

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: 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) **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
AUGUST 23, 2019**

1 **Q. Please state your name and business address?**

2 A. My name is Richard DeWilde, and my business address is 1300 Brenda Avenue, Perryville,
3 MO 64775.

4 **Q. On behalf of what party in this case are you testifying?**

5 A. Lake Perry Lot Owners' Association. I hold the office President of the Association.

6 **Q. What is your education and professional background?**

7 A. I am a Certified Public Accountant and run my business as a CPA in the city of Perryville.
8 I received a Bachelor of Science degree in Accounting from Southeast Missouri State
9 University. I was employed by a local CPA firm in Perryville from January, 1974 through
10 October, 1983. I started my own accounting practice in November of 1983. I have
11 practiced in the accounting field since that time. In my CPA practice, I provide tax advice,
12 business accounting services, and auditing services. In my career, I have provided some
13 minimal ratemaking advice and appeared before the Public Service Commission many
14 years ago. In 1997, I was appointed to the Advisory Board of First State Community Bank,
15 Perryville branch and am presently an active board member serving our Perryville market.
16 In 2004, I was first elected to the Board of Citizens Electric Corporation. I served as
17 treasurer from 2010 to 2013, vice president from 2013 to 2015, and president from 2015 to
18 present.

19 In 2003, I was elected as President of the Board of Trustees of the Association. As
20 President of the Association, I have taken a hands-on approach to the management of the
21 subdivision. I am closely involved with the lot owners and am familiar with the water and

1 sewer operations. The Board of Trustees meets on a regular basis to discuss the utility
2 services and other association issues.

3 I am a life-long resident of the state of Missouri and active in my community. I am a
4 member of the Perryville Development Corporation, a member of the Perryville Chamber
5 of Commerce, and a 4th Degree member of the Knights of Columbus Council #1263.

6 **Q. Please summarize and state the purpose of your testimony?**

7 A. The purpose of my testimony is to present facts showing why Confluence Rivers'
8 Application is detrimental to the public interest. Confluence Rivers' direct testimony has
9 failed to provide information adequate to show the transaction is not detrimental to the
10 public interest. The Association has created a business plan and conducted an engineering
11 report that is superior to Confluence Rivers' proposal. By this undertaking, we have shown
12 a transaction that would be in the public interest. My testimony will utilize this information
13 to show how the Application is detrimental to the public interest.

14 **Q. Please describe the Lake Perry subdivision.**

15 A. Lake Perry is a private gated community. Lake Perry is an approximate 1800 acre
16 recreational lake development located in western Perry County, MO. The development
17 has eight (8) plats, one (1) full-time camping area and a mini-farm plat and a total of 614
18 lot owners. The development has approximately 11 miles of paved roads, an office
19 building, four multi-unit boat slips, a recreation center with a restaurant and pool as well
20 as other amenities such as two sandy beaches, sand volleyball court and children
21 playgrounds. The development has a small fish hatchery, a small fishing lake and a larger
22 (approximate 200 acre) lake for boating and water sports.

1 **Q. Please describe the Lake Perry Lot Owners Association.**

2 A. Lake Perry Lot Owners' Association was formed in 2003. The development was turned
3 over to the lot owners' association after a public auction was held in September of 2003.
4 Lake Perry bills all lot owners an annual assessment. The money is then transferred to
5 Perry County Land Company, Inc to manage the day to day operations. Perry County Land
6 Company, Inc. pays all the operating bills and employs one full time maintenance
7 supervisor and three to four part-time employees to maintain all the facilities, mow grass,
8 remove snow and many other maintenance functions including the pool. These employees
9 help with water and sewer maintenance from time to time.

