

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Missouri-)
American Water Company for a Certificate)
of Convenience and Necessity Authorizing it)
to Install, Own, Acquire, Construct, Operate,)
Control, Manage and Maintain a Water)
System and Sewer System in and Around the)
City of Eureka, Missouri)

Case No. WA-2021-0376

APPLICATION FOR REHEARING

COMES NOW the Office of the Public Counsel (the “OPC”) and pursuant to RSMo. § 386.500, submits its Application for Rehearing concerning the Amended Report and Order issued by the Missouri Public Service Commission (the “Commission”) in the above-captioned matter on June 29, 2022 (the “June 29, 2022 Amended Order”). (Doc. 114).¹ In support of its Application for Rehearing, the OPC respectfully states as follows:

The June 29, 2022 Amended Order is unjust and unreasonable because the Commission did not rely on the January 20, 2020 Appraisal, which fulfills the requirements of § 393.320 RSMo. and the Uniform Standards of Professional Appraisal Practice (the “USPAP”), in setting the ratemaking rate base for Missouri-American Water Company’s (“MAWC”) acquisition of the City of Eureka, Missouri’s (“Eureka”) water and wastewater² systems. For this reason, the OPC requests that the Commission grant this Application for Rehearing and reconsider its decision to set the ratemaking rate base for the Eureka water and sewer systems consistent with the March 23, 2020 Appraisal. Rather, the Commission should set the ratemaking rate base consistent with the January 20, 2020 Appraisal.

¹ References to document numbers represent the document numbers assigned in the Electronic Filing Information System (“EFIS”).

² This Application for Rehearing uses the terms “sewer” and “wastewater” interchangeably.

I. Background

A. Procedural Background

This case began when MAWC filed an Application and Motion for Waiver (the “Application”) requesting “to obtain a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage and maintain a water system and sewer system in and around the City of Eureka, Missouri.” (Appl. ¶ 1, Doc. 1). MAWC also filed a Motion to Consolidate on the same day that it filed its Application. (Doc. 2).

The next day, the Commission entered its Order Directing Notice, Setting Deadline for Intervention Requests, Setting Deadline for Responses to Consolidation, and Directing Filing of Staff Recommendation. (Doc. 3). Jefferson County Public Sewer District (“JCPSD”) later applied to intervene in this matter, which the Commission granted. (Docs. 4, 6). The Commission also granted MAWC’s request to consolidate the water and sewer cases. (Doc. 5).

Several months later, the Staff of the Commission (“Staff”) filed its Recommendation. (Doc. 12). In its Recommendation, Staff recommended that the Commission reject MAWC’s Application for several reasons. (*See generally id.*). MAWC replied to and objected to Staff’s Recommendation and requested that the Commission enter a procedural schedule for this matter. (MAWC Resp. 9, Doc. 13). The Commission entered a Procedural Schedule. (Doc. 17).

Three days later, MAWC filed the Direct Testimony of several witnesses. (Docs. 18-23). In response, Staff filed the Rebuttal Testimony of two witnesses and JCPSD filed the Rebuttal Testimony of one witness. (Docs. 26-28). Finally, MAWC filed the Surrebuttal Testimony of several witnesses. (Docs. 29-34).

After the filing of written testimony, the Commission entered its Order Directing Applicant to Supplement Application (the “December 29, 2021 Order”) in which the Commission recognized that “Staff’s recommendation . . . refers to the Flinn Engineering report and indicates that they

reviewed more than one version of the report. In reviewing the documents filed in this matter, the Commission does not find any Flinn Engineering reports.” (Dec. 29, 2021 Order 1, Doc. 35). The Commission ordered MAWC and Staff to “file any and all versions of the Flinn Engineering report referred to in Appendix A of MAWC’s applications, with supporting affidavits.” (*Id.* 2). MAWC and Staff responded to the December 29, 2021 Order. (Docs. 36-37). MAWC also replied to Staff’s Response and cited to Mr. LaGrand’s testimony as an explanation for the difference between the two Flinn Engineering Reports. (Doc. 39).

Following the filing of written testimony and prior to the evidentiary hearings, MAWC, JCPSD, and Staff filed a Partial Stipulation and Agreement. (Doc. 45).

