

In the Matter of:

THE APPLICATION OF CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC., etc.

WA-2019-0299 VOL. II

October 07, 2019



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

October 7, 2019

Jefferson City, Missouri

Volume 2

In The Matter Of The Application of)
Confluence Rivers Utility Operating)
Company, Inc. For Authority to Acquire) File No. WA-2019-0299
Certain Water And Sewer Assets And For))
A Certificate Of Convenience And)
Necessity)

CHARLES HATCHER, Presiding
REGULATORY LAW JUDGE

RYAN A. SILVEY, Chairman
WILLIAM KENNEY,
MAIDA COLEMAN,
COMMISSIONERS.

REPORTED BY:
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FOR: Staff of the Missouri Public Counsel Commission

1 JUDGE HATCHER: Let's bring this proceeding to
2 order and go on the record. Good afternoon. Today is October
3 7th, 2019. The Commission has set this time for an evidentiary
4 hearing in the case In The Matter Of The Application Of
5 Confluence Rivers Utility Operating Company, Inc. For Authority
6 To Acquire Certain Water And Sewer Assets And For Certificate Of
7 Convenience And Necessity. This is File Number WA-2019-0299,
8 which had been previously consolidated with SA-2019-0300.

9 My name is Charles Hatcher, and I am the
10 regulatory law judge presiding over this hearing. Let's go and
11 have Counsel make their par-- let's go ahead and have Counsel
12 for parties make their entries of appearance.

13 Confluence Rivers, please.

14 MR. COOPER: Thank you, Your Honor. Dean Cooper
15 and Jennifer Hernandez from the law firm of Brydon, Swearngen
16 and England appearing on behalf of Confluence Rivers Utility
17 Operating Company, Inc., and the court reporter has the address.

18 JUDGE HATCHER: Thank you.

19 And for Staff?

20 MS. BRETZ: Karen Bretz and Mark Johnson for
21 Staff, and the court reporter has our information too.

22 JUDGE HATCHER: Thank you.

23 And for Public Counsel?

24 MR. CLIZER: John Clizer appearing on behalf of
25 The Office of the Public Counsel, and I have supplied my

1 information to the court reporter already.

2 JUDGE HATCHER: Thank you.

3 And for Lake Perry Lot Owners?

4 MR. LINTON: Good morning, Judge. David C.
5 Linton on behalf of The Lake Perry Lot Owners' Association from
6 McCarthy, Leonard and Kaemmerer, and the court reporter has my
7 contact information as well.

8 JUDGE HATCHER: Thank you all. Right now, I'd
9 like to ask everyone to please silence your cell phones.

10 And then let's move on to preliminary matters.
11 We have two that I want to address; one we've already talked
12 about before we got started, that's the exhibit numbers. For
13 the record, we divvied those up; 0 to 99 for Confluence Rivers;
14 100 to 199 for Staff; 200 to 299 for The Public Counsel; and 300
15 to 399 for the Lot Owners.

16 The other is that we do have before us an
17 application for a Certificate of Convenience and Necessity. So
18 I just wanted to also make sure that the parties were aware that
19 we will need to make sure that the record includes the Tartan
20 factors.

21 Any other preliminary matters that we need to
22 get started?

23 Mr. Cooper?

24 MR. COOPER: Yes, and I saw that line in your --
25 in your order that was issued late -- late last week. I think

1 the Company's position and has been that it is purchasing
2 certificates from the existing public utility, and that only in
3 the alternative would it seek new and different Certificates of
4 Convenience and Necessity. So I -- this may be something that
5 is most appropriate to debriefing ultimately, but --

6 JUDGE HATCHER: That's fine. I understand that
7 is the Company's position.

8 MR. COOPER: Thank you, Your Honor.

9 JUDGE HATCHER: All right. Thank you.

10 And then we have the witness lists that were
11 submitted, and we will be going in order with those witnesses.
12 And then, now we will turn to opening statements. The order
13 that I have is Confluence for opening statements. Confluence
14 Rivers followed by Staff, Public Counsel, and then Lot Owners.

15 So Confluence Rivers, would you like to please
16 come on up and get us started?

17 MR. COOPER: Good morning. As we just
18 introduced ourselves, my name is Dean Cooper. I'm appearing for
19 Confluence Rivers.

20 COMMISSIONER KENNEY: Excuse me, Mr. Cooper.
21 Can I get one of those handouts?

22 MR. COOPER: Yes. There's a stack there.

23 JUDGE HATCHER: I am sorry. I did not know they
24 were the openings.

25 MR. COOPER: As we were stating a few minutes

1 ago, my name is Dean Cooper along with Jennifer Hernandez. We
2 represent Confluence Rivers Utility Operating Company, Inc. In
3 this case, Confluence Rivers seeks to purchase the Certificates
4 of Convenience and Necessity and water and sewer assets of Port
5 Perry Service Company.

6 As of its most recent annual report Port Perry
7 Service Company served approximately 370 water customers and 248
8 wastewater customers in and around the Lake Perry subdivision.
9 The Lake Perry subdivision is, as set out, actually, in the
10 testimony of the intervener association, a private, gated, 1,800
11 -- approximately 1,800-acre recreational lake development
12 located in western Perry County, Missouri.

13 It has a number of amenities, 11 miles of paved
14 roads, office building, and a variety of other facilities, and
15 many of the homes and lots are second homes that are used for
16 vacation and recreation. Port Perry first obtained its CCNs in
17 1973 from this Commission. The existing water and sewer rates
18 were put into place in May -- on May 15th of 2002.

19 Now, the assets that Confluence Rivers proposes
20 to acquire from Port Perry are in better shape than some of the
21 other systems that Confluence Rivers affiliate, CSWR or Central
22 States Water Resources, has acquired in Missouri and elsewhere.
23 However, there are still deficiencies in regard to both Missouri
24 Department of Natural Resources design standards and permits
25 that need to be addressed by the Company.

1 As you may remember, Confluence Rivers currently
2 owns and operates nine water and nine sewer systems in the state
3 of Missouri, serving approximately 548 water and 595 sewer
4 customers. It's currently, as we stand here today, a water
5 corporation, a sewer corporation, and a public utility as those
6 terms are defined by the Missouri statutes.

7 Earlier this year, in February, the Commission
8 stated as follows in regard to Confluence Rivers: Considering
9 the present troubled nature of the systems at issue, the
10 Company's sound track record in rehabilitating similarly
11 situated systems, the Company's ability to acquire, maintain,
12 and operate the systems, and the statutory obligation of the
13 Commission to ensure safe and adequate service, allowing the
14 Company to acquire the Selling Company's assets, per the terms
15 and conditions of the stipulation in that case, will not be
16 detrimental to the public. That was the case where the Company
17 acquired the nine water and nine sewer systems that I mentioned
18 previously.

19 Confluence Rivers -- well, let me start with
20 this: There is no financing application in this case as there
21 has been in some of the previous CSWR affiliate cases. That's
22 because Confluence Rivers will finance the purchase with equity
23 from its ultimate parent, CSWR, LLC. Any future debt financing
24 that might be needed would be subject to the approval of the
25 Commission in a financing case, as well as reviewed in a rate

1 case if that debt were used to derive the cost of capital.

2 Let's talk about the standard, the transfer of
3 assets, the transfer of the franchise as it's referred to in the
4 statute or the CCNs. The standard for that is derived from a
5 1934 Supreme Court case here in the state of Missouri. It was
6 set up by the idea that the owners of property have a
7 constitutional right to determine whether to sell their property
8 or not, and the court said, "To deny them that right would be to
9 deny them an incident important to ownership of property. A
10 property owner should be allowed to sell his property unless it
11 would be detrimental to the public."

12 The court went on to provide some more
13 explanation for what "detrimental to the public" meant. It
14 says, "To prevent injury to the public, in the clashing of
15 private interest with public good in the operation of public
16 utilities, is one of the most important functions of the Public
17 Service Commission" -- or the "Public Service Commissions,"
18 plural, amongst the various states. "It is not their province
19 to insist that the public shall be benefited as a condition to
20 change of ownership, but that their duty is to see that no such
21 change shall be made as would work to the public detriment. 'In
22 the public interest,' in such cases can reasonably mean no more
23 than 'not detrimental to the public.'"

24 This Commission has, in the past, applied that
25 standard through what sometimes is referred to as a no net

1 detriment standard. That is that all benefits and detriments in
2 evidence should be considered by the Commission. The Commission
3 said that, "The presence of detriments is not conclusive to the
4 Commission's ultimate decision because detriments can be offset
5 by attendant benefits."

6 We still have the question, I guess -- we talked
7 several times in that series of case cites about the public
8 interest. What is the public interest? This Commission, again,
9 has said that, "The public interest is found in the positive,
10 well-defined expression of the settled will of the people of the
11 state or nation as an organized body politic, which expression
12 must be looked for and found in the Constitution, statutes, or
13 judicial decisions of the state or nation."

14 "The 'public interest' necessarily must include
15 the interests of both the ratepaying public and the investing
16 public; however, as noted, the rights of individual groups are
17 subservient to the rights of the public in general."

18 In this case we believe that Confluence Rivers
19 acquisition of the identified assets is not only not detrimental
20 to the public interest, it's a benefit to the systems,
21 customers, and public interest as compared to the status quo.

22 Confluence Rivers would bring proven experience
23 in the rehabilitation operation, management, and investment in
24 small water and sewer facilities to the systems.

25 The Staff of the Commission has recommended

1 approval of the application with certain conditions. Confluence
2 Rivers has no objections to the conditions proposed by Staff and
3 would suggest that the Commission should order those conditions
4 in an approval.

5 I would say that the opposition in this case is
6 somewhat unique. Really, the allegation of detriment takes the
7 form of what I would call a one-sided proposal. That is, it's a
8 proposal being made by a party that has not been accepted by the
9 Seller. The proposal comes from the Lake Perry Service Company,
10 not really the Association. But the Lake Perry Service Company,
11 by its very nature, has no owners, today no members, no water
12 and sewer assets, no contract to buy any water and/or sewer
13 assets, and no guarantee that it ever will. Thus, we believe
14 the two applicants before the Commission, in this case, are
15 truly the Confluence Rivers proposal, or if that is denied, then
16 the status quo.

17 In conclusion, again, Confluence Rivers is an
18 owner/operator with a solid track record of rehabilitating,
19 maintaining, and operating small water and sewer systems.
20 Confluence Rivers' financial and technical resources are
21 sufficient to provide improved facilities and service options
22 for customers. Confluence Rivers' ownership will result in
23 continued regulation of operations by the Commission to ensure
24 safe and adequate service at just and reasonable rates.

25 Accordingly, we would argue that the acquisition

1 of the Port Perry Service Company utility assets and
2 Certificates of Convenience and Necessity should be approved by
3 the Commission subject to the conditions that have been proposed
4 by the Staff. That's all I have at this time.

5 JUDGE HATCHER: Thank you, Mr. Cooper.

6 COMMISSIONER KENNEY: I have no questions.
7 Thank you, Mr. Cooper.

8 MR. COOPER: Thank you, Your Honor.

9 JUDGE HATCHER: Staff?

10 MS. BRETZ: Good morning. May it please the
11 Commission. My name is Karen Bretz, representing PSC Staff.
12 The black letter law in this case is relatively straightforward.
13 According to Missouri law and your regulations, you must allow a
14 sale and transfer of the CCNs if it is not detrimental to the
15 public interest. That is the legal standard to be applied in
16 this case.

17 What does not detrimental to the public interest
18 mean? The appellate courts have said this standard involves
19 balancing the rights of private investors to transfer their
20 interests in a utility and the rights of the public served by
21 the utility to not be harmed by the transfer.

22 Let's first look at the rights of private
23 investors to transfer their assets. OPC states in its position
24 statement that the Commission should let the free market operate
25 by allowing customers to choose which utility they want to

1 receive service from. But OPC overlooks the rights of the
2 Sellers. The Seller's rights are strong here; they own the
3 utilities and want to sell them.

4 Even though the utilities are regulated, the
5 Seller still has property rights in them. The Sellers can use
6 the property for any legal use, in this case, to operate water
7 and sewer utilities. They can make improvements to their
8 property consistent with state and local laws. They can also
9 sell the property under terms mutually agreeable to the buyer
10 and the seller so long as the Commission approves the transfer.

11 Now, let's look at the public's right to not be
12 harmed by the transfer. The appellate court said in the Fee Fee
13 Trunk Sewer case that, quote, "The obvious purpose of Commission
14 approval is to ensure the continuation of adequate service to
15 the public served by the utility."

16 The Commission stated in its order approving
17 stipulation and agreement and granting Certificates of
18 Convenience and Necessity dated February 14th, 2019 that, quote,
19 "He" -- referring to Mr. Cox -- "has a good track record of
20 acquiring and improving existing systems in Missouri to the
21 benefit of ratepayers."

22 Confluence owns numerous small systems in
23 Missouri. It is experienced and has shown it has the ability to
24 provide safe and adequate service. Staff member Dana Parish
25 will testify that Confluence has sound customer service and

1 billing practices. Confluence has the capital to make repairs
2 and upgrades. Staff has no reason to believe that Confluence
3 will not succeed in operating these systems. Prospective
4 customers will -- prospective customers and the general public
5 will continue to receive adequate service should the application
6 be approved.

7 Does Confluence application satisfy the not
8 detrimental standard? Weighing the strong property rights of
9 the Sellers against the low potential for public harm, Staff can
10 say, yes. It is not detrimental to the public interest for
11 Confluence to purchase and operate these systems. Natelle
12 Dietrich will testify for Staff -- for Staff toward this.

13 Now, let's turn to the Lot Owners' Association.
14 The Lot Owners made an offer to purchase the systems contingent
15 upon the Confluence transaction, this transaction, not receiving
16 Commission approval. According to the terms of their own
17 document, the Lot Owners propose that their sale happen only if
18 the sale does not happen, if it falls through.

19 What are OPC and the Lot Owners arguments that
20 the transaction will be detrimental to the public interest? The
21 big one is that rates will go up under Confluence. Will they go
22 up eventually under Confluence? Yes. As Staff member Dave Roos
23 explains in his testimony, Confluence plans improvements and
24 repairs to these systems. Staff found these improvements and
25 repairs and their accompanying costs to not be unreasonable.

1 However, rates will not go up until Confluence files a rate
2 case. And when Confluence does that, Staff will analyze
3 Confluence's application as Kim Bolin writes in her surrebuttal
4 testimony. Ultimately, it is the Commission that will set just
5 and reasonable rates.

6 But it is not as if rates won't go up under the
7 Lot Owners' proposal. Glen Justis, a Lot Owners' witness who
8 analyzed their business plan, writes in his surrebuttal that if
9 the Lot Owners acquire the systems, water and wastewater rates
10 will go up 84 percent immediately. Additionally, under this
11 scenario the systems will be unregulated. There will be no
12 Commission oversight.

13 Another Lot Owners' argument is that a loss of
14 local control will be detrimental to the public interest. The
15 Lot Owners' desire to secure local control of the systems does
16 not make the sale to Confluence detrimental to the public.
17 Selling to Confluence keeps the status quo regarding the local
18 control argument. A private, regulated utility would continue
19 to operate the systems.

20 The Lot Owners also argue that Confluence
21 financing is evidence of detriment. Staff fails to see how
22 financing could be related to detriment in this case.
23 Confluence proposes to buy the systems via an equity infusion
24 from its parent company. Confluence is not requesting financing
25 authority in this case. To issue financing in the future,

1 Confluence must obtain Commission approval. And to recover the
2 financing expenses in a rate case, Confluence must get
3 permission from the Commission.

4 The 10,000-pound gorilla in this case is what
5 happens if the Commission denies the application. The Lot
6 Owners do not have a sale agreement with the Sellers. Further,
7 there is no guarantee that the Sellers would sell the systems to
8 the Lot Owners, much less at their offered purchase price. The
9 Lot Owners purchase price is substantially less than
10 Confluence's.

11 This situation is not one competing purchaser
12 against the other. It is not the bankruptcy sale, like Osage,
13 where the bankruptcy trustee, who in that case was the Seller,
14 could turn to the next highest bidder if the Commission doesn't
15 authorize the sale.

16 As public policy, the Commission should allow
17 the transferability of these systems. The Commission does not
18 want water and wastewater systems to be operated by owners who
19 don't want to operate them. Monitoring and repairs are put off
20 and the customers in the general public may be harmed. Just
21 think if you wanted to sell your house, but an authority told
22 you no, you can't sell it to the person you want to, or you
23 can't sell it at the price you want to sell it at. First, you
24 would stop cutting the grass. Then, you wouldn't make repairs.
25 It goes on, and on, and on. You see where this goes.

1 My point is that, if the buyer meets Commission
2 requirements for buying the system, the Commission should stay
3 out of the way and let the transaction proceed.

4 I'll turn briefly to the conditions the Lot
5 Owners propose in a sale to Confluence. Mr. Busch will discuss
6 Staff's position on these in his testimony and will be available
7 for questions. The first stipulation that Conf-- the first
8 stipulation that the Lot Owners propose is that rate base be
9 limited to Staff's recommended book value. It is Staff's and
10 the Commission's practice to set rate base at net book value.
11 Staff's estimated net book value in this case is only a
12 recommendation. It is just estimated. And it would be a better
13 place to figure out true net book value in a rate case.

14 The second is to require Confluence to develop a
15 capital improvement plan endorsed by the Lot Owners and OPC.
16 Staff has requested that other utilities develop capital
17 improvement plans and it's not opposed to doing that here.
18 Staff is fine -- Staff is fine with this. However, Staff does
19 not see any reason for it to be endorsed by OPC and the Lot
20 Owners.

21 The third is to require Confluence to establish
22 a customer advisory board. In this case, Staff doesn't see any
23 need for the Lot Owners to be involved in Confluence's business
24 decisions.

25 The fourth, and the last one, is to require

1 Confluence to be biannually audited by an independent company.
2 Staff believes this is unnecessary. Staff will audit Confluence
3 during its rate case. And if the Lot Owners believe that
4 service is substandard or there's something going on, they may
5 always file a complaint with the Commission.

6 As much as OPC writes about the hopes and dreams
7 of the Lot Owners to own water and wastewater systems, hopes and
8 dreams are not related to the technical, managerial, and
9 financial ability to run utilities. Staff anticipates that the
10 Lot Owners will portray this as a David and Goliath fight. In
11 their eyes it's the corporation against the Lot Owners. It is
12 out-of-town control versus local control. It's really not that.
13 There is one application before you with one fully signed
14 purchase and sale agreement ready to be executed if the
15 Commission approves the transaction. According to the law, you
16 must allow this sale to proceed if you find it not detrimental
17 to the public interest. Thank you.

18 COMMISSIONER KENNEY: I have no questions.
19 Thank you.

20 JUDGE HATCHER: Thank you, Ms. Bretz.

21 MS. BRETZ: Thank you.

22 JUDGE HATCHER: And Office of the Public
23 Counsel? Opening statement, Mr. Clizer?

24 MR. CLIZER: Thank you. Good morning. May it
25 please the Commission. John Clizer, here on the behalf of the

1 Office of the Public Counsel. To me, this case comes down to a
2 simple dispute between democracy and bureaucracy. On the one
3 hand, you have the actual people, the citizens of the state of
4 Missouri, who are here asking you -- pleading, in fact, that you
5 not allow this system to be sold to Confluence.

6 On the other hand, you have the Confluence
7 itself, whose motives are clearly driven by profit, and the
8 Staff who have taken this bury-your-head-in-the-sand position of
9 refusing to even look at any other potential, possible offer for
10 this system. I think that the winner should be clear.

11 Before we get there, let's talk about the
12 standard. So the standard that we have already discussed up to
13 this point is whether or not the acquisition would be
14 detrimental to the public interest. I actually think that all
15 of the parties pretty much can agree on that one point. That is
16 the standard. The issue then becomes what is detrimental to the
17 public interest.

18 The OPC raises two arguments, both fairly
19 straightforward with regard to the standard. The first is that
20 in order to determine what is detrimental to the public
21 interest, you should actually look at the expressed interest of
22 the public. In other words, what does the public have to say
23 about this acquisition? Think of it in terms of this: Ask
24 yourself, if there was an actual, competitive market for public
25 utilities, what would the public want? What would they go for?

1 This leads directly to my second argument, which
2 is that something can be detrimental to the public interest when
3 it forecloses or precludes a better alternative. This is the
4 standard that this Commission has literally already adopted in
5 previous cases, and the OPC is just asking for them to continue
6 with that same standard moving forward.

7 So the question becomes, is permitting
8 Confluence to buy the system going to foreclose a better
9 alternative? And the answer is unquestionably, yes. If you
10 permit Confluence to purchase this system, customers are going
11 to end up paying substantially more in rates than they would
12 have if it was allowed to be sold to the Lot Owners'
13 Association.

14 I'll give you three examples of what I'm talking
15 about. First of all, Confluence has all but stated they intend
16 to dispute the net base rate -- I'm sorry -- the net book value
17 that Staff has estimated for the system. That means at some
18 future rate case they're going to want to argue for
19 substantially increased net book value -- a substantially
20 increased base rate -- sorry -- not base rates, rate base. I
21 got my words confused. They're going to ask for a substantially
22 increased rate base without having provided any actual
23 improvements to the system.

24 The second issue, Confluence is practically
25 guaranteed to have more expensive financing than anything that

1 the Lot Owners can produce. I just want to remind you, this is
2 the Company who came to you multiple times. Multiple times
3 telling you that they could not possibly have found any
4 financing below 14 percent. And then here you have the Lot
5 Owners who can find financing at about 4 percent. Well, now
6 Confluence says, that doesn't matter because we are going to use
7 equity. The trick here is that equity is still more expensive
8 than debt financing, or at least should be. If you give this to
9 Confluence, these Lot Owners are going to have to be paying
10 substantially more based on the financing.

11 The third kind of example I will talk about is
12 that Confluence's application is filled with hidden and varied
13 costs. The most egregious of these, to me at least, is the cost
14 being paid to consultants by Confluence to -- actual, original
15 owners, the current owners of the system. I can't go into the
16 details here in the opening because of confidentiality. We'll
17 get into it in the actual testimony. But it is just another
18 example of how Confluence is going to end up causing
19 substantially higher rates if they are allowed to purchase the
20 system.

21 These issues and others, are like I said, going
22 to drive up the costs for Lake Perry. The customers are going
23 to end up paying substantially more in rates than they otherwise
24 would have to to receive the same level of service. Paying more
25 than you have to to receive the same level of service is the

1 definition of detrimental to the public interest. Therefore,
2 I'm urging this Commission to deny Confluence Rivers'
3 application.

4 The Lot Owners have proven that they are the
5 better alternative. They have put in an amount of work that is
6 really nothing short of extraordinary. The Lot Owners have gone
7 far beyond what would actually be required to prove their worth
8 to own the system, which is ironic given that it's actually more
9 work than Confluence has.

10 While Confluence has been shady and refused to
11 be up front regarding how its financing is going to work, what
12 its cost of equity is going to be, and cost of debt is going to
13 be, the Lot Owners have been up front. They've said exactly,
14 this is how we are financing to purchase the system. Here's
15 what it is going to cost customers.

16 Unlike Confluence, the Lot Owners have a clearly
17 defined business plan that sets out exactly where they expect
18 the system to go, and what it is going to cost. In other words,
19 the Lot Owners have already shown that they are prepared to work
20 hard and put in more effort than Confluence when it comes to
21 making sure that this water and sewer system is run properly.
22 This makes sense given that it is the Lot Owners who are
23 actually going to end up drinking the water. The idea that you
24 would expect anyone else in the world to care more about the
25 quality or safety of the water than the people that actually

1 have to drink it, is just plain ludicrous. The Lot Owners are
2 going to be able to provide safe and clean water to their own
3 community, and they are going to do so at a cheaper price than
4 Confluence can and this is, thus, detrimental to the public
5 interest to deny them their ability to do so.

6 I feel like I'm starting to repeat myself here,
7 so I'm going to wrap this up with one last thought. And this
8 touches on what I put in my position statements. The problem I
9 have with this entire case is I believe this goes to the issue,
10 the heart, of the entire regulatory process. If you look around
11 to yourself and you ask, what is the purpose for all of this,
12 for this Commission, for this building, for all of us being
13 here? Right? To me, the answer has always been the Commission
14 stands in the place of competition. Right?

15 You have a noncompetitive market -- sorry, you
16 have noncompetitive utilities who require an independent
17 arbitrator to determine what should be, or what would be, the
18 result if competition exists. The question is literally, what
19 would customers have chosen had there existed a competitive
20 market? The joke about this case is that here the customers are
21 literally before you to tell you what they would have chosen had
22 there been a competitive market.

23 If the Commission doesn't listen to them, then
24 it defeats the entire purpose for this organization. I urge the
25 Commission, therefore, to deny his application. I would like to

1 say you should listen to the testimony of the Lot Owners. They
2 have put together an extraordinarily good testimony. The OPC
3 has also provided its own witness, Ms. Keri Roth. She has a lot
4 of experience on these water application cases, and she should
5 be able to help answer any questions you have. I hope that this
6 Commission will listen to the voice of the public and honor the
7 will of the people. And with that, I will take any questions
8 you might have.

9 COMMISSIONER KENNEY: No questions. Thank you.

10 JUDGE HATCHER: Thank you, Mr. Clizer.

11 Mr. Linton? Go ahead, Mr. Linton.

12 MR. LINTON: Good morning. May it please the
13 Commission. My name is David Linton, and I represent the Lake
14 Perry Lot Owners' Association. Lake Perry is a close --
15 close-knit, first-class, gated community. You can see the
16 passion of the neighbors for their community in their attendance
17 at the recent local public hearing. You can also see their
18 passion for their community in their attendance here today. You
19 can see their passion in their community in the case that they
20 had put on, the business plan, the engineering plan, that they
21 have prepared for this case.

22 As Mr. Cooper has expressed, the community is
23 located on 1,800 acres. It has a 200-acre lake that is located
24 approximately 12 miles from Perryville, Missouri. And this is a
25 visual representation of the lake and the community. The

1 community boasts of a swimming pool, a beach, boat docks, a
2 restaurant, an expanding, paved road system, all implemented
3 under the management of the Board of Trustees. It also boasts
4 of a water and sewer system that are in complete compliance with
5 DNR regulations.

6 The real estate development was initiated by a
7 number of companies several years ago. This includes Port Perry
8 Land Company, Port Perry Marketing Company, Southeast Missouri
9 Land Company, and Stockbridge Realty Investors. Among these
10 companies was the Port Perry Service Company, which is the
11 predecessor to the Seller in this case.

12 In 2003, the service company was sold and the
13 governance of the development was assigned to the Lot Owners'
14 Association. Since that time, the neighborhood has been
15 well-managed by an elected Board of Trustees. The trustees are
16 intimately involved with the management and operation of the
17 community, and to some extent, also the water and sewer
18 operations.

19 We are here because Port Perry Service Company
20 has signed a contract to sell the water and sewer facilities to
21 Confluence Rivers Utility Operating Company. Confluence Rivers
22 is seeking this Commission's approval of the transaction
23 pursuant to Section 393.190 of the Missouri statute, and it's
24 already been pointed out the standard for this review is not
25 detrimental to the public interest.

1 Now, Confluence Rivers and Staff would have you
2 take the position that Confluence Rivers is capable, therefore
3 it should receive the stamp of approval from the Commission.
4 Both appear to be following a Tartan factor test methodology.
5 The Tartan factors, as you well know, pertain to the -- a
6 certificate of public and convenience of necessity case. But
7 that's not the case we have here before us.

8 The five factors of the Tartan methodology
9 analysis are described in Staff -- the Staff report. I won't go
10 into the details there, other than to mention that the first
11 four factors have to do with capability, and the last one has to
12 do with public interest. The last factor of public interest is
13 typically characterized as a catchall, a make way if you will,
14 if the other four factors are not dispositive. But again, that
15 is not this case. A certificate case involves a request to go
16 into an area and provide a new service. The standard in that
17 case is -- the question is whether the service is beneficial,
18 and whether the benefit to the community outweighs the cost of
19 the service.

20 The question for the Commission in this case is
21 simply the last factor, not the last four. What is the fact on
22 the public? Confluence Rivers would have you believe that you
23 must approve this transaction if they are capable, i.e.
24 not interfere with their constitutional right to transfer
25 property, but that is not this case either. To understand the

1 standard of, not detrimental to the public interest, means in
2 this case we must consider the history and the founding
3 principles behind this Commission. As the Office of the Public
4 Counsel has already said, the Commission exists to take the
5 place of competition.

6 In giving some thought to this situation and
7 developing an apt analogy, you might consider this Commission as
8 a bandage to remedy flaws in the lack of competition. For each
9 of us, in an ideal world, we would always want to receive
10 essential services from someone who has our best interests at
11 heart. But I think we all know that we don't always live in
12 that world. We don't always have somebody that's looking out
13 for our best interests. So free-market economies typically look
14 to competition to create incentives for competitive markets to
15 provide the best interest for the customer.

16 Well, when you have a noncompetitive market, you
17 have to replace that with something that regulates rather than
18 provides for competition. And in this case, this Commission
19 provides a bandage, a remedy for that lack of competition.
20 Basically, what we have in this case then, is that this
21 Commission must provide for competition, and put itself in the
22 place of competition.

23 This is what is called a regulatory compact.
24 The regulatory compact is defined as a quid pro quo for being
25 granted a monopoly in a geographical area for the provision of a

1 particular good or service. The utility is subject to
2 regulation by the state to ensure that it is prudently investing
3 its revenues in order to provide the best and most efficient
4 service possible to the consumer. So the primary role of this
5 Commission then is to protect the customer from the exercise of
6 monopoly power.

7 The next question for this Commission to
8 consider in its evaluation of the transfers is the burden of
9 proof. Confluence Rivers must prove that this is not
10 detrimental to the public interest. As discussed in the AG
11 Processing versus PSC case, the PSC erred when determining
12 whether to approve the merger with UtiliCorp because it failed
13 to consider and decide all the necessary and essential issues.
14 Primarily, the issues of UtiliCorp being allowed to recover or
15 recoup its acquisition premium.

16 Following on that decision, this Commission
17 determined that in deciding on what is not detrimental to the
18 public interest, it must also decide what are the appropriate
19 alternatives to the transaction. And I cite you to the Matter
20 Of The Application Of Aquila, Inc. That case is cited as Case
21 No. EO-2008-0046. The determination of -- to the public
22 interest occurs in part because Aquila's plan to join Midwest
23 ISO would preclude it from joining Southwest Power. The
24 Commission must take into consideration other alternatives,
25 which the Staff and Confluence Rivers has said you're not

1 allowed to do that.

2 This case is identical to the Aquila case in
3 that the Lot Owners' Association has had local control over
4 their water and sewer facilities for a long time. And now
5 Confluence Rivers is proposing to take that away from them at a
6 much higher rate.

7 So the burden of proof issue. The burden of
8 proof consists of two components. First, is the burden of
9 production; and second, is the burden of persuasion. The burden
10 of production is defined as the party's duty to introduce enough
11 evidence on the issue to have the issue decided by the finder of
12 fact. The burden of persuasion then is a party's duty to
13 convince that finder of fact to view the facts in a way that
14 favors the party.

15 Well, in this case, Confluence Rivers has
16 carried neither the burden of production, nor the burden of
17 persuasion. They have been so focused on touting their own
18 capabilities that they -- and describing the conditions of the
19 system, that they have failed to quantify their business plan
20 that benefits the public.

