

**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	)	<b><u>Case No. SM-2025-0067</u></b>
Confluence Rivers Utility Operating	)	
Company, Inc. to Acquire Certain Sewer	)	
Assets of Missouri-American Water Company	)	
in Callaway and Morgan Counties, Missouri	)	

**REPLY BRIEF OF STAFF**

**COMES NOW**, the Staff of the Missouri Public Service Commission (“Staff”), and  
for its *Reply Brief* respectfully states as follows:

**Introduction**

The purpose of a reply brief is to respond to the arguments made by party opponents. Rather than replying to every argument other parties make in their initial briefs, and having presented and argued its positions in its *Initial Brief*, Staff is limiting its replies to where it views further explanation will most aid the Commission in its deliberations.

The main contention points, from the perspective of Staff, are discussed below. Staff’s *Reply Brief* is organized to address these points; therefore, Staff will not address each and every sub-issue or argument made by the parties to this matter. Staff stands on the arguments as presented in its *Initial Brief*, and silence on any argument or position should not be taken as acceptance.

**Argument**

As discussed in Staff’s *Initial Brief*, “[t]he Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to

the public interest.”<sup>1</sup> This standard, and the analysis required to reach said standard, is also discussed in Staff’s *Initial Brief*:

[I]n order for the Commission to determine whether or not a proposed sale is detrimental to the public – the Commission needs to look at all the relevant factors involved (the detriments and the benefits), **weigh** the factors, and determine whether or not there is a resulting detriment after weighing those factors (original footnotes omitted; emphasis added).<sup>2, 3</sup>

1. The Commission (Subject to Judicial Review) has the Authority to Determine the Proper Weight to Attribute to Each Factor (Detriments and Benefits).

As Staff pointed out in its *Initial Brief*, Missouri courts will find the Commission’s decision to approve a transfer of assets unreasonable if the Commission “erroneously ignores evidence that may have substantially impacted the **weight** of the evidence evaluated to approve the transaction” (internal quotations omitted; emphasis added).<sup>4</sup> Missouri courts have also stated that a Commission decision is subject to being rejected by the courts if the decision is “clearly contrary to the overwhelming **weight** of the evidence.”<sup>5</sup> Lastly, Missouri courts recognize that the Public Service Commission is specially-situated to adjudicate the complex issues in utilities cases. As such, Missouri courts “do not substitute [their] judgment for that of the Commission on matters that fall within [the Commission’s] area of expertise...”<sup>6</sup>

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<sup>1</sup> *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. Ct. App. 1980). [Emphasis Added.]

<sup>2</sup> Item No. 71, *Staff Initial Brief*, pg. 4.

<sup>3</sup> “In this matter, the Commission indicated that determining whether a sale is detrimental to the public interest is 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” (internal quotations omitted; emphasis added). *Osage Util. Operating Co., Inc. v. Missouri Pub. Serv. Comm’n*, 637 S.W.3d 78, 93 (Mo. Ct. App. 2021).

<sup>4</sup> *Osage Util. Operating Co., Inc. v. Missouri Pub. Serv. Comm’n*, 637 S.W.3d 78, 93 (Mo. Ct. App. 2021). Case quotation cited in Item No. 71, *Staff Initial Brief*, pg. 4.

<sup>5</sup> *Osage Util. Operating Co., Inc. v. Missouri Pub. Serv. Comm’n*, 637 S.W.3d 78, 97 (Mo. Ct. App. 2021), quoting *Wood v. Wagner Elec. Corp.*, 355 Mo. 670, 674, 197 S.W.2d 647, 649 (1946). [Emphasis Added.]

<sup>6</sup> *Osage Util. Operating Co., Inc. v. Missouri Pub. Serv. Comm’n*, 637 S.W.3d 78, 98 (Mo. Ct. App. 2021).

