

**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)	<u>File No. WM-2020-0403</u>
and Sewer Assets of Terre Du Lac Utilities)	
Corporation)	

STAFF RECOMMENDATION

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

1. On June 12, 2020, Confluence Rivers Utility Operating Company, Inc. (“Confluence”) filed its *Application and Motion for Waiver*, seeking authority to acquire substantially all of the water and/or sewer assets of Terre Du Lac Utilities Corporation (“TDLU”) and approval of the transfer of TDLU’s existing certificates of convenience and necessity (“CCNs”), or for the Commission to grant new CCNs authorizing Confluence to own, install, construct, operate, control, manage and maintain the systems it proposed to acquire. Confluence also seeks a rate of return premium and debt acquisition adjustment under Commission Rule 20 CSR 4240-10.085(1)(C), and a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1).

2. On July 7, 2020, Staff filed its *Status Report*, indicating when it would be able to file a recommendation. That same day, the Commission issued its *Order Directing Filing*, ordering Staff to file its recommendation no later than August 21, 2020.

3. On August 14, 2020, Staff filed its *Motion for Extension*, and on that same day, the Commission issued its *Order Extending Deadline*, directing Staff to file its Recommendation no later than September 18, 2020.

4. Pursuant to § 393.190, RSMo, no water corporation shall “sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.” When deciding whether to approve a regulated entity’s request to transfer assets pursuant to § 393.190 RSMo, the Commission must determine that the transfer is “not detrimental to the public interest.”¹

5. Further, Pursuant to § 393.170, RSMo, no water corporation shall provide service to consumers without first having obtained approval from the Commission. In determining whether or not to grant such approval, the Commission has traditionally applied the five “Tartan Criteria” established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994): (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 service; (4) the applicant’s proposal must be economically feasible; and (5) the service must promote the public interest.

6. When considering applications proposing the transfer of the assets of existing water systems, the Commission typically analyzes the transferee’s Technical, Managerial, and Financial (“TMF”) criteria. As explained in the Staff *Memorandum*, attached hereto as Appendix A, the TDLU systems currently have several operational deficiencies; that being said, Staff has determined that Confluence possesses the

¹ *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. P.S.C.*, 335 Mo. 448, 459-460, 73 S.W.2d 393, 400 (Mo. banc 1934)

necessary TMF criteria to own and operate the assets of TDLU, and to correct the current deficiencies of the systems. Further, Staff finds that Confluence fulfills the requirements of the Tartan Energy Criteria.

7. However, Staff's conclusion that the transfer of TDLU's water and wastewater assets is not detrimental to the public interest, and the transfer of TDLU's current, or granting of new, CCNs allowing Confluence to serve the current customers of the systems is convenient and necessary for the public interest, is wholly contingent on the Commission rejecting Confluence's request for a rate of return premium and debit acquisition adjustment under Commission Rule 20 CSR 4240-10.085. As explained in its *Memorandum*, it is Staff's position that:

- A. The TDLU water system is a viable utility, and thus is ineligible for an acquisition incentive pursuant to Commission Rule;
- B. Confluence did not demonstrate that it exercised appropriate due diligence in obtaining original cost information from TDLU;
- C. If the wastewater systems is considered to be nonviable at the current time, it is primarily due to past and current negligence or mismanagement of the systems; and
- D. The approval of an acquisition incentive in this case would result in unjust or unreasonable rates for TDLU customers in the future.

8. Accordingly, as more thoroughly explained in Staff's *Memorandum*, Staff concludes that approval of a rate of return premium and debt acquisition adjustment pursuant to Commission Rule 20 CSR 4240-10.085 is not in the public interest, and should be denied by the Commission. However, should the Commission reject Confluence's request for an acquisition incentive, Staff finds the proposed transfer of assets is not detrimental to the public interest, the transfer of TDLU's existing CCNs, or

the granting of new CCNs, to Confluence authorizing it to install, acquire, build, construct, own, operate, control, manage, and maintain water and sewer systems are in the public interest, and Staff recommends approval with conditions described in the *Memorandum*.

9. The Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989). Should no party or individual request a hearing, the Commission need not hold a hearing to approve the transfer of assets and grant a CCN to Confluence.

WHEREFORE, Staff respectfully submits this *Staff Recommendation* for the Commission's information and consideration and hereby requests the Commission approve Confluence's Application, subject to the conditions outlined in Staff *Memorandum*, attached hereto as Appendix A; and grant such other and further relief as the Commission deems 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 18th day of September, 2020.

/s/ Mark Johnson