

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

In the Matter of the Proposed Commission)	
Rule 20 CSR 4240-10.195 Appraisal)	
Requirements for Acquisition of a Small)	Case No. WX-2026-0108
Water or Sewer Utility to be used by a Large)	
Water or Sewer Public Utility)	

COMMENTS OF THE OFFICE OF THE PUBLIC COUNSEL

Pursuant to the Public Service Commission of the State of Missouri’s (the “Commission”) *Notice of Hearing and Comment Period* filed in the above styled case on November 18, 2025, the Office of the Public Counsel (the “OPC”) submits these comments.

I. Introduction

The OPC appreciates the Commission promulgating this new rule. However, the OPC is concerned that significant gaps exist in the proposed rule. Given the multitude of concerns expressed in the case concerning Missouri-American Water Company’s (“MAWC”) acquisition of the City of Eureka’s water and sewer systems, Commission Case Number WA-2021-0376, the OPC is particularly concerned that some of these gaps may allow such a situation to arise once again.¹ Of particular importance, the OPC suggests that a process be added for the Commission to appoint an appraiser prior to the appraisal being completed. The OPC also suggests modifications to the timeline for Staff to complete its Recommendation to ensure that all parties have the opportunity to participate in a contested case should one become necessary. The OPC proposes other changes to ensure the independence of the appraisers and consulting engineers and for clarification of the proposed rule. Each of the OPC’s proposed changes are explained below.

¹ The OPC acknowledges that the Missouri legislature has made several significant changes to the appraisal statute that allow the Commission to exercise more independent judgment over these types of cases, even if the large water public utility chooses to utilize the appraisal process. The OPC is appreciative of the legislature making these important changes.

The OPC also includes as Attachment A a redline version of the proposed rule reflecting its proposed changes in track changes.

II. The OPC's Suggested Modifications to the Proposed Rule

1. Establish a process for the Commission to appoint an appraiser (new subsection (1))

(1) Commission Appointment of an Appraiser

(A) The large water public utility shall submit a confidential letter to the Commission's General Counsel, copying the Office of the Public Counsel and the Staff of the Commission, notifying the Commission of its intent to begin pursuing the appraisal process outlined in 393.320, RSMo.

(B) Within fifteen (15) days of receipt of the confidential letter, the Commission shall indicate in writing and copying all parties whether it will appoint an appraiser under section 393.320.3(1), RSMo.

(C) If the Commission elects to appoint an appraiser, the appointment shall occur within forty-five (45) days of the receipt of notice from a large water public utility. If the Commission requires more than forty-five (45) days to complete the appointment of an appraiser, it shall notify the large water public utility within forty-five (45) days of the receipt of notice from the large water public utility.

(D) If the Commission declines to appoint an appraiser or no action occurs within forty-five (45) days of the receipt of the confidential letter identified in subsection (1)(A) of this rule, the large water public utility may proceed with the appraisal process as outlined in this rule and in section 393.320, RSMo.

Explanation: One of the most important changes that the OPC proposes is to establish a process by which the Commission will determine whether it will appoint an appraiser, as provided in § 393.320.3(1) RSMo.²

The appraisal process provided for in § 393.320 RSMo. is unique in that neither the buyer nor the seller in the transaction has an incentive to keep the price low. The seller, the small water utility as defined in § 393.320 RSMo., desires the highest price possible for the system it is selling. Given the nature of ratemaking, the buyer, the large water public utility, also desires a high price

² Unless specifically noted all references to the Revised Statutes of Missouri are to the 2025 statutes.

as it will earn a return on the ratemaking rate base amount established as part of the appraisal process. *See* § 393.320.5 RSMo. A higher price therefore means a higher return. This is a well-recognized concern with fair market value legislation. *See* Kathryn Kline (National Regulatory Research Institute), A Review of State Fair Market Value Acquisitions Policies for Water and Wastewater Systems (2021), <https://pubs.naruc.org/pub/ED8E5710-1866-DAAC-99FB-B70190F3D64A> (stating “One common critique of [Fair Market Value] is that both the buyer and the seller may have an incentive to inflate the purchase price.” (citation omitted)).

In the prior version of the statute, three appraisers participated in the appraisal process. § 393.320.3(1) RSMo. (2024). Each of the parties to the transaction (the large water public utility and the small water utility) chose an appraiser and the two appraisers then chose a third appraiser. *Id.* This third appraiser brought an element of independence to the transaction as the third appraiser was not beholden to either party to the transaction.

