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	)))))))	Case No. WA-2019-0299 Consolidated with SA-2019-0300

INITIAL BRIEF OF THE MISSOURI OFFICE OF THE PUBLIC COUNSEL

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October 31, 2019

PUBLIC

Renewed Motion to Strike and Continuing Objection to the Testimony of Kristi Savage-Clarke:

On September 27th the Office of the Public Counsel ("OPC") filed a motion to strike the surrebuttal testimony of Kristi Savage-Clarke. *Motion to Strike Surrebuttal Testimony of Kristi Savage-Clarke,* WA-2019-0299, pgs. 1 - 3. The OPC filed this motion based on the argument that Ms. Savage-Clarke's testimony was, in fact, the testimony of the Missouri Department of Natural Resources ("the MDNR"). *Id*. pgs. 1 – 2. The OPC's argument was fully confirmed during the evidentiary hearing when Ms. Savage-Clarke positively stated that she was speaking on behalf of the MDNR. Tr. vol. 2 pg. 108 lns. 7 – 10. Ms. Savage-Clarke also conceded that her testimony had been written during the normal course of her work for the MDNR, that her testimony was prepared with help from an attorney who also worked for the MDNR, and that she had been compensated for her work by the MDNR. Tr. vol. 2 pg. 80 lns. 14 – 24. There should thus be absolutely no question that Ms. Savage Clarke's testimony was testimony of the MDNR. There is also absolutely no dispute that the MDNR never requested to intervene in this case and was hence not a party to this case. Therefore, by admitting the testimony of Ms. Savage-Clarke, the Commission has admitted into evidence the testimony of a non-party to the case.

The introduction of testimony evidence belonging to a party who did not intervene in a case not only violates but completely undermines the Commission's rule related to intervention. *See* 20 CSR 4240-2.075. By permitting this kind of evidence, the Commission has essentially adopted the position that any individual or

organization who wishes to testify before the Commission need not seek to intervene itself and instead only has to find at least one other party who **is** in the case and is willing to offer the non-intervener's testimony as evidence. Such an outcome should be obviously problematic and is likely to lead to even more circumvention of the intervention rule in the future. Consequently, if the Commission desires for its rule governing the intervention of third-parties to have any practical effect the Commission should strike the testimony of Ms. Savage-Clarke for violating that rule.

In addition to violating the Commission's rules regarding intervention, the MDNR also raises a due process issue in that the OPC was unable to issue discovery on the MDNR prior to the evidentiary hearing. As such, the OPC was drastically hindered in its ability to properly test the veracity of Ms. Savage-Clarke's statements.[1] Again, by allowing this testimony to stand the Commission will only serve to encourage similar actions in the future as a means for parties to avoid discovery by submitting their testimony through third-party channels. The Commission should not allow this to happen and should therefore strike the testimony of Ms. Savage-Clarke.

Review of the Issues raised in this case:

Issue 1. Should the Commission find that Confluence Rivers Utility Operating Company, Inc.'s ("Confluence Rivers")

[1] And Ms. Savage-Clarke's statements certainly needed to be tested considering that what little cross-examination the OPC was able to perform demonstrated that much of what Ms. Savage-Clarke had to say was either wholly without support or simply wrong.

acquisition of the Port Perry Service Company's ("Port Perry") water and wastewater assets and certificates of convenience and necessity is not detrimental to the public interest, and approve the transaction?

The Commission should not approve Confluence Rivers' acquisition of the Port Perry water and wastewater assets and certificates of convenience and necessity. The Commission should instead find that Confluence Rivers' acquisition of the Port Perry water and wastewater assets is detrimental to the public interest and deny approval of the transaction. To explain why, the OPC provides the following argument, broken down into several parts.

