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

REPLY BRIEF

Comes now, the Office of the Public Counsel (the "OPC") and offers this reply post hearing brief.

I. Background

Both the Staff of the Public Service Commission of the State of Missouri ("Staff" and "Commission," respectively) and Missouri-American Water Company ("MAWC") and Confluence Rivers Utility Operating Company, Inc. ("Confluence" and collectively with MAWC, the "Joint Applicants") focus their Initial Briefs on the detriments the OPC identified in Dr. Geoff Marke's written testimony and in its Statement of Positions. However, the OPC is *not* the party that bears the burden of proof in this matter. Rather, it is the Joint Applicants who bear that burden. *In re 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, at *455 (Mo. P.S.C. 2008) (hereinafter "*KCP&L Merger*") (quoting *In re Union Elec. Co., d/b/a AmerenUE, for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easements & Contractual Agreements to Central Ill. Pub. Serv. Co., d/b/a AmerenCIPS, &, in Connection Therewith, Certain Other Related Transactions*, 2005 Mo. PSC LEXIS 190 (Mo. P.S.C. 2005) (hereinafter

"*AmerenCIPS*")). The Commission has made clear that this burden does not shift. *Id.* (citation omitted). Therefore, it is the Joint Applicants who must show that no detriment exists so that the Commission may approve the relief they request in their Joint Application. *Osage Util. Operating Co. v. Mo. Pub. Serv. Comm'n*, 637 S.W.3d 78, 92 (Mo. Ct. App. 2021) (hereinafter "*Osage Util.*"). As explained in the OPC's Initial Brief and expanded upon below, the Joint Applicants have failed to carry that burden in this case. Therefore, the Commission must deny the relief requested in the Joint Application.

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

It appears that no party contests the legal standard that the Commission must apply in deciding this case is the "not detrimental to the public interest" standard. *See Id.* at 92-93 (citation omitted); (Staff Initial Br. 3-4, Doc. 71; Jt. Applicants' Initial Br. 3-5, Doc. 70).

However, in their descriptions of the appropriate legal standard, both Staff and the Joint Applicants fail to recognize that it is the Joint Applicants who bear the burden of proof in this case. (*See* Staff Initial Br. 3-4; Jt. Applicants' Br. 3-5); *KCP&L Merger*, 2008 Mo. PSC LEXIS at *455 (citation omitted). "That burden does not shift." *KCP&L Merger*, 2008 Mo. PSC LEXIS 693, at *455 (citation omitted).

In its Report and Order on Rehearing in the *AmerenCIPS* case, the Commission made clear that in a § 393.190 RSMo. case, it is the applicant's burden to show that the transaction is not detrimental to the public and that burden does not shift to the party arguing the existence of detriments associated with the transaction. 2005 Mo. PSC LEXIS 190, at *79. In that case, Union Electric Company, d/b/a AmerenUE ("Ameren"), the applicant, explicitly argued in its Application for Rehearing that the Commission erred in its original order because it improperly put the burden of proof on Ameren when other parties raised potential detriments. *Id.* at *7-*8. Specifically, Ameren

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> alleged that the Commission exceeded its authority by, as AmerenUE asserted, effectively requiring AmerenUE to hold harmless ratepayers from potential detriments from the transfer that AmerenUE alleged had not been sufficiently established in the record. AmerenUE alleged that this unlawfully shifted the burden of production with respect to the alleged detriments to AmerenUE and away from the proponents of the detriments. AmerenUE's basis for this allegation was that the law required those who allege that potential detriments exist to go forward with sufficient evidence to establish that the detriments are presently existing and likely to occur.
>
> *Id.*

In that same case, the OPC argued that the burden of proof in a § 393.190 RSMo. case does not shift. *Id.* at *75.

In deciding the issue, the Commission made clear that it is the applicant alone who bears the burden of proof in a § 393.190 RSMo. case. *Id.* at *79 (stating "[i]n cases brought under Section 393.190.1 and the Commission's implementing regulations, the applicant bears the burden of proof."). The Commission explicitly stated "[t]hat burden does not shift." *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?

The OPC has identified detriments to this transaction, which must be offset by attendant benefits for the Commission to approve this transaction. Aside from the temporary benefit associated with the lower rate for service that Confluence now states it will charge customers, the Joint Applicants fail to identify any permanent benefit associated with the transaction as proposed. Tellingly, in their Initial Brief they also fail to address any reason why MAWC may want to sell these systems to Confluence. Though Staff identifies three proposed "benefits" in its Initial Brief each of those benefits can either be refuted or apply equally to both MAWC and Confluence. Without some offsetting benefits, the detriments identified by the OPC result in this transaction being detrimental to the public interest.

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A. The Joint Applicants Fail to Carry Their Burden to Prove that this Transaction is Not Detrimental to the Public Interest

The Joint Applicants focus most of their Initial Brief on Confluence and its immediate parent company, CSWR, LLC's ("CSWR"), qualifications. (*See* Jt. Applicants' Initial Br. 5-9). The OPC does not dispute that Confluence is a water utility regulated by this Commission that currently operates both water and wastewater systems throughout the State of Missouri using rates set by this Commission. However, it is not the *ability* of Confluence to operate these systems that caused the OPC to oppose this acquisition.[1]

The standard by which the Commission must determine this case is whether Confluence's acquisition of these 19 systems results in a *net detriment* to customers. *Osage Util.*, 637 S.W.3d at 92-93. The Commission has been clear that it is the applicant in a § 393.190 RSMo. case that bears the burden of establishing that no net detriment exists. *KCP&L Merger,* 2008 Mo. PSC LEXIS 693, at *455 (citation omitted); *AmerenCIPS*, 2005 Mo. PSC LEXIS 190, *79.

Throughout this case, the OPC identified a number of detriments that customers of these systems will experience as a result of this transaction. Although the Joint Applicants in their Initial Brief addressed the OPC's detriments, tellingly they fail to even identify the questionable benefits they raised in the Joint Application and their witnesses' written testimony. (*See generally* Jt.

[1] To the extent the Joint Applicants or Staff rely on Confluence's *ability* to operate the systems to establish a benefit, such reliance is in vain because both MAWC and Confluence could operate the systems.

