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Witness: Josiah Cox
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File Nos.: WA-2019-0299
Date: September 23, 2019

Missouri Public Service Commission

Surrebuttal Testimony

of

Josiah Cox

On Behalf of

Confluence Rivers Operating Company, Inc

September 23, 2019

CR Exhibit No. 2P
Date 10/7/19 Reporter SMB
File No. WA-2019-0299

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SURREBUTTAL TESTIMONY OF
JOSIAH COX
CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.

WITNESS INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Josiah Cox. My business address is 500 Northwest Plaza Drive, Suite 500, St. Ann, Missouri, 63074.

Q. ARE YOU THE SAME JOSIAH COX WHO PREVIOUSLY FILED DIRECT TESTIMONY IN THIS CASE ON BEHALF OF CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC. (CONFLUENCE RIVERS)?

A. Yes.

PURPOSE

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. The purpose of my surrebuttal testimony is to respond to portions of the rebuttal testimonies filed by the Lake Perry Lot Owners Association (LPLOA) witnesses Chad Sayre, Richard DeWilde, and Glen Justis. I will also address generally the testimony provided at the local public hearing conducted by the Commission on September 10, 2019.

Q. WHAT SUBJECTS WILL YOU ADDRESS?

A. I will address Confluence Rivers' technical, managerial, and financial ability to own and operate the Port Perry Service Company assets; I will compare those technical, managerial, and financial abilities to those of the LPLOA; and, I will

address, generally, rate concerns raised by the lot owners that testified at the local public hearing.

LPLOA TESTIMONY

Q. HAVE YOU READ THE REBUTTAL TESTIMONY OF LPLOA WITNESS RICHARD DEWILDE?

A. Yes.

Q. ON PAGE 11, LINES 21, OF HIS REBUTTAL TESTIMONY, MR. DEWILDE ALLEGES THAT THE APPLICATION OF CONFLUENCE RIVERS IS DETRIMENTAL TO THE PUBLIC INTEREST. HOW WOULD YOU RESPOND?

A. Confluence Rivers' proposed acquisition of the specified assets of Port Perry Service Company ("Port Perry") is not detrimental to the public interest of the State of Missouri.

Confluence Rivers and its affiliate Central States Water Resources, Inc., ("CSWR") and Missouri companies Hillcrest Utility Operating Company, Inc., Raccoon Creek Utility Operating Company, Inc., Elm Hills Utility Operating Company, Inc., and Indian Hills Utility Operating Company, Inc., have acquired small Missouri water and sewer companies, brought capital required to improve those systems, upgraded the services provided to customers, and delivered safe and adequate service where, in most cases, that was not the situation prior to acquisition.

Q. HAS THE COMMISSION RECENTLY APPLIED THE NOT DETRIMENTAL STANDARD SPECIFICALLY IN RELATION TO CONFLUENCE RIVERS?

A. Yes. The Commission recently applied the standard of "not detrimental to the public interest" in its order for a case involving Confluence Rivers (Commission File No. WM-2018-0116 (February 14, 2019)). In that order, the Commission found that the proposed sale of 9 water and 9 sewer systems to Confluence Rivers was not detrimental to the public interest and stated in support as follows:

> Considering the present troubled nature of the systems at issue, the Company's sound track record in rehabilitating similarly situated systems, the Company's ability to acquire, maintain, and operate the systems, and the statutory obligation of the Commission to ensure safe and adequate service, allowing the Company to acquire the Selling Companies' assets per the terms and conditions of the Stipulation will not be detrimental to the public.

Q. DOES CSWR'S EXPERIENCE NOW EXTEND BEYOND THE STATE OF MISSOURI?

A. Yes. In addition to Missouri, CSWR affiliates own and operate water and sewer systems in Arkansas and this month has closed on systems in Kentucky. CSWR affiliates are further in the process of acquiring systems in Tennessee, and Louisiana.

Q. DID THE KENTUCKY PUBLIC SERVICE COMMISSION MAKE FINDINGS CONCERNING CSWR'S EXPERIENCE AND ABILITY TO OWN, IMPROVE AND OPERATE WATER AND SEWER SYSTEMS WHEN IT APPROVED THOSE ACQUISITIONS?

A. Yes. In Kentucky Public Service Commission ("Kentucky PSC") Case No. 2019-00104, the Kentucky PSC concluded that CSWR's affiliate Bluegrass Water Utility Operating Company, LLC, "has the financial, technical, and managerial

abilities to provide reasonable service to those persons located in the acquired systems."

Q. ARE THERE IMPROVEMENTS IN SERVICE THAT CUSTOMERS OF PORT PERRY SERVICE COMPANY WILL EXPERIENCE AS A RESULT OF CONFLUENCE RIVERS' ACQUISITION OF ITS ASSETS?

A. Yes. From a customer service standpoint, customers will have multiple channels in which to interact with Confluence Rivers. First, customers will have a 24-hour phone line to report any utility service issues. Those service issue calls are then transferred into the computerized maintenance management system (CMMS) and converted into work orders, which creates a history with the reported service issue and works to quickly and efficiently deal with any actual issues for customers. Second, Confluence Rivers has customer service representatives available during business hours to talk about any customer concerns. Additionally, Confluence Rivers will have a utility-specific webpage and dedicated email address that will keep customers informed about their utility service. Mirroring the relevant utility homepage information, Confluence Rivers will also have a dedicated social media page in order to offer another avenue of communication with customers about utility matters. The social media account will be manned by customer service representatives that can answer customer questions. Finally, Confluence Rivers will also offer online bill paying options to customers including e-checks, debit card, and credit cards.

