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

SUR-REPLY TO REPLIES TO OPC RESPONSE TO STAFF RECOMMENDATION

COMES NOW the Office of the Public Counsel (the "OPC") and in reply to the Staff of the Public Service Commission of the State of Missouri ("Staff" and the "Commission," respectively) and Confluence Rivers Utility Operating Company, Inc.'s ("Confluence") Replies to the OPC's Response to Staff's Recommendation (the "Staff Reply," Doc. 11 and the "Confluence Reply," Doc. 12) respectfully states:

After reviewing the Staff Reply and the Confluence Reply, the OPC maintains its position that Confluence's acquisition of the Cannon Home wastewater system as proposed in the Joint Application is 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). Neither Staff nor Confluence identifies anything in its Reply that shows that the acquisition premium Staff calculated in its Recommendation is reasonable. Because the Commission must consider the reasonableness of the acquisition premium in evaluating this proposal and here the acquisition premium is over **___ **[1] of the purchase price with nothing suggesting that it is reasonable, the OPC requests that the Commission either (1) impose the condition the OPC recommended in its original

[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)).

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Response to Staff's Recommendation[2] or (2) schedule a hearing in this matter. (Staff Rec. Mem. 12, Doc. 8).

I. The Staff Reply and the OPC's Response

Staff in its Reply opposes the OPC's proposed condition because it would preclude Confluence from seeking recovery of the acquisition premium. (Staff Reply 1). Instead Staff asks that the Commission include a "clarification in its approval order" that reserves determinations of the acquisition premium's recovery, prudence, or reasonableness for ratemaking purposes. (*Id.* 3).

Staff acknowledges that "the Commission must consider the acquisition premium's reasonableness as part of its evaluation of whether the proposed transaction is detrimental to the public" and that "reserving future ratemaking issues does not substitute for that evaluation." (*Id.* 1-2). However, Staff pointed to nothing in its Reply to establish that the acquisition premium that it calculated in this case is reasonable.[3] Similarly, Staff's investigation as described in its Recommendation identifies no reason why Confluence should pay more than **___ ** over the net book value for the Cannon Home system. Therefore, its proposal to simply reserve decisions about the acquisition premium for the future without more appears to be what the Missouri Supreme Court found insufficient in the *AG Processing* case. 120 S.W.3d at 736 (stating "[t]he fact that the acquisition premium recoupment issue could be addressed in a subsequent ratemaking

[2] The OPC's proposed condition is: Confluence will not seek to recover any acquisition premium associated with this transaction from its customers. (OPC Resp. to Staff Rec. 8, Doc. 10).

[3] Staff stated that it "identified the premium, calculated the system's net book value, and recommended acquisition accounting requirements. Those measures do not themselves resolve the premium's reasonableness, but neither do the premium's existence and Confluence's stated intention to seek recovery establish, standing alone, that the transaction will produce a net public detriment." (Staff Reply 2). The OPC explained in its original Response that if the Commission allows Confluence to recover the acquisition premium, then given the nature of utility ratemaking, customers' rates would be higher based solely on Confluence's management's decision to pay higher than the net book value for the Cannon Home system. (OPC Resp. to Staff Rec. 8). Without some offsetting benefit, it is difficult to see how this is not a net public detriment.

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case did not relieve the PSC of the duty of deciding it as a relevant and critical issue when ruling on the proposed merger.").[4]

II. The Confluence Reply and the OPC's Response

Similar to Staff, Confluence opposes the OPC's proposed condition, but it does so on the basis of the dollar amount of the acquisition premium. It maintains that the acquisition premium of **_____ ** represents a small portion of Confluence's net sewer plant in service and that recovery of it would have a small impact on annual revenue requirement. (Confluence Reply 2-3). Confluence asserts that "the Commission need not ignore the acquisition premium. It can decide that given the amount of the acquisition premium in relation to the size of Confluence Rivers, the sale is not detrimental to the public interest." (*Id.* 4).

Though Confluence wishes to diminish the overall dollar amount of the acquisition premium in this case, it too has failed to identify anything to suggest why paying more than **___ ** over net book value for the Cannon Home system is reasonable. It also points to nothing to show that the dollar amount of the acquisition premium alone can satisfy whether the premium is reasonable. In fact, the acquisition premium at issue in the *AG Processing* case represented only 34.07%[5] of the total cost of the merger. 120 S.W.3d at 733 n.2. Even at that smaller percentage of the overall merger price, the Commission ultimately determined that the surviving entity in that case could not recover 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 &*

[4] As described in greater detail in the OPC's original Response to Staff Recommendation, in setting forth its decision, the Missouri Supreme Court stated that "[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." *AG Processing*, 120 S.W.3d at 736 (footnote omitted).

[5] 92,000,000 (the acquisition premium in the *AG Processing* case)/270,000,000 (the approximate total cost of the merger in the *AG Processing* case).

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into UtiliCorp United Inc., &, in Connection Therewith, Certain Other Related Transactions, Case No. EM-2000-292 (hereinafter "UtiliCorp/St. Joe Merger"), 2nd Report & Order 8). In this case, even though the dollar amount of the acquisition premium is smaller than that at issue in *AG Processing*, it represents a larger overall portion of the purchase price: **___ ** With this in mind, Confluence's reliance on the dollar amount of the acquisition premium does little to support its position that it is reasonable.[6]

III. Conclusion

Neither Staff nor Confluence identifies a reason why Confluence should pay more than **___ ** above the net book value of the Cannon Home system. Because nothing establishes that the acquisition premium in this case is reasonable, the OPC maintains its position that the transaction as proposed is detrimental to the public and requests that the Commission either impose its proposed condition or schedule a hearing in this matter.

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,

/s/ Lindsay VanGerpen
Lindsay VanGerpen (#71213)
Senior Counsel
Missouri Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-5565
Facsimile: (573) 751-5562
E-mail: Lindsay.VanGerpen@opc.mo.gov

[6] As explained further in the OPC's original Response to Staff's Recommendation, this case differs from *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*, Commission Case Number SM-2025-0067 because Confluence has affirmatively represented in the Joint Application that it will seek recovery of the acquisition premium. (Jt. Appl. 6, Doc. 1).

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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 27th day of October 2026.

/s/ Lindsay VanGerpen

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