

TITLE 20 – DEPARTMENT OF COMMERCE AND INSURANCE
Division 4240 – Public Service Commission
Chapter 10 –Utilities

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250 and 393.140, RSMo 2016, and section 393.1509, RSMo Supp. 2024, the commission adopts a rule as follows:

20 CSR 4240-10.185 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 1717-1719). The 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 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. Ms. Martin stated at the hearing that OPC did not have any additional comments besides the written comments submitted. Ms. Martin’s written comments stated that OPC is supportive of the proposed rule, but suggested one addition to section (3) to make the rule consistent with section 393.1509.2(3), RSMo, which requires the commission’s order to be effective no later than one hundred eighty (180) days from the receipt of a petition under the statute. Scott Stacey, Deputy Counsel, Staff Counsel’s Office, on behalf of the commission staff agreed with OPC’s suggestion.

RESPONSE AND EXPLANATION OF CHANGE: The commission appreciates OPC’s participation in the rulemaking process and agrees with the OPC’s suggestion of adding “to become effective” in section (3).

COMMENT #2: 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 changes. MAWC commented that it appreciated staff’s willingness to make the suggested changes as proposed in staff’s comments filed on December 17, 2024. MAWC suggested a change to subsection (2)(A) to clarify when the twelve-(12-) month period restriction begins; to subsection (2)(C) to define when the existing water and sewer infrastructure rate adjustment (WSIRA) is reset to zero; and to clarify subsection (3)(A). Staff agreed with MAWC’s suggested language additions and deletions.

RESPONSE AND EXPLANATION OF CHANGE: The commission appreciates MAWC’s participation in the rulemaking process and agrees with the MAWC’s suggestions for changing subsections (2)(A) and (2)(C). The commission will add language to define that the twelve- (12-) month period begins on the effective date of the WSIRA rate schedules resulting from the

initial WSIRA in subsection (2)(A). The commission will change subsection (2)(C) to define that the WSIRA is reset to zero on the effective date of rate schedules resulting from a general rate proceeding for the utility. The commission will also clarify subsection (3)(A) by changing “applicable and appropriate” to consistent.”

COMMENT #3: MAWC suggested a change in part (4)(B)8.I.(VII) to insert another type of pumps. Staff agreed with MAWC’s suggestion.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with MAWC’s suggestion of adding “high service or discharge pumps” to part (4)(B)8.I.(VII) and will change that part accordingly.

COMMENT #4: MAWC suggested a change in subparagraph (4)(B)9.E. to clarify that the explanation required is for whether the project associated with the WSIRA is intended solely for customer growth. Staff agreed with MAWC’s suggested change.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with MAWC’s suggestion of adding clarifying language to subparagraph (4)(B)9.E. and will make that change.

COMMENT #5: MAWC suggested deleting subsection (4)(D) requiring certain documents be signed, sealed, and dated by a Missouri registered professional engineer. Staff commenting at the hearing that it disagreed with deleting this requirement but was willing to work with MAWC and Liberty Utilities Missouri Water, LLC, to come up with compromise language. That language was provided to the commission.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt the compromise language provided by the parties as a reasonable change to subsection (4)(D) as follows: Documents submitted in support of an application which offer the professional opinion of a licensed professional engineer shall be signed, sealed, and dated by a Missouri registered professional engineer.

COMMENT #6: MAWC suggested a change in paragraph (5)(D)2. to clarify by replacing the word “announcement” with “notice”. Staff agreed with MAWC’s suggested change.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with MAWC’s suggestion and will change paragraph (5)(D)2. as suggested.

COMMENT #7: Dean Cooper commented at the hearing on behalf of Confluence Rivers Utility Operating Company, Inc. and Liberty Utilities Missouri Water, LLC. He stated Confluence Rivers and Liberty Water were in support of MAWC’s comments and staff’s responsive comments filed with the commission on December 17, 2024.

RESPONSE: The commission appreciates Mr. Cooper, Confluence Rivers, and Liberty Water participating in the rulemaking process and thanks them for their comments. The commission added the clarifying language the parties agreed to for subsection (4)(D), but no other changes were made as a result of these comments.

COMMENT #8: Mr. Stacey submitted written comments on behalf of staff and made additional comments at the hearing. Curtis Gateley, also commented at the hearing on behalf of staff.

Mr. Stacey commented that staff was in support of the proposed rule. Mr. Stacey further stated that staff was generally supportive of the changes proposed by OPC and MAWC, with the

exception of the removal of subsection (4)(D) and that clarifying language to address staff's concerns in this subsection was needed. Mr. Gateley commented regarding the reasons why a professional engineer's seal was needed and that staff was not in favor of removing subsection (4)(D). However, staff stated that clarifying language could be added to effectuate staff's purpose for wanting professional engineer seals, etc. A discussion was held among staff, MAWC, Confluence Rivers, Liberty Water, Mr. Cooper, Brian LaGrand, and OPC and clarifying language that all parties agreed to was suggested to the commission and was addressed above. RESPONSE: The commission appreciates Mr. Stacey, Mr. Gateley, and staff's participation in the rulemaking process and agrees with staff on its proposed rule and additional changes which were incorporated above. No other changes were made as a result of these comments.

20 CSR 4240-10.185 Petitions for Water and Sewer Infrastructure Rate Adjustment

(2) An eligible utility may effectuate a change in its WSIRA no more than two (2) times in a twelve- (12-) month period.

(A) The twelve- (12-) month period restriction starts on the effective date of WSIRA rate schedules resulting from the initial WSIRA.

(B) For the purpose of this rule, an initial WSIRA is the first WSIRA granted to the eligible utility or a subsequent WSIRA established after all existing WSIRAs have been reset to zero (0) after a general rate proceeding.