In the *AmerenCIPS* case, the Commission noted that in deciding § 393.190 RSMo. cases it "has previously considered such factors as the applicant's experience in the utility industry; the applicant's history of service difficulties; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the assets safely and efficiently." 2005 Mo. PSC LEXIS 190, at *72 (citation omitted). In that case, Ameren sought to transfer assets to its regulated affiliate. *Id.* at *2. The Commission ultimately concluded that "[n]one of" the identified "factors are at issue in the present case; neither is [Ameren's] ability to continue to provide adequate service to its customers." *Id.*

This is similar to the present case. Here, no party questions Confluence's ability to operate these systems. Similarly, no party questions MAWC's ability to operate these systems. The Commission regulates both MAWC and Confluence. Both MAWC and Confluence operate both water and wastewater systems throughout Missouri using rates established by this Commission. Therefore, reliance on Confluence's ability to operate the systems fails to provide any assistance to the Commission in deciding the issue present in this case.

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Applicants' Initial Brief). Rather, they appear to rely on Confluence's ability to operate the systems and point only to the rates that Confluence now intends[2] to charge customers of the 19 systems if the Commission approves this transaction. (*See, e.g., id.* 9). Though the Joint Applicants downplay any upcoming Confluence rate case, Confluence has admitted in response to an OPC data request, in Mr. Silas's written Surrebuttal Testimony, and at the hearing that it intends to file a rate case in the third or fourth quarter of this year. (Ex. 300 "Murray Rebuttal Testimony," DM-R-2 "Confluence Responses to OPC DRs 1-39", Doc. 61 (specifically, Confluence's response to OPC DR 29); Ex. 3 "Silas Surrebuttal Testimony" 13, Doc. 51; Tr. 37, Doc. 48). As discussed below and in the OPC's Initial Brief, it is likely that this rate case will result in rates higher than those currently being charged by MAWC. Therefore, any benefit associated with this rate decrease is likely temporary.

Because the Joint Applicants have not identified any offsetting permanent benefits associated with the transaction, the OPC's identified detriments result in this transaction being detrimental to the public interest.[3]

[2] When MAWC and Confluence filed the Joint Application, they stated that "Confluence Rivers proposes to utilize the existing customer rates for the nineteen (19) wastewater systems ($65.36/month)." (Jt. Appl. 6, Doc. 1).

Given the pending MAWC rate case, WR-2024-0320, the OPC asked Confluence what rate it intended to charge the customers of these systems should the Commission approve different rates as a result of that rate case and allow Confluence to acquire the systems in this case. (Ex. 300 "Murray Rebuttal Testimony," DM-R-2 "Confluence Responses to OPC DRs 1-39" (specifically, OPC DR 39)). Confluence stated that it was its "intention to adopt at the time the application is approved by the Commission the base rate that is being charged to customers of the systems at issue in this case. If the rates change as a result of any pending case, Confluence Rivers will likely request the adoption of the approved rates." (*Id.* (specifically Confluence's response to OPC DR 39)). Confluence made this same assertion in Mr. Silas's Surrebuttal Testimony. (Ex. 3 "Silas Surrebuttal Testimony" 12, Doc. 51 (stating "It has been the Company's intention to adopt the MAWC base rate that is being charged to customers of the subject systems at the time the application is approved by the Commission.")). Both Confluence's response to the OPC's DR 39 and Mr. Silas's testimony thus suggest that Confluence intended to charge customers the MAWC rate that resulted from the Commission's decision in WR-2024-0320.

However, in the Joint Applicants' Statement of Positions, the Joint Applicants appear to have change course, stating that "[a]s of closing, Confluence Rivers proposes to charge the customers of the subject systems the MAWC base rate as of Direct Testimony ($65.36)." (Jt. Appl. Statement of Position 5, Doc. 45).

[3] The Commission's rule governing applications for authority to sell assets requires the applicant to identify "[t]he reasons the proposed sale of the assets is not detrimental to the public interest." 20 CSR 4240-10.105(1)(D). Though

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B. The Staff of the Commission Did Not Conduct an Analysis that Considered Whether a Net Detriment Exists as a Result of the Proposed Transaction in Completing its Recommendation

In its Initial Brief, Staff agrees that the legal standard that the Commission must use when deciding this case is the "not detrimental to the public" standard. (*See* Staff Initial Br. 3-4). However, in completing its Recommendation in this case, Staff conducted no analysis that considered ownership of the systems by MAWC versus Confluence. (*See generally* Ex. 200 "Robertson Rebuttal Testimony" Schedule JJR-r2 "Staff Memo," Doc. 55). Aside from passing references to the "not detrimental" standard, the analysis Staff completed for its Recommendation[4] focused on whether Confluence met the Tartan criteria and whether it had the Technical, Managerial, and Financial ("TMF") ability to operate the system. (*See generally id.*). Staff states in its Initial Brief that it "initially found that this proposed sale fulfilled the legal standard, and Staff stands by its filing." (Staff Initial Br. 4).

As. Dr. Marke explained, neither the Tartan criteria nor the TMF criteria apply to this case. (Ex. 303 "Marke Surrebuttal Testimony" 1-3, 9-15, Doc. 64). Similarly, the Commission should not rely on either standard to guide its decision, as both standards focus on the *ability* of a company to operate a system. Confluence's ability to operate the systems, however, is not at issue in this case as both MAWC and Confluence could operate these systems.

In its Statement of Positions, Staff noted in a footnote that the Missouri Court of Appeals, Western District ("Western District") previously pointed to a utilities' ability to meet the TMF criteria as a benefit when considering an application brought pursuant to § 393.190 RSMo. (Staff

the OPC does not dispute that the Joint Applicants made vague statements alluding to questionable benefits in the Joint Application, it is telling that the Joint Applicants failed to identify those benefits in their Initial Brief.

[4] In its Initial Brief, Staff identifies "a non-exhaustive" list of benefits that it has identified with the proposed sale. (Staff Initial Br. 11-13). However, none of these benefits consider ownership of the systems under MAWC versus Confluence. The OPC addresses each of Staff's "benefits" below.

