

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 24<sup>th</sup> day of  
June, 2019.

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

**ORDER ADDRESSING MOTIONS**

Issue Date: June 24, 2019

Effective Date: June 24, 2019

On March 29, 2019, Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers”) filed an application with the Missouri Public Service Commission (“Commission”) requesting that a Certificate of Convenience and Necessity to acquire the water and sewer systems owned by Port Perry Service Company, in Perry County, Missouri. Port Perry Service Company’s (“Port Perry”) sewer and water systems include as customers some of the 600 residents of the Lake Perry Lot Owners’ Association (“Lot Owners”). The Lot Owners intervened and have objected to the sale.

Several motions have been filed in this case which need to be addressed prior to the prehearing conference scheduled for June 28. Included in its March 29 application, Confluence Rivers moved for a waiver of the 60-day pre-filing notice required by Commission Rule 4 CSR 240-4.017(1) (Motion 1). On April 3, the Lot Owners filed a two-prong *Motion to Dismiss*, and renewed its motion on June 4. The Lot Owners seek the dismissal of the case either because Confluence Rivers did not meet the 60 day notice requirement, or that the case can only be filed by the seller of the systems, not the buyer

(Motion 2). The Office of the Public Counsel (“OPC”) filed their motion to make the seller a party on June 10 (Motion 3). Staff noted it did not object to Confluence Rivers’ motion to waive the 60-day notice requirement, but has filed no pleadings with regard to any of the other motions. The Commission takes up these motions in this order.

### **Sixty-Day Notice Requirement (Motion 1)**

The Lot Owners move to dismiss this case as Confluence Rivers did not file a 60-day advance notice of a case filing, as required by Rule 4 CSR 240-4.017(1). Confluence Rivers acknowledges it did not file the required notice, but moved in its original application, filed March 29, for a waiver of the rule. Confluence Rivers states that it meets all requirements for a finding of ‘good cause’ as defined in the rule.

Commission Rule 4 CSR 240-4.017(1)(D) allows the Commission to grant a variance from the 60-day notice filing upon a finding of good cause, which includes “a verified declaration from the filing party that it has had no communication with the office of the commission within the prior 150 days regarding any substantive issue likely to be in the case”. Confluence Rivers states that good cause exists as it had no communication with the Commission regarding the subject of its application in the 150 days preceding the filing. Confluence Rivers verified this declaration in its application. Staff does not oppose Confluence Rivers’ request.

The Commission finds that Confluence Rivers has met the requirements to show good cause for a waiver of the notice requirements of Commission Rule 4 CSR 240-4.017(1), and will grant Confluence Rivers’ motion in that regard. Having granted that motion, the Commission denies the Lot Owners’ motion to dismiss on the grounds of failure to meet the 60-day notice requirement.

## Failure of the Seller to File the Application (Motion 2)

The Lot Owners state that only the seller, not the buyer, of a utility may file a case to transfer ownership of the utility, and since Port Perry, the seller, did not file this application, it must be dismissed. The Lot Owners rely on Section 393.190.1, RSMo, which reads in pertinent part, “No water...or sewer corporation shall hereafter **sell**,... **its** franchise, works or system... without having first secured from the commission an order...” (emphasis added).

The Commission previously decided this issue in File Number WM-2018-0116, also involving a purchase of water systems by Confluence Rivers (including Port Perry). In its *Order Denying Request to Join Parties*<sup>1</sup> the Commission denied OPC’s request to enjoin the proceedings until the sellers are made parties to the case. The Commission noted the statute relied upon in the motion, Section 393.190.1, RSMo, also states “... *Any person seeking any order* under this subsection ...” (emphasis in original order). The Order concludes that the “General Assembly contemplated that the seller of public utility assets is not the only party who can request relief under this subsection.”<sup>2</sup>

A prior Commission decision is not binding precedent on later Commission decision.<sup>3</sup> However, consistency between cases, when appropriate, is beneficial and preferred. While not bound by the order in File Number WM-2018-0116, the Commission finds no fault with the reasoning, and finds no new arguments on the issue. Therefore, the Commission will deny the motion to dismiss.

