

**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)
Water or Sewer Utility to be used by a Large)
Water or Sewer Public Utility)

Case No. WX-2026-0108

RESPONSIVE COMMENTS OF THE OFFICE OF THE PUBLIC COUNSEL

Pursuant to the Public Service Commission of the State of Missouri's (the "Commission") statement at the January 7, 2026 rulemaking hearing keeping open the record for comments until the end of January 8, 2026, the Office of the Public Counsel (the "OPC") submits these responsive comments.

I. Introduction

The OPC appreciates the Commission keeping open the record to receive comments in response to those made at the January 7, 2026 rulemaking hearing (the "Hearing"). Attached to these written comments as Attachment A-1 is a redline version of the proposed rule showing the OPC's updated suggested modifications. The modifications highlighted in yellow represent changes from the redline rule the OPC submitted as Attachment A to its original comments on December 31, 2025. As reflected in Attachment A-1, the OPC amends its modifications to the proposed rule in light of the comments made by the Staff of the Commission ("Staff") and Missouri-American Water Company ("MAWC"). Below, the OPC will explain each of the highlighted changes and provide its response to Staff and MAWC. Where a redline change or a comment from Staff or MAWC is not addressed, the OPC maintains its position as expressed in its written December 31, 2025 comments and its oral comments at the Hearing.

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

1. Establish a process for the Commission to appoint an appraiser, with modification suggested by MAWC (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~~ the Office of the Public Counsel and the Staff of the Commission 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: The OPC maintains its position that one of the most important changes that it 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.¹ The OPC strongly disagrees with Staff's position that the rule remain silent.² As the OPC explained, one of the concerns with fair market value legislation is that neither the buyer nor the seller has an incentive to keep the purchase price low. *See* Kathryn Kline (National Regulatory Research Institute), A Review of State Fair Market Value Acquisitions Policies for Water and Wastewater Systems 17 (2021),

¹ Unless specifically noted all references to the Revised Statutes of Missouri are to the 2025 statutes.

² For the same reasons addressed in this explanation, the OPC disagrees with Staff's opposition and reasoning regarding subsection (2)(G)1 (or 20 CSR 4240-10.195(3)(N)1 as identified in Staff's responsive comments). (*See* Ex. 1 "Staff's Responsive Comments" 11, Doc. 10).

<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)). A Commission-appointed appraiser provides an element of independence not otherwise present. For this reason, it is imperative that the Commission appoint an appraiser.

However, without a process whereby the Commission is notified that the large water public utility seeks to begin the appraisal process, it is likely that the Commission will never appoint an appraiser. This is likely to occur because if the Commission appoints an appraiser after an initial appraisal is completed and filed with an application, then that initial appraisal becomes invalid, as § 393.320.3(2)(a) RSMo. requires the appraisal to be jointly completed by the appraisers. Not only would an additional appraisal require additional costs, but, depending upon its outcome, it may result in the large water public utility deciding not to go through with the acquisition.

Therefore, to ensure that the Commission has the opportunity to appoint an appraiser prior to the completion of any appraisal, the OPC suggests its proposed process, as modified above and included in its Attachment A-1.

The modification now suggested by the OPC (highlighted in yellow) is that the Commission respond in writing to the large water public utility and copying the OPC and Staff, rather than all parties. This was a change suggested by MAWC, which the OPC agrees with.

The OPC disagrees with MAWC’s second proposed change, which requested a 75-day limit on the Commission’s appointment of the appraiser. The OPC opposes the inclusion of this limit as it is unclear whether State of Missouri policies about retaining certain assistance may preclude the Commission from appointing an appraiser within this 75-day timeframe.

2. Response to MAWC’s proposals to include a definition of “creditor” and to include a provision about the ownership of shares through certain investment vehicles subsection (2)(A) (formerly subsection (1)(A)).

(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.

(1) 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 decisions.

