

**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)	

**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 *Motion to Strike Rebuttal Testimony of Glen Justis and Richard DeWilde* states as follows to the Missouri Public Service Commission (“Commission”):

SUMMARY

Confluence Rivers moves to strike the Rebuttal Testimony of Glen Justis and Richard DeWilde as the 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 – other than the portion of Mr. DeWilde’s testimony where he agrees with the net book value stipulated by all other parties.

BACKGROUND

1. On February 13, 2020, at the Commission’s agenda meeting, it was stated that the Commission would like to receive more testimony so it could determine the net book value number. The Regulatory Law Judge was asked to work with the parties to schedule an additional hearing to take evidence on that sole issue. On the same date, the Commission issued an *Order Setting Procedural Conference* that re-opened the evidentiary record to obtain “information

regarding the net book value of the subject utility assets being purchased.¹”

2. On March 24, 2020, the Commission issued its *Order Setting Procedural Schedule* stating:

. . . the Commission determined that it is necessary to assess the net book value of Port Perry Service Company, LLC. That determination is necessary as it is a “relevant and critical” issue as to whether the proposed acquisition is “detrimental to the public interest.” **The Commission’s determination that net book value is a relevant and critical issue is separate from the discussion of an acquisition premium.**²

(emphasis added).

3. On April 10, 2020, the Commission issued its *Order Directing Responses Regarding Cancellation of Evidentiary Hearing Regarding Net Book Value*, which, after noting that there is agreement as to the Port Perry Service Company, LLC net book value, stated that “all parties in this case now agree about **the factual issue that was the subject of the evidentiary hearing** scheduled for May 19-20, 2020.”³ (emphasis added).

4. Through its agenda discussion, the filings, and various Orders the Commission has made it clear that the record was opened for the limited purpose of taking evidence on the sole issue of the net book values of the water and sewer assets that are part of the proposed transaction.

MOTION TO STRIKE REBUTTAL TESTIMONY

5. On April 28, 2020, the Association filed the Rebuttal Testimony of Glen Justis and the Rebuttal Testimony of Richard DeWilde. Except for the portion of Mr. DeWilde’s testimony described below, the Association’s rebuttal testimony does not rebut the direct

¹ *Order Setting Procedural Conference*, para. 1.

² *Order Setting Procedural Schedule*, para. 1.

³ *Order Directing Responses Regarding Cancellation of Evidentiary Hearing Regarding Net Book Value*, paras. 2-3.

testimony of Staff witness Kim Bolin or address the sole issue on which the Commission directed the parties to file testimony – the net book values of the Port Perry assets

6. Mr. Justis’ Rebuttal Testimony does not address net book value in any fashion. Instead, his testimony exclusively addresses issues related to acquisition premium.

7. Mr. DeWilde’s Rebuttal Testimony contains a single comment regarding the net book value of the Port Perry assets. He states “all parties to the case had the ability to review Staff’s Report and assess the appropriateness of that number. It is a reasonable calculation of the net book value for the Port Perry assets.”⁴ Otherwise, his testimony focuses exclusively on issues related to acquisition premium.

8. In addition, Commission rule 20 CSR 4240-2.130(7)(B) defines “rebuttal testimony” as “testimony which is responsive to the testimony and exhibits contained in any other party’s direct case.” As noted previously, Staff witness Kim Bolin was the only witness to file direct testimony. With the exception of the single statement in Mr. DeWilde’s rebuttal testimony quoted above, neither witness rebuts or responds to Ms. Bolin’s direct testimony in this case. In fact, Mr. Justis’ testimony doesn’t mention Ms. Bolin or her testimony even once. Therefore, except for Mr. DeWilde’s statement agreeing with Ms. Bolin’s net book value calculation, the testimony of neither of the Association’s witnesses constitute rebuttal testimony under the Commission’s rules.

9. Because it is neither relevant to the sole issue before the Commission and is not proper rebuttal testimony, the following testimony filed on the Association’s behalf should be stricken:

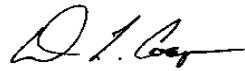
Justis Rebuttal – All; and,

⁴ *Rebuttal Testimony of Richard DeWilde*, p. 2, ll. 18 through p. 3, ll. 1-2.

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 4, 2020, to the following:

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