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Exhibit No. 203

OPC – Exhibit 203
Riley Surrebuttal
File No. WR-2023-0006

Exhibit No.: _____
Issue(s): Outside Accounting Services/
Income Tax Expense
Witness/Type of Exhibit: Riley/Surrebuttal
Sponsoring Party: Public Counsel
Case No.: WR-2023-0006

SURREBUTTAL TESTIMONY

OF

JOHN S. RILEY

Submitted on Behalf of the Office of the Public Counsel

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

CASE NO. WR-2023-0006

July 21, 2023

SURREBUTTAL TESTIMONY

OF

JOHN S RILEY

CASE NO. WR-2023-0006

1 **Q. What is your name and what is your business address?**

2 A. John S. Riley, PO Box 2230, Jefferson City, Missouri 65102.

3 **Q. By whom are you employed and in what capacity?**

4 A. I am employed by the Missouri Office of the Public Counsel (“OPC”) as a Utility Regulatory
5 Supervisor.

6 **Q. What is your educational background?**

7 A. I earned a B.S. in Business Administration with a major in Accounting from Missouri State
8 University.

9 **Q. What is your professional work experience?**

10 A. I was employed by the OPC from 1987 to 1990 as a Public Utility Accountant. In this capacity,
11 I participated in rate cases and other regulatory proceedings before the Public Service
12 Commission (“Commission”). From 1994 to 2000 I was employed as an auditor with the
13 Missouri Department of Revenue. I was employed as an Accounting Specialist with the
14 Office of the State Court Administrator until 2013. In 2013, I accepted a position as the Court
15 Administrator for the 19th Judicial Circuit until April 2016 when I joined the OPC as a Public
16 Utility Accountant III. I have also prepared income tax returns, at a local accounting firm, for
17 individuals and small business from 2014 through 2017

18 **Q. Are you a Certified Public Accountant (“CPA”) licensed in the State of Missouri?**

19 A. Yes. As a CPA, I am required to continue my professional training by attending Missouri
20 State Board of Accountancy qualified educational seminars and classes. The State Board of

1 Accountancy requires that I spend a minimum of 40 hours a year in training that continues
2 my education in the field of accountancy.

3 **Q. Have you previously filed testimony before the Missouri Public Service Commission?**

4 A. Yes I have. A listing of my case filings is attached as JSR-S-1.

5 **Q. What is the purpose of your surrebuttal testimony?**

6 A. To respond to rebuttal testimony of Confluence Rivers witness Brent Thies concerning Staff
7 witness Jane C. Dhority's assessment of the Company's external Audit and Accounting fees.
8 I am also responding to Company witness Brad Seltzer's rebuttal testimony concerning Staff's
9 income tax expense amount included in the cost of service.

10 **Q. What was Ms. Dhority's original assessment of the external audit & accounting fees?**

11 A. She determined that the services provided by Anders CPAs + Advisors ("Anders") was
12 duplicative to the duties Confluence in-house accounting personnel were responsible for and
13 therefore removed the cost of the Anders contract from the rate case.¹

14 **Q. What was the Company response to her recommendation?**

15 A. Mr. Thies stated Anders work was not duplicative to Company personnel's work but as he
16 explained Anders' responsibilities, he reinforced the argument that Anders work was
17 unnecessary.

18 **Q. Please elaborate on Mr. Thies' explanation.**

19 A. As Mr. Thies explains: Anders was hired to support the month-end close and account
20 reconciliation processes. He continues by stating that these "services are inherently not

¹ WR-2023-0006, Dhority Direct, page 6, lines 1-18 (External Audit & Accounting Fees)

1 duplicative.”² He points out that “proper accounting procedures require review of all journal
2 entries and reconciliations. The presence of Anders’ staff working to compile supporting
3 materials and prepare journal entries allows CSWR’s staff to review those entries before
4 posting to the general ledger.”

