

**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.   )

**APPLICANTS' STATEMENT OF POSITION**

**COME NOW** Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers”) and Missouri-American Water Company (“MAWC”) (collectively, “Applicants”), and state the following to the Missouri Public Service Commission (“Commission”) as their *Statement of Position* as to issues described in the *List of Issues, Order of Opening Statements, Order of Witnesses, and Order of Cross-Examination* filed on May 30, 2025:

**Proposed Transaction**

MAWC seeks to sell, and Confluence Rivers desires to acquire, nineteen (19) small wastewater systems. Eighteen of those systems are located in Callaway County and the remaining system is located in Morgan County. As of March 3, 2025, the total number of active connections for the nineteen systems was 616.

The assets to be sold by MAWC were among the assets MAWC acquired from Aqua Missouri, Inc., Aqua Development, Inc., and Aqua/RU, Inc. d/b/a Aqua Missouri, Inc. pursuant to approval granted by the Commission in Case No. WO-2011-0168. The transaction was associated with the decision by Aqua to largely exit the state of Missouri as a regulated utility. The proposed transaction would result in MAWC selling nineteen of those former Aqua systems to Confluence Rivers.

## List of Issues

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

**APPLICANTS POSITION:** The Missouri Court of Appeals has described the standard for the sale of the assets of a regulated utility as follows:

Prior to the sale of certain assets of a regulated utility, the Commission must approve the transfer. § 393.190.1. “The obvious purpose of this provision is to ensure the continuation of adequate service to the public served by the utility.” *Fee Trunk Sewer*, 596 S.W.2d at 468. In determining whether a transfer should be approved, the Commission determines whether the transfer is detrimental to the public interest. *AG Processing, Inc.*, 120 S.W.3d at 735 (citing *State ex rel. City of St. Louis v. Pub. Serv. Comm’n*, 73 S.W.2d 393, 400 (Mo. banc 1934)).<sup>1</sup>

The “Missouri Supreme Court indicated that it is not the province of the Commission ‘to insist that the public shall be benefited, as a condition to change of ownership, but [the Commission’s] duty is to see that no such change shall be made as would work to the public detriment.’ [City of St. Louis, 73 S.W.2d at 400] (quoting *Elec. Pub. Utilities Co.*, 140 A. at 844).”<sup>2</sup>

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 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.”<sup>3</sup> If there is no detriment, the Commission must approve the proposed transaction.

If the Commission does identify a detriment, it has 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.”<sup>4</sup> The Commission has described this standard as follows:

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<sup>1</sup> *Osage Util. Operating Co. v. Mo. Pub. Serv. Comm’n*, 637 S.W.3d 78, 92 (Mo.App. 2021) (emphasis added).

<sup>2</sup> *Osage Util.*, 637 S.W.3d at 93.

<sup>3</sup> *State ex rel. St. Louis v. Public Service Commission*, 73 S.W.2d 393, 400 (Mo. 1934) (emphasis added).

<sup>4</sup> *See Re Union Electric Company*, 13 Mo.P.S.C.3d 266, 293, Case No. EO-2004-0108 (2005).

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.<sup>5</sup>

Where there are detriments identified, this balancing approach has been found by the Court of Appeals to be appropriate.<sup>6</sup>

Ultimately, Applicants' task, and the Commission's consideration, may be described as follows:

. . . an applicant need not show that the transfer will produce the greatest benefit to the public—or any net benefit at all—but only that the transfer will not work to the detriment of the public.<sup>7</sup>

**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?**

**APPLICANTS POSITION:** No. Confluence Rivers' acquisition of the MAWC wastewater systems at issue in this case will not be detrimental to the public interest, as there is no detriment.

Applicants are both water corporations, sewer corporations, and public utilities, as those terms are defined in Section 386.020, RSMo. They are subject to the jurisdiction and supervision of the Commission as provided by law and each will remain so after the proposed acquisition.

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<sup>5</sup> *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).

<sup>6</sup> See *Osage Util.*, 637 S.W.3d at 94.

<sup>7</sup> *Osage Util.*, 637 S.W.3d at 94, citing *City of St. Louis*, 73 S.W.2d at 400.

Confluence Rivers has been a Missouri public utility since March of 2015, and provides water service to approximately 6,400 connections and sewer service to approximately 6,500 connections in the State of Missouri, pursuant to certificates of convenience and necessity previously granted by the Commission. It is an experienced owner and operator of wastewater systems in the State of Missouri and specializes in running and rehabilitating small systems.

Confluence Rivers provides service that is safe and adequate and in all respects just and reasonable, as required by Section 393.130, RSMo, and has tariff books containing rules and regulations and rates approved by the Commission that have become effective within the last nineteen months.

The customers of the subject wastewater systems represent a small percentage of the MAWC wastewater customers and after the acquisition will represent a relatively small percentage of the Confluence Rivers wastewater customers.

A comparison of future rates for either MAWC or Confluence Rivers is difficult, if not impossible, as the future values of elements critical to the calculation of Confluence Rivers' future revenue requirements – e.g., operating costs, capital structure, and return on equity – are both unknown and unknowable at the present time. Additionally, timing of investments, timing of rate cases, use of the Missouri Water and Sewer Infrastructure Act (“WSIRA”), and possible implementation of a future test year may also have a significant impact.

However, a comparison of the current MAWC rates being paid today by the customers of the nineteen subject systems and those being paid today by Confluence Rivers' customers, all of which contain impacts of past investments, operating costs, and rates of return utilized by the Commission in setting rates for the Applicants, shows there is no significant difference in rates between the companies. MAWC's base rate for these customers at the time direct testimony was

filed was \$65.36 and these customers were actually paying \$68.56 monthly at that time when WSIRA was included. As of May 28, 2025, MAWC's base rate is \$74.11, which resulted from Commission Case No. WR-2024-0320. Confluence Rivers' current District 1 rate is \$60.21, and its District 2 rate is \$70.83, average of \$65.52.

As of closing, Confluence Rivers proposes to charge the customers of the subject systems the MAWC base rate as of Direct Testimony (\$65.36). Such rate would represent a decrease from the rate currently charged these customers (\$74.11) and would not change for quite some time as Confluence Rivers currently has no rate case on file (and new rates would likely not become effective until 11 months from its next general rate case filing).

Thus, any allegation of a detriment associated with future rates that may be authorized by the Commission under Confluence Rivers' is not supported by the best evidence available – the current Commission-approved rates of MAWC and Confluence Rivers.

Confluence Rivers' acquisition of the subject MAWC wastewater systems will not be detrimental to the public interest and should be approved by the Commission subject to the conditions and actions proposed by the Staff of the Commission.

*Silas, Dir. and Sur., All*  
*Kadyk, Dir. and Sur., All*

**WHEREFORE**, Applicants respectfully request that the Commission consider this *Statement of Position*.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing document was filed in EFIS on this 5<sup>th</sup> day of June, 2025, with notice of the same being sent to all counsel of record by electronic mail.

    //s// Dean L. Cooper