

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 9th day of December, 2020.

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

**ORDER APPROVING ACQUISITION OF WATER AND SEWER ASSETS
AND GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY**

Issue Date: December 9, 2020

Effective Date: January 8, 2021

Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) on March 11, 2020, applied for authority to acquire the sewer and water utility assets of Branson Cedars Resort Utility Company, LLC (Branson Cedars); the water utility assets of Fawn Lake Water Corp. (Fawn Lake) and P.A.G. LLC d/b/a Prairie Heights Water Company (Prairie Heights); and the sewer utility assets of Freeman Hills Subdivision Association (Freeman Hills) and a sewer system serving the DeGuire subdivision in Madison County (DeGuire).¹ Confluence Rivers also seeks the Commission’s approval to transfer Branson Cedars’ certificates of convenience and necessity (CCNs) to Confluence Rivers and asks the Commission to grant CCNs for the Fawn Lake, Prairie Heights, Freeman Hills and DeGuire systems. In addition, Confluence Rivers requests an expansion of its existing service area under a CCN it holds for sewer service in the Villa

¹ On April 17, 2020, Confluence Rivers’ application as to sewer utility assets, File No. SM-2020-0283, was consolidated with this case concerning water utility assets, File No. WM-2020-0282. On June 1, 2020, Confluence Rivers withdrew from the consolidated case the portion of its application pertaining to Terre Du Lac Utilities Corporation. On June 12, 2020, Confluence Rivers filed a new application concerning Terre Du Lac in File No. WM-2020-0403, consolidated with File No. SM-2020-0404.

Ridge subdivision in Franklin County (Villa Ridge). Finally, Confluence Rivers requests waiver of the 60-day notice requirement under Commission Rule 20 CSR 4240-4.017.

On July 17, 2020, the Staff of the Public Service Commission (Staff) recommended that the Commission approve Confluence Rivers' application, subject to specified conditions.² On July 20, 2020, the Office of the Public Counsel (OPC) asked the Commission to suspend the deadline for response to Staff's recommendation, order Confluence Rivers to provide notice of the pending acquisitions to all customers on the systems to be acquired and set a date or dates for a local public hearing. After receiving responses from Staff and Confluence Rivers, the Commission scheduled a virtual public hearing and ordered Confluence Rivers to provide notice to customers associated with the water and sewer assets subject to the application.

The Commission held a virtual public hearing on August 13, 2020, and heard from three witnesses.³ After the public hearing, the Commission reinstated a deadline for response to Staff's recommendation. OPC did not file a response. On August 24, 2020, Confluence Rivers filed a response to Staff's recommendation and stated "no objection" to the conditions recommended by Staff for approval of the application.

Confluence Rivers' response to Staff's recommendation also states the company disagrees with Staff regarding net book value of the systems it seeks to acquire. The parties agree that if the acquisitions are approved by the Commission, "an updated rate base level will be established" in the next rate case for these systems.⁴

² The recommendation filed by Staff consists of a *Staff Recommendation* and a memorandum, attached as Appendix A. The memo reports Staff's analysis and states Staff's recommendations and conclusions in detail, including the specific conditions proposed by Staff. References to Staff's recommendation are to the filing document and the attached memorandum as a whole.

³ *Transcript of Virtual Public Hearing*, File No. WM-2020-0282 (Aug. 24, 2020).

⁴ *Confluence Rivers' Response to Staff Recommendation*, ¶16 (Aug. 24, 2020); *Staff Recommendation, Appendix A: Memorandum*, p. 17 (July 17, 2020).

On September 23, 2020, the Commission directed Confluence Rivers to respond to the Commission's written queries with a verified supplement of its application.⁵ The Commission requested additional information about the financial statements included in the application and the improvements contemplated for each of the systems to be acquired. Also on September 23, 2020, the Commission directed Staff to respond to a set of written queries with a supplement to its recommendation.⁶ The Commission's questions to Staff concerned Staff's review of the cost, viability and urgency of system improvements proposed by Confluence Rivers.

