

In the Matter of:

**APPLICATION OF CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC**

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**WA-2019-0299, VOL 6**

*May 15, 2020*

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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

May 15, 2020

Via WebEx Conference

Volume 6

In The Matter Of The Application of )  
Confluence Rivers Utility Operating )  
Company, Inc. For Authority to Acquire) File No. WA-2019-0299  
Certain Water And Sewer Assets And For) )  
A Certificate Of Convenience And )  
Necessity )

CHARLES HATCHER, Presiding  
REGULATORY LAW JUDGE

REPORTED BY:  
Lisa M. Banks, CCR  
TIGER COURT REPORTING, LLC

A P P E A R A N C E S

ALL PARTIES ATTENDED VIA WEBEX CONFERENCE

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FOR: Staff of the Missouri Public Counsel Commission

1 JUDGE HATCHER: Today is May 15th, 2020. The  
2 Commission has set this time for a prehearing conference for  
3 File Number WA-2019-0299, which is captioned In the Matter of  
4 the Application of Confluence Rivers Utility Operating Company,  
5 Inc. For Authority to Acquire Certain Water and Sewer Assets for  
6 a Certificate of Convenience and Necessity.

7 I'd like to state for the record this conference  
8 is being held via Internet and telephone conference via WebEx.  
9 I would also like to remind everyone to please try and identify  
10 themselves before you speak for the benefit of those who are not  
11 on video, and also for the benefit of the court reporter. And  
12 just a reminder, also, everyone please mute your microphones on  
13 your end. I have muted everyone on my end, except for the court  
14 reporter and myself.

15 My name is Charles Hatcher. I'll be the  
16 regulatory law judge assigned to this case. Let's go ahead and  
17 have counsel for the parties state their entries of appearance.

18 Confluence Rivers?

19 MR. COOPER: Yes, Judge. This is Dean Cooper  
20 speaking. Dean Cooper and Jennifer Hernandez of the law firm of  
21 Brydon, Swearngen & England, P.C., PO Box 456, Jefferson City,  
22 Missouri, 65102, appearing on the behalf of Confluence Rivers  
23 Utility Operating Company, Inc.

24 JUDGE HATCHER: Thank you, Mr. Cooper.

25 And the Lot Owners' Association? Mr. Linton,

1 you are on mute.

2 MR. LINTON: Can you hear me?

3 JUDGE HATCHER: Yes. Go ahead.

4 MR. LINTON: Good morning, Your Honor. This is  
5 David Linton of behalf of the Lake Perry Lot Owners' Associates.  
6 I'm with the law firm of McCarthy, Leonard and Kaemmerer. My  
7 address is 314 Romaine Spring View, Fenton, Missouri 63026.

8 JUDGE HATCHER: Thank you.

9 And counsel for Staff?

10 MR. JOHNSON: Judge, this is Mark Johnson on  
11 behalf of the staff of the Public Service Commission. Karen  
12 Bretz and myself are here. Our address is 200 Madison Street,  
13 PO Box 360, Jefferson City, Missouri 65102.

14 JUDGE HATCHER: Thank you. This prehearing  
15 conference is convened for the purposes of addressing any  
16 last-minute details. We are --

17 MR. CLIZER: Your Honor?

18 JUDGE HATCHER: -- evidentiary hearing on  
19 Tuesday and Wednesday. I've put forth --

20 MR. CLIZER: The Office of Public Counsel?

21 JUDGE HATCHER: I am so sorry I missed you  
22 Mr. Clizer. Office of Public Counsel, go ahead.

23 MR. CLIZER: John Clizer appearing on behalf of  
24 the Office of Public Counsel. Our office is 200 Madison Street,  
25 Suite 650, Jefferson City, Missouri 65101. Thank you.

1 JUDGE HATCHER: I apologize again. I thought I  
2 had gotten all counsel parties.

3 Again, this prehearing conference is convened  
4 for the purposes of addressing the last-minute details prior to  
5 our evidentiary hearing on Tuesday and Wednesday. Part of the  
6 list of topics in my order -- I'll just read through those --  
7 it's witness availability to testify on camera, showing the  
8 witnesses face, keeping live testimony brief, confidential  
9 information by exhibits, and exhibit sharing, and presentations,  
10 which are -- I am talking about PowerPoints, et cetera.