(C) Existing WSIRAs are reset to zero (0) on the effective date of rate schedules resulting from a general rate proceeding for the eligible utility.

(3) The commission shall issue an order to become effective no later than one hundred eighty (180) days from the receipt of a complete WSIRA petition. To effectuate this requirement, staff of the commission (staff) may submit a report regarding the examination to the commission no later than ninety (90) days after the petition is filed.

(A) The staff report shall examine the information provided by the eligible utility to confirm that the underlying costs are consistent with this rule.

(B) No other revenue requirement or ratemaking issues shall be examined in consideration of the petition or associated proposed WSIRA rate schedule.

(C) In order to be considered in the staff report, any updates to the petition must be filed no later than sixty (60) days from the date the petition was filed.

(4) All eligible utilities filing a petition and proposed rate schedule with the commission to establish or change a WSIRA shall implement the following requirements.

(B) The petition for a WSIRA shall include –

1. All information contained in the requirements of 20 CSR 4240-2.060(1) and (6);

2. The petitioner's number of water or sewer connections;

3. Contact name and information with the eligible utility for communications regarding the petition;

4. Date of last general rate proceeding decided by commission order, if applicable;

5. Date and related case number of most recent five- (5-) year capital expenditure plan filed with the commission;

6. A description of all information posted on the eligible utility's website regarding the WSIRA and related infrastructure system projects;
7. A description of how the eligible utility will educate and instruct customer service personnel to handle customer questions or concerns regarding the WSIRA; and
8. Calculations and explanation of the source of and basis for—
 - A. State, federal, and local income or excise tax rates used to determine the proposed rates and their relation to the current statutory rates;
 - B. Regulatory capital structure;
 - C. Cost rates for debt and preferred stock;
 - D. Cost of common equity;
 - E. Property tax rates;
 - F. Depreciation rates;
 - G. Applicable customer class billing determinants used;
 - H. Annual reconciled differences for the recovery of revenues or credits of an effective WSIRA; and
 - I. Costs that are eligible for recovery during the period in which the WSIRA will be in effect, including the net original cost of the eligible infrastructure system projects, the amount of the WSIRA costs related to the eligible infrastructure system projects, and a breakdown of the eligible infrastructure projects identified by work order or cost center for each of the following project categories:
 - (I) Replacement of existing water and sewer pipes, and associated valves, hydrants, meters, service lines, laterals, sewer taps, curb stop, and manholes;
 - (II) Cleaning and relining of existing water or sewer pipes;
 - (III) Replacement of lead mains, lead goosenecks, and lead service lines and associated valves and meters;
 - (IV) Replacement of booster station(s) and lift station pump(s) with equipment of similar capacity and operations, as well as related pipes, valves, and meters;
 - (V) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of this state;
 - (VI) Facilities relocations required due to construction or improvement of a highway road, street, public way, or other public work on or on behalf of a political subdivision of this state, or another entity having the power of eminent domain provided that the cost related to such projects have not been reimbursed to the eligible utility;
 - (VII) Replacement of water or wastewater treatment mechanical equipment with equipment of similar capacity and operation, including well and intake pumps, transfer pumps, high service or discharge pumps, and metering pumps; and
 - (VIII) Replacement of Supervisor Control and Data Acquisition System (SCADA) components necessary for the operation and monitoring of remote installations including radio and cellular communication equipment, and programmable logic controllers;

9. Explanation for each of the following:
 - A. How customers subject to the proposed WSIRA are benefiting from infrastructure system projects that will be recovered through the proposed WSIRA;
 - B. How the proposed WSIRA is being prorated between the affected customer classes, if applicable;
 - C. How the proposed WSIRA is being applied in a manner consistent with the customer classes cost-of-service study recognized by the Commission in the eligible utility's most recent general rate proceeding, if applicable;
 - D. How the proposed WSIRA is being applied consistent with the rate design methodology utilized to develop the eligible utility's rates resulting from its most recent general rate proceeding;
 - E. Whether the infrastructure project associated with the proposed WSIRA is intended solely for customer growth;
 - F. Date the infrastructure system project associated with the WSIRA was completed and became used and useful;
 - G. Efforts to quantify and seek reimbursement for any costs associated with facility relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain, which could offset the requested WSIRA revenues;
 - H. If any of the infrastructure system projects associated with the WSIRA were funded through financing arrangements directed specifically to the projects, an explanation of how the projects were funded, including the amount of debt and the interest rate on that debt;
 - I. Service time of any infrastructure replaced that were in service when either replaced or abandoned; and
 - J. The request for proposal (RFP) process used, or the reasons that a RFP process was not used, to select the entity that performed the infrastructure replacement projects.

(D) Documents submitted in support of an application which offer the professional opinion of a licensed professional engineer shall be signed, sealed, and dated by a Missouri registered professional engineer.

(5) Upon a WSIRA becoming effective, the eligible utility shall—

(D) Eligible utilities collecting WSIRA revenues shall file their updated five- (5-) year capital expenditure plan with the commission no later than February 28 of each year. If this date falls on a weekend, then the eligible utility shall submit its plan no later than the last business day prior to February 28.

1. The five- (5-) year capital expenditure plan shall include, at a minimum, the following:

A. Total dollar amount related to recurring and developer projects along with a description of each project; and

B. Total dollar amount related to investments and a description of each project for each service area in which the utility provides services.

2. If the eligible utility knows or believes it will not meet the annual requirement, then the eligible utility shall submit a written notice within ten (10) business days prior to February 28 and shall provide—

A. Justification for not meeting the requirement;

B. A proposed extension due date not exceeding thirty (30) days from the initial due date; and

C. Measures taken to ensure it meets the next annual submittal date.