

Exhibit No.: _____

Issues: Public Interest

Witness: Hon. Rick Francis

Sponsoring Party: Lake Perry Lot Owners Association

Type of Exhibit: Rebuttal Testimony

Case Nos.: WA-2019-0299

Date Testimony Prepared: August 23, 2019

**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)
Sewer Assets and for a Certificate of Convenience)
And Necessity)

Case No. WA-2019-0299

Case No. SA-2019-0300

**REBUTTAL TESTIMONY OF
RICK FRANCIS
ON BEHALF OF THE
LAKE PERRY LOT OWNERS ASSOCIATION
AUGUST 23, 2019**

1 **Q. What is your name and on whose behalf are you testifying?**

2 A. My name is Rick Francis, and I am testifying on behalf of the Lake Perry Lot Owners
3 Association.

4 **Q. By whom are you employed and what is your education and professional
5 background?**

6 A. I am employed by the state of Missouri. I am the state representative for District 145 of
7 the state of Missouri, which includes all or parts of Perry, Madison, and Bollinger counties.
8 I was elected to my first two-year term in November, 2016. As a member of the Missouri
9 Legislature, I am a member of the Utilities, Financial Institutions, and Agriculture Policy
10 Committees. The Lake Perry subdivision is in my district. I also own a lot in the Lake
11 Perry subdivision. I am also a farmer, and I own a farm in my district.

12 I previously spent 33 years in education as a teacher and coach at Risco, Woodland
13 and Perryville High Schools and served as Middle School Principal and Assistant
14 Superintendent for Perry County School District #32. I retired from The Lindbergh School
15 District in 2012, where I was Assistant Superintendent for Personnel.

16 I graduated from Woodland High School in 1976, and I earned a bachelor's degree
17 in Education in 1980, a Master of Arts in Administration in 1990, and a Specialist in
18 Educational Administration degree in 1992 from Southeast Missouri University. I earned
19 my Doctorate in Educational Leadership and Policy Analysis from the University of
20 Missouri-Columbia in 2000.

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

1 A. The purpose of my testimony is to express, as the District 145 representative, my
2 observations and conclusions regarding the proposed transaction between Port Perry
3 Service Company and Confluence Rivers Utility Operating Company. It is my firm
4 conviction that the transaction is detrimental to the public interest.

5 **Q. Please explain.**

6 A. As I understand the question before this Commission, they must determine that the
7 proposed transaction between Port Perry Service Company and Confluence Rivers
8 Operating Company is not detrimental to the public interest in order to approve the
9 transaction.

10 While I am not a lawyer, I am a legislator, and I recognized that Missouri law
11 provides the land owners of Lake Perry subdivision the right to form a not-for-profit
12 corporation for the operation of sewer and water services, pursuant to sections 393.825 and
13 393.900 *et sec.*, respectively, of the Missouri Revised Statutes. I also note that sections
14 393.857 and 393.948 require that those rights be construed liberally. So I conclude initially
15 that this Commission must take the lot owners' concerns and their efforts in establishing a
16 not-for-profit corporation to provide for sewer and water operations seriously.

17 The public interest, by its very nature is a balancing effort. As a member of the
18 Utilities Committee of the Missouri House of Representatives, I know that this
19 Commission is responsible for assuring that our utilities provide adequate services at just
20 and reasonable rates. It must consider all aspects of a transaction in determining whether
21 that transaction is detrimental to the public interest. And finally, and most importantly, the
22 primary responsibility of the Commission is to protect the interests of the customers or

1 ratepayers of the state of Missouri against monopoly power rather than the interests of the
2 utility. With those principles in mind, it is clear to me that this transaction is detrimental
3 to the public interest.

