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 Assets and for a Certificate of Convenience and Necessity	)))))	File No. WA-2019-0299

REPLY TO LPLOA RESPONSE CONCERNING MOTION TO STRIKE

COMES NOW Confluence Rivers Utility Operating Company, Inc. ("Confluence Rivers" or "Company"), and, in reply to the Lake Perry Lot Owners Association ("LPLOA") *Response to Motion to Strike and/or to Limit Scope of the Proceeding* ("LPLOA Response"), states as follows to the Missouri Public Service Commission ("Commission"):

1. On September 6, 2019, Confluence Rivers filed its *Motion to Strike and/or to Limit Scope of the Proceeding* ("Motion to Strike"). The Motion to Strike concerns testimony related to a LPLOA proposal for which the LPLOA admits they have no contract to support.

2. The Motion to Strike further reminded the Commission that its review of these types of matters begins with the constitutional concept of property rights – the owners of property have a constitutional right to determine whether to sell their property or not. "To deny them that right would be to deny them an incident important to ownership of property. *A property owner should be allowed to sell his property unless it would be detrimental to the public*." *State ex rel St. Louis v. Public Service Commission*, 73 S.W.2d 393, 400 (Mo. 1934), *citing* *City of Ottawa v. Public Service Commission*, 288 Pac. (Kan.) 556 (emphasis added).

3. This standard was further explained by the Missouri Supreme Court as follows:

> To prevent injury to the public, in the clashing of private interest with public good in the operation of public utilities, is one of the most important functions of Public

> Service Commissions. It is not their province to insist that the public shall be *benefited*, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public *detriment*. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.'

State ex rel. St. Louis v. Public Service Commission, 73 S.W.2d 393, 400 (Mo. 1934). Therefore, "proposals," such as that made by the LPLOA, that have no evidence of a contract between the owner and the entity making the proposal have no relevance to an acquisition case.

4. The LPLOA Response argued that certain prior cases make its proposal relevant to the acquisition application in this case. Those cases are as follows:

> *State ex rel. Capital City Water Co. v. Mo. Pub. Serv. Comm'n.*, 850 S.W.2d 903 (Mo. App. W.D.1993) ("*Capital City Rate Case*");
>
> *Ag Processing v. Public Service Com'n.*, 120 S.W.3d 732 (Mo., 2003) ("*AGP Acquisition Premium Case*"); and,
>
> *In the Matter of the Application of Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks – L&P for Authority to Transfer Operational Control of Certain Transmission Assets to the Midwest Independent Transmission System Operator, Inc*., Case No. EO-2008-0046 (2008) ("*Aquila MISO/SPP Case*").

These cases have no bearing on the issue raised by Confluence Rivers' Motion to Strike.

5. The *Capital City Rate Case* concerned a water company rate case and the question as to how a contract should be reflected in the revenue requirement. It did not address Section 393.190.1, RSMo, or the constitutional issue associated with the sale of utility property and has no relationship to the issue at hand.

6. The *AGP Acquisition Premium Case* does concern a Section 393.190.1, RSMo matter. However, the case is specifically focused on the acquisition premium and whether it was appropriate for the Commission to decline to address the possible recoupment of that acquisition premium until a future rate case. Here, there is no request for an acquisition premium and the

LPLOA testimony concerns a completely speculative proposal, given the lack of a contract. The *AGP Acquisition Premium Case* does not require speculation about the Commission's future consideration of all relevant factors in the setting of rates. In fact, in differentiating between the general speculation about rates and the acquisition premium issue, the Court stated as follows: "While PSC may be unable to speculate about future merger-related rate increases, it can determine whether the acquisition premium was reasonable, and it should have considered it as part of the cost analysis when evaluating whether the proposed merger would be detrimental to the public." *AGP Acquisition Premium Case* at 736.

7. The *Aquila MISO/SPP Case* is unique in its own way and concerns a situation much different than that in this case. The following findings of fact provide background as to the referenced uniqueness:

- Aquila is already a member of Southwest Power Pool. Its predecessor companies, Missouri Public Service Company and St. Joseph Light and Power joined that organization in 1951 and 1958, respectively. Aquila currently contracts with Southwest Power Pool for certain services. Specifically, Aquila receives tariff administration, OASIS administration, available transmission capacity and total transmission capacity calculations, scheduling agent, and regional transmission planning from Southwest Power Pool. Aquila does not, however, participate in Southwest Power Pool's EIS market.

