

**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

INITIAL BRIEF

Comes now, the Office of the Public Counsel (the “OPC”) and offers this initial post hearing brief.

I. Background

In this unique case, Missouri American Water Company (“MAWC”) and Confluence Rivers Utility Operating Company, Inc. (“Confluence” and collectively with MAWC, the “Joint Applicants”) seek authority for MAWC to sell and Confluence to acquire nineteen (19) small wastewater systems in Callaway and Morgan Counties and for related relief. (Jt. Appl. 1, 7-8, Doc. 1). Unlike many other acquisition cases, especially those involving small wastewater systems, both the buying and selling utility to this transaction are regulated by this Public Service Commission of the State of Missouri (“Commission”). MAWC also intends to continue providing wastewater service in the State of Missouri, including to other small systems in the area of these systems. There is also no allegation that MAWC cannot or will not provide service to these customers should the Commission deny the Joint Application. Rather, MAWC has been providing service to these customers and it appears it is willing to continue to do so, if ordered by the Commission.

Though the Staff of the Commission (“Staff”) recommends that the Commission approve the relief requested in the Joint Application, they have not conducted any analysis comparing the quality and cost of service under MAWC’s and Confluence’s ownership. When the OPC conducted such an analysis it became clear that, as explained more fully below, customers will suffer at least five detriments as a result of this transaction. The Joint Applicants, who bear the burden of proof, have identified only one benefit and it is likely temporary. The remaining items they rely upon appear to provide only questionable benefits. Therefore, when applying the required balancing test, the transaction results in a net detriment to customers. For this reason, the OPC respectfully requests the Commission deny the relief requested in the Joint Application.

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

In order to approve the proposed sale, the Commission must find it is “not detrimental to the public interest.” *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.*”) (citation omitted).

The Joint Applicants bring this case pursuant to § 393.190 RSMo.,¹ which provides, in pertinent part:

No . . . sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.

§ 393.190.1 RSMo.

In 1934, the Missouri Supreme Court, recognized that “[a] property owner should be allowed to sell his property unless it would be detrimental to the public.” *State ex rel. St. Louis. v.*

¹ The Joint Applicants also cite Commission Rules 20 CSR 4240-2.060 (the rule governing applications filed before the Commission); 20 CSR 4240-4.017 (the rule requiring applicants to file a 60-day notice before filing a case before the Commission and explaining waiver of that provision); and 20 CSR 4240-10.105 (the rule setting forth the filing requirements for sewer utility applications for authority to sell assets).

Pub. Serv. Comm'n, 73 S.W.2d 393, 400 (Mo. 1934). In quoting a Maryland case interpreting an “identical statute,” the court stated

To prevent injury to the public, in the clashing of private interest with public good in the operation of public utilities, is one of the most important functions of Public Service Commissions. It is not their province to insist that the public shall be *benefited*, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public *detriment*. ‘In the public interest,’ in such cases, can reasonably mean no more than ‘not detrimental to the public.’

Id. (quoting *Elec. Pub. Utils. Co. v. West*, 140 A. 840 (Md. 1928)).

The Commission itself has expanded on this standard stating that “[w]hat is required is a cost-benefit analysis in which all of the benefits and detriments in evidence are considered.” *In the Matter of the Jt. Appl. of Great Plains Energy Inc., Kan. 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*, 2008 Mo. PSC LEXIS 693, *447-56 (Mo. P.S.C. 2008) (hereinafter “*KCP&L Merger*”); *see also Osage Util.*, 637 S.W.3d at 93. The Commission has defined a detriment as “any direct or indirect effect of the transaction that tends to make the [provision of wastewater service²] . . . less safe or less adequate, or which tends to make rates less just or less reasonable.” *KCP&L Merger*, 2008 Mo. PSC LEXIS at *454.

