

**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

MOTION TO COMPEL

COMES NOW the Office of the Public Counsel (“OPC”) and for its first *Motion to Compel*, states as follows:

1. The OPC has issued, among others, the following numbered requests for discovery (“DR”) to Confluence Rivers Utility Operating Company, Inc. ("Confluence Rivers" or “the Company”): 2002, 2003, 2004, 2005, 2007, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3018, 3019, 3020, 3023, and 3025.
2. Confluence Rivers has either objected, objected in part, and/or provided incomplete answers to all of the foregoing.
3. The foregoing DRs and the related discovery disputes were addressed during the discovery conference held on April 19, 2023.
4. At the conclusion of said discovery conference, the regulatory law judge assigned to this case acknowledged that Commission rule requirements establishing the prerequisites for the Commission to entertain discovery motions (which are found in 20 CSR 4240-2.090) had been met.

5. In addition, the *Order Setting Procedural Schedule* issued by the Commission on February 16, 2023, ordered, among other things, that “Commission Rule 20 CSR 4240-2.090’s requirement that a party must seek a telephone conference with the presiding officer before filing a discovery motion is waived.”

6. The discussion had during the April 19, 2023, discovery conference did not resolve the outstanding discovery disputes related to the foregoing DRs.

7. All obligated efforts to resolve the discovery disputes regarding the foregoing DRs having thus far failed, the OPC now files this motion to request the Commission issue an order compelling Confluence Rivers to respond to and provide, without redaction or omission, full and complete responses to the foregoing DRs.

8. In support of this motion, the OPC will address each data request and explain the reason why an order to compel should be issued.

Generally Applicable Standard of Law

9. “Courts in Missouri have long recognized that the rules relating to discovery were designed to eliminate, as far as possible, concealment and surprise in the trial of lawsuits and to provide a party with access to anything that is ‘relevant’ to the proceedings and subject matter of the case not protected by privilege.” *State ex rel. Plank v. Koehr*, 831 S.W.2d 926, 927 (Mo. banc 1992); *see also* *Edwards v. State Bd. of Chiropractic Exam'rs*, 85 S.W.3d 10, 22 (Mo. Ct. App. 2002) (“Discovery has several purposes including eliminating surprise, aiding in the ascertainment of the truth, narrowing issues, facilitating trial preparation, and obtaining relevant information.”).

10. With regard to the question of what is “relevant,” Missouri Courts have held that the term should be construed broadly:

Missouri's discovery rules allow parties to obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery **or to the claim or defense of any other party**. It is not grounds for objection that the information may be inadmissible at trial, but it is sufficient if the information sought **appears reasonably calculated to lead to the discovery of admissible evidence**.

State ex rel. BNSF Ry. Co. v. Neill, 356 S.W.3d 169, 172 (Mo. banc 2011); see also (*State ex rel. Brown v. Dickerson*, 136 S.W.3d 539, 543 (Mo. App. W.D. 2004) (“The term ‘relevant’ is broadly defined to include material ‘*reasonably* calculated to lead to the discovery of admissible evidence.” (emphasis in original) (quoting *State ex rel. Stecher v. Dowd*, 912 S.W.2d 462, 464 (Mo. banc 1995))).

11. Information sought for impeachment purposes is within the scope of discovery and is always relevant. *Edwards v. State Bd. of Chiropractic Exam'rs*, 85 S.W.3d 10, 25 (Mo. App. E.D. 2002) (“Information showing that a person having knowledge of discoverable facts may not be worthy of belief is always relevant to the subject matter of the action. Inconsistent statements, criminal convictions, proof of bias, and similar material, being themselves admissible evidence, cannot be excluded from the scope of discovery.” (internal citations omitted)).

DR 2002

12. DR 2002 requested Confluence Rivers to “[p]lease provide a list, including location, date acquired, service provided, and number of customers of each

of the 798 water and/wastewater systems referenced in direct testimony of Josiah Cox p. 3, 12-14.” The DR went on to states that “If additional systems have been added since this testimony was filed[,]” Confluence Rivers should “[p]lease include those systems” as well.

13. The specific testimony segment referenced to in this DR states “[s]ince its formation, CSWR has acquired, and currently is operating through various affiliates, 798 water and/or wastewater systems in Missouri, Kentucky, Louisiana, Texas, Arkansas, Tennessee, Mississippi, Arizona, North Carolina, and Florida.”

14. Confluence Objected to DR 2002 stating as follows:

Confluence Rivers objects to this data request a) as the responsive information is not relevant to the subject proceeding and not proportional to the needs of the case considering the totality of the circumstances to include, but not limited to, the fact that the information concerns entities not regulated by the Commission; b) the request is unduly burdensome in that it will require considerable time and resources to compile the information requested for each of the 798 systems referenced; c) the requested information is immaterial to the issues in this case; and, d) the Missouri system information is equally available to OPC in an EFIS search.

