BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Review of the Commission's Rules	)	
Regarding Small Water and Sewer Companies.	)	Case No. WW-2017-0283

OPC'S COMMENTS ABOUT DRAFT RULES REGARDING INCENTIVES TO ACQUIRE NON-VIABLE WATER OR SEWER UTILITIES

COMES NOW the Office of the Public Counsel ("OPC"), by and through counsel, in response to the Commission's Order Scheduling a Workshop Meeting, provides the following comments about draft rules regarding incentives to acquire non-viable water or sewer utilities:

1. OPC appreciates the spirit of this rule to encourage healthy utilities to acquire unhealthy utilities; however, the proposed regulation is not without many concerns and many questions. First, OPC is interested in the enabling authority for this rule. OPC has identified Mo. Rev. Stat. § 393.146, and OPC questions if this statute is the enabling authority for the proposed rule or not. If so, many provisions of the statute appear to be inconsistent with the rule. Additionally, the statute contains consumer safeguards that do not appear in the proposed rule, such as disallowing an acquisition premium and such as disallowing a rate of return greater than 100 basis points of the rate of return in the acquiring utility's most recent general rate case proceeding. There are size limitations on the acquiring utility and on the utility to be acquired; however, a small utility can petition to be designated a "capable public utility." The proposed rule should be consistent with, and within the confines of, what the legislature has expressed in statute.
2. As drafted, a "nonviable utility" is not restricted by size or by type. OPC believes such restrictions would be reasonable, and such a restriction is contemplated by Mo. Rev. Stat. § 393.146. OPC believes it would be reasonable to limit the application of the rule to small utilities of the type who are under PSC jurisdiction.

3. For example, OPC questions if this rule applies to the acquisition of a major metropolitan utility. For an investor owned utility to acquire a large municipal system, the investor-owned utility already has an incentive to grow its customer base and revenue. Even without size differences, investor owned utilities have already been acquiring small systems in recent years.
4. In addition to the previous concern, OPC will go through the rule in sequence and express various other inter-related concerns.
5. First, under (1)(A)1 and 2, OPC recommends separating (1)(A)1 into a sub-part a and a sub-part b to emphasize the separate elements required to prove a utility is non-viable. For ease of drafting, it may be preferable to match the language of the drafted rule with the language contained in § 393.146.
6. OPC questions why a rate of return premium is necessary when the risks attendant to the purchase are often considered as a part of the purchase price. OPC also believes risks would be further mitigated by the ability of the utility to recover the costs of improvements in a future rate case. In a scenario where the utility is ordered to acquire a troubled water or sewer system, § 393.146 caps the rate of return incentive and ties it directly to a company's existing authorized rate of returns. Such a ceiling helps safeguard from the potential for companies to abuse this mechanism.
7. Related to (1)(A)(C), OPC questions whether it would be accurate accounting to give the Company more rate base than what would be supported by assets. OPC also questions the recovery period for these adjustments.
8. Related to (2), OPC seeks clarity on what is meant by the words "may consider." Does this mean the Commission can decide a rate of return and a debit acquisition adjustment

in the acquisition case? If so, OPC believes it would be more appropriate to make the actual adjustments in the context of all relevant factors (i.e., in the rate case).

9. Related to (4), OPC believes that the second sentence should cut-and-pasted before the first sentence. OPC notes that argument and inquiry over the valuation of the original cost valuation of the assets should not be delayed beyond the acquisition case because it could be a relevant factor in determining the net book value and the size of an acquisition premium or discount.
10. Related to (4)(1)(A), OPC suggests further definition of the term "impaired."
11. Related to (4)(1)(I), OPC questions why an item that is unavailable during the acquisition might become available at a later time. If the item can be obtained at all, it seems reasonable to not delay procurement unless good cause can be shown.
12. Related to (4)(2), OPC recommends that after the words "in its proposed rate base" that there be added the words "for potential inclusion in the next rate case."
13. Related to (4)(E), OPC questions if the application's request for incentives would not apply to the non-complying/non-viable utility in the context of (4)(E) or if the entire application would be rejected on this basis. OPC recommends clarifying the consequences of not complying with (4)(E).
14. Related to (4)(F), OPC believes further definition of "necessary plant improvements" is necessary, and OPC believes that "3 years" should be replaced with "a reasonable time period." Related to the former, OPC reasons that there is a potential for companies to abuse this mechanism by arguing that "necessary plant improvements" could mean essentially any improvement (e.g., like AMI metering with cloud computing).

Additionally, three years may be appropriate for some improvements but inappropriate for others (e.g., staggering/phasing in main replacements over multi-year period).

15. Related to (5) and related to (6), OPC does *not* believe that the acquisition incentive and/or the debit acquisition adjustment should be approved *prior* to the next rate case. While OPC does not believe either is appropriate, if considered, OPC recommends doing so in a rate case.
16. Related to (6), it says that the "acquiring utility shall file an original cost plant-in-service study to support its requested acquisition adjustment." OPC questions whether the cart is being put before the horse, or in other words, OPC questions how the grant of a debit acquisition adjustment could be found to be reasonable without the necessary supporting evidence.
17. Related to (7), OPC is concerned about allowing the utility to pay a discounted purchase price *and* allowing the utility to recover the acquisition discount. If a utility can recover an acquisition premium or an acquisition discount, the utility will have an incentive to make inefficient market choices.

WHEREFORE, for the foregoing reasons, OPC submits these Comments about Draft Rules Regarding Incentives to Acquire Non-Viable Water or Sewer Utilities.

Respectfully submitted,

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I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 30th day of January, 2018.

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