General Overview of the Purpose of the Public Service Commission

The first step to understanding the OPC's position in this case requires an examination of the whole reason for the regulation of privately owned public utilities and the very purpose that this Commission is meant to serve. One of the five bullet points found in the Commission's own mission statement is a pledge to "establish standards so that **competition** will maintain or improve the quality of services provided to Missourians[.]" Missouri Public Service Commission, About the PSC, (Oct. 31, 2019), *https://psc.mo.gov/General/About_The_PSC* (emphasis added). This commitment by the Commission toward the protection and promotion of competition within the world of utility regulation is of great importance given the simple fact that such competition does not normally exist, or rather, does not otherwise play the same

part that it is normally assigned in this world. This point was well explained by the noted economist Alfred Kahn:

> To be sure, the government influences the functioning of the private competitive sectors of the economy as well in many ways – for example, by regulating the supply and availability of money, enforcing contracts, protecting property, providing subsidies or tariff protection, prohibiting unfair competition, providing market information, imposing standards for packaging and product content, and insisting on the right of employees to join unions and bargain collectively. In principle, these influences, however pervasive, are intended to operate essentially at the periphery of the markets affected. Their role is generally conceived as one of maintaining the institutions *within whose* framework the free market can continue to function, of enforcing supplementing, and removing the imperfections of competition – not supplanting it. In these sectors the government does not, or is not supposed to, decide what should be produced and how or by whom; it does not fix prices itself, nor does it control investment or entry on the basis of its own calculations of how much is economically desirable; the government does not specifically control who should be permitted to do what jobs, nor does it specify the permissible dimensions and characteristics of the product.
>
> In contrast, the government does do all these things with the public utilities. Here the primary guarantor of acceptable performance is conceived to be (whatever it is in truth) not competition or self-restraint but direct governmental prescription of major aspects of their structure and economic performance.

Alfred E. Kahn, The Economics of Regulation: Principles and Institutions vol. 1 pgs. 2 – 3 (1970). Thus, it is wise for the Commission to have tasked itself with being the great protector and champion of what little competition may still be found when dealing with regulated public utilities. But what then does it mean to promote competition?

In the traditional context, competition in a market exists as the result of market consumers being able to pick and choose from amongst a selection of

alternative providers. Consumers of public utility services, however, are generally not able to choose from whom they receive service. Thus, for the Commission to truly seek to promote and protect the virtues of competition, as laid out in its own mission statement, the Commission should seek to ensure that public utility consumers receive a level of service at an appropriate cost that is in line with what **would** have occurred **had a free market for utility services existed**. In other words, the Commission should ask: if customers **could** pick and choose among utility providers, who would they choose?

Any attempt to answer the question of which public utility customers would choose (had they the option) will naturally require comparative consideration of the various possible utility service providers that would/could have been available. To put the matter even more simply: establishing standards so that **competition** will maintain or improve the quality of services provided to Missourians requires the Commission to actually consider the **competing** bidders seeking to provide such service. The truth of this maxim can be readily discerned from the Commission's own past interpretations of the legal standard employed when considering whether or not to approve the sale of a utility.

Standard of Review for the Disposition or Sale of Assets and Other Legal Issues with the Current Application

The standard employed by the Commission when determining whether or not to approve the sale or transfer of a utility or its assets "is set forth in *Fee Fee Trunk Sewer, Inc. v. Litz*: '[t]he Commission may not withhold its approval of the disposition

of assets unless it can be shown that such disposition is detrimental to the public interest.'" *Envtl. Utils., LLC. v. PSC of Mo.*, 219 S.W.3d 256, 265 (Mo. App. W.D. 2007) (*quoting State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980)). In the past, the Commission has found "[t]he potential for a dramatic rate increase for customers absorbed" by the purchasing utility was "detrimental to the public interest." *Envtl. Utils., LLC.*, at 263. The Commission has also relied on the existence of better alternatives to the proposed application as grounds for determining a proposed transaction is "detrimental to the public interest." *Report and Order*, EO-2008-0046, pgs. 27 – 28 ("The detriment to the public interest occurs, in part, because Aquila's plan to join Midwest ISO would preclude it from joining Southwest Power Pool."). These types of considerations reflect the point raised in the preceding section: The Commission must examine the probable results of any proposed acquisition and compare those probable results to any other realistic alternatives that are presented if the Commission truly wants to serve the public interest and emulate the virtues of competition.

