

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Confluence)	
Rivers Utility Operating Company, Inc., for)	
Authority to Acquire Certain Water and Sewer)	File No. WA-2019-0299
Assets and for a Certificate of Convenience)	
and Necessity)	

**RESPONSE TO STAFF RECOMMENDATION, REQUEST FOR HEARING AND
RENEWAL OF ITS MOTION TO DISMISS
OF LAKE PERRY LOT OWNERS ASSOCIATION**

COMES NOW Lake Perry Lot Owners Association (“Association”), and for its response to the *Staff Recommendation* filed by the Staff of the Public Service Commission (“Staff”) regarding the application of Confluence Rivers Utility Operating Company, Inc. (“CRU”), for its request for a contested hearing, and to renew its motion to dismiss the application, states the following:

1. On March 29, 2019, CRU filed its *Application and Request for Waiver* (“Application”), requesting Missouri Public Service Commission approval of the sale of the water and sewer utility assets and transfer of the certificates of convenience and necessity (“CCN”) from Port Perry Service Company to CRU.
2. On April 1, 2019, the Commission set a due date of April 16, 2019 to intervene and ordered Staff to file a recommendation on or before May 31, 2019.
3. The Association filed its *Application to Intervene* in the case on April 3, 2019 and moved to dismiss CRU’s Application on the basis that CRU lacks the statutory grounds to file the Application.
4. On April 10, the Commission granted the Association’s *Application to Intervene* but has not yet ruled on the Association’s motion to dismiss.

5. On May 31, 2019, Staff filed its *Staff Recommendation*, wherein it recommends approval of the Application subject to several proposed conditions.

6. Pursuant to 4 CSR 240-2.080(13), the Association offers this *Response to Staff Recommendation*, requests a hearing, and continuing to note the lack of the necessary applicant, renews its motion to dismiss this case.

7. Without waiving its motion to dismiss, the Association requests a hearing on the Application and an order scheduling a prehearing conference. Furthermore, inasmuch as the seller Port Perry Service Company is an indispensable party to this transaction, the Association requests the Commission join Port Perry Service Company in this case.

ASSOCIATION RESPONSE

8. With all due respect to Staff, the *Staff Recommendation* is poorly conceived and not an appropriate analysis for this case. The Tartan factors, as the *Staff Recommendation* recognizes, were originally designed to apply to CCN cases under section 393.170 RSMo. They are designed to focus the analysis on the need for service and the capability of the applicant to provide service, nothing more. They were not designed to apply to sale transaction cases under section 393.190 RSMo, such as this.

By way of comparison, the Commission must address CCN cases pursuant to section 393.170 RSMo and determine whether the permission and franchise requested therein is “necessary or convenient for the public service.” In such a case, the Commission’s focus is limited to the need or desire for new service and the mere technical capabilities of applicant, i.e. whether the service will be adequately supplied for the public convenience and necessity. The sale of the assets of an existing water and sewer utility currently serving the public in compliance with an existing CCN, such as this case, requires a different form of analysis. Pursuant to section

393.190, RSMo., the Commission must determine whether the transaction will be “detrimental to the public interest.” In a case such as this, the question is the impact of the transaction on the public and the customers. Simply stated, the Staff applied the wrong analysis. The truncated analysis of the *Staff Recommendation* does a disservice to the public interest and the utility customers.

9. Rather, the Commission has, and in this case must, apply a standard more akin to the standard applied in *In Re Aquila, Inc.*¹ In that case, the Commission was confronted with determining whether it would be detrimental to the public interest to permit Aquila, Inc. to transfer functional control of its transmission assets to the Midwest ISO. The Commission correctly observed the guidance of the Missouri Supreme Court:

To prevent injury to the public, in the clashing of private interest with the public good in the operation of public utilities, is one of the most important functions of Public Service Commissions. It is not their province to insist that the public shall be benefited, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public detriment. *‘In the public interest,’ in such cases, can reasonably mean no more than ‘not detrimental to the public.’*² (emphasis provided in Commission Report and Order)

10. In applying the Court’s guidance, the Commission clearly stated that it must consider “other alternatives” in a transaction such as this.

