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

STATEMENT OF POSITIONS OF THE MISSOURI OFFICE OF THE PUBLIC COUNSEL

COMES NOW the Office of the Public Counsel ("OPC") and for its *Statement of Positions*, states as follows:

1. The *Order Setting Procedural Schedule* issued by this Commission on February 16, 2023, required, among other things, that:

> For the Statements of Position, each party shall file a simple and concise statement summarizing its position on each disputed issue, including citations to pre-filed testimony supporting its position.

2. Pursuant to the Commission's February 16th Order, the OPC now files this motion summarizing its position on each disputed issue.

3. The OPC's position on any given issue is subject to change in the event new, material information is discovered.

Issue 1: Depreciation

Question: What depreciation rates should the Commission order?

Answer: Neither Confluence Rivers, nor the Commission's Staff have provided sufficient support for their respective depreciation recommendations. *See Rebuttal Testimony of John A. Robinett*, EFIS Item no. 87, pg. 1 ln. 9 – pg. 3 ln. 21. Of the two, however, Staff's recommendation, which is focused primarily on the Commission's previous ordered and accepted rates for Confluence Rivers supplemented with rates agreed to and ordered in the most recent Missouri American Water case, is the better option. *See Direct Testimony of Amanda Coffer*, pg. 3 lns. 1 – 15. For this reason, the Commission should order the depreciation rates recommended by the Commission's Staff.

Issue 2: Recommended Reports

Question: Should Confluence maintain revenue reporting, chemical reporting and electric expense reporting to be provided to Staff when requested in future rate cases?

Answer: Yes. This information will greatly assist Staff in performing the audits necessary in a general rate case. *Surrebuttal Testimony of Paul K. Amenthor*, EFIS Item No. 109, pg. 3 ln. 23 – pg. 7 ln. 14.

Question: Should the Commission order Confluence to maintain a monthly report, to be provided in future rate cases, showing the payment habits of its customers that includes the amounts of actual revenue collected at different time intervals so this data can be used in lead/lag studies in future rate cases?

Answer: Yes. This information will greatly assist Staff in performing the audits necessary in a general rate case. *Surrebuttal Testimony of Jane C. Dhority*, EFIS Item No. 112, pg. 3 ln. 12 – pg. 5 ln. 15.

Question: Should Confluence provide the Confluence General Ledger, CSWR general ledger, and allocation percentages with supporting information on a quarterly basis, including between rate cases?

Answer: Yes. Providing this information will allow Staff "to monitor overall CSWR costs and how they change through review of the CSWR general ledger, as well as, the amount eventually recorded in the Confluence general ledger." *Surrebuttal Testimony of Ashley Sarver*, EFIS Item No. 118, pg. 27 lns. 9 – 16. This, in turn, will allow "Staff to see the entire bucket of costs to be allocated at CSWR and the portion that is recorded in the Confluence general ledger, as these should change as further acquisitions are made, whether in Missouri or another state." *Id.* "Staff's review of the ledgers can verify the allocation factors that CSWR would also provide in the reporting." *Id.*

Issue 3: Income Taxes

Question: How should income tax expense be set for purposes of establishing the revenue requirements?

Answer: For purposes of establishing the revenue requirements for this case, Confluence River's income tax expense should be set such as to allow the Company to recover **only** the amount of taxes that Staff has calculated the Company will actually pay to the IRS, **and no more**. *Surrebuttal Testimony of Kimberly K. Bolin*, EFIS Item No. 110, pg. 6 lns. 1 – 4 ("Given that Confluence has not paid any income taxes to taxing authorities in recent years, and is projected not to pay income taxes for several years out in the future, there is simply no compelling reason to increase Confluence's customer rates at this time for "phantom" income tax expense."); *Surrebuttal Testimony of John S. Riley*, EFIS Item No. 122, pg. 7 lns. 20 – 21 ("Absent IRS directives, including an income tax expense that does not exist is punitive and unjust to the Company's captive customers.")

Questions: If the Commission allows Confluence to recover income tax expense in an amount greater than what would be remitted to the IRS in a given tax year, should the excess income tax expense be booked to a deferred liability account that will offset rate base?

Answer: If the Commission "believes a normalization needs to be established then a corresponding deferred liability, tax or otherwise, should be included to offset the amount." *Surrebuttal Testimony of John S. Riley*, EFIS Item No. 122, pg. 8 lns. 5 – 6.

<u>Issue 4: Accounting Services</u>

Question: What amount of third party accounting fees should be included in the Company's revenue requirement?

Answer: All costs Confluence incurred for third party accounting and tax preparation services performed by Anders CPAs + Advisors ("Anders") should **<u>not</u>** be recovered in the Company's revenue requirement. *Direct Testimony of Jane C. Dhority*, EFIS Item No. 57, pg. 6 lns. 17 – 18. These services are duplicative of Confluence's own, in-house accounting staff. *Id.*; *Surrebuttal Testimony of John S. Riley*, EFIS Item No. 122, pg. 4 lns. 15 – 19 ("Ms. Ms. Dhority stated the work performed by Anders was duplicative to what the Company in-house accountants should be completing. She's absolutely correct. With three different accounting groups working for the same small Company, there are too many bean counters in the mix. As Staff has proposed, the Anders contract should be excluded from the revenue requirement.").

<u>Issue 5: Rate Design/District Consolidation</u>

Question: What rate design should the Commission order for Confluence?

