

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

3 TRANSCRIPT OF PROCEEDINGS

4 RULEMAKING HEARING

5
6 In the Matter of the Proposed)
Rescission of the Commission's) File No. WX-2025-0032
7 Rule 20 CSR 4240-50.050)
Environmental Cost Adjustment)
8 Mechanism)

9
10 In the Matter of the Proposed)
Rescission of the Commission's) File No. WX-2025-0033
Rule 20 CSR 4240-10.095)
11 Environmental Improvement)
Contingency Fund)

12 TUESDAY, OCTOBER 8, 2024

13 10:00 a.m. - 10:16 a.m.

14
15 Governor Office Building

16 200 Madison Street

17 Jefferson City, Missouri 65101

18 VOLUME I

19
20 NANCY DIPPELL, Presiding
21 DEPUTY CHIEF REGULATORY LAW JUDGE

22 KAYLA HAHN, Chair

23 Reported By:
24 Shelley L. Bartels, RPR, CCR
25 Job No.: 173542

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1 Proceedings began at 10:00 a.m.:

2 JUDGE DIPPELL: So let's go ahead and go
3 on the record. This is File No. WX-2025-0032 in the
4 matter of the proposed rescission of the Commission's
5 Rule 20 CSR 4240-50.050 and File No. WX-2025-0033 in
6 the matter of the proposed rescission of the
7 Commission's Rule 20 CSR 4240-10.095.

8 My name is Nancy Dippell. I'm the
9 regulatory law judge presiding over this rulemaking
10 hearing today. It's 10:00 a.m. and we are in the
11 Governor Office Building.

12 We set this time for a rule comment
13 hearing on the two rules that I mentioned. And
14 rulemaking hearings are a little different than our
15 regular evidentiary hearings. So we don't have sworn
16 testimony. Instead, anyone is able to comment if
17 they wish. And, therefore, you don't -- it doesn't
18 matter if you're an attorney and representing a
19 company or a company doesn't have to be represented
20 by an attorney. So there have been some written
21 comments filed, and we are doing both of the rules at
22 the same time, so I will ask for your oral comments.
23 And I'd just ask that you be clear which rule you're
24 commenting on when you're doing so.

25 I have with me on the bench today Chair

1 Hahn. And I'm expecting online some of the other
2 commissioners so they may interrupt as they join in
3 to let us know that they're present.

4 Do we have any questions before we get
5 started? Okay. Just go ahead then and I'm going to
6 let Staff go last if -- unless you want to go first.

7 MR. JOHNSON: Happy to go first. That's
8 fine.

9 JUDGE DIPPELL: Well, just go ahead and
10 go first then.

11 MR. JOHNSON: All right.

12 JUDGE DIPPELL: I will give each of you
13 an opportunity to respond if there are comments. We
14 want to get everything on the record that we need.
15 Go ahead.

16 MR. JOHNSON: Thank you, Judge. Good
17 morning, Chair Hahn and any other commissioners
18 online. I'm Mark Johnson. I'm counsel for Staff. I
19 have with me today Curtis Gateley who's the manager
20 of the Water, Sewer, Steam, and Gas Department, and
21 he's here to answer any questions if you may have
22 any. But I'll just go ahead and jump right in. We
23 have filed comments in the docket already, so I will
24 keep my statements short, but I will also provide a
25 brief response to the written comments filed by the

1 Office of OPC.

2 So first up I will address Docket
3 No. WX-2025-0032 relating to the rescission of
4 20 CSR 4240-50.050, environmental cost adjustment
5 mechanism. As stated in Staff's prefiled comments in
6 this matter, Staff supports rescission of this
7 regulation. Now, the Commission's ECAM regulations
8 arose from the passage of section 386.266 of the
9 Revised Statutes of Missouri. That legislation
10 allows electric, gas, and water corporations to
11 request from the Commission authorization for certain
12 types of rate adjustment mechanisms, specifically a
13 revenue stabilization mechanism and then of course
14 the environmental cost adjustment mechanism.