7. In deciding whether a proposed transaction is “not detrimental to the public interest”, the Commission must consider and decide all the necessary and essential issues.

8. One necessary and essential issue the Commission must consider is the lost opportunity cost associated with allowing Aquila to join Midwest ISO instead of Southwest Power Pool.

¹ Case No. EO-2008-0046, *Report and Order* (October 9, 2008)

² *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393, 400, 335 Mo. 448 (Mo., 1934), quoting *Electrical Public Utilities Co. v. West*, 140 Atl. 840, l.c. 844.

9. When alternatives with economic impacts are presented, an evaluation of the detriments of a particular alternative to the public interest must include consideration of the opportunity cost of not pursuing any available alternatives. There do not appear to be any Missouri state court cases directly announcing this principle, but it is a well-established aspect of Federal administrative law.

10. Missouri's Western District Court of Appeals has recently held that the Commission is not limited to narrowly considering the possible benefits of a presented alternative when other alternatives are also important. In *Environmental Utilities, LLC v. Public Service Commission*, the court upheld the Commission's rejection of a proposed sale of a part of the sewer system of a troubled utility, because, while there were benefits to those customers who would be served by the purchaser, the benefits of the sale of the entire system would be greater, and would be lost if the incomplete transaction were allowed to proceed.³

11. The Staff's posture to the "other alternatives" in the *Staff Recommendation* is entirely dismissive. In one simple paragraph "Other Available Utilities," the Staff truncates its analysis of other alternatives by concluding that "there is no proposal." The *Staff Recommendation* recognized that a new Lake Perry Service Company has been approved by the DNR to serve the customers of Port Perry Service Company as a nonprofit water and sewer utility entity. With that information, it was incumbent upon Staff to consider the other alternative, not simply dismiss it out of hand. Commission precedent requires a more robust analysis of the alternatives, and the *Staff Recommendation* should have presented it.

12. The Association has an alternative that the Commission must consider. The Association's alternative is attached hereto as Exhibit A, which is an Asset Purchase Agreement signed by the newly formed Lake Perry Service Company and delivered to Port Perry Service Company on April 4, 2019.

³ *In the Matter of the Application of Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks – L&P for Authority to Transfer Operational Control of Certain Transmission Assets to the Midwest Independent Transmission System Operator, Inc.*, Case No. EO-2008-0046, Report and Order, October 9, 2008, p. 16.

13. Neither Lake Perry Service Company nor its proposal to Port Perry Service Company are mere speculation. They are significant and definitive with a solid business plan behind them. The Association has been involved with and close to the operations of Port Perry Service Company for years, and the Lake Perry Service Company will draw on the expertise of the Association in its service to the customers. Finally, the Association also has the financial commitments of its members to make the proposal work.

14. The only reason the Lake Perry Service Company has not filed an application to acquire the assets of Port Perry Service Company as an alternative to the CRU Application is that the Commission rules prohibit the filing of such an application, and CRU has directed Port Perry Service Company not to speak to the Association. In a recent conversation between the President of the Association, Richard DeWilde, and the President of Port Perry Service Company, Mr. Michael Yamnitz, Mr. Yamnitz told Mr. DeWilde that counsel for CRU had directed Mr. Yamnitz not to speak to Mr. DeWilde. However, the Lake Perry Service Company is more than prepared to move forward with its offer.

REQUEST FOR HEARING

15. Contrary to Staff's conclusion that there is no contract being developed, the attached Exhibit A is entirely developed, in writing, and signed by the new Lake Perry Service Company. It is definitive and well planned. Since the Commission rules prohibit the filing of the Association's proposal as an application, and since CRU attorneys have directed Port Perry Service Company not to speak to its customers, the Association will provide its proposal to the Commission at a hearing to be held in this case, much as Southwest Power Pool was required to do in the Aquila case. The Association suggests that the Commission must consider the Lake

Perry Service Company APA as another alternative in determining whether the CRU Application is “detrimental to the public interest.” Therefore, the Association requests a hearing.

