

**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 Nos. WM-2020-0282
and Sewer Assets, and For Certificates)	SM-2020-0283
of Convenience and Necessity)	

**APPLICATION FOR ACQUISITION INCENTIVE
RELATED TO THE ACQUISITION OF THE
TERRE DU LAC NONVIABLE WATER AND SEWER SYSTEMS**

Pursuant to Sections 386.040, 386.250 and 393.140, RSMo. and Commission Rule 20 CSR 4240-10.085, Confluence Rivers Utility Operating Company, Inc., (“Confluence Rivers” or “Applicant”) requests a rate of return premium and a debt acquisition adjustment in conjunction with its acquisition of the Terre Du Lac Utilities Corporation (“Terre Du Lac”) water and sewer systems. In support, Confluence Rivers states the following to the Missouri Public Service Commission (“Commission”):

1. As part of its *Application and Motion for Waiver* filed March 11, 2020, and *Supplement to Application* filed March 23, 2020 (known collectively herein as “*Application*”), Confluence Rivers seeks authority to purchase substantially all the water and sewer utility assets of Terre Du Lac, including the Certificate of Convenience and Necessity (“CCN”). Confluence Rivers’ request is more specifically described in the *Application* and under the terms and provisions of the *Purchase and Sale Agreement*, as amended by the *First Amendment to Purchase and Sale Agreement* (known collectively herein as the “*Terre Du Lac Agreement*”).

2. Terre Du Lac is a “water corporation,” “sewer corporation,” and a “public utility” as defined by Section 386.020, RSMo., and is subject to the jurisdiction and supervision of the Commission as provided by law. On December 3, 1973, the Commission granted Terre Du Lac a CCN to provide water and sewer services in Commission Case No. 17887. Pursuant to that CCN, Terre Du Lac provides water and sewer services to approximately 1,302 customers in Saint Francois and Washington Counties, Missouri.

3. Terre Du Lac owns and operates a community public water system that supplies drinking water to the homeowners of Terre Du Lac using three supply wells, two storage tanks and water distribution mains.

4. Terre Du Lac owns and operates three wastewater treatment facilities: the North Lagoon is a three-cell lagoon serving approximately 510 homes; the South Lagoon is a single-cell lagoon serving approximately 18 homes; and the Oxidation Ditch serves approximately 650 homes. All three wastewater treatment facilities are operated under the authority of a Missouri State Operating Permit (M.S.O.P.) issued by the Missouri Department of Natural Resources (“MDNR”) pursuant to the Federal Water Pollution Control Act.

5. For reasons discussed further herein, Terre Du Lac is a “nonviable utility” under Commission rule 20 CSR 4240-10.085(1)(C). The Terre Du Lac systems are not currently related to the operation of any other water or sewer systems providing service to the same or similar service area. (20 CSR 4240-10.85(3)(A)1).

6. In addition to the Terre Du Lac systems, Confluence Rivers’ *Application*

also proposes the purchase of the water and sewer assets of Branson Cedar Resort Utility Company, LLC, a public utility subject to the jurisdiction and supervision of the Commission, as well as the water and/or sewer assets of the currently unregulated systems of Fawn Lake Water Corp., Freeman Hills Subdivision Assoc., P.A.G LLC, d/b/a Prairie Heights Water Company, and a sewer system located in DeGuire Subdivision, Fredricktown, Missouri. Additionally, Confluence Rivers currently owns and operates 9 water and 9 sewer systems.

7. Per Commission Rule 20 CSR 4240-10.085, Confluence Rivers seeks an Acquisition Incentive (a rate of return premium, debt acquisition adjustment, or both designed to incentivize the acquisition of a nonviable utility) related to the purchase of the Terre Du Lac assets only. This would be accomplished by a surcharge applicable to the Terre Du Lac water and wastewater systems' customers. The surcharge would be computed separately for water and wastewater and consist of the amount of revenue requirement driven by the rate of return premium, debt acquisition adjustment, or both.

