

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

In the Matter of Missouri-American Water )  
Company’s Application 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 Smithton, Missouri )

Case No. WA-2023-0071

**RESPONSE TO STAFF RECOMMENDATION**

**COMES NOW** the Office of the Public Counsel (the “OPC”) and in response to the Staff of the Public Service Commission of the State of Missouri’s (“Staff”) Recommendation (Doc. 10) respectfully states:

Missouri-American Water Company (“MAWC”) intends to acquire the City of Smithton, Missouri (“Smithton”) water and sewer systems and to utilize the appraisal process provided for in § 393.320 RSMo to set the ratemaking rate base for the systems once acquired. The OPC does not object to MAWC acquiring the Smithton water and sewer systems, subject to the conditions identified by Staff in its Recommendation, at the price identified in the Purchase Agreement, attached as Appendix C to MAWC’s Application and Motion for Waiver (the “Application”). (Appl. App. C “Purchase Agreement” 1, Doc. 1; Recommendation Mem. 13-14, Doc. 10). However, the OPC files this Response to Staff’s Recommendation to note its concern with MAWC’s communications with Smithton regarding Smithton’s choice of an appraiser.

**I. Background**

On August 12, 2022, MAWC filed the Application and accompanying attachments to acquire the Smithton water and sewer systems.<sup>1</sup> (Doc. 1). On December 19, 2022, Staff filed its

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<sup>1</sup> MAWC originally filed the Application and accompanying attachments in both a water and sewer case. (See Case No. WA-2023-0071, Doc. 1; Case No. SA-2023-0072, Doc. 1). Upon motion from MAWC, the Commission consolidated the cases and designated the water case (WA-2023-0071) as the lead case. (See Case No. WA-2023-

Recommendation requesting that the Commission approve MAWC’s Application and grant MAWC the requested Certificates of Convenience and Necessary, subject to certain, identified conditions.<sup>2</sup> (Doc. 10).

## **II. Response**

Although the OPC has no objection to MAWC acquiring the Smithton systems at the price identified in the Purchase Agreement and subject to the conditions identified by Staff in its Recommendation, the OPC is concerned with the language that MAWC employs when communicating with owners of the systems it seeks to acquire using the appraisal process described in § 393.320 RSMo. (the “Appraisal Statute”). The OPC seeks no relief on this issue in this case, but files this Response to alert Parties to a potential issue that the OPC may raise in a future case.

### **A. Pertinent Legal Standard**

Section 393.320 of the Revised Statutes of Missouri provides for an appraisal process that a large water public utility may choose to utilize when acquiring a qualifying small water utility. § 393.320 RSMo. If the large water public utility chooses to utilize the appraisal process set forth in the statute, then the statute mandates how the Commission set the ratemaking rate base of the small water utility during an acquisition. *See* §§ 393.320.2 and .5 RSMo.

Section 393.320 also identifies qualifications for the appraisers and qualifications for the appraisal itself. §§ 393.320.3(1), (2) RSMo. Specifically, it requires that “[e]ach of the appraisers shall be a disinterested person who is a certified general appraiser under chapter 339.” § 393.320.3(1) RSMo. Further, the statute states that “[t]he appraisers shall: (a) Jointly prepare an

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0071, Docs. 4, 5; Case No. SA-2023-0072, Docs. 4, 5). Because the Commission consolidated the cases, the OPC provides citations to the documents filed in Case Number WA-2023-0071 only.

<sup>2</sup> Pursuant to 20 CSR 4240-2.080(13), the OPC has ten (10) days to file its response to Staff’s Recommendation.

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 [‘USPAP’] . . .” § 393.320.3(2)(a) RSMo.

In Case Number WA-2021-0376 (the “MAWC Eureka Acquisition Case”), the Commission included as a “Conclusion of Law” that “[i]n the USPAP definitions, ‘appraiser’ is defined as ‘one who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective.’” (Case No. WA-2021-0376, Amended Report & Order 25, Doc. 114 (footnote omitted)). In setting forth its decision in that case, the Commission stated that this definition of an appraiser is required by § 393.320 RSMo “by virtue of its reference to the USPAP.” (*Id.* 29).

