

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 12<sup>th</sup> day of July, 2023.

In the Matter of the Application of )  
Confluence Rivers Utility Operating )  
Company, Inc. and Terry Jarrett, Receiver, )  
for Confluence Rivers to Obtain a )  
Certificate of Convenience and Necessity )  
and to Acquire Certain Sewer Assets )

**File No. SA-2023-0215**

**ORDER APPROVING ACQUISITION OF ASSETS AND GRANTING A  
CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: July 12, 2023

Effective Date: July 22, 2023

**Procedural History**

On January 4, 2023,<sup>1</sup> Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) and Terry Jarrett, Receiver for the sewer system assets of Kenneth Jaeger, located near the Lost Valley subdivision in Ralls County, Missouri (Lost Valley System), filed an application for Confluence Rivers to acquire the unpermitted sewer system assets of Kenneth Jaeger (Confluence Rivers and Mr. Jarrett are collectively “Joint Applicants.”). The application also seeks a certificate of convenience and necessity (CCN) for Confluence Rivers to operate the system. Joint Applicants requested waiver of the Commission’s rule requiring a 60-day notice prior to filing an application.

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<sup>1</sup> All dates refer to 2023.

The Commission issued notice of the application and set a deadline for the filing of applications to intervene, but no applications to intervene were received.

The Staff of the Commission (Staff) filed an initial recommendation on April 6. Staff's initial recommendation advised of deficiencies in the application, anticipated an amended application, and requested 45 days to review the anticipated amended application, if it should be filed.

On April 18, the Joint Applicants filed an amendment to the application. Thus, under consideration by the Commission, is the application as amended on April 18.

On June 5, Staff filed a Report and Recommendation, with an attached Memorandum, addressing the application as amended. Staff recommended the Commission grant Confluence Rivers the requested CCN, subject to certain recommended conditions.

On June 22, Confluence Rivers filed its response to Staff's recommendation. Confluence Rivers stated that with the one exception, it had no objection to Staff's proposed conditions. Confluence Rivers proposed alternate language for the condition to which it took exception - regarding installation of the subsurface irrigation system. Specifically, Confluence Rivers proposed changing the calendar timeline for installation from 18 months to an installation timeline that will be agreed to at a future date by the Missouri Department of Natural Resources. No response to the suggested correction was filed.

Besides the change proposed by Confluence Rivers, no other responses or objections to the application or to Staff's recommendation were received.<sup>2</sup> No party

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<sup>2</sup> Commission Rule 20 CSR 4240-2.080(13).

requested a hearing. The requirement for a hearing is met when the opportunity for a hearing has been provided.<sup>3</sup> Thus, the Commission will rule on the application as amended.

Confluence Rivers is a certificated and regulated water and sewer utility providing service to customers in Missouri. Central States Water Resources, LLC is the parent company of Confluence Rivers. Confluence Rivers provides water service to approximately 4,400 customers and sewer service to approximately 4,600 customers across several counties.

In 2004, Kenneth Jaeger constructed the unpermitted sewage lagoon located near the Lost Valley subdivision. In December 2021, the Missouri Attorney General's Office filed its *Petition and Motion to Appoint Receiver* in Ralls County Circuit Court, Case No. 21RL-CV00330, citing continued violation of the Missouri Clean Water Law, Sections 644.006 through 644.150, RSMo, in that Mr. Jaeger's sewage lagoon has periodically discharged partially treated sewage into a tributary of the Salt River. On May 3, 2022, a default judgement was entered in the above-mentioned case against Mr. Jaeger, and a Receiver was appointed.

The current sewer treatment system is not capable of providing safe and adequate service. Rather than repair or replacement of malfunctioning parts, a new treatment system must be installed. Lost Valley System does not currently charge for sewer services. Lost Valley System's approximate customer count and type are as follows: 35 single family residences, and two commercial customers (a convenience store and a 72-lot RV campground).