8. Commission Rule 20 CSR 4240-10.085(1)(C) defines a "nonviable utility" as:

...A small water or sewer utility, serving eight thousand (8,000) or fewer customers that :

1. Is in violation of statutory or regulatory standards that affect the safety and adequacy of the service provided, including, but not limited to, the Public Service Commission law, the federal clean water law, the federal Safe Drinking Water Act, as amended, and the regulations adopted under these laws;

2. Has failed to comply with any order of a federal agency, the Department of Natural Resources, or the commission concerning the

safety and adequacy of service;

3. Is not reasonably expected to furnish and maintain safe and adequate service and facilities in the future; or

4. Is insolvent[.]

9. The Terre Du Lac systems are nonviable utilities within the meaning of 20 CSR 240-10.085(1)(C). Terre Du Lac is currently subject to an enforcement action filed by the Missouri Attorney General's Office ("AGO") on behalf of the MDNR for violations of the Missouri Safe Drinking Water Law and the Missouri Clean Water Law. The Amended Petition filed by the AGO is attached hereto and labeled as **Appendix—1**.

10. Regarding the drinking water system, the Amended Petition alleges that:

- From 2006 through at least 2012, the Terre Du Lac drinking water system failed to meet the Running Annual Average ("RAA") Maximum Contaminant Level ("MCL") for Radium 226 and 228 in violation of the Missouri Safe Drinking Water Act Sections 640.100-640.140, RSMo. and MDNR implementing regulations 10 CSR 60-4.060(1)(A);
- From 2006 through at least 2012, the Terre Du Lac drinking water system failed to meet the RAA MCL for Gross Alpha particles in violation of the Missouri Safe Drinking Water Act Sections 640.100-640.140, RSMo. and MDNR implementing regulations 10 CSR 60-4.060(1)(B); and
- Between July 2010 to June 2011, Terre Du Lac failed to certify to

MDNR that it had provided public notice to customers when the system failed to perform required water quality monitoring in violation of 10 CSR 60-8.010(1) and 10 CSR 60-7.010.

11. Regarding the wastewater treatment facilities, the Amended Petition alleges that:

- In July 2009 and other dates yet unknown, the wastewater treatment facilities discharged contaminated sludge causing pollution to waters of the state in violation of Section 644.051.1(1), RSMo. of the Missouri Clean Water Law;
- In July 2009 and other dates yet unknown, Terre Du Lac failed to report the bypassing of sewage to MDNR within 24 hours pursuant to 10 CSR 20-6.010;
- From 2009 to at least 2012, Terre Du Lac failed to place the wastewater treatment facilities under the direct supervision of a certified operator in violation of 10 CSR 20-9.020(2);
- From 2009 and other dates yet unknown, the Oxidation Ditch treatment facility exceeded the effluent limitations in its M.S.O.P. in violation of 10 CSR 20-6.010(8)(A)4;
- From 2008 to at least 2012, Terre Du Lac failed to submit all quarterly Discharge Monitoring Reports in violation of 10 CSR 20-7.015(9)(A)(1);
and
- From January 2007 to at least 2012, Terre Du Lac failed to complete

minimum laboratory testing to ensure adequate wastewater systems in-plant operational control in violation of 10 CSR 20-6.010(8)(A)4 and 10 CSR 20-9.010(5).

For its violations, Terre Du Lac faces substantial penalties of up to \$10,000 per day per violation.

12. On May 19, 2015, the Circuit Court of St. Francois County entered an *Agreed Partial Order of Preliminary Injunction*, whereby Terre Du Lac was ordered to undertake certain corrective actions, including actions to reduce the presence of radionuclides in the drinking water system to levels below the MCL, and operation and maintenance repairs to the sewer systems to eliminate unauthorized bypasses and discharges of contaminated sludge from the facilities. Attached hereto as **Appendix—2** is the *Agreed Partial Order of Preliminary Injunction*. To date, Terre Du Lac has failed to take all the corrective operations and maintenance actions as ordered by the Court.