Q. WOULD YOU SUMMARIZE THE COMPANY'S POSITION AS TO THE PUBLIC INTEREST ASSOCIATED WITH THE PROPOSED TRANSACTIONS?

A. Confluence Rivers is an existing public utility in Missouri and is fully qualified, in all respects, to own and operate the systems to be acquired and to otherwise provide safe and adequate service. Confluence Rivers and CSWR have the resources required to rehabilitate the systems it proposes to acquire, and the managerial, technical, and financial capabilities to safely and adequately operate the systems going forward.

Q. MR. DEWILDE EXPRESSES A VARIETY OF CONCERNS IN HIS REBUTTAL TESTIMONY. HOWEVER, HIS PRIMARY ARGUMENT APPEARS TO BE THAT THE LPLOA HAS PUT TOGETHER A PROPOSAL THAT IS "VIABLE." (REB., P. 14, LINE 12) WOULD YOU COMPARE CONFLUENCE RIVERS SITUATION TO THE LPLOA PROPOSAL?

A. Yes. In the following table, I identify several aspects necessary for a utility to provide safe and adequate service to the Port Perry service area and the differences between Confluence Rivers' existing operations and the LPLOA "proposal:"

ITEM	CONFLUENCE RIVERS	LPLOA PROPOSAL
Contract to Purchase Assets	Yes – The Company has a contract in place with Port Perry	No. LPLOA has made an contingent offer to purchase that has not been accepted by Port Perry
Existing Utility Operations	Yes – The Company currently owns and operates 9 water and 9 sewer systems. Its affiliated companies own and operate many more systems in the state of Missouri	No – neither the LPLOA nor the Lake Perry Service Company currently, or in the past, have owned or operated water or sewer systems
Customer Service numbers/systems in	Yes – CSWR companies have implemented	No – Lake Perry Service Company ("LPSC")

place	customer service system and processes that provide numerous services and compliance with Chapter 13 of the Commission's rules	currently has no customers
Financing Available	Yes. CSWR companies have invested over $10.1 million to date in Missouri water and sewer systems and have access to capital for Port Perry purchase and improvements	LPSC has not provided any evidence of investment in Missouri water or sewer systems
Deemed by Missouri Department of Natural Resources to have technical, managerial and financial ability to operate Missouri water and sewer systems	Yes – Confluence Rivers is currently permitted to provide both water and sewer service in the State of Missouri	No – neither LPLOA nor LPSC hold any permits to provide water or sewer service in the State of Missouri
Organizational experience constructing, maintaining and operating Missouri water and sewer systems	Yes – CSWR companies have provided water and sewer service in Missouri for approximately four and a half years	No - neither the LPLOA nor the Lake Perry Service Company currently, or in the past, have owned or operated water or sewer systems
Existing Financial Resources	Yes-CSWR companies have the capital required to purchase the Port Perry utility assets	No-neither the LPLOA nor the Lake Perry Service Company have enough capital currently to purchase and operate the water or sewer systems

Q. LPLOA WITNESS DEWILDE INDICATES THAT LAKE PERRY SERVICE COMPANY ("LPSC") "PROPOSES TO COMPENSATE PORT PERRY SERVICE COMPANY $150,000 FOR THE SALE OF THE ASSETS OF THE WATER AND SEWER SYSTEMS." (REB., P. 10, LINES 6-9) IS IT

APPROPRIATE TO ASSUME THAT THIS WOULD BE THE PRICE FOR WHICH LPSC COULD PURCHASE THOSE ASSETS?

A. No. There is no evidence that Port Perry considers that offer to be reasonable or would be willing to sell its assets for that price. The only purchase price we know Port Perry believes is reasonable and will accept is the amount stated in the executed *Agreement For Sale of Utility System* ("Asset Purchase Agreement") between Port Perry and CSWR. Further, on September 20, 2019, LPLOA filed a Motion to Strike that alleges as follows:

> Port Perry has four additional offers to purchase the water and sewer systems at this time. If the Commission denies the Application filed by Confluence Rivers, it may or may not consider other offers. It is more than capable of continue to operate the water and sewer systems.

It is unclear who made those offers or their amounts. Consequently, it is unclear whether LPSC could acquire the Port Perry assets in the absence of a Confluence Rivers purchase and, even if it could, it is unknown what price LPSC would have to pay for those assets.

Q. DOES MR. DEWILDE DESCRIBE THE FINANCING THAT THE LPSC HAS PLANNED FOR PURPOSES OF THE PROPOSED PURCHASE AND INITIAL CAPITAL?

A. Yes. Mr. DeWilde states (Reb., p. 8, lines 2-21) that LPSC will ask current Lake Perry lot owners to consider investing money for this utility purchase. The goal is to reach $300,000 and utilize this money to purchase a Certificate of Deposit ("CD") for $300,000. At that time, LPSC would borrow $300,000 from a bank

using the new CD as collateral. The LPSC would then attempt to obtain a commercial loan after three years of operations.

Q. WHAT IS THE INTEREST RATE ON THE LOAN CONTEMPLATED BY LPSC?

A. It appears the LPSC will be paying interest both to a bank and to its investors, as Mr. DeWilde states that the "investors will receive a return on their money at various levals depending on their investment amount." (Reb., p. 8, lines 7-8) Thus, even though Mr. DeWilde indicates a bank may loan money under these circumstances at a 3.65% interest rate, he further states that blending the interest LPSC will pay to the bank and the investors reflects an approximate 6 to 7% overall interest cost for the first three years. (Reb., p. 8, lines 18-21)

Q. ARE THERE OTHER EFFECTIVE INTEREST RATES SUGGESTED BY THE INFORMATION PROVIDED BY THE LPLOA THAT INDICATE THE POSSIBILITY OF A HIGHER INTEREST RATE?