On October 7, 2020, Confluence Rivers and Staff filed responses to the Commission's queries. As directed by the Commission, Confluence Rivers responded in a verified supplement to its application. Confluence Rivers' filing included an updated income statement and balance sheet. In addition to answering the Commission's questions, Staff requested additional time to file more than 250 photos taken during inspection of the subject systems. On October 9, 2020, the Commission suspended until further order the requirement that Staff submit such photos.

No additional responses to Staff's recommendation or Confluence Rivers' supplement to its application have been received, and the time for responses has expired.⁷ The Commission has received no requests to intervene in this case. No party has requested a hearing; any hearing requirement is met when the opportunity for hearing is provided.⁸ The Commission will take up Confluence Rivers' application unopposed.

Confluence Rivers is a public utility, sewer corporation and water corporation,

⁵ *Order Directing Responses Regarding Confluence Rivers' Application* (Sept. 23, 2020).

⁶ *Order Directing Responses Regarding Staff's Recommendation* (Sept. 23, 2020).

⁷ Commission Rule 20 CSR 4240-2.080(13) allows parties 10 days to respond to pleadings unless otherwise ordered by the Commission.

⁸ *State ex rel. Rex Deffenderfer Enters., Inc. v. Pub. Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App. 1989).

subject to Commission jurisdiction.⁹ Confluence Rivers provides water and sewer utility services in several areas throughout Missouri. The company's application indicates it provides water service to about 547 customers and sewer service to about 636 customers, which is consistent with the figures determined in its most recent rate case, File No. WR-2020-0053.

Staff reports Confluence Rivers is a subsidiary of Central States Water Resources, LLC, (CSWR) which owns water and sewer companies in Missouri, as well as water and sewer systems in Arkansas, Tennessee, Kentucky, and Louisiana. CSWR also owns Central States Water Resources, Inc. (Central States). Central States entered into sale agreements with Branson Cedars, Freeman Hills and the owners of Prairie Heights and DeGuire.¹⁰ Each of these agreements provide that Central States will assign its interests to Confluence Rivers at closing. Similarly, Elm Hills Utility Operating Company, Inc., which is owned by Central States,¹¹ entered into a sale agreement with Fawn Lake, under which Elm Hills will assign its rights to Confluence Rivers at closing.

REGULATED UTILITY ASSETS

Confluence Rivers' application concerns acquisition of both regulated systems and utility systems not now regulated by the Commission.

Branson Cedars

Branson Cedars¹² serves 64 water units and 60 sewer units in the Branson Cedars

⁹ Section 386.020(43),(49),(59), RSMo (Cum. Supp. 2019). Citations to Missouri statutes are to the Revised Statutes of Missouri (2016), unless otherwise stated.

¹⁰ The Prairie Heights sale agreement includes Prairie Heights and Patricia Gardner. DeGuire is owned by Mr. Mark Edgar.

¹¹ *Application and Motion for Waiver*, File No. WA-2019-0235 (identifying Central States as Elm Hills' "corporate parent"); *Elm Hills Annual Report for 2019*, p. 2 (April 30, 2020).

¹² Branson Cedars Resort Utility Company, LLC is a limited liability company formed in 2013 and listed as active with the Missouri Secretary of State.

Resort development in Taney County. Most of Branson Cedars' customers own rental units that are not occupied full time. The Commission granted Branson Cedars a CCN in 2015,¹³ and Branson Cedars is a water corporation and sewer corporation subject to the Commission's jurisdiction.¹⁴

After Confluence Rivers' acquisition of the utility assets, Branson Cedars will retain one well, which will be used for water features and irrigation, and Branson Cedars will no longer distribute, sell, or in any manner supply water "for gain."¹⁵

Villa Ridge

Confluence Rivers seeks permission to expand its existing service territory under a CCN for sewer service in the Villa Ridge subdivision in Franklin County. In February 2019, the Commission authorized Confluence Rivers to acquire the Villa Ridge assets, which were certificated to the former owner in 1987.¹⁶ Confluence Rivers' application indicates it has learned the former utility company provided service to three customers located beyond the service territory. Staff confirms sewer service is now being provided to three Villa Ridge customers outside the service territory as it is currently described and recommends the Commission authorize Confluence Rivers to expand the service territory.

