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Gateley Surrebuttal
File No. WR-2023-0006

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MISSOURI PUBLIC SERVICE COMMISSION

INDUSTRY ANALYSIS DIVISION

WATER, SEWER, & STEAM DEPARTMENT

SURREBUTTAL TESTIMONY

OF

CURT B. GATELEY

CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.

CASE NO. WR-2023-0006

Jefferson City, Missouri
July 2023

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SURREBUTTAL TESTIMONY OF**

CURT B. GATELEY

CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.

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1 **SURREBUTTAL TESTIMONY OF**

2 **CURT B. GATELEY**

3 **CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.**

4 **CASE NO. WR-2023-0006**

5 Q. Please state your name and business address.

6 A. My name is Curt B. Gateley. My business address is 200 Madison Street,
7 Jefferson City, Missouri 65101.

8 Q. Are you the same Curt B. Gateley who filed Direct testimony on May 26, 2023
9 in this case?

10 A. Yes.

11 Q. What is the purpose of your Surrebuttal testimony?

12 A. I will be providing information Staff learned at the Local Public Hearings
13 (“LPHs”) for this case, which ended just prior to the filing of Rebuttal. I will also be addressing
14 statements made by Confluence witnesses Josiah Cox and Todd Thomas, and Office of the
15 Public Counsel (“OPC”) witness Dr. Geoff Marke.

16 **Local Public Hearing**

17 Q. What did Staff learn at the LPHs?

18 A. Staff learned of:

- 19
 - Sanitary Sewer Overflows¹ (“SSOs”) at Lake Virginia

¹ An SSO is a discharge of untreated sewage. There are two types of SSOs, wet weather and dry weather. A wet weather SSO is caused by precipitation entering a collection system in sufficient quantity to create more flow than the collection system is designed to carry, causing partially diluted sewage to back up until it finds a location to overflow. A dry weather SSO is generally caused by a mechanical failure at a lift station, or blockage of a sewer line due to grease build up, tree root intrusion, a collapsed pipe, etc. The sewage overflow typically occurs at a manhole or into a customer’s home.

- 1 • Bypassing² and failure to conduct routine maintenance at Glen Meadows
- 2 • A customer receiving threats of service call charges when calling to complain
- 3 about odors from the sewage treatment system at Hillcrest lagoon³
- 4 • Customers dissatisfied with the speed of upgrades at multiple facilities
- 5 • Complaints about not being notified of boil advisories

6 **Lake Virginia**

7 Q. What was the source of the SSOs at Lake Virginia?

8 A. The collection system at Lake Virginia is in poor condition. Portions of the
9 collection system have been uncovered due to inappropriately shallow installation and erosion.
10 Some manholes are constructed of stacked blocks without mortar, which allows for intrusion
11 of precipitation into the sewer system. There is a history of blocked sewer lines and dry weather
12 SSOs at Lake Virginia.

13 A customer at Lake Virginia sent Staff emails during the period in which the LPHs were
14 occurring. This customer stated he had been calling Confluence about sewage odor near his
15 home, but the problem had not been resolved. When Staff contacted Confluence about this
16 situation, Confluence walked the collection system near the customer's home and found
17 evidence of two significant SSOs. Based on photographs supplied by Confluence, at least one
18 of the SSOs occurred during dry weather and had been occurring for at least several days.
19 Confluence has stated these were due to blockages in the sewer lines that were resolved with
20 jetting, and that the lines would be re-investigated every eight weeks due to their poor condition.

² A bypass is a discharge of partially treated sewage, where the waste stream is diverted around a portion of the treatment system. Unanticipated bypasses can be caused by a mechanical failure, such a pump breaking, or can be caused by too much precipitation entering the collection system, overwhelming the flow capacity of the treatment system. Bypasses can also be intentional, such as when some portion of the treatment system must be taken offline for emergency repairs.

³ Statements of Mr. Bridges, June 14, 2023 LPH during the Q&A portion.

