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MISSOURI PUBLIC SERVICE COMMISSION

COMMISSION STAFF DIVISION

WATER AND SEWER DEPARTMENT

SURREBUTTAL TESTIMONY

OF

JAMES A. BUSCH

**CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.
CASE NO. WA-2019-0299**

*Jefferson City, Missouri
September, 2019*

1 **SURREBUTTAL TESTIMONY**

2 **OF**

3 **JAMES A. BUSCH**

4 **CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.**

5 **CASE NO. WA-2019-0299**

6 Q. Please state your name and business address.

7 A. My name is James A. Busch. My business address is 200 Madison Street,
8 Jefferson City, MO 65102.

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

10 A. I am the Regulatory Manager of the Water and Sewer Department at the Missouri Public
11 Service Commission (Commission).

12 Q. Please describe your educational background and work experience.

13 A. I have Master's and Bachelor's degrees in Economics from the Southern Illinois
14 University at Edwardsville. I have worked in utility regulation since 1997. I started work at
15 the Commission in 1997 as Regulatory Economist I in the Procurement Analysis Department.
16 In 1999, I accepted a position as a Public Utility Economist at the Office of Public Counsel.
17 I then transferred back to the Commission in 2005 to become a Regulatory Economist III in
18 the Energy Department. I accepted my current position in 2008.

19 Q. Have you previously filed testimony before this Commission?

20 A. Yes. A listing of my testimony is attached as Attachment JAB – 1.

21 Q. What is the purpose of your surrebuttal testimony?

22 A. The purpose of my surrebuttal testimony is to address public comments submitted to
23 the Commission and made at the Local Public Hearing held on September 10, 2019 in

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1 Perryville, Missouri. I will also respond to the rebuttal testimony of various
2 Lake Perry Lot Owners Association's (LPLOA) witnesses.

3 Q. Are there other Staff witnesses filing surrebuttal testimony address public comments?

4 A. Yes. Staff expert Dana Parish is also filing testimony regarding public comments.

5 Q. Have you reviewed all of the public comments that have been submitted in this
6 proceeding?

7 A. Yes. As Manager of the Water and Sewer Department, all public comments are routed
8 to my task list. This task list is found in the Commission's Electronic Filing Information
9 System, or EFIS. All comments that are submitted regarding water and sewer utilities are
10 first forwarded to me. I review those comments and determine whether they need to be
11 forwarded to a different Staff member for further investigation. For example, if a comment
12 states that there has been an odor noticed from the wastewater treatment facility, I would
13 forward that comment to a member of my staff to further investigate the issue.

14 Q. In this proceeding, was there a theme to the public comments?

15 A. Yes. My review of the comments revealed two major themes. First, there was an
16 adamant request for a local public hearing. Second, most of the comments were not in favor
17 of Confluence Rivers (Confluence) acquiring the assets of Port Perry Service Company (Port
18 Perry) and, instead, were in favor of the Lake Perry Lot Owners Association acquiring those
19 assets.

20 Q. Was a local public hearing held in this proceeding?

21 A. Yes. As mentioned above, a LPH was held on September 10, 2019.

22 Q. Regarding the reasoning for opposing Confluence Rivers' proposed acquisition, what
23 were some of the reasons stated?

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1 A. Generally, there were two major reasons provided in the public comments.
2 First, several comments expressed a fear of potentially higher rates that might be charged by
3 Confluence in the future. Second, there were many comments about maintaining local
4 control of the water and sewer assets.

5 Q. At the LPH, were these same concerns brought up by the attendees?

6 A. Yes, these same concerns were mentioned at the LPH.

7 Q. Were there any other concerns mentioned at the LPH?

8 A. Yes. Some of the attendees at the LPH mentioned that they had heard of service issues
9 at other companies owned and operated by Central States Water Resources (CSWR). CSWR
10 is an affiliate entity of Confluence and has other affiliates throughout Missouri such as
11 Hillcrest Utility Operating Company, Raccoon Creek, and Indian Hills.