13. Terre Du Lac has failed to provide safe and adequate service since the Court entered the 2015 *Agreed Partial Order of Preliminary Injunction*. More recently, on March 21, 2016, MDNR issued a Notice of Violation (“NOV”) to Terre Du Lac for findings of non-compliance based upon observations made at inspections of the North Lagoon, South Lagoon and Oxidation Ditch on January 26, 2016, a review of Discharge Monitoring Reports, and a file review.

14. The NOV for the North Lagoon stated that Terre Du Lac had failed to submit progress reports on achieving compliance with the permitted limit for

ammonia as required by its M.S.O.P., and 10 CSR 20-6.010(7)(A). At the time of the NOV, a compliance report due September 1, 2015, and February 1, 2016 remained outstanding. Additionally, Terre Du Lac had failed to submit 4th quarter 2015 test results for dissolved oxygen, total Nitrogen as N, and total Phosphorus as P, in violation of its M.S.O.P and 10 CSR 20-7.015(9)(A)l. The 2016 NOV for the North Lagoon is attached hereto as **Appendix—3.**

15. The 2016 NOV for the South Lagoon stated that Terre Du Lac also failed to submit progress reports on achieving compliance with the permitted limit for ammonia as required by the facility's M.S.O.P. and 10 CSR 20-6.010(7)(A). The 2016 NOV for the South Lagoon is attached hereto as **Appendix—4.**

16. The 2016 NOV for the Oxidation Ditch stated that Terre Du Lac also failed to submit discharge monitoring reports as required by the facility's M.S.O.P and 10 CSR 20-7.015(9)(A)l. Testing results for E.coli were not submitted for July 31, 2015. Testing results for total nitrogen and total ammonia as N were not submitted for November 30, 2015. And testing for dissolved oxygen, total nitrogen as N, and total phosphorus as P were not submitted for December 31, 2015. The 2016 NOV for the Oxidation Ditch is attached hereto as **Appendix—5.** MDNR also sent letters in 2016 for exceedances of effluent limitations set in the M.S.O.P. for the Oxidation Ditch. These letters indicated exceedances of Ammonia and E. Coli in the effluent discharged from

the facility. The 2016 Exceedance letters for the Oxidation Ditch are attached hereto as **Appendix—6**.

17. In 2017, MDNR sent Terre Du Lac several letters outlining unsatisfactory findings from inspections as well as NOVs for the significant violations of effluent limitations as well as Sanitary Sewer Overflows (“SSO”). On January 10, 2017, MDNR issued a NOV for violations of effluent limitations for ammonia set forth in the M.S.O.P. for the Oxidation Ditch. The 2017 NOV for effluent limitations is attached hereto as **Appendix—7**. Then on January 13, 2017, MDNR issued Terre Du Lac a NOV for a SSO that allowed wastewater to discharge from a manhole and run into a nearby stream. The NOV states that MDNR was advised by the neighboring homeowner that Terre du Lac had been informed of the SSO prior to MDNR’s investigation on January 4, 2017, and that no cleanup activities had occurred since Terre du Lac had been notified of the SSO on December 29, 2016. The SSO is a violation of Sections 644.051.1 (2) and 644.076.1, RSMo. and 10 CSR 20-7.031. Additionally, Terre Du Lac failed to notify MDNR of the SSO within 24 hours in violation of the M.S.O.P. and Section 644.076.1, RSMo. The NOV for the SSO is attached hereto as **Appendix—8**. Both the North and South lagoons also experienced issues in 2017. On December 18, 2017, MDNR sent reports listing the Unsatisfactory Findings identified at the North and South Lagoons during an inspection conducted on December 13, 2017. The reports listed identical unsatisfactory findings for both lagoons, in violation of the respective M.S.O.P. The unsatisfactory findings included:

- The facility failed to clearly and sufficiently restrict entry by children, livestock, or unauthorized persons and to protect the facility from vandalism as required in the M.S.O.P. under Special Conditions item 12;
- The facility failed to clearly mark Outfall 001 in the field as required in the M.S.O.P. under Special Conditions item 3;
- The facility failed to place warning signs on each side of the facility enclosure in such position as to be clearly visible from all direction of approach as required in the M.S.O.P under Special Conditions item 14;
- The facility failed to keep the berms of the lagoon mowed and kept free of any deep-rooted vegetation, animal dens, or other potential sources of damage to the berms as required in the M.S.O.P. under Special Conditions item 19; and
- The facility failed to submit progress reports, which were due on August 1, 2015 and February 1, 2017, as required by the special conditions of the respective M.S.O.P.