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Statement of Position 2 n. 3 (citing *Osage Util.*, 637 S.W.3d at 97)). However, the case currently before the Commission is very different from the case considered by the Western District in *Osage Utility*. In *Osage Utility*, the current operator of the system, Osage Water Company ("OWC"), "effectively abandoned" the system and "was unable or unwilling to provide safe and adequate service to its customers." 637 S.W.3d at 83. At the time of the case, the system had been ordered into permanent receivership. *Id.* The case considered by the Western District arose when a bankruptcy trustee held an auction to liquidate the assets and, pursuant to a prior agreement, Central States Water Resources, Inc. ("Central States")[5] matched the highest bid, making it the winner of the auction. *Id.* Entities the court referred to as the "Joint Bidders" were originally the highest bidders, but due to the prior agreement with Central States, were declared the First Back-Up Bidders in the auction. *Id.*

When Central States' affiliate, Osage Utility Operating Company, Inc. ("Osage Utility") came before the Commission seeking approval to acquire the assets, the Joint Bidders intervened and together with other parties opposed the transfer. *Id.* at 83-84. The Commission approved the transaction. *Id.* at 84. On appeal, the Joint Bidders argued the Commission had failed to consider evidence showing the transaction was detrimental to the public. *Id.* at 92. In addressing that argument, the Western District noted that the record revealed "substantial benefits" associated with the transfer of the assets to Osage Utility. *Id.* at 97. It recognized that "Osage Utility has the technical, managerial, and financial ability to provide safe and adequate service to the [Osage Water Company] service areas." *Id.* However, when this statement is considered in context, it becomes clear that the Western District made this statement because of the underlying condition

[5] Central States was an affiliate of Osage Utility Operating Company, Inc. and the managing affiliate for CSWR, LLC. *Osage Util.*, 637 S.W.3d at 83 n.2.

Central States is also an affiliate of Confluence, the buyer in this case. (Ex. 302 "Marke Rebuttal Testimony" 2, Doc. 63).

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of the systems, including the inadequate service currently being provided to customers. *See, e.g., id.* ("Given the inadequate service that has been provided to some of the OWC areas, the Commission gave particular weight to the stability that Osage Utility can provide to its customers after more than fourteen years of instability.").

Here, though, no party has identified any concern with the adequacy of the service MAWC has been providing to the customers of these 19 systems. Rather, MAWC states that its "experience with owning and operating these systems" is that it "has been successful in providing high quality customer service while exceeding the regulatory standards through prudent capital investments." (Ex. 100 "Kadyk Direct Testimony" 6, Doc. 52). In further support of this statement, as the result of its investigation, Staff found "a common theme with many of these systems is that they are properly constructed and have been well maintained, but they are aged." (Recommendation Memo. 3).

Therefore, this case is vastly different than the case underlying the Western District's decision in *Osage Utility*. Rather than considering the acquisition of a struggling system, that is near the end of a bankruptcy proceeding, and that had been distressed for quite some time, this is a proposed sale of 19 systems that are nearly all operating satisfactorily and are being run by the "largest publicly-traded investor-owned water utility in the United States (and in Missouri)." *Compare Osage Util.*, 637 S.W.3d at 83 (describing the background of the *Osage Utility* case); *with* (Marke Rebuttal Test. 2, 4-9; Ex. 303 "Marke Surrebuttal Testimony" 4, Doc. 64 (describing MAWC)). For this reason, rather than providing a benefit to be considered in the Commission's balancing of all detriment and benefits, Confluence's ability to meet the TMF criteria is not at issue in this case and provides no guidance for the Commission's decision. *See AmerenCIPS*, 2005 Mo. PSC LEXIS 190, at *72 (recognizing that where Ameren sought approval to transfer assets to

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its regulated utility affiliate, factors such as "the applicant's experience in the utility industry; the applicant's history of service difficulties; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the assets safely and efficiently" as well as Ameren's "ability to continue to provide adequate service to its customers" were not at issue in completing a § 393.190 RSMo. transaction).

Staff's analysis, as explained throughout the Memorandum accompanying its Recommendation, focuses only on the Tartan criteria and the TMF factors. (*See generally* Recommendation Memo.). Not only do these standards not apply to this matter, they also focus on issues not in dispute in this case as both MAWC and Confluence could operate these systems. Because Staff failed to conduct any type of analysis that considered ownership of the systems under MAWC versus Confluence, Staff's analysis in its Recommendation provides the Commission with little guidance as it considers whether this transaction as proposed is detrimental to the public.

C. The Benefits Staff Identifies in its Initial Brief Fail to Represent Benefits Associated with this Transaction

Staff identifies a "non-exhaustive" list of proposed benefits to this transaction for the first time in its Initial Brief. (Staff Initial Br. 11-13). These "benefits" include: (1) Confluence and CSWR have the "technical expertise necessary to make needed repairs to these 19 aging systems when the time comes;" (2) because Confluence can travel a further distance to its systems in more remote parts of Missouri, it "is certainly well-equipped to traverse the shorter distance to the Callaway County systems at issue here;" and (3) "it is better that MAWC sells these systems to Confluence (who does have consolidated rates) then to a company who does not have consolidated rates." (*Id.*). Each of these "benefits" can either be disputed or apply equally to both MAWC and Confluence. The OPC will address each "benefit" in turn.

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First, the OPC has not disputed that Confluence has the technical expertise to operate these systems. But, importantly, MAWC does as well. MAWC states that it "has been successful in providing high quality customer service while exceeding the regulatory standards through prudent capital investments" during its ownership of these systems. (Kadyk Direct Test. 6). Similarly, Staff's own analysis revealed that the systems "are properly constructed and have been well maintained." (Recommendation Memo. 3). MAWC has also stated that it has been "actively collaborating" with the Missouri Department of Natural Resources "on the current requirements for the systems in question" and both it and Confluence have "agreed to take the actions necessary to meet those requirements once a decision is made on this application."[6] (Marke Rebuttal Test. GM-4 "MAWC Response to OPC DR 10"). Because *both* MAWC and Confluence have the technical expertise necessary to run these systems, this cannot represent a benefit associated with this transaction. Rather, it is a tie between the two companies.

Staff also cites Confluence's ability to travel to the systems if it is allowed to acquire them. (Staff Initial Br. 12). The OPC does not dispute Confluence's ability to travel to these systems. However, it is difficult to see how this provides a benefit to customers when MAWC has been successfully operating these systems and has both a service center and other wastewater systems close by. (*See* Kadyk Direct Test. 6; Marke Surrebuttal Test. 5-7). In fact, MAWC identified two full-time employees who operate these systems, and both maintain a business address in Jefferson

[6] Staff also points to Confluence's small size "as a potential benefit." (Staff Initial Br. 4-5). It cites to nothing in the record to support this contention. (*See* Staff Initial Br. 4-5). Staff's suggestion that Confluence may be able to give more oversight to the systems and to prioritize their repairs, also suggests that MAWC cannot successfully operate the systems. (*See id.*). This runs counter to the evidence in the record. (Kadyk Direct Test. 6 (MAWC's response regarding its experience owning the systems); Recommendation Memo. 3 (recognizing that the systems have been well maintained); MAWC Resp. to OPC DR 10 (recognizing MAWC's collaboration with the Missouri Department of Natural Resources)). Further, as Dr. Marke pointed out, if the Commission allows Confluence, a smaller company, to acquire these systems it would also represent "a step back from what . . . regulation is intended to do." (Tr. 120-21). Specifically, it would be moving away from economies of scale and "have a further erosion in terms of operational efficiencies." (*Id.*). For these reasons, Confluence's small size cannot represent a benefit to this transaction.

