

**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)

**REPLY TO LOT OWNERS’ RESPONSE
CONCERNING MOTION TO QUASH
AND REQUEST FOR HEARING**

COMES NOW Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers” or “Company”), and, as its *Reply to Lot Owners’ Response Concerning Motion to Quash and Request for Hearing*, states as follows to the Missouri Public Service Commission (“Commission”):

REPLY

1. On April 28, 2020, the Lake Perry Lot Owners Association (“Lot Owners”) filed its *Response to Motion to Quash* (“Lot Owners’ Response”).

2. The Lot Owners’ Response does not make any claim that the persons in question will testify in regard to the net book value (“NBV”) of the Port Perry water and sewer assets - “. . . the factual issue that was the subject of the evidentiary hearing scheduled for May 19-20, 2020.”¹ Instead the Lot Owners’ Response indicates that the persons will talk about “prudent banking judgment,” something that is well beyond the Commission’s directive to reopen the record in this case to take evidence as to the NBV of the assets Confluence Rivers proposes to purchase. Thus, the Lot Owners’ response confirms what Confluence Rivers speculated in its

¹ *Order Directing Responses Regarding Cancellation of Evidentiary Hearing Regarding Net Book Value*, p. 1.

Motion to Quash:

In this instance, there is no reason to believe the two parties who filed NDAs on April 23 are experts on the NBV of the assets Confluence Rivers seeks to acquire in this case. And because none of the information provided since the Commission re-opened the record in this case has been designated “Confidential,” there is no basis to conclude the information these individuals are seeking has anything to do with NBV or that their review of confidential information would be limited to that issue.

(Motion to Quash, para. 7)

3. In addition to admitting that the persons in question will not testify as to the NBV of the assets, the Lot Owners further ignore that “none of the information provided since the Commission re-opened the record in this case has been designated ‘Confidential.’” Thus, the identified persons filed Non-Disclosure Agreements in order to view other confidential information that has been available in this matter for many, many months (if not, more than a year), and information that is beyond the issue for which the record has been reopened.

4. The Lot Owners further attempt to place blame on Confluence Rivers for the Lot Owners’ attempt to expand the Commission’s reopening of the record, stating that “If CRU had produced net book value in proper order . . . the association would have had the right to call, examine and cross-examine witnesses . . . about what the net book value indicates about the transaction and its impact on the public interest.” This statement is completely off base for several reasons:

- NBV, especially when one is talking about a small water and sewer company with limited financial records, is not a number to be “produced.” It is a product of a review and interpretation of years of invoices, to the extent those invoices have been maintained and can be located. In the base case, Confluence Rivers produced the

invoices it had obtained and all parties were free to calculate NBV based on their interpretation of those invoices.

- While the Company took the position that an exact NBV was not necessary given its waiver of any acquisition premium recovery, any party was free to calculate and testify as to its opinion of NBV. In fact, the Commission Staff did calculate and testify as to its opinion of a particular NBV in the base case (Ex. 100, Dietrich Direct, Sch. ND-d2, P. 7). The Staff NBV from Staff's Recommendation filed on May 31, 2019, was not dramatically different from the NBV agreed to by the parties at this stage of the case and provided ample additional opportunity for any party address the issue.
- The Lot Owners had the “right to call, examine and cross-examine witnesses . . . about what the net book value indicates about the transaction and its impact on the public interest” in the base case. There is nothing that prohibited this and, as was pointed out in an earlier Confluence Rivers pleading, the Lot Owners did file rebuttal testimony in the base case concerning NBV through its witness Glen Justis.² In the Association’s Position Statement filed September 30, 2019, the Association stated its position on the imposition of conditions on the acquisition should the Commission approve the Application:

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

- Limit CRU’s starting rate base to Staff’s recommended net book value.³

² Ex. No. 307, Rebuttal Testimony of Glen Justis, p. 15, ll. 1-6; p. 17, ll. 12-22; p. 21, 17-20.

³ *Lake Perry Lot Owners Association’s [sic] Position Statement On List Of Issues*, p. 4, para. 2a.

5. The Lot Owners are not seeking “an opportunity” to address these issues, they are seeking “another opportunity” to do so.

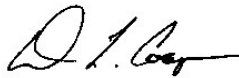
6. For all the reasons stated above and in Confluence Rivers’ Motion to Quash, the NDAs filed by the Lot Owners on April 23 should be quashed by the Commission.

REQUEST FOR HEARING

7. Confluence Rivers requests a telephonic hearing to address this matter. This matter concerns the review of confidential materials that appear to not be relevant to the matters before the Commission at this time, and Confluence Rivers wants to take all steps necessary protect those materials from disclosure to persons and for purposes not authorized by 20 CSR 4240-2.135(6).

WHEREFORE, Confluence Rivers respectfully requests that the Commission quash the NDAs described herein.

Respectfully submitted,



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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 April 28, 2020, to the following:

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