

**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'S
MOTION TO STRIKE**

COMES NOW Lake Perry Lot Owners Association (“Association”) and, as its Motion to Strike, states as follows to the Missouri Public Service Commission (“Commission”):

1. On September 23, 2019, Josiah Cox and Kristi Savage-Clarke filed written surrebuttal testimony in the above referenced case on behalf of Confluence Rivers Utility Operating Company (“CRU”).

2. Mr. Cox and Ms. Savage-Clarke failed to limit their testimony to material that is responsive to matters raised in rebuttal testimony in violation fo the Commission’s rule 20 CSR 4240-2.130 (7) and violated Commission rule 20 CSR 4240-2.130 (10) by supplementing Confluence Rivers’ prefiled direct testimony.

3. In relevant parts, the Commission rules provide as follows:

20 CSR 4240-2.130 (7)

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party’s entire case-in-chief;

(D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party’s rebuttal testimony.

20 CSR 4240-2.130 (10)

(10) No party shall be permitted to supplement prefiled prepared direct, rebuttal, or surrebuttal testimony unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing. This provision does not forbid the filing

of supplemental direct testimony for the purpose of replacing projected financial information with actual results.

Cox Surrebuttal Testimony

4. In his surrebuttal testimony, Mr. Cox discusses new evidence designed to supplement the Applicant's case in chief, as follows:

Page 2, line 22 through page 4, line 2	New regulatory assessments of CRU
Page 4, 3 through page 5, line 6	New information on CRU's plans
Page 10, lines 1 through 7	“
Page 10, line 22 through page 11, line 4	“
Page 13, lines 7 through 13	New information on CRU's plans
Page 15, line 3 through page 21, line 1	“
Page 23, line 1 through page 24, line 19	New information on CRU financing

This new information submitted as surrebuttal avoids rebuttal by the parties under the Commission's typical rules and unfairly prevents the Association from responding.

Savage-Clarke Testimony

5. The entirety of Ms. Savage-Clarke's testimony is new regarding the Department of Natural Resources' preferences, opinions and recommendations regarding CRU's case in chief.¹ The entirety of Ms. Savage-Clarke's testimony supplements the case in chief of CRU. This new information submitted as surrebuttal avoids rebuttal by the Association under the Commission's typical rules and unfairly prevents the Association from responding.

MOTION TO STRIKE

6. According to the Commission rules, “Direct testimony shall include **all** testimony and exhibits asserting and explaining that party's entire case-in-chief.” [emphasis added] Permitting new information regarding CRU's plans denies the Association the ability to rebut

¹ The testimony of Ms. Savage-Clarke is particularly surprising since the Department has repeatedly advised the Association that it did not take positions in cases such as this.

said information and said information should stricken. In the event the Commission does not strike the surrebuttal testimony of Mr. Cox and Ms. Savage-Clarke, the Association requests additional time to do discovery and the ability to provide additional live testimony at hearing in response. Inasmuch as the hearing will almost certainly before the Association can develop and CRU can respond to data requests, the Association requests the hearing be delayed until adequate discovery achieved.

WHEREFOR, the Association respectfully requests the Commission strike the above referenced statements from the surrebuttal testimonies of Mr. Cox and Ms. Savage-Clarke, or in the alternative, grant the Association additional time to do discovery, delay the hearing scheduled for October 7 and 8, and grant the Association the right to present additional live testimony at the hearing.

Respectfully submitted,



By: _____

David C. Linton, #32198
314 Romaine Spring View
Fenton, MO 63026
Telephone: 314-341-5769
Email: jdlinton@reagan.com

Attorney for Lake Perry Lot Owners
Association

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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 25th day of September 2019.