11 Before we get to the list, we do have an  
12 outstanding motion to strike the rebuttal testimony filed by  
13 Confluence Rivers on May 4th, 2020. That motion is denied.  
14 Also, I think I might be able to disperse with the discussion of  
15 the use of video. I am (indiscernible) and I scowl a lot. As  
16 much as anyone, I would like this hearing will be audio only.  
17 But an important aspect of this conference is the record and the  
18 court reporter's job of making that record is made much easier  
19 when we all -- or as many of us that can, participate by video.  
20 That way, the court reporter can see who is talking and thus  
21 make sure that is correct when she makes the record. The  
22 Commission will request that all who are able, participate by  
23 video at the evidentiary hearing on Tuesday and Wednesday.

24 Confidential information; I think we might be to  
25 wrap this one up also. I will always attempt to catch anything

1 confidential before it's stated publicly. But that is still  
2 counsel's responsibility. As to the WebEx platform -- and this  
3 is what we will be using in our evidentiary hearing Tuesday and  
4 Wednesday -- the WebEx platform has a lobby function. And the  
5 judges tested this out this morning and we are able to move  
6 witnesses, parties, participants, whomever, into the lobby room  
7 of WebEx.

8           This keeps them connected to our conference call  
9 as a whole, but they aren't able to listen in to what we are  
10 discussing on the remainder of the call, and they are not able  
11 to talk to each other. So that seemed to me to really answer  
12 the questions and provide sufficient protections for any  
13 in-camera usage that we might have come up at the evidentiary  
14 hearing. So like I said, I think we can wrap that issue up as  
15 well.

16           Let me see if anybody has any comments. I'll  
17 stop and take a breath for a moment. Let me call on the parties  
18 and we will go in the same order as introduction. That way, it  
19 will be easier for the court reporter to identify who is going  
20 next. I'm going to call the lead counsel, and if you want to  
21 defer to your co-counsel, I'll let you all take of that.

22           Mr. Cooper, would like to start us off.

23           MR. COOPER: If the issue is whether we have any  
24 questions at this point in time on what you said so far, I do  
25 not have any such question.

1 JUDGE HATCHER: Okay. Specifically on the lobby  
2 issue, are you familiar with how WebEx works with moving  
3 participants into the lobby area?

4 MR. COOPER: I am not familiar with that, Judge.  
5 I guess from your description and your representation that the  
6 judges have tested it and you believe that it works, I don't  
7 know where else to go with it other than to -- to assume that  
8 that is correct.

9 JUDGE HATCHER: Okay. Let's go to Mr. Linton.  
10 He is muted.

11 MR. LINTON: There. Can you hear me now?

12 JUDGE HATCHER: Yes, Sir. Go ahead.

13 MR. LINTON: Okay. I am in a similar position  
14 as Mr. Cooper. I really have no questions as far as the  
15 confidential information and the side room. I will have to work  
16 through that, but it is something I don't have any experience  
17 with, but I am willing to work through it.

18 JUDGE HATCHER: All right. And Staff? Any  
19 comments or concerns at this point, Mr. Johnson?

20 MR. JOHNSON: Thank you, Judge. I think Staff  
21 is in the same boat as the other parties. No questions in  
22 regard to confidentiality at this time. I'm sure whatever  
23 method is used we will make it work.

24 JUDGE HATCHER: All right. And Office of the  
25 Public Counsel, Mr. Clizer?



1 MR. CLIZER: I have no questions at this time.  
2 Thank you.

3 JUDGE HATCHER: Thank you. The last two topics  
4 are probably going to be more discussion-oriented. I expect  
5 that they might be. One is sharing of materials. I kind of  
6 lumped this together, exhibits, presentations. I obviously  
7 don't want to get into anyone's case-in-chief, but does anyone  
8 plan to have presentations? I'm thinking of a PowerPoint or  
9 that we might usually do in the hearing room, that we might have  
10 to think through a little bit more on a WebEx platform?

11 Mr. Cooper?

12 MR. COOPER: I do not plan on having a  
13 PowerPoint.

14 JUDGE HATCHER: While I have you on the line so  
15 to speak, what about exhibits? Are you planning on having  
16 those? And I guess my follow-up question is: Would you be able  
17 to get those distributed by Monday?

18 MR. COOPER: The answer -- I think the answer to  
19 the Monday question is yes. We certainly could get those  
20 distributed by Monday if need be. Let me ask you this: We  
21 normally provide a hard copy of testimony, that's an obvious  
22 exhibit, I suppose to the court reporter. Do we need to do  
23 anything in that regard?

24 JUDGE HATCHER: I will have to check the rules  
25 if it's required on a hard copy. Right now, let's proceed that

1 it's not required. You can just submit that to myself, and the  
2 court reporter, and the other counsel.

3 Let's move on, Mr. Linton?

4 MR. LINTON: Yes, sir.

5 JUDGE HATCHER: Yes. You are on the line. We  
6 are talking about, first, presentations. Do you have a  
7 presentation like a PowerPoint or something?