15. Despite its objection, Confluence did provide a response that referred the OPC to Confluence Rivers’ response to Staff DR 0100.

16. Confluence Rivers’ response to Staff DR 0100 only provides the number of water and sewer customer connections for each state that CSWR LLC operates in and does not answer the question posed by the OPC.

17. Consequently, the OPC requests the Commission to order Confluence Rivers to provide a list of the 798 water and/or wastewater systems it claims to operate across elven states and, for each system, indicate where it is located, the date

it was acquired, what services are being provided, and how many customers the system serves.

18. The information sought by the OPC is relevant because Confluence Rivers' witness has made it relevant by offering the statement.

19. If the existence and identity of these affiliate entities were not relevant to this case, then the testimony offered by Confluence Rivers' witness that discusses these entities should be struck on this basis.

20. Further, the information being sought would establish the veracity of the witness' statement. Discovery related to the veracity of a witness testimony is always relevant. *Edwards v. State Bd. of Chiropractic Exam'rs*, 85 S.W.3d 10, 25 (Mo. App. E.D. 2002).

21. The information is not unduly burdensome because it should be information that is retained by Confluence Rivers or its affiliates.

22. Both Confluence Rivers and its affiliates should know where the water and wastewater systems they operate are located, when those systems were acquired, what services is being provided at each system, and how many customers they are serving.¹ This is information that Confluence Rivers and its affiliate entities should have readily available if they are indeed operating prudently, and is information that was clearly available to Mr. Cox when he wrote his testimony.

¹ Confluence Rivers' suggestion that it would "require considerable time and resources to compile the information requested for each of the 798 systems" that its own parent Company CSWR LLC ultimately oversees would seem to imply that CSWR LLC does not currently know where the water and wastewater systems is manages are located. If true, this should pose an extreme concern for this Commission.

23. The objection that the information is “immaterial” is not a proper objection. Rather, it is just a restatement of the relevance objection. Please see the discussion of relevance above.

24. Finally, the Missouri system information is not equally available to OPC in an EFIS search. First, the OPC is not aware of how Confluence Rivers is breaking down the count of its systems with regard to Mr. Cox’s statement. Attempting to correlate what Mr. Cox stated with whatever information may be found in EFIS cannot be easily achieved.² Mr. Cox, by contrast, should be able to easily provide the information requested as it relates to his own statement.

25. Second, the information sought is not readily available in any one given location in EFIS. Some of the information *may* be available, but it would be spread over a very large number of cases that were themselves spread over a lengthy span of time. Moreover, the information would not necessarily be up to date. Confluence Rivers’ by contrast, should have the information regarding its Missouri utility systems immediately and readily available. To suggest differently would again suggest that Confluence does not know the location, size, or services provided by the systems that it is operating.

² As a basic example: is Mr. Cox treating Confluence Rivers as one consolidated water and wastewater provider or is he counting each of the separate water and waste water systems that were consolidated to form Confluence Rivers separately? Another example: is Mr. Cox counting a system that provides both water and wastewater service as one system or two?

DR 2003

26. DR 2003 requested Confluence Rivers to “[p]lease provide a list, including location, service provided, and number of customers of all applications pending for water and wastewater systems referenced in the direct testimony of Josiah Cox p. 3, 14-18.”

27. The specific testimony segment referenced to in this DR states “[u]tilities within the CSWR affiliate group have additional applications pending in Texas, Tennessee, Louisiana, Florida, North Carolina, Missouri, South Carolina, Arizona, and Mississippi seeking authorization from utility regulators in those states to acquire even more systems and customers.”

28. Confluence Objected to DR 2003 stating as follows:

Confluence Rivers objects to this data request a) as the responsive information is not relevant to the subject proceeding and not proportional to the needs of the case considering the totality of the circumstances to include, but not limited to, the fact that the information concerns entities not regulated by the Commission; b) the request is unduly burdensome in that it will require considerable time and resources to compile the information requested for the 9 states of applications referenced; c) the requested information is immaterial to the issues in this case; and d) the Missouri application information is equally available to OPC in EFIS.

29. Despite its objection, Confluence did provide a response. That response, however, only provided a list of the five pending Confluence Rivers acquisition cases in Missouri. It did not provide any information on the other eight states listed in Mr. Cox’s testimony.

30. Consequently, the OPC requests the Commission to order Confluence Rivers to provide a list of the water and/or wastewater systems that the CSWR affiliate group currently have applications to acquire pending in Texas, Tennessee, Louisiana, Florida, North Carolina, South Carolina, Arizona, and Mississippi and, for each system, indicate where it is located, what services are being provided, and how many customers the system serves.