1 Q. What is Staff's recommendation to correct the problems that have led to the
2 SSOs at Lake Virginia?

3 A. It is Staff's position that the Commission order Confluence to have an
4 engineering report prepared and submitted to Staff within one year, focused on rehabilitating
5 the sewer collection system at Lake Virginia. After the report is submitted, it would be Staff's
6 expectation that Confluence would then start making the appropriate improvements to the
7 system. Rehabilitating a poorly constructed collection system (Confluence acquired the system
8 in 2020⁴) can be complex, particularly if the existing lines are not buried deep enough,⁵ or if
9 the lines do not have the proper slope to carry away solids.⁶ Changing the depth of sewer lines
10 to protect them from damage and freezing may require changes to a customer's service
11 connections. In the meantime, Confluence should be educating customers about the
12 vulnerability of the collection system, and the importance of not exacerbating problems by
13 dumping oil and grease or other unsuitable materials into the collection system.

14 **Glen Meadows**

15 Q. Can you elaborate on the bypassing and maintenance failures at Glen Meadows?

16 A. The president of the homeowners association ("HOA") at Glen Meadows,
17 Joe Maixner, reported that Confluence's contractor had failed to mow the grass on the lot with
18 the well owned by Confluence.⁷ He reported making several calls to Confluence, but no action
19 was taken by Confluence until the HOA threatened to fine Confluence for failure to maintain
20 the lot. He also complained that although Confluence has owned the Glen Meadows system

⁴ WA-2019-0299.

⁵ 10 CSR 20-8.120(3)(A)2.

⁶ 10 CSR 20-8.120(3)(A)1.

⁷ Statements of Joe Maixner, June 12, 2023 LPH during the Q&A and testimony portions.

1 for over six months,⁸ little action has been taken to improve the failing sewer system. At the
2 June 23, 2023 LPH,⁹ a customer reported that the sewage treatment plant had again bypassed,
3 resulting in sludge in the receiving stream. According to Mr. Maixner, Confluence responded
4 that it would pump the sludge out by June 26, 2023.

5 Q. What action would Staff recommend in response to these complaints related to
6 the Glen Meadows system?

7 A. Besides taking care of its property to comply with HOA rules or those of any
8 local government, it is Staff's recommendation that Confluence ensures routine maintenance is
9 performed. Confluence has stated that it is assessing the system and determining what upgrades
10 are appropriate. It is Staff's recommendation that Confluence present Staff with its planned
11 upgrades once its assessment is complete, and to inform Staff when the upgrades are finished.
12 Confluence is expected to complete the upgrades as quickly as possible to eliminate further
13 pollution of the receiving stream.

14 **Service Call Charges**

15 Q. Can you please describe the situation where a customer was threatened with
16 being charged a fee when calling to complain about odors from a lagoon, as described by the
17 customer at the LPH on June 14, 2023?

18 A. The customer stated he had made multiple complaints about the odors from the
19 lagoon. During a recent call, the customer stated he was told by Confluence that further calls
20 may result in him being charged for a service call.

⁸ WA-2023-0006.

⁹ Unknown customer statement during the Q&A portion of the LPH.

1 Q. Is charging a type of service call fee for customers complaining about odors
2 authorized in the tariff for this system?

3 A. No, it is not.

4 Q. What is the purpose of the service call fee that is in the tariff?

5 A. Service call fees are for circumstances where a customer needs company staff to
6 perform some particular action, such as inspecting work done by a customer's plumber,
7 responding to damage to a sewer line caused by a customer, etc. Confluence is not allowed to
8 charge a customer a fee when the customer complains about odors. To resolve the odor issue,
9 Confluence stated they installed new equipment into the lagoon to increase aeration.
10 Staff contacted Confluence about the service call fee threat and informed the company that
11 charging such fees to customers complaining to the company would be a violation of the tariff.
12 In addition, charging such fees would have a chilling effect on customers who are often the first
13 to notice problems. Since Confluence agreed not to violate their tariff, and the fee was never
14 actually charged, Staff does not intend to file a complaint.