**B. MAWC’s Communication with Smithton**

In Data Request Number 0032 submitted in the instant case, Staff requested information about the appraisers who completed the Smithton appraisal and how those appraisers were chosen. (*See* Appendix A “Staff Data Request No. 0032 & MAWC’s Response”).<sup>3</sup> Specifically, Staff asked

RSMo Section 393.320.3 (1) states, “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.” Please identify (1) which appraiser was selected by the City of Smithton, (2) which appraiser was selected by MAWC, and (3) which appraiser was selected by the previous two appraisers. Additionally, please provide documentation showing support of each utility independently selecting each appraiser.

(*Id.*).

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<sup>3</sup> Staff’s Data Request 0032 and MAWC’s response to that data request are attached to this Response as Appendix A.

In its response to this Data Request, MAWC identified the chosen appraisers and attached a series of emails and their accompanying attachments to show “the communication where the City of Smithton chose their appraiser.” (*Id.*).

Included in those emails, is an email from a MAWC employee to the email address “mayorofsmithton@gmail.com” that begins “Good Morning Mayor Lemens.” (App. A 2<sup>4</sup> (a July 14, 2020 email from 11:24 a.m.)). In pertinent part, that email references an attached list of appraisers that are on MAWC’s “vendor list for appraisal service.” (*See id.*). MAWC stated that the “highlighted appraisers on the list have been previously utilized for water and/or wastewater system appraisals.” (*Id.*). The email also references “attached . . . qualification reports for those appraisers.” (*Id.*). Further, the email appears to suggest that MAWC must qualify appraisers not included on the list. (*Id.*). Specifically, the email includes a sentence that states “[i]f you would like to select an appraiser that is not on the list, please provide me with their contact information so I can get them qualified to provide appraisal services.” (*Id.*)

C. **OPC’s Concern: MAWC’s Statement to Smithton Regarding Smithton’s Chosen Appraiser Appears to Impose an Additional Qualification for Appraisers Not Supported by § 393.320 RSMo. and May Affect the Appraiser’s Independence, Impartiality, and Objectivity, as well as Whether the Appraiser is Truly Disinterested**

In this case, the OPC has no objection to MAWC acquiring the Smithton water and sewer systems at the price identified in the Purchase Agreement. However, because MAWC appears to be suggesting to entities that it seeks to acquire using the appraisal process that it must qualify an appraiser before he or she is able to participate in the appraisal process described in § 393.320 RSMo., the OPC files this response to note its concern for the record.

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<sup>4</sup> The page number identified here is the page number appearing in the top right hand corner of the page that is preceded by the word “Page.”

In describing the appraisal process that a large water public utility may use to acquire a qualifying small water utility, § 393.320 RSMo. includes qualifications for who may serve as an appraiser and requirements for the appraisal. *See* §§ 393.320.3(1), (2) RSMo. These include that each appraiser be a “disinterested person” and that the “determination of fair market value shall be in accordance with Missouri law and with the [USPAP].” *Id.* The Commission has previously stated that the USPAP’s requirement that the appraisers be “independent, impartial, and objective” is required by § 393.320.3(2)(a) RSMo. “by virtue of its reference to the USPAP.” (Case No. WA-2021-0376, Amended Report & Order 25, 29).

In its communication with Smithton, MAWC appears to suggest that it must qualify any appraiser that Smithton may choose who does not appear on the list of appraisers that MAWC provided. (*See* App. A 2 (July 14, 2020 email stating “[i]f you would like to select an appraiser that is not on the list, please provide me with their contact information so I can get them qualified to provide appraisal services.”)). This language could be interpreted as suggesting that MAWC is adding an additional requirement to the qualifications that an appraiser must meet before he or she is eligible to participate in the § 393.320 RSMo. appraisal process—namely that MAWC must determine that the appraiser meets certain, unidentified requirements. (*See id.*).