8 MR. LINTON: No presentations. I don't  
9 anticipate any exhibits other than the exhibits of the rebuttal  
10 testimony. I'm assuming we're going to lay the foundation as we  
11 always do in the hearing. And then again, yeah, my question has  
12 been primarily about how to get the hard copy to the court  
13 reporter and in the files. I do recognize that it's already on  
14 EFIS, but I guess the question then is each of my witnesses will  
15 then be expected to have his own copy of his testimony. I just  
16 want to make sure the logistics of laying the foundation,  
17 providing the copy to the court reporter, to the Commission and  
18 making sure that the witnesses have what they need to provide  
19 testimony and cross-examination. I just want to make sure that  
20 all works out.

21 JUDGE HATCHER: Let's stick with the assumption  
22 that you can submit that electronically to the court reporter.  
23 I will look further into the rule and I will issue an order or a  
24 notice letting everyone know if I have found something that does  
25 require that it be submitted in, I guess, a tangible format. I

1 will look into that further.

2 MR. LINTON: And then if it is getting down into  
3 the weeds, I guess you could assign exhibit numbers to the  
4 various testimony and exhibits. I'm not sure exactly how we do  
5 that.

6 JUDGE HATCHER: Let's go ahead and -- I was  
7 going to say let's do that now, but let me keep kind of with the  
8 -- with my thoughts as I scheduled them out. But yes, let's get  
9 to the exhibit numbers. I will put that on the list for today.

10 That takes care of Mr. Linton. Let's get to  
11 Staff.

12 Mr. Johnson, any presentations and your answer  
13 on exhibits?

14 MR. JOHNSON: Staff doesn't anticipate having  
15 any type of presentation. In regard to exhibits, I think we  
16 will only have the prefiled testimony that was filed in the  
17 additional proceeding. And as a general comment -- although I  
18 don't know if the Commission has held a virtual hearing as of  
19 yet. In the recent -- there's an ongoing Empire rate case, the  
20 hearing was waived, but the parties subsequent to the acceptance  
21 of the testimony for the record, later filed on their own -- or  
22 refiled on their own, testimony with exhibit numbers marked. I  
23 don't know if that would be a process that we would like to go  
24 about in this case.

25 JUDGE HATCHER: I don't know, but I appreciate

1 you throwing that out there. That is a good idea. Again, let's  
2 put a pin in that for a second.

3 And Mr. Clizer, Office of the Public Counsel,  
4 presentations and exhibits?

5 MR. CLIZER: The Office of the Public Counsel  
6 does not have a presentation, and all I don't see any questions  
7 regarding exhibits except curiosity, the partial stipulation  
8 that was entered into by the parties that after having been  
9 filed in EFIS, will that need to be entered as exhibit or will  
10 the court be -- sorry -- the Commission be able to take  
11 administrative notice of that? That might be -- require a  
12 ruling that perhaps shouldn't be done here. I appreciate that  
13 fact having just asked that question. But that would be my only  
14 question regarding exhibits.

15 JUDGE HATCHER: Okay. I will add that to my  
16 list. Good catch. I don't want to guess because I am sure that  
17 I will guess wrong and then have to walk that back. So, I will  
18 just say that I will take it under advisement for now. Thank  
19 you, Mr. Clizer.

20 Okay, let's get back to our exhibit numbers.  
21 That seems maybe the easiest thing to tackle at the moment. So  
22 I would -- I am not familiar with the rules, so if anyone wants  
23 to look that up real quick. I would propose that we assign the  
24 numbers 0 to 99 for the commission exhibits, so that as perhaps  
25 as Mr. Clizer states, if the Commission sets forth its exhibit,

1 as the stipulation being recognized. So 0 to 99 we will reserve  
2 for commission exhibits; 100 -- so 100 to 199 will be Confluence  
3 Rivers; the 200s, that is 200 to 299, will be the Lot Owners;  
4 300s, 300 to 399 will be Staff; and the 400s for Public Counsel,  
5 that's 400 to 499. Comments on that? We'll go back to our  
6 list.

7 Mr. Cooper?

8 MR. COOPER: I guess the -- and I will have to  
9 go back and look, so I apologize that I don't have this nailed  
10 down, but I think in the earlier hearing probably we were 0 or 1  
11 to 99. And there probably is, for example, already Exhibit 1,  
12 2, 3, through some number. I guess I -- I can deal with what  
13 you laid out too, but I just kind of identify that as an issue  
14 for us to consider.

