

**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)	

**MOTION TO STRIKE SURREBUTTAL
TESTIMONY OF KRISTI SAVAGE-CLARKE**

COMES NOW the Office of the Public Counsel (“OPC”) and, for its *Motion to Strike Surrebuttal Testimony of Kristi Savage-Clarke*, states as follows:

1. On April 1, 2019, the Public Service Commission of the State of Missouri (“Commission”) issued its *Order Directing Notice And Setting Dates For Submission Of Intervention Requests And Staff Recommendation* in this case. This order held that “[a]ny application to intervene shall be filed no later than April 16, 2019.”

2. The Missouri Department of Natural Resources (“MDNR”) did not file an application to intervene in this case prior to April 16, 2019. Nor has MDNR filed an application to intervene at any point subsequent to April 16, 2019.

3. Despite having never filed an application to intervene in this case, MDNR has nevertheless filed the testimony of its employee Ms. Kristi Savage-Clarke on September 23, 2019.

4. It should be noted that, while the testimony ostensibly claims to have been filed on behalf of Confluence Rivers Utility Operating Company, Inc.

(“Confluence”), it is, in fact, unquestionably the testimony of MDNR. This can be proven very simply given that the testimony itself states that the purpose of the testimony is to “. . . provide the position of MDNR regarding Confluence Rivers’ Application in this case.” *Surrebuttal*, Kristi Savage-Clarke, pg. 3.

5. Because MDNR never filed a motion to intervene in this proceeding, the filing of this MDNR testimony is improper. 20 CSR 4240-2.075. In addition, MDNR’s actions deprived the OPC of its fundamental, due-process rights to issue discovery to MDNR to confirm or contest MDNR’s allegations.

6. The OPC wishes to make clear that it is not opposed to MDNR entering into this case. Indeed, we welcome fellow state agency input on this issue. However, the procedural rules of the Commission exist for a reason and the entry of a new party this late in the proceeding without any time for proper investigation is a clear and unmistakable miscarriage of justice.

7. The testimony of MDNR witness Ms. Kristi Savage-Clarke should be stricken. If MDNR wishes to intervene in this case in order to provide its position regarding Confluence Rivers’ application, then it should seek leave to do so under 20 CSR 4240-2.075(10) and then seek further leave to late file testimony. Such motions should only be granted, however, if the current procedural schedule is suspended in order to permit further discovery on the newly added party.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission Strike the surrebuttal testimony of MDNR witness Kristi Savage-Clarke.

Respectfully submitted,

OFFICE OF THE PUBLIC
COUNSEL

By: /s/ John Clizer
John Clizer (#69043)
Senior Counsel
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-5324
Facsimile: (573) 751-5562
E-mail: john.clizer@OPC.mo.gov

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-seventh day of September, 2019.

 /s/ John Clizer