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City, MO, very near to these systems. (Marke Rebuttal Test. GM-3 "MAWC Resp. to OPC DR 16"). This argument also ignores that Confluence must either retain an additional contractor to travel to these systems or the contractor(s) who operates its systems in other counties will have to travel significantly farther than MAWC's employees. (Confluence's Resps. to OPC DRs 1-39 (specifically, Confluence's Responses to OPC DRs 17, 18 (recognizing that Confluence "intends to enter into a third-party operations and maintenance contract to serve these customers," but that it "has yet to finalize an operations and maintenance contract for the operation of the nineteen systems.")); Marke Surrebuttal Test. 5-8). Confluence's ability to travel to the systems in Callaway County does not provide any additional benefits to customers because the customers already have nearby operators (MAWC's employees based in Jefferson City).

Finally, Staff claims that it is better for MAWC to sell these systems to Confluence than to another entity because it has consolidated rates. (*See* Staff Initial Br. 12-13). Both MAWC and Confluence have consolidated rates. (Marke Rebuttal Test. 9). However, as Dr. Make explained in his Rebuttal Testimony, Confluence's focus on acquiring small, distressed systems in need of capital investment will likely lead to higher rates as these systems are capital intensive, but Confluence has a smaller customer base over which to spread the costs. (*See* Marke Rebuttal Test. 9-10). Again, Confluence's consolidated rates are not a benefit associated with this transaction.

Because each of the "benefits" identified by Staff can either be refuted or applies equally to both MAWC and Confluence, none of them represent a benefit that offset the detriments identified by the OPC.

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D. Both Staff and the Joint Applicants Fail to Discredit the Detriments Identified by the OPC

Both Staff and the Joint Applicants focus the majority of their Initial Briefs on attempting to discredit the detriments identified by the OPC. However, as explained below, their arguments fail to do so. The OPC will address the arguments regarding each detriment in turn.

1. Arguments Associated with the Joint Applicants' Size and Business Models

The OPC has identified several detriments associated with the transfer of the systems from MAWC to Confluence associated with MAWC's size and connections to American Water Works Company, Inc. ("American Water"). These detriments include losses of: economies of scale, access to American Water's "premiere" laboratory, benefits associated with MAWC's operational model, and benefits associated with information sharing amongst American Water entities. (*See, e.g.*, Marke Rebuttal Test. 2-9; Marke Surrebuttal Test. 4-5). The Joint Applicants and Staff address these detriments in their Initial Briefs. However, because their counterarguments can be refuted, these continue to represent detriments associated with this transaction.

In addressing the OPC's arguments regarding the size of MAWC and the benefits associated with being MAWC customers, the Joint Applicants argue that "there is nothing detrimental" in that the transaction will result in the customers being transferred from MAWC to the much smaller Confluence. (Jt. Applicants' Initial Br. 10-12). The Joint Applicants point to Confluence's experience with owning systems in Missouri and the size of its parent company, CSWR. (*Id.*).

Again, the OPC does not dispute that Confluence owns and operates wastewater systems in Missouri. It also does not dispute that CSWR owns and operates systems in other parts of the country. However, nowhere in their argument do the Joint Applicants recognize the substantial benefits that are associated with MAWC's larger size, namely economies of scale. (*See generally*

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id.). MAWC serves nearly three times as many wastewater customers in Missouri as compared to Confluence. (*Compare* Marke Rebuttal Test. GM-9 "MAWC's Response to OPC DR 28" (identifying that as of the end of 2024, MAWC served 24,077 wastewater customers); *with* (Marke Rebuttal Test. GM-8 "Confluence's Response to OPC DR 1" (identifying 6,618 Confluence wastewater customer connections as of December 31, 2024); Confluence Responses to OPC DRs 1-39 (specifically Confluence's response to OPC DR 1 (identifying 20 additional wastewater connections due to recent acquisitions))). This larger customer base allows MAWC to spread its costs over a greater number of people, thus allowing it to keep costs down for all of its customers. The loss of economies of scale is a detriment to the customers of these systems.

As to the laboratory, MAWC describes 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"). When asked to identify MAWC's "main operational strengths," MAWC relied, in part, on its access to this lab. (*Id.* (stating "MAWC excels in its ability to operate water and wastewater systems for a variety of reasons . . . . 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")). Confluence, on the other hand, described during the hearing that it participated in two pilots[7] and its third-party contractors were required to maintain contracts with local laboratories for testing, though it stated that Confluence maintained responsibility for the testing. (Tr. 55-57). Participation in two research pilots and ensuring that testing is completed, though, do not equate to access to "one of the premiere water laboratories in the country." (MAWC Resp. to OPC DR 25). Presumably MAWC's access to American Water's laboratory comes with the ability to not only use the equipment located in the laboratory, but also

[7] Specifically, Mr. Silas referenced a pilot looking at "side stream MBBRs" and another that Confluence is "in the middle of" looking at "a membrane aerated biofilm reactor." (Tr. 55-56).

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to share in the information gleaned from the testing and experiments conducted at the lab. (*See id.*). These are the benefits to which the OPC referred. Confluence has provided nothing to show that it has access to the same amount or standard of information or that it has access to the same type of laboratory as MAWC. Thus, the loss of access to American Water's laboratory is a detriment for customers of these 19 systems.

Similarly, as to the arguments regarding Confluence's use of contractors, as the OPC stated in its Initial Brief, the Commission need not opine on the prudence of Confluence's use of third-party contractors to operate its wastewater systems in this case. Rather, the question is whether the change in operational model represents a detriment to the customers of these 19 systems. *See Osage Util.,* 637 S.W.3d at 92-93. MAWC itself has recognized advantages associated with its use of full-time employees and also recognized that these advantages are not present with third-party contractors. (Marke Surrebuttal Test. GM-2 "MAWC Response to OPC DR 54"). These advantages include things such as "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." (*Id.*). It also includes the benefit associated with MAWC's full-time employees' access to "the entire knowledge base of American Water." (*Id.*). Similarly, Dr. Marke has pointed out that the contractor model raises concerns about the "operational, reputational, financial, and cyber/physical asset risk of the service provided." (Marke Rebuttal Test. 4). Taken together, the loss of these benefits coupled with the rise of these concerns show that the change in operational model is a detriment to customers.