Explanation: The OPC maintains its suggested revisions for this subsection, which Staff did not oppose, for the reasons identified in its written comments and expressed at the Hearing. The OPC disagrees with MAWC’s position to include a definition of a “creditor,” as shown in subsection (2)(A)1 of MAWC’s redline rule entered as Exhibit 4 at the Hearing. (See Ex. 4 “MAWC Redline Rule” 2, Doc. 13). The OPC does not oppose MAWC’s addition of a provision referring to ownership of shares in certain investment vehicles.

The OPC is concerned that MAWC’s definition of “creditor” creates unnecessary ambiguity as it is not clear from the plain language of MAWC’s revised rule what is meant by a “material financial claim” and an “ordinary-course trade payable[.]” Though the OPC has discussed this provision with MAWC, it is concerned that these terms may create confusion in future cases as they are not further defined.

As an alternative, the OPC suggests that the Commission may consider rewording this subsection of the proposed rule to read “An appraiser or consulting engineer appointed for the purposes of this rule shall be a disinterested person.” This rewording reiterates the standard set forth in § 393.320.3(1) RSMo., which states “[e]ach of the appraisers shall be a disinterested person”

3. Reword subsection (2)(F), which was moved 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 a professional engineer or direct supervisor licensed in the state of Missouri.

Explanation: The OPC does not oppose Staff’s suggested rewording of this provision and appreciates MAWC’s and Staff’s support in moving this provision into subsection (2).

4. Move provisions of former subsection (2)(M) to subsection (2)(G)

Given the length of this modification, please see highlighted section (2)(G) on Attachment A-1.

Explanation: The OPC does not generally oppose MAWC’s suggestion to move the provisions discussing the appraisal (originally subsection (2)(M)) into the subsection identifying general requirements of the appraisal and engineering reports (subsection (2) as shown on Attachment A-1).

However, as shown in Attachment A-1, the OPC suggests that the requirement to include the appraisal and the requirement that the application identify whether one appraiser did not participate in the appraisal remain in subsection (3) that identifies what must be filed with an application. The OPC also proposes a slight revision to the leading sentence of new subsection (2)(G) for clarity. The OPC further proposes that subsection (2)(G)3C, which identifies the requirement to file the engineering report, remain its own provision. This is as opposed to MAWC’s suggestion to combine it with subsection (2)(G)3B, which identifies the requirement for the applicant to provide the name of the licensed engineer that completed or approved the report. The OPC makes this suggestion for clarity as well.

The OPC also understands the Commission’s concern with identifying the most-recent version of the Uniform Standard of Professional Appraisal Practice (“USPAP”) in the rule and therefore strikes this addition in Attachment A-1. The OPC notes that § 393.320.3(2)(a) RSMo.

requires that that “determination of fair market value shall be in accordance with Missouri law and with the Uniform Standards of Professional Appraisal Practice.” Similarly, § 339.535 RSMo. requires “State-certified real estate appraisers, state-licensed real estate appraisers, state-licensed appraiser trainees, and state-certified appraiser trainees shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.”

5. Oppose MAWC’s suggested revision to subsection (3) (formerly subsection (2)) that would require the applicant to only file information “if available.”

- (3) 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 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 shall file with its application for each utility system to be acquired

Explanation: MAWC seeks to change subsection (3) (former subsection (2)) so that the provision does not require (“shall”) the filing of the identified information, but that the information should be provided “if available.” The OPC opposes this provision as unnecessary. The rule as proposed includes a provision in subsection (5) allowing the Commission to grant variances “for good cause.”

6. Oppose MAWC’s suggested revision to subsection (3)(L) (formerly subsection (2)(K)) that would no longer require the engineering evaluation to include certain information, but only that it “may” do so.

