

Court on account of violations of the Missouri Clean Water Law.² The facility is unpermitted and non-compliant.

In the *Order Appointing Receiver* (“Receivership Order”) filed with the Application, the Court states: “This property consists of a wastewater treatment lagoon, land application field, and all assets and appurtenances thereto located in the SW ¼, SE 1/4, Section 14, Township 55, North, Range 7 West in Ralls County, Missouri.”³ If the order refers to a full quarter/quarter section—and it does not expressly reference anything less than a full quarter/quarter--then the order refers to 40 acres. But the maps and supporting documentation which Confluence has provided with the Application do not indicate either that a total of 40 acres or any indication that “all” of the land in the Receivership is in fact being acquired.

As set out in Staff’s Memorandum, per an Engineering Memorandum prepared for Confluence, “[t]he land they initially proposed to use for the irrigation zone still needs to be acquired.” This statement was directed at 7.49 acres of land identified in a MECO⁴ engineering report as the proposed location for a land application system. In response to DR0028, Confluence stated that 32 acres were being acquired, and that no additional land acquisition would be necessary. While this is consistent with the legal description and the map submitted with the Application, it appears to be in conflict both with the Receivership Order and with Staff’s observations at the property, which have led Staff to conclude that a land application system, with consideration of 7.49 acres for a land application field, will require 40 acres.

² Case No. 21RL-CV00330

³ The order further states that Mr. Terry Jarrett “... shall preserve and protect the entire property, and shall not allow it to be subdivided. ...”

⁴ Hand Delivered to Staff, January 27, 2023

As detailed in Staff's Memorandum, the current sewage treatment system is not capable of providing safe and adequate service, and a new treatment system must be installed. Confluence proposes to seek permission from the Department of Natural Resources to convert the present unpermitted single cell lagoon as a storage basin, install pumping equipment, and utilize subsurface land application to dispose of the partially treated wastewater. While Staff finds that this is a reasonable plan, it is Staff's experience that ownership or a long term lease granting full control of all the land required for land application systems is needed, i.e., in this case, a full 40 acres.

The present sewage system is not in compliance, and customers are not presently receiving safe and adequate service. Accordingly, Confluence's Application must be evaluated on the basis of whether that situation is rectified, in this case on the basis of whether Confluence will acquire the land needed for a land application system. Regulation 20 CSR 4240-3.305(1)(A)3 requires that an Application include a legal description of the area to be certificated. Staff contends that the certificated area must include both the customers to be served and the system components necessary to serve them. 20 CSR 4240-3.305(1)(A)4, similarly, requires a map of the certificated area. On the basis of its investigation, Staff concludes that the Application does not satisfy these regulations. Confluence's legal description and map do not include the land required for the land application system needed to bring the system into compliance and to provide customers with safe and adequate service.

Staff, therefore, concludes that the Application is deficient and should be denied. Should Confluence rectify its deficiencies, Staff's recommendation will likely change.

Should Confluence file an amended application prior to April 14, Staff asks the Commission to give Staff at least forty-five days for its evaluation.

Respectfully Submitted,

/s/ Paul T. Graham #30416

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CERTIFICATE OF SERVICE

The undersigned by his signature below certifies that the foregoing pleading was served upon all counsel of record on this April 6, 2023, by electronic filing in EFIS, electronic mail, hand-delivery, or U.S. postage prepaid.

/s/ Paul T. Graham

MEMORANDUM

TO: Missouri Public Service Commission
Official Case File, File No. SA-2023-0215
Confluence Rivers Utility Operating Company, Inc.

FROM: Kelli McKinley – Financial Analysis Department
Keri Roth – Water, Sewer & Steam Department
Andrew Harris – Water, Sewer & Steam Department

/s/ Keri Roth / 04-06-2023
Senior Research/Data Analyst / Date

/s/ Paul Graham / 04-06-2023
Staff Counsel's Office / Date

SUBJECT: Staff's Recommendation to Deny the Application and Request for Certificate of Convenience and Necessity

DATE: April 6, 2023

Case Background

On January 4, 2023, Confluence Rivers Utility Operating Company, Inc. ("Confluence") and Terry Jarrett, Receiver for the sewer assets of Kenneth Jaeger located near the Lost Valley subdivision in Ralls County, Missouri ("Receiver"), filed a *Joint Application and Motion for Waiver* ("Application"), seeking approval for Confluence to acquire the sewer assets of Mr. Kenneth Jaeger at the Lost Valley subdivision. Confluence also sought a Certificate of Convenience and Necessity ("CCN") to operate the system. The Commission established an initial deadline of February 28, 2023 for Staff's Recommendation or a status report.