15 **Prioritization of Upgrades**

16 Q. You said several customers expressed dissatisfaction with the progress of
17 upgrades?

18 A. Yes, and this is a concern that Staff shares. Multiple customers complained in
19 particular with facing higher rates while enjoying little benefit to this point. While the
20 Department of Natural Resources ("DNR") sets a minimum compliance deadline in the orders
21 it issues to Confluence, these deadlines can be extended by DNR. In theory, Confluence
22 purchasing and committing to upgrade and operate a system is a good first step, as it has
23 the resources to rapidly make upgrades and commit to proper operation. In practice, some

1 systems should be much higher priorities than others due to the severity of the systems specific
2 issues, and making upgrades for systems already purchased should generally be a higher priority
3 than future acquisitions. Confluence appears to be directing a great deal of resources into
4 acquisitions, causing concern amongst Staff.¹⁰ Confluence witness Josiah Cox, in his rebuttal
5 testimony, has agreed to begin filing a 5-year capital improvement plan, which will provide
6 Staff an opportunity to review and participate in the development of the plan.¹¹ This would
7 begin to ease Staff's concerns and ensure that all parties are on the same page regarding
8 prioritization.

9 **Customer Communications**

10 Q. Has Confluence addressed the customer complaints about communication of
11 boil advisories?

12 A. It is my understanding that Confluence is already using its website and social
13 media to communicate with customers, but they have also proposed emails and potentially text
14 notifications. This is in addition to physical signage posted on community bulletin boards or
15 entrances to subdivisions. Because there are no regulations dictating the method that is used to
16 communicate precautionary boil advisories, Staff works with companies to ensure that adequate
17 communication with customers occurs. There is always the problem of customers maintaining
18 up to date contact information for electronic notifications, or unsafe locations at entrances to
19 stop and view a sign. Confluence has an unusual exposure to problems with communication
20 directly to customers due to its purchasing of distressed systems that may not have good records,
21 and often the need to make many physical repairs to distribution systems. As communications

¹⁰ WA-2023-0450, SA-2023-0437, WA-2023-0295, WA-2023-0284, SA-2023-0215.

¹¹ Page 21, line 20.

1 with customers continue to evolve, Confluence has shown they are willing to adapt. It is Staff's
2 recommendation that Confluence continue to pursue improvement in their efforts to
3 communicate with customers.

4 Q. Overall, how does the information revealed at the LPHs impact Staff's opinion
5 of Confluence's operations?

6 A. Some of the information Staff has received can be explained as 'growing pains'
7 of a rapidly expanding company. Some of the issues are the type expected when dealing with
8 distressed systems. Staff remains generally satisfied with Confluence's responses when
9 problems arise, but Staff continues to have concerns about oversight of contract employees.
10 Long term dry weather bypasses of the extent seen at Lake Virginia should not occur, and
11 Confluence must ensure that basic maintenance such as mowing grass occurs as scheduled.

12 **Operations, Maintenance, and Oversight**

13 Q. Do you agree with Mr. Cox's suggestions in Rebuttal that the bypassing at
14 Fox Run and the lack of upgrades at Auburn Lakes are problems to be expected when
15 Confluence purchases distressed systems?¹²

16 A. Absolutely not. Dry weather bypasses and the pollution they cause are
17 never acceptable, and all possible efforts must be made to avoid them. They are most
18 commonly due to some critical equipment failure, and are generally repaired immediately.
19 However, because a critical piece of equipment will eventually fail at the majority of
20 mechanical treatment plants, dry weather bypasses are inevitable. Issues of this nature should
21 be eliminated as quickly as possible and mitigated by pumping and hauling wastewater as
22 needed during repairs. As previously stated in my Direct testimony and the Rebuttal testimony

¹² Page 43, line 3 through page 45, line 19.

1 of Staff witness Daronn A. Williams, the bypassing at Fox Run had been going on for at least
2 several days, and possibly weeks. Mr. Cox's statements in his Rebuttal are distressing in that
3 he indicates that such problems are simply the nature of the beast. It is understood that some
4 noncompliance will occur when Confluence purchases distressed systems. Some facilities
5 require major upgrades, which take time. But Confluence must operate these systems to
6 perform to the best of their ability while upgrades are being made.

