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

APPLICATION FOR REHEARING

Comes now, the Office of the Public Counsel (the "OPC") and pursuant to § 386.500 RSMo., submits this Application for Rehearing concerning the Order of Rulemaking issued by the Public Service Commission of the State of Missouri (the "Commission") in the above-captioned matter on March 5, 2026 (the "Final Order of Rulemaking"). (Doc. 18). In support of its Application for Rehearing, the OPC respectfully states as follows:

The OPC appreciates the Commission promulgating this rule and allowing parties' the opportunity to provide comments throughout the rulemaking process. The OPC also appreciates the Commission accepting most of its proposed changes to the rule. The OPC still has concerns with the rule as proposed in the Final Order of Rulemaking (the "Final Proposed Rule"). To ensure that the rule is clear and meets the legislative intent suggested in the amendments to § 393.320 RSMo.[1] (the "Appraisal Statute") as part of Senate Bill 4 in 2025 (the "Senate Bill 4 Amendments"), the OPC brings this Application for Rehearing.

The Final Order of Rulemaking is unreasonable for at least four reasons. First, the Commission's decision to not include a process by which the Commission may appoint an appraiser to participate in the joint appraisal prepared as part of an acquisition will likely result in the Commission never appointing an appraiser. This ignores the clear legislative intent to make the appraisal process more neutral, as shown in the Senate Bill 4 Amendments to the Appraisal

[1] All statutory citations are to the current statute, unless otherwise specified.

Statute. Second, similarly the Commission's decision to not include language in subsection (2)(N)1 recognizing that the Commission may have appointed an appraiser suggests an intention to not appoint an appraiser. This too ignores the legislative intent in the Senate Bill 4 Amendments. Third, it appears the Commission inadvertently left in language in subsection (1)(A), such that the rule now prohibits an appraiser or consulting engineer from being "associated with a creditor, equity security holder, or a shareholder of the utilities subject to the acquisition," without prohibiting someone who is "associated with" the utilities themselves. This is unreasonable as it does not comply with the Commission's Final Order of Rulemaking addressing this comment. Finally, the Final Order of Rulemaking is unreasonable because the Commission's decision to not change the filing deadline of Staff's Recommendation in cases where the appraised value of the small water utility is less than $5 million raises due process concerns. Namely, it will result in other parties to those cases having very little time to consider Staff's Recommendation and for the Commission to conduct a full contested case proceeding, should one be requested, before the Commission must issue an order by the statutory deadline. After addressing the relevant background of this matter and the applicable legal standard, the OPC will address each of these issues in turn.

I. Relevant Background

The relevant background of this case extends beyond this rulemaking case itself. It is important to consider the legislative history of the Appraisal Statute, therefore before addressing the background of this case, the OPC will first address the background of the Appraisal Statute.

A. The Appraisal Statute: § 393.320 RSMo.

Generally, the Appraisal Statute sets forth a process that a "large water public utility"[2] may follow in acquiring certain "small water utilit[ies],"[3] so that the ratemaking rate base of the small water utility will be set at a level identified in the statute. § 393.320 RSMo. In fact, the statute itself provides "[t]his section is intended for the specific and unique purpose of determining the ratemaking rate base of small water utilities and shall be exclusively applied to large water public utilities in the acquisition of a small water utility." § 393.320.8 RSMo. The Appraisal Statute has been amended twice since its original enactment.

The Appraisal Statute first became effective in August 2010. In relevant part, the statute required three appraisers to "[j]ointly prepare an appraisal of the fair market value of the water system and/or sewer system." §§ 393.320.3(1), (2)(a) RSMo. (2010). The statute mandated that the three appraisers be: (1) appointed by the small water utility, (2) appointed by the large water

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[2] The Appraisal Statute defines a "large water public utility" as

> a public utility:
> (a) That regularly provides water service to more than eight thousand customer connections, regularly provides sewer service to more than eight thousand customer connections, or regularly provides a combination of either to more than eight thousand customer connections; and
> (b) That provides safe and adequate service but shall not include a sewer district established under Section 30(a), Article VI of the Missouri Constitution, sewer districts established under the provisions of chapter 204, 249, or 250, public water supply districts established under the provisions of chapter 247, or municipalities that own water or sewer systems

§ 393.320.1(1) RSMo. To date, Missouri-American Water Company ("MAWC") is the only large water public utility to utilize the appraisal process.