When the legislature amended the statute in 2025 it modified this provision. Though three appraisers may still participate in the appraisal, under the current statute, the appraisal “shall be performed by no less than two appraisers.” § 393.320.3(1) RSMo. The appraisers are still required to jointly prepare the appraisal. § 393.320.3(2)(a) RSMo. The buyer and seller utility still choose an appraiser. § 393.320.3(1) RSMo. However, instead of the two appraisers choosing the third appraiser, the Commission itself may choose an appraiser. *Id.* To help ensure the independence of the appraisal process, it is imperative that the Commission choose this third appraiser. Though the statute allows for this choice to occur, it does not provide a process for its implementation. Therefore, the OPC suggests including one in the rule.

The process suggested by the OPC builds on the process suggested by MAWC, as proposed in its Comments on the proposed rule. (MAWC Comments on Proposed Rule 20 CSR 4240-10.195

3, Doc. 6). The main differences between the process proposed by the OPC and that proposed by MAWC is that the OPC's proposed process includes notification requirements to the OPC and Staff and grants the Commission the ability to notify the large water public utility that it requires more time to complete the appointment process. Allowing the large water public utility to file a confidential letter with the Commission's General Counsel and copying the OPC and Staff (and the same for the Commission's written response) maintains the confidential nature of any potential transaction, while ensuring transparency of communications between a regulated entity and its regulators, the Commission.

The OPC has also added a provision to allow the Commission to notify the large water public utility that its appointment of an appraiser will exceed forty-five (45) days. The OPC requests this change to ensure that the Commission has the opportunity to appoint an appraiser while complying with all State of Missouri requirements for retaining such expert assistance.

Failing to include a process by which the Commission will be notified of its ability to choose an appraiser prior to the completion of the appraisal will likely result in the Commission never choosing an appraiser. For instance, consider the circumstance that would exist if the large water public utility only notified the Commission of the potential transaction when it filed its Application to acquire the small water utility using the § 393.320 RSMo. appraisal process. Pursuant to the Commission's proposed rule, the appraisal must be included with the Application. (former subsection (2)(M)2). The Commission in this circumstance would only know of its ability to appoint an appraiser *after* the appraisal had taken place. Further complicating this circumstance, the statute requires that the appraisers "[j]ointly prepare" the appraisal. § 393.320.3(2)(a) RSMo. So, if the Commission decided to appoint an appraiser at that late stage, because the appraisers must jointly prepare the appraisal, the original appraisal underlying the Application would become

void as it would have to be redone with all three appraisers participating. This could lead to many adverse consequences, including but not limited to, the possible abandonment of the acquisition. For this reason, it is unlikely the Commission would appoint an appraiser under such conditions. To avoid this result it is imperative that the rule include a process by which the Commission is notified of its ability to appoint an appraiser *prior to* the completion of the appraisal.

2. Add a reference to engineering reports or evaluations (subsection (2), formerly subsection (1))

(2) Appraisals/Engineering Reports or Evaluations.

Explanation: As proposed subsection (2) (formerly subsection (1)), identifies general requirements for appraisers and their appraisals. However, it also references a “consulting engineer.” To recognize that the subsection includes this requirement, the OPC suggests adding a reference to the Engineering Reports or Evaluations in the subsection itself.

3. Clarify subsection (2)(A) (formerly subsection (1)(A)) regarding appraiser or consulting engineer independence requirements

(2)(A) An appraiser or consulting engineer appointed for the purposes of this rule shall not be ~~associated with a creditor, equity security holder, or a shareholder of~~ the utilities subject to the acquisition, including, but not limited to being a creditor, equity security holder, or a shareholder, and shall not have any material interest in either utility, or other large water or sewer public utilities.

Explanation: Subsection (2)(A) appears to include standards meant to ensure the independence of an appraiser or consulting engineer. Specifically, as proposed, an appraiser or a consulting engineer cannot be “a creditor, equity security holder, or a shareholder of the utilities subject to the acquisition.” However, a multitude of other ways exist for an individual to be associated with a utility in a way that may affect their independence that do not include being a creditor, equity security holder, or a shareholder. For instance, the provision as written, does not prohibit an employee of one of the utilities from being an appraiser or consulting engineer. But, it too should

be prohibited by the rule. For this reason, the OPC suggests rewording the provision slightly so that the appraiser or consulting engineer is not “associated with the utilities subject to the acquisition, including, but not limited to being a creditor, equity security holder, or a shareholder.” Such language is broad enough to encompass other types of influential relationships between the appraisers/consulting engineers and the utilities at issue.

4. Amend when information that is not publicly available, but is relied on must be provided (subsection (2)(E) (formerly subsection (1)(E))).