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<sup>3</sup> *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

## **Discussion**

### **Certificate of Convenience and Necessity**

Section 393.170, RSMo (Supp. 2022), in subsection 2, requires Confluence Rivers to have a CCN, which is granted by the Commission, prior to providing sewer service in the Lost Valley subdivision service area. Subsection 393.170.3, RSMo, requires that the Commission determine that the services are “necessary or convenient for the public service.” The term “necessity” does not mean “essential” or “absolutely indispensable,” but rather that the proposed project “would be an improvement justifying its cost,” and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.<sup>4</sup> It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.<sup>5</sup> Subsection 393.170.3 permits the Commission to impose the conditions it deems reasonable and necessary for the granting of a CCN.

The Commission has articulated specific criteria when evaluating applications for utility CCNs as follows:

- (1) there must be a need for the service;
- (2) the applicant must be qualified to provide the proposed service;
- (3) the applicant must have the financial ability to provide the service;
- (4) the applicant's proposal must be economically feasible; and
- (5) the service must promote the public interest.<sup>6</sup>

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<sup>4</sup> *State ex rel. Intercon Gas, Inc., v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).

<sup>5</sup> *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

<sup>6</sup> *Report and Order*, In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, \*3 (Mo. P.S.C.).

These criteria are known as the Tartan Factors.<sup>7</sup>

There is a need for the service, as the customers of Lost Valley System are already receiving sewer service and will continue to need that service. Additionally, there is a need to update the system, and Lost Valley System is currently in receivership. Confluence Rivers is qualified to provide the service, as it is an existing sewer utility subject to the Commission's jurisdiction. Confluence Rivers has the financial ability to acquire the system, as no external financing is needed and Confluence Rivers has demonstrated historically that it has adequate resources to operate utility systems it owns. The proposed transaction is economically feasible, due to it being financially feasible, as well as Confluence Rivers' ability to draw resources from its parent company. The proposal promotes the public interest, as Lost Valley System is in court appointed receivership and is in need of upgrades. Confluence Rivers has demonstrated the ability to provide safe and adequate service, which also supports a finding of promotion of the public interest.

Based on the application as amended, and Staff's recommendations, the Commission concludes that the factors for granting a CCN to Confluence Rivers have been satisfied and that it is in the public's interest for Confluence Rivers to provide sewer service to the customers currently served by Lost Valley System. Further, the Commission finds that Confluence Rivers possesses adequate technical, managerial, and financial capacity to operate the sewer system. Thus, the Commission will authorize the transfer of assets and grant Confluence Rivers the CCN to provide sewer service

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<sup>7</sup> *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

within the proposed service area, subject to the unopposed conditions described by Staff, as amended by the unopposed amendment proposed by Confluence Rivers.

The Commission will also require Confluence Rivers to include information for Lost Valley System customers to be able to contact Confluence Rivers' customer service department by phone, email and website. Lost Valley System is not currently charging for sewer services; thus, all Lost Valley System customers will be receiving a sewer bill for the first time.

### **Rates and Rules**

Lost Valley System does not presently charge for sewer service. Confluence Rivers proposes to charge a flat rate of \$16.67 per month for sewer service, which is consistent with the currently approved sewer charge in Confluence Rivers' Freeman Hills service area. While this rate is expected to be well below the cost of service, it is a step toward an appropriate rate and will help minimize rate shock. The system will require investment after being acquired by Confluence Rivers, which will result in a request for a rate increase at some point in the future once the system upgrades have been completed. Additionally, Confluence Rivers proposes to utilize the rules governing the rendering of service currently found in Confluence Rivers' existing P.S.C. MO No. 13 tariff for sewer service, until the Commission orders new rates and rules.

The Commission finds that the proposed rates and rules of operation are just and reasonable. The Commission will direct Confluence Rivers to file new or amend its current tariffs, setting out the rates and rules for Lost Valley System customers.

