SUMMARY OF COMMENTS: The public comment period ended August 15, 2018, and the commission held a public hearing on the proposed rescission on August 22, 2018. The commission received timely written comments from the staff of the commission. Alexandra Klaus, representing the commission's staff; and Ryan Smith, representing the Office of the Public Counsel, appeared at the hearing and offered comments.

COMMENT #1: The commission staff filed written comments in support of the proposed rescission.
RESPONSE: The commission agrees and will rescind the rule.

COMMENT #2: The Office of the Public Counsel indicated no opposition to the proposed rescission.
RESPONSE: The commission agrees and will rescind the rule.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250, RSMo 2016, the commission rescinds a rule as follows:

4 CSR 240-3.640 Annual Report Submission Requirements for Water Utilities is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 16, 2018 (43 MoReg 1577–1578). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended August 15, 2018, and the commission held a public hearing on the proposed rescission on August 22, 2018. The commission received timely written comments from the staff of the commission. Alexandra Klaus, representing the commission's staff; and Ryan Smith, representing the Office of the Public Counsel, appeared at the hearing and offered comments.

COMMENT #1: The commission staff filed written comments in support of the proposed rescission.
RESPONSE: The commission agrees and will rescind the rule.

COMMENT #2: The Office of the Public Counsel indicated no opposition to the proposed rescission.
RESPONSE: The commission agrees and will rescind the rule.

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

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, and 393.140, RSMo 2016, the commission adopts a rule as follows:

4 CSR 240-10.085 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1424–1425). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended August 1, 2018, and the commission held a public hearing on the proposed rule on August 7, 2018. The commission received timely written comments from Liberty Utilities (Missouri Water) LLC, Missouri-American Water Company, the Office of the Public Counsel and the staff of the commission. Jacob Westen, representing the commission's staff, Ryan Smith representing the Office of the Public Counsel, and Dean Cooper representing Missouri-American, as well as Cheryl Norton, Brian LaGrand, and Jim Jenkins on behalf of Missouri-American, appeared at the hearing and offered comments.

COMMENT #1: Public Counsel questions the purpose statement of the rule, suggesting it should be clarified to make clear that the rule applies to "capable utilities" as that term is used in section 393.146, RSMo, which was cited by the commission as authority for this rulemaking.
RESPONSE: As will be discussed in response to Comment No. 24, the commission has concluded that section 393.146, RSMo is not what provides authority for this rulemaking. As a result, there is no reason to modify the purpose statement of this rule to match the language of that statute. No change will be made in response to this comment.

COMMENT #2: Public Counsel recommends the multiple definitions contained in section 4 CSR 240-10.085(1) be placed in alphabetical order for clarity.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the proposed clarification and will re-designate the definitions in section 4 CSR 240-10.085(1) in alphabetical order.

COMMENT #3: Missouri-American suggests an "or" be inserted between paragraphs 4 CSR 240-10.085(1)(A)1. and 2. to make it clear that a system can be found to be non-viable by meeting any one of these four items, referring to paragraphs 4 CSR 240-10.085(1)(A)1.–4.
RESPONSE: Missouri-American is correct that a system can be found to be non-viable if it meets any one (1) of the four (4) listed criteria. However, the "or" between paragraphs 4 CSR 240-10.085(1)(A)3. and 4. is grammatically sufficient to establish that fact. No change will be made in response to this comment.

COMMENT #4: Public Counsel suggests a definition of "capable utility" be added to section 4 CSR 240-10.085(1) to better match the provisions of section 393.146, RSMo, which was cited by the commission as authority for this rulemaking.
RESPONSE: As will be discussed in response to Comment No. 24, the commission has concluded that section 393.146, RSMo is not what provides authority for this rulemaking. As a result, there is no reason to modify the definitions section of this rule to match the language of that statute. No change will be made in response to this comment.

