

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

In the Matter of the Application and Petition)	
Of the Office of the Public Counsel)	
Requesting the Commission Promulgate)	File No. WX-2019-XXXX
Rules Pertaining to the Affiliate)	
Transactions of Water Corporations)	

**APPLICATION AND PETITION
FOR PROMULGATION OF RULES**

COMES NOW Office of the Public Counsel (OPC), by and through counsel, and, pursuant to Section 386.250, RSMo; Section 386.710, RSMo; Section 393.140, RSMo; Section 536.041, RSMo; and, Missouri Public Service Commission (Commission) Rule 4 CSR 240-2.180, states as follows to the Commission:

BACKGROUND INFORMATION

1. The OPC is a Missouri state agency within the Department of Economic Development. The OPC's office is located at Governor's Office Building, Suite 650 Jefferson City, MO 65101.
2. The OPC is directed by Section 386.710, RSMo to "represent and protect the interests of the public" before the Commission.
3. Pursuant to that responsibility, OPC filed an application and petition to initiate rulemaking regarding affiliate transactions by water corporations on June 22, 2018, in Case File WX-2018-0387.
4. On June 27, 2018, the Staff of the Public Service Commission (Staff) expressed its intent to consolidate existing Commission affiliate transaction rules, while also subjecting water utilities to those same rules, in Case File AW-2019-0394. Wishing to not interfere with Staff's

endeavor, and out of respect of a request from Staff, OPC withdrew its rulemaking petition on July 2, 2018.

5. Interested parties filed comments in the AW-2019-0394 docket on August 10, 2018, and thereafter Staff hosted a workshop on October 9, 2018. Staff's proposed affiliate transaction rules have since languished on the vine, with the latest substantive activity in the docket being the aforementioned workshop.

6. OPC continues to maintain that the public interest is furthered by protecting the customers of large water utilities from affiliate transaction abuses just as electric and gas customers are currently protected, and believes that continued delay is unwarranted.¹

PETITION TO PROMULGATE

7. The Commission is empowered under Section 386.250, RSMo to adopt and promulgate rules prescribing the conditions and rendering of public utility service.

8. Under section 393.140(4), RSMo, the Commission is concurrently authorized to prescribe uniform record and account keeping measures for water corporations.

9. Section 536.041, RSMo, endows any person, including the OPC, to request and petition an agency for rulemaking.

10. Consistent with the above statute, Commission Rule 4 CSR 240-2.180 provides for the promulgation of rules following the filing of a petition for rulemaking with the Commission.

11. Transactions between a Commission-regulated entity and its affiliates potentially present certain moral hazards whereby a regulated utility has the potential and the incentive to

¹ To the extent the Commission questions whether to proceed with a rulemaking before the Commission is transitioned to its new department, OPC points out that on August 28, 2019, when the Commission's reorganization is complete, it will still be enforcing rules within Title 4 reserved for the Department of Economic Development, and will continue to do so in spite of the departmental change. Ministerial matters such as Title numbers need not stall proper rulemaking, and so the OPC again petitions to the Commission for rulemaking.

impermissibly benefit from directing the funds from captive ratepayers towards non-regulated operations.

12. The Commission has long understood consumer vulnerability exists when affiliated transactions occur, having investigated Southwestern Bell Telephone Company's affiliated transactions in 1994,² considered rules to address affiliated transactions of telephone companies twenty years ago,³ and promulgated affiliated transaction rules for electric corporations and gas corporations, nineteen and twenty years ago, respectively.⁴

13. The Commission has already implemented rules setting forth financial and evidentiary standards, and record keeping requirements for regulated electrical corporations whenever such corporation engages in affiliated transactions as codified in 4 CSR 240-20.015 and 4 CSR 240-20.017.

14. The Commission has also implemented rules setting forth financial and evidentiary standards, and record keeping requirements for regulated gas corporations whenever such corporation engages in affiliated transactions as codified in 4CSR 240-40.015 through 4 CSR 240-40.017.

15. The OPC hereby petitions the Commission to open a rulemaking docket to initiate a rulemaking workshop with the ultimate intent of promulgating a Water Corporation Affiliate Transactions Rule for water and sewer corporations after receiving input from various stakeholders.

² TO-94-184.

³ TO-96-328.

⁴ EX-99-263; Case No. GX-99-445.

16. The OPC estimates that the effects of this rulemaking on the expenditure of public funds or a reduction of public revenues for the Commission, any other state agency, or any political subdivisions are less than five hundred dollars in aggregate.

17. The OPC estimates that the effects of this rulemaking on private persons or entities regarding any required monetary expenditures or income reductions are less than five hundred dollars in aggregate.

