

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 13th day of January, 2021.

In the Matter of the Application of)
Confluence Rivers Utility Operating)
Company, Inc., to Acquire Certain) **File No. WM-2020-0403**¹
Water and Sewer Assets of Terre Du)
Lac Utilities Corporation)

**ORDER APPROVING STIPULATION AND AGREEMENT AND
GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY**

Issue Date: January 13, 2021

Effective Date: February 12, 2021

On June 12, 2020,² Confluence River Utility Operating Company, Inc. (Confluence or the Company) filed an Application and Motion for Waiver (Application) seeking authority to purchase substantially all of the water and/or sewer assets of Terre Du Lac Utilities Corporation (Terre Du Lac). It also asked the Commission either to approve a transfer of Terre Du Lac's certificate of convenience and necessity (CCN) or to grant Confluence a new water and sewer CCN authorizing it to own, install, contract, operate, control, manage, and maintain the systems it proposed to acquire from Terre Du Lac. Confluence also requested a waiver of the 60-day notice requirement of 20 CSR 4240-4.017(1). On June 15, the Commission issued its Order Directing Notice and Establishing Time for Filings.

The Commission Staff (Staff) filed a Recommendation on September 18 (Staff Recommendation), recommending the Application be approved, but only if the request for a rate of return premium and debt acquisition adjustment under Commission Rule

¹ WM-2020-0403 and SM-2020-0404 were consolidated by order of July 6, 2020.

20 CSR 4240-10.085(1(C) was removed. On November 8, Confluence filed a response objecting to the Staff Recommendation.

On December 14, Confluence filed a Revised Response to Staff Recommendation (Revised Response). Therein Confluence stated that it and Terre Du Lac had recently executed an amendment to the Purchase and Sale Agreement that reflected a reduction in the purchase price. The amendment to the Purchase and Sale Agreement was attached as Appendix 1 to the Revised Response, and the Revised Response states that based upon the amendment Confluence was withdrawing its request for a rate of return premium and debt acquisition adjustment. Confluence's Revised Response further revised its prior objection to the Staff Recommendation and stated Confluence's agreement with and willingness to accept the identified "conditions and actions" 1-12 in the Staff Recommendation.³

A local public hearing was held on December 15. On December 18, Confluence, Terre Du Lac, the Staff, and the Office of Public Counsel filed a Unanimous Stipulation and Agreement (Stipulation). The signatories have agreed to the transfer of Terre Du Lac's assets and affected CCN's to Confluence subject to the conditions and actions outlined in the Staff's Recommendation, as modified in the Stipulation.

FINDINGS

Confluence is a Missouri corporation, active and in good standing in Missouri, with its principal office and place of business in St. Louis, Missouri. It provides water services to approximately 547 customers and sewer service to approximately 636 customers and is a

² All date references hereafter will be to 2020, unless otherwise indicated. All references to the Missouri Revised Statutes will be to 2016.

³ Terre Du Lac also filed an objection to Staff's Recommendation on November 9. Terre Du Lac has not withdrawn its objection but has signed the stipulation, which states: "However, Confluence and Terre Du Lac have subsequently amended the Purchase and Sale Agreement that is the subject of this case and no longer object to the Staff Recommendation."

“water corporation,” a “sewer corporation,” and a “public utility” as those terms are defined in Section 386.020, RSMo, and is subject to the jurisdiction and supervision of the Commission. Confluence is a subsidiary of Central States Water Resources, Inc. (CSWR), which is also the parent company of six other water and sewer companies in Missouri, as well as systems in Arkansas, Tennessee, Kentucky, and Louisiana. Terre Du Lac is a for-profit corporation in good standing in Missouri. It is a “water corporation,” a “sewer corporation,” and a “public utility” as defined by Section 386.020, RSMo, and is subject to the jurisdiction and supervision of the Commission. Terre Du Lac provides water and sewer service to approximately 1,302 customers in Saint Francois and Washington Counties, near the city of Bonne Terre, Missouri.

On November 27, 2019, CSWR and Terre Du Lac entered into a Purchase and Sale Agreement. It was amended on March 17, 2020, and on August 10, 2020.⁴ The November 27 and March 17 agreements are included in Appendix A-C of the Application. On December 14, Confluence filed a Revised Response to Staff Recommendation, containing a Third Amendment to Purchase and Sale Agreement, reflecting a reduction in the purchase price. This third amendment is attached to Confluence’s revised response as Appendix 1. Hereinafter, the November 27, 2019 purchase agreement and its three subsequent amendments will be, per the recitals of the Third Amendment, referred to together as the “purchase agreement” or “agreement.”