15 JUDGE HATCHER: No. That is an excellent point.  
16 Let's back the train up for a second. And we will just address  
17 that issue whether there is an issue or not. So we went four  
18 parties. I would guess we did not give the 500s, but just to be  
19 safe, if we give the 600s to Confluence; the 700s to the Lot  
20 Owners; 800s to Staff; and the 900s to Public Counsel.

21 Mr. Cooper, let's go back around to you. Any  
22 thoughts on that numbering system?

23 MR. COOPER: No. I think you are right, Judge.  
24 I think that would be safe.

25 JUDGE HATCHER: Okay. Mr. Linton, any thoughts

1 or objections to that numbering system?

2 MR. LINTON: I think that works.

3 JUDGE HATCHER: Mr. Johnson?

4 MR. JOHNSON: That works for Staff. Thank you,  
5 Judge.

6 JUDGE HATCHER: Mr. Clizer?

7 MR. CLIZER: That works for the OPC.

8 JUDGE HATCHER: Excellent. Okay. Let's throw  
9 out the tangible submission of the tangible prefiled testimony  
10 to the court reporter. Mr. Johnson, you were saying that in a  
11 previous case that that was submitted electronically and that  
12 that was accepted in that case. Is that what I heard correctly  
13 -- or did I hear that correctly, rather?

14 MR. LINTON: Yes, Judge. My understanding is  
15 after exhibit number were designated to the case -- or to the  
16 parties, the parties then refiled each exhibit they intended to  
17 submit to the court -- excuse me -- to the Commission within  
18 EFIS.

19 JUDGE HATCHER: I'm following you now. They  
20 basically prefiled their exhibits with the correct number in  
21 EFIS. And then when we get to the hearing, would we anticipate  
22 then, that by agreement or without objection that all of the  
23 exhibits are admitted? Or did that situation go one by one on  
24 each exhibit, I would guess?

25 MR. JOHNSON: Well, Judge, I think due to the

1 circumstances in that case where there was no hearing, the  
2 prefiled testimony was agreed to be submitted and then a period  
3 for objections was allowed or a an additional exhibit. In this  
4 matter, however, I would perhaps recommend the exhibits can be  
5 marked as they are admitted into evidence during the hearing and  
6 then maybe subsequent to the hearing each party would refile its  
7 exhibits that were submitted in the hearing.

8 JUDGE HATCHER: Okay. I am interested in that.  
9 Let's go through our list for comments. Mr. Cooper?

10 MR. COOPER: I think we can work with that,  
11 Judge. I'm a little bit familiar with what Mr. Johnson is  
12 talking about there. I guess for the benefit of everybody and  
13 maybe to confirm my understanding as well, I think when those  
14 exhibits got refiled in EFIS, even though, for example, Exhibit  
15 1 might be direct testimony of, you know, Joe Smith, when they  
16 got refiled with the exhibit number, I think they got identified  
17 in EFIS as a hearing exhibit, and not -- and no longer as  
18 testimony. That might be a technical comment, but I'm thinking  
19 that is kind of how that works within EFIS.

20 JUDGE HATCHER: Okay. I appreciate that.

21 Mr. Linton?

22 MR. LINTON: I guess I'm -- my question is more  
23 from a logistics of actual physical presence. Are we suggesting  
24 that the hearing examiner and the court reporter are in the  
25 hearing room and there are copies of the various exhibits there

1 that get marked and the court reporter takes them and then they  
2 get refiled as marked? Or is there some sort of other -- we're  
3 talking about physical papers, and the only way I can see that  
4 happening is if that happens in the hearing room. Unless I'm  
5 totally off base, I understand.

6 JUDGE HATCHER: No. No.

7 MR. COOPER: This is Dean Cooper. I think what  
8 we're talking about is that in this scenario that we're just  
9 going to kind of avoid the paper copy step, that what we  
10 previously filed will get refiled as a hearing exhibit in EFIS  
11 and that it will go from there. I could be off base.

12 JUDGE HATCHER: That was my understanding, but I  
13 think Mr. Linton put his finger right on. My concern is that  
14 we need to find out if the paper copies are required. Now, what  
15 I am planning on doing is proceeding on Mr. Johnson's  
16 suggestion. I need to check with Mr. Clizer first. But  
17 proceeding with that on the assumption that the rules do not  
18 strictly require a tangible copy to be submitted, that submitted  
19 -- air quotes -- could be through EFIS, which I believe now with  
20 our numbers, everyone will spend Friday and Monday on filing in  
21 EFIS, their exhibits with the appropriate exhibit number, 601,  
22 602. And then after the hearing the Wednesday, Thursday or  
23 Friday -- sorry -- so then Wednesday, Thursday, or Friday or  
24 whenever, the parties would then refile their exhibits with the  
25 appropriate stamp that have been accepted as exhibits. That's



1 terribly worded.

