

In the Matter of:

In the Matter of The Revision of Commission's Rules Regarding Gas Utilities

WR-2020-0053- VOL 4

March 18, 2020



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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
On-The-Record Presentation
March 18, 2020
Jefferson City, Missouri
Volume 4

In The Matter Of Confluence Rivers)
Utility Operating Company, Inc.'s) File No.
Request For A Water Rate Increase) WR-2020-0053

CHARLES HATCHER, Presiding
REGULATORY LAW JUDGE
RYAN SILVEY, Chairman (By phone)
SCOTT T. RUPP, (By phone)
MAIDA J. COLEMAN, (By phone)
COMMISSIONERS

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P R O C E E D I N G S

1
2 JUDGE HATCHER: Okay. Let's go on the record.
3 Today is March 18, 2020. The Commission has set aside
4 this time for an on-the-record presentation for the file
5 marked WR-2020-0053 which is combined with SR-2020-0054.
6 This is In The Matter Of Confluence Rivers Request For A
7 Water And Sewer Rate Increase.

8 We do have some unusual circumstances today.
9 We are in the midst of a COVID-19 pandemic. So we do
10 have several participants on the phone, including the
11 Commissioners, but what we want to do is go ahead and
12 start the introductions of counsel and then we will get
13 right to the presentation.

14 A couple announcements from the bench. There
15 is a slight delay on Webex. So for those on the phone
16 who might be testifying or speaking, please speak
17 slowly. Also in the room we want to make sure and speak
18 just one at a time to be conscious of the court reporter
19 and her challenges with the Webex and the conference
20 call and everyone else.

21 With that said, let's go ahead and -- Oh, let
22 me turn the camera and the microphone on. Okay. That
23 was not an uncomfortable silence for the record. We are
24 now transmitting audio and video.

25 Let's go ahead and get started with the

1 introduction of Staff, Confluence Rivers?

2 MR. COOPER: Thank you, Your Honor.

3 JUDGE HATCHER: I'm sorry. Introduction of
4 parties. Confluence Rivers, please?

5 MR. COOPER: Dean Cooper from the law firm of
6 Brydon, Swearingen & England, PC, PO Box 456, Jefferson
7 City, Missouri 65102, appearing on behalf of Confluence
8 Rivers Utility Operating Company, Inc. With me today is
9 Mr. Russ Mitten who is the company representative, and I
10 will mention that Todd Thomas from the company is I'm
11 told attempting to dial in at this point in time but
12 seems to be experiencing a busy signal.

13 MR. HATCHER: On that note, a quick note from
14 the bench. He may do better by accepting the Webex
15 calendar invite and then trying to connect through his
16 computer to then ask the computer to call him on his
17 phone. I don't know why that works better but that was
18 our experience upstairs testing this. Staff,
19 introductions, please?

20 MS. PAYNE: Whitney Payne on behalf of the
21 Staff of the Missouri Public Service Commission, 200
22 Madison Street, Suite 800, Jefferson City, Missouri
23 65102. Mark Johnson is also on the phone for Staff.

24 JUDGE HATCHER: Thank you. And Office of the
25 Public Counsel?

1 MR. CLIZER: John Clizer on behalf of the
2 Office of the Public Counsel. My information has been
3 provided to the court reporter.

4 JUDGE HATCHER: All right. And now we have
5 the sound on. It's going to be an interesting morning.
6 Are there any other introductions that need to be made
7 before we move on?

8 Okay. Confluence Rivers, would you please go
9 ahead and start your portion of the presentation?

10 MR. COOPER: Thank you, Your Honor. As you
11 may be aware, this case represents the first rate case
12 for Confluence Rivers since its acquisition of nine
13 water systems and nine sewer systems, as a result of the
14 Commission's Order in File No. WM-2018-0116. The
15 closings on the water and sewer systems took place
16 between May and July of 2019. As closings took place as
17 to the various systems, tariffs for systems already
18 regulated by the Commission were adopted by Confluence
19 Rivers and tariff sheets were filed associated with the
20 previously unregulated systems.

21 The existing rates of each system were adopted
22 by Confluence Rivers. Since acquiring these systems,
23 Confluence Rivers has made improvements to each of the
24 systems. The cost of the improvements completed as of
25 today is approximately \$2.9 million.

1 Confluence Rivers again as of today has
2 approximately 547 water customers and 636 sewer
3 customers spread among the various water and sewer
4 systems. Confluence Rivers has implemented customer
5 service that provides benefits to the customers. This
6 includes 24-hour emergency service phone lines for
7 potential service issues, on-call emergency service
8 contractor personnel, implementation of a computerized
9 maintenance management system for wastewater and
10 drinking water utility assets, realtime remote
11 monitoring to ensure service stability, customer
12 dissemination of the Missouri Department of Natural
13 Resource drinking water testing information, online bill
14 pay options, up-to-date website bulletins about current
15 service status and service initiation and discontinuance
16 procedures.