COMMENT #5: Public Counsel suggests the definition of nonviable utility found in subsection 4 CSR 240-10.085(1)(A) be modified to limit its application to small utilities. The commission's staff concurs in that comment.
RESPONSE AND EXPLANATION OF CHANGE: The commission will modify the rule to limit the definition of nonviable utility to small utilities serving eight thousand (8,000) or fewer customers.

COMMENT #6: Paragraph 4 CSR 240-10.085(1)(A)2. of the definition of nonviable utility includes a utility that has failed to comply

with any order of the department of natural resources or the commission concerning the safety and adequacy of service "within a reasonable period of time." Staff asks the commission to remove the phrase "within a reasonable period of time" from the definition. Staff believes the phrase is vague. Further, the orders with which the utility has failed to comply presumably contain their own time for compliance and there is no need to include an additional timeframe within this definition.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff and will remove the phrase from the definition. The commission also notes that the definition should apply if the nonviable utility has failed to comply with the order of a federal agency. The provision will be modified accordingly.

COMMENT #7: Subsection 4 CSR 240-10.085(1)(B) defines "rate of return premiums" as an award by the commission of up to one hundred (100) basis points to a utility in recognition of the risks associated with the acquisition of a nonviable utility. Staff, Public Counsel, Missouri-American, and Liberty Utilities all express concern that the proposed definition does not make clear whether the additional one hundred (100) basis points would apply to the acquiring company's entire rate base or just the additional rate base involved in the acquisition. Staff and Public Counsel suggest the incentive be limited to just the acquired rate base. Missouri-American and Liberty Utilities point out that because the acquired rate base may be small in relation to the acquiring company's overall rate base, the incentive allowed under the rule will likely be very small and not much of an incentive.
RESPONSE AND EXPLANATION OF CHANGE: The concept of a rate of return premium is not explicitly limited by the rule to either the acquiring company's entire rate base, or to the acquired rate base. That ambiguity is an intentional feature of the rule. The commission wants to have the discretion to craft a rate of return incentive that will be effective. The details of what incentive is appropriate will be determined based on the evidence presented to the commission in a particular case. The definition will be modified to make the commission's retention of discretion more clear by referring to an adjustment to a portion or all of the acquiring utility's rate base.

COMMENT #8: Subsection 4 CSR 240-10.085(1)(B) defines rate of return premiums and indicates such an incentive can be awarded in recognition of the increased risk associated with acquisition of a nonviable utility and the "associated system improvement costs." Liberty Utilities expresses concern that the phrase "associated system improvement costs" is not clearly defined in the rule.
RESPONSE: The commission does not believe associated system improvement costs" should be rigidly defined within this rule. Rather the meaning of the term will need to be determined on a case-by-case basis, considering the evidence presented. No change will be made in response to this comment.

COMMENT #9 Missouri-American suggests the definition of "debit acquisition adjustment" contained in subsection 4 CSR 240-10.085(1)(C) be simplified to refer to all of the acquisition cost over the depreciated original cost of the acquired system rather than a "portion" of such costs.
RESPONSE: The commission wants to allow itself as much discretion as possible in crafting an appropriate incentive, including any debit acquisition adjustment. No change will be made in response to this comment.

COMMENT #10: Public Counsel argues it would be unreasonable for a utility to receive more in rate base than would be supported by the assets and is concerned that the definition does not contemplate the amount of time allowed to amortize a debit acquisition adjustment.
RESPONSE: This section just defines a term. The reasonableness and details of such an adjustment will be determined on a case-by-case basis. No change will be made in response to this comment.

COMMENT #11: Subsection 4 CSR 240-10.085(1)(D) defines "plant-in-service study." Missouri-American is concerned that nonviable acquired companies may not have sufficient books and records to allow the acquiring company to prepare a plant-in-service study. Missouri-American asks that more flexibility be built into the definition to recognize those concerns.
RESPONSE: The commission addresses concerns about unavailable records elsewhere in the rule and does not believe it is necessary to do so within this definition subsection. No changes will be made in response to this comment.