2 Mr. Johnson, have I summarized your suggestion  
3 correctly?

4 MR. JOHNSON: For the most part, I believe so.

5 JUDGE HATCHER: Okay.

6 MR. JOHNSON: And I don't mean to preclude other  
7 potential options, but my thinking was this process could be put  
8 in place in lieu of having hard copy versions of testimony  
9 submitted to the court reporter.

10 JUDGE HATCHER: Let me get to Mr. Clizer before  
11 I discuss further.

12 Mr. Clizer, I would love to have your comments  
13 on this.

14 MR. CLIZER: Thank you, Your Honor. As Your  
15 Honor was just explaining a second ago, it occurred to me it  
16 would appear that there are going to be three separate filings  
17 and I'm not entirely sure if that is necessary, in EFIS I mean.  
18 We have the prefiled testimony currently already in EFIS. If  
19 the parties want to have more informally -- but confer with each  
20 other as to the exhibits they intend to present and then have  
21 those exhibits actually presented during the virtual hearing,  
22 I'm not sure if those would necessarily need to be filed a  
23 second time. They only need to be filed at the end of the  
24 hearing once they have actually been offered and accepted or  
25 denied as the case may be. That would be my understanding. I'm

1 not sure it would be necessary to have them filed a second time  
2 prior to the hearing and another time after hearing, but I will  
3 defer to others to have that input.

4 As far as the physical copies, I don't  
5 necessarily believe there is a need for them myself. However,  
6 I'm curious to know whether or not the PSC's record department  
7 would prefer to have physical copies. And if that is the case  
8 it could -- I would be okay with just having the testimony  
9 submitted in EFIS as marked by the parties as we were just  
10 discussing. But I don't see what would prevent the parties from  
11 also mailing of their testimony directly to be PSC to be  
12 retained by the record department. That was just an idea.

13 As to the underlying concept, which again is as  
14 I understand it, is that the exhibits will be filed by the  
15 parties following the hearing after they have been accepted and  
16 marked by the parties. I'm okay with that.

17 JUDGE HATCHER: Okay. Then here is my proposal.  
18 We all move forward under this assumption that this is how it is  
19 going to work and that will give everyone the weekend and Monday  
20 and Tuesday morning to think about that and object if they feel  
21 that they need to object to that format.

22 I was helped just recently in an email and given  
23 the rule, the evidence rule, regarding giving copies to the  
24 reporter. It is 20 CSR 4240-2.130(15). Unless the presiding  
25 officer directs otherwise, when exhibits that have not

1 previously been filed are offered in evidence, the original  
2 shall be furnished to the reporter and the party offering  
3 exhibits shall be prepared to furnish a copy to each  
4 commissioner or the presiding officer for each party. I am  
5 emphasizing in reading the words "furnish" and I would think  
6 that that gives us enough room to furnish an electronic copy,  
7 the original electronic copy, to the reporter.

8 I do like Mr. Clizer's catch there. If the  
9 testimony has already been filed in EFIS, let's save everyone a  
10 step and no need to refile that before the hearing. That will  
11 be strictly an after-the-hearing filing as an admitted exhibit.  
12 For any exhibit that you have not already filed in EFIS, let's  
13 go ahead and use our exhibit numbering system and get those  
14 submitted by Monday evening.

15 Okay. That wraps up that. The last thing -- I  
16 have two things on my list remaining; keeping the testimony  
17 brief, which really we just covered with the admitting of the  
18 exhibits. That was what I was trying to get at. So we can  
19 check that off of the list. I'll wrap around to see if anybody  
20 else has some issues.

21 And then Mr. Clizer had mentioned the question  
22 of having the non-unanimous stipulation entered as an exhibit  
23 and to do that by administrative notice or -- moving on. I will  
24 check into that. I will take on that responsibility and check  
25 into that and find out how we are going to handle that.

1                   That was all of the issues that I wanted to  
2 touch on. I'm going to go through our handy list of counsel and  
3 see if anyone else has any wrap up or remaining issues they  
4 would like to discuss. Mr. Cooper, if you would lead us off,  
5 please.

6                   MR. COOPER: Well, let me -- I think I do. We  
7 have an issues list that's due today now, I believe, as a result  
8 of an extension. And I guess that -- you may or may not, Judge,  
9 be able to help with this at this point in time, but one of the  
10 things that is bouncing around in that is, you know, what issues  
11 are out there. It's kind of bounced around through the  
12 pleadings to some extent.