17 The rate case for both the water and sewer
18 services provided by Confluence Rivers were initiated
19 through the Staff-assisted rate case process by notice
20 delivered to the Commission on August 29 of 2019. The
21 parties were ultimately able to reach a Unanimous
22 Disposition Agreement in this case which was filed on
23 February 10 of 2020. That agreement calls for a revenue
24 requirement increase as to water rates and sewer rates
25 that is less than what was initially proposed by

1 Confluence Rivers.

2 Additionally, the disposition agreement calls
3 for consolidated water and sewer tariffs that will bring
4 all water customers and sewer customers under a common
5 set of rules and regulations. You may have noted that
6 in the disposition agreement that the acceptance of the
7 new water and new sewer tariff books will result in the
8 cancellation of 11 sets of tariff sheets that currently
9 exist today.

10 The tariffs will also utilize a consolidated
11 water rate and consolidated sewer rate for these
12 customers. Each of these systems is on its own
13 extremely small in terms of customer numbers and each
14 has had varying levels of record keeping and upkeep over
15 the years. Consolidating the systems for rate design
16 purposes allows the costs to be spread over a greater
17 number of customers and will provide a more stable rate
18 for customers over time for what is a similar service
19 from system to system.

20 Confluence Rivers filed tariffs, the tariffs
21 that had been attached to the disposition agreement, on
22 March 13 of 2020. These tariff sheets carried a
23 proposed effective date of April 12 of 2020. The
24 tariffs again that were filed are the same tariff sheets
25 that were attached to the disposition agreement.

1 Confluence Rivers asks the Commission to
2 approve the Unanimous Disposition Agreement and allow
3 the filed tariff sheets to go into effect. Thank you,
4 Your Honor.

5 JUDGE HATCHER: Thank you. We'll go to Staff
6 next. I'm sorry. Let's pause here. Do we have any
7 questions from the bench? I know that we have
8 Commissioners on the line.

9 COMMISSIONER COLEMAN: None from me.

10 JUDGE HATCHER: Thank you. We'll go ahead and
11 move on to Staff's presentation.

12 MS. PAYNE: Staff would agree with what the
13 Company has presented. It would note that the
14 improvements that have been made, the money that's been
15 spent on those is about 15 percent complete in
16 consideration of all of the improvements proposed to be
17 made for these systems and it would also note that we
18 conducted a full investigation and an audit of the books
19 and what is reflected in the Unanimous Disposition
20 Agreement is a culmination of that investigation and
21 audit of the books. Thank you.

22 JUDGE HATCHER: Thank you. Are there any
23 questions from the Commissioners?

24 CHAIRMAN SILVEY: Judge, this is Commissioner
25 Silvey.

1 JUDGE HATCHER: Let's go ahead and go to the
2 Chairman first.

3 COMMISSIONER RUPP: I defer to the Chairman.

4 JUDGE HATCHER: Thank you. Go ahead, Mr.
5 Chairman.

6 CHAIRMAN SILVEY: I just have a couple brief
7 questions. Thank you, Judge. One of them is a
8 technical question. The Water and Sewer Department
9 Field Operations and Tariff Review Section on Lake
10 Virginia Service Area in the second paragraph mentions
11 Lake Virginia and Villa Ridge, then in paragraph 4
12 mentions Lake Virginia Ridge system and Lake Virginia
13 system. Is the Lake Virginia Ridge the same system as
14 Villa Ridge or is that an additional sewer system?

15 MS. PAYNE: Thank you, Chairman. We're going
16 to get a witness to answer your question from a more
17 technical aspect.

18 JUDGE HATCHER: If the witnesses could
19 introduce themselves for the record. Go ahead.

20 MR. SPRATT: David Spratt, Water and Sewer
21 Department. Lake Virginia and Villa Ridge are separate
22 systems. They were a part of the MPB system prior to
23 that.

24 CHAIRMAN SILVEY: Okay. Thank you. This is
25 again for Staff. What is the actual cost of the capital

1 projects completed and included in this rate case?

2 MS. McMELLEN: This is Amanda McMellen with
3 the Auditing Department. That was based on our
4 investigation and it's based on a black box settlement.
5 So there's no amount that's in rate base for the
6 improvements that have been done since the merger case.
7 We have our own numbers. None of the numbers for plant
8 in service have been agreed upon.

9 MR. COOPER: Chairman, this is Dean Cooper on
10 behalf of Confluence Rivers. I do want to just add one
11 thing that probably was confusing between what I said
12 and what Ms. Payne said in the opening and that is my
13 number that I referenced was an as-of-today number.
14 That is not the date that was used for purposes of
15 Staff's audit and the rates that have been set in this
16 case which, and I'm going to look to the Staff to
17 confirm this, but I think that was like a November 12
18 date perhaps and they're shaking their head yes. That
19 was essentially what would be the equivalent, I think,
20 of a true-up date in a general rate case.

21 JUDGE HATCHER: If the bench could interrupt,
22 I have forgotten to swear in some witnesses. Mr.
23 Spratt, if you would please stay where you are but raise
24 your right hand. Do you solemnly swear that the
25 testimony you gave and any that you would further give

1 will be the truth in this matter?

