

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 50—Water Utilities**

PROPOSED RULE

4 CSR 240-50.050 Environmental Cost Adjustment Mechanism

PURPOSE: This rule allows the establishment of an Environmental Cost Adjustment Mechanism (ECAM), which allows periodic rate adjustments to reflect net increases or decreases in a water utility's prudently incurred costs directly related to compliance with federal, state, or local environmental law, regulation, or rules.

(1) Definitions. As used in this rule, the below listed terms are defined as follows:

(A) ECAM qualifying environmental costs means prudently incurred costs, both capital and expense, occurring after the later of the last day of the test year or last day of the true-up period in a water utility's most recent rate case, and which meet the following conditions:

1. Costs that are directly related to the imposition, after the later of the last day of the test year or last day of the true-up period in the company's most recent rate case, of any federal, state, or local law (including, without limitation, common law, statutes, ordinances, or regulations) pertaining to the regulation or protection of health, safety, and the environment for which compliance is required after the later of the last day of the test year or last day of the true-up period in the company's most recent rate case; or

2. Costs that are directly related to any permit, license, agreement, or order developed or issued for which compliance is required after the last day of the test year or last day of the true-up period in the company's most recent rate case in response to any federal, state, or local law (including, without limitation, common law, statutes, ordinances, or regulations) pertaining to the regulation or protection of health, safety, and the environment; or

3. Are not available for inclusion in any approved Infrastructure System Repair Surcharge as defined in 4 CSR 240-3.650; and

4. Do not include any increased costs resulting from negligent or wrongful acts or omissions by the utility.

(B) Environmental Cost Adjustment Mechanism (ECAM) means a mechanism established in a general rate proceeding that allows periodic rate adjustments, outside a general rate proceeding, to reflect the net increases or decreases in a water utility's ECAM qualifying environmental costs.

(C) General rate proceeding means a general rate proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs, or rates and charges, of the water utility are considered by the commission.

(D) Staff means the staff of the Public Service Commission.

(E) True-up year means the twelve (12)-month period beginning on the first day of the first calendar month following the effective date of the commission order approving an ECAM unless the effective date is on the first day of the calendar month. If the effective date of the commission order approving a rate mechanism is on the first day of a calendar month, then the true-up year begins on the effective date of the commission order. The first annual true-up period shall end on the last day of the twelfth calendar month following the effective date of the commission order establishing the ECAM. Subsequent true-up years shall be the succeeding twelve (12)-month periods. If a general rate proceeding is concluded prior to the conclusion of a true-up year, the true-up year may be less than twelve (12) months.

(F) Water utility means a water corporation as defined in section 386.020(59), RSMo, subject to commission regulation pursuant to Chapters 386 and 393, RSMo.

(2) Applications to Establish or Modify an ECAM. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 386.266, RSMo, only a water utility, in a general rate proceeding, may file an application with the commission to establish, modify, or discontinue an ECAM by filing tariff schedules. Any party in a general rate proceeding in which an ECAM is proposed or in effect may seek to continue, modify, support, or oppose the proposed or existing ECAM. After a full hearing in a general rate proceeding, the commission shall approve, modify, or reject the application to establish or modify an ECAM. The final approved ECAM shall be designed to permit the water utility to make periodic rate adjustments to its rate schedules outside of a general rate proceeding to reflect changes in its environmental costs as defined in subsection (1)(C).

(A) The ECAM shall be based on known and measurable ECAM Qualifying Environmental Costs.

(B) The water utility shall include in its initial notice to customers regarding the general rate case in which an ECAM is first proposed, a commission-approved description of how the water utility proposes that the ECAM would operate.

(C) The commission may take into account any change in business risk to the water utility resulting from establishment, continuation, or modification of the ECAM in setting the water utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the water utility.

(D) In determining which environmental cost components to include in an ECAM, the commission will consider, but is not limited to only considering, the magnitude of the costs, the ability of the utility to manage the costs, the incentive provided to the utility as a result of the inclusion or exclusion of the cost, and the extent to which the cost is related to environmental compliance.

(E) The commission may, in its discretion, determine what portion of prudently incurred environmental costs may be recovered in an ECAM and what portion shall be recovered in base rates.

