

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 15th day of December, 2021.

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., for Authority to Acquire Certain Water and Sewer Assets and for Certificates of Convenience and Necessity)	
)	<u>File No. WA-2021-0425</u>
)	<u>File No. SA-2021-0426</u>
)	

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: December 15, 2021

Effective Date: December 25, 2021

On June 25, 2021, Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) filed an application with the Commission requesting a Certificate of Convenience and Necessity (CCN) to install, own, acquire, construct, operate, control, manage, and maintain water and sewer systems in Benton, Clay, Pettis, Platte, and Camden Counties in Missouri. The application also request a variance of the 60-day notice requirement contained in Commission Rule 20 CSR 4240-4.017(1), and a waiver of any requirement that Confluence Rivers provide plans and specifications related to the construction of the distribution and collection systems because it is acquiring existing systems and will not construct systems.

The Commission issued notice and set a deadline for intervention requests, but received none. The Commission also directed its Staff to file a recommendation about Confluence Rivers' application. On November 4, 2021, the Commission's Staff (Staff) recommended the Commission approve Confluence Rivers' request for a CCN, with

16 conditions. On November 15, 2021, Confluence Rivers responded to Staff's recommendation stating that it had no objection to any of the 16 conditions.

Confluence Rivers is a "water corporation," a "sewer corporation," and "public utility" as those terms are defined in Section 386.020, RSMo, and is subject to the jurisdiction of the Commission.

Confluence Rivers is a subsidiary of Central States Water Resources, LLC, which also owns and operates six other water and sewer companies in Missouri. Confluence Rivers currently provides water service to approximately 2,440 customers and sewer service to approximately 2,102 customers in Missouri. Confluence Rivers is current on its water and sewer PSC assessment payments, is current on its annual reports, and is in good standing with the Secretary of State's office.

The requested water CCN would allow Confluence Rivers to provide water service by acquiring three existing water systems: The Missing Well, Inc. (The Missing Well), Ozark Clean Water Company's Spring Branch Subdivision (Spring Branch), and Cedar Green Land Acquisition LLC (Cedar Green).

The requested sewer CCN would allow Confluence Rivers to provide wastewater treatment service by acquiring five existing sewer systems: The Missing Well, Shelton Estates Sewer Company (Shelton Estates), Clemstone Sewer District of Platte County (Clemstone), Prairie Heights LLC – Sullivan (Prairie Heights), and Cedar Green.

The Missing Well

The Missing Well is a not-for-profit corporation run by the Home Owners Association that serves approximately 73 water and sewer customers in Benton, County Missouri. This water and sewer system are located on a tract of land near Warsaw

Missouri that already has several developments. The Commission does not currently regulate the Missing Well's water or sewer system.

The water system serves approximately 204 people through 68 active service connections. The Missing Well water system consists of Well #1, which was installed in 1987, Well #2, and Well #3. Well #1 is not currently operating. The developer did not obtain Missouri Department of Natural Resources (DNR) well permits prior to construction of the wells. Well #2 serves a majority of the system with 57 connections and the well water is not disinfected. Well #1 and Well #2 were permitted through a 2021 Noncompliant Well Agreement. The water has not been sampled consistently.

DNR has determined that The Missing Well is in violation of the Safe Drinking Water Act for installing Well #3 without first obtaining a construction permit from DNR, and for installing a multi-family well instead of a community well (Well #2). DNR offered The Missing Well a Compliance Agreement, but The Missing Well has refused to sign the agreement because of a lack of funds to fulfill the agreement. Confluence Rivers anticipates several improvements including a new well house, a ground storage tank, remote monitoring, magnetic flow meters, new piping, and an updated control system.

The Missing Well sewer system consists of a two-cell lagoon that is over 30 years old and was never permitted by DNR. There is no aeration, mixing, or disinfection of the wastewater prior to discharge. It was not constructed in accordance with an engineering report or construction permit, and only provides partial treatment. The lagoon serves approximately 80 acres of residential area and the current operator believes there are no more than 25 houses directly connected to the lagoon, with the other residences having septic tanks or holding tanks.

Confluence Rivers believes that the treatment plant is not currently equipped to treat wastewater to effluent levels that would be acceptable to DNR. The lagoon was the subject of a DNR enforcement action concerning the development's water system, but DNR has not formally inspected the lagoon in the last five years.

