

**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 Nos. WA-2019-0299
Assets and for a Certificate of Convenience and)
Necessity)

**REPLY OF CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.
TO THE RESPONSES OF OPC AND LAKE PERRY LOT OWNERS ASSOCIATION
REGARDING THE PROPOSAL FOR A LOCAL PUBLIC HEARING**

COMES NOW Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers), by and through the undersigned counsel, and files this Reply to the Responses filed by both Lake Perry Lot Owners Association (Association) and the Office of the Public Counsel (OPC) in regard to Confluence Rivers’ objection to the proposal for a local public hearing. In support of this Reply, counsel states the following:

1. Neither the response of the Association, nor OPC, refute that the Association is (1) a party to this case; (2) represents the entirety of the customer base; and (3) represents the interests of the customers of Port Perry Service Company.

Association Response

2. In fact, the Association’s Response reaffirms these facts while arguing that being a represented party in a case does not eliminate one’s ability to testify as a member of the general public: “Confluence Rivers’ claim that **the residents are not the public because they are represented by a party to the case** is ludicrous. Does a person cease to be a member of the public simply **because they are involved in litigation?**” (Association Response, ¶ 2) (emphasis added).

3. On April 3, 2019, the Association filed an Application to Intervene in this matter. In the Application to Intervene, the Association states that it “represents the entirety of the customer base of Port Perry Service Company” and that the Association’s “interest in this case is different from the general public.” See Application to Intervene, ¶ 3. Further, the Application to

Intervene states the Association “represents the interests of the customers of Port Perry Service Company.” See Application to Intervene, ¶ 6. The Association therefore asserted that there is no customer of the Port Perry systems whose interests the Association does not represent.

4. When the Commission granted the Application to Intervene, the Association, and the entire Port Perry customer base it represents, became a party to the case.

5. The Association argues that the “public” is broader than the customer base of Port Perry and public notice of a hearing serves as “an invitation to anyone who wants to attend.” (Association Response, ¶ 3). But the Association fails to explain that Lake Perry is a gated community that limits access to lot owners and their guests. Therefore, it is difficult to imagine anyone not a party to this case who would want to testify at a public hearing. And the Association’s response – as well as the response filed by OPC – fail to shine any light on that fundamental question.

6. The Association’s Response also suggests that testimony proffered at a local public hearing cannot be used as evidence in a matter before the Commission. This certainly is an incorrect assertion as the Commission typically admits local public hearing transcripts into evidence, making the testimony part of the record parties can cite to and the Commission can consider in making its decision in a matter. The Commission’s *Guide to Local Public Hearings*, found on its website, states “[w]itnesses must swear or affirm to the accuracy of their testimony so their comments can be included as part of the official record in the case.” And as the Association’s August 2019 Newsletter makes clear, the Association is looking for members to speak at a local public hearing as “spokespersons” to address the Commission. The Newsletter goes on to state the Association will provide its “spokespersons” with prepared talking points.

7. Lot owners-customers that are already a party to this case through the Association will improperly supplement any prefiled testimony of the Association if allowed to testify at a local public hearing in this matter. Moreover, the Association cannot truly be interested in protecting the interest of those it believes to constitute the “public” as it intends to limit those

who speak at any public hearing: “We will be looking for speakers at the PSC local hearing in Perryville. **We cannot have all of you speak** but would like some spokespersons to address the commission.” (Attachment 1 to Confluence Rivers’ Objection, p. 2, ¶ 1) (emphasis added).

8. The Association argues that the Commission has allowed local public hearings in the past when local citizen groups were part of a case and argues that the Commission’s procedure in this matter should be no different. However, the Association fails to point out that this case is factually different from the other matters the Association has identified. In this case, the Association has affirmed it represents all lot owner-customers. Therefore, as a result of the Association’s intervention, all customers are formal parties to the case. There is no true “public” to hear from at such a hearing in this case.

