

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 17th day of
July, 2019.

In the Matter of the Application and Petition of the)	
Office of the Public Counsel Requesting the)	
Commission Promulgate Rules Pertaining to the)	<u>File No. WX-2019-0380</u>
Affiliate Transactions of Water Corporations)	

**ORDER DENYING PETITION FOR PROMULGATION OF RULES
REGARDING AFFILIATE TRANSACTIONS OF WATER
CORPORATIONS**

Issue Date: July 17, 2019

Effective Date: August 3, 2019

On June 4, 2019,¹ the Office of the Public Counsel filed a petition asking the Commission to promulgate new rules regarding the affiliate transactions of water corporations. Public Counsel included a draft rule as an attachment to its petition. In response to Public Counsel's petition, the Commission directed its Staff to investigate Public Counsel's request and to file its recommendation by July 5. The Commission also directed that any other person wishing to file a recommendation do so by July 5.

Staff filed its recommendation on June 27. Staff explains it is already reviewing the Commission's affiliate transaction rules in three working files, WW-2018-0392, AW-2018-0393, and AW-2018-0394. Specifically, in File No. WW-2018-0392, Staff is considering the promulgation of a new affiliate transaction rule applicable to water and sewer corporations with 8,000 or fewer customers. Extension of the Commission's existing affiliate transaction

¹ All dates are in 2019, unless otherwise indicated.

rules to water corporations with more than 8,000 customers is under consideration in File No. AW-2018-0394. Staff indicates that if the review process undertaken in those files is allowed to continue, draft proposed rules will be ready for the Commission's consideration in a few months.

Public Counsel's petition acknowledges the existence of Staff's on-going review of the Commission's affiliate transaction rules, but expresses concern that Staff's review has "languished on the vine". Concern about that delay prompted Public Counsel to file its petition.

Missouri-American Water Company filed its own recommendation on June 28. It opposes Public Counsel's proposal to extend application of the Commission's affiliate transaction rules to water corporations with more than 8,000 customers. As the only water corporation to which such rules would apply, Missouri-American contends the Commission already scrutinizes its affiliate transactions in its general rate cases and argues it should not be subject to the additional and unnecessary regulatory burden that would be imposed by a rule.

Section 536.041, RSMo 2016, allows any person to petition a state agency requesting the adoption, amendment, or repeal of any rule. That statute further requires the agency to explain what action it has taken in response to the petition and the reasons for that action. 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 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 536.175.4 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 Public Counsel'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 draft rule attached to Public Counsel's petition has not yet been subject to a full review, but the informal review and workshop process already undertaken by Staff regarding its draft rule has allowed all interested stakeholders an opportunity to present information and arguments to Staff. For that reason, the Commission will wait to see the draft rule that results from Staff's review before undertaking the formal rulemaking process.

Based on recommendation of Staff and the existence of the on-going rule review by Staff, the Commission concludes that Public Counsel's petition for rulemaking should be denied. The Commission will issue orders in the previously established working files to direct Staff to expeditiously file proposed rules for the Commission's consideration.

THE COMMISSION ORDERS THAT:

1. The Application and Petition for Promulgation of Rules filed by the Office of the Public Counsel on June 4, 2019, is denied.

2. This order shall become effective on August 3, 2019.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style.

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Woodruff, Chief Regulatory Law Judge