The Missing Well currently does not separately charge its customers for either water or sewer service. Confluence Rivers proposes \$20 water and \$20 sewer rates as an interim rate to recoup a small portion of the operating expenses necessary to run the systems.

Spring Branch

The Spring Branch operates facility is a community public water system located in the Lake of the Ozarks watershed, in Benton County Missouri. The water system serves approximately 131 customers. The Commission does not currently regulate the Spring Branch water system.

Spring Branch is a ground water system with three wells that are normally operated as three separate distribution systems but can be interconnected. All three wells have hydropneumatic pressure tanks and are disinfected with sodium hypochlorite solution.

DNR's last inspection found Spring Branch to be out of compliance with the Missouri Safe Drinking Water Act. DNR identified 20 deficiencies. Some of those deficiencies have been addressed, but the remaining deficiencies will require substantial system improvement.

Staff noted that the above ground portion of the water system appears to be temporary construction with exposed wiring, unsecured chemical injection tubing, and a

poor piping and equipment layout. The system's water storage capacity is limited and does not meet Missouri drinking water standards.

The current water rates for Spring Branch are \$30.99 monthly.

Shelton Estates

Shelton Estates is a not-for-profit corporation that provides sewer service to approximately 20 customers in Clay County, Missouri. Shelton Estates Subdivision is located approximately three miles north of Excelsior Springs. The subdivision is platted for 60 total houses, but no houses have been built within the last fifteen years. Shelton Estates is not currently regulated by the Commission.

The existing facility is about 40 years old and includes a two cell facultative lagoon for secondary treatment. The first cell is approximately 50,000 square feet, while the second is approximately 12,000 square feet. Neither is equipped with aeration or mixing and there is no on site electric service. DNR determined that the lagoon has significant noncompliance issues with the Missouri Clean Water Law. The lagoon has been abandoned for over five years. Confluence Rivers anticipates improvements will be necessary for the lagoon.

It is unknown at this time whether Shelton Estates owns the property where the wastewater lagoon is located. The purchase agreement between Shelton Estates and Confluence Rivers will only become effective if and/or when Shelton Estates has free title to the lagoon property.

The current sewer rates for Shelton Estates are \$35 per month or \$350 per year.

Clemstone

Clemstone is a small public sewer district incorporated by the Circuit Court of Platte County, Missouri, in 1983. Clemstone provides sewer services to approximately 75 customers in Platte County, Missouri. Clemstone is not currently regulated by the Commission.

Clemstone's facility is an extended aeration treatment facility and the treatment process includes flow equalization, activated sludge/aeration treatment, clarification, chlorination & dechlorination. The facility has a design flow of 30,000 gallons per day of domestic sewage and the permit notes an actual flow of 5,900 gallons per day.

DNR found the wastewater treatment system to be out of compliance with the Missouri Clean Water Law. The system has a history of periodically exceeding its permit limits for biological oxygen demand, total suspended solids, E.coli, and ammonia. Confluence Rivers anticipates several necessary improvements.

The current sewer rates for Clemstone are \$60.00 per month.

Prairie Heights

Prairie Heights provides sewer services to approximately 19 customers in the Prairie Heights Subdivision, approximately five miles west of Sedalia in Pettis County, Missouri. Prairie Heights is not currently regulated by the Commission.

The Prairie Heights system provides that residential wastewater flows to one of two septic tanks. All houses with a basement connected to the system contain a grinder pump that pumps the wastewater to a septic tank. Wastewater from houses without basements gravity flows to a septic tank. Wastewater from the two septic tanks gravity flows to the treatment system. The treatment system is a recirculating sand filter about

20 years old. The subdivision is not fully built out, so an increase in population could lead to a flow increase.

DNR inspected the system in March 2019 and found that Prairie Heights was in compliance with the Missouri Clean Water Law. However, the results of Staff's Sunshine Request to DNR and Confluence River's regulatory review indicate that Prairie Heights has a history of non-compliance with ammonia effluent limits.

The current sewer rates for Prairie Heights are \$25 per month.

Cedar Green Land Acquisition LLC (Cedar Green)

Cedar Green provides water and sewer service to approximately 54 customers. It is a resort development in an unincorporated area of Camden County consisting of two condominium buildings and two residential houses. Cedar Green is regulated by the Commission and its current water and sewer rates were approved in File Nos. WA-2013-0117 and SA-2013-0354.