9. Finally, a party’s desire to protect its rights is far from a “threat” directed to another party or its members and it is disingenuous for anyone to suggest such. When Confluence Rivers identified the need for cross examination, it was to make the Commission aware that Confluence Rivers wished to protect its due process rights against any party witness that might be allowed to testify at any local public hearing scheduled in this matter. If Association members are allowed to supplement party evidence in this matter through public hearing testimony, it is not a threat for Confluence Rivers to announce its intent to test the veracity of the testimony through cross-examination.

OPC Response

10. OPC’s Response does not refute the facts in paragraph 1 above, only Confluence Rivers’ conclusion that there is no “general public” in this case that could testify at a public hearing. (OPC Response, ¶ 3). OPC states that the practical implication of Confluence Rivers’ objection would be to eliminate the basis for holding a local public hearing in cases where OPC is a party and represents the public. (OPC Response, ¶ 5). OPC takes Confluence Rivers’ argument to an illogical end.

11. OPC is a party to Commission cases by statute. See Section 386.710, RSMo. OPC represents the general public, i.e. customers, as a class, and does not provide specific legal representation for individuals or individual customer problems and issues. Unlike OPC, the Association had to submit an application to intervene and explain to the Commission how its interests are different from those of the general public. To support its intervention, the Association represented that it represents the entirety of the customer base of Port Perry Service Company and all their interests. (Application to Intervene, ¶¶ 3, 6). In its representation of the specific legal interests of the Association’s members, the Association is doing something that OPC does not have the statutory authority to ever do. OPC’s extension of Confluence Rivers’ position to any matter where OPC is a party is not possible under OPC’s statutory authority.

12. OPC also argues that Confluence Rivers errs in its conclusion that the testimony offered at local public hearings and admitted into the record by transcript is evidence in a proceeding, just as pre-filed testimony offered and admitted into the record at an evidentiary hearing is evidence in a proceeding. OPC states that there is an “obvious difference” between the testimony of “ordinary citizens” at local public hearings and the testimony provided by “expert witnesses” at evidentiary hearings. OPC argues Confluence Rivers conclusion would “only serve to foster a fundamental distrust of the bureaucratic process that is public utility regulation....” To the contrary, OPC’s use of status (“ordinary citizen” verses “expert witness”) to determine when testimony equates to evidence is just the type of ideology that fosters any distrust from the “ordinary citizen” public when it comes to public utility regulation. (OPC Response, ¶ 7).

13. Moreover, the cases cited by OPC in its Response lend no support for OPC’s position. In both WR-2017-0285 and WR-2015-0301, each of the city interveners stated an individual interest as a customer of the utility service. Also, the city interveners stated a police power interest different from the interest of the general public. There certainly is no indication in

these cases that the city interveners intended to exercise the degree of control over any residents' testimony as the Association proposes to exert of the "public" witnesses that appear at any local public hearing. Neither of these cases suggest the city interveners intended to pick which residents would testify or dictate the points any witness would testify to.

CONCLUSION

14. The Commission's procedural order requires all testimony by parties of the case to be prefiled in writing. Given that the Association is a party, testimony by Association members outside of the ordered direct, rebuttal and surrebuttal schedule would improperly supplement prefiled testimony and violate the Commission's procedural order and regulations.

15. Further, there is no "public" for the Commission to hear from in this case. The interests of the Association's members in this case are said to be "different from the general public." As the entire customer base is represented by the Association, and Lake Perry is a gated community only accessible to the Association's members, there is no "general public" available to testify at the hearing.

16. If the Commission believes one or more representatives of OPC's constituency, the general public, exist in this case and may want to present testimony, Confluence Rivers does not object to scheduling a local public hearing for that limited purpose. However, the order scheduling such local public hearing should make clear that party witnesses, including all customers represented by the Association, will not be allowed to testify at that hearing. Confluence Rivers asks that such order also make clear that all testimony by such party witnesses must be prefiled in writing in accordance with the Commission's rules and the procedural order in this case.

WHEREFORE, Confluence Rivers requests the Commission sustain its objection to the Association's request for the setting of a local public hearing. In the alternative, Confluence

Rivers requests the Commission limit any local public hearing as proposed in paragraph 16 above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been transmitted by electronic mail to the following on this 14th day of August, 2019:

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