¹³ File No. WA-2015-0049.

¹⁴ Sections 386.020(59) and 386.020(49), RSMo (Cum. Supp. 2019).

¹⁵ A water use agreement to be executed by Branson Cedars and Confluence Rivers is expected to allow the well retained by Branson Cedars to serve as a secondary source of water for Confluence Rivers. *Staff Recommendation, Appendix A: Memorandum*, p. 4, n.1, n.2 (July 17, 2020).

¹⁶ *Order Approving Stipulation and Agreement and Granting Certificates of Convenience and Necessity*, File No. WM-2018-0116 (Feb. 14, 2019) (approving acquisition of assets from M.P.B., Inc.). M.P.B., Inc. obtained a CCN in File No. SM-87-52.

UNREGULATED UTILITY SYSTEMS

Fawn Lake

Fawn Lake¹⁷ provides water service to 29 customers near Fawn Lake Air Park in Warren and Lincoln counties. Fawn Lake has been the subject of a Staff complaint for violating Missouri statute by operating a water system without a CCN, failing to provide safe and adequate service and failing to promote and safeguard the public health.¹⁸ The Commission authorized its general counsel to file suit in December 2017 after Fawn Lake defaulted in Commission proceedings. Staff reports the Missouri Department of Natural Resources (DNR) issued notices of violation to Fawn Lake in 2016, and the system returned to compliance in 2018. A problem with a well head was discovered and corrected in a 2019 inspection, which also noted an undersized hydropneumatic tank.

Prairie Heights

Prairie Heights¹⁹ provides water service to about 54 customers in the Prairie Heights subdivision in the city of Bolivar in Polk County. Staff reports DNR records show the system was inspected by DNR most recently in January 2020, and DNR indicated no violations of safe drinking water regulations for the previous two years.

Freeman Hills

Freeman Hills²⁰ provides sewer service to about 16 customers in the Freeman Hills subdivision, near the city of Mexico in Audrain County. Staff reports DNR issued notices of violation to Freeman Hills in 2014 and the facility was cited for pollution. In

¹⁷ Fawn Lake Water Corp. is a for profit corporation in good standing with the Missouri Secretary of State.

¹⁸ File No. WC-2015-0330.

¹⁹ P.A.G. LLC d/b/a Prairie Heights Water Company is a limited liability company formed in 2008 and listed as active with the Missouri Secretary of State.

²⁰ Freeman Hills Subdivision Association is a nonprofit corporation formed in 2005 and in good standing with the Missouri Secretary of State.

December 2016, Freeman Hills entered a DNR abatement order, which set deadlines for addressing the violations. Staff reports DNR records indicate Freeman Hills remained out of compliance as of at least May 2019, when DNR requested Freeman Hills commit to system upgrades or sell the system to an operator who will bring the system into compliance.

DeGuire

The DeGuire system provides sewer service to about 24 residential customers and four commercial customers in the DeGuire subdivision, south of Fredericktown in Madison County. Staff reports DeGuire's operating permit expired in February 2006. Staff's review of DNR records indicates DNR issued DeGuire a letter of warning in November 2019²¹ after concluding the system was in violation of the Missouri Clean Water Law and water protection regulations for failure to seek timely renewal of its operating permit and failure to file discharge monitoring reports. DNR also noted fence damage and rodent activity.

ACQUISITION OF ASSETS

Commission approval is required for both the transfer of the Branson Cedars' utility assets and Confluence Rivers' acquisition of the Fawn Lake, Prairie Heights, Freeman Hills and DeGuire systems.²² The Commission may approve such transactions as long as they are not shown to be "detrimental to the public interest."²³ Staff evaluated Confluence Rivers' technical, managerial, and financial capacity (TMF) to determine whether the proposed transfer and acquisitions are detrimental to the public interest. Staff advises that Confluence Rivers satisfies the TMF criteria.