[3] The Appraisal Statute defines a "small water utility" as

> a public utility that regularly provides water service or sewer service to eight thousand or fewer customer connections; a water district established under the provisions of chapter 247 that regularly provides water or sewer service to eight thousand or fewer customer connections; a sewer district established under the provisions of chapter 204, 249, or 250 that regularly provides sewer service to eight thousand or fewer customer connections; or a water system or sewer system owned by a municipality that regularly provides water service or sewer service to eight thousand or fewer customer connections; and all other entities that regularly provide water service or sewer service to eight thousand or fewer customer connections.

§ 393.320.1(2) RSMo.

public utility, and (3) appointed by the two appraisers so appointed. § 393.320.3(1) RSMo. (2010). The original Appraisal Statute arguably left the Commission with little discretion to reject a proposed acquisition if a large water public utility chose to comply with the appraisal process. *See* § 393.320.5 (identifying what the ratemaking rate base shall be and stating that the Commission "shall issue its decision establishing the ratemaking rate base of the small water utility in its order approving the acquisition."). The original statute also did not identify any deadline for the Commission to reach a decision in an acquisition case brought pursuant to the statute.

When the legislature amended the Appraisal Statute in 2013 it maintained the appraisal process, including how the appraisers were chosen, as previously described. *Compare* § 393.320.3 RSMo. (2010); *with* § 393.320.3 RSMo. (2013). The legislature added only a single provision in 2013, requiring that the large water public utility consolidate the small water utility into one of its existing service areas "for ratemaking purposes" upon acquisition. § 393.320.6 RSMo. (2013). The new language required the Commission to approve this consolidation "in its order approving the acquisition." *Id.*

The Appraisal Statute recently underwent its second amendment as part of the legislature's Senate Bill 4 omnibus utility legislation in 2025. *See* S. 4, 103rd Gen. Assemb., 1st Reg. Sess. (Mo. 2025). The amendments enacted as part of this legislation affect multiple provisions of the Appraisal Statute and in several instances show the legislature's desire to empower the Commission with greater authority in acquisitions brought pursuant to this statute. Most pointedly for purposes of this filing, the legislature changed who chooses the appraisers—now allowing the Commission itself to choose the third appraiser.[4] § 393.320.3(1) RSMo. The legislature

[4] As part of the amendments, the legislature recognized the existing law that an appraisal under the statute need only be signed by two of the appraisers. § 393.320.3(3) RSMo. In recognizing this, the legislature modified the requirement that three appraisers participate in the appraisal, now requiring that "[a]n appraisal shall be performed by no less than

maintained the requirement that the appraisers "[j]ointly prepare" the appraisal. § 393.320.3(2)(a) RSMo. The Senate Bill 4 Amendments also include adding language that makes clear that the Commission retains its ability to determine whether to approve the proposed acquisition, even if the large water public utility chooses to utilize the appraisal process or the small water utility's ratepayers voted in favor of the acquisition. § 393.320.8 RSMo. (stating "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" and "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 Senate Bill 4 Amendments also added a provision requiring the Commission to issue its decision within six (6) months of the application being filed when the appraised value of the small water utility was $5 million or less. § 393.320.5(2) RSMo. By statute, this deadline may be extended for an additional thirty (30) days. § 393.320.5(3) RSMo. Similarly, the amendments granted the Commission rulemaking authority and required the Commission to promulgate rules to implement the provisions of the statute. § 393.320.9 RSMo. The Senate Bill 4 Amendments to the Appraisal Statute became effective on August 28, 2025.