18. For the North Lagoon, the required progress report was to address the facility's progress towards meeting the effluent limits set by the M.S.O.P for ammonia and E. Coli. For the South Lagoon, the required progress report was to address the facility's progress towards meeting the effluent limits set by the M.S.O.P. for

ammonia. The 2017 Reports of Unsatisfactory Findings are attached hereto as **Appendix—9.**

19. Most recently, MDNR sent Terre Du Lac Letters of Warnings for all three wastewater treatment facilities based on observations made during a July 10-11, 2019 inspection. For the Oxidation Ditch, the violations included:

- During the inspection, the Terre Du Lac Oxidation Ditch failed to comply with the [total residual chlorine] effluent limits required by the M.S.O.P. and Sections 644.051.1 (3) and 644.076.1, RSMo;
- Terre Du Lac failed to submit annual Form S sludge reporting as required by the standard conditions of its M.S.O.P. and Section 644.076.1, RSMo;
- Terre Du Lac has not conducted and recorded operational monitoring at the correct frequency for the Oxidation Ditch WWTP;
- Terre Du Lac failed to clearly mark outfalls as required by the special conditions of the M.S.O.P. and Section 644.076.1, RSMo. Condition #3 of the M.S.O.P. states that all outfalls must be clearly marked in the field; and
- Terre Du Lac failed to maintain an Operation and Maintenance manual as required by the special conditions of its M.S.O.P. and Section 644.076.1, RSMo.

The 2019 Letter of Warning and Report of Inspection for the Oxidation Ditch is

attached hereto as **Appendix—10**.

20. For the North Lagoon the violations included:

- During the inspection, the Terre Du Lac South One-Cell Lagoon failed to comply with the [ammonia and E. Coli] effluent limits contained in the M.S.O.P. and Sections 644.051.1(3) and 644.076.1, RSMo;
- Terre Du Lac failed to meet the Schedule of Compliance as outlined in the M.S.O.P. for meeting ammonia and E. Coli effluent limits;
- Terre Du Lac has not recorded any operational monitoring for the North Three-Cell Lagoon;
- Terre Du La failed to maintain an Operation and Maintenance manual [containing key operating procedures and a brief summary of the operation of the facility] as required by the special conditions of the M.S.O.P. and Section 644.076.1, RSMo; and
- Terre Du Lac caused or permitted construction, installation or modification of any sewer system or of any water contaminant source, point source or wastewater treatment facility without first receiving a construction permit in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

The 2019 Letter of Warning and Report of Inspection for the North Lagoon is attached hereto as **Appendix—11**.

21. For the South Lagoon, the violations included:

- During the inspection, the Terre Du Lac South One-Cell Lagoon failed to comply with the [ammonia] effluent limits contained in the M.S.O.P. and Sections 644.051.1(3) and 644.076.1, RSMo;
- Terre Du Lac failed to meet the Schedule of Compliance as outlined in the M.S.O.P. for meeting E.coli effluent limits;
- Terre Du Lac has not recorded any operational monitoring for the South One-Cell Lagoon;
- Terre Du Lac failed to maintain an Operation and Maintenance manual [containing key operating procedures and a brief summary of the operation of the facility] as required by the special conditions of its M.S.O.P. and Section 644.076.1, RSMo; and
- Terre Du Lac failed to maintain lagoon cells and berms as required by the special conditions in its M.S.O.P. and Section 644.076.1, RSMo.

The 2019 Letter of Warning and Report of Inspection for the South Lagoon is attached hereto as **Appendix—12**.