Further, Confluence brands itself as "specializ[ing] in running and rehabilitating small systems." (Silas Direct Test. 8). The Joint Applicants appear to rely on this in their Initial Brief. (Jt. Applicants' Initial Br. 2 (stating that this is "something that is particularly relevant in this

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situation as the subject systems range in size from 13 active connections at the smallest and to 83 active connections at the largest.")). However, this ignores the fact that MAWC operates other small wastewater systems, including several near these systems. (Marke Surrebuttal Test. 5-7; Tr. 49-50). No party has asserted that MAWC struggles to operate small wastewater systems or that any of them are distressed. As has been addressed above, MAWC itself has asserted that it "has been successful" in owning and operating the systems at issue in this case. (Kadyk Direct Test. 6). Rather than serving as a benefit, as addressed in the OPC's Initial Brief, Confluence's focus on acquiring small, distressed systems will likely result in increased costs for customers of these 19 systems. Therefore, it too represents a detriment to customers.

2. <u>Arguments Regarding Rates</u>

Both Staff and the Joint Applicants attempt to discredit the OPC's arguments regarding higher future rates under Confluence's ownership by characterizing the OPC's analysis as speculative because certain ratemaking elements are not known.[8] (*See* Staff Initial Br. 7-9; Joint Applicants' Initial Br. 12-14). Both Staff and the Joint Applicants urge the Commission to focus on the rates customers are currently paying and those that they will pay immediately after the acquisition. Staff and the Joint Applicants' arguments not only attempt to improperly shift the burden of proof onto the OPC, but they also fail to recognize that the potential for higher future rates is something the Commission has previously considered when deciding a § 393.190 RSMo. case. Further, their arguments regarding what rates the Commission should focus on are short-sighted and require the Commission to ignore clear evidence of a customer detriment.

[8] The Joint Applicants also cite the use of the Missouri Water and Sewer Infrastructure Act ("WSIRA") and the possible implementation of a future test year as reasons why future rates are unknown. (Jt. Applicants' Initial Br. 13). While both factors may affect future rates, it should be noted that due to the passage of Senate Bill 4, which changed many laws relating to utility regulation in Missouri, beginning on August 28, 2025, *both* MAWC and Confluence are now eligible to request a WSIRA charge and to request the use of a future test year. *See* §§ 393.150, 393.1506 (2025).

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a. The Commission Has Previously Considered Future Rates When Deciding § 393.190 RSMo. Cases

In attempting to discredit the OPC's analysis regarding potential future rates, it appears that both the Joint Applicants and Staff assert that the Commission should not consider these potential future rate impacts in this acquisition case. However, the Commission has previously considered future rates in deciding whether a transfer of assets is detrimental to the public.

It cannot be disputed that without conducting a full rate review culminating in a Commission Order, that it is nearly impossible to know for certain what inputs a Commission will use in setting rates in a future rate case.[9] However, the inability to know this information for certain has not stopped the Commission from considering higher future rates in deciding § 393.190 RSMo. cases in the past. For instance, in *Osage Utility*, "the Commission considered the estimated rates of Osage Utility [the applicant buyer] as compared to the Joint Bidders [the alternative buyer]." 637 S.W.3d at 95-96. Similarly, the Commission considered the possibility of higher rates in the *AmerenCIPS* case, expressly stating when describing the legal standard by which it reviews a § 393.190 RSMo. case that "[t]he 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." 2005 Mo. PSC LEXIS 190, at *79.

Not only has the Commission considered future rates when deciding a case pursuant to § 393.190 RSMo., but the Missouri Supreme Court reversed a Commission decision when it failed to consider the recovery of an acquisition premium—a factor that could affect customers' future rates. *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n*, 120 S.W.3d 732, 736-37 (Mo. banc

[9] The current Commission cannot bind future Commissions. However, there are some instances, where, by statute, certain ratemaking decisions must be made in an acquisition case. *See, e.g.*, § 393.320 RSMo. (identifying what must be used as the ratemaking rate base when an acquisition is brought pursuant to this statute).

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2003). Specifically, the *AG Processing* Court in a footnote recognized that "PSC staff had also testified that their analysis of the merger demonstrated that the expected rate impact on SJLP and MPS customers would be negative." *Id.* at 736 n.16. Citing to this case for support the Western District has also recognized "[t]he potential for increased rates for ratepayers does not require the Commission to disapprove of a transfer. . . . Rather, increased rates are 'just one factor for the Commission to weigh when deciding whether or not to approve' a transaction." *Osage Util.*, 637 S.W.3d at 96, n.15 (quoting *AG Processing*, 120 S.W.3d at 737).

Therefore, not only can the Commission consider future rates when making its decision in this acquisition case, but it must.

b. <u>The OPC Conducted its Analysis with the Only Information Available</u>

Though the OPC cannot know for sure what inputs the Commission will use in a future rate case to set rates for both MAWC and Confluence, in conducting its analysis, the OPC relied on known information to establish potential future rates. It also attempted to identify offsets for these higher inputs. This reasonable analysis resulted in potential future rates for Confluence that are higher than those for MAWC. This outcome is supported by the only rate identified in the record, that identified by Confluence, which it calculated after conducting its own analysis.

In conducting its analysis, the OPC used the Joint Applicants' requested capital structures and cost of capital inputs from their most recent rate cases. (Murray Rebuttal Test. 9-10). Though these requested inputs may be different than what the Commission ultimately authorizes in a typical rate case, they show what the companies themselves consider these important ratemaking elements to be.[10] However, Mr. Murray did not stop there. He also conducted his analysis using

[10] If the companies themselves did not consider these inputs to be reasonable, the Commission should question why they are being requested. Notably, the Commission's rules require "[a]ll testimony . . . [to] be taken under oath." 20 CSR 4240-2.130(19). Pre-filed testimony must be "be accompanied by an affidavit providing the witness's oath." 20 CSR 4240-2.130(8). That oath typically certifies that a witness's testimony is "true and correct to the best of [his or

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the ratemaking inputs decided by the Commission in Confluence's most recent rate case, WR-2023-0006. (Murray Rebuttal Test. 13-14). Because MAWC's most recent rate case ended in a black-box settlement, the Commission did not make these same decisions in that case.[11] (*Id.*; *see* Murray Surrebuttal Test. 2-3). Using information identified in the Revenue Requirement Stipulation and Agreement though, Mr. Murray calculated a pre-tax rate of return. (Murray Rebuttal Test. 13-14). Though these inputs may be different than those the Commission ultimately uses in a future rate case, they provide a solid foundation to estimate future rates in this case.

