

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

In the Matter of the Application of Confluence)	
Rivers Utility Operating Company, Inc. to)	
Acquire Certain Water and Sewer Assets,)	Case No. WM-2018-0116
For a Certificate Of Convenience and Necessity,)	Case No. SM-2018-0117
and, in Connection Therewith, To Issue)	
Indebtedness and Encumber Assets)	

**APPLICATION TO INTERVENE OUT OF TIME
OF LAKE PERRY LOT OWNERS' ASSOCIATION**

COMES NOW Lake Perry Lot Owners' Association ("Lot Owners Association"). and, pursuant to 4 C.S.R. 240-2.075, files its Application to Intervene, and in support thereof states as follows:

1. Lot Owners Association is a nonprofit mutual benefit corporation organized under the laws of the state of Missouri. Formed in August 2003, one of the purposes of the Lot Owners Association is, "To act in the common interest of the home owners and lot owners in and near Lake Perry and to maintain and promote a high standard of quality in the appearance, safety, and peaceful enjoyment of the streets, roads, and grounds within Lake Perry, and to maintain and upkeep common grounds, facilities, and equipment, and to engage in any lawful act or activities in furtherance of all the foregoing." Attached hereto as Exhibit A is a copy of the Articles of Incorporation of Lake Perry Lot Owners' Association. Lake Perry consists of approximately 600 lots, to which Port Perry Service Company provides water and sewer service to certain lots.

2. The legal name and address of the Lot Owners Association is:

Lake Perry Lot Owners' Association
Richard DeWilde, President
1300 Brenda Ave
Perryville, MO 63775
rtde wilde@sbcglobal.net
(573) 547-6596

3. The Lot Owners Association's interest in this case is different than the interest of the general public in that it represents the entirety of the lot owners to whom Port Perry Service Company provides water and sewer services. The Lot Owners Association seeks to become a party to this case for all purposes.

4. Correspondence, communications, orders and decisions in this case may be directed to the above referenced President of Lot Owners Association as well as the undersigned legal counsel.

5. Lot Owners Association is opposed to the Application as it pertains to the proposed transaction with Port Perry Service Company. Currently, the Lot Owners Association does not have a position on the Application as it pertains to the other transactions but reserves the right to adopt a position later.

6. There is good cause to grant the Lot Owners Association intervention in this case. Lot Owners Association represents the interests of the lot owners in the Lake Perry community. It has a critical interest in representing the interests of the lot owners in their water and sewer services before this Commission. The Lot Owners Association's application to intervene is not designed to foster nor will it cause undue or prejudicial delay.

7. This is a unique case. Unfortunately, the Applicant has created confusion in the way it has gone about presenting this case. The Application is a bundled set of nine disparate transactions that defy a unified treatment. Public Counsel has itemized several confusing factors with the case in its *Public Counsel Response to Staff's Recommendation and Motion for Hearing*. It has pointed out that not all sellers are subject to the same precarious circumstances. See paragraph 30. This is most certainly the case with Port Perry Service Company. The Public Counsel has also pointed out that the Application is flawed in that the purported applicant is not

the appropriate applicant per statute. Finally, the Applicant failed to file its 60-day notice as required by Commission Rule 4 CSR 240-4.017(1). Any one of these flaws would justify or even require the Commission to dismiss the Application. See *Order Denying Waiver and Directing the Secretary to Reject Application*, File No. EA-2016-0358, issued July 12, 2016.

8. The Applicant could have avoided confusion by having each seller notify its customers in advance of the transactions and sought their input rather than bundle nine disparate transactions into one application without the proper notice. It would be right to suggest at this time that the Commission should dismiss the case and direct the individual sellers to file nine separate cases in the interest of expediting those cases that truly need expediting. However, if the Lot Owners Association is granted intervention, it will not interject a delay beyond what the Applicant has already caused. It will accept the record established in this case, including the requirements of any orders of the commission, as of the date of this application. It will accept the case as it stands.

9. The Lot Owners Association has only recently become aware of Application. The first notice was a verbal communication from the President of Port Perry Service Company, Michael Yamnitz, to Lot Owners Association's President Richard DeWilde during the second week of March, at which time, Mr. Yamnitz advised Mr. DeWilde of the transaction and that the buyer of Port Perry Service Company was a very good company. On or about March 12, lot owners also received notification of the transaction from the Applicant. See a copy of the Confluence letter attached hereto as Exhibit B.