(F) If costs are requested to be recovered through the ECAM and the revenue to be collected in the ECAM rate schedules exceeds two and one-half percent (2.5%) of the water utility's Missouri annual gross jurisdictional revenues, the water utility cannot subsequently request that any cost identified as an environmental cost be recovered through a infrastructure system repair surcharge.

(3) Application for Discontinuation of an ECAM. An ECAM shall be discontinued only after providing the opportunity for a full hearing in a general rate proceeding. The commission shall consider all relevant factors that affect the cost or overall rates and charges of the petitioning water utility.

(A) Any party to the general rate proceeding may oppose the discontinuation of an ECAM on the grounds that the water utility is currently experiencing, or in the next four (4) years is likely to experience, declining costs or on any other grounds that would result in a detriment to the public interest. If the commission finds that the water utility is seeking to discontinue the ECAM under these circumstances, the commission shall not permit the ECAM to be discontinued, and shall order its continuation or modification. To continue or modify the ECAM under such circumstances, the commission must find that it provides the water utility a sufficient opportunity to earn a fair rate of return.

(B) The commission may take into account any change in business risk to the water utility resulting from discontinuance of the ECAM in setting the water utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the water utility.

(C) The water utility shall include in its initial notice to customers regarding the general rate case, a commission-approved description of why it believes the ECAM should be discontinued.

(D) Subsections (2)(C) through (2)(F) shall apply to any proposal for continuation or modification.

(4) Periodic Adjustments of ECAMs. If a water utility files proposed rate schedules to establish or adjust its ECAM rates between general rate proceedings, the staff shall examine and analyze the information filed by the water utility and additional information obtained through discovery, if any, to determine if the proposed ECAM rate adjustment is in accordance with the provisions of this rule, section 386.266, RSMo, and the ECAM established in the water utility's most recent general rate proceeding.

(A) The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the water utility files its tariff schedules to adjust its ECAM rates.

1. If the staff determines that the ECAM rate adjustment is in accordance with the provisions of the rule, section 386.266, RSMo, and the ECAM established in the water utility's most recent general rate proceeding, the commission shall either—

A. Issue an interim rate adjustment order approving the tariff schedules and the ECAM rate adjustments within sixty (60) days of the water utility's filing; or

B. If no such order is issued, the tariff schedules and ECAM rate adjustments shall take effect sixty (60) days after the tariff schedules were filed.

2. If the staff determines that the ECAM rate adjustment is not in accordance with the provisions of this rule, section 386.266, RSMo, or the ECAM established in the water utility's most recent rate proceeding and the water utility agrees with the staff's determination, the commission shall reject the rate schedules proposed in the water utility's filing and shall instead order implementation of appropriate tariff schedules and ECAM rate adjustments taking into consideration staff's determinations, with the tariff schedules and ECAM rate adjustments to be effective within sixty (60) days after the tariff schedules were filed.

3. If the staff determines that the ECAM rate adjustment is not in accordance with the provisions of this rule, section 386.266, RSMo, and the ECAM established in the water utility's most recent general rate proceeding and the water utility disagrees with the staff's determination, the commission shall reject the rate schedules proposed in the water utility's filing, order implementation of an appropriate interim ECAM rate schedule and shall schedule an evidentiary hearing to be held within sixty (60) days after the tariff schedules were filed. After conclusion of the evidentiary hearing, the commission shall either—

A. Issue a rate adjustment order approving the tariff schedules as filed; or

B. Reject the proposed rate schedules of the water utility's filing and shall instead order implementation of an appropriate rate schedule taking into consideration evidence presented in the evidentiary hearing to be effective within ninety (90) days after the tariff schedules were filed.

(B) The ECAM rate adjustment shall reflect a comprehensive measurement of changes in revenue requirement due to any federal, state, or local laws, permits, licenses, agreements, or orders that impact ECAM qualifying environmental costs as defined in subsection (1)(A) in either a positive or negative manner.

(C) The periodic adjustment shall reflect a comprehensive measurement of both increases and decreases to any ECAM qualifying environmental costs incurred since the previous ECAM filing.

(D) Any periodic adjustment made to ECAM rate schedules shall not generate an annual amount of general revenue that exceeds two and one-half percent (2.5%) of the water utility's Missouri gross jurisdictional revenues established in the water utility's most recent general rate proceeding.