COMMENT #12: Public Counsel points to several sections of the rule that use the phrase "acquisition incentive" as a short-hand way of referring to "rate of return premiums" and "debit acquisition adjustment." It suggests that either "acquisition incentive" be defined, or that "rate of return premiums and debit acquisition adjustment, or both" be used in its place.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the use of the undefined term "acquisition incentive" could be misleading. A definition of "acquisitions incentive" as including the other defined terms of "rate of return premiums" and "debit acquisition adjustment" will be added as a new subsection to section 4 CSR 240-10.085(1). The definition of "acquisition incentive" will also result in changes to section 4 CSR 240-10.085(2) to incorporate that now-defined term.

COMMENT #13: Public Counsel is concerned that section 4 CSR 240-10.085(2) would allow the commission to approve an acquisition incentive in the acquisition case even though such costs would not be known and measurable and the related improvements would not be used and useful.
RESPONSE: The commission does not share Public Counsel's concerns because, as section 4 CSR 240-10.085(2) describes, an approved acquisition incentive could only be applied in a subsequent rate case, and then, only if such application will not result in unjust or unreasonable rates. No changes will be made in response to this comment.

COMMENT #14: Paragraph 4 CSR 240-10.085(3)(A)2. lists various documents and records of original costs of the nonviable utility that must be filed by the acquiring utility as part of any application for an acquisition incentive. Missouri-American and Liberty Utilities are concerned that nonviable utilities frequently do not keep good records. As a result, the acquiring company may be unable to produce some of the records required by the rule. Subsection 4 CSR 240-10.085(3)(B) provides that if those documents and records are unavailable at the time the application for acquisition incentive is filed, they can be furnished by the acquiring utility before its next rate case. Public Counsel points out that there is no reason to believe that documents and records that were unavailable at the time the application for an acquisition incentive was filed will become available before the next rate case is filed.
RESPONSE AND EXPLANATION OF CHANGE: The commission is certainly aware that nonviable utilities may not keep good records, and recognizes that an acquiring utility cannot file documents that do not exist. That is why subsection 4 CSR 240-10.085(3)(C) allows the acquiring utility to file estimated cost-related documents so long as they also file documents supporting the reasonableness of those estimates. That provision already addresses the commenters concerns, but the first sentence of that subsection is unnecessary and may give the false impression that non-existent cost-related documents must be filed. The commission will remove that first sentence without changing the meaning of the subsection as a whole. The commission will also delete subsection 4 CSR 240-10.085(3)(B). The intent of that provision is to provide for a mechanism through which the commission would receive the information required by paragraph 4 CSR 240-10.085(3)(A)2. However, subsection 4 CSR 240-10.085(3)(C) already provides for such a mechanism, so subsection 4 CSR 240-10.085(3)(B) is unnecessary.

COMMENT #15: Public Counsel suggests the applicant for an acquisition incentive be required to certify that it is a "capable public utility" as that phrase is used in section 393.146, RSMo 2016, which was cited by the commission as authority for this rulemaking.
RESPONSE: As will be discussed in response to Comment No. 24, the commission has concluded that section 393.146, RSMo is not what provides authority for this rulemaking. As a result, there is no reason to modify the rule to match the language of that statute. No change will be made in response to this comment.

COMMENT #16: Public Counsel recommends a change in the structure of section 4 CSR 240-10.085(4) to make the statement that the acquiring utility has the burden of proof into its own subsection and then to make the list of things that must be proven paragraphs in a separate subsection.
RESPONSE: The commission does not believe the structural change proposed by Public Counsel will clarify the rule. No change will be made in response to this comment.

COMMENT #17: Public Counsel would add a provision requiring the acquiring utility to prove that it is a "capable public utility" as that phrase is used in section 393.146, RSMo 2016, which was cited by the commission as authority for this rulemaking.
RESPONSE: As will be discussed in response to Comment No. 24, the commission has concluded that section 393.146, RSMo is not what provides authority for this rulemaking. As a result, there is no reason to modify the rule to match the language of that statute. No change will be made in response to this comment.