31. The information sought by the OPC is relevant because Confluence Rivers' witness has made it relevant by offering the statement in question.

32. If the existence of these pending acquisitions were not relevant to this case, then the testimony offered by Confluence Rivers' witness that discusses these entities should be struck on this basis.

33. Further, the information being sought would establish the veracity of the witness' statement. Discovery related to the veracity of a witness testimony is always relevant. *Edwards v. State Bd. of Chiropractic Exam'rs*, 85 S.W.3d 10, 25 (Mo. App. E.D. 2002).

34. In addition, the information is relevant to the extent that these additions will affect the proper allocation of corporate resources at the CSWR level, which has a direct impact on Confluence Rivers' revenue requirement.

35. The information is not unduly burdensome because it should be information that is retained by Confluence Rivers or its affiliates.

36. All members of the CSWR LLC affiliate group, including Confluence Rivers, should know the location, size, and services provided by any system that the CSWR LLC affiliate group is seeking to acquire.

37. The objection that the information is “immaterial” is not a proper objection. Rather, it is just a restatement of the relevance objection. Please see the discussion of relevance above.

38. As Confluence has provided information on the Missouri acquisitions, the OPC is only asking the Commission to compel discovery on the other eight states. Confluence Rivers’ objection that the Missouri application information is equally available to OPC in EFIS is therefore irrelevant.

DR 2004

39. DR 2004 requested Confluence Rivers to “[p]lease provide verification that Central States is the single largest owner of individual domestic wastewater treatment plants in the United States and one of the largest owners of individual drinking water systems in the United States as referenced in the direct testimony of Josiah Cox, p. 10, 12-14.”

40. The specific testimony segment referenced to in this DR states “[i]n December of 2022 CSWR became the single largest owner of individual domestic wastewater treatment plants and one of the largest owners of individual drinking water systems in the US.”

41. Confluence objected to DR 2004 stating “the responsive information is immaterial to the issues in this case.”

42. Despite its objection, Confluence Rivers did provide a response to DR 2004, which stated, in its entirety, that “[v]erification is found by searching unique NPDES permit numbers in federal ECHO database.”

43. This response is incomplete because it only explains how the Company believes verification may be found without actually providing verification. Further, Confluence Rivers has not provided any “unique NPDES permit numbers” for its systems or explained how searching “unique NPDES permit numbers” in the “federal ECHO database” would lead to a conclusion that “Central States is the single largest owner of individual domestic wastewater treatment plants in the United States.” In short, this answer is a meaningless statement that offers no useful information.

44. Consequently, the OPC requests the Commission to order Confluence Rivers to provide an actually meaningful answer to the DR that demonstrates exactly how Confluence has verified its claim to be “the single largest owner of individual domestic wastewater treatment plants in the United States.”

45. With regard to the objection raised by Confluence Rivers, the OPC continues to point out that claiming something is “immaterial” is not a proper objection. This is really an objection to relevance.

46. The information being requested seeks verification of the statements made by a witness. Discovery related to the veracity of a witness testimony is always relevant. *Edwards v. State Bd. of Chiropractic Exam'rs*, 85 S.W.3d 10, 25 (Mo. App. E.D. 2002).

DR 2005

47. DR 2005 requested Confluence Rivers to “[p]lease provide a five-year breakdown by year and water/waste water system of Confluence customer accounts that have been transferred to a collection agency.” The DR further requested Confluence Rivers (a) “[p]lease provide a narrative explanation for what threshold (if any) point triggers the transfer to the collection agency” and (b) “please provide a narrative explanation if this practice has changed at any point over the past five years.”

48. Confluence objected to DR 2004 stating “the request is unduly burdensome in that it will require considerable time and resources to compile the information requested by year and individual system.”

49. The OPC has not received any further information related to this DR.

50. This information should not be unduly burdensome.

51. Confluence Rivers should know and keep track of how many customer accounts have been transferred to a collection agency as part of its day-to-day operation.

52. It would be manifestly imprudent for the Company to be routinely transferring delinquent customers to a collection agency without tracking that information.

53. Consequently, the OPC requests the Commission to order Confluence Rivers to either provide whatever tracking information it possess regarding the

transfer of delinquent customer accounts to a collection agency or positively state that it does not track such information.

54. In addition, the OPC requests the Commission order Confluence Rivers to directly address parts (a) and (b) of the DR. These call for narrative responses and do not request the Company provide specific data, so they are not unduly burdensome.

DR 2007

55. DR 2007 requested Confluence Rivers to “[p]lease provide the following information regarding Central State’s Water Resource utilities over the past three-years: [t]he name of the water affiliate and operating U.S. state; [r]egulatory case number; [r]equested and ordered rate increase; and [r]equested and awarded Return on Equity.”