1. Missouri gross jurisdictional revenues shall be the amount established in the water utility's most recent general rate proceeding and shall exclude gross receipts tax, sales tax, and other similar pass-through taxes not included in tariffed rates for regulated services;

2. The water utility shall be permitted to collect any applicable gross receipts tax, sales tax, or other similar pass-through taxes and

such taxes shall not be counted against the two and one-half percent (2.5%) rate adjustment cap; and

3. Any environmental costs, to the extent addressed by the ECAM, not recovered as a result of the two and one-half percent (2.5%) limitation on rate adjustments, including depreciation and property taxes related to capital investments, may be deferred at a carrying cost each month equal to the water utility's net of tax cost of capital, for recovery in a subsequent ECAM periodic adjustment or in the water utility's next general rate proceeding.

(E) A water utility with an ECAM shall file one (1) mandatory adjustment to its ECAM in each true-up year coinciding with the true-up of its ECAM. It may also file one (1) additional adjustment to its ECAM within a true-up year.

(F) The water utility shall be current on its submission of its Surveillance Monitoring Reports as required in section (9) of this rule in order for the commission to process the water utility's requested ECAM adjustment increasing rates.

(G) If the staff, Office of the Public Counsel (OPC), or other party has not received information required by commission rule or order, it shall notify the water utility within ten (10) days of the water utility's filing of an application or tariff schedules to adjust the ECAM rates and identify the information required. The water utility, within ten (10) days of the request, shall supply the information identified by the party, or shall notify the party that, in its opinion, the information provided was in compliance.

(H) If the water utility does not supply the information in a timely manner, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel, the processing time line for the adjustment to increase ECAM rates shall be suspended. If the commission then issues an order requiring the information be provided, the time necessary for the information to be provided shall further extend the processing time line for the adjustment to increase ECAM rates. For good cause shown the commission may further suspend this timeline.

(5) True-ups of an ECAM. A water utility that files for an ECAM shall include in its tariff schedules and application, if filed in addition to tariff schedules, provisions for true-ups on at least an annual basis that shall accurately and appropriately remedy any over-collection or under-collection through subsequent rate adjustments or refunds.

(A) The subsequent true-up rate adjustments or refunds shall include interest at the water utility's short-term borrowing rate. The interest rate on accumulated ECAM under-collections or over-collections shall be calculated on a monthly basis for each month the ECAM rate is in effect, equal to the weighted average interest rate paid by the water utility on short-term debt for that calendar month. This rate shall then be applied to a simple average of the same month's beginning and ending cumulative ECAM over-collection or under-collection balance. Each month's accumulated interest shall be included in the ECAM over-collection or under-collection balances on an ongoing basis.

(B) The true-up adjustment shall be the difference between the revenue collected and the revenue authorized for collection during the true-up period and billed revenues associated with the ECAM during the true-up period.

(C) The water utility shall be current on its submission of its Surveillance Monitoring Reports as required in section (9) of this rule at the time that it files its application for a true-up of its ECAM in order for the commission to process the water utility's requested annual true-up of any under-collection.

(D) The staff shall examine and analyze the information filed and additional information obtained through discovery, to determine whether the true-up is in accordance with the provisions of this rule, section 386.266, RSMo, and the ECAM established in the water utility's most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the water utility files its

tariff schedules for a true-up. The commission shall either issue an order deciding the true-up within sixty (60) days of the water utility's filing, suspend the timeline of the true-up in order to receive additional evidence and hold a hearing if needed, or, if no such order is issued, the tariff schedules and the ECAM rate adjustments shall take effect by operation of law sixty (60) days after the water utility's filing.

1. If the staff, OPC, or other party has not received information required by commission rule or order, it shall notify the water utility within ten (10) days of the water utility's filing of an application or tariff schedules to adjust the ECAM rates and identify the information required. The water utility, within ten (10) days of the request, shall supply the information identified by the party, or shall notify the party that, in its opinion, the information provided was in compliance.