21 Let us consider a few aspects of this case.
22 First, in this case, Confluence Rivers is fond of claiming that
23 their owners -- that the owners of property have a
24 constitutional right to determine whether to sell their property
25 or not. Well if that is true, the buyers of this service should

1 have a constitutional right to determine whether or not they buy
2 that service. In this case, the residents of Lake Perry have
3 done their -- have clearly done their research and find the
4 service of Confluence Rivers to be wanting. As a matter of
5 fact, this case might be used as an example of how not to
6 provide customer service.

7 Confluence Rivers has been antagonistic to the
8 customers at every turn. It is understandable why the customers
9 do not want Confluence Rivers' service. If Confluence Rivers
10 treats its potential customers in such a manner, how can we
11 expect them to treat their actual customers any better?

12 Second, financing. The Commission has, in prior
13 CSWR cases, expressed concern with the CSWR financing. In its
14 Report and Order in WR-2017-0259 it said this: In the
15 acquisition case, the Commission ordered that the financing
16 allowed in that case be used solely for buying the system and
17 improving the plant, but Indian Hills commingled those monies
18 with other garnered subsidiaries.

19 In that case, the Commission also said this:
20 The premise underlying all Indian Hills arguments about the
21 loan, is that it tried to get better financing, but none was
22 available. Indian Hills and Staff defied OPC to find a lender
23 at market rates, but that argument reverses the burden of proof.
24 OPC has no duty to find Indian Hills a lender. Indian Hills has
25 the burden of proof to show that its rate increase supports

1 just and reasonable rates. The documentation of Indian Hills
2 search for debt is scant and in some cases irrelevant. The
3 Commission finds it unconvincing.

4 In the case before us, rates and financing are
5 significant aspects to this case. They're significant impacts
6 to the public interest. In past cases, CSWR has persuaded this
7 Commission that it is incapable of obtaining competitive debt
8 financing and yet, the Association created a business plan for a
9 not-for-profit entity and obtained an initial commitment on an
10 attractive debt-financing structure. Confluence Rivers simply
11 touts its capabilities with no specifics in its business plan on
12 this critical point.

13 Third, rates. Confluence Rivers seeks to have
14 this Commission ignore its rates and kick the can down to the
15 rate case. The Association has shown the rate impact from prior
16 CSWR cases, and the Association has provided a conservative
17 estimate on rates. Confluence Rivers wants to reserve even the
18 issue of net book value for the next rate case. Since rates
19 impact the public and relate to the public interest, there's
20 evidence on the record this Commission must consider those
21 aspects and those impacts on the public.

22 While there are other factors, the last I will
23 touch on is local control. Local control is important. As I
24 said before, in the provision of essential services, we all want
25 somebody who will provide service to us that has our best

1 interests at heart. The community has had local control for
2 many years, for decades. They know the people that work on
3 their system and provide their essential services, and they know
4 them as friends. They want to maintain that character of their
5 services.

6 If you read Confluence Rivers' testimony, you
7 get the sense that everything is about mechanization. Their
8 testimony describes websites, Facebook pages, call centers,
9 billing systems, all centralized, all very mechanized. But
10 there is nothing about the immediate service from someone they
11 know. If customer service is about showing the customer's best
12 interest at heart, neither past conduct nor the testimony
13 provide a sense that Confluence Rivers is in the public
14 interest.

15 The Association has three witnesses; Mr. Richard
16 DeWilde, Mr. Glen Justis, and Mr. Chad Sayre. Representative
17 Rick Francis was unable to make this hearing, and so we will
18 withdraw his testimony. Mr. DeWilde is the president of the Lot
19 Owners' Association. Mr. DeWilde is an accountant and a CPA.
20 Mr. DeWilde is president of the board of Citizens Electric
21 Cooperation, so he has utility experience. He is on the board
22 of a local bank in Perryville. He is an expert in finance. He
23 is the best able to explain to you the excellent management
24 structure that the Association has, and the excellent management
25 structure that Lake Perry Service Company can put in place. He

1 has taken a look at Confluence Rivers' testimony and its
2 financing evidence for what it is, or what there is of it. And
3 he finds it wanting and unconvincing.

4 Mr. Justis is a business planner with Experience
5 On-Demand. He was primarily responsible for putting together
6 the Lake Perry Service Company business plan with Mr. DeWilde's
7 help. He can answer all of your questions about a competent
8 business plan.

9 Finally, Chad Sayre is a registered professional
10 engineer with Allstate Consultants. He put together an initial
11 engineering plan for the Lake Perry Service Company from which
12 Mr. Justis put together his business plan. He is -- he has
13 critiqued the allegations of Confluence Rivers and finds them
14 wanting.

15 So with that, in light of the failure of
16 Confluence Rivers to present competent evidence that this
17 transaction will not be detrimental to the public interest, the
18 Association requests that you deny the application and maintain
19 service for the Port Perry Service Company. Thank you.

20 COMMISSIONER KENNEY: I've got just a couple.
21 Good morning, Mr. Linton.

22 MR. LINTON: Good morning, Commissioner.

23 QUESTIONS BY COMMISSIONER KENNEY:

24 Q. Just on the Port Perry Service Company assets,
25 have they been on the market for sale for any length of time, or

1 did Confluence Rivers approach them with an offer?

2 A. What I have been able to discern from discovery
3 is that Confluence Rivers approached Port Perry.

4 Q. Are you positive of that or --

5 A. That's what I've been able to discern from
6 discovery, and we'll ferret that out more as the hearing goes
7 on.

8 Q. Okay. What assurances do you have that Port
9 Perry Service Company would sell the assets to the Lot Owners
10 for a reduced price?

11 A. In a market situation where -- you need a
12 willing buyer and a willing seller. I have no assurances.

13 Q. Okay. Have the Lot Owners raised any of the
14 \$300,000 that is in their business plan?

15 A. It is premature to do that, but they have
16 commitments, either verbal or in writing, to carry what they
17 need to provide --

18 Q. In writing or verbal? Which one?

19 A. In writing or verbal, a combination of both.
20 Mr. DeWilde can explain more of that when he's on the stand.

21 COMMISSIONER KENNEY: Okay. Thank you.

22 JUDGE HATCHER: Thank you, Mr. Linton.

23 MR. LINTON: Thank you.

24 JUDGE HATCHER: Let's go ahead, and we will
25 start with our first witness. That will be Josiah Cox.

1 Mr. Cox, if you could please come to the witness
2 stand.

3 (Witness sworn.)

4 JUDGE HATCHER: Thank you. Please be seated.
5 JOSIAH COX having been first duly sworn testified as
6 follows:

7 DIRECT EXAMINATION BY MR. COOPER:

8 Q. Please state your name.

9 A. My name is Josiah Cox.

10 Q. By whom are you employed and in what capacity?

11 A. CSWR, LLC. I am the president of the company.

12 Q. Have you caused to be prepared, for the purposes
13 of this proceeding, certain direct and surrebuttal testimony in
14 question and answer form?

15 A. I have.

16 Q. And is it your understanding that that testimony
17 has been marked as Exhibits 1P and 1C for the direct public and
18 confidential versions, and 2P and 2C for the confidential and
19 public versions of the surrebuttal testimony?

20 A. Yes.

21 Q. Do you have any changes that you would like to
22 make to that testimony at this time?

23 A. I do have a couple of changes.

24 Q. Where would the first of those be?

25 A. It would be in my direct testimony on Page 13.

1 I would like to strike Lines 13 through 15.

2 Q. There's one sentence there, so the entire
3 sentence?

4 A. Yes. Delete the entire sentence.

5 Q. What is the other change?

6 A. The other change would be in my surrebuttal
7 testimony on Page 9, on Line 21. There is an error there.
8 Instead of 9.3 million, it should say 930,000 of debt.

9 Q. Do you have any other changes that you need to
10 make?

11 A. I do not.

12 Q. If I were to ask you the questions that are
13 contained in Exhibits 1 and 2 -- actually 1P and 1C, 2P and 2C
14 today, would your answers, as now amended, be the same?

15 A. Yes.

16 Q. Are those answers, as amended, true and correct
17 to the best of your information, knowledge, and belief?

18 A. Yes.

19 MR. COOPER: Your Honor, I would offer Exhibits
20 1P, 1C, 2P, 2C into evidence and tender the witness for
21 cross-examination.

22 (WHEREIN; Confluence Rivers Exhibits 1P, 1C, 2P,
23 and 2C were offered into evidence.)

24 JUDGE HATCHER: Thank you, Mr. Cooper. Are
25 there any objections to the offer of exhibits? Seeing no

1 objections, the exhibits are so admitted onto the hearing
2 record.

3 (WHEREIN; Confluence Rivers Exhibits 1P, 1C, 2P,
4 and 2C were received into evidence.)

5 JUDGE HATCHER: And on cross-examination, first
6 we have Staff Counsel. Please go ahead.

7 MS. BRETZ: Thank you.

8 CROSS-EXAMINATION BY MS. BRETZ:

9 Q. Good morning, Mr. Cox.

10 A. Good morning.

11 Q. Did you read Mr. DeWilde's testimony?

12 A. I did.

13 Q. Do you recall his argument about economies of
14 scale for CSWR? He was talking about duplication of effort
15 because of the current structure. He talked about
16 overengineering. Do you recall that argument?

17 A. I do.

18 Q. Do you have any response to that?

19 A. Yes, I do, actually. Could you point to me in
20 his testimony, exactly where he was mentioning that?

21 Q. It's on Page 12. I have one here if you need to
22 borrow it.

23 A. Well, actually I was out of order there. Page
24 12? Thank you. Yes. Could you hand it to me? I'm sorry. I'm
25 having a hard time finding it here. Thank you. Perfect. All

1 right. I have it in front of me.

2 Q. Okay. So it is on Page 12, Lines 4 through 8.
3 Do you have a response to that?

4 A. Yes, absolutely. We completely disagree with
5 that for two reasons. One, we don't duplicate effort. We
6 allocate individual effort for every single system that we buy,
7 own, and operate. So we dedicate time to, for example,
8 Confluence Rivers currently with the nine water and wastewater
9 systems we own and operate there.

10 We do not overengineer any system, obviously.
11 What we've seen is we use an approach to determine what is the
12 lowest cost option in order to bring these, whatever water and
13 wastewater systems we own, to minimum standards and also the
14 standard that provides for safe and reliable service. I mean, I
15 would say from our perspective, the larger we get, the more
16 efficient we get to allocate overhead from our corporate parent.
17 So instead of having to have a dedicated, full-time employee
18 to a single system, we are able to do that in a much more
19 efficient manner, so it actually ends up being a net benefit to
20 consumers.

21 Q. I think I read in some of your other testimony
22 -- and I can't recall where -- that you bid all of your
23 construction projects out?

24 A. Yes. We do. We bid out -- and we bid out our
25 operations and maintenance. So we typically have local

1 contractors and local operators to meet our minimum requirements
2 in terms of insurance, capability, and that kind of thing.

3 That's correct.

4 Q. So when you bid projects out, they typically go
5 to the lowest bidder?

6 A. They do. They go to the lowest bidder. And I
7 would say that's another benefit of economies of scale that we
8 have, is that we are able to tender larger projects because we
9 have more projects going at any one time, and we are a larger
10 vendor, so we are able to attract, you know, higher quality,
11 lower cost providers for operations and maintenance service as
12 well.

13 Q. Are you able to --

14 MR. LINTON: Your Honor, at this point I'm going
15 to interject an objection in that this is friendly
16 cross-examination designed to allow more direct testimony into
17 the case.

18 JUDGE HATCHER: Any response?

19 MS. BRETZ: I -- we are talking about specific
20 testimony. I can't name the page where he spoke about the
21 construction cost, but it is in his direct testimony.

22 JUDGE HATCHER: I would have to agree,
23 Mr. Linton. It seems that we're going through Mr. DeWilde's
24 testimony and answering that.

25 Overruled. Go ahead.

1 THE WITNESS: I forgot the question.

2 BY MS. BRETZ:

3 Q. You were speaking about bidding out projects,
4 going to the lowest bidder.

5 A. Yeah, so absolutely. So again, you know, we're
6 able to aggregate more projects together in a single-bid package
7 and, thus, we're able to attract more bidders and more
8 competitive pricing and on an ongoing basis. I believe we get
9 better service from particular vendors because we're a larger
10 customer on an ongoing basis.

11 Q. Are you able to tap into local companies, local
12 bidders?

13 A. Absolutely. We have used -- in fact, we've used
14 local contractors on a number of our projects historically. We
15 have a local operations and maintenance group, you know, within
16 45 miles of this system currently at Hillcrest.

17 Q. Okay. Did you read the rebuttal testimony of
18 Glen Justis?

19 A. I did.

20 Q. Do you remember the four conditions that he
21 stated should be placed on any sale to Confluence?

22 A. I do. Can you give me where that is too?
23 Can I hand this back to you, sir. Thank you.
24 I have them in front of me.

25 Q. Okay. I am sorry. I am trying to find that

1 myself.

2 A. Page 21.

3 Q. Thank you. So his first condition is to limit
4 starting rate base to Staff's recommendation. Do you have any
5 response to that?

6 A. Well, yes. The Staff used an estimate, and they
7 used an estimate based on the last rate case, which was 2002.
8 So we believe there has been more investment in the system over
9 the last 17 years. And you know, in our examination of the
10 records of the Company, there has been more investment. But
11 obviously, we understand that's a matter to be taken into a
12 future rate proceeding if it ever comes to that. So -- and
13 we're not looking for acquisition premium, which we believe the
14 net book value is just higher than the current estimate by
15 Staff.

16 Q. Okay. Turning to the second one, which has to
17 do with --

18 MR. LINTON: Your Honor, at this point, I just
19 want to record a continuing objection to this line of
20 questioning designed to bring in additional surrebuttal
21 testimony, which the witness had an opportunity to file
22 previously.

23 JUDGE HATCHER: Any response, Ms. Bretz?

24 MS. BRETZ: Just the same thing that I stated
25 earlier.

1 JUDGE HATCHER: Okay. Remind me. We are on
2 whose testimony?

3 MS. BRETZ: Mr. Justis'.

4 JUDGE HATCHER: Okay. Yeah. I don't see any
5 reason to differ from my earlier ruling, Mr. Linton. I'm sorry.
6 Overruled.

7 Please continue.

8 BY MS. BRETZ:

9 Q. The second condition was for Confluence to
10 establish a clear capital investment plan. Do you have any
11 problem with submitting a capital investment plan to the
12 Commission?

13 A. We have no problem submitting a capital plan to
14 the Commission. Obviously, we believe the Commission is the
15 ultimate arbiter of this, so we don't want anything to have to
16 be endorsed by a lot owner association.

17 Q. Do you submit capital improvement plans for any
18 of your other systems currently?

19 A. The only system I believe we have a requirement
20 to do that currently is Indian Hills. We have an ongoing
21 capital improvement plan we submit annually.

22 Q. Does that require endorsement by any party?

23 A. It does not. It is a reporting requirement.

24 Q. And Staff does not endorse that either?

25 A. They do not.

1 Q. All right. Turning to the Lot Owners' third
2 condition, which is to establish a customer advisory board. Do
3 you have any response to that?

4 A. It seems to be redundant because we already have
5 multiple governing organizations, both in the Public Service
6 Commission Staff, the Office of Public Service, and the Missouri
7 Public Service commissioners, you know, in the end. Obviously,
8 we don't think there is any more regulation necessary for us to
9 provide safe and reliable service that is just and reasonable.

10 Q. Okay. And the fourth condition is to undergo a
11 biannual independent audit. Do you have any response to that?

12 A. Well, again it seems redundant because it is
13 part of any future proceedings. There would be an audit done to
14 Confluence Rivers' books for any investments that have been made
15 and, you know, there would be a determination made as to whether
16 or not those investments were just and reasonable. Beyond that,
17 you know, as a whole company, we have an annual third-party
18 audit as a company. We actually also have a biannual
19 environmental audit that's by a third party as well. That is an
20 investor requirement because our investors are concerned about
21 our ability and our ongoing performance in terms of the
22 environment, environmental regulation, and safe and reliable
23 service.

24 Q. Okay.

25 MS. BRETZ: That is all I have. Thank you.

1 THE WITNESS: Thank you.

2 JUDGE HATCHER: Thank you. And, Mr. Clizer?

3 MR. CLIZER: Thank you, Your Honor.

4 CROSS-EXAMINATION BY MR. CLIZER:

5 Q. Good morning, Mr. Cox.

6 A. Good morning.

7 Q. I know you already stated that you are the
8 president of Confluence Rivers. Are you also a member of the
9 Board of Directors?

10 A. I am a member of the Board of Directors.

11 Q. How many other members of the board are there?

12 A. Four. Confluence Rivers, since it's a
13 subsidiary of CSWR, LLC, I am the only board member. The other
14 board members are at the Central States Water Resources level.

15 Q. Do you own an equity interest in -- well,
16 actually let me just back up. Who owns the equity of Confluence
17 Rivers?

18 A. Confluence Rivers Utility Holding Company.

19 Q. Who owns the equity in that?

20 A. Central States Water Resources, LLC.

21 Q. That's what I thought. I wanted to get there.
22 Do you own equity interest in Central States Water Resources?

23 A. I do not.

24 Q. So let's talk about this transaction. I believe
25 there is a little bit of confusion I have with your testimony,

1 so I'll just cut straight to the chase. You are purchasing
2 Confluence Rivers or proposing to purchase Confluence Rivers
3 with an equity infusion. Correct?

4 A. That is correct. We will fund the entire
5 purchase with equity.

6 Q. Okay. Confluence Rivers has filed a rate case
7 here recently. Correct?

8 A. That is correct.

9 Q. What is the return on equity that you are
10 requesting in that rate case?

11 A. I don't remember that.

12 Q. You don't recall that?

13 A. I don't.

14 Q. You are the president of the company and you
15 just filed a rate case, but you don't know what you're asking
16 for in terms of equity?

17 A. We file a bunch of cases all the time, and I
18 review at the time, but I don't require -- I don't remember the
19 exact number.

20 Q. All right. Do you recall the estimated rates --
21 well, actually, let me back up some more. As part of that rate
22 case, you are proposing to consolidate rates across all
23 utilities in the Confluence Rivers family, for lack of a better
24 word. Right?

25 A. Yeah, for the existing utilities, that is

1 correct.

2 Q. Right. And do you know what the estimated rate
3 was for residential customers based on that consolidated --

4 A. I don't remember the exact number off the top of
5 my head.

6 Q. Are you familiar with the testimony of Keri
7 Roth?

8 A. I am.

9 Q. Do you have a copy of it?

10 A. I believe I do.

11 Q. Could you find for me Schedule KNR-6?

12 A. I have that.

13 Q. Do recall what this document is?

14 A. I do. This was a document we gave to the Office
15 of the Public Counsel and the Missouri Public Service Commission
16 Staff in an informal meeting before we launched a rate case for
17 Confluence Rivers.

18 Q. Right. And at that point your proposed rate --
19 the consolidated proposed rate for water services is \$61.64?

20 A. That is correct.

21 Q. And the proposed rate for sewer services is
22 \$68.53?

23 A. That is correct.

24 MR. CLIZER: That is actually all the questions
25 I have. Thank you.

1 JUDGE HATCHER: Thank you, Mr. Clizer.

2 Mr. Linton?

3 MR. LINTON: Yes, Your Honor.

4 CROSS-EXAMINATION BY MR. LINTON:

5 Q. Good morning, Mr. Cox.

6 A. Good morning.

7 Q. Could you turn to your direct testimony, Page 2.

8 A. I have it.

9 Q. You made a reference there to your Tennessee
10 PUC. Correct?

11 A. On Page 2?

12 Q. Yes.

13 A. I do not see that. If you could tell me where
14 that is, what line.

15 Q. I take that back. Would it be your surrebuttal
16 testimony?

17 A. Oh, okay. I'm on Page 2.

18 JUDGE HATCHER: Check Page 3 on the rebuttal
19 testimony.

20 MR. LINTON: Thank you, Your Honor.

21 JUDGE HATCHER: I'm sorry, surrebuttal
22 testimony.

23 BY MR. LINTON:

24 Q. Could you give me a status update on your cases
25 before the Tennessee PUC?

1 A. We had an informal conference last Monday and
2 they've asked for some additional information in the acquisition
3 request.

4 Q. Have you withdrawn any of your applications?

5 A. We have not.

6 Q. You have not. Now turn to Page 13, Line 13 of
7 your direct.

8 A. I am there.

9 Q. You struck that. Why did you strike that
10 testimony?

11 A. I did not strike this. Are you looking at my
12 direct or surrebuttal -- surrebuttal or direct?

13 Q. Direct.

14 A. Okay. Sorry. I'm there now.

15 Q. Why did you strike that testimony?

16 A. I believe it's -- I think we agreed in the
17 course of document requests that we were just going to pull
18 that.

19 Q. And what was your reason for withdrawing it?

20 A. I don't remember why in the document request we
21 agreed to do that. I just remember that we agreed to do it, so
22 that is why I struck it.

23 MR. LINTON: I would like to have a document
24 marked.

25 JUDGE HATCHER: Go ahead.

1 BY MR. LINTON:

2 Q. Can you please identify that document?

3 A. It's the -- my direct testimony for Confluence
4 Rivers from November 19th, 2018.

5 Q. Can you take a look at Page 16, Line 5 of that
6 exhibit?

7 A. I see it.

8 Q. What does that sentence say?

9 A. In addition, most of the existing utilities have
10 major clouding or impairments due to numerous changes of
11 ownership control without the conc-- commensurate recorded deed
12 transfer documentation.

13 Q. You did have clouding at that time as well.
14 Correct?

15 A. Correct.

16 Q. If you would, take a look at Page 10, Line 1
17 through 7 of that same document.

18 A. So Page 10, is that what you said?

19 Q. I take that back. Page 10, Line 1 through 7 of
20 your surrebuttal.

21 A. Of my current surrebuttal?

22 Q. Yes.

23 A. So Page 10?

24 Q. Right.

25 A. All right. I have Page 10. What's next?

1 Q. And there you discuss the fact that --

2 A. Which line?

3 Q. 1 through 7.

4 A. Okay.

5 Q. You discuss the fact that Confluence Rivers
6 plans to acquire assets using equity. Right?

7 A. Yes.

8 Q. You have had trouble with debt financing in the
9 past, have you not?

10 A. Yes. That was before we had a change of
11 ownership.

12 Q. Now, take a look at what has been marked as
13 Exhibit 300, at Page 22 of that document.

14 A. I am there.

15 Q. Actually, let's turn to Page 23. Did you
16 investigate other financing options at that time in that case?

17 A. We did, at that time. Again, that was before we
18 had an ownership change, so we were required by our New York
19 private equity group Zions Capital Management in the fall of
20 2019. So this testimony actually happened before that
21 transaction was consummated. So we're actually actively back in
22 capital markets based on new ownership looking for debt
23 financing. So this -- this is no longer pertinent.

24 Q. What was the result of your investigation at
25 that time?

1 A. Under the previous ownership we had trouble
2 getting debt financing from traditional lenders.

3 Q. And why was that?

4 A. Because most of the utilities we buy, they are
5 at a negative ongoing cash loss, in addition to not providing --
6 you know, providing safe and reliable service. The assets are
7 depreciated and there's liability associated with potential
8 environmental degradation, and with -- the actual basic
9 provision of water oftentimes. So banks do not like assets that
10 have liabilities attached to them and negative cash flows.

11 MR. LINTON: I move for the admission of Exhibit
12 300.

13 (WHEREIN; LPLOA Exhibit 300 was offered into
14 evidence.)

15 JUDGE HATCHER: Are there any objections to the
16 admission? Seeing no objections, it is so admitted.

17 (WHEREIN; LPLOA Exhibit 300 was received into
18 the record.)

19 BY MR. LINTON:

20 Q. Now, take a look at Page 10, Lines 17 through 19
21 of your surrebuttal.

22 A. I have it.

23 Q. Okay. I believe you state there that your
24 estimate for improvements for Port Perry Water in the last case
25 was \$693,000; is that right?

1 A. Not here in the surrebuttal that you're having
2 me read.

3 Q. Yes.

4 A. Can you just point to me the line?

5 Q. 17 through 19 on Page 10 of your surrebuttal.

6 A. Oh, you are saying the original plans?

7 Q. Right.

8 A. So my testimony says the most cost-effective
9 method to add disinfection to this backup water source would be
10 to drill another well near the existing grounds -- water ground
11 storage tank, tie in to a to-be-constructed permanent disi--
12 disinfection system and utilize the existing ground -- water
13 ground storage tank for mandated residents. Correct.

14 Q. And it's -- \$693,000 was the cost -- estimated
15 cost at that time?

16 A. I believe we have submitted some cost. 693 may
17 be the right number. It is that ballpark.

18 Q. It is in your testimony. Right?

19 A. Somewhere. Not here.

20 Q. Page 10, Line 17 through 19 of your surrebuttal.

21 A. I'm sorry. I'm looking at the wrong spot. Yes.
22 You are correct.

23 Q. And I think, correct me if I'm wrong -- I think
24 you just answered my next question, that that was entirely
25 driven by the perspective, or the desire, to put in a third

1 well; is that correct?

2 A. Well, no. It was driven by the thought that we
3 had to disinfect the secondary water source, and so the cheapest
4 way to install a permanent disinfection would actually be to
5 move the well next to the ground storage tank. That way, we can
6 have central disinfection at residents' tie-in. Because
7 otherwise, we'd have to change the entire pipe run from the
8 existing second well so it would be dedicated straight to the
9 tank.

10 Q. You refer to that as a third well, though?

11 A. That is correct.

12 Q. Okay. At Page 12, Line 1 of your surrebuttal
13 testimony, you say after additional review of the situation, it
14 was determined that even though Port Perry's drinking water
15 system at Well 1 is currently being disinfected, there is no
16 MDNR mandated drinking water disinfection for this community; is
17 that correct?

18 A. Correct.

19 Q. You say "after". When was that additional
20 review and decision made?

21 A. I want to say it was this spring.

22 Q. This spring?

23 A. Correct.

24 Q. So March, April, May of 2019?

25 A. Yeah. Somewhere in there.

1 Q. Sometime in there.

2 MR. LINTON: I would like to have an exhibit
3 marked.

4 BY MR. LINTON:

5 Q. Can you please identify that exhibit?

6 A. It's a water system report.

7 Q. And who did the water system report?

8 A. 21 Design Group.

9 Q. And who was that?

10 A. That is the third-party consulting engineer we
11 use for engineering services.

12 Q. Okay. Who signed that report?

13 A. Ben Kuenzel.

14 Q. Would you please turn to Page 1 of that report
15 under Summary of Findings.

16 MR. COOPER: Mr. Linton, just want to ask you a
17 question. We, of course, have identified the report. The
18 report has been identified as confidential. I assume as you ask
19 your questions, you're staying away from --

20 MR. LINTON: Thank you.

21 MR. COOPER: -- confidential matters.

22 MR. LINTON: I probably will eventually get
23 there, so thank you for reminding me. Maybe we ought to go into
24 in camera. Let's go in camera.

25 COMMISSIONER KENNEY: Excuse me, Judge.

1 Are you going to directly talk about highly
2 confidential numbers on every question?

3 MR. LINTON: I will ask eventually within the
4 next two or three questions about --

5 COMMISSIONER KENNEY: At that point, you can go
6 into -- otherwise, we have a standard here. We do not do that
7 unless we need to.

8 MR. LINTON: Absolutely, sir.

9 COMMISSIONER KENNEY: All right. Thank you.

10 MR. LINTON: The entire document has been
11 referred to as confidential. I'll defer to Counsel for
12 Confluence Rivers to --

13 MR. COOPER: Give me just a second to confer
14 with the rest of my folks before I say this, but --

15 JUDGE HATCHER: Actually, this is going to be a
16 good time for us to take a break to stretch our legs. So why
17 don't we call that 15 minutes to give all the parties and their
18 Counsel an extra five. We'll call that -- it's 10:22 now,
19 10:35.

20 MR. COOPER: Thank you, Your Honor.

21 JUDGE HATCHER: We are off the record. Thank
22 you.

23 (OFF THE RECORD.)

24 JUDGE HATCHER: Let's go back on the record,
25 please.

1 Mr. Linton, if you'd help remind me, you were
2 questioning Mr. Cox, and you were getting ready to decide if you
3 were going in camera or not.

4 MR. LINTON: Right at the moment, no. We're not
5 going in camera.

6 JUDGE HATCHER: Okay.

7 MR. COOPER: Judge, what we've talked about on
8 the break is that it's the individual project numbers that we
9 view as confidential because of the impact they can have on a
10 bidding process that Mr. Cox talked about previously. So that's
11 where the sensitivity lies.

12 JUDGE HATCHER: Okay. That sounds good. Please
13 continue.

14 BY MR. LINTON:

15 Q. Mr. Cox, would you please turn to Page 1 of that
16 document?

17 A. I have it in front of me.

18 Q. And note Item No. 7, Summary of Findings. What
19 does that say?

20 A. The public water system is currently
21 disinfected. And just to be clear, we knew it disinfected from
22 the start. We just didn't know --

23 MR. LINTON: I don't think --

24 THE WITNESS: -- MDNR mandated disinfection.

25 MR. LINTON: -- there is a question, Your Honor.

1 BY MR. LINTON:

2 Q. What does Summary of Findings 8 say?

3 A. The existing system had an average daily usage
4 of 67,000 gallons. It's been highly unmaintained by the
5 previous ownership. Since the report, residential ownership has
6 changed as well as the system operator. Both parties are
7 working to improve system quality.

8 Q. Did you skip over the sentence, however, the
9 system has been highly unmaintained by previous owners?

10 A. I thought I said it.

11 Q. I apologize. Now, take a look at Page 10. What
12 is the -- okay. I'm going to try to avoid giving a number since
13 this will be in the record, but take a look at Page 10. What is
14 on Page 10?

15 A. It is the recommended project.

16 Q. Okay. What is the --

17 MR. LINTON: And again, Counsel for Confluence
18 Rivers, if you want to go into camera, let me know.

19 BY MR. LINTON:

20 Q. Under Item 2 of recommended project, what does
21 that say?

22 A. Pump -- well, Pump 1 inspect all equipment,
23 replace meter and saw the FD to Well 2.

24 Q. Now, take a look at the green area.

25 A. I see it.

1 Q. What does that present?

2 A. It's got an individual per line item basis of
3 the project.

4 Q. Okay. The total extended price is not the
5 \$693,000 that you proposed in your original --

6 A. No. This is our first iteration. So we did
7 this in -- I believe it would be the early summer of '18. And
8 then we believed, at that point, the engineer came back and said
9 they think permanent disinfection was required so we went to the
10 permanent disinfection solution, which was the third well
11 drilling. And after further review this spring, we went back
12 and decided that a permanent disinfection was not -- that
13 errative process is very typical of how we do projects.

14 Q. So what is the date on this report?

15 A. 07/11. So the summer of '18.

16 Q. July 11, '18?

17 A. Correct.

18 Q. And it was signed by Mr. Kuenzel. Right?

19 A. That's correct.

20 Q. Take a look at Page 19, Line 7 of your
21 surrebuttal testimony.

22 JUDGE HATCHER: Would you say the page and line
23 number again?

24 MR. LINTON: Page 19, Line 7.

25 THE WITNESS: I'm there.

1 BY MR. LINTON:

2 Q. Now, you make reference to the Minimum Design
3 Standards for Missouri Community Water Systems. Correct?

4 A. Correct.

5 Q. Do you have what has been marked as Exhibit 302
6 in front of you, sir?

7 A. I do.

8 Q. Could you please identify that document?

9 A. The Minimum Design Standards for Missouri
10 Community Water Systems.

11 Q. What is the date on that document?

12 A. 10 of '13.

13 Q. Can you turn to Section 205 -- or 2.5 of that
14 document?

15 A. I have it.

16 Q. What does 2.5.a.5 say?

17 A. 2.5.a.5?

18 Q. Yes, sir.

19 A. Fencing around vulnerable areas of drinking
20 water facilities such as treatment storage facilities, pumping
21 stations, and wells with signs prohibiting unauthorized access.