On January 20-21, 2022, the Commission held an evidentiary hearing. (Docs. 50-51). Following the evidentiary hearing, MAWC filed two additional exhibits that the Commission had requested during the evidentiary hearing: (1) “[a] copy of an appraisal document dated January 20, 2020, that was referenced during the hearing,” and, (2) “[c]opies of the pictures reviewed by MAWC witness Simpson.” (Doc. 49). MAWC, Staff, and OPC submitted Initial Post-Hearing Briefs and Reply Post-Hearing Briefs. (Docs. 74-79).

Several weeks later, the Commission entered a Notice of Proposal to Admit the USPAP as an Exhibit and Order Establishing Time to Respond stating that “[i]n order to facilitate ease of reference, the Commission proposes to admit into evidence as confidential Commission Exhibit 302 the 2020-2021 Edition of the Uniform Standards of Professional Appraisal Practice, published by The Appraisal Foundation.” (Mar. 31, 2022 Notice 1, Doc. 80). MAWC stated that it “ha[d] no objection to the admission of Exhibit 302” and neither Staff nor OPC responded to the March 31, 2022 Notice. (MAWC Resp. ¶ 2, Doc. 81). The Commission entered the USPAP into evidence. (Apr. 8, 2022 Order 1, Doc. 82; USPAP, Doc. 83).

Several days later, Staff filed a Request to Reopen the Record to examine an issue relating to the residents of the Arbors subdivision potential to pay twice for their water system. (Doc. 84). The Commission granted Staff's request. (Doc. 88). Staff filed Direct Testimony of two witnesses and MAWC filed Rebuttal Testimony of two witnesses. (Docs. 95-96, 99-100). On May 6, 2022, the Commission held an Evidentiary Hearing on the Arbors' issue. (Doc. 104).

On June 9, 2022, the Commission entered its first Report and Order, which granted MAWC's requested CCNs and bore an effective date of July 9, 2022. (Doc. 112). Five days later, MAWC filed a Motion for Correction or Clarification, which the Commission granted by issuing its Amended Report and Order on June 29, 2022. (Docs. 113-114). The June 29, 2022 Amended Order also bears a July 9, 2022 effective date.

B. Relevant Factual Background³

MAWC seeks to acquire Eureka's water and sewer systems for \$28 million. (*See* Tr. 56–57, Docs. 50–51⁴ (Mr. Sean Flower, mayor of Eureka, testifying that “the ballot language that we prepared was that the sale price was based on the appraisal”); Ex. 1: Flower Direct Test. 6–7, Doc. 55 (identifying the ballot language, which specified the price as \$28,000,000.00); *see also* Ex. 11: LaGrand Direct Test. 9, Doc. 65 (stating that “[t]he acquisition of the Eureka water and wastewater systems would increase MAWC's rate base by \$28.0 million.”)).

In acquiring the Eureka water and sewer assets, MAWC choose to utilize the appraisal statute, § 393.320 RSMo. (LaGrand Direct Test. 6). In accordance with this statute, MAWC bases its proposed purchase price on an appraisal price. (*See* Tr. 56 (Mr. Flower testifying that “the ballot

³ In the interest of brevity, the OPC does not describe all the facts in evidence in this section. Rather, it includes only those facts most pertinent to the issues addressed in this Application for Rehearing.

⁴ The OPC notes that the January 20-21, 2022 Hearing transcript was filed as two documents, Documents 50 and 51. The transcript is continuously paginated between the two documents. Therefore, the OPC will refer to the transcript in general.

language that we prepared was that the sale price was based on the appraisal”); *see also* Tr. 187 (Mr. Jeffrey Kaiser, MAWC Vice President of Operations, stating “[t]hat’s my understanding” in response to a question that asked “[s]o the sale price was decided by the appraisal price; is that what I’m hearing?”)).

To comply with the statute, Eureka choose Mr. Edward W. Dinan of Dinan Real Estate Advisors, Inc. to complete an appraisal of the Eureka water and sewer assets. (Ex. 108 at 21,⁵ Doc. 72). MAWC choose Mr. Joseph Batis. (*Id.* 20). Mr. Dinan and Mr. Batis choose Ms. Elizabeth Goodman Schneider as the third appraiser. (*Id.* 15).