B. <u>This Rulemaking Case: WX-2026-0108</u>

On October 22, 2025, the Commission issued its Finding of Necessity and Order Directing Proposed Rule 20 CSR 4240-10.195 be Filed for Publication. (Doc. 2). The original proposed rule was filed the next day in the Commission's Electronic Filing and Information System ("EFIS") and appeared in the Missouri Register on December 1, 2025. (Docs. 3, 5).

two appraisers." § 393.320.3(1) RSMo. In the current version of the Appraisal Statute the large water public utility and the small water utility must appoint an appraiser and the Commission may do so. *Id.*

Three parties—the Staff of the Commission ("Staff"), Missouri-American Water Company ("MAWC"), and the OPC—submitted comments. (Docs. 6-9). The Commission held a rulemaking hearing on January 7, 2026, during which each of the three parties made additional comments. (*See* Doc. 17). Following the rulemaking hearing each of the three parties submitted responsive/supplemental comments. (Docs. 14-16).

The Commission issued its Final Order of Rulemaking on March 5, 2026, indicating that it had a statutory 30 day effective date. (Docs. 18, 19).

II. Legal Standard

"After an order or decision has been made by the commission, the public counsel . . . shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such rehearing, if in its judgment sufficient reason therefor be made to appear." § 386.500(1) RSMo. An application for rehearing "shall set forth specifically the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust, or unreasonable." § 386.500(2) RSMo.

"Reasonableness depends on whether or not (i) the order is supported by substantial and competent evidence on the whole record, (ii) the decision is arbitrary, capricious or unreasonable, or (iii) the Commission abused its discretion." *Pub. Serv. Comm'n v. Mo. Gas Energy*, 388 S.W.3d 221, 227 (Mo. Ct. App. 2012) (citations omitted). (internal quotation marks and citations omitted).

III. Argument: The Commission's Final Order of Rulemaking is Unreasonable for Four Reasons

The OPC files this Application for Rehearing because the Commission's Final Order of Rulemaking is unreasonable for at least four reasons, each of which is addressed in turn.

A. The Commission's Final Order of Rulemaking is Unreasonable as the Commission Ignored the Legislative Intent to Make the Appraisal Process More Neutral by Failing to Include a Process by Which the Commission Will be Notified of its Ability to Appoint an Appraiser

Though the legislature explicitly granted the Commission the authority to appoint an appraiser and both the OPC and MAWC requested the Commission identify a process in the rule to implement this, the Commission choose not to include such a process in the Final Proposed Rule. In excluding this process, it is nearly certain that the Commission will never appoint an appraiser.[5] This is against the legislative intent as shown in the Senate Bill 4 Amendments to the Appraisal Statute. The Commission's failure to recognize this and to include a process in its Final Order of Rulemaking by which it could appoint an appraiser shows that the Commission's decision is unreasonable.

1. Parties' Comments Regarding the Proposed Addition

Both the OPC and MAWC requested that the Commission include a process in the rule by which the Commission would be told of its opportunity to appoint an appraiser and could do so, prior to the large water public utility bringing the acquisition case before the Commission. (OPC Comments 2-5, Doc. 8; MAWC Comments 3, Doc. 6). Both the OPC and MAWC maintained their requests in their responsive comments, submitted after the hearing. (OPC Responsive Comments 2-3, Doc. 16; MAWC Responsive Comments 2-3, Doc. 15). The process outlined in both the OPC's and MAWC's responsive comments is very similar. (*See id.*). Specifically, the

[5] Subsection (3)(N)1 of the OPC's redline rule submitted with its initial Comments (subsection (2)(N)1 of the Final Proposed Rule) addresses what must be included in the appraisal. This subsection explicitly requires the appraisal to list the appraisers who participated in the appraisal and identify who appointed them. (Final Order of Rulemaking 12). As originally proposed, subsection 1 referenced only the large public utility and the small utility. (Initial Secretary of State Filing 10, Doc. 3). The OPC suggested that this subsection be amended, in part, to add a reference to the Commission in recognition of the fact that the Commission itself may have appointed an appraiser. (OPC Comments 9). The Commission rejected this addition. (Final Order of Rulemaking 4). Though addressed in greater detail below, the Commission's exclusion of the OPC's proposed language in this subsection further suggests the Commission's intention to not appoint an appraiser.

