

TITLE 20 – DEPARTMENT OF COMMERCE AND INSURANCE
Division 4240 – Public Service Commission
Chapter 50 – Water Utilities

ORDER OF RULEMAKING

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

20 CSR 4240-50.060 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 15, 2024 (49 MoReg 1719-1721). The section with changes is 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 December 15, 2024, and the commission held a public hearing on the proposed amendment on December 18, 2024. The commission received three (3) written comments from parties during the comment period and four (4) parties commented at the hearing. The comments were generally in support of the proposed rule with a few suggested changes.

COMMENT #1: Anna Martin, Associate Counsel, on behalf of the Office of the Public Counsel (OPC), submitted written comments and provided comments at the hearing. Mr. Marc Poston, Chief Counsel, on behalf of OPC also provided comments at the hearing. OPC submitted comments in regards to an unexplained difference between the proposed water rule and the proposed sewer rule. One difference is 20 CSR 4240-60.050 (sewer) includes an entire section with subsections, requiring “a rate base calculation following the commission approved Uniform System of Accounts (“USOA”) requirements with workpapers and supporting documents for the assets to be acquired.” This requirement does not appear in the 20 CSR 4240-50.060 proposed water rule. Scott Stacey, Deputy Counsel, submitted written comments on behalf of the commission staff, and made additional comments at the hearing. Curtis Gateley, also commented at the hearing on behalf of staff. Staff proposed adding the following under paragraph (3)(A)11. Brian LaGrand on behalf of Missouri-American Water Company (MAWC) commented at the hearing that MAWC did not agree with the inclusion of new paragraph (3)(A)11., as a rate base calculation is not warranted under an application for a certificate of convenience and necessity. MAWC further stated that requirement was more appropriate during a rate case. OPC and staff disagreed with MAWC and stated this information is needed.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with OPC that this paragraph was inadvertently not included in the proposed water rule. The commission disagrees with the MAWC’s suggestion of not including paragraph (3)(A)11. and agrees with OPC and Staff that this information is needed. The commission agrees this paragraph should be inserted and will add a new paragraph (3)(A)11.

COMMENT #2: Anna Martin, on behalf of OPC also commented that another difference between the proposed water rule and the proposed sewer rule is subparagraph (3)(A)9.D., requiring the utility to provide “Estimated corporate allocation/expense including a detailed explanation of how the allocations were calculated” is included in 20 CSR 4240-60.050 (proposed sewer rule) but not in 20 CSR 4240-50.060 (proposed water rule). Additionally, MAWC suggested rewriting paragraph (3)(A)9. Staff agreed that the language in subparagraph (3)(A)9.D. had been inadvertently left out of the rule and staff agreed with MAWC’s suggested language.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with OPC that subparagraph (3)(A)9.D. should be included in the water rule the same as it is being included in the proposed sewer rule. The commission also agrees with the MAWC’s suggestion of rewriting paragraph (3)(A)9. for clarity. The commission will rewrite paragraph (3)(A)(9) and insert missing subparagraph (3)(A)9.D.

COMMENT #3: OPC commented it is supportive of the proposed rule but suggested requiring a petitioning utility to provide any relevant purchase agreement that set forth the terms of an asset’s acquisition, including its purchase price. The commission staff supported the change and proposed adding OPC’s suggestion to new paragraph (3)(A)12.

Dean Cooper commented at the hearing on behalf of Confluence Rivers Utility Operating Company, Inc. and for Liberty Utilities Missouri Water, LLC. Mr. Cooper, also responded at the hearing that that new subparagraph (3)(A)12.B. regarding acquisition premiums as proposed by staff in responsive comments needed to be rewritten and made suggestions.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the OPC’s suggestion of adding this requirement. The commission will add new paragraph (3)(A)12. as proposed by OPC and staff, in combination with the suggestions proposed by Mr. Cooper.

