

Stakeholder	Proposed Rule Reference	Change	Summary of Comment	Staff Response
Missouri American Water Company (MAWC)	20 CSR 4240-10.195(1)(A)	<p><b>1. For purposes of this subsection, “creditor” means a person or entity with a material financial claim against either utility outside ordinary-course trade payables.</b></p>	Added definition to creditor.	Staff recommends rejecting this addition as unnecessary. Staff is unaware of a case where defining a creditor has been raised or been a contested issue. Because such a definition would be applicable to most cases before the Commission, if a definition becomes necessary Staff suggests it appears in statute.
MAWC	20 CSR 4240-10.195(1)(A)	<p><b>2. Ownership of shares through a widely held mutual fund, index fund, or similar pooled investment vehicle shall not constitute a material interest, provided the appraiser does not exercise control over the fund’s investment decision.</b></p>	This is in regards to the term, material interest based on term, disinterested person per 393.320.1(3)1, RSMo, which states “...Each of the appraisers shall be a disinterested person who is a certified general appraiser under chapter 339.	Staff does not agree with MAWC due to the term “disinterested person” as established in 393.320.3.(1). Efforts to redefine this term would be best accomplished through the statute.
MAWC	20 CSR 4240-10.195(1)(F)1.	<p><b>(F) An appraisal shall include, but is not limited to, the following: 1. A listing of the licensed appraisers separated by and confirming who the appointed appraiser is representing for both the large public utility and small utility;</b></p>	MAWC moved the conditions proposed in the draft rule from (2)(M)1. To (1)(F)1. Does not duplicate.	Staff does not oppose this modification.

MAWC	20 CSR 4240-10.195(1)(F)2.	<b>(F) An appraisal shall include, but is not limited to, the following: 2. The completed jointly prepared appraisal shall be attached to the application;</b>	(1)(F)2. Identical condition established in (2)(M)2. Does not duplicate.	Staff does not oppose this modification.
MAWC	20 CSR 4240-10.195(1)(F)3.	<b>(F) An appraisal shall include, but is not limited to, the following: 3. If the appraisal references an engineering report, then the following shall be provided:</b>	(1)(F)3. Identical condition established in (2)(M)3. Does not duplicate.	Staff does not oppose this modification.
MAWC	20 CSR 4240-10.195(1)(F)3	<b>A. The name of the consultant or engineering company; B. The name of the licensed engineer that completed or approved the report; C. A complete and unredacted copy of the report; and D. The engineering report shall be signed, sealed, and dated by a Missouri registered professional engineer;</b>	MAWC proposes that the conditions move from (2)(M)3.A-D to (1)(F)(3)3. A-D. Does not duplicate	Staff does not oppose this modification.
MAWC	20 CSR 4240-10.195(1)	<b>(G) Within fifteen days (15) days of receipt of a confidential letter submitted to the</b>	Addition of timeframe for the Commission to notice if a Commission appointed appraiser and restricts the time	Staff recommends the rule remain silent in order to provide flexibility to the Commission.

		<p><b>Commission's General Counsel, the Commission shall indicate whether it will appoint an appraiser under section 393.320, RSMo. 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 utility. If the Commission declines or no action occurs, the large utility may proceed to jointly select qualified appraisers with the small utility.</b></p>	<p>the commission shall obtain the appraiser.</p>	<p>Staff is opposed to this additional requirement as there are no prohibition preventing a large water utility from filing a notice with the Commission regarding a potential appraisal and potentially subsequent acquisition of a small water utility. It is important to recognize that not all appraisals conducted by large water utilities result in acquisitions; the large water utility may ultimately decide not to pursue the acquisition for its own reasons. Therefore, requiring the Commission to make a determination prior to the utility seeking an acquisition is premature, as there is no assurance that the acquisition will occur.</p>
MAWC	20 CSR 4240-10.195	<p>(2) If a large water public utility determines to utilize the procedures under section 393.320, RSMo, for the acquisition of a small utility, then the large water or sewer public utility shall submit an application for the acquisition of the small water utility in accordance with the</p>	<p>MAWCs argument is that some of the information may not be available.</p>	<p>Staff is opposed to MACW's proposed modification to section (2) of this rule. The draft rule's proposed minimum standards are based on Staff's experience with managing and processing acquisition and appraisal cases.</p> <p>Additionally, MAWC's proposal is unnecessary given 20 CSR 4240-10.195(6) as proposed establishes that the commission may grant a variance</p>