OPC proposed that the Commission include the following language, with the highlighted language representing a difference between the process the OPC suggested in its original Comments and that suggested in its Responsive Comments[6]:

(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.[7]
  (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.

(OPC Responsive Comments 2-3).

In response to the suggestion to include such a process, Staff recommended "the rule remain silent in order to provide flexibility to the Commission." (Staff Responsive Comments 5, Doc. 9).[8] It also opposed adding such a process to the rule. (*Id.* 5-6). In taking that position it stated that "there [is] . . . no prohibition preventing a large water utility from filing a notice with

[6] As the OPC stated in its responsive comments, this change was suggested by MAWC and the OPC agrees with it. (OPC Responsive Comments 3).

[7] MAWC suggested the same process with an addition at the end of this subsection. (*See* Ex. 4 "MAWC Redline Proposed Rule" 1, Doc. 13). Specifically, MAWC requested the addition of a sentence that stated "[t]he appointment shall be completed within 75 days after receipt of the large water public utility's notice." (*Id.*). The OPC opposed this addition in its Responsive Comments. (OPC Responsive Comments 3).

[8] Staff's Responsive Comments respond to the OPC's and MAWC's original Comments and were filed before the rulemaking hearing. However, as pointed out above, the process identified in the OPC's Responsive Comments is nearly identical to that proposed in the OPC's original Comments. (*Compare* OPC original Comments 2-5, *with* OPC Responsive Comments 2-3). In its Post-Hearing Comments, Staff relied, in part, on its prior objections. (Staff's Post-Hearing Comments 1, Doc. 14).

the Commission regarding a potential appraisal and potentially subsequent acquisition of a small water utility." (*Id.* 5). It further pointed out that all appraisals do not result in the large water public utility proceeding with the acquisition. (*Id.* 5-6). For this reason, Staff asserted that "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."[9] (*Id.* 6).

2. The Commission's Final Order of Rulemaking

In addressing this change in the Final Order, the Commission summarized the OPC and Staff's position, nearly copying Staff's responsive comments verbatim. (Final Order of Rulemaking 3; Staff Responsive Comments 5-6). In reaching its decision, the Commission did not respond to either party's arguments. (Final Order of Rulemaking 4). Rather, the Commission stated only that it "agrees with staff's comments in regard to OPC's proposed change and will not change or modify this portion of the rule. No changes were made as a result of these comments."[10] (*Id.*). The Commission offered no additional explanation for why it choose not to include the OPC's and MAWC's suggested process beyond that it agreed with Staff's statements.

3. The Missouri Legislature Attempted to Solve a Problem with the Appraisal Process in Granting the Commission the Authority to Appoint an Appraiser

As recognized by the National Regulatory Research Institute ("NRRI") "[o]ne common critique of [fair market value legislation] is that both the buyer and the seller may have an incentive to inflate the purchase price." Kathryn Kline (National Regulatory Research Institute), A Review of State Fair Market Value Acquisitions Policies for Water and Wastewater Systems 17 (2021),

[9] Staff raised the same objections to MAWC's proposal on this issue. (Staff Responsive Comments 2-3).

[10] Similar to its decision with regard to the OPC's proposed change, in addressing MAWC's proposal, the Commission summarized MAWC and Staff's positions and stated that it "agrees with staff that no modifications are needed. No changes were made as a result of this comment." (Final Order of Rulemaking 7-8).

https://pubs.naruc.org/pub/ED8E5710-1866-DAAC-99FB-B70190F3D64A. Consistent with any other transaction, the small water utility wants the highest price possible for its asset. However unique to these types of transactions, the buyer—the large water public utility—also wants a high price as it "is allowed to include the cost of the acquisition in the new rate base." *Id.*; § 393.320.5 RSMo. Therefore, neither party to the transaction has an incentive to keep the purchase price low.

