

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of Confluence)
Rivers Utility Operating Company, Inc., and)
Missouri-American Water Company for Authority)
for Confluence Rivers Utility Operating Company,) File No. SM-2025-0067
Inc. to Acquire Certain Sewer Assets of Missouri-)
American Water Company in Callaway and Morgan)
Counties, Missouri.)

JOINT REPLY TO OPC RESPONSE TO STAFF RECOMMENDATION

COME NOW Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers”), Missouri-American Water Company (“MAWC”), and the Staff of the Missouri Public Service Commission (“Staff”), and state the following to the Missouri Public Service Commission (“Commission”) as their *Joint Reply to OPC Response to Staff Recommendation*:

1. On August 27, 2024, Confluence Rivers and MAWC filed an *Application and Motion for Waiver* requesting that the Commission approve the sale and purchase between them of nineteen small wastewater systems. The systems are in Callaway and Morgan Counties and total approximately 606 connections. The smallest, Calley Trail, serves 11 connections and the largest, Ryans Lake, serves 85 connections.

2. On December 30, 2024, Staff filed its *Staff’s Report and Recommendation* and supporting *Memorandum* suggesting that the Commission approve Confluence Rivers’ acquisition of the subject sewer system assets and issue CCNs, subject to 12 conditions and actions described in Staff’s *Memorandum*.

3. On January 10, 2025, MAWC and Confluence Rivers filed their *Joint Response to Staff Report and Recommendation* and, therein, stated that they had no objection to the Staff’s proposed orders and requirements, with one clarification related to the tariff filing. On January 9,

2025, the Office of the Public Counsel (“OPC”) filed its *Response to Staff Recommendation* (“OPC Response”).

REPLY TO OPC’S COMMENTS

4. The OPC Response alleges, in part, that the “Staff has failed to consider the future rate impacts that will occur when Confluence Rivers . . . acquires the assets of the nineteen (19) systems identified in Confluence [Rivers] and [MAWC’s] Joint Application and Motion for Waiver.” (OPC Resp., p. 1) (emphasis added).

5. To address the situation OPC believes to exist, it identifies four “recommended conditions.” Conditions 1-3 involve linking, without time limitation, the Confluence Rivers’ pre-tax rate of return in future rate cases for “the systems subject to this transaction” to that of MAWC:

1. Confluence commits that for the systems subject to this transaction, it will not request a higher pre-tax rate of return than MAWC would seek if it were still the owner of the systems subject to this transaction. For purposes of enforcing this condition, the parties agree that the maximum pre-tax rate of return Confluence shall request will be determined based on MAWC’s most recently filed general rate case;

2. If the Commission sets MAWC’s authorized pre-tax rate of return in MAWC’s most recent rate case (or the parties agree to a specified pre-tax rate-of-return as part of a settlement), this is the maximum pre-tax rate of return that Confluence shall sponsor in its next rate case for purposes of determining the revenue requirement for the systems subject to this transaction;

3. If the income tax rate used to determine MAWC’s effective pre-tax authorized rate of return is higher than Confluence’s income tax rate, then the maximum pre-tax authorized rate of return that Confluence shall sponsor for use in setting the rates of these particular systems in its next rate case shall be adjusted downward accordingly.¹

(footnote omitted).

6. Condition 4 concerns compliance with the NARUC Uniform System of Accounts (USOA).

¹ OPC Response to Staff Recommendation, p. 6-7.

7. The partes to this Joint Reply oppose OPC proposed conditions 1-3, and do not object to Condition 4.

ALLEGED RATE IMPACTS

8. OPC's statement as to what "will" happen to rates, or even what "will likely happen" in Confluence Rivers' next rate case, is something no one knows with any degree of certainty. The OPC Response is focused on rate of return ("ROR"). ROR is a company-specific item representing market conditions at a point in time; a utility's capital structure at a point in time; costs of equity and debt; and, the risk profile of the utility.

9. ROR is only one element/factor contributing to a revenue requirement set in a general rate case and rates are ultimately a result of both revenue requirement and rate design.² Mr. Murray's Memorandum attached to the OPC Response admits that "[a]t this time, the OPC has not investigated other ratemaking elements which may impact the rates charged to these systems under Confluence's ownership." (Murray Memo, p. 1, FN. 3).

10. Having said that, the Commission can compare the current MAWC rates being paid by the customers of the nineteen subject systems and those being paid by the majority of Confluence Rivers' customers today. MAWC's current rate for these customers is \$65.36 (\$67.55, when WSIRA is included). Confluence Rivers will adopt the \$65.36 rate at the time ownership is transferred.³ On the other hand, Confluence Rivers' current District 1 rate is \$60.21 and its District 2 rate is \$70.83. The MAWC rate to be adopted by Confluence Rivers for the nineteen systems in question is firmly in the middle of these existing Confluence Rivers rates.

11. OPC suggests that "these nineteen systems will likely experience higher rates,

² Rate design depends, among other things, on allocation of costs and grouping/consolidation with other sewer systems.

³ MAWC's initial filing in its pending rate case (Case No. WR-2024-0320/SR-2024-0321) included a proposed rate increase for these systems.

solely due to the transfer of ownership from MAWC to Confluence due to Confluence’s requested and traditionally awarded higher rates of return, as well as the higher rate base it may request for the systems.” (OPC Resp., p. 5) (emphasis added). First, the only change in rates “solely due to the transfer of ownership” will be a rate reduction for these customers, as Confluence Rivers is adopting the MAWC existing base rate for these customers of \$65.23.⁴ Moreover, the rates could not be changed by Confluence Rivers for quite some time (at least 11 months from its next general rate case filing), while MAWC currently has a rate case pending that includes an operation of law date of May 28, 2025.