Section 393.320 does not require MAWC—as the large water public utility—to approve of Smithton’s—as the small water utility— chosen appraiser. *See generally* § 393.320 RSMo. Further, the statute does not require that MAWC qualify any appraiser that a small water utility may choose. *See generally id.* Rather, the statute requires only that the appraisers “be a disinterested person who is a certified general appraiser under chapter 339” and that the “determination of fair market value shall be in accordance with Missouri law and with the [USPAP].” §§ 393.320.3(1), (2)(a) RSMo. The Commission has further stated that the USPAP’s

requirement that the appraisers be “independent, impartial, and objective” is required by § 393.320.3(2)(a) RSMo. “by virtue of its reference to the USPAP.” (Case No. WA-2021-0376, Amended Report & Order 25, 29).

The language regarding MAWC’s qualification of a small water utility’s chosen appraiser could also call into question the independence, impartiality, and objectivity of the chosen appraiser, as well as whether he or she is truly disinterested. (*See* Case No. WA-2021-0376, Amended Report & Order 25, 29 (stating that the requirement that the appraisers be “independent, impartial, and objective” is required by § 393.320.3(2)(a) RSMo. “by virtue of its reference to the USPAP.”)). For instance, in the MAWC Eureka Acquisition Case, the Commission included in its “Findings of Fact” quotations from a similar email that MAWC sent to Eureka officials and to MAWC and Eureka’s chosen appraisers.<sup>5</sup> (*Id.* 8). Those emails included a substantially similar sentence to that included in MAWC’s email to Smithton. (*Compare* Case No. WA-2021-0376, Ex. 108 20, 22<sup>6</sup> (emails that include the sentence “[i]f you would like to select an appraiser that is not on the list, please provide me with their contact information so I can get them qualified to provide appraisal services.”); *with* App. A 2 (email that includes the sentence “[i]f you would like to select an appraiser that is not on the list, please provide me with their contact information so I can get them qualified to provide appraisal services.”)). In setting forth its decision in the MAWC Eureka Acquisition Case, the Commission described several concerns “with the manner in which an appraised value was determined for Eureka’s water and sewer systems.” (Case No. WA-2021-0376, Amended Report & Order 28-31). Most pertinent to the instant matter, the Commission

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<sup>5</sup> It is unclear whether MAWC included similar language in an email to it and Smithton’s chosen appraisers in preparing for the Smithton appraisal.

<sup>6</sup> The page numbers identified here is the page number appearing in the top right hand corner of the page that is preceded by the word “Page.”

noted its concerns “with both the manner in which the three appraisers were selected and the contact that MAWC had with the appraisers prior to the issuance of both the Initial Appraisal Report . . . and the Final Appraisal Report . . .” (*Id.* 29). Though in describing its concern the Commission did not specifically reference the emails containing the sentence regarding MAWC’s qualification of appraisers not on the list it provided, the Commission described these emails in its Findings of Fact. (*See id.* 8, 29).

Because the language used in MAWC’s email could be interpreted in a way that adds an additional requirement for the appraisers participating in a § 393.320 RSMo. appraisal to meet, not required by the Appraisal Statute, and could potentially call into question the independence, impartiality, and objectivity of the appraisers, as well as whether he or she is truly disinterested, the OPC raises its concern with this language for the record. However, the OPC seeks no relief related to this concern for this case. Rather, the OPC has no objection to MAWC acquiring the Smithton water and sewer systems at the price specified in the Purchase Agreement, subject to the conditions identified by Staff in its Recommendation. (*See* Purchase Agreement 1; Recommendation Mem. 13-14).

**III. Conclusion**

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission accept this Response that describes the OPC’s concern; grant MAWC’s requested CCNs, subject to the conditions identified by Staff in its Recommendation; and set the ratemaking rate base for the Smithton water and sewer systems at the purchase price identified in the Purchase Agreement.

Respectfully submitted,

/s/ Lindsay VanGerpen  
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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 29th day of December 2022.

/s/ Lindsay VanGerpen