It appears that the Missouri legislature understood this unique problem when amending the Appraisal Statute as part of Senate Bill 4. Namely, the legislature introduced an element of neutrality into the appraisal process by granting the Commission the authority to appoint an appraiser. *See* § 393.320.3(1) RSMo. This appraiser would not be beholden to either party, each of whom wants a high price, but, presumably, could approach the process more neutrally.

4. <u>The Commission's Decision to Not Include a Process Where it Will be Notified of its Opportunity to Appoint an Appraiser Prior to the Appraisal Being Completed Will Likely Result in the Commission Not Appointing an Appraiser</u>

With the exclusion of the process suggested by the OPC and MAWC, it is likely that the first time that the Commission learns of its opportunity to appoint an appraiser will be after the large water public utility files an application with the Commission to acquire the small water utility.[11] Because the application must include "[t]he appraisal relied on in determining the fair

[11] The OPC notes that Staff pointed out in its responsive comments that "there [is] . . . 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." (Staff Responsive Comments 5). Staff stated in its Post-Hearing Comments that it opposed the OPC's edit to the process highlighted in yellow above because "Staff and OPC are already both notified when applications are submitted to the Commission." (Staff Post-Hearing Comments 1). The OPC therefore interprets Staff's position as referring to the large water public utility filing a notice through the Commission's EFIS.

Initially, the OPC agrees that nothing would prohibit the large water public utility from filing a notice with the Commission through EFIS. However, the OPC notes that due to potentially sensitive contract negotiations, a large water public utility is unlikely to file such a notice publicly and the OPC does not believe that an entire case can be filed confidentially (typically the name of the system to be acquired is included in the case name when the large water public utility files the case in EFIS). (*See* MAWC Comments 3 (noting that the notification to the Commission and the Commission's "response would need to occur prior to the filing of the application referenced in Section (2), and many times will take place prior to the execution of an agreement or when the matter has become public.")). For this

market value of the small water utility," at the time the application is filed the appraisal will have already been completed. (*See* Final Order of Rulemaking 12).

As the Appraisal Statute requires that the appraisers "[j]ointly prepare" the appraisal, if the Commission wanted to appoint an appraiser after the large water public utility filed the application, it would require the initial appraisal to be invalidated. § 393.320.3(2)(a) RSMo. Not only would this increase the costs of the acquisition and delay it by requiring an additional appraisal, but it may also jeopardize the proposed acquisition as the purchase price of the transaction could change. These are not reasonable outcomes. For at least these reasons, it is likely that the Commission would never appoint an appraiser if it is not notified of its ability to do so prior to the completion of the first appraisal.[12]

5. The Commission's Decision to Not Include a Process Requiring Notification to the Commission Prior to the Completion of an Appraisal is Unreasonable

The Commission's decision to not include a process requiring the large water public utility to notify it prior to the completion of an appraisal is unreasonable. As discussed above, with the Senate Bill 4 Amendments to the Appraisal Statute the Missouri legislature made clear that the Commission maintains its authority to approve or disapprove cases brought pursuant to the Appraisal Statute, regardless of several factors. In doing so, it also appears to have attempted to solve one of the most common critiques of these types of transactions—that no party to the transaction seeks a lower price. To do this, the legislature granted the Commission the authority

reason, the OPC's understanding is that the large water public utility would have to contact the Commission outside of EFIS, which raises potential *ex parte* concerns.

