

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

In the Matter of the Application of )  
Confluence Rivers Utility Operating )  
Company, Inc., to Acquire Certain Water ) **File No. WM-2020-0282**  
and Sewer Assets, and For Certificates of )  
Convenience and Necessity )

**MOTION TO DISMISS, OR IN THE ALTERNATIVE,  
FOR ADDITIONAL NOTICE AND RE-ESTABLISHMENT  
OF AN INTERVENTION PERIOD**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”) and for its *Status Report*, states as follows:

1. On March 11, 2020, Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers”), filed its *Application and Motion for Waiver* in File Nos. WM-2020-0282 and SM-2020-0283, seeking authority pursuant to 393.170 and 393.190, RSMo, and 20 CSR 4240-2.060, 3.600, 10.105, and 4.017(1)(D) to acquire sewer and water utility assets in multiple transactions from various entities in the following Missouri counties: Audrain, Lincoln, Madison, Polk, St. Francois, Taney, Warren, and Washington. In addition, Confluence Rivers seeks to expand a sewer utility certificate in Franklin County and to acquire, if necessary, new water or sewer utility certificates of convenience and necessity

2. On March 16, 2020, the Commission issued its *Orders Directing Notice and Setting Dates for Submission of Intervention Requests and Staff’s Recommendation* in File Nos. WM-2020-0282 and SM-2020-0283; in its Orders, the Commission set intervention deadlines of April 16, 2020, and directed Staff to file, no later than April 30, 2020, a recommendation regarding Confluence Rivers’ Application, or a status report advising when it expects to file a recommendation.

3. On March 23, 2020, Confluence Rivers filed its *Supplement to Application*, stating that subsequent to the filing of its initial application, Central States Water Resources Inc. (“Central States”)<sup>1</sup> entered into a *First Amendment to Purchase and Sale Agreement* with Terre Du Lac Utilities Corporation (“Terre Du Lac”). The amendment is attached thereto as Appendix A1-C.

4. No applications to intervene were submitted in either File No. WM-2020-0282 or File No. SM-2020-0283, and on April 17, 2020, the Commission issued its *Order Consolidating Cases* consolidating both cases, and directing all future filings be made in File No. WM-2020-0282.

5. On April 30, 2020, Staff filed its *Status Report*, advising the Commission that a number of Staff’s data requests to Confluence Rivers were awaiting reply, and that the circumstances surrounding the COVID-19 pandemic have interfered with necessary inspections. In response to Staff’s *Status Report*, the Commission issued its *Order Directing Filing* ordering the Commission’s Staff to file a recommendation regarding Confluence River’s application no later than June 30, 2020.

6. Subsequent to the Commission’s *Order Directing Filing*, on May 8, 2020, Confluence Rivers filed its *Application for Acquisition Incentive Related to the Acquisition of the Terre Du Lac Nonviable Water and Sewer Systems* (“Application for Acquisition Incentive”) within File No. WM-2020-0282, seeking a rate of return premium, debt acquisition adjustment, or both, related to the purchase of the

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<sup>1</sup> Central States is under common ownership with Confluence Rivers, and is the entity that has entered into a *Purchase and Sale Agreement* with Terre Du Lac. A copy of that agreement is attached as Appendix A-C to Confluence Rivers’ March 11, 2020, *Application and Motion for Waiver*.

water and sewer asset of Terre Du Lac Utilities Corporation, and pursuant to Commission Rule 20 CSR 4240-10.085.

7. Staff has initial concerns relating to Confluence's *Application for Acquisition Incentive*; namely, in regard to the records relating to original cost and contributions in aid of construction ("CIAC") amounts for Terre Du Lac submitted by the Company. Pursuant to 20 CSR 4240-10.085, in order to aid in quantifying a utility seeking an acquisition incentive to provide a variety of information concerning the plant, depreciation reserve, and CIAC balances of the acquired assets.<sup>2</sup> While the rule allows for any information not available from the seller to be reasonably estimated,<sup>3</sup> based upon its recent audit experience with Terre Du Lac, Staff expects that all, or at the very least, most of the information required under 20 CSR 4240-10.085(3)(A)2.A through H to be obtainable from Terre Du Lac, and be available for review as part of an acquisition incentives request.<sup>4</sup> Despite this, Confluence Rivers appears to have based its valuation of the net book value of Terre Du Lac entirely on estimates prepared by an outside consultant using selective annual reports, and does not appear to be supported in any way by information Staff believes should be directly available from Terre Du Lac. While the Rule states that the acquiring utility must exercise due diligence and make reasonable efforts to obtain necessary information from the seller, Confluence Rivers provided no explanation as to why plant, reserve, and CIAC information was not available and not used in submitting its *Application for Acquisition Incentive*. Staff views Confluence Rivers' failure to provide

