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Witness: *Kimberly K. Bolin*
Sponsoring Party: *MoPSC Staff*
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Case No.: *WR-2023-0006*
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MISSOURI PUBLIC SERVICE COMMISSION
FINANCIAL AND BUSINESS ANALYSIS DIVISION

SURREBUTTAL TESTIMONY

OF

KIMBERLY K. BOLIN

CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.

CASE NO. WR-2023-0006

Jefferson City, Missouri
July 2023

**** Denotes Confidential Information ****

1 **SURREBUTTAL TESTIMONY OF**
2 **KIMBERLY K. BOLIN**
3 **CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.**
4 **CASE NO. WR-2023-0006**

5 Q. Please state your name and business address.

6 A. My name is Kimberly K. Bolin. My business address is 200 Madison Street,
7 Suite 440, P.O. Box 360, Jefferson City, MO 65102.

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

9 A. I am the Director of the Financial and Business Analysis Division for the
10 Missouri Public Service Commission (“Commission”).

11 Q. Are you the same Kimberly Bolin who filed direct testimony on May 26, 2023,
12 in this case?

13 A. Yes, I am.

14 Q. What is the purpose of your testimony?

15 A. The purpose of my surrebuttal testimony is to address the rebuttal testimonies of
16 Confluence Rivers Utility Operating Co., Inc.’s (“Confluence”) witnesses Bradley M. Seltzer
17 and Brent Thies concerning the use of Net Operating Losses (“NOLs”) to offset income tax.

18 Q. What is an NOL?

19 A. An NOL results when a utility does not have enough taxable income to utilize
20 all of the tax deductions to which it would otherwise be entitled.

21 Q. On page 2, line 16 through 17, of Mr. Thies rebuttal testimony he cites a
22 difference of approximately \$394,320 associated with Staff’s use of the NOLs. Is this correct?

1 A. No. Staff's use of the NOLs is not the only factor in the \$394,320 difference.
2 Approximately \$209,430 is due to the differences caused by Staff's and Confluence's revenue
3 requirements. Confluence has requested a rate increase of \$3,148,865, and Staff currently
4 recommends a rate increase of \$844,467. Due to Confluence's larger rate increase request,
5 Confluence has approximately \$867,284 more in taxable income than Staff's taxable income,
6 thus Confluence has more income tax expense before the consideration of NOLs.

7 Q. What would Staff's income tax expense be if Staff did not apply any of the NOLs
8 to Confluence's taxable income?

9 A. Staff income tax expense would be \$264,793, which is approximately \$233,742
10 higher than Staff's recommended income tax expense, as of Staff's rebuttal testimony.

11 Q. Mr. Thies states on page 2, line 18 through 19, that Staff has not included any
12 income taxes in its revenue requirement calculation. Is this correct?

13 A. No. In Staff's direct filing, Staff included a company-wide total of \$22,410 for
14 current income taxes. In Staff's rebuttal filing Staff included \$31,051 for current income taxes.

15 Q. Do you agree with Mr. Seltzer that NOLs are tax timing differences?

16 A. No. Tax timing differences occur when the timing used in reflecting a cost
17 (or revenue) for financial reporting purposes (book purposes) is different from the timing
18 required by the IRS in determining taxable income (tax purposes).

19 Q. Can NOLs be attributed to one discrete tax item on an income tax return?

20 A. No. NOLs do not have a set time in which they will be reversed on income tax
21 returns, unlike most tax timing differences.

22 Q. Does Confluence expect that its NOLs will be increasing in the future?

1 A. Yes. In Staff Data Request No. 0120.1, Confluence lists its projected NOL
2 balances for Missouri 2022 as \$9,769,955; 2023 as \$10,923,174; and 2024 as \$10,072,174.

3 Q. What was Confluence's NOL Missouri 2021 balance?

4 A. ** [REDACTED] **. Per Confluence's response to Data Request No. 0120,
5 Confluence's balance of net operating losses could potentially last for six or more tax years.

6 Q. Mr. Seltzer quotes Financial Accounting Standards ("FAS") 109, paragraph 11b,
7 as providing an example of temporary timing differences. What type of temporary timing
8 difference examples are in that paragraph?

9 A. Product warranty liability is provided as the example of a temporary timing
10 difference. Product warranty liabilities are booked as a liability for book purposes and are later
11 used for tax purposes when the liability is paid. NOLs do not represent any future tax deduction
12 that may occur. NOLs are various deductions that the utility cannot take because of the lack of
13 income. NOLs are available to offset future taxable income over an indefinite period of time.
14 Under the Tax Cuts and Job Act (TCJA) of 2017, NOLs can be carried forward indefinitely.

15 Q. Is the Commission required to follow FAS for ratemaking purposes?

16 A. No.

17 Q. On page 7, line 9 through 22, of Mr. Seltzer's rebuttal testimony he cites
18 FERC Order 144; is the Commission bound to follow FERC Orders for purposes of ratemaking
19 in Missouri?

20 A. No.

21 Q. FERC Order 144 discusses "tax normalization." Please provide an overview of
22 the concepts of income tax normalization and income tax flow-through.