Although no exhaustive list of considerations exists, the Commission must “consider all relevant factors in issuing its decisions and orders.” *Osage Util.*, 637 S.W.3d at 93 (citation omitted). This includes anything that “may have substantially impacted the weight of the evidence evaluated to approve the transaction.” *Id.* (internal quotation marks and citation omitted). Specifically, these considerations must include a determination of whether any acquisition

² In *KCP&L Merger*, the Commission considered whether an electric utility should be allowed to merge with another entity. 2008 Mo. PSC LEXIS at *4-*6. Therefore, the Commission referenced the power supply as the commodity provided by the utilities at issue in that matter. Because this case involves the provision of wastewater service, the standard should consider anything that affects wastewater service.

premium is “reasonable”³ and the potential for increased rates. *See State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n*, 120 S.W.3d 732, 736-37 (Mo. banc 2003) (citation omitted); *Osage Util.*, 637 S.W.3d at 96 n. 15.

The cost-benefit analysis requires an “analytical use of the standard,” with “[a]pproval . . . based upon a finding of no net detriment.” *KCP&L Merger*, 2008 Mo. PSC LEXIS at *453-54. Though a transaction need not result in a benefit to the public, it cannot “work to the detriment of the public.” *Osage Util.*, 637 S.W.3d at 94 (citation omitted).

It is the applicant, or, in this case, the Joint Applicants, who bear the burden of proof. *KCP&L Merger*, 2008 Mo. PSC LEXIS at *455. “That burden does not shift. Thus, a failure of proof requires a finding against the applicant.”¹ *Id.*

III. Issue 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 identified in the Joint Application from MAWC to Confluence would be detrimental to the public interest because the Joint Applicants have failed to carry their burden of proof to show that the benefits customers will experience as a result of this sale equal or outweigh⁴ the detriments they will suffer. Netting the detriments

³ The Missouri Supreme Court has recognized that although the Commission may consider the recovery of acquisition premium in a future rate case, it must consider the acquisition premium in the acquisition case. *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n*, 120 S.W.3d 732, 736 (Mo. banc 2003). Specifically, the court stated

The fact that the acquisition premium recoupment issue could be addressed in a subsequent ratemaking case did not relieve the PSC of the duty of deciding it as a relevant and critical issue when ruling on the proposed merger. While PSC may be unable to speculate about future merger-related rate increases, it can determine whether the acquisition premium **was reasonable, and it should have considered it as part of the cost analysis when evaluating whether the proposed merger would be detrimental to the public.**¹

Id. (emphasis added).

⁴ The OPC understand that the Joint Applicants need not show that the transaction results in a net *benefit* to customers. *See St. Louis*, 73 S.W.2d at 400 (quoting with approval a Maryland Supreme Court case stating that the public need not be benefitted by a transaction); *Osage Util.*, 637 S.W.3d at 94. However, it is the OPC’s position that the benefits relied on by the Joint Applicants fail to equal or outweigh the detriments that it has identified.

identified by the OPC with the benefits relied on by the Joint Applicants, it becomes clear that customers will suffer a net detriment if the Commission approves the relief requested in the Joint Application.

A. Customers of the Nineteen Systems Will Suffer Detriments as a Result of this Sale

Customers will suffer, or will at least likely suffer, at least five detriments as a result of this transaction. These detriments are associated both with the quality of service, as well as the cost of that service. *See KCP&L Merger*, 2008 Mo. PSC LEXIS at *454 (defining what constitutes a detriment in a § 393.190 RSMo. analysis).

1. Loss of Economies of Scale

First, it cannot be disputed that if the Commission approves of this transaction, customers will lose the benefits associated with larger economies of scale. MAWC is “the largest investor-owned water utility in Missouri” and is “an affiliate of the largest investor-owned water utility in the United States.” (Ex. 302 “Marke Rebuttal Testimony” 8-9, Doc. 63). As of the end of 2024, it served 24,077 wastewater customers in Missouri. (*Id.* GM-9 “MAWC’s Response to OPC DR 28”).

Confluence, on the other hand, serves approximately 73% less wastewater customers in Missouri, 6,638 wastewater customers. (*Id.* GM-8 “Confluence’s Response to OPC DR 1” (identifying 6,618 wastewater customer connections as of December 31, 2024); Ex. 300 “Murray Rebuttal Testimony” DM-R-2 “Confluence Responses to OPC DRs 1-39” (specifically Confluence’s response to OPC DR 1 (identifying 20 additional wastewater connections due to recent acquisitions))).