²¹ According to Staff's recommendation, DNR records indicate DeGuire did not respond to the letter of warning by December 23, 2019, as requested by DNR.

²² Section 393.190.

²³ *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980); *State ex rel. City of St. Louis v. Pub. Serv. Comm'n*, 73 S.W.2d 393, 400 (Mo. banc 1934).

Confluence Rivers is an established water and sewer utility that, as discussed above, provides service to more than 500 water customers and more than 600 sewer customers in Missouri. Staff observes Confluence Rivers has the technical ability to operate the subject utilities. Staff also concludes Confluence Rivers' managerial capacity is adequate, in that the company has adequate customer service employees to manage customer requests and meet regulatory requirements for all of the systems. Staff raises no concerns regarding Confluence Rivers' financial capacity, and observes it has access to capital through CSWR. Staff concludes that the proposed transfers of assets are not detrimental to the public interest.

CERTIFICATES OF CONVENIENCE AND NECESSITY

In addition to approval of the acquisitions at issue in this case, Confluence Rivers also seeks the necessary certificates of convenience and necessity to provide utility service in the areas currently served by the acquired systems. The Commission may grant a water corporation or sewer corporation a certificate of convenience and necessity after determining that such construction and operation are either "necessary or convenient for the public service."²⁴ The Commission has stated five criteria that it uses to determine necessity or convenience:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the 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.²⁵

²⁴ Section 393.170.3, RSMo.

²⁵ *In re Tartan Energy Co.*, 3 Mo. P.S.C. 173, 177 (1994).

Staff recommends Confluence Rivers' application for CCNs satisfies these standards, which are often referred to as the "Tartan" criteria or factors. Staff observes the need for the service is evident because the customers of Branson Cedars, Fawn Lake, Prairie Heights, Freeman Hills, and DeGuire are receiving service and will continue to require service. In addition, some of the systems require improvements to provide safe and adequate service in compliance with law. Staff advises Confluence Rivers is qualified to provide service based on its established record in providing water and sewer service to other Missouri customers. Staff also advises Confluence Rivers has demonstrated its financial ability by making appropriate investment in its current operations. Finally, Staff recommends the proposed transactions are economically feasible because no rate change is requested. In addition, Staff proposes that the improvements in service that Confluence Rivers can provide to the acquired systems are in the public interest.

MAINTENANCE OF CURRENT RATES AND TARIFFS

Confluence Rivers proposes to continue providing service at all of the acquired systems' current monthly rates after acquisition.²⁶ Confluence Rivers' application asserts that the current rates do not reflect the cost of providing service and the company expects to seek a rate increase after investments have been made to improve the systems. The Commission has not evaluated the necessity or prudence of any proposed improvements; the prudence of any system improvement will be evaluated in a subsequent rate proceeding.

As unregulated systems, the rates for Fawn Lake, Prairie Heights, Freeman Hills and DeGuire were established by the current owners without Commission approval.

²⁶ Branson Cedars' current water and sewer rates became effective on December 3, 2018, in File No. WR-2018-0356.

Staff's recommendation states that it is not now known how closely the current rates align with the cost of operations. The current rates for each system, including commodity charges when applicable, are specified in Staff's recommendation.²⁷ Staff recommends Confluence Rivers be required to submit tariff modifications to adopt the current rates for Fawn Lake, Prairie Heights, Freeman Hills and DeGuire in Confluence Rivers' water and sewer tariffs, respectively.