Importantly, it cannot be disputed that the cost of debt inputs are a known value. (Tr. 94). Confluence has a higher cost of debt than MAWC. (*Id.*). During his testimony at the hearing, Mr. Murray stated that Confluence has, only within the last few years, been able to obtain bank financing at a cost of 6.6%.[12] (*Id.*). MAWC, however, has an embedded cost of debt of 4.5%. (*Id.*). This difference—200 basis points or 2%—cannot be disputed. (*Id.*). Confluence's higher cost of debt is a clear detriment to customers.[13]

The Joint Applicants also take issue with the amount of capital spend the OPC used in its analysis. (Jt. Applicants' Initial Br. 13). Specifically, the Joint Applicants argue that according to Mr. Kadyk's testimony, MAWC is projected to spend more capital on these systems than

her] knowledge." (*See* Marke Rebuttal Test. affidavit). If the Joint Applicants argue that Mr. Murray's analysis is speculative because he relied on their requested ratemaking elements, perhaps the validity of those arguments in their underlying rate cases should be questioned.

[11] The Commission ultimately approved the elements identified in the Stipulation and Agreements as fair and reasonable for purposes of setting rates. (*See generally* Report & Order, Doc. 292, Case No. WR-2024-0320).

[12] Mr. Murray explained that prior to obtaining this bank financing, Confluence "consistently . . . claimed that they could not raise traditional types of debt issuances." (Tr. 94). Therefore, "[f]or the longest time, they had an affiliate financing transaction that had a 14-percent rate assigned to it." (*Id.*).

[13] Staff appears to at least acknowledge that this higher cost of debt is a detriment to customers. (Staff Initial Br. 9). It argues though, that this "is just one factor for the Commission to weigh when deciding whether or not to approve [a] merger." (*Id.* (quoting *AG Processing*, 120 S.W.3d at 737)).

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Confluence[14] over the next three to five years.[15] (*Id.* (citing Kadyk Surrebuttal Test. 5-7, Silas Surrebuttal Test. 21)). In its responses to the OPC's data requests, MAWC identified two tables of information—one that included information about projects specific to these systems and the other that included projected capital spend for a larger group of systems. (Murray Rebuttal Test. DM-R-6 "MAWC Response to OPC DR 31"). Though the OPC sought clarification on this response, "MAWC did not at that time and has not since then provided disaggregated information for the nineteen systems individually." (Murray Surrebuttal Test. 2; Murray Surrebuttal Test. DM-S-1 "MAWC Response to OPC DR 42"). Because MAWC, one of the Joint Applicants who bears the burden of proof in this case, cannot provide disaggregated data, the OPC cannot consider this additional capital spend in its analysis.[16] (Murray Surrebuttal Test. 2).

The OPC's attempts to identify offsets to these higher ratemaking elements further show the reasonableness of Mr. Murray's analysis. (*See* Murray Rebuttal Test. 6-8; Tr. 103-04). During his testimony at the hearing, Mr. Murray described how he "want[ed] to try to solve problems and . . . get to . . . whether or not . . . this is a transaction that may make sense." (Tr. 103). He reiterated that the OPC "welcomed" information regarding offsets "to try to do a full evaluation as to whether

[14] It should be noted that MAWC did not indicate that it planned to make the same investments Confluence's engineers identified. "Similarly, it appears that Staff agrees with only some of the improvements identified in Confluence Rivers' engineering reports." (Marke Rebuttal Test. 4 n.9 (citing Staff Response to OPC DRs 38, 42)).

[15] It should be noted that given MAWC's significantly larger customer base over which to spread costs, MAWC would have to expend *significantly* more capital for its customers to experience the same rate impact.

Consider a simplified example: Spreading a $1,000,000 capital expenditure over MAWC's 24,077 customers over a one year period, results in each customer paying approximately $3.46/month ($1,000,000/24,077/12). However, spreading that same $1,000,000 capital expenditure over Confluence's 6,638 customers over a one year period, results in each customer paying approximately $12.55/month ($1,000,000/6,638/12).

Using the same simplified example, one can see that to achieve the same approximately $12/month rate impact, MAWC would have to spend approximately $3,500,000 ($3,500,000/24,077/12=$12.11). This simplified example suggests that MAWC can provide three times the amount of capital expenditure as what Confluence can provide for the same rate to customers, due to MAWC's larger economies of scale.

[16] As Mr. Murray stated in his Surrebuttal Testimony, if MAWC provided this disaggregated information, he "would certainly consider such information in [his] . . . analysis." (Murray Surrebuttal Test. 2).

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or not this transaction . . . looks like it might be detrimental." (*Id.* 103-04). However, as he stated, both during his testimony at the hearing and in his pre-filed testimony, when the OPC issued data requests asking for this type of information, it received responses stating that no offsets could be quantified. (*Id.*; Murray Rebuttal Test. 6-8).

Mr. Murray's analysis showed that customers will pay more under Confluence's ownership due to the higher cost of service inputs. (Murray Rebuttal Test. 9-16). That these higher cost of service inputs will lead to higher future rates is corroborated by the higher rate Confluence itself estimated. (*Id.* 4 (citing Confluence's response to Staff DR 24)). The Joint Applicants bear the burden of proof in this case. *KCP&L Merger*, 2008 Mo. PSC LEXIS 693, at *455. Yet, here, they have failed to identify any offset to the higher cost of service elements the OPC identified in its analysis. Therefore, these higher cost of service elements are a clear detriment to customers.

c. <u>The Rates Customers Will Pay if the Commission Approves this Transaction Fail to Offset Higher Future Rates</u>

Both Staff and the Joint Applicants urge the Commission to rely on the rates customers will pay immediately following the acquisition if the Commission approves this transaction. (Staff Initial Br. 9; Jt. Applicants' Initial Br. 14). The OPC does not dispute that this rate is $8.75 per month lower than MAWC's current base rate. However, reliance on this rate would be short-sighted. As the OPC explained in its Initial Brief, Confluence admits that that it intends to file a rate case in the third or fourth quarter of this year. (Confluence Responses to OPC DRs 1-39 (specifically, Confluence's response to OPC DR 29); Silas Surrebuttal Testimony 13; Tr. 37). 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 18 months. As explained above, Mr. Murray's analysis shows that customers will likely pay more under Confluence's ownership. Therefore, this lower rate is likely only a temporary benefit.