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<sup>1</sup> WM-2018-0116, EFIS 39, Issued April 25, 2018, *Order Denying Request to Join Parties*.

<sup>2</sup> WM-2018-0116, EFIS 39, Issued April 25, 2018, *Order Denying Request to Join Parties*, p. 1-2.

<sup>3</sup> *State ex rel. AG Processing, Inc. v. Public Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003); *Fall Creek Const. Co., Inc. v. Director of Revenue*, 109 S.W.3d 165, 172 -173 (Mo. banc 2003).

### **Making the Seller a Party (Motion 3)**

Similar to the argument made by the Lot Owners, OPC states that Port Perry is the party required by Section 393.190.1, RSMo to file the application to sell. OPC's motion is part of its larger *Response to Staff Recommendation*. OPC makes several objections to Staff's recommendation in its *Response*, and moves for denial of the application, but does not tie the denial request specifically to the lack of Port Perry as a party.<sup>4</sup> They do, however, clearly state their request to add Port Perry as a party.<sup>5</sup> Therefore, the Commission will treat this request as a motion to add a party.

Ten days have elapsed since OPC's filing and no party has responded. The Commission again will refer to its finding in File Number WM-2018-0116. The *Order Denying Request to Join Parties* found that Commission rules do not require the assets' sellers to be parties in the case.<sup>6</sup> Port Perry certainly is aware of these proceedings and is able to request to intervene on its own behalf.

Again, a prior Commission decision is not established precedent for later Commission decisions.<sup>7</sup> However, consistency between cases, when appropriate, is beneficial and preferred. While not bound by the order in File Number WM-2018-0116, the Commission again finds no fault with the reasoning, and finds no new arguments on the issue. Additionally, consistency between cases, when appropriate, is beneficial and

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<sup>4</sup> *Response to Staff Recommendation*, p. 5, item 17.

<sup>5</sup> *Response to Staff Recommendation*, p. 5, Wherefore clause.

<sup>6</sup> WM-2018-0116, EFIS 39, Issued April 25, 2018, *Order Denying Request to Join Parties*, p. 2, citing Commission Rules 4 CSR 240-3.310, 3.605 (both rules direct the filing requirements for sewer and water utility applications and are since rescinded and moved in substance to 4 CSR 240-10.105).

<sup>7</sup> *State ex rel. AG Processing, Inc. v. Public Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003); *Fall Creek Const. Co., Inc. v. Director of Revenue*, 109 S.W.3d 165, 172 -173 (Mo. banc 2003).

preferred. Finding it appropriate in this case, the Commission will deny the motion to add Port Perry as a party.

**THE COMMISSION ORDERS THAT:**

1. The motion to waive the 60-day notice requirement of Commission Rule 4 CSR 240-4.017(1), filed by Confluence Rivers Utility Operating Company, Inc. on March 29, 2019, is granted.
2. The motion to dismiss due to a failure to meet the 60-day notice requirement of Commission Rule 4 CSR 240-4.017(1), filed by Lake Perry Lot Owners' Association on April 3, 2019, is denied.
3. The motion to dismiss due to the applicant being the buyer and not the seller, filed by Lake Perry Lot Owners' Association on April 3, 2019, is denied.
4. The motion to add Port Perry Service Company as a party, filed by the Office of the Public Counsel on June 10, 2019, is denied.
5. This Order shall be effective when issued.

**BY THE COMMISSION**



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and  
Coleman, CC., concur.

Hatcher, Regulatory Law Judge

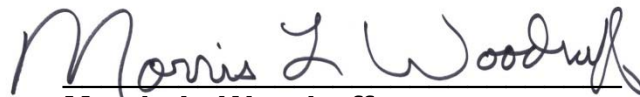
**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

**WITNESS** my hand and seal of the Public Service Commission,  
at Jefferson City, Missouri, this 24<sup>th</sup> day of June 2019.



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**June 24, 2019**

**File/Case No. WA-2019-0299**

**Missouri Public Service  
Commission**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.