DECISION

The Commission finds that Confluence Rivers' acquisition of the specified water and sewer assets is not detrimental to the public interest. Further, the Commission finds that Confluence Rivers possesses adequate technical, managerial, and financial capacity to operate the water and sewer systems it seeks to purchase. The Commission concludes the criteria for granting CCNs to Confluence Rivers have been satisfied and that it is in the public interest for Confluence Rivers to provide water and sewer service to the areas currently served by the assets to be acquired. Subject to the conditions in Staff's recommendation, the Commission will authorize the sale of the Branson Cedars assets and approve Confluence Rivers' acquisition of Branson Cedars, Fawn Lake, Prairie Heights, Freeman Hills and DeGuire. The Commission will grant Confluence Rivers certificates of convenience and necessity to provide water and sewer service within the Branson Cedars service area. The Commission will grant Confluence Rivers certificates of convenience and necessity to provide water service within the Fawn Lake and Prairie Heights service areas and sewer service within the Freeman Hills and DeGuire service

²⁷ *Staff Recommendation, Appendix A: Memorandum*, p. 19 (July 17, 2020). Confluence Rivers proposes to charge \$20.00 per month for monthly service to Prairie Heights customers; Confluence Rivers estimated the current Prairie Heights flat rate at \$19.08 per month based on the system's income data. Staff recommends the Commission approve the \$20.00 flat rate based on the Staff's conclusion that a \$19.08 rate is "very unlikely to cover existing cost of service."

areas. In addition, the Commission will authorize Confluence Rivers to expand the Villa Ridge service territory.

Confluence Rivers and Staff acknowledge a disagreement about net book value of the systems to be acquired, and this order makes no finding in regard to net book value. To assist the Commission in establishing rate base for the systems to be acquired pursuant to this order,²⁸ the Commission will direct Confluence Rivers to file specific information for each system when it next seeks a rate adjustment for Fawn Lake, Prairie Heights, Freeman Hills or DeGuire. Likewise, to enable the Commission to evaluate improvements made to such systems in a future rate proceeding, the Commission will direct Confluence Rivers to file engineering and technical reports and additional project information for each system when it next seeks a rate adjustment for any of the systems acquired pursuant to this order.

Finally, the Commission will grant Confluence Rivers' request for waiver of the 60-day notice requirement under 20 CSR 4240-4.017. The Commission finds good cause exists for waiver, based on Confluence Rivers' verified declaration that it had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before Confluence Rivers filed its application.

THE COMMISSION ORDERS THAT:

1. Branson Cedars is authorized to sell and transfer utility assets to Confluence Rivers and, upon closing, Confluence Rivers is granted a certificate of convenience and necessity to serve those assets.

²⁸ Relevant statutes include but are not limited to sections 386.250, 393.130, 393.140 and 393.230, RSMo (2016). The Commission's directive includes the types of information that may be considered in a rate case, including in the Staff investigation provided for in a staff-assisted rate case under Commission Rule 20 CSR 4240-10.075(8).

2. Upon closing of the asset transfer, Confluence Rivers is authorized to begin providing service and Branson Cedars is authorized to cease providing service.

3. Confluence Rivers is authorized to expand its Villa Ridge service area as requested to add three customers at the end of Bridgewater Hill Drive.

4. Confluence Rivers is authorized to acquire the utility assets of Fawn Lake, Prairie Heights, Freeman Hills and DeGuire.

5. Confluence Rivers is granted certificates of convenience and necessity to install, acquire, build, construct, own, operate, control, manage and maintain water systems in the areas currently served by Fawn Lake and Prairie Heights.

6. Confluence Rivers is granted certificates of convenience and necessity to install, acquire, build, construct, own, operate, control, manage and maintain sewer systems in the areas currently served by Freeman Hills and DeGuire.

7. Confluence Rivers shall use the depreciation rates for water and sewer utility plant accounts recommended by Staff and attached to Staff's recommendation.

