

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 or TDD Hotline 1-800-829-7541.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 10—Utilities**

PROPOSED RULE

4 CSR 240-10.085 Incentives for Acquisition of Nonviable Utilities

PURPOSE: The purpose of this proposed rule is to create a process for a water or sewer utility to propose an acquisition incentive to encourage acquisition of nonviable water or sewer utilities by a water or sewer utility with the resources to rehabilitate the acquired utility within a reasonable time frame.

(1) As used in this rule, the following terms mean:

(A) Nonviable utility—

1. A utility that is in violation of statutory or regulatory standards that affect the safety and adequacy of the service provided, including, but not limited to, the public service commission law, the federal clean water law, the federal Safe Drinking Water Act, as amended, and the regulations adopted under these laws;

2. A utility that has failed to comply, within a reasonable period of time, with any order of the department of natural resources or the commission concerning the safety and adequacy of service;

3. A utility that is not reasonably expected to furnish and maintain safe and adequate service and facilities in the future; or

4. A utility that is insolvent;

(B) Rate of return premiums. Additional rate of return basis points, up to one hundred (100) basis points, awarded at the commission's discretion in recognition of risks involved in acquisition of nonviable utilities and the associated system improvement costs;

(C) Debit acquisition adjustment. Adjustments to an acquiring utility's rate base to reflect a portion or all of the excess acquisition cost over depreciated original cost of the acquired system; and

(D) Plant-in-service study. A report detailing a determination of the value of the original costs of the property of a public utility that requires the acquiring utility to accumulate the records and accounting details in order to support reasonable plant, reserve, and contributions in aid of construction balances.

(2) An application for an acquisition incentive in the form of a rate of return premium and/or debit acquisition adjustment must be filed at the beginning of a case seeking authority under sections 393.190 or 393.170, RSMo. If the commission determines the request for an acquisition incentive is in the public interest, it shall grant the request. The commission may apply a rate of return premium and/or debit acquisition adjustment in the applicant's next rate case proceeding following acquisition of a nonviable utility if the commission determines it will not result in unjust or unreasonable rates.

(3) Filing Requirements—

(A) An application for an acquisition incentive to acquire a nonviable utility shall include the following:

1. A statement as to whether the nonviable utility is related to the operation of another utility (for example, a water or sewer system providing service to the same or similar service area) and whether the related utility operation is part of the transaction;

2. Records related to the original cost of the nonviable utility. The acquiring utility must exercise due diligence and make reasonable attempts to obtain, from the seller, documents related to original

cost. In particular, as part of its exercise of due diligence, the acquiring utility shall request, from the seller, for purposes of conducting the plant-in-service study, records relating to the original cost of the assets being acquired and records relating to contributions in aid of construction (CIAC) amounts, including:

A. Accounting records and other relevant documentation, and agreements of donations of contributions, services, or property from states, municipalities, or other government agencies, individuals, and others for construction purposes;

B. Records of un-refunded balances in customer advances for construction (CAC);

C. Records of customer tap-in fees and hook-up fees;

D. Prior original cost studies;

E. Records of local, state, and federal grants used for construction of utility plant;

F. Relevant commission records;

G. A summary of the depreciation schedules from all filed federal tax returns; and

H. Other accounting records supporting plant-in-service; and

3. If the system to be acquired is part of a larger transaction involving multiple systems of which some do not qualify as nonviable, a detailed revenue and rate base plan describing how the acquiring utility will only apply the sought acquisition adjustment to the nonviable system(s) within the larger transaction;

(B) If any of the items required under paragraph (3)(A)2. are unavailable at the time the application is filed, they shall be furnished by the acquiring utility prior to the next rate case; and

(C) The failure of a seller to provide cost-related documents, after reasonable attempts to obtain the data, will not be a basis for the acquiring utility to provide incomplete information about the value of the acquired system's assets in its proposed rate base. Any information not available from the seller shall be estimated by the acquiring utility, along with documentation supporting the reasonableness of the estimates developed.

(4) When submitting an application for an acquisition incentive to acquire a nonviable utility, the acquiring utility has the burden of proof and shall demonstrate the following:

(A) The acquiring utility is not a nonviable utility and will not be materially impaired by the acquisition;

(B) The acquiring utility maintains the managerial, technical, and financial capabilities to safely and adequately operate the system to be acquired;

(C) The system to be acquired is a nonviable utility;

(D) The purchase price and financial terms of the acquisition are fair and reasonable and have been reached through arm's-length negotiations;

(E) Any plant improvements necessary to make the utility viable will be completed within a period of time no longer than three (3) years after the effective date of acquisition;

(F) How managerial or operational deficiencies that can be corrected without capital improvements will be corrected within six (6) months of the acquisition;

(G) How capital improvements and operational changes planned within the next three (3) years will correct deficiencies;

(H) The acquisition is in the public interest; and

(I) The acquisition would be unlikely to occur without the probability of obtaining an acquisition incentive.