As Dr. Marke testified, “[a]ll things being equal, scale economies will benefit a natural monopoly’s customers.^[1]” (*Id.* 9). As he explained at the hearing, given MAWC’s size it would be “in a better position to provide a cost-effective solution to” problems such as a large boil order

“because of economies of scale.” (Tr. 123, Doc. 48). Given the algebraic nature of ratemaking, whereby costs are shared amongst customers, a smaller customer base will likely result in higher rates for customers simply because there are fewer customers over which to spread the costs. (*See id.* 120).

2. Operational Models

Second, MAWC and Confluence’s operational models differ greatly. Specifically, MAWC relies on full-time employees to operate its systems, supplemented with contractors for “specialty items.”⁵ (*Id.* 51; Marke Rebuttal Test. GM-2 “MAWC Response to OPC DR 17”; Marke Rebuttal Test. 2). When asked to identify the individuals required to operate and maintain each of the nineteen systems, MAWC identified two individuals, both of whom maintain a business address in Jefferson City, Missouri. (Marke Rebuttal Test. GM-3 “MAWC Response to OPC DR 16”). MAWC itself has recognized the benefits associated with its use of full-time employees, saying “[u]tilizing full-time operational staff that have a diverse knowledge base of MAWC’s systems allows for efficient decision making that considers historical changes to the systems and future planning efforts to improve the systems.” (Ex. 303 “Marke Surrebuttal Testimony” GM-2 “MAWC Response to OPC DR 54”). It further stated that “[a]ll operational personnel have access to the entire knowledge base of American Water and that is not true of a third-party contractor.” (*Id.*).

Confluence though relies on third-party contractors to operate its wastewater systems,⁶ with only a regional manager overseeing the entire state of Missouri. (*See* Marke Rebuttal Test. 2-4; Tr. 63). Confluence’s reliance on third-party contractors “places a considerable amount of faith

⁵ MAWC explained the types of contractor services it utilizes include “landscaping, generator inspection and testing, chemical delivery, etc.” (Marke Rebuttal Test. GM-2 “MAWC Response to OPC DR 17”).

⁶ Confluence has not yet finalized an operations and maintenance contract for these nineteen systems. (Confluence Responses to OPC DRs 1-39 (specifically Confluence’s responses to OPC DRs 17 and 18)).

in 3rd and potentially 4th party vendors that can increase the operational, reputational, financial, and cyber/physical asset risk of the service provided.” (Marke Rebuttal Test. 4). The contractor model also raises concerns regarding overspending and heightened concerns with potential double-dealing. (*Id.*).

In addition to Confluence’s reliance on third-party contractors, its traditional focus has been on the acquisition of small, distressed systems. (Marke Rebuttal Test. 3 (citing CSWR-sponsored video explaining this focus)). These systems often require Confluence to expend capital to bring the systems into compliance. (*See* Tr. 120). As Dr. Marke testified, Confluence’s model is “predicated on past customers helping subsidize all of those systems” because “[t]he larger that customer base, the more you can spread those costs around.” (*Id.*). In fact, in Confluence’s most recent rate case it requested a higher common equity ratio because it planned to continue to pursue acquisitions of distressed systems that may need significant capital investment. (*See id.* 95).

The Commission need not opine on the prudence of Confluence’s use of third-party contractors to operate its wastewater systems in this case.⁷ It simply cannot be disputed that MAWC and Confluence utilize different operational models to operate their wastewater systems. Therefore, the Commission must determine whether the customers of these nineteen systems will suffer a detriment given the change in operational model used by their wastewater provider. As MAWC recognized, there are clear advantages to receiving service from full-time employees. (MAWC Resp. to OPC DR 54). These advantages are not present when receiving service from a third-party contractor. (*Id.*). Further, Confluence’s traditional focus on the acquisition of distressed systems coupled with the loss of economies of scale, will likely result in higher rates for

⁷ The OPC takes no position in this case on the findings of Confluence’s internal study regarding its cost/benefit analysis of the use of contractors versus full-time employees. (*See* Ex. 3 “Silas Surrebuttal Testimony” AJS-3, Doc. 51; Tr. 62-63).

customers. (*See* Marke Rebuttal Test. 3-4). Therefore, the change in operational model results in a detriment to customers of these systems.

