

**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. \_\_\_\_\_  
Assets and for a Certificate of Convenience            )  
and Necessity    )

**APPLICATION AND MOTION FOR WAIVER**

Under authority of, and in accordance with, Sections 393.170 and 393.190, RSMo., 4 CSR 240-2.060, 4 CSR 240-3.305, 4 CSR 240-3.600, and 4 CSR 240-10.105, Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers” or “Applicant”) requests the Commission’s authority to acquire all or substantially all assets Port Perry Service Company (“Port Perry”) uses to provide retail water and sewer utility services, including its certificate of convenience and necessity (“CCN”).

In accordance with 4 CSR 240-4.017(1)(D), Confluence Rivers also moves the Commission for a waiver of the 60-day prefiling notice requirement of 4 CSR 240-4.017(1).

In support of its application and motion for waiver, Applicant states:

**Introduction**

1. Confluence Rivers is a Missouri corporation in good standing, with its principal office and place of business at 500 Northwest Plaza Drive, Suite 500, St. Ann, Missouri, 63074. The company previously filed a certified copy of its articles of incorporation and its certificate of good standing in File No. WM-2018-0116. As authorized by 4 CSR 240-2.060(1)(G), those documents are incorporated into this application by reference. Confluence Rivers has not filed a fictitious name registration with the Missouri Secretary of State.

2. On February 14, 2019, the Commission granted Confluence Rivers CCNs to operate water and sewer utilities (Commission File Nos. WM-2018-0116 and SM-2018-0117).

Therefore, Confluence Rivers is a “water corporation,” a “sewer corporation,” and a “public utility” as those terms are defined in Section 386.020, RSMo., and is subject to the jurisdiction and supervision of the Commission, as provided by law.

3. Confluence Rivers has no overdue Commission annual reports or assessment fees, and there is no pending action or final unsatisfied judgment or decision against the Applicant from any federal or state agency or court that involves customer service or rates, which action, judgment or decision occurred within three years of the date of this application.

4. Communications regarding this application should be addressed to the undersigned counsel and to:

Todd Thomas, Vice President  
Confluence Rivers Utility Operating Company, Inc.  
500 Northwest Plaza Drive, Suite 500  
St. Ann, MO 63074  
Phone: (314) 736-4672  
E-mail: [tthomas@cswrgroup.com](mailto:tthomas@cswrgroup.com)

#### **The Proposed Transaction**

5. Confluence Rivers proposes to acquire, and Port Perry proposes to sell, all or substantially all assets Port Perry uses to provide water and sewer services to customers in its certificated service areas. Terms and conditions of that transaction are set out in the June 20, 2017, *Agreement for Sale of Utility System* (“Sale Agreement”), which is attached to this application as **Appendix A**. Under authority of, and in accordance with, 4 CSR 240-2.135(2)(A)(3) and (6), that agreement has been designated “Confidential” because it contains market-specific information and information representing strategies employed in contract negotiations.

6. As required by 4 CSR 240-10.105(C), **Appendix B** verifies the authority of Josiah

Cox, the President of Confluence Rivers, to enter into the Sale Agreement with Port Perry and to seek Commission approval of that transaction.

7. Port Perry is a Missouri corporation in good standing with its principal office and place of business at 728 PCR 724, Perryville, Missouri 63775. In April 1975, the Commission granted Port Perry CCNs to operate water and sewer utilities (Commission Case No. SR-2013-0544). Therefore, Port Perry is a “water corporation,” a “sewer corporation,” and a “public utility,” as those terms are defined in Section 386.020, RSMo., and is subject to the jurisdiction and supervision of the Commission as provided by law. Under authority of its CCNs, Port Perry provides water service to approximately 321 customers and sewer service to approximately 223 customers in Perry County. The area served by Port Perry is shown on the map attached to this application as **Appendix C** and a metes and bounds description of that area is provided in **Appendix D**, both of which were excerpted from Port Perry’s approved tariff.

8. Although the Sale Agreement is between Port Perry and Central States Water Resources, Inc. (CSWR”), Section 17 authorizes CSWR to assign its rights under the agreement to an affiliate. Confluence Rivers is an affiliate of CSWR. Therefore, in accordance with terms of the Sale Agreement, CSWR has executed an *Assignment of Rights* that, at closing, would transfer to Confluence Rivers all CSWR’s rights, title, and interests in Port Perry’s assets. A copy of that assignment is attached to this application as **Appendix E**.

9. Port Perry’s sewer system requires basic maintenance on berms housing the wastewater storage lagoon cells to prevent future failure. The wastewater system currently is out of compliance for basic sewer security, discharge recording, and physical protection of the system. Additionally, Port Perry’s wastewater system’s automated valve system has failed; i.e.,

all valves are locked in the open position, and the valves require replacement. Many of the sprinkler heads also have failed as well and must be repaired or replaced.

10. Port Perry's water system currently is out of compliance for basic drinking water security, physical separation of chlorine disinfection systems, monitoring of residual chlorine, emergency redundant chlorine pumps, and corresponding operational management. Bringing that system into compliance would require a new chlorination system, including redundancy and testing equipment, and new fencing. In addition, the well house at Well No. 1 is in poor condition and must be repaired. The secondary backup wells also require repairs, including setting a new utility pole and installing a variable frequency drive to eliminate the "water hammer" that occurs at well start-up.

