

**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, For a Certificate)	<u>Case No. WM-2018-0116</u>
Of Convenience and Necessity, and, in)	
Connection Therewith, To Issue)	
Indebtedness and Encumber Assets)	

STAFF MOTION FOR RELIEF FROM ORDER

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and for its *Motion for Relief from Order*, respectfully states:

1. On November 21, 2018, Lake Perry Lot Owners’ Association (“Owners’ Association”) filed its *Motion to Compel Answers to Certain Data Requests*, requesting that the Commission direct Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers”), or in the alternative, Port Perry Service Company (“Port Perry”), to provide full and complete answers to the Owners’ Association’s Third Set of Data Requests.

2. On November 30, 2018, Confluence Rivers filed its *Response to Motion to Compel*, requesting the Commission deny Owners’ Association’s request. On December 3, 2018, the Missouri Public Service Commission (“Commission”) issued its *Order Requiring Lake Perry to Reply and Staff to File Recommendation* where it, among other things, directed Staff to file a recommendation regarding the Owners’ Association’s *Motion*. In addition, the Commission directed any party filing a reply or recommendation to brief the discovery question in terms of the ultimate material issues which the Commission must resolve in this cause, listing those material issues with exact specificity.

3. As Staff played no role in the discovery requests at issue in the Owners' Association's *Motion*, and both the Association and Confluence are represented by counsel in this proceeding, Staff respectfully requests that it be relieved from the Commission's order to file a Recommendation in regard to the Owners' Association's *Motion*.

4. In regard to the ultimate material issues that must be resolved in this case, Staff generally agrees with the standards articulated in Confluence Rivers' Response. The matter at hand requires resolution of multiple issues, including whether the Commission should approve the acquisition of several small water and sewer utilities by Confluence, the issuance of certificates of convenience and necessity, and whether the Commission should approve Confluence Rivers' request to obtain financing. While the standards for each of these issues are slightly different,^{1,2,3} Staff, in its *Recommendation* filed March 6, 2018, its supplemental *Recommendation* filed September 17, 2018, and in its Direct Testimony filed November 19, 2018, stated its recommendation that the Commission approve the *Application(s)* of Confluence to acquire certain water and sewer utility assets. Staff's recommendation in those documents reflects an evaluation based on the technical, managerial and financial

¹ The Commission in determining whether to approve the acquisition of utility assets considers whether such acquisition is detrimental to the public interest. *Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980).

² The Commission, in determining whether to grant a CCN to an entity to provide utility services considers whether the construction and the operation are either necessary or convenient for the public service pursuant to Section 393.170.3, RSMo. To make this determination, the Commission generally considers five categories: 1) there is a need for the service, 2) whether the applicant is qualified to provide the proposed service, 3) whether the applicant has the financial ability to provide the service, 4) whether the proposal is economically feasible, 5) and whether the service would promote the public interest (see *In Re Intercon Gas, Inc* 30 Mo P.S.C. (N.S.) 554, 561 (1991).

³ The Commission in determining whether to approve a request to obtain financing considers whether the requested financing is not reasonably chargeable to operating expenses or income and has been reasonably required for purposes specified by statute (Section 393.200, RSMo).

capacity standards⁴ and on the Tartan Energy Criteria⁵ commonly applied by the Commission to such applications, and an initial finding that the proposed transfers of assets and granting of new CCNs as requested by Confluence Rivers are not detrimental to the public interest, and are necessary and convenient for the public service. Staff anticipates that any further material issues may be identified in parties' rebuttal testimony, which will be filed on December 18, 2018, pursuant to the procedural schedule filed in this matter.

5. To the extent that the Commission finds that further discussion of the discovery dispute between Confluence and the Owners' Association is necessary, Staff would propose either an additional telephone conference be scheduled pursuant to 4 CSR 240-2.090(8)(B) or a prehearing/discovery conference pursuant to 4 CSR 240-2.090(4).

WHEREFORE, Staff moves the Commission to relieve it from its obligation to file a recommendation concerning the Lake Perry Lot Owners' Association's *Motion to Compel Answers to Certain Data Requests*; to relieve it from its obligation to list with exact specificity every ultimate material issue involved in the *Motion* which the Commission will have to resolve in this cause; and grant such further and other relief as is just in the circumstances.

⁴ The technical, managerial and financial criteria consider an entity's experience in operating and managing utility resources, the experience of the personnel in operating and managing utility resources and the financial ability and history of an entity.

⁵ The Tartan Energy criteria contemplate the 1) need for service, 2) the utility's qualifications, 3) the utility's financial ability, 4) the feasibility of the proposal, and 5) the promotion of the public interest. Staff also commonly includes whether or not other utility entities are available to provide similar service.

Respectfully submitted,

/s/ Whitney Payne

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 4th day of December, 2018, to all counsel of record.

/s/ Whitney Payne