3. Loss of Access to American Water Resources/Laboratory

Customers will also suffer the loss of access to all the resources associated with MAWC's affiliation with American Water, including its laboratory, if the Commission approves this transaction. This is yet another detriment.

MAWC described American Water's laboratory as "one of the premiere water laboratories in the country." (Marke Surrebuttal Test. GM-1 "MAWC Response to OPC DR 25"). It has access to the laboratory "to deal with constantly changing emerging contaminants and other water quality issues." (*Id.*). MAWC's operational personnel also "have access to the entire knowledge base of American Water." (MAWC Resp. to OPC DR 54).

When questioned about its use of laboratories Confluence referenced its participation in pilot programs and described how its third-party contractors maintain contracts with laboratories for sample testing. (*See* Tr. 55-57, 60). Though Confluence asserts that it maintains responsibility for its contractors who conduct the testing, based on Confluence's testimony, it appears that its contractors are the ones who must maintain a relationship with any laboratory. (*Id.*).

MAWC's affiliation with American Water provides benefits to customers. The loss of these benefits is yet another detriment to customers.

4. Acquisition Premium

Staff has identified an acquisition premium in this case of **_____** or approximately
_____. (Ex. 200 "Robertson Rebuttal Testimony" JJR-r2
"Staff Memorandum" 9, Doc. 55).

Confluence does not dispute that Staff has identified this acquisition premium. (Tr. 63-64). Although Confluence asserted at the hearing that it was not requesting the Commission approve

the acquisition premium, it gave no indication of what its request would be in the next rate case,⁸ where the Commission typically decides recovery of any acquisition premium. (*See id.* 17, 40, 62).

Although the Commission need not decide recovery of the acquisition premium in this case, it must determine whether it is reasonable “as part of the cost analysis when evaluating whether the proposed [sale is] . . . detrimental to the public.” *AG Processing*, 120 S.W.3d at 736.

Under the facts of this case, where a regulated utility whose rates were recently calculated assuming continued ownership of these systems could continue to provide service to these customers without incurring an acquisition premium, this acquisition premium is unreasonable and constitutes a detriment. (Ex. 301 “Murray Surrebuttal Testimony” 2-3, Doc. 62; Marke Surrebuttal Test. 5).

5. Higher Cost of Service Inputs

Mr. David Murray, Chartered Financial Analyst, who has nearly twenty-five years of experience working with both the Staff and the OPC, has identified several cost of service inputs that will be higher under Confluence’s ownership as compared to MAWC’s ownership. (*See* Murray Rebuttal Test. 8-16). As Mr. Murray explained, these higher cost of service inputs will likely result in higher rates under Confluence’s ownership. (*Id.*).

For instance, Mr. Murray identifies that MAWC projected only **_____** in investments for three of the nineteen systems over the next five years.⁹ (*Id.* 8). Confluence, on the

⁸ Although the Joint Applicants’ counsel references Confluence’s expectation of recovering the acquisition premium through rates, neither he nor Confluence’s witness mentioned whether Confluence would seek recovery of the acquisition premium in Confluence’s next rate case. (Tr. 17 (Confluence’s counsel stating “if an acquisition premium exists at closing, Confluence Rivers does not expect to recover that premium in rates”), 40 (in response to a Commissioner question which asked “When this comes through in the next rate case, this will be seen at book value without regard to an acquisition premium. Is that -- is that correct?” Confluence’s counsel confirming that is Confluence’s expectation), 62 (Confluence’s witness confirming that Confluence is not requesting that the Commission approve an acquisition premium)).