Acquisition of Assets

The drinking water system utilizes groundwater wells as the source of supply. The distribution system, with water meters on all customer service connections, has approximately 50 miles of 4, 6, and 8-inch diameter pipe. The drinking water system

operates under a DNR permit. Historically, Terre Du Lac has had two issues with its water supply source: capacity and quality. Terre Du Lac's water system has experienced ongoing environmental issues relating to naturally occurring radionuclide levels within its well systems. The addition of a new drinking water well in 2016 and the removal of a well from service has significantly increased system capacity and reduced the radionuclide problem. The sewer system includes a single-cell lagoon and collection sewer, an oxidation ditch and its collection sewers, and a three-cell aeration lagoon and collection sewers. Terre Du Lac has a history of noncompliance with Commission and Department of Natural Resources (DNR) rules and regulation.

Rates

In the Application, Confluence proposed to adopt the existing tariffs and rates of Terre Du Lac. Staff supported this proposal to adopt Terre Du Lac tariffs, adopt existing water rates for the unregulated systems in P.S.C. MO No. 2, and adopt the existing sewer rates in P.S.C. MO No. 3.⁵ The current water rates for Terre Du Lac are as follows:

5/8" & 3/4" Meters \$14.85 per month
1" Meter \$37.14 per month
2" Meter \$118.85 per month
Usage Charge \$1.80 per 1,000 gallons of water used per month

The current sewer rates for Terre Du Lac are as follows:

Residential and Commercial
5/8" & 3/4" meters \$19.72 per month

Commercial, Multi-Family & Residential
1" meter \$49.29 per month
2" meter \$157.74 per month

Both the water and sewer rates became effective on September 29, 2017.

⁴ Filed with the Commission on December 28, 2020 as Second and Third Amendments to Purchase and Sale Agreement (Appendix A and B Confidential).

The Commission has jurisdiction to rule on the Application because Missouri law requires that before selling or transferring its assets, a water corporation or sewer corporation must first obtain an order from the Commission authorizing the sale or transfer. The Commission will deny the Application only if approval would be detrimental to the public interest. The Application requested an acquisition premium in the form of a debt acquisition premium and a return on equity incentive. Staff found the proposed transfer was detrimental to the public interest due to the requested acquisition premium, but stated that the proposed transfer of assets would not be otherwise detrimental to the public interest. Confluence has withdrawn its request for an acquisition premium. The system has operated in the past with significant deficiencies that can cause public health concerns. Confluence is a qualified utility based upon its current provisions for water and sewer service, and Confluence has the financial capacity to acquire and operate the Terre Du Lac systems. The Commission finds, accordingly, that the assets transfer is not detrimental to the public interest.

Certificate of Convenience and Necessity

The Commission may grant a water and sewer corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either “necessary or convenient for the public service.”⁶ The Commission articulated the specific criteria to be used when evaluating applications for utility CCNs in the case *In re Intercon Gas, Inc.*, 30 Mo. P.S.C. (N.S.), 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)

⁵ Staff Memorandum in Support of Staff Recommendation, p. 19.

the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.⁷

The Staff states that Confluence's application satisfies the "Tartan" criteria. Based on Staff's recommendation, the Commission finds there is a need for service as the customers are already receiving and will continue to need the service. Criterion one is satisfied. Confluence is a qualified utility based upon its current provisions for water and sewer service. Criterion two is satisfied. Confluence has the financial capacity to acquire and operate Terre Du Lac through access to capital through its upstream affiliates. Its parent company, CSWR, owns several water and sewer utilities in several states. Criterion three is satisfied.

The Staff concluded that the proposal is economically feasible. In reaching this conclusion, the Staff considered the need to correct several deficiencies in the service Terre Du Lac customers are now receiving and whether those deficiencies can be addressed with Terre Du Lac's current rates. The Staff has considered Confluence's proposals for system repairs and improvements and concluded they represent a reasonable plan for providing safe and adequate service. In reaching its conclusion that the proposed transactions are economically feasible, the Staff took into consideration the need for improvements, including, but not limited to, Confluence's proposed improvements for the water system; its general plan to replace the single-cell lagoon and collection sewer with a lift station that will involve the construction of a new electric service, an all-weather access road, and a remote monitoring system; system improvements for the oxidation ditch

⁶ Section 393.170.3, RSMo.