22 Q. Can you backup and read the sentence that
23 interdicts that list of five components?

24 A. All water systems facility -- all water system
25 facilities shall be designed to include measures to provide

1 protection against vandalism, sabotage, terrorist acts, or
2 access by unauthorized personnel. Protection measures may
3 include, but is not limited to.

4 Q. Can you take a look at the inside, front cover
5 of that document? What does this sentence say inside the front
6 cover of that document?

7 A. Are you saying on the back of the first page?

8 Q. Inside the back of the first page, yes.

9 A. Nothing in this document may be used to
10 implement any enforcement action or levy any penalty unless
11 promulgated by rule under Chapter 536, RSMo or authorized by
12 statute.

13 Q. Now, take a look at Page 6, and its Roman
14 numeral -- a small Roman numeral vi, so it is V-I.

15 A. I have the page in front of me.

16 Q. I'll just ask the question: To whom do these
17 standards apply?

18 A. To water system owners and to professional
19 engineer designers.

20 Q. Can you read the statement from the report or
21 from the Minimum Design Guide?

22 A. These standards apply to new community public
23 water systems designed during the effective dates of this
24 document. These standards also apply to alterations made to
25 existing community public water systems.

1 Q. Thank you. Just a few more questions. Mr. Cox,
2 you have represented that you and Mr. Thomas did the primary
3 negotiation with Port Perry Service Company regarding the
4 transaction, the contract to sell the facilities; is that
5 correct?

6 A. Correct.

7 Q. I have a number of e-mails between Mr. Thomas
8 and Mr. Yamnitz regarding that negotiation. Who would it be
9 best to ask questions about that correspondence, you or
10 Mr. Thomas?

11 A. I would assume Mr. Thomas, but I don't know. If
12 you could point me to any specific interaction, I would be glad
13 to give you my commentary.

14 MR. LINTON: With that answer, Your Honor, I
15 will defer and ask the questions of Mr. Thomas, but I reserve
16 the right to recall Mr. Cox in the event Mr. Thomas cannot
17 answer the questions.

18 JUDGE HATCHER: Are there any objections to the
19 reservation Mr. Linton is asking for?

20 MR. COOPER: I guess, yes, in that I don't know
21 that I've ever seen that done in a Commission proceeding. It
22 seems out of the ordinary. I think ultimately, it's up to the
23 Commission whether it wants a witness back or not.

24 MR. LINTON: The only reason I am doing it is to
25 expedite this process. I am assuming that Mr. Thomas is going

1 to be the better to answer the questions and -- since the
2 e-mails are his. But to the extent he can't answer them, I just
3 want to be able to ask Mr. Cox the questions.

4 JUDGE HATCHER: How many e-mails, and how many
5 questions?

6 MR. LINTON: Probably two to three dozen
7 questions.

8 JUDGE HATCHER: Then I'm going to grant your
9 request and give you the ability to call back Mr. Cox in case
10 you don't get the answers from Mr. Thomas.

11 MR. LINTON: Thank you very much, Your Honor.
12 With that, I have no further questions of
13 Mr. Cox.

14 JUDGE HATCHER: All right. Any questions from
15 the bench?

16 COMMISSIONER KENNEY: Good morning, Mr. Cox.

17 THE WITNESS: Good morning.

18 QUESTIONS BY COMMISSIONER KENNEY:

19 Q. Did Confluence Rivers approach the company, Port
20 Perry to purchase -- I mean, request to purchase or were you
21 approached?

22 A. We approached them. So our standard business
23 practice is we built a database of every single water and sewer
24 system in the state of Missouri. And we cross-reference that
25 with enforcement lists and our understanding of the age of the

1 infrastructure and the existing technology. We realize -- and
2 we call on the people that we know have infrastructure issues.
3 So we call them with the understanding that -- our belief that
4 they needed significant reinvestment. And based on what we can
5 see on paper, they were not making any.

6 Q. So just a standard business practice?

7 A. That's correct.

8 Q. All right. Thank you.

9 JUDGE HATCHER: I do have several questions for
10 Mr. Cox.

11 QUESTIONS BY JUDGE HATCHER:

12 Q. First, what happens in the eventuality that the
13 Commission would set the net book value at Staff's recommended
14 rate or amount, which is 58,000 as a rough number?

15 A. Yeah. We're not asking for acquisition premium.
16 So, you know, we believe that our purchase price is
17 representative of net book value, but if the Staff found against
18 this, then that would be our loss as a company.

19 Q. Okay. And do we need to establish what the net
20 book value is for the facilities in this case?

21 A. I do not believe we do. I believe that's more
22 pertinent to a future rate case proceeding.

23 Q. Okay. How can the Commission not establish a
24 net book value when establishing that net book value implicates
25 the actual terms of the contract?

1 A. Again, the reason why we accepted the condition
2 that the Staff gave us was that Staff witness Bolin said, Hey, a
3 cursory review of just the assets prior to -- you know, based on
4 the last rate case in 2002. And so we believe we have more
5 records of investment of having that system over the last 17
6 years, and that's what we would present for some future
7 proceeding.

8 Q. But my question was the sale contract that
9 Confluence Rivers has with Port Perry Service Company. It
10 references a finding by the Commission setting the net rate base
11 in order to determine the ultimate purchase price; is that
12 correct?

13 A. That is true. That is in there. You know, most
14 of the time it has been our practice that we are not going to
15 get to that net book value finding until significantly in the
16 future, so we close the transaction so that clause becomes null
17 and void.

18 Q. Okay. Then can you walk me through -- I am
19 looking at Clause 4 of the purchase contract. This is coming
20 from the application. I don't know if that has been distributed
21 anywhere. But Page 3, Sub 4 of the purchase contract, The
22 Agreement For Sale Of Utility System is how it is titled. I'll
23 give everyone a minute to find their place.

24 A. I don't believe I have that.

25 MR. COOPER: So Mr. Cox, if you were to turn to

1 your direct testimony, it's confidential schedule JC-5C. I
2 think that's -- you will be able to work from there. I think
3 that is the document that the judge is referring to.

4 JUDGE HATCHER: Yes. Thank you.

5 THE WITNESS: Which one?

6 MR. COOPER: 5C.

7 THE WITNESS: Got it. I have it.

8 So which clause are you talking about?

9 BY JUDGE HATCHER:

10 Q. Paragraph 4 on Page 3, the number -- Paragraph
11 4. It says, Purchase Price.

12 A. Got it.

13 Q. And I just want to remind myself and everyone
14 that we are not reading numbers out loud. Walking through --
15 can you just explain how Paragraph 4 works for me, without
16 divulging numbers?

17 A. Yes. So it works in twofold. One, if we get --
18 if there is a net book value finding sometimes inside of a
19 proceeding that is lower than what we have determined, we have
20 the ability, the option, to lower the contract to that purchase
21 price.

22 Q. And this was also agreed to by Port Perry?

23 A. That is correct.

24 Q. Okay.

25 JUDGE HATCHER: All right. That is all the

1 questions that I have. Do we have any recross due to questions
2 from the bench?

3 And we go with Staff being first in order.

4 MS. BRETZ: None.

5 JUDGE HATCHER: Thank you.

6 And, Mr. Clizer, Public Counsel is next in
7 order. Do you have any questions based on bench's additional
8 questions?

9 MR. CLIZER: All right. I guess.

10 RECROSS-EXAMINATION BY MR. CLIZER:

11 Q. Do you still have that clause in front of you?

12 A. I do now.

13 Q. All right. Just for the sake of clarity, so I
14 understand this, in the event that the Missouri Public Service
15 Commission determines the net book value is less than -- and
16 there is a number listed -- buyer has the option of paying that
17 number listed or terminating the agreement. Correct?

18 A. That is correct.

19 Q. Okay. So it doesn't go beyond -- below that
20 number listed?

21 A. Below net book value.

22 Q. No. It doesn't go below the number listed in
23 that contract. Is it either that or terminates?

24 A. No.

25 JUDGE HATCHER: No, Mr. Clizer. I think that it

1 gives them the option if it is below that.

2 MR. CLIZER: The buyer has the option of paying
3 blank or terminating this agreement?

4 JUDGE HATCHER: Yes. Is that your question?

5 MR. CLIZER: Yes.

6 JUDGE HATCHER: Okay. Mr. Cox?

7 THE WITNESS: No. I believe the clause would --
8 the purchase price will be adjusted to an amount equal to or
9 greater than net book value of the assets as determined or the
10 amount equal to the aggregate payments required to satisfy all
11 liens.

12 JUDGE HATCHER: And look, Mr. Cox, two lines
13 further down.

14 THE WITNESS: Yes. The parties hereby agree the
15 purchaser may increase or decrease depending on such
16 determination.

17 MR. CLIZER: Thank you. I have no further
18 questions.

19 JUDGE HATCHER: Thank you, Mr. Clizer.

20 Mr. Linton?

21 MR. LINTON: No questions.

22 JUDGE HATCHER: And redirect?

23 MR. COOPER: Yes, Your Honor.

24 REDIRECT EXAMINATION BY MR. COOPER:

25 Q. Mr. Cox, you were asked some questions by Staff

1 Counsel about economies of scale and you went through several
2 that I think that you believe that the company has. One of the
3 items that I didn't hear, necessarily, is purchasing of
4 supplies. Is that something that you have some economies of
5 scale that assists you with the provision of service?

6 A. Yes. We do, for consumables associated with
7 running water and wastewater systems, we can buy those in bulk.
8 And so we get those at a significantly cheaper price than an
9 individual's system owner.

10 Q. You were also asked about whether, ultimately,
11 you bid construction jobs. Do remember that?

12 A. Yes.

13 Q. In that bidding process are there any CSWR
14 affiliates that bid on the construction of those projects?

15 A. No. There are not.

16 Q. There was reference to an existing Confluence
17 Rivers' rate case. Correct?

18 A. Yes.

19 Q. And I believe there was a mention that -- well,
20 let me ask this: If the Port Perry deal is closed, will Port
21 Perry become a part of that rate case?

22 A. No. It will not.

23 Q. The timing of it is just that it couldn't be?

24 A. It just couldn't be from our perspective.

25 Q. You were asked about proposed rates that had

1 been shared in an informal meeting with Staff and OPC. Have you
2 ever received a rate, as a result of a rate case, that was equal
3 to or greater than the Company's initial proposal?

4 A. We have not.

5 Q. You were asked questions about this sentence
6 concerning clouding of title. How many -- what is it? How many
7 systems now have CSWR affiliates closed on, approximately, in
8 Missouri?

9 A. In Missouri? Thirty-something.

10 Q. Is clouding of title something you commonly see
11 in small water and sewer companies?

12 A. I mean, almost every single system we buy has
13 some existing title defects or property rights issues.

14 Q. And it's something that the Company works
15 through in the closing process?

16 A. It is. It is standard practice for us to make
17 sure that all of those issues are resolved.

18 Q. You were asked some questions about your direct
19 testimony, and I think it was WM-2018-0116. It was the first
20 Confluence Rivers case where the nine water and nine sewer
21 systems were ultimately purchased. Could you explain why the
22 financing situation is different today than it was at that time
23 or prior to that time?

24 A. Yeah, absolutely. So we were owned by a local
25 family office, Central States Water Resources, our major

1 investor was. We were able to attract an institutional private
2 equity firm out of New York City, Zions Capital Management, and
3 we closed the transaction with Zions in the fall of '18. So
4 they -- all testimony in regards to that first Confluence Rivers
5 case was prior to us being owned by a New York private equity
6 firm.

7 Q. I think there has been -- I guess the other
8 thing is, has the CSWR organization grown since that time?

9 A. Yes. We have grown quite a bit. We own more
10 systems. We have more cases going in more states. We are
11 operating in additional states since that original application
12 was filed and processed.

13 Q. And that provides more opportunities for the
14 company in terms of financing?

15 A. It does. More opportunities for financing and
16 greater opportunities for economies of scale, as well.

17 Q. You were asked some questions about the Minimum
18 Design Standards for Missouri Community Water Systems. Do you
19 remember that?

20 A. I do.

21 Q. Do you still have that document with you?

22 A. I have it right in front of me.

23 Q. Okay. If you were to turn -- well, would you
24 turn to page -- I guess it's B. It would be Page 5,
25 essentially, in the introduction section there.

1 A. Got it.

2 Q. And it's titled, Preamble?

3 A. I see it.

4 Q. And there's a first paragraph under, What is the
5 purpose of this document. Do you see that?

6 A. I do.

7 Q. And could you read the last sentence of that
8 paragraph for us?

9 A. These standards are necessary for facilities to
10 comply with Missouri safe drinking water statutes and
11 regulations.

12 Q. And if we were to turn over to the next page,
13 Page vi, do you have that in front of you?

14 A. I do.

15 Q. And again, you were asked some questions about
16 that first paragraph. To whom do these standards apply.
17 Correct?

18 A. Correct.

19 Q. Could you read the last sentence of that
20 paragraph?

21 A. Yes. However, where deterioration of water
22 quality, sanitation, safety, or performance requires corrective
23 action, the alterations must meet or exceed minimum design
24 standards.

25 Q. Now, the law judge asked you some questions

1 about rate base and a rate base determination in this case. And
2 I think you said you're not expecting a rate base determination
3 in this case; is that correct?

4 A. That is correct.

5 Q. Okay. And there was some discussion, I think,
6 about what the difficulty with rate base is in this situation.
7 When were the rates set that are currently applicable to Port
8 Perry? Do you remember?

9 A. 2002.

10 Q. And that would have been the last time that the
11 Commission established a rate base for purposes of a rate base.
12 Correct?

13 A. That is correct.

14 Q. And so in order to go from that point in time to
15 today, theoretically, there is, what, 17 years of records that
16 need to be examined -- first found, and then examined to
17 determine what the net original cost rate base would be today.
18 Correct?

19 A. That is correct.

20 Q. Ultimately, I believe that when you were talking
21 about the provision of the sales agreement -- or the sales
22 contract, it is not your intent, then, to exercise that based
23 upon any rate base numbers or net original cost numbers that are
24 -- have been spoken of today. Correct?

25 A. That is correct.

1 MR. COOPER: That's all the questions I have,
2 Your Honor.

3 JUDGE HATCHER: Thank you.

4 Mr. Cox, you are excused.

5 We will call the next witness. That is Kristi
6 Savage Clarke. Please come to the witness stand.

7 (Witness sworn.)

8 JUDGE HATCHER: Thank you. Please have a seat.

9 Mr. Cooper?

10 MS. HERNANDEZ: Actually --

11 JUDGE HATCHER: Oh, I'm sorry. Ms. Hernandez,
12 go ahead.

13 KRISTI SAVAGE CLARKE, having been first duly sworn testified as
14 follows:

15 DIRECT EXAMINATION BY MS. HERNANDEZ:

16 Q. Good morning. Can you please identify yourself
17 for the record?

18 A. Yes. My name is Kristi Savage Clarke.

19 Q. And where were you employed?

20 A. I'm employed by the -- I'm employed by the
21 Missouri Department of Natural Resources.

22 Q. And in what capacity?

23 A. I am an environmental manager.

24 Q. And have you caused to be prepared for the
25 purposes of this proceeding certain surrebuttal testimony in

1 question and answer form?

2 A. I have.

3 Q. And is it your understanding that your
4 surrebuttal testimony has been marked as Exhibit 3 for
5 identification?

6 A. Yes.

7 Q. And do you have any changes that you would like
8 to make to your surrebuttal testimony at this time?

9 A. I have no changes at this time.

10 Q. And if I asked you the questions, which are
11 contained in Exhibit 3 today, would your answers be the same?

12 A. Yes.

13 Q. And are those answers true and correct to the
14 best of your information, knowledge, and belief?

15 A. Yes.

16 MS. HERNANDEZ: Your Honor, I offer Exhibit 3
17 into evidence and tender the witness for examination.

18 (WHEREIN; Confluence Rivers Exhibit 3 was
19 offered into evidence.)

20 JUDGE HATCHER: Thank you. Are there any
21 objections to the admission of Exhibit 3 onto the record?

22 MR. CLIZER: Yes, Your Honor. While I
23 understand that the Commission has previously ruled on the
24 motion to strike in order to preserve my issue, I would like to
25 say once again that I object to the introduction of this

1 evidence. I believe that it violates our constitutional rights
2 under the Fifth Amendment, as well as Article 1, Section 10 of
3 the Missouri Constitution and that we have been unable to
4 properly provide discovery to the Department of Natural
5 Resources regarding the issues raised by this testimony.

6 JUDGE HATCHER: Thank you for your objection.
7 The Commission has already ruled on that in writing, and we will
8 be consistent with that here. Your objection is noted, but
9 overruled. Thank you.

10 CROSS-EXAMINATION BY MS. BRETZ:

11 Q. Good morning, Ms. Savage Clark?

12 A. Good morning.

13 Q. There are no current violations for the Port
14 Perry system; is that correct?

15 A. That is correct.

16 Q. Are the systems in compliance with DNR
17 standards?

18 A. I cannot determine compliance at this time.
19 When compliance is issued after an inspection or any other time,
20 a violation could happen the very next day. So having not
21 recently observed, or had staff observe, the conditions there,
22 there could very well be noncompliance or violations.

23 Q. So being in compliance or not compliant, it's a
24 very dynamic thing and when people come out it's merely a --
25 it's a snapshot of what the system is at that time?

1 A. Absolutely correct. A snapshot in time.

2 Q. Okay. Do the systems need to meet DNR
3 standards?

4 A. Yes, they do.

5 Q. And why is that?

6 A. DNR standards have been developed to protect
7 human health and the environment. And if we are not protecting
8 human health and the environment, we shouldn't be operating.

9 Q. Are you aware of any concerns with the systems
10 that may arise to a violation down the road?

11 A. I have not had any concerns filed at this moment
12 in time. But it is an aging system, maintenance is an ongoing
13 concern. It is certainly possible, but I am not aware of
14 anything specific.

15 Q. Does DNR routinely go out to the systems and
16 make inspections?

17 A. Routine being -- our policy is to -- for a
18 system like this -- would be to inspect once every five years.
19 And we can also have investigations if there are concerns filed
20 in between inspections.

21 Q. When was the last time that a regularly
22 scheduled inspection was done on these systems?

23 A. I believe it was 2016.

24 Q. So that is almost three years ago?

25 A. Yes.

1 Q. Are you aware of any complaints about the
2 systems recently?

3 A. I am not aware of any specific complaints at
4 this time.

5 Q. Do the systems -- are you aware of whether the
6 systems meet current design standards?

7 A. No. I am not aware of whether they meet current
8 design standards. Our design standards recently changed, so
9 they haven't been inspected since our recent rule change.

10 Q. You were here when there was testimony about the
11 Missouri -- or the Minimum Design Standards for Missouri
12 Community Water Systems and --

13 A. Yes.

14 Q. So this -- these design systems are dated
15 December 10th, 2013. Is that the most recent ones for water?

16 A. To my knowledge, but I am not as knowledgeable
17 about drinking water as I am on wastewater.

18 Q. Okay. Are you familiar with the term gold
19 plating in utilities?

20 A. Yes.

21 Q. What does that mean to you?

22 A. To me that means building more of a system than
23 is required to meet standards.

24 Q. Do you believe that improving a system so that
25 it comes up to meeting DNR standards would be gold plating?

1 A. No.

2 Q. Why is that?

3 A. We need to meet the standards in order to
4 protect human health and the environment. And we need to do
5 whatever we need to do to get there. If getting there means
6 improved operation, that is the least expensive thing we can do.
7 That's fine. If getting there requires construction because
8 improved operation can't get us there, then we need to do
9 construction. And none of that would be considered gold plating
10 in my estimation.

11 Q. One moment, please. Do you have experience
12 dealing with Confluence?

13 A. Yes, I do.

14 Q. Could you briefly summarize your experience with
15 Confluence?

16 A. I first started working with Confluence during a
17 water pollution case that I was managing at the time, called at
18 that time Branco, but it later became called Hillcrest. And
19 since that time, we have -- myself and my staff -- have worked
20 with Confluence Rivers a number of different times -- well, I'm
21 sorry, Central States a number of different times as they
22 acquired other utilities.

23 Q. And did some of those other utilities have
24 issues with them?

25 A. Yes. I would say that the majority of the

1 facilities that I personally worked with and am aware of had
2 fairly serious issues with their compliance.

3 Q. So some of these utilities did not meet the
4 minimum design standards?

5 A. Some of these facilities not only don't meet
6 design standards, but were actively causing pollution to waters
7 of the state and were in terrible shape.

8 Q. So some of the systems that did not meet the
9 minimum design standards, was it not only the customers that
10 there -- that there was a potential for the customers to
11 experience harm, but also the greater community?

12 A. Yes. It is rather anecdotal. I don't have
13 written evidence, but we did have people from the neighborhoods
14 that were affected asking to have corrections made and
15 intimating they were willing to pay additional money to not have
16 poop in the creek where their children played. Sorry. I --
17 poop is poop.

18 Q. We understand. Thank you. And what was your
19 experience in dealing with Confluence in getting these systems
20 back up to design standards?

21 A. My experience with Confluence has been positive.
22 In my experience, they typically, as they are acquiring, as they
23 have the contracts signed, they often take over operation of the
24 facilities, which would cause an immediate improvement in the
25 quality of the effluent being discharged and the quality of the

1 environment. And then once they actually complete acquisition,
2 they generally, very quickly, bring them back into compliance
3 and keep them there.

4 Q. Do you believe that Confluence has the ability
5 to protect the public health?

6 A. Absolutely.

7 Q. What is your experience dealing with the Lot
8 Owners' Association?

9 A. A lot owners' association?

10 Q. Well, the Lot Owners in this specific case?

11 A. In this specific case, the Port Perry case?

12 Q. Yes.

13 A. I have no experience dealing with the Lot Owners
14 in the Port Perry case.

15 Q. Okay. Thank you.

16 JUDGE HATCHER: All right. And Public Counsel
17 for cross-examination.

18 MR. CLIZER: Thank you, Your Honor.

19 CROSS-EXAMINATION BY MR. CLIZER:

20 Q. Good morning.

21 A. Good morning.

22 Q. Would you prefer Savage Clarke or --

23 A. You can just call me Kristi. That's fine, too.

24 Q. Kristi. All right. Well, I'm going to start
25 off with a series of questions. First of all, I'd just like to

1 know who contacted the Department of Natural Resources regarding
2 the preparation of this testimony?

3 A. With regard to the preparation of the testimony?

4 Q. Or just simply why are you here? Who brought
5 you into this case?

6 A. Confluence Rivers asked if I would be willing to
7 speak about the facts of the case.

8 Q. I am not trying to be insulting here, but this
9 testimony, did you primarily prepare it yourself?

10 A. I worked with an attorney.

11 Q. Okay. Was that attorney a Department of Natural
12 Resources attorney or was it some other third-party attorney?

13 A. Both.

14 Q. Both. And I take it, did you prepare this
15 testimony while you were at work?

16 A. Yes.

17 Q. And did you receive compensation from the
18 Department of Natural Resources for the time you spent preparing
19 this testimony?

20 A. Yes.

21 Q. Okay. And you already said that you received
22 aid from legal counsel for the Department of Natural Resources
23 for preparing your testimony?

24 A. Yes.

25 Q. All right. I understand that those might have

1 been a little bit weird. Thanks for bearing with me on that.

2 Really quick, did you contact anybody from the
3 Lot Owners' Association or the Port's Perry -- sorry -- Lake
4 Perry Service Company -- they use very similar names -- while
5 preparing your testimony?

6 A. No.

7 Q. Did you contact anybody from Commission Staff
8 while preparing your testimony?

9 A. No.

10 Q. Did you contact anybody from OPC or the Office
11 of the Public Counsel?

12 A. No, I did not.

13 Q. All right. Excellent. Let's get into the
14 testimony itself. Your testimony mainly focuses on TMF factors.
15 Right? Actually, it discusses TMF factors. Let me ask that.

16 A. Yes.

17 Q. Okay. And those are the technical, managerial,
18 and financial factors. Right?

19 A. Yes.

20 Q. Okay. Well, let's start with technical. I did
21 not find anywhere in your testimony a discussion of the Port --
22 the Lot Owners' technical capacity. Does your testimony discuss
23 the Lot Owners technical capacity to run the system?

24 A. It does not. I have no awareness of the Lot
25 Owners having any technical capacity to run a sewer or water

1 system.

2 Q. Are you familiar with the testimony of Mr. -- I
3 wish I pronounced this correctly -- DeWilde, DeWilde?

4 A. Yes.

5 Q. Okay. Do you have a copy in front of you?

6 A. Of Mr. DeWilde's or my own?

7 Q. Sorry. Mr. DeWilde's.

8 A. I do.

9 Q. Specifically, do you have a copy of the Schedule
10 RD-7?

11 A. RD-6, RD-7. Yes, I do.

12 Q. Included in there -- and these aren't numbered,
13 so I am just going to say one, two, three, four, five -- Page 6,
14 I think, is a letter from Jeremy Meyer?

15 A. Yes.

16 Q. And Jeremy Meyer indicates that he is a licensed
17 operator for water systems and wastewater systems? It will be
18 the third -- I hesitate to call it a paragraph?

19 A. Yes. He indicates he has licensure.

20 Q. And he is willing to work with Port Perry
21 Company?

22 A. Yes.

23 Q. All right. Would you agree with me that a
24 licensed operator would have the technical skills to operate
25 this water system?

1 A. In theory, yes.

2 Q. Let's move on to managerial factor. Once again,
3 I don't believe that your testimony addresses the managerial
4 capacity of the Lot Owners' Association; is that correct?

5 A. I have no knowledge of the managerial capacity
6 of the Lot Owners' Association.

7 Q. Do you have a copy of the direct testimony of
8 Josiah Cox?

9 A. Yes, I do.

10 Q. Will you turn to Page 8 -- oh wait. 9?

11 A. Page 9.

12 Q. You would agree with me that on Page 9, Lines 9
13 through 10, Confluence indicates that it's going to utilize a
14 contract billing agent and an emergency answering services,
15 i.e., third-party contractors to fulfill the management
16 requirement?

17 A. It appears to be true.

18 Q. Yes. So it is essentially, according to MDNR --
19 well, let me backup.

20 MDNR has taken the position that Confluence has
21 the managerial capacity to operate the system?

22 A. Yes.

23 Q. So according to MDNR, any entity capable of
24 hiring a third-party entity to handle managerial aspects has the
25 managerial capacity?

1 A. I don't recall making that statement.

2 Q. You say that Confluence has the managerial
3 capacity?

4 A. They do.

5 Q. And Confluence is employing third-party
6 managerial operators?

7 A. They have said so.

8 Q. Therefore, any other entity who could, in
9 theory, hire third-party managerial operators would have
10 managerial capacity?

11 A. Depending on the quality of who they hire, yes.

12 Q. Okay. When reviewing the managerial capacity of
13 Confluence Rivers, did you investigate the managerial aspects of
14 its owner or presidents? Not owner. I apologize. Josiah Cox?

15 A. No.

16 MR. CLIZER: Sorry. One moment. Your Honor, I
17 would ask for an exhibit to be marked.

18 JUDGE HATCHER: Go ahead.

19 MR. CLIZER: Although, I'm not entirely sure I
20 would be offering it. I apologize. I didn't mean to throw that
21 at you.

22 For the record, I believe this would be 201.
23 Yes.

24 BY MR. CLIZER:

25 Q. Can you identify the document you've been

1 handed?

2 A. No.

3 Q. Do you read at the top it says United States
4 Bankruptcy Court. It's a voluntary petition.

5 MS. HERNANDEZ: Your Honor, objection. I don't
6 believe this document is relevant to this proceeding. We're
7 discussing the Company's managerial ability, not Mr. Cox's
8 independent, personal managerial --

9 MR. CLIZER: I would say that capability of the
10 individual operating the system, or rather running the Company
11 is a direct, relevant indicator of the abilities of the Company
12 itself.

13 COMMISSIONER KENNEY: I'll weigh in also.
14 Mr. Cox, I apologize to you that this goes on again. We dealt
15 with this one time before. The fact that in 2013/'14, like many
16 of my friends, suffered a harsh financial crisis, including
17 myself, that I applaud you for being able to come out of the
18 bankruptcy, pay your bills, and move forward. I know it is an
19 embarrassment for you. We talked about this about three or four
20 years ago, and I'm sorry you have to go through this again.
21 Thank you.

22 JUDGE HATCHER: Mr. Clizer, a response to the
23 objection?

24 MR. CLIZER: I believe I've already given it,
25 but you know what, fine. I will just proceed with additional

1 questioning on other matters.

2 JUDGE HATCHER: Okay.

3 BY MR. CLIZER:

4 Q. While I am getting an answer from opposing
5 counsel on an issue, do you have a copy of the application that
6 was filed?

7 A. If you'll tell me where it is, I might.

8 Q. There might be a copy to Josiah Cox's direct.
9 Not the section that I have.

10 MR. COOPER: Mr. Clizer?

11 MR. CLIZER: Understood.

12 Has the application been entered into the
13 record?

14 JUDGE HATCHER: I would say no, but --

15 BY MR. CLIZER:

16 Q. Ms. Savage Cox, what I've just handed
17 you --

18 A. Clarke.

19 Q. Clarke. I apologize. I'm sorry.

20 A. Ms. Savage Clarke, what I've just handed you are
21 Exhibits E and Exhibits F attached to Confluence Rivers'
22 application. The first page, that's D, but I would like you to
23 see the next ones, E and F. You would agree with me that these
24 are contracts for consulting -- consultation between Confluence
25 Rivers and one -- I'm gonna mess up these names -- Brad Moll and

1 Mike Yamnitz. Correct?

2 A. It would appear to be, but I am not a contract
3 lawyer.

4 Q. That's fine.

5 MR. CLIZER: Your Honor, I would like to go in
6 camera for just two questions. And having conversed with
7 opposing Counsel, this is the proper time, I believe.

8 JUDGE HATCHER: Any objections to going in
9 camera? All right. We shall go in camera.

10 MR. COOPER: Should we clear the room?

11 JUDGE HATCHER: Thank you for the reminder.
12 Let's go ahead and clear the room of all unauthorized parties.

13 (REPORTER'S NOTE: At this time an in-camera
14 session was held, contained in Volume 3, Page 88.)