However, Mr. Dinan, Mr. Batis, and Ms. Goodman Schneider prepared, signed cover letters for, and signed certifications for two appraisals: (1) a January 20, 2020 Appraisal and (2) a March 23, 2020 Appraisal. (*Compare* Ex. 300: January 20, 2020 Appraisal, Doc. 49, *with* Ex. 3: Batis Direct Test. Schedule JEB-2: March 23, 2020 Appraisal, Doc. 57). The appraisers shared the January 20, 2020 Appraisal with MAWC. (Ex. 108 at 109). Presumably, the appraisers shared the January 20, 2020 Appraisal with Eureka as well. (*See id.* at 89, 113).

MAWC chose to use the second appraisal—the March 23, 2020 Appraisal—to calculate its proposed purchase price for the Eureka systems. (*Compare* Tr. 56–57 (Mr. Flower explaining that the “sale price was based on the appraisal” and that ballot language included “the \$28 million number”), *with* Mar. 23, 2020 Appraisal Cover Letter at 2 (identifying the market value of the water delivery system as \$18,000,000 and the market value of the wastewater collection system as \$10,000,000)).

⁵ Exhibit 108 includes several emails it appears MAWC produced in response to Staff’s Data Request 0061. The document includes page numbers in the upper right-hand corner. The OPC references these page numbers in this Application for Rehearing.

Both the January 20, 2020 Appraisal and the March 23, 2020 Appraisal specify that they are “prepared subject to the Special Assumptions and Limiting Conditions” addressed in the reports. (Jan. 20, 2020 Appraisal Cover Letter at 2; Mar. 23, 2020 Appraisal Cover Letter at 2). Both appraisals specify that “[t]he Special Assumptions and Limiting Conditions address several significant issues that impact the analysis and conclusions presented in the attached report” and list several items. (*Id.*). Specifically, both appraisals reference “[t]he Flinn Engineering Report.” (*Id.*).

Similar to the appraisals, Ms. Kelly Simpson of Flinn Engineering prepared two engineering reports: (1) the January 18, 2020 Engineering Report and (2) the March 16, 2020 Engineering Report. (LaGrand Direct Test. 11–12 (explaining that two versions of the Flinn Engineering Report exist); *Compare* Ex. 11: LaGrand Direct Test. Schedule BWL-3: January 18, 2020 Flinn Engineering Report at 25–47,⁶ *with* Ex. 11: LaGrand Direct Test. Schedule BWL-3: March 16, 2020 Flinn Engineering Report at 3–24). Ms. Simpson testified that she considered both the January 18, 2020 Engineering Report and the March 16, 2020 Engineering Report to be a final document. (Tr. 222).

The January 18, 2020 Engineering Report supports the January 20, 2020 Appraisal and the March 16, 2020 Engineering Report supports the March 23, 2020 Appraisal. (Tr. 152 (Mr. Batis explaining the difference between the January 20, 2020 Appraisal and the March 23, 2020 Appraisal and stating, in pertinent part, that the appraisers “adjusted [their] report once we received revised work from Flinn Engineering.”); Ex. 3: Batis Direct Test. 5, Doc. 57).

⁶ Several page numbers appear on the two engineering reports. The page number referenced throughout the OPC’s Application for Rehearing is the page number assigned as a part of Schedule BWL-3, as opposed to the page number of the specified report.

