BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc. and Cannon Home Association, Inc., for Authority Allowing Confluence to Acquire Certain Sewer Assets and for a Certificate of Convenience and Necessity to Provide Sewer Service in an Area of Ralls County, Missouri	)))))))	Case No. SM-2026-0369

RESPONSE TO STAFF RECOMMENDATION

COMES NOW the Office of the Public Counsel (the "OPC") and in response to the Staff of the Public Service Commission of the State of Missouri's ("Staff" and the "Commission," respectively) Report and Recommendation (the "Recommendation," Doc. 8) respectfully states:

The OPC is concerned that Staff has failed to adequately consider the reasonableness of the over **___ **[1] acquisition premium that Staff calculated exists in this case when determining that the proposed acquisition is not "detrimental to the public." *See State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n*, 120 S.W.3d 732, 735 (Mo. banc 2003) (citations omitted); (Staff Rec. Mem. 12). Here, Confluence Rivers Utility Operating Company, Inc. ("Confluence") specifically stated in the Joint Application that it "intends to seek recovery of a premium associated with this transaction in future rates." (Jt. Appl. 6, Doc. 1). Such position coupled with the large acquisition premium make this proposed acquisition detrimental to the public. To correct this, the OPC recommends that the Commission impose a condition that prohibits Confluence from requesting recovery of the premium in a future rate case, in addition to the conditions proposed by Staff in its Recommendation.

[1] Redacted information included throughout this filing is either information another party has designated to be confidential or based on information another party has designated to be confidential (Rule 20 CSR 4240- 2.135(9)).

I. Background

On June 23, 2026, Confluence and Cannon Home Association, Inc. ("Cannon Home," and collectively with Confluence, the "Joint Applicants") filed the Joint Application seeking Commission authority for Cannon Home to sell and Confluence to acquire all of Cannon Home's wastewater system in Ralls County, Missouri. (*See* Joint Application 1-2). Cannon Home currently provides wastewater service to approximately 126 customer connections and is regulated by the Commission. (*Id.* 2).

Confluence identifies the purchase price of the transaction as **_____ ** and clearly states in the Joint Application that it "believes an acquisition premium does exist and Confluence . . . intends to seek recovery of a premium associated with this transaction in future rates." (*Id.* 6; App. B-C "Agreement for Sale of Utility System" 2). In support of the Joint Application, Confluence attached Appendix K-C, which it describes as a "rate base calculation following the Commission approved Uniform System of Accounts (USOA) requirements with workpapers." (Jt. Appl. 6; App. K-C "Rate Base Calculation"). In a table entitled **_____ _____ ** under the heading **_____ ** Appendix K-C includes a row entitled **_____ where it identifies the **_____ **[2] with a note that states **_____ ** (App. K-C 1).

In addressing the public interest, the Joint Applicants address only Confluence, stating that the sale "results in regulated sewer service being provided to the current and future customers of the Cannon Home sewer system." (*Id.* 7). They continue by pointing out that if the Commission approves the sale, the systems "remain subject to the jurisdiction of the Commission." (*Id.*). Further, they reference Confluence's qualifications to own and operate the system, its operation of

[2] The OPC interprets this amount as Confluence's calculation of the acquisition premium. This amount is ** ** of the purchase price.

other water and wastewater systems in Missouri, its compliance with the Commission's rules, and that it has the "financial strength and resources necessary to make any expenditures and investments required to maintain the systems." (*Id.*).

The Joint Applicants do not identify why Cannon Home seeks to sell the system. (*See generally* Jt. Appl.). They also do not identify any issues with compliance under Cannon Home's ownership. (*Id.*).

The Commission ordered its Staff to file a Recommendation and set a time for responses to be filed to that Recommendation. (Order Directing Staff to File a Recommendation & Setting Time for Responses 1, Doc. 5). Following a short extension, Staff filed its Recommendation on September 28, 2026. In the memorandum attached to its Recommendation, Staff asserted that it was "Staff's position, based on its review as described herein, . . . that the transfer of utility assets is not detrimental to the public interest." (Staff Rec. Mem. 17). Therefore, Staff recommended that the Commission grant the relief requested in the Joint Application, subject to fourteen (14) identified conditions. (*Id.* 17-18).

As a part of Staff's investigation, it found that "[m]aterials and equipment used were appropriate and the plant appeared to be operating well and performing as required." (Staff Rec. Mem. 3). Staff also noted that the Missouri Department of Natural Resources, the other Missouri entity that regulates the Cannon Home system, "did not find any operational concerns during its inspection." (*Id.*).

Staff calculated the net book value of the Cannon Home system to be $59,900 as of June 30, 2026. (*Id.* 12). Comparing that amount to the proposed purchase price of the transaction–**_____ **–shows that an acquisition premium of **_____ ** exists. (*Id.*). Put another way, the acquisition premium amounts to over **_____ ** of the purchase price. (*See id.*).