On February 28, 2023, Staff filed a *Status Report* stating that additional time was necessary to attempt to remedy deficiencies in the Application with the applicants, as described below. The Commission issued an *Order Granting Extension* on March 13, 2023 establishing a new deadline for Staff's Recommendation on or before April 14, 2023.

Background of Mr. Kenneth Jaeger and Lost Valley

According to the Application, in 2004, Kenneth Jaeger owned the unpermitted and non-compliant 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 effluent 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 Receiver was appointed.

In the *Order Appointing Receiver* ("Receivership Order") filed with the application, the Court identifies, "This property consists of a wastewater treatment lagoon, land application field, and all assets and appurtenances thereto located in the SW ¼, SE 1/4, Section 14, Township 55, North, Range 7 West in Ralls County, Missouri." The Receivership Order further states that Mr. Terry Jarrett "... shall preserve and protect the entire property, and shall not allow it to be subdivided ..." It should be noted that land as described in the Receivership Order is 40 acres.

The fact that the existing single cell facultative lagoon does not currently have a permit from the Department of Natural Resources ("DNR") means that it does not have legal authorization to operate. Such a permit would identify the conditions under which a facility could operate, including whether or not it was allowed to discharge to waters of the state, and the quality that the treated water must attain in order to be discharged. As noted above, the DNR and the Missouri Attorney General's Office have already determined the facility is not in compliance. Staff is aware that in most situations, single cell lagoons of any kind have not been capable of meeting DNR requirements for discharge for many years due to their limited ability to provide treatment.

Thus, the current sewer treatment system is not capable of providing safe and adequate service. Rather than repairs or replacement of malfunctioning parts, a new treatment system must be installed.

Staff's Investigation

Staff conducted an inspection of the sewer system in question on January 27, 2023. Staff observed the single cell facultative lagoon near the center of the property, a lift station near the southeast

corner of the property used to pump sewage to the lagoon, and a field to the north and east of the lagoon proposed for land application of the effluent from the lagoon.

Staff reviewed the application for completeness as part of its investigation. Staff found that while the application stated that a certain amount of land was to be acquired from the Receiver as part of the transaction, the maps and supporting documentation did not indicate that all of this land was in fact being acquired. Staff attempted to clarify this situation by issuance of DRs¹, and through discussions² with Confluence, to no avail.

In order to bring the facility into compliance with DNR and PSC regulations, Confluence proposes to seek permission from DNR to convert the unpermitted single cell lagoon as a storage basin, install pumping equipment, and utilize subsurface land application to dispose of the partially treated wastewater. Staff finds this to be a reasonable plan for remediating the present situation. However, in Staff's experience land is often difficult to obtain for land application systems. It is also crucial that land application be conducted at every opportunity that weather provides, and at the rates approved by DNR. Therefore, ownership or a long term lease that grants full control of the land is appropriate for temporary surface land application devices (such as a traveling gun or sprinklers), and that land ownership is appropriate for permanent structures (such as subsurface drip irrigation lines). In its Application, Confluence proposes to acquire the necessary land as part of the assets, in accordance with the Receivership Order.

According to an Engineering Memorandum prepared for Confluence "The land they initially proposed to use for the irrigation zone still needs to be acquired."³ This statement was directed at 7.49 acres of land identified in a MECO⁴ engineering report as the proposed location for a land application system. In response to DR No. 0028, Confluence stated that 32 acres were being acquired, and that no additional land acquisition would be necessary. This is consistent with the legal description and the map submitted with the application. However this is in conflict with the

¹ Data Request ("DR") Nos. 0027, 0028 and 0029.

² Email between Staff and Confluence, February 14, 2023. Meeting between Staff and Confluence March 20, 2023.

³ Engineering Memorandum, 21 Design, August 10, 2022.