⁹ It came to the OPC’s attention after the filing of Rebuttal Testimony that MAWC may intend to invest more in the nineteen systems at issue in this matter. (Murray Surrebuttal Test. 2). However, as Mr. Murray stated, because MAWC

other hand, identified approximately ** _____ ** of additional investment to all nineteen systems. (*Id.* 9).

Perhaps more pointedly, Mr. Murray discussed the differences between MAWC and Confluence's costs of capital. (*Id.* 9-10). As shown in the table below, these include requested capital structures, returns on equity, and costs of debt. (*Id.*).

Metric	Confluence	MAWC
<i>Common Equity</i>	68.56%	50.39%
<i>Long-term Debt</i>	31.44%	49.61%
<i>Return on Equity</i>	11.35%	10.75%
<i>Cost of Long-Term Debt</i>	6.60%	4.56%
<i>Pre-Tax Rate of Return (Based on Companies' Requests)</i>	12.44%	9.37%
<i>Pre-Tax Rate of Returns (Based on Commission Order and Stipulation and Agreement)</i>	9.90%	8.49%

Ultimately, Confluence's requested pre-tax rate of return in its most recent rate case was 12.44%, as compared to MAWC's pre-tax rate of return, 9.37%. (*Id.*). A difference of over 300 basis points. (*Id.*). Mr. Murray also conducted his analysis using the rate of return approved in Confluence's rate case and the WSIRA rate of return agreed to in MAWC's most recent rate case. (*Id.* 13-14). Those rates of return are 9.90% for Confluence and 8.49% for MAWC. (*Id.* 9, 13).

Mr. Murray calculated the potential rate impacts to customers of these systems using the rates of return under both scenarios. (*Id.* 10-16). His analysis showed that customers would pay more under Confluence's ownership in every scenario.¹⁰ (*Id.*).

has failed to provide disaggregated information about the amount of capital it intends to allocate to these systems in addition to the ** ** Mr. Murray did not factor this additional amount into his analysis. (*Id.*).

¹⁰ As Mr. Murray explained at the evidentiary hearing, the OPC attempted to identify offsets to these higher cost of service inputs. (Tr. 103-04). However, the discovery process revealed that neither MAWC nor Confluence had conducted an analysis to identify any savings. (*Id.*; Murray Rebuttal Test. 6-8).

Customers paying higher rates under Confluence's ownership is supported by Confluence's own analysis, as shown in the Feasibility Study submitted in support of the Joint Application. (*Id.* 4; Murray Surrebuttal Test. 3). In that study, Confluence assumed that customers would pay a rate of **_____**. (Murray Rebuttal Test. 4). This is **_____** higher than the rate the customers are currently paying under MAWC's ownership. (*Compare id.* (identifying the **_____** rate Confluence assumed in the Feasibility Study) *with* Murray Surrebuttal Test. 2-3 (identifying the \$74.11 rate customers are currently paying under MAWC's ownership)). This likelihood for higher rates is another detriment to this transaction.

B. Though the Joint Applicants Have Identified One Quantifiable Benefit it is Likely Temporary and the Remaining Items They Identify Provide Questionable Benefits

With these detriments in mind, the question becomes whether the Joint Applicants have identified benefits to offset or equal out the detriments.

1. Likely Temporary Lower Rates

The OPC does not dispute that the Joint Applicants have identified at least a temporary benefit in that Confluence now states that if the Commission approves of the transaction, it will charge customers the rate that they were paying at the time that the Joint Applicants filed the Joint Application: \$65.36. (Jt. Appls. Statement of Position 5, Doc. 45). This is \$8.75 lower than the base rate customers are currently paying due to the rate increase approved as part of MAWC's most recent rate case. (Murray Surrebuttal Test. 2-3).

Although this rate is lower than the rate customers are currently paying, this benefit is likely temporary. Confluence admits that it intends to file a rate case in the third or fourth quarter of this year. (Silas Surrebuttal Test. 13). As explained above, Mr. Murray's analysis shows that it is likely that customers will pay higher rates due to the higher cost of service inputs under Confluence's ownership. (Murray Rebuttal Test. 8-16). Confluence itself has also assumed a rate significantly

higher than the rate MAWC currently charges to provide the same service. (*Compare Murray Rebuttal Test. 4 with Murray Surrebuttal Test. 2-3*). Assuming that Confluence files its rate case in December 2025 and the Commission suspends the tariff sheets for the traditional eleven months, customers will pay this decreased rate for, at most, about eighteen months.