Answer: The Commission should order the rate design options specified as "1Metered—Option 2" and "1Unmetered—Option 2" for water and "1Sewer—Option 2" for sewer found in the direct testimony and related attachments of the OPC's witness Jordan Seaver. *Direct Testimony of Jordan Seaver*, EFIS Item No. 72, pg. 5 lns. 21 – 22. These options avoid the change to single tariff pricing. *Id.* at pg. 6 ln. 2. This is something that many Confluence Customers spoke out against during the local public hearings. *See Surrebuttal Testimony of Geoff Marke*, EFIS Item No. 120, pg. 15 lns. 4 – 7. Instead, the OPC's proposed rate design "avoids very large increases in revenues for some systems that the single tariff pricing options cause" "by increasing each system individually based on spreading out the increase in rates[.]" *Seaver*, at pg. 6 ls. 5 – 7. If the Commission declines to adopt the rate design proposed by the OPC, then the Commission should still "choose an option for rate design that is not single tariff pricing." *Id.* at lns. 10 – 11. In particular, the "modified district-specific pricing" proposed by Staff, is "preferable to the single tariff consolidation and has benefits that the latter does not." *Surrebuttal Testimony of Jordan Seaver*, EFIS Item No. 124, pg. 25 – 26. However, the OPC's proposal is still a better option than either of these because "[i]t is the only rate design option that actually preserves the cost of service differences between the systems[.]" *Id.* at pg. 7 lns. 3 – 4.

Question: What is the appropriate amount of usage for purposes of establishing water rates?

Answer: The Commission should use an estimated usage of 5,000 gallons per customer per month. *Direct Testimony of Keri Roth*, EFIS Item No. 71 pg. 6 lns. 11 – 13. This is the Number that Staff used "based on its experience with customer usage among the various water systems in the state" *Id*. at lns. 19 – 20. It is necessary to use an estimate owing to the extremely poor quality of Confluence's water sales data. *See Direct Testimony of Curt B. Gateley*, EFIS Item No. 62, pg. 1 ln. 21 – pg. 5 ln. 4.

Question: Should Confluence Rivers be permitted to consolidate its rules and regulations and service charges into a single tariff book for water service and a single tariff book for sewer service?

Answer: Yes. In answering that question, it is important to understand the difference between a tariff "book" and the "rates" the Company may charge for service, which are found in its tariff. The tariff book is the collection of individual tariff sheets that make up the tariff as a whole. Confluence currently has multiple different tariff "books" filed with the Commission, which correspond to different water or wastewater systems. The Company is proposing to consolidate these different tariff books into one single book. That is acceptable. In addition to this, many of the separate tariff books contain individual tariff sheets that specify the rate the company will charge for service for that specific system. The different tariff books contain different tariff sheets, which all specify different tariff rates. Confluence is proposing to adopt "single tariff pricing" in this case, which means that the Company seeks to charge one rate to all customers. *Rebuttal Testimony of Keri Roth*, EFIS Item No. 82 pg. 3 lns. 10 – 13. There are significant issues with doing this. For example, "when costs are spread over an ever larger customer base, it can create a disincentive to keep construction costs as low as practicable." *Id*. at pg. 6 lns. 18 – 19. Thus, while Confluence should be permitted to gather all the different tariff sheets currently found in its different tariff books into one consolidated tariff book, the Company should not be permitted to consolidate all of its rates into one single rate. The tariff rates should be spelled out, by system, on separate tariff sheets contained in the one, consolidated tariff book.

Issue 6: Rate Case Expense

Question: Should Confluence be permitted to amortize rate case expense and include the unamortized portion in rate base to receive a return on and of this expense?

Answer: No. Confluence's rate case expenses should be split equally and half should be recovered from customers using a three-year normalization, not an amortization. *Rebuttal Testimony of Jane C. Dhority*, EFIS Item No. 79, pg. 7 lns 18 – 23. "Confluence should not receive carrying costs on this expense." *Id*. Therefore, the unamortized portion should not be included in rate base and allowed to generate a return for the Company.

Question: Should the Company be allowed to recover the cost of its depreciation study?

Answer: No. Water and wastewater utilities in Missouri are not required to file a depreciation study of their assets during a general rate case. *Direct Testimony of John A. Robinett*, EFIS Item No. 67, pf. 1 lns. 15 – 17. Moreover, Confluence did not issue a request for proposal related to the procurement of depreciation services in this case. *Id*. at pg. 2 lns. 1 – 4.

> [B]ecause Confluence failed to perform proper due diligence in soliciting and selecting a depreciation consultant, there is no way to know whether [another] consultant[] would have been a better choice. The Commission is thus left guessing whether the depreciation study performed by Gannett Fleming on behalf of Confluence is the best and most cost effective study. Unfortunately that is a question that cannot be determined (because of Confluence's lack of due diligence) and rate payers should consequently not shoulder the cost of this depreciation study.

Id. at lns. 13 – 19. Finally, Confluence has itself admitted "that none of the accounts recorded in Confluence's books had sufficient data available to perform a traditional statistical service life and net salvage analyses." *Id*. at pg. 3 lns. 9 – 10. "This means Confluence has insufficient data on which to perform a statistically valid life analyses to determine average service lives for its assets." *Id*. at lns. 10 – 12. For all these reasons, the Commission should not allow Confluence to recover the cost of its unnecessary, un-vetted, and effectively unusable depreciation study from customers.

