BEFORE THE PUBLIC SERVICE COMMISSION 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** Tariff Nos. YW-2023-0113 and YS-2023-0114

CONFLUENCE RIVERS STATEMENT OF POSITIONS

COMES NOW, Confluence Rivers Utility Operating Company ("Confluence Rivers") and presents its positions on the issued jointly identified by the Parties on the July 26, 2023 List of Issues.

I. INTRODUCTION

Confluence Rivers is a subsidiary of CSWR, LLC[1]. CSWR, LLC's plan has been to pursue the purchase and recapitalization of failing water and wastewater utilities, both in Missouri and other states. As reflected in its mission statement: CSWR's mission is to bring safe, reliable and environmentally responsible water resources to every community in the United States.

The first water and sewer systems to be purchased by a CSWR, LLC affiliate were the Brandco Investments, LLC systems, as a result of authority granted by this Commission in File No. WO-2014-0340. Those systems were purchased by CSWR, LLC's subsidiary, Hillcrest Utility Operating Company, Inc. (Hillcrest), on March 13, 2015.

The Brandco water and sewer systems were in a complete state of disrepair when acquired by Hillcrest. The Hillcrest Subdivision wastewater treatment plant had been under multiple Missouri Department of Natural Resources (MDNR) and Missouri Attorney General compliance

[1] Which was formerly known as First Round CSWR, LLC.

and enforcement actions. The Hillcrest Subdivision drinking water system had been put on an eight-week boil order due to positive E. coli tests. After tank inspections done by the MDNR it was determined that the most likely source of bacterial contamination was a rusted out vent screen on top of the existing drinking water storage tank possibly allowing bird feces to contact the drinking water system. Due to the Missouri Attorney General formal enforcement actions against the previous owner, residents of the subdivision were unable to sell their homes, because lenders were being unwilling to underwrite home loans in the community.

Hillcrest began construction on the drinking water and wastewater improvements to the Brandco systems approximately 30 days after it acquired the systems. The drinking water and wastewater improvements were completed in the fall of 2015.

Over the next several years, the following CSWR affiliates became Missouri public utilities authorized to provide water and sewer service in Missouri, subject to the regulation of the Commission: Hillcrest; Osage Utility Operating Company, Inc. (Osage); Elm Hills Utility Operating Company, Inc. (Elm Hills); Raccoon Creek Utility Operating Company, Inc. (Raccoon Creek); Indian Hills Utility Operating Company, Inc. (Indian Hills); and Confluence Rivers.

These companies acquired numerous small Missouri water and sewer systems, brought capital to improve those systems, upgraded the services provided to customers, and delivered safe and adequate service where that was not the case prior to acquisitions. CSWR companies have purchased multiple systems in Missouri that were in state-appointed receivership, with numerous MDNR deficiencies and brought those systems back into regulatory compliance for the provision of safe and reliable service. These acquisitions have several times occurred at the urging of either the Missouri Commission Staff or the Missouri Department of Natural Resources.

Effective January 1, 2022, pursuant to the authority of this Commission in File No. WM-2021-0412, Hillcrest, Elm Hills, Osage, Raccoon Creek, and Indian Hills, and Hillcrest, Elm Hills, Osage, Raccoon Creek, and Indian Hills were merged into Confluence Rivers, with Confluence Rivers being the surviving entity. Therefore, this case represents the first rate case for the now merged and consolidated Missouri entities. It also represents the first "general rate case" for these entities, as the prior cases had been filed under the Staff Assisted Rate Case Procedure (Commission Rule 20 CSR 4240-10.075, and its predecessor rule).

As of June 30, 2023, CSWR, LLC affiliates have acquired, and currently are operating 842 water and/or wastewater systems in Arizona, Arkansas, Florida, Kentucky, Louisiana, Mississippi, Missouri, South Carolina, North Carolina, Tennessee, and Texas.