		requirements established under section 393.320, RSMo, the requirements established in 20 CSR 4240-2.060, 20 CSR 4240-50.060, and 20 CSR 4240-60.050, and <b>shall</b> file with its application for each utility system to be acquired, <b>if available</b> :		from specific portions of this rule for good cause.
MAWC	20 CSR 4240-10.195(2)(K)	An engineering evaluation of the proposed small utility to be acquired <b>may shall</b> include, but not be limited to, the following items:	MAWCs argument is that some of the information may not be available.	<p>Staff is opposed MACW's proposed modification to section (2) of this rule. The draft rule's proposed minimum standards are based on Staff's experience with managing and processing acquisition and appraisal cases.</p> <p>Additionally, MAWC's proposal is unnecessary given 20 CSR 4240-10.195(6) as proposed establishes that the commission may grant a variance from specific portions of this rule for good cause.</p>
MAWC	20 CSR 4240-10.195(2)(M)	<u>An appraisal shall include, but is not limited to, the following:</u> <ol style="list-style-type: none"> <li>1. A listing of the licensed appraisers separated by and confirming who the appointed appraiser is representing for both the large public utility and small utility;</li> <li>2. The</li> </ol>	MAWC moved the conditions proposed in the draft rule from (2)(M)1. To (1)(F)1. Does not duplicate.	Staff does not oppose this modification.

		<p><del>completed jointly prepared appraisal shall be attached to the application; 3. If the appraisal references an engineering report, then the following shall be provided: A. The name of the consultant or engineering company; B. The name of the licensed engineer that completed or approved the report; C. A complete and unredacted copy of the report; and D. The engineering report shall be signed, sealed, and dated by a Missouri registered professional engineer;</del></p>		
<b>Office of Public Counsel (OPC)</b>	20 CSR 4240-10.195(1)(A)	<b>Commission Appointed 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</b>	OPC proposes to establish a process by which the Commission determines if an appraiser will be sought and appointed.	<p>Staff recommends the rule remain silent in order to provide flexibility to the Commission.</p> <p>Staff is opposed to this additional requirement as there are no prohibition preventing a large water utility from filing a notice with the Commission regarding a potential appraisal and potentially subsequent acquisition of a small water utility. It is important to recognize that not all appraisals conducted by large water utilities result in acquisitions; the large water utility may ultimately decide not to</p>

		<b>process outlined in 393.320, RSMo.</b>		pursue the acquisition for its own reasons. Therefore, requiring the Commission to make a determination prior to the utility seeking an acquisition is premature, as there is no assurance that the acquisition will occur.
OPC	20 CSR 4240-10.195(1)(B)	<b>(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.</b>	OPC proposes to establish a process by which the Commission determines if an appraiser will be sought and appointed.	Staff recommends the rule remain silent in order to provide flexibility to the Commission.  Staff is opposed to this additional requirement as there are no prohibition preventing a large water utility from filing a notice with the Commission regarding a potential appraisal and potentially subsequent acquisition of a small water utility. It is important to recognize that not all appraisals conducted by large water utilities result in acquisitions; the large water utility may ultimately decide not to pursue the acquisition for its own reasons. Therefore, requiring the Commission to make a determination prior to the utility seeking an acquisition is premature, as there is no assurance that the acquisition will occur.
OPC	20 CSR 4240-10.195(1)(C)	<b>(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</b>	OPC proposes to establish a process by which the Commission determines if an appraiser will be sought and appointed.	Staff recommends the rule remain silent in order to provide flexibility to the Commission.  Staff is opposed to this additional requirement as there are no prohibition preventing a large water utility from

		<b>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.</b>		filings a notice with the Commission regarding a potential appraisal and potentially subsequent acquisition of a small water utility. It is important to recognize that not all appraisals conducted by large water utilities result in acquisitions; the large water utility may ultimately decide not to pursue the acquisition for its own reasons. Therefore, requiring the Commission to make a determination prior to the utility seeking an acquisition is premature, as there is no assurance that the acquisition will occur.
OPC	20 CSR 4240-10.195(1)(D)	<b>(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.</b>	OPC proposes to establish a process by which the Commission determines if an appraiser will be sought and appointed.	<p>Staff recommends the rule remain silent in order to provide flexibility to the Commission.</p> <p>Staff is opposed to this additional requirement as there are no prohibitions preventing a large water utility from filing a notice with the Commission regarding a potential appraisal and potentially subsequent acquisition of a small water utility. It is important to recognize that not all appraisals conducted by large water utilities result in acquisitions; the large water utility may ultimately decide not to pursue the acquisition for its own reasons. Therefore, requiring the Commission to make a determination prior to the utility seeking an acquisition is premature, as there is no</p>

				assurance that the acquisition will occur.
OPC	20 CSR 4240-10.195(2)	(2) <b>Appraisals/Engineering Reports or Evaluations</b>	The existing version of this draft rule started with (1) Appraisals. With OPC's added (1)(A) – (D) above, (2) is now Appraisals but now includes Engineering Reports and Evaluations.	Staff is not opposed this this modification due to the fact that the existing draft rule clearly establishes under (1)(A) Appraisals, "An appraiser or consulting engineer..."
OPC	20 CSR 4240-10.195(2)(A)	An appraiser or consulting engineer appointed for the purposes of this rule shall not be <b>associated with a creditor, equity security holder, or a shareholder</b> of the utilities subject to the acquisition, <b>including, but not limited to being a creditor, equity security holder, or a shareholder</b> , and shall not have any material interest in either utility, or other large water or sewer public utilities.	OPC revision to the rule but does not change the purpose of the requirement.	Staff does not oppose this modification.
OPC	20 CSR 4240-10.195(2)(E)	If resources are referenced which are not publicly available, the appraisers shall provide copies of the referenced resource materials <b>with the appraisal upon request by the</b>	OPC request that the standard be changed so that the appraisers provide the non-public information with the appraisal, as opposed to upon request.	Staff does not oppose this modification.