56. Confluence Objected to DR 2007 stating as follows:

Confluence Rivers objects to this data request a) as the responsive information is not relevant to the subject proceeding and not proportional to the needs of the case considering the totality of the circumstances to include, but not limited to, the fact that the information concerns entities not regulated by the Commission; b) the request is unduly burdensome in that it will require considerable time and resources to compile the information requested for each of the affiliates; c) the requested information is immaterial to the issues in this case; d) the Missouri system information is equally available to OPC in an EFIS search, and other state information is equally available to OPC through its own research. The Missouri discovery rules do not require a party to conduct research for the requesting party.

57. Despite its objection, Confluence Rivers did provide a response to DR 2007. However, that response only listed three active rate-filing cases and three

closed rate-filing cases and did not indicate whether these constituted all rate cases conducted by Confluence Rivers and its affiliates over the last three years.

58. In an effort to mitigate the impact of this request, the OPC will forego items (c) and (d) of the initial DR and shorten the list of information requested to just (1) the name of the utility and the state it operates in and (2) the regulatory case number.

59. The OPC consequently requests the Commission order Confluence Rivers to provide (1) the name of the water affiliate and the state of operation and (2) the associated regulatory case number for every Central States Water Resources affiliated utility that has filed a rate case in the last three years.

60. In response to the objection raised, the information being sought by the OPC is relevant in that it demonstrates how other regulators have approached and addressed utilities that are similarly situated to Confluence Rivers. The consideration of how similarly situated utilities are treated is a fundamental cornerstone of expert witness testimony that is routinely presented to this Commission.

61. The request is not unduly burdensome because Central States Water Resources should be keeping track of the rate cases that its own utilities engage in and should be able to readily provide that information. If the information being requested truly required “considerable time and resources to compile,” it would mean that Central States Water Resources is not actively tracking the rate cases its own subsidiary utilities are engaged in, which would be clearly imprudent behavior.

62. The objection that the information is “immaterial” is not a proper objection. Instead, it is just a restatement of the relevance objection. Please see the discussion of relevance above.

63. Finally, the information is not “equally available to OPC through its own research.” It would obviously require the OPC to expend considerable time and effort to track down every rate case filed by a Central States Water Resources affiliated entity across eleven different states because the OPC does not know the names of all the Central States Water Resources affiliated entities nor does the OPC know when those entities filed rate cases.

64. Central States Water Resources, and by extension its wholly owned subsidiary Confluence Rivers, on the other hand, should definitely know (1) where its affiliate subsidiary are located, and (2) the regulatory case numbers associated with the rate cases filed by those affiliate subsidiaries.

65. If Central States Water Resources, and by extension its wholly owned subsidiary Confluence Rivers, truly considers compiling the regulatory case numbers assigned to its own subsidiaries’ rate cases to be “doing research,” then it is clearly being improperly managed as this information would be readily available to any properly managed company.

DRs 3002 – 3005

66. DR 3002 requested Confluence Rivers to “[p]lease provide all correspondence between CoBank and Confluence Rivers Utility Operating Company Inc. since June 1, 2022.”

67. DR 3003 requested Confluence Rivers to “[p]lease provide all correspondence between CoBank and CSWR, LLC since June 1, 2022.”

68. DR 3004 requested Confluence Rivers to “[p]lease provide all correspondence between CoBank and Missouri CSWR, LLC since June 1, 2022.”

69. DR 3005 requested Confluence Rivers to “[p]lease provide all correspondence between CoBank and Confluence Rivers Utility Holding Company, LLC since June 1, 2022.”

70. Confluence Rivers objected to DRs 3002 through 3005 with the same objection, which is as follows:

Confluence Rivers objects to data requests 3002-3005 as information sought in these requests is not relevant to the subject proceeding and is not proportional to the needs of the case to, the extent the information concerns entities not regulated by the Commission (“CSWR, LLC,” “Missouri CSWR, LLC” and “Confluence Rivers Utility Holding Company, LLC”). In addition, Confluence Rivers believes much if not all the information sought in these requests was provided through discovery conducted in Commission File No.WF-2023-0023 and/or in response to obligations imposed by the final order in that case.

71. Despite this objection, Confluence Rivers did provide certain documents to the OPC in response to these DRs.

72. However, based on a review of the information presently available to the OPC (which includes correspondence reviewed in previous cases), the OPC believes that the Company’s response is incomplete.