10 **Q. Please describe the response of the Lake Perry lot owners and the Lake Perry Lot**
11 **Owners Association to the Applications in Case No. WM-2018-0116 and Case No. SM-**
12 **2019-0299?**

13 A. I first became aware of Confluence Rivers' Application in early 2018. At the Lake Perry
14 Board of Trustees meeting held April 18, 2018, I brought this to the attention of the board.
15 It was then included for discussion at the Lake Perry Lot Owners' Association annual
16 meeting held April 29, 2018. The lot owners that attended that meeting decided to oppose
17 the Application and pursue, if possible, the purchase of Port Perry Service Company. One
18 year later, on April 28, 2019, we again discussed the topic at the annual meeting. And the
19 lot owners confirmed their opposition to the Application.

20 **Q. You stated that the Association authorized the Association to pursue, if possible, the**
21 **purchase of Port Perry Service Company. Please explain what you did.**

1 A. As we reviewed the Application of Confluence Rivers in Case Nos. WM-2018-0116 and
2 SM-2018-0117, we determined a number of things were detrimental to the interest of the
3 public in the Application. These included among other things that the purchase price was
4 excessive and the financing arrangements that Central States Water Resources had entered
5 into in the past and what it was proposing in that case were excessive. Coupled with the
6 extreme rate increases occurring in the communities that CSWR had already taken over, we
7 were convinced that the Application was detrimental to the public interest. In order to
8 quantify the extent of the harm to the public interest from the Confluence Rivers
9 Application, we engaged a business planner and an engineer to assess these and other
10 factors necessary to form our own water and sewer company. Association witnesses Glen
11 Justis and Chad Sayre will address their assessments of these and other factors. The Lake
12 Perry Service Company was formed in February, 2019 as a not for profit organization to
13 own and operate the systems.

14 **Q. Please describe the additional steps the Association undertook to prepare to make an**
15 **offer to purchase the assets of Port Perry Service Company.**

16 A. In preparation to make a formal offer to Port Perry Service Company, the Association first
17 had to do its due diligence on whether it could undertake the acquisition. We took the
18 following actions:

19 1. Develop an engineering review. As I previously indicated, we engaged Allstate
20 Consultants, Inc. to do a Preliminary Engineering Report. I joined Mr. Chad Sayre of
21 Allstate Consultants on a tour of the facilities and the subdivision on November 28, 2018.
22 Association witness Chad Sayre discusses his report in his Rebuttal Testimony. Allstate's
23 report concludes at section 6.0 thereof that, "Upon an initial cursory assessment we

1 conclude that the Lake Perry lot and homeowners and all those current and future
2 customers would be greatly served to have a locally formed 'not for profit' owner/operator
3 of the water and sewer systems.”

4 2. Develop a business plan. As I previously indicated, we engaged Experience on
5 Demand, Inc. to prepare a Business Plan for a new Lake Perry Service Company, a not for
6 profit utility company formed under Chapter 393 of the Missouri Revised Statutes. Mr.
7 Glen Justis reviewed the financial data for Port Perry Service Company and consulted with
8 Mr. Sayre in developing the business plan. Association witness Glen Justis discusses his
9 Business Plan in his Rebuttal Testimony. From the Association’s perspective, likely the
10 most significant findings of these two first efforts are:

11 a. that it is feasible for the Lake Perry Service Company to acquire and operate
12 the Port Perry Service Company,

13 b. it is likely that the Lake Perry Service Company’s cost of capital will be
14 lower than that of Confluence Rivers, and

15 c. it is likely that the Lake Perry Service Company’s rates will be significantly
16 lower than those of Confluence Rivers.

17 3. Solicit and obtain bank financing commitment. With the Engineering Report and
18 the Business Plan in my possession, I approached First State Community Bank for a loan
19 commitment. I received a letter from First State Community Bank on May 3, 2019
20 outlining two options for financing that they would be willing to undertake. I have attached
21 a copy of that letter as Schedule RD-2C to my testimony. You will note that they commit

1 to a fixed interest rates of 3.65% and 4.45%. Obviously, these interest rates may need to
2 be adjusted, but they were attractive rates at the time I received them.