MOTION TO DISMISS

16. The Association renews its motion to dismiss. The Association will not rehearse once again the various reasons for its motion to dismiss and will simply incorporate its prior motion herein for all purposes. Rather, it will simply point out in addition that the posture of Port Perry Service Company, being the seller in this transaction, and yet being controlled by CRU (as evidenced by the above-referenced directive from CRU to Port Perry Service Company), has put the Association in an untenable position regarding its relationship to its water and sewer provider and an untenable position for presenting its proposal to Port Perry Service Company and to this Commission. For these reasons, the Association renews its motion to dismiss this case in the absence of Port Perry Service Company being named the applicant.

WHEREFORE, Lake Perry Lot Owners Association respectfully responds to the Staff Recommendation, requests a hearing and an order joining Port Perry Service Company as a party and scheduling a prehearing conference or, in the alternative, dismissing the Application.

Respectfully submitted,



By: _____

David C. Linton, #32198
314 Romaine Spring View
Fenton, MO 63026
Telephone: 314-341-5769
Email: jdinton@reagan.com
Attorney for Lake Perry Lot Owners
Association

Filed: June 4, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Request for Hearing and Prehearing Conference was sent to all parties of record in File No. WA-2019-0299 via electronic transmission this 4th day of June 2019.

David C. Lester

VERIFICATION

COUNTY OF PERRY)
) SS
STATE OF MISSOURI)

Richard DeWilde, being duly sworn on oath, deposes and says he is President of Lake Perry Lot Owners Association, he has read the foregoing and knows its contents, and the information contained therein is true and correct to the best of his knowledge and belief.

Lake Perry Lot Owners Association

Richard DeWilde

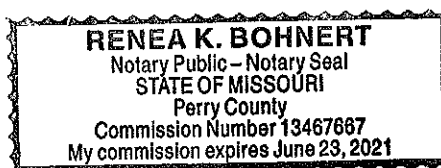
Richard DeWilde

Subscribed and sworn to before me, the undersigned Notary Public in and for the county and state aforesaid, on the 4th day of June, 2019.

Diana K. Bohnert

Notary Public

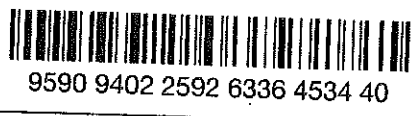
My commission expires:



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 MICHAEL YAMNITZ
 728 PCR 724
 PERRYVILLE MO 63775



2. Article Number (Transfer from service label)

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Michael Yamnitz Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
- Adult Signature
 - Adult Signature Restricted Delivery
 - Certified Mail®
 - Certified Mail Restricted Delivery
 - Collect on Delivery
 - Collect on Delivery Restricted Delivery
 - Insured Mail
 - Insured Mail Restricted Delivery (over \$500)
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Return Receipt for Merchandise
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

Domestic Return Receipt

EXHIBIT 1

Michael Yamnitz
728 PCR 724
Perryville, MO 63775



1300 Brenda Ave.
Perryville, MO 63775
573-547-6596

Brad Moll
2101 Moll Avenue
Perryville, MO 63775

Re: Asset Purchase Agreement

Dear Mike and Brad:

I am writing on behalf of the Lake Perry Lot Owners Association and the newly formed Lake Perry Service Company. The Lake Perry Lot Owners, through the new Service Company, have authorized me to extend an offer to you for the purchase of the assets of Port Perry Service Company. You will find enclosed two originals of an Asset Purchase Agreement, signed by me on behalf of the newly formed Service Company.

The Lot Owners have engaged an independent engineer and an independent business planner. We have investors who are willing to commit financing adequate to purchase the facilities as they are, and we have an expression of interest from a bank for long-term, low-cost financing. The Lot Owners, as your customers, are most certainly attentive to your desire to sell your water and sewer operations in their community and want to be considerate of your desires. It is with that in mind that we are offering you \$150,000 in a contingency contract in the event the Confluence Rivers transaction does come to fruition. We believe this will provide you a reasonable, even attractive, fall back, in the event the Confluence Rivers transaction is not approved by the Missouri Public Service Commission. It is consistent with the findings of our engineer, our business planner, our investors, and the bank.