2 MR. SPRATT: I do.

3 JUDGE HATCHER: Thank you. And I did not get
4 your name?

5 MS. McMELLEN: Amanda McMellen.

6 JUDGE HATCHER: Amanda McMellen, would you
7 please stay where you are and raise your hand? Do you
8 swear that the testimony you gave and any that you will
9 give in the future in this case will be the truth?

10 MS. McMELLEN: I do.

11 JUDGE HATCHER: Thank you. Both witnesses are
12 sworn in and thank you for all the email reminders. I
13 do appreciate that. I'm feeling a little out of sorts
14 with the procedures of the hearing this morning. So I
15 do appreciate the help.

16 Let's go ahead and go back. Any other
17 Commissioner questions from the Chairman?

18 CHAIRMAN SILVEY: Thank you, Judge. I'll
19 defer to Commissioner Rupp at this time, and you're
20 doing a fine job.

21 JUDGE HATCHER: Thank you. Commissioner Rupp,
22 go ahead.

23 COMMISSIONER RUPP: Great. Thank you, Judge.
24 Thank you, Mr. Chair. My question is for Staff. So I
25 understand this case is under the new Staff-assisted

1 rate case rule and we don't have the testimony and
2 evidence from parties that we typically would have in
3 the normal rate case. I get that. But to that end, the
4 Commission issued an order a couple weeks ago requesting
5 that Staff file its auditing department report so as to
6 substantiate the cost of service and rates in this
7 agreement. The Staff stated that it considered those
8 documents confidential settlement documents.

9 I went back and re-reviewed the sections of
10 the Staff-assisted rate case rule and I don't see any
11 prohibition on Staff providing its auditors' reports to
12 the Commission. This leads me to my first question,
13 which is where in the rule does it state that Staff's
14 investigation and audit report is a confidential
15 settlement document?

16 MS. PAYNE: Commissioner, it's not contained
17 in the Staff-assisted rate case rule. It is contained
18 in the other rules and statutory provisions that were
19 cited in Staff's response. Anytime the parties gather
20 together to discuss what negotiations might reach
21 settlement as is contemplated by the Staff-assisted Rate
22 case rule, then that is considered a settlement
23 discussion.

24 The auditing memo specifically was updated in
25 light of the day 120 requirements of the rule that are

1 meant to become a settlement offer for the parties. So
2 unlike the memos that were filed, the water and sewer
3 and the customer experience memos that were attached to
4 the disposition agreement, the auditing memo
5 specifically contained Staff's settlement offers to the
6 other parties and that is why it contained privileged
7 settlement discussion that could not be filed.

8 COMMISSIONER RUPP: Okay. So that being said,
9 I went back and looked at disposition agreements and
10 stuff before the new rule and there were past instances
11 that income statements and EMS containing rate base and
12 cost of service amounts were attached to the disposition
13 agreements. So if the disposition agreement resolves
14 all the issues in the case, what in the new rule
15 prohibits the parties from attaching those supporting
16 documentation and work papers the rule requires be
17 submitted to the parties on Staff-proposed settlement
18 offer?

19 MS. PAYNE: I can only tell you the legal
20 evaluation that I gave the specific case and that I
21 considered our auditing memo that was provided to the
22 parties in this case.

23 JUDGE HATCHER: Okay. Let me interrupt.

24 COMMISSIONER RUPP: Then that kind of leads
25 into my concern. My concern is at the end of the day I

1 don't have issues with the consolidation as to the
2 rates. Let me just say that. Because we've allowed
3 Missouri-American Water Company to consolidate rates. I
4 don't have an issue with that. I have more of an issue
5 with the lack of information supporting the rate
6 increase and the consolidation. My concern is there's
7 not enough evidence to support the rate increases and
8 consolidation given this is a significant rate increase.
9 So I believe your staff is either, A, interpreting the
10 rule way too strictly or --

11 THE COURT REPORTER: I'm sorry. I didn't
12 understand the last part of what he said.

13 JUDGE HATCHER: Commissioner Rupp, could you
14 repeat for the court reporter your last sentence?

15 COMMISSIONER RUPP: Sure. Based on my concern
16 is there's not enough evidence presented to support some
17 of these increases in consolidation and it's either, A,
18 in my opinion the Staff is interpreting this rule way
19 too strictly or they just don't want the auditing report
20 attached to the disposition agreement. Those are my two
21 concerns.

22 MS. PAYNE: I apologize. Commissioner, I will
23 point out that subsection (9)(B) of the rule does
24 specifically reference that all supporting documentation
25 for the purposes of settlement is considered

1 confidential. I will also say that if the parties
2 agree, I certainly do not want to be the Staff counsel
3 to tell the Commissioner no. So if this is a hinging
4 point, with the permission of OPC and the Company, we
5 could file it confidentially for the Commission's
6 consideration.

7 JUDGE HATCHER: Thank you.

8 COMMISSIONER RUPP: I think that would be -- I
9 think that would be helpful to us to understand where
10 some of these numbers came from and how we got there
11 considering the amount of increases that we're
12 considering.