2. If the water utility does not supply the information in a timely manner, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel, the processing time line for the adjustment to increase ECAM rates shall be suspended. If the commission then issues an order requiring the information be provided, the time necessary for the information to be provided shall further extend the processing time line for the adjustment to increase ECAM rates. For good cause shown the commission may further suspend this timeline.

3. If the party asserting the information is not being provided can demonstrate to the commission that the adjustment shall result in a reduction in the ECAM rates, the processing timeline shall continue with the best information available. When the water utility provides the necessary information, the ECAM shall be adjusted again, if necessary, to reflect the additional information provided by the water utility.

(6) Duration of ECAMs and Requirement for General Rate Case. Once an ECAM is approved by the commission, it shall remain in effect for a term of not more than four (4) years unless the commission earlier authorizes its modification, extension, or discontinuance in a general rate proceeding.

(A) A water utility may submit proposed rate schedules to implement periodic adjustments to its ECAM rate between general rate proceedings.

(B) If an ECAM expires due to the four (4) year limitation, a water utility is not prohibited from requesting establishment of a new ECAM in connection with a subsequent rate case.

(C) If the commission approves an ECAM for a water utility, the water utility must file a general rate case with the effective date of new rates to be no later than four (4) years after the effective date of the commission order implementing the ECAM, assuming the maximum statutory suspension of the rates so filed.

1. The four (4)-year period shall not include any periods in which the water utility is prohibited from collecting any charges under the adjustment mechanism, or any period for which charges collected under the ECAM must be fully refunded. In the event a court determines that the ECAM is unlawful and all moneys collected are fully refunded as a result of such a decision, the water utility shall be relieved of any obligation to file a rate case. The term fully refunded as used in this section does not include amounts refunded as a result of reductions in net environmental compliance costs or prudence adjustments.

2. At the time of the filing of the general rate case described above, the water utility shall file revised ECAM rate schedules to reset the ECAM to zero when new base rates and charges become effective following a commission order establishing customer rates in the general rate proceeding that incorporates eligible costs previously reflected in an ECAM into the water utility's base rates. If an over or under recovery of ECAM revenues, including any commission ordered refunds, exists after the ECAM has been reset to zero, the

amount of over or under recovery shall be tracked in an account and considered in the water utility's next ECAM filing.

(7) Prudence Reviews Respecting an ECAM. A prudence review of the costs subject to the ECAM shall be conducted no less frequently than at eighteen (18)-month intervals.

(A) All amounts ordered refunded by the commission shall include interest at the water utility's short-term borrowing rate. The interest shall be calculated on a monthly basis in the same manner as describe in subsection (5)(A) of this rule.

(B) Staff shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred eighty (180) days after the staff initiates its prudence audit. The timing and frequency of prudence audits for each ECAM shall be established in the general rate proceeding in which the ECAM is established. Staff shall file notice within ten (10) days of starting its prudence audit. The commission shall issue an order not later than two hundred ten (210) days after staff commences its prudence audit if no party to the proceeding in which the prudence audit is occurring files, within one hundred ninety (190) days of staff's commencement of its prudence audit, a request for hearing.

1. If staff, OPC, or other party auditing the ECAM determines that insufficient information has been supplied to make a recommendation regarding the prudence of the water utility's ECAM qualifying environmental costs, it may utilize discovery to obtain the information it seeks.

2. If the water utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel the processing timeline shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown, the commission may further suspend the timeline.

3. The water utility shall refund all imprudently incurred costs plus interest at the water utility's short-term borrowing rate, even if the timeline is extended due to a water utility's failure to timely provide sufficient responses to discovery, and a refund is due to the customers. The interest shall be calculated on a monthly basis in the same manner as described in subsection (5)(A) of this rule.

(8) Disclosure on Customers' Bills. Any amounts charged under an ECAM approved by the commission shall be separately disclosed on each customer's bill. Proposed language regarding this disclosure shall be submitted to the commission for the commission's approval.

(9) Submission of Surveillance Monitoring Reports. Each water utility, with more than eight thousand (8,000) customers, with an approved ECAM shall submit to staff, OPC and parties approved by the commission in the previous general rate proceeding granting an ECAM a Surveillance Monitoring Report in the form and having the content provided for by 4 CSR 240-3.162(6).