- (2)(E) If resources are referenced which are not publicly available, the appraisers shall provide copies of the referenced resource materials with the appraisal-upon request by the commission or parties to the case.

Explanation: The rule as proposed required an appraiser to provide information that had been relied on, but that was not publicly available, if requested by either the commission or parties to the case. However, typically all of the appraisers are not a party to the case before the Commission.³ Therefore, parties’ ability to request information without the use of a subpoena is limited. *See* 20 CSR 4240-2.090(2)(A) (recognizing that data requests may be “transmitted directly between attorneys, agents, or employees of the commission, public counsel, or other parties.”). For this reason, the OPC requests that the standard be changed so that the appraisers provide the non-public information with the appraisal, as opposed to upon request.

5. Move subsection (2)(F) from former subsection (2)(N)

- (2)(F) All documents, evaluations, or reports prepared by, or under the direct supervision of, a registered professional engineer shall be signed, sealed, and dated by either the professional engineer or direct supervisor licensed in the state of Missouri.

³ For instance, in the case considering MAWC’s acquisition of the City of Eureka’s water and sewer systems, MAWC sponsored testimony of only one of the appraisers. (*See* Ex. 3 “Batis Direct Testimony,” Case No. WA-2021-0376, Doc. 57; Ex. 4 “Batis Surrebuttal Testimony,” Case No. WA-2021-0376, Doc. 58).

Explanation: Subsection (2)(F) requires that certain documents be “signed, sealed, and dated.”

As proposed, this requirement appeared in the subsection identifying the documents to be filed with the Application. Because this subsection does not require the filing of any additional information, but rather identifies when certain information must meet procedural requirements, the OPC suggests moving it to the section that identifies the general requirements of appraisals and engineering reports/evaluations. The OPC suggests no changes to the language of this provision, but simply suggests this change to recognize organizational structure.

6. Add a provision requiring that an Application include a statement concerning the receipt of a corrected appraisal report (new provision in subsection (3), formerly subsection (2))

- (3)(C) A statement as to whether any corrected reports were received, as provided for in section 393.320.3(2)(b), RSMo, including the date the corrected report was received and a description of any and all changes made in the corrected report;

Explanation: When the legislature amended § 393.320 RSMo., it included language that the appraisers “[r]eturn *only* their *final* appraisal, in writing and at the same time, to the small water utility and large water public utility” § 393.320.3(2)(b) RSMo.(emphasis added). The statute also allows for a corrected report “if factual errors are identified.” *Id.*

In recognition of the fact that a large water public utility may rely on a corrected appraisal to support its Application, the OPC requests that this provision be added so that all parties are aware that a corrected report supports the Application.⁴ The OPC’s suggested provision also requires a large water public utility to identify the date it received the corrected report and to include a description of any and all changes made to the corrected report.

⁴ This request is partially in recognition of the fact that Staff only inadvertently discovered a prior engineering report that materially altered the appraisal used to support the proposed Eureka acquisition when MAWC provided the wrong version of the engineering report in response to a Staff data request. (*See* Staff Reply Br. 9-10, Case No. WA-2021-0376, Doc. 78 (“Staff inadvertently became aware of the first Flinn Engineering report. (footnote explains discovery of the two engineering reports)); Staff Resp. to Dec. 29, 2021 Order Re The Flinn Engineering Report, Case No. WA-2021-0376, Doc. 37)).

7. Clarify who determines whether upgrades or new construction is necessary (subsection (3)(M), formerly (2)(L)).

(3)(M) **If upgrades or new construction is necessary**, an engineering report shall be included and shall contain, at a minimum, the following:

Explanation: As proposed, the rule requires that an engineering report be included when upgrades or new construction is necessary. However, neither the rule nor § 393.320 RSMo. specifies who determines whether upgrades or new construction is necessary. The OPC urges the Commission to amend this subsection to determine who makes this decision. For instance, the Commission could tie this requirement to the ability to meet Department of Natural Resources (“DNR”) standards.

8. Clarify the requirement to include the appraisal with the Application and add a requirement regarding appraiser’s possible non-participation (subsection (3)(N), formerly (2)(M)).

(3)(N) ~~A~~ The appraisal relied on in determining the fair market value of the small water utility. If one of the appraisers did not join the final appraisal, as provided in section 393.320.3(3), RSMo a statement indicating such and providing a reason why shall also be included. The appraisal shall include, but is not limited to, the following:

Explanation: The OPC suggests three changes to subsection (3)(N), formerly subsection (2)(M), which identifies requirements for the appraisal to be included with the Application.