[12] Staff opposed the inclusion of this process in part because it recommended "the rule remain silent in order to provide flexibility to the Commission." (Staff Responsive Comments 5). It is important to point out the OPC and MAWC's proposed process does not *require* the Commission to appoint an appraiser. (*See* OPC Responsive Comments 2-3). Rather, the process explicitly includes a provision allowing the Commission to indicate that it will not appoint an appraiser. (*Id.*).

to appoint an appraiser. § 393.320.3(1) RSMo. If it never does so, the Commission would be acting in contravention of what the legislature appears to have intended. By not including this process the Commission is putting itself in a position where it will likely never appoint an appraiser because to do so would require the first appraisal to be invalidated and it may ultimately impact the acquisition proposed in an already filed case. For these reasons, the Commission's Final Order of Rulemaking is unreasonable.

B. The Commission's Decision to Not Include Language in Subsection (2)(N)1 of the Final Proposed Rule is Unreasonable as it Fails to Recognize that the Commission May Appoint an Appraiser

Subsection (2)(N)1 of the Final Proposed Rule requires that the appraisal that must be filed with the application include a list of the appraisers and identify who appointed each appraiser. (Final Order of Rulemaking 12). The OPC suggested adding language to this subsection to recognize that the Commission may have appointed an appraiser. (OPC Comments 9). The Commission did not include this language in the Final Proposed Rule, which appears to suggest that the Commission does not intend to appoint an appraiser. For the reasons discussed above, this contradicts the legislative intent shown in the Senate Bill 4 Amendments to the Appraisal Statute and the Commission's decision is unreasonable.

In its original Comments, the OPC suggested adding language to the proposed rule that recognized that the Commission may appoint an appraiser. Specifically, the OPC suggested adding the following language to what is now subsection (2)(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[13] utility, and if the Commission has chosen to appoint an appraiser, the Commission;

[13] The Commission agreed with the OPC's suggestion to add the word "water" in two places so that this provision referred to the terms defined in the Appraisal Statute. (Final Order of Rulemaking 4). The OPC appreciates the Commission accepting this suggestion.

(OPC Comments 9). The OPC explained that the language at the end of the subsection simply recognized that the Commission may have appointed an appraiser. (*Id.*)

As shown in the redline rule it submitted at the rulemaking hearing, MAWC did not oppose this change. (Ex. 4 p.3). Staff, however, opposed this additional language and recommended that "the rule remain silent regarding the potential appraiser appointed by the Commission in order to provide flexibility to the Commission." (Staff Responsive Comments 10).

In addressing this proposal in the Final Order of Rulemaking the Commission again summarized the OPC and Staff's position and stated only that it "agrees with staff's position regarding the additional language offered by OPC and will not accept such change." (Final Order of Rulemaking 4). Again, the Commission offered no explanation for why it agreed with Staff's position. (*See id.*).

The language as proposed by the OPC recognized that the Commission may have chosen not to appoint an appraiser. (*See* OPC Comments 9). So, even with this language the Commission would have had "flexibility" as mentioned by Staff. (*See* Staff Responsive Comments 10). By not including this language—which only required that if the Commission appointed an appraiser that the appraiser be identified as having been appointed by the Commission—it appears that the Commission has forecasted that it will not appoint an appraiser. As discussed above, this is in direct contravention to the legislative intent shown in the Senate Bill 4 Amendments to the Appraisal Statute. For this reason, the Commission's decision is unreasonable.

C. <u>It Appears the Commission Inadvertently Left in Additional Language in Subsection (1)(A), Such That the Final Proposed Rule Does Not Comply with the Commission's Final Order of Rulemaking and is Unreasonable</u>

Since the original proposed rule was filed subsection (1)(A) appears to have identified a standard meant to ensure the independence of an appraiser or consulting engineer. In its initial

Comments, the OPC suggested a change to this subsection to recognize that people other than "a creditor, equity security holder, or a shareholder" of the utilities should not serve as an appraiser or consulting engineer. (OPC Comments 5-6). Staff did not oppose the OPC's suggested change. (Staff Responsive Comments 8). The Commission agreed with the OPC. (Final Order of Rulemaking 3). However, the Final Proposed Rule does not match the Commission's Final Order of Rulemaking, namely it appears that the Commission inadvertently left in language that should have been stricken. The OPC believes this is simply a scriveners' error that should be corrected.