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d. Confluence Itself Assumes it Will Charge a Rate Higher Than MAWC's Current Rate

Tellingly neither Staff nor the Joint Applicants address the rate that Confluence itself assumes customers will pay under its ownership. As explained in the OPC's Initial Brief, in the pro forma financial statements Confluence submitted with the Joint Application it 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 pro forma financial statements) *with* Murray Surrebuttal Test. 2-3 (identifying the $74.11 rate customers are currently paying under MAWC's ownership)). As shown in Confluence's response to Staff Data Request Numbers 51 and 52, Confluence conducted an analysis that considered a variety of ratemaking elements to arrive at this proposed rate. (Ex. 304 "Confluence Response to Staff DR 51", Doc. 65; Ex. 305 "Confluence Response to Staff DR 52", Doc. 66). Though Confluence states in its responses that this rate **_____

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_____ ** this is the only proposed rate either of the Joint Applicants, who bear the burden of proof, have put forward in this case. (*See* Confluence Resp. to Staff DR 52; *see also* Confluence Resp. to Staff DR 51 (containing a similar statement)). Therefore, the Commission must consider it when conducting its analysis in this case. The fact that Confluence itself assumes it will charge a rate higher than MAWC's current rates, supports the outcome of Mr. Murray's analysis.

e. The Likely Higher Rates for Service Customers Will Pay Under Confluence's Ownership Represents a Detriment Associated with this Transaction

The Commission has considered the potential for higher rates in previous § 393.190 RSMo. cases and it appears it must do so. The OPC does not bear the burden of proof, rather it is the Joint

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Applicants who must show that the transaction is not detrimental to the public. *KCP&L Merger*, 2008 Mo. PSC LEXIS 693, at *455. The OPC conducted an analysis using the available information. It attempted to identify offsets, but neither of the Joint Applicants could do so. The results of the OPC's analysis are also supported by the only rate included in the record of this matter. Though customers may initially pay a lower rate for service under Confluence's ownership, they will likely shortly after pay a higher rate for service. This is a detriment the Commission must consider.

3. Arguments Regarding Costs Paid by Remaining Customers

In his Surrebuttal Testimony, Dr. Marke identified a detriment to MAWC's remaining customers associated with MAWC's continued recovery of the costs associated with these systems, including costs associated with the "significant upgrades" MAWC made to the Ryan's Lake system. (Marke Surrebuttal Test. 5). The Joint Applicants argue that the Commission should disregard this detriment, essentially arguing that this is the way things must be. (*See* Jt. Applicants' Initial Br. 15). Staff, alternatively, argues that one cannot be sure MAWC is recovering these costs given that its prior rate case ended in a black box settlement. (*See* Staff Initial Br. 9-10). Both the Joint Applicants and Staff also assert that this is offset because MAWC will be receiving less revenues because its rates were set assuming that it would continue receiving revenue from these customers. (*Id.*; Jt. Applicants' Initial Br. 15). These arguments fail to negate this detriment.

Initially, the existence of this detriment for MAWC's remaining customers appears established. The Joint Applicants essentially concede that this is true. (*See* Jt. Applicants' Initial Br. 15 (stating "[t]his is the way rate making works, and there is nothing the Commission can do in this case to reduce MAWC's rates without running afoul of well-established Missouri case law regarding how utility rates are set.")). Though Staff argues that MAWC may not, in fact, be

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recovering these costs, they have pointed to nothing to show that a disallowance was sought in MAWC's recent rate case associated with these systems. (*See* Staff Initial Br. 9-10).

As to this detriment being offset by MAWC's reduced revenues, the OPC does not dispute that MAWC would not be receiving revenues from these 616 customers if the Commission allows Confluence to acquire these systems. However, whether this reduction in revenues offsets the detriment to MAWC's remaining customers that will arise when they continue to pay for the 19 systems at issue here as if MAWC owned them appears at least questionable. Not only have these calculations not been run,[17] but Staff also identified a **_____ ** acquisition premium. (Recommendation Memo. 9). This acquisition premium may offset this reduction in revenues, leaving only the detriment for MAWC's remaining customers.

4. Arguments Regarding the Acquisition Premium

Both Staff and the Joint Applicants argue that the acquisition premium identified by Staff is not a detriment to this transaction. (Jt. Applicants' Initial Br. 15-16; Staff Initial Br. 10-11). The Joint Applicants appear to argue both that an acquisition premium may not exist, and also that Confluence "does not expect to recover[] that premium in rates." (Jt. Applicants' Initial Br. 15-16). Staff, on the other hand, asserts that the acquisition premium is not a detriment because its position has been that acquisition premiums should not be reflected in rates. (Staff Initial Br. 10-11). These arguments fail to establish that the acquisition premium is not detrimental to the public.

In arguing that the amount of the acquisition premium is unknown, and, therefore, the acquisition premium is not detrimental, the Joint Applicants ignore the evidence that exists in this case. In completing its analysis Staff calculated a **_____ ** difference between the current net book value of the systems and the purchase price of **_____ ** (Recommendation

[17] It should be noted that, as the Joint Applicants recognize in their Initial Brief, the 616 customers involved in this transaction represent only 2.6% of MAWC's wastewater customers. (Jt. Applicants' Initial Br. 8).

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Memo. 9). This represents an acquisition premium of **_____** (*See id.*). Confluence does not dispute that Staff's calculations are the only calculations that exist in this record.[18] (Tr. 63-64).

As to the recovery of the acquisition premium, the OPC does not dispute and in fact agrees that it has typically been Staff's position that companies should not recover acquisition premiums. (Marke Rebuttal Test. 10-11). However, as the OPC pointed out in its Initial Brief, Confluence has been careful throughout this case when it comes to what position it may take regarding the recovery of the acquisition premium in its upcoming rate case. Though the Joint Applicants state that they "do[] not expect to recover[] that premium in rates," they never say that they will not request recovery of it. (*See* Jt. Applicants' Initial Brief 15-16; Tr. 17, 40, 62). Confluence's response to Staff's Data Request No. 51 supports the idea that Confluence may seek recovery of the acquisition premium. In that response, Confluence made clear that it completed an analysis that reached the same proposed future rate as that identified in its pro forma financial statements by, in part, _____** (Confluence Resp. to Staff DR 51). Confluence provides no reason why it would **_____** in this analysis[19] if it did not intend to seek recovery of it in the next rate case.[20] (*See id.*).