12 Q. You refer to the people in attendance at the LPH as attendees. Why not call
13 them customers?

14 A. Not all of the comments received at the LPH were from current customers
15 of Port Perry.

16 Q. Does Staff have a general comment regarding these public comments?

17 A. Yes. The comments seemed to indicate that the attendees were in favor of the
18 Commission denying the request by Confluence, and instead allowing the
19 Lake Perry Lot Owners Association to purchase the assets.

20 Q. Is this outcome possible in the context of this proceeding?

21 A. No. This proceeding involves the request of Confluence to acquire the assets of
22 Port Perry. The overall determination of that request by the Commission is to determine
23 whether or not the acquisition will be detrimental to the public interest.

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1 Should the Commission deny the proposed acquisition, the assets would remain with Port
2 Perry. Port Perry will not be under any obligation to sell the assets to the
3 Lake Perry Lot Owners Association or any other entity.

4 Q. Did you review LPLOA's witness Richard DeWilde's rebuttal testimony?

5 A. Yes.

6 Q. On page 3, lines 7 – 13, Mr. DeWilde states that Confluence's direct testimony failed
7 to provide adequate information to show the proposed transaction is not detrimental to the
8 public interest and that the LPLOA has shown a transaction that is in the public interest. Do
9 you have any comments?

10 A. Yes. Staff disagrees that the application of Confluence is detrimental to the public
11 interest, as outlined in the Staff Recommendation attached to the Direct Testimony of Staff
12 Witness Natelle Dietrich. While Staff is aware of LPLOA's desire to purchase the system
13 Staff has not thoroughly vetted their business plan at this point. Further, it is Staff's opinion
14 that it needs to evaluate the application that is in front of the Commission and then make a
15 recommendation as to whether that proposal is or is not detrimental to the public interest.
16 That evaluation is not necessarily affected by the existence of other interested purchasers.
17 Finally, the public interest must include a look at both the consumers and the shareholders.
18 While it is true that one of the Commission's roles is to protect the consumers from the abuse
19 of monopoly power, it is not in the Commission's purview to dictate to whom an owner must
20 sell its assets.

21 Q. Have you read Mr. Glen Justis' rebuttal testimony?

22 A. Yes.

1 Q. On page 6, lines 4 – 8, Mr. Justis discusses the stability of the nonprofit formed by
2 LPLOA. Do you have any comment?

3 A. Yes. Considering the nonprofit was recently formed for the purpose of trying to acquire
4 the utility assets, it seems premature to speculate on the stability of the organization.

5 Q. On pages 13 and 14, lines 8 – 23 and 1 -5, Mr. Justis describes various methods in
6 which he believes IOUs can generate excess profit at the expense of customers. Do you have
7 any comments?

8 A. Yes. First, Mr. Justis discusses the concept of “gold-plating” in his rebuttal testimony.
9 Gold-plating is a situation where a utility invests in a more expensive plant to increase the
10 overall cost of a project. At times, this is a valid concern. However, Staff reviews all plant
11 additions, and the Office of the Public Counsel, and other interested intervenors are provided
12 the opportunity to review all proposed plant investment during the course of a rate case.
13 Should any party believe plant investment is excessive, it is able to propose disallowances.
14 Second, Mr. Justis states that investor owned utilities (“IOUs”) may seek to inflate profits by
15 intentionally obtaining debt financing at inflated interested rates. It should be noted that the
16 Commission has to approve all long-term issuances of secured debt. Further, cost of debt is
17 reviewed by Staff in each rate case.

18 Third, Mr. Justis states IOUs can create additional excess profit by transacting with affiliate
19 companies. During a rate request, Staff investigates all contracts entered into by the utility,
20 and requests bids that show the goods or services at issue were sold or obtained at market
21 rates. Further, Staff can use its knowledge of similar contracts and recommend those as a
22 better proxy for costs that are to be built into customer rates.

1 Q. On page 18, lines 1 – 8, Mr. Justis discusses anticipated cost of capital of Confluence and
2 is concerned about the open-ended nature of this aspect. Is his concern valid?

3 A. Not in my opinion. Most acquisitions do not discuss potential capital costs. Capital
4 costs are generally determined during the pendency of a rate proceeding or during a finance
5 case if the entity is encumbering the assets of the utility.