The OPC suggested that the Commission modify subsection (1)(A) to read

> 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.

(OPC Comments 5). Staff did not oppose this modification. (Staff Responsive Comments 8).

In addressing this comment, the Commission stated that it "agrees with OPC's and staff's comments and will modify the language in subsection (1)(A) as suggested. No other changes were made as a result of these comments." (Final Order of Rulemaking 3). However, the Final Proposed Rule states in subsection (1)(A):

> (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.

(*Id.* 9 (emphasis added)).

The italicized language in the Final Proposed Rule is what causes the OPC to bring this point in this Application for Rehearing. Based on the language in the Final Order of Rulemaking where the Commission addressed this comment, it appears the inclusion of this language was simply a scrivener's error. The OPC suggests that the Commission amend it Final Order of

Rulemaking to omit this language in the Final Proposed Rule such that the Final Proposed Rule matches the Final Order of Rulemaking.[14]

D. The Commission Decision to Not Change the Deadline for Staff's Recommendation in Cases Where the Appraised Value is Less than $5 Million is Unreasonable as it Allows Parties Very Little Time to Participate in a Contested Case Proceeding, if Required

The requirement that the Commission reach a decision within six or seven months in cases where the appraised value is $5 million or less is another aspect of the Senate Bill 4 Amendments to the Appraisal Statute. §§ 393.320.5(2)-(3) RSMo. The proposed rule in the Final Order of Rulemaking requires that in such cases Staff issue its Recommendation within 120 days after receipt of the application for acquisition.[15] (Final Order of Rulemaking 13). This leaves only approximately 60-90 days for any party to the case to request and participate in a contested case proceeding and for the Commission to issue its final order on the acquisition. This is an inadequate amount of time, even with shortened discovery timelines.[16] Because parties will have only very little time to engage in contested case proceedings should they be necessary, the Commission's decision is unreasonable.

The OPC suggested in its original Comments that the Commission shorten the time for Staff to issue its Recommendation in these types of cases to sixty (60) days and to modify the extension that Staff may seek to fifteen (15)—instead of thirty (30)—days. (OPC Comments 12-13). The OPC explained its due process concerns saying that allowing Staff one hundred fifty (150) days to submit its Recommendation could result in as little as one (1) month existing for

[14] As this appears to be a scrivener's error, the OPC offers that the Commission could likely make this correction *nunc pro tunc.*

[15] The OPC appreciates the Commission striking the provision allowing Staff to request an additional thirty (30) day extension for its Recommendation. (Final Order of Rulemaking 5).

[16] The OPC appreciates the Commission accepting its suggestion that the rule set shortened discovery timelines in such cases to facilitate the expedited timeline. (*See* Final Order of Rulemaking 5, 13).

parties to file testimony, participate in a hearing, file briefing, and for the Commission to make a decision with a ten (10)-day effective date. (*Id.*).

Both MAWC and Staff opposed the OPC's proposal. (Ex. 3 "MAWC Hearing Comments," Doc. 12; Staff Responsive Comments 12). Staff, in particular, recommended that the Commission delete this subsection "to provide flexibility to the Commission" or alternatively "keep at 120 days and remove the thirty day extension." (Staff Responsive Comments 12).

In reaching its decision on this suggestion, the Commission summarized the OPC and Staff's positions. (Final Order of Rulemaking 5). In its Response and Explanation of Change, it stated in full:

> The commission agrees with OPC's addition of subsection (4)(A) but disagrees with OPC's modification of the time frame. The commission will remove the thirty-(30-) day extension language as proposed by staff. No other changes were made as a result of these comments.

(*Id.*). The rule as included in the Final Order of Rulemaking requires Staff to submit its Recommendation within one hundred twenty (120) days and shortens the time for parties to respond to data requests, saying

> (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 (120) days after receipt of the application for acquisition.
>
> > (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.