- In 1999, Aquila, then known as UtiliCorp, agreed to merge with St. Joseph Light & Power Company. That proposed merger required the approval of both this Commission and FERC. In its order approving the merger, FERC required the merged company to file a plan to join an RTO. At the time, Midwest ISO was the only FERC approved RTO in the area, so Aquila entered into an agreement to join Midwest ISO on July 16, 2001.

- In its testimony, Aquila confirmed that it filed the application currently before the Commission to satisfy its obligation under the 2003 FERC settlement with Midwest ISO. At the hearing, Aquila's witness, Dennis Odell, indicated Aquila's concern that it would be required to pay financial penalties to Midwest ISO if it breached its contractual obligation to again apply for membership in Midwest ISO. When asked at the hearing whether Aquila would have applied for membership in Midwest ISO in the absence of its obligation under the 2003 settlement, Odell replied that he did not know.

- As part of its application, Aquila submitted the results of a cost-benefit analysis performed by CRA International. CRA is an independent consulting firm hired by Aquila to analyze the costs and benefits of Aquila's various options for joining, or not joining, an RTO. After consulting with a stakeholder group that included Midwest ISO, Southwest Power Pool, Staff, and Public Counsel, Aquila instructed CRA to consider three scenarios: membership in Midwest ISO; membership in Southwest Power Pool; and a move to a stand-alone status in which Aquila would perform transmission and reliability related functions on its own. CRA completed the study on March 28, 2007, and Aquila submitted a copy of the study as part of its application, and as an attachment to Dennis Odell's direct testimony.

- One other development that occurred during the course of this case will have a definite impact on the possible benefits to Aquila from joining Midwest ISO. On July 1, 2008, in Case No. EM-2007-0374, the Commission approved the acquisition of Aquila by Great Plains Energy Incorporated, the parent company of Kansas City Power & Light Company (KCPL). KCPL is currently a member of Southwest Power Pool.

8. The Commission's decision also included the following –

- Nevertheless, Aquila has asked for permission to join Midwest ISO. Under other circumstances, the Commission might be inclined to defer to the business judgment of Aquila if there were a good reason to do so. However, it is clear that the only reason Aquila has applied to join Midwest ISO instead of Southwest Power Pool is its obligation to do so under a six-year-old agreement with Midwest ISO in a case before FERC.

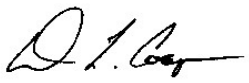
- Aquila is now free to apply to the Commission for authority to join whichever RTO best meets its needs.

9. Thus, Aquila was already a member of SPP, the agreement to join MISO had arisen many years before and under much different circumstances, Aquila itself provided the evidence of the various options it had for RTO membership, and, more recently, Aquila and KCPL had announced a transaction where Aquila would be purchased by KCPL, an existing member of SPP. This situation bears little resemblance to the asset sale case before the Commission in the *Aquila MISO/SPP Case*. Here, the LPLOA has no contract in place, so we do not know whether the LPSC can purchase the subject assets and, even if they can, we do not know at what price. There is no true alternative, as was present in the *Aquila MISO/SPP Case*.

10. Accordingly, Confluence Rivers requests the Commission strike the portions of testimony identified in Confluence Rivers' Motion to Strike or limit the scope of the proceeding to eliminate the issues raised by the LPLOA proposal.

WHEREFORE, Confluence Rivers respectfully requests the Commission issue its order granting Confluence Rivers' *Motion to Strike and/or Limiting the Scope of the Proceeding* in the manner, and for the reasons, stated herein.

Respectfully submitted,



Dean L. Cooper, MBE #36592
Jennifer L. Hernandez, MBE #59814
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65012
(573) 635-7166 telephone
(573) 636-7431 facsimile
jhernandez@brydonlaw.com
dcooper@brydonlaw.com

ATTORNEYS FOR CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on September 23, 2019, to the following:

Office of the General Counsel
staffcounselservice@psc.mo.gov
karen.bretz@psc.mo.gov

Office of the Public Counsel
opcservice@ded.mo.gov
john.clizern@ded.mo.gov

David Linton
jdlinton@reagan.com