8. The authority granted by this order is subject to the following conditions, as set forth in Staff's recommendation:

- a. A 2019 annual report shall be filed for Branson Cedars;
- b. Prior to closing on the Branson Cedars assets, Confluence Rivers shall submit an adoption notice to adopt the existing Branson Cedars tariffs;
- c. Within 15 days after closing on the Branson Cedars assets, Confluence Rivers shall formalize a water usage agreement with Branson Cedars or another entity as a back-up source of supply for the Confluence Rivers system and provide a copy of the agreement to Staff;

- d. Confluence Rivers shall promptly file tariff sheets to revise the service area map and legal description for the Villa Ridge service area;
- e. Confluence Rivers shall submit tariff modifications to adopt the rates, maps, and legal descriptions for Fawn Lake and Prairie Heights in PSC MO No. 12, including an updated map for Fawn Lake and updated legal description for Prairie Heights, as attached to and described in Staff's recommendation;
- f. Confluence Rivers shall submit tariff modifications to adopt the rates, maps, and legal descriptions for Freeman Hills and DeGuire in PSC MO No. 13;
- g. Confluence Rivers shall notify the Commission of closing within five days of closing on any of the assets in this case;
- h. If closing on any of the assets in this case does not occur within 30 days after the effective date of this order, Confluence Rivers shall file a report on the status of the transaction(s) within five days after the initial 30-day period expires, and subsequent status reports within five days after each subsequent 30-day period, until closing takes place or until Confluence Rivers files a notice stating closing will not occur;
- i. Confluence Rivers shall notify the Commission if Confluence Rivers determines it will not acquire any of the subject assets. At such time, the Commission may modify, cancel, and/or deem null and void any CCN issued to Confluence Rivers for the relevant service area and may require filing of any necessary and appropriate tariffs;

- j. Confluence Rivers shall create and keep financial books and records for plant-in-service, revenues, and operating expenses (including invoices) in accordance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USoA);
- k. Before the customers acquired in this case receive notification from Confluence Rivers of the pending acquisition(s), Confluence Rivers shall provide training to its call center personnel regarding rates and rules applicable to customers acquired in this case;
- l. Within 15 days of closing on the assets and prior to the first Confluence Rivers billing to customers acquired in this case, Confluence Rivers shall distribute to the customers acquired in this case an informational brochure detailing the rights and responsibilities of the utility and its customers regarding utility service, consistent with the requirements of Commission Rule 20 CSR 4240-13, as well as notification regarding changes to the billing cycle, bill format, and payment options;
- m. Within 15 days after closing on the assets, Confluence Rivers shall provide to the Commission's Customer Experience Department a sample of its actual communication with its newly acquired customers regarding its acquisition and operation of the utility assets and how customers may contact Confluence Rivers;
- n. Within 30 days of Confluence Rivers' first billing for each acquired system in this case, Confluence Rivers shall provide to the Commission's Customer Experience Department a sample of five billing statements from the first month's billing;

o. Confluence Rivers shall file notice in this case when the requirements stated above, addressing staff training, informational brochures, communications, and billing, are complete;

9. With its next filing for a general rate increase that includes Fawn Lake, Prairie Heights, Freeman Hills or DeGuire, Confluence Rivers shall file for each system included in the rate request:

a. All independent engineering reports, including any reports now in existence, that estimate the value of the utility system assets when first placed into service. Such filings shall identify the calculation method used to derive the original cost estimates; and

b. The amounts and calculations in compliance with the applicable NARUC USoA for accumulated depreciation, contributions in aid of construction (CIAC) and CIAC amortization for all utility system plant accounts through the 12-month period used to calculate the annual operating revenue request.

Such filings shall be filed in the rate case in the Commission's electronic filing information system (EFIS).

10. With its next filing for a general rate increase that includes any system acquired pursuant to this order, Confluence Rivers shall file for each system included in the rate request:

a. All engineering and technical reports prepared for Confluence Rivers by technical consultants or engineers prior to acquisition of the system;

b. All engineering and technical reports prepared for Confluence Rivers by technical consultants or engineers after acquisition of the system; and

- c. A list of all projects completed since acquisition of the system, including for each project: a project description, completion date, total project cost and source of project funds.

Such filings shall be filed in the rate case in EFIS.

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

12. Staff is relieved of the obligation to submit in this case any photos from Staff's inspection of each of the systems proposed for acquisition in this case.

13. The 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) is waived for good cause.

14. This order shall be effective on January 8, 2021.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

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

Jacobs, Regulatory Law Judge