The identified market value listed in the March 23, 2020 Appraisal is vastly different than the identified market value listed in the prior January 20, 2020 Appraisal. (*Compare* Jan. 20, 2020 Appraisal Cover Letter at 2, *with* Mar. 23, 2020 Appraisal Cover Letter at 2). Similarly, the Estimated Depreciated Book Value identified in the January 18, 2020 Engineering Report and that identified in the March 16, 2020 Engineering Report are significantly different. (*Compare* Jan. 18, 2020 Engineering Report at 30, *with* Mar. 16, 2020 Engineering Report at 8). The suggested value of the systems as expressed in the two appraisals and the two engineering reports are described in the tables below:

Appraisal (Market Value)	
January 20, 2020 Appraisal ⁷	Water: \$12,500,000 Sewer: \$5,500,000 Total: \$18,000,000
March 23, 2020 Appraisal ⁸	Water: \$18,000,000 Sewer: \$10,000,000 Total: \$28,000,000

Engineering Reports (Estimated Depreciated Book Value)	
January 18, 2020 Engineering Report ⁹	Water: \$10,565,695.54 Sewer: \$5,521,205.06 Total: \$16,086,900.61
March 16, 2020 Engineering Report ¹⁰	Water: \$18,155,170.19 Sewer: \$13,293,844.11 Total: \$31,449,014.30

The changes in the underlying Engineering Reports arose when Ms. Simpson modified the assumption she “used to estimate the age of the buried assets.” (Tr. 211; Ex. 9: Simpson Direct Test. 6–7, Doc. 63 (explaining the difference between the January 18, 2020 Engineering Report

⁷ Jan. 20, 2020 Appraisal Cover Letter at 2; Jan. 20, 2020 Appraisal at 76.

⁸ Mar. 23, 2020 Appraisal Cover Letter at 2; Mar. 23, 2020 Appraisal at 75.

⁹ Jan. 18, 2020 Engineering Report at 30.

¹⁰ Mar. 16, 2020 Engineering Report at 8.

and the March 16, 2020 Engineering Report). Ms. Simpson explained that she modified this assumption after MAWC employee, Mr. Derek Linam, “made [her] aware of the existence of certain GIS data that was relevant to this question.” (Simpson Direct Test. 7, Tr. 201).

Ms. Simpson explained that Mr. Linam reached out to her for the first time around February 6, 2020. (Ex. 107 at 24,¹¹ Doc. 71; *see* Tr. 213 (Ms. Simpson explaining that she “do[es] not recall the date that [Mr. Linam] first contacted [her] because that was a phone call,” but stating that “we have the emails so we can tell that it was somewhere in the middle of February, beginning to middle of February.”). The next day, February 7, 2020, Mr. Linam explained that he “wanted to review the assumption that the system was 70% built by the 1950s.” (Ex. 107 at 23). He stated that he had “pulled some statistics from parcels out of GIS and wondered how it might change the depreciated value if we use some different assumptions.” (*Id.*). Ms. Simpson stated that she could “come to [Mr. Linam’s] office and bring everything on my laptop.” (*Id.* at 22). She continued saying “[w]e can test various assumptions live on the spreadsheets and see what it does.” (*Id.*). After several additional emails, Mr. Linam told Ms. Simpson that he was “just wondering how a ‘newer’ system assumption will impact depreciated value for the water and waste[.]water distribution and collection systems. (*Id.* at 17). Mr. Linam and Ms. Simpson continued to communicate via email and it appears they met at least once to discuss Ms. Simpson’s assumptions regarding the age of the Eureka assets. (*See generally id.*). Ms. Simpson then revised her original engineering report and concluded that the value of the Eureka assets was higher. (*See* Simpson Direct Test. 6-7, Mar. 16, 2020 Engineering Report at 8).

¹¹ Exhibit 107 includes several emails it appears MAWC produced in response to Staff’s Data Request 0060. The document includes page numbers in the upper right-hand corner. The OPC references these page numbers in this Application for Rehearing.

II. Standard of Review

“After an order or decision has been made by the commission, the public counsel . . . shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such rehearing, if in its judgment sufficient reason therefor be made to appear.” RSMo. § 386.500(1). An application for rehearing “shall set forth specifically the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust, or unreasonable.” *Id.* § 386.500(2).

“Lawfulness is determined by whether or not the Commission had the statutory authority to act as it did.” *Pub. Serv. Comm’n v. Mo. Gas Energy*, 388 S.W.3d 221, 227 (Mo. Ct. App. 2012) (citations omitted). “Reasonableness depends on whether or not (i) the order is supported by substantial and competent evidence on the whole record, (ii) the decision is arbitrary, capricious or unreasonable, or (iii) the Commission abused its discretion.” *Id.* (internal quotation marks and citations omitted).