13 JUDGE HATCHER: Thank you. And Jim Busch has
14 come to offer some testimony. Mr. Busch, please raise
15 your right hand? Do you solemnly swear that the
16 testimony you're about to offer will be the truth?

17 MR. BUSCH: I do.

18 JUDGE HATCHER: Thank you. Please go ahead.

19 MR. BUSCH: Commissioner Rupp and other
20 Commissioners, this may not get precisely to the answer
21 you're looking for but sometimes in other small water
22 and sewer cases where you will see Staff file its
23 auditing memo with a disposition agreement is because
24 all the parties agree to the numbers that Staff has put
25 forward in their settlement discussion and that is the

1 numbers that are put forward.

2 In this case and other cases where we've had a
3 slightly larger company under the small company rule,
4 what Staff puts out is a settlement, and what is
5 ultimately agreed upon by the parties is not what was in
6 that auditing memo that was submitted as a settlement
7 agreement. Therefore, in this case not only was it
8 settlement we don't have an audit that was updated to
9 reflect the actual numbers that were agreed to by the
10 three parties in this case. Other than the settlement,
11 Staff doesn't have the numbers that could actually
12 support that because we haven't done that level of
13 analysis, it was a black box settlement.

14 I don't know if that gets to exactly what your
15 concern is but that gives a little bit more of a history
16 of why sometimes you will see an auditing memo filed
17 with the disposition agreement and in this case and
18 other cases sometimes you will not see Staff's auditing
19 memo.

20 JUDGE HATCHER: Thank you, Mr. Busch.

21 COMMISSIONER RUPP: Mr. Busch, help me
22 understand then. So in the past if everybody is agreed
23 on what's in the memo, then you guys will attach it?

24 MR. BUSCH: That is correct.

25 COMMISSIONER RUPP: If people -- Is that

1 correct?

2 MR. BUSCH: That is correct, Commissioner.

3 COMMISSIONER RUPP: Okay. But if people don't
4 agree, then you don't attach the memo?

5 MR. BUSCH: Generally that is correct, yes.

6 COMMISSIONER RUPP: But you have agreed to a
7 settlement offer --

8 MR. BUSCH: We have agreed to --

9 COMMISSIONER RUPP: -- and there are numbers.
10 So could a new audit document be created based off of
11 the settlement numbers?

12 MR. BUSCH: Staff could create an audit based
13 upon what we believe the numbers are. I don't know if
14 the Company or OPC would necessarily agree to the
15 numbers that we would believe that the certain issues
16 settled out to. I'll let -- OPC and the Company could
17 chime in as well.

18 MR. COOPER: Commissioner, I think that --

19 JUDGE HATCHER: Go ahead, Commissioner.

20 COMMISSIONER RUPP: Proceed.

21 MR. COOPER: Commissioner --

22 COMMISSIONER RUPP: I don't want to -- Here's
23 my issue is I've had issues with black box settlements
24 in major rate cases and small rate cases, and again it's
25 still difficult for me in my simple mind to get past the

1 fact that we have a stipulation and agreement and I'm
2 asked to be voting on it. When I ask for specifics, I'm
3 told well, all the different parties had different
4 opinions on what the numbers are, and it's very
5 difficult for me to understand that. And I have just
6 had a growing, growing, growing concern about black box
7 settlements over the last couple years and it's starting
8 to rise to the level that I'm extremely concerned.

9 So Mr. Busch, since you're standing there, if
10 you can dissuade my concerns and help calm them, I would
11 appreciate your insight; but if you don't want to tackle
12 that at this time, I understand.

13 MS. PAYNE: Commissioner, if you would be
14 okay, I would prefer to answer the question. What it is
15 with a black box settlement is the parties come together
16 and obviously as in any settlement negotiation everyone
17 has certain issues that they find to be more of a
18 concern and less of a concern, and certainly those vary
19 based on the nature of the parties. What a black box
20 settlement does is it gives each party the opportunity
21 to elevate certain issues in their mind to be the more
22 important and perhaps the ones that more dollars are
23 attributed to as opposed to the issues that might be
24 more important to the other parties.

25 So what is come to -- I mean, certainly we use

1 our starting positions as a foundation for that final
2 number that you see in the disposition agreement. It's
3 just that while Staff might consider that certain
4 elements are the ones that more dollars should be
5 attributed to, the Company and OPC would attribute those
6 dollars somewhere else. So it's not quite all the smoke
7 and mirrors that it may look like when we file that
8 disposition agreement. It's really just us giving and
9 taking on different issues. But since we can't come to
10 a final dollar amount agreement on that specific issue,
11 we attribute some dollars more to the issue that we find
12 more important, the Company attributes those same
13 dollars to an issue that it might find more important.