(A) The Surveillance Monitoring Report shall be submitted within fifteen (15) days after the water utility's next scheduled United States Securities and Exchange Commission (SEC) 10-Q or 10-K filing following the effective date of the commission order establishing the ECAM and within fifteen (15) days after each subsequent SEC 10-Q or 10-K filing.

(B) Upon a finding that a utility has knowingly or recklessly provided materially false or inaccurate information to the commission regarding the surveillance data prescribed in 4 CSR 240-3.162(6), after notice and an opportunity for a hearing, the commission may suspend an ECAM or order other appropriate remedies as provided by law.

(10) Pre-Existing Adjustment Mechanisms, Tariffs, and Regulatory Plans. The provisions of this rule shall not affect the following:

(A) Any adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism that was approved by the commission and in effect prior to the effective date of this rule; and

(B) Any experimental regulatory plan that was approved by the commission and in effect prior to the effective date of this rule.

(11) Nothing in this rule shall preclude a complaint case from being filed, as provided by law, on the grounds that a utility is earning more than a fair return on equity due to an approved ECAM, nor shall a water utility be permitted to use the existence of its ECAM as a defense to a complaint case based upon an allegation that it is earning more than a fair return on equity. If a complaint is filed on the grounds that a utility is earning more than a fair return on equity, the commission shall issue a procedural schedule that includes a clear delineation of the case timeline no later than sixty (60) days from the date the complaint is filed.

(12) Waiver of Provisions of this Rule. Provisions of this rule may be waived by the commission for good cause shown after an opportunity for hearing.

AUTHORITY: sections 386.250 and 393.140, RSMo 2000, and section 386.266, RSMo Supp. 2012. Original rule filed Aug. 15, 2013.

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 TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before October 16, 2013, and should include a reference to Commission Case No. WX-2013-0448. 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 regarding this proposed rule is scheduled for October 24, 2013 at 10:00 a.m. in the commission's offices in the Governor Office Building, 200 Madison Street, Room 305 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.

SPECIAL NEEDS: 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 (voice) or Relay Missouri at 711.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission Chapter 120—New Manufactured Homes

PROPOSED AMENDMENT

4 CSR 240-120.065 Manufactured Home Dealer Setup Responsibilities. The commission is amending section (4).

PURPOSE: This amendment clarifies the time allowed for inspections to occur after a purchase and delivery of a manufactured home and adds the requirement of notification to the commission of the property locator.

(4) The commission shall not so discipline the dealer's registration unless the director of the commission's manufactured housing and modular units program finds, incident to an inspection, setup deficiencies and initiates action to discipline the registration within five (5) years after the date of sale./, subject to the following, effective the first day of the month after the effective date of this amendment:

(A) The director will have a period of one (1) year from the date the dealer reports the delivery of the home to the consumer within which to conduct the initial inspection of the home setup. If the delivery is not reported by the dealer to the commission, the one (1) year period for initial inspection will run from the date the commission becomes aware of the delivery;

(B) After the one (1) year period has passed and within two (2) years of the delivery date of the home to the consumer, the director may conduct an inspection of the home for setup and code violations upon the receipt of a formal written complaint by the consumer;

(C) Dealers shall submit to the commission a property locator indicating the destination of the home within forty-eight (48) hours of the date the home leaves the dealer's location or the manufacturer's location if the home is shipped directly to the consumer. For multi-section homes the forty-eight (48) hours begins when the first section leaves the dealer's or manufacturer's location. The property locator form will be provided by the commission;

(D) The commission may assess a fifty dollar (\$50) per home inspection fee to dealers who fail to submit the property locator by the due date; and

(E) The commission shall assess a two hundred dollar (\$200) inspection fee to dealers who hire unlicensed installers to set up a home.

AUTHORITY: section 700.040, RSMo 2000. Original rule filed June 12, 2001, effective Jan. 30, 2002. Amended: Filed Aug. 15, 2013.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before October 16, 2013, and should include a reference to Commission Case No. MX-2013-0432. 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 regarding this proposed amendment is scheduled for October 25, 2013 at 10:00 a.m. in the commission's offices in the Governor Office Building, 200 Madison Street, Room 305 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 amendment, and may be asked to respond to commission questions.

SPECIAL NEEDS: 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 (voice) or Relay Missouri at 711.