3 4. Solicit and obtain commitments for initial seed money. As you can see from the
4 bank's commitment letter, the \$300,000.00 loan would need to be secured by a
5 \$300,000.00 3-year Certificate of Deposit to be purchased at the bank. In response to that
6 requirement, I solicited members of the Association to determine their commitment to this
7 effort and sought their commitment to invest in such a Certificate of Deposit. I have
8 attached as Schedule RD-3C a list of individual members of the Association who have
9 committed to invest in such a Certificate and the amount of the commitment. To date, we
10 have a total commitment of \$252,000.00. I have several additional indications of interest
11 that I have not followed up on yet. I am confident we will have sufficient commitments to
12 reach the \$300,000.00 necessary for the collateral commitment.

13 5. Form the Lake Perry Service Company. Concurrently with the above referenced
14 efforts, the Association initiated steps to form a new not for profit service company
15 pursuant to sections 393.175, 393.825 to 393.861, and 393.900 to 393.951 of the Revised
16 Statutes of Missouri. You will find the following schedules attached to my testimony.

- 17 ▪ Articles of Incorporation. Articles of Incorporation for Lake Perry Service
18 Company, Schedule RD-4.
- 19 ▪ Bylaws. Bylaws for the Lake Perry Service Company, Schedule RD-5.
- 20 ▪ Approval of the Department of Natural Resources. An approval letter from
21 the Missouri Department of Natural Resources, finding that the Articles of
22 Incorporation and bylaws meet the requirements of the relevant sections of
23 Chapter 393, Schedule RD-6.

1 **Q. Please describe the financing aspect of the acquisition in more detail.**

2 A. The following was the arrangement we agreed to:

3 Lake Perry Service Company will ask current Lake Perry lot owners to consider investing
4 money into this utility purchase. The amounts of each lot owner's investment will vary
5 according to the lot owner's discretion. The goal was to reach \$300,000 and utilize this
6 money to purchase a Certificate of Deposit for the full \$300,000. At that time, the bank
7 will issue a \$300,000 loan with the new CD as collateral. The investors will receive a return
8 on their money at various levels depending on their investment amount. It will be paid to
9 them each year for a three-year period. After three years of history the bank will then be
10 in a better position to make a financial decision to provide a commercial loan.

11 During that three-year period of the CD, Lake Perry Service Company will be paying a
12 monthly payment on the \$300,000 loan. This is all accounted for in the business plan for
13 Lake Perry Service Company.

14 The interest from the \$300,000 CD will be paid to Lake Perry Service Company. That
15 interest will help offset the interest paid on the loan. Our interest paid on the loan backed
16 by the CD will be 1.5% larger than the interest we would receive from the CD. At the time
17 of our discussion with the bank, that number was 3.65% interest.

18 Blending the net interest Lake Perry Service Company will pay for interest on the loan less
19 the interest they will receive on the CD and including the interest anticipated to pay on the
20 investors' money, the business plan reflects and approximate 6 to 7% overall interest cost
21 for the first three years.

22 **Q. How does the Association propose to operate the systems.**

1 A. The Association proposes that the systems be operated much as they have been in the past,
2 with the obvious improvements called for in the Engineering Report and Business Plan. I
3 have made a preliminary inquiry to all of the individuals and entities that provide service
4 to the Port Perry Service Company and others to determine their willingness to provide the
5 operating services Lake Perry Service Company will need. I have received commitment
6 letters from the following individuals and organizations:

- 7 ○ Earth First Contractors New service connections and repair to main lines
- 8 ○ Paycheck Payroll Services Accounting and back office services
- 9 ○ Charles Staffeldt Operations and maintenance
- 10 ○ Jeremy Meyer DS3 License water and Class A License wastewater
- 11 ○ Richard T. DeWilde
- 12 ○ Robert Welden General maintenance
- 13 ○ Brian Flentge Construction
- 14 ○ Diane Murray Chemical testing

15 I have attached these commitment letters as Schedule RD-7 to my testimony.

16 You will see on page 3 of the Business Plan that the following functions will be contracted
17 out: Professional Engineering, Accounting & Billing Services, Operations Support
18 Contractors. Regarding the Professional Engineering Services, the Association has
19 developed a good working relationship with Mr. Sayre and anticipates we may utilize
20 Allstate Consultants again in the future. Otherwise, we have made other useful contacts in
21 this process that we may use to our advantage.