In addressing this large acquisition adjustment, Staff recognizes that "Confluence is not seeking regulatory treatment for acquisition premiums or discounts as part of the current application, but Confluence Rivers intends to seek recovery of a premium associated with this transaction in future rates." (*Id.*). Staff points out that if Confluence "pay[s] over net book value" it "could negatively affect the feasibility of the proposal if Confluence requests an acquisition premium in a future rate case." (*Id.* 12-13). Though Staff recommends that "the Commission explicitly order Confluence to adhere to the acquisition accounting guidance provided in the Uniform System of Accounts ('USOA')," and states that "Confluence shall initially establish net book value for the wastewater system as of June 30, 2026, utilizing Staff's calculation of net book value," it provides no analysis as to the reasonableness of the acquisition premium. (*Id.* 13).

On October 8, 2026, the Joint Applicants filed their Response to Staff Recommendation stating that "they have no objection" to Staff's recommended conditions/actions. (Resp. to Staff Rec. 1, Doc. 9).

II. Response

The OPC files this Response because it is concerned that Staff has failed to consider the reasonableness of the large acquisition premium in its investigation. Given the large acquisition premium and Confluence's assertion that it will seek recovery of such premium in a future rate case, the OPC argues the proposed acquisition is detrimental to the public unless the Commission imposes an additional condition.

A. Legal Standard: Detrimental to the Public

Section 393.190.1 of the Revised Statutes of Missouri governs the sale of any portion of a sewer corporation's system that is "necessary or useful in the performance of its duties to the public" and requires Commission approval prior to the sale. § 393.190.1 RSMo.

The Missouri Supreme Court has recognized that "[a] property owner should be allowed to sell his property unless it would be detrimental to the public." *State ex re. St. Louis v. Pub. Serv. Comm'n,* 73 S.W.2d 393, 400 (Mo. 1934). The Commission need not find a public benefit as a result of the transaction, but the transaction cannot result in a net detriment to the public. *See Osage Util. Operating Co. v. Mo. Pub. Serv. Comm'n*, 637 S.W.3d 78, 93 (Mo. Ct. App. 2021) (citing *St. Louis*, 73 S.W.2d at 400).

To determine whether a sale is detrimental to the public, the Commission must "consider all relevant factors." *Id.* (citing *AG Processing, Inc.*, 120 S.W.3d at 736). Although no exhaustive list of considerations has been identified, courts will find the Commission's decision unreasonable "if it 'erroneously ignores evidence that may have substantially impacted the weight of the evidence evaluated to approve' the transaction." *Id.* (citing *State ex rel. Praxair, Inc. v. Pub. Serv. Comm'n*, 344 S.W.3d 178, 184 (Mo. banc 2011)).

Importantly for purposes of this case, the Missouri Supreme Court in an en banc opinion concluded that the Commission erred when it did not address the reasonableness of an acquisition premium as part of its decision on a proposed merger. *AG Processing, Inc.*, 120 S.W.3d at 736. Specifically, the *AG Processing, Inc.* Court stated "[w]hile 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." *Id.* (footnote omitted).

B. Legal Standard: Commission Consideration of Acquisition Premium

After the Missouri Supreme Court remanded the *AG Processing, Inc.* case, the Commission again considered whether the proposed merger was detrimental to the public–this time specifically focusing on the acquisition premium. *In the Matter of the Jt. Appl. of UtiliCorp United Inc. & St.*

Joseph Light & Power Co. for Authority to Merge St. Joseph Light & Power Co. with & into UtiliCorp United Inc., &, in Connection Therewith, Certain Other Related Transactions, Case No. EM-2000-292 (hereinafter "UtiliCorp/St. Joe Merger"). In its decision, the Commission pointed out that it "has consistently applied the net original cost standard when placing a value on assets for purposes of establishing a utility's rates." (UtiliCorp/St. Joe Merger 2nd Report & Order 6). The Commission defined the principle of the net original cost rule saying "[a]s a general rule, only the original cost of utility plant to the first owner devoting the property to public service, adjusted for depreciation, should be included in the utility's rate base." (*Id.* at 4). The Commission concluded that the surviving entity could not recover the acquisition premium in its rates, saying

> For many years, the Commission has used a net original cost standard to place a value on utility plant after a merger. That standard has proven to be fair to utilities as well as to ratepayers. There is no reason to vary from that standard in this case. *The Commission concludes that UtiliCorp should not be allowed to recover any of the acquisition premium in its rates.*

(*Id.* 8 (emphasis added)). Ultimately, the Commission found that the proposed merger was not detrimental to the public and that it need not address the reasonableness of the acquisition premium because the surviving entity could not recover any premium through its rates.[3] (*See id.*).

The Commission recently addressed the consideration of an acquisition premium, this time in a wastewater acquisition case in *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* (hereinafter "MAWC/Confluence Acquisition"), Commission Case Number SM-2025-0067.

[3] Specifically, the Commission stated "[w]ith the Commission having decided that UtiliCorp will not be allowed to recover any acquisition premium from its ratepayers, the existence of an acquisition premium cannot alter the Commission's evaluation of whether the merger would be detrimental to the public." (UtiliCorp/St. Joe Merger 2nd Report & Order 8).