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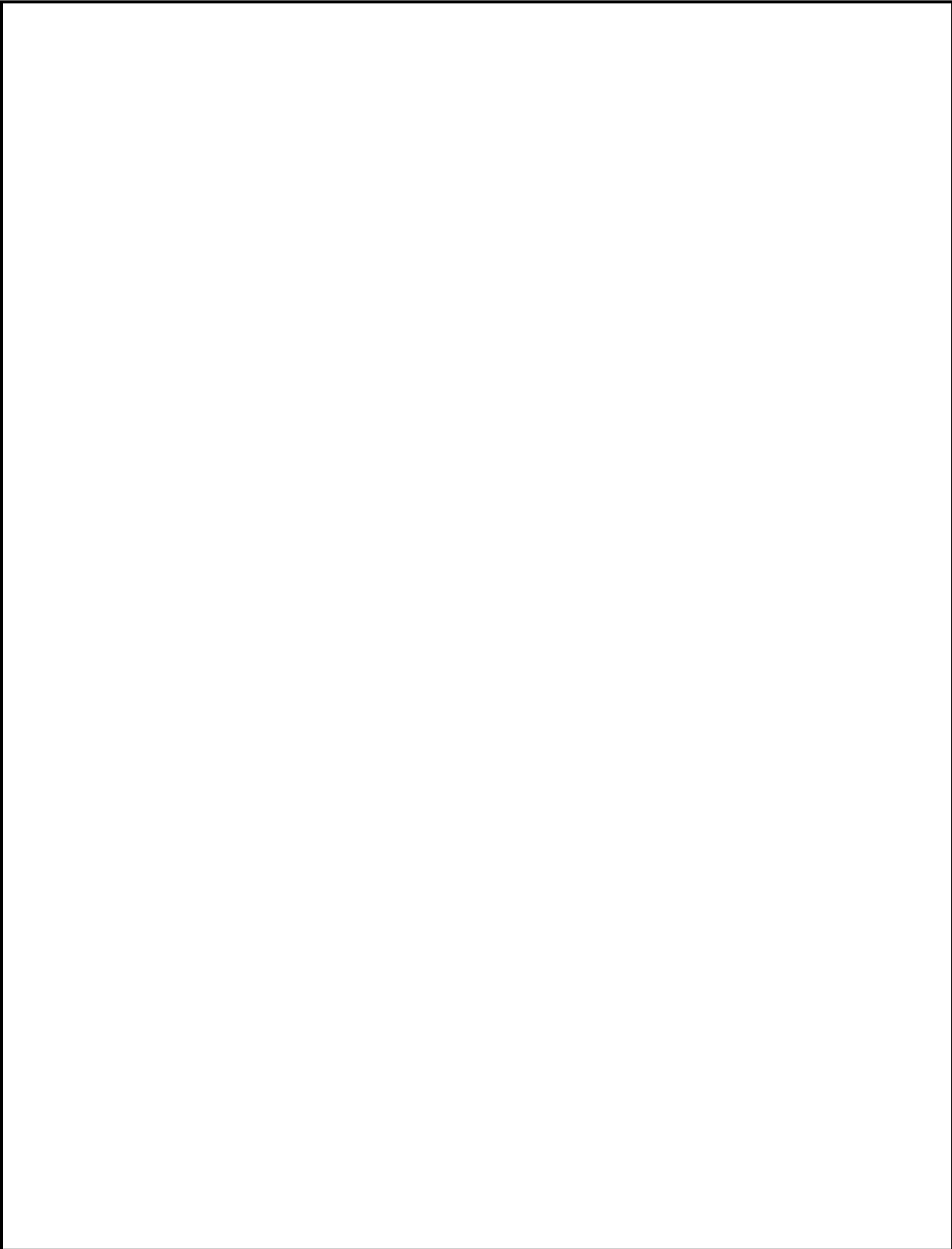
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1 (REPORTER'S NOTE: At this time, public session
2 was resumed.)

3 JUDGE HATCHER: Please go ahead.

4 BY MR. CLIZER:

5 Q. I'm not going to refer to the actual dollar
6 amounts we just discussed, but did you take into consideration
7 the fact that Confluence needed to spend that amount of money to
8 hire consultants when determining whether they had the
9 managerial capacity to operate these systems?

10 A. No.

11 Q. No. Okay. Let's move on to the financial
12 capacity. Now, previously you were asked a question by Staff
13 Counsel about whether or not this system meets the minimum
14 design standards. Correct?

15 A. Yes.

16 Q. Do you recall?

17 A. Yes.

18 Q. And I believe at that time you said you are not
19 sure. Correct?

20 A. If that is what I said, yes.

21 Q. Well, would you like to change --

22 MS. BRETZ: Objection, Your Honor. That is not
23 a correct characterization of Ms. Savage Clarke's testimony.

24 THE WITNESS: Thank you.

25 BY MR. CLIZER:

1 Q. Do you know whether or not this system meets
2 Missouri's minimum design standards?

3 A. I do not.

4 Q. Okay. That is all I wanted to get to. Thank
5 you. Could you turn to Page 7 of your testimony?

6 A. Page 7 of my testimony?

7 Q. Correct. I believe the sentence starts on Line
8 3, but I'm going to go ahead and jump down to Line 6, starting
9 at, It does not appear. You say, It does not appear Lake Perry
10 Service Company's business plan attached to Scheduled J-- or
11 GJ-01, the testimony of Mr. Glen Justis, includes funds until
12 2024 for necessary repairs to meet the minimum design standards
13 of Missouri community water systems. You would agree I read
14 that correctly?

15 A. Yes.

16 Q. How is it you were able to state that if you're
17 not sure if they currently meet minimum design standards?

18 A. I went with Mr. Justis' testimony.

19 Q. You don't know if they meet minimum design
20 standards, but you also don't think they are going to meet
21 design standards; is that correct?

22 A. That is not what I said. Mr. Justis' testimony
23 clearly states that in 2024 they have additional funds to bring
24 things back up -- or to bring things up, to make improvements.

25 Q. Are you familiar with the testimony of witness

1 Chad Sayre?

2 A. Yes.

3 Q. Do you have a copy of it in front of you?

4 A. I am sure I do.

5 Q. Do you have a copy?

6 A. Yes.

7 Q. Okay. Sorry. Can you turn to Page 3?

8 A. (Witness complied.)

9 Q. Can you read Lines 14, like together, 16. It
10 would be a single sentence beginning with, Both wells.

11 A. Both wells, as public water supplies, need to be
12 able to disinfect and eventually will need pump upgrades, but
13 currently in the system is compliant with regulations and MDNR.

14 Q. Do you disagree with this assessment by
15 Mr. Sayre?

16 A. I can't recall who said so, but I believe one of
17 the wells lacks disinfection, so I do then, if that's true. If
18 both wells are not disinfected, then that's not an accurate
19 statement.

20 Q. Turning back to your own testimony, turning to
21 Page 7, Lines 9 through 10 you state, Also there does not appear
22 to be any funds immediately available for an emergency equipment
23 replacement reserve. Correct?

24 A. Yes. In my reading of --

25 Q. How much funds would you expect a company this

1 size to have on hand?

2 A. A company the size of who? Which company are we
3 talking about?

4 Q. Sorry. How much many -- how much money would
5 you expect a company with between 300 and 400 connections to
6 have on hand to meet this requirement that you cite to?

7 A. I have no idea. I am not an accountant. I'm
8 sorry.

9 Q. Have you verified that Confluence has this money
10 on hand?

11 A. Nope.

12 Q. No. You mentioned multiple times in your
13 opinion that the application, or rather, the acquisition of this
14 system by Confluence is not detrimental to the public. Did you
15 consider rate impact when determining whether this application
16 was detrimental to the public interests?

17 A. No, I did not.

18 Q. Do you know what the long-term rate impact for
19 this system could potentially be?

20 A. No, I do not.

21 Q. Did you attend any of the local public hearings
22 held in this case?

23 A. No, I did not.

24 Q. Have you reviewed any of the comments entered in
25 this case?

1 A. No, I have not.

2 Q. Did you review any of the hundreds of signatures
3 and petitions collected opposing this acquisition?

4 A. No, I have not.

5 MR. CLIZER: All right. I have no further
6 questions. Thank you.

7 JUDGE HATCHER: Thank you, Mr. Clizer.

8 And the Lot Owners, Mr. Linton?

9 CROSS-EXAMINATION BY MR. LINTON:

10 Q. Good morning, Ms. Savage Clarke. Finally good
11 to meet you.

12 A. We've met before.

13 Q. Well, good to see you again. I have a few
14 questions for you. At Page 3, Lines 1 through 7, you state --
15 of your surrebuttal testimony -- you state that you are the
16 compliance enforcement chief; is that correct?

17 A. Yes.

18 Q. Could you describe your functions as that, in
19 that office?

20 A. Would you like a different description than is
21 in my written testimony?

22 Q. I guess not. We'll just go with that.

23 A. Okay.

24 Q. Are you a lawyer?

25 A. No, I am not.

1 Q. Are you an engineer?

2 A. No, I am not.

3 Q. Have you been to the site for Lake Perry or Port
4 Perry Service Company?

5 A. No, I have not.

6 Q. What is your educational background?

7 A. My educational background includes a bachelor's
8 degree in biology and chemistry, a master's degree in agronomy.

9 Q. Are you an MBA?

10 A. No, am I not.

11 Q. Do you have a business degree?

12 A. No, I do not.

13 Q. Have you reviewed the qualifications of
14 Mr. DeWilde?

15 A. Yes.

16 Q. Are you aware he is a CPA?

17 A. I would have to go back and look again. I don't
18 recall everyone's qualifications. I read quite a bit here.

19 Q. Subject to check, would you agree he is a CPA?

20 A. I have no idea.

21 Q. Let's just assume he is a CPA, and his testimony
22 says that. Would you -- do you understand he's an accountant?

23 A. I have no idea.

24 Q. Do you understand whether he is a president of
25 Citizens Electric Corporation?

1 A. I have no idea.

2 Q. Would you understand that he's on the Board of
3 Directors of a bank in Perryville, Missouri?

4 A. Again, no idea.

5 Q. If all of those things are true, are you saying
6 Mr. DeWilde is not qualified in the TMF?

7 A. I am saying that I am not aware of experience
8 running a wastewater utility or a drinking water utility.

9 Q. Have you reviewed the testimony of Mr. Justis?

10 A. Yes, I have.

11 Q. Have you -- can you tell me what jobs he has had
12 in the past?

13 A. Off the top of my head, no, I cannot.

14 Q. Can you tell me what degrees he has?

15 A. Off the top of my head, no, I cannot.

16 Q. If he had an MBA, would you know that?

17 A. I am not sure how to answer that question.

18 Q. So you haven't reviewed his testimony well
19 enough to know whether he's an MBA?

20 A. I have reviewed his testimony, but I do not
21 recall everyone's testimony word for word.

22 Q. Would you say that a person engaged in --
23 professionally, as a business planner with an MBA is not
24 qualified by your TMF standards?

25 A. I am not aware that Mr. Justis has any

1 experience running a wastewater or drinking water utility.

2 Q. Have you reviewed the testimony of Mr. Sayre?

3 A. Yes, I have.

4 Q. Are you aware that he is a registered
5 professional engineer?

6 A. Yes, I am.

7 Q. Would you say that he is qualified under your
8 TMF standard?

9 A. Qualified for what?

10 Q. Under your TMF standard.

11 A. Qualified for what?

12 Q. Under your TMF standard. You have testified
13 that Confluence Rivers is qualified under your TMF standard. I
14 want to know if Mr. Sayre is not qualified under your TMF
15 standard.

16 A. The question for me is not complete unless you
17 ask me qualified to do what.

18 Q. Thank you very much. Moving on then, at Pages 4
19 and 5 you describe what DNR's preferences are and the hierarchy
20 of continuing authority; is that correct?

21 A. That is correct.

22 Q. Okay. And we already established you are not a
23 lawyer. Correct?

24 A. Yes.

25 Q. You wouldn't be saying, would you, that your

1 priorities would take priority over state statute, are you?

2 A. No.

3 Q. I've handed you a section of the Missouri
4 Statute 393.857. Do you see that?

5 A. Yes.

6 Q. Could you read that section of the statute?

7 A. The entire paragraph?

8 Q. Please.

9 A. Sections 393.825 to 393.861 and Section 393.175
10 shall be construed liberally. The enumeration of any object,
11 purpose, power, manner, method, or thing shall not be deemed to
12 exclude like or similar objects, purposes, powers, manners,
13 methods, or things. To the extent that Sections 393.825 to
14 393.861 and Section 393.175 do not speak to an issue, the
15 provisions applicable to mutual benefit not-for-profit
16 corporations or limited liability companies, as the nonprofit
17 sewer companies may elect in its articles of incorporation,
18 which are not inconsistent with the provisions of Sections
19 393.825 to 393.861 and Section 393.175 shall apply to nonprofits
20 sewer companies.

21 Q. In your analysis of your priorities, did you
22 take into consideration this section of the Missouri statute?

23 A. Yes.

24 Q. What is your -- what is your analysis of that
25 statute relative to your priorities?

1 A. The priorities don't exclude 393's. They just
2 prioritize other types of organizations.

3 Q. At Page 9, Line 5 of your testimony, it states
4 there that, If recommended repairs and maintenance are delayed,
5 it may result in a risk to human health; is that correct?

6 A. Yes.

7 Q. Are you saying there that there is not a risk
8 now?

9 A. If recommended repairs and maintenance have been
10 delayed, then yes, there would be a risk. They could fail at
11 any time if we delay maintenance and recommended repairs.

12 Q. Is that true of any system?

13 A. Yes.

14 Q. So there is always a potential risk for any
15 system in the future. Correct?

16 A. That is true. But what I am saying here is that
17 delay of recommended repairs enhances that risk.

18 Q. But if repairs are done, the potential for
19 future risk will be reduced. I believe that's your testimony.
20 Right?

21 A. Repairs and maintenance should be done on a
22 schedule and should be done as things arise. If they are
23 delayed for any reason, that leads to problems.

24 Q. On Page 7, Line 1 of your testimony -- let me
25 get there. Strike that.

1 At Page 12, Line 2 of your testimony you say
2 that, Confluence Rivers have a clear plan for remedying the
3 liability. What is that clear plan? Can you describe that
4 clear plan to me?

5 A. Confluence Rivers has indicated to the
6 department that they plan to fix some of the problems with the
7 wastewater system where there are some -- and forgive me I am
8 not an engineer, so I can't go into great detail. But there's
9 some valving issues. With a land application system like this
10 it's very important that it apply the water evenly across the
11 ground, and I believe it is not currently doing so. There is
12 something wrong with the sprinklers. Some of them are not
13 functional, and some of them do not have the spray distance that
14 they are supposed to.

15 And what happens when you have that is ponding.
16 And if we have ponding, that's standing water and that standing
17 water then has to go somewhere and it usually ends up in waters
18 of the state, and that is considered to be water pollution. And
19 so Lake Perry, being a lake community, should be very concerned
20 that if their sprinkler system is not working correctly, they
21 are polluting the lake, which affects their property values.

22 So Central States has indicated they plan to fix
23 some valving and fix some other things related to the sprayers
24 so that we go back to having an even distribution of wastewater
25 across the land application field. There's also safety issues

1 related to fences that are not adequate to prevent entry of
2 children into the wastewater lagoon area. Excuse me. Safety is
3 always a current concern. We have a large constructed basin.
4 We would prefer not to have pets swimming in it, or children
5 falling in it, or livestock accidentally entering that, should
6 some neighbor's cattle get loose. So we try to have -- we are
7 required to have by permit, a fence that will exclude livestock,
8 children, et cetera from entering the area. And it should have
9 signs posted clearly noting the hazard. And there should be
10 some effort made to keep the public off of -- this is a permit
11 that very specifically does not allow the public to have entry
12 to the land application area.

13 This is wastewater. It will have E.coli and
14 other things. And once it gets into the soil it's safe, but
15 during and after the time -- shortly after the time of
16 application, you don't want public entry in that area. So we
17 need to have a little bit more safety going on there. So those
18 are some of the things that I am aware of that Central States
19 plans to do with the wastewater.

20 If we're going to talk about the drinking water,
21 I'm aware that there is, as I said, some problem with lack of
22 chlorination on the second well. And there's a couple of
23 different plans. With any group that does this type of
24 acquisition, I would expect them to get in and start operating
25 it and figure out what they can do to fix it without great

1 investment, and then go on to, okay, that didn't work, so now
2 we're going to have to put in a little bit more effort and bring
3 in an engineer and figure out how to make this work if we can't
4 operate our way out of the problems. But if there is a well
5 there that is not chlorinated, that's -- that's a problem.

6 Q. It is? Can you show me where a well that is not
7 chlorinated is required by state statute or regulation?

8 A. I am not sure if they are required to chlorinate
9 because they've had a problem or if they've just decided that
10 they would like to have chlorination on that -- on those wells.
11 But they did put chlorination on the first well, and there is
12 not on the second well.

13 Q. You just said that if there is not chlorination,
14 that's a problem. Can you show me from state statute or
15 regulation that --

16 A. If they have had --

17 Q. -- that is a problem?

18 A. If they've had -- have bad samples, meaning if
19 the BACT E.coli, then they are required to chlorinate or find
20 some way to disinfect that water and remove that. Yes,
21 that's --

22 Q. Can you show me --

23 A. -- a requirement.

24 Q. Can you show me the regulation and statute that
25 requires that?

1 A. I would have to dig, but it's there. If the
2 department finds that their samples have harmful organisms in
3 them, then yes, they have to disinfect.

4 Q. Thank you very much.

5 MR. CLIZER: No further questions.

6 JUDGE HATCHER: Commissioner?

7 QUESTIONS BY COMMISSIONER KENNEY:

8 Q. It's still morning. Good morning, Ms. Savage
9 Clarke.

10 A. Sorry. Good morning.

11 Q. Yeah. I am hiding over here.

12 A. You are.

13 Q. Just a couple of questions. Now, you have been
14 with the Department of Natural Resources for eight years now?

15 A. Yes, sir.

16 Q. And you're section chief?

17 A. I am.

18 Q. I saw by your testimony that that means you
19 supervise about a group of ten?

20 A. I do.

21 Q. Okay. I have a couple of questions based on
22 Counsel of the Office of the Public Counsel from the opening.
23 I'm kind of interested because, quite frankly, I'm trying to
24 find out why you are here. How did you get involved in this
25 case?

1 A. I was asked by Confluence Rivers if I would be
2 willing to speak about some of the facts and, you know, some of
3 the department's requirements.

4 Q. Have you personally evaluated Port Perry?

5 A. I have -- I have looked, as have my staff,
6 evaluated Port Perry on paper, yes. Personally visited, no. We
7 don't have the staff to cover the entire state to go to all of
8 our sites.

9 Q. I see you as an expert witness discussing Port
10 Perry, their service company, and yet you have never been on the
11 site?

12 A. That is quite common for our cases. As I said,
13 my staff carry 450 cases that cover the entire state of Missouri
14 and we cannot go on site to most of our cases and still get them
15 worked. So we look at data, and we look at inspection reports
16 from our staff. And in this case, that would have been our
17 southeast regional office staff doing inspections. And we look
18 at photos, and we look at discharge monitoring reports that have
19 been submitted, and we look at their permit requirements. We
20 have a huge amount of data that we can go through to evaluate a
21 system and evaluate what is going on on a site, if need be.

22 Q. Did anyone from MDNR review your testimony that
23 you filed in this case?

24 A. Yes.

25 Q. Who would that be?

1 A. Our general counsel.

2 Q. So you said your general counsel. And then, did
3 you also say earlier when Public Counsel asked you a question
4 that you had another attorney review it?

5 A. Help me prepare it. I've never testified before
6 the Public Service Commission, so I needed help formatting --

7 Q. Let me rephrase that.

8 A. -- and putting things in --

9 Q. You had Staff Counsel review your testimony?

10 A. Yes.

11 Q. Is that correct? And another attorney --

12 A. Yes.

13 Q. -- helped you put it together?

14 A. Yes, helped me put it together. Yes.

15 Q. Was that other attorney an attorney for the
16 Company?

17 A. Yes.

18 Q. So the Company allowed you to do that. Now, did
19 anyone from MDNR authorize your testimony today?

20 A. Yes.

21 Q. And who would that be?

22 A. Upper management.

23 Q. Okay. So they said you could come and testify?

24 A. Yes.

25 Q. Okay. Are you getting paid to testify today?

1 A. In that I'm on salary with --

2 Q. Is anyone else paying you to testify --

3 A. Oh, my goodness, no.

4 Q. No one paid you to -- for your written
5 testimony?

6 A. No. I mean, I worked for DNR, and as part of my
7 work --

8 Q. I am just trying to understand because --

9 A. But no one other than DNR is paying me, if that
10 helps.

11 Q. Okay. You don't have any financial interest in
12 Confluence Rivers or --

13 A. No. I --

14 Q. -- of the parent companies or affiliates?

15 A. No, I do not.

16 Q. The reason I'm asking these questions are
17 because in my seven years on the Commission this is highly
18 unusual to have -- for me at least, to have a witness from a
19 state agency as an expert witness on the stand for a company. I
20 just -- to me it is unusual. So that is why I had to ask those
21 questions, but I think that answers my question. That still
22 doesn't answer my question on how you are here.

23 Are you representing the state as their witness
24 in this case?

25 A. I am not familiar with your proceedings at the

1 Public Service Commission, but yes. I am here -- I'm not -- I'm
2 here with the state stating how we do things and how we consider
3 who's the hierarchy of continuing authorities for the permits we
4 issue, how we determine compliance and violations, and things
5 like that.

6 Q. I'm guessing -- so you're involved in this case
7 and because of your involvement or something to do with Port
8 Perry Service Company and -- so then the Company sought your
9 expert advice?

10 A. More or less. We were working -- yes. My staff
11 and I were working with Confluence Rivers on a rather large
12 group of purchases that they were making.

13 Q. That other group, so then they brought you into
14 this one?

15 A. Yes.

16 Q. So you weren't really involved in Port Perry
17 until they brought you in? I mean, you weren't -- were you --
18 had you done any -- your team done any investigations into the
19 Port Perry Service Company before you were sought out by
20 Confluence Rivers?

21 A. Yes. As a matter of preparing an abatement
22 order on consent, we had done some work on Port Perry. Yes.

23 COMMISSIONER KENNEY: Okay. You answered my
24 questions. Thank you very much.

25 JUDGE HATCHER: Thank you. And let's go to

1 recross-examination after bench questions. By order we have
2 Staff?

3 MS. BRETZ: Nothing. Thank you.

4 JUDGE HATCHER: Thank you. And the Public
5 Counsel on recross?

6 RECROSS-EXAMINATION BY MR. CLIZER:

7 Q. I believe you were just asked this question. I
8 want to confirm it. You are here today speaking on behalf of
9 the Department of Natural Resources. Correct?

10 A. Yes, I am.

11 MR. CLIZER: Okay.

12 JUDGE HATCHER: I'm sorry. Are there any other
13 questions?

14 MR. CLIZER: No further questions. I would just
15 once again -- I know you've already ruled on this -- move to
16 strike the testimony on the grounds that it is a testimony of a
17 party who has not intervened in this case.

18 JUDGE HATCHER: I appreciate your keeping your
19 objection alive. And we will overrule it again. Thank you,
20 Mr. Clizer. Any other questions on recross?

21 MR. CLIZER: No.

22 JUDGE HATCHER: Okay. And Lot Owners?

23 MR. LINTON: No questions.

24 JUDGE HATCHER: All right. And redirect by
25 Confluence Rivers.

1 MS. HERNANDEZ: Thank you.

2 REDIRECT EXAMINATION BY MS. HERNANDEZ:

3 Q. You were asked some questions about compliance
4 with DNR regulations. Do you agree -- or do you have any
5 knowledge as to whether the wastewater treatment facility is in
6 compliance with the issued permit at this point in time?

7 A. At this point in time, I don't have any written
8 documentation from my own people that it is not, but it has been
9 discussed and there has been testimony that the spray diameter
10 is not adequate, that some of the spray nozzles are not
11 functioning, and that there is some ponding of water on the
12 application site when there's application ongoing. And if that
13 is true, then those would be noncompliant and would also be
14 violations of the permit.

15 Q. So if DNR walked onto the Port Perry site today
16 and saw those things going on, it's your opinion that there
17 would be -- that DNR would find a violation?

18 A. Yes. That would be my opinion.

19 Q. Earlier you talked about water pooling or
20 ponding. What is -- what's the makeup of that water?

21 A. Water that would be ponding would be water that
22 has received only primary treatment, the lagoon or the water is
23 wastewater stored, is only receiving primary treatment. It is
24 not receiving disinfection and it's not removing ammonia and
25 other things. And so it would be typical of what we would see

1 in wastewater that would be -- that would be only receiving
2 primary treatment. It would have, potentially, E.coli and
3 ammonia that could be going into, then, waters of the state
4 among other things. Including, but not limited to. Those are
5 the ones that would be concerning -- would be E.coli and other
6 disease-causing organisms because E.coli is not the only thing
7 we measure. E.coli as an indicator species, if there's E.coli
8 present in the water, then there are other disease-causing
9 organisms in that water as well.

10 Q. You were asked some questions about the
11 emergency equipment replacement reserve. Why is it important to
12 have such reserve?

13 A. Oh, my goodness. They rely heavily on a pump to
14 take the excess water out of that lagoon and move it out into
15 the sprinkler system. If that pump goes down and cannot be
16 replaced, then they risk water going overtop of the berm on the
17 lagoon, which can then damage the lagoon and also go to waters
18 of the state causing pollution. And again, this pollution has
19 potentially disease-causing organisms in it. So it's a lovely
20 lake community. This is a concern.

21 If we lose that pump and don't have money to
22 replace it immediately, it can go from zero to disaster in a
23 very short period of time. So any large equipment failures, you
24 have to have money in reserve to work on those, and that's just
25 standard with the wastewater and drinking water facilities.

1 If we lose chlorination on the one well that has
2 chlorination on it, are we risking disease-causing organisms
3 coming out in our drinking water.

4 Q. And is it your opinion that Confluence Rivers
5 has access to funds for emergency repairs should they be needed?

6 A. Yes. It has been my experience that in the
7 30-some facilities that Confluence has testified that they now
8 are owning and operating in Missouri, that I haven't had cause
9 to take action against any of them for some sort of failure
10 related to maintenance or failure to be able to replace things.
11 So they are currently operating all of those without a problem.

12 Q. And you were asked some questions about -- from
13 Staff about Hillcrest?

14 A. Yes.

15 Q. Can you expand on what was the situation at
16 Hillcrest?

17 A. Hillcrest was a very sad situation. A
18 gentleman purchased, with his retirement savings, a utility
19 company. He intended in his retirement to operate a utility
20 company, and he had a health failure. That health failure
21 snowballed into -- he had a drinking water system and wastewater
22 system in major disrepair. And he was not able to fund things
23 because he was not able to collect all of the payments that were
24 due from the users of the systems.

25 And as that snowballed, more and more people

1 stopped paying their bills, and it snowballed further into a
2 problem with lenders. It is a very large neighborhood, 225-ish
3 homes. And in a neighborhood like that, there's always people
4 buying and selling homes. Well, that suddenly came to a halt
5 because the lenders became aware that the system had major
6 issues, environmental issues. And so I had people calling me --
7 this was my personal case. This was before I was a manager.
8 And I spent half my day on the phone talking to lenders and real
9 estate people and folks trying to sell their homes asking me
10 when is DNR going to fix this. Well, DNR doesn't fix that
11 problem. DNR is trying to encourage the owner to fix that.

12 And the gentleman was ill and dying and knew it,
13 and was trying to fix this and he couldn't. He hired extra
14 people and PSC sent people down to try to help him collect his
15 bills and it snowballed into a mess. And we actually had legal
16 agreements with the man to fix things, but he's dying and taking
17 a dying man to court was not really going to be good for anyone.
18 And all we really wanted was compliance. We didn't want to
19 punish this man.

20 In the end, Central States stepped in and
21 purchased the system and fixed it quickly, and people were able
22 to sell their homes again and buy homes again and life went back
23 to normal. So it's an example of how when one little thing goes
24 wrong with the system, it can snowball in a very bad way.

25 I'm sorry I said the word snowball 15 times.

1 MS. HERNANDEZ: No further questions. Thank
2 you.

3 JUDGE HATCHER: Thank you, Ms. Savage Clarke.
4 You are excused.

5 And with that, it is by my watch 12:07. Let us
6 take our lunch break and come back at 1:15. And with that, we
7 are adjourned for lunch.

8 (OFF THE RECORD.)

9 JUDGE HATCHER: Let's go back on the record
10 after our lunch hour recess has expired. The next witness that
11 I have on my schedule is Todd Thomas.

12 Mr. Thomas, please raise your right hand.

13 (Witness sworn.)

14 JUDGE HATCHER: Thank you. Please have a seat.
15 And Confluence Rivers?

16 TODD THOMAS, having been first duly sworn testified as follows:

17 DIRECT EXAMINATION BY MS. HERNANDEZ:

18 Q. Good afternoon. Can you state your name,
19 please.

20 A. Todd Thomas.

21 Q. And by whom are you employed?

22 A. CSWR.

23 Q. And in what capacity?

24 A. I am responsible for business development and
25 engineering.

1 Q. Have you caused to be prepared for the purposes
2 of this proceeding certain direct testimony in question and
3 answer form?

4 A. I have.

5 Q. And is it your understanding that the testimony
6 has been marked as Exhibit 4 for identification?

7 A. Yes.

8 Q. And do you have any changes you would like to
9 make to that testimony at this time?

10 A. I do not.

11 Q. And if I asked you the questions, which are
12 contained in Exhibit 4 today, would your answers be the same?

13 A. Yes.

14 Q. And are those answers true and correct to the
15 best of your information, knowledge, and belief?

16 A. Yes.

17 MS. HERNANDEZ: Your Honor, I'd offer Exhibit 4
18 into evidence and tender the witness for cross-examining.

19 (WHEREIN; Confluence Rivers Exhibit 4 was
20 offered into evidence.)

21 JUDGE HATCHER: Let's take Exhibit 4 first. Are
22 there any objections to the admission of Exhibit 4 onto the
23 hearing record? Seeing none, it is so admitted.

24 (WHEREIN; Confluence Rivers Exhibit 4 was
25 received into evidence.)

1 JUDGE HATCHER: And on to the witness by
2 predetermined order of cross-examination, Staff, please go
3 ahead.

4 MS. BRETZ: Nothing here. Thank you.

5 JUDGE HATCHER: And the Office of the Public
6 Counsel?

7 MR. CLIZER: The Office of the Public Counsel
8 has no cross. Thank you, Your Honor.

9 JUDGE HATCHER: And the Lot Owners?

10 MR. LINTON: Yes, Your Honor. Thank you.

11 CROSS-EXAMINATION BY MR. LINTON:

12 Q. Hello, Mr. Thomas. How are you?

13 A. Fine, thank you.

14 Q. I understand from Mr. Cox earlier today that you
15 and he were primarily responsible for negotiating the sale
16 agreement with Confluence -- excuse me -- Port Perry Service
17 Company; is that correct?

18 A. That's correct.

19 Q. Can you please identify what has been marked as
20 Exhibit 304C?

21 A. This appears to be some e-mail correspondence
22 from myself to Mr. Yamnitz, at least on this first page.

23 Q. Well, take a look through. I would like to get
24 a lay of the land of the entire package of e-mail
25 correspondence.

1 A. I have looked through it.

2 Q. And do you recognize that being your
3 correspondence between you and Mr. Yamnitz?

4 A. I do.

5 Q. Explain to me -- or let's work through the lay
6 of the land, again, with the e-mails here. It strikes me that
7 if you take a look at the first two sheets, they are listed in
8 the bottom, right-hand corner: 1 of 4, 2 of 4, 3 of 4, 4 of 4.
9 That appears to be one string of e-mails. The third sheet would
10 be 1 of 2, and then 2 of 2. That seems to be a second string of
11 e-mails; is that correct?

12 A. Yes.

13 Q. Okay. And if I were to flip through that, I
14 think, would you agree with me, that the strings of e-mails are
15 in a chronological order from front to back, starting with the
16 earliest in time going to the latest in time. But also at the
17 same time, as is typical in a string of e-mails, within a string
18 you are moving from bottom to top in chronological order; is
19 that correct?

20 A. That appears to be the case.

21 Q. So let's work through this string of e-mails, or
22 number of e-mails, regarding your interaction with Mr. Yamnitz.
23 On the first sheet, 2 of 4, there is an e-mail from Todd Thomas
24 to Michael Yamnitz dated April 24th. Do you see that?
25 Down at the bottom of 2 of 4?