<u>Issue 7: Acquisition Related Expense</u>

Question: What legal and preliminary engineering costs related to acquisitions and applications for certificates of convenience and necessity should be capitalized?

Answer: None. *Direct Testimony of Keith Majors*, EFIS Item No. 64, pg. 15 lns. 1 – 9. "The Commission has consistently denied recovery in cost of service of transaction costs as costs of ownership that should be retained by the purchaser or investors." *Id.* at pg. 14 lns. 19 – 20. Specifically, the Commission has stated:

> As a general rule, only the original cost of utility plant to the first owner devoting the property to public service, adjusted for depreciation, should be included in the utility's rate base. That principle is known as the net original cost rule. The net original cost rule was developed in order to protect ratepayers from having to pay higher rates simply because ownership of utility plant has changed, without any actual change in the usefulness of the plant. If a utility were allowed to revalue its assets each time they changed hands, it could artificially inflate its rate base by selling and repurchasing assets at a higher cost, while recovering those costs from its ratepayers. Thus, ratepayers would be required to pay for the same utility plant over and over again. The sale of assets to artificially inflate rate base was an abuse that was prevalent in the 1920s and 1930s and such abuses could still occur.

Surrebuttal Testimony of Keith Majors, EFIS Item No. 116, pg. 7 lns. 1 – 13. This is solid and well-reasoned logic that the Commission should continue to employ.

<u>Issue 8: Retirements</u>

Question: Has Staff reflected the proper amount of retirements that correspond to the proper level of additions in its accounting schedules?

Answer: The OPC takes no position at this time because it is still developing its understanding of this issue. The OPC reserves the right to address this issue in briefing based on the evidence adduced during the hearing.

<u>Issue 9: Cost of Capital</u>

Question: What is the appropriate capital structure to use in calculating the Company's rate of return?

Answer: The appropriate capital structure to use in setting Confluence's rate of return is 45% common equity and 55% long-term debt, as put forth in the testimony of the OPC's witness Mr. David Murray. *Direct Testimony of David Murray*, EFIS Item No. 66, pg. 4, lns. 14 – 21, schedule DM-D-16. This capital structure is guided by the financial covenants contained in Confluence's December 22, 2022, Credit Agreement with CoBank ACB ("CoBank"). *Id.* at pg. 6 ln. 1 – pg. 7 ln. 22; *Rebuttal Testimony of*

David Murray, EFIS Item No. 86, pg. 4. lns. 12 – 22, pg. 8, lns. 7 – pg. 9. ln. 6.

CoBank was willing to loan Confluence an amount consistent with 55% Total Debt to Total Capitalization. D*irect Testimony of David Murray*, EFIS Item No. 66, Schedule DM-D-3, pg. 11; *Rebuttal Testimony of David Murray*, EFIS Item No. 86, pg. 8, lns. 7 – 13; *Surrebuttal Testimony of David Murray*, EFIS No. 121, pg. 5, ln. 17 – pg. 6, ln. 4. CoBank would have charged an interest rate of 6.6% on the entire amount of debt loaned. *Direct Testimony of David Murray*, EFIS Item No. 66, pg. 19, lns. 17 – 23. This arms-length loan agreement is the most reliable evidence of a market-based capital structure for purposes of setting the ROR for Confluence's current ratepayers. *Rebuttal Testimony of David Murray*, EFIS Item No. 86, pg. 8, lns. 7 – 20. Using this capital structure thus ensures Confluence's current ratepayers are not subsidizing CSWR's "growth through acquisitions" strategy. *Surrebuttal Testimony of David Murray*, EFIS No. 121, pg. 2, lns. 12 – 28, and pg. 11, ln. 14 – pg. 12, ln. 5.

Question: What is the appropriate cost of debt to use in calculating the Company's rate of return?

Answer: The appropriate cost of debt to use in calculating Confluence River's rate of return is 6.23%. *Direct Testimony of David Murray*, EFIS Item No. 66, pg. 19, lns. 14-16. This is different than the stated interest rate of

6.6% on Confluence's loan from CoBank. *Surrebuttal Testimony of David Murray*, EFIS No. 121, pg. 13, lns. 14 – 19. However, this 6.6% is not the effective cost of Confluence's loan. Confluence's upfront administrative costs and patronage credit must be considered to determine the effective cost to Confluence. *Direct Testimony of David Murray*, EFIS Item No. 66, pg. 19, lns. 14-16. Factoring in administrative costs and patronage credit lowers Confluence's effective cost to 6.23%. *Id*. This is the known and measurable cost that should be applied to the 55% debt ratio to set Confluence's allowed ROR. *Surrebuttal Testimony of David Murray*, EFIS No. 121, pg. 13, lns. 1 – 13.

Question: What is the appropriate return on common equity to use in calculating the Company's rate of return?

Answer: The appropriate return on common equity to use in calculating the Company's rate of return is 9.65%. *Direct Testimony of David Murray*, EFIS Item No. 66, pg. 2, lns. 1 – 16. Public Counsel witness David Murray considered the following issues in developing his recommended ROE of 9.65%: (1) the water utility industry's COE compared to that of the natural gas industry and electric utility industry, (2) the Commission's zone of reasonableness standard, (3) the Commission's last authorized ROE of 9.37% for Spire Missouri in Case No. GR-2021-0108 and 9.25% for The Empire District Electric Company in Case No. ER-2019-0374, (3) his recommended ROE of 9% in the 2022 MAWC rate case, (4) and the credit metrics of CSWR's legacy companies, Hillcrest Utility Operating Company, Raccoon Creek Utility Operating Company and Indian Hills Utility Operating Company, which were all merged into Confluence on December 31, 2021. *Id.* at pg. 2, ln. 1 – pg. 2, ln. 16 and pg. 22, lns. 1 – 17. Based on Mr. Murray's analysis of Confluence's and its legacy companies' credit metrics, he determined Confluence's risk profile justified an additional 65 basis point risk premium compared to his 9% ROE recommendation for MAWC. *Id.* at pg. 3, lns. 3 – 16.