[18] The Joint Applicants argue that the Commission must only consider the current rates being charged for service, which they characterize as the "best evidence," when considering the OPC's detriment addressing customers' future rates for service. (Jt. Applicants' Initial Br. 14). Curiously, however, when it comes to consideration of the acquisition premium, the Joint Applicants argue that the Commission should disregard the undisputed evidence in the record that shows the existence of an acquisition premium. (*See id.* 15-16). Rather, the Joint Applicants appear to request that the Commission disregard the acquisition premium because it may exist in a different amount at the time of closing due to an unknown "amount of investment" and that "depreciation reserve will necessarily have increased through the passage of time." (*Id.* 15). The Joint Applicants cite to nothing showing any additional investment, nor do they calculate any increase in depreciation reserve. (*See id.*). The Joint Applicants bear the burden in this case, but have submitted nothing to support their contention. The Commission should disregard this argument.

[19] Confluence includes a disclaimer sentence in its response that states **

** (Confluence Resp. to Staff DR 51). Though Confluence includes this disclaimer sentence, again, it carefully avoids saying that it will not *seek* recovery of these costs, including the acquisition premium.

[20] In its Initial Brief Staff cites to the statement that "Confluence has provided the Commission with an assurance that if Confluence was unable to receive an acquisition premium, Confluence would 'still be economically viable and have

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The Missouri Supreme Court has made clear that although the Commission can consider recovery of the acquisition premium in a future rate case, it must also consider the acquisition premium in an acquisition case brought pursuant to § 393.190 RSMo. *AG Processing*, 120 S.W.3d at 736. Specifically, the Supreme Court noted that the Commission "can determine whether the acquisition premium . . . [is] reasonable, and . . . should . . . consider[] it as part of the cost analysis when evaluating whether the proposed merger would be detrimental to the public." *Id.*

The evidence in this record establishes that a **____ ** or **_____ ** acquisition premium exists in this case. (Recommendation Memo. 9). If the Commission approves this transaction it can address the recovery of this premium in a future rate case, however, in this case it must decide whether this premium is reasonable. *AG Processing*, 120 S.W.3d at 736. Where MAWC can continue to provide safe and adequate service to these customers, this acquisition premium is not reasonable.[21]

5. <u>Arguments Regarding the Location of the Systems</u>

Finally, both the Joint Applicants and Staff argue that the location of the systems do not represent a detriment to this transaction. (Jt. Applicants' Initial Br. 16-18; Staff Initial Br. 11). To be clear, the OPC does not characterize the location of the systems alone as a detriment.

Rather, as explained in the OPC's Initial Brief, the location of the systems refutes what the Joint Applicants identify as a potential benefit to this transaction. Namely, the Joint Applicants assert that the location of the systems provide a benefit to the transaction. (*See, e.g.*, Kadyk Direct

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the ability to provide safe and adequate service.'" (Staff Initial Br. 10-11 (quoting Silas Surrebuttal Test. 25)). However, Staff does not state that Confluence will not seek recovery or will not recover the acquisition premium. (*See id.*).

[21] This acquisition premium highlights the negative precedent setting nature of this case. If the Commission allows Confluence to acquire these systems without some offsetting benefit to customers, it will set a precedent by which regulated utilities can increase their profits by swapping systems and accompanying acquisition premiums with little Commission oversight.

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Test. 7 (addressing the question "[a]re there benefits for the customers served by the subject wastewater systems?" by saying, in part, "Confluence Rivers already has several small wastewater systems in the vicinity of these systems.")). However, MAWC has other systems much closer to 18 of the 19 systems at issue here. (Marke Surrebuttal Test. 5-8). This includes its service center in Jefferson City, MO and its large wastewater systems in Taos and Wardsville. (*Id.* 5-7). Confluence, on the other hand, has no other systems in Callaway County and only one in Cole County. (*Id.* 7-8; Marke Surrebuttal Test. GM-6C "Confluence Response to OPC DR 46;" Marke Surrebuttal Test. GM-7B "Confluence Response to OPC DR 44"). Therefore, the location of the systems weighs against, not in favor of, this transaction.[22]

E. Conclusion: Both Staff and the Joint Applicants Have Failed to Refute the OPC's Detriments

Throughout their Initial Briefs both Staff and the Joint Applicants attempt to refute the detriments the OPC identified as a result of this proposed transaction. However, for the reasons addressed above, they have failed to do so. Both parties have also failed to identify benefits that offset these detriments. Therefore, netting the benefits and detriments associated with allowing Confluence to acquire these systems from MAWC as proposed in this case, shows that the transaction would be detrimental to the public.

IV. Conclusion: The Joint Applicants Have Failed to Carry Their Burden to Show that the Proposed Transfer Would Not be Detrimental to the Public

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

[22] The location of the systems also calls into question the weight to be given MAWC's assertion that the sale of these systems will allow its employees to have more time as they will not have to drive "as far to complete the routine tasks." (Murray Rebuttal Test. DM-R-3 "MAWC Response to OPC DR 26)). The OPC agrees with Staff's assertion in its Initial Brief that "[o]f the 19 wastewater systems at issue in this case, 18 of them are located in Callaway County and are thus relatively close to one another – making travel between these systems relatively simple." (Staff Initial Br. 11 (citing Recommendation Memo. 3)).

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Commission to determine whether the transaction results in a net detriment to customers. The Commission has made clear that the applicants, here the Joint Applicants, bear the burden of proof to show that this standard has been met. This standard does not shift to the party asserting a detriment. In this case, the OPC has identified detriments, addressed both in this Reply Brief and its Initial Brief. The Joint Applicants, however, have failed to identify offsetting benefits or to refute the OPC's detriments. Therefore, they have failed to carry their burden and the Commission must deny the relief requested in the Joint Application. Doing so will allow the 616 customers of these systems to continue receiving wastewater service from MAWC, thereby avoiding any detriments associated with this sale and allowing them to continue to receive all the benefits associated with being a MAWC customer.

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 28th day of July 2025.

/s/ Lindsay VanGerpen

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