5 **Q. How do you view this explanation?**

6 A. It is hard to tell which group of accountants is reviewing the other. Mr. Thies appears to be
7 implying that Anders is not reviewing the supporting materials it compiles or the journal
8 entries it prepares. This makes no sense. Any competent third-party accounting firm engaged
9 by a utility to support the month-end close and account reconciliation processes would include
10 a review of all the journal entries and reconciliations at issue as a matter of routine practice.
11 Mr. Thies’ suggesting that CSWR staff are required to “review” those same journal entries
12 and reconciliations a second time is irrational. Moreover, Mr. Thies fails to mention that
13 CSWR also employs an auditing firm that is paid on a monthly basis.³ Auditing by definition
14 is a review process. It would therefore be logical that the auditors would review the month
15 end processes Anders has been contracted to assist with, thus negating the need for CSWR to
16 employ its own staff of accountants to review the work being performed by Anders.
17 Somewhere, somehow accounting processes are being duplicated by at least one of three
18 accounting groups.

19 Overall, there can be no question some accounting process is being duplicated. There is no
20 justification for CSWR to employ its own staff of accounting specialists to review the work
21 of an independent commercial accounting firm. Any competent third-party accounting firm
22 will perform all necessary review of the relevant journal entries and reconciliations as part of the
23 scope of its work in assisting with the month-end close and account reconciliation processes.

² Thies rebuttal, page 6, line 14

³ RSM LLP has been identified as CSWR’s outside and independent auditing company

1 CSWR should consequently not be entitled to collect both the expenses incurred in retaining
2 Anders and employing its own internal accounting staff.

3 **Q. Mr. Thies states that “CSWR does not employ accountants or other employees with**
4 **extra capacity in their schedules. Were it not for the support Anders provides, any**
5 **employee time off would have the potential to create a backlog of time sensitive**
6 **accounting work.”⁴ How do you respond to this?**

7 A. The month end closing processes do not have to be accomplished on the last day of the month.
8 A great deal of the information needed to close the books isn’t even available at month end.
9 There is no drop dead time limit on month end closings. In fact, Staff was still waiting on
10 Company’s January 2023 financial information as of the end of June 2023, so the Company
11 should not be implying that any accounting information from a half a year ago was “time
12 sensitive” at the end of January.

13 **Q. Could you summarize your position on the exclusion of the Anders contract from the**
14 **cost of service?**

15 A. Yes. Ms. Dhority stated the work performed by Anders was duplicative to what the Company
16 in-house accountants should be completing. She’s absolutely correct. With three different
17 accounting groups working for the same small Company, there are too many bean counters
18 in the mix. As Staff has proposed, the Anders contract should be excluded from the revenue
19 requirement.

⁴ Thies rebuttal, page 7, lines 1-3

1 **INCOME TAX EXPENSE**

2 **Q. Company witness Mr. Bradley Seltzer takes exception to Staff witness Ms. Kimberly**
3 **Bolin’s interpretation of Net Operating Loss (“NOL”) and how it applies to the current**
4 **cost of service. Should the Commission give any credence to Mr. Seltzer’s arguments?**

5 A. No. First, I would note that the question of whether Confluence’s NOLs constitute a “tax
6 timing difference” is irrelevant. The only important point the Commission needs to
7 understand and make a decision regarding is that Confluence is not expected to have taxable
8 income in the near future and the available NOL balance will cover the taxable income in
9 these rates. A “timing difference” does not change how much income tax should be included
10 in the cost of service.

11 **Q. Is Mr. Seltzer’s interpretation that this NOL is a “tax timing difference” correct?**

12 A. No. Mr. Seltzer has several facts misconstrued in his analogy. The first thing to consider is
13 the phrase “tax timing difference” as it applies to this NOL. A tax timing difference infers
14 that there was a difference in an expense (or many expenses combined) recorded for financial
15 (*i.e.* regulatory) purposes as opposed to the amount applied within a tax return. The most
16 common and best understood expense that is applied differently in financial reporting and tax
17 returns would be accelerated depreciation.

18 **Q. Was this NOL a by-product of accelerated depreciation?**

19 A. No. Mr. Seltzer acknowledges this on page 4 of his testimony. He goes on to state that since
20 this NOL is not caused by deferred taxes attributable to accelerated depreciation then the
21 normalization rules of the IRS do not apply.

1 **Q. Does Mr. Seltzer ever explain in his testimony what timing differences caused the**
2 **Company's NOL?**

3 A. No. I did not find an explanation or any specific expense differences mentioned in his rebuttal
4 testimony. I did try and follow his explanation that NOLs in general are a "tax timing
5 difference," but it appears Mr. Seltzer's argument is extremely misguided. He quoted a recent
6 Missouri American Water Co. Western District case opinion⁵ to attempt to illustrate a point
7 but the quote doesn't apply to his argument. Let's review the quote and his attempted analogy.