<u>Issue 10: Call Center Expense</u>

Question: What amount of call center expense should Confluence recover?

Answer: Confluence should not be permitted to recover any costs associated with the liveVOICE answering service and should further not be permitted to recover 50% of the cost pertaining to Nitor Billing services. *Rebuttal Testimony of Jane C. Dhority*, EFIS Item No. 79, pg. 2 lns. 13 - 15. The liveVOICE costs should be removed because the Company no longer uses those services. *Id.* at lns. 17 – 18. The Nitor Billing Services disallowance should be made because Confluence has not formally amended its contract after ceasing to use Nitor for billing services (which the Company has moved in-house). *Id.* at pg. 2 ln. 17 – pg. 7 ln. 7.

<u>Issue 11: Customer Feedback</u>

Question: Should the Commission order Confluence to use such methods as customer opinion surveys to solicit the opinions of its customers regarding the service that they are receiving?

Answer: Yes. As explained by Staff witness Scott Glasgow:

> Surveys can be a very useful tool. Customer opinion surveys can provide a utility with valuable information such as measuring customer needs and how they feel about a company, products and services. Customer surveys can help indicate how a company performs customer service and measure operational efficiency. Surveys can also be beneficial for benchmarking purposes to see growth or areas of improvement over time.

Direct Testimony of Scott Glasgow, EFIS Item No. 58, pg. 8 lns 17 – 21.

Question: Should the Commission order Confluence to conduct a third-party study regarding customer feedback?

Answer Yes. The above excerpt from Staff's testimony in direct, while a good and useful starting point, does not go far enough to addressing Confluence's "failure to comply with an explicit Commission order or take into account the apparent historical negligence in this area to date." *Rebuttal Testimony of Geoff Marke*, EFIS Item No. 89, pg. 16 lns. 8 – 10. Therefore,

> The Company should submit a competitive RFP for a third-party customer opinion survey throughout each of its systems. The RFP should be based, in part, on feedback given to the Company from Staff and OPC. The selection of the contract will be based on a three-way vote from the

> Staff, OPC, and the Company. If a majority decision cannot be reached, the results will be presented to the Commission for selection. The cost of the study should not exceed $100K and should be recorded entirely below-the-line. Finally, the results of the study should be submitted within one year of rates going into effect and be made public in EFIS.

Id. at lns. 11 – 17. The same Staff witness who's testimony is cited in the prior answer has now further testified that he agrees with this proposal. *Surrebuttal Testimony of Scott J. Glasgow*, EFIS Item No. 114, pg. 6 lns. 1 – 4.

<u>Issue 12: Uncollectible Expense</u>

Question: What amount of Uncollectible Expense should be used to set the revenue requirement?

Answer: The actual net write offs experienced by Confluence for the 12 months ending December 31, 2022, as calculated by the Commission's Staff should be used to set the revenue requirement. *Surrebuttal Testimony of Paul K. Amenthor*, EFIS Item No. 109, pg. 3 lns. 5 – 8. This calculation relies on "known historical information that shows actual experience of delinquencies" and "is consistent with the methodology used in determining the proper uncollectible expense for other Missouri utilities." *Id.* at pg. 3 lns. 14 – 20.

Issue 13: Fire Protection

Question: Should the Commission disallow hydrant investments from rate base for the Terre Du Lac system based on the investments not being used and useful?

Answer: Yes. The Commission should disallow $22,304 "from account 348.000 related to fire hydrants as these assets do not appear to be used or useful to the fire department of Terre Du Lac." *Rebuttal Testimony of Geoff Marke*, EFIS Item No. 89, pg. 19 lns. 7 – 8.

Question: Should the Commission order Confluence to meet with representatives of Staff, OPC, and the Terre Du Lac fire department to pursue possible avenues for funding to address fire protection concerns?

Answer: Yes. *Rebuttal Testimony of Geoff Marke*, EFIS Item No. 89, pg. 19 lns. 8 – 15.

Issue 14: Operations, Maintenance, and Oversight

Question: Should the Commission order Confluence to create and follow written procedures for auditing contract operator performance and to improve maintenance and oversight activities such that it responds to problems as they occur?

Answer: Yes. *See*, *e.g.*, *Direct Testimony of Angela Schaben*, EFIS Item No. 68, pg. 6 ln. 7 – pg. 10 ln. 16.

Question: Should Confluence be required to hire or designate not less than one employee solely dedicated to Missouri operations?