22 **Q: Have you made an offer to Port Perry Service Company?**

1 A: Yes. On or about April 4, 2019, the Lake Perry Service Company made an offer to Port
2 Perry Service Company in the form of an Asset Purchase Agreement. I have attached a
3 copy of that proposal to my testimony as Schedule RD-8.

4 **Q. Please describe the offer Lake Perry Service Company made to Port Perry Service**
5 **Company.**

6 A. The Asset Purchase Agreement proposes to compensate Port Perry Service Company
7 \$150,000.00 for the sale of the assets of the water and sewer systems. The offer is
8 contingent on the failure of Port Perry and Confluence Rivers to consummate their
9 agreement. While we desire to purchase the systems, we understand the position Port Perry
10 is in and have structured the offer so as to avoid putting Port Perry in a difficult position.
11 The offered price is significantly higher than the net book value of the Staff. It is fixed for
12 now and remains an open offer. I have attached a copy of the meeting minutes authorizing
13 the offer along with a resolution adopted by the Board of Trustees on August 21, 2019 as
14 Schedule RD-9 to my testimony.

15 **Q. Has Port Perry responded to your offer?**

16 A. No. I have discussed the Association's interest in purchasing the utility company with
17 Michael Yamnitz a few times in the past. Each of those discussions took place at my office
18 at 1300 Brenda Avenue in Perryville, MO. He was clear that he and Brad Moll (the two
19 principals of Port Perry Service Co) had entered into a contract for Confluence Rivers to
20 purchase their business. Of course, Confluence had issued a letter to each of the utility
21 customers in late March or early April, 2018 to let them know they were going to purchase
22 the company. I do tax work for Mike and his wife, Beth, and on occasions when he would

1 come to the office to discuss their tax information the conversation would also include the
2 sale of Port Perry Service Co. I mentioned that the Association was interested in submitting
3 an Asset Purchase Agreement to tender an offer and asked him to sign it and send it back
4 to us. We did send this offer to him by certified mail and received the confirmation from
5 the postal service that he received it. See Schedule RD-8

6 But Mr. Yamnitz has always made it clear that he is not at liberty to discuss our desire to
7 purchase the Port Perry assets. On one occasion when he was in my office he said he could
8 not discuss the sale of the utility company with me. I asked why and he said, "Our attorneys
9 said we cannot discuss it with you." I asked him if he could tell me who the attorney was
10 and he said, "The Confluence attorneys."

11 About the same time as that last conversation with Mr. Yamnitz, I received a a letter dated
12 March 19, 2019, entitled "Demand to Cease and Desist From Interfering with Central
13 States Water Resources, Inc's Contract with the Port Perry Service Company." This letter
14 was sent by James A Beckemeier, the attorney for Central States Water Resources, Inc. I
15 have attached a copy of the letter as Schedule RD-10 to my testimony. While I believe I
16 am justified in speaking to Port Perry on behalf of the Association about the Association's
17 desire to purchase the assets of Port Perry, and especially about an offer that is contingent
18 as I have described, it is apparent to me Confluence Rivers is advising them they should
19 not talk to us.

20 **Q. What have you learned during the course of your efforts in this case?**

21 A. The Application of Confluence Rivers is clearly detrimental to the public interest. The
22 Association has undertaken all appropriate efforts and due diligence to make a proposal to

1 Port Perry Service Company. During that process, we have confirmed our suspicions that
2 the offer price and the financing cost is too high. Their Application proposes to take local
3 control and local services away from the community.