1 A. Yes.

2 Q. Can you tell me what you said to Mr. Yamnitz on
3 April 24th at 8:29 a.m.?

4 A. It says: Mike, take a look below and give me a
5 call. I had the numbers in that you sent me. I assume -- I
6 assumed that the amounts you sent me were all-inclusive for 2012
7 through 2016, and I included what I am previously --

8 Q. Stop for a moment. I want to check with Counsel
9 and see if we are getting into confidential information.

10 MS. HERNANDEZ: Just the numbers.

11 BY MR. LINTON:

12 Q. Okay. Just exclude the number. I think it will
13 be in the record by admission of the exhibit into the evidence,
14 so exclude the number.

15 A. I'll start at the beginning of the sentence I
16 just had previously started.

17 I assumed that the amounts you sent me were
18 all-inclusive for 2012 through 2016, and I included what I had
19 previously calculated from 2002 until 2011. With the additions
20 of what you sent me, the offer is now X.

21 Q. And you go on to say, If this is acceptable to
22 you, I will get you a contract. Correct?

23 A. That is correct.

24 Q. On Page 3 of 4, there is a string of numbers.
25 Was this -- were these string of numbers used in developing the

1 number X in your e-mail?

2 A. Yes.

3 Q. What are those numbers?

4 A. When I started talking with Mr. Yamnitz, the
5 most readily available number was the net book value number from
6 the most recent annual report. These numbers here are -- I have
7 to reread what I sent. One moment. So these numbers here that
8 you are asking about are from 2002 through 2011, and these were
9 numbers that I was able to get from past annual reports on
10 expenses or purchases or improvements that were made within the
11 systems that did not appear to be included in the net book value
12 on subsequent annual reports.

13 Q. Are the O&M expenses?

14 A. From the records I had, it appeared that many of
15 them involved improvements that would extend the life of the
16 system, so therefore, I classified them as not O&M, but capital.

17 Q. Okay. Then take the next grouping, Page 2 of 2.
18 At the beginning of the thread you describe the consulting
19 agreement; is that correct?

20 A. Give me a little bit more information. What are
21 the dates?

22 Q. Dated -- starting on 1 of 2. It looks like it
23 is an e-mail from you, Todd Thomas, dated May 5th, 2017. Then
24 you have to flip over to Page 2 of 2. And it says, Mike.

25 A. I believe I am here.

1 Q. Okay. What did you write to Mr. Yamnitz? And
2 again, numbers will be X.

3 A. Mike, and it starts, Thanks to -- that's the
4 right one?

5 Q. Yes.

6 A. Thanks to you and Brad for -- thanks to you and
7 Brad for taking the time to meet on Monday. I have gone back to
8 see what I can do for the offer. Below, I believe is the best
9 offer I can give you.

10 Q. Okay. Keep going.

11 JUDGE HATCHER: Excuse me. What page are we on?

12 MR. LINTON: 2 of 2. It would be third sheet in
13 on the backside of the third sheet.

14 BY MR. LINTON:

15 Q. Go ahead. I think you were at, asset valuation.

16 A. Yes.

17 Asset valuation of X dependent upon the PSC's
18 approval of the net book value, I will need to get the
19 documentation from your accountant.

20 Continue?

21 Q. Continue on down to the end of the e-mail.

22 A. Consulting agreement of \$X per month each for
23 you and Brad, total of \$X per month.

24 MS. HERNANDEZ. Todd, no numbers.

25 THE WITNESS: Oh, gosh darn it. Forgive me.

1 COMMISSIONER KENNEY: I think those numbers have
2 already been brought up, haven't they?

3 MR. CLIZER: In camera.

4 THE WITNESS: I am so sorry.

5 For 18 months. In summary, the consulting
6 period equates to a total payment of X, which makes the total
7 offer X. Call me at your convenience to discuss. Sincerely,
8 Todd Thomas.

9 BY MR. LINTON:

10 Q. So in that last -- second to last statement,
11 which makes a total offer X, you add the X from the consulting
12 agreement, plus the X from the actual contract agreement; is
13 that correct? To come up with a sum?

14 A. That is correct.

15 Q. For a good engineer that would probably be X,
16 plus Y, equals Z, but --

17 All right. Now go to the prior page.
18 Mr. Yamnitz writes to you on May 10th at 8:05. What does he say
19 to you down at the bottom of 1 of 2?

20 A. He said: The price isn't bad, but was concerned
21 about the length of time on the consulting fees.

22 Q. And then go to the e-mail prior -- or after that
23 in time, prior to that on the page. And what is your response
24 to Mr. Yamnitz?

25 A. Which time is that?

1 Q. It is at 11:25.

2 A. It is: Mike, thanks for the reply. I could
3 extend the consulting agreement to two years. Did you see my
4 prior note about you guys keeping the account balances and
5 accounts receivable?

6 Q. Thank you. Now, go to the next sheet. It is 1
7 of 2. And there's an e-mail there, May 30th at 7:19, I believe,
8 from you to Mr. Yamnitz. Can you tell me what you said to
9 Mr. Yamnitz there? And you can skip the first sentence.

10 A. I'll read the whole thing.

11 Mike, I am sorry to hear you had some family
12 health issues. For clarity, the blank-months or X-months that I
13 have offered you and Brad for your consulting agreement is not
14 contingent upon -- on PSC approval. I will offer you and Brad
15 an additional three to four years if I can get PSC approval. I
16 know of a recent case where it was approved, and I am trying to
17 get a similar extended agreement through the PSC now where the
18 initial agreement was for one year -- or was for a year. Once
19 the Port Perry acquisition is made and the regulatory required
20 upgrades are made, then I can submit the extended agreement term
21 for PSC approval.

22 Q. Turn to the next sheet. Here I think we have an
23 e-mail from you to Mr. Yamnitz dated June 13, 2017. This is a
24 rather long e-mail, so I will give you a minute to look at it.

25 A. I found it.

1 Q. Can you briefly summarize without spending, you
2 know, the Commission's time reading the whole thing. Can you
3 briefly summarize the contents of that e-mail?

4 A. Not really. It is quite involved, and it is
5 hard to briefly summarize.

6 Q. Okay. Well, then what are the first three
7 bullet points under, Site Visit Follow-up Questions?

8 A. The DNR requires a redundant chlorination pump
9 for water systems that are chlorinating. Does a spare pump
10 exist in storage that we do not see?

11 That is the first bullet.

12 The second bullet: The DNR requires adequate
13 detention time for chlorination. The piping system appears to
14 show that water is chlorinated and then immediately pumped into
15 the distribution system. Did I see this incorrectly? Do you
16 know how much detention time you are getting?

17 That is the second bullet.

18 The third bullet: There appears to be no
19 chlorination at the second well. Therefore, it would appear
20 that when the water is pumped from the second well into the
21 system, that is not chlorinated. Is this the case? Has the DNR
22 never mentioned this or asked about this?

23 Q. Thank you. Now, go on down to the heading,
24 Purchase Price Language, in the contract.

25 A. I'm here.

1 Q. Okay. And there at the fourth line from the
2 bottom, there's a sentence that starts, We are willing to
3 overpay. Can you tell the Commission what you wrote to
4 Mr. Yamnitz there?

5 A. I would like to read it in the context of the
6 entire paragraph.

7 Q. That's fine.

8 A. First, I apologize in advance for the length of
9 this e-mail, but I want to expand a bit more regarding why the
10 purchase price may vary from what's in the contract and why it
11 is important to me to have a contract that is binding to a
12 reasonable extent. The bottom line is that the day you sign the
13 agreement to sell, we begin spending money right away in design
14 plans, specs, bid documents, legal, title work, et cetera. All
15 of this work must be done to -- prior to -- there is a typo
16 there -- prior to submitting the acquisition case for buying the
17 system, to the PSC. Having said that, we don't know how much of
18 the purchase price the PSC is going to recognize as the net book
19 value of the system until we submit the acquisition case and the
20 PSC reviews it and rules on it. Therefore, we offer a purchase
21 price -- we offer a price to purchase a system that, to the best
22 of our knowledge, we think the PSC will accept. However, we
23 cannot guarantee that the PSC will accept it. We are willing to
24 overpay above the net book value to a certain extent knowing
25 that the PSC may not fully accept what we have submitted. Keep

1 in mind that anything we pay you that is over net book value we
2 cannot recognize and recover.

3 Q. Continue.

4 A. I reviewed the information that I received from
5 Tammy last week and feel that PSC will accept most of the
6 justification for the blank that I have offered you.

7 Q. Turn the sheet over. The e-mail goes on. It is
8 quite a lengthy e-mail. Well, actually, go back to the prior
9 page. It says, Below are some bullet points outlining what I
10 stated above. Did I read that correctly?

11 A. Yes.

12 Q. And then so, that's followed then by a number of
13 bullet points regarding the process, if you will. Again, I
14 would like you to focus on the last five bullet points. If you
15 want to give all of the bullet points, you are more than welcome
16 to.

17 A. For the sake of ease, I will read them all.
18 CSWR, Mike and Brad agree to contract terms,
19 signs purchase/sale agreement.

20 The second bullet: CSWR begins to spend money
21 on engineering, surveys, design, specs, bidding, title work,
22 et cetera.

23 The third bullet point: CSWR, based on
24 information gathered, assembles an acquisition case.

25 The fourth bullet: CSWR submits the acquisition

1 case to the PSC, which includes the value of the system.

2 Next bullet: PSC sends DR, or data request, to
3 CSWR for any questions they have regarding the acquisition case.

4 Next bullet: PSC sends CSWR a formal offer.

5 The next bullet: CSWR either accepts or rejects
6 the of-- the formal offer. If we reject it, we can fight it and
7 try to get the other offer increased.

8 The next bullet: Once CSR-- CSWR accepts the
9 PSC offer, we close on the property, pay you, and begin making
10 any of the DNR mandated improvements.

11 Next bullet: Once all the mandated improvements
12 are made, CSWR can submit for a rate increase.

13 Q. Just one clarification. The third bullet from
14 the bottom, I think you inserted the word "other" before offer.
15 We can fight it and try to get the other offer, but the word
16 "other" is not there. Correct? The offer.

17 A. Again if that is what I said, you are correct.

18 Q. What do you mean in that -- those bullet points
19 by formal offer?

20 A. So given that I'm actually not the expert on
21 doing acquisition cases, still the seller wants to understand
22 what the timeline is. So my intention on that was saying that
23 if it appeared that the -- that the PSC did not want to
24 recognize the values of those improvements to the system and add
25 them to rate base, that we could contest that. However, my --

1 that was the intent.

2 Q. So CSW-- and when you refer to PSC, are you
3 referring to the Commission itself or to the Staff?

4 A. Most generally in this, I am referring to Staff.

5 Q. Let's move on to the next paragraph there. And
6 tell us what you wrote to Mr. Yamnitz in the next paragraph?

7 A. Beginning with, As you?

8 Q. Yes.

9 A. Pardon me.

10 As you both know, dealing with the PSC is a
11 whole different animal. Most accountants, business people, and
12 bankers don't understand how restrictive, expensive, and onerous
13 the PSC process can be. I'm trying my best to give you the most
14 I can for your system without paying you more than I can
15 recover. Therefore, I'm proposing a change to the agreement,
16 which in parentheses -- it says in parentheses -- (which I will
17 send to you) that puts a floor on how much the purchase price
18 can drop before you are not bound to the agreement. If the PSC
19 comes back with a net book value that is below the minimum, CSWR
20 will have the ability to release you from the agreement or pay
21 the difference and continue with the purchase of the property.
22 An acquisition case and a rate case each costs tens of thousands
23 of dollars. Before I begin spending money, we all need to be
24 comfortable with the agreement.

25 Q. Go on.

1 A. Let me get a quick drink.

2 Q. Absolutely. A lot of words there.

3 A. Brad, I checked into paying the guaranteed two
4 years of the consulting agreement up front. If I do that, there
5 is no way the PSC will allow us to recognize the money paid for
6 the consulting agreement. It will look more like a way to pay
7 additional purchase price and not a consulting agreement. Once
8 again, I am sorry for the long e-mail. I figured that it was
9 best to give you plenty of information. I will send you a
10 revised purchase agreement for your review.

11 Q. That's good. Thank you. Then there are a
12 number of pages that contain a copy of the purchase agreement.
13 Flip past those. And the next e-mail I want to ask you about is
14 December 21st, 2017 at 12:12.

15 A. You said it is past the purchase agreement?

16 Q. Yeah. It is past the purchase agreement, and I
17 think there may be one e-mail in there past the purchase
18 agreement, just pass over that. And then the next page is an
19 e-mail dated Thursday, December 21st, 2017.

20 A. I've got it.

21 Q. Okay. Again, can you briefly summarize the
22 contents of this e-mail? How about, let me backup. This is an
23 e-mail from -- it looks like down at the bottom of that Page 1
24 of 2, that it comes from a Caroline. Can you tell me who
25 Caroline is?

1 A. Caroline is an attorney with the law firm that
2 we utilize for real estate matters.

3 Q. Okay. And it is directed to you. And then am I
4 correct that you forwarded that on to Mr. Yamnitz?

5 A. Yes.

6 Q. Can I have you briefly summarize what that
7 e-mail is about?

8 A. Allow me to read it for a moment. In general,
9 it's just having to do with ownership and clearing title of the
10 assets.

11 Q. And it lists on that e-mail a number of
12 companies. There was Port Perry Service Company, Perry County
13 Land Company, Port Perry Marketing Company -- Corporation,
14 excuse me, Port Perry Service Company, Southeast Missouri Land,
15 LLC, Port Perry Land Company, LLC, and Stockbridge Realty
16 Investors of Arizona; is that right?

17 A. That is what it says.

18 Q. Did you ever get a response back from
19 Mr. Yamnitz about that e-mail?

20 MS. HERNANDEZ: I'm sorry. I'm going to object
21 at this point as to the extent that the answer would call for
22 attorney-client privileged information.

23 MR. LINTON: Well, Your Honor, clearly the
24 client has waived attorney-client privilege in that they've
25 represented there is clouding on title in their testimony in both

1 this case and the prior case. They pass that on to Mr. Yamnitz.

2 JUDGE HATCHER: And that was the testimony that
3 they subsequently struck; is that correct? The testimony you
4 are referencing?

5 MR. LINTON: Yes. It was also in the prior case
6 of WM-2018-0116.

7 JUDGE HATCHER: But that is not this case.

8 MR. LINTON: That's not this case, but it has
9 been waived because it's already been produced in the public by
10 the client.

11 JUDGE HATCHER: Tell me how it's been produced
12 in the public?

13 MR. LINTON: It was filed in the prior case.

14 JUDGE HATCHER: That one statement you said.

15 MR. LINTON: Well, it is part of Mr. Cox's
16 testimony in the prior case, yes, sir. And it was filed in this
17 case.

18 JUDGE HATCHER: Then it could be argued that it
19 was waived in the prior case.

20 MR. LINTON: But if you waive it --

21 JUDGE HATCHER: This is this case and that
22 testimony by your agreement, I believe, was stricken from the
23 submitted testimony about the clouding of title.

24 MR. LINTON: I did not waive an objection to
25 that claim.

1 JUDGE HATCHER: But did you agree that
2 Confluence Rivers could withdraw that from their filed
3 testimony?

4 MR. LINTON: I did not object.

5 JUDGE HATCHER: Okay.

6 MR. LINTON: Because I have it waived here.

7 JUDGE HATCHER: I'm sorry. You have?

8 MR. LINTON: I have -- I have the
9 attorney-client privilege waived here by the client releasing
10 that. And I had it already waived in the prior case.

11 JUDGE HATCHER: Who is the client?

12 MR. LINTON: Confluence Rivers, Mr. Thomas.

13 JUDGE HATCHER: Confluence Rivers. Okay. So
14 you are saying that you have a waiver or are you arguing that --

15 MR. LINTON: I am arguing --

16 JUDGE HATCHER: -- that stands as a waiver?

17 MR. LINTON: I am arguing it stands as a waiver,
18 yes, sir.

19 JUDGE HATCHER: Okay. Confluence Rivers do you
20 have any further response?

21 MS. HERNANDEZ: In terms of this, the document,
22 I think the questions can be asked on that. Right now he's just
23 asking the witness to read it. But anything that has to deal
24 with further attorney-client information, that hasn't been --
25 that privilege hasn't been waived.

1 MR. LINTON: And all I am asking is, did he get
2 a response from Mr. Yamnitz to this e-mail because he asked for
3 a response.

4 JUDGE HATCHER: Ms. Hernandez, what's the
5 problem with that question?

6 MS. HERNANDEZ: I think the question is fine,
7 and just to the extent that there would be any attorney-client
8 information in the answer.

9 JUDGE HATCHER: Okay. Mr. Thomas, let's go slow
10 with your answers after we get a question from Mr. Linton.

11 THE WITNESS: Okay. Thank you.

12 JUDGE HATCHER: Go ahead.

13 THE WITNESS: Would you re-ask the question?

14 BY MR. LINTON:

15 Q. Sure. Did you get a response to Mr. Yamnitz to
16 your request that, Call me at your convenience to discuss?

17 A. I do not recall getting an answer to this
18 e-mail.

19 Q. Thank you. Then flip a couple of pages back to
20 -- at the top of the page -- Monday, April 23rd, 2018. It is 1
21 of 2.

22 A. I am here.

23 Q. I am really interested in your e-mail of April
24 20th, 2018, at 12:25 p.m., and I am interested in the last
25 paragraph on that page. And if you want to go and read the

1 entire e-mail that is fine, but I am particularly interested in
2 the last paragraph and what you said there.

3 A. That paragraph says -- you're just asking me to
4 read that paragraph?

5 Q. Yes, please.

6 A. When -- this is from --

7 Q. Yes.

8 A. -- Mike Yamnitz to me?

9 Q. Yes, sir. That is right.

10 A. When approached by Central States Water, of
11 possibly making the purchase of the Company, I mentioned to a
12 person that had showed interest in buying it previously, but he
13 said it would not -- it wouldn't work for him at this time. We
14 had been approached in previous years, but decided at that time
15 we would look into what they -- that we would look into what
16 they had to offer.

17 Q. Thank you. I think we're done with that
18 package, Mr. Thomas.

19 JUDGE HATCHER: Mr. Linton, before I move on.

20 MR. LINTON: Yes?

21 JUDGE HATCHER: Did you ask for that exhibit to
22 be introduced as evidence as an exhibit?

23 MR. LINTON: Thank you. I think I neglected to
24 ask the prior exhibits to be introduced into evidence, and I
25 would request that the prior exhibits be introduced into

1 evidence as well as that.

2 (WHEREIN; LPLOA Exhibits 301C, 302, 303 and 304C
3 were offered into evidence.)

4 JUDGE HATCHER: Okay. The first exhibit, if I
5 recall, was some testimony. I don't have a copy of that.

6 MR. LINTON: Mr. Cox's testimony.

7 JUDGE HATCHER: That was Mr. Cox's testimony?

8 MR. LINTON: From the WM-2018-0116 case.

9 JUDGE HATCHER: Does -- and remind me what that
10 exhibit was marked as? 300?

11 Do we have any objections to the direct
12 testimony of Josiah Cox from the prior acquisition case marked
13 as Exhibit 300?

14 MS. BRETZ: None.

15 MS. HERNANDEZ: I think we would not object to
16 the extent it's just limited to the Q&A that was subject to
17 questioning, not the entire direct testimony.

18 JUDGE HATCHER: Mr. Linton?

19 MR. LINTON: That's fine with me.

20 JUDGE HATCHER: Okay. Without seeing objections
21 -- without hearing any objections, Exhibit 300 is so admitted
22 onto the record.

23 (WHEREIN; LPLOA Exhibit 300 was received into
24 evidence.)

25 JUDGE HATCHER: We have the Central States Water

1 Resources confidential Port Perry Water System report. This is
2 marked as 301C. Does anyone have any objection to 301C being
3 admitted onto the hearing record? Without objection, it is so
4 admitted.

5 (WHEREIN; LPLOA Exhibit 301C was received into
6 evidence.)

7 JUDGE HATCHER: We also have the Minimum Design
8 Standards from Missouri Community Water Systems. This is marked
9 as Exhibit 302. Does anyone have any objections to the
10 admission of 302 onto the hearing record? Hearing no
11 objections, that is so admitted.

12 MS. HERNANDEZ: I'm sorry.

13 JUDGE HATCHER: Yes?

14 MS. HERNANDEZ: Just for clarification, is it
15 the entire document or those portions that we were cited? We
16 would ask that the entire document be admitted, just because we
17 asked some follow-up questions.

18 MR. LINTON: Absolutely. I agree.

19 JUDGE HATCHER: Okay. Without objection, the
20 entire Minimum Design Standards from Missouri Community Water
21 Systems is admitted.

22 (WHEREIN; LPLOA Exhibit 302 was received into
23 evidence.)

24 JUDGE HATCHER: And, Mr. Linton, you marked
25 Statute 393-857 as Exhibit Number 303. I don't see a printed on

1 date. Does anyone have any objections --

2 MR. LINTON: And quite frankly, Your Honor, I
3 don't have to have that admitted. The statute says what the
4 statute says, and I got the witness to interact with that.

5 JUDGE HATCHER: I'm interpreting that as a
6 request to withdraw your exhibit?

7 MR. LINTON: Absolutely.

8 JUDGE HATCHER: All right. Thank you. Where
9 are we?

10 MR. LINTON: I think the most recent exhibit was
11 Exhibit 304C.

12 JUDGE HATCHER: The package of e-mails. Does
13 anyone have any objections to the admission of Exhibit 304C, the
14 package of e-mails that we were just discussing?

15 MS. HERNANDEZ: Just a moment. No objections.

16 JUDGE HATCHER: Hearing no objections, it is so
17 admitted.

18 (WHEREIN; LPLOA Exhibit 304C was received into
19 evidence.)

20 JUDGE HATCHER: Mr. Linton, please continue.

21 BY MR. LINTON:

22 Q. Okay. So now, I also understand that you are
23 responsible for investigating the condition of the water and
24 service facility at Port Perry; is that correct?

25 A. I am part of the team.

1 Q. Okay. And these e-mails involve you as well?

2 A. I haven't looked at every one of them to see
3 that they involve me on every one.

4 Q. Okay. So who is Mr. Kuenzel?

5 A. Mr. Kuenzel is the third-party professional
6 engineer that we utilize. He is with 21 Design Group.

7 Q. All right. Same lay of the land question
8 regarding this package of e-mails. Generally, the e-mail
9 strings go chronologically from front to back, from earliest to
10 latest. And then -- but in the string of an e-mail, for
11 example, let's say on Page 1 of 2, and 2 of 2, chronologically
12 is from the bottom to the top; is that correct?

13 A. Without examining every one of them, I can just
14 say it appears to be correct.

15 Q. Okay. So three pages in, I guess that would be
16 three sheets in, there is -- well, let me back up. The second
17 sheet in on 2 of 2, there seems to be an e-mail from Thomas
18 Adams to Mr. Kuenzel, to Ben.

19 It says: Mr. Kuenzel, I am attaching a copy of
20 the most recent 2015 inspection for this water system. For some
21 reason it didn't scan as one document but it does have all 11
22 pages. Let me know if you need anything further.

23 Is that an accurate reading of that e-mail?

24 A. Yes.

25 Q. Okay. And then there is a -- attached to that,

1 as I understand how you provided the information, a letter from
2 -- is it Derrick Calvert to Mr. Yamnitz, dated March 6, 2015?

3 A. Yes.

4 Q. And that also attaches a Missouri Department of
5 Natural Resources compliance and operation inspection report,
6 does it not?

7 A. It does.

8 Q. Can you identify what the significant
9 deficiencies are on the first page of that report, in all caps,
10 toward the bottom one-third of the page?

11 A. Which page is it on?

12 Q. It is on the first page of the report. It would
13 be on the page following the letter.

14 A. It says, No significant deficiencies were found.

15 Q. Right. Okay. And this is for the public -- the
16 community public water system, just to be clear, the report.

17 Correct?

18 A. That is correct.

19 Q. Okay. Flip to the next e-mail dated September
20 7th, 2017.

21 JUDGE HATCHER: Mr. Linton?

22 MR. LINTON: Yes, sir?

23 JUDGE HATCHER: This would be much more helpful
24 if there are page numbers in these exhibits. Maybe next time we
25 could do that?

1 MR. LINTON: I will. I'm just providing what
2 Confluence Rivers had provided me. I apologize. I did not
3 think through --

4 JUDGE HATCHER: Can you tell us what page again?

5 MR. LINTON: Yes. Absolutely. You come to the
6 end of the report that DNR provided to Mr. Kuenzel. There is a
7 photo attachment, Page 6 of 6.

8 JUDGE HATCHER: Okay. Is this the end of the
9 report where it says, Appendix A?

10 MR. LINTON: May I approach?

11 JUDGE HATCHER: Yes. Okay. Okay. I see. So
12 we are -- if you turn one page, two page, three page -- turn
13 four pages. It is on the fifth page starting with the picture
14 series.

15 MR. LINTON: Actually, it is right here. Go to
16 the end of the report, flip past the pictures. There you go.
17 Right there.

18 JUDGE HATCHER: Okay. Three more pages and then
19 starting with the Gmail.

20 MR. LINTON: Capital cost report.

21 JUDGE HATCHER: Okay. We are there. Thank you.

22 BY MR. LINTON:

23 Q. Now, going down to the bottom of the page, you
24 have an e-mail dated September 5, 2017, from you to Ben Kuenzel.
25 Right?

1 A. Yes.

2 Q. Okay. And then Mr. Kuenzel responds to you
3 September 7th, 2017, and it says, See cost estimate attached.
4 Correct?

5 A. Yes.

6 Q. Okay. Flip over to the next page then. I
7 assume this is the cost estimate that was attached to that
8 e-mail; is that correct?

9 A. I don't know.

10 Q. Are you thinking or --

11 A. No.

12 Q. So your e-mail to Ben Kuenzel stated, Capital
13 cost for Port Perry had two attachments. Correct? If you go
14 down to the bottom of your e-mail.

15 A. It says there are two attachments, yes.

16 Q. So Port Perry sewer and Port Perry water.
17 Correct?

18 A. That is what it says, yes.

19 Q. And so if you turn over to the next two pages,
20 you have what appear to be two documents; one starting that
21 says, Construction item appears to be budget items. And then
22 the next one says, Construction items as well. Maintain -- the
23 first one says, Port Perry, 317 customers. At the top of the
24 page. And the second one says, Port Perry maintain no
25 discharge, 317 customers; is that correct?

1 A. That's what those documents say, yes.

2 Q. So can you describe what the first page of those
3 two pages is?

4 A. There's no file name on these or a date, so I'll
5 just describe what they are, but I am not describing to you what
6 the context is with regards to timing. The first one, it is a
7 line item schedule, or a schedule of line items, that have to do
8 with potential capital or expenditures to the water system.

9 Q. Okay. And what is the second document?

10 A. The same. It's an estimate of potential capital
11 items that could be spent on the wastewater system.

12 Q. So the first is a water document and the second
13 is a wastewater document; is that correct?

14 A. That is correct.

15 Q. And again, the date of this is September 7th,
16 2017. Correct?

17 A. That is the date on the e-mail prior to that.

18 Q. Okay.

19 A. But there is no date on the next two documents.

20 Q. Okay.

21 MS. HERNANDEZ: Your Honor, unless there is a
22 pending question on the contents of the document, we would
23 stipulate to the admission of the entire document, and let it
24 speak for itself.

25 MR. LINTON: I have just a few questions. I

1 will accept that and skip a few of my questions.

2 JUDGE HATCHER: Thank you. Please go ahead.

3 BY MR. LINTON:

4 Q. Flip over to an e-mail then, dated June 19. And
5 again, may I approach?

6 JUDGE HATCHER: Yes.

7 MR. LINTON: It's right before this report. It
8 is toward the back.

9 BY MR. LINTON:

10 Q. So this document here is an e-mail and it says
11 on Saturday, June 16th, 2018, Mr. Kuenzel wrote, See attached
12 for signature. Any way you can sign this before leaving? Do
13 you see that?

14 A. I do.

15 Q. And then you responded, Here you go; is that
16 correct, on June 19th, 2018?

17 A. Yes.

18 Q. Okay. So flip to the next page. Well, before
19 you do that, there is an attachment at the bottom of that e-mail
20 that says, Port Perry construction permit, water. Correct?

21 A. Yes.

22 Q. Okay. Now -- so that attachment, then, is the
23 following pages. So, if you would, please turn to Page 1 of
24 that report where it says, Summary of Findings.

25 A. Give me just a moment, please.

1 Q. Absolutely.

2 A. What's causing me pause here is the fact that it
3 says, Port Perry construction permit, water. And the next --
4 and the document is a water report.

5 Q. So what reports are going to be signed?

6 A. Well, this says it's a Port Perry construction
7 permit on the attachment.

8 Q. All right. And realizing this is what
9 Confluence Rivers provided to the Association. You provided
10 this information to the Association? What does that tell me?

11 A. I don't understand your question.

12 Q. This was your document. What does that tell me,
13 that this is your document?

14 A. I see a document with a date -- an e-mail with a
15 date. And it says there is an attachment here. Then on the
16 next page you're showing me a report.

17 Q. Okay.

18 A. I'm just telling you that the report and the
19 file name don't match.

20 Q. Okay. Is there a date on the document?

21 A. Which page are you talking about?

22 Q. The first page. Is there a date anywhere on the
23 document, for that matter?

24 A. Well, tell me -- can you please tell me
25 specifically what page you are looking at?

1 Q. I'm asking you a question. Is there a date on
2 the first page?

3 A. I don't know which page you are referring to.
4 I'm sorry.

5 Q. The title page.

6 A. The title page for what? If you could
7 describe --

8 Q. The report.

9 A. -- to me --

10 Q. The title page of the report.

11 A. Let me read this. It says -- I mean, can you
12 tell me which report it is that you're talking about? Can you
13 describe it? Can you read the --

14 Q. It is the page following the e-mail page that I
15 just spoke to you about. Is there a date on that page?

16 A. On the page immediately following the e-mail
17 page, I do not see a date.

18 Q. Can you flip over to the -- to Page 1 of the
19 document? So you've got the cover page. You have the table of
20 contents page, and then you have Page 1. Can you flip there?

21 A. I am here.

22 Q. Okay. What does Item 7 under, Summary of
23 findings -- a Summary of Findings. What does that say?

24 A. It says, The portable water system is currently
25 disinfected.

1 Q. Flip over to Page 2. Do you see where it says
2 in the third paragraph there, Currently?

3 A. Yes.

4 Q. Could you read what the report says down to the
5 end of that page?

6 MS. HERNANDEZ: Again, Your Honor, I think it is
7 just reading the document, and the document speaks for itself.
8 I don't hear a question besides reading what's on the page.

9 JUDGE HATCHER: Mr. Linton, I'm trying to give
10 you a lot of latitude, but can we move a little faster?

11 MR. LINTON: Okay. Then I will move along.

12 BY MR. LINTON:

13 Q. One last question on that document. Could you
14 turn to Page 10 of that document?

15 A. I am here.

16 Q. The extended price on that page, the total
17 extended price.

18 JUDGE HATCHER: Let's make sure you're not
19 saying any numbers.

20 MR. LINTON: I -- I -- I know. I am not.

21 JUDGE HATCHER: Thank you, sir.

22 BY MR. LINTON:

23 Q. That is not the \$693,000 that are in Mr. Cox's
24 testimony, is it?

25 A. That is correct.

1 Q. Last document. Can you please identify what had
2 been provided as Exhibit 306?

3 A. This is a letter from myself -- an e-mail from
4 myself to Kristi Savage Clarke discussing getting agreements on
5 consent for the acquisitions in the Confluence Rivers
6 acquisition case.

