

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

In the Matter of the Application and Petition	)	
of Missouri-American Water Company	)	
Requesting the Commission Promulgate an	)	<b><u>Case No. WX-2013-0267</u></b>
Environmental Cost Adjustment Mechanism	)	
for the Water Industry	)	

**STAFF’S RECOMMENDATION FOR OPENING  
A WORKING DOCKET**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and hereby states:

1. On November 9, 2012, Missouri-American Water Company (MAWC or Company), filed an *Application and Petition for Promulgation of Rule (Application)*, asking the Missouri Public Service Commission (Commission) to consider the Company’s proposal to promulgate the Environmental Cost Adjustment Mechanism attached as Appendix A to the *Application*.

2. On November 13, 2012, the Commission issued an *Order Directing Staff to Investigate and File Recommendation (Order)* requiring Staff to investigate and provide a recommendation, or a date by which a recommendation could be filed, on whether the Commission should proceed with a rulemaking no later than December 14, 2012. This filing complies with that *Order*.

3. MAWC is a public utility, sewer corporation and water corporation, as defined under Section 286.020 (43) (49) and (59), RSMo<sup>1</sup> respectively.

4. Section 386.266 resulted from SB 179 of the 2005 Missouri legislative session and became effective on January 1, 2006. This Section applies to electrical,

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<sup>1</sup> All statutory citations are to the Missouri Revised Statutes as currently supplemented

gas and water corporations, but does not apply to sewer corporations through the plain language of the statute.

5. Section 389.266.2 specifically includes electrical, gas, or water corporations and states, in pertinent part:

Subject to the requirements of this section, any electrical, gas, or water corporation may make an application to the commission to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred costs, whether capital or expense, to comply with any federal, state, or local environmental law, regulation, or rule. ... In addition to the rate adjustment, the electrical, gas, or water corporation 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 rate adjustment cap.

6. Section 386.266.9 states:

Prior to August 28, 2005, the commission shall have the authority to promulgate rules under the provisions of chapter 536 as it deems necessary, to govern the structure, content and operation of such rate adjustments, and the procedure for the submission, frequency, examination, hearing and approval of such rate adjustments. Such rules shall be promulgated no later than one hundred fifty days after the initiation of such rulemaking proceeding. Any electrical, gas, or water corporation may apply for any adjustment mechanism under this section whether or not the commission has promulgated any such rules.

7. Administrative rulemaking is governed by Chapter 536 *Administrative Procedure and Review*. The Company appropriately cites Section 536.041, which states:

Any person may file a written petition with an agency requesting the adoption, amendment or repeal of any rule. Any agency receiving such a petition or other request in writing to adopt, amend or repeal any rule shall forthwith furnish a copy thereof to the joint committee on administrative rules and to the commissioner of administration. Within sixty days after the receipt of the petition, the agency shall submit a written response to the petitioner and copies of the response, in electronic format, to the joint committee on administrative rules and to the commissioner of administration, containing its determination whether such rule should be

adopted, continued without change, amended, or rescinded, together with a concise summary of the state agency's specific facts and findings with respect to the criteria set forth in subsection 4 of section 536.175. If the agency determines the rule merits adoption, amendment, or rescission, it shall initiate proceedings in accordance with the applicable requirements of this chapter.

8. The Company, as a water corporation, has properly applied for an adjustment mechanism under Section 386.266.9. The Company cites the appropriate law and followed Commission Rule 240-2.0180(1) in making its request before the Commission.

9. At this time, Staff has reviewed the Company's proposed rule but does not offer an opinion on its language at this time. This proposed rule will impact many water utilities and customers throughout the state of Missouri and it is Staff's view that other stakeholders should be invited to participate and be involved in the process of creating an appropriate rule. As a result, Staff recommends that the Commission proceed with the rulemaking process by opening a working docket to facilitate the process. Staff will continue to work with the Company and all other stakeholders as the process continues.

10. To help move the process along, Staff has reserved Room 316 of the Governor Office Building in Jefferson City, Missouri for an initial workshop to be held Thursday, January 24, 2013 from 10:00 am – 4:00 pm. In addition, Staff will invite the various stakeholders in an effort to obtain initial comments about the proposed rule and to begin the process necessary to promulgate a rule. Staff has also reserved Room 316 for a second workshop meeting to be held February 28, 2013. Further meetings will be scheduled by Staff as the process continues. Staff hereby requests that the Commission to provide notice of the workshop dates and times in its order opening the rulemaking docket.

**WHEREFORE**, Staff recommends that the Commission open a working docket to proceed with the rulemaking process as requested in the Company's *Application* and to allow other stakeholders to participate. Staff further requests that the Commission include the dates referenced in paragraph 10 of this pleading in any order issued to allow all interested stakeholders to participate in the rulemaking process.

Respectfully submitted,

**/s/ Rachel M. Lewis**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or by electronic mail to all counsel of record on this 14th day of December, 2012.

**/s/ Rachel M. Lewis**