A. Yes. The annual "Interest Expense" identified in the LPLOA business plan ($25,950) would suggest an interest rate of 8.65%.

Q. WHAT DOES MR. DEWILDE STATE WILL HAPPEN TO THE CD AND THE BANK LOAN AT THE END OF THREE YEARS?

A. He does not specify. However, the business plan assumes that the note would be 36 months in term with annual interest paid monthly, and the principal repaid at the end of the term. Thus, LPSC would need additional funds to make a balloon payment on its bank loan and to repay or retire the CD that makes up the security for that loan.

Q. HOW DOES THE LPSC PLAN TO OBTAIN THE FUNDS TO FUND THIS BALLOON PAYMENT AND INVESTOR REPAYMENT?

A. The business plan "assumes" a commercial loan with an "assumed" interest rate of approximately 6%. (Justis Reb., Sched. GJ-01, p. 7) However, there is no evidence such a loan could or would be obtained to reimburse investors much less provide for essential reinvestment requirements.

Q. WOULD THE LPSC ALSO NEED FUNDS FOR IMPROVEMENTS TO THE SYSTEMS?

A. Yes. The business plan suggests a need for an additional $630,000 for system improvements in the 2024-2025 time frame.

Q. HOW DOES THE LPSC PLAN TO OBTAIN THE FUNDS TO FUND THESE IMPROVEMENTS?

A. The LPSC hopes that five years from now (2024) a United States Department of Agriculture loan will be available to it at "attractive terms." (Justis Reb., Sched. GJ-01, p. 7) This is also its plan for $150,000 in improvements it would hope to make in 2025. But, again, there is no evidence LPSC ultimately would be able to obtain the debt financing or equity investment it describes.

Q. WHAT TOTAL DEBT FINANCING NEEDS DOES THE LPSC APPEAR TO HAVE IDENTIFIED OVER THE FIRST FIVE YEARS, OR SO, OF ITS EXISTENCE?

A. There appears to be roughly a need for somewhere around $9.3 million of debt financing over that period of time.

Q. DOES CONFLUENCE RIVERS PROJECT THAT ITS NEED FOR DEBT FINANCING WILL BE ANYWHERE NEAR THAT AMOUNT?

A. No. Confluence Rivers plans to acquire the assets using equity. Additionally, Confluence Rivers has committed to move toward a 50-50 mix of equity and debt for its capital structure in future rate cases. Therefore, debt would be needed only to fund some part of the cost of improvements. Thus, Confluence Rivers' need for debt financing will be substantially less than that of the LPSC.

Q. HAVE YOU READ THE REBUTTAL TESTIMONY OF LPLOA WITNESS CHAD SAYRE?

A. Yes.

Q. MR. SAYRE MAKES REFERENCE TO WHAT HE DESCRIBES AS "CONFLICTING AND INCONSISTENT EVALUATIONS OF THE SYSTEMS" IN REGARD TO THE ENGINEERING REPORTS HE HAS SEEN. (REB., P. 5, LINES 15-16). WOULD YOU EXPLAIN THE PROCESS CONFLUENCE RIVERS HAS GONE THROUGH TO REACH ITS CURRENT PLANS FOR REHABILITATION OF THE SYSTEMS?

A. Based on engineering plans, preliminary plans suggested that the estimated cost of Port Perry improvements would be approximately $693,000 for the water system upgrades and $90,000 for the sewer system upgrades.

Q. WHAT ARE CONFLUENCE RIVERS' CURRENT PLANS FOR REHABILITATION?

A. The current estimated cost for Confluence River's planned improvements for Port Perry's water and sewer systems is $295,575, which includes all surveying fees,

engineering fees and contingencies. That estimate is itemized in the attached **Schedule JC-1C** and **Schedule JC-2C**. These schedules have been identified as Confidential in accordance with Commission Rule 20 CSR 4240-2.135(2)(A)4, 5, and 6.

Q. WHAT IS THE SOURCE OF THE CHANGED ESTIMATE?

A. The engineering reports initially produced as a part of Todd Thomas's direct testimony included costs for a third well house for the water system. Additionally, the engineering report for the wastewater system had an error (costs related to the Equipment Installation and Contractor O & P were included twice as a part of the estimate). The final engineering reports eliminated the third well and corrected for the extra Equipment Installation and Contractor O & P costs.

Q. WHY WAS THE THIRD WELL HOUSE REMOVED PRIOR TO THE FINAL ENGINEERING REPORT?

A. Initially Confluence Rivers planned on ensuring that the Port Perry back-up well's water would be disinfected. Because the current back-up well does not have a disinfection system and ties directly into the community's water distribution system, the most cost-effective method to add disinfection to this back-up water source would be to drill another well near the existing water ground storage tank, tie into a "to-be constructed" permanent disinfection system, and utilize the existing water ground storage tank for mandated residence time to allow disinfection to be effectual. Running a dedicated water line from the current back up well to the current water ground storage tank or building new ground storage with additional disinfection facilities would each cost more than drilling a third well

near the existing ground storage tank. After additional review of the situation it was determined that even although Port Perry's drinking water system at well one is currently being disinfected, there is no MDNR mandated drinking water disinfection for this community. With this finding, Confluence Rivers determined that with extensive rehabilitation and construction work the existing second well site could be utilized as a backup water source for the community and avoid construction of the third well.

Q. WOULD YOU EVER DESCRIBE PLANS AND ESTIMATES AT THIS STAGE AS ABSOLUTELY CONCLUSIVE?

A. No. In every case, CSWR companies will operate acquired systems for a period of time to see if actual experience and improved operations may address difficulties previously thought to require repairs. Additionally, even when repairs are pursued, CSWR will competitively bid the repairs to true third parties (usually local companies) to obtain the lowest price available (CSWR has no affiliated companies that perform construction work).