III. Argument:

The June 29, 2022 Amended Order is Unjust and Unreasonable Because the Commission Should Have Relied on the January 20, 2020 Appraisal in Setting the Ratemaking Rate Base for MAWC’s Acquisition of the Eureka Water and Sewer Assets

The June 29, 2022 Amended Order is unjust and unreasonable because the Commission should have relied on the January 20, 2020 Appraisal in setting the ratemaking rate base for MAWC’s acquisition of the Eureka water and sewer assets. This January 20, 2020 Appraisal fulfills the requirements of the appraisal statute—§ 393.320 RSMo.—and the USPAP, at least to the same extent as the March 23, 2020 Appraisal, which the Commission relied on in its June 29, 2022 Amended Order. The January 20, 2020 Appraisal also predates the March 23, 2020 Appraisal and, importantly, MAWC’s discussions with Ms. Kelly Simpson that led her to revise her

assumptions and greatly increase her identified value of the Eureka assets. Ms. Simpson’s revised assumptions ultimately led to the revised March 23, 2020 Appraisal, which arrived at an appraised value of the Eureka assets that is much higher than that set forth in the January 20, 2020 Appraisal. Because the January 20, 2020 Appraisal fulfills the necessary requirements, the Commission should have relied on it in setting the ratemaking rate base for MAWC’s acquisition of the Eureka water and sewer assets.

A. Applicable Standards: § 393.320 RSMo. and the USPAP

An appraisal must fulfill two standards before the Commission may consider it under the appraisal statute, § 393.320 RSMo.: (1) the standard described in the appraisal statute itself and (2) the USPAP, which § 393.320 references. The OPC briefly discusses each standard in turn.

1. Section 393.320 RSMo.

Section 393.320 RSMo., the appraisal statute, stands at the heart of this matter. This statute “is intended for the specific and unique purpose of determining the ratemaking rate base of small water utilities and shall be exclusively applied to large water public utilities in the acquisition of a small water utility.” § 393.320.8 RSMo. In pertinent part, at a basic level, the statute describes a process that a large water public utility—defined by the statute—may choose to employ when acquiring a small water utility—also defined by the statute. *See generally* § 393.320 RSMo. If the large water public utility chooses to employ the specified appraisal process, then it “shall be used by the public service commission to establish the ratemaking rate base of a small water utility during an acquisition.” § 393.320.2 RSMo.

The appraisal process described in the statute is:

3. (1) An appraisal shall be performed by three appraisers. One appraiser shall be appointed by the small water utility, one appraiser shall be appointed by the large water public utility, and the third appraiser shall be appointed by the two appraisers

so appointed. Each of the appraisers shall be a disinterested person who is a certified general appraiser under chapter 339.

(2) The appraisers shall:

(a) Jointly prepare an appraisal of the fair market value of the water system and/or sewer system. The determination of fair market value shall be in accordance with Missouri law and with the Uniform Standards of Professional Appraisal Practice; and

(b) Return their appraisal, in writing, to the small water utility and large water public utility in a reasonable and timely manner.

(3) If all three appraisers cannot agree as to the appraised value, the appraisal, when signed by two of the appraisers, constitutes a good and valid appraisal.

§ 393.320.3 RSMo.

In accordance with its purpose, the appraisal statute also mandates the amount the Commission must set as the ratemaking rate base for the acquired small water utility assets and distinguishes between those situations where the small water utility is a public utility subject to chapter 386 of the Revised Statutes of Missouri and those situations where the small water utility is not. *See* § 393.320.5(1). As it pertains to this matter—where the Eureka systems do not constitute public utilities subject to chapter 386—the statute mandates that “(1) The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility” *Id.* The Commission must issue its decision “establishing the ratemaking rate base of the small water utility in its order approving the acquisition.” § 393.320.5(2) RSMo.

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¹² The Commission entered the entire USPAP into the evidentiary record. The OPC cites the page appearing on the bottom of the USPAP document.