The Cedar Green water system consists of a well house located on a hill above the condominiums off the main road. The source of water is a 610-foot deep well, drilled in 2004 that extends down to 399 feet. A submersible 30 horsepower electric pump was installed and produces approximately 80 gallons-per-minute. The standpipe has a storage capacity of 59,000 gallons. The water is not chlorinated.

The system is currently DNR compliant. However, Staff inspected the water system and observed that the well house showed signs of deterioration and water damage to the ceiling, walls, insulation, and siding. The piping showed signs of corrosion and pitting. The system controls showed signs of age and are obsolete. A portion of the footings and foundation of the 59,000 gallon tank are undermined from erosion.

The Cedar Green collecting sewer consists of 400 feet of three-inch PVC and a lift station. Sewage from the condominium buildings flows by gravity to a lift station between the two condominium units, which pumps it to the treatment facility. Sewage from the single-family residences flows by gravity to the treatment plant. The wastewater treatment plant is an extended aeration plant.

DNR last inspected the system in August 2018, and the system was found to comply with the Missouri Clean Water Law. Confluence Rivers is proposing to upgrade system controls, install remote monitoring and repair, and replace treatment components as needed. Additionally, Confluence Rivers proposes to repair the mechanical building and wood decking, replace the pump, blower, aeration header, repair the collection system and scum baffle, and install remote monitoring and flow measurement equipment.

The current water rate for Cedar Green is a quarterly flat rate of \$80.37 per living unit, and the current sewer rate is a quarterly flat rate of \$142.65 per living unit.

Decision

More than ten days have passed since Staff filed its recommendation and no party has objected to Confluence Rivers' application or Staff's recommendation.¹ No party has requested an evidentiary hearing.² Therefore, the Commission will rule upon Confluence Rivers' application.

The Commission may grant a water or sewer corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for

¹ Commission rule 20 CSR 4240-2.080(13) provides that parties shall be allowed ten days from the date of filing in which to respond to any pleading unless otherwise ordered by the Commission.

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

the public service.”³ The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (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.⁴ These criteria are also known as the Tartan Factors.⁵

There is a current and future need for water and sewer service. The existing customer base for each of the systems being acquired has both a desire and need for service. In addition, there is a need for the necessary steps to be taken to update each of the water and sewer systems being acquired by Confluence Rivers to ensure provision of safe and adequate service. Confluence Rivers has demonstrated that it is qualified to provide the service as it is currently providing safe and reliable water and sewer service to approximately 2,440 water customers and approximately 2,102 sewer customers in its Missouri service areas. Confluence Rivers has demonstrated that it has adequate resources to operate the utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when they arise. Confluence Rivers has the financial ability to provide the service, and no

³ Section 393.170.3, RSMo.

⁴ The factors have also been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.” See 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).

⁵ *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

financing approval is being requested. Confluence Rivers will be adopting existing rates for the systems with the exception of The Missing Well, which does not separately charge its customers for water or sewer service. Confluence Rivers proposes \$20 water and \$20 sewer rates as an interim rate for The Missing Well to recoup some of the operating expenses necessary to run the system. Staff supports the adoption of the existing rates for the systems with rates, and the \$20.00 water and sewer rates for The Missing Well and the Commission finds the existing system rates and the proposed \$20.00 water and sewer rates for The Missing Well to be just and reasonable.

Confluence Rivers' acquisition of these systems promotes the public interest. The public interest is a matter of policy to be determined by the Commission,⁶ and it is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.⁷ Each of these systems require substantial repairs and upgrades to continue to provide safe and reliable water, or sewer service, or both to existing and future customers. Most of these systems have a history of DNR violations. The Commission finds that granting a CCN to Confluence Rivers promotes the public interest.

Based on the application and Staff's recommendation, the Commission concludes that the factors for granting a CCN to Confluence Rivers have been satisfied and that it is in the public interest for Confluence Rivers to provide wastewater treatment services to The Missing Well, Spring Branch, Shelton Estates, Clemstone, Prairie Heights, and Cedar Green, and water service to The Missing Well, Spring Branch, and Cedar Green.