PROPOSED RULE

18. Attached hereto as **OPC-1** is the full text of OPC's proposed Commission Rule that the OPC requests the Commission consider for promulgation. The OPC does not seek to amend or rescind any existing Commission rule.

19. In further support of its proposed rule, the OPC also tenders its attached *Memorandum*, along with supporting documents, to the Commission for its consideration.

WHEREFORE, the OPC respectfully requests that the Commission consider the information provided herein and, open a rulemaking docket, and initiate the rulemaking process to ultimately promulgate a water corporation affiliate transactions rule.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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**Attorney for the Office of the Public
Counsel**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on 4th day of June, 2019, to the following:

Office of the General Counsel
Governor's Office Building
Jefferson City, MO 65101
staffcounsel@psc.mo.gov

/s/ Caleb Hall

MEMORANDUM

To: Missouri Public Service Commission

From: Geoff Marke, Chief Economist
Missouri Office of the Public Counsel

Subject: Proposed Rulemaking: Water Affiliate Transaction Rules

Date: 16 May 2019

Overview:

The Office of Public Counsel (“OPC”) is requesting the Commission open a rulemaking docket in its Chapter 50 Rules—Water Utilities, for the purpose of adding a subsection titled: “Affiliate Transactions” to be codified as subsection: 4 CSR 240-50.015. OPC has included a draft copy of the proposed rules in attachment OPC-1.

The proposed affiliate transactions rules, when coupled with effective enforcement, will provide the public assurance that their utility rates are not adversely impacted by (i.e., being used to subsidize) the utilities’ affiliate activities. This specific request for rulemaking for Missouri water utilities would not be overly burdensome as the proposed water rules mirror both the electric (4 CSR 240-20.015) and gas (4 CSR 240-40.015) affiliate transactions rules currently in place.

Extent of Application for Proposed Rules:

OPC believes that all water utilities operating in the state of Missouri should be subject to certain rules relating to affiliate transactions including, for example, requirements for competitive bidding, requirements that the utilities maintain control over their own books, rules related to record keeping & access, rules prohibiting preference except under limited circumstances, rules regarding audits, requirements for reporting affiliate transactions, specific definitions regarding cost determination (and other key terms), rules prohibiting the utility from engaging in non-complying affiliate transactions, and a requirement that the utility must pursue its best interest in affiliate transactions. That being said, OPC is cognizant that the level of detail and requisite compliance to meet the proposed rules for a water utility with less than 8,000 customers will need to be balanced against associated costs and burden of proof. Therefore, OPC maintains that the proposed rules should apply, at a minimum, to water utilities with more than 8,000 customers. OPC reserves the right to consider a future venue to determine the reasonableness of the attached affiliate transactions rules for the remaining water utilities or whether an abridged affiliate transactions rule (with requisite requirements to be included in the minimum filing requirements for the Company’s annual reports to the Commission) would be more appropriate for a water utility with less than 8,000 customers.

Necessity of Proposed Rule:

The necessity of the proposed rules can easily be seen by considering the business practices currently employed by American Water. As articulated most recently in both direct and surrebuttal testimony in Case No. WR-2017-0285, American Water is the only water utility in the United States included in the S&P 500. Headquartered in Voorhees, New Jersey, American Water employs approximately 6,900 people and provides services through its subsidiaries to an estimated 15 million people in 46 states and Ontario, Canada. Among these subsidiaries is Missouri American Water which serves nearly half a million customers with the state.

While Missouri American Water currently utilizes a Cost Allocation Manual (“CAM”), it is not a Commission-approved CAM because there are no affiliate transaction rules in place for water utilities. Missouri American Water’s CAM thus lacks any enforceable standards and can only provide minimal protection for the citizens of Missouri when American Water engages in potentially improper subsidization such as its current allocation of Business Transformation System costs to its regulated subsidiaries as opposed to its nonregulated “Market-Based Business” operations. These problems are further exacerbated because the lack of affiliate transaction rules means that regulators must operate at a considerable informational disadvantage in ensuring a transparent and appropriate cost allocation.