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B. The January 20, 2020 Appraisal Complies with Both the Appraisal Statute and the USPAP

Although differences exist between the January 20, 2020 Appraisal and the March 23, 2020 Appraisal, the two appraisals share many similarities. (*Compare* January 20, 2020 Appraisal, *with* March 23, 2020 Appraisal). The January 20, 2020 Appraisal fulfills the requirements of § 393.320 RSMo. and the USPAP, at least to the same extent that the March 23, 2020 Appraisal fulfills those requirements.

Most importantly, the same three appraisers—Mr. Edward W. Dinan, Mr. Joseph E. Batis, and Ms. Elizabeth Goodman Schneider—completed each of the appraisals. (*Compare* Jan. 20, 2020 Appraisal Cover Letter at 3, *with* Mar. 23, 2020 Appraisal Cover Letter at 3). Eureka—the small water utility¹⁴—chose Mr. Edward Dinan of Dinan Real Estate Advisors to be its appraiser. (Ex. 108 at 21). MAWC—the large water public utility¹⁵—chose Mr. Joe Batis as its appraiser.

¹⁴ The OPC does not dispute that Eureka constitutes a small water utility under § 393.320.1(2) RSMo.

¹⁵ The OPC does not dispute that MAWC constitutes a large water public utility under § 393.320.1(1) RSMo.

(*Id.* 20). Together, Mr. Dinan and Mr. Batis choose Ms. Elizabeth Goodman Schneider as the third appraiser.¹⁶ (*Id.* 15). This satisfies the appraisal statute’s requirements regarding how the three appraisers are to be chosen and the requirement that the three appraisers jointly prepare the appraisal. § 393.320.3(1), 393.320.3(2)(a) RSMo.

As to the appraisal statute’s mandate that “[t]he determination of fair market value shall be in accordance with Missouri law and with the [USPAP],” § 393.320.3(2)(a) RSMo., the January 20, 2020 Appraisal complies with the USPAP’s requirements regarding the content of an appraisal report—at least to the same extent as the March 23, 2020 Appraisal. (*See generally* Jan. 20, 2020 Appraisal, Mar. 23, 2020 Appraisal, USPAP at 20-22 (Standards Rule 2-2)). Therefore, the January 20, 2020 Appraisal fulfills this requirement of the appraisal statute. § 393.320.3(2)(a) RSMo.

The OPC presumes that the January 20, 2020 Appraisal fulfills the appraisal statute’s requirement that the three appraisers return their written appraisal to the large water public utility and the small water utility “in a reasonable and timely manner.” § 393.320.3(2)(b) RSMo. Although the email in the record shows that Mr. Batis sent the January 20, 2020 Appraisal to MAWC, the other appraisers, Ms. Simpson, and Mr. Jordan Leiner,¹⁷ the OPC presumes that Eureka received the January 20, 2020 Appraisal as well. (Ex. 108 at 109 (January 21, 2020 email from Mr. Batis stating that “[a]ttached is the appraisal report and the Flinn Engineering report . . . ” with an attachment identified as “FINAL APPRAISAL REPORT-EUREKA MISSOURI.pdf”)).

¹⁶ Although the OPC shares the Commission’s concerns regarding MAWC’s involvement in Eureka’s selection of Mr. Dinan and Mr. Dinan and Mr. Batis’s selection of Ms. Goodman Schneider, the OPC does not rely on those concerns in bringing this Application for Rehearing. (*See* June 29, 2022 Amended Order 29)

¹⁷ At the January 20, 2022 Evidentiary Hearing, Mr. Batis explained that Mr. Jordan Leiner “is one of the associates of Mr. Dinan, and he is one of our contacts at the Dinan office for helping to assemble information and do research for us for our appraisals.” (Tr. 95).

