCs;
23. Payroll tax allowance for members of S corps & LLCs that work for the companies;
24. Recovery of depreciation expense "lost" between time of plant installation and effective date of rates in which the plant is recognized (for existing companies with limit on time frame involved);
25. If they so request, company personnel should be provided an appropriately protected Excel version of the Staff's EMS program;
26. Recovery of past due expenses such as receivership fees, PSC assessments, DNR permit fees, electric bills, etc. paid by purchasers of systems in receivership;
27. Establishment of a small company assistance program;
28. Updating of the small company rate case "How to Booklet."