13                   But there has been the indication, at least in  
14 my mind, that the orders have been interested in the net book  
15 value of the assets of Port Perry Service Company. And it seems  
16 to me that that is an obvious issue for the list. I guess I'll  
17 kind of leave it at that for the time being and maybe there are  
18 others that want to chime in.

19                   JUDGE HATCHER: Okay. I think that would be --  
20 let's get everyone's opinion on that.

21                   Mr. Linton?

22                   MR. LINTON: Yeah. The logistical question I  
23 have and I'll respond to Mr. Cooper after I ask a question.  
24 During the hearing I have noticed that you are in control of the  
25 mute and the unmute. How do we interject objections or other

1 interjections that we might be wanting to interject?

2 JUDGE HATCHER: Today since some of the counsel  
3 is on video, wave the hand. But I see your point. I think that  
4 the evidentiary hearing will be moving relatively slowly enough  
5 through this technology, and since all of you have the ability  
6 to unmute yourself, it's kind of like the same -- I did not have  
7 any special administrative tools to mute everyone. It was the  
8 same button that everybody pushes. As a host, I can just do it  
9 to everyone. I will probably employ that same strategy at the  
10 hearing. I will mute everyone because you are able to unmute  
11 yourself. I understand that it certainly is going to take me 30  
12 seconds to find my unmute button. So we'll try and be watchful  
13 of that to handle objections in a timely manner.

14 MR. LINTON: Okay. I'm probably slower than  
15 most. How do I unmute on the system? Is it on my phone or is  
16 it on the computer?

17 JUDGE HATCHER: If you connected your audio  
18 through the computer, it's on there. What I have found is if  
19 you wiggle your mouse a little bit, down at the bottom of the  
20 screen comes some controls all in a little circle.

21 MR. LINTON: I see that.

22 JUDGE HATCHER: The first one on the far left  
23 should be your mute.

24 MR. LINTON: I see it. The only question I have  
25 is in the instructions it said to -- when you engage in this

1 conference, this WebEx, you said call me. And so now I am  
2 speaking through my phone. Come Tuesday, should we, as counsel,  
3 go through the audio and the video through the computer rather  
4 than on the phone?

5 JUDGE HATCHER: I was (indiscernible)  
6 misunderstanding with the technology of WebEx. When it was  
7 first explained to the judges was for telephone conferences  
8 mainly so that it was easier to have the computer call your  
9 phone for this telephone conference. Since everyone has seemed  
10 to now been using a lot more of WebEx and Zoom for this video  
11 function, it has been more useful to login using your computer  
12 audio. What that does -- that uses your computer microphone.  
13 You can plug in headphones through the back of the computer.  
14 And if you use your phone headphones, they will have like a  
15 phone on it. I don't know where the microphone is on my  
16 computer, but I know it came with one, and obviously it comes  
17 with the very well-placed looking-right-down-at-my-head video  
18 camera.

19 MR. LINTON: Yeah, I can handle the computer.  
20 If I get my phone out of the way that works real well. I  
21 appreciate it. Thanks.

22 As to Mr. Cooper's comments, I guess the  
23 position I have always been in in the pleadings that I have  
24 presented is that the Commission's request for evidence on net  
25 book value cannot be divorced from the overall standard that is

1 what is detrimental to the public interest. And this is one  
2 particular aspect of it that strikes me that there does need to  
3 be an issue, is the transaction detrimental to the public  
4 interest in light of the net book value. And I think the fact  
5 that you denied the motion to strike kind of confirms that. So  
6 in my way of thinking there are three issues; what is the book  
7 value; does that show this transaction to be detrimental to the  
8 public interest; and the third one is basically conditions much  
9 like the -- much like the issues list in the last case are the  
10 conditions that need to be imposed. So those are my thoughts.

11 JUDGE HATCHER: So Mr. Linton, I just want to  
12 summarize. You are proposing three issues on the list of issues  
13 that is what Mr. Cooper was referencing that would be due today.  
14 That is; what is the net book value, is it detrimental, and what  
15 conditions should, if any, should the Commission place on that?

16 MR. LINTON: Yeah, the two latter issues would  
17 be basically identical to the issues in the prior hearing. And  
18 then the first issue, what is the net book value, would be the  
19 only one that you would add. Those would be my thoughts.

