

**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)

**LAKE PERRY LOT OWNERS ASSOCIATION
RESPONSE TO MOTION TO QUASH**

COMES NOW the Lake Perry Lot Owners Association (“Association”) in response to the *Motion to Quash Non-Disclosure Agreements (“Motion to Quash”)* of Confluence Rivers Utility Operating Company, Inc. (“CRU”) and in compliance with the *Order Directing Responses to Motion to Quash* of the Missouri Public Service Commission (“Commission”), states as follows:

1. On April 23, 2020, the Lake Perry Lot Owners Association (“Association”) filed Non-Disclosure Agreements (“NDAs”) from two persons Dennis Bohnert and Kenneth Anderson who are employed by two banks in Perryville, Missouri: one by First State Community Bank (FSCB) and the other by The Bank of Missouri .

2. On April 24, 2020, CRU filed its *Motion to Quash*, and on the same day, the Commission issued its *Order Directing Responses to Motion to Quash*.

3. In its *Motion to Quash*, CRU alleges that, “Because the two persons who filed NDAs yesterday appear to be bankers, their expertise on the NBV of assets Confluence Rivers proposes to purchase – the sole issue the Commission directed the parties to address – is not obvious.” CRU seems to suggest the evidence provided by two bankers is not relevant to these proceedings.

4. As the Commission is aware, this case comes to it by an Application pursuant to section 393.190.1 RSMo. for the acquisition of certain assets of Port Perry Service Company.

Pursuant to law, Port Perry and CRU have the burden of proof to show that the Application is “not detrimental to the public interest.” As part of that showing, CRU must produce evidence and persuade the Commission that the transaction is not detrimental to the public interest in a balancing of all necessary and essential issues. *Ag Processing v. Public Service Commission*, 120 S.W.3d 732, 736 (Mo. 2003).

5. The Commission found in its *Order Setting Procedural Schedule*, issued March 24, 202, that CRU had failed to carry its burden of proof in the case, stating, “[The NBV] is necessary as it is a ‘relevant and critical’ issue as to whether the proposed acquisition is ‘detrimental to the public interest.’”

6. Inasmuch as the Commission found that the NBV is a “relevant and critical” issue in its determination of whether the proposed acquisition is “detrimental to the public interest,” if CRU had produced the net book value in proper order at the hearing on October 7 and 8, as it should have done, and as the Association repeatedly argued, the Association would have had the right to call, examine and cross-examine witnesses pursuant to section 536.070(2) RSMo. about what the net book value indicates about the transaction and its impact on the public interest.

7. The opinions of two bankers on what the net book value indicates about the transaction and its impact on the public interest are certainly relevant to this proceeding, especially considering that Mr. Cox testified in his surrebuttal testimony in this case that CRU plans to move toward a 50-50 mix of equity and debt for its capital structure in future rate cases. (Surrebuttal Testimony of Josiah Cox, p. 10, lines 3-5.) It is also relevant evidence regarding the viability of the operation of the systems after the acquisitions. Two bank executives are clearly experts on prudent banking judgment. The fact that CRU continues to refuse to assess this information should not prevent the Association from doing so.

WHEREFORE, the Association respectfully requests that the Commission deny CRU's *Motion to Quash*.

Respectfully submitted,



By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent to all parties of record in File No. WA-2019-0299 via electronic transmission this 28th day of April, 2020.