7 Q. And so the attachment then is a letter from Ben
8 Kuenzel, P.E., will to you dated September 24th, 2018. Correct?

9 A. Could you repeat that?

10 Q. So the attachment to that e-mail is a letter
11 from Mr. Kuenzel to you dated September 24th, 2018?

12 JUDGE HATCHER: Did you say November 24th?

13 MR. LINTON: September 24th. September 24th.

14 JUDGE HATCHER: My letter is dated November 8th,
15 2017.

16 MR. LINTON: I apologize. Okay. We'll go with
17 that one that then.

18 JUDGE HATCHER: All right.

19 BY MR. LINTON:

20 Q. November 8th, 2017; is that right?

21 A. That's correct.

22 Q. Okay. Now, would you turn to the third page of
23 that document?

24 A. I am here.

25 Q. Can you just read the first sentence, and I will

1 stipulate to the rest of the document, but read the first
2 sentence on Port Perry Water.

3 A. This drinking water has been reasonably
4 maintained.

5 MR. LINTON: I have no further questions.

6 JUDGE HATCHER: Thank you. Do we have any
7 questions from the bench?

8 COMMISSIONER KENNEY: No.

9 JUDGE HATCHER: Mr. Chairman.

10 CHAIRMAN SILVEY: We're not discussing any
11 numbers; is that correct?

12 JUDGE HATCHER: We are trying to stay on the
13 record as much as possible given the public interest that's been
14 here. So if we can ask the question minus the numbers, we're
15 saying X, that's what we've been doing.

16 CHAIRMAN SILVEY: Okay. Thank you. I'll see if
17 I can do this.

18 QUESTIONS BY CHAIRMAN SILVEY:

19 Q. Without saying the numbers, your direct
20 testimony in Case Number WM-2018-0116 as it pertained to the
21 estimate of the cost of the improvements needed for Lake Perry
22 for their water system and the sewer system, it is on Page 22 of
23 direct testimony from that case. Those numbers are different
24 than the numbers in this case. So can you explain why those
25 numbers are different and what you have added to or taken away

1 from in your cost estimates to arrive at different numbers?

2 A. Yes. I know you recited the case numbers, but
3 I'll just refer to them as the first and then the second, if
4 that's okay. So as part of any acquisition case we get -- we do
5 preliminary estimates or we have our third-party engineer do
6 preliminary estimates. And those estimates are really based on
7 what it's going to take to get those systems in compliance.
8 Both the water and the wastewater at Port Perry are out of
9 compliance.

10 So to get the water system in compliance, the
11 engineer -- our engineer first came up with a version of what he
12 felt would get the system in compliance.

13 Q. In the first case?

14 A. This is in the summer of 2018, I believe. I'd
15 have to look when we were having these discussions. But leading
16 up to that acquisition case, our engineer came back to us and
17 said, Hey, I don't believe that is sufficient to get us in
18 compliance, and he developed another engineering report that was
19 a larger amount of what he felt, at the time, was going to get
20 us in -- the water system into compliance.

21 Q. Okay. So what are those differences?

22 A. The main difference is whether or not you can
23 stay in the July -- or the summer of 2018 report, if you could
24 utilize Well 2, and then the next version is saying, No. Based
25 on the fact that Well 2 does not have disinfection, what we

1 really need to do, the most cost-effective thing is drill a new
2 well at the ground storage tank with a well house and
3 chlorination system there. So that is the estimate that we
4 utilized to go into that acquisition case.

5 Q. So are you no longer proposing drilling an
6 additional well?

7 A. That is correct.

8 Q. So somewhere in the -- I think as Mr. Cox said,
9 in the spring of this year when we were reapplying for Port
10 Perry, we gave -- our engineer spent more time looking at this
11 and discussing it with Missouri DNR and determined and advised
12 us that we could go back to that original estimate where we
13 rehabilitate Well 2 and not pursue the new well, which lowered
14 the overall capital cost.

15 Q. Okay. Now, Confluence believes that the net
16 book value should be determined in a rate case; is that correct?

17 A. I am not the rate expert, but in general, I
18 believe that is correct.

19 Q. But under the terms of the purchase agreement
20 with Port Perry, the purchase amount could be significantly
21 higher than what the Commission ultimately determines as the net
22 book value in the future case. Would that be a correct
23 statement?

24 A. That is a correct statement. Yes.

25 Q. So if the Commission were to decide that the

1 correct amount is significantly lower than what you were to
2 purchase for, is the Company financially able to absorb that if
3 we don't allow you to recover it?

4 A. Sir, Mr. Cox was asked this same line of
5 questions previously, and I think it would be best if he were to
6 answer those again, if that's okay with you.

7 CHAIRMAN SILVEY: If it's already in the record,
8 I'll just check it out. All right. Thank you.

9 COMMISSIONER KENNEY: I have no questions.

10 JUDGE HATCHER: All right. Recross after bench
11 questions? By agreement, we have Staff going first.

12 Any recross from Staff?

13 MS. BRETZ: No, Your Honor.

14 JUDGE HATCHER: Thank you. And then we have
15 Public Counsel?

16 MR. CLIZER: No recross. Thank you, Your Honor.

17 JUDGE HATCHER: And then recross from the Lot
18 Owners?

19 MR. LINTON: No. No questions, Your Honor.

20 JUDGE HATCHER: All right. And then redirect
21 and -- redirect from Confluence Rivers.

22 MS. HERNANDEZ: No questions. Thank you.

23 JUDGE HATCHER: Thank you.

24 Mr. Cooper, did you want to address the
25 chairman's question just now of Mr. Thomas from referencing

1 Mr. Cox's prior testimony about determining what the -- whether
2 the Commission needs to establish the rate base this proceeding
3 or another one? Sorry. I don't want put you on the spot.

4 MR. COOPER: No. No. I'm trying to -- I am
5 thinking through the question just for a second. Certainly I
6 believe that what Mr. Cox testified to this morning and what we
7 believe, the most appropriate place for the net original cost or
8 the rate base to be determined is a rate case because that is
9 where it really is -- the rubber meets the road, so to speak.

10 What Mr. Cox had indicated this morning, and
11 what is the position of the Company, is that it understands
12 that, as Mr. Thomas recognized, that the purchase price may be
13 greater than ultimately the net original cost and that the
14 Company ultimately does not seek -- is not seeking what would,
15 in that situation, be an acquisition premium and believes that
16 that process would not harm its financial standing. Is that
17 responsive to the question?

18 JUDGE HATCHER: If I can slightly paraphrase
19 just to make sure I have my mind wrapped around it and for the
20 record. Confluence Rivers and the other contracting party, Port
21 Perry, have agreed between themselves to address the
22 requirements of numbered Paragraph 4 in your sales contract
23 outside of the PSC determining the rate base?

24 MR. COOPER: Well, yes. And I'm not sure it
25 even has to go that far. If the purchasing company pays a

1 certain dollar amount, I think that is the end of the question
2 as far as the asset purchase agreement.

3 JUDGE HATCHER: And then Confluence Rivers, in
4 consult with your client, will determine how to move forward
5 with recovering that cost or not?

6 MR. COOPER: Or not. In fact, I think Mr. Cox
7 has said in his surrebuttal testimony that he would anticipate
8 that in a rate case the net original cost would be the measure
9 of rate base and if he didn't go this far this morning, I think
10 he intended to say this morning, that, yes. The Company would
11 be waiving the attempt to recover any acquisition premium that
12 might result from that.

13 JUDGE HATCHER: Okay. And, Mr. Thomas, I was
14 going to excuse you, but if you could hold on just a second. I
15 think I opened a slight can of worms there.

16 Let's go back through recross, and right after
17 this we are going to take a break.

18 MR. LINTON: Your Honor, I would like to move
19 for the admission of my last exhibits.

20 (WHEREIN; LPLOA Exhibits 305 and 306 were
21 offered into evidence.)

22 JUDGE HATCHER: Thank you. What was it
23 numbered? Is this 306?

24 MR. LINTON: Yes.

25 JUDGE HATCHER: Okay. The second e-mail package

1 and this one begins with the subject line, Port Perry Inspection
2 Report?

3 MR. LINTON: Right. And I believe I may need to
4 move for the admission of the prior one as well, 305.

5 JUDGE HATCHER: Oh, that was the letter. Okay.

6 MR. LINTON: The e-mail packets -- the second
7 e-mail package.

8 JUDGE HATCHER: Okay. We'll go in numerical
9 order. This is 305, Exhibit 305, an e-mail with an attachment
10 from 21 Design Group. Are there any objections to the admission
11 of Exhibit 305? Hearing no objections, it is so admitted.

12 (WHEREIN; LPLOA Exhibit 305 was received into
13 evidence.)

14 MR. LINTON: And 304, I am not sure I moved for
15 the admission of 304 then. That was the second package of
16 e-mails.

17 JUDGE HATCHER: I believe we got 304.

18 MR. LINTON: Okay.

19 JUDGE HATCHER: Okay. 306, the second set of
20 e-mails. Any objections on the admission of Exhibit 306?
21 Hearing no objections, it is so admitted.

22 (WHEREIN; LPLOA Exhibit 306 was received into
23 evidence.)

24 JUDGE HATCHER: 304. I'm pretty sure I asked
25 earlier, but we'll ask again just belt and suspenders strategy.

1 304, any objections to the admission of Exhibit 304? Hearing
2 none, Exhibit 304 is admitted.

3 (WHEREIN; LPLOA Exhibit 304C is received into
4 evidence.)

5 JUDGE HATCHER: Getting back to the witness,
6 Mr. Thomas.

7 Mr. Cooper, I seem to have put you on the spot.
8 I apologize for that. That was not my intention. But let's run
9 through any questions based on my questions to Mr. Cooper. But
10 you don't get to ask Mr. Cooper any questions.

11 Staff?

12 MS. BRETZ: Nothing. Thank you.

13 JUDGE HATCHER: Public Counsel?

14 Mr. Linton?

15 MR. LINTON: No questions.

16 JUDGE HATCHER: Thank you. Let's recess.

17 MR. CLIZER: Sorry.

18 JUDGE HATCHER: Yes?

19 MR. CLIZER: I'm sorry. One. I was hoping to
20 confer with Staff first, but as I mentioned to you before, OPC
21 witness Ms. Roth would like to be dismissed by 3:00 today. I
22 would propose that she be taken out of order at the beginning of
23 tomorrow, assuming that other Counsel is okay with that.

24 JUDGE HATCHER: I see nods, and I see no
25 negative head shaking. Your proposal is so accepted.

1 Ms. Roth, you are excused for the day. Thank
2 you.

3 Let's take ten minutes to 2:45. We are
4 recessed.

5 (OFF THE RECORD.)

6 JUDGE HATCHER: Let's go back on the record. We
7 turn now to our next witness in our list, and the predetermined
8 witness list is Natelle Dietrich.

9 Please come forward, Ms. Dietrich.

10 (Witness sworn.)

11 JUDGE HATCHER: Thank you. Please be seated.

12 Go ahead.

13 NATELLE DIETRICH, having been first duly sworn testified as
14 follows:

15 DIRECT EXAMINATION BY MS. BRETZ:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Could you please state your name for the record,
19 spelling your last name.

20 A. Natelle, N-A-T-E-L-L-E, Dietrich,
21 D-I-E-T-R-I-C-H.

22 Q. Where are you employed and in what capacity?

23 A. The Missouri Public Service Commission. At the
24 time that my testimony was filed, my title was commission staff
25 director. With the Commission's organizational changes

1 effective October 1st of this year, my title is director
2 industry analysis division. The industry analysis division
3 consists of energy resources, engineering analysis, manufactured
4 housing, safety engineering, tariff rate design,
5 telecommunications, and water and sewer. And within those
6 departments, staff's responsible for expertise in safety,
7 utility rates, tariffs, rules and regulations, economic
8 analysis, engineering oversight, investigations and construction
9 inspections.

10 Q. Thank you. Did you prepare testimony in this
11 proceeding, direct testimony that's been marked as Exhibit 100
12 public and confidential?

13 A. I did.

14 Q. And you prepared surrebuttal testimony that's
15 been marked as Exhibit 101?

16 A. That's correct.

17 Q. Do you have any changes or corrections to your
18 testimony?

19 A. I do not.

20 MS. BRETZ: I would ask that Exhibits 100,
21 public and confidential, and 101 be entered into evidence.

22 (WHEREIN; Staff Exhibits 100P, 100C, and 101
23 were offered into evidence.)

24 JUDGE HATCHER: Are there any objections to the
25 admission of Exhibits 100 and Exhibit 101? Hearing no

1 objections, it is so admitted. Go ahead.

2 (WHEREIN; Staff Exhibits 100P, 100C and 101 were
3 received into evidence.)

4 BY MS. BRETZ:

5 Q. If I asked you those same questions today, would
6 you answers be the same?

7 A. With the correction to the title that we just
8 discussed, yes.

9 MS. BRETZ: I tender the witness for
10 cross-examination.

11 JUDGE HATCHER: Thank you. And that does remind
12 me, Ms. Hernandez, I am going to come back to you.

13 Cross-examination, we have a predetermined, agreed to order.

14 Confluence Rivers, you will be first.

15 MR. COOPER: No questions.

16 JUDGE HATCHER: Thank you. And Office of the
17 Public Counsel?

18 MR. CLIZER: Give me one minute. I want to make
19 absolutely sure if I have -- I guess I have no questions.

20 JUDGE HATCHER: Thank you.

21 And the Lot Owners?

22 MR. LINTON: I have no questions, Your Honor.

23 JUDGE HATCHER: Thank you. The bench has no
24 questions.

25 Ms. Dietrich, you are dismissed.

1 The next witness on our list is Mr. James Busch.
2 Mr. Busch, please come on down.

3 (Witness sworn.)

4 JUDGE HATCHER: Thank you. Please be seated.

5 Staff, please go ahead.

6 JAMES BUSCH, having been first duly sworn testified as follows:

7 DIRECT EXAMINATION BY MR. JOHNSON:

8 Q. Would you please state your name and spell your
9 last name for the record.

10 A. My name is James Busch. Busch is spelled
11 B-U-S-C-H.

12 Q. And how are you employed and in what capacity?

13 A. I'm employed at the Missouri Public Service
14 Commission and I am the regulatory manager of the water and
15 sewer department.

16 Q. Now, and are you the same James Busch that
17 prepared, or caused to be prepared, surrebuttal testimony in
18 this matter marked as Staff Exhibit 103?

19 A. I am.

20 Q. And do you have any changes or corrections to
21 that testimony?

22 A. Not that I'm aware of.

23 Q. If I were to ask you those same questions here
24 today, would your answers be the same?

25 A. They would.

1 MR. JOHNSON: Judge, at this time I would offer
2 Staff Exhibit 103 into evidence.

3 (WHEREIN; Staff Exhibit 103 was offered into
4 evidence.)

5 JUDGE HATCHER: Thank you. And are there any
6 objections to the admission of Exhibit 103 to the hearing
7 record? Hearing no objections, it is so admitted. Go ahead.

8 (WHEREIN; Staff Exhibit 103 was received into
9 evidence.)

10 MR. JOHNSON: I tender the witness for
11 cross-examination.

12 JUDGE HATCHER: And, again, we have a
13 predetermined list for cross-exam.

14 Confluence Rivers, you're up.

15 MR. COOPER: No questions.

16 JUDGE HATCHER: Thank you.

17 Office of the Public Counsel?

18 MR. CLIZER: No questions, Your Honor. Thank
19 you.

20 JUDGE HATCHER: Thank you.

21 And the Lot Owners?

22 MR. LINTON: No questions, Your Honor.

23 JUDGE HATCHER: Thank you. The bench has no
24 questions.

25 Mr. Busch, you are dismissed. Thank you very

1 much.

2 Ms. Hernandez, let's take care of Exhibit 3
3 while Mr. Roos makes his way to the witness stand.

4 Ms. Hernandez, I wasn't sure if she had
5 requested the admission of Exhibit 3.

6 MS. HERNANDEZ: I believe I offered it. I just
7 did not hear a response as to whether it had been admitted.
8 There was an objection from OPC as I recall and so I didn't hear
9 the --

10 JUDGE HATCHER: We'll just go real quick then to
11 redo that. Exhibit 3, are there any objections?

12 MR. CLIZER: To start off, Exhibit 3 would be
13 the testimony of --

14 MS HERNANDEZ: Ms. Savage Clarke.

15 MR. CLIZER: Yes. That's what I figured. Yes,
16 and, again, as I know you've already ruled on it but just to
17 maintain our objection, we oppose and I don't think I need to
18 restate myself.

19 JUDGE HATCHER: Not at all. The Commission has
20 previously ruled on that in writing and we'll stay consistent
21 with that. Objection is overruled. Exhibit 3 is admitted onto
22 the hearing record.

23 (WHEREIN; Staff Exhibit 3 was received into
24 evidence.)

25 JUDGE HATCHER: Are there any other issues

1 before we move on to Mr. Roos? All right.

2 Mr. Roos, please raise your right hand.

3 (Witness sworn.)

4 JUDGE HATCHER: Thank you. Please be seated.

5 Ms. Bretz, please go ahead.

6 DAVID C. ROOS, having been first duly sworn testified as

7 follows:

8 DIRECT EXAMINATION BY MS. BRETZ:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Please state your name for the record, spelling
12 your last name.

13 A. David C. Roos, R-O-O-S.

14 Q. Where are you employed and in what capacity?

15 A. I'm employed by the Missouri Public Service
16 Commission as a utility engineering specialist.

17 Q. Did you prepare testimony in this proceeding
18 which has been marked as Staff Exhibit 105, public and
19 confidential?

20 A. I did.

21 Q. Do you have any changes or corrections to your
22 testimony?

23 A. I do not.

24 Q. If I asked you the same questions today, would
25 your answers be the same?

1 A. They would.

2 MS. BRETZ: Judge, I'd ask for introduction of
3 Staff Exhibit 105, public and confidential.

4 (WHEREIN; Staff Exhibit 105P and 105C were
5 offered into evidence.)

6 JUDGE HATCHER: Are there any objections to the
7 admission of Exhibit 105 to the hearing record? Hearing none,
8 it is admitted.

9 (WHEREIN; Staff Exhibits 105P and 105C were
10 received into evidence.)

11 JUDGE HATCHER: Go ahead.

12 MS. BRETZ: Staff tenders the witness for
13 cross-examination.

14 JUDGE HATCHER: Confluence Rivers, do you have
15 any questions on cross-examination?

16 MS. HERNANDEZ: No, thank you.

17 JUDGE HATCHER: Office of the Public Counsel?

18 MR. CLIZER: No. Thank you, Your Honor.

19 JUDGE HATCHER: And Lot Owners, Mr. Linton?

20 MR. LINTON: No questions, Your Honor.

21 JUDGE HATCHER: The bench has no questions.
22 Mr. Roos, you are excused. Thank you for being here today.

23 The next witness is Kim Bolin.

24 (Witness sworn.)

25 JUDGE HATCHER: Thank you. Please be seated.

1 Please go ahead.

2 KIM BOLIN, having been first duly sworn testified as follows:

3 DIRECT EXAMINATION BY MR. JOHNSON:

4 Q. Could you please state your name and spell your
5 last name for the record?

6 A. My name is Kimberly Bolin, and Bolin is spelled
7 B-O-L-I-N.

8 Q. And Ms. Bolin, how are you employed and in what
9 capacity?

10 A. I am employed as a utility regulatory auditor
11 with the Missouri Public Service Commission.

12 Q. And are you the same Kimberly Bolin that
13 prepared, or caused to be prepared, surrebuttal testimony in
14 this matter marked as Staff Exhibit 102?

15 A. Yes, I am.

16 Q. And at this time, do you have any changes or
17 corrections to that testimony?

18 A. No, I do not.

19 Q. If I were to ask you those same questions here
20 today, would your answers be the same?

21 A. Yes.

22 MR. JOHNSON: Judge, at this time I would move
23 to offer Staff Exhibit 102 into evidence.

24 (WHEREIN; Staff Exhibit 102 was offered into
25 evidence.)

1 JUDGE HATCHER: Are there any objections to the
2 admission of Exhibit 102 to the hearing record? Hearing no
3 objections, it is so admitted.

4 (WHEREIN; Staff Exhibit 102 was received into
5 evidence.)

6 JUDGE HATCHER: Go ahead.

7 MR. JOHNSON: Thank you, Judge. At this time I
8 would tender the witness for cross-examination.

9 JUDGE HATCHER: And we go back to our trusty
10 schedule, Confluence Rivers, any questions?

11 MS. HERNANDEZ: A few questions. Thank you.

12 CROSS-EXAMINATION BY MS. HERNANDEZ:

13 Q. Ms. Bolin, would you agree that rate based
14 figures are estimates at the time of an acquisition case?

15 A. In this case they are and it's very common for
16 that to be concurrent.

17 Q. And the last rate based determination by the
18 Commission for Port Perry for the purposes of a rate case
19 would've been around 2002?

20 A. I believe that is correct.

21 Q. So, theoretically, there are 17 years of records
22 that need to be reviewed in order to update the net original
23 cost rate base from where it was in the last rate case?

24 A. Yes. There are many.

25 Q. If Confluence Rivers acquires the Port Perry

1 assets, do you know what rates will be two years from now?

2 A. No, I do not.

3 Q. And if Confluence Rivers was not to purchase the
4 Port Perry assets, do you know what rates would be two years
5 from now?

6 A. Could you repeat that question?

7 Q. If Confluence Rivers did not purchase the Port
8 Perry assets, do you have a way to know what rates would be two
9 years from now?

10 A. No, I don't.

11 MS HERNANDEZ: Nothing further. Thank you.

12 JUDGE HATCHER: Thank you.

13 Office of the Public Counsel, any
14 cross-examination?

15 MR. CLIZER: No. Thank you, Your Honor.

16 JUDGE HATCHER: And to the Lot Owners?

17 MR. LINTON: No questions.

18 JUDGE HATCHER: Thank you. The bench has no
19 questions. And that takes us to redirect.

20 MR. JOHNSON: I have none. Thank you, Judge.

21 JUDGE HATCHER: Thank you. Ms. Bolin, you are
22 excused. Thank you.

23 And the next witness on our list is Dana Parish.
24 (Witness sworn.)

25 JUDGE HATCHER: Thank you. Please be seated.

1 Staff, your witness.

2 DANA PARISH, having been first duly sworn testified as follows:

3 DIRECT EXAMINATION BY MS. BRETZ:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. Please state your name, spelling your last name
7 for the record.

8 A. Dana Parish. Last name is P-A-R-I-S-H.

9 Q. Where are you employed and in what capacity?

10 A. With the Missouri Public Service Commission as a
11 utility policy analyst.

12 Q. Did you prepare surrebuttal testimony in this
13 proceeding, which has been marked as Staff Exhibit 104?

14 A. Yes.

15 Q. Do you have any changes or corrections to your
16 testimony?

17 A. No, I do not.

18 Q. If I asked you the same questions today, would
19 your answers be the same?

20 A. Yes.

21 MS. BRETZ: I would move to enter into evidence
22 Staff Exhibit 104.

23 (WHEREIN; Staff Exhibit 104 was offered into
24 evidence.)

25 JUDGE HATCHER: Are there any objections to the

1 admission of Exhibit 104 onto the hearing record? Hearing none,
2 it is so admitted.

3 (WHEREIN; Staff Exhibit 104 was received into
4 evidence.)

5 JUDGE HATCHER: Go ahead.

6 MS. BRETZ: Staff tenders the witness for
7 cross-examination.

8 JUDGE HATCHER: Thank you. And according to our
9 list, Confluence Rivers, you have the first opportunity at
10 cross-examination.

11 MS HERNANDEZ: No questions. Thank you.

12 JUDGE HATCHER: Thank you. Office of the Public
13 Counsel.

14 MR. CLIZER: No questions. Thank you, Your
15 Honor.

16 JUDGE HATCHER: Thank you. And Lake Perry Lot
17 Owners.

18 MR. LINTON: No questions, Your Honor.

19 JUDGE HATCHER: Thank you. The bench has no
20 questions.

21 Ms. Parish, thank you. You are dismissed.

22 And I just want to pause for a second as I
23 shuffle my paperwork and we come to Ms. Roth is the next on my
24 witness list. Ms. Roth has been excused for the day. She'll be
25 back tomorrow morning. So the next on my list would be Glen

1 Justis.

2 Mr. Linton, are you ready to proceed with your
3 presentation of your witnesses?

4 MR. LINTON: I am.

5 JUDGE HATCHER: All right. Mr. Justis.

6 (Witness sworn.)

7 JUDGE HATCHER: Thank you. Please be seated.

8 GLEN JUSTIS, having been first duly sworn testified as follows:

9 DIRECT EXAMINATION BY MR. LINTON:

10 Q. Please state your name for the record.

11 A. Glen Justis.

12 Q. And by whom are you employed?

13 A. I am a senior partner at Experience On-Demand,
14 LLC.

15 Q. And who are you here on behalf of today?

16 A. Lake Perry Lot Owners' Association.

17 Q. Did you prepare, or cause to be prepared --

18 And I guess at this point I need to give the
19 court reporter a copy of the exhibit.

20 So again, did you have a reason to cause or
21 prepare what has been marked as Exhibit 307 and 307C?

22 A. Yes.

23 Q. Do you have any changes to make to those
24 exhibits?

25 A. I do. I have two corrections to make.

1 Q. Go ahead.

2 A. On Page 9 of my rebuttal testimony, starting on
3 Line 20, the words "Mr. DeWilde has" needs to be replaced by
4 "that representatives of LPLOA have." Would you like me to read
5 the entirety of the sentence?

6 Q. Please.

7 A. So the sentence will now read, Based on
8 communications that representatives of LPLOA have had with
9 banks.

10 Q. Okay. And the second?

11 A. The second correction is on the following page,
12 on Page 10.

13 Q. Go ahead.

14 A. This is on Line 6, beginning with the word
15 "exceeding the 300,000." That needs to now read "commitments of
16 252,000 have been received."

17 Q. Do you have any other changes?

18 A. I do not.

19 Q. So if I were to ask you those questions today
20 with those changes, would your answers be the same?

21 A. Yes.

22 Q. Are the -- is the testimony and the exhibits
23 attached to your exhibit true and accurate to the best of your
24 information, knowledge, and belief?

25 A. They are.

1 MR. LINTON: I move for the admission of Exhibit
2 307 and 307C into the record.

3 (WHEREIN; LPLOA Exhibits 307 and 307C have been
4 offered into evidence.)

5 JUDGE HATCHER: Are there any objections to the
6 admission of Exhibit 307 and 307C onto the hearing record?

7 Hearing no objections, it is so admitted.

8 (WHEREIN; Exhibits 307 and 307C were received
9 into evidence.)

10 JUDGE HATCHER: Please go ahead.

11 MR. LINTON: Consistent with your order
12 recently, I will now ask some direct questions in the form of
13 surrebuttal to Mr. Josiah Cox's surrebuttal testimony and
14 Ms. Kristi Savage Clarke's surrebuttal testimony.

15 JUDGE HATCHER: Please go ahead.

16 BY MR. LINTON:

17 Q. Mr. Justis, have you reviewed Kristi Savage
18 Clarke's testimony?

19 A. I have.

20 Q. At Page 7, Line 1 -- well, backing up,
21 Ms. Savage Clarke's states that there's no evidence that Port
22 Perry considers the offer to be reasonable or would be willing
23 to sell its assets for that price. Do you have any response to
24 that?

25 A. I'm sorry. I didn't follow where you were

1 referring.

2 Q. 7, 1.

3 A. 7?

4 Q. I apologize. I apologize.

5 A. I'm looking at her surrebuttal.

6 Q. Okay. 7, 1. So in that question and answer she
7 has concerns about the financial capacity of Lake Perry Service
8 Company. Do you agree with her response in that question and
9 answer?

10 A. I do not.

11 Q. Could you please explain?

12 A. She makes the statement, and this is the
13 beginning -- or this is in Line 7 and 8, that Lake Perry
14 Services Company does not have any funds available until 2024 to
15 make any necessary repairs. Our business plan not only provides
16 for immediate repairs for those things that are necessary to
17 repair, but also provides for additional cash buildup and
18 liquidity in the company for additional unforeseen needs. That
19 information is detailed on Pages 6 through 8 of Schedule GJ-01
20 in my original rebuttal testimony.

21 Q. On Page 10, toward the bottom of the page --

22 A. This is, again, Ms. Savage Clarke's?

23 Q. Yes. She says they are, Most often lower level
24 continuing authorities, such as property owners' associations
25 and nonprofits, do not have the resources to invest in system

1 infrastructure to provide and maintain safe and adequate
2 services. Do you agree with her testimony there?

3 A. I do not have an opinion one way or the other.
4 I do offer an observation in the Missouri DNR's 2019 census of
5 public water systems where they do a detailed analysis and
6 inventorying of community water systems. There is, according to
7 this report, 1,430 currently operating community-based water
8 systems.

9 Q. And that tells you what?

10 A. That tells me that it's very common and would be
11 true to say that there are many successfully operating community
12 water-based -- community-based water systems in the state.

13 Q. Take a look -- have you reviewed Mr. Cox's
14 surrebuttal testimony?

15 A. Yes, I have.

16 Q. Take a look at Page 23 of his surrebuttal
17 testimony, Lines 1 through 8.

18 A. I'm sorry, Page --

19 Q. 23.

20 A. Page 23.

21 Q. Right. And in that question and answer, the
22 question is LPLOA witness Justis indicates that the effective
23 interest rate for Confluence Rivers' debt may be in excess of 13
24 percent. Is that accurate? And Mr. Cox's reply's, no. Can you
25 please respond to that?

1 A. I guess I would make two points there. Number
2 1, is that I find it interesting that there's no discussion of
3 the capital plan or the expected weighted average cost of
4 capital in the current case. The prior case did include an
5 interesting reference of a -- what I believe was a sample term
6 sheet or a proposed term sheet from a lender where the base
7 interest rate was 13 percent, plus additional expenses, which in
8 my mind would effectively create a total interest rate in excess
9 of 13 percent. So based on that most recent information, as far
10 as I know, my statement stands.

11 Q. Then on the same page, Lines 9 through 22,
12 there's a question, was there a time when CSWR did have debt
13 costs in the range referred to by Mr. Justis. Yes. Do you --
14 and his response. Do you have any comments with response to his
15 comments there?

16 A. I do not.

17 MR. LINTON: I have no further questions, and I
18 tender the witness for cross-examination.

19 JUDGE HATCHER: Thank you, Mr. Linton.

20 And according to our prearranged schedule,
21 Office of the Public Counsel has the first opportunity for
22 cross-examination.

23 MR. CLIZER: Thank you.

24 CROSS-EXAMINATION BY MR. CLIZER:

25 Q. Good afternoon, Mr. Justis.

1 A. Good afternoon.

2 Q. You said you had a copy of Mr. Cox's surrebuttal
3 in front of you; is that correct?

4 A. I do.

5 Q. Could you turn to Page 6 for me? Well, it might
6 be better to start on Page 5, to be honest. On Pages 5 through
7 6 there's a table that's been included here that compares
8 Confluence Rivers to the LPLOA proposal. You would agree with
9 me on that. Right?

10 A. Yes.

11 Q. On Page 6 one of the items in that table is
12 listing financing available. You would agree that Mr. Cox's
13 table represents a fair and accurate representation of the
14 financing available or the financing that LPO -- that the Lot
15 Owners have available?

16 A. So are you specifically referring to the third
17 column on the last line?

18 Q. That would be the Lot Owners' column, as I
19 understand it. Yes.

20 A. Okay. I would -- well, I would disagree with
21 this statement. I believe Lake Perry Services Company has
22 sufficient commitments and a capital plan that is sufficient,
23 but they do not currently have the cash in the bank.

24 Q. Moving down that table to existing financial
25 resources, which is the last row, you would agree that the

1 statement found in the third column, which again is the Lot
2 Owners, is a fair and accurate representation?