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<sup>2</sup> See 20 CSR 4240-10.085(3)(A)

<sup>3</sup> 20 4240-10.085(3)(B) states, "any information not available from the seller shall be estimated by the acquiring utility, along with documentation supporting the reasonableness of the estimates developed."

<sup>4</sup> This expectation is further supported by TDLU being a signatory of a Partial Disposition Agreement in its last rate case (Case Nos. WR-2017-0110 and SR-2017-0111) in which it committed to maintain appropriate ongoing recordkeeping of its plant additions and retirements of a nature that would be directly relevant to the requirements of the Rule at (3)(A)2.A through H.

documents obtained from Terre Du Lac relating to original cost and contributions in aid of construction amounts, as highly problematic, and intends to thoroughly review this matter.

8. Of most pressing concern, however, is that 20 CSR 4240-10.085(2) requires that an application for an acquisition incentive be filed “at the beginning of a case seeking authority under section 393.190 or 393.170, RSMo.” Yet, Confluence Rivers did not file such an application in conjunction with its March 11<sup>th</sup> *Application and Motion for Waiver* initiating this matter, nor its March 23<sup>rd</sup> *Supplement to Application*. Instead, Confluence Rivers waited nearly two months after it first filed for authority to acquire the water and sewer assets of Terre Du Lac, and after the deadline for applications for intervention has passed, to request an acquisition incentive. Further, while 20 CSR 4240-10.085(8) provides that provisions of the Commission’s Incentives for Acquisition of Nonviable Utilities Rule may be waived for good cause shown, no such waiver was requested by Confluence Rivers. Finally, as the Commission originally directed Staff to either file a recommendation, or a status report advising when it expects to file a recommendation, no later than April 30, 2020, it can hardly be deemed to be “at the beginning of the case.” Therefore, to the extent that Confluence Rivers has failed to meet the requirements of 20 CSR 4240-10.085(2), Staff moves that the Commission dismiss Confluence Rivers’ *Application for Acquisition Incentive*.

9. However, Staff recognizes that it has yet to complete a Recommendation in this matter, and no testimony has been filed by any party.<sup>5</sup> Staff also notes that pursuant to Commission Rule 20 CSR 4240-2.205, the Commission may, on its own volition, waive

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<sup>5</sup> Commission Rule 20 CSR 4240-2.116(1) provides that an applicant or complainant may voluntarily dismiss an application or complaint without an order of the commission at any time before prepared testimony has been filed or oral evidence has been offered by filing a notice of dismissal with the commission.

any rule or provision of a rule promulgated by it. That being said, Confluence Rivers' May 8<sup>th</sup> *Application for Acquisition Incentive* constitutes a significant modification to its original request that has the potential to considerably expand the scope of Staff's (and other parties') analysis in this case. The request for acquisition incentives in conjunction with Confluence Rivers' application to obtain the water and sewer assets of Terre Du Lac could also give rise to interest from third parties to request intervention in this case. Therefore, to the extent the Commission considers Confluence's *Application for Acquisition Incentive* to have been properly "filed at the beginning" of this matter, or to the extent the Commission believes there is sufficient cause to waive the requirements of 20 CSR 4240-10.085(2), Staff requests, as an alternative to dismissal, the Commission direct additional notice be given, and re-establish a period for interested parties to request intervention in the matter.

**WHEREFORE**, Staff respectfully submits its *Motion to Dismiss, or In the Alternative, for Additional Notice and to Re-Establish Intervention Period*, and prays the Commission issue an order dismissing Confluence Rivers' *Application for Acquisition Incentive*; or, in the alternative, directing notice of Confluence Rivers' *Application for Acquisition Adjustment* be given, and establishing a further deadline for applications for intervention; and grant such other and further relief as the Commission considers just in the circumstances.

Respectfully submitted,

**/s/ Mark Johnson**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all parties and/or counsel of record on this 15<sup>th</sup> day of May, 2020.

**/s/ Mark Johnson**