Another major area of concern is the interplay between regulated and non-regulated services offered to customers. Consider, for example, that American Water’s non-regulated affiliate “Homeowner Services” provides services to its subsidiary’s customers that include:

- Water and sewer service line protection;
- In-home plumbing emergency program;
- Electric line protection;
- Power surge protection;
- Heating system repair; and
- Cooling system repair

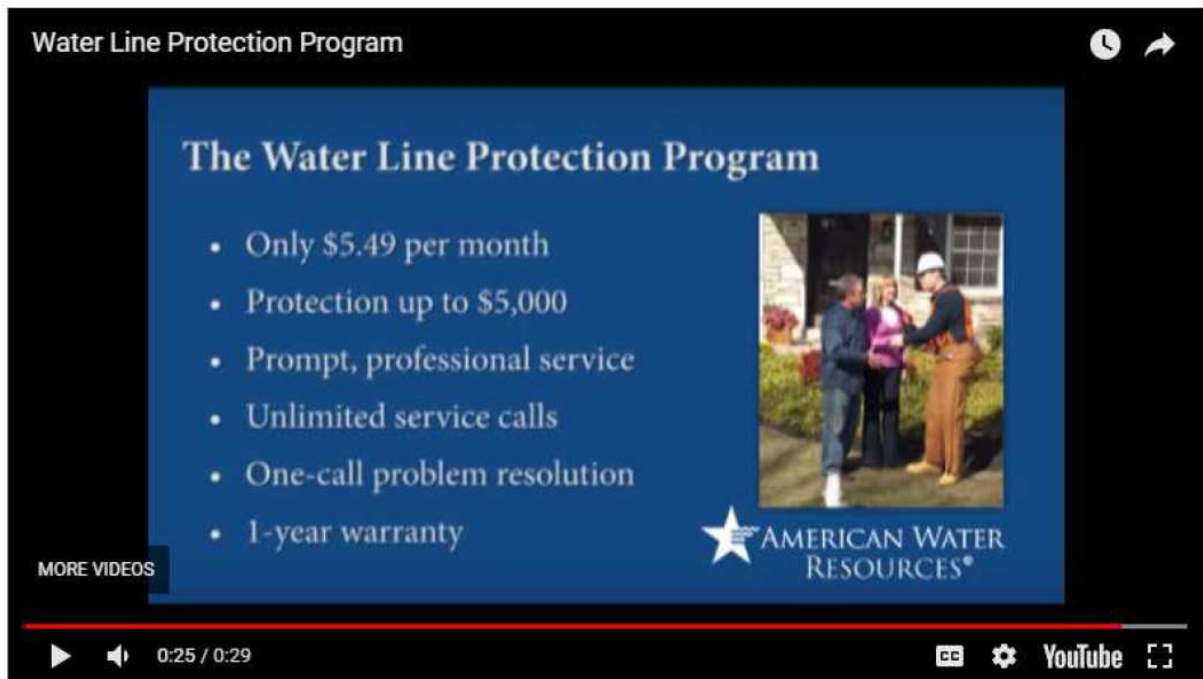
According to the American Water homepage under Industry & Homeowner Solutions:

Homeowner Services>

Many homeowners are not aware that they are legally responsible for the portion of the water and sewer service lines that extend through their property and that repair to these lines are typically not covered by homeowners insurance. For over fourteen years American Water Resources (AWR) has offered water utility services by protecting homeowners, just like you, against unexpected home repair costs. Through our affordable Protection Programs, hundreds of thousands of homeowners have peace of mind knowing they will receive prompt,

courteous, qualified service from a trusted company. AWR helps protect what most homeowners' insurance policies don't, with the claim forms.³ (emphasis added) Figure 1 provides a visual snapshot of the American Water: Water Line Protection Program video currently on its website.¹

Figure 1: Non-regulated water service line protection program²



Beyond being mere speculation, improper allocation of services rendered by American Water subsidiaries has been documented by other states. For example, a New Jersey Public Service Commission ordered independent third-party audit concluded that American Water had implemented an accounting and charging allocation method in which “only seven percent of the work performed can be specifically assigned to New Jersey American Water leaving 93 percent of charges allocated” (see OPC-2).

Finally, the OPC’s request for affiliate transactions rulemaking will not be overly burdensome for Missouri American Water as American Water already has subsidiaries operating in other states that have to conform to water utility affiliate transaction rules (see OPC-3).

For all of the aforementioned reasons, OPC makes this long-overdue and reasonable request to the Commission.

¹ American Water Works Company, Inc. (2018) We Keep Life Flowing: <https://amwater.com/corp/>

² American Water Resources (2018) <https://awrusa.com/products-services-water-line-protection>

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

AFFIDAVIT OF GEOFF MARKE

STATE OF MISSOURI)
)
COUNTY OF COLE) SS.

COMES NOW GEOFF MARKE and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *APPLICATION AND PETITION FOR PROMULGATION OF RULES*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.



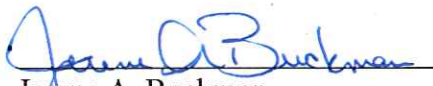
Geoff Marke
Chief Economist

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 4th day June 2019.



JERENE A. BUCKMAN
My Commission Expires
August 23, 2021
Cole County
Commission #13754037



Jerene A. Buckman
Notary Public

My Commission expires August 23, 2021.