73. Specifically, in comparing Confluence Rivers’ response for this DR to the Company’s response to Staff DR 17 in case WF-2023-0023 (which requested correspondence with CoBank about the proposed debt financing in the application),

the OPC found a June 21, 2022 9:56 am email that had not been included in Confluence's response in this case. Additionally, the OPC received several emails in response to its own DR 3002 that should have been included in response to Staff's DR 17 from case WF-2023-0023, but which had not been provided in that case.

74. Given this, the OPC believes that Confluence has not provided all correspondence, and associated attachments, for the period requested.

75. Moreover, many of the materials that were provided to the OPC in response to DR 3002 include unjustified redactions and are thus not complete responses.

76. Consequently, the OPC requests the Commission to order Confluence Rivers to (1) provide a complete response to the original DR, and (2) to provide unredacted versions of the information the Company has previously provided.

77. In response to the specific objections raised by the Company, the OPC states as follows.

Relevance and Proportionality

78. The material being requested by these DRs are relevant to the extent that CoBank, the entity with whom correspondence is being requested, is the only entity currently providing long-term debt financing to Confluence Rivers.

79. This long-term debt financing has a direct and obvious impact on the rate of return that the Company may be authorized by this Commission, which generally constitutes a material component of the utility's revenue requirement.

80. In requesting these correspondences, the OPC is seeking, among other things, to assess and understand the main factors CoBank and Confluence discussed and analyzed in determining the amount, cost (*i.e.* interest rate and fees), and specific covenants included in the debt financing agreement.

81. This correspondence would likely provides insight regarding CoBanks' overall evaluation of the Company's business and financial risk, which may also include comparisons to loan terms assigned to Confluence's affiliates.

82. With regard to the claim of proportionality, Confluence Rivers offers a mere recitation of law without any suggested rationale to support it. The material being requested is proportional to the needs of the case because it has the potential to significantly alter the Commission's authorized rate of return (and subsequently the overall revenue requirement); because the correspondence should be readily accessible to Confluence, its affiliates, or its agents; and because the information cannot be readily or easily acquired by the OPC thorough other channels.

Relationship to Affiliate Entities

83. Confluence objected to these DRs to "the extent the information concerns entities not regulated by the Commission ("CSWR, LLC," "Missouri CSWR, LLC" and "Confluence Rivers Utility Holding Company, LLC")."

84. This is not a reasonable basis to object to a DR.

85. Both the Commission and the regulatory experts that regularly appear before the Commission rely heavily on information concerning entities the

Commission does not regulate when determining what rates a utility should be authorized to recover.

86. For example, Confluence Rivers' own witness in this case, Mr. Dylan W. D'Ascendis, relied on a proxy information of several parent/holding companies of operating utilities not under the regulation of this Commission in developing his proposed rate of return.

87. To the extent that Confluence Rivers' objection is to be understood as claiming that the information requested is not within Confluence Rivers' possession, custody, or control, the objection is still inaccurate.

88. All of the entities identified by the Company either exert control over Confluence Rivers or share common control with the Company through some ultimate parent company.

89. As such, each of these entities would constitute an affiliate of Confluence Rivers as the term is generally understood and defined. *See affiliate*, BLACK'S LAW DICTIONARY DELUXE ED. 72 (11th ed. 2019) ("A corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation.");³ *see also* 20 CSR 4240-20.015(1)(A) (effectively adopting the Black's Law Dictionary definition of affiliate for Regulated Electric Corporations) and

³ As used by Black's Law Dictionary, the term "corporation" includes a "limited-liability company." *Corporation*, BLACK'S LAW DICTIONARY DELUXE ED. 429, 431 (11th ed. 2019) (including nested term "limited-liability corporation" and cross-referencing "limited-liability company"); *Company*, BLACK'S LAW DICTIONARY DELUXE ED. 350, 351 (11th ed. 2019) (defined primarily as "[a] corporation" and including nested term "limited-liability company," which is noted as being "also termed limited-liability corporation").

20 CSR 4240-40.015(1)(A) (effectively adopting the Black’s Law Dictionary definition of affiliate for Regulated Gas Corporations).

90. Moreover, the information available to the OPC indicates that there are individual persons who either **_____

_____ **

91. In particular, it is the OPC’s understanding and belief that **_____

_____ **

92. Given these factors, the information being requested is plainly within the power and control of Confluence Rivers either by virtue of this affiliate status **-

_____ ** Any argument to the contrary is merely an attempt to abuse the Company’s corporate structure to hide relevant information and thwart regulatory oversight.

