

**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

STATEMENT OF POSITIONS

Comes now the Office of the Public Counsel (the “OPC”) and submits this Statement of Positions:

1. What legal standard must the Commission apply in deciding this case?

In deciding this § 393.190 RSMo. case, the Commission must apply the “not detrimental to the public interest” standard. *See Osage Util. Operating Co. v. Mo. Pub. Serv. Comm’n*, 637 S.W.3d 78, 92-93 (Mo. Ct. App. 2021) (hereinafter “*Osage Util.*”). Under this standard, the Commission must engage in a “balancing process, which requires the Commission to perform a cost benefit analysis in which all of the benefits and detriments in evidence are considered.” *Id.* at 93 (citation and internal quotation marks omitted). The Commission must “consider all relevant factors in issuing its decisions and orders.” *Id.* (citing *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n*, 120 S.W.3d 732, 736 (Mo. banc 2003)). The Commission itself has recognized the “analytical use of the standard” and stated that “[a]pproval should be based upon a finding of no net detriment.” *In the Matter of the Jt. Appl. Of Great Plains Energy Inc., Kansas City Power & Light Co., & Aquila, Inc., for Approval of the Merger of Aquila, Inc., with a Subsidiary of Great Plains Energy Inc. & for Other Related Relief*, 266 P.U.R. 4th 1, 448-56 (Mo. P.S.C. 2008) (hereinafter “KCP&L Merger”). The burden of proof to show that the transaction will result in

“no net detriment” remains with the applicant and does not shift to any other party. *See id.* at 454-55. “Thus, a failure of proof requires a finding against the applicant.” *Id.*

On appeal, “the Commission’s decision will be found to be unreasonable if it ‘erroneously ignores evidence that may have substantially impacted the weight of the evidence evaluated to approve’ the transaction.” *Osage Util.*, 637 S.W.3d at 93 (quoting *State ex rel. Praxair, Inc. v. Pub. Serv. Comm’n*, 344 S.W.3d 178, 184 (Mo. banc 2011)). For instance, the Missouri Supreme Court determined that although the Commission could have addressed the recovery of an acquisition premium in a future rate case, the Commission “should have considered it as part of the cost analysis when evaluating whether the proposed merger would be detrimental to the public.” *AG Processing, Inc.*, 120 S.W.3d at 736 (footnote omitted).

2. Would the sale of the subject Missouri-American Water Company wastewater systems to Confluence Rivers Utility Operating Company, Inc., be detrimental to the public interest?

Yes, the sale of the nineteen wastewater systems from Missouri-American Water Company (“MAWC”) to Confluence Rivers Utility Operating Company, Inc.’s (“Confluence” and collectively with MAWC, the “Companies”), as detailed in the Joint Application and Motion for Waiver (the “Joint Application”) is detrimental to the public interest. The OPC has identified at least five customer detriments due to this transaction:

- (1) “[c]ustomers [of these nineteen systems] will go from receiving service from the largest publicly-traded investor-owned water utility in the United States (and in Missouri), which comes with access to its own research laboratory and whose business model is focused on the use of full-time employees, to receiving service from a much smaller utility whose business model is predicated on finding distressed systems for sale and operating the systems entirely with contractual employees.”
- (2) customers of these nineteen systems will likely be subject to higher rates due to losses of economies of scale and higher cost-of-service items;
- (3) “MAWC’s remaining customers will continue to pay costs as if these systems were still in operation;”
- (4) a ** _____ ** acquisition premium exists; and
- (5) 18 of the 19 wastewater systems are closer to existing MAWC systems than Confluence systems.

(See Marke Rebuttal Test. 2-9, 10-11; Murray Rebuttal Test. 3-4, 6-15; Marke Surrebuttal Test. 3-8). Based on the information available, including the information the OPC received through discovery, Mr. David Murray, Chartered Financial Analyst, quantified how much higher the cost of service would be per connection under Confluence's ownership as compared to MAWC's ownership based on certain cost-of-service items. (Murray Rebuttal Test. 8-15). Though the OPC proffered discovery requests attempting to identify offsets to these higher cost-of-service items, neither MAWC nor Confluence identified any specific offsets. (*Id.* 6-8, 16).

Under the § 393.190 RSMo. standard discussed above, it is clear that MAWC and Confluence as the Joint Applicants in this case bear the burden to show that this transaction is not detrimental to the public interest. *KCP&L Merger*, 266 P.U.R. 4th at 455. Throughout this matter, MAWC and Confluence rely only on vague statements alluding to questionable benefits to assert that this transaction is in the public interest. When pressed in discovery it became clear that these statements were supported by little analysis. For instance, although the Companies appear to rely on Confluence's business model to support the idea that efficiencies may exist if Confluence owns the systems, neither MAWC nor Confluence have performed an analysis that identifies how this would result in any benefit to customers. (Marke Rebuttal Test. 7; Murray Rebuttal Test. 6-8). Similarly, the Companies rely on the proximity of Confluence's other systems to the subject systems. (Silas Direct Test. 9; Kadyk Direct Test. 7). However, MAWC has other systems much closer to the great majority of these systems. (Marke Rebuttal Test. 7-8; Marke Surrebuttal Test. 5-8). Tellingly, although MAWC owns other small wastewater systems, it has stated in response to the OPC's discovery that it does not anticipate selling any of these other small wastewater systems to Confluence. (Marke Rebuttal Test. 8).

The OPC identified at least five customer detriments as a result of this transaction. (*See, e.g., Marke Surrebuttal Test. 3-8*). The Companies, however, have failed in their burden to show that customer benefits exist to offset these detriments. (*See, e.g., Murray Rebuttal Test. 6-8, 16; Marke Rebuttal Test. 7-8*). Under the analytical use of the not detrimental to the public interest standard, the Commission must determine whether a net detriment exists after considering all of the benefits and detriments in evidence. *Osage Util.*, 637 S.W.3d at 93-94; *KCP&L Merger*, 266 P.U.R. 4th at 453-55. In this case, the Companies have failed to identify benefits that offset the detriments identified by the OPC. Therefore, the transaction results in a net detriment and is detrimental to the public interest.

WHEREFORE, the Office of the Public Counsel respectfully submits its Statement of Positions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing will be emailed to all counsel of record this 5th day of June 2025.

/s/ Lindsay VanGerpen