Answer: Conditionally yes. This is a recommendation proposed by Staff witness Curt B. Gateley. *Direct Testimony of Curt B. Gateley*, EFIS Item No. 62, pg. 13 ln. 8 – pg. 14 ln. 8. This recommendation was prompted, in part, by Staff's concerns regarding Confluence's over-reliance on third-party contractors to handle the management of its water and wastewater systems. *Id.* at pg. 11 lns. 5 – 10; *Surrebuttal Testimony of Curt B. Gateley*, EFIS Item NO. 113, pg. 10 lns. 19 – 21 ("Staff believes that Confluence's current business model of contracting nearly all of the tasks of running a utility is not sustainable in the long term."). The OPC shares staff's concerns. *Rebuttal Testimony of Geoff Marke*, EFIS Item No. 89, pg. 9 lns. 18 – 21. However, the OPC has offered a different proposal, which is outlined in the testimony of OPC witness Dr. Geoff Marke. *See Rebuttal Testimony of Geoff Marke*, EFIS Item No. 89, pg. 9 ln. 23 – pg. 10 ln. 2. Should the Commission **not** agree with the OPC's proposal, then it should instead issue the order as set forth in Mr. Gateley's testimony.

Question: Should the Commission order a disallowance related to the Company's lack of written procurement policies or guidelines, and if so, how much?

Answer: Yes. "CSWR does not utilize formal procurement bid scoring metrics and do not appear to follow formally documented practices related to procurement[.]" *Direct Testimony of Angela Schaben*, EFIS Item No. 68, pg. 10 lns. 9 – 10. In addition, "[a] formal scoring process of competitive bidding is not completed." *Id.* at pg.8 lns. 8 – 9. This is a problem because "[f]ormal documentation closes employee knowledge gaps and provides a means for developing task delegation processes" while "[d]efficient documentation practices jeopardizes professional growth and creates procedural risks when an employee with all the knowledge leaves the Company and the remaining employees struggle to fill in the knowledge gap." *Id.* at pg. 8 lns. 13 – 17. In fact, independent studies have shown that "effective management of third party spend can on average release savings of between 7-12%." *Id.* at pg. 8 lns. 4 – 5. The Commission should therefore disallow a portion of Confluence's "requested amount for contracted operations to account for inefficiencies." *Id.* at pg. 10 lns. 12 – 13. "The total disallowance amounts to $69,786 for water operations, $92,921 for sewer operations, and $46,274 of allocated contract services equaling $208,981 overall." *Id.* at lns. 13 – 15.

Question: Should the Commission order a disallowance related to Confluence's contract-based business model, and if so, how much?

Answer: Yes. As both Staff and OPC witnesses pointed out, the Company's overreliance on third-party contractors is a detriment to its Missouri customers. The Commission should therefore order the disallowance proposed in the testimony of the OPC's witness Dr. Geoff Marke. That disallowance is for "$1,094,426 from the Company's combined water and wastewater operations expense budget, which is currently pegged at $1,694,426 annually in Staff's filed accounting schedules" *Rebuttal Testimony of Geoff Marke*, EFIS Item No. 89, pg. 9 lns. 23 – 25. "The remaining balance of $600,000 should be used to hire and train nine new full-time employees to oversee the Company's Missouri water and wastewater assets full-time." *Id.* at pg. 9 ln. 26 – pg. 10 ln. 1. The $600,000 is more than enough to retain nine water and/or wastewater managers and nine people is more than enough to handle Confluence's system (even taking geographical considerations into effect). *Id.* at pg. 10 ln. 3 – pg. 12 ln. 6. In fact, this would "increase the number of main operators for Confluence's systems." *Id.* at pg. 13 lns. 6 – 7. Even if the Commission were to decline to make this adjustment, there are still significant savings that can be achieved by moving the Company's operation of its water and wastewater systems. "Confluence could hire as many as twenty operators and still produce cost savings of $494,426 for customers based on Staff's filed accounting schedules." *Id.* at pg. 13 lns. 22 – 23.

<u>Issue 15: Customer Communication</u>

Question: Should the Commission order Confluence to continue to pursue improvement in their efforts to communicate with customers, particularly boil advisories?

Answer: Yes. *See Surrebuttal Testimony of Geoff Marke*, EFIS Item No. 120, pg. 6 ln. 7 – pg. 12 ln. 19.

<u>Issue 16: Meter Testing</u>

Question: Should the Commission order Confluence to establish a customer meter testing program compliant with 4240-10.030(38)?

Answer: Yes. Staff witness Curt B. Gateley discussed the problems with the Companies current data collection and management at length. *Direct Testimony of Curt B. Gateley*, EFIS Item No. 62, pg. 1 ln. 21 – pg. 5 ln. 4. The Commission should adopt his recommendations as set forth in direct testimony. *Id.* at pg. 5 lns. 5 – 19.

<u>Issue 17: Advanced Meter Infrastructure Investments</u>

Question: Should the Commission disallow any costs related to AMI meter investments?

Answer: Yes. Confluence has at least two systems where it has deployed an Orion AMI meter attachment. *Direct Testimony of Geoff Marke*, EFIS Item No. 65, pg. 8 lns. 24 – 26. These meters could **<u>theoretically</u>** provide some benefits to customers. *Id.* at pg. 9 lns. 8 – 14. However, "Confluence has not made the software investment to enable those customers to visualize 15-minute interval data of water usage (e.g., personalized online customer portal)." *Id.* at pg. 10 lns. 3 – 4. "If a customer experiences a higher than expected water usage due to a possible leak the only way that customer would be aware of it is in their monthly bill." *Id*. at lns. 5 – 6. Moreover, Confluence's current customer bills does not possess the means to convey that information. *Id*. at ln. 7.