1 A. Under the Internal Revenue Service Code (“IRS Code”), a company is allowed
2 to deduct certain costs against income at different times for tax purposes than the timing of
3 when it is allowed to reflect the same costs as a reduction to income for financial reporting
4 purposes. The existence of these book/tax timing differences (“timing differences”) usually
5 provide a net tax benefit to business entities, in that most timing differences serve to reduce a
6 business entity’s taxable income levels below the level of its reported financial income.
7 An example of a timing difference that results in significant financial benefits to companies is
8 the ability of the companies to use “accelerated depreciation” deductions for tax purposes under
9 the IRS Code, in contrast to the straight-line book depreciation methods companies rely upon
10 in determining their financial income.

11 Income tax normalization is the practice of setting rates for income tax expense based
12 on the adjusted book net income of the utility, which serves to delay the recognition of tax
13 timing difference benefits and detriments to ratepayers. Income tax flow-through is the practice
14 of setting rates for income tax expense based on the adjusted taxable income of the utility,
15 which immediately passes on the benefits and detriments of tax timing differences to ratepayers.

16 Q. Who determines whether flow-through or normalization treatment is provided
17 to utilities in setting rates for income taxes?

18 A. For most timing differences, that decision would be made by the utilities’
19 regulatory commissions. However, in regard to the specific timing differences associated with
20 use of accelerated depreciation methods for tax purposes, the IRS Code effectively mandates
21 that regulatory commissions normalize the benefits of the accelerated depreciation tax
22 deductions in setting rates. For this reason, accelerated depreciation is frequently referred to as

1 a “protected” tax timing difference. Other tax timing differences for which the IRS Code does
2 not mandate normalization treatment are referred to as “unprotected” differences.

3 Q. For income tax purposes does Confluence utilize accelerated depreciation?

4 A. No. Confluence utilizes straight line depreciation which is the same method that
5 is used for ratemaking purposes.

6 Q. What has been the practice of the Commission regarding the question of
7 normalization or flow-through of income tax expense?

8 A. The Commission has always normalized tax timing differences that are
9 “protected;” i.e., accelerated tax depreciation. For “unprotected differences,” the Commission
10 has assessed on a case-by-case basis whether the timing difference should be normalized or
11 flowed-through.

12 Q. Mr. Seltzer references the “actual tax doctrine” or “actual tax principle” several
13 times in his rebuttal testimony. What is your understanding of the “actual tax doctrine”?

14 A. Based on Mr. Seltzer’s testimony, it appears to be a purported regulatory rule
15 mandating normalization of all tax-timing differences.

16 Q. Does such a doctrine or principle bind the Missouri Commission?

17 A. Absolutely not.

18 Q. Has the Commission ever adopted the actual tax doctrine or principle?

19 A. No. As discussed above, the Missouri Commission has never had a policy of
20 normalizing all income tax expense tax-timing differences.

21 Q. Why does Staff recommend flow-through treatment of Confluence’s NOLs in
22 this case?

1 A. Given that Confluence has not paid any income taxes to taxing authorities in
2 recent years, and is projected not to pay income taxes for several years out in the future, there
3 is simply no compelling reason to increase Confluence's customer rates at this time for
4 "phantom" income tax expense.

5 Q. When the tax normalization approach is used in setting rates, how is the financial
6 impact of this approach on utilities accounted for?

7 A. The portion of the income tax expense collected from customers that will be
8 retained by the utility until later periods due to normalization treatment is charged to deferred
9 income tax expense accounts. Because the amounts paid in by customers for deferred income
10 tax expense represents capital paid in by ratepayers that the utilities can use for a period of time,
11 it is appropriate to provide customers a return on this capital contribution. By reducing the
12 utility's rate base by the balance of its net collection of accumulated deferred income taxes
13 ("ADIT") at a point in time, customers can see a return on capital contribution.

14 Q. If the Commission were to rule against Staff and decide that NOLs should be
15 normalized in this case, what should the Commission order in addition to this treatment?

16 A. If the Commission were to agree with Confluence's position on the NOL issue
17 in this case and normalize that item for ratemaking purposes, it would be authorizing collection
18 of amounts in current rates by Confluence that would not be paid to taxing authorities until
19 future periods, potentially many years later. In that event, customers would be contributing
20 cost-free capital to Confluence. Accordingly, the Commission should order in this proceeding
21 that any amounts of income tax expense collected in rates that exceed the amount of income
22 taxes actually paid to federal and state taxing authorities in future years to be used as an offset

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Kimberly K. Bolin

1 | to rate bases in future rate proceedings to recognize the capital being forcibly contributed to

2 | Confluence by its ratepayers.

3 | Q. Does this conclude your surrebuttal testimony?

4 | A. Yes it does.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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

AFFIDAVIT OF KIMBERLY K. BOLIN

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW KIMBERLY K. BOLIN and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Surrebuttal Testimony of Kimberly K. Bolin*; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.


KIMBERLY K. BOLIN

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 19th day of July 2023.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: April 04, 2025
Commission Number: 12412070


Notary Public