The examination of possible alternatives is not the only issue for consideration when determining whether a transaction is detrimental to the public interest. The Commission also needs to consider what the public's expressed desire is when evaluating the "public interest." *See State ex rel. Kan. City Power & Light Co. v. Pub. Serv. Com.*, 76 S.W.2d 343, 354 (Mo. 1934) (When considering who among competing service providers should be granted a certificate of convince and necessity, the Missouri Supreme Court found that "[d]oubtless, under the circumstances, the

interest and preference of the consumer was of some weight . . . ."); *Report and Order*, Case No. 12632 & 12674, 1955 Mo. PSC LEXIS 20, pgs. 18 – 19 ("While the preference of the city [of Kansas City] and the prior filing by Gas Service would not be of such weight as to control our decision, we do find that under all the facts and circumstances as shown by the evidence, **such factors should be given due consideration**." (emphasis added)). Again, the necessity of this kind of deliberation stems from an underlying goal of promoting (or at a minimum, emulating the effects of) competition because it is only by listening to the **actual expressed opinion of the public** that the Commission can best discern what would have occurred had there been a free market to provide competition among water utilities.

Compare the preceding with the position taken by Confluence Rivers, which essentially argues that a property owner's right to sell trumps any consideration of the public interest. Such a conclusion is clearly inconsistent with both the statutory language governing the transfer of assets and the legal decisions that have reviewed such transfers. RSMo. § 393.190.1; *Envtl. Utils., LLC.*, 219 S.W.3d at 263; *Report and Order*, EO-2008-0046, pgs. 27 – 28. Moreover, Confluence's apparent concern for the right of property owners to dispose of their property is somewhat ironic given that Confluence fought to keep the actual owners of the Port Perry system out of this case. *Renewed Response to Motion To Dismiss*, WA-2019-0299, pgs. 5 - 7. As the OPC has already pointed out, this actually creates a significant problem for this case. *Response to Staff Recommendation*, WA-2019-0299, pgs. 4 – 5.

The language of Missouri revised statutes section 393.190.1 plainly requires that for a transfer of assets it is necessary for the **selling** utility to seek approval, not the **acquiring** utility. RSMo. § 393.190.1 ("No . . . water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of **its** franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing **it** so to do." (emphasis added)). Therefore, the only way that the transfer of ownership for which Confluence Rivers seeks approval to be done in compliance with the plain language of section 393.109.1 would be if Port Perry were to bring an action seeking Commission approval of its decision to sell its own assets, which is not the same as the current case where Confluence Rivers has brought an action seeking Commission approval to buy those same assets. Nevertheless, the OPC will continue on to discuss the evidence presented in this case.

Evidence that Allowing the Acquisition of the Port Perry Service Company Assets by Confluence Rivers would be Detrimental to the Public Interest

The first and most obvious evidence to consider regarding whether the acquisition of the Port Perry assets by Confluence Rivers is detrimental to the public interest is the opinion of the public itself. In that regard, there can be absolutely no question that the public (by which the OPC means those individuals who currently

are or are likely in the future to be served by the current Port Perry water and sewer systems) are openly and aggressively against the acquisition. Just take a minute to read through the extensive testimony provided at the local public hearing held in these cases. Tr. vol. 1. Every single member of the public who stepped forward to make their voices heard at that meeting was pleading for the Commission to reject Confluence River's request to acquire the Port Perry assets. *Id.* The vast majority of these individuals even came wearing red shirts in a sign of solidarity regarding this opposition. *Id*. pg. 35 lns. 18 – 22, pg. 60 lns. 18 – 21, pg. 62 lns. 9 – 19. By comparison, not a single voice – not even one – was raised in favor of the acquisition.