14 COMMISSIONER RUPP: Yeah, I understand what
15 you're saying, but it's still difficult for us. If we
16 have a ratepayer that comes and says how come my sewer
17 bill is going up this amount and we have to say I don't
18 know because they all came up with a number but we don't
19 really know how they're applying their numbers. You ask
20 three different people. You ask the Office of the
21 Public Counsel who's supposed to be the person standing
22 up for the ratepayer. They're going to give you a
23 different answer than the Staff and then the Company,
24 and these black box settlements start to in my opinion
25 cause distrust between the ratepayer and the system of

1 which we have because they can't get specific answers,
2 Commissioners can't get specific answers, you know, and
3 we're told that no, it's confidential, we can't put that
4 -- we have to push to get stuff included in our record
5 at least for the Commissioners to see, let alone the
6 ratepayers. It's a transparency issue. It's an issue
7 that I understand you're attempting to work and the
8 rules that you have I think you're interpreting the
9 rules a little too strictly in this case but I'm just
10 going to opine on my unhappiness with black box
11 settlements at this point. Thank you.

12 MS. PAYNE: On a final note, I would assure
13 you that the parties upheld the type of position that
14 you can certainly consider to be uniform. OPC
15 absolutely argued on behalf of the ratepayers. Staff
16 argued on behalf of the results of its audit and
17 investigation.

18 We did not, you know, by any means just say
19 this looks like a good number, let's raise rates to this
20 degree. This number was reached through a lot of hard
21 work and a lot of negotiation and a lot of consideration
22 for what would be rates that would return the cost of
23 service and a reasonable amount of return.

24 COMMISSIONER RUPP: That's all I have, Judge.
25 Thank you.

1 JUDGE HATCHER: Thank you. Are there any
2 other Commissioner questions? If not --

3 CHAIRMAN SILVEY: Judge, this is Commissioner
4 -- I'll wait. My next question is for OPC. I don't
5 believe they've spoken yet, have they?

6 JUDGE HATCHER: No, they have not.

7 CHAIRMAN SILVEY: I will withhold until then.
8 Thanks.

9 JUDGE HATCHER: That seems like a good segue.
10 Mr. Clizer, would the Office of the Public Counsel care
11 to make a presentation?

12 MR. CLIZER: I have no specific comments
13 beyond what has already been said by the other parties.
14 A few things we'd like to point out. A large amount of
15 the costs as we understand them for this rate case are
16 primarily driven by the costs of operation and
17 maintenance and payroll. We kind of hope that there are
18 ways that the Company might be able to reduce those
19 costs moving forward, especially as they continue to
20 expand and acquire new systems, that they might be able
21 to find utilities of scale that will be able to reduce
22 those costs.

23 JUDGE HATCHER: Thank you, Mr. Clizer. Are
24 there any questions from the Commissioners? Mr.
25 Chairman?

1 CHAIRMAN SILVEY: Thank you, Judge.

2 JUDGE HATCHER: Go ahead.

3 CHAIRMAN SILVEY: Yes, thank you. Just a
4 couple. For OPC, what concerns, if any, related to the
5 cost of service did OPC have in this case?

6 MR. CLIZER: I'm sorry. Can you repeat that
7 again really quick?

8 CHAIRMAN SILVEY: Yes, yes. What concerns did
9 OPC have, if any, related to the cost of service in this
10 case?

11 MR. CLIZER: I can say that the OPC had
12 concerns with the inclusion of certain items in rate
13 base that was a large portion of the part of why there
14 was a black box settlement because we were able to reach
15 an agreement with the Company that they would drop
16 certain issues and we would drop certain issues in turn.
17 We definitely have concerns regarding the overall
18 expense being included for the operation and maintenance
19 of these systems.

20 But like I said, we're hoping that Confluence
21 is able to find utilities of scale moving forward. We'd
22 also particularly like to see them begin bidding out
23 some of the systems which are geographically distant
24 from the remaining body separately as we feel like that
25 might be able to reduce costs moving forward. Those

1 were issues however that were addressed to the Company
2 in settlement negotiations, and we will continue to
3 monitor that issue moving forward.

4 CHAIRMAN SILVEY: Is OPC concerned with the
5 rate increase impact on customers that's reached in the
6 settlement?

7 MR. CLIZER: It's concerning to the extent
8 that it's going to be quite large. It's going to hurt
9 customers -- not hurt customers. Sorry. It's going to
10 hit customers quite hard, but we did the best that we
11 could to lower it to an amount that was just and
12 reasonable.

13 CHAIRMAN SILVEY: And I think you kind of
14 touched on this broadly in your first answer, but what
15 led to OPC's agreement on the cost of service and the
16 rates in this case?

17 MR. CLIZER: We reviewed the audit that was
18 performed by Staff. We found that we agreed with most
19 of what they had done. We raised what few issues we had
20 with Staff and were able to get some agreements. There
21 were a few issues still lingering from both the OPC and
22 the Company's positions. They obviously went in
23 different directions. The OPC would like to have
24 lowered rate base. The Company had certain other
25 expenses they think that should have been included. We

1 agreed to essentially mutually exclude those, in other
2 words, we would both drop our countervailing issues in
3 order to reach a middle ground.

4 CHAIRMAN SILVEY: Okay. So again, I would
5 like to echo Commissioner Rupp's comments a little bit
6 on black box settlements in general and the amount of
7 information we're able to get before being asked to vote
8 on them. But I understand your position you gave up
9 some things, they gave up some things. All the parties
10 have agreed. Just for the record does the OPC believe
11 that these rates are just and reasonable for all
12 customers?