First, this provision appears in new subsection (3) (formerly subsection (2)) that identifies the items that must be filed with the Application. To match the wording of the prior elements in this subsection, the OPC suggests rewording the first sentence. This rewording makes clear that the appraisal itself must be filed with the Application.

Second, the OPC requests the addition of a sentence that if one of the appraisers did not join the appraisal then the large water public utility is required to include a statement that specifies such and identifies the reason why. The appraisal statute recognizes that “[i]f 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(3) RSMo. This provision appeared in the prior version of the statute, as well as the revised version. *Compare* § 393.320 RSMo. (2024), *with* § 393.320 RSMo. (2025). If one of the appraisers did not join the appraisal then requiring the large water public utility to specify such and to identify the reason why will put all parties and the Commission on notice of this fact.

Third, the OPC suggests adding the phrase “[t]he appraisal” simply to complete the third sentence which introduces the requirements of the appraisal identified in the subsections of this provision.

9. Add language recognizing that the Commission may also have appointed an appraiser and utilizing the defined terms from the appraisal statute (subsection (3)(N)1, formerly subsection (2)(M)1).

(3)(N)1 A listing of the licensed appraisers separated by and confirming who the appointed appraiser is representing for both the large water public utility and small water utility, and if the Commission has chosen to appoint an appraiser, the Commission;

Explanation: As proposed subsection (3)(N)1 required that the appraisers be identified and the appointing party be confirmed, whether it be the large public utility or the small utility. The OPC suggests three changes to this subsection.

First, the OPC suggests adding “water” to the phrase “large public utility,” so that the reference is to a “large water public utility.” This is to utilize the same terminology as the statute, which defines a “large water public utility.” § 393.320.1(1) RSMo.

Similarly, the OPC suggests adding the word “water” to the reference to “small utility,” so that the reference is to a “small water utility.” This too is to utilize the same terminology as the statute, which defines a “small water utility.” § 393.320.1(2) RSMo.

Finally, the OPC suggests adding language that recognizes that the Commission may also appoint an appraiser, as provided in § 393.320.3(1) RSMo.

10. Strike subsection (3)(N)2 (formerly subsection (2)(M)2)

- (3)(N)2 ~~The completed jointly prepared appraisal shall be attached to the application;~~

Explanation: As proposed subsection (3)(N)2 (formerly subsection (2)(M)2), requires that the “completed jointly prepared appraisal shall be attached to the application.” However, with the rewording suggested by the OPC in its suggested change 8, such a reference is no longer necessary.

11. Move subsection (3)(N)4 (formerly subsection (2)(M)4) to subsection (3)(O)

- (3)(O) The requested purchase price as it relates to the appraisal amount that the large water public utility proposes to use as the ratemaking rate base for the small water utility.

Explanation: Subsection (3)(N)4 (formerly subsection (2)(M)4) refers to “[t]he requested purchase price as it relates to the appraisal amount that the large water public utility proposes to use as the ratemaking rate base for the small water utility.” As proposed, this subsection appears in the section of the rule identifying requirements for what must be included in the appraisal itself. However, the OPC is not aware of any reason for the appraisal to reference the “requested purchase price.” Rather, § 393.320.5(1) RSMo. specifically provides in pertinent part that 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” Therefore, the purchase price may be different than the appraised value. For this reason, the OPC suggests moving this subsection out of the section identifying what must be included in the appraisal and instead including it as its own provision in the section about what must be included in the Application.

12. Clarify that the appraisal must be completed in accordance with Missouri law and the most recent version of the Uniform Standard of Professional Appraisal Practice (“USPAP”) and that a fair market value determination does not determine whether the acquisition is in the public interest (subsection (3)(N)3, formerly subsection (2)(M)5).

(3)(N)3 A fair market value determination completed in accordance with Missouri law and with the most recent version of the Uniform Standards of Professional Appraisal Practice (“USPAP”). This determination ~~showing that the acquisition is in the public interest, which~~ shall include, but is not limited to, the following liabilities that reduce the value of the acquisition:

Explanation: Though § 393.320.3(2)(a) RSMo. requires that the appraisal be completed in accordance with Missouri law and the USPAP, the rule as proposed does not reflect these governing standards. Subsection (3)(N)3 requires that the appraisal include a fair market value determination. To reflect these governing standards, the OPC suggests adding a reference to them in this subsection. In particular, the OPC suggests a reference to the most recent version of the USPAP as it is the OPC’s understanding that the USPAP is updated on an as needed basis.

