

**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 )

**CONFLUENCE RIVERS’ REPLY  
TO LAKE PERRY LOT OWNERS ASSOCIATION’S RESPONSE TO MOTION  
TO STRIKE REBUTTAL TESTIMONY OF GLEN JUSTIS AND RICHARD DEWILDE**

**COMES NOW** Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers” or “Company”), and for its *Reply to the Lake Perry Lot Owners Association Response to Motion to Strike* states as follows to the Missouri Public Service Commission (“Commission”):

**SUMMARY**

Despite the Association’s argument to the contrary, rebuttal testimony in this matter is limited by Commission Rule 20 CSR 4240-2.130(7)(B). The Association’s testimony does not qualify as rebuttal testimony under the Commission’s rules and does not address the only issue for which the Commission re-opened the record in this case – to determine the net book value of the Port Perry Service Company, LLC assets.

**REPLY**

**The Association’s Testimony Exceeds the Permissible Scope of Pre-Filed Testimony Under Rule 20 CSR 4240-2.130(7)(B)**

1. The Commission’s *Order Setting Procedural Schedule* directed the parties to comply with certain procedural requirements, including the requirement that testimony be pre-filed as defined in Commission Rule 20 CSR 4240-2.130.<sup>1</sup> Commission Rule 20 CSR 4240-2.130(7)(B) defines rebuttal testimony for the purpose of filing prefiled testimony: “(B) Where

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<sup>1</sup> *Order Setting Procedural Schedule*, p. 3, para. 3(a).

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[.]”

2. The procedural schedule **permitted all parties** the opportunity to file direct testimony.<sup>2</sup> Staff witness Kimberly Bolin filed direct testimony concerning the assessment of the net book value of Port Perry's assets that Confluence Rivers proposes to acquire in this case.

3. The entirety of Mr. Justis' testimony is improper rebuttal testimony as it does not rebut any of Ms. Bolin's testimony. Except for Mr. DeWilde's limited testimony on the Association's agreement of the net book value stipulated to by OPC, Staff and Confluence Rivers,<sup>3</sup> his testimony also fails to rebut any of Ms. Bolin's testimony and is improper rebuttal testimony.

4. The Association argues that Commission Rule 20 CSR 4240-2.130(7)(C) is controlling in determining whether its rebuttal testimony is proper. Commission Rule 20 CSR 4240-2.130(7)(C) provides: “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....” (emphasis added).

5. There is no moving party in the current procedural posture. As all parties were permitted to file direct testimony, Commission Rule 20 CSR 4240-2.130(7)(B) applies in this instance. As such, the Commission should strike Mr. Justis' testimony in its entirety, and the testimony of Mr. DeWilde, as provided herein, as improper rebuttal testimony.

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<sup>2</sup> *Id.* at p. 2.

<sup>3</sup> p. 2, line 1 through p. 2, line 8 after “Staff Witness Bolin in her Direct Testimony,” and p. 2, line 12 through p. 3, line 2.

**CONCLUSION**


6. The Commission should strike the following improper rebuttal testimony filed on the Association’s behalf in this case:

Justis Rebuttal – All; and

DeWilde Rebuttal – All, except for p. 2, line 1 through p. 2, line 8 after “Staff Witness Bolin in her Direct Testimony,” and p. 2, line 12 through p. 3, line 2.

**WHEREFORE**, Confluence Rivers respectfully requests the Commission issue an Order granting this Motion and strike the rebuttal testimony of Mr. Justis and Mr. DeWilde as set forth for the reasons stated herein.

Respectfully submitted,



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**ATTORNEYS FOR CONFLUENCE RIVERS  
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## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on May 13, 2020 to the following:

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