⁷The factors have been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Ord, *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), 1994 WL 762882, *3 (Mo. P.S.W.C.).

treatment system, including potentially expanding or replacing the oxidation ditch in its entirety; and proposed improvements for the Three-Cell Lagoon and Collection Sewer. The Staff observed that parts of these projects were planned to be completed no later than 18 months following the acquisition closing. After reviewing all the proposed improvements for the water and sewer systems, it was Staff's conclusion that adequate revenue is built into existing rates to maintain the drinking water and sewer systems and to retain employees capable of conducting this maintenance. Noting the Confluence was not requesting a rate change and otherwise based on its conclusion that the system could be maintained on current rates, Staff concluded that Tartan criterion four was satisfied. Staff stated it will review all investments and the actual costs for all repair and improvements during a future rate case to be filed by Confluence. Based upon Staff's analysis and recommendation and because Confluence is not requesting a change in the currently approved Commission rates, the Commission finds that the proposed continuation of Terre Du Lac's current rates and the proposal are feasible. The Commission finds that criterion four is satisfied. The Commission further finds that because of the positive findings with respect to criteria one through four, the proposed acquisition promotes the public interest. Criterion five is satisfied.

Based upon the information provided in the Application and in the verified Recommendation of Staff, as well as the Stipulation, the Commission finds the operation of the water and sewer systems now serving Terre Du Lac's customers described in this order is "necessary or convenient for the public service."⁸

⁸ Section 393.170.3, RSMo, 2016.

DECISION

The Commission finds based on Confluence's sworn Application that Confluence has had no communications with the Commission within 150 days prior to its Application regarding any substantive issue likely to be in the case. Good cause, accordingly, exists for granting a waiver of the 60-day notice requirement of Rule 20 CSR 4240-4.017(1)(D). The Commission will grant the waiver. The Commission finds Confluence's acquisition of the Terre Du Lac water and sewer assets is not detrimental to the public interest and will grant Confluence's request for authority to acquire those assets and systems and Terre Du Lac authority to transfer them to Confluence. The Commission finds that granting Confluence CCNs is necessary or convenient for the public service and will grant Confluence CCNs for the Terre Du Lac service area, subject to the conditions and actions outlined in Staff's Recommendation as modified in the stipulation. The Commission finds that Confluence has withdrawn its request for an acquisition premium and that that issue is moot.

The Commission has not evaluated the necessity or prudence of any proposed improvements. In approving the Stipulation and in granting Confluence certificates of necessity, the Commission is making no findings regarding the ratemaking treatment to be afforded any matters pertaining to the granting of the certificates or expenditures related to the certificated service area. To assist the Commission in establishing rate base for the systems to be acquired pursuant to this order, the Commission will direct Confluence to file engineering and technical reports and additional project information for all Terre Du Lac improvements when it next seeks a rate adjustment for any of the assets acquired pursuant to this order.

THE COMMISSION ORDERS THAT:

1. Confluence is granted a waiver of the sixty-day notice requirement provided for in Commission Rule 20 CSR 4240-4.017(1).

2. The Unanimous Stipulation and Agreement is approved and its signatories are ordered to comply with its terms. A copy of the Unanimous Stipulation and Agreement is attached to this order as Attachment A.

3. Confluence is granted authority to acquire the Terre Du Lac assets and Terre Du Lac is authorized to transfer those assets to Confluence per the terms and conditions of the purchase agreement described in the body of this order, subject to the terms of the Unanimous Stipulation and Agreement.

4. Upon closing of the asset transfer, Terre Du Lac is authorized to cease providing service, and Confluence is authorized to begin providing service.

5. Confluence shall submit an adoption notice before closing on the assets to adopt the existing Terre Du Lac tariffs.

6. Confluence is granted Certificates of Convenience and Necessity to operate the Terre Du Lac water and sewer systems in the Terre Du Lac service area described in the body of this order, subject to the conditions and actions set out in the Unanimous Stipulation and Agreement

7. Confluence shall charge Terre Du Lac's existing rates. It shall adopt Terre Du Lac's tariffs, adopt existing water rates for the unregulated systems in P.S.C. MO No. 2, and adopt the existing sewer rates in P.S.C. MO No. 3.

8. Confluence shall file engineering and technical reports and project information for all improvements to the sewer and water assets acquired pursuant to this order when it next seeks a rate adjustment.

9. Confluence and Terre Du Lac are authorized to do and perform, or cause to be done and performed, all such acts and things, as well as make, execute and deliver any and all documents as may be necessary, advisable and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.

10. This order shall become effective on February 12, 2021.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

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

Graham, Regulatory Law Judge