10. On March 15, the Lot Owners Association Board discussed the possibility of the water and sewer services being sold during its regular monthly Board meeting. In response to its discussion, the Board initiated an informal investigation of the transaction and of the case.

During the investigation, the undersigned counsel was contacted on Thursday, March 22, regarding the status of the case. On March 26, in response to the Board's investigation, the Board engaged the undersigned counsel to represent them before the Public Service Commission in this case.

11. Based on information and belief arising from the Board's informal investigation, the Lot Owners Association has reason to confirm and support the Office of Public Counsel's concerns as stated in *Public Counsel Response to Staff's Recommendation and Motion for Hearing*.

12. The Lot Owners Association's conduct in all regards after receiving notice of the pendency of the case has been diligent, designed to appropriately evaluate its options and interests, and not designed for undue delay.

13. At least with regard to the Port Perry Service Company, the Lot Owners Association intervention should not prejudice the Applicant, or, more importantly, the public interest. Paragraph 30 of the Application alleges that, "The wastewater operations are in danger of failing due to a lack of basic maintenance . . ." and "the water system is out of compliance for basic drinking water [requirements]." However, the Lot Owners Association is not aware of any such dangers or violations. The Lot Owners Association is only aware of two boil orders being called by Port Perry Service Company in the last ten plus years. In either event, the Lot Owners Association will take Applicants concerns into consideration. The Lot Owners Association is not aware of any further cause for urgency. The Commission should appropriately evaluate the Application and not be rushed into a hasty judgement.

14. Granting the Lot Owners Association's application to intervene is in the public interest. The Lot Owners Association desires to explore the possibility of other buyers, including

the Lot Owners Association itself, for Port Perry Service Company. The Lot Owners Association has water and sewer expertise within the Association. The customers of Port Perry Service Company would like an opportunity to evaluate their options, something they were not given prior to the filing of this case.

15. This Commission has found that foreclosing alternate opportunities which may substantially benefit a utility's customers may be detrimental to the public interest. In *In Re: Aquila, Inc.*, File No. EO-2008-0046, this Commission decided it would not approve an agreement for Aquila to join the Midwest ISO rather than the Southwest Power Pool. Its justification was that Aquila's membership in SPP would be more beneficial for Aquila's customers. "The detriment to the public interest occurs, in part, because Aquila's plan to join Midwest ISO would preclude it from joining Southwest Power Pool."¹ The Commission explained further:

Under other circumstances, the Commission might be inclined to defer to the business judgment of Aquila if there were a good reason to do so. However, it is clear that the only reason Aquila has applied to join Midwest ISO instead of Southwest Power Pool is its obligation to do so under a six-year-old agreement with Midwest ISO in a case before FERC. This Commission is not bound by that agreement, and its existence is not a sufficient reason to defer to Aquila's judgment. The Commission will not allow the existence of that agreement to harm Aquila's Missouri ratepayers by allowing Aquila to enter into a less than optimal agreement with Midwest ISO.²

Port Perry Service Company has opted to bypass an opportunity to benefit its customers by engaging a company in its own back yard for a transaction with a new company headquartered in St. Ann proposing to serve nine disparate systems from St. Louis County to Greene County. Considering the Public Counsel's documented concerns, the Commission should consider

¹ See *In re Aquila, Inc.*, Report and Order at 17, No. EA-2008-0046 (October 9, 2008).


² *In re Aquila, Inc.*, at 19.

alternatives in its decision. The Lot Owners Association proposes to explore those more beneficial alternatives. Seeking those beneficial alternatives is in the public interest.

16. There is good cause to grant the Lot Owners Association's Application to Intervene. The Lot Owners Association has a vital interest to protect in its members' property. It received notice of the transaction very late due to no fault of its own. It was diligent in following up and engaging the case once notified. The intervention will not prejudice the Applicant in any way. And the Lot Owners Association may be able to propose a potentially beneficial alternative to the seller Port Perry Service Company.

WHEREFORE, for the foregoing reasons, the Lot Owners Association respectfully requests the Commission grant its Application to Intervene in this matter.

