

Exhibit No.: _____

Issues: Public Interest

Witness: Richard DeWilde

Sponsoring Party: Lake Perry Lot Owners Association

Type of Exhibit: Rebuttal Testimony

Case Nos.: WA-2019-0299

Date Testimony Prepared: April 28, 2020

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Confluence)	
Rivers Utility Operating Company, Inc.)	
For Authority to Acquire Certain Water and)	Case No. WA-2019-0299
Sewer Assets and for a Certificate of Convenience)	Case No. SA=2019-0300
And Necessity)	

**REBUTTAL TESTIMONY OF
RICHARD DEWILDE
ON BEHALF OF THE
LAKE PERRY LOT OWNERS ASSOCIATION
APRIL 28, 2020**

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Q. What is your name?

1 A. Richard DeWilde

2 **Q. Are you the same Richard DeWilde who previously filed rebuttal testimony**
3 **in this case?**

4 A. Yes, I am.

5 **Q. What is the purpose of your testimony?**

6 A. The purpose of my testimony is to comment on the net book value calculated by
7 Staff witness Bolin in her Direct Testimony and comment on how the calculated net book value
8 shows the Application of Confluence Rivers Operating Company, Inc. (“CRU”) and transaction
9 between Port Perry Service Company and CRU for the sale of the assets of Port Perry to be
10 detrimental to public interest.

11 **Q. What is your comment on the Stipulation and Agreement as to Net Book**
12 **Value?**

13 A. The Stipulation and Agreement sets forth a value of net book value for the Port
14 Perry assets as of December 31, 2019 as \$ for water and \$ for sewer. The
15 Stipulation and Agreement establishes that those values “will be used as starting amounts for the
16 calculation of rate base (with regard to the Port Perry assets) in Confluence River’s next rate
17 case.” Therefore, the net book value for the entire Port Perry facilities is \$. All parties to
18 the case had the ability to review Staff’s Report and assess the appropriateness of that number. It
19 is a reasonable calculation of the net book value for the Port Perry assets.

1 **Q. What are your observations pertaining to this value of net book value**
2 **compared to the purchase price of \$ _____ ?**

3 A. First, allow me to quantify the magnitude of the difference. The stated purchase
4 price is \$ _____, _____ % of the net book value. The difference between the stated purchase price
5 and the net book value is \$ _____.

6 It is also worthwhile noting the purchase price floor stated in the Asset Purchase
7 Agreement. The relevant portion of the Agreement states as follows: “The Parties further agree
8 that, in the event the Missouri Public Service Commission determines the net book value of the
9 Assets is less than _____ Dollars (\$ _____), Buyer has
10 the option of paying _____ Dollars (\$ _____) for the
11 Assets or terminating this Agreement.” Even the floor price is _____ % of the net book value, and
12 the difference is \$ _____. Therefore, the acquisition premium is \$ _____ in the case of the
13 stated purchase price and \$ _____ in the case of the floor price. The acquisition premium is
14 _____ % of the net book value based on the floor price. And as reflected in the Stipulation and
15 Agreement and Confluence Rivers’ Waiver Concerning Acquisition Premium, filed with this
16 Commission on March 4 of this year, Confluence Rivers is not seeking and will not be allowed
17 to recover the acquisition premium.

18 **Q. Please explain the concept of an acquisition premium?**

19 A. As Ms. Bolin explains in her Direct Testimony, an “acquisition premium” is the
20 amount a utility pays more than the net book value for another utility’s assets. FASB No. 142
21 confirms that definition. FASB No. 142 goes on to discuss that an “acquisition premium”
22 represents “good will.” So, if a market places a high value on a name brand or a service, a buyer
23 can expect to pay a higher price for the company than the net book value. The Commission has

1 typically refused to allow a utility purchaser to recover the acquisition premium in an acquisition
2 case because the recovery of an acquisition premium is detrimental to the public interest because
3 it allows the transaction to inflate the rate base of the assets and thereby inflate the rates.