The OPC bases this presumption on the March 16, 2020 email Mr. Batis sent to Ms. Melisha Billups, a MAWC employee, to inform her that “[b]ased upon new and updated information pertaining to the assets of Eureka’s water and wastewater systems, there are significant impacts to the valuation opinions included in our appraisal report dated January 20, 2020.” (*Id.* 113). In that email, Mr. Batis mentioned that he would “be emailing Craig Sabo [of Eureka] this morning – providing him no specifics about the assignment, changes, etc. – I will merely tell him that we are in the process of collecting and reviewing additional information and will be determining the impact within the next week or two.” (*Id.*). Similarly, on that same day, Mr. Batis emailed Mr. Sabo of Eureka and Ms. Billups of MAWC saying:

I am in the process of reviewing additional/updated information regarding the assets of the Eureka water and wastewater systems. Until I have reviewed everything in detail, consult with Kelly Simpson (Flinn Engineering), and consult with the other two appraisers, I cannot provide you any meaningful information about the impact to value. I expect to have a better understanding of the revisions within the next few days, assuming everyone is available for conference calls, etc.

(*Id.* 89). If Eureka had not yet received the January 20, 2020 Appraisal, presumably Mr. Batis would have had no reason to inform Mr. Sabo of any changes to the document. With this presumption in mind, the January 20, 2020 Appraisal complies with the requirement that the appraisers provide the written appraisal report to the large water public utility and the small water utility, which completes the requirements of § 393.320.3 RSMo.¹⁸

In addition to fulfilling the requirements of the appraisal statute, the January 20, 2020 Appraisal also fulfills the certification requirement of the USPAP. Specifically, each of the three appraisers signed a certification for the January 20, 2020 Appraisal that complies with the USPAP. (Jan. 20, 2020 Appraisal at 77-80; *see* USPAP at 23-24 (Standards Rule 2-3)). Each of the three

¹⁸ The OPC notes that the final subsection of § 393.320.3 RSMo. applies to those situations where “all three appraisers cannot agree.” § 393.320.3(3) RSMo. Based on the evidence in the record, it appears that the three appraisers all agreed on the price in the January 20, 2020 Appraisal. Therefore, this subsection does not apply.

appraisers also signed a cover letter to accompany the January 20, 2020 Appraisal. (Jan. 20, 2020 Appraisal Cover Letter at 3; *see* USPAP at 23-24 (Standards Rule 2-3)).

Therefore, the January 20, 2020 Appraisal fulfills the requirements of the appraisal statute and the USPAP, at least to the same extent as the March 23, 2020 Appraisal.

C. The Commission Should Have Used the January 20, 2020 Appraisal in Setting the Ratemaking Rate Base for MAWC's Acquisition of the Eureka Water and Sewer Systems

Two appraisals exist in the evidentiary record of this matter: (1) the January 20, 2020 Appraisal and (2) the March 23, 2020 Appraisal. The January 20, 2020 Appraisal complies with both the appraisal statute and the USPAP, at least to the same extent that the March 23, 2020 Appraisal complies with those standards. Because the January 20, 2020 Appraisal predates the March 23, 2020 Appraisal and MAWC's involvement in the process of valuing the Eureka assets, the Commission should have relied on it in setting the ratemaking rate base for MAWC's acquisition of the water and sewer systems.

For purposes of this Application for Rehearing, the most important difference between the January 20, 2020 Appraisal and the March 23, 2020 Appraisal is the resultant appraised value of the Eureka water and sewer systems. The first appraisal—the January 20, 2020 Appraisal—valued the Eureka water and sewer system at a significantly lower price than the second appraisal—the March 23, 2020 Appraisal. Specifically, the January 20, 2020 Appraisal values the water system at \$12,500,000 and the sewer system at \$5,500,000, for a total value of \$18,000,000. (Jan. 20, 2020 Appraisal Cover Letter at 2; Jan. 20, 2020 Appraisal at 76). The March 23, 2020 Appraisal, on the other hand, values the water system at \$18,000,000 and the sewer system at \$10,000,000, for a total of \$28,000,000. (Mar. 23, 2020 Appraisal Cover Letter at 2; Mar. 23, 2020 Appraisal at 75). In graph form this is:

Appraisal (Market Value)	
January 20, 2020 Appraisal ¹⁹	Water: \$12,500,000 Sewer: \$5,500,000 Total: \$18,000,000
March 23, 2020 Appraisal ²⁰	Water: \$18,000,000 Sewer: \$10,000,000 Total: \$28,000,000

This results in a \$10 million difference between the two appraisals. (*Compare* Jan. 20, 2020 Appraisal at 76, *with* Mar. 23, 2020 Appraisal at 75).

