

**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 )

**STAFF RECOMMENDATION**

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

1. On March 11, 2020, Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers”), filed an *Application and Motion for Waiver* (“Application”) with the Missouri Public Service Commission (“Commission”) requesting approval of its acquisition of the water and/or sewer assets and associated certificates of convenience and necessity (“CCNs”), operated and held by multiple entities in St. Francois, Taney, and Washington Counties, along with the acquisition of the water and/or sewer assets of certain non-certificated entities, and approval of associated new CCNs, in Audrain, Lincoln, Madison, Polk, and Warren Counties. Confluence Rivers also requests a waiver of the Commission’s 60-day notice requirement under 20 CSR 4240-4.017.

2. On April 30, 2020, the Commission issued its *Order Directing Filing*, directing its Staff to file its recommendation regarding Confluence Rivers’ application no later than June 30, 2020.

3. On May 8, 2020, Confluence Rivers filed a request for a “rate of return premium and debt acquisition adjustment” in relation to its proposed acquisition of the assets of Terre Du Lac Utilities Corporation (“Terre Du Lac”). After Staff, on

May 15, 2020, filed its *Motion to Dismiss, or in the Alternative, for Additional Notice and Re-Establishment of an Intervention Period*, Confluence Rivers, on June 1, 2020, filed a notice of voluntary dismissal as to the Terre Du Lac acquisition

4. The Commission, on June 12, 2020, after no party responded to Confluence Rivers' notice of dismissal, issued its *Acknowledgement of Dismissal*, recognizing that 20 CSR 4240-2.116(1) permits voluntary dismissal without a Commission order before evidence has been offered or prepared testimony filed.

5. As amended by Confluence Rivers' voluntary dismissal of the Terre Du Lac acquisition, Confluence Rivers' Application seeks authority to acquire the assets of Branson Cedars Resort Utility Company LLC (Branson Cedars) and its CCNs, the issuance of new CCNs related to the acquisition of the currently unregulated systems of Fawn Lake Water Corp. ("Fawn Lake"), Freeman Hills Subdivision Assoc. ("Freeman Hills"), P.A.G. LLC, d/b/a Prairie Heights Water Company ("Prairie Heights"), and a sewer system located in DeGuire Subdivision and owned by Mr. Mark Edgar ("DeGuire"), and the expansion of its current Villa Ridge service territory.

6. On June 26, 2020, Staff filed its *Motion for Extension*, requesting the Commission order Staff to file its Recommendation no later than July 17, 2020. On June 29, 2020, the Commission granted Staff's request.

7. 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.”<sup>1</sup>

8. 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.

9. 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, Staff has determined that Confluence Rivers possesses the necessary TMF criteria to own and operate the assets of Branson Cedars, Fawn Lake, Freeman Hills, Prairie Heights, and DeGuire, and fulfills the requirements of the Tartan Energy Criteria. Furthermore, Staff finds the requested expansion of Confluence Rivers’ Villa Ridge service area also fulfills the Tartan Energy Criteria.

10. Accordingly, as more thoroughly explained in Staff’s *Memorandum*, Staff concludes that the proposed transfers of assets are not detrimental to the public interest,

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<sup>1</sup> *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)

the granting of the requested CCNs authorizing Confluence Rivers 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*.

11. 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.

**WHEREFORE**, Staff respectfully submits this *Staff Recommendation* for the Commission's information and consideration and hereby requests the Commission approve Confluence Rivers' 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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Missouri Public Service Commission

**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 17<sup>th</sup> day of July 2020.

**/s/ Mark Johnson**