⁶ *State ex rel. Public Water Supply District No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

⁷ *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993).

Therefore, the Commission will grant Confluence Rivers' requested CCN, and also order the conditions described in Staff's recommendation. So that Confluence Rivers may expedite its acquisition and repair of these systems the Commission will make this order effective on December 18, 2021.

THE COMMISSION ORDERS THAT:

1. Confluence Rivers is granted a waiver of the 60-day notice requirement contained in Commission Rule 20 CSR 4240-4.017(1).

2. Confluence Rivers is granted a waiver of any requirement that it provide plans and specifications related to the construction of the distribution and collection systems because it is acquiring existing systems.

3. Confluence Rivers is authorized to acquire, and is granted a CCN to own, install, construct, operate, control, manage, and maintain the water and sewer assets of Cedar Green.

4. Confluence Rivers is authorized to acquire, and is granted a CCN to own, install, construct, operate, control, manage, and maintain the unregulated water and sewer assets of The Missing Well, Shelton Estates, Clemstone, Prairie Heights, and Cedar Green.

5. Confluence Rivers shall set monthly rates for The Missing Well at a flat rate of \$20.00 monthly for water service and a flat rate of \$20.00 monthly for sewer service.

6. Confluence Rivers shall adopt the current existing water and/or sewer rates for Spring Branch, Shelton Estates, Clemstone, Prairie Heights, and Cedar Green.

7. Confluence Rivers shall file notice to adopt the Cedar Green water and sewer tariffs as P.S.C. MO No. 20 and 21, respectively, to become effective before closing

on the assets. Confluence Rivers file tariff sheets to revise the service area map and service area written descriptions for Cedar Green.

8. Confluence Rivers shall submit tariff sheets for Clemstone, The Missing Well, Prairie Heights, Shelton Estates, and Spring Branch to become effective before closing on the assets, to include a service area map, service area written descriptions, rates and charges to be included in its EFIS tariffs P.S.C. Mo No. 12 and 13, applicable to water and sewer service, respectively.

9. Confluence Rivers shall notify the Commission of closing on the assets within five days after such closing.

10. If closing on the water and sewer assets does not take place within 30 days following the effective date of the Commission's order approving such, Confluence Rivers shall submit a status report within five days after this 30-day period regarding the status of the closing, and additional status reports within five days after each additional 30-day period, until closing takes place, or until Confluence Rivers determines that the transfer of the assets will not occur.

11. 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 Cedar Green, Clemstone, The Missing Well, Prairie Heights, Shelton Estates, and Spring Branch service areas in its water and sewer tariffs, and rate and charges sheets applicable to customers in those service areas in both the water and sewer tariffs.

12. Confluence Rivers shall keep its financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts.

13. Confluence Rivers shall evaluate the soil and rock erosion around the Cedar Green ground storage tank and install shoring as required and file a notification in EFIS when completed.

14. Confluence Rivers shall file a notification in EFIS for each facility when construction has been completed to bring The Missing Well, Spring Branch and Shelton Estates into compliance with DNR regulations.

15. Within one year of closing on the assets of The Missing Well, Confluence Rivers shall close and properly abandon Well #1 at The Missing Well in accordance with DNR regulations, and file a notification in EFIS when this abandonment is completed.

16. Confluence Rivers shall provide training to its call center personnel regarding rates and rules applicable to the water and sewer customers in each of the acquired areas.

17. Confluence Rivers shall distribute to the customers in each of the acquired areas an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water or sewer service, or both, consistent with the requirements of Commission Rule 20 CSR 4240-13, within 30 days of closing on the assets.

18. Confluence Rivers shall provide to the Customer Experience Department (CXD) Staff an example of its actual communication with the water and sewer customers of each acquired company regarding its acquisition and operations of the water and sewer

system assets, and how customers may reach Confluence, within 10 days after closing on the assets.

19. Confluence Rivers shall provide to the CXD Staff a sample of billing statements from the first month's billing for each of the acquired companies within 10 days after the initial bill.

20. 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 10 days after such communications and notifications.

21. This order shall become effective on December 25, 2021.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

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

Clark, 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 15th day of December, 2021.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

December 15, 2021

File/Case No. WA-2021-0425 and SA-2021-0426

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

Sincerely,



**Morris L. Woodruff
Secretary**

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