More importantly, the rule as proposed included language that the appraisal include “[a] fair market value determination *showing that the acquisition is in the public interest.*” (former subsection (2)(M)5 (emphasis added)). When the legislature amended § 393.320 RSMo. it included specific language that recognized that a large water public utility’s decision to proceed under the appraisal statute did not automatically mean that the transaction was in the public interest. § 393.320.8 RSMo (“A large water public utility's choice to comply with the provisions of this section does not automatically ensure that the transaction is in the public interest.”). The legislature also included language making clear that the Commission had to separately determine that the proposed transaction was in the public interest and that a certificate of convenience and necessity should be granted. §393.320.2 RSMo. (providing that the procedures identified in the appraisal statute shall be used to establish the ratemaking rate base of the small water utility

“provided that the public service commission independently concludes that a certificate of convenience and necessity should be granted pursuant to section 393.170.”); § 393.320.8 RSMo. (“The public service commission shall independently determine whether the acquisition is in the public interest, regardless of whether the matter has been put to a vote of the small water utility's ratepayers.”). The OPC is aware of no standard that suggests that an appraised price can show that the transaction is in the public interest. Similarly, the OPC is unsure how the appraised price can itself show that the transaction is in the public interest. Rather, the determination of whether the acquisition is in the public interest should remain with the Commission and such a determination should not be transferred to the appraisers. For these reasons, the OPC requests the Commission strike the phrase “showing that the acquisition is in the public interest, which” in subsection (3)(N)3, formerly subsection (2)(M)5.

13. Reduce the amount of time for Staff to complete its review if the appraised value of the acquisition is less than \$5,000,000 and shorten the data request response time in such a circumstance, to allow time for the Commission to resolve a contested case (subsection (4), formerly subsection (3))

- (4) If the appraised value of the acquisition is \$5,000,000 or less, the commission staff shall provide a recommendation within ~~one hundred twenty-sixty (120-60)~~ days after receipt of the application for acquisition. Commission staff may request a ~~thirty-fifteen- (30 15-)~~ day extension to the staff recommendation due date for good cause.

A. To facilitate this expedited timeline, the deadline to respond to data requests shall be shortened from that identified in 20 CSR 4240-2.090(2)(C), to ten (10) calendar days, with five (5) calendar days to object or notify the requesting party that additional time is needed to respond to the data requests.

Explanation: The Rule as proposed allows Staff one hundred twenty (120) and up to one hundred fifty (150) days to complete its recommendation if the appraised value of the acquisition is \$5,000,000 or less. However, § 393.320.5(2) RSMo. requires that the Commission issue its decision within six (6) months of the submission of the application in this circumstance.

§ 393.320.5(2) RSMo. If Staff is allowed 150 days to complete its recommendation, as little as one month could exist for parties to file testimony, participate in a hearing, file briefing, and for the Commission to make a decision with a ten-day effective date, all before the expiration of the statutory 6-month deadline. This is very likely impossible. At a minimum though it would greatly infringe on parties' due process rights by allowing little or no time for preparation or by eliminating part of the contested case process. Therefore, to allow time for the Commission to hold a contested proceeding should one become necessary, the OPC requests that Staff be required to complete its recommendation within 60, and potentially up to 75, days.

To facilitate this expedited review, the OPC also suggests that the rule require responses to data requests be provided within ten (10) calendar days, with five (5) calendar days to object or notify the requesting party that additional time is needed to respond, as opposed to the twenty (20) calendar days to respond and ten (10) calendar days to object provided in 20 CSR 4240-2.090(2)(C) and (D).

III. Conclusion

The OPC appreciates the Commission promulgating this important rule to provide clarity to the appraisal process provided for in § 393.320 RSMo. However, the OPC is concerned that the rule as proposed lacks important clarity and misses critical opportunities to require certain information to ensure a fair and transparent process. Particularly this includes the opportunity to create a process by which the Commission will be notified in time to appoint an appraiser as allowed for in the statute. The OPC is also concerned that if Staff is not required to file its recommendation concerning acquisitions less than \$5,000,000 for 120, and potentially up to 150, days then parties' due process rights may be materially hindered as sufficient time to hold a contested hearing will not exist. The OPC is further concerned that the language of the proposed

rule could be interpreted to mean that the appraisers would make a public interest determination as opposed to the Commission. The OPC's other concerns are addressed in more detail above.

The OPC offers these modifications for the Commission's consideration and looks forward to the opportunity to present more on this important topic and to answer any questions at the Commission's rulemaking hearing.

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

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 31st day of December 2025.

/s/ Lindsay VanGerpen