8 "a company is allowed to deduct certain costs against income for tax
9 purposes at different times than when it is allowed to reflect the same
10 costs as a reduction to income for financial reporting purposes. This
11 is referred to as 'timing differences.'" That is precisely the situation
12 in the instant case where Confluence Rivers properly deducted its
13 operating expenses for book and financial reporting purposes, but, by
14 reason of its NOLs, was unable to currently deduct such expenses for
15 tax reporting purposes.⁶

16
17 He begins by quoting a generally agreed upon statement that tax deduction expenses can be
18 taken at different times than when they are deducted for financial reporting. However, his
19 conclusion that Confluence "by reason of its NOLs, was unable to currently deduct such
20 expenses for tax reporting purposes" is completely inaccurate. An existing NOL does not
21 prevent expense deduction for tax purposes. If the Company is in a net income loss situation
22 then the added expenses merely create a larger tax loss, which in turn translates into a larger
23 NOL carryforward. He further muddles his argument by trying to assert that a deferred tax
24 liability is inherent in the NOL. Mr. Seltzer has already stated that the Confluence NOLs
25 were not a product of deferred taxes attributable to accelerated depreciation and does not
26 imply there was any other deferred tax timing difference that caused the losses, yet he
27 suddenly states that there is a deferred tax "liability." To state that there is a "liability"

⁵ He provides a four line quote but does not cite it in the opinion and he does not apply context to how this quotation is relevant to Confluence's NOL

⁶ Seltzer rebuttal, page 5 lines 11-17 Emphasis added

1 necessarily infers a future amount will come due.⁷ Because there is nothing due in the future
2 based on this NOL, it is therefore not a “liability” as Mr. Seltzer states.

3 **Q. How do you believe these NOLs were created?**

4 A. Without any other assertions from Mr. Seltzer, these losses were not generated by specific tax
5 provisions and therefore will not eventually “turn around” by way of expiring temporary
6 deferred tax benefits. Stated another way, the IRS Code did not create special tax inducements
7 that caused these NOLs. These losses were instead generated the old fashion way; by having
8 more expenses than revenues. The Company has an operating loss, taxable or otherwise.
9 These NOLs can be applied to taxable income indefinitely. They do not expire⁸.

10 **Q. Mr. Seltzer lists several authoritative sources to support his contention that income tax**
11 **expense should be included in the cost of service. Should these sources be considered by**
12 **the Commission when making a decision about income tax expense in the rate case?**

13 A. No. The sources Mr. Seltzer mentions refer to deferred tax liabilities and he has already
14 admitted the Company does not have any deferred tax liability in this case. Staff has
15 performed the calculations and determined that the Company will not have an income tax
16 liability in the near future. If the Commission were to include an income tax expense in the
17 cost of service without including an offsetting deferred tax liability, the Company would enjoy
18 a permanent tax savings due to the ratepayer funding an expense that does not exist. All three
19 parties agree that there are no normalization rules that drive inclusion of an income tax
20 expense in this case. Absent IRS directives, including an income tax expense that does not
21 exist is punitive and unjust to the Company’s captive customers.

⁷ Oxford definition of Liability. “debts or obligations a person or company owes to someone else.”

⁸ One of the provisions of the TCJA was to change the expiration period of NOLs from 20 years to no expiration date

1 **Q. To summarize that answer, are you saying the Commission would need to include a**
2 **deferred tax liability into rate base to offset the Company's proposed income tax expense**
3 **because without the liability, the expense is a permanent gift of interest free money?**

4 A. Yes. I believe the Commission should exclude the nonexistent tax expense, however, if it
5 believes a normalization needs to be established then a corresponding deferred liability, tax
6 or otherwise, should be included to offset the amount.