3 A. That was what I just referred to. My prior
4 statements were referring to that statement.

5 Q. I'm sorry, existing financing resources or
6 financing available?

7 A. Existing financial resources.

8 Q. Okay.

9 A. I apologize. I misunderstood where you were
10 directing me.

11 Q. What about financing available then?

12 A. Clearly, Lake Perry Services Company has
13 financing available. It has not been fully secured, but it is
14 available.

15 Q. On Pages 8 through 9 of Mr. Cox's surrebuttal
16 testimony he discusses some of the facts regarding the Lot
17 Owners' proposed business plan. In particular, on Page 8, Lines
18 20 through 22, he describes how the LPSC would need additional
19 funds to make a balloon payment on its bank loan to repay or
20 retire the CD that makes up the security for the loan. You
21 would agree with that. Correct?

22 A. They would need funds at that point.

23 Q. And has that been worked into your business
24 plan?

25 A. Yes, they have.

1 Q. On Page 9, generally Lines 1 through 6, there's
2 a discussion of the funds available to fund this balloon
3 payment. Specifically, on Lines 4 through 6, Mr. Cox says,
4 However, there's no evidence such a loan could or would be
5 obtained to reimburse investment much less provide for essential
6 reinvestment requirements. Do you agree with that?

7 A. No. I disagree for two reasons. One, my
8 understanding and Mr. DeWilde will be covering this in his
9 testimony, is that we have received indications, including draft
10 commitment letters from banks to provide those funds. And
11 number two is, part of the business plan is very intentionally
12 geared to build cash in the business. And so future investments
13 would come from a combination of cash and additional funds
14 raised through debt.

15 Q. On Pages 24 and 25 of Mr. Cox's surrebuttal --
16 and I'll give you a minute to go to those pages.

17 Are you there?

18 A. I am.

19 Q. Beginning on Line 20 and 24 there's a question
20 that involves that there are other costs for which the business
21 plan does not account.

22 A. And this is on page --

23 Q. Beginning on Page 24. I'm sorry. Did I said
24 Page 20? I meant 24.

25 A. Yes. I see.

1 Q. Yes.

2 A. So what is the question?

3 Q. Without reading -- I'm sorry.

4 A. Please.

5 Q. Without reading through the entire section, do
6 you agree with Mr. Cox's assessment that there are costs that
7 you have not accounted for in your business plan?

8 A. There are costs that we have not specifically
9 itemized in the business plan. We had included additional
10 capacity in terms of additional cash that exists at Day 1 to
11 cover a modest amount of additional requirements.

12 Q. Do you have -- I believe you were asked some
13 questions about the surrebuttal testimony of Ms. Kristi Savage
14 Clarke. Correct? Do you have that in front of you?

15 A. Yes.

16 Q. Could you go to Page 7 of that testimony?

17 A. Page 7?

18 Q. Correct.

19 A. Uh-huh.

20 Q. Tell me when you are there.

21 A. I am there.

22 Q. On Lines 9 and 10 that reads, Also there does
23 not appear to be any funds immediately available for an
24 emergency equipment replacement reserve. I should say this is
25 apparently in reference to the Lot Owners' business plan. You

1 would agree with me that's what that says?

2 A. Yes.

3 Q. And that's a fair and accurate representation of
4 your business plan?

5 A. It is not.

6 Q. Do you have a copy of your own testimony in
7 front of you?

8 A. I do.

9 Q. Could you turn to Page 6 of Schedule GJ-01?

10 A. I am there.

11 MR. CLIZER: Counsel, is this schedule
12 confidential? It's my understanding that these numbers are not
13 confidential.

14 MR. LINTON: Hold on.

15 MR. CLIZER: Okay.

16 MR. LINTON: These are not confidential.

17 BY MR. CLIZER:

18 Q. On Page 6 is a table laying out the capital
19 investment plan as it exists in the Lake Perry business plan; is
20 that correct?

21 A. Yes.

22 Q. And under the column for System Acquisition in
23 2019 for the water system CapEx. I'm sorry. It list 150,000.
24 Correct?

25 A. Yes, it does.

1 Q. And for the sewer system CapEx in 2019 it lists
2 75,000 under a column labeled System Acquisition?

3 A. Yes, it does.

4 Q. That 75,000, therefore, was for the acquisition
5 of a system?

6 A. Yes. So both those values were for the
7 acquisition of the water and wastewater systems.

8 Q. Now, it's my understanding, and we can go to the
9 DeWilde testimony if necessary, that the offer that was made was
10 450,000 for both systems. Is that your understanding?

11 A. That's my recollection. Mr. DeWilde can confirm
12 that.

13 Q. That being the case, that would mean that under
14 your plan there's an additional \$75,000 available, potentially,
15 for repairs; is that correct?

16 A. That's correct. I would direct you to the table
17 on Page 8, which maybe provides a more direct indication of the
18 cash and liquidity position of the organization. So what this
19 table provides, a projection of the minimum and maximum total
20 cash that the company will hold in each year. So as you can see
21 there, there's -- based on your math, that's where the \$75,000
22 is.

23 MR. CLIZER: All right. Thank you. I do not
24 believe I have any further questions.

25 JUDGE HATCHER: Thank you. Any

1 cross-examination from Staff?

2 MR. JOHNSON: Yes. Just briefly, Judge. Thank
3 you.

4 CROSS-EXAMINATION BY MR. JOHNSON:

5 Q. Good afternoon, Mr. Justis.

6 A. Good afternoon.

7 Q. Now, in your analysis of the application at
8 issue, did you review any potential benefits of a sale to
9 Confluence Rivers may create?

10 A. I did not.

11 Q. Is it your opinion that Confluence Rivers has
12 the technical capacity to operate a Port Perry system?

13 A. That is my belief. I don't know that for a
14 fact, but I believe that's correct based on the information that
15 I have seen so far.

16 Q. In your rebuttal testimony on Page 13, you list
17 several methods in which investor-owned utility companies could
18 potentially generate excess profits.

19 A. Yeah. That's right.

20 Q. Okay. And one of those methods would be gold
21 plating. Would you agree with me that gold plating, as
22 described in your testimony, is a potential issue with every
23 regulated utility company?

24 A. It's a potential issue with every regulated
25 company?

1 Q. Or maybe I'll rephrase that to say it is -- the
2 potential for gold plating exists with all regulated utility.
3 Would you agree with that?

4 A. Well, all regulated utilities regulated by --

5 Q. By this Commission.

6 A. This institution, yes.

7 Q. Would you agree with me that the Commission is
8 responsible for setting just and reasonable rates?

9 A. Absolutely.

10 Q. And you also state that regulated utilities
11 could potentially seek to inflate profits by intentionally
12 obtaining debt financing at inflated interest rates. Would you
13 agree that that is a potential issue that could arise with every
14 utility regulated by this Commission?

15 A. Not necessarily.

16 Q. Would even agree that it's an issue that could
17 arise with every utility seeking to obtain the financing that's
18 regulated by this commission?

19 A. Not necessarily.

20 Q. Okay. Would you agree with me that issuances of
21 long-term secured debt must first be approved by this Commission
22 prior to their issuance by a regulated utility?

23 A. Please repeat the question.

24 Q. Yes. Sorry. Would you agree with me that for a
25 utility regulated by this Commission they must obtain approval

1 from the Commission to issue long-term secured debt?

2 A. Yes.

3 Q. I think I have just one more question,
4 Mr. Justis. Do the Lot Owners or the Lake Perry Service Company
5 currently have an agreement to purchase the system, the Port
6 Perry --

7 A. They have issued an offer. I do not believe
8 they have a mutually accepted agreement.

9 MR. JOHNSON: Okay. Thank you. That's all I
10 have.

11 JUDGE HATCHER: Thank you. Confluence Rivers,
12 any cross-examination?

13 MR. COOPER: Yes, Your Honor.

14 CROSS-EXAMINATION BY MR. COOPER:

15 Q. I'm working from per some live direct here. So
16 I may need just a second to get focused.

17 Mr. Linton referred you to Ms. Savage Clarke's
18 surrebuttal testimony, I think on Page 7, and asked you about a
19 statement she made about funds not being available until 2024
20 for repairs. Do you remember that?

21 A. I believe so.

22 Q. And I'm not sure -- if I look at Page 7, I think
23 it was Line 7, 8, and 9 of her testimony. I think the complete
24 sentence was that, It does not appear Lake Perry Service Company
25 business plan attached to your testimony includes funds until

1 2024 for necessary repairs to meet the Minimum Design Standards
2 for Missouri Community Water Systems. Would you agree that
3 that's what that statement says?

4 A. Bear with me. I'm trying to get my references
5 based on your question, sir. I'm sorry. What page is
6 Ms. Savage Clarke's surrebuttal?

7 Q. Page 7.

8 A. Yes.

9 Q. The business plan you put together calls for a
10 substantial investment in 2024. Correct?

11 A. That's correct.

12 Q. If any of those repairs or -- if any of that
13 construction that's called for in 2024 were deemed to be
14 required to meet the Minimum Design Standards from the Missouri
15 Community Water Systems, would Ms. Savage Clarke's statement be
16 true in that case?

17 A. No.

18 Q. So you have built-in -- how much money is it?
19 Tell me what the investment is that's expected --

20 A. So if we look at --

21 Q. -- in 2024 and 2025?

22 A. Oh, 2024 and '25, we have the \$450,000 in the
23 water system, \$30,000 in the wastewater system. We then have
24 future upgrades that are just undefined, but based on our
25 engineer's advice we believe it appropriate to accommodate. In

1 2025, for \$100,000 for future upgrades if they should prove to
2 be needed, and that was for water. 50,000 in 2025 for
3 wastewater. And then we see in the third column over on that
4 table on Page 6, the expenditures, which I'm referring to in my
5 response to Ms. Savage Clarke's surrebuttal. Those are the
6 monies that are immediately available to address any remediation
7 requirements, if any exist, to take care of the minor repair
8 items.

9 Q. But there's no if -- again, let's say the
10 450,000 that you've identified in 2024, there's no provision for
11 financing for that prior to 2024. Correct?

12 A. Not currently, no.

13 Q. And so if any of those between now and 2024 were
14 deemed to be needed to meet minimum standards, sitting here
15 today, there's no financing for those dollar amounts. Right?

16 A. We would accelerate the financing plan and
17 request the funds.

18 Q. Read to me -- Mr. Linton asked you a question
19 and I think you read us a number of 1,130 operating authorities.
20 What was the description of those 1,130 operating authorities?
21 Were those described as community-based water systems?

22 A. Yes.

23 Q. Would you agree with me that Port Perry Service
24 Company is a community-based water system?

25 A. Based on my understanding of what that means,

1 yes.

2 Q. Okay.

3 A. Oh, I'm sorry, Port Perry?

4 Q. Yes.

5 A. My understanding is that Port Perry is an
6 investor-owned utility.

7 Q. And you think that's different than a
8 community-based water system?

9 A. I don't specifically know the definition that
10 MDNR is using in this example.

11 Q. So you just don't really know what falls into
12 community-based water systems?

13 A. Not explicitly. That's correct, sir.

14 Q. Mr. Clizer asked you about this table that's in
15 Mr. Cox's surrebuttal testimony. It's on -- well, I think he
16 asked you two questions about the portion of it that's on Page
17 6. Do you remember that?

18 A. Yes, I do.

19 Q. And one of the items that he was asking you
20 about was the row that's titled on left side, Financing
21 Available. Correct?

22 A. Uh-huh.

23 Q. And the statement in regard to Lake Perry
24 Service Company is that it has not provided any evidence of
25 investment in Missouri water or sewer systems; is that correct?

1 The far right column.

2 A. That is how that sentence reads. Yes.

3 Q. And you would agree with me, wouldn't you, that
4 sitting here today Lake Perry Service Company has not invested
5 in any Missouri water or sewer companies?

6 A. No. That is correct.

7 Q. Or systems?

8 A. That is not how I read that question, but that
9 is correct.

10 Q. You were also asked a portion of Mr. Cox's
11 surrebuttal where he states that LPSC would need additional
12 funds to make a balloon payment on its bank loan and to repay or
13 retire the CD that makes up the security for that loan. Do
14 remember that?

15 A. Yes.

16 Q. And I think on the following page there is a
17 statement that there's no evidence alone that could or would be
18 obtained to reimburse investors at that three-year period.
19 Correct?

20 A. That's correct. That's what Mr. Cox has
21 indicated.

22 Q. You don't have a -- the only commitment that has
23 been referred to in your testimony, I believe, is the commitment
24 or the letter from the bank that talks in terms of a \$300,000
25 loan at the point of purchase, at the same time as Lake Perry

1 Service Company would place with the bank a \$300,000 CD.

2 Correct?

3 A. That's correct.

4 Q. So there is no commitment for any other loans
5 three years from now?

6 A. My understanding was that that term sheet
7 commitment letter addressed that as well. If that's not
8 correct -- that may not be correct, but that was my
9 understanding when I responded in the way that I did.

10 Q. So if we were look at the letter and the letter
11 only spoke to this initial funding, then it would be true that
12 there is no commitment for three years from now?

13 A. Yes. That would be true.

14 Q. And when you -- I think Mr. Clizer took you
15 through where your contingency comes from in those first years
16 or identified the -- I think the \$75,000 that you would have
17 available in those first -- the first year. That assumes,
18 doesn't it, that the purchases -- that Lake Perry Service
19 Company could make the purchase for the \$150,000. Correct?

20 A. That's correct.

21 Q. So anything above that would reduce -- would
22 reduce that reserve. Correct?

23 A. It would, assuming you have the same amount of
24 initial capital raised.

25 MR. COOPER: That's all the questions I have,

1 Your Honor.

2 JUDGE HATCHER: Thank you. Are there any
3 questions from the bench?

4 CHAIRMAN SILVEY: Yes.

5 JUDGE HATCHER: Mr. Chairman?

6 QUESTIONS BY CHAIRMAN SILVEY:

7 Q. Thank you. Good afternoon.

8 A. Good afternoon.

9 Q. On Page 15 and 16 of your rebuttal testimony you
10 reference the -- there's some numbers here, so I'm going to be
11 careful. Essentially, in your discussion of the amounts
12 required, you reference, quote, Despite the existence of sealed
13 water and wastewater engineering reports dated 07/11 of '18 and
14 06/21 of '18 respectively. And then again on Page 16 you
15 reference, quote, Multiple sealed and unsealed versions of the
16 engineering reports exist along with conflicting communication
17 with Staff and responses to LPLOA's data request. What is a
18 sealed water and wastewater report? How is it different from an
19 unsealed?

20 A. Well, a sealed one is officially sealed, stamped
21 by the professional engineer.

22 Q. Okay.

23 A. It indicates a final, official report issued by
24 them.

25 Q. And why is it important for the Commission to

1 consider if Confluence has a sealed engineering report to
2 support their application?

3 A. I think it adds greater weight and finality to
4 the document. An unsealed report, in my profession and in my
5 experience in these types of proceedings, indicates a
6 preliminary, incomplete report.

7 Q. Okay. Have you had any discussions with anyone
8 from Port Perry indicating that they would definitely sell their
9 system to Lake Perry if the Commission rejects the Confluence
10 request?

11 A. No.

12 Q. Okay. Thank you.

13 JUDGE HATCHER: Commissioner?

14 COMMISSIONER KENNEY: Yes.

15 QUESTIONS BY COMMISSIONER KENNEY:

16 Q. Good afternoon. Just briefly.

17 A. Yes, sir.

18 Q. Is there any -- is there any -- just in case the
19 Lake Perry Service Company was unable to get enough members to
20 contribute the \$300,000 loan, are there any other options that
21 have been looked into?

22 A. Not to my knowledge.

23 Q. Okay. I guess if that happens, they buy the --
24 they don't try to buy the system?

25 A. And system operates as is.

1 Q. Unless someone else comes to buy it. Are they
2 going to object to that again?

3 A. I think it depends on the prospective buyer.

4 Q. I just have one little question on here. I'm
5 trying to understand your financial --

6 A. Yes, sir.

7 Q. I think I do.

8 A. Yes, sir.

9 Q. On Page 9 --

10 A. Of my testimony or business plan?

11 Q. On your schedule GJ-01 in your surrebuttal. I
12 think I understand, but I just want to clarify?

13 A. Page 9?

14 Q. Yeah. The top of Page 9.

15 A. Yes.

16 Q. 2019 net funding, the 300,000. And then you
17 show the expenses, comes over cash flow, then 45. Now, in 2020,
18 '21, and '22 the 25950, is that 8.65 percent of that 300; is
19 that correct?

20 A. Yes, sir. That's basically correct. The early
21 years have a effective interest rate of 8.65.

22 Q. Okay. And then on 2023 when the principal
23 payment -- that's assuming that the bank loan of 300,000, even
24 if is it not characterizing here -- but a bank loan came in at
25 300,000 and paid off that \$300,000 landowner loan?

1 A. That's correct.

2 Q. Okay. Thank you.

3 JUDGE HATCHER: Thank you. Now we'll go back to
4 recross from any of the bench questions. First, we'll start
5 with Public Counsel. Mr. Clizer?

6 RECROSS EXAMINATION BY MR. CLIZER:

7 Q. I have hopefully just one. Chairman Silvey
8 asked you a question generally related to the idea of what
9 happened if this system is not bought. I might be totally
10 paraphrasing there. But do you have an understanding of what
11 happens if neither the Lot Owners' Association or Confluence
12 were to buy this system?

13 A. Of what happened?

14 Q. Yes.

15 A. The system would continue to be operated by the
16 current owners of Port Perry.

17 MR. CLIZER: I have nothing else. No further --

18 JUDGE HATCHER: Thank you. Next, we turn to
19 Staff.

20 MR. JOHNSON: No questions. Thank you, Judge.

21 JUDGE HATCHER: And we turn to Confluence
22 Rivers.

23 MR. COOPER: Real briefly.

24 RECROSS EXAMINATION BY MR. COOPER:

25 Q. Mr. Justis, you talked about the effective rate

1 of 8.65 percent in that first three-year period. Now, that's
2 higher than what some of the Counsel have talked about being the
3 interest rate on the bank loan. Correct?

4 A. The interest rate on the bank loan? I don't --
5 I don't recall that specifically.

6 Q. Okay. So to get to the 8.65 percent, there's
7 more than one set of interest rates you've got to deal with.
8 Right?

9 A. There's -- there's multiple components. Yes.

10 Q. Right? So one component is the loan that maybe
11 there is a commitment for. Right? I think there was a timing
12 issue with that too.

13 A. This would be -- this would be the bank loan.

14 Q. This would be the bank loan. And that is
15 3-point-some-odd percent. Correct? 3.65?

16 A. I don't recall the exact numbers. I just recall
17 the structure, but yes. I'll assume that is correct.

18 Q. Well, let me see if I help.

19 A. Sure.

20 Q. Just a second. So I think it was mentioned in
21 opening statement this morning. 3.65 percent sound correct to
22 you?

23 A. Yes.

24 Q. Now, the rest of what is going on there, though,
25 is that to get that loan -- and we've talked about this -- you'd

1 have to place \$300,000 with the bank in a CD. Correct?

2 A. Yes.

3 Q. So, kind of, the bank is perhaps loaning you
4 your own money in the end. Right?

5 A. Yes.

6 Q. The 3.65 percent. Now, the other piece of that
7 is, is that the Lake Perry Service Company plans to pay its
8 investors a return on that 300,000 they're going to put in the
9 bank. Correct?

10 A. That's correct.

11 Q. And if I read your testimony correctly, the
12 average return to be paid to investors is about 7.5 percent; is
13 that correct?

14 A. I believe that is what I said in my testimony.
15 Yes.

16 Q. Which means that some investors are going to get
17 more than 7.5 percent. Correct?

18 A. That's correct.

19 Q. And then there's some return on the CD, as well?

20 A. Correct.

21 Q. Right? But it's after you -- if you look at
22 that entire piece of that financing, that's how you get to the
23 point that it's an effective rate of 8.65 percent. Correct?

24 A. That's correct.

25 MR. COOPER: That's all the questions I have.

1 JUDGE HATCHER: Thank you.

2 And redirect from the Lot Owners?

3 MR. LINTON: I have no questions.

4 JUDGE HATCHER: Thank you. Mr. Justis, you're
5 excused.

6 And I just want to make sure that I following
7 along with the witnesses. The next witness on my schedule,
8 Mr. Linton, is Rick Francis, but you had mentioned earlier today
9 that he had a scheduling conflicts and would not be testifying.
10 I thought I heard you say you are withdrawing his testimony?

11 MR. LINTON: We will be withdrawing his
12 testimony.

13 JUDGE HATCHER: Okay. So, Mr. Francis is done.
14 That moves us on to Chad Sayre; is that correct?

15 MR. LINTON: Yes, sir.

16 JUDGE HATCHER: All right. Mr. Sayre, please
17 come onto the witness stand.

18 (Witness sworn.)

19 JUDGE HATCHER: And, the Lot Owners, your
20 witness.

21 CHAD SAYRE, after been first duly sworn testified as follows:

22 DIRECT EXAMINATION BY MR. LINTON:

23 Q. Please state your name for the record.

24 A. Chad Warren Sayre.

25 Q. By whom are you employed and in what capacity?

1 A. I am employed by Allstate Consultants, LLC, and
2 I am a principal and vice president.

3 Q. And who are you here appearing on behalf of here
4 today?

5 A. The Lake Perry Lot Owners' Association.

6 Q. Did you prepare, or cause to be prepared, an
7 exhibit for introduction in this case today?

8 A. Yes.

9 Q. Is that exhibit -- does that exhibit -- exhibit
10 that has been marked as Exhibit 308?

11 A. Yes.

12 Q. Do you have any changes to make to that
13 testimony?

14 A. Not that I know of.

15 Q. If I were to ask you those questions today,
16 would your answers be the same?

17 A. Yes.

18 Q. Do you believe that the questions and answers as
19 well as the schedules attached thereto are true and accurate to
20 the best of your information and belief?

21 A. Yes.

22 MR. LINTON: With that, I would move for the
23 admission of Exhibit 308 into evidence.

24 (WHEREIN; LPLOA Exhibit 308 was offered into
25 evidence.)

1 JUDGE HATCHER: Thank you. Are there any
2 objections to the admission of 308 onto the hearing record?
3 Hearing no objections, it's so admitted.

4 (WHEREIN; LPLOA Exhibit 308 was received into
5 evidence.)

6 JUDGE HATCHER: Please continue.

7 MR. LINTON: I -- we will I have some additional
8 questions for Mr. Sayre.

9 BY MR. LINTON:

10 Q. Have you reviewed Josiah Cox surrebuttal
11 testimony?

12 A. Yes.

13 Q. Particularly, Page 13, Line 7 through 13.

14 JUDGE HATCHER: Mr. Linton, that was his
15 surrebuttal testimony?

16 MR. LINTON: Yes, sir.

17 JUDGE HATCHER: And what page again?

18 MR. LINTON: Page 13, Line 7 through 13.

19 JUDGE HATCHER: Thank you.

20 THE WITNESS: Yes.

21 BY MR. LINTON:

22 Q. Do have any responses to -- do you have any
23 response to Mr. Josiah Cox comments there?

24 A. I don't believe so.

25 Q. Turn now to Page 15, Lines 5 through 17.

1 A. Okay.

2 Q. In the question and answer Mr. Cox says, there
3 were a couple of major issues that could present serious
4 liability issues that are currently -- currently not in
5 compliance with MDNR minimum standards. Do you agree with that
6 question and answer?

7 A. No.

8 Q. Could you please explain?

9 A. Yes. The systems are in compliance, and there
10 aren't any serious liability issues as far as MDNR design
11 standards are concerned. He also says that they don't have
12 minimum security to protect the community. I disagree with
13 that. The Lake Perry Lot Owners' Association is quite rare in
14 my comparison of many institutions and entities like theirs.
15 They actually have security gates for entrance and exit. They
16 have -- before you ever get into the subdivision. Then they
17 have video cameras and a video surveillance system that they
18 maintain on each of the entrances to the subdivision. That in
19 itself puts them in a category that, frankly, of all the
20 literally hundreds of the systems that my company has reviewed
21 that -- I don't know that I have ever encountered that
22 situation.

23 So fencing that's around the lagoons and storage
24 facilities also, while looked at -- there's minor repairs that
25 were needed that I noted. It also needs the current MDNR

1 standards -- design standards for such facilities. So I -- to
2 summarize, I totally disagree with statements like that. Not
3 just this statement, but other statements in Mr. Cox's
4 surrebuttal about this fear of liability and environmental
5 compliance and environmental damage.

6 Q. Turn then to Page 17, starting at Line 3. He
7 makes the comment, Until Confluence Rivers can operate the
8 existing wastewater system and determine that wastewater is not
9 currently leaking into nearby waterways, an AOC is necessary to
10 prevent future MDNR citations, potential fines, and potential
11 stream remediation costs caused by existing wastewater
12 operations. Do you agree with that?

13 A. No.

14 Q. Could you please explain?

15 A. Yes. First of all, I don't believe an abatement
16 order and consent was ever justified in my past experience in
17 working with the Department of Natural Resources in any way with
18 this system. It's an interesting tactic. And I say interesting
19 because I saw where this system was included with numerous other
20 systems where there may be concerns that I haven't reviewed.

21 But in this system there was no -- nothing that
22 I saw that would have justified any abatement because it's in
23 compliance, so what would we be abating. It has security that
24 more than exceeds DNR requirements. And there hasn't been any
25 samples. This is something that -- this system even chlorinates

1 its effluent prior to irrigating it on the ground.

2 So whenever you say to prevent future MDNR
3 citations, potential fines, and potential stream remediation
4 costs caused by the existing wastewater operation, I totally
5 disagree. I never -- I talked to two individuals on our tour,
6 site tour, that we took, and one worked for the Lake Perry Lot
7 Owners's Association and one worked for the Port Perry
8 Operations Group. I saw no evidence of any leakage or anything
9 that bothered me from a perspective of serious liability or
10 especially about stream remediation cost caused by the existing
11 wastewater facility.

12 Q. Take a look at the picture on that Page 17.

13 A. Yes.

14 Q. What does that picture tell you about the
15 situation of the facility?

16 A. Looks like it was very cold when that picture
17 was taken. That's a picture -- it appears across the berm, the
18 lower berm of the facility. You will see some of the tree
19 growth that's there up the banks. That is one of the things
20 that I mentioned and has been something that -- there was piles
21 of brush there, but it still needs to be worked on. I haven't
22 been there for a little while. But to me it looks like also
23 it's probably -- through the winter they don't get to irrigate
24 as much. It's probably -- you know, that is the lagoon as --
25 it's not -- it looks like it is just estimating, looking at the

1 size of the manhole, three to four feet from the top of the
2 berm. And you can kind of see a kill line along where the trees
3 have grown up, the brush. To me it just looks like a fairly
4 normal picture. It's frozen. Of a land application system.

5 Q. Okay. On Page 19 then, Mr. Cox's --

6 A. I wasn't quite done.

7 Q. Okay. Go ahead.

8 A. On Page 17, as I look at the picture, it says
9 that the spray irrigation system is failing, and at multiple
10 points. And I want to put that into context coming from someone
11 that does this a lot -- a lot of land application systems. My
12 guy and I sign and seal those regularly. We do operations
13 reviews and we work with operators a lot. It's a constant
14 battle. If you read the Department of Natural Resources
15 compliance determination in 2016, they mention the same things.
16 They talk about they've done a good job with their spray
17 irrigation heads, but there was two or three -- that speaks for
18 itself -- but two or three that still needed some more work.

19 Whenever these systems -- very economic system,
20 but they pump out of a lagoon. There's algae in that lagoon and
21 I'm sure the operators battle. That's a constant same thing,
22 are these little irrigation heads. But there's multiple
23 irrigation heads. And the other thing that's not been said is
24 this system has the ability and is chlorinated before it's
25 irrigating according to the Department of Natural Resources

1 letter -- compliance letter.

2 So as far as risk to the public, reliability,
3 when something is disinfected, especially to the point where
4 these folks are -- these operations company -- this Port Perry
5 is disinfecting the system prior to irrigation, it's just -- you
6 lower your shoulders when you are in my business whenever you
7 see people that have the ability and are practicing that
8 disinfection.

9 Q. Are there any visible signs of leakage that you
10 saw from this facility?

11 A. I saw no visible signs of leakage from any of
12 the berms. We got a really nice tour. It was well-mowed,
13 well-maintained. I believe somebody was mowing it the day I was
14 there even in the fall. I was there last fall. I actually met
15 with the Confluence team briefly either before or after our
16 tour.

17 Q. On Page 19, Mr. Cox states that there are
18 existing electrical safety concerns, basic housekeeping items
19 that could put the drinking water system at risk and existing
20 corrosion issues that risk the ongoing operations of utility
21 systems for the basic provision of water service. Can you
22 respond to that and that question and answer?

23 A. Yes. I totally disagree with the way that that
24 is worded. It says their existing electrical safety concerns.
25 And as far as Well No. 1, my tour of one Well No. 1 and its

1 systems, I think basic -- it's hard to put -- to me, it's hard
2 to have in the same sentence basic housekeeping items that could
3 put the drinking water system at risk. I don't think the
4 drinking water system is at risk in any way under its current
5 operations. I was quite impressed with the knowledge of the
6 operator employee that we were there with, and that the building
7 was locked that encloses all of the chemicals and the access to
8 any place into the drinking water system.

9 So whenever I read that sentence and I go on --
10 the corrosion issues. I didn't see any corrosion issues that
11 were putting it at risk. I think it's another one of those
12 things, whenever you deal with chemicals and things that go into
13 the water and soil issues that are there close to Perryville,
14 Lake Perry, then you're always dealing with corrosion. But
15 those would be housekeeping items.

16 But the basic provision of water service, I've
17 seen that two or three times in Mr. Cox's surrebuttal. And one
18 place -- it is not here, I don't believe, but it talks about
19 putting it at risk for several -- for years, and I just -- this
20 is a system that is in compliance.

21 On Line 5, functional of Well 1 and well house
22 does not fencing around the site for any security to meet
23 Section 2.5. The only thing that is exposed is the -- the
24 wellhead, and it's quite normal and it's not accessible. That's
25 not a risk. I don't believe that there's ever been anything in

1 Department of Natural Resource correspondence that I saw in
 2 their reviews that said that they needed to fence around a
 3 wellhead that was constructed like that wellhead at Well No. 1.

4 The building encloses all of the items that
 5 would be of concern with me and it was well-locked. And even
 6 the office space was locked in comparison to the chemical room.
 7 Now, the Section 2.5 for new systems, that is a minimum design
 8 standard, but that is not what's required in the code of state
 9 regulations as far as I know. It says -- probably the quote can
 10 be checked, but vulnerable areas. This is not vulnerable,
 11 especially when you talk about anyone who enters and exits this
 12 facility has to go through an open and closed gate and have a
 13 code to get in or get permission or have someone come to get
 14 them. And then they also get checked on the way out. And they
 15 have to pass in front of video cameras. So I don't -- it's an
 16 impressive -- an impressive operations in comparison to many lot
 17 owners or homeowners systems that I've reviewed in the past.

18 Q. When you says systems, the gated area and the
 19 security cameras, are those owned and operated by the
 20 Association or by the water and sewer operations?

21 A. My understanding was that was the Lake Perry Lot
 22 Owners' Association owns and operates the community center, the
 23 gates, all of the roadways. They are all paved. It's been
 24 self-funded, self-maintained. The pool house. They have a nice
 25 pool. They actually own a building that they also own and lease

1 as a restaurant. These are all important things to me.
2 Beaches, beaches are hard to keep maintained and they were
3 immaculate. Docks, they have their own docking system, and from
4 what I recall and what they charge -- they charge a fair amount
5 of monthly fees to make sure that they are well-capitalized to
6 continue to maintain and improve their systems.

