

**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 and)
Necessity)

MOTION TO STRIKE AND/OR TO LIMIT SCOPE OF THE PROCEEDING

COMES NOW Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers” or “Company”), and, as its *Motion to Strike and/or to Limit Scope of the Proceeding*, states as follows to the Missouri Public Service Commission (“Commission”):

BACKGROUND

1. This Application concerns the proposed acquisition of the assets of an existing water corporation and sewer corporation, regulated by the Commission (Port Perry Service Company), by another existing water corporation and sewer corporation, regulated by the Commission (Confluence Rivers). Port Perry Service Company has agreed to sell its utility assets to Confluence Rivers pursuant to an *Agreement For Sale of Utility System*.

2. Confluence Rivers seeks to provide service after closing of the proposed transaction under the same water and sewer tariffs currently applicable to the Port Perry Service Company service area and charge the same rates currently applicable to the Port Perry Service Company service area. Neither the rates nor the tariff provisions may be changed without approval of the Commission.

STANDARD

3. This case arises from the following requirement in Section 393.190.1, RSMo:
No gas corporation, electrical corporation, water corporation or sewer corporation

shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void.

4. The Commission’s review of these types of matters begins with the constitutional concept of property rights – the owners of property have a constitutional right to determine whether to sell their property or not. “To deny them that right would be to deny them an incident important to ownership of property. *A property owner should be allowed to sell his property unless it would be detrimental to the public.*” *State ex rel St. Louis v. Public Service Commission*, 73 S.W.2d 393, 400 (Mo. 1934), *citing City of Ottawa v. Public Service Commission*, 288 Pac. (Kan.) 556 (emphasis added).

5. This standard was further explained by the Missouri Supreme Court as follows:

To prevent injury to the public, in the clashing of private interest with public good in the operation of public utilities, is one of the most important functions of Public Service Commissions. It is not their province to insist that the public shall be *benefited*, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public *detriment*. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.'

State ex rel. St. Louis v. Public Service Commission, 73 S.W.2d 393, 400 (Mo. 1934).

TRANSACTION AT ISSUE

6. The change at issue, and the transaction to be assessed as to the “not detrimental” standard, is that which the seller has agreed to and the Commission has been asked to approve. In this case, the transaction at issue is described in the *Agreement For Sale of Utility System*

between Port Perry Service Company and Confluence Rivers.

7. The Commission has previously found offers suggested as an alternative to the transaction before the Commission to be irrelevant. In response to a Staff argument in an earlier case, the Commission stated that principle as follows:

Staff argues that the Agreement with WNG is detrimental to the public because there were proposals to purchase the pipeline made by *Missouri Gas Energy* (MGE) that the Staff believes were superior to the Agreement. The Commission finds that the MGE proposals are not relevant to the question of whether the transaction at issue in this case is detrimental to the public interest. The record is clear that these proposals had been withdrawn by the time the Williams' proposal was accepted. Simply because there may have been proposals more favorable to ratepayers at some point does not have much bearing on whether or not the current proposal is detrimental. The MGE proposals may form the basis for a challenge in a subsequent rate case to UCU's prudence in not accepting them and accepting the WNG offer instead, but they do not have any relevance to the issues in this case.

In the matter of the Application of UtiliCorp United Inc., d/b/a Missouri Public Service, for authority to sell a part of its franchise, works or system, Case No. GM-97-435 (October 15, 1998). In addition to protecting the constitutional rights of utility owners to when and to whom to sell their property, this makes sense because where there is no agreement by the owner to sell his property, there is no transaction upon which the Commission may pass judgment. There is only speculation as to what might be.

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8. On August 23, 2019, the Lake Perry Lot Owners Association (“LOA”) filed rebuttal testimony in this matter. That rebuttal testimony contained many passages related to a speculative transaction. That is, a description of how an entity called the Lake Perry Service Company might provide service utilizing the Port Perry Service Company assets, should it be able to purchase the Port Perry Service Company assets.

9. Because the LOA has not produced an agreement to purchase the relevant assets, all testimony concerning the speculative transaction is irrelevant to the “not detrimental” standard prescribed by law and should be stricken, or the scope of the proceeding limited, to exclude these matters from consideration in this case¹.

10. The provisions of testimony at issue (to include schedules referenced by these provisions) are as follows:

DeWilde Rebuttal – p. 3, line 10 – p. 3, line 13; p. 4, line 20–p. 12, line 1; p. 12, line 21-22; p. 13, line 17 - p. 14, line 15 (to include Schedules RD-2C, RD-3C, RD-4, RD-5, RD-6, RD-7, RD-8, RD-9. And RD-10);

Justis Rebuttal – p. 3, line 12-15; p. 4, line 15 –p. 11, line 21; p. 12, line 17 – p. 13, line 7; p. 17, line 23 – p. 18, line 8; p. 19, line 9 –p. 21, line 14 (to include Schedule GJ-01);

Sayre Rebuttal – All (to include Schedules CWS-1, CWS-2, and CWS-3);

Francis Rebuttal - p. 3, lines 10-16; p. 5, line 1 – p. 6, line 7.

11. Each of these provisions concerns a transaction that does not exist and is not before the Commission in this case. Accordingly, Confluence Rivers requests the Commission strike the identified portions of testimony or limit the scope of the proceeding to eliminate the issues raised by the identified portions of testimony.

WHEREFORE, Confluence Rivers respectfully requests the Commission issue its order granting this Motion to Strike and/or Limiting the Scope of the Proceeding in the manner, and

¹ See, for example, *In the Matter of the Joint Application of Great Plains Energy Incorporated, et al.*, Report and Order, 2008 Mo. PSC LEXIS 693, 23-50; 266 P.U.R.4th 1, EM-2007-0374 (July 11, 2008).

for the reasons, stated herein.

Respectfully submitted,



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**ATTORNEYS FOR CONFLUENCE RIVERS
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on September 6, 2019, to the following:

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