2. Other Potential Benefits

As to other potential benefits, the Joint Applicants rely only on vague statements alluding to questionable benefits.

For instance, MAWC states that it believes “these very small systems . . . will be more efficiently serviced by Confluence Rivers’ service model than the full-time employees utilized by MAWC.” (Ex. 100 “Kadyk Direct Testimony” 7, Doc. 52). As discussed above, the change in operational model is likely to result in a detriment to customers, as opposed to a benefit. Further, the discovery process revealed that neither MAWC nor Confluence has conducted an analysis to quantify any reduction in costs associated with this transaction. (*See Murray Rebuttal Test. DM-R-4 “MAWC Response to OPC DR 3;” Murray Rebuttal Test. DM-R-5 “MAWC Response to OPC DR 4;” Confluence Responses to OPC DRs 1-39 (specifically Confluence’s responses to OPC DRs 8 and 35)*). Tellingly, MAWC intends to continue providing wastewater service, including to other small wastewater systems in the area surrounding the majority of these systems. (Kadyk Direct Test. 6; Tr. 49-50). It also does not intend to sell any of its other small water, wastewater, or water and wastewater systems to Confluence in the next five years. (Marke Rebuttal Test. GM-7 “MAWC Response to OPC DR 32”). The lack of analysis to quantify a benefit associated with the change in operational model, as well as MAWC’s intention to retain and continue operating its other small wastewater systems in the area calls into question any benefit that may be associated with Confluence’s operational model.

MAWC also references its ability to “concentrate more effectively on its main operational strengths and large-scale facilities.” (Kadyk Direct Test. 7). In identifying its “main operational strengths,” MAWC refers to its ability to operate water and wastewater systems, including its internal expertise, operational experience, and buying power. (MAWC Resp. to OPC DR 25). Specifically, it states in full:

MAWC excels in its ability to operate water and wastewater systems for a variety of reasons including, our internal expertise to deal with challenges in both the water and wastewater services, our operational experience in solving problems in an efficient and cost-effective manner, our buying power with vendors and suppliers, and our relationship with the contractor communities in which we partner. American Water has one of the premiere water laboratories in the country that is available to MAWC to deal with constantly changing emerging contaminants and other water quality issues.

(*Id.*). Though MAWC has referenced that its employees operating these systems will have additional time if it sells these systems, it has provided nothing to quantify any associated reduction in the cost of service. (Murray Rebuttal Test. DM-R-3 “MAWC Response to OPC DR 26”). Even if there is some small benefit to MAWC’s remaining customers, it would be offset by the detriment the customers of the nineteen systems would experience by losing access to the items MAWC itself identifies.

Finally, both the Joint Applicants rely on the location of the systems. (Kadyk Direct Test. 7; Ex. 1 “Silas Direct Testimony” 9, Doc. 49). This statement fails to recognize that MAWC’s other systems are closer to the majority of these systems than Confluence’s other systems.¹¹ Figures 1 and 2 of Dr. Marke’s Surrebuttal Testimony shows the proximity of these nineteen systems to some of MAWC’s other systems. (Marke Surrebuttal Test. 6-7). This includes

¹¹ Though it appears that Confluence’s other systems are closer to the Ozark Meadows system, MAWC has systems significantly closer to the other eighteen systems. (Marke Surrebuttal Test. 5-8).

MAWC's service center in Jefferson City, MO¹² and its large wastewater systems in Taos and Wardsville. (*Id.* 5-7). During his testimony at the hearing, Mr. Kadyk admitted that MAWC has both small and large wastewater systems in the area near to these systems. (Tr. 49).

