

**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, Inc. to Acquire Certain Sewer )  
Assets of Missouri-American Water )  
Company in Callaway and Morgan Counties, )  
Missouri )

Case No. SM-2025-0067

**SUR-REPLY TO JOINT REPLY TO OPC RESPONSE TO STAFF  
RECOMMENDATION**

**COMES NOW** the Office of the Public Counsel (the “OPC”) and in accordance with the Public Service Commission of the State of Missouri’s (the “Commission”) Order Directing Public Counsel to Respond (Doc. 18) and in reply to Confluence Rivers Utility Operating Company, Inc. (“Confluence”), Missouri-American Water Company (“MAWC”), and the Staff of the Commission’s (“Staff” and collectively with Confluence and MAWC, the “Respondents”) Joint Reply to OPC Response to Staff Recommendation (the “Joint Reply,” Doc. 17) respectfully states:

Having reviewed the Joint Reply, the OPC remains concerned that the transaction detailed in Confluence and MAWC’s (collectively, the “Joint Applicants”) Joint Application and Motion for Waiver (the “Joint Application,” Doc. 1) will be detrimental to the current customers of the nineteen (19) systems identified in the Joint Application.<sup>1</sup> Though the Respondents<sup>2</sup> state that the rates paid by customers of these nineteen systems will fall between the rates paid by current

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<sup>1</sup> The OPC appreciates the Respondents’ statement in the Joint Reply that they do not object to the OPC’s condition 4. (J. Reply 3).

<sup>2</sup> In this Sur-Reply, the OPC refers to MAWC and Confluence as the Joint Applicants. It refers to Staff, MAWC, and Confluence as the Respondents. Though the Respondents collectively responded to the OPC’s Response to Staff Recommendation (the “OPC Response,” Doc. 12), as will be explained in greater detail throughout this Sur-Reply, it is the Joint Applicants’ burden to show that the transaction does not result in a net detriment. Therefore, when responding to the arguments raised in the Joint Reply, the OPC will refer to the Respondents and when referring to the applicable burden of proof, the OPC will refer to the Joint Applicants.

customers of Confluence’s two wastewater districts, they have cited only vague statements from the Joint Application to show that benefits exist to outweigh the detriment identified by the OPC. As the OPC will explain below, this does not show that the Joint Applicants have carried their burden to show that no net detriment exists because of this transaction. For this reason, the OPC requests that the Commission either (1) impose the conditions it recommended in its Response to Staff Recommendation (the “OPC Response,” Doc. 12), or (2) schedule a hearing in this matter.

**I. The Joint Applicants Have Failed to Carry Their Burden to Show that the Transaction Will Have No Net Detriment**

The Joint Applicants bear the burden of showing that the proposed transaction will have no net detriment. This burden does not shift to the OPC, even if the OPC raises a concern with the transaction. At this juncture, the Joint Applicants have failed to carry that burden—either through the original Joint Application or the arguments raised in the Joint Reply. Rather, they have provided no evidence and rely on an argument that ignores the higher rate of return inputs identified by the OPC and that is supported by only vague statements from the Joint Application, which include no quantitative analysis.

**A. Applicable Legal Standard**

The OPC agrees that the applicable legal standard requires the Commission to approve the transaction unless it concludes that the transaction “is detrimental to the public interest.” *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. Ct. App. 1980) (citing *State ex rel. City of St. Louis v. Pub. Serv. Comm’n of Mo.*, 73 S.W.2d 393, 400 (Mo. banc 1934)).

As pointed out in the Joint Reply, the Commission has addressed this standard in detail in its Report and Order in *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Aquila, Inc., for Approval of the Merger of Aquila, Inc., with a Subsidiary of Great Plains Energy Incorporated and for Other Related Relief*, 2008

Mo. PSC Lexis 693 (Mo. Pub. Serv. Comm'n 2008) (hereinafter "KCP&L Merger"). In that case, citing to a prior Commission decision and a Supreme Court of Missouri decision, the Commission referenced an "analytical use of the standard" and made clear that it is the applicant who maintains the burden of proof to show that the standard has been met. *KCP&L Merger*, 2008 Mo. PSC LEXIS 693, at \*454-55. Specifically, the Commission stated "[w]hat is required is a cost-benefit analysis in which all of the benefits and detriments in evidence are considered." *Id.* at 453. Referencing the Missouri Supreme Court's decision in *State ex rel. AG Processing, Inc. v. Public Service Commission*, 120 S.W.3d 732, 736 (Mo. banc 2003), the Commission stated

The *AG Processing* decision<sup>3</sup> . . . requires the Commission to consider th[e] risk [of future rate increases] together with the other possible benefits and detriments and determine whether the proposed transaction is likely to be a net benefit or a net detriment to the public. Approval should be based upon a finding of no net detriment.