Respectfully submitted,

By: 
David C. Linton, #32198
314 Romaine Spring View
Fenton, MO 63026
Telephone: 314-341-5769
Email: jdinton@reagan.com

Attorney for Lake Perry Lot Owners'
Association

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Application to Intervene was sent to all parties of record in File No. WM-2018-0116 and SM-2018-0117 via electronic transmission this 29th day of March 2018.



VERIFICATION

State of Missouri)
) ss
County of Perry)

I, Richard DeWilde, having been duly sworn upon my oath, state that I am the President of Lake Perry Lot Owners' Association ("Lot Owners Association"), that I am duly authorized to make this affidavit on behalf of Lot Owners Association, and to the best of my knowledge, information and belief the matters and things stated in the foregoing Application to Intervene are true and correct.

Richard DeWilde

Subscribed and sworn before me this 28th day of March 2018.

Renea K Bohnert

Notary Public

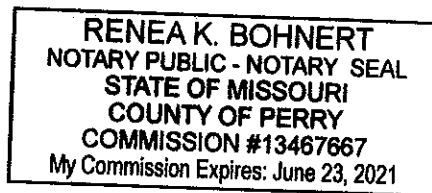


Exhibit A

STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE
MATT BLUNT
SECRETARY OF STATE
Articles of Incorporation of a Nonprofit Corporation

File Number: 200325411225
Charter # N00540683
Date Filed: 08/25/2003 05:53 PM
Matt Blunt
Secretary of State

HONORABLE MATT BLUNT
SECRETARY OF STATE
STATE OF MISSOURI
P O BOX 778
JEFFERSON CITY MO 65102

The undersigned natural persons of the age of 18 years or more for the purpose of forming a corporation under the Missouri Nonprofit Corporation Act adopt the following Articles of Incorporation:

1. The name of the corporation is **Lake Perry Lot Owners' Association.**
2. This corporation is a **Mutual Benefit Corporation.**
3. The period of duration of the corporation is **perpetual.**
4. The name and street address of the Registered Agent and Registered Office in Missouri is:
Dale E. Gerecke, 3113 Independence Street, P. O. Box 1300, Cape Girardeau, MO 63702-1300.
5. The names and addresses of each incorporator:
Syl Biermann, 1362 Dutch Mill Drive, Manchester, MO 63011
Winona McConachie, 1088 Port Perry Drive, Perryville, MO 63775
6. Does the corporation have members? **Yes**
7. The assets of the corporation will be distributed on dissolution as follows:
 - a. **Distribution to all known and outstanding creditors to pay, satisfy and discharge all debts, obligations and liabilities of the corporation; and**
 - b. **Distribution of remaining assets, if any, to the successor corporation or entity, if any, which may then be in existence to act in the common interest of the home owners and lot owners as a home owner, lot owner and community improvement association for Lake Perry in Perry County, Missouri; and**
 - c. **Distribution of remaining assets, if any, of the corporation to its members.**
8. The corporation is formed for the following purposes:
 - a. **To engage and transact any lawful business as a home owner, lot owner and community improvement association for Lake Perry in Perry County, Missouri; and**
 - b. **To accomplish these purposes, the corporation shall have the power to hold, acquire, own, lease, mortgage, convey or sell or otherwise acquire or dispose of real and personal property; and**
 - c. **To enter into whatever agreements are necessary to carry out all the corporation's powers and purposes; and**




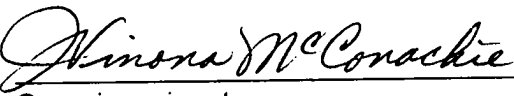
- d. To acquire by purchase, lease, or otherwise any and all real and personal property necessary and incidental to the fulfillment of all of the corporation's powers and purposes; and
- e. To raise money and to accept gifts of money or property; and
- f. To act in the common interest of the home owners and lot owners in and near Lake Perry and to maintain and promote a high standard of quality in the appearance, safety, and peaceful enjoyment of the streets, roads and grounds within Lake Perry, and to maintain and upkeep common grounds, facilities, and equipment, and to engage in any lawful act or activities in furtherance of all the foregoing; and
- g. To engage and transact any lawful business and to do any and all acts permitted and to have all other such legal powers permitted under the provisions of Chapter 355 of the General Not for Profit Corporation Law of Missouri.