Confluence has not performed any cost benefit analysis for the deployment of AMI meters. *Rebuttal Testimony of Geoff Marke*, EFIS Item No. 89, pg. 17 lns. 6 – 8. There is currently no evidence to show the Company even performed an RFP related to these investments. *Id*. at lns. 9 – 11. For all these reasons, the Commission should disallow $26,768 from the Company's revenue requirement. *Surrebuttal Testimony of Geoff Marke*, EFIS Item No. 120, pg. 13 ln. 23 – pg. 14 ln. 2.

<u>Issue 18: Use of Employees rather than Contractors</u>

Question: Should the Commission order Confluence to begin transitioning from using contract wastewater and drinking water operators to Confluence employees performing these functions?

Answer: Yes. This recommendation was made independently by both the OPC and Staff. The OPC recommends a disallowance of costs unnecessarily incurred to hire third-party operators. *See Rebuttal Testimony of Geoff Marke*, EFIS Item No. 89, pg. 9 ln. 23 – pg. 10 ln. 2. The Staff takes a slightly different approach:

> To that end, Staff recommends that in addition to immediately hiring or designating additional personnel for

> overseeing contract operators, the Commission should order Confluence to begin hiring its own employees such that it may end its contracts for operation to the extent practicable. Staff recommends that within 60 days of the effective date of an order on this rate case, Confluence should be required to submit a plan to reduce reliance on contract operators, with a goal of no less than 50% of its plants being operated by Confluence employees prior to its next rate case.

Surrebuttal Testimony of Curt B. Gateley, EFIS Item No. 113, pg. 11 lns. 6 – 12. In either case, the Company needs to change tactics. *Id* at pg. 10 lns. 19 – 21 ("Staff believes that Confluence's current business model of contracting nearly all of the tasks of running a utility is not sustainable in the long term.").

Issue 19: Capital Improvement Plan

Question: Should the Commission order Confluence to file a 5-year capital improvement plan, updated annually, in this docket each year no later than March 31st? This plan will be reviewed with Staff and OPC for discussion of prioritization of projects. The first plan shall be filed no later March 31, 2024. The plan shall include: a. Projected budgets for the tasks to be completed; b. A brief summary of the improvement c. Projects shall be broken out by system, and by utility type; d. A schedule for testing of existing master meters, and installation of master meters where none are presently installed; e. The plan will include a narrative discussing why projects were chosen for year 1 of the plan in lieu of other projects.

Answer: Yes. "Confluence stated in response to Staff Data Request No. 0036 that Confluence has no short-term or long-term plans or guidelines." *Direct Testimony of David C. Roos*, EFIS Item No. 60, pg. 5 lns. 5 – 6. Based on these and other responses, the Commission's Staff has determined "Confluence has no adequate long-term capital plan for its Missouri water and sewer utilities." *Id.* at ln. 11. The Commission should therefore order the Company to file a 5-year capital improvement plan as described in this question:

> At a minimum, this planning process requires an annual meeting between engineering and maintenance personnel to evaluate and discuss issues of any trends that indicate system weakness, as well as customer growth versus capacity. This process provides considerable value in avoiding predictable system failures. Missouri American Water Company routinely submits a five-year capital plan in EFIS, and Staff has also received a five-year capital plan from Liberty Utilities LLC.

Id at lns. 16 – 21.

<u>Issue 20: Late Fees</u>

Question: Should the Commission order Confluence Rivers to eliminate late fees for customers except for customers for whom no ready disconnection method is available?

Answer: Yes. The OPC's expert witness, Dr. Geoff Marke, explains how there is not "any evidence to support that late payment fees are an appropriate deterrent to non-payment" and that "any additional fee added to an already financially struggling customer will increase the likelihood of disconnection." *Direct Testimony of Geoff Marke*, EFIS Item No. 65, pg. 12 lns. 19 – 21. Instead, it is "the threat of disconnection [that] is the primary deterrent to incentivize timely payments, and that Confluence should be doing everything in its power to provide an affordable service, which should include minimizing punitive charges that make it more likely for already struggling customers to fall off." *Id*. at pg. 12 ln. 21 – pg. 13 ln. 2. In addition, Dr. Marke has noted several problems with the Company's late fees. The most important is that the late fees found in the Company's tariff does not match what is listed on Confluence's website. *Id*. at pg. 13 ln. 7 – pg. 14 ln. 5. These issue notwithstanding, Dr. Marke did acknowledge that there are some instances where late fees may be needed:

> Perhaps for sewer-only customers who receive water from a personal well. On this end, I believe Mr. Thies makes a compelling argument. In that unique situation, where a Memorandum of Understanding cannot be entered into with a different water provider (e.g. a municipal system) a late fee may serve as a second best solution to a problem that would otherwise require extraordinary measures to cease service (i.e. a backhoe opening up the ground and cutting off the water line). I would not oppose a minimal late fee in such a situation.

Surrebuttal Testimony of Geoff Marke, EFIS Item No. 120, pg. 13 lns. 16 – 21. Consequently, the Commission should order Confluence Rivers to eliminate late fees for customers except for customers for whom no ready disconnection method is available.

Issue 21: Budget Billing

Question: Should the Commission order Confluence Rivers to offer a budget billing option for customers?