As of the filing of this case, Confluence Rivers provided water service to approximately 4,400 water connections and wastewater service to approximately 4,600 connections, through 42 wastewater facilities and 26 drinking water systems, in portions of the following Missouri counties: Audrain; Benton; Boone; Camden; Cape Girardeau; Clay; Clinton; Cole; Crawford; Franklin; Greene; Jefferson; Johnson; Lincoln; Madison; Montgomery; Perry; Pettis; Phelps; Platte; Polk; Ray; St. Francois; St. Louis; Taney; Warren; and Washington. As of the date of its direct testimony, Confluence Rivers had invested approximately $28.6 million to acquire, upgrade, and improve the water and wastewater systems it currently owns and operates in Missouri.

Generally, Confluence Rivers, and its predecessors, acquired systems in Missouri that have been poorly managed, with failing infrastructure. Many of the prior owners did not have the technical, managerial, and financial ability to make capital investments necessary to ensure regulatory compliance and provide safe, efficient, and reliable service to customers.

The MDNR has been extremely appreciative and complimentary of the work Confluence Rivers has done to correct these issues. MDNR has stated as follows:

> When systems are unable to resolve their technical, managerial, or financial problems, one reliable solution is selling the system to a higher-performing utility operating company. ***In Missouri, Confluence Rivers Utility Operating Company, Inc. (CRUOC) is one of the few utility operating companies who is willing to acquire some of the most difficult failing systems. CRUOC has consistently taken swift actions after taking control of these systems to bring them into compliance by employing qualified operators, effectively administering and managing the systems, and investing in repairs and upgrades***.
>
> CRUOC's willingness to acquire systems with long-standing compliance issues has proven to be beneficial to human health and the environment by bringing many of these systems into compliance with environmental laws. The Department looks forward to continuing to work with CRUOC as it continues to acquire wastewater and public water systems in Missouri, in furtherance of the Department's initiative to encourage regionalization and consolidation of the many private systems in Missouri that are struggling to achieve compliance with laws for the protection of public health and the environment.[2]

Not coincidentally, most of the prior owners failed to timely seek, or implement, rate increases necessary to enable them to properly operate and maintain the systems. For instance, the Port Perry sewer rates have not changed since 1993. As a result, the rates that Confluence Rivers adopted when it acquired the systems – *i.e.*, rates in effect at closing – were insufficient to cover the operating costs for operations – that were woefully unprofessional and inadequate – and also failed to provide a fair rate of return.

This rate filing is designed to achieve two primary objectives. First, Confluence Rivers wants to increase rates to a level that allows it to recover reasonable operating costs and provide a fair return on the investments it has made to serve customers. Second, Confluence Rivers seeks to unify the terms of service and consolidate rates statewide.

<u>Evidence</u>: Cox Direct, pages 4-15; Commission File Nos. WO-2014-0340 and WM-2021-0412.

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[2] See, Cox Rebuttal, Schedule JMC-R-2 (emphasis added).

II. POSITION STATEMENTS

1. Depreciation

What depreciation rates should the Commission order?

Position: The Commission should utilize the rates resulting from the Confluence Rivers depreciation study. The Company's depreciation proposal is appropriately based on service life and net salvage estimates developed with expert judgment and extensive industry knowledge. Just as important, depreciation rates are calculated based on the Company's current plant and accumulated depreciation balances, including the age distribution of its current asset base.[3] In contrast, Staff and OPC's proposals are based on depreciation rates used for other utilities or, in those instances in which Staff and OPC recommend the use of the Company's current depreciation rates, those current depreciation rates were established several years ago and were not based on statistical life or net salvage analyses for the Company and not necessarily based on the current composition of the Company's asset base.[4]

Evidence: Allis Direct, Rebuttal, and Surrebuttal.

2. Recommended Reports:

Which reports recommended by Staff, if any, should Confluence be ordered to maintain and provide to Staff and OPC?

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

b. 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?