COMMENT #18: Public Counsel questions the provision in subsection 4 CSR 240-10.085(4)(E) that would require the acquiring utility to prove how improvements needed to make the acquired utility viable will be completed within three (3) years. Similarly, subsection 4 CSR 240-10.085(4)(G) would require proof of how capital improvements and operational changes within the next three (3) years will correct deficiencies. Public Counsel is concerned that an artificial three (3) year requirement might not be sufficient to correct problems in some circumstances. Instead, it proposes a more flexible, "reasonable," timetable for the utility to work with other governmental agencies to correct problems
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Public Counsel's concern that a three- (3-) year limitation may be unnecessarily rigid. The questioned subsections will be modified to remove the three- (3-) year limitation. In its place, the rule will require the applicant to specify an anticipated time for completion of necessary improvements.

COMMENT #19: Subsection 4 CSR 240-10.085(4)(I) requires the applicant for an acquisition incentive to prove that the acquisition would be unlikely to occur without the probability of obtaining an acquisition incentive. Liberty Utilities and Missouri-American are concerned that this "but for" requirement would be impossible to prove, meaning the acquisition incentives allowed by the rule could never be used.
RESPONSE: The commission understands the difficulty of proving that a transaction would not occur but for the chance of obtaining an acquisition incentive. Certainly, such acquisitions have taken place without the possibility of the acquisition incentive described in this rule. So, the rule should not be taken as an invitation to seek an unnecessary incentive to subsidize an acquisition that would occur without an incentive. As a result, a "but for" requirement is a necessary part of the rule. The commission cannot at this time describe exactly what would need to be proved to meet the "but for" requirement. That standard will need to be developed on a case-by-case basis depending upon the evidence presented in the particular case. No change will be made in response to this comment.

COMMENT #20: Section 4 CSR 240-10.085(5) creates a presumption that a utility that has had an acquisition incentive approved by the commission is to file a general rate case within twelve (12) months after approval of the acquisition unless otherwise ordered by the commission. Missouri-American is concerned that it would be unreasonable, and undesirable for a large utility to be required to prematurely file a general rate case just to incorporate a small nonviable water or sewer system. Staff and Public Counsel agree ratepayers would not benefit if the acquiring utility were required to file an expensive and unnecessary rate case.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the acquiring utility should not be required to file an expensive and unnecessary general rate proceeding. The one- (1-) year filing requirement will be removed from the rule and replaced with a requirement that the acquiring utility file a general rate proceeding within the time ordered by the commission. The commission also notes that section 4 CSR 240-10.085(5) refers to a utility's "rate case." The intent of the provision is to refer to the utility's next general rate proceeding, not to some other single-issue rate case in which not all the utility's rates, revenues, and expenses are considered. For that reason, the commission will change the reference from "rate case" to "next general rate proceeding" in this section and elsewhere that phrase appears in the rule.

COMMENT #21: If an acquisition adjustment is approved, section 4 CSR 240-10.085(6) requires the acquiring utility to file a plant-in-service study as part of its next general rate proceeding. Missouri-American would prefer that the plant-in-service study be agreed upon at the time of the acquisition incentive application rather than wait for a determination in the next general rate proceeding.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that if the required plant-in-service study is ready to be filed as part of the acquisition incentive application, the applicant may do so. But, another applicant may not be prepared to file that study until a subsequent general rate proceeding. The commission will modify the rule to allow for both possibilities.

COMMENT #22: Section 4 CSR 240-10.085(7) indicates the rule does not preclude an acquiring utility that acquires an asset at a cost less than the depreciated original cost of the system from seeking to include in its rate base an amount up to the depreciated original cost of the system. Public Counsel argues the utility's recoupment of such an acquisition discount would be unreasonable and inequitable.
RESPONSE: Section 4 CSR 240-10.085(7) does not allow for the recoupment of an acquisition adjustment. It merely indicates such recoupment is not precluded by this rule and leaves the appropriateness of such recoupment to be decided in an appropriate contested case. No change will be made in response to this comment.