Answer: Yes. "Budget billing is an optional payment program utilized by most utilities in Missouri that allows customers to pay a consistent amount for water/sewer use." *Direct Testimony of Geoff Marke*, EFIS Item No. 65, pg. 14 lns. 15 – 17. "This amount is typically based upon customers use the last 12 months." *Id*. It is important to understand that "budget billing does not reduce the amount customers pay for service, rather it spreads the payment out over the year." *Id*. at lns. 18 – 19. This may be a good option for some customers as it can give "more certainty around the water/sewer bill." *Id*. at pg. 15 ln. 2.

Issue 22: Capital v. Expense

Question: Should certain costs capitalized by the Company be treated as a repair expense and normalized for cost of service?

Answer: Yes. As explained by Staff witness Karen Lyons:

> Staff made adjustments to the legacy systems for expenses that Confluence recorded as capital costs. For example, Confluence recorded repairs and inspections for the water and sewer plant as capital costs. These costs should be

> treated as an expense based on the guidance from the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts ("USOA").

Direct Testimony of Karen Lyons, EFIS Item No. 59, pg. 3 lns. 5 – 9. This is sound reasoning and the Commission should order Staff's adjustments be made.

Issue 23: Timesheets

Question: Should the Commission order Confluence to require its employees, including executives, to keep timesheets that show the activities performed and where they were performed?

Answer: Yes. In the absence of time sheets, it will be nearly impossible to determine accurately how to allocate the salaries of CSWR employees working for Confluence between Missouri and the other states where Confluence is active (as well as between acquisition activities and other operations). *Surrebuttal Testimony of Ashley Sarver*, EFIS Item No. 118, pg. 7 ln. 23 – pg. 8 ln. 2.

> If CSWR is allowed to exclude employees from the director level and above from maintaining timesheets, it could have a detrimental impact on customers rates in that Staff's calculations will be less accurate as more employees will no longer be keeping timesheets. This may result in customers paying for more salaries than what is truly occurring.

Id. at pg. 9 lns. 7 – 11. When CSWR acquires new systems, its customers do not get to choose "whether those systems are within or outside of

Missouri, nor whether the time spent on those acquisitions actually comes to fruition or pursuit of the acquisition is dropped." *Id.* at pg. 9 lns. 17 – 20. "Regardless, the salary still exists from the time the employee spent on the acquisition" and "[t]his has a direct impact on the allocation of costs to customers in Missouri." *Id.* at lns. 20 – 21. The necessity of ensuring that Missouri Customers only pay for the work CSWR and Confluence employees perform in relation to its Missouri operations requires Confluence to keep timesheets. Confluence's aversion to this requirement is a naked attempt to force Missouri customers to subsidize the Company's operations in other states and should not be accepted by this Commission. Instead, the Commission should order Confluence to require timesheets to be kept by all employees.

Issue 24: Payroll

Question: What is the appropriate amount of payroll expense to include in Confluence's cost of service?

Answer: $173,602. *Direct Testimony of Ashley Sarver*, EFIS Item No. 61, pg. 23 ln. 19.

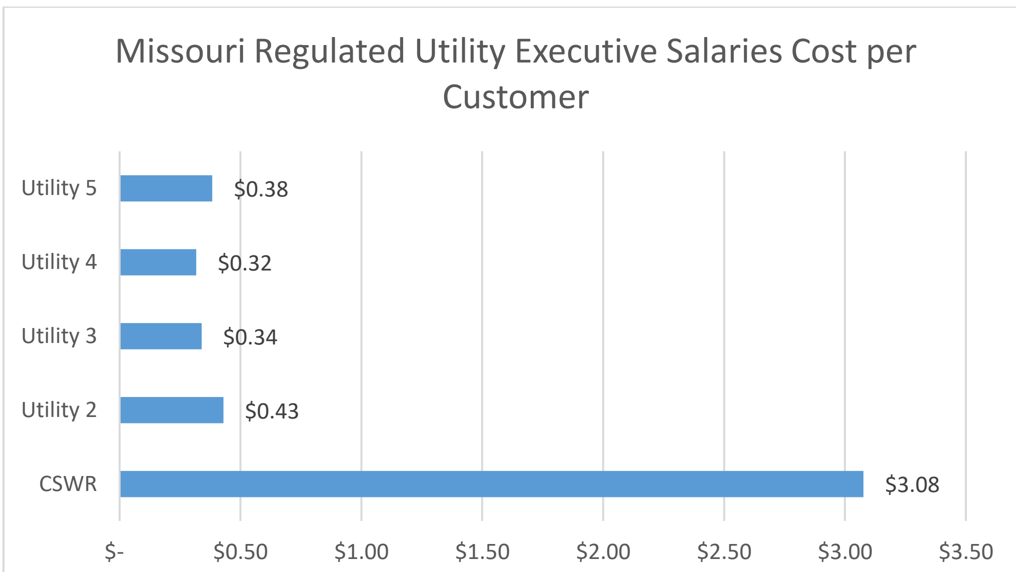
Question: What amount, if any, of executive compensation should be recovered in rates?

Answer: None. Confluence has directly and openly violated the Commission's order to comply with the Unanimous Disposition and Agreement reached in Confluence's last general rate case, Case No. WR-2020-0053, which required Confluence to keep accurate time sheets. *Direct Testimony of Ashley Sarver*, EFIS Item No. 61, pg. 17 ln. 17 – pg. 18 ln. 4. This requirement to keep timesheets is also stated in CSWR's own internal Employee Handbook. *Id.* at pg. 18 lns. 5 – 7. The result of this failure is that Confluence cannot meet its evidentiary burden to show that its executive suite performed any duties directly related to providing service to its existing Missouri customers. As such, Confluence should not be permitted to recover the 7.97% of executive salaries for the CSWR employees that would otherwise be assigned to confluence.

