

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

|                                          |   |                       |
|------------------------------------------|---|-----------------------|
| Office of the Public Counsel             | ) |                       |
|                                          | ) |                       |
| v.                                       | ) | Case No. WC-2007-0038 |
|                                          | ) |                       |
| Central Jefferson County Utilities, Inc. | ) |                       |

**REPLY TO OPC'S SUGGESTIONS  
IN OPPOSITION TO MOTION IN LIMINE**

COMES NOW Central Jefferson County Utilities, Inc. (Central Jefferson or Company), and, in reply to the Office of the Public Counsel's (OPC) Suggestions in Opposition to Central Jefferson's Motion in Limine, states as follows to the Missouri Public Service Commission (Commission):

1. On January 31, 2007, Central Jefferson filed its Motion in Limine Concerning the Direct Testimony of Ted Robertson (Motion). The Motion was based on the fact that Mr. Robertson's testimony merely presented an audit performed by the Staff. This is an audit Mr. Robertson had no part in performing and which the Staff itself called "preliminary" and "incomplete."

2. OPC filed its Suggestions in Opposition to the Central Jefferson Motion on February 2, 2007. OPC stated that Mr. Robertson was justified in relying upon Staff's work in forming an expert opinion and that "any weakness in the factual underpinnings of the expert's opinion or in the expert's knowledge goes to the weight that testimony should be given, and not to its admissibility. OPC Sugg., p. 5, quoting *Alcorn v. Union Pacific Railroad Company*, 50 S.W.3d 226, 246 (Mo. 2001). OPC further alleged that "Central Jefferson makes many conclusions as to allegations that the Staff audit is

'preliminary' and 'incomplete' and the like . . . but, those are noting but the allegations of counsel in a motion, without any present factual or evidentiary basis." OPC Sugg., p. 6.

3. OPC's reasoning is flawed in at least two respects. First, while OPC claims that the Staff work is used as a basis for Mr. Robertson's expert opinion, Mr. Robertson's testimony offers no such opinion. Mr. Robertson's testimony contained no conclusion or opinion as to any over earnings. Mr. Robertson testifies as follows:

*The EMS accounting schedules, and the audit workpapers that support them, **indicate** that both of CJCUC's utility operations are exceeding ("overearning") an appropriate level of revenue requirement based on their current expense/investment return cost structure.*

*The documents **show** that the annual level of overearnings the utility operations are currently experiencing is \$51,500 for the sewer operation and \$16,900 for the water operation.*

Robertson Dir., p. 5.

4. This is not an expert opinion, as claimed by the OPC. It is a recitation of what is written on a piece of paper. As a non-participant in the process that created that piece of paper, Mr. Robertson is not qualified to testify to the results of that process.

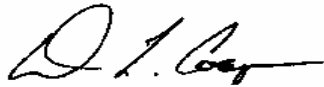
5. This brings us to the second flaw in OPC's Suggestions. OPC alleges that Central Jefferson has made "conclusions as to allegations that the Staff audit is 'preliminary' and 'incomplete'." OPC Sugg., p. 6 Those claims come not from the minds of counsel, as alleged by OPC, but rather directly from the party that created the audit in the first place – the Staff. It is the Staff witness that points out that "the Staff's work product relied upon by the [Public Counsel] was not, and is not, yet a 'completed' work product," and that the audit findings "should be considered preliminary and 'incomplete.'" Johansen Reb., p. 3, 7. It is unclear why OPC believes the Staff testimony does not constitute "factual or evidentiary basis to demonstrate that these

allegations and conclusions have any accuracy, veracity, or relevance.” OPC Sugg., p. 6-7.

6. Mr. Robertson’s testimony should not be admissible. OPC’s Suggestions in Opposition do not and cannot cure the defects in this testimony. Accordingly, the OPC should be prohibited from presenting it to the Commission and/or it should be stricken.

WHEREFORE, Central Jefferson respectfully requests that the Commission sustain Central Jefferson’s objection and strike the Direct Testimony of Ted Robertson.

Respectfully submitted,



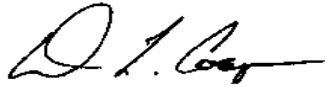
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Attorneys for Central Jefferson County Utilities, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first electronic transmission, on this 12<sup>th</sup> day of February, 2007, to the Christina Baker, Office of the Public Counsel and to Keith Krueger, Office of the General Counsel, Missouri Public Service Commission.

A handwritten signature in black ink, appearing to read "D. J. Coe", is positioned above a horizontal line.