20 JUDGE HATCHER: All right. Mr. Johnson?

21 MR. JOHNSON: Well, I think from Staff's  
22 perspective, I guess we would be interested in a little bit of  
23 perhaps clarification as to the overall purpose for the  
24 additional proceedings, if it was intended to be a limitation on  
25 an actual calculation of net book value, or if there were

1 potentially additional matters relating to net book value that  
2 the Commission was interested in hearing about. I'm not  
3 entirely sure if we have a firm position on what the  
4 Commission's intent was or is, but we'd be interested. I don't  
5 know if you would be able to provide further guidance on that,  
6 but we'll be prepared to head to hearing on whatever issues end  
7 up being presented to the Commission.

8 JUDGE HATCHER: Okay. Mr. Clizer?

9 MR. CLIZER: Thank you, Your Honor. Let me  
10 start off by simply saying that the OPC isn't sponsoring any  
11 particular issue with regard to those issues. The Commission  
12 clearly wanted determination as to the net book value, so the  
13 question of what the net book value is an obvious issue. We  
14 agree with that. We haven't waived any other issues ourselves.  
15 But that being said, I just want to point out -- and this might  
16 be a little bit of a rant -- it's my personal opinion the list  
17 of issues really should be something that just describes what  
18 the parties themselves think are at issue in this case and all  
19 of the parties are at liberty to raise what they believe  
20 individually are issues in the case.

21 It's the Commission's prerogative to determine  
22 if something isn't an issue, but you know, if the parties --  
23 really should be feel free to bring as many issues as they want  
24 to bring before the Commission and the Commission should make  
25 the determination. So I would assume or rather argue the



1 Commission should keep a list of issues as broad as possible and  
2 just narrow it down once those issues have come forward it and  
3 determine something isn't worth hearing or has already been  
4 determined. That would be my response to the issue, no pun  
5 intended.

6 JUDGE HATCHER: Okay. I tend to agree with  
7 Mr. Clizer's assessment that the parties are free to kind of  
8 form issues as to how to proceed. If we find agreement, the  
9 rule certainly encourages that. Mr. Cooper, let's circle back  
10 around to you.

11 MR. COOPER: Judge, I don't -- in a normal case  
12 I think I would agree with what Mr. Clizer described there and  
13 certainly we have dealt with that. I guess we are in a little  
14 different territory and the reason for my question is we've  
15 already had, I think, a two-day hearing that encompassed a lot  
16 of issues and a lot of subjects in this case. And since we're  
17 in sort of a subsequent hearing initiated exclusively by the  
18 Commission's order to reopen the record for a specific purpose,  
19 I think to me that is the reason for my question. I think that  
20 puts us in a little different posture than we would be in a  
21 normal case.

22 Certainly the two issues that Mr. Linton has  
23 described that are in addition to the net book value of the  
24 assets, I think others may have even mentioned, were a part of  
25 the earlier hearing. There has been evidence, there has been

1 briefing, there has been, you know, a lot of activity already  
2 transpired in regard to those. I guess that is the reason for  
3 my question is that we seem to be in a little different  
4 situation than we normally are in these cases in that we're in a  
5 proceeding that was requested and specified by the Commission  
6 itself.

7 JUDGE HATCHER: Okay.

8 MR. LINTON: May respond to that?

9 JUDGE HATCHER: Yes, Mr. Linton. Go ahead.

10 MR. LINTON: I don't really think we did address  
11 the net book value in the prior proceeding. In the prior  
12 proceeding and prior hearing Confluence Rivers' position was  
13 well, we will deal with that at a rate case and part of the very  
14 reason that the Commission had issued an order saying, we need  
15 to know what the net book value is, was the fact they didn't  
16 present it. Now we are redoing this because Conference Rivers  
17 did not present the net book value. A net book value should  
18 have been one of the many factors that the Commission takes into  
19 consideration in its determination of the detrimental to the  
20 public interest standard. And to say that you're going to  
21 calculate net book value in a vacuum without bringing it in to  
22 the overall consideration of what's detrimental to the public  
23 interest, is -- doesn't make any sense to me.

24 MR. COOPER: Judge, I think that that is a  
25 little inaccurate. I mean, certainly my client's position was

1 that we didn't -- that the Commission didn't need to determine  
2 it in this case for a variety of reasons. However, as to what  
3 is the net book value, Staff had its own calculation of net book  
4 value that was a part of the evidence of the underlying record.  
5 It is not as if that issue was ignored by the parties in the  
6 earlier hearing. I'll leave it at that.

7 JUDGE HATCHER: Okay. I'd like to interject my  
8 thoughts and maybe try to clear this up a little bit. The  
9 estimation of net book value, we dealt with at the beginning of  
10 the case, was just an estimation. The Commission determined  
11 that net book value in this case was a -- I'm trying to remember  
12 the phrasing from Ag -- the Ag case. But it was a necessary and  
13 essential issue for the Commission to determine in the larger  
14 scope of whether the transaction is a detriment to the public.  
15 So that is why the Commission wants to have the hearing, to more  
16 firmly nail down net book value number, and then put that number  
17 into the equation of detriment to the public.