22. A hearing on the AGO's *Motion to Enforce Agreed Partial Order of Preliminary Injunction* ("Motion to Enforce") was scheduled for October 15, 2019. The *Motion to Enforce* stated that Terre Du Lac has failed to comply with the terms of the *Agreed Partial Order of Preliminary Injunction* and requested the Court enter an order for the stipulated penalties in the amount of \$117,000, and a stipulated penalty of \$500 per day for each day after April 19, 2016, that Terre Du Lac has remained out

of compliance with the *Agreed Partial Order of Preliminary Injunction*. However, the AGO and Terre Du Lac requested a continuance to allow Terre Du Lac and Central States Water Resources, Inc. (“Central States”) time to enter into a sale agreement for the sale of the water and sewer systems to Central States. The AGO’s *Motion to Enforce*, as well as the *Parties’ Motion To Continue For Settlement* are attached hereto as **Appendix—13**.

23. The State of Missouri is supportive of Central States acquiring Terre Du Lac’s systems and running those systems in a manner that complies with applicable law and provides safe and reliable service because Terre Du Lac is not reasonably expected to furnish and maintain safe and adequate service and facilities in the future.

24. Confluence Rivers is a viable utility and will not be materially impaired by the acquisition of these systems. Confluence Rivers and CSWR have the resources to rehabilitate the Terre Du Lac systems, and the managerial, technical, and financial capabilities to safely and adequately operate the systems going forward.

25. The *Terre Du Lac Agreement* is the result of arm’s-length negotiations between the parties and the terms are fair and reasonable given the systems’ current procedural status and operating conditions.

26. A preliminary engineering review of the Terre Du Lac water system has been completed. The preliminary findings are attached as **Appendix—14C**. Confluence Rivers anticipates the following water system improvements are necessary to make the utility viable:

- Locate all hydrants and valves in the distribution system, prepare a valve exercise plan and ensure proper routine flushing of the distribution system.
- Abandon and seal Well No. 1 in accordance with MDNR regulations. Well 1 has been disconnected from the system, most likely due to the historically high levels of radionuclides.
- Repaint the inside and outside of the water storage tanks, as well as other repairs. The tanks were constructed in the 1980s.
- Update or Replace the outdated chlorination systems, install new pumps and chlorine analyzer.
- Repair wellhouses, replace corroded electrical components and ensure all electrical components are installed correctly to avoid electrical hazards.
- Installation of a Mission Remote Monitoring system equipped with a pressure transducer and magnetic flow meter to allow remote monitoring.

Confluence Rivers will file applications with MDNR for any necessary construction permits. The improvements will be completed within reasonable periods of time, working with MDNR through the permitting process to establish timelines for necessary actions. **Appendix—14C** is marked Confidential pursuant to Commission rule 20 CSR 4240-2.135(2)(A)3. and 6., as it contains marketing analysis or other market specific information relating to services offered in competition with others, and strategies employed in contract negotiations, respectively

27. A preliminary engineering review of the Terre Du Lac wastewater system has been completed. The preliminary findings are attached at **Appendix—15C**. Confluence Rivers anticipates the following wastewater system improvements are necessary to make the utility viable:

Oxidation Ditch

- Replace mechanical rotor; install sludge holding tank, install mission remote monitoring system and flow meter; and repair fencing. After a period of operation and evaluations of facilities regarding capacity and permit limits, a second phase of improvements may be necessary to bring the facilities into full permit compliance.

Three Cell Lagoon

- Install a Moving Bed Biological Reactor; install an effluent filter or clarifier along with a disinfection process; install a mission remote monitoring system and flow meter; repair fencing around lagoons and repair berms to remove deep rooted vegetation and animal burrows; install an electrical service extension to lagoon aerators; repair/replace lagoon aerators; install an all-weather access road to the treatment facility; evaluate effluent box and repair as needed.

Single Cell Lagoon

- Install an electrical service extension; install an all-weather access road to the treatment facility; install a new lift station and force main to pump to the larger lagoon or oxidation ditch to eliminate discharge of effluent from the single-cell lagoon; and install a mission remote monitoring system.

Collection Systems

- Perform smoke testing and video inspection of collection system; install flow monitoring to evaluate inflow and infiltration into the collection system.