Confluence, on the other hand, has no other systems in Callaway County and only one in Cole County. (Marke Surrebuttal Test. 7-8; Marke Surrebuttal Test. GM-6C "Confluence Response to OPC DR 46;" Marke Surrebuttal Test. GM-7B "Confluence Response to OPC DR 44"). Given that MAWC has other systems significantly closer to eighteen of the nineteen systems, it is difficult to see how the location of the systems provides any benefits to customers.

C. Conclusion: Netting the Potential Benefits and Detriments Shows that the Transaction Results in a Net Detriment to Customers of these Systems, so the Commission Should Deny the Relief Requested in the Joint Application

To determine whether the transaction results in a net detriment to customers, the Commission must conduct a balancing process, considering all of the benefits and detriments in evidence. *See Osage Util.*, 637 S.W.3d at 93. The Commission cannot ignore anything that "may have substantially impacted the weight of the evidence evaluated to approve the transaction." *Id.* (internal quotation marks and citation omitted).

Though the OPC does not dispute that Confluence, an entity regulated by this Commission, has the ability to operate these systems, a sale from MAWC to Confluence under the circumstances presented in this case results in a net detriment to customers. Therefore, the OPC urges the Commission to deny the relief requested in the Joint Application.

¹² Though Mr. Kadyk mentioned at the hearing that the staff at the Jefferson City location are mainly water system operators, he recognized that MAWC has "crossover employees that do both" at that location. (Tr. 47). Importantly, the two system operators that MAWC identified maintain a business address in Jefferson City. (MAWC Resp. to OPC DR 16).

As the OPC has explained, the lower rate for service benefit associated with this sale is likely temporary. When looking at the information the OPC received in discovery it appears questionable whether the other items identified by the Joint Applicants provide any benefits.

The detriments to this transaction, however, are numerous and substantial. These detriments include both cost of service and quality of service issues. Most pointedly, if the Commission approves of the transaction, customers will lose all the benefits associated with being a MAWC customer. This includes the benefits associated with MAWC's operational model and its use of full-time employees. They will also lose access to American Water's laboratory and the knowledge base associated with it. Similarly, they will lose the benefits associated with MAWC's large size, which means the loss of economies of scale, likely driving up rates as there are less customers over which to spread costs. They will also likely be required to pay higher rates for the same wastewater service they receive from MAWC due to higher cost of service inputs.¹³ An acquisition premium also exists in this case, which the Commission must consider. *AG Processing*, 120 S.W.3d at 736.

This Commission has made clear that it is the applicants, here the Joint Applicants, that bear the burden to show that a transaction does not result in a net detriment. *KCP&L Merger*, 2008 Mo. PSC LEXIS at *455. With only temporary and questionable benefits to outweigh the detriments identified by the OPC, it is clear that, on balance, the Joint Applicants have failed in that burden and this transaction results in a net detriment to customers. Because a net detriment

¹³ Though the potential for higher rates does not require the Commission to disapprove of a transfer, it is one factor the Commission must consider when deciding whether to approve the transaction. *Osage Util.*, 637 S.W.3d at 96 n.15 (citing *AG Processing, Inc.*, 120 S.W.3d at 737). The potential for higher rates must be offset or equaled out with "a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of the service." *KCP&L Merger*, 2008 Mo. PSC LEXIS at *455.

exists, the Commission should deny the acquisition as detrimental to the public interest. *Osage Util.*, 637 S.W.3d at 92-93.

IV. Conclusion: Applying the No Net Detriment Standard to the Facts of This Case Shows that a Net Detriment Exists and the Commission Should Deny the Relief Requested in the Joint Application

Before a regulated wastewater utility may sell a part of its system it must receive Commission approval under § 393.190 RSMo. This standard has been interpreted to require the Commission to determine whether the transaction results in a net detriment to customers. In this case, the numerous detriments are not equaled out or outweighed by the likely temporary benefit of lower rates or the other items identified by the Joint Applicants. Therefore, the transaction results in a net detriment.

WHEREFORE, the OPC respectfully requests that the Commission deny the relief requested in the Joint Application.

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 18th day of July 2025.

/s/ Lindsay VanGerpen