To reiterate, this Asset Purchase Agreement is contingent on the Confluence Rivers transaction not being consummated, which would include the Missouri Public Service Commission not approving the agreement with Confluence Rivers. So, it respects your prior commitment.

We remain of the firm conviction that your agreement with Confluence Rivers is detrimental to the public interest in general and harmful to our community in particular. We will continue to oppose the transaction before the Public Service Commission, but we wanted you to know that we stand behind you should we be successful in our opposition.

We are also raising a concern with you regarding your relationship with Confluence Rivers. We were disturbed when you advised us that you refused to talk to us based on the advice of the Confluence Rivers law firm. You must be aware that in this situation Confluence Rivers has a legal interest in conflict with the best interests of Port Perry. A lawyer who represents a buyer and a seller in a contract transaction that is under dispute has an inherent conflict of interest. Put simply, it is in your best interest to talk to us. It is in Confluence Rivers' interest for you to reject our offer to meet.

We encourage you to seek your own legal counsel and not the counsel of Confluence Rivers. As you know, the lawyer cannot serve two masters. He cannot have the best interest of both of you at heart.

This is a matter of significant concern implicating the laws and regulations of the Missouri Public Service Commission. While we do not take this action lightly, we are preparing to file a complaint before the Commission. We hope this action will be unnecessary, but it may become necessary considering the situation before us.

Please respond to this letter and allow us to meet with you.

Thank you for your attention, and we look forward to further discussions.

Sincerely,

A handwritten signature in cursive script that reads "Richard DeWilde".

Richard DeWilde

President

Lake Perry Lot Owners Association

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into this 25th day of March, 2019, by and between Lake Perry Service Company ("Lake Perry"), and Port Perry Service Company, ("Port Perry") (in the aggregate, "Parties").

Recitals

A. Port Perry owns, operates, and manages a sanitary sewage collection and treatment system and a water well distribution system (in the aggregate, "Systems") for all the Lake Perry Subdivision;

B. Port Perry desires to sell the Systems and has entered into an agreement with Confluence Rivers Utility Operating Company ("Confluence Rivers") to sell the System, *Agreement for Sale of Utility Systems with Central States Water Resources, Inc* ("Confluence Rivers Agreement"), which was the subject in part of a recent Missouri Public Service Commission case, File No. WM-2018-0116; and

C. Lake Perry desires to purchase the Systems from Port Perry and agrees to purchase the Systems from Port Perry in the event Port Perry and Confluence Rivers fail for any reason to consummate the Confluence Rivers Agreement.

NOW THEREFORE, for and in consideration of the premises and the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Article I DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

(a) "Assets" means the properties and assets of Port Perry used in the operation of the Systems, including but not limited to the assets listed on Exhibit A, attached hereto and incorporated herein by reference.

(b) "Closing Date" means a date mutually agreeable to the parties.

Article II TERMS OF SALE

2.01 Sale of Assets. On the Closing Date, Port Perry shall sell, assign, transfer and convey to Lake Perry, and Lake Perry shall purchase and acquire from Port Perry, subject to the terms and conditions hereinafter set forth, all of Port Perry's right, title and interest in and to the Assets.

2.02 No Assumption of Liabilities. Lake Perry is not assuming any liabilities of Port Perry unless expressly agreed to herein. On the Closing Date, Lake Perry shall assume and agree to pay, perform or otherwise discharge the liabilities of the Systems arising on and after the Closing Date. Port Perry shall perform or timely otherwise discharge the liabilities of the Systems arising before the Closing Date. Lake Perry and Port Perry shall prorate utility expenses and similar charges relating to the Systems, and Port Perry shall be liable to the extent such expenses and charges relate to any time before the Closing Date, and Lake Perry shall be liable to the extent such expenses and charges relate to any time on and after the Closing Date.