13 MR. CLIZER: Yes. If I may, I'd like to point
14 out two things. I think this was something that's
15 already been echoed by some of the other people; but
16 with regard to the negotiations, there's a lot of risk
17 evaluation that has to go into it. You have to look at
18 how strong the arguments concerning your particular
19 issues are and what the likelihood of success is before
20 this Commission. All of that has to go into the
21 calculus you have to perform in determining whether or
22 not to settle.

23 So there are certainly costs that we would
24 like to see not included in rate base. But based on our
25 assumption of the likelihood of success on the merits

1 and other factors, including the likelihood of success
2 on the merits of issues raised by the Company, we found
3 that this was the best possible outcome that we believed
4 we could achieve for ratepayers.

5 CHAIRMAN SILVEY: Okay. Thanks. And just a
6 clarifying question. This revenue requirement, does it
7 only include 15 percent of the planned update to the
8 system?

9 MR. CLIZER: I'm actually going to defer that
10 to Staff. I believe they're better equipped.

11 MS. PAYNE: Approximately, yes.

12 CHAIRMAN SILVEY: Approximately 15 percent.
13 So then back to OPC. Are you concerned at all about
14 what's going to happen in the future when the other 85
15 percent needs to be done?

16 MR. CLIZER: Well, of course we're concerned.
17 That's going to be an incredibly large increase on
18 customers, but the answer is what can you do about that.
19 We're obviously going to examine what improvements are
20 being made, try and determine if those improvements were
21 absolutely necessary, if they were prudent basically;
22 but absent an engineering analysis and future rate
23 cases, sitting here right now I can't tell you whether
24 or not those improvements are necessary. That is the
25 problem. I mean, yes, we are concerned, that is a

1 concern.

2 CHAIRMAN SILVEY: But even with those
3 concerns, you do believe that this settlement reaches
4 just and reasonable rates for all customers?

5 MR. CLIZER: I believe that this settlement
6 results in the best outcome that customers can hope to
7 achieve given the information that I have seen.

8 CHAIRMAN SILVEY: Okay. Thank you, Judge.

9 JUDGE HATCHER: Are there any other
10 Commissioner questions? The bench has a couple of
11 questions. This is going to hit all of the parties. So
12 what is the test period for this rate case?

13 For the record, we have multiple parties
14 looking through paperwork at the moment.

15 MS. McMELLEN: This is Amanda McMellen with
16 Staff. The test period was the 12 months ending June
17 30, 2019 and updated through September 30, 2019.

18 JUDGE HATCHER: Ms. McMellen, could you please
19 state those dates again? I'm sorry.

20 MS. McMELLEN: It's the 12 months ending June
21 30, 2019 and then updated for known and measurable
22 changes through September 30, 2019 and then additional
23 improvements for plant going through November 12.

24 JUDGE HATCHER: So to make sure that I have
25 that clear. When you say additional updates for plant,

1 is that the -- is November 12 then the cutoff date for
2 when you're counting physical assets being used and
3 useful?

4 MS. McMELLEN: Correct.

5 JUDGE HATCHER: Okay. And so that's the end
6 date for inclusion of capital projects then?

7 MS. McMELLEN: Correct.

8 JUDGE HATCHER: Thank you. And that is where
9 we're getting the 15 percent number? Okay. Because
10 we're looking at those capital improvements 85 percent
11 being still in the future?

12 MS. PAYNE: Correct.

13 JUDGE HATCHER: And do you know -- I'm not
14 sure which party is going to be best for this. The
15 consolidation of the cost of service of the utility
16 systems, is that going to result in a single annual
17 report being filed going forward -- presumably for 2020
18 and going forward?

19 MS. PAYNE: I would defer to the Company.

20 MR. COOPER: I'm thinking about what may be
21 kind of layered in your question there, Judge, but yes,
22 Confluence Rivers will file a single annual report. But
23 I think it probably would have filed a single annual
24 report even without this consolidation as it is the
25 water and sewer corporation.

1 JUDGE HATCHER: Okay.

2 MS. PAYNE: Judge, if it helps, my water and
3 sewer expert is telling me that the Company would file a
4 single report. They may break it out by system within
5 that report. It's up to the discretion of the Company.

6 JUDGE HATCHER: Okay. Let's circle back
7 around to Staff's offer, as I understand it, and I want
8 to repeat it so that everyone is on the same page. You
9 had mentioned in response to a Commissioner question
10 that there may be a way forward to file the work papers
11 as confidential in this case?

12 MS. PAYNE: We could file what is the auditing
13 memo that was provided to the parties for the day 120
14 requirement of the rule considered to be a settlement
15 offer to the parties as a confidential document for the
16 benefit of the Commissioners. That memo it should be
17 noted it would be filed with the caveat that it is not
18 the agreed numbers that went into the final disposition
19 agreement. It's strictly Staff's position at day 120.

