

**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 *Motion to Compel*, states as follows:

1. OPC issued data request DR3069 on July 31, 2023.
2. DR3069 in its entirety reads as follows:

In response to Staff Data Request No. 231.1, Confluence provided Staff copies of CSWR presentations made to US Water Systems LLC’s (“US Water”) Board of Directors. These presentations indicate CSWR prepares and transmits quarterly Investment Memorandums to US Water for purposes of requesting funding. Please provide CSWR’s Investment Memorandums for the period January 1, 2019 through June 30, 2023.

3. Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers”) sent the OPC an objection to DR3069 on August 3, 2023, which was received by the OPC at 6:23 pm.

4. Confluence River’s Objection states, in its entirety, as follows:

Confluence Rivers objects in that the information sought is not relevant to the subject proceeding and is not reasonably calculated to lead to the discovery of admissible evidence when considering the totality of circumstances and is not proportional to the needs of the case in

establishing the revenue requirement and the rate design for Confluence Rivers and to the extent the data request requests documents from CSWR, LLC, an entity not regulated by the Commission. Additionally, the data request is overly broad in that it seeks documents for a four and a half year period and without regard to the relationship of any such information to Confluence Rivers, the Missouri utility operating company and subject of this general rate case.

5. The OPC does not agree with the objection presented by Confluence Rivers, as will be explained below.

6. As a result, 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, a full and complete response to OPC DR3069.

7. The OPC has in good faith conferred or attempted to confer by telephone with counsel for Confluence Rivers concerning this matter prior to the filing of this motion pursuant to Commission Rule 20 CSR 4240-2.090(8)(A).

8. The OPC has not sought a conference with the presiding officer in this case pursuant to 20 CSR 4240-2.090(8)(B) because 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.”

9. In support of its motion, the OPC states as follows:

Generally Applicable Standard of Law

10. “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.”).

11. 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))).

Response to Confluence’s Objection

12. OPC’s Data Request 3069 related to documents identified in Confluence’s response to Staff DR No. 231.1.

13. The Commission ordered Confluence to provide such documents in response to Staff's *Motion to Compel* filed in response to the aforementioned Staff data request.

14. OPC's review of such documents has already led to the OPC's discovery of relevant information to the Confluence rate case, specifically as it relates to the Confluence's arguments related to its requested capital structure and rate of return.

15. The OPC is likely to introduce this information as exhibits during the upcoming hearing in this case.

16. As identified in the CSWR presentations to US Water Systems LLC ("US Water"), CSWR drafts and submits quarterly memorandums to US Water for purposes of requesting funding (*i.e.* financing) for purposes of capitalizing its investments in CSWR's current systems and acquisitions of new systems.

17. Cost of capital and capital structure are major drivers of Confluence's requested rate increase in this case.

18. CSWR's request for capital from US Water is directly relevant to the arguments made in this case.

19. CSWR's Investment Memoranda likely provide US Water information directly related to potential risks of investments in utility assets as it compares to expected returns.

20. These issues are the essence of determining a fair and reasonable ROR to award Confluence.

21. On August 2, 2023, the Commission issued an *Order Clarifying Commission Order and Directing Response* concerning Staff DR 231.1, which is referenced in, and forms the basis for, OPC's DR3069.

22. With regard to CSWR and the Commission's authority over it, the Commission's August 2 order stated as follows:

The definitions of both water and sewer corporations include those owning, operating, controlling or managing any water or sewer system. As stated in Mr. Cox's testimony, CSWR, Inc. manages all the corporate entities listed in its organizational chart, which includes Confluence Rivers. CSWR, Inc. appears to meet the definition of a water and sewer corporation due to its manager designation.

23. The Commission further stated as follows:

Given the above questions as to what role US Water and CSWR, Inc. play with regard to Confluence Rivers management and funding, the Commission finds that Staff needs further information regarding the entities seemingly involved in the management of Confluence Rivers, namely US Water and CSWR, Inc.

24. For these same reasons, the Commission should order Confluence Rivers to provide the quarterly Investment Memorandums it prepares and transmits to US Water for purposes of requesting funding for the period January 1, 2019 through June 30, 2023.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission direct the Company to immediately provide all materials and information responsive to OPC DR3069.