Q. IS CONFLUENCE RIVERS ASKING THE COMMISSION TO APPROVE ANY SPECIFIC LEVEL OF REPAIRS IN THIS ACQUISITION CASE?

A. No. It has been my understanding that regardless of estimates, the Commission will examine the actual dollars spent for reasonableness and prudence in a rate case prior to allowing such amounts to be a part of the rate calculation. Moreover, the practice routinely followed by CSWR's affiliates following an acquisition is to operate the properties for several months and then re-evaluate its repair estimates and plans based on that operating experience. This generally

has allowed us to reduce the cost of actual repairs because we were able, based on our hands-on experience with the systems, to identify less costly fixes for problems identified in our preliminary estimates.

Q. PLEASE DESCRIBE THE PLANS FOR REHABILITATION OF THE PORT PERRY WATER AND SEWER SYSTEMS PROVIDED BY LPLOA WITNESS SAYRE.

A. Mr. Sayre summarizes his proposed water and sewer system improvements on pages 3-4 of his Rebuttal Testimony. The estimates identified by Mr. Sayre are for well improvements, access roads, fence, disinfection, line improvements, and monitoring. These are the same type of improvements proposed by Confluence Rivers. LPLOA witness Glen Justis states that the LPLOA improvements total $670,000 ($40,000 in near term repairs, improvements, and system analyses, plus $630,000 of investments in future years. (Justis Reb., p. 8, lines 8-10).

Q. HOW DO THE LPLOA PLANS COMPARE TO THE CURRENT PLANS DEVELOPED BY THE PROFESSIONAL ENGINEER ON BEHALF OF CONFLUENCE RIVERS?

A. There are two major differences between Confluence Rivers' proposals and those of Mr. Sayre. The first is the fact that the existing second well cannot act as a back-up water source for the community. Well two is not currently functional as a backup water source for the Port Perry community. Delaying the second well rehabilitation and hydraulic analysis as mentioned in Mr. Sayre's testimony (p. 3, lines 10 – 16) will, if matched to the business plan submitted by LPSC, put the Port Perry community at risk for the loss of even basic provision of water

service for years. The second major difference is items listed as "minor replacements and repair items" (Sayre Reb., p. 4, line 10) are in Confluence Rivers' opinion safety and public health related. Confluence Rivers has an experienced water and sewer utility owner's sense of urgency to remedy public safety concerns, remedy potential public health exposure issues, and/or remedy provision of service reliability issues.

Q. MR. SAYRE ALSO QUESTIONS THE AGREEMENT ON CONSENT ("AOC") THAT CONFLUENCE RIVERS HAS NEGOTIATED WITH THE DEPARTMENT OF NATURAL RESOURCES IN REGARD TO THE PORT PERRY PROPERTIES. (REB., P. 6, LINE 3-14). WHAT IS THE BACKGROUND OF THAT AOC?

A. The AOC was entered into based on the group of 10 original water and wastewater systems to included in Confluence Rivers' initial asset transfer case. Many of the water and sewer systems had various urgent reinvestment needs and/or existing MDNR compliance or Missouri Attorney General enforcement actions.

Q. WHY DID CONFLUENCE RIVERS BELIEVE SUCH A STEP WAS PRUDENT IN REGARD TO THE PORT PERRY SYSTEMS?

A. As an experienced regulated water and wastewater owner/operator, CSWR/Confluence Rivers is committed to provide safe and reliable service. The MDNR AOC demonstrates that Confluence Rivers is aware of existing issues and ensures that while Confluence Rivers is working to remediate the items to

protect the public, it will not be subject to citations for what amounts to previous system neglect.

Q. WHAT ISSUES IS CONFLUENCE RIVERS AGREEING TO REMEDIATE AS TO THE WASTEWATER SYSTEM?

A. On the wastewater utility side of Port Perry, there are a couple major issues that could present serious liability issues and are currently not in compliance with MDNR minimum design standards. The current wastewater lagoon storage and wastewater irrigation fields do not have minimum security to protect the community. The Operating Permit Special Conditions states "The facility must be sufficiently secured to resist entry by children, livestock and unauthorized persons as well as to protect the facility from vandalism." Additionally, an existing MDNR Operating Permit Special Condition states "A least one gate must be provided to access the wastewater treatment facility and provide for maintenance and mowing. The gate shall remain locked except when opened by the permittee to perform operational monitoring, sampling, maintenance, mowing, or for inspections by the Department." Both the fence and the gate are failing. Below I have provided pictures of each.

Failing Fence Around Lagoon Storage

Failing Gate at Wastewater Plant

In addition to the wastewater access safety concerns, the current lagoon storage berms have been poorly maintained and have vegetation and trees growing in them. The existing MDNR Operating Permit Special Conditions of the permit states "The berms of the storage basin(s) shall be mowed and kept free of any deep-rooted vegetation, animal dens, or other potential sources of damage to the

berms." Keeping the lagoon berms free of deep-rooted vegetation prevents leakage of untreated sanitary waste to nearby water bodies via berms being pierced or weakened by root systems. Until Confluence Rivers can operate the existing wastewater system and determine that wastewater is not currently leaking into nearby water bodies an AOC is necessary to prevent future MDNR citations, potential fines, and potential stream remediation costs caused by the existing wastewater operation. A picture of the berm is found below.