15 Specific to the topic of this hearing,
16 the legislation authorizes a water corporation to
17 make an application to the Commission to approve rate
18 schedules authorizing periodic rate adjustments
19 outside of general rate proceedings to reflect
20 increases and decreases in its prudently-incurred
21 costs to comply with any federal, state, or local
22 environmental law regulation or rule. Subsection 10
23 of that statute provides the Commission with
24 rulemaking authority to promulgate rules to govern
25 the structure, content, and operation of such rate

1 adjustments and the procedure for the submission
2 frequency examination hearing and approval of such
3 rate adjustments.

4 Further, subsection 13 requires the
5 Commission have previously promulgated rules to
6 implement the application process for rate adjustment
7 mechanisms detailed in 386.266 prior to the
8 Commission issuing an order for such rate adjustment
9 mechanisms.

10 So given that information, why is Staff
11 supportive of rescinding the ECAM regulations. Well,
12 simply put, it's because this regulation has never
13 been utilized in the 11 years it's been on the books.
14 The Office of Public Counsel has filed comments
15 opposing the rescission of this rule stating that the
16 rule provides important uniform procedural
17 requirements beyond those provided in statute and
18 contends that without it, the Commission would lack
19 authority to authorize an ECAM. Now, Staff agrees
20 the regulation does provide uniform procedural
21 requirements that are above and beyond what's
22 included in the statute. However, Staff does not
23 agree the Commission would lack authority without the
24 regulations.

25 Now, in OPC's prefiled comments they

1 cited to subsection 13 of 386.266. And I would point
2 out, as I stated earlier, that that section only
3 states that the Commission must implement rules for
4 an application process prior to any order for these
5 rate adjustment mechanisms. And I would point to the
6 fact that the Commission has general requirements for
7 applications before it in chapter 2 of its rules,
8 specifically 20 CSR 4240-2.060. Staff believes
9 these regulations provide an adequate pathway for a
10 water utility to request an ECAM in the future if it
11 wish -- if it should wish to and any guidance on the
12 process for necessary reviews, such as an annual
13 true-up or prudence reviews, could be detailed in the
14 water utility's tariff creating such a mechanism.
15 And that could be dealt with in the case file
16 relating to that mechanism.

17 But that being said, Staff is not as
18 opposed to keeping the rules in the Commission's --
19 or in the Commission's regulations if the Commission
20 would choose to do so. However, I would point out
21 that, as I said, it has yet to be utilized in the
22 last 11 years. If the -- if the regulation's kept on
23 the books, Staff is not confident that it would be
24 used in the future.

25 Moving on to WX-2025-0030 [sic] relating

1 to the rescission of 20 CSR 4240-10.095,
2 environmental improvement contingency funds, I would
3 state that again, as stated in Staff's prefiled
4 comments, it supports the rescission of this rule.

5 Little background on this one. This rule
6 authorizes water or sewer utilities that serve fewer
7 than 8,000 customers to establish an environmental
8 improvement contingency fund. Now, in short, the
9 EICF allows a small water or sewer company to collect
10 revenue from its customers to go towards necessary
11 improvements directly related to state and/or federal
12 environmental health or safety requirements prior to
13 those improvements going into service. The reasoning
14 for this mechanism is that it can sometimes be
15 difficult for a small water or sewer utility to
16 obtain sufficient capital for investments. The fund
17 would allow these utilities to collect revenue from
18 customers over time to fund those projects instead or
19 in addition to financing utilized to fund those
20 improvements.

21 Now, while the rule has a noble goal, the
22 reality has been that this regulation is simply not
23 utilized. In recent years the cost to complete
24 capital improvements has increased greatly, making it
25 difficult to collect sufficient additional revenue in

1 a reasonable amount of time to satisfy new
2 environmental requirements. Additionally, these
3 funds must be closely monitored by the utility and
4 the PSC Staff to ensure there's no misuse or
5 commingling of customer revenues.

6 The administrative burden has proven to
7 be difficult for these very small and oftentimes
8 unsophisticated companies that would be helped most
9 by the use of the EICF. In the six years the
10 regulation has been active, only one utility has
11 requested the use of an EICF, and it no longer
12 utilizes the fund. So, therefore, Staff, as stated
13 before, supports the rescission of Commission
14 Rule 20 CSR 4240.10-095.

15 Thank you. I'm happy to answer any
16 questions you might have.

17 JUDGE DIPPELL: Thank you. Are there any
18 commissioner questions? Chair Hahn? All right.
19 Anyone online? Not hearing any. Thank you,
20 Mr. Johnson.

21 MR. JOHNSON: Thank you.

22 JUDGE DIPPELL: Are there comments from
23 Public Counsel?

24 MS. VANGERPEN: Yes, just briefly, Judge,
25 thank you. Good morning, Judge Dippell, Chair Hahn

1 any commissioners who may be online. The OPC just
2 wants to take this time to --

3 JUDGE DIPPELL: Why don't you go ahead
4 and give us your name and --

5 MS. VANGERPEN: I apologize.

6 JUDGE DIPPELL: -- stuff for the record.
7 That's all right.

8 MS. VANGERPEN: Yes. My name is Lindsay
9 VanGerpen, and I'm appearing behalf of the Office of
10 the Public Counsel. We did file written comments in
11 the WX-2025-0032 case concerning the environmental
12 cost adjustment mechanism, so I'm happy to answer any
13 questions on that rule.

14 I did want to just briefly respond to
15 Staff's point about the application process and the
16 necessity of the rule. So the OPC has opposed the
17 rescission of that rule on the grounds that the rule
18 itself does include additional procedural
19 requirements above what's included in the statute.
20 And as the way that we interpret subsection 13 is
21 that the Commission does have to pre -- would have
22 had to previously promulgate a rule prior to
23 approving an environmental cost adjustment mechanism.

24 And our understanding of that provision
25 is supported by the Western District's decision in

1 State ex rel. Office of the -- Office of Public
2 Counsel v MO PSC at 331 S.W.3d.677. And that is a
3 case that considered the environmental cost
4 adjustment mechanism for an electric utility in 2011.
5 And in that case the Western District stated that
6 subsection 12 which -- of the statute which later
7 became subsection 13 plainly and unambiguously
8 requires the PSC to promulgate the ECRM rules prior
9 to issuing an order for an ECRM rate adjustment, not
10 prior to January 1, 2006, and therefore, statutory --
11 statutory construction was unnecessary under the
12 Court's analysis.

13 So our position is mainly that because
14 the Commission has -- has to promulgate rules prior
15 to issuing an order and this issue rule has
16 previously been promulgated, we would oppose
17 rescission of that rule. And that's our position.

18 We have not filed any comments and take
19 no position on the rescission of the rule for the
20 environmental cost, the ECIF, in WX-2025-0033.

21 I'm happy to answer any questions.

22 JUDGE DIPPELL: Thank you. Chair Hahn.

23 CHAIR HAHN: Unrelated to the current
24 hearing we're in right now, are you the DCI employee
25 of the quarter for OPC?

1 MS. VANGERPEN: I was, yes.

2 CHAIR HAHN: Congratulations.

3 MS. VANGERPEN: Thank you very much.

4 JUDGE DIPPELL: Are there any other
5 commission questions? Not hearing any. Thank you.

6 MS. VANGERPEN: Thank you.

7 JUDGE DIPPELL: Is there anyone else
8 present that would like to give comments? All right.
9 I believe then that that concludes the comments for
10 this rulemaking hearing and you can go off the
11 record.

12 (Off the record at 10:16 a.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)

3 COUNTY OF CALLAWAY)

4 I, Shelley L. Bartels, a Certified Court
5 Reporter, CCR No. 679, do hereby certify that I was
6 authorized to and did stenographically report the
7 transcript of proceedings; and that the foregoing
8 transcript, pages 1 through 12, is a true record of
9 my stenographic notes.

10 I FURTHER CERTIFY that I am not a relative,
11 employee, or attorney, or counsel of any of the
12 parties, nor am I a relative or employee of any of
13 the parties' attorney or counsel connected with the
14 action, nor am I financially interested in the
15 action.

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17 DATED this 13th day of October, 2024.

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Shelley L. Bartels, CCR 679

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