7 **Q. Does this conclude your surrebuttal testimony?**

8 A. Yes.

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

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

AFFIDAVIT OF JOHN S. RILEY


STATE OF MISSOURI)
) ss
COUNTY OF COLE)

John S. Riley, of lawful age and being first duly sworn, deposes and states:

1. My name is John S. Riley. I am a Utility Regulatory Supervisor for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

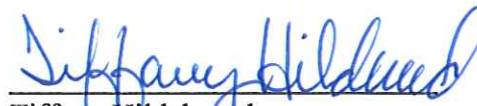


John S. Riley
Utility Regulatory Supervisor

Subscribed and sworn to me this 20th day of July 2023.



TIFFANY HILDEBRAND
My Commission Expires
August 8, 2023
Cole County
Commission #15637121



Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2023.

ST LOUIS COUNTY WATER COMPANY	CASE NO. WR-88-5
SOUTHWESTERN BELL TELEPHONE COMPANY	CASE NO. TC-89-21
EMPIRE DISTRICT ELECTRIC COMPANY	CASE NO. ER-2016-0023
KCP&L GREATER MISSOURI OPERATIONS COMPANY	CASE NO. ER-2016-0156
KANSAS CITY POWER & LIGHT COMPANY	CASE NO. ER-2016-0285
AMEREN MISSOURI	CASE NO. ER-2016-0179
EMPIRE DISTRICT ELECTRIC PRUDENCE REVIEW	CASE NO. EO-2017-0065
LACLEDE GAS COMPANY	CASE NO. GR-2017-0215
MISSOURI AMERICAN WATER COMPANY	CASE NO. WU-2017-0351
MISSOURI AMERICAN WATER COMPANY	CASE NO. WR-2017-0285
LIBERTY (MIDSTATE NATURAL GAS)	CASE NO. GR-2018-0013
KANSAS CITY POWER AND LIGHT	CASE NO. ER-2018-0145
KCP&L GREATER MISSOURI OPERATIONS COMPANY	CASE NO. ER-2018-0146
EMPIRE DISTRICT ELECTRIC PRUDENCE REVIEW	CASE NO. EO-2018-0244
EMPIRE DISTRICT ELECTRIC COMPANY	CASE NO. ER-2018-0228
EMPIRE DISTRICT ELECTRIC COMPANY	CASE NO. ER-2018-0366
EMPIRE DISTRICT ELECTRIC COMPANY	CASE NO. EO-2018-0092
AMEREN GAS COMPANY	CASE NO. GR-2018-0227
MISSOURI AMERICAN WATER COMPANY	CASE NO. WO-2018-0373
LIBERTY UTILITIES EMPIRE ELECTRIC CO	CASE NO. EA-2019-0010
SUMMIT NATURAL GAS OF MISSOURI, INC	CASE NO. GR-2018-0230
SPIRE NATURAL GAS, EAST/WEST ISRS	CASE NO. GO-2019-0115
MISSOURI AMERICAN WATER COMPANY	CASE NO. WO-2019-0184

AMEREN GAS	CASE NO. GR-2019-0077
UNION ELECTRIC COMPANY	CASE NO. ER-2019-0335
LIBERTY EMPIRE ELECTRIC CO.	CASE NO. ER-2019-0374
EVERGY MISSOURI METRO	CASE NO. EO-2020-0262
MISSOURI AMERICAN WATER CO.	CASE NO. WO-2020-0190
EMPIRE ELECTRIC COMPANY FAC	CASE NO. ER-2020-0311
MISSOURI AMERICAN WATER CO.	CASE NO. WR-2020-0344
SPIRE MISSOURI INC	CASE NO. GR-2021-0108
UNION ELECTRIC COMPANY	CASE NO. ER-2021-0240
EMPIRE ELECTRIC COMPANY	CASE NO. ER-2021-0312
EMPIRE DISTRICT GAS COMPANY	CASE NO. GR-2021-0320
EMPIRE DISTRICT ELECTRIC COMPANY	CASE NO. EO-2022-0040
EMPIRE DISTRICT ELECTRIC COMPANY	CASE NO. EO-2022-0193
EVERGY MISSOURI WEST SECURITIZATION	CASE NO. EF-2022-0155
EVERGY MISSOURI WEST	CASE NO. ER-2022-0130
EVERGY MISSOURI EAST	CASE NO. ER-2022-0129
SPIRE MISSOURI, INC.	CASE NO. GR-2022-0179
UNION ELECTRIC COMPANY	CASE NO. ER-2022-0337