This means that when the Commission is weighing “all relevant factors” in this case, the Commission has the authority to determine how much weight to give each of these factors (the detriments and benefits) according to its understanding based upon its expertise – as long as the Commission does not run afoul of the parameters set by the courts in the text above.<sup>7</sup>

In *Osage Utility Operating Company, Inc. v. Missouri Public Service Commission* (hereinafter *Osage v. PSC*), the court deferred to the Commission in determining the proper weight to give to factors in that sale, such as: (1) potentially higher rates and (2) potential stability provided by a prospective purchaser.<sup>8</sup>

## 2. The Significance of the Lab Discussed by the OPC is Called into Question

There is a dearth of clarity from the Office of the Public Counsel (“OPC”) regarding the significance of Missouri-American Water Company’s (“MAWC”) drinking water research lab in Belleville, Illinois. While Staff – in large part – addressed this issue in its *Initial Brief*, it is worth noting here that the OPC has not provided any evidence stating that wastewater testing is in fact performed at this “premier” drinking water research laboratory.<sup>9</sup> It is Staff’s understanding that no wastewater testing has been done at this lab for some time. Therefore, the customers at the 19 systems will not be losing access to any particular benefit associated with their wastewater utility service.

Additionally, in its *Initial Brief*, the OPC again attempts to portray the fact that Confluence Rivers Utility Operating Company, Inc. (“Confluence”) does not have its own lab as a detriment by stating, “[t]hough Confluence asserts that it maintains responsibility

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<sup>7</sup> *Osage Util. Operating Co., Inc. v. Missouri Pub. Serv. Comm’n*, 637 S.W.3d 78, 93 (Mo. Ct. App. 2021).

<sup>8</sup> *Osage Util. Operating Co., Inc. v. Missouri Pub. Serv. Comm’n*, 637 S.W.3d 78, 97-98 (Mo. Ct. App. 2021). Note: within this passage of the case, the court notes that the “**Commission found significant Osage Utility’s affiliates’ proven track record of bringing distressed systems into compliance and operating them in a safe and adequate manner**” (internal quotations removed; emphasis added).

<sup>9</sup> Item No. 69, *OPC Initial Brief*, pg. 8.

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."<sup>10</sup>

This attempted portrayal falls flat. The OPC has not provided any evidence of an actual harm that has occurred as a result of Confluence contractors being responsible for maintaining a relationship with laboratories. Thus, Staff sees no detriment here.

Finally, in light of Staff's statements above and in its *Initial Brief*, the OPC's fixation on the "issue" of the laboratory in this case seems to be a red herring as opposed to a legitimate concern.

3. The OPC's Position Implies that MAWC Should be Prohibited from Selling its Assets to Any Company Within Missouri

The OPC lauds MAWC and its parent company, American Water, for their size, resources, and business model.<sup>11</sup> The OPC especially focused on MAWC's size in the evidentiary hearing, stating "[a]s this Commission is well aware, Missouri-American is a large, sophisticated corporate entity, and is the largest provider of wastewater service in the state of Missouri."<sup>12</sup> The OPC once again repeated this sentiment in its *Initial Brief* when it stated that "[a]s of the end of 2024, it [MAWC] served 24,077 wastewater customers in Missouri."<sup>13</sup> This calls into question whether the OPC believes it would ever be proper for MAWC to sell any of its systems, because there is no other water/wastewater company in Missouri that is as large as MAWC. Indeed, when counsel for Confluence and MAWC asked OPC witness, Dr. Marke, a question to that effect – Dr. Marke seemed to give a non-committal, non-dispositive answer.<sup>14</sup>

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<sup>10</sup> Item No. 69, *OPC Initial Brief*, pg. 8.

<sup>11</sup> Exhibit No. 302C, *Geoff Marke Rebuttal Testimony*, pg. 2, lines 7-12.

<sup>12</sup> Item No. 48, *Transcript Volume 2*, pg. 27, lines 13-16.

<sup>13</sup> Item No. 69, *OPC Initial Brief*, pg. 5.

<sup>14</sup> Item No. 48, *Transcript Volume 2*, pgs. 132-133.

4. Regardless of the Business Model Utilized, the Statutory Standard Remains the Same, and the Fact that Confluence Relies on Contracted Labor Does Not Amount to a Detriment

In its *Initial Brief*, the OPC points to a comment made by MAWC in response to a data request (“DR”) to argue that the proposed sale at issue here is detrimental. The MAWC response states (in part) “[a]ll operational personnel have access to the entire knowledge base of American Water and that is not true of a third-party contractor” [Emphasis Added].<sup>15</sup> This sale does not involve all the assets of American Water. What is at issue in this case are 19 wastewater systems. These 19 systems and the customers served by them represent a tiny fraction of American Waters’ holdings.<sup>16</sup> There is no need for Confluence’s operational personnel (be they full-time employees or third-party contractors) to have access to the “entire knowledge base” of the “largest...publicly traded water and wastewater utility in the United States...” in order to provide safe and adequate service to these small, relatively unsophisticated wastewater systems.<sup>17</sup>

In the study Confluence conducted in August of 2024, it concluded that

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\*\*\*<sup>18</sup> The OPC attempted to call the credibility of this study into question in its questioning of Mr. Silas as to the provenance of this study.<sup>19</sup> Although the study was

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<sup>15</sup> Item No. 69, *OPC Initial Brief*, pg. 6.