9. The effective date of this document is **the date it is filed** by the Secretary of State of Missouri.

In Affirmation of the facts stated above:

Signed by Incorporators:

	Syl Biermann	8/11/03
Organizer signature	Printed name	Date

	Winona McConachie	8-15-03
Organizer signature	Printed name	Date

Dated at Perryville, Missouri this 15th day of August, 2003.

State of Missouri



Matt Blunt
Secretary of State

CERTIFICATE OF INCORPORATION MISSOURI NONPROFIT

WHEREAS, duplicate originals of Articles of Incorporation of

Lake Perry Lot Owners' Association
N00540683

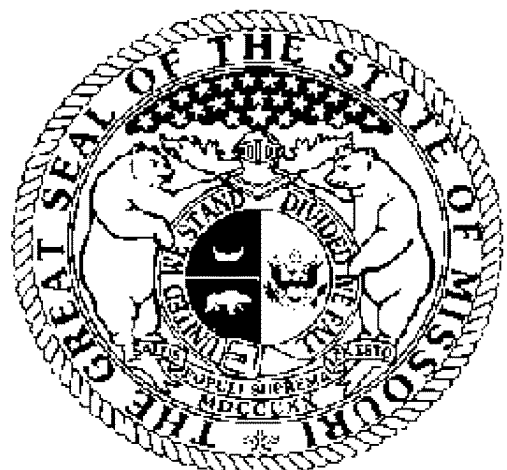
have been received and filed in the Office of the Secretary of State, which Articles, in all respects, comply with the requirements of Missouri Nonprofit Corporation Law;

NOW, THEREFORE, I, MATT BLUNT, Secretary of State of the State of Missouri, do by virtue of the authority vested in me by law, do hereby certify and declare this entity a body corporate, duly organized this date and that it is entitled to all rights and privileges granted corporations organized under the Missouri Nonprofit Corporation Law.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 25th day of August, 2003.

Matt Blunt

Secretary of State





CONFLUENCE RIVERS

Utility Operating Company

A CSWR Managed Utility

Dear Resident,

Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) and Port Perry Service Company (Port Perry) have filed a joint application with the Missouri Public Service Commission seeking Commission authorization for Port Perry to sell to Confluence Rivers its water and sewer assets. Port Perry is currently serving approximately 329 water customers and 139 sewer customers in Perry County. If the proposal is approved by the Public Service Commission, Confluence Rivers would become a regulated water and sewer utility that would be subject to the jurisdiction of the Missouri Public Service Commission.

Existing rates are proposed to be adopted, with future rate changes based on future plant improvements. After completing the proposed acquisition, Confluence Rivers plans to construct numerous improvements to the system to address degradation due to age and environmental compliance issues.

Customers may provide comments to the Public Service Commission Staff and/or the Office of the Public Counsel which represents the public in matters before the Commission regarding the proposed sale of the water and sewer systems. Your comments should include a reference to Case Number WM-2018-0116. The Commission Staff and the Public Counsel will review all customer comments submitted in response to this notice. All comments will also be filed in the official case file for review by the Commissioners.

Public Service Commission
Attn: Water/Sewer Dept.
P.O. Box 360
Jefferson City, MO 65102
Phone: 800-392-4211
Fax: 573-751-1847

Email: watersewercomments@psc.mo.gov

Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
Phone: 866-922-2959
Fax: 573-751-5562

Email: mopco@ded.mo.gov

To submit your comments via the Commission's Website:

- 1.) Go to <http://www.psc.mo.gov>
- 2.) Click on the Submit Comments box under the "How Do I..." heading on the right top of the page
- 3.) From this page click on the "submit comment" link found under "Submit Comments in Writing"
- 4.) Fill out the submit the Public Comments form, including the case number shown above. If you want to attach a document, before clicking the "Submit" button, click the "Attach" button. There are instructions on that page for attaching the document and returning to the previous screen.
- 5.) Click the "Submit" button at the bottom of the page.

If you have questions, please contact Confluence Rivers at 314-736-4672 or any of the above public offices.

Josiah Cox,
Confluence Rivers Utility Operating Company, Inc.