

**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'S
POSITION STATEMENT ON LIST OF ISSUES**

COMES NOW Lake Perry Lot Owners Association (“Association”), by and through its counsel, and submits this position statement on the issues filed by the Staff of the Public Service Commission on September 25, 2019:

LIST OF ISSUES

1. Should the Commission find that Confluence Rivers Utility Operating Company, Inc.’s (“Confluence Rivers”) acquisition of the Port Perry Service Company’s (“Port Perry”) water and wastewater assets and certificates of convenience and necessity is not detrimental to the public interest, and approve the transaction?

The Commission should find that Confluence Rivers has failed to prove that the acquisition of Port Perry is not detrimental to the public interest and deny the application.

Quite simply, the Confluence Rivers and Staff have failed to carry their burden of proof in this case. It is a most basic principle of law that an Applicant must carry its burden of proof. In this case, that burden of proof is that the transaction will not be detrimental to the public interest.

In its decision, the Commission must consider and evaluate all necessary and essential issues. *Ag Processing v. Public Service Com'n.*, 120 S.W.3d 732 (Mo. 2003). It must evaluate issues raised by the parties. *Id.*

In this case, among other things, the following issues have been raised by the parties yet not addressed by CRU:

- a. No one wants CRU. The customers do not want the service provided by CRU. At a local public hearing held by the Commission in Perryville, 100% of the attendants spoke against the transaction. CRU has repeatedly argued that the Commission's interference with this transaction would take away the buyer's and seller's right to freely sell property. The opposite side of the question is just as significant. Forcing customers to take and pay for a service provider they do not want is equally unequitable. And CRU has done nothing to show there is a desire for their service.
- b. Financing. The Commission itself has identified the financing issue as a necessary and essential issue relevant in this case. In *Matter of the Application of Indian Hills Utility Operating Company, Inc.*, File No. WO-2016-0045, the Commission made the following finding in its *Order Approving Transfer Of Assets And Issuance Of Certificate Of Convenience And Necessity*: "Finally, the Commission notes that Indian Hills and any successors or assigns bear the burden of proof, in subsequent rate cases **where the financing relevant to this case is at issue.**" [emphasis added] The Commission clearly stated in that case that the financing was a relevant issue in the application case. The Association and OPC refined that issue in this case. CRU has not provided any information on the

financing issue. The Commission would err in refusing to find that CRU had failed to carry its burden of proof on the necessary and essential issue of financing.

- c. Rates. In a somewhat related matter, the Association has introduced evidence that raises a concern regarding rates. CRU has not. The Association has introduced evidence showing that rates would be lower under the very real alternative of the Association's running of the services. CRU has not countered that evidence. Rates impact the public. Rates are a necessary and essential issue in this case, and it would be error for the Commission to fail to recognize that CRU has not carried its burden of proof in this case.
- d. Loss of Local Control. The residents of Lake Perry have had local control of their water and sewer systems for decades. Their Association is intimately familiar with these operations. As CRU's testimony establishes, the transaction will take local control of the residents' services from them. The removal of local control of the water and sewer services would be detrimental to the public interest.

The Commission should not adopt the speculative and truncated analysis of CRU and Staff. If there is one thing that is clear in this case, it is that the Port Perry facilities are not distressed. Speculation on what could happen do not make facilities distressed. Certainly, routine maintenance and improvements may be necessary, but those possible eventualities do not make a system distressed.

The Commission should also eschew the simple Tartan factor/TMF tests of Staff and CRU. While capability is a factor in the Commission's analysis, it is not the only

factor. Truncating the analysis at capability would make the Commission a rubber stamp or establish a “most favored nations” list for the Commission. The Commission must consider the “public interest” and not the “company interest.” In this case, the public interest revolves around the impact on a community that does not want the CRU service, CRU rates, CRU customer service, or CRU control.

2. If so, should the Commission condition its approval of Confluence Rivers’ acquisition of Port Perry and, if so, what should such conditions be?

If the Commission determines to approve the CRU acquisition of Port Perry, the Commission should impose the following conditions on CRU, as proposed by Association witness Justis, at pages 21 and 22 of his Rebuttal Testimony:

- a. Limit CRU’s starting rate base to Staff’s recommended net book value.
- b. Require Confluence Rivers to develop a clear capital investment plan for Lake Perry that is endorsed by both LPLOA and the Office of Public Council (OPC).
- c. Require Confluence Rivers to establish a customer advisory board and associated governance processes, satisfactory to both LPLOA and OPC, that allows meaningful customer input into future capital investments before they are incurred.
- d. Require Confluence Rivers to undergo a biannual independent audit, using an auditor and audit plan acceptable to both LPLOA and OPC, to review the reasonableness of operating costs and to confirm that all goods and services are being procured appropriately.

CRU has failed to carry its burden of proof that this transaction is not detrimental to the public interest. The Commission has already determined that CRU’s financing and business plan are relevant, necessary and essential issues in a case such as this. It is also apparent that CRU has been hostile to good customer relations with the current customers of Lake Perry. Each of these conditions is designed to establish some discipline on CRU in its development of a business plan and financing and return some respect to the customers in Lake Perry.

WHEREFORE, the Association respectfully submits this Position Statement for the Commission's consideration.

Respectfully submitted,



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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 30th day of September 2019.