<sup>16</sup> According to the OPC, American Water has “over 14 million customers in 24 states and 18 military installations.” Exhibit No. 302C, *Geoff Marke Rebuttal Testimony*, pg. 2, line 9. In contrast to this, the 19 systems at issue here serve (as of March 3, 2025) 616 customers. Exhibit No. 102, *Kadyk Errata Sheet*.

<sup>17</sup> Item No. 69, *OPC Initial Brief*, pg. 6; Exhibit No. 302C, *Geoff Marke Rebuttal Testimony*, pg. 2, lines 7-8.

<sup>18</sup> Exhibit No. 3, *Surrebuttal Testimony of Aaron J. Silas*, Schedule AJS-3, pgs. 13-14.

<sup>19</sup> Item No. 48, *Transcript Volume 2*, pgs. 62-63.

ultimately produced by Confluence's internal personnel, \*\* [REDACTED]

[REDACTED] . \*\*20

##### 5. OPC's Financial Analysis is Fundamentally Based in Speculation

The OPC relies heavily on speculation when it comes to the following conclusions:

(1) Confluence has a "higher cost of capital as compared to MAWC's cost of capital", thus  
(2) this proposed sale is detrimental to the public interest.<sup>21</sup> Staff witness, Johnny Garcia, identifies two ways in which Staff takes issue with the OPC's cost of capital comparison. These are: (1) the OPC's reliance on the **requested** cost of capital, and (2) "the lack of transparency and verifiability due to MAWC's history of resolving rate cases through black box settlements."<sup>22</sup> In the excerpt below, Mr. Garcia discusses these two issues more thoroughly:

This is a flawed basis for evaluating customer impacts, as requested costs of capital are merely proposals subject to challenge by each party, true-up adjustments, and the Commission['s] discretion. The second concern is the lack of transparency and verifiability due to MAWC's history of resolving rate cases through black box settlements. A black box settlement is a type of negotiated resolution in which parties agree to a total revenue requirement without specifying how individual components – such as the return on equity, cost of debt, or capital structure and other revenue items – are determined. As a result, these settlements do not disclose the embedded cost of capital, making them **unsuitable for comparative analysis** [Emphasis Added.].<sup>23</sup>

Therefore, the fundamentally speculative nature of the OPC's comparison shows that the OPC is standing on shaky ground in its allegation that this sale is detrimental to the public interest.

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<sup>20</sup> Item No. 48, *Transcript Volume 2*, pgs. 62-63; Exhibit No. 3, *Surrebuttal Testimony of Aaron J. Silas*, Schedule AJS-3.

<sup>21</sup> Exhibit No. 300C, *David Murray Rebuttal Testimony*, pgs. 5 (lines 24-25), 9-10, and 16, lines 21-27.

<sup>22</sup> Exhibit No. 201, *Surrebuttal Testimony of Johnny Garcia*, pgs. 6-7.

<sup>23</sup> Exhibit No. 201, *Surrebuttal Testimony of Johnny Garcia*, pgs. 6-7.

6. Confluence Cannot Benefit from Economies of Scale Without Buying Systems, and More Importantly, Non-Distressed Systems

The OPC highlights multiple instances in which (in the opinion of the OPC) this proposed sale will lead to a loss in economies of scale and thus result in a detriment to the public interest.<sup>24</sup> It seems that the OPC is specifically concerned that the potential loss in economies of scale will “likely driv[e] up rates as there are less customers over which to spread the costs.”<sup>25</sup> Staff’s opinion is that the OPC’s concerns are misplaced:

While it is true that the concept of economies of scale are more pronounced with larger utilities, it does not necessarily mean that customers of smaller utilities are harmed. Further, it would only make sense that if economies of scale were a concern, allowing Confluence to purchase more systems, regardless of whether or not they are distressed, would increase Confluence’s ability to achieve economies of scale similar to or in excess of MAWC. Thus, it appears to Staff that Dr. Marke’s concern regarding economies of scale is misplaced, not only in how it relates to this particular acquisition case, but also in how it could negatively affect growth for smaller utility operating companies in the future.<sup>26</sup>

Not only would Confluence as a company not be able to benefit from economies of scale without being approved to purchase additional systems (especially non-distressed systems) but (more importantly) current Confluence customers would be precluded from these benefits as well.