(5) If the acquisition incentive is approved by the commission, the utility shall file a rate case no later than twelve (12) months after commission approval of the acquisition or within the period of time as ordered by the commission in section 393.190 or 393.170, RSMo case, unless the utility requests and the commission otherwise approves. Rate impacts of the approved incentive mechanism will go into effect upon order of the commission at the conclusion of that first rate case proceeding. If the acquisition incentive is approved in section 393.190 or 393.170, RSMo case, prior to its next rate case,

the acquiring utility shall—

(A) Book contributions that were properly recorded on the books of the acquired system as CIAC. If evidence supports other CIAC that was not booked by the seller, the acquiring utility shall make an effort, supported with documentation, to determine the actual CIAC and record the contributions for ratemaking purposes, such as lot sale agreements or capitalization vs. expense of plant-in-service on tax returns;

(B) Identify all plant retirements and plant no longer used and useful, and complete the appropriate accounting entries; and

(C) If the records are not available from the acquired system to complete subsection (5)(A) or (5)(B), on a going-forward basis, create and maintain documentation of (5)(A) and (5)(B) from the date of acquisition.

(6) If a debit acquisition adjustment is approved, in its next rate case proceeding, an acquiring utility shall file a plant-in-service study to support the amount of its requested acquisition adjustment addition to its rate base. The acquiring utility shall reconcile and explain any discrepancies between the acquiring utility's plant-in-service study of original cost valuation and the commission's records, to the extent reasonably known and available to the acquiring utility, at the same time the supporting documentation for the study is filed. Any disputes regarding the acquiring utility's plant-in-service study will be resolved in that first subsequent rate case proceeding.

(7) Nothing in the rule precludes an acquiring utility that pays less than the depreciated original cost of the acquired system from seeking to include in rate base an amount up to the depreciated original cost of the acquired system.

(8) Provisions of this rule may be waived by the commission for good cause shown.

AUTHORITY: sections 386.040, 386.250, 393.140, and 393.146, RSMo 2016. Original rule filed May 30, 2018.

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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rule with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, 200 Madison Street, PO Box 360, Jefferson City MO 65102-0360. To be considered, comments must be received at the commission's offices on or before August 1, 2018, and should include a reference to Commission Case No. AX-2018-0240. 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 is scheduled for August 7, 2018 at 10:00 a.m., in Room 305 of the Governor Office Building, 200 Madison St., 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 or TDD Hotline 1-800-829-7541.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 10—Utilities**

PROPOSED RULE

4 CSR 240-10.095 Environmental Improvement Contingency Fund

PURPOSE: This rule provides parameters and procedures for small water and/or sewer utilities to request a special fund to collect revenue from customers to make improvements necessitated by environmental regulations.

(1) For the purposes of this rule only, a water or sewer utility serving eight thousand (8,000) or fewer customers shall be considered a small utility.

(2) A small utility or commission staff may request establishment of an Environmental Improvement Contingency Fund (EICF) during the course of a rate case, whether filed pursuant to 4 CSR 240-10.075 or section 393.150, RSMo.

(3) Following the request for an EICF, the staff will—

(A) Investigate the small utility's financial resources and its ability to finance capital improvements;

(B) Conduct a managerial audit to determine the quality of the small utility's management; and

(C) Conduct a comprehensive review of the necessary improvements at the small utility.

(4) An EICF may only go into effect if, at the conclusion of the rate case where the small utility or commission staff requests an EICF, the commission approves the following items:

(A) A list of necessary improvements.

1. The list of necessary improvements may only include those improvements that—

A. Are directly related to environmental rules, regulations, or orders of the Missouri Department of Natural Resources (DNR), the United States Environmental Protection Agency (EPA), or other regulatory authority including, but not limited to, federal, state, or local authorities, city ordinances, and the state attorney general; and

B. Are reasonably anticipated to be completed within five (5) years of the effective date of new rates, although, for good cause shown, the commission may consider projects that require longer to complete; and

2. During the rate case, upon request by the small utility or by direction of the commission, staff will assist the utility in identifying a list of necessary improvements;

(B) An estimated amount of funds necessary for the improvements in the list described in subsection (4)(A).

1. Staff and the small utility will submit the estimated amount of funds necessary for the improvements, which may include costs for preliminary engineering reports related to those improvements.

2. The percentage of the estimated amount collectable through an EICF will be based on an analysis of the needs of the small utility and its ability to secure financing through normal debt or equity sources. The commission may give special consideration to requests that do not require full funding of the estimated amount collectable.

3. If a requested EICF includes funds for a preliminary engineering report, the report must be completed and submitted to the commission prior to the first disbursement from the EICF account; and

(C) A schedule for completion of the list of improvements required by subsection (4)(A). Upon request by the small utility or by direction of the commission, staff will assist the small utility in preparing such a schedule.