

**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,)	File No. WM-2018-0116
For a Certificate of Convenience and Necessity,)	SM-2018-0117
and, in Connection Therewith, To Issue)	
Indebtedness and Encumber Assets.)	

RESPONSE TO MOTION TO COMPEL

COMES NOW Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers), and, in response to the *Lake Perry Lot Owners’ Association Motion to Compel Answers to Certain Data Requests* (Motion to Compel), states as follows to the Missouri Public Service Commission (Commission):

BACKGROUND

1. On November 2, 2017, Confluence Rivers filed an Application and Motion for Waiver for Confluence Rivers to acquire certain water and sewer assets of various water and sewer systems, along with a certificate of convenience and necessity. Included in those systems Confluence Rivers proposes to acquire are water and sewer systems owned by Port Perry Service Company. Port Perry is a “water corporation,” a “sewer corporation,” and a “public utility,” as defined by Section 386.020, RSMo., and is subject to the jurisdiction and supervision of the Commission as provided by law. Port Perry provides water service to approximately 321 customers and sewer service to approximately 223 residential customers in Perry County, Missouri

2. On November 21, 2018, the Lake Perry Lot Owners’ Association (Association) filed a Motion to Compel responsive information to various Data Requests associated with Port

Perry Service, Confluence Rivers, and Josiah Cox. As stated by the Motion to Compel, Confluence Rivers has objected to several of those questions on the basis that they are neither relevant to the subject proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Relevance is significant in Commission cases as to interveners, such as the Association, as they do not have the statutory access given to the Commission Staff and the Office of the Public Counsel.

STANDARD

3. In order to assess a relevance objection, it is important to start with a review of the standard to be applied by the Commission. As to the Port Perry Service Company, Confluence Rivers has requested:

- a) Because Port Perry is a water and sewer corporation Confluence Rivers seeks the Commission's order authorizing the proposed sale pursuant to Section 393.190, RSMo; and,
- b) Confluence River is also seeking the Commission's permission to enter into certain evidence of indebtedness and to encumber the to-be acquired franchise, works or system in conjunction with that financing pursuant to Sections 393.190 and 393.190, RSMo.

4. The Courts have indicated that a public utility sale shall be approved, unless such sale would be "detrimental to the public interest." The reasoning for such standard is found in the follow excerpt, and is grounded in fundamental property rights:

The owners of this stock should have something to say as to whether they can sell it or not. To deny them that right would be to deny to them an incident important to ownership of property. [*City of Ottawa v. Public Service Commission*, 288 Pac. (Kan.) 556.] A property owner should be allowed to sell his property unless it would be detrimental to the public.

The State of Maryland has an identical statute with ours and the Supreme Court of that State in the case of *Electrical Public Utilities Co. v. West*, 140 Atl. 840, 1. c. 844, the court said:

"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).

The Commission must approve those acquisition applications over which it has jurisdiction, unless the transaction is shown to be "detrimental to the public interest," a standard established by the Missouri Supreme Court in *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393 (Mo. 1934) and reaffirmed in *State ex rel. AG Processing, Inc. v. Public Service Commission*, 120 S.W.3d 732, 735 (Mo. banc 2003).

_____. Essentially, the assets must not be in any worse off as a result of the proposed transaction.

5. The Commission has described its standard as follows in regard to financing applications:

The standard for deciding the application is whether the requested financing is "not . . . reasonably chargeable to operating expenses or income" and "has been reasonably required for purposes" specified by statute.

In the Matter of Missouri-American Water Company for Authority to issue up to \$180,000,000 of Long-Term, Unsecured Debt, File No. WF-2017-0349 (August 9, 2017).

The referenced "purposes specified by statute" (Section 393.200, RSMo), are as follows:

. . . the acquisition of property, the construction, completion, extension or improvement of its plant or system, or for the improvement or maintenance of its service or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income, or from any other moneys in the treasury of the corporation not secured or obtained from the issue of stocks, bonds, notes or other evidence of indebtedness of such corporation

6. The items to which Confluence Rivers has objected are not relevant to either of

the standard applicable to the transaction or the financing. The Association requests Port Perry documents related to all water line service maps, etc. (3CR1-1); a list of all water and sewer customers (3CR1-2); Monthly water sales (3CR1-5); monthly volumes of wastewater effluent (3CR1-6); list of real property owner, leased or controlled by Port Perry (3CR1-7); copies of sewer agreements with customers (3CR1-8); subdivision plats and covenants (3CR1-9); cash on hand (3CR1-10); existing debts of Port Perry (3CR1-11); Port Perry operation and maintenance rules (3CR1-13); interconnection agreements (3CR1-15); lists of easements and agreements for access (3CR1-16); and, copies of certificates of insurance (3CR1-17). The Association further requests information related to any law suits against Confluence Rivers, its owners, organizers, and/or officers (3CR2); law suits against Port Perry, its owners, organizers, and/or officers (3CR3); and Mr. Cox's association with Trumpet Builders, LLC and law suits concerning Trumpet (3CR4).