11. Largely because it is unable to make the expenditures and investments necessary to upgrade its systems and bring them into regulatory compliance, Port Perry has concluded it is in the best interests of both the company and its customers to sell the water and sewer systems to a qualified operator. Confluence Rivers is a qualified operator and the transaction proposed in this application is not detrimental to the public interest. Indeed, Confluence Rivers believes granting its application will promote the public interest, particularly of those customers currently served by the systems Applicant seeks to acquire.

12. As it has demonstrated to the Commission in past cases, Confluence Rivers, with the support and assistance of its affiliate CSWR, is fully qualified, in all respects, to own and operate the Port Perry system. The successful operation of other water and sewer systems in Missouri demonstrates the ability of Applicant and its affiliates to provide safe and reliable service to customers and to comply with the Commission's rules, regulations, and decisions

governing the ownership and operation of such systems. Confluence Rivers also has the financial strength and resources necessary to make expenditures and investments required to bring Port Perry's systems into regulatory compliance. As evidence of that fact, and in accordance with 4 CSR 240-10.105(1)(E), a balance sheet and income statement, with adjustments, showing the effect the proposed acquisition would have on Confluence Rivers is attached to this application as **Appendix F**. Because the pro-forma financials include proprietary and competitively sensitive analyses and information, in accordance with 4 CSR 240-2.135(2)(A)(3) and (4) **Appendix F** has been designated "Confidential."

### **Request for Service Area CCNs**

13. By law, water and sewer corporations providing service to the public must have a Commission-issued CCN to lawfully operate. Port Perry's water and sewer CCNs are among the assets Confluence Rivers would acquire under the Sale Agreement. Confluence Rivers therefore requests the Commission approve, for administrative convenience, the transfer of those CCNs as part of that transaction. Alternatively, should the Commission choose not to approve such a transfer, Confluence Rivers requests new water and sewer CCNs be issued authorizing it to own, install, construct, operate, control, manage, and maintain the systems it proposes to acquire from Port Perry.

### **Tariffs and Rates**

14. If the Commission grants the approvals and authority requested in this application, Confluence Rivers proposes to adopt and continue Port Perry's existing water and sewer rates and tariffs for all customers. However, because current rates may not reflect or fully recover projected costs of providing service, and because Applicant will be required to expend substantial capital for upgrades and replacements to current facilities and to bring the system into

regulatory compliance, it may, in the near future, be required to seek Commission approval to increase water or sewer rates charged to customers or consolidate rates for some or all of Confluence Rivers' Missouri systems.

15. Because Confluence Rivers proposes to acquire all or substantially all of Port Perry's assets, and also because Applicant proposes to continue Port Perry's rates and tariffs, the transaction proposed for approval in this case should not have any material effect on the tax revenues of any political subdivision where Port Perry's water and sewer systems are located.

#### **Motion for Waiver**

16. Commission rule 4 CSR 240-4.017(1) requires "[a]ny person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case." Because it did not file such a notice within the time period prescribed by that rule, Confluence Rivers seeks a waiver of the 60-day pre-filing notice requirement.

17. Under 4 CSR 240-4.017(1)(D), a waiver of the pre-filing notice requirement may be granted for good cause. In this regard, Applicant declares, as verified below, that within the 150 days prior to this application Confluence Rivers has had no communication with the Office of the Commission (as defined in 4 CSR 240-4.015(10)) regarding any substantive issue likely to be in this case. Good cause for the requested waiver exists because health and safety concerns related to the Port Perry systems could be adversely affected if Applicant is required to delay this filing for 60 days.

18. Therefore, as authorized by 4 CSR 240-4.017(1)(D), Confluence Rivers moves the Commission for a waiver of the 60-day notice requirement of 4 CSR 240-4.017(1) and acceptance of this application at this time.

**WHEREFORE**, for the reasons previously stated, Applicant respectfully requests the

Commission issue an order: authorizing Confluence Rivers to acquire and own public utility water and sewer systems currently owned by Port Perry; authorize the transfer to Applicant of Port Perry's existing CCNs or, in the alternative, issue new CCNs so Confluence Rivers may lawfully own, install, construct, operate, control, manage, and maintain water and sewer systems for the public within the areas shown in **Appendix C** and described in **Appendix D**; granting Applicant's motion for a waiver of the 60-day prefiling notice requirement of 4 CSR 240-4.017(1); and granting Confluence Rivers such further relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ L. Russell Mitten

Dean L. Cooper            MBE #36592  
L. Russell Mitten        MBE #27881  
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**ATTORNEYS FOR CONFLUENCE RIVERS  
UTILITY OPERATING COMPANY, INC.**

**Certificate of Service**

This 29<sup>th</sup> day of March, 2019, a copy of the Application and Motion for Waiver was served via electronic mail on the Commission's Staff Counsel Department and the Office of the Public Counsel.

/s/ L. Russell Mitten

**VERIFICATION**

STATE OF MISSOURI                    )  
  ) ss  
COUNTY OF ST. LOUIS                )

F. TODD THOMAS, being duly sworn on oath, deposes and says he is the Vice President of Confluence Rivers Utility Operating Company, Inc.; he has read the foregoing application and knows its contents; and the information contained in that application is true and correct to the best of his knowledge and belief.

CONFLUENCE RIVERS UTILITY OPERATING  
COMPANY, INC.

BY: *F. Todd Thomas*  
F. TODD THOMAS

Subscribed and sworn to before me, the undersigned Notary Public in and for the county and state aforesaid, on the 26<sup>th</sup> day of March 2019.

*Brenda Eaves*  
Notary Public

My Commission expires: 01/31/2021