7 After Confluence personnel became aware of the bypassing at Fox Run the Company
8 took action to fix it. This bypass occurred because of a failure to maintain the system by the
9 previous owner, but also a failure by Confluence to conduct the needed deferred maintenance
10 themselves when it purchased the system, and lack of proper oversight of both the system and
11 the contracted employees following acquisition. This situation is not acceptable, and some
12 change must happen so that Confluence consistently responds to problems when they occur,
13 not when Staff or DNR complains to the Company. As I stated in my Direct testimony,
14 additional oversight of the contract employees who are operating the water and sewer systems
15 appears to be necessary.

16 Q. What about Mr. Cox's position on Auburn Lakes?

17 A. As described in detail in Staff witness Andrew Harris's Rebuttal testimony, the
18 water system serving Auburn Lakes was adequate for the number of customers when purchased
19 by Confluence. It became inadequate as customer growth occurred, with Confluence not taking
20 timely steps to make upgrades to the system. Proper capital planning, and improved
21 communications with contract operators, would have mitigated this problem. Instead, from
22 what Staff has been able to determine, Confluence became aware of the extent of the problem
23 due to Staff investigations of customer complaints.

1 Q. Do you agree with Confluence witness Todd Thomas's allegation that
2 recirculating sand filter media status and performance is difficult to ascertain?¹³

3 A. Not in my experience. The pooling of wastewater on the surface of the media
4 as described by Mr. Thomas is indicative of a failing media, and requires a response.
5 Management of wastewater across a filter media can generally be controlled via distribution
6 valves, and it is not uncommon for sectors of a filter media to need to be turned off for a period
7 of time to allow the biofilm to die back. This valving apparatus is included in the design
8 specifically for this reason. When an operator cannot control pooling of wastewater on the
9 surface of the media in this way, it is a clear indication that something is wrong. If the problem
10 is the eventual accumulation of sludge and biofilm that fills the media bed, then the typical
11 response is to excavate the media, inspect and repair the liner as necessary, and subsequently
12 install new media. The most important issue regarding this situation is that Confluence should
13 have made the assessment of the media condition described by Mr. Thomas *upon closing on*
14 *the purchase of this system*. Staff expects more from Confluence than simply buying a system,
15 running it to failure, and then taking appropriate action. Staff expects Confluence to be
16 proactive to prevent problems to the extent possible.

17 Q. Did Mr. Thomas's statements in his Rebuttal testimony make Staff more
18 confident that Confluence is properly operating and maintaining their systems?

19 A. No. Particularly disappointing was Mr. Thomas's statement that someone at
20 Confluence was notified within 24 hours of the bypass beginning. That means that Confluence
21 chose not to respond immediately with appropriate actions to the bypass, and instead responded
22 after Staff's discovery of the bypass during its inspection.

¹³ Beginning on page 15, line 19.

1 Q. Do you believe that Confluence's planned upgrades to the Fox Run system
2 mitigates the need to prevent bypasses as Mr. Thomas suggests?¹⁴

3 A. No. Confluence's customers, and persons who live downstream of their
4 sewer treatment plants, deserve for the treatment plants to be operated to perform to the best of
5 their ability.

6 Q. Staff's position in your direct testimony was that additional oversight of contract
7 employees was needed. Has Staff's position changed?

8 A. Somewhat. It is Staff's position that additional oversight of contract employees,
9 in the form of dedicated Missouri personnel, is likely the best next step in improving the
10 situation. Staff is not in the position to determine how many personnel are necessary, or
11 whether these should be new positions or reassignment of existing personnel. Staff does find
12 it notable that Confluence has only one employee certified in Missouri to operate drinking water
13 treatment systems, only two certified in drinking water distribution systems, and none certified
14 for operation of sewer treatment.¹⁵ It appears to Staff that in order to ensure proper oversight
15 of contract operators it would be wise for Confluence employees to have the same training as
16 its contract operators. Confluence's innovative approach to running a utility company
17 continues to cause Staff significant concern. A utility company cannot delegate responsibility
18 for maintenance, operations, or capital planning. Contract employees can perform certain
19 functions well, but company oversight of those limited functions must be maintained. Staff
20 believes that Confluence's current business model of contracting nearly all of the tasks of
21 running a utility is not sustainable in the long term.

¹⁴ Pages 18-20.

¹⁵ Data Request No. 0427, and Staff review of the DNR list of certified operators at Confluence personnel listed in Data Request No. 0037.3.