Like with the water system, Confluence Rivers will file applications with MDNR for any necessary construction permits related to the wastewater system improvements. The improvements will be completed within reasonable periods of time, working with MDNR through the permitting process to establish timelines for necessary actions. **Appendix—15C** is marked Confidential pursuant to Commission rule 20 CSR 4240-2.135(2)(A)3. and 6., as it contains marketing analysis or other market specific information relating to services offered in competition with others, and strategies employed in contract negotiations, respectively.

28. Due to the systems state of general disrepair over the span of decades, substantial repairs are necessary to rehabilitate the Terre Du Lac systems. Due to the condition of the system and the anticipated cost of repairs, the acquisition would be unlikely to occur without the probability of Confluence Rivers obtaining an acquisition incentive for the Terre Du Lac systems.

29. Any system deficiencies that can be corrected without capital improvements will be completed as timely as possible after closing, but no later than six months from the closing.

30. The proposed acquisition of Terre Du Lac by Confluence Rivers is in the public interest. The Terre Du Lac water and sewer systems have struggled for the last 20 years to comply with the Missouri Safe Drinking Water Law and MDNR implementing regulations, as well as the Missouri Clean Water Law and MDNR implementing regulations. As stated above, Confluence Rivers and CSWR have the resources to rehabilitate the Terre Du Lac systems, and the managerial, technical, and financial capabilities to safely and adequately operate the systems going forward to the benefit of the Terre Du Lac customers and the state of Missouri.

31. Confluence Rivers has exercised due diligence and made reasonable attempts to obtain from Terre Du Lac the documents related to the original cost of the nonviable utility. Confluence Rivers has requested from Terre Du Lac the records relating to the original cost of the nonviable utility assets being acquired and records relating to contributions in aid of construction amounts, including the types of records set forth in Commission Rule 20 CSR 4240-10.085(3)(A)2.A. through H.

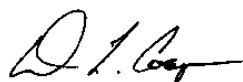
32. Information related to the original cost of the Terre Du Lac assets and estimates used by Confluence Rivers, where despite Confluence Rivers' due diligence and reasonable attempts to obtain documents from Terre Du Lac certain documents were not available from Terre Du Lac, is attached as Appendix—16C. Appendix—16C is marked Confidential pursuant to Commission Rule 20 CSR 4240-2.135(2)(A)3. and 6., as it contains marketing analysis or other market specific information relating to services offered in competition with others, and strategies employed in contract negotiations, respectively.

33. Pursuant to Commission Rule 20 CSR 4240-10.085(6), Confluence Rivers intends to file a plant-in-service study to support the amount of its requested acquisition adjustment addition to its rate base in its next general rate proceeding.

WHEREFORE, Confluence Rivers Utility Operating Company, Inc., hereby requests an acquisition premium associated with the Terre Du Lac systems as described herein.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.



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**ATTORNEYS FOR CONFLUENCE
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COMPANY, INC.**

CERTIFICATE OF SERVICE

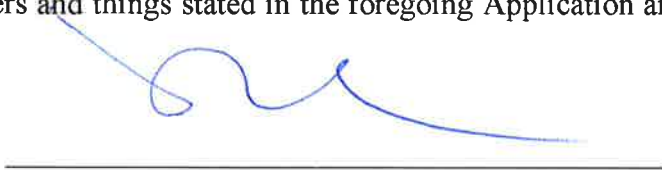
I hereby certify that a true and correct copy of the foregoing was served by electronic mail on this 8th day of May 2020 to all counsel of record.

/s/ Jennifer L. Hernandez


VERIFICATION

State of Missouri)
) ss
County of St. Louis)

I, Josiah Cox, having been duly sworn upon my oath, state that I am the President of Confluence Rivers Utility Operating Company, Inc. ("Confluence Rivers"), that I am duly authorized to make this affidavit on behalf of Confluence Rivers, and that to the best of my information, knowledge and belief the matters and things stated in the foregoing Application are true and correct.



Subscribed and sworn before me this 6th day of May, 2020.


Notary Public