4 **Q. What is your assessment of the relative magnitude of the “acquisition**
5 **premium” to the net book value?**

6 A. I recognize that CRU is not seeking to recover the “acquisition premium,” but the
7 “acquisition premium” in this case is still being paid, and it is significant. The acquisition
8 premium for this transaction is almost twice that of the actual net book value, assuming CRU
9 pays the floor purchase price. This is an extremely inflated price for the Port Perry system. In a
10 highly competitive market for a valuable name, you might expect a company to be sold at a price
11 of three times its net book value, with the “acquisition premium” being twice the net book value.
12 You might expect that price to net book value relationship for companies like McDonald’s or
13 some other highly marketed and successful business, not for Port Perry. You might expect the
14 acquisition premium for Port Perry to be some modest amount such as % to induce Port
15 Perry to sell since Port Perry has been reasonably maintained and operated and is in relatively
16 good condition, but not %. Port Perry’s good will does not justify that kind of mark up.

17 **Q. What is your judgment regarding the public interest impact of the**
18 **Agreement for Sale of Utility System between CRU and Port Perry Service Company**
19 **considering the net book value of the systems?**

20 A. Mr. Justis quantifies the impact the inflated purchase price has on the public
21 interest more in his Rebuttal Testimony. Based on our observations, it is my judgment that the
22 Agreement for Sale of Utility System between CRU and Port Perry is detrimental to the public
23 interest. Quite frankly, the Agreement implicitly recognizes that under these circumstances the

1 transaction is detrimental to the public interest and unreasonable. The Agreement itself
2 recognizes that in the event the net book value is less than \$, CRU has the option to pay
3 the \$ or walk away. It is surprising that considering the size of the acquisition premium
4 CRU will pay and not recover that CRU has not walked away already.

5 **Q. Has CRU indicated their attitude on the magnitude of a shortfall in**
6 **recovery?**

7 A. Yes, it has. Mr. Thomas sent Mr. Yamnitz several emails negotiating the terms of
8 the Agreement. In one of those emails, dated June 13, 2017, he wrote,

9 [W]e don't know how much the purchase price the PSC is going to recognize as net book
10 value of the system until we submit the acquisition case, and the PSC reviews it and rules
11 on it. Therefore, we offer a price to purchase a system that, to the best of our knowledge,
12 we think the PSC will accept. However, we cannot guarantee that the PSC will accept it.
13 We are willing to over pay above net book value to a certain extent knowing that the PSC
14 may not fully accept what we have submitted. Keep in mind that anything we pay you
15 that is over net book value, we cannot recognize and recover. I reviewed the information
16 that I received from Tammy last week and feel that the PSC will accept most of the
17 justification for the \$ that I have offered you.
18

19 Further on in that email he made the following representations:

20 As you both know, dealing with the PSC is a whole different animal. Most accountants,
21 business people, and bankers don't understand how restrictive, expensive, and onerous
22 the PSC process can be. I'm trying my best to give you the most I can for your system
23 without paying you more than I can recover. Therefore, I'm proposing a change to the
24 agreement, which in parentheses -- it says in parentheses -- (which I will send to you) that
25 puts a floor on how much the purchase price can drop before you are not bound to the
26 agreement. If the PSC comes back with a net book value that is below the minimum,
27 CSWR will have the ability to release you from the agreement or pay the difference and
28 continue with the purchase of the property. An acquisition case and a rate case each costs
29 tens of thousands of dollars. Before I begin spending money, we all need to be
30 comfortable with the agreement.
31

32 Brad, I checked into paying the guaranteed two years of the consulting agreement up
33 front. If I do that, there is no way the PSC will allow us to recognize the money paid for
34 the consulting agreement. It will look more like a way to pay additional purchase price
35 and not a consulting agreement.¹
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¹Exhibit No. 304C, TR. Vol. 2, pp. 123-126.

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CRU portrayed their motivation as not desiring to pay an excessive acquisition premium.