93. Further, the Commission has a clear legislative grant of authority to request, pursue, and review information in the possession of individuals (including corporations and limited-liability companies) beyond those entities whose rates for service it regulates. *See, e.g.*, RSM. § 393.140(8) (granting the Commission the power to “power to examine the accounts, books, contracts, records, documents and papers of any such corporation or person” without limitation to only those corporations whose

rates it regulates); RSM. § 393.140(9) (granting the Commission the power “to compel, by subpoena duces tecum, the production of any accounts, books, contracts, records, documents, memoranda and papers” without limitation to only those corporations whose rates it regulates); RSM. § 386.450 (granting the Commission the power to order “the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said corporation, person or public utility in any office or place within or without this state” without limitation to only those corporations whose rates it regulates); *see also* 20 CSR 4240-20.015(6) (“To the extent permitted by applicable law and pursuant to established commission discovery procedures, a regulated electrical corporation shall make available the books and records of its parent and any other affiliated entities when required in the application of this rule.”), 20 CSR 4240-40.015(6) (“To the extent permitted by applicable law, and pursuant to established commission discovery procedures, a regulated gas corporation shall make available the books and records of its parent and any other affiliated entities when required in the application of this rule”).

Prior Provision of Information

94. The OPC only seeks information that has not previously been provided. This includes the redacted segments of the documents that Confluence provided in response to these DRs.

DRs 3006 – 3009

95. DR 3006 requested Confluence Rivers to “[p]lease provide all correspondence between potential lenders/debt investors and Confluence Rivers Utility Operating Company Inc. since June 1, 2022.”

96. DR 3007 requested Confluence Rivers to “[p]lease provide all correspondence between potential lenders/debt investors and CSWR, LLC since June 1, 2022.”

97. DR 3008 requested Confluence Rivers to “[p]lease provide all correspondence between lenders/debt investors and Missouri CSWR, LLC since June 1, 2022.”

98. DR 3009 requested Confluence Rivers to “[p]lease provide all correspondence between lenders/debt investors and Confluence Rivers Utility Holding Company, LLC since June 1, 2022.”

99. Confluence Rivers objected to DRs 3006 through 3009 with the same objection, which is as follows:

Confluence Rivers objects to data requests 3006-3009 a) as the information sought in these requests is not relevant to the subject proceeding and is not proportional to the needs of the case to the extent the information concerns entities not regulated by the Commission (“CSWR, LLC,” “Missouri CSWR, LLC” and “Confluence Rivers Utility Holding Company, LLC”).

100. Confluence Rivers has not provided any response to these DRs.

101. The OPC requests the Commission order Confluence Rivers to provide clear and complete answers to these DRs that include all documents requested.

102. Because the objection to DRs 3006 – 3009 mirror in large part those for 3002 – 3005, the OPC will direct the Commission to the response to the Company’s objections previously identified in for DRs 3002 – 3005 as its response to the Company’s objections for 3006 – 3009.

103. The only material difference regarding the objections is that DRs 3006 - 3009 request documents and other information that is relevant not because it provides information on what long-term debt financing the Company did receive, but rather, because it provides insight into what other long-term debt financing options may have been available to the Company.

104. Evidence that Confluence Rivers has deliberately under-leveraged its capital structure by foregoing or otherwise undermining other potential debt offers would support a recommendation by the OPC, or any other party to this proceeding, that the Commission should impute a higher debt to equity ratio than that implied on Confluence’s books. This makes the evidence directly relevant to this case. *State ex rel. BNSF Ry. Co.*, 356 S.W.3d at 172 (“Missouri’s discovery rules allow parties to obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery **or to the claim or defense of any other party.**”).

DRs 3010 – 3011

105. DR 3010 requested Confluence Rivers to “[p]lease provide information detailing all outstanding loans/debt for all of out-of-state affiliates of Confluence Rivers Utility Operating Company. This information shall include current outstanding balance, terms and conditions of the outstanding debt, and the name of the financial institution/debt investors loaning funds to the affiliate.”

106. DR 3011 requested Confluence Rivers to “[p]lease identify the current ratemaking capital structure allowed for out-of-state affiliates of Confluence Rivers Utility Operating Company.”

107. Confluence Rivers objected to DRs 3010 and 3011 with the same objection, which is as follows:

Confluence Rivers objects to data requests 3010 and 3011 as the information sought in these requests is not relevant to the subject proceeding and is not proportional to the needs of the case to the fact that the information concerns entities not regulated by the Commission (“out-of-state affiliates of Confluence Rivers Utility Operating Company”). In addition, the information sought in these requests is, in whole or in part, available to OPC from public records.

108. Despite its objection, Confluence Rivers provided a response to these DRs that identified docket numbers for rate cases brought by Confluence Rivers’ affiliate utilities operating in other states, but did not otherwise answer the question.

109. Consequently, the OPC requests the Commission to order Confluence Rivers to provide complete responses to DRs 3010 and 3011, including without limitation, providing the current ratemaking capital structure allowed for out-of-

state affiliates of Confluence Rivers Utility Operating Company instead of just providing docket numbers.

