

Missouri Code of State Regulations

Title 20. Department of Commerce and Insurance

Division 4240. Public Service Commission

Chapter 10. Utilities

20 Mo. Code of State Regulations 4240-10.085
Formerly cited as 4 CSR 240-10.085

20 CSR 4240-10.085. Incentives for Acquisition of Nonviable Utilities

Currentness

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) 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--

(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) 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 reasonable period of time, as specified in the application, 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 planned capital improvements and operational changes 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 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.

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

Credits

*AUTHORITY: sections 386.040, 386.250, and 393.140, RSMo 2016.**

**Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; and 393.140, RSMo 1939, amended 1949, 1967.*

This rule originally filed as 4 CSR 240-10.085. Original rule filed May 30, 2018, effective Jan. 30, 2019. Moved to 20 CSR 4240-10.085, effective Aug. 28, 2019.

Current through rules effective January 30, 2023. Some Sections may be more current; see credits for details.

20 Mo. Code of State Regulations 4240-10.085, 20 MO ADC 4240-10.085

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