

**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)	Case No. WA-2019-0299
Assets and for a Certificate of)	
Convenience and Necessity)	

**RESPONSE TO CONFLUENCE’S RESPONSE TO PROPOSED PROCEDURAL
SCHEDULE**

COMES NOW the Office of the Public Counsel (“OPC”) and for its *Response to Confluence’s Response to Proposed Procedural Schedule*, states as follows:

1. The Staff of the Missouri Public Service Commission (“Staff”) filed a joint proposed procedural schedule in the above referenced case on behalf of itself, OPC, and the Lake Perry Lot Owners Association (“Lot Owners”) on March 17, 2020.
2. Confluence Rivers Utility Operating Company, Inc. (“Confluence”) filed a response to the joint proposed procedural schedule on March 23, 2020. As part of that response, Confluence challenged the three rounds of testimony set forth in the joint procedural schedule as being unnecessary.
3. The OPC disagrees with Confluence’s assessment on this matter and now responds to this portion of Confluence’s response.¹

¹ The OPC does not respond to any other portion of Confluence’s response at this time. However, this should not be taken as a tacit endorsement of the legal positions expressed by Confluence in the remainder of its response. The OPC has simply chosen not to opine on the legal positions raised in the unaddressed portions of Confluence’s response at this time.

4. Confluence's position that multiple rounds of testimony are unnecessary appears to stem entirely from its conclusion that "Staff's report is tantamount to a direct case." This is incorrect. Staff was not responsible for the initiation of this action nor does Staff carry the burden of proof in this case. Both of these responsibilities instead belong solely to Confluence. Staff's report, consequently, cannot be considered "tantamount to a direct case" because it is Confluence and not Staff who bears the burden of presenting their direct case.

5. The rest of Confluence's claims regarding the proposed procedural schedule are equally erroneous as a result of this first fault. For example, Confluence suggests that it is redundant for other parties to file rebuttal testimony because they have already had "the opportunity to comment on Staff's report." What Confluence misses is that the OPC is not concerned with filing rebuttal to Staff's report, but rather, with rebutting (if necessary) Confluence's case in chief raised on direct. Likewise, it is necessary for the OPC to be given the opportunity to file surrebuttal to respond to the position taken by any of the other parties in this case who filed rebuttal to Confluence's case in chief.

6. The OPC recognizes the lengthy nature of the proposed procedural schedule (and the concerns Confluence has raised regarding the same), but notes that such an outcome is normal in legal proceedings of any nature. Confluence's attempt to artificially shorten this case by shifting its legal burden onto Staff should not be accepted.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission adopt the proposed procedural schedule filed jointly by Staff, the OPC and the Lot Owners on March 17, 2020.

Respectfully submitted,
OFFICE OF THE PUBLIC
COUNSEL

By: _____ /s/ John Clizer _____
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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this Twenty-fourth day of March, 2020.

_____ /s/ John Clizer