The public was not content to merely express itself at the local public hearing, though. Members of the public also went further by taking the extraordinary step of collecting petitions showing their opposition to Confluence Rivers' requested acquisition. Over a hundred petitions were included in the record; every single one of which, again, shows members of the public **opposed** to Confluence Rivers being allowed to acquire the Port Perry assets. Roth, *Surrebuttal*, pg. 4, Schedule KNR-2. And then the public went further still, many even coming to attend the evidentiary hearing **in person** to further demonstrate their animosity to the acquisition. Tr. vol. 4 pg. 298 ln. 18 – pg. 299 ln. 4. The public even reached out to their elected representatives seeking aid to prevent this acquisition. *See*, *e.g.*, Roth, *Surrebuttal*, pgs. 3 – 4. Finally, and perhaps most importantly, the public joined together as a group to form the Lake Perry Service Company ("Lake Perry") "for the specific purpose of acquiring and operating the Lake Perry water and wastewater systems."

Justis, *Rebuttal*, pg. 5. Given all of these actions, there can be no question that the public is vehemently opposed to the proposed Confluence River's acquisition. And when the public comes together and unites in a single resounding voice to tell the Commission that they are staunchly opposed to the acquisition of the Port Perry water and sewer assets by Confluence Rivers, how can it possibly be said that such an acquisition is not detrimental to the public's interest?

As already discussed, the Commission should be considering the expressed desires of the public when considering whether a proposed action is "detrimental to the public interest." *State ex rel. Kan. City Power & Light Co.*, 76 S.W.2d at 354; *Report and Order*, Case No. 12632 & 12674, 1955 Mo. PSC LEXIS 20, pgs. 18 – 19. And in this case, that expressed desire goes beyond the mere animosity the public has toward Confluence Rivers, because here the public has undertaken the truly unique step of developing their own competing bid through the development of Lake Perry. Roth, *Surrebuttal*, pg. 3; Justis, *Rebuttal*, pg. 5. Moreover, this competing bid represents not only a viable but actually a **superior** alternative to Confluence Rivers that will otherwise be foreclosed if the Commission permits Confluence River's proposed acquisition.

Before discussing the various ways that Lake Perry is superior to Confluence Rivers, let us start with a review of the company itself. The company was founded by the members of the Lake Perry Lot Owner's Association, which directly represents the interests of the consuming public in this case. Justis, *Rebuttal*, pgs. 4 – 5. It has been completely financed through community contributions, which demonstrates the

public's commitment to maintaining their own water system. Tr. pg. 295 ln. 11 – pg. 296 ln. 20; DeWilde, *Rebuttal*, pg. 7. Lake Perry has further already secured commitments from operators for both the financial and technical side of the water and wastewater system management, including commitments from the licensed operator who is currently serving the system **and is thus already familiar with the system**. DeWilde, *Rebuttal*, pg. 9, Schedule RD-7. Finally, Lake Perry has developed an extensive and well documented business plan which includes an extremely detailed engineering report. Justis, *Rebuttal*, pgs. 4 – 6, Schedule GJ-01; Sayre, *Rebutta*l, Schedule CWS-2. Lake Perry has thus gone far above and beyond what would otherwise be expected of it (or really any proposed purchaser) and has, in fact, surpassed Confluence Rivers itself in the amount of data provided.

Considering, the amount of effort that Lake Perry has put forward, what has been the response of the Commission's Staff ("Staff") toward, this alternative bidder? The answer, sadly, has been for Staff to completely ignore the proposed Lake Perry bid. Dietrich, *Rebuttal*, Schedule ND-d2 pg. 6. The excuse that the Staff has put forward for ignoring the Lake Perry bid has been simply and solely that the bid was not accepted by Port Perry. *Id*. However, this rationale creates a truly dangerous precedent. You see, the **reason** that there is no competing bid in this case is because Confluence Rivers has been working hard behind the scene to ensure that no other bid was capable of being considered. They did this by having their own legal staff instruct the current owners of Port Perry not to consider or even discuss any other potential bidders. DeWilde, *Rebuttal*, pgs. 10 – 11, Schedule RD-8; Roth, *Surrebuttal*,

pg. 13. This was followed by sending *Cease and Desist* letters to Lake Perry when it approached the current owners of Port Perry with a potential competing bid to again try and derail any other offer. DeWilde, *Rebuttal*, pgs. 10 – 11, Schedule RD-10; Roth, *Surrebuttal*, pg. 13. As such, Staff's excuse for not considering the competing bid in this case is really the direct result of the actions that Confluence Rivers has taken.