COMMENT #23: Public Counsel suggests section 4 CSR 240-10.085(7) be clarified to indicate that any attempt to include costs in rate base will occur in the utility's next general rate proceeding.
RESPONSE AND EXPLANATION OF CHANGE: The commission will make that clarification.

COMMENT #24: Public Counsel challenges the commission's reliance on section 393.146, RSMo as authority for its promulgation of this regulation. Further, Public Counsel challenges the commission's authority to promulgate this rule under the other cited sections, 386.040, 386.250, and 393.140.
RESPONSE AND EXPLANATION OF CHANGE: Section 393.146, RSMo creates a mechanism by which the commission may compel a capable public utility to acquire a nonviable small water or sewer system under certain circumstances. Subsection 393.146.16, RSMo gives the commission rulemaking authority to carry out the purposes of that section. But it does not give the commission general rulemaking authority to address other problems connected to nonviable small water and sewer systems. Consequently, the rulemaking authority granted to the commission by section 393.146, RSMo is not what supports the promulgation of this rule and reference to that section will be removed from this rulemaking.

The other statutes cited as authority for this rule, sections 386.040, 386.250, and 393.140, RSMo, support the commission's general rulemaking authority to regulate water and sewer utilities and provide authority for this rule.

4 CSR 240-10.085 Incentives for Acquisition of Nonviable Utilities

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

(A) Acquisition incentive—A rate of return premium, debt acquisition adjustment, or both designed to incentivize the acquisition of a nonviable utility;

(B) Debit acquisition adjustment. Adjustments to a portion or all of 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;

(C) Nonviable utility—A small water or sewer utility, serving eight thousand (8,000) or fewer customers that:

1. 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. Has failed to comply with any order of a federal agency, the Department of Natural Resources, or the commission concerning the safety and adequacy of service;

3. Is not reasonably expected to furnish and maintain safe and adequate service and facilities in the future; or

4. Is insolvent;

(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; and

(E) Rate of return premiums. Additional rate of return basis points, up to one hundred (100) basis points, applied to either the acquiring utility's entire rate base or to the newly acquired rate base, awarded at the commission's discretion in recognition of risks involved in acquisition of nonviable utilities and the associated system improvement costs.

(2) An application for an acquisition incentive 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 an acquisition incentive in the applicant's next general rate proceeding following acquisition of a nonviable utility if the commission determines it will not result in unjust or unreasonable rates.

(3) Filing Requirements—

(B) 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:

(E) Any plant improvements necessary to make the utility viable will be completed within a reasonable period of time, as specified in the application, after the effective date of acquisition;

(G) How planned capital improvements and operational changes will correct deficiencies;

(5) If the acquisition incentive is approved by the commission, the utility shall file a general rate proceeding within the period of time ordered by the commission. Rate impacts of the approved incentive mechanism will go into effect upon order of the commission at the conclusion of the acquiring utility's first general rate proceeding following approval of the acquisition incentive. If the acquisition incentive is approved in a section 393.190 or 393.170, RSMo case, prior to its next general rate proceeding, 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 plants 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 requested, an acquiring utility shall either file a plant-in-service study to support the amount of its requested acquisition adjustment addition to its rate base in its next general rate proceeding, or, if it prefers to do so, the acquiring utility may file the required plant-in-service study in section 393.170 or 393.190 application case. 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 general rate proceeding.

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

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

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

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 393.140, and 393.270 RSMo 2016, the commission adopts a rule as follows:

4 CSR 240-10.095 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1425–1426). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended August 1, 2018, and the commission held a public hearing on the proposed rule on August 7, 2018. The commission received timely written comments from Missouri-American Water Company, the Office of the Public Counsel and the staff of the commission. Jacob Westen, representing the commission's staff, Ryan Smith and Caleb Hall representing the Office of the Public Counsel, and Jim Jenkins on behalf of Missouri-American, appeared at the hearing and offered comments.

COMMENT #1: Staff explained that the purpose of the proposed