In the MAWC/Confluence Acquisition case Confluence sought to acquire several small wastewater systems from Missouri American Water Company ("MAWC"). (MAWC/Confluence Order 4). In setting forth its Recommendation Staff calculated an acquisition premium. (Ex. 200 "Robertson Rebuttal Testimony," Schedule JJR-r2 "Staff Recommendation Memorandum" 9, MAWC/Confluence Acquisition, Doc. 55). Staff stated in its Recommendation that "[i]t has been Staff's position in prior cases that rates should be based upon the remaining net book value of the original cost of the utility plant at the time it was placed in service, and that no acquisition adjustment, above or below net book value, should be reflected in rates." (*Id.*).

In reaching its decision, the Commission stated that it did not "believe a determination as to the reasonableness of any potential acquisition premium is required, because the Commission is not granting approval of any acquisition premium as part of this case and Confluence is not requesting or expecting to recover an acquisition premium in customer rates as a result of this Report and Order." (MAWC/Confluence Acquisition Order 29). The Commission continued stating that "Confluence, Staff, and Public Counsel are all in agreement that any acquisition premium should not be recovered in Confluence's customer rates during any subsequent general rate proceeding." (*Id.*).

C. Staff's Failure to Address the Reasonableness of the Acquisition Premium is Unreasonable, Here the Large Acquisition Premium and Confluence's Assertion that it Will Seek Recovery of it, Mean that the Transaction is Detrimental to the Public

Here, though Staff recommends certain accounting treatment of the over **___** acquisition premium, it did not consider the reasonableness of the premium itself in reaching its determination that the proposed transaction is not detrimental to the public. Such a failure to address this important factor is unreasonable. *See AG Processing, Inc.*, 120 S.W.3d at 736.

When considering the reasonableness of the acquisition premium in this case, it becomes clear that it makes the acquisition as proposed detrimental to the public. Specifically, both Staff and Confluence calculate a large premium, with Staff's calculation finding a premium that is over **___ ** of the purchase price. (Staff Rec. Mem. 12; App. K-C 1). Confluence then makes clear that it intends to seek recovery of this premium in a future rate case. (Jt. Appl. 6). This statement materially distinguishes this case from the MAWC/Confluence Acquisition case and makes it more akin to the UtiliCorp/St. Joe Merger case. (*See* MAWC/Confluence Acquisition Order 29; UtiliCorp/St. Joe Merger 2nd Report & Order 6-8). As Staff recognized in its memorandum, the "purchase price is a management decision of the Company." (Staff Rec. Mem. 12). However, given the nature of utility ratemaking and how costs are typically spread across ratepayers, if the Commission allows Confluence to recover the acquisition premium in its next rate case, it will necessarily make its customers' rates higher than they would have otherwise been, due to Confluence's management's decision to pay more than the net book value for the Cannon Home system. The potential recovery of a large acquisition premium that may result in higher rates for customers surely makes this transaction as proposed detrimental to the public. (*Contra* UtiliCorp/St. Joe Merger 2nd Report & Order 7-8).

D. Proposed Condition to Ensure Transfer is Not Detrimental to the Public

To help ensure that this acquisition is not detrimental to the public, the OPC proposes a condition in addition to those proposed by Staff. The OPC's recommended condition is simply:

1. Confluence will not seek to recover any acquisition premium associated with this transaction from its customers.[4]

[4] The OPC acknowledges that if the Commission approves the transaction as a part of this case, Staff will calculate a final rate base amount for the Cannon Home system as part of the general rate case in which Confluence seeks to include the system in its rates. This may result in a change to the amount of the acquisition premium from that included in Staff's Recommendation. For that reason, the OPC suggests a condition that recognizes the existence of an acquisition premium, without specifying an amount.

The Commission's decision in the UtiliCorp/St. Joe Merger case explains that the Commission typically does not allow utilities to recover acquisition premiums through rates and explicitly prohibited the utility in that case from doing so. (*See* UtiliCorp/St. Joe Merger 2nd Report & Order 8-9). The Commission's decision in the MAWC/Confluence Acquisition case supports that decision. (*See* MAWC/Confluence Acquisition Order 29). The OPC's simple condition will ensure that Confluence's customers are not asked to pay higher costs due solely to Confluence's decision to pay more than the net book value for the Cannon Homes system. It also complies with the Commission's decision in the UtiliCorp/St. Joe Merger and the MAWC/Confluence Acquisition cases.

III. Conclusion

Both Staff and Confluence's analyses suggest that a large acquisition premium exists in this case. Confluence has also made clear that it intends to seek recovery of that premium in its future rate case. Allowing Confluence to do so will raise its customers' rates higher due solely to Confluence's decision to pay more than the net book value for the Cannon Home system and would result in the transaction becoming detrimental to the public. Imposing conditions to protect customers from the detrimental effects of the transaction is therefore required. For this reason, the OPC asks that the Commission, in addition to the conditions recommended by Staff, impose the condition specified in this Response. Alternatively, if the Commission does not impose the OPC's recommended condition, the OPC opposes the transaction as being detrimental to the public and requests that the Commission hold a hearing in this matter.

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WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission either impose its proposed condition in addition to those recommended by Staff or hold a hearing in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 9th day of October 2026.

/s/ Lindsay VanGerpen