Q. What kind of signal does this purchase price send?

A. The price is so far beyond what is reasonable that it makes it impossible for other viable transaction to have an opportunity to bid. A % “acquisition premium” plus the two-year employment contract was a clear economic hurdle that prevented any other buyer getting Port Perry’s ear. It certainly prevented the Association from having an opportunity to make an offer that Port Perry would consider. The Association attempted to speak with Port Perry on several occasions and even offered them a contingent offer in the event the CRU transaction did not go forward. That acquisition premium simply shut down the market and assured a non-transparent marketplace. Ultimately, such a marketplace will unreasonably inflate prices.

Q. What are your concerns if the transaction is approved?

A. Having worked on the business plan for the Association to acquire the Port Perry Assets, it is apparent that if the systems are to be viable in the future, there must be a way to recover the purchase price along with the future investments to make the assets sustainable. Therefore, CRU would have to find some way to get a return on its \$ purchase price plus \$ 0/year in employee salaries for Mr. Yamnitz and Mr. Moll. Mr. Justis describes several of the possible consequences in his Rebuttal Testimony if it is prohibited from a recovery on the \$. Simply stated, the transaction now appears to be like buying a bond and being told you will only be paid interest on one-third of the face value of the bond.

The problem is that there are still too many uncertainties in the transaction. CRU has not even now indicated how they will make the transaction work with this excessive acquisition premium. This uncertainty is critical with the Association and the services that will follow. As

1 the Association has previously indicated, the lot owners in the subdivision are unanimously
2 opposed to this transaction. We have indicated as much in the following actions: Signed
3 petitions, comments to the Public Service Commission, attendance at town hall meetings,
4 attendance at the PSC public hearing where every person that spoke was against the purchase by
5 Central States (Confluence Rivers), attendance at the hearings in October, 2019, and the extent to
6 which the Association has prosecuted this case.

7 The Commission must understand that this subdivision (Lake Perry) is quite different
8 than many others in that much of the water and many sewer taps are for camping units and
9 motorhomes. This would allow them to have the choice of not using the water and sewer system
10 in place at Lake Perry and instead bring in their own water and dispose of their waste at a dump
11 station.

12 It has been hypothesized that one way of overcoming a large acquisition premium is to
13 acquire many new customers as a result of an acquisition. That is virtually impossible at Lake
14 Perry. Due to the distaste for CRU, the uncertainty in the services going forward, and the
15 flexibility of the customer base, it is more likely than not that CRU would see no increase in
16 customers and actually see a decline in customers taking service. The decrease in customers will
17 make the rate to the remaining customers much greater.

18 **Q. Are there other factors that indicate that the transaction is detrimental to the**
19 **public interest?**

20 A. I understand that the Commission has refused to consider the Association's offer
21 to Port Perry as a transaction they can accept. However, the Association put a lot of effort into a
22 legitimate, viable business plan. The Association's offer price based on that business plan was
23 also at a significant premium over net book value in order to see if Port Perry would consider the

1 offer. They did not. That opportunity was foreclosed to the Association due to the premium
2 paid by CRU. However, the Association would be able to recover its premium and still be able
3 to provide service at lesser rates than what we determined CRU would have to charge.

4 **Q. Are there any reasonable options for moving forward under these**
5 **conditions?**

6 A. No. The purpose of the Public Service Commission is to take the place of
7 competition. In theory, the Commission should look at a transaction and determine whether the
8 transaction would work in a free market. This transaction would not be viable in a free market.
9 What the Commission should do, to maintain the appearance of an open and free marketplace, is
10 to deny the Application and not isolate the transaction from reasonable competing offers.

11 **Q. Does this conclude your testimony?**

12 A. Yes, it does.

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AFFIDAVIT OF RICHARD DeWILDE

STATE OF MISSOURI)	
)	ss.
COUNTY OF PERRY)	

COMES NOW Richard DeWilde and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing Rebuttal Testimony; and that the same is true and correct according to the best of his knowledge and belief, under the penalty of perjury.

Further the Affiant sayeth not.

/s/ Richard Dewilde
Richard DeWilde