This should already be clear (but just in case it is not), the OPC considers it imperative to point out that the Staff's decision to ignore a competing offer because Confluence Rivers is ordering or threatening the seller not to consider competing bids is wholly unacceptable. The Commission needs to **consider** the alternative buyers for a system, even if it ultimately determines that those alternative bids do not render the current proposal "detrimental to the public interest." If the Commission fails to do this – if the Commission accepts Staff's position that other potential buyers need not be considered so long as the first buyer "through the door" is able to legally scare the sellers into not accepting or even discussing any other offer – then the Commission will be establishing a precedent that has the strong potential to render it blind, deaf, and dumb to important facts in future cases.[2] Moreover, the Commission will be adopting a precedent that **directly undercuts** competition in the market, as can already be seen in this case. If the Commission wishes to stand by its own mission statement to any degree whatsoever, therefore, it must seek to prevent this outcome and reject Staff's proffered rationale for not considering Lake Perry's competing bid.

[2] Not to mention encouraging future potentially unethical behavior on the part of prospective buyers.

Apart from Staff's decision to ignore the Lake Perry bid, the only other major consideration paid to the Lake Perry offer came from the OPC and the MDNR. The OPC's consideration will be discussed later, so for now let us focus on the testimony of the MDNR. The MDNR testimony mostly focused on its belief that Lake Perry did not possess the Technical, Managerial, or Financial ("TMF") capacity to operate a water or wastewater system. Savage-Clarke, *Surrebuttal*, pg. 6. However, a close examination of the MDNR testimony reveals that the MDNR is either being illogically inconsistent with how it considers these factors, or else is greatly misinformed about this case as a whole.

Let us start with the first part of the TMF standard: technical. Nothing in the MDNR testimony actually discusses Lake Perry's technical capacity. Tr. vol. 2 pg. 81 lns. 20 – 24. Moreover, the record clearly shows that Lake Perry has commitments from a licensed water and wastewater operator to run the systems. DeWilde, *Rebuttal*, pg. 9, Schedule RD-7; Tr. vol. 2 pg. 82 ln 16 – pg. 83 ln 1. This is consistent with Confluence Rivers, who also intends to hire third-party operators to manage the systems. Cox, *Direct*, pg. 8. Therefore, Lake Perry clearly has as much technical capacity to operate these systems as Confluence Rivers does.

The second standard, managerial capacity, fares no better than the first. Again, nothing in the MDNR testimony actually discusses Lake Perry's managerial capacity. Tr. vol. 2 pg. 83 lns. 2 – 6. Also, Confluence River's own testimony indicates that their "managerial capacity" stems almost entirely from the fact that they have managed to hire a third-party company to handle their accounts. Cox, *Direct*, pg. 9.

So apparently, all that is required for managerial capacity from the MDNR's perspective is the ability to hire third parties to do the necessary work. Tr. vol. 2 pg. 83 ln. 23 – pg. 84 ln. 11. Lake Perry is just as capable as any other party when it comes to hiring outside workers to manage a water system and could easily hire the exact same company that Confluence Rivers has, so it clearly has the same level of managerial capacity under the MDNR's own standards as Confluence Rivers.

