

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 22nd day of
April, 2015.

In the Matter of the Application and Petition of)	
Missouri-American Water Company Requesting the)	<u>File No. WX-2015-0209</u>
Commission Promulgate a Revenue Decoupling)	
Mechanism for the Water and Sewer Industry.)	

**ORDER DENYING APPLICATION AND PETITION FOR
PROMULGATION OF RULE**

Issue Date: April 22, 2015

Effective Date: May 2, 2015

On February 27, 2015, Missouri-American Water Company filed a petition asking the Commission to promulgate a new rule to establish a revenue decoupling mechanism for use by water and sewer corporations. Missouri-American proposed specific language for the new rule as part of its petition.

After receiving Missouri-American's petition, the Commission provided a copy of that petition to the Joint Committee on Administrative Rules and to the Office of Administration as required by Section 536.041, RSMo (Cum. Supp. 2013). Before deciding whether to grant Missouri-American's petition, the Commission directed its Staff to investigate that petition and to file a recommendation. The Commission also invited other interested stakeholders to offer their recommendations.

Staff filed its comments and recommendation on April 1. Staff offers its opinion that the revenue decoupling mechanism proposed by Missouri-American would be unlawful under current Missouri law and advises the Commission to deny Missouri-American's

petition. The Missouri Industrial Energy Consumers (MIEC), the Office of the Public Counsel, and the Consumers Council of Missouri also recommended that the Commission deny the petition.

Missouri-American responded to the adverse recommendations on April 7, and denies that its proposed rule would be unlawful. Missouri-American argues that what it is proposing is simply a tracking mechanism of a sort that is frequently used by the Commission in regulating the utilities subject to its authority. Nevertheless, Missouri-American suggests the Commission open a working case at which the Commission and other stakeholders can discuss the issues and concerns raised by Staff, Public Counsel, MIEC, and Consumers Council.

Section 536.041, RSMo (Cum Supp. 2013), allows any person to petition a state agency requesting the adoption, amendment, or repeal of any rule. That section further requires the agency to submit a written response to the rulemaking petition within sixty days of receipt of the petition, indicating its determination of whether the proposed rule should be adopted. Similarly, Commission Rule 4 CSR 240-2.180(3)(B) requires the Commission to respond to a petition for rulemaking by either denying the petition in writing, stating the reasons for its decision, or by initiating a rulemaking in accordance with Chapter 536, RSMo.

Section 536.041 also requires the agency to offer a concise summary of the agency's "findings with respect to the criteria set forth in subsection 4 of section 536.175." The criteria in subsection 4 are designed to guide the agency's review of its existing rules under the periodic review process required by that statute. As a result, those criteria do not precisely match the review needed to determine whether Missouri-American's rulemaking

petition should be granted. However, the gist of the criteria is to require the agency to consider whether the rule is properly drafted to be consistent with the language and intent of the authorizing statute; whether the rule imposes an unnecessary regulatory burden; and whether a less restrictive, more narrowly tailored, or alternative rule could accomplish the same purpose.

The Commission finds that the regulatory language offered by Missouri-American does not meet the statutory criteria. Staff, Public Counsel and the consumer groups that responded to Missouri-American's petition raise legitimate concerns about whether the proposed rule is consistent with the Commission's authority and whether the revised rule would sufficiently protect consumer interests. For that reason, the Commission will deny Missouri-American's petition.

Nevertheless, the Commission wants to further explore these issues and will establish a working case to consider the advisability and legality of a decoupling mechanism and other risk-shifting ideas. That working case will be established by a subsequent separate order.

THE COMMISSION ORDERS THAT:

1. Missouri-American Water Company's Application and Petition for Promulgation of a Rule is denied.
2. As required by Section 536.041, RSMo, a copy of this order shall be provided to the Joint Committee on Administrative Rules and to the Commissioner of Administration.

3. This order shall become effective on May 2, 2015



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Woodruff, Chief Regulatory Law Judge