⁴ Hand Delivered to Staff, January 27, 2023.

Receivership Order and observations made by Staff at the property, which indicate 40 acres shall be preserved and protected and not be subdivided.

Conclusion

In order for Staff to recommend approval of an application, it must comply with the law, including that the acquisition must be in the public interest. As part of determining public interest, Staff examines whether the customers will receive safe and adequate service under the feasibility proposals outlined by the Applicant. In this situation, because the customers are not presently receiving safe and adequate service, Staff must examine an applicant's proposal for rectifying the situation. Since the method of wastewater treatment described by Confluence that will be utilized is predicated upon obtaining a significant portion of land, it is critical that the land to be purchased and area to be certificated be correct. Because Confluence is seeking to utilize permanent, subsurface equipment, the most appropriate plan is for Confluence to own the land, rather than seek a long term easement. Purchase of the land would be consistent with the Receivership Order. Despite attempts to work with Confluence as described above, Staff was unable to obtain proper documentation from Confluence to support their application.

20 CSR 4240-3.305(1)(A)5. requires, among other things, "A feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction...". Confluence sought a waiver from this requirement in their application, stating that they would be purchasing an existing sewer system. However, the treatment portion of the system is not providing safe and adequate service and is not recognized by DNR through an operating permit. Confluence has admitted a new treatment system must be constructed⁵. Confluence has been working with engineering firms since some time before August of 2022⁶ on a land application system for this facility. Compared to a mechanical plant, a land application system is relatively simple to design. Therefore it is Staff's position that it is

⁵ Response to Staff DR No. 0006.

⁶ Engineering Memorandum, 21 Design, August 10, 2022.

reasonable for Confluence to have completed plans and specifications for the new treatment system prior to submittal of this application.

Staff's position is that the application does not satisfy 20 CSR 4240-3.305. Specifically:

- 20 CSR 4240-3.305(1)(A)3. requires that the application include a legal description of the area to be certificated. The certificated area must include the customers to be served as well as the system components necessary to serve those customers. Because the legal description in the Receivership Order submitted with the Application conflicts with the legal description of the land to be acquired in the application, it is Staff's position that this regulation has not been satisfied.
- 20 CSR 4240-3.305(1)(A)4. requires a map of the certificated area. Because the map conflicts with the description of the land to be acquired in the Receivership Order, it is Staff's position that this regulation has not been satisfied.

Staff cannot conclude that the application is in the public interest unless ownership of the necessary land is demonstrated.

Recommendation

Staff recommends the application be denied. Staff recommends the applicants refile the application with proper supporting documents in compliance with 20 CSR 4240-3.305(1)(A)3. and 4. and in agreement with the Receivership Order.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

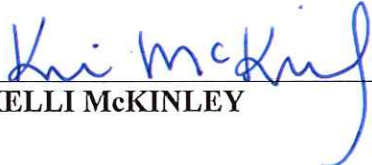
In the Matter of the Application of Confluence)
Rivers Utility Operating Company, Inc. and) File No. SA-2023-0215
Terry Jarrett, Receiver, for Confluence Rivers)
to obtain a Certificate of Convenience and)
Necessity and to Acquire Certain Sewer Assets)

AFFIDAVIT OF KELLI MCKINLEY

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW KELLI MCKINLEY and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Staff Recommendation* in memorandum form; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.



KELLI MCKINLEY

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 6th day of April 2023.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: April 04, 2025
Commission Number: 12412070



Notary Public

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of Confluence)
Rivers Utility Operating Company, Inc. and) File No. SA-2023-0215
Terry Jarrett, Receiver, for Confluence Rivers)
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Necessity and to Acquire Certain Sewer Assets)

AFFIDAVIT OF KERI ROTH

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW KERI ROTH and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Staff Recommendation* in memorandum form; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.


KERI ROTH

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 6th day of April 2023.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: April 04, 2025
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BEFORE THE PUBLIC SERVICE COMMISSION

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Necessity and to Acquire Certain Sewer Assets)

AFFIDAVIT OF ANDREW HARRIS

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW ANDREW HARRIS and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation* in memorandum form; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.



ANDREW HARRIS

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 6th day of April 2023.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: April 04, 2025
Commission Number: 12412070



Notary Public