(*Id.* 13).

In practice this process is likely to infringe on the due process rights of any party who chooses to participate in these cases. Specifically, if Staff submits its Recommendation one

hundred twenty (120) days after receipt of the application,[17] the Commission must issue its order fifty (50) days later to allow for a ten-day effective date. This likely means that parties have one (1) month (thirty (30) days)[18] or less to review Staff's Recommendation, request a hearing, issue any necessary discovery, submit pre-filed testimony, participate in a hearing, and submit briefing or participate in oral argument. Even if the Commission were to grant the thirty (30)-day extension allowed for in § 393.320.5(3) RSMo., this would allow only an additional thirty (30) days to this extremely condensed timeline. Even sixty (60) days to complete all of these steps raises due process concerns.

Because it will allow for insufficient time for parties to participate in a contested case should one become necessary, the Commission's decision to reject the OPC's changes to the deadline for Staff's Recommendation in cases where the appraised value is less than $ 5 million is unreasonable.

IV. Conclusion

The Missouri legislature amended the Appraisal Statute as part of the Senate Bill 4 omnibus utility bill in 2025. These amendments show the legislature's desire to make the Commission's role clear in cases brought pursuant to the Appraisal Statute. In doing so, the legislature vested the Commission with the power to appoint an appraiser, likely in hopes that it would inject an element of neutrality into a process plagued with concerns that it artificially inflates purchase prices. The amendments also shortened the timeframe in which the Commission must reach a

[17] Though the Commission has excluded Staff's explicit authority to request an extension, the OPC notes that nothing precludes Staff from doing so. In fact, 20 CSR 4240-2.050(3) allows the Commission to grant an extension "[w]hen an act is required or allowed to be done by order or rule of the commission at or within a specified time." The requirement that Staff submit its Recommendation within one hundred twenty (120) days is set by Commission Rule.

[18] In taking this position, the OPC has allotted approximately twenty (20) days for the Commission to review the parties' evidence and briefing/oral arguments, prepare a draft Order, and notice the case for both an Agenda discussion and an Agenda meeting to decide the case.

decision in certain cases and granted the Commission rulemaking authority. As explained above, in exercising that rulemaking authority, the Commission's Final Order of Rulemaking is unreasonable for at least four reasons: (1) in excluding a process by which the Commission will be notified of its ability to choose an appraiser prior to the completion of the initial appraisal; (2) in excluding language that recognized that the Commission may appoint an appraiser; (3) in not striking the first reference to "a creditor, equity security holder, or a shareholder of" in subsection (1)(A); and (4) in not shortening the time in which Staff must submit its Recommendation in certain cases.

Wherefore, the OPC respectfully requests that the Commission consider this Application for Rehearing, grant it, and amend its Final Order of Rulemaking and its Final Proposed Rule by (1) including a process by which the Commission will be notified of its ability to choose an appraiser prior to the completion of the initial appraisal, as suggested by the OPC; (2) including a reference in subsection (2)(N)1 that the Commission may have appointed an appraiser, also as suggested by the OPC; (3) omitting the first reference to "a creditor, equity security holder, or a shareholder of" in subsection (1)(A); and (4) shortening the time for Staff to complete its

[Continued on next page]

Recommendation in cases where the appraised value is less than $5 million to allow time for parties to participate in all elements of a contested case proceeding.[19]

Respectfully submitted,

/s/ Lindsay VanGerpen

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing will be emailed to all counsel of record this 3rd day of April 2026.

/s/ Lindsay VanGerpen

[19] The OPC understands that Staff requires time to complete its Recommendation and appreciates Staff's thorough investigation in doing so. If the sixty (60) days the OPC originally suggested does not allow Staff sufficient time to complete its investigation, the OPC suggests seventy-five (75) or eighty (80) days. Either of these time frames would greatly increase the amount of time that parties have to participate in a contested case should one become necessary.