The last TMF factor is financial capacity and it is here where MDNR actually does have something to say. Unfortunately, what the MDNR has to say is demonstrably false. The MDNR sates its belief that Lake Perry lacks financial capacity to operate the water and wastewater systems for two reasons: (1) Lake Perry is putting off necessary repairs to meet MDNR minimum standards, and (2) Lake Perry does not have a reserve fund for emergency equipment replacement reserves. Kristi-Savage, *Surrebuttal*, pg. 7. As to this first point, the evidence presented by **several** engineering reports showed that these systems already meet MDNR minimum standards. Sayre, *Rebutta*l, pgs. 3 – 4; Justis, *Rebuttal*, Schedule GJ-04; *see also* Justis, *Rebuttal*, pgs. 8 – 9. In fact, Confluence River's own updated engineering reports showed that they intended to **forego** the very same improvements that the MDNR accused Lake Perry of putting off. Cox, *Surrebuttal*, pgs. 11 – 12. So this first claim by the MDNR is obviously wrong.

The second half of the MDNR's complaint as to financial capacity needs even less consideration to dismiss. The MDNR witness could not state how much money Lake Perry should have for an emergency equipment replacement reserve. Tr. vol. 2

pg. 92 ln. 20 – pg. 93 ln. 8. The MDNR witness also seems to have overlooked the fact that Lake Perry has significant cash reserves available. Tr. vol. 2 pg. 178 lns. 13 – 22. It is therefore very unclear what, if anything, the MDNR has based this claim off of and the claim again appears to be completely false.

Having now examined all three TMF capacity factors, it should be clear that the testimony of the MDNR is simply wrong. Lake Perry possess every bit as much TMF capacity as does Confluence Rivers, and, indeed, quite possibly more. As such, we should now begin considering the various ways that Lake Perry's acquisition of the Port Perry assets will serve as a **far better alternative** to Confluence River's proposed acquisition. By doing so, it will become much easier to see how the acquisition of the Port Perry water and wastewater systems by Confluence Rivers will be "detrimental to the public interest" as it will foreclose the empirically established superior alternative. *See Report and Order*, EO-2008-0046, pgs. 27 – 28.

Make absolutely no mistake, the residents currently being served by the Port Perry water and wastewater assets will ultimately end up paying more for services under Confluence Rivers than they will under Lake Perry. There are numerous reasons for this, including: financing terms, improvement costs, and buried third party costs. Let us start with financing. Lake Perry proposes to finance its acquisition of the Port Perry assets using a certificate of deposit backed by community contributions. Tr. pg. 295 ln. 11 – pg. 296 ln. 20; DeWilde, *Rebuttal*, pg. 7. Lake Perry has secured commitments for debt financing with fixed rates of 3.65% and 4.45%. *Surrebuttal*, Keri Roth, pg. 4. Taking into consideration the other factors of its

financing plan, this will result in a total cost of debt for Lake Perry of around 8.65%. Justis, *Rebuttal*, pg. 10.

Now let us consider Confluence Rivers. Unlike Lake Perry, Confluence Rivers intends to purchase the Port Perry assets not with debt, but rather, with equity. Cox, *Surrebuttal*, pg 10. The cost of equity is generally more than the cost of debt, so right off the bat it is likely that this will drive up the cost of financing. Tr. vol. 4 pg. 290 lns. 10 – 13. Unfortunately, though, it is difficult to do a direct comparison because Confluence River's CEO *conveniently* forgot how much of a return on equity the company was requesting in its now ongoing rate case. Tr. vol. 2 pg. 44 lns. 6 – 19. Still, it is easy to guess how much return on equity the company will seek in the future by considering what it has gotten in the past cases filed by its affiliates. Specifically, Confluence Rivers' affiliates have received returns on equity of 13% and 12% in the Hillcrest and Indian Hills rate cases respectively. *Report and Order*, WR-2016-0064, pg. 25; *Report and Order*, WR-2017-0259, pg. 1. If Confluence Rivers therefore ultimately seeks a return on equity in line with these past cases for its affiliates, its ratepayers will be paying far more than they would under Lake Perry's financing arrangements.