2.03 Accounts Receivable. Lake Perry shall bill and collect any and all amounts due from the customers of the Systems for service provided by Port Perry prior to the Closing Date and shall remit any and all such payments to Port Perry. To the extent service is provided during a billing cycle during which the Closing Date occurs, Lake Perry shall pro rate payment for the bill and remit payment in proportion to the time each entity owned the Systems during the billing cycle.

2.04 Future Payables. Lake Perry will be responsible for all normal anticipated monthly payables resulting from the operation of the Systems that are due and owing for services rendered following the Closing Date.

2.05 Purchase Price. The purchase price for the sale of the Assets shall be **One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00)**, which sum shall be payable by Lake Perry to Port Perry on the Closing Date, the adequacy and sufficiency of which is acknowledged.

2.06 MPSC Contingency. This Agreement is contingent upon the failure of Port Perry and Confluence Rivers to consummate the Confluence Rivers Agreement, whether due to the failure of either party thereto to perform its commitments under said Agreement or refusal of the Missouri Public Service Commission ("MPSC" or "Commission") to approve the Confluence Rivers Agreement, as required by law, or for any other reason. If the Commission approves the Confluence Rivers Agreement and authorizes Confluence Rivers to acquire the assets of Port Perry and the parties thereto close on the Confluence Rivers Agreement, this Agreement shall be null and void. However, if at any time, Port Perry determines, at its sole discretion, that either party or the parties to the Confluence Rivers Agreement are unwilling or will be unable to close, Port Perry shall so notify Lake Perry, and the parties shall proceed to set a Closing Date to fulfill the terms of this Agreement.

2.07 The Parties also agree that this Agreement is contingent upon the Missouri Public Service Commission approving the Agreement and shall cooperate to pursue its approval before the Missouri Public Service Commission upon the failure to the Confluence Rivers Agreement. However, nothing in this Agreement shall prohibit either party from presenting this Agreement to the Missouri Public Service Commission in any proceeding thereof.

Article III
REPRESENTATIONS AND WARRANTIES OF PORT PERRY

Port Perry hereby represents and warrants to Lake Perry as follows:

3.01 Corporate Organization. Port Perry is a corporation in good standing in the state of Missouri and is qualified to conduct business in Missouri.

3.02 Authorization. Port Perry has the necessary power and authority to enter into this Agreement, and this Agreement has been duly authorized by the Board of Directors of Port Perry.

3.03 No Violation. Neither the execution and delivery of this Agreement by Port Perry, the performance by Port Perry of its obligations hereunder, nor the consummation by it of the transactions contemplated hereby will (1) violate any provision of the Articles of Incorporation or Bylaws of Port Perry, or (2) to the best knowledge of Port Perry, violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority to which Port Perry is subject, which would have a material adverse effect on the Systems taken as a whole.

3.04 Litigation. There is no action, proceeding or investigation pending or threatened against or involving Port Perry or any of the Assets which, if determined adversely, could materially and adversely affect the Systems taken as a whole, and Port Perry is not in violation of any order, judgment, injunction or decree outstanding against it the effect of which would be materially adverse to the Systems taken as a whole.

3.05 Title to Properties. As of the Closing Date, Port Perry will have good and marketable title to all the Assets, and the Assets will be subject to no liens or encumbrances, whether by mortgage, pledge, lien, security agreement, conditional sale agreement or otherwise.

3.06 No Warranties. The Assets sold hereunder are being sold "AS IS, WHERE IS" and no warranties of any kind or character, express or implied, including any warranty of quality or any warranty of merchantability of fitness for a particular purpose, are being given by or on behalf of Port Perry; provided, however, that Port Perry does warrant its title to the Assets and its right and authority to sell and transfer the same to Lake Perry. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3.07 Brokers and Agents. No broker, agent or representative of Port Perry has any agreement or contract with Port Perry entitling such broker, agent or representative to any commission or payment by reason of the transfer of the assets which are the subject of this agreement.