Trees and Wooded Vegetation On Lagoon Berms

Finally, the current wastewater spray irrigation system is failing at multiple points._ Currently, sprinkler heads are applying wastewater discharge to a radial area of approximately 5' when the original design plans show 40'. The Operating Permit Special Conditions of the permit states "General Irrigation Requirements. The wastewater irrigation system shall be operated so as to provide uniform distribution of irrigated wastewater over the entire irrigation site." This lack of

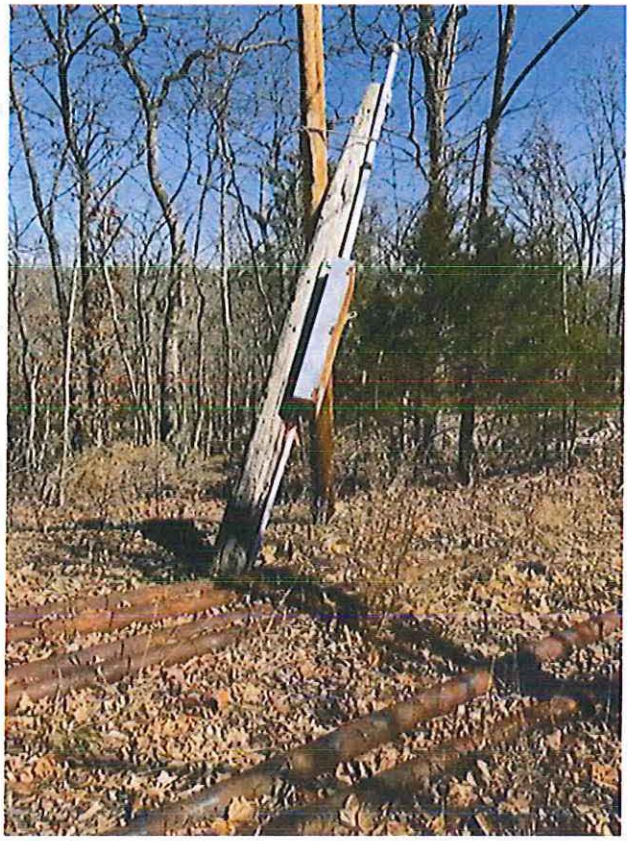
effective operations has previously caused ponding of untreated wastewater in the absorption fields which are subject to runoff during precipitation events. This untreated sanitary sewer effluent ponding may have already washed into receiving waterbodies, which is not in compliance with the permit. Confluence Rivers again as a responsible proactive wastewater utility has identified this issue as another MDNR operating permit special condition that needs to be addressed without bringing additional regulatory and remediation costs to the existing Port Perry rate payers. A picture of the sprinkler is found below.

Wastewater Spray Irrigation with 5 Foot Radial Distribution Rather Than 40 Foot

Q. WHAT ISSUES IS CONFLUENCE RIVERS AGREEING TO REMEDIATE AS TO THE DRINKING WATER SYSTEM?

A. On the drinking water side of Port Perry, all of well one's facilities are in need of immediate repairs. There are existing electrical safety concerns, basic housekeeping items that could put the drinking water system at risk and existing corrosion issues that risk the on-going operations of the utility system for the basic provision of water service. In addition, the existing functional well one and well house site do not have fencing around the site for any security to meet section 2.5. Security and Safety Measures of the Minimum Design Standards for Missouri Community Water Systems. This MDNR section states "Fencing around vulnerable areas of drinking water facilities such as treatment and storage facilities, pumping stations and wells with signs prohibiting unauthorized access." These regulations exist to prevent damage or harm to consumers of the drinking water. Moreover, well two is not operable as a back-up source of water to energize the drinking water system in the case of well one failure, which would not be in compliance with MDNR requirements for a second functional source for drinking water systems with above 500 residents. Well two is currently inoperable due to a poor design tie-in to the existing distribution system and a lack of upkeep or basic reinvestment. Well two's electrical line pole has fallen over and is lashed by ropes to an adjacent utility pole. Well two's electrical panel is rusted out and a safety hazard. Confluence River's well contractor was not allowed to even turn on well two during due diligence, per the current owners, due to water hammer issues that could purportedly "blow out" appliances and other home water infrastructure due to unregulated high pressures hitting the system from a pumping system not designed to interact with the existing

hydraulics of the drinking water distribution system. Lastly, an initial investigation by Confluence River's consulting engineer found it was likely that even if pump pressures did not damage nearby existing homes, that the existing pump and well could not hydraulically provide service to the entire Port Perry community. Since Port Perry is currently not in compliance with basic MDNR standards for a functional back up drinking water source, Confluence Rivers determined than an MDNR AOC was necessary to ensure that MDNR knew that Confluence Rivers would be working to address those issues in short order, and to ensure that while Confluence Rivers is working to remediate the items, it will not be subject to citations for what amounts to previous system neglect. A picture of the referenced electrical pole is found below.



Fallen Well Two Electrical Pole Lashed to Other Utility Pole

Q. WHEN DOES THE LPSC PLAN TO MAKE THE LARGEST AMOUNT OF ITS IMPROVEMENTS?

A. The business plan suggests that those will primarily happen in the 2024-2025 timeframe.

Q. DOES CONFLUENCE RIVERS PLAN TO WAIT THAT LONG TO MAKE IMPROVEMENTS TO THE SYSTEMS?

A. No.

Q. WHY NOT?

A. While the assets Confluence Rivers proposes to acquire from Port Perry are in better shape than some of the other systems CSWR has acquired in Missouri and elsewhere, there are still deficiencies in regard to Missouri Department of Natural Resources (MDNR) design standards and permits that need to be addressed. Those issues include improvements necessary to ensure effluent produced by the wastewater treatment facility always complies with MDNR permitted regulations about safety and the release of pollutants into Missouri waterways. The urgent repairs and refurbishment of both drinking water well sites are required to protect consumer safety and meet minimum MDNR guidelines for the provision of drinking water service to communities of Port Perry's size. LPSC's proposed improvement dates will leave Port Perry customers' without basic backup water source service and potentially expose residents and neighbors to untreated sanitary sewer effluent via irrigation short

circuiting or leakage through the existing berms. CSWR's experience indicates that the best way to deal with these types of issues is to address them head-on and not let problems and potential problem linger in a situation where we are addressing water to be consumed by customers and effluent that will be released into the environment.