### **Waiver of 60-day notice rule**

Confluence Rivers also sought a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D). Confluence Rivers verified that it had no communication with the office of the Commission regarding any substantive issue likely to be in this case during the preceding 150 days. The Commission finds good cause to waive the notice requirement.

So that Confluence Rivers may address the repairs and improvements as soon as possible, the Commission finds it is reasonable to make this order effective in less than 30 days.

### **THE COMMISSION ORDERS THAT:**

1. Confluence Rivers' request for waiver from the 60-day notice requirement of Commission rule 20 CSR 4240-4.017(1)(D) is granted.
2. Confluence Rivers is granted authority to acquire all or substantially all of the sewer utility assets of Lost Valley System as described in the application as amended.
3. Upon closing, Confluence Rivers is granted a CCN to install, acquire, build, construct, own, operate, control, manage, and maintain a sewer system in the areas currently served by Lost Valley System, subject to the conditions and requirements contained in Staff's recommendation, as amended by Confluence Rivers, and as modified by the Commission, as follows:
  - a) For the approved service area, Confluence Rivers shall apply a monthly charge of \$16.67 for sewer service, and shall adopt the rules governing sewer service currently found in Confluence Rivers' sewer tariff P.S.C. MO No. 13;
  - b) Confluence Rivers shall submit tariff sheets, to become effective before closing on the assets, to include the amended service area map, amended service area written description, rates and charges;

- c) Confluence Rivers shall notify the Commission of closing on the assets within five days after such closing;
- d) If closing on the sewer system assets does not take place within thirty days following the effective date of the Commission's order approving such, Confluence Rivers shall submit a status report within five days after this thirty-day period regarding the status of closing, and additional status reports within five days after each additional thirty-day period, until closing takes place, or until Confluence Rivers determines that the transfer of the assets will not occur;
- e) If Confluence Rivers determines that a transfer of the assets will not occur, Confluence Rivers shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and Confluence Rivers shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the service area in its sewer tariff, and rate and charges sheets applicable to customers in the service area in the sewer tariff;
- f) Confluence Rivers shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
- g) Confluence Rivers shall adopt its current depreciation rates for Lost Valley System and these rates are attached as Attachment A to Staff's Memorandum;
- h) Confluence Rivers shall provide training to its call center personnel regarding rates and rules applicable to the sewer customers in the acquired area;
- i) Confluence Rivers shall distribute to the customers in the acquired area an informational brochure detailing the rights and responsibilities of the utility and its customers consistent with the requirements of Commission Rule 20 CSR 4240-13, and include information for customers to be able to contact Confluence Rivers' customer service department by phone, email and website, within thirty days of closing on the assets;
- j) Confluence Rivers shall provide to the Commission's Customer Experience Department (CXD) Staff an example of its actual communication with the Lost Valley System customers regarding its acquisition and operations of the sewer system, and how customers



may reach Confluence Rivers including by phone, email and website within ten days after closing on the assets;

- k) Confluence Rivers shall provide to the CXD Staff a sample of five billing statements from the first three month's billing for the acquired Company within ten days of the billings;
- l) Confluence Rivers shall file notice in this case outlining completion of the above-recommended training, customer communications, notifications and billing for each acquired company within ten days after such communications and notifications;
- m) Confluence Rivers shall include the Lost Valley System sewer customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;
- n) Confluence Rivers shall complete installation of the subsurface irrigation system within the time permitted by any Agreement on Consent entered into with the Missouri Department of Natural Resources; and,
- o) Confluence Rivers shall file notice in this File No. once conditions a-n above have been completed.

4. Upon closing of the asset transfer, Confluence Rivers is authorized to begin providing service.

5. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.

6. This order shall become effective on July 22, 2023.



**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell  
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier  
and Hahn CC., concur.

Hatcher, Senior Regulatory Law Judge.

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 12<sup>th</sup> day of July, 2023.**



*Nancy Dippell*  
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**Nancy Dippell**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**July 12, 2023**

**File/Case No. SA-2023-0215**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Nancy Dippell  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.