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

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[3] Allis Rebuttal, page 2.
[4] *Id.*

Position: The Commission should not order the preparation of the reports recommended by the Staff. In each case, the information contained in the recommended reports are available to Staff in the context of the rate case. Rather than review this information from the native documentation, including invoices, Staff wants to be relieved of this fundamental auditing role and, instead, wants Confluence Rivers to maintain a report. As Mr. Thies points out, "[c]onverting the data from one format to another does nothing to improve the quality of the data."[5] While Staff has a longer auditing period than any other state in which CSWR operates, Staff complains that it is unable to timely completed its audit duties.[6] As such, Staff readily acknowledges that such reports are solely for its convenience and to ease its duties in auditing a rate case.[7]

What Staff fails to recognize is the cost that will be incurred and assigned directly to Missouri operations and ratepayers associated with preparing these reports.[8] Specifically, CSWR will either have to hire an auditor or divert hours to maintain an electric report of hundreds of electric invoices simply so that Staff can identify the cost of electricity and other costs. "Unnecessary reporting requirements, simply for Staff's auditing convenience, will create extra work for someone on the staff of CSWR, LLC which translates to compensation and benefits expense. Given that no other jurisdiction has asked for similar reports, the costs would be passed directly on to Confluence Rivers and its ratepayers."[9] Given the number of comments at local public hearings concerned with the level of increases resulting from this case, Confluence Rivers believes that Staff, by asking Confluence Rivers to incur more costs, is dismissing these customer concerns. Staff should simply audit the underlying native data instead of seeking to impose additional costs on customers.

Evidence: Thies Rebuttal, pages 24-26; O'Reilly Rebuttal, pages 10-12.

3. Income Taxes

With respect to income tax--

a. How should income tax expense be set for purposes of establishing the revenue requirements?

b. 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?

Position: In the process of acquiring distressed systems, Confluence Rivers adopts the current rates charged by those systems. In many cases, these rates are years or even decades old.[10] As such, those rates do not reflect the cost of service at the time of acquisition and certainly do not reflect the increased costs associated with the capital investment and professional operations provided by Confluence Rivers. Until Confluence Rivers files a rate case and rates are increased to reflect operational costs, Confluence Rivers incurs a net operating loss.

[5] Thies Rebuttal, page 25.

[6] Staff had a minimum of seven accountants auditing Confluence Rivers for five months prior to filing its testimony in this case.

[7] *Id.* page 26.

[8] Inexplicably, in many cases, Staff wants information to be provided between rate cases when it is not conducting an audit of Confluence Rivers. As such, the extra costs will go beyond simply an auditor at CSWR, it will also incur costs for legal and regulatory review.

[9] *Id.*

[10] For instance, Port Perry sewer rates of $18.94 / month have not changed since January 1, 1994.

Effectively, this net operating loss is a quantification of the benefit that ratepayers received from Confluence Rivers providing service at a below-cost rate. The Internal Revenue Code allows Confluence Rivers to use these net operating losses in the future to offset a future tax liability. Thus, while customers receive a current benefit, Confluence Rivers will receive some return in the form of reduced future taxes.

Contrary to other states, Staff and Public Counsel seek to use this net operating loss to reduce the rates resulting from this case. Epitomizing the notion of "looking a gift horse in the mouth," Staff and Public Counsel believe that ratepayers should not only receive the benefit of below cost initial rates, but also receive the tax benefit resulting from those below cost rates.[11] Such a position, if adopted, would certainly change the dynamic regarding the feasibility of acquiring distress systems in Missouri relative to states that properly allow the Company to keep the benefit of such net operating losses.

Evidence: Seltzer Rebuttal; Thies Surrebuttal, pages 8-10.

4. Accounting Services

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

Position: Confluence Rivers and CSWR contracts with Anders CPAs to handle certain routine and standardized accounting services including month-end close of financial books, account reconciliation, bank reconciliations, and standard monthly journal entries. This allows CSWR staff to spend time on other accounting work that is less standardized and more time-consuming and less tied to the monthly closing schedule.[12] Under the misplaced assertion that such duties are "duplicative" of duties already performed by CSWR employees, Staff has disallowed $57,757 associated with Anders' duties. As Mr. Thies states, however, Staff's justification is misplaced:

> [T]he services Anders performs are inherently not duplicative. Logically, there can be only one close process each month and each journal entry or bank reconciliation need only be completed one time. However, proper accounting procedures require review of all journal entries and reconciliations. The presence of Anders' staff working to compile supporting materials and prepare journal entries allows CSWR's staff to review those entries before posting to the general ledger.[13]

Given that such services are necessary for operations and are not duplicative of any services already performed by CSWR / Confluence Rivers, the Commission should reject Staff's adjustment.

