

**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)

RESPONSE TO LPLOA’S SECOND MOTION TO STRIKE

COMES NOW Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers” or “Company”), and, in response to the Lake Perry Lot Owners Association’s (“LPLOA”) *Motion to Strike* (“LPLOA 2nd Motion”), states as follows to the Missouri Public Service Commission (“Commission”):

1. On September 25, 2019, the LPLOA 2nd Motion was filed with the Commission. The LPLOA requests that certain specific statements in the direct testimony of Confluence Rivers witness Josiah Cox and all of the surrebuttal testimony of Kristi Savage Clarke from Missouri Department of Natural Resources (“MDNR”) be stricken.

2. The Commission Rule at issue in the LPLOA 2nd Motion is 20 CSR 4240-2.130(7), which states as follows:

(7) For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

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

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party’s direct case. A party need not file direct testimony to be able to file rebuttal testimony;

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects,

disagrees or proposes an alternative to the moving party's direct case;
and

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

(emphasis added).

3. The LPLOA 2nd Motion alleges that the identified testimony improperly supplements the Confluence Rivers case in chief. However, Commission Rule 20 CSR 4240-2.130(7) does not stop with the description of direct testimony. Surrebuttal testimony is appropriate where "responsive to matters raised in another party's rebuttal testimony."

4. It is for good reason that provision is made for the applicant to respond to rebuttal testimony designed to "explain why a party rejects, disagrees or proposes an alternative to the moving party's direct case." That is because the applicant in matters before the Commission has the burden of proof. The party that carries that burden should have the final opportunity to respond. The process is not designed to provide an opposing intervener such as the LPLOA to have the last word in testimony.

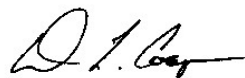
5. The testimony the LPLOA seeks to strike is very much responsive to the rebuttal testimony. Each of the matters the LPLOA 2nd Motion seeks to strike in Mr. Cox's surrebuttal testimony is directly related to either criticisms of the Confluence Rivers proposal as detrimental to the public interest or the LPLOA testimony as to its self-described "viable" proposal, each of which are identified in Mr. Cox's surrebuttal (p. 2:8-10; p. 5: 7-11; p. 6:2 – p. 7:2; p. 7:19-21; p. 10:11-16; p. 13:4-6; p. 14:7-11; p. 22:9-11; p. 23:1-3; p. 24:20-21).

6. Further, Ms. Savage-Clarke's surrebuttal testimony identifies the portions of the rebuttal testimonies of Lake Perry Lot Owners Association (LPLOA) witnesses Mr. Richard DeWilde, Mr. Chad Sayre, and Mr. Glen Justis (p. 3:21 – p. 4:2; p. 6:18 – p. 7:2; p. 7:16-20; p. 8:21 – p. 9:2; p. 9:13-16; p. 10:6-8; p. 10:14-18; p. 11:13-15).

7. Because the Josiah Cox surrebuttal testimony and the Kristi Savage-Clarke surrebuttal testimony is responsive to rebuttal testimony and has been provided in accordance with the Commission's rules, there is no justification to provide special opportunity for additional time for discovery, to delay the hearing, or to provide special opportunity to present additional live testimony at the hearing.

WHEREFORE, Confluence Rivers respectfully requests the Commission deny the LPLOA 2nd Motion to Strike.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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