18 I see two issues. And without really going over  
19 the language too much, but what is the net book value would be  
20 issue Number 1, and is it detrimental the public. We did touch  
21 on the same types of arguments in the first part of the case.  
22 And I would maybe direct the parties to look at this anew with  
23 the new numbers of net book value. So now that we have these  
24 new numbers, are those numbers a detriment to the public. But  
25 like Mr. Clizer said, I don't necessarily want to narrow it

1 down. I think the Commission's view is pretty straightforward.  
2 What is the net book value and is that a detriment to the public  
3 interest. Does that help everyone?

4 Mr. Cooper?

5 MR. COOPER: I think -- yeah, I think it helps.  
6 I don't know where my client will be yet, but I'll have to talk  
7 to them to determine that. But it is a helpful conversation.

8 JUDGE HATCHER: Okay. I appreciate that.

9 Mr. Linton?

10 MR. LINTON: I agree with you, Judge.

11 JUDGE HATCHER: All right. Mr. Johnson?

12 MR. JOHNSON: Yes, Judge, that helps. And just  
13 to help clarify the issues that you identified, it was what --  
14 the Commission is interested in what the number the net book  
15 value should be, and whether that number has -- or relates to a  
16 potential detriment to the public. Am I interpreting that  
17 correct?

18 JUDGE HATCHER: Yes. I would just add a small  
19 note and I'm sure you've already considered it, but just for the  
20 record I want to state that the Commission would be determining  
21 what the number is. And to determine that, the Commission needs  
22 evidence to base its determination. So that evidence comes over  
23 in exhibits and testimony. So since the Commission has  
24 determined that this is a necessary, essential issue, we need to  
25 determine what the net book value is. The current posture of

1 the case is that the non-unanimous stipulation becomes a  
2 position statement of the signatories, but it is not evidence as  
3 it could be relied on if it was a unanimous.

4 So we are getting into the issue, Mr. Johnson,  
5 yes -- of what is that number and is that number a detriment.  
6 But for the Commission to reach a decision to those two  
7 questions, it is a looking for the evidence that will be  
8 supplied in this curative-based issue. I hope I clarified that  
9 a little bit.

10 MR. JOHNSON: Yes. Thank you, Judge.

11 JUDGE HATCHER: Mr. Clizer -- I see you,  
12 Mr. Linton. Let me move to Mr. Clizer first.

13 Mr. Clizer, go ahead.

14 MR. LINTON: Absolutely.

15 MR. CLIZER: If you're asking for a response to  
16 the original question of whether or not that clarifies things, I  
17 do believe that that helps clarify things, yes.

18 JUDGE HATCHER: Yes. Excellent. Yes, I was.

19 Mr. Linton?

20 MR. LINTON: Just in your thinking, you say the  
21 number is a detriment to the public interest. I guess, to  
22 clarify from my own perspective, is the transaction that is a  
23 detriment to the public interest in light of the fact that there  
24 is a number of net book value. Is that -- are we seeing eye to  
25 eye?

1 JUDGE HATCHER: If I have been reading the basis  
2 on this, the overall decision is whether the transaction is  
3 overall detrimental to the public interest. Within that  
4 decision of detrimental, a particular transaction can have  
5 detriments, and it is a balancing of those detriments with the  
6 benefits, so net book value may be a detriment. That is part of  
7 what you all will be discussing at the hearing. Whether it is  
8 the only detriment or one in a list or how it benefit -- how it  
9 compares to the benefits, I leave up to you. Okay? All right.

10 MR. LINTON: Sounds good. Thank you.

11 JUDGE HATCHER: Let's go through our list. I  
12 think we have now addressed everything that anybody wanted to  
13 talk about. Let's go through one more time. I feel like we are  
14 within a couple of minutes of ending this.

15 Mr. Cooper?

16 MR. COOPER: I've got nothing else. Thank you,  
17 Your Honor.

18 JUDGE HATCHER: Thank you.

19 Mr. Linton?

20 MR. LINTON: No, sir.

21 JUDGE HATCHER: Thank you.

22 Mr. Johnson?

23 MR. JOHNSON: Nothing further. Thank you,  
24 Judge.

25 JUDGE HATCHER: Thank you.

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And Mr. Clizer?

MR. CLIZER: Nothing further. Thank you, Your Honor.

JUDGE HATCHER: Thank you all. And we are off the record.

(OFF THE RECORD.)

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