110. In response to the specific objections raised by the Company, the OPC states as follows:

Relevance and Proportionality

111. The information being sought in DRs 3010 and 3011 is relevant as it provides evidence regarding what other regulatory commissions have found to be just and reasonable with regard to debt costs and capital structures for similarly situated utilities.

112. Consideration of the financing arrangements for similarly situated utilities (which clearly would include Confluence Rivers' affiliate utility operating companies) is a commonly used tool for determining the fairness and reasonableness of an authorized rate of return.

113. Regarding proportionality, Confluence has offered no rational basis as to why the information sought is not proportional to the needs of the case, especially given the relevance discussed above, and the information sought is readily available to Confluence Rivers through the medium of the common ownership and control of Confluence Rivers and its affiliate utility operating companies by the mutually shared parent company: CSWR LLC.

Relationship to Affiliate Entities

114. The OPC incorporates by reference its response to the same objection raised to DRs 3002 – 3005

115. The use of information concerning utilities not directly regulated by the Commission is a common tactic and has been relied on by Confluence Rivers' own witness in this case, Mr. Dylan W. D'Ascendis, who relied on a proxy of several utilities not under the regulation of this Commission in developing his testimony.

Availability of the Information to the OPC through Public Records

116. Confluence Rivers' objection claims "the information sought in these requests is, in whole or in part, available to OPC from public records."

117. This is not accurate.

118. The OPC reviewed the docket numbers provided in the response that Confluence Rivers did offer, however, the financing details sought by the OPC were redacted in the publicly available version of those records.

119. Confluence Rivers, however, would have access to the un-redacted version of these documents through the medium of its parent Company (CSWR LLC), who also owns the affiliates from which information is sought.

DR 3012

120. DR 3012 requested Confluence Rivers to “[p]lease provide the documents Marty Moore provided to Bryan Ervin as it relates to the email exchange starting on June 28, 2021.”

121. Confluence provided an objection that “the information responsive to this request is not relevant to the subject proceeding” and that “Confluence Rivers believes much if not all the information sought in this request was provided through discovery conducted in Commission File No.WF-2023-0023.”

122. The OPC consequently requests the Commission issue an order compelling Confluence Rivers to provide the requested documents.

123. The information is relevant because it concerns the due-diligence that CoBank performed on Confluence and its affiliates for purpose of determining whether or not to provide debt capital.

124. It thus represents the objective opinion of a third-party debt investor regarding the Company.

125. The documents have not been provided in case WF-2023-0023 as Confluence suggests. If they had, the OPC would not be requesting them again here.

DR 3018 – 3020

126. DR 3018 requested Confluence Rivers to “[f]or quarterly periods March 31, 2020, through December 31, 2022, please provide quarterly financial statements for US Water Systems LLC, CSWR LLC, Missouri CSWR LLC, Hillcrest Utility Operating Company, Raccoon Creek Utility Operating Company, Elm Hills Utility Operating Company, Indian Hills Utility Operating Company, Osage Utility Operating Company and Confluence Rivers Utility Operating Company.”

127. DR 3019 requested Confluence Rivers to “[f]or annual periods December 31, 2020, through December 31, 2022, please provide annual financial statements for US Water Systems LLC, CSWR LLC, Missouri CSWR LLC, Hillcrest Utility Operating Company, Raccoon Creek Utility Operating Company, Elm Hills Utility Operating Company, Indian Hills Utility Operating Company, Osage Utility Operating Company and Confluence Rivers Utility Operating Company.”

128. DR 3020 requested Confluence Rivers to “[f]or annual periods December 31, 2020, through December 31, 2022, please provide annual audited financial statements and notes to financial statements for US Water Systems LLC, CSWR LLC, Missouri CSWR LLC, Hillcrest Utility Operating Company, Raccoon Creek Utility Operating Company, Elm Hills Utility Operating Company, Indian Hills Utility Operating Company, Osage Utility Operating Company and Confluence Rivers Utility Operating Company.”

129. Confluence Rivers objected to DRs 3018 and 3020 with the same objection, which is as follows:

Confluence Rivers objects to data requests 3018-3020 as information responsive to these requests is not relevant to the subject proceeding and is not proportional to the needs of the case to the extent it seeks information regarding entities not regulated by the Commission. (US Water Resources [sic], LLC, CSWR, LLC, and Missouri CSWR, LLC). In addition, to the extent the requests seek information regarding US Water Systems, that information is not within Confluence Rivers' possession, custody, and control.