Evidence: Thies Rebuttal, pages 6-7.

[11] This is analogous to giving someone a car and then having them charge you for the gas to drive that car.
[12] Thies Rebuttal, page 6.
[13] *Id.*

5. Rate Design/District Consolidation:

With respect to rate design and district consolidation—

a. What rate design should the Commission order for Confluence?

i. What is the appropriate amount of usage for purposes of establishing water rates?

b. 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?

►Rate Design Position: Water rates generally consist of a monthly charge as well as a usage charge. In order to collect the appropriate revenue requirement, and to set appropriate rates, one must know both the expected number of customers as well as the expected water usage per customer.

While Confluence Rivers' metered water customers use on average 2,765 gallons per month, Staff assumed that each customer would use 5,000 gallons of water per month. Staff ignores Confluence Rivers' usage data because of alleged "problems with the quality of Confluence's water sales data." As such, Staff used sales data of other utilities as a surrogate for Confluence Rivers customer usage.[14] The implications of Staff's inflated usage figure is not minimal. Specifically, "[t]he practical effect is Staff's rate design will be based on an inflated estimate of water usage which means the Company's rates will not recover the Commission-authorized revenue requirement."[15]

As Mr. Lyons showed, however, there is no systemic concern with Confluence Rivers' usage data. As he discussed, he conducted a "revenue proof" test. That test seeks to compare "calculated revenues" (as determined by multiplying test year bills and usage to current rates) against the actual "billed revenues". That comparison showed that "calculated revenues are within 2.00 percent of the Company's billed revenues." As such, Mr. Lyons concludes that "the number of customers and usage are accurate and can be relied upon to establish the proposed rates in this proceeding."[16]

Given that the Company's data "can be relied upon to establish the proposed rates in this proceeding," the Commission should utilize the Company's proposed water rate design.

Evidence: Lyons Direct, pages 5-7; Lyons Surrebuttal, pages 1-7.

►Consolidation Position: Confluence Rivers recommends that the Commission consolidate its rates for both water and sewer operations. Consolidation has long been recognized as a tool towards the acquisition of small, distressed systems. For instance, in a 2008 report, the National Regulatory Research Institute stated:

> Single tariff pricing is another way to encourage mergers. Enabling a uniform rate structure or consolidated rates for systems owned by the same entity may encourage a corporate utility to grow its business by acquiring – whether contiguous or interconnected or not – other systems. With consolidated

[14] Roth Direct, page 6.
[15] Lyons Surrebuttal, page 3.
[16] *Id.* at page 4.

> pricing, customers pay the same price even though their individual system may have unique operating characteristics and needs. Single tariff pricing makes it easier to share costs among larger numbers of customers.[17]

Thus, for purposes of this case, single tariff pricing is an effective tool towards mitigating the rates for customers of smaller systems with fewer customers over which to spread costs.

The benefits of consolidation go well beyond rate mitigation and the encouragement of small system acquisitions. As Staff recognized in 2010, the benefits of consolidation are numerous.

- Mitigates rate shock to utility customers
- Lowers administrative costs to the utilities
- Provides incentives for utility regionalization and consolidation
- Physical interconnection is not considered a prerequisite
- Addresses small-system viability issues
- Improves service affordability for customers
- Provides ratemaking treatment similar to that for other utilities
- Facilitates compliance with drinking water standards
- Overall benefits outweigh overall costs
- Promotes universal service for utility customers
- Lowers administrative cost to the commission
- Promotes ratepayer equity on a regional basis
- Encourages investment in the water supply infrastructure
- Promotes regional economic development
- Encourages further private involvement in the water sector[18]

Given the numerous benefits of single tariff pricing consolidation, the Commission has moved Missouri American to almost entirely to one rate.