COMMENT #4: Brian LaGrand submitted written comments on behalf of Missouri American Water Company (MAWC) and provided comments at the hearing. MAWC is generally supportive of the proposed rule, but had several suggested including adding an exception in section (2) for when a public vote has been held. OPC commented at the hearing that it largely agreed with MAWC’s suggestions; however, there were a few areas of concern on suggested language posed by MAWC to section (2) regarding a public vote. Mr. Poston stated that not every customer may be notified that a vote is being or has been held, such as when communities vote to approve the sale of a municipal water system which had unforeseen issues with the public; and existing customers of a system that were not notified that a vote took place on a new system as they were not members of that system. OPC suggested rejection of the suggested language proposed by MAWC.

RESPONSE: The commission agrees with OPC that the language suggested by MAWC may cause a problem with all customers being notified. The commission will not accept the change proposed by MAWC to section (2). No change resulted as of this comment.

COMMENT #5: MAWC also commented suggesting changes to section (3) and subparagraph (3)(A)2.A. regarding requiring items be included in the application for a certificate of convenience and necessity by a sewer company only if available and allowing the commission to establish a time by which the items must be provided. MAWC suggested the proposed language appeared to indicate the application would be dismissed if the items were not provided.

OPC commented at the hearing that MAWC's suggested language in section (3) undercuts the goals of the proposed rule as the changes would create a rule with an acquired system's failed bookkeeping in mind. OPC suggests the commission not accept MAWC's changes to section (3) and also suggests that if the utility has issues with obtaining documents, that it can request a waiver with the commission. MAWC commented that it did not agree with OPC, as not all documents are readily available during the acquisition phase of a system due to some sellers not being sophisticated with bookkeeping, etc. MAWC's proposed change recommended to subparagraph (3)(A)2.A. was to clarify the type of map to be included. Staff agreed with MAWC's suggested changes.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the MAWC's suggestion of removing and adding portions to and from section (3) to require items be included in the application for a certificate of convenience and necessity by a sewer company only if available and allowing the commission to establish a time by which the items must be provided. The commission also clarifies subparagraph (3)(A)2.A. The commission will also clarify that subparagraphs (3)(A)3.A. and (3)(A)3.B. require the utilities to make an affirmative statement of the information that is known about the age of the existing plant and if the age is unknown to estimate the age.

COMMENT #6: MAWC commented suggesting an addition to subparagraph (3)(A)5.B. Staff agreed with MAWC's suggested change.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the MAWC's suggestion of adding "by seller or buyer" to subparagraph (3)(A)5.B. to add clarification.

COMMENT #7: MAWC commented suggesting clarification of subparagraphs (3)(B)7.A. and (3)(C)2.A. and the deletion of subparagraphs (3)(B)7.F. and (3)(C)2.F. Staff agreed with MAWC's suggested changes.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the MAWC's suggestion of adding "created with professional mapping software, or be" to subparagraphs (3)(B)7.A. and (3)(C)2.A. and the deleting subparagraphs (3)(B)7.F. and (3)(C)2.F. as they were unclear.

COMMENT #8: MAWC suggested a correction making subparagraph (3)(C)3.E. as published become new paragraph (3)(C)4 as that requirement should not fall under what is provided in the professional engineering report. Staff agreed with MAWC's suggested change.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the MAWC's suggestion of moving the requirement in subparagraph (3)(C)3.E. to new paragraph (3)(C)4.

COMMENT #9: Mr. Cooper stated Confluence Rivers had no objections to staff's comments filed with the commission on December 17, 2024. He also stated that Liberty Water is in support of MAWC's comments. Mr. Cooper stated in response to OPC's comment on the public vote language that was submitted by MAWC should remain, as the utilities are talking about a seller that is not currently regulated by this commission (e.g., municipality, water district, and homeowners association). He further stated these entities are not going to keep records in the same way as a regulated entity would. Also, Mr. Cooper stated that these entities already have a responsibility to interact with the customers requiring a public vote.

RESPONSE AND EXPLANATION OF CHANGE: The commission appreciates Confluence Rivers and Liberty Water’s participation in the rulemaking process and agrees with Mr. Cooper’s suggested change adding a new subparagraph (3)(A)12.B. and makes the change. The commission disagrees, however, with MAWC’s suggested addition regarding a public vote being held and disagrees with the removal of paragraph (3)(A)7. No changes other than those stated above in this order were made as a result of these comments.

COMMENT #10: Mr. Stacey commented that staff was in support of the proposed rule and that he submitted comments and responses in regards to the written comments filed on behalf of OPC and MAWC on December 17, 2024. Mr. Stacey further stated that staff was generally supportive of the changes proposed by OPC and MAWC. Mr. Gateley commented that staff agreed with Mr. Cooper’s changes to subparagraph (3)(A)12.B. changing the word “utility” to “facility” and other changes were reasonable. Mr. Gateley further agreed that the changes proposed by MAWC on information not being available during an acquisition are reasonable. Mr. Stacey and Mr. Gateley further stated that the language proposed by MAWC of “unless a public vote was held,” should not be accepted.

RESPONSE: The commission thanks staff for its participation in the rulemaking process and agrees with staff on its proposed rule and additional changes as posed above. No other changes were made as a result of these comments.

20 CSR 4240-50.060 Filing Requirements for Water Utility Applications for Certificates of Convenience and Necessity

(3) Application for a certificate of convenience and necessity by a water utility shall include the following, if available, or be subject to dismissal if the required information is not submitted within any time period that may be established by the commission:

(A) If the application is for a service area, where service is currently provided by an existing water utility, the application shall contain the following items:

1. The legal description of the area to be certified;
2. A legible map of the proposed service area of appropriate scale that meets the following requirements:
 - A. Be created using professional mapping software, or be based on a color aerial or satellite photograph;
 - B. Include a defined boundary of the entire service area encompassing all customers;
 - C. Show nearby roads and highways with large and legible labels;
 - D. Include a legend of map features for features shown on the map;
 - E. Include all features of the water system within the service area;
3. A description of the existing utility providing water, including—
 - A. Age or, if unknown, the estimated age, and a general description of the type of water system;
 - B. Age or, if unknown, the estimated age, and material of the water system;
 - C. Water demand total and total for each customer class;
 - D. Design capacity the treatment system is authorized to serve according to the Missouri Department of Natural Resources (DNR), number of customers

presently connected, and the projected number of customers within the next five (5) years; and

E. Any violations of DNR requirements within the last five (5) years;

4. A description of any proposed operation or capital improvements to the water system, including the reason for the improvements, estimated cost of capital improvements, and proposed timeline for completion of the improvements that satisfy any outstanding Missouri State Operating Permit (permit) requirements from DNR;

5. A description and copy of all notifications or meetings with existing customers prior to the filing of the application regarding the change in ownership—

A. If the purchase was subject to a vote of customers and that vote was approved by voters, please provide a copy of all customer notifications, meeting handouts, presentations, and outreach efforts, including documentation that supported the sale of the system. Please also provide a copy of the ballot language in which the voters reviewed when voting for the approval to sell the system and the results of that vote; or

B. If the purchase was not subject to a vote of customers, provide a copy of all notifications sent to customers by seller or buyer, or if unable to provide a copy of a notification, provide a statement indicating the notification could not be produced and reason it could not be provided;

6. An economic feasibility study, with the proposed method for financing, proposed rates, service charges, and revenues and expenses during the first three (3) years of operation;

7. If there are any customers within another service area currently being served by the system to be acquired, provide the addresses of these customers;

8. A description of the estimated cost the buyer will incur to incorporate the seller's water system customers into the buyer's company;

9. Provide the estimated costs to operate the system, including copies of any available support documentation, for each of the following:

A. Any contracts in effect necessary for the provision of service;

B. Estimated Public Service Commission assessments expense;

C. DNR fees and assessments expense;

D. Estimated corporate allocation/expense including a detailed explanation of how the allocations were calculated;

E. Chemical expense;

F. Electrical expense;

G. Postage expense;

H. Repair and maintenance expense;

I. Testing and sampling expense;

J. Mowing expense;

K. Office supplies expense;

L. Customer billing expense;

M. Outside services expense;

N. Income tax expense; and

O. Any other miscellaneous expenses; and

10. Financial statement, general ledgers, invoices, and billing registers for the seller's water and/or sewer systems, if available, for the previous five (5) years;

11. A rate base calculation following the commission approved Uniform System of Accounts (USOA) requirements with workpapers and supporting documentation for the assets to be acquired. All workpapers and supporting documents for the valuation of the water utility assets being acquired shall include, but not be limited to, the following:

- A. A list of all USOA accounts that are in use or expected to be in use based on the capital improvements identified in 4;
- B. The existing plant in service balance by USOA account number for each plant item;
- C. Copies of invoices for the original purchase, installation, and subsequent capital repairs and additions, if any;
- D. The current depreciation reserve for each USOA account with supporting backup calculations showing how the amounts were derived and depreciation rates used; and
- E. The amount of Contribution in Aid of Construction (CIAC); and

12. The applicant shall provide:

- A. The purchasing agreement that set forth the terms of the acquisition including purchase price; and
- B. Whether an acquisition premium exist and if the purchasing facility intends to seek recovery of the cost onto ratepayer;

(B) If the application is for a service area where service is not currently provided by an existing utility providing water, the application shall contain the following items:

1. A description of the circumstance including economic, environmental, or other, driving the need for services in the requested area and the facts showing that the granting of the application is required by the public convenience and necessity;

2. If there are ten (10) or more residents or landowners, provide the name and address of at least ten (10) proposed service area residents or landowners, or the name and address of all residents and landowners if fewer than ten (10) in the proposed service area;

3. A description of any other water utility service areas of commission-regulated companies or political subdivisions within one (1) mile of the proposed service area;

4. A report bearing the seal of a professional engineer registered in the state of Missouri, including—

- A. A physical description of the proposed water system to be constructed;
- B. The cost of the proposed water system and the cost of alternative water systems examined; and
- C. A timeline for completion of construction that incorporates permit requirements from DNR;

5. Projected financial details including—

- A. The proposed method for financing construction and the resulting capital structure;
- B. An economic feasibility study detailing expected revenues earned and expected expenses to be incurred during all phases of the project;
- C. Projected rate base over all phases of the project;
- D. Proposed rates charged to ratepayers over all phases of the project. If the phases of the project will continue past five (5) years, estimated rate charges for phases beyond five (5) years may be submitted; and

E. Projections on customer growth over all phases of the project including the number of existing households currently utilizing an unregulated form of water system that are expected to become utility customers;

6. The legal description of the area to be certificated; and

7. A legible map of the proposed service area, meeting the following requirements:

A. Be created with professional mapping software, or be based on a color aerial or satellite photograph;

B. Include a defined boundary of the entire service area, which encompasses all customers;

C. Show nearby roads and highways with large and legible labels;

D. Include a legend of the map features; and

E. Include all collection, storage, and treatment features of the sewer system within the service area; and

(C) If the application is for a new structure, such as construction of a new pipeline to convey sewage to a treatment facility that will not involve additional customers, the application shall contain the following items:

1. The legal description of the area to be certificated;

2. A legible map of the proposed service area, meeting the following requirements:

A. Be created with professional mapping software, or be based on a color aerial or satellite photograph;

B. Include defined boundaries of the entire service area(s);

C. Show nearby roads and highways with large and legible labels;

D. Include a legend of map features; and

E. Include all water treatment, storage, and distribution features of the water system with the service area; and

3. A report bearing the seal of a professional engineer registered in the state of Missouri, including:

A. A detailed physical description of the feature to be constructed;

B. A description of why the new features are necessary;

C. The cost of the proposed feature and any of the available alternative examined; and

D. A timeline for completion of construction, which incorporates permit requirements from DNR; and

4. The projected impact upon the applicant's revenue requirements.