Even if the Commission were to ignore the Company's failure to both abide by Commission order and present sufficient evidence to justify cost recovery, there are other reasons for why Confluence should not recover any portion of roughly 8% of executive compensation assigned to Confluence.

> Confluence's president is paid more than the base pay that has been included in the cost of service for utility presidents for all the other major utilities in the State of Missouri. These other Missouri utilities have more employees, are performing a larger portion of the business operations with in house employees, are performing their own construction activities, have a much larger customer base and more complex operations than that of Confluence.

Id. at pg. 18 lns. 13 – 18. The gross overpayment of executive salaries is not isolated to Confluence's President. Analysis performed by the OPC's witness Ms. Anglea Schaben shows that, on an per-customer basis, the average salary for the five highest paid CSWR employees is eight times the per-customer impact of executive salaries for the next highest large Missouri utility:



Rebuttal Testimony of Angela Schaben, EFIS Items No. 88, pg. 6 lns. 1 – 2. "The Company has not provided a valid basis for such exorbitant payroll expenses, exceeding even executive base salaries of fortune 500 companies with millions of customers, given what little the executive class contributes in the day-to-day operation of its water and wastewater systems." *Direct Testimony of Angela Schaben*, EFIS Item No. 68, pg. 5 lns. 20 – 24. "Captive ratepayers should therefore not be extorted to pay for these unreasonable and inflated payroll expenses."

Id.

Question: Should MERIC be used in setting salaries?

Answer: Yes.

> MERIC is the research division for the Missouri Department of Higher Education and Workforce Development's Office of Performance and Strategy. They provide innovative analyses and assistance to policymakers and the public, including studies of the state's economic trends, targeted industries, and labor markets. The Occupational Employment Statistics program is a Federal-State cooperative effort that produces employment and wages estimates for about 800 different occupations. The Missouri program is operated by the Missouri Department of Economic Development / MERIC in cooperation with the U.S. Department of Labor - Bureau of Labor Statistics. This same source was cited above for the cost of living indexes and supports why it is important to at least use a regional basis for developing salaries as opposed to a national resource. MERIC has been recognized with 15 national awards for research excellence since it was formed in 2001. MERIC was developed to provide good information for sound decision-making for both employers and employees. A state resource that is available in the same state and region of the United States would be a strong resource in determining the salary levels for employees in that same state.

Surrebuttal Testimony of Ashley Sarver, EFIS Item No. 118, pg. 20 lns. 8 – 21.

Question: Should a rate for unemployment be applied to Staff's proposed amount of salaries in setting such amounts?

Answer: No. Confluence argues that an unemployment rate, provided by the U.S. Department of Labor – Bureau of Labor Statistics, is necessary to update MERIC data used by Staff and OPC. *Surrebuttal Testimony of Ashley Sarver*, EFIS Item No. 118, pg. 22 ln. 16 – pg. 23 ln. 2. However, "MERIC is in cooperation with the U.S. Department of Labor – Bureau of Labor Statistics and Staff has reviewed the updated information for 2022 and that data has not significantly changed [as Confluence suggests] that it would have due to unemployment and market conditions." *Id.* at pg. 23 lns. 3 – 6.

<u>Issue 25: Employee Benefits</u>

Question: What is the appropriate amount of employee benefits to include in Confluence's cost of service?

Answer: The appropriate amount of employee benefits to include in Confluence's cost of service is the amount recommended by Staff witness Ashley Sarver. *Direct Testimony of Ashley Sarver*, EFIS Item No. 61, pg. 24 ln. 3 – pg. 26 ln. 9

<u>Issue 26: Corporate Allocations</u>

Question: What is the appropriate percent of corporate expenses to be allocated from CSWR to Confluence?

Answer: 7.97%. *Direct Testimony of Ashley Sarver*, EFIS Item No. 61, pg. 5 lns. 16 – 17.

Issue 27: Cell Phone/Internet Reimbursement

Question: Should the Commission allow recovery of cell phone and Internet reimbursement?

Answer: The Commission should only allow recovery of the cell phone owned by CSWR and assigned to Jonathan Meany, Engineering Regulatory Manager. *See Surrebuttal Testimony of Ashley Sarver*, EFIS Item No. 118, pg. 31 lns. 6 – 8. The other two phones owned by CSWR "are not assigned to a specific employee, but rather they are located in a storeroom at CSWR's corporate office." *Id.* Neither of those phones showed any usage during the test year. *Id.* at pg. 31 lns. 9 – 13. They are therefore not used and useful and should not be recovered by the Company.

Any employee of CSWR that is assigned an office phone "should not be reimbursed for their personal cell phones." *Direct Testimony of Ashley Sarver*, EFIS Item No. 61, pg. 5 lns. 16 – 17. In the same vein, no amount of home internet costs for employees should be recovered by the Company. "Internet that is utilized in the office is a necessary business expense, however reimbursing amounts for home internet is not necessary when cell phones allow for internet access and the office is always available for more involved work." *Surrebuttal Testimony of Ashley Sarver*, EFIS Item No. 118, pg. 31 lns. 2 – 4.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this *Statement of Position*, and rule in the OPC's favor on all issues stated herein.

Respectfully submitted,

By: /s/ John Clizer

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this twenty-eighth day of July, 2023.

/s/ John Clizer