3.08 Regulatory Compliance. Port Perry is in compliance with all federal, state, and local regulations, including but not limited to the regulations of the Missouri Public Service Commission and the Missouri Department of Natural Resources. If Lake Perry discovers, is notified, or otherwise becomes aware that Port Perry is out of compliance with any federal, state, or local regulation or requirement prior to the Closing Date, Lake Perry may at its sole option, suspend the Closing Date and negotiate and/or enter into a settlement agreement or other voluntary administrative action to resolve the non-compliance. Should Lake Perry, in its sole discretion, fail to negotiate a resolution or otherwise resolve the non-compliance, it may declare this Asset Purchase Agreement null and void. Lake Perry shall not be deemed to admit liability or fault related to the non-compliance for any action taken pursuant to this section 3.08.

Article IV
REPRESENTATIONS AND WARRANTIES OF LAKE PERRY

Lake Perry hereby represents and warrants to Port Perry as follows:

4.01 Corporate Organization. Lake Perry is a corporation in good standing in the state of Missouri and is qualified to conduct business in Missouri.

4.02 Authorization. Lake Perry has the necessary power and authority to enter into this Agreement, and this Agreement has been duly authorized by its Board of Directors. This Agreement is a legal, valid and binding obligation of Lake Perry.

4.03 No Violation. Neither the execution and delivery of this Agreement by Lake Perry, the performance by Lake Perry of its obligations hereunder nor the consummation by it of the transactions contemplated hereby will (i) violate any provision of the Articles of Incorporation or Bylaws of Lake Perry, or (ii) to the best knowledge of Lake Perry, violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority to which Lake Perry is subject.

4.04 Title to Assets. Title to and risk of loss, destruction or damage to the Assets shall pass to Lake Perry immediately after the Closing Date.

Article V
ADDITIONAL COVENANTS

5.01 Closing Documents.

(a) On the Closing Date, Port Perry shall deliver the following to Lake Perry:

(i) A duly executed Bill of Sale, Assignment of Easements, General Assignment and Corporation Warranty Deed conveying the Assets to Lake Perry;

(ii) Copies of all books and records of Port Perry with respect to the Systems; and

(iii) A certified resolution of the Board of Directors of Port Perry authorizing this Agreement and the transactions contemplated hereby;

(b) On the Closing Date, Lake Perry shall deliver the following to Port Perry:

(i) A certified resolution of the Board of Directors of Lake Perry authorizing this Agreement and the transactions contemplated hereby.

5.02 The Closing. The consummation of the transactions contemplated by this Agreement shall occur on the Closing Date at such place as Port Perry and Lake Perry may mutually agree.

5.03 Indemnity. Port Perry agrees to indemnify, defend and hold harmless Lake Perry from and against any and all claims, damages, actions, judgments, costs and expenses (including without limitation, reasonable attorneys' fees and court costs) of whatsoever nature arising out of or in connection with events or occurrences or based on the condition of the Systems existing before the Closing Date. Lake Perry agrees to indemnify, defend and hold harmless Port Perry from and against any and all claims, damages, actions, judgments, costs and expenses (including without limitation, reasonable attorneys' fees and court costs) of whatsoever nature arising out of or in connection with events or occurrences or based upon the condition of the Systems arising after the Closing Date.

Article VI CONDITIONS PRECEDENT

6.01 Conditions Precedent. The Parties shall comply with all applicable requirements of the Missouri Public Service Commission and the Missouri Department of Natural Resources. The obligations of the Parties hereunder are subject to the satisfaction of such applicable requirements. The Parties shall cooperate and diligently pursue compliance with all such applicable requirements. If the Parties are unable to obtain all required regulatory approvals, Lake Perry may terminate this Agreement after consultation with Port Perry.

6.02 Conditions of Port Perry. The obligations of Port Perry hereunder are subject to satisfaction of each of the following conditions (all or any of which may be waived in whole or in part by Port Perry in writing) on or prior to the Closing Date:

(a) The representations and warranties of Lake Perry shall be true and correct;

(b) Lake Perry shall have delivered to Port Perry a certified copy of a resolution of the Board of Directors of Lake Perry duly authorizing the execution, delivery and performance of this Agreement; and

(c) Payment of the Purchase Price by Lake Perry to Port Perry.