Q. HAVE YOU READ THE REBUTTAL TESTIMONY OF LPLOA WITNESS GLEN JUSTIS?

A. Yes.

Q. AT PAGE 15, LINE 4 OF HIS REBUTTAL TESTIMONY, MR. JUSTIS ALLEGES THAT THE PRICE BEING PAID FOR PORT PERRY IS EXCESSIVE. HOW WAS THE PRICE DETERMINED?

A. The price was determined by an arms-length negotiated agreement between a willing buyer and a willing seller. There is no testimony presented by Mr. Justis or any other LPLOA witness that the current Port Perry owners would be willing to accept a lower price. And as LPLOA itself pointed out, there may be four or more other potential purchasers willing to pay a price for the assets that's greater than what Mr. Justus considers reasonable.

Q. DOES THE PRICE IN THIS CASE HAVE ANYTHING TO DO WITH THE RATES THAT WILL ULTIMATELY BE CHARGED TO RATEPAYERS?

A. No. There is no request for any special ratemaking treatment associated with any acquisition premium that may result. Confluence Rivers would anticipate that the net original cost of the system would be used by the Commission in setting rates.

Q. LPLOA WITNESS JUSTIS INDICATES THAT THE EFFECTIVE INTEREST RATE FOR CONFLUENCE RIVERS' DEBT MAY BE IN EXCESS OF 13%. IS THAT ACCURATE?

A. No. Initially, however, I want to note that there will be no debt associated with the purchase of the Port Perry assets. Confluence Rivers will use an infusion of capital (equity) to fund that purchase. However, even as to any debt that may be associated with repairs, there is no anticipation of debt costs in the amount identified by Mr. Justis.

Q. WAS THERE A TIME WHEN CSWR DID HAVE DEBT COSTS IN THE RANGE REFERENCED BY MR. JUSTIS?

A. Yes. As can be seen from earlier CSWR affiliate financing and rate cases, financing for a company attempting to establish itself as capable of acquiring, improving, and operating distressed water and sewer systems was only available at the rates referenced by Mr. Justis. The Commission found as follows as to that circumstance:

> In general, small distressed water and sewer systems are shut off from traditional capital markets because of potential liability associated with existing health and environmental compliance failures, lack of professional management, and a complex regulatory system.

(Report and Order, MoPSC File No. WR-2016-0064, p. 22-23 (July 12, 2016).

Q. HAS CSWR BEGUN TO MAKE PROGRESS IN THE AREA OF DEBT FINANCING?

A. Yes. In 2018, Confluence Rivers' corporate parent was able to secure a large institutional private equity investor, Sciens Capital Management, to provide the

funds necessary to purchase and finance the acquisition of additional small water and wastewater systems. These investors invest equity capital necessary to make the acquisitions and, in the event group members are unable to attract commercial financing from non-affiliated sources, also have pledged to provide debt capital necessary to make necessary system improvements. As a result, Confluence Rivers has more options available to it, than did it or its affiliates when the organization was attempting to establish itself.

Q. ARE THERE OTHER PROTECTIONS FOR CUSTOMERS IN REGARD TO FINANCING?

A. Yes. As a public utility regulated by the Missouri Public Service Commission, Confluence Rivers must come to the Commission for approval before entering into any debt financing. Perhaps, more importantly, Confluence Rivers may not raise rates except with approval of the Commission. Such proceedings include review of the prudence of repairs, the cost of such repairs and the reasonableness of other costs, to include debt costs. The Commission has shown itself to be able to identify and address those issues in the past and I would expect them to continue to do so in the future. Moreover, no party opposing Confluence Rivers' application has presented any evidence to conclude otherwise.

Q. IN REVIEWING THE LPLOA BUSINESS PLAN, ARE THERE ANY COSTS FOR WHICH YOU BELIEVE THE BUSINESS PLAN MAY NOT ACCOUNT?

A. Yes. It is unclear whether the business plan addresses the considerable costs spent to date by the LPLOA, and the additional costs LPSC would incur if it is

able to acquire the Port Perry assets – such as the estimated closing costs of that transaction. CSWR affiliates have acquired numerous water and wastewater systems in Missouri and elsewhere, and, as a result of that experience, the company is well aware that due diligence and closing costs, including legal fees and expenses, can substantially increase the total amount a buyer is required to pay in order to close an acquisition transaction. For the water and wastewater assets CSWR or its affiliates have acquired in Missouri thus far, closing costs have ranged from $12,000 to $105,000. We would expect closing costs for the transaction contemplated by LPSC to be similar, yet there's nothing in LPLOA's rebuttal testimony demonstrating the maximum loan amount upon which the proposal relies would be sufficient to cover both the likely purchase price and all closing costs.