12. OPC, in part, makes future rate difference projections based on a higher rate base (which would presumably be the case no matter who owns these systems)⁵; a higher rate of return ordered in past cases; no assumed cost reductions; and no rate design implication/considerations - - all of which could impact resulting rates either up or down.

13. OPC’s concern as to the potential impact of possible future rates of return that may be authorized by the Commission is not supported by the current rates of MAWC and Confluence Rivers in regard to the subject systems.

NOT DETRIMENTAL TO THE PUBLIC INTEREST

14. Under applicable law, the Commission must approve those acquisition applications over which it has jurisdiction, unless the transaction is shown to be “detrimental to the public interest.”⁶ This standard is rooted in the constitutional concept of property rights – the owners of property have a constitutional right to determine whether to sell their property or not. “To deny

⁴ While these customers are currently paying \$67.55, when WSIRA is included, the Commission has approved an increase to MAWC’s WSIRA rate that is likely to become effective on February 7, 2025 (See File No. WR-2025-0009).

⁵ See Staff Memorandum generally and p. 16 (“Staff has evaluated the proposals for upgrading the systems and finds them to be reasonable.”).

⁶ *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. Ct. App. 1980).

them that right would be to deny them an incident important to ownership of property. *A property owner should be allowed to sell his property unless it would be detrimental to the public.*⁷

15. The Commission has appropriately viewed its task to call for a netting of detriments and benefits. The Commission has applied the standard as a no-net-detriment standard in which "all of the benefits and detriments in evidence are considered."⁸ The Commission has described this standard as follows:

In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that UE provides safe and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable. The presence of detriments, thus defined, is not conclusive to the Commission's ultimate decision because detriments can be offset by attendant benefits. The mere fact that a proposed transaction is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of the service.⁹

(emphasis added).

16. OPC makes no such attempt at balancing "all the benefits and detriments" before it proposes its conditions. It instead takes aim at one alleged detriment (the potential for a higher rate of return in future rate cases).

17. Benefits associated with this transaction were described by Confluence Rivers and MAWC in their Application:

By divesting these smaller wastewater facilities, that do not overlap with its water service areas, MAWC can concentrate more effectively on its main operational strengths and large-scale facilities. Confluence Rivers, on the other hand, specializes in running and rehabilitating small systems. Its focus on small,

⁷ *State ex rel. St. Louis v. Public Service Commission*, 73 S.W.2d 393, 400 (Mo. 1934).

⁸ *See Re Union Electric Company*, 13 Mo.P.S.C.3d 266, 293, Case No. EO-2004-0108 (2005).

⁹ *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Aquila, Inc.*, Report and Order, Case No. EM-2007-0374, 2008 Mo. PSC LEXIS 693, 454-455 (MoPSC July 1, 2008), quoting *Re Union Electric Company*, Case No. EO-2004-0108, 13 Mo.P.S.C.3d 266, 293 (2005) (emphasis added).

geographically dispersed systems gives Confluence Rivers an advantage in managing the unique challenges that come with these types of operations. Moreover, Confluence Rivers already has several small wastewater systems in the vicinity of these systems.¹⁰

18. Given these factors, the proposed transaction should be found to be not detrimental to the public interest.

PRIOR CASES

19. OPC alleges that its proposed conditions are similar to those ordered in an acquisition case concerning Laclede Gas Company's purchase of the Missouri Gas Energy ("MGE") assets (Case No. GM-2013-0254) and Algonquin's purchase of the assets of The Empire District Electric Company ("Empire") assets (Case No. EM-2016-0213). The proposed sale and purchase of these nineteen small sewer systems bear no resemblance to the MGE and Empire sales cited.

20. It should first be noted that the provisions in those cases referenced by OPC were the result of stipulations and were not litigated in either case. Further, the MGE and Empire sales involved all assets of those companies, through an asset sale in the case of MGE and through a stock sale in the case of Empire. For MGE, those were assets providing service to approximately 500,000 customers.¹¹ For Empire, that involved assets providing service to approximately 150,000 Missouri electric, 42,000 natural gas, and 4,400 water customers.¹² The financing supporting those entire company customer bases was necessarily going to be wholly different after the sale than it was before.

21. In this situation, both the buyer and the seller are currently regulated entities that have been through general rate cases before the Commission. The nineteen systems that are the

¹⁰ Joint Application and Motion for Waiver, p. 6, para. 18.

¹¹ Case No. GM-2013-0254, Joint Application, EFIS Item 2.

¹² Case No. EM-2016-0213, Joint Application, EFIS Item 7, p. 3.

subject of this case provide service to 606 total customers. These customers would be subtracted from MAWC's base of roughly 500,000 total water and sewer customers and added to Confluence Rivers base of roughly 12,000 water and sewer customers. This transaction does not create the complete change in existing circumstances seen in the MGE and Empire transactions

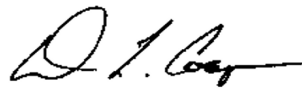
22. Ultimately, OPC's proposed Conditions 1-3 are an attempt to tie the Commission's hands in future rate cases. The question of rate of return is something that is addressed in each general rate case and has been addressed by the Commission as to both Confluence Rivers and MAWC in past rate cases. Without the proposed OPC Conditions 1-3, the Commission will still have the authority to address OPC's concerns in future Confluence Rivers general rate cases and make findings based upon the evidence and circumstances that exist at that time.

WHEREFORE, Confluence Rivers, MAWC, and Staff request the Commission issue an order approving the *Application* and grant Confluence Rivers the CCNs recommended in Staff's *Memorandum*, subject to the Staff's proposed orders and requirements and OPC's proposed Condition 4, and for such other and further relief as deemed appropriate in the circumstances.

Respectfully submitted,

/s/ Andrea B. Hansen

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on January 28, 2025, to the following:

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