20 JUDGE HATCHER: Okay. And --

21 MR. CLIZER: Your Honor?

22 JUDGE HATCHER: Yes, Mr. Clizer.

23 MR. CLIZER: To that end, and I believe that
24 she's already touched on this, I want to make very clear
25 the OPC disagrees with certain portions of that report,

1 particularly the rate base. While I don't want to speak
2 for the Company, I believe they disagree with certain
3 portions of that report. I believe it was the expenses
4 but I won't speak for them, like I said.

5 We came to a settlement for a host of reasons
6 that I don't want to rehash, and I want to make it clear
7 that we are trying to preserve our legal issues moving
8 forward. If in the future we want to make the arguments
9 that we withheld making in this case because of
10 settlement, we don't want that report to be held against
11 us. We don't want the Commission to come back and say
12 well, you allowed it in this case, why are you changing
13 your opinion. That is part and parcel for why the black
14 box settlement was adopted. I just want to make sure
15 that that's clear and that factors into the bench's
16 consideration.

17 MS. PAYNE: And I will certainly follow up
18 with yes, Staff would not file it without the permission
19 of the parties because the disposition agreement was
20 reached on the basis that we would not be filing those
21 numbers.

22 JUDGE HATCHER: That was going to be part B of
23 that question. Thank you. Would the other parties,
24 Office of the Public Counsel and Confluence Rivers, have
25 any input at this time as to Staff's offer to put the

1 auditing memo from day 120 into the confidential record
2 -- into the record as confidential?

3 MR. COOPER: Yes, Your Honor, and Mr. Clizer
4 is correct, one of the rare instances where he and I
5 have similar views on this process. I think we probably
6 want to go away and talk about your question and get
7 with Staff on it. But I think if we go forward, I think
8 at best what this should probably look like is Staff's
9 very clear indication that if an audit is filed it is
10 Staff's and Staff's only position as to the underlying
11 numbers. We used to do that at one time with memos from
12 Staff in support of stipulations years ago and probably
13 some of the language that we used to use in that
14 situation would be nice to pull back out because while
15 we understand the Commission's concern and issue, you
16 know, we also similar to Mr. Clizer and the Public
17 Counsel, part of the reason that this stipulation makes
18 sense is because it has the ability to preserve some
19 issues for the future if need be.

20 JUDGE HATCHER: Okay. Then let's put a pin in
21 that discussion and I'll let the parties take that up
22 out of the room. That does lead into another question
23 the bench has and this is specifically for Staff,
24 although I invite the other parties to please comment.

25 Staff, you have talked about the 120 day audit

1 memo, and what the bench is looking at is the small
2 utility rate case timeline that is produced in each of
3 these cases, and I believe the rule requires this
4 settlement to be produced by this date. My question is
5 -- I'm sorry for the long introduction. My question is,
6 above that the day 85 case activity says initial
7 audit/investigation reports completed and provided to
8 case manager. Would Staff take the position that the
9 day 85 reports are also privileged?

10 And I would follow that up with at what point
11 are the numbers produced in this area not going to be
12 considered privileged?

13 MS. PAYNE: I would agree with you that we
14 refer to it as the day 90 pursuant to subsection (8)(F).
15 But what I would say is that Staff was still, especially
16 in this case, receiving information in between its day
17 90 investigation report and the day 120 settlement
18 offer. So while that agreement on its face, no, is not
19 considered settlement, it also does not match the
20 ultimate agreement. We couldn't in good faith say that
21 those numbers would be any sort of a basis for the
22 ultimate disposition agreement that was reached.

23 JUDGE HATCHER: Is there anything stopping you
24 from filing your day 90 -- what would you like to call
25 it?

1 MS. PAYNE: It's the day 90 memo.

2 JUDGE HATCHER: -- memo. Is there anything
3 preventing you from filing the day 90 memo?

4 MS. PAYNE: Technically it is considered a
5 starting point for the negotiation for settlement. So I
6 would want to have a consideration before I filed it.

7 JUDGE HATCHER: And Mr. Busch has returned to
8 the podium. Please go ahead, Mr. Busch.

9 MR. BUSCH: If I may. That is more of an
10 internal guideline. Staff does our -- unlike a normal
11 general rate case where the Company has filed their
12 testimony and then Staff and OPC and any other
13 intervenors are allowed to then do their audit and
14 investigation and create their direct testimony, none of
15 that is occurring under the small utility rate case
16 process. It's to help lower the cost. The utility
17 itself does not do an audit.

18 Now, maybe a larger utility like Confluence,
19 CSWR, maybe they do their own internal audit but none of
20 that is provided. So what happens when this process is
21 initiated is that the Company files a letter requesting
22 that they need some sort of rate relief. Our smaller
23 companies are so unsophisticated, it's just -- sometimes
24 it's just a number chosen with no supporting
25 documentation by themselves.