7. These items are neither relevant to the subject proceeding, as identified in the standards above, nor reasonably calculated to lead to the discovery of admissible evidence in regard to those matters.

8. The Association suggests that there is relevance related to detriment to public interest because it is information related to the condition of the present wastewater and drinking water system. (Motion, p. 3) Of course, whether the acquisition is detrimental to the public interest concerns whether Confluence Rivers is at least as qualified as Port Perry to operate, maintain and improve as necessary the Port Perry systems. However, as to the condition of the systems, Confluence Rivers has provided responses to the Association requests for MDNR correspondence (3CR1-3), has requested the monitoring reports (3CR1-4), and the engineering

studies associated with the Port Perry systems (3CR1-14). These items provide the condition of the system. It is unclear what the other items requested by the Association have with this question.

9. The Association also alleges that Confluence Rivers is somehow using its objection related to the fact that much of this is Port Perry information as a “subterfuge.” (Motion, p. 5) It is true that Confluence Rivers has pointed out that as to the Port Perry information, it has no ownership interest in Port Perry. Thus, the information may be beyond Confluence River’s possession, custody, and control. Confluence River has, however, also committed to make good faith effort to acquire from Port Perry that information deemed to be relevant. The Association’s discussion of the Commission Staff and OPC’s access to the Port Perry books and records is of no import here, as the Association is neither the Staff nor the OPC. Additionally, the Association’s discussion of subpoena powers is misplaced as, to Confluence Rivers’ knowledge, no subpoena has been requested.

10. The Association, in regard to the requests for past litigation information, suggests that such information is necessary for an “assessment of the qualifications of the entities to undertake utility services.” It is unclear what this has to do with litigation related to the seller, Port Perry (3CR3). If this were the first proposal of the Confluence Rivers organization to own and operate water and sewer systems in Missouri, perhaps there would be some relevance. However, Confluence Rivers is owned and managed by the same organizations (First Round CSWR, LLC and Central State Water Resources, Inc.) that own and manage Elm Hills Utility Operating Company, Inc., Hillcrest Utility Operating Company, Inc., Raccoon Creek Utility Operating Company, Inc., and Indian Hills Utility Operating Company, Inc., all regulated by the

Commission; as well as, seven wastewater and one water system in the State of Arkansas.

11. At best, it appears to the Association is attempting to use the regulatory process to do their own due diligence on a potential purchase, while having knowledge of, and access to, the Port Perry contract that is a subject of this case.

12. Even if the Association came up with a competing proposal, it would not be relevant to this case as the only transaction for the Commission's review is that proposed by Confluence Rivers. The Commission previously found competing offers to be irrelevant 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.

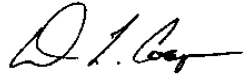
In the matter of the Application of UtiliCorp United Inc., d/b/a Missouri Public Service, for authority to sell a part of its franchise, works or system, Case No. GM-97-435 (October 15, 1998).

13. Confluence Rivers has provided, or is in the process of providing, all of the information requested by the Association that is relevant to this matter.

WHEREFORE, Confluence Rivers requests the Commission deny the Association's

Motion to Compel.

Respectfully submitted,



Dean L. Cooper, MBE #36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65012
(573) 635-7166 telephone
(573) 635-3847 facsimile
dcooper@brydonlaw.com

**ATTORNEYS FOR CONFLUENCE RIVERS
OPERATING COMPANY, INC.**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail on November 30, 2018, to the following:

Whitney Payne
Office of the General Counsel
Governor Office Building
Jefferson City, MO 65101
staffcounservice@psc.mo.gov
whitney.payne@psc.mo.gov

Ryan Smith
Office of the Public Counsel
Governor Office Building
Jefferson City, MO 65101
opcservice@ded.mo.gov
ryan.smith@ded.mo.gov

David C. Linton
Attorney for Lake Perry Lot Owners'
Association
Email: jdlington@reagan.com

