

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 3rd day of
January, 2013.

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

**ORDER DENYING PETITION FOR PROMULGATION OF A RULE TO
ESTABLISH AN ENVIRONMENTAL COST ADJUSTMENT MECHANISM
FOR WATER UTILITIES**

Issue Date: January 3, 2013

Effective Date: January 7, 2013

On November 9, 2012, Missouri-American Water Company filed a petition asking the Commission to promulgate a new rule to implement an environmental cost adjustment mechanism for water utilities. As required by Section 536.041, RSMo, the Commission provided a copy of that petition to the Joint Committee on Administrative Rules and to the Office of Administration. Before deciding whether to grant Missouri-American's petition, the Commission directed its Staff to investigate Missouri-American's petition and to file a recommendation. Staff filed that recommendation on December 14.

Staff agrees that Missouri-American has appropriately requested the implementation of an environmental cost adjustment mechanism. Staff does not take a position on the specific language of the rule proposed by Missouri-American but explains that the new rule will have an impact on many water utilities and customers throughout the state. For that reason, Staff recommends the Commission direct Staff to work with all

interested stakeholders to draft an appropriate rule. To begin that process, Staff has scheduled workshop meetings for January 24, 2013 and February 28, 2013 to obtain input from those stakeholders.

Missouri-American filed a response to Staff's recommendation on December 20. In that response, Missouri-American indicates its willingness to participate in the workshop process proposed by Staff. However, it asks that the Commission act promptly to conclude the workshop process with the formal promulgation of a rule.

Section 536.041, RSMo (as amended in 2012), 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 initiate 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 it does not yet know the answer to those questions. For that reason, the Commission must at this time deny Missouri-American's petition. However, the workshop process proposed by Staff will allow all interested stakeholders an opportunity to present information and arguments to the Commission. In that way, those criteria can be satisfied if the Commission decides to undertake a formal rulemaking after the workshops.

To facilitate Staff's efforts to draft an appropriate rule, and to allow all interested stakeholders an opportunity to offer their advice concerning that rule, the Commission will issue a separate order to establish a working case to facilitate a series of workshops led by Staff and to contain the informal comments that may result from that workshop process. A separate working case is appropriate for that process to allow the informal comments presented in the workshops regarding initial drafts of the rule to be kept separate from the comments on the proposed rule that may be filed during the formal rulemaking process.

The Commission is mindful of Missouri-American's concern that the workshop process should not unreasonably delay the promulgation of a rule. Therefore, the Commission will direct its Staff to submit a proposed rule for the Commission's consideration no later than April 3, 2013.

THE COMMISSION ORDERS THAT:

1. Missouri-American Water Company's application and petition for promulgation of a rule relating to establishment of an environmental cost adjustment mechanism for the water industry is denied.

2. The Commission's Staff shall prepare and submit a proposed rule relating to establishment of an environmental cost adjustment mechanism for the water industry no later than April 3, 2013.

3. 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.

4. This order shall become effective on January 7, 2013.

BY THE COMMISSION

A handwritten signature in cursive script that reads "Shelley Brueggemann".

**Shelley Brueggemann
Acting Secretary**

(S E A L)

Gunn, Chm., Jarrett, Kenney, and
Stoll, CC., concur.

Woodruff, Chief Regulatory Law Judge