1 Q. Are you then in agreement with OPC witness Dr. Geoff Marke¹⁶ that Confluence
2 should be ordered to hire its own employees to operate the utilities?

3 A. Yes, but I propose a different timeline. I believe that cutting funding for current
4 contracts is not in the best interest of customers. But I do believe that Confluence must move
5 toward a more normal, sustainable utility business model. The current problems are likely to
6 get worse as Confluence continues to grow. To that end, Staff recommends that in addition to
7 immediately hiring or designating additional personnel for overseeing contract operators, the
8 Commission should order Confluence to begin hiring its own employees such that it may end
9 its contracts for operation to the extent practicable. Staff recommends that within 60 days of
10 the effective date of an order on this rate case, Confluence should be required to submit a plan
11 to reduce reliance on contract operators, with a goal of no less than 50% of its plants being
12 operated by Confluence employees prior to its next rate case. As other utilities have
13 experienced, it may be difficult to retain employees in all areas of the state that Confluence
14 operates, and temporary contracts may be needed when employee turnover or a new acquisition
15 occurs. As evidenced by the employees currently working under contract, certified operators
16 exist throughout the state and could be hired by Confluence.

17 Q. Do you believe that it will cost customers more money for Confluence to hire
18 additional employees?

19 A. Confluence has made no demonstration that contracting the entirety of its
20 operations, as well as most other tasks of running the utility company, saves customers any
21 money. Confluence and other utilities have demonstrated that contract employees can
22 sometimes provide less than optimal service. The other two larger utilities in Missouri employ

¹⁶ Rebuttal of Geoff Marke, beginning on page 9.

1 the majority of their operators themselves, and only use contract operators where necessary.
2 Some limited problems with contract operators employed by those other utilities have occurred,
3 and those companies keep their contract operators to a minimum as a result.

4 Q. How will Staff improve its regulatory approach to Confluence going forward to
5 address these concerns?

6 A. In addition to the remedies identified in Staff's direct testimony, Staff intends to
7 identify schedules for completing upgrades in a timely manner for those systems that are not
8 capable of providing safe and adequate service at the time of purchase by Confluence. This
9 may mean working with Confluence to identify schedules that exceed the minimum
10 requirements of DNR, or other 'check in' conditions where the necessary and most cost
11 effective changes have not been identified. When a distressed system is acquired by another
12 utility, some investigation of conditions is needed before investment is made so that the right
13 solution is achieved. Examples include determining dry vs wet weather flows to a sewage
14 treatment plant, peak usage of drinking water on holidays at a lake community, etc. Such
15 investigation needs must be considered when establishing such a schedule. For other situations
16 where the solution has already been identified, Staff intends to recommend more certain
17 schedules going forward when appropriate. It should be noted that Confluence also acquires
18 systems that appear to only need repair and proper maintenance, and in those situations a
19 schedule may not be necessary at all.

20 Q. Does Staff intend to begin including conditions in its recommendations for
21 fundamental activities, such as installation of master meters at drinking water systems?

22 A. No. If a utility company is unable to perform the basic functions of improving
23 a system to attain good performance, such as knowing how much water they were pumping,

Surrebuttal Testimony of
Curt B. Gateley

1 Staff would not recommend approval of that company's application for a CCN (Certificate of
2 Convenience and Necessity). Due to facts discovered during this case Staff will attempt to
3 identify, in greater detail, the needs of a system and the acquiring company's intentions for
4 completing those basic, fundamental needs. This of course applies to all companies, not just
5 Confluence.

6 Q. Does this conclude your Surrebuttal testimony?

7 A. Yes it does.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Confluence Rivers Utility)
Operating Company, Inc.'s Request for) Case No. WR-2023-0006
Authority to Implement a General Rate)
Increase for Water Service and Sewer)
Service Provided in Missouri Service Areas)

AFFIDAVIT OF CURT B. GATELEY

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW CURT B. GATELEY and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Surrebuttal Testimony of Curt B. Gateley*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.




CURT B. GATELEY

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 17th day of July 2023.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: April 04, 2025
Commission Number: 12412070



Notary Public