

**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)

**OBJECTION TO LAKE PERRY LOT OWNERS ASSOCIATION’S
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 Response objecting to Lake Perry Lot Owners Association’s (Association) request for a local public hearing. In support of this objection, counsel states the following:

1. Confluence Rivers acknowledges that the Commission’s common practice is to hold public hearings to listen to the thoughts of the public. However, there is no true “public” to hear from at such a hearing in this case.

2. 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.

3. On April 15, 2019, the Commission granted the Association’s Application to Intervene, making the Association a party to this case. Again, based on the Association’s allegations, all customers are now in the case as a party - the Association.

4. On June 28, 2019, the Commission issued its Order Setting Procedural Schedule, ordering dates by which the parties shall file direct, rebuttal and surrebuttal testimony. The

Order directed the parties to comply with the procedural requirements contained therein, including that parties' testimony shall be prefiled as required by Commission Rule 4 CSR 240-2.130. See Order, ¶ 3(a).

5. Commission Rule 4 CSR 240-2.130(7) establishes the testimony filing requirements for parties (direct, rebuttal, and surrebuttal, where ordered). Additionally, Rule 4 CSR 240-2.130(10) states:

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.

6. Certainly, the Commission is entitled to hear what the customers of Port Perry have to say in this case. But 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.

7. The direct connection between the two can be seen from the Association's own correspondence. The Association's August 2019 Newsletter to members, attached hereto and labeled as Attachment 1, acknowledges that the Association is "filing testimony against the Confluence River takeover of our water and sewer infrastructure." See Attachment 1, p. 1. The newsletter goes on to state "we are scheduling a public hearing with representatives of the Public Service Commission the first week of September. **WE NEED YOU THERE. IT WILL BE HELD IN PERRYVILLE.**" See Attachment 1, p. 2 (emphasis in original).

8. The newsletter also states "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. We will assist you with talking points." See Attachment 1, p. 2. The newsletter suggests that the Association is seeking to add to the testimony in this case by providing additional testimony outside the prefiled testimony schedule ordered by the

Commission. It also suggests the Association would determine which members of the “public” would be allowed to testify at the public hearing.

CONCLUSION

9. 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.

10. 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.” Accordingly, there is no “general public” available to testify at the hearing.

11. If the Commission grants the Association’s motion and allows party representatives to testify at a public hearing, Confluence Rivers would have no choice but to cross-examine each such witness to the degree Confluence Rivers believes is necessary. As noted previously in this response, the testimony of those hand-picked party representatives – scripted or at the very least guided through Association-provided talking points – would be offered for the sole purpose of supplementing the Association’s prefiled testimony, and cross-examination of those witnesses is the only avenue available to Confluence Rivers to protect its due process rights.

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

Respectfully submitted,

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ATTORNEYS FOR CONFLUENCE RIVERS
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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 7th day of August, 2019:

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