4 They argue that they have economies of scale. Mr. Cox's testimony indicates that they
5 serve 2,800 customers (page 5, line 5). However, Schedule JC-1 indicates numerous
6 operating companies across five separate states. This arrangement indicates the opposite
7 of economies of scale. The arrangement indicates duplication of effort and over-
8 engineering and a system spread too thin.

9 The following are some ancillary concerns we have as a community which have not been
10 addressed:

- 11 • Profits would benefit investors or owners outside the community; thus the income
12 would possibly not be spent in the State of Missouri at all.
- 13 • Maintenance and repairs could potentially be expedited with local contacts and
14 personnel on site and would be delayed by a large entity spanning 5 states.
- 15 • Property values would be impacted with the higher utility rates. Many of these
16 homes and lots are second homes and used for vacation/recreation.
- 17 • Many improvements to the development would possibly be put on hold with the lot
18 owners spending more money on higher rates. As one very clear example is the
19 Board of Trustees has deferred paving new roads in the development pending the
20 outcome of this case.
- 21 • We are thinking that local contractors and vendors will be more comfortable
22 working with a local entity when it comes to payment for services performed.

- 1 • Some property owners have threatened to sell and move out before the rates get too
2 high.

3 **Q. Has the Confluence Rivers’ Direct Testimony persuaded you that the Application is**
4 **not detrimental to the public interest?**

5 A. No. Clearly not. Their testimony is not persuasive that it is. Their testimony relates
6 primarily or exclusively to their capability. Assuming they are capable, capability is not
7 enough to determine whether this transaction is not detrimental to the public interest. If
8 capability is all that mattered, any company from California or New York would be deemed
9 an appropriate candidate to take over our services.

10 Confluence Rivers’ testimony fails to provide any justification of the purchase price. Their
11 testimony fails to provide any cost or rate information regarding future activities and
12 improvements. Their testimony does discuss their disagreement with Staff regarding the
13 net book value determination, but it makes no proposals. The customers, which this
14 Commission is created to protect, need to know the impact of this transaction on the rates
15 and services under consideration. The Confluence Rivers testimony has failed to provide
16 that information.

17 **Q. Do you see any additional disadvantages from approving this Application?**

18 A. As this Commission is aware, and as I have already discussed, the state statute authorizes
19 the formation of not for profit companies to undertake the provision of water and sewer
20 services. It is my firm conviction that the Association has undertaken some excellent work
21 in showing how the services authorized by the Missouri legislature can be utilized to a
22 better advantage than a company with small services in multiple states. In addition, my

1 experience with this process has shown me that many people are upset with the rate shock
2 Confluence Rivers has created. I believe it would also be an additional detriment to the
3 public interest for this Commission to foreclose the option the Legislature has created when
4 the citizens of Lake Perry have taken such efforts to pursue new and imaginative solutions
5 to the high cost of services such as what Confluence Rivers will bring. The Commission
6 will gain experience in these alternatives for making judgments in future cases and the
7 citizens will be rewarded for their efforts by maintaining their water and sewer services
8 within their control.

9 **Q. In your opinion, is the Lake Perry Service Company a stable and concerned nonprofit**
10 **corporation?**

11 A. Yes, it is. It is in terms of management, as Mr. Justis and I have shown in putting together
12 a business plan that shows the proposal to be viable. It is in terms of financing, as we have
13 shown in the form of a bank commitment and other investors. And it is in terms of
14 operations in that we have individuals and entities already familiar with the system and
15 willing to continue those services.

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

17 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 RICHARD DEWILDE

I, Richard DeWilde, state that I am President of the Lake Perry Lot Owners Association, that the Rebuttal Testimony of Richard DeWilde 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.

Richard DeWilde

Subscribed and sworn to before me this 22ND of August, 2019

Elizabeth A. Rousseau
Notary Public

My commission expires: 5-26-21

(Seal)

ELIZABETH A. ROUSSEAU NOTARY PUBLIC - NOTARY SEAL STATE OF MISSOURI COUNTY OF PERRY COMMISSION #13799524 My Commission Expires: May 26, 2021
--