7 Q. Further on down, Mr. Cox makes reference to Well
8 No. 2, and including the existence of water hammer and the
9 impact of water hammer. Could you speak to that issue?

10 A. Yes. Mr. Cox and Mr. Kuenzel and I probably
11 agree on some points on Well No. 2. It's a large well and
12 according to the Department of Natural Resources website, you
13 know, has significant rated capacity. So his concern about
14 starting that well across the line without continued operation,
15 you know, would be concern a for causing problems. It's,
16 whenever you turn it on, you have the potential with the
17 velocities that you would see to have some water hammer issues.
18 I say potential. But I also know that this is a backup well.
19 And, you know, it's a backup well that in my report I -- my
20 report speaks for itself, but I also think that there's some
21 things that can be done to mitigate those concerns. But as a
22 backup well -- first of all, tickled that they not only have a
23 backup well, but they have excess -- I believe is in excess of
24 200,000-gallon storage tank for the drinking water system, both.
25 That's not quite -- that's not normal.

1 Q. Explain the tank capacity and what do you mean
2 by not normal?

3 A. Many community-owned -- many community water
4 systems struggle to get one day of their rated capacity in
5 storage. Very few, frankly, with this size, would probably have
6 two days. If you take the average daily flow of what has been
7 published, they have an excess of two days of storage of
8 finished drinking water. And actually, a person could make the
9 argument that they have three days of storage available to them
10 on site, Port Perry does.

11 Q. Were you here earlier today when Mr. Cox
12 discussed the signed and sealed engineering report? I think the
13 date was July 11th, 2018, for the water system?

14 A. Yes.

15 Q. There's some question as to the impact, or
16 validity, if you will, of a signed and sealed engineering
17 report. Could you explain that from a registered engineer
18 standpoint?

19 A. Yes.

20 MR. COOPER: Objection, Your Honor. Before we
21 go any further, I think the purpose of this testimony was to be
22 responsive to surrebuttal as set out in the Commission's order,
23 not responsive to testimony earlier today.

24 JUDGE HATCHER: Mr. Linton, a reply?

25 MR. LINTON: There is the question of the signed

1 and sealed engineer's report and I think it's a relevant
2 question for this proceeding. What's the impact of the signed
3 and sealed engineer report?

4 JUDGE HATCHER: I'm a little curious to find out
5 myself. Overruled. Go ahead.

6 THE WITNESS: In our profession, the engineering
7 profession, we have a code of ethics and it is adopted by the
8 National Society of Professional Engineers. And then there's
9 other state standards of care, accepted engineering practice or
10 principal. What we require -- and we do a lot of this from an
11 evaluation sign and seal reports -- it was a concern of mine
12 that these reports were being presented as evidence and they
13 weren't signed and sealed. And what that means is whenever I
14 sign and seal that report, I am responsible for the report.

15 The second thing is, we have a provision at
16 Allstate Consultants, some may say it's a little old-fashioned,
17 but if you sign and seal a report to the public interest, to the
18 public body, in this case the Department of Natural Resources,
19 the USDA, some other problem-type entity, they all get signed
20 and sealed whether they are preliminary or not. You stamp them
21 preliminary and you sign and seal them if you are publishing
22 that document.

23 So where Mr. Linton in some of the other
24 discussions were, is it was a big concern of mine that to my
25 knowledge I have only found -- and I may be misspeaking in my

1 documents, but I think I've only gotten the one signed and
2 sealed document. It was referenced along with plans and
3 specifications that were approved by the Department of Natural
4 Resources in August of '18. I've yet to see those documents.
5 So to have these varying budgets out there, the way you are
6 supposed to handle this, in my opinion, is if you sign and seal
7 a document and then you revise it, you are supposed to post a
8 provision date on that document so that the public can track
9 that. That is why we do these reports. We do them for the
10 public and public health, and Mr. Cox made that clear that was
11 one of their goals. Well, that is our requirement, is our
12 interests have to be in the public health. And so it is got to
13 be very confusing, if it was confusing for me, for everyone else
14 these things with no revision dates.

15 I feel like it was probably cleared up a little
16 bit with testimony for me, on why they went back and forth so
17 much, but I still disagree with the unsigned and sealed reports
18 from a professional engineering's perspective.

19 BY MR. LINTON:

20 Q. So if a signed sealed engineering report was to
21 be changed, how would that occur?

22 A. You make -- preliminary engineering reports are
23 that. So to be clear, they're preliminary engineering reports.
24 So to change one, you don't send them out for the public's
25 consumption without having a seal on it. There's requirements

1 for that. You are supposed to sign and seal those documents.
2 Whenever you change it, you simply make your revision. You post
3 the revision date. You reseal a new report. We don't -- it
4 depends on the items that were changed. If they were major,
5 many firms have an addenda sheet that they publish so that it
6 can be referenced back, so you have this chain or this
7 waterfall, in this case, of the numerous reports back and forth
8 so that people can -- people at the Department of Natural
9 Resources and people of the public that once they are submitted
10 there they are public documents, so that they can track those.

11 Q. Have you reviewed the surrebuttal testimony of
12 Kristi Savage Clarke?

13 A. Yes.

14 Q. In her testimony at Page 5, Line 16 -- and you
15 may have gone through this before, but the hierarchy she says --
16 16 -- Line 16.

17 A. Yes, I'm there.

18 Q. The hierarchy in both the drinking water and
19 wastewater regulations requires the higher ranking, continuing
20 authority are typically more permanent than lower ranking
21 continuing authorities. Can you respond to that comment?

22 A. The first thing I might note is it doesn't say
23 on Line 17 require. It says it recognizes that higher ranking
24 continuing authorities are typically more permanent than lower
25 ranking continuing authorities.

1 Q. Okay.

2 A. I think the wording of it speaks for itself.
3 It's typically -- I don't know what -- I don't really know what
4 she's referencing there as far as being more permanent. I work
5 for systems that have -- that are -- that have been owned by all
6 sorts of entities, and I don't know that any of them -- that
7 they are less permanent because they are not in a higher
8 hierarchy. I don't see the statistics behind that statement
9 that she made. I haven't seen the statistics to back that up.

10 Q. In following on in that -- I'm going to try to
11 read it correctly this time. In my experience, higher ranked
12 continuing authorities typically have a greater technical,
13 managerial, and financial capacity than lower ranking continuing
14 authorities. Can you respond to that comment?

15 A. Just to be sure, what line is that on?

16 Q. That was just the next sentence that I just
17 referred you to, Line 20?

18 A. Okay. There it is. I don't agree with that. I
19 work for a lot of what she is referring to as maybe lower
20 ranking utilities. I think she should have qualified that with
21 maybe in-house or on-staff. Larger cities have engineering
22 divisions, larger operators have people that they employee
23 permanently on their staff depending on the number of customer
24 they have. But my firm is very competent and we work for the
25 lower hierarchy facilities that are -- we try to make sure they

1 are in compliance, so I disagree. I don't know she can make
2 that statement.

3 Q. Would you say they are qualified to assist Lake
4 Perry Service Company?

5 A. I most certainly am. I wouldn't be doing the
6 work if I wasn't.

7 Q. Turn to Page 8, Line 1. Can you respond to the
8 statement there that the large entities -- the larger entities
9 have access to operational experts who are available to consult
10 on all matters of repairs?

11 A. Any size entity has access to operational
12 experts. The larger ones have no more access than a small one.
13 There's -- I heard Mr. Cox and maybe Mr. Thomas testify that
14 they outsource their operations -- operators occasionally, maybe
15 even in this case that they would be using local operators,
16 local engineers. There's -- I'm not as local to Perryville, but
17 there's even local engineers at Perryville that have expertise.
18 So I don't believe that just because you are a large entity that
19 you have more access or less than a smaller entity that is of a
20 different structure.

21 Q. Turning to Page 9, Line 5, Ms. Savage Clarke
22 states that if recommended repairs and maintenance are delayed
23 it may result in a risk to human health. Can you respond to
24 that comment?

25 A. Yes. My report recommends making the

1 maintenance, the housekeeping items that were referenced
2 earlier, immediately. They're just maintenance items. We find
3 them all the time. And so if recommended repairs -- once we do
4 the hydraulic analysis and once we determine what needs to be
5 done to that next level of finality, I -- I don't -- she -- if
6 things are -- if this happens or if that happens, but in this
7 case we have a compliant system. I assume -- I guess if things
8 were, you know, weren't fixed there could be a risk to human
9 health, I guess. But that is not what we recommended and that
10 is not what my report says.

11 Q. You make reference to a hydraulic analysis?

12 A. Yes.

13 Q. What is your proposal on the hydraulic analysis?

14 A. Well, it's required by the department and so
15 what I recommended was to fix the few heads. If the fence needs
16 some more repairs -- most recent pictures -- I mean, it would be
17 very minor repairs to fence. I had some pictures taken just a
18 few days ago just to see if they made some of the repairs and
19 they had. So from the perspective of, you know, making those
20 repairs and all of those things, that is one step that we need
21 to go ahead and do, or Mr. Yamnitz, Port Perry needs to go ahead
22 and continue making progress on those. And I noted from DNR in
23 their letters that were a letter of compliance that they had
24 made progress back in even in those few years back.

25 So from the perspective of hydraulic analysis,

1 before we would recommend any -- any -- any new well, any
2 rehabilitation of existing well, or make statements that have
3 been made, we would recommend a complete comprehensive hydraulic
4 analysis be completed to meet DNR's requirements and sit down
5 with DNR and talk about those alternatives to look at the future
6 and look at, you know, continued compliance.

7 Q. So would you then put your initial report in
8 context? How would you characterize your estimates in your
9 engineering report?

10 A. Well, they weren't very pleasing to Mr. DeWilde
11 at first. But after I explained to him that -- how we recommend
12 to do things -- I tried to be very conservative, which means I
13 estimate high, and my report makes it clear. I think it's even
14 in bold. My estimates have a probability to be high. I don't
15 want to be the low bidder as an engineer. So from that
16 perspective, I said my recommendation was -- is to continue with
17 maintenance items that needed to be done as usual, get the
18 hydraulic analysis completed, and then I recommended even
19 looking at a five-year supervised plan with DNR where we could
20 kind of do small things at different times.

21 You know, after the hydraulic analysis is
22 completed, then we would determine what's the highest priority
23 and the most economic, sustainable solution for the
24 improvements, if they need to be done.

25 Q. You made reference to the fence around the

1 lagoon. You've referred to it as something else. You made
2 reference to the fence. You say it has been improved?

3 A. Well, there was a gate laying down the day I was
4 there and the gate is not lying down. And also, I wanted to
5 make my point as far as security. It's really talking about
6 security. And fencing -- I was here for Ms. Savage Clarke's
7 testimony and there was this, you need to protect -- the CSRs
8 speak for themselves on what's required in the code of state
9 regulations. But it's enclose the facility site with a fence
10 designed to discourage the entrance of unauthorized persons and
11 animals. That's the code of state regulations. That's what it
12 says. And so this fence in numerous meetings in the last --
13 especially in the last six or eight months, what's there in
14 addition to coming through the video surveillance and locked
15 entry gates to the entire subdivision, to have the perimeter
16 fence all way around the lagoon -- yes, there's some wires that
17 need to be pulled up and there's some brush that needs to be cut
18 over time, but it more than -- I don't think DNR has ever given
19 a notice of violation for the same fence that is there now.

20 So I had some pictures taken. I had Mr. DeWilde
21 take some pictures for me. And one thing I didn't do when I was
22 on site was count the number of warning signs that were there.
23 I believe it was either ten or 11 signs are up in and around the
24 circumference of the irrigation field and the lagoon. That
25 exceeds any of the minimum requirements.

1 MR. LINTON: I have no further questions and I
2 tender the witness for cross-examination.

3 JUDGE HATCHER: Thank you. And according to
4 preagreed to list for cross-examination, we go first to Public
5 Counsel.

6 CROSS-EXAMINATION BY MR. CLIZER:

7 Q. Good morning, Mr. Sayre.

8 A. Good morning.

9 Q. And am I pronouncing that correctly, by the way?

10 A. Yes, Sayre.

11 Q. Okay. I've got good news, most of my cross has
12 already been answered. I really just have two questions. One,
13 when you were discussing the tour that you went on.

14 A. Yes.

15 Q. You mentioned that you had worked with an
16 operator or talked with an operator there. Do you remember the
17 name of that operator?

18 A. I met with -- we went -- I went with
19 Mr. DeWilde, Mr. Linton, Mr. Justis for the day. And we had a
20 representative from the Lot Owners' Association, who is their
21 maintenance supervisor and then there was a person that was
22 employed by Port Perry, and I don't remember his name.

23 Q. It wasn't Jeremy Meyer, was it? You don't
24 remember?

25 A. No. That wasn't it.

1 Q. Fair enough. Some discussion on Well 2. By
2 Well 2, I mean the backup well. I think there is an
3 understanding between all the parties as to that. If I remember
4 correctly, I think I read the well was built sometime in 1986.
5 Does that sound about right?

6 A. I believe. It is a more modern facility. Yeah.

7 Q. Okay. So it has been there for about, let's say
8 30 years, roughly. Do you have an idea how many times that
9 backup well has been used?

10 A. From what I gathered from my questions to the
11 fellow with Port Perry, not very often. I am not sure, if I
12 recall correctly, he had ever seen it operated.

13 MR. CLIZER: That's all of my cross. Thank you
14 very much.

15 JUDGE HATCHER: Thank you, Mr. Clizer.

16 Staff, please go ahead.

17 MS. BRETZ: Nothing. Thank you.

18 JUDGE HATCHER: Thank you.

19 And, Confluence Rivers?

20 MR. COOPER: Before we do this, Your Honor, I
21 think -- I guess this is going to ask you about your level of
22 curiosity that you referred to earlier, I think. But we have
23 gone very far with new testimony today with Mr. Sayre, I think
24 even beyond, in some cases, your order in terms of merely
25 responding to the Company's surrebuttal. As has been discussed

1 previously the Company, the applicant, has the burden in these
2 matters and I think generally the Commission's rules and
3 procedural schedules are set up such that they provide the
4 applicant the, sort of, last word to some extent.

5 Given that, I guess what we would like to ask or
6 request is that we be provided the opportunity to recall either
7 Mr. Thomas or Mr. Cox to discuss their visit as recently as last
8 Friday to the site in order to provide some additional
9 information as to the condition.

10 JUDGE HATCHER: Okay. Just to summarize,
11 Mr. Linton asked if he could recall Mr. Cox if his questions
12 didn't get answered. So let's start there.

13 Mr. Linton, were you satisfied with the answers
14 that you have gotten so far?

15 MR. LINTON: I waive my right to recall Mr. Cox.

16 JUDGE HATCHER: Okay. So now Confluence Rivers
17 is asking to be able to recall both witnesses?

18 MR. COOPER: Not necessarily. I would be happy
19 with either or, but I need to talk to them to figure out which
20 one is the most appropriate. But, yes, we would want to recall
21 a witness.

22 JUDGE HATCHER: Does any party have an objection
23 to that request?

24 MR. LINTON: I would object. And basically, we
25 are providing additional sur-surrebuttal if that be a term in

1 response to new information that was provided by Confluence
2 Rivers that should've been part of the direct. We've had very
3 limited access to discovery since that new information, and so
4 what -- on direct testimony here asked today was our opportunity
5 to do a little bit of discovery in response to --

6 JUDGE HATCHER: What heard is an admission that
7 there was some new material, so Confluence Rivers your
8 request --

9 MR. LINTON: New material from Confluence
10 Rivers. I was not saying new material from our point of view.

11 JUDGE HATCHER: Okay. Then can you tell me that
12 again because I understood that you were saying that Mr. Sayre
13 was introducing new material that he didn't have access to until
14 this visit a week ago or so.

15 MR. LINTON: No. What we were doing was
16 responding to new information that Confluence Rivers was putting
17 forth in their surrebuttal testimony that should have been in
18 their direct testimony. We were foreclosed from doing an
19 effective discovery process where that new information that was
20 part of Confluence Rivers surrebuttal.

21 JUDGE HATCHER: So you're saying the new
22 information is from the surrebuttal of Confluence Rivers and you
23 are asking Mr. Sayre about that new information?

24 MR. LINTON: Was completely in the form of doing
25 some discovery in response to their new information.

1 JUDGE HATCHER: This visit was a week ago? This
2 visit that you were referencing was five days ago?

3 THE WITNESS: My visit was done prior to my
4 report, which was January of 2019.

5 MR. COOPER: No. I think I suggested that, if
6 we were to recall Mr. Cox or Mr. Thomas, that they would testify
7 as to the results of their visit from last Friday.

8 JUDGE HATCHER: Okay.

9 MR. COOPER: Three days ago or whatever that
10 would be. That's probably what you heard, Judge. The other
11 thing I would like to say in response to Mr. Linton is that I
12 think the Commission's order clearly says ours surrebuttal was
13 in accordance with the Commission's rules. I don't think
14 there's any -- there should be any suggestion that it was
15 improper surrebuttal.

16 MR. CLIZER: Judge, I know that you are in the
17 process of making a decision on this, so I would also like to
18 say that I would object, echoing in many ways what Mr. Linton
19 has already said. But just, I don't know where this ends.

20 JUDGE HATCHER: That is a good question.
21 Mr. Cooper, can you help us, without divulging any secrets, what
22 you're seeking to introduce from last week's visit?

23 MR. COOPER: Well, there were comments made
24 about the pictures that were in surrebuttal. There were
25 comments made about the existing condition of the systems.

1 Essentially, we have pictures as of three days ago that would
2 support what was in our surrebuttal and I suppose be counter to
3 what

4 Mr. Sayre has said in some instances.

5 MR. LINTON: Mr. Sayre also has photographs and
6 would be willing to introduce those in response to Mr. Cox as
7 well.

8 JUDGE HATCHER: I'm not liking the continuing
9 going back and forth. We do have to end testimony at the point.
10 This testimony by Mr. Sayre has been allowed by the Commission
11 due to the properly admitted, but still a little surprising with
12 your witness, surrebuttal testimony. We have to come back
13 tomorrow. I'm going to think on this.

14 So where we're at now is I'm gonna consider
15 Mr. Cooper's motion overnight and Mr. Sayre is done with his --
16 no, he's still got cross-examination.

17 MR. COOPER: We may have cross-examination now
18 that we have crossed that -- we've discussed this issue.

19 JUDGE HATCHER: Okay.

20 MR. COOPER: Give us just a moment.

21 CROSS-EXAMINATION BY MR. COOPER:

22 Q. Mr. Sayre, so in spite of your, sort of, dispute
23 with surrebuttal of the Company in terms of the condition of the
24 water and sewer system at Lake Perry, in the end and I think you
25 made reference to this not pleasing Mr. DeWilde, you recommend,

1 and over three phases, I think -- but you recommend somewhere
2 around \$670,000 worth of repairs to the system potentially?

3 A. My report speaks for itself, but yes, in that
4 range. Immediate items, hydraulic analysis, and then a
5 determination of the final improvements for long-term
6 investment.

7 Q. Okay. And that's considerably more than the
8 estimate that the Company has put forth in its testimony in this
9 case. Correct?

10 A. I believe that is correct. I've seen a large
11 range. I think it would help me today to see some of the
12 testimony. In the previous case, their estimate was quite a bit
13 higher and now it's lower. But you made a statement -- I don't
14 know if I can do this. I'm not a Public Service --

15 Q. Well, hold on. I think you answered the
16 question.

17 A. You said, in spite of the argument, if you will,
18 of the condition of the existing system. I don't know that I
19 disagree with many of the statements that were made. That fence
20 needs to be done and brush needs to be removed. But in the
21 surrebuttal there were these large, fearful terms used about no
22 -- the threat to public health and basic water provision for
23 years in the surrebuttal, and all of these doomsday things like
24 -- that's how I looked at it.

25 And so it was for me -- that's why I wanted to

1 make it clear that with fencing that needs to be repaired,
2 sprinkler heads that I put in my report -- it speaks for itself
3 -- that they need to be maintained and replaced almost annually,
4 but the system is in compliance. So --

5 Q. But in the end, what you recommend be done to
6 the system is considerably more in cost than what's estimated
7 here by the Company. Correct?

8 A. That is not correct. It's very, very important
9 and that the Commission understands this: Prior to any money --
10 besides the maintenance items, the fence and the brush, and the
11 sprinkler heads -- and I even mention that there are some minor
12 things that can be done to Well No. 2 to make it manually
13 operable and more manageable, then the hydraulic analysis is
14 done. These are very low-cost items.

15 Then, after that is whenever we would submit to
16 the Department of Natural Resources after meeting with their
17 public drinking water team about what they think as far as a
18 long-term plan for improvement.

19 Q. And you talked -- you heard Mr. Thomas talk
20 about sort of an iterative process as well. Correct?

21 A. I believe it was as much Mr. Cox that said
22 iterative from what I call, not so much Mr. Thomas. But I think
23 getting the hydraulic analysis done is the most important thing
24 before -- but as an engineer, I don't try to underestimate what
25 the most challenging case would be for a plan of finance or a

1 funding pathway for these smaller communities. So I still stand
2 by my higher estimates, but I also tied it in my report to what
3 the impact to the existing rate should be with the assumptions I
4 made in my report. That's what you're supposed to do. We're
5 supposed to divulge to the public what the impact on rates would
6 be.

7 Q. And again your report speaks for itself?

8 A. Yes, it does.

9 Q. The dollar amounts are --

10 A. They're in there.

11 Q. They're in there?

12 A. Yep.

13 Q. And they're almost at \$700,000. Correct?

14 A. Correct.

15 MR. COOPER: That's all the questions I have,
16 Your Honor.

17 JUDGE HATCHER: Thank you. Questions from the
18 bench, Mr. Chairman?

19 CHAIRMAN SILVEY: Thank you.

20 QUESTION BY CHAIRMAN SILVEY:

21 Q. I just want to briefly explore or revisit this
22 idea of sealed versus unsealed, so help me understand this. Is
23 it common for an engineer to produce both sealed and unsealed
24 reports or is it indicative of the qualifications of the person
25 producing the report, whether it is sealed or unsealed?

1 A. If I may, just a little bit background about my
2 profession?

3 Q. Yes.

4 A. You have to graduate from an accredited school.
5 In Missouri, there are very few options for that. After you
6 graduate, you can get your bachelor of science in engineering,
7 then you have to work four years under a registered professional
8 engineer and document that, and then you're eligible to take an
9 exam. And if you are blessed enough to pass that exam, then you
10 are able to have a professional engineering license. Once you
11 have a professional engineering license, there's -- there's
12 always opinions and people that interpret it. If you publish a
13 draft report and you don't seal it, it should be an internal
14 document. It should not be published to something that can
15 impact the public.

16 We are supposed to be a profession that is in
17 the public's interest. That's what it says in our code of
18 ethics. So in this case, I asked Mr. Kuenzel at a meeting that
19 Mr. Cox was nice enough to have with us last fall, the fall of
20 '18 is whenever I did my site review, and I published my report
21 in January of '19, I believe, it is. So I asked Mr. Kuenzel
22 then when will I get a signed, sealed report. He said, I will
23 give you one. That was just a matter of respect from me to him
24 to say, Hey, I am getting ready to act upon this in the public's
25 interest. Meaning, I'm going to publish a report to a public

1 body. And so I published my report without ever seeing a
2 signed, sealed report that -- that that day I felt like was
3 current.

4 The signed, sealed report that was just done in
5 the summer of '18 was not produced, you know, to me in that --
6 following that meeting. So that -- the impact of having a
7 signed, sealed report is responsibility. And you don't have to
8 sign and deal every time you do a draft report, but if you
9 publish that report to the Department of Natural Resources or to
10 a public entity's use, then in my opinion, you are supposed to
11 sign and seal it so they know that you are the responsible
12 professional for that data that's in that report. That may be
13 TMI, but --

14 Q. No. No. I'm trying to truly understand this
15 process. So it's not as if there are engineers producing
16 reports that have a higher qualification than other engineers
17 and that's what results in the signing and the sealing?

18 A. That's correct. No. That's not how it works.

19 Q. That not how it works?

20 A. Once you -- you are supposed to be competent at
21 what you do. You're not supposed to do work that you're not
22 competent to do. I don't feel like -- I feel like Mr. Kuenzel's
23 work, what I read in the draft reports and the other report, was
24 competent. I think -- I didn't -- I saw his -- I think we
25 agreed on many items. You're supposed to be competent on the

1 work that you undertake.

2 And the fact that somebody might be younger, or
3 older, or anything else doesn't have a scoresheet of whether one
4 seal is more important than another seal. Once you sign and
5 seal it, it shows the public and your client that you are
6 responsible for that work.

7 Q. But if I understand your testimony from just a
8 moment ago, not having a signed, sealed document, in your
9 opinion, is something that is not necessarily appropriate for
10 public consumption or to be basing decisions on?

11 A. That is correct.

12 CHAIRMAN SILVEY: Okay. Thank you.

13 JUDGE HATCHER: Mr. Chairman, any other
14 questions from the bench?

15 QUESTIONS BY JUDGE HATCHER:

16 Q. Something is just nagging at me about the signed
17 and the sealed. Is there any requirement that when engineers
18 produce a report that it needs to be sealed?

19 A. If that report is being published and being for
20 consumption by the public or your client and it involves
21 engineering data, then my interpretation from my dad, who is
22 also an engineer, and my company is that you shall seal that
23 work. If it is preliminary, then you sign and seal it and stamp
24 it preliminary, which to Chairman Silvey's point, you know it is
25 still preliminary or draft, but you know who the design

1 professional is that's responsible for that work.

2 Once you revise that work, then it's important
3 that you document the revisions for the public and/or your
4 client so that they can track what's current.

5 Q. Can you succinctly tell me then, what was wrong
6 with the reports that weren't prepared, as I understand them,
7 from public consumption, but were prepared just for Confluence
8 Rivers' consumption?

9 A. My opinion, full respect for Mr. Kuenzel, my
10 company would not do that, in that whenever something is being
11 prepared for the use by the client -- most clients would require
12 it be signed and sealed.

13 Q. Okay.

14 COMMISSIONER KENNEY: I will follow-up on that.

15 JUDGE HATCHER: Commissioner Kenney?

16 QUESTIONS BY COMMISSIONER KENNEY:

17 Q. I didn't know that you answered his question.
18 Is there -- I know you are a company. I understand that. Is
19 any violation or ethics rule that's broken when they don't seal
20 it? Is there any law that was broken?

21 A. I am not a lawyer.

22 Q. But you know -- you are licensed engineer?

23 A. In my opinion, again --

24 Q. I don't want your opinion. I'm not asking for
25 your opinion. I'm just asking for -- whether there's -- if it's

1 a violation of any law?

2 A. It's a violation of a standard for the Missouri
3 Society of Professional Engineers.

4 Q. So it is a standard for the Missouri Society of
5 Professional Engineers?

6 A. And they adopt the National Society of
7 Professional Engineers.

8 Q. Then you answered my question there. Because I
9 know a lot of times I've gotten documents in my role as a
10 developer and builder that aren't stamped yet. I reviewed them
11 and we go off of them. In fact, cities when you build houses
12 like Lee's Summit, you could take a set of plans and go and
13 redline them and build a house. They don't allow that anymore.
14 It has to be stamped and certified now. But they did that for
15 years.

16 A. Many residential structures don't require. They
17 have exemptions.

18 Q. Well, yeah, but most cities now require engineer
19 plans.

20 A. They do, and they do because they want somebody
21 to be responsible.

22 Q. I understand. Okay. Thank you.

23 JUDGE HATCHER: Mr. Chairman?

24 FURTHER QUESTIONS BY CHAIRMAN SILVEY:

25 Q. So then just a quick follow-up to help me

1 understand. The purpose of having the sign and the sealing is
2 so that you know specifically which individual's responsible for
3 that work, as opposed to just Engineering Firm X produced a
4 report?

5 A. That's correct. It's a personal seal from a
6 registered professional engineer.

7 Q. So like a notary?

8 A. That's correct.

9 Q. But in a different setting?

10 A. That's right. A lot more school.

11 CHAIRMAN SILVEY: Thank you.

12 FURTHER QUESTIONS BY COMMISSIONER KENNEY:

13 Q. I'll follow-up on that one. There's a lot of
14 engineering firms. Aren't there are a lot of engineering work
15 where the person that prepares documents and it's reviewed by
16 someone else and the other person stamps it?

17 A. That's correct. It's by you or under your
18 direct supervision.

19 JUDGE HATCHER: Okay. Those are the questions
20 from the bench. According to our predetermined recross, Public
21 Counsel?

22 MR. CLIZER: No recross. Thank you, Your Honor.

23 JUDGE HATCHER: Thank you.

24 Staff, you're up next.

25 MS. BRETZ: Nothing, Your Honor. Thank.

1 JUDGE HATCHER: And, Confluence Rivers?

2 MR. COOPER: A couple of things. Thank you,
3 Your Honor.

4 RECROSS EXAMINATION BY MR. COOPER:

5 Q. You talked a lot about publishing of reports.
6 Is providing copies of draft reports in response to discovery
7 requests publishing?

8 A. In my opinion, yes. Definitely.

9 Q. So you have a pretty broad view of publishing.
10 Right?

11 A. Yes, I do.

12 Q. Now, would you agree with me that the estimates
13 being used by the Company in this case tie to the signed and
14 sealed engineering reports?

15 A. I've only seen one signed and sealed report that
16 I can recall.

17 Q. Well, there's two attached to --

18 A. One for water and one for wastewater?

19 Q. Exactly. From Mr. Justis' --

20 A. Summer of '18?

21 Q. Correct.

22 A. Yes. I believe -- I believe that those are -- I
23 believe that those are the numbers that are being used.

24 Q. Yeah. So their estimates are tied to those
25 signed, sealed engineering reports. Correct?

1 A. That's correct.

2 MR. COOPER: Okay. Thank you.

3 JUDGE HATCHER: Thank you. Mr. Linton, any
4 redirect?

5 MR. LINTON: Just one question.

6 REDIRECT EXAMINATION BY MR. LINTON:

7 Q. You may have already answered this, but if you
8 have I just want to verify. If you have a signed, sealed report
9 would it be appropriate to submit information at odds with that
10 signed, sealed report and represent it as accurate information?

11 A. I probably need a little more description on
12 whenever you said "at odds".

13 Q. With an estimate of a cost of a project being
14 significantly higher than what was in the signed, sealed report?

15 A. If your estimate is different than what was in
16 your signed, sealed report, and you didn't do a revision --

17 Q. Yes?

18 A. -- then you should do a revision or that -- in
19 my -- back to my opinion, as a professional engineer that is an
20 issue.

21 MR. LINTON: Thank you. No further questions.

22 JUDGE HATCHER: Thank you. And let's go ahead
23 and excuse Mr. Sayre. Thank you.

24 We're going in end the day here. Mr. DeWilde,
25 you will be the first up tomorrow. And right after that we have

1 the Public Counsel witness Ms. Roth. That should be the last of
2 the listed witnesses. I have not forgotten Confluence Rivers'
3 request about the potential to recall either Mr. Thomas or
4 Mr. Cox. Are there any questions or issues before we wrap up
5 for today?

6 MR. COOPER: What time tomorrow?

7 JUDGE HATCHER: 9:00 a.m. Any other suggestions?
8 9:00 a.m. it is. With that, we off the record and adjourned for
9 the day.

10 (OFF THE RECORD.)

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CERTIFICATE OF REPORTER

I, Lisa M. Banks, CCR within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Lisa M. Banks, CCR No. 1081

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