Of course, financing is not the only problem. In addition, the evidence suggests that Lake Perry is capable of undertaking the necessary improvements and maintenance of the Port Perry system at much lower costs. This is because Lake Perry intends to make use of local resources to minimize costs. Justis, *Rebuttal*, Schedule GJ-01. Also, because the Lake Perry service company will be operated

directly by the people receiving service, it has every incentive to keep expenses in check. Justis, *Rebuttal*, pgs. 11, 19. This is the complete opposite of Confluence Rivers, who has a perverse incentive to build rate base regardless of the impact on the community. *Id.* To see a concrete example of this, just compare the cost estimates found in the first engineering report prepared by both companies. *Compare* Sayre, *Rebutta*l, Schedule CWS-2, *and* Justis, *Rebuttal*, Schedule GJ-04. Of course, Confluence Rivers might attempt to rebut this by pointing out that it has recently re-assessed its engineering analysis and is now predicting a much lower level of investment will be needed. Cox, *Surrebuttal*, pgs. 11 – 12. What Confluence Rivers would be failing to consider in that circumstance, however, is that Lake Perry is **<u>also</u>** capable of amending its prior engineering reports and, given that Lake Perry's initial estimates were lower than Confluence Rivers, its re-assessed costs are likely to be less as well. Tr. pg. 289 lns. 14 – 20.

The final concern that the OPC has pointed out is the buried costs that Confluence Rivers has included in its application. By far the most egregious of these are the consulting fees that Confluence Rivers intends to pay to the current owner of Port Perry. These costs amount to ** ______________________________ ______________________________ **. Tr. vol. 3 pg. 88 ln. 6 – pg. 89 ln 14. Such costs serve no real purpose other than to entice the current owners into selling the systems. These costs, and others like them, are emblematic of the bloat that drives up Confluence River's operating costs. Examples showing the effect of

such bloat can be seen directly in the information Confluence Rivers provided to the OPC with regard to its current rate case. Roth, *Surrebuttal*, pg. 6, Schedule KNR-6.

Confluence Rivers is currently engaged in a rate case before this Commission where it is seeking an increase to rates that its initial data suggests will result in average monthly rates of $61 for water and $68 for wastewater services. Roth, *Surrebuttal*, Schedule KNR-6; *see also* WR-2020-0053. While the company is not currently asking to increase the rates now being paid by Port Perry customers, it is ridiculously unrealistic not to expect that Confluence Rivers will ultimately seek to consolidate the Port Perry ratepayers with its other customers. Therefore, the only genuine expectation if Confluence Rivers acquired the Port Perry system is that the current Port Perry customers will ultimately be paying costs at or near those requested in Confluence River's current rate case, if not more. When combined, the rates for water and wastewater services Confluence Rivers is currently seeking for its other customers is twice as high as Lake Perry's proposed combined rate of $64.24. *Rebuttal*, Glen Justis, pg. 18. This point bears repeating: if Confluence Rivers is permitted to acquire the Port Perry water and wastewater assets, then customers will almost certainly end up paying double what they would under Lake Perry.

In the end, one inescapable fact remains: ratepayers are far, far more likely to end up paying more under Confluence Rivers then they would under Lake Perry for the same or similar service. This alone should prove that the Confluence River's acquisition is detrimental to the public interest. And if this fact is coupled with the reality that the public has unanimously voiced their disagreement with the proposed

Confluence Rivers application, a single clear answer emerges: Confluence River's requested application should be denied.

<u>Issue 2.</u> If so, should the Commission condition its approval of Confluence Rivers' acquisition of Port Perry and, if so, what should such conditions be?

The Commission should not grant approval of Confluence Rivers' acquisition of the Port Perry water and sewer assets. However, if the Commission makes the unfortunate decision to grant Confluence Rivers' requested application regardless, then it should, at a minimum, place on the acquisition those conditions set forth in Staff's recommendation and the rebuttal testimony of the Association witness Glen Justis. *Rebuttal*, Glen Justis, pgs. 21 – 22.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this *Initial Brief* and grant the relief requested herein.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this Thirty-first day of October, 2019.

/s/ John Clizer