1 So Staff undertakes a full and complete audit
2 and has to request information from the Company blindly,
3 you know, not knowing exactly why the Company has really
4 requested those dollars. The day 85 and the day 90 is
5 set up so that Staff can take all that preliminary
6 accounting and other data that we have, put it in some
7 sort of a brief cost of service and submit it to the
8 parties as this is where we're at right now, have we
9 missed anything, is there anything else you want to
10 include, gives OPC a chance to see where Staff is at at
11 that time. I think the new rule requires OPC if they're
12 doing their own audit to also give that information so
13 that the parties can kind of get an idea of where the
14 case is going, what sort of an increase or potentially
15 decrease depending on the case is at that point in time.
16 It's not even a settlement offer at that stage. It is
17 at best the preliminary results that the Commission has
18 been able to gather from the utility at that stage to
19 prepare and to come up with better information over the
20 next 30 days to actually come up with a settlement offer
21 that we can provide to the parties. So that data is
22 very, very raw and it's just -- the day 85 is just --
23 the case managers need to get all that information to
24 compile it to then send it to the other parties in some
25 sort of a clear manner.

1 JUDGE HATCHER: Thank you, Mr. Busch. I'd
2 like to make two quick announcements. For those on the
3 phone, if you could please mute your phone. We'll wait
4 for you to unmute it if you're going to speak. Also,
5 the Judge's email is down and this announcement is
6 specifically for the Commissioners to please text if you
7 have any further issues you would like to discuss. IT
8 is working on my email currently.

9 I do have a couple other questions but I do
10 feel that the hearing is winding down. We're probably
11 in the last five or ten minutes. I'd like to switch to
12 the Unanimous Disposition Agreement. Again, if we could
13 have everyone on the phone please mute their phone. I
14 am looking at -- I'm trying to get to the water -- the
15 residential customer bill comparison and that appears to
16 be about page 10 of the packet. I'd like to just look
17 at the percent increases, that column.

18 I'll start my question with a quick
19 introduction. I will have to be relying on this
20 document to write the decision either way that that
21 decision goes. And if everyone could look at the
22 percent increases, please, I don't see that those
23 percent increases match up with the numbers.

24 For example, Auburn Lake Estates has a current
25 rate of 37.50. The proposed rate would be 69.63 which

1 in my non-math attempt is about double, but the
2 percentage says it's 185 percent. I think that number
3 was gotten to by using the trick on the calculator of
4 multiplying one point your percentage. Does Staff have
5 any comment on that?

6 MS. PAYNE: So Staff actually prepared back
7 when we thought that this could can be a face-to-face
8 hearing an updated handout that compares everything, and
9 I would be happy to file that after this that would
10 probably make things a little bit clearer and actually
11 includes more information than the original. I will
12 certainly verify with the parties first, but it should
13 clear things up and reflect what rates would look like
14 and how that came to be based on the agreement.

15 JUDGE HATCHER: Thank you. The bench
16 appreciates that. I was also having a little trouble
17 with some of the larger numbers matching up. Let me
18 find where I marked that. Okay. I don't have the page
19 number. I'm on page 8. And it is titled Development of
20 Tariffed Rates and the second line there says agreed-
21 upon overall revenue increase \$349,630. However -- And
22 the sheet before that has a similar number, 309,666.
23 And when I go back up to the top of the document, it is
24 not matching the numbers at the top which were 306,555
25 and 345,597. I'm looking at paragraph 1 on page 2 of 5

1 of the resolution. I'm wondering if someone can help me
2 get those numbers to match.

3 MR. GATELEY: Curt Gateley for Staff.

4 JUDGE HATCHER: Please raise your right hand.
5 Tell me your name again.

6 MR. GATELEY: Curt Gateley.

7 JUDGE HATCHER: Mr. Gateley, do you swear or
8 affirm to tell the truth in the testimony in this case?

9 MR. GATELEY: I do.

10 JUDGE HATCHER: Thank you. Go ahead.

11 MR. GATELEY: The settlement -- The correct
12 numbers are on page 2 of 5 of the settlement document.
13 It appears that the numbers in the attachment are -- to
14 some degree it's rounding and some degree it should have
15 been corrected and updated to match what's in the
16 settlement. This is for demonstration purposes of how
17 we would calculate rates. It's not intended to be the
18 sole representation of the settlement, but we should
19 have corrected that number before we finished. It was
20 an error.

21 JUDGE HATCHER: I will count that -- Again, if
22 we could please have everyone on the conference call
23 please mute their phones. Staff, am I hearing that that
24 will also be supplemented in a filing?

25 MS. PAYNE: We certainly can, yes.

1 JUDGE HATCHER: And then I should take also on
2 page 2 under number 3 the last sentence, the proposed
3 tariff provisions will bear an effective date of March
4 12, 2020. I should file that under this settlement
5 issuing guidance, not necessarily a strict schedule?

6 MS. PAYNE: That is correct. And the tariffs
7 that were filed by the Company, the proposed tariffs, do
8 bear the correct effective date.

9 JUDGE HATCHER: Okay. And are there any other
10 Commissioner questions? The bench is out of questions.
11 And I want to check one last time for any Commissioner
12 questions. The bench hears none.

13 Are there any other issues that we need to
14 discuss before we go off the record?

15 Thank you all. The hearing is adjourned.
16 We're off the record.

17 (Off the record.)
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