Q. WHAT OTHER TYPES OF COSTS MIGHT LPSC INCUR?

A. An example would be the cost of future regulatory proceedings necessary to obtain Commission approval of the proposed acquisition. If LPSC succeeds in negotiating a definitive agreement to purchase Port Perry's assets, it must file an application for Commission authority to consummate that transaction. To obtain that approval, LPSC would have to demonstrate it is technically, financially, and managerially qualified to own and operate public water and wastewater systems and that the proposed acquisition is not detrimental to the public interest. In order to make the required filing and bear the burden of proof required by law, LPSC would need to pay legal counsel and other qualified experts. As with the closing-related costs I discussed earlier, it is not clear that the proceeds from the

discussed loan would be sufficient to cover those costs, in addition to the acquisition costs I discussed in the preceding paragraphs. Moreover, if one or more of the other three potential bidders LPLOA believes exist decides to contest LPSC's application in the same manner and to the same degree LPLOA has contested this application, those costs could be substantial. In a data request submitted August 30, 2019, Confluence Rivers requested information from LPLOA as to how much it had spent and expected to spend for its intervention in this case. As of the date of this testimony, LPLOA has refused to fully respond to that request. However, based on the limited information LPLOA did provide, we estimate its participation in this case will ultimately cost LPLOA an amount well in excess of $100,000. If LPSC is required to spend a similar amount to obtain Commission approval of its proposed acquisition of Port Perry's assets, it is unclear where will it obtain funds sufficient to pay those costs plus the other acquisition-related costs I previously discussed.

Q. ARE THERE OTHER CONCERNS ASSOCIATED WITH THE LPSC'S CONSTRAINED ABILITY TO OBTAIN FINANCING WITHIN THE FIRST THREE YEARS OF ITS PROPOSED EXISTENCE?

A. Yes. As conditional and potentially inadequate as the projected LPSC financing may be, it appears to the only funds that would be available to LPSC for at least three (3) years. Even assuming the maximum amount the bank has indicated it is willing to loan is sufficient to cover all the purchase and acquisition-related costs, that leaves no room for LPSC to readily obtain funds necessary to deal with existing system deficiencies, major system failures or other investment, repair,

and maintenance costs necessary to keep the water and wastewater systems operating in a manner that complies with MDNR regulations and provides safe, reliable, and adequate service, if the systems require something unexpected. The LPLOA's rebuttal testimony provides no answer to how it would obtain emergency funds in that situation.

LOCAL PUBLIC HEARING

Q. DID YOU ATTEND THE LOCAL PUBLIC HEARING THAT WAS CONDUCTED ON SEPTEMBER 10, 2019?

A. Yes, I did. I was present for the question and answer session and then listened to the testimony that was presented to the Commission.

Q. WHAT CONCERNS DID YOU HEAR THAT DAY?

A. I heard a variety of concerns. However, a prominent concern was in regard to the potential for future rate increases.

Q. WHAT IS CONFLUENCE RIVERS' INITIAL PROPOSAL IN REGARD TO RATES?

A. Initially, Confluence Rivers would provide service to the Port Perry service area utilizing the same rates and rules and regulations as are applicable today.

Q. WOULD THAT BE THE CASE INDEFINITELY?

A. No, and I don't think that would the case regardless of who would take over the systems.

Q. WHY IS THAT?

A. First, the water and sewer rates for Port Perry have not changed for over seventeen (17) years. Rates were last changed on May 15, 2002. It is unrealistic to believe that the cost to provide safe and adequate water and sewer services have not increased over that 17-year period. In our experience, the consequence of such unchanged rates over time is commonly a reduction of services provided and/or a lack of reinvestment in the water and sewer systems as demonstrated by the deficiencies noted in the preceding testimony. Either way, a day comes when those rates must be adjusted to return service to a higher quality and to upgrade the systems.

Second, it seems to be uncontroverted that the Port Perry systems are in need of upgrades. In terms of the list of water upgrades, Confluence Rivers and the LPLOA are fairly well aligned, although the timing of the proposed improvements is very different and Confluence Rivers' estimates of those improvements are lower. On the wastewater side of the community, Confluence Rivers has significant differences based on observations at the site during due diligence and Confluence Rivers intent to comply with MDNR minimum design standards and existing Port Perry operating permit special conditions.

Q. IS IT TRUE THAT CSWR'S COMPANIES ALWAYS RAISE RATES IMMEDIATELY AFTER ACQUISITION?

A. No. However, the systems acquired by CSWR companies generally do include the factors I just described – unchanged rates for many years (in one case (Hillcrest), it had been approximately 26 years since the last rate change when CSWR acquired the systems), a reduction in services provided to customers over

that time, and a need for repairs. Consequently, there have been rate changes within 17-24 months after acquisition for most of the CSWR operating companies. Elm Hills, on the other hand, is approaching two years post-acquisition and has not yet started the rate case process.

Q. HAS CSWR GIVEN SOME THOUGHT AS TO HOW TO MAKE CHANGES LESS DRASTIC?

A. Yes. This is certainly something to which we have given some thought. Certainly, the changes in regard to ownership and, ultimately, their impact on debt rates should help somewhat. However, it is also true that waiting until all projects are completed to seek a rate increase helps drive the increase experienced by customers. We are experimenting with asking for an initial rate increase earlier in the process, which should serve to be a practical "phase-in" of rate increases.

Q. DO YOU THINK THAT WILL COMPLETELY SATISFY CUSTOMERS?

A. No. I am certain that it will not, as no one likes a rate increase. However, hopefully, it will stagger the increase in a way that allows for some adjustment.

Q. DO YOU BELIEVE THAT THE LPLOA MEMBERS HAVE GOTTEN A FULL AND COMPLETE EXPLANATION FROM THE CURRENT OWNER AND CONFLUENCE RIVERS AS TO WHY THE OWNER IS SELLING TO CONFLUENCE RIVERS AND AS TO CONFLUENCE RIVERS' PLANS?

A. No. We are aware of at least three "town hall" type meetings that the LPLOA arranged to discuss these issues. Neither the current owner's counsel, nor Confluence Rivers representatives were allowed to participate in those meetings.

