

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

In the Matter of the Commission’s)
Proposed Rule 20 CSR 4240-50.060)
and Proposed Rescission of 20 CSR)
4240-3.600 Relating to Filing) Case No. WX-2025-0117
Requirements for Water Utility)
Applications for Certificates of)
Convenience and Necessity)
)

COMMENTS OF THE OFFICE OF THE PUBLIC COUNSEL

Pursuant to the Public Service Commission (“Commission”) of the State of Missouri’s *Notice of Hearing and Comment Period* filed on November 25, 2024 the Office of the Public Counsel (“OPC”) submits these comments.

The OPC supports the Commission’s initiative to improve its rule defining the filing requirements for water utility applications for convenience and necessity (“CCN”). The proposed rule, 20 CSR 4240-50.060, makes significant improvements to rule 20 CSR 4240-3.600. The proposed rule brings clarity, specificity, and transparency to the CCN approval process. Further, the rule provides for evidentiary support to help the Commission approve CCNs that are in the public interest and supported by a thorough review of the necessary facts.

The proposed rule provides public protection, consistent with the Commission’s authority and responsibility to determine whether a CCN application is convenient and necessary for the public service. § 393.170 RSMo. Further, the review process that the proposed rule describes is thorough. This thoroughness allows the

Commission to determine whether one or more conditions on CCN approval is reasonable and necessary, as provided by § 393.170 RSMo.

There are a few concerns that the OPC has with this rule, as written. The first issue is that this rule does not appear to have some of the requirements that exist in the Commission's proposed rule 20 CSR 4240-60.050, which applies to sewer utilities. While the OPC acknowledges that water utilities and sewer utilities do not have the exact same needs, some of the differences between these rules have no apparent rationale without further explanation.

There are two specific, unexplained differences between the proposed water rule and the proposed sewer rule. One such difference is that Rule 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 document for the assets to be acquired." However, no such requirement exists in Rule 50.060 (water). The other difference is that (3)(A)9D, requiring the utility to provide "Estimated corporate allocation\expense including a detailed explanation of how the allocations were calculated" is included in 60.050 (sewer) but not in 50.060 (water).

In addition to its request that the Commission correct or explain the water/sewer rulemaking discrepancies, the OPC proposes adding a simple requirement for the petitioning utility. The OPC suggests that the rule require any petitioning utility provide the relevant purchase agreement(s) that set forth the terms of any relevant asset's acquisition, including the purchase price. This provision

will ensure that the Commission is aware of an important detail that factors into its determination of potential rate impacts, including the existence of an acquisition premium. Whether an acquisition premium exists, and whether the utility intends to seek recovery of it from ratepayers, speaks directly to the question of whether granting the CCN is in the public interest. In 2003, the Missouri Supreme Court acknowledged the importance of considering an acquisition premium, stating:

The fact that the acquisition premium recoupment issue could be addressed in a subsequent ratemaking case did not relieve the PSC of the duty of deciding it as a relevant and critical issue when ruling on the proposed merger. While PSC may be unable to speculate about future merger-related rate increases, it can determine whether the acquisition premium was reasonable, and it should have considered it as part of the cost analysis when evaluating whether the proposed merger would be detrimental to the public. The PSC's refusal to consider this issue in conjunction with the other issues raised by the PSC staff may have substantially impacted the weight of the evidence evaluated to approve the merger. The PSC erred when determining whether to approve the merger because it failed to consider and decide all the necessary and essential issues, primarily the issue of UtiliCorp's being allowed to recoup the acquisition premium.

State ex rel. AG Processing, Inc. v. PSC, 120 S.W.3d 732, 736 (Mo. 2003). Although *AG Processing* case involved a merger, the same concept applies. The existence of an acquisition premium and its possible recovery in rates is an important consideration when determining whether a CCN is detrimental to the public.

WHEREFORE, the OPC respectfully requests that the Commission consider these comments and make the changes suggested.

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 15th day of December, 2024.

/s/ Anna Martin