

**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)

**LAKE PERRY LOT OWNERS ASSOCIATION
RESPONSE TO MOTION TO STRIKE**

COMES NOW the Lake Perry Lot Owners Association (“Association”) in response to the *Motion to Strike Rebuttal Testimony of Glen Justis and Richard DeWilde (“Motion to Strike”)* of Confluence Rivers Utility Operating Company, Inc. (“CRU”) and states as follows:

1. On March 24, 2020, the Commission issued its Order Setting Procedural Schedule stating:

. . . the Commission determined that it is **necessary to assess the net book value** of Port Perry Service Company, LLC. **That determination is necessary as it is a “relevant and critical” issue as to whether the proposed acquisition is “detrimental to the public interest.”** The Commission’s determination that net book value is a relevant and critical issue is separate from the discussion of an acquisition premium.

(emphasis added).

2. On April 28, 2020, the Association filed the Rebuttal Testimony of Glen Justis and the Rebuttal Testimony of Richard DeWilde. Both Mr. Justis and Mr. DeWilde spoke about how the net book value showed that the transaction contemplated in the Application was detrimental to the public interest.

3. As the Commission is aware, as the above quote from the *Order Setting Procedural Schedule* shows, this case comes to it by an Application pursuant to section 393.190.1 RSMo. for the acquisition of certain assets of Port Perry Service Company. Pursuant to law, Port Perry and CRU have the burden of proof to show that the Application is “not

detrimental to the public interest.” As part of that showing, CRU must produce evidence and persuade the Commission that the transaction is not detrimental to the public interest in a balancing of all necessary and essential issues. *Ag Processing v. Public Service Commission*, 120 S.W.3d 732, 736 (Mo. 2003).

4. Inasmuch as the Commission found that the NBV is a “relevant and critical” issue in its determination of whether the proposed acquisition is “detrimental to the public interest,” if CRU had produced the net book value in proper order at the hearing on October 7 and 8, as it should have done, and as the Association repeatedly argued, the Association would have had the right to call, examine and cross-examine witnesses pursuant to section 536.070(2) RSMo. about what the net book value indicates about the transaction and its impact on the public interest. It is only because the Commission had to correct CRU’s failure to provide an essential component to its case in chief that the Commission had to reopen the case.

5. CRU cites the wrong rule at paragraph 8 of its *Motion to Strike*. The correct rule, Commission rule 20 CSR 4240-2.2130(7)(C) states that, “Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party’s direct case.” The Association had and has the right to explain why it disagrees with CRU’s direct case based on the net book value evidence.

6. Under either rule, Staff testimony did provide a conclusory observation through Ms. Bolin that Staff felt the transaction was in the public interest. In response to that testimony, the testimonies of Mr. Justis and Mr. DeWilde were clearly responsive.

7. CRU’s approach effectively turns the rule on burden of proof on its head in this case. Failing to provide any evidence on the public interest impact based on the net book value,

it claims that other parties are foreclosed from providing evidence on this most basic of issues. CRU has failed to carry its burden of proof in this case and now wants to use that failure to prohibit others from tendering evidence.¹ It's as if CRU is proposing that "trust me" is the trump card in this case.

WHEREFORE, the Association respectfully requests that the Commission deny CRU's *Motion to Strike* and deny the Application.

Respectfully submitted,



By: _____

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Filed: May 7, 2020

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent to all parties of record in File No. WA-2019-0299 via electronic transmission this 7th day of May, 2020.



¹ Hearsay evidence and mere conclusions based on hearsay evidence are not substantial and competent evidence. *State ex rel. Horn v. Randall*, 275 S.W.2d 758, 765 (Mo. App. 1955).