6 Q. On pages 21 and 22, Mr. Justis proposes conditions that should be imposed by the
7 Commission if the Commission approves the application. Please comment on the conditions.

8 A. Mr. Justis recommends the Commission impose four conditions, if it approves
9 Confluence's application. The first is that the company's rate base should be based on Staff's
10 recommended net original cost, which will be reviewed at the initial rate case after
11 acquisition.

12 The second condition is to require a clear capital improvement plan for Lake Perry endorsed
13 by both LPLOA and OPC. Staff would not oppose a capital investment plan to be submitted
14 by Confluence. Staff has requested capital investment plans from other water and sewer
15 utilities in the past and has had those requests approved by the Commission. However, Staff
16 does not agree that this plan has to be endorsed by LPLOA, OPC, or any other entity. The
17 time to oppose the plan is when the Company attempts to recover costs in rates. Ultimately,
18 the Commission will determine the prudence of those management decisions.

19 The third condition is for Confluence to establish a customer advisory board that allows
20 meaningful customer input into future capital investment. Staff does not see the need for this
21 condition; this would appear to result in the customers micro-managing the decisions of the
22 Company. Again, any party to a subsequent rate case can propose disallowances to any
23 unnecessary investments at that time.

1 The fourth condition proposed by Mr. Justis is to require a biannual independent audit of the
2 system. In Staff's opinion, this condition is also unnecessary. First of all, Mr. Justis does
3 not indicate who should pay for this independent audit. Second, if there are issues with how
4 Confluence operates its system, the customers have the ability to file formal or informal
5 complaints with the Commission. Staff routinely reviews customer complaints, and works
6 with both the consumers and the utilities to resolve any issues. Finally, Staff conducts full
7 audits of utilities in the course of a rate case. The Commission also has the ability to direct
8 Staff to investigate the operations of a utility at any time.

9 Q. On Schedule GJ -07, Mr. Justis compares rates of systems that CSWR has purchased.
10 Do you have any comments?

11 A. Yes. First, his column marked "Rate after Acquisition" should state that these rates
12 were changed after a rate case. Rates did not increase immediately after purchase. So, the
13 consumers continued to pay lower rates while all improvements were being performed. Only
14 after a rate case, where all relevant factors were considered, were rates increased.

15 Second, in his comparison of before and after rates of the Hillcrest water system, Mr. Justis
16 has an error. In his original rate, he has a rate of \$3.58. This was the monthly customer
17 charge. There was also a usage rate of \$1.84 per 1,000 gallons. So in his comparison, which
18 shows an average usage of 5,000 gallons a month, the original rate should
19 be \$12.78 ($\$3.58 + 5 * \1.84). Thus the increase was 504%. Staff readily admits this is a
20 rather large increase, but it was approved by the Commission as a just and reasonable rate
21 based on its review of all relevant factors.

22 Third, in his comparison of Indian Hills, he only compares the summer rates between April
23 and September. During the rest of the year, the usage charge drops from \$11.55 to \$7.70.

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1 Thus, the monthly bill using 5,000 gallons is \$89.40. This is a 603% increase. Staff readily
2 admits this is a rather large increase, but again, this rate was approved by the Commission as
3 a just and reasonable rate based on its review of all relevant factors.

4 Q. Do you have any final comments?

5 A. Yes. Staff has worked with CSWR for nearly five years. CSWR has purchased many
6 distressed systems and returned them to compliance. That is a benefit to the customers and,
7 overall, to the state of Missouri. Unfortunately, the cost to do so has resulted in high rates to
8 the consumers in those areas. Staff encourages CSWR to seek alternative methods to limit
9 rate impacts to its customers when undertaking its upgrades.

10 With that said, in these types of cases, Staff has to review the technical, managerial, and
11 financial capabilities of the purchasing entities. Although high rates have been an eventual
12 outcome, due to the dilapidated condition of the systems that were purchased, CSWR has
13 shown the capabilities needed to purchase and upgrade these systems and the Commission
14 has determined that CSWR's acquisitions are not detrimental to the public.

15 Q. Does this conclude your surrebuttal testimony?

16 A. Yes it does.