- (3)(L) An engineering evaluation of the proposed small utility to be acquired shall include, but not be limited to, the following items:

Explanation: Similar to the provision above, MAWC seeks to change subsection (3)(L) so that the provision does not require the engineering evaluation to include certain information, but only that it “may” do so. The OPC opposes this change as unnecessary. The rule as proposed includes a provision in subsection (5) allowing the Commission to grant variances “for good cause.”

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: Though Staff believes it is not necessary for the Commission to clarify who decides when upgrades or new construction is necessary, the OPC continues to believe clarification would be helpful for the reasons addressed in its prior comments. For clarity, the OPC has changed this highlighting both in this document and in Attachment A-1 to blue.

8. Strike language “for the small water utility” in 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: Though MAWC and Staff do not oppose the OPC’s suggestion to move the requirement that the purchase price be identified into its own requirement about what must be identified in the application, MAWC suggests striking the language “for the small water utility.” The OPC does not oppose this small modification.

9. Maintain OPC proposal regarding Staff’s Recommendation in cases where the appraised value is \$5 million or less (subsection (4) and originally 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: Both Staff and MAWC oppose the OPC’s suggested modification regarding the timeline for Staff’s Recommendation in cases with an appraised value of \$5 million or less. Staff

“instead recommends deletion of (5)^[3] to provide flexibility to the Commission. Or in the alternative, keep at 120 days and remove the thirty day extension.” (Staff Responsive Comments 13). MAWC suggests no change to the language as originally proposed and opposes the “revised shortened timeline for data request responses, as it conflicts with other Commission rules.” (Ex. 3 “MAWC Summary,” Doc. 12). MAWC suggests that the “parties can agree to shortened timelines on case-by-case basis as allowed under Subsection 5.” (*Id.*)

The OPC continues to support its modifications to this provision because allowing Staff 120-150 days to complete its Recommendation would allow for only a very short time for parties and the Commission to complete all elements of a contested case before the Commission must make a decision by the statutory 6 or 7 month deadline. *See* § 393.320.5(2) RSMo. (“For any acquisition with an appraised value of five million dollars or less, such decision shall be issued within six months from the submission of the application by the large public water utility to acquire the small water utility.”); § 393.320.5(3) RSMo. (allowing Staff or the OPC to request a 30 day extension for good cause). As explained in the OPC’s initial comments and its comments at the Hearing this is likely impossible.

Though the OPC believes it would be best to have this provision in the Rule so that a clear starting point is identified in these types of cases, the OPC does not oppose Staff’s suggestion to remove subsection (4) entirely. However, the OPC opposes Staff’s alternative suggestion to keep the 120-day timeline and remove the thirty-day extension, for the same reason it originally proposed changes to this provision.

The OPC is concerned with MAWC’s suggestion that the parties can agree to shortened data request response times on a case-by-case basis. First, this presumes that the parties will be

³ Because Staff identifies 20 CSR 4240-10.195(4) in the column entitled “Proposed Rule Reference” within the row discussing this change, the OPC believes this reference to (5) should have been a reference to (4).

able to reach an agreement that would facilitate a shortened timeframe for Staff to submit its Recommendation. Second, though the OPC agrees that the parties can seek a variance in cases under subsection (5), including this provision without modification would require a variance in all cases with an appraised value of \$5 million or less for the reasons the OPC identified originally. At the time the application is filed, parties generally do not know whether a contested hearing proceeding (with the filing of pre-filed testimony, an evidentiary hearing, and briefing) is required, as typically those decisions are made as a result of discovery. To have even the possibility of these avenues, a party would be required to request a variance at the time the case was filed. This would essentially nullify the provision as written. For these reasons, the OPC maintains its support for its suggested modifications to subsection (4).

III. Conclusion

The OPC appreciates the Commission promulgating this important rule to provide clarity to the appraisal process provided for in § 393.320 RSMo. and allowing time to respond to comments made at the Hearing. The OPC offers these updated modifications for the Commission's consideration.

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 will be emailed to all counsel of record this 8th day of January 2026.

/s/ Lindsay VanGerpen