

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)
Confluence Rivers Utility Operating Company, Inc.,)
For Authority to Acquire Certain Water and Sewer) File No. WA-2019-0299
Assets and for a Certificate of Convenience and)
Necessity)

WAIVER CONCERNING ACQUISITION PREMIUM

COMES NOW Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers” or “Company”), and, as its *Waiver Concerning Acquisition Premium*, states as follows to the Missouri Public Service Commission (“Commission”):

1. Confluence Rivers understands from the Commission’s agenda discussion concerning this case and the procedural conference recently held in this matter, that the Commission desires to assess the net book value of Port Perry Service Company, LLC in regard to what acquisition premium may be present in this transaction with reference to the Missouri Supreme Court’s decision in *State ex rel. AG Processing, Inc. v. Public Service Commission*, 120 S.W.3d 732, 736 (Mo. banc 2003).

2. On remand, this Commission described the *AG Processing* decision as follows:

In its decision remanding this case to the Commission, the Missouri Supreme Court found that the Commission's original Report and Order was lawful, but not reasonable, because it did not decide whether the acquisition premium was reasonable and whether the inclusion of the acquisition premium in the Commission's cost analysis of the merger would make the merger detrimental to the public. The Supreme Court held that "the PSC erred when determining whether to approve the merger because it failed to consider and decide all the necessary and essential issues, primarily the issue of UtiliCorp's being allowed to recoup the acquisition premium." n6 The purpose of this report and order on remand is thus to determine whether UtiliCorp should be allowed to recoup the acquisition premium and whether its ability, or inability, to recoup the premium will have any effect on the Commission's determination that the merger is not detrimental to the public interest.

In the Matter of the Joint Application of UtiliCorp United Inc. and St. Joseph Light & Power Company, Second Report and Order, Case No. EM-2000-292, 2004 Mo.PSC LEXIS 233 (issued February 26, 2004) (emphasis added).

3. Ultimately, the Commission found as follows in the *UtiliCorp United Inc.* matter:

Indeed, since today's decision makes it clear that it is the responsibility of UtiliCorp's shareholders to pay any acquisition premium, there is no need for the Commission to determine whether the price that UtiliCorp chose to pay for SJLP is reasonable.

With the Commission having decided that UtiliCorp will not be allowed to recover any acquisition premium from its ratepayers, the existence of an acquisition premium cannot alter the Commission's evaluation of whether the merger would be detrimental to the public. Therefore, the Commission will reaffirm its determination from its initial Report and Order that the merger between UtiliCorp and SJLP is in the public interest because it is not detrimental to the public.

Id. (emphasis added)

4. As a result, in a number of Commission cases since this decision was issued, the acquisition premium matter raised by *AG Processing* has been addressed by the acquiring utility's statement that it will not seek to recover any acquisition premium that may be found to exist; thus, making the acquisition premium issue irrelevant to the question as to whether a transaction will be detrimental to the public. An example of this approach is found in *In the Matter of Missouri-American Water Company*, Order Granting Certificate of Convenience and Necessity, File No. WA-2017-0181, 2017 Mo. PSC LEXIS 174 (issued April 13, 2017):

Staff also indicated that there was not sufficient information to determine whether the purchase price was above or below the net book value of the Wardsville assets. On March 23, 2017, OPC filed a motion requesting that the Commission direct MAWC to file a statement indicating what its position was with regard to the treatment of an acquisition premium, if any, in this case.

On March 23, 2017, MAWC filed its response to Staff and OPC. MAWC indicated that it had no objection to Staff's recommendations. With regard to OPC's motion, MAWC stated that it would "not seek to recover an acquisition premium if any exists associated with this acquisition."

Thus, the Commission will authorize the transfer of assets and grant MAWC the certificate of convenience and necessity to provide water and sewer service within the proposed service area, subject to the conditions described by Staff above and MAWC's statement that it will not seek to recover an acquisition premium if one exists.

Similar examples may be found in MoPSC Files Nos. SA-2018-0019, WO-2014-0113, and WO-2013-0517.

5. Confluence Rivers has not requested an acquisition premium in this case and, in this pleading, Confluence Rivers seeks to formalize its waiver of acquisition premium recovery related to the to be acquired Port Perry Service Company, LLC assets in a rate case, in hope that it will assist the Commission in moving forward with its decision.

6. Therefore, Confluence Rivers hereby states that it will not seek to recover acquisition premium associated with the acquisition of the assets of Port Perry Service Company, LLC. Supporting references to Confluence Rivers' position may be found in the record at the following locations:

- Exh. 5, Cox Sur., p. 22 – “There is no request for any special ratemaking treatment associated with any acquisition premium that may result. Confluence Rivers would anticipate that the net original cost of the system would be used by the Commission in setting rates;”
- Tr. P. 40, ln. 13 (Cox) – “. . . we’re not looking for acquisition premium . . . ;”
- Tr. P. 62, ln. 15 (Cox) – “We’re not asking for acquisition premium;”
- Tr. P. 150, ln. 10-16 (Counsel Cooper) – “What Mr. Cox had indicated this morning, and what is the position of the Company, is that it understands that,

as Mr. Thomas recognized, that the purchase price may be greater than ultimately the net original cost and that the Company ultimately does not seek -- is not seeking what would, in that situation, be an acquisition premium and believes that that process would not harm its financial standing;"

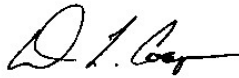
- Tr. P. 151, ln. 6-12 (Counsel Cooper) – “. . . I think Mr. Cox has said in his surrebuttal testimony that he would anticipate that in a rate case the net original cost would be the measure of rate base and if he didn't go this far this morning, I think he intended to say this morning, that, yes. The Company would be waiving the attempt to recover any acquisition premium that might result from that.”

7. Confluence Rivers believes that the testimony in this case concerning its financial wherewithal to purchase and operate the Port Perry Service Company, LLC is also evidence that the failure to recover acquisition premium in this case will not impede Confluence River’s ability to provide safe and adequate service on a going-forward basis.

8. Accordingly, Confluence Rivers asks that the Commission consider the information provided above and, thereafter, find that there is no need for an additional evidentiary hearing in this case.

WHEREFORE, Confluence Rivers respectfully requests that the Commission consider this Waiver and, thereafter, issue such orders as it shall find to be lawful and reasonable.

Respectfully submitted,



Dean L. Cooper, MBE #36592

Jennifer L. Hernandez, MBE #59814

BRYDON, SWEARENGEN & ENGLAND P.C.

312 E. Capitol Avenue

P.O. Box 456

Jefferson City, MO 65012

(573) 635-7166 telephone

(573) 636-7431 facsimile

jhernandez@brydonlaw.com

dcooper@brydonlaw.com

**ATTORNEYS FOR CONFLUENCE RIVERS
UTILITY OPERATING COMPANY, INC.**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on March 4, 2020, to the following:

Office of the General Counsel
staffcounservice@psc.mo.gov
karen.bretz@psc.mo.gov

Office of the Public Counsel
opcservice@opc.mo.gov
john.clizern@opc.mo.gov

David Linton
jdinton@reagan.com