*Id.* at \*453-54.

In that same case, the Commission made clear that the applicant maintains the burden to show that the standard has been met. *Id.* at \*455. Specifically stating "[i]n cases brought under Section 393.190.1 and the Commission's implementing regulations, the applicant bears the burden of proof. *That burden does not shift.* Thus, a failure of proof requires a finding against the applicant." *Id.* (emphasis added and citation omitted).

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<sup>3</sup> In the *KCP&L Merger* case, the Commission's citation to this standard included language that referenced the OPC's argument that the *AG Processing* case "require[s] the Commission to deny approval where a risk of future rate increases exists." 2008 Mo. PSC LEXIS 693, at \*453. The Commission then referred to the balancing test of benefits and detriments. *See id.* at \*453-55. Here, the OPC notes the risk of future rate increases, but does not solely rely on it in requesting the imposition of conditions or a hearing. Rather, it is the inability to engage in the necessary balancing test and the resulting net detriment that has led to the OPC bringing this request. Namely, the OPC bases its request for the imposition of conditions or for a hearing on the Joint Applicants' failure to quantify any benefit that would offset the detriment of future rate increases as identified in Mr. Murray's Memorandum.

**B. The Arguments Raised in the Joint Reply Fail to Show that the Joint Applicants Have Carried Their Burden to Show that the Transaction Will Have No Net Detriment**

In the Joint Reply, the Respondents take a narrow view of the OPC's assertion that the customers of these nineteen systems will likely experience higher rates due to Confluence's ownership of the systems. Rather, they focus on the rates customers will pay immediately after Confluence's acquisition of the systems.<sup>4</sup> (J. Reply 3-4). They also point out that MAWC currently has a rate case pending before the Commission and that Confluence could not change the rates it will charge these customers without going through the rate case process. (*Id.* 4). The Respondents do not address rate impacts after Confluence's future rate case, including the higher rate of return inputs. (*See generally id.*). Those future rate impacts though are where the OPC's concerns lie. (*See generally* Mr. Murray Mem.).

The Respondents also take issue with the OPC's focus on the rate of return element of ratemaking. (J. Reply 4-5). Although the OPC focused its analysis on the rate of return, the OPC does not bear the burden to show that benefits exist that will outweigh this likely detriment. *See KCP&L Merger*, 2008 Mo. PSC LEXIS 693, at \*455 (“[i]n cases brought under Section 393.190.1 and the Commission's implementing regulations, the applicant bears the burden of proof. That burden does not shift.”). Rather, it is MAWC and Confluence, as the Joint Applicants, who must show that no net detriment exists.<sup>5</sup>

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<sup>4</sup> The OPC does not dispute that Confluence proposes to utilize the existing customer rates (\$65.36) for the nineteen wastewater systems. (*See* J. Appl. 6). The OPC also does not dispute that this rate is between the rates that Confluence currently charges its sewer customers in District 1 and District 2 (\$60.21 and \$70.83, respectively). (J. Reply 3). However, these current rates do not address the OPC's concern regarding the higher rate of return inputs that Mr. Murray discussed in his Memorandum. (*See generally* OPC Resp. Att. A “Mr. Murray Memorandum,” Doc. 12).

<sup>5</sup> Specifically, the Respondents refer to the OPC's failure to consider things such as “cost reductions” and “rate design implication/considerations” that “could impact resulting rates either up or down.” (J. Reply 4). However, it is not the OPC who bears the burden to show that no net detriment exists. *See KCP&L Merger*, 2008 Mo. PSC LEXIS 693, at \*455. If the Joint Applicants can point to and quantify some other ratemaking element that offsets the higher rate of return inputs, such information could potentially satisfy the OPC's concerns.

In the Joint Reply, the Respondents rely only on vague statements from the Joint Application, which generally refer to alleged operational efficiencies that may result from the transaction. (J. Reply 5-6 (citing J. Appl. ¶ 18)). However, the Respondents provide no quantitative analysis to show how these alleged operational efficiencies<sup>6</sup> would offset higher rates that customers would likely face if the Commission allows Confluence to acquire these systems. (*Id.*). Without this quantitative information, the Commission cannot determine at this time whether these alleged benefits would offset the higher rates that customers would likely face under Confluence’s ownership.<sup>7</sup> See *KCP&L Merger*, 2008 Mo. PSC LEXIS 693, at \*453-54 (referring to the cost-benefit analysis).

