

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

RESPONSE TO STAFF RECOMMENDATION

COMES NOW the Office of the Public Counsel (“OPC”) and for its *Response to Staff Recommendation*, states as follows:

1. On March 29, 2019, Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers”) filed its application seeking authority from the Public Service Commission of the State of Missouri (“the Commission”) to acquire all or substantially all of the assets currently used by the Port Perry Service Company to provide retail water and sewer utility services, which included its certificate of convenience and necessity (“CCN”).

2. The Staff of the Commission (“Staff”) filed its *Recommendation* regarding the above referenced application on May 31, 2019. Specifically, Staff recommended that the Commission grant Confluence Rivers the authority requested in the company’s application subject to several conditions.

3. Contrary to the position reached in the Staff’s *Recommendation*, the acquisition of the assets of the Port Perry Service Company by Confluence Rivers

would be contrary to the public interest and therefore the Commission should reject Staff's *Recommendation* and deny Confluence Rivers the authority it has requested.

4. As the *Memorandum* attached to Staff's *Recommendation* itself points out, the Commission generally applies a set of criteria originally developed in a CCN case filed by the Tartan Energy Company (which are now usually referred as the "Tartan criteria") when considering a request for a CCN.

5. One of these stated Tartan criteria is whether the granting of the requested CCN constitutes a "promotion of the public interest."

6. In this case, the Staff's *Recommendation* provides no real evaluation of this "promotion of the public interest" criteria other than to rely on prior Commission statements to the effect that "positive findings with respect to the other four [Tartan] standards . . . will **in most instances** support a finding that an application for a CCN will promote the public interest." (emphasis added).

7. While this kind of logic could be considered acceptable for an ordinary CCN application case, it is most certainly **not** acceptable in the present situation where the public itself (meaning those members of the public who are directly affected by this application) has taken the extraordinary step of entering an appearance before this Commission for the sole purpose of opposing Confluence River's application.

8. Curiously, Staff's *Recommendation* goes as far as to acknowledge that those members of the public who are being served by the subject water and sewer systems oppose the acquisition and are themselves actively attempting to acquire

ownership over the same systems (using the Lake Perry Lot Owners Association as the legal vehicle for accomplishing this goal), yet Staff refuses to consider the public's expressed interest in purchasing these systems as part of its evaluation.¹

9. In doing so, Staff has not only dismissed the expressed interest of the public but has now also concluded that the public's interest is best served by the Commission adopting a course of action that runs contrary to the very interest that the public itself has unequivocally expressed.

10. Such actions by Staff serve only to benefit the interests of the acquiring service company to the detriment of the public and hence represent a major flaw in Staff's *Recommendation*.

11. Nor is this the only issue regarding Staff's *Recommendation* that is worth addressing. Another major concern with Staff's *Recommendation* is the simple fact that, **

** , Staff has either failed or refused to recommend placing any condition on the acquisition that would prevent Confluence Rivers from recovering the value for this difference (what is otherwise known as an acquisition premium) from ratepayers.

12. The failure to include such a condition would effectively open the door for Confluence Rivers to attempt to recover this acquisition premium in a later filed

¹ However Staff does rely on the public's involvement in the case as a means of forgoing the need for Confluence Rivers to supply public notice in the case. Specifically, the Staff states: "[s]ince the [Lake Perry Lot Owner's] Association, whose members include PPSC customers, has intervened, Staff asserts that there is not a need for separate customer notice regarding this pending case."

rate case, thus further illustrating why this acquisition is detrimental to the public interest.

13. In addition, Staff's *Recommendation* overlooks what should be considered a rather critical problem with this case, in that the Port Perry Service Company (the current owners of the water and sewer systems subject to this case) have failed to seek authorization to sell the subject systems as required by section 393.190.1. 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)).

14. No doubt other parties to this case may well argue that Confluence River's application is itself an attempt to comply with this statutory requirement; however, to argue as such would overlook the obvious fact that section 393.109.1 requires the **selling** utility to seek approval, not the **acquiring** utility.

15. In this case, the selling utility, the Port Perry Service Company, is not a party to this case and has not otherwise sought the Commission's approval for the sale of the assets that make up the subject water and sewer systems.

16. In fact, as the situation currently stands, the only way for the transfer of ownership for which Confluence Rivers seeks approval to be done in compliance

with the plain language of section 393.109.1 is for the Port Perry Service Company to itself be joined as a party to this case as a joint applicant alongside Confluence Rivers.

17. Given the forgoing, the OPC asks that the Commission reject the conclusions reached in Staff's current *Recommendation* and further requests that the Commission deny Confluence River's application in its entirety. In addition, the OPC also requests an evidentiary hearing related to these issues outlined in this *Response to Staff Recommendation* so as to permit further development of a factual record as necessary to resolve said issues.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this *Response to Staff Recommendation*, reject Staff's *Recommendation* for the reasons laid out in this response, deny Confluence River's request for authorization to acquire the CCN currently in the possession of the Port Perry Service Company, issue an order scheduling an evidentiary hearing for this matter, join the Port Perry Service Company as a party, and take any such further actions as necessary.

Respectfully submitted,
OFFICE OF THE PUBLIC
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CERTIFICATE OF SERVICE