7. The OPC is Re-Hashing a Non-Issue by Continuing to State That the Presence of an Acquisition Premium is a Detriment

The OPC stated in its initial brief that “[a]lthough 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.”<sup>27</sup> The OPC’s

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<sup>24</sup> Item No. 69, *OPC Initial Brief*, pgs. 5-7 and 15.

<sup>25</sup> Item No. 69, *OPC Initial Brief*, pg. 15.

<sup>26</sup> Exhibit No. 202, *Surrebuttal Testimony of Jarrod J. Robertson*, pg. 4, lines 15-23.

<sup>27</sup> Item No. 69, *OPC Initial Brief*, pgs. 8-9.

argument unfairly casts doubt on Confluence's intent to act in good faith when Confluence's next rate case comes around. The OPC itself does not deny that Confluence's counsel (who is responsible for speaking on behalf of his client) stated "if an acquisition premium exists at closing, Confluence Rivers does not expect to recover that premium in rates."<sup>28</sup>

### **Additional Potential Benefits to be Realized by This Sale**

In addition to the benefits highlighted by Staff in its *Initial Brief*, Staff believes there are additional potential benefits to be realized by this sale. In response to a DR from the OPC (attached as a schedule to Mr. Murray's rebuttal testimony), MAWC stated the following:

The sale will free up time MAWC employees spend on maintaining these systems and allow them to focus on other projects and tasks. Further, our employees are not going to have to travel as far to complete the routine tasks and can more efficiently use their time on the remaining systems owned by MAWC. Some of these systems are a 60-mile round trip drive for MAWC employees. Selling them will allow our MAWC employees to concentrate on our larger systems in the area, which include Hallsville, Wardsville and Taos. One example is that ideally MAWC would like to camera and jet many of the sewer lines in our larger systems, and this should allow time for our current employees to do those tasks that go above and beyond day-to-day maintenance.<sup>29</sup>

From the above, one can confidently surmise that these benefits to MAWC will also flow down to its remaining customer base, if this sale is approved.

### **Conclusion**

In summary, Staff finds that the proposed sale is not detrimental to the public interest as stated more fully above. As such, Staff recommends that the Commission: (1) approve the sale of the 19 wastewater systems as issue (subject to the 12 conditions

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<sup>28</sup> Item No. 69, *OPC Initial Brief*, pg. 9, footnote 8.

<sup>29</sup> Exhibit No. 300 Schedule DM-R-4 OPC 03 – MAWC Response.



initially proposed by Staff and the condition proposed by the OPC and agreed upon by all parties),<sup>30</sup> (2) cancel the applicable MAWC CCN's, (3) grant Confluence CCN's for these systems, (4) grant Confluence's proposed substitution for Staff Condition 4, and (5) grant Applicants' motion for waiver of the 60-day pre-filing notice requirement.<sup>31</sup>

**WHEREFORE**, Staff respectfully submits this *Reply Brief* for the Commission's information and consideration.

Respectfully submitted,

/s/ Andrea B. Hansen

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 28<sup>th</sup> day of July, 2025.

/s/ Andrea B. Hansen

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<sup>30</sup> The condition which the OPC proposed, and all parties agreed to, states: "[r]equire Confluence to adhere to the acquisition accounting guidance provided in the USOA so that a request for rate recovery can be properly audited in Confluence's next rate case." This condition was proposed in Item No. 12, *Response to Staff Recommendation*, pg. 7. This condition was agreed to by Staff, Confluence, and MAWC in Item No. 17, *Joint Reply to OPC Response to Staff Recommendation*, pg. 3.

<sup>31</sup> "Require Confluence Rivers to submit tariff sheets, to be effective before closing on the assets, to include a service area map, service area written description, and rates to be included in its EFIS tariff P.S.C. MO No. 31, applicable to sewer service." Item No. 70, *Applicant's Initial Brief*, pg. 10.