6.03 Conditions of Lake Perry. The obligations of Lake Perry hereunder are subject to satisfaction of each of the following conditions (all or any of which may be waived in whole or in part by Lake Perry in writing) on or prior to the Closing Date:

(a) The representations and warranties of Port Perry shall be true and correct;

(b) Port Perry shall have delivered to Lake Perry a certified copy of a resolution of the Board of Directors of Port Perry duly authorizing the execution, delivery and performance of this Agreement; and

(c) Port Perry shall have delivered to Lake Perry a Bill of Sale, Assignment of Easements, General Assignment and Corporation Warranty Deed conveying the Assets to Lake Perry.

Article VII MISCELLANEOUS

7.01 Bulk Sales. The Parties hereto waive compliance with the provisions of any bulk sales law applicable to the transactions contemplated hereby; provided, however, that any loss suffered by Lake Perry as a result of failure to comply therewith shall be borne by Port Perry.

7.02 Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Parties hereto.

7.03 Fees and Expenses. Except as otherwise provided herein, the parties hereto shall bear their own costs and expenses incurred in connection herewith and with the transactions contemplated hereby. Port Perry and Lake Perry agree to indemnify and hold the other harmless from any claim (together with costs and expenses, including attorneys' fees, incurred in connection with such claims) for compensation by any person, firm or corporation claiming to have been requested, authorized or employed to act as lender, broker or agent in connection with the subject matter of this Agreement or negotiations leading thereto.

7.04 Assignment. No party shall assign this Agreement or any of its rights and obligations hereunder.

7.05 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and permitted assigns.

7.06 Notices. Any notice, demand or request required or permitted to be given under any provision of this Agreement shall be in writing and delivered personally or by registered or certified mail (return receipt requested, with postage prepaid) to the

following address, or to such other address as either party may request by notice in writing to the other party:

(a) If to Port Perry:

Michael Yamnitz & Brad Moll
Port Perry Service Company
1303 West St. Joseph St.
Perryville, MO 63775

(b) If to Lake Perry:

Richard DeWilde
Lake Perry Service Company
1300 Brenda Avenue
Perryville, MO 63775

7.07 Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, superseding any and all prior agreements, understandings, negotiations and discussions. No amendment, alteration, modification or waiver of this Agreement shall be binding unless evidenced by an instrument in writing signed by the parties hereto.

7.08 Construction. The captions and headings of this Agreement are for convenience and reference only and shall not control or affect the meaning or construction of this Agreement. Use of the masculine gender shall also be deemed to refer to the feminine gender and neuter gender and the singular to the plural unless the context clearly requires otherwise.

7.09 Choice of Law. This Agreement shall be construed, governed, and enforced in accordance with the laws of the State of Missouri.

7.10 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted. The invalidity or unenforceability of any provision of this Agreement to any person or circumstance shall not affect the validity or enforceability of such provision as it may apply to any other persons or circumstances.

7.11 Waiver. The failure in one or more instances of a party to insist upon performance of any of the terms, conditions and covenants set forth in this Agreement, or the failure of a party to exercise any right or privilege conferred by this Agreement, shall not be construed thereafter as waiving their right to insist upon the performance of such terms, conditions and covenants or the right to exercise such rights and privileges, which rights shall continue and remain in full force and effect as if no forbearance had occurred.

7.12 Attorney Fees. In the event it becomes necessary for either party to file a suit to enforce this Agreement or any provision contained herein, and either party prevails in such action, then such party shall be entitled to recover, in addition to all other remedies or damages, reasonable attorney fees and court costs incurred in such suit.

7.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, but all of which together will constitute for all purposes one and the same instrument.