		<b>commission or parties to the case.</b>		
OPC	20 CSR 4240-10.195(2)(F)	<b>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.</b>	OPC suggest no changes to the language but simply suggest this change to recognize the organizational structure.	Staff is not opposed to this modification provided that the language read: <b>All documents, evaluations, or reports prepared by, or under the direct supervision of, a registered professional engineer shall be signed, sealed, and dated by a professional engineer licensed in the state of Missouri.</b>
OPC	20 CSR 4240-10.195(3)(C)	<b>(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;</b>	OPC suggested provision requires the large utility to provide the date it received the corrected report to include a description of any and all changes made to the corrected report.	Staff does not oppose this modification.
OPC	20 CSR 4240-10.195(3)(M)	<b>(3)(M) If upgrades or new construction is necessary, an engineering report shall be included and shall contain, at a minimum, the following:</b>	OPC did not provide an edit or addition to the proposed standard, which under (2)(L) of the proposed draft rule but due to comments received from OPC is now under (3)(M). OPC is request clarification on (3)(M) regarding who (DNR, PSC, the large water utility) is	Staff does not agree with this potential request / modification to the draft standard. As noted in the draft rule under 20 CS 4240-10.195(3)(M)2. Requires the large utility to provide a description of why the upgrade or new construction is necessary. Additionally, the rule, as drafted, does not remove the Commission from making determinations regarding if

			requiring the upgrade or new construction.	upgrades and/or new construction will be included.
OPC	20 CSR 4240-10.195(3)(N)	<b>(N) <del>An</del>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:</b>	OPC indicates that the modification to the standard makes clear that the appraisal itself must be filed with the application; if one of the appraisers does not agree it puts all parties on notice; and added appraisal at the end to ensure that the information is provided in the appraisal.	Staff is not opposed to this modification.
OPC	20 CSR 4240-10.195(3)(N)1.	<b>1. A listing of the licensed appraisers separated by and confirming who the appointed appraiser is representing for both the large <b>water</b> public utility and small <b>water</b> utility, <b>and if the Commission has chosen to appoint an appraiser, the Commission;</b></b>	OPC suggests adding water to large and small as it is in other parts of the rule and statute; and adding language that the commission may also appoint an appraiser.	Staff is not opposed to adding water to large water public utility as proposed by OPC.  Staff is opposed to OPC's addition regarding the Commission determination to appoint an appraiser.  Staff recommends the rule remain silent regarding the potential appraiser appointed by the Commission in order to provide flexibility to the Commission.
OPC	20 CSR 4240-10.195(3)(N)2.	<b><u>2. The completed jointly prepared appraisal shall be attached to the application;</u></b>	This requirement is now under (3)(N) of this rule	Staff is not opposed to this modification.

OPC	20 CSR 4240-10.195(3)(N)4.	4. <del>The requested purchase price as it relates to the appraisal amount that the large public utility proposes to use as the ratemaking rate base; and</del>	Moving to subsection (3)(O)	Staff is not opposed to this modification.
OPC	20 CSR 4240-10.195(3)(N)3	<p><b>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:</b></p>	<p>Due to paragraphs (3)(N)2 and 4 being removed, this condition is under paragraph (3)(N)3 but was (3)(N)5.</p> <p>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.</p> <p>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</p>	<p>The regulation would have to include a specific version and date of such practices, and all appraisers would be required to use that version regardless of future reforms and developments.</p> <p>Staff disagrees with the notion that the deleted language transfers responsibility, as it remains the applicant’s responsibility to prove their case. Including providing evidence that the acquisition is in the public interest. However, Staff does not oppose deleting this language to eliminate any concern.</p>

			(3)(N)3, formerly subsection (2)(M)5.	
OPC	20 CSR 4240-10.195(3)(O)	<b>(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. 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.</b>	Standard was moved to (2)(F).	Staff is not opposed to this modification.
OPC	20 CSR 4240-10.195(4)	(4) If the appraised value of the acquisition is \$5,000,000 or less, the commission staff shall provide a recommendation within <del>one hundred twenty sixty</del> (12060) days after receipt of the application for acquisition. Commission staff may request a <del>thirty fifteen-</del> (30-15-) day	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.	Staff is opposed to this modification. Staff instead recommends deletion of (5) to provide flexibility to the Commission. Or in the alternative, keep at 120 days and remove the thirty day extension.

		extension to the staff recommendation due date for good cause.	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.	
OPC	20 CSR 4240-10.195(4)(A)	<b>(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.</b>	To facilitate a expedited review.	Staff is not opposed to this addition.