Q. WERE THE TOWN HALL MEETINGS STRUCTURED TO EXAMINE OPTIONS AVAILABLE TO THE PORT PERRY CUSTOMERS?

A. They did not appear to be. Attached as **Schedule JC-3** is a handout that was provided to people prior to one of the meetings. The handout and, it seems, the meeting were structured more to advocate for a LPLOA purchase of the system and plan an attack on Confluence Rivers' proposal, than to examine available options.

Q. WHAT ADDITIONAL INFORMATION WOULD YOU WANT THOSE PORT PERRY CUSTOMERS TO KNOW ABOUT THE CONFLUENCE RIVERS PURCHASE OF THE PORT PERRY ASSETS?

A. I want the customers to know that Confluence Rivers has the proven technical, managerial, and financial wherewithal to not only invest in the near term to address existing water and sewer utility infrastructure needs, but also Confluence Rivers has demonstrated its ability to provide the safe and reliable water and sewer service required to help a community thrive over the long term.

Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

A. Yes, it does.

AFFIDAVIT

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

I, Josiah Cox, state I am President of Confluence Rivers Utility Operating Company, Inc.; the attached surrebuttal testimony and schedules were prepared by me or under my direction and supervision; and the answers to the questions posed in that testimony are true and correct to the best of my knowledge, information, and belief.

JOSIAH COX

Subscribed and sworn before me this 23rd day of September 2019.

Notary Public

My commission expires: 01/31/2021

BRENDA EAVES
Notary Public, Notary Seal
State of Missouri
St Charles County
Commission # 13443468
My Commission Expires 01-31-2021

SCHEDULE JC-1C

HAS BEEN MARKED

CONFIDENTIAL

IN ITS

ENTIRETY

SCHEDULE JC-2C

HAS BEEN MARKED

CONFIDENTIAL

IN ITS

ENTIRETY

AUGUST, 2019 NEWSLETTER

VERY IMPORTANT

This letter is to inform you that the Missouri Public Service Commission has received a filing from Confluence Rivers, a utilities operator/consolidator, to purchase the current water and sewer assets that serve Lake Perry. If that filing is successful, there will be no opportunity for Lake Perry to manage its own destiny.

The Board of Trustees has retained a prominent attorney from St. Louis as well as an economic consultant from St. Louis and an engineering consultant from Columbia, Missouri. We have been very pleased with their expertise. Due to our concern that the MO-PSC may allow Confluence Rivers to take our utility services away from us, we are asking for your help. Some of the achievements to date and plans for your assistance are listed as follows:

1. We are filing testimony against the Confluence Rivers takeover of our water and sewer infrastructure.
2. Due to our concern that Confluence Rivers effort will permanently stop any other possibilities to any meaningful input on HOW our utilities will support us in the future, we have planned additional, organized ways you, as Stakeholders, can be involved.

How can you help and become involved?

1. We are scheduling two town hall meetings to inform all of you on what is going on and answer questions. One of the meetings will be in Perryville. The Perryville meeting is scheduled for Monday, August 12th at 7:00 p.m. This meeting will be held at the American Legion Colonnade room (the same room as our annual meeting), located at 312 N. Jackson St., Perryville, MO 63775. The other meeting will be held in St. Louis and is scheduled for Tuesday, August 13th at 7:00 p.m. This meeting will be held at the Lutheran Church of Webster Gardens in their Youth and Community Center. The address is 8749 Watson Road, Webster Groves, MO 63119. **We need all of you to attend one of these meetings so you can be informed and get your questions answered.**

2. We are scheduling a public hearing with representatives of the Public Service Commission the first week of September. **WE NEED YOU THERE. IT WILL BE HELD IN PERRYVILLE.** To show a sense of unity we are considering having a colored t-shirt for every attendee so anyone from the commission can easily see how many lot owners are interested.
3. A hearing will be held in Jefferson City on October 7th and 8th. It would be great if as many of you as possible could make the hearing. A big show of support for our position is important.

What else?

1. We will be looking for speakers at the PSC local hearing in Perryville. We cannot have all of you speak but would like some spokespersons to address the commission. We will assist you with talking points. This is where you can best let Jeff City know your thoughts.
2. We need more of you to sign the petition we circulated on May 1st. We really need 90% of lot owners and especially current utility customers to sign the petitions. You will be able to sign these with an attachment we have with this letter, at the town hall meetings or contacting a board member so we can accommodate you in some manner. **THIS ALONE IS A VERY IMPORTANT PART OF THIS PROCESS!!!!!** If anyone is willing to help in any way to get this petition signed or distributed, please let a board member know. One point on the petition – Please use your **Lake Perry** address on the petition and indicate if you are a current utility customer.

Board of Trustees Contact Information

	Home	Office	Cell
Rich DeWilde	573-547-8035	573-547-6596	
Diane Murray	573-547-3916		
Alan Frentzel	573-547-8741		573-517-3452
Vince Reinacher			618-534-8192
Brian Flentge			314-913-1190
Rick Burton			573-450-9257
Larry Jenneman			314-324-5944

TO THE MISSOURI PUBLIC SERVICE COMMISSION

Please take notice that the undersigned, being the owners of record of real property identified by address below, and within the Lake Perry Subdivision, hereby petition the Missouri Public Service Commission ("Commission"), express their opposition to the Application in Case Nos. WA-2019-0299 and SA-2019-0300, the Application of Confluence Rivers Utility Operating Company, Inc., for Authority to Acquire Certain Water and Sewer Assets and for a Certificate of Convenience and Necessity ("Port Perry Case"), and request the Commission deny said Application.

NAME	LAKE PERRY ADDRESS	SIGNATURE

Attachment 1