It is the Joint Applicants’ burden to show that there will be no net detriment resulting from the sale of these nineteen systems from MAWC to Confluence. *Id.* at \*455 (stating that “[i]n cases brought under Section 393.190.1 and the Commission’s implementing regulations, the applicant bears the burden of proof. That burden does not shift.”). If the Joint Applicants cannot provide

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<sup>6</sup> The OPC questions the weight to be afforded these alleged benefits at this juncture. Not only have the Joint Applicants submitted no evidence to support these statements, but on their face they appear debatable.

For instance, the Respondents point to Confluence’s “specializ[ation] in running and rehabilitating small systems.” (J. Reply 5 (citation omitted)). However, in its Recommendation, Staff pointed out that “a common theme with many of these systems is that they are properly constructed and have been well maintained, but they are aged.” (Staff Recommendation Mem. 3, Doc. 11). It appears that the majority, if not all, of these systems are not distressed. (See Staff Recommendation Mem. 4-8). No party has asserted that MAWC could not or would not make any necessary future upgrades.

Similarly, the Respondents reference the lack of overlap between these systems with MAWC’s water service areas and the proximity to Confluence’s other small wastewater systems in the vicinity. (J. Reply 5-6). However, based on a publicly available map of MAWC’s service area it appears that while these systems do not overlap with MAWC’s water service area in the Jefferson City area, they are fairly close to it and to other MAWC-operated small wastewater systems. See Missouri American Water Service Areas map, available at <https://experience.arcgis.com/experience/0ddc455a3ac945dc8f03af40de1924a2>.

Finally, the Respondents mention that Confluence would have an advantage because of its “focus on small, geographically dispersed systems.” (J. Reply 5-6 (citation omitted)). However, MAWC operates other small wastewater systems that are similarly geographically dispersed. See Missouri American Water Service Areas map, available at <https://experience.arcgis.com/experience/0ddc455a3ac945dc8f03af40de1924a2>. MAWC has provided no indication in this case—and the OPC is not aware of any indication in any other case—that tends to show that MAWC lacks the ability to run such systems.

<sup>7</sup> Importantly, Mr. Murray has provided a quantitative analysis in his verified Memorandum that shows how Confluence’s higher rate of return inputs would result in higher rates.

sufficient evidence to show that no net detriment exists, the Commission must deny the proposed transaction. *Id.* (referencing the burden of proof and stating that “a failure of proof requires a finding against the applicant.”); *see Fee Fee Trunk Sewer, Inc.*, 596 S.W.2d at 468. Because the Joint Applicants have not at this time quantified any benefit that would offset the detriment identified by the OPC, the OPC requests either the imposition of conditions or a hearing.

## **II. The OPC’s Proposed Conditions Were an Attempt to Ensure that No Net Detriment Existed to Customers**

In drafting the conditions in its initial response, the OPC attempted to draft conditions that would protect ratepayers from a detriment it believes exists because of this transaction. These conditions were based on conditions imposed in prior cases that, admittedly, differ from the case currently before the Commission. However, simply because this transaction involves smaller systems and a smaller number of customers no reason exists to disregard the issues identified by the OPC in its initial Response and in this Sur-Reply. If other parties do not believe that the OPC’s proposed conditions appropriately address the OPC’s concern,<sup>8</sup> then the OPC has, alternatively, requested that the Commission hold a hearing in this matter.

## **III. Conclusion**

To approve the sale of the nineteen sewer systems from MAWC to Confluence the Commission must determine that the sale results in no net detriment to the public interest. Here, the OPC has quantified a detriment—likely higher customer rates due to Confluence’s traditionally higher rate of return inputs. Both the Respondents in the Joint Reply and the Joint Applicants in their Joint Application, on the other hand, have failed to quantify any benefit that would offset this

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<sup>8</sup> In their Joint Reply, the Respondents appear to assert that the OPC could address its concerns in a future Confluence rate case. (J. Reply 7). This is insufficient. The Commission should weigh the risk of higher rates in addressing the no net detriment standard in this case. *See AG Processing, Inc.*, 120 S.W.3d at 735-36 (addressing the legal standard under § 393.190 RSMo. and concluding that the Commission should have considered an acquisition premium as part of the merger case, even if it could have been addressed in a future rate case).

detriment, instead relying on vague statements generally referring to alleged operational efficiencies. The Commission should conclude that the Joint Applicants have not, at least at this stage, carried their burden to show that the transaction will result in no net detriment and either (1) impose the OPC's proposed conditions, or (2) set this matter for a hearing.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission either impose its proposed conditions in addition to those recommended by Staff or hold a hearing in this matter.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 7th day of February 2025.

/s/ Lindsay VanGerpen