This \$10,000,000 difference arose when the appraisers “adjusted [their] report once [they] received revised work from Flinn Engineering.” (Tr. 152). Ms. Simpson explained that she considered her first engineering report to be a “final document.” (Tr. 222). However, Ms. Simpson revised her engineering report after she “was made aware of the existence of certain GIS data that was relevant to this question.” (Simpson Direct Test. 7). At the evidentiary hearing Ms. Simpson stated that a MAWC employee, Derek Linam, made her aware of the GIS data. (Tr. 201). Ms. Simpson and Mr. Linam communicated several times via email about the GIS data and Ms. Simpson’s assumptions regarding the Eureka assets. (*See generally* Ex. 107). Based on the emails introduced into the evidentiary record, it appears that Mr. Linam reached out to Ms. Simpson for the first time on February 6, 2020—after the appraisers completed the January 20, 2020 Appraisal. (Ex. 107 at 24; *see* Tr. 213 (Ms. Simpson explaining that she “do[es] not recall the date that [Mr. Linam] first contacted [her] because that was a phone call,” but stating that “we have the emails so we can tell that it was somewhere in the middle of February, beginning to middle of February.”)). Ms. Simpson’s revised engineering report resulted in a much higher value for the Eureka water

¹⁹ Jan. 20, 2020 Appraisal Cover Letter at 2; Jan. 20, 2020 Appraisal at 76.

²⁰ Mar. 23, 2020 Appraisal Cover Letter at 2; Mar. 23, 2020 Appraisal at 75.

and sewer assets.²¹ (*Compare* Jan. 18, 2020 Engineering Report at 30, *with* Mar. 16, 2020 Engineering Report at 8). Ms. Simpson testified that she also considered her revised engineering report to be a final document. (Tr. 222). Ms. Simpson did not sign either the January 20, 2020 Appraisal or the March 23, 2020 Appraisal. (*See generally* Jan. 20, 2020 Appraisal; Mar. 23, 2020 Appraisal).

By relying on the January 20, 2020 Appraisal, the Commission would not only be relying on the first appraisal report, it would also be relying on the appraisal report that predates much of MAWC's involvement in the process of valuing the Eureka assets. The Commission would also be relying on the appraisal that reaches a lower, more reasonable price for the Eureka assets.

Section 393.320 of the Revised Statutes of Missouri states that “[t]he lesser of the purchase price *or* the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility” § 393.320.5(1) RSMo. (emphasis added). Relying on the January 20, 2020 Appraisal and setting the ratemaking rate base for the Eureka water system at \$12,500,000 and the sewer system at \$5,500,000, for a total of \$18 million complies with the statute because this appraised value is lower than the purchase price. Because the January 20, 2020 Appraisal complies with the appraisal statute and the USPAP, the Commission should have relied on it in setting the ratemaking rate base of MAWC's acquisition of the Eureka water and sewer assets.

²¹ MAWC's involvement in the process of valuing the Eureka assets highlights at least one important problem with the appraisal statute. Specifically, no party has an incentive to request a lower value for the small water utility's assets. Although the statute requires that the appraisers be chosen in a way that should result in a tension between buyer and seller to meet at a reasonable value for the assets, due to the ratemaking process and MAWC's ability to earn a return on its rate base, no party in this transaction has an incentive to request a lower price. Mr. Linam's, a MAWC employee, actions in reaching out to Ms. Simpson stating that he “wanted to review the assumption that the system was 70% built by the 1950's” and stating that he “wonder[s] how a ‘newer’ system assumption will impact depreciated value,” suggests that MAWC did not wish to lower the purchase price. (*See* Ex. 107 at 17, 23). MAWC should not profit from its involvement in the appraisal process.

IV. Conclusion

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission grant the Application for Rehearing, reconsider its decision regarding the ratemaking rate base set forth in the June 29, 2022 Amended Order, and set the ratemaking rate base of the Eureka water and sewer system consistent with the January 20, 2020 Appraisal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 8th day of July 2022.

/s/ Lindsay VanGerpen