

FILED
JAN 8, 2026
Missouri Public
Service Commission

Exhibit No. 2

OPC – Exhibit 2
OPC Comments
Case No. WX-2026-0108

WX-2026-0108

Comments of the Office of the Public Counsel

Background

- ❖ Traditional Valuation: Net Book Value
 - ❖ Original Cost – Depreciation = Net Book Value
- ❖ Appraisal Statute: Fair Market Value
- ❖ Typically: fair market value > net book value

Fair Market Value Legislation

Some Benefits

- ❖ Encourages large water public utilities to acquire small water utilities
 - ❖ Attendant benefits
- ❖ Helpful when documentation is sparse

Some Concerns

- ❖ Likely higher costs for customers
- ❖ Existing customers may pay for the system(s) twice

Concern: No Incentive to Keep Price Low

- ❖ Unique problem: No party wants a lower price
 - ❖ **Seller:** Desires high price for systems
 - ❖ **Buyer:** Desires high price for higher return
 - ❖ As recognized by NRRI

OPC's Written Comments

- ❖ 13 modifications
- ❖ Proposals focus on:
 - ❖ Procedure
 - ❖ Fairness
 - ❖ Clarity

Additional Detail for 3 Proposals

- ❖ (1) Procedure so the Commission may choose an appraiser
- ❖ (2) Appraisers making a public interest determination
- ❖ (3) Timeline for Staff Recommendation when appraised value <\$5 million

Procedure for Commission's Appraiser

OPC Subsection (1)

Procedure for Commission's Appraiser

Appraisal Statute (2024)

3 Appraisers Total

- ❖ Buyer: 1 Appraiser
- ❖ Seller: 1 Appraiser
- ❖ Buyer's & Seller's Appraisers (jointly): 1 Appraiser

Appraisal Statute (2025)

2-3 Appraisers Total

- ❖ Buyer: 1 Appraiser
- ❖ Seller: 1 Appraiser
- ❖ Commission (*may*): 1 Appraiser

The Problem

- ❖ Statute allows the Commission to choose an appraiser, but does not specify how to accomplish this choice
- ❖ Proposed Rule does not include a procedure
- ❖ Without Commission will likely never choose as initial appraisal would be invalid

Commission Appraiser

- ❖ Imperative for the Commission to appoint an appraiser
- ❖ Neither buyer nor seller have incentive to keep cost low
- ❖ Commission appraiser adds an element of independence

OPC's Proposal

(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.

Appraisers' Public Interest Determination

OPC Subsection (3)(N)3

The Problem

- ❖ Proposed: “A fair market value determination *showing that the acquisition is in the public interest . . .*”
- ❖ Suggests appraisers make public interest determination

Revised Appraisal Statute

§393.320.2 RSMo.

- ❖ "... provided that the public service commission *independently* concludes that a certificate of convenience and necessity should be granted."

§393.320.8 RSMo.

- ❖ "A large water public utility's choice ... does **not** automatically ensure that the transaction is in the public interest."
- ❖ "The public service commission shall *independently* determine whether the acquisition is in the public interest ..."

Why Change?

- ❖ No standard for the appraisers to make public interest determination
- ❖ Statute mandates that the Commission decide this

OPC Proposal

5.3. 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:~~

Appraised Value < \$5 Million: Staff Recommendation Timeline

OPC Subsection (4)

The Problem

Current Proposal

Staff Recommendation 120-150
days: 4-5 months

Appraisal Statute

Commission Decision: 6-7
months

The Problem Continued

- ❖ If Staff Recommendation on day 150 and Commission decision within 6 months:
 - ❖ As little as 1 month for
 - ❖ Filing contesting Staff's Recommendation, and
 - ❖ Pre-filed Testimony, and
 - ❖ Hearing, and
 - ❖ Briefing/Oral Argument, and
 - ❖ Commission Decision with 10-day effective date.

OPC's Proposal:

(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.

(3)(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.

Other OPC Proposals

Reference to Engineering Reports or Evaluation

OPC Subsection (2)

Proposed

Appraisals

OPC Proposal

Appraisals/Engineering Reports or Evaluations

Appraiser's and Consulting Engineer's Independence

OPC Subsection (2)(A)

Proposed

An appraiser or consulting engineer appointed for the purposes of this rule shall not be a creditor, equity security holder, or a shareholder of the utilities subject to the acquisition, and shall not have any material interest in either utility, or other large water or sewer public utilities.

OPC Proposal

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.

Providing Non-Public Information

OPC Subsection (2)(E)

Proposed

If resources are referenced which are not publicly available, the appraisers shall provide copies of the referenced resource materials upon request by the commission or parties to the case.

OPC Proposal

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.

Reorganization of Professional Engineer Documents

OPC Subsection (2)(F)

Proposed

- ❖ 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.
- ❖ Appears in (2)(N)

OPC Proposal

- ❖ Same language
- ❖ Move to (2)(F)

Corrected Reports

OPC Subsection (3)(C)

Proposed

Not referenced

Issue

- Appraisal Statute allows for corrected reports-§393.320.3(2)(b) RSMo.
- Parties may not know corrected report used

OPC Proposal

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;

Clarification Regarding Necessary Construction or Upgrades

OPC Subsection (3)(M)

Proposed

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

OPC Proposal

- ❖ No specific proposal
- ❖ Clarify who determines necessity

Appraiser Not Joining

OPC Subsection (3)(N)

Proposed

An appraisal shall include, but is not limited to, the following

OPC Proposal

An 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:

Potential Commission Appraiser

OPC Subsection (3)(N)1

Proposed

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

OPC Proposal

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

Strike Provision

OPC Subsection (3)(N)(2)

Proposed

The completed jointly prepared appraisal shall be attached to the application

OPC Proposal

~~The completed jointly prepared appraisal shall be attached to the application;~~

Reorganization of Requirement to Identify Purchase Price

OPC Subsection (3)(O)

Proposed

- ❖ 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
- ❖ Appeared in (2)(M)(4)

OPC Proposal

- ❖ 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.
- ❖ Same language without “and”
- ❖ Move to (3)(O)

Questions?

Thank you!