4 Confluence Rivers' Application alleges that the sewer system and the water system
5 are out of compliance with basic sewer system requirements and basic drinking water
6 requirements. If this were true, the Commission might have some public interest concern
7 that would be rectified by the transaction. But it does not. The Department of Natural
8 Resources has not issued any notice of violation for either system and there is none
9 outstanding. As the testimony of Chad Sayre points out, both systems are functioning and
10 in compliance. While both systems require some maintenance, there is no immediate
11 concern.

12 The Staff's allegations of public interest are no better. They summarize their
13 findings in their Staff Recommendation.

14 Based upon this review, Staff determined that CRU possesses the necessary TMF
15 capabilities and fulfills the requirements of the Tartan Energy Criteria.
16 Accordingly, Staff asserts that approving the utilities' sale and transferring the
17 CCNs to CRU is necessary and convenient for the public service and is not
18 detrimental to the public interest, and Staff recommends approval with conditions
19 described in the Staff Memorandum.

20 The mere finding that CRU possesses the necessary TMF capabilities is not adequate for
21 determining a transaction is in the public interest. Just because they can do it does not
22 mean it is in the public interest for them to do it.

23 If the Commission is to truly fulfill its obligation, it must consider how the
24 transaction will affect the customers. In this, the public interest is clearly on the side of not
25 approving the transaction. The customers clearly do not want the transaction to go forward.

1 I have talked to the residents of the subdivision. I have participated in the Association's
2 meetings. I am aware that the Association has authorized and formed a not-for-profit
3 corporation for the operation of the system. And I know they have commitment from a
4 bank to finance the acquisition of the systems. The customers' level of commitment for
5 having a member owned water and sewer service company is high and their opposition to
6 the Confluence Rivers transaction is also high.

7 As an elected official in the Missouri Legislature, I take seriously my oath of office
8 and my function of protecting the citizens of the state of Missouri. The function of
9 government, and particularly this Commission, is to protect the citizens of this state against
10 those that would force them into a situation they do not want to be in. I would find it
11 abhorrent to anticipate that the Missouri state government would force the citizens of the
12 state of Missouri to take a service they do not want.

13 **Q: Are there other factors you consider important in determining whether this**
14 **transaction is detrimental to the public interest?**

15 A: Yes. I start with the observation that the Lake Perry Lot Owners Association through the
16 Lake Perry Service Company has a definitive workable offer on the table to the Port Perry
17 Service Company. That offer would produce several salutary effects. First, it would
18 maintain the control of the systems locally. Confluence Rivers' offices are in St. Ann,
19 Missouri. The Association's and the new Service Company's offices are and will be
20 adjacent to the subdivision itself. The Association has been helpful in the past in resolving
21 the needs of the Association members. The Service Company, run by the same
22 management, will do likewise in the future.

1 Second, and similarly, the new Service Company is member owned and controlled,
2 which means its rates would be subject to the supervision of the members. The members
3 will be motivated to maintain reasonable rates while maintaining a working, compliant
4 system. However, Confluence Rivers system is far flung across the state and region. They
5 will be motivated simply by profit and obtaining rate increases from this Commission.
6 Third, the financing will be local. The new Service Company has a commitment from a
7 local bank to provide financing for the operation of the Service Company.

8 **Q: Does this conclude your testimony?**

9 **A: Yes, it does.**

**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 Sewer) File No. WA-2019-0299
Assets and for a Certificate of Convenience) File No. SA-2019-0300
and Necessity)

AFFIDAVIT OF RICK FRANCIS

I, Rick Francis, state that I am state representative from Perry County, MO, that the Rebuttal Testimony of Rick Francis filed in the above referenced case and all schedules attached thereto were prepared by me or under my direct supervision, and that the answers to the questions posed therein are true and correct to the best of my information, knowledge and belief.

x Richard L. Francis

Subscribed and sworn to before me this 21 of August, 2019

[Signature]

Notary Public

My commission expires: 9/25/2021
NICOLE M. KUEKER
Notary Public - Notary Seal
State of Missouri
Perry County
My Commission Expires 09-25-2021
Commission # 13770952

(Seal)