7.14 Cooperation. Port Perry will cooperate with and on Lake Perry's request before, on and after the Closing Date in furnishing such information and other assistance regarding the acquisition by Lake Perry of the Assets. Port Perry further agrees that it will cooperate with Lake Perry in the orderly transfer of the Assets. After the Closing Date, Port Perry will at the request of Lake Perry, and without further consideration, sale, transfer and conveyance, take such other and further actions as Lake Perry may reasonably request in order to effectively vest title to the Assets in Lake Perry, put Lake Perry in possession of the Assets, and assure to Lake Perry the benefits thereof.

In Witness Whereof, the parties hereto have executed this Agreement as of the date first above written.

**LAKE PERRY SERVICE
COMPANY, INC.**

**PORT PERRY SERVICE
COMPANY, INC.**

By: Richard J. DeMuir

By: _____

SEAL

SEAL

ATTEST:

Diane Klung
, Secretary

ATTEST:

, Secretary

Exhibit A

The Following is a list of Assets that are to be transferred from Port Perry to Lake Perry pursuant to this Agreement:

- (a) The sanitary sewage collection and treatment system, including any and all sanitary sewage mains with all manholes and lamp holes, sanitary sewage treatment plants, plumbing and mechanical systems and equipment, all outfall sewage treatment and sewage pumping station sites, sewage lagoons, electrical controls, piping connection, owned by Port Perry, excluding all sewer laterals, that provides sewer services to customers of Port Perry; including but not limited to the sanitary sewage collection and treatment system facilities in the Lake Perry Subdivision (as described below);
- (b) The water system, including any and all existing deep wells with pumping facilities, electrical controls, piping connection, all housing structures for well and pressure facilities with appliances and accessories, etc., owned by Port Perry, excluding all water service lines and sewer laterals, that provides water services to customers in the Lake Perry Subdivision (as described below);
- (c) Any and all real property and easements owned by Port Perry within the Lake Perry Subdivision (as described below);
- (d) The Debt Service Account, Depreciation and Replacement Accounts, which are held or maintained by Port Perry for the construction, operation, maintenance or expansion of the Systems;
- (e) All vendor, customer and service records and lists, cell phone numbers, office phone numbers, e-mail addresses and fax numbers related to the Systems;
- (f) All operating permits and licenses associated with the operation or any improvements to the Systems.

The Lake Perry Subdivision shall be identified as the following:

Beginning at the point of intersection of the center line of Missouri Highway T with the east line of section 9, T34N, R9E, Perry County, Missouri; Thence north along said east line to the northeast corner of said section; Thence west along the north line of said section to the southeast corner of the southwest $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 4; Thence north along the east line of said $\frac{1}{4}$ $\frac{1}{4}$ section and continuing to the northeast corner of the northwest $\frac{1}{4}$, of said southeast $\frac{1}{4}$; Thence west along the east-west centerline of section 4 to the west line of said section; Thence south along said west line to the northeast corner of the southeast $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 5; Thence west along the north line of said $\frac{1}{4}$ $\frac{1}{4}$ section and its prolongation to the centerline of Missouri Highway T; Thence along said centerline through sections 5, 6, and 7, T34N, R9E and section 1, T34N, R8E to the south line of said section 1; Thence southwestwardly to the southwest corner of the northwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of section 12; Thence

southeastwardly to the northwest corner of the northeast $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 12, T34N, R8E; Thence south along the west line of said $\frac{1}{4}$ $\frac{1}{4}$ section and continuing to the northwest corner of the northeast $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of section 13, T34N, R8E; Thence southeastwardly to the northwest corner of the northwest $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of section 18, T34N, R9E; Thence southeastwardly to the intersection of county roads in the southeast $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of said section; Thence eastwardly along the county road to its intersection with a county road in the northeast $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 17; Thence northwardly along the county road to the north line of said $\frac{1}{4}$ $\frac{1}{4}$ section; Thence east along said north line to the northeast corner of said $\frac{1}{4}$ $\frac{1}{4}$ section; Thence northeastwardly to the southwest corner of the southwest $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 9; Thence east along the south line of said $\frac{1}{4}$ $\frac{1}{4}$ section and continuing to the southeast corner of section 9, T34N, R9E; Thence north along the east line of said section to the point of beginning.