Without waiving its objection, Confluence Rivers will seek to provide the requested information as to CSWR LLC, Missouri Central States Water Resources, LLC (as, to Confluence Rivers' knowledge, no company named Missouri CSWR, LLC exists in Missouri), Hillcrest Utility Operating Company, Raccoon Creek Utility Operating Company, Elm Hills Utility Operating Company, Indian Hills Utility Operating Company, Osage Utility Operating Company and Confluence Rivers Utility Operating Company.

130. In accordance with the second paragraph of its objection, Confluence Rivers did ultimately provide a response to these DRs. However, that response only directed the OPC to review the Company's response to irrelevant Staff DRs and did not provide all the information requested.

131. The OPC consequently requests the Commission order Confluence Rivers to produce the documents requested in DRs 3018 through 3020 for all the utilities identified in the DRs.⁴

132. In response to the specific objections raised by the Company, the OPC states as follows:

⁴ It should be noted that in Confluence Rivers' affiliate's (Elm Hills Utility Operating Company) 2020 rate case, Case No. WR-2020-0275, OPC requested and received quarterly financial statement information for all of CSWR LLC's Missouri operating utilities.

Relevance and Proportionality

133. The information being sought in these DRs are necessary to analyze the individual companies that made up Confluence Rivers before its merger and, in particular, to analyze the financial performance of the companies after they were authorized rate increases by this Commission.

134. In the Elm Hill's rate case, Case No. WR-2020-0285, the OPC demonstrated the financial stability of these affiliates after investments in these systems were factored into the rates charged to customers.

135. This information is essential to assessing the business risk of these investments and a corresponding fair and reasonable rate of return to allow on these investments and is therefore relevant. *State ex rel. BNSF Ry. Co.*, 356 S.W.3d 172..

Relationship to Affiliate Entities

136. The OPC incorporates by reference its response to the same objection raised to DRs 3002 – 3005.

Issues Related to US Water System

137. Confluence Rivers objected “to the extent the requests seek information regarding US Water Systems LLC, that information is not within Confluence Rivers’ possession, custody, and control.”

138. This is not accurate.

139. Two of Confluence Rivers' witness for this case, **_____

_____ ** and thus have direct access to the information being requested.

140. Because Confluence Rivers' witnesses have direct access to the information being requested, that information is sufficiently within the Company's possession, custody, and control to be provided to the OPC via discovery.

DR 3023

141. DR 3023 requested Confluence Rivers to "[p]lease provide copies of all materials/minutes from member meetings pursuant to the US Water Systems LLC Agreement."

142. Confluence Rivers objected to data request 3023 claiming (1) "the information sought is not relevant to the subject proceeding and is not proportional to the needs of the case because the information sought concerns an entity not regulated by the Commission[,]" (2) "the request is overly broad and unduly burdensome in that it requests 'all materials/minutes,' and is not limited in timeframe[,] and (3) that "[t]he request also seeks information that is beyond Confluence Rivers' possession, custody, and control."

143. Confluence has not provided any response to this DR.

144. The OPC requests the Commission order the Company to produce the requested materials.

145. The information is relevant because US Water Systems appears to be the ultimate parent Company of Confluence Rivers (**_____

_____ **) and these materials thus represent the ultimate investment and capitalization decisions and policies for Confluence Rivers.

146. The request is not overly broad and unduly burdensome because US Water Systems LLC is only five years old and **_____

_____** so the volume of materials should be exceedingly low.

147. The information being requested is also within Confluence Rivers' "possession, custody, and control" because it requests information made available to US Water System LLC's members, **_____

_____**

DR 3025

148. DR 3025 requested Confluence Rivers to "[f]or the period January 1, 2020, through March 31, 2023, please provide a copy of all investor presentations CSWR LLC's management has made to U.S. Water Systems LLC investors (to include, but not be limited to Sciens Capital Management LLC and affiliates' representatives)."

149. Confluence Rivers objected to data request 3025 claiming "the information sought is not relevant to the subject proceeding and not proportional to the needs of the case in that it seeks information concerning entities not regulated by

the Commission and/or that is beyond Confluence Rivers' possession, custody, and control.”

150. Confluence has not provided any response to this DR.

151. The OPC requests the Commission order the Company to produce the requested materials.

152. The information is relevant because US Water Systems LLC appears to be the ultimate parent Company of Confluence Rivers and these materials thus represent the ultimate investment and capitalization decisions and policies for Confluence Rivers.

153. The information being requested is also within Confluence Rivers' "possession, custody, and control" because two of Confluence Rivers' witness for this case, **_____

_____ **

154. WHEREFORE, the Office of the Public Counsel respectfully requests the Commission direct the Company to immediately provide all materials and information responsive to OPC DRs 2002, 2003, 2004, 2005, 2007, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3018, 3019, 3020, 3023, and 3025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed, or hand-delivered to all counsel of record this eleventh day of May, 2023.

/s/ John Clizer