> The operating characteristics of MAWC's service areas support STP. All the systems pump their treated water through transmission lines to distribution areas that include mains, booster pump stations and storage facilities. All of the areas rely on a centralized workforce for billing, accounting, engineering, administration, and regulatory matters. MAWC manages the state-wide operations from a common location. The various service areas also rely on a common source of funds for financing.[19]

In contrast, Staff attempted to consolidate systems into 3 water systems and 4 sewer systems on the basis of "cost of service".[20] Given this, Staff approach: (1) hinders the ability to achieve the

[17] Cox Direct, page 19 (citing to *Small Water Systems: Challenges and Recommendations*, National Regulatory Research Institute, February 7, 2008 (citing to *Joint Report of the US EPA and NARUC, Consolidated Water Rates: Issues and Practices in Single Tariff Pricing*, September 1999)).
[18] Cox Surrebuttal, page 28 (citing to *Brief and Scenarios of the Staff of the Missouri Public Service Commission*, Case No. SR-2010-0023, filed September 1, 2010, at pages 16-17).
[19] Report and Order, Case No. WR-2017-0285, issued May 2, 2018, page 26.
[20] Roth Direct, page 4 and 7.

benefits of consolidation and (2) ignores the clear Commission policy direction set forth in a string of Missouri American decisions.[21] As Mr. Cox pointed out, Staff's cost of service approach is "unworkable and unsound."[22] Specifically, recognizing that cost of service will change depending on system investment, operations expense, as well as Staff's quantification of cost of service, the consolidation of systems "will be in a constant state of flux." [23] Staff's willingness to accept such instability is interesting given its previous comments. As Staff has previously asserts, "***[o]ne of the basic principles of rate design is stability***. Constantly changing rate design does not allow for stability and could lead to greater customer confusion and dissatisfaction."[24] Indeed, given the numerous errors that it had to correct, Staff's system cost of service has already changed. Therefore, Staff's grouping of systems should also be different now than it was since the time that it filed its direct testimony.

Given its inability to mitigate rate impacts, the numerous benefits associated with consolidation, and the Commission's clear policy in favor of consolidation, Confluence Rivers urges the Commission to adopt single tariff pricing.

Tariff Book: Regardless of the ultimate decision as to consolidation of rates, Confluence Rivers should 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.

Evidence: Cox Direct, pages 18-20; Cox Rebuttal, pages 13-30; Cox Surrebuttal, pages 19-31.

6. Rate Case Expense:

With respect to rate case expense—

a. 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?

b. Should the Company be allowed to recover the cost of its depreciation study?

Position: (a) Rate case expense is no different than any other cash working capital item. Specifically, like other elements of cost of service, Company investors stake the money for rate case expense prior to it being recovered in rates. As such, like other elements of cash working capital, the unamortized portion should be included in rate base. (Thies Direct, pages 14 and 17).

(b) The Company should be allowed to recover the cost of its depreciation study. While a depreciation study is not dictated as it is for electric and gas utilities, a depreciation study is still valuable.

[21] Worse still, OPC simply seeks to maintain the status quo and not provide for any consolidation, thus denying ratepayers of all the benefits of consolidation.

[22] Cox Rebuttal, page 19.

[23] *Id.*

[24] Cox Rebuttal, page 21 (citing to Busch Rebuttal, Case No. WR-2017-0285, filed January 24, 2018, page 13 (emphasis added)).

> A depreciation study, even absent a regulatory requirement, helps to best assign depreciation expense to the generation of customers that receive the benefit of the underlying asset. For this reason, the best practice in the industry is for utilities to perform depreciation studies every three to five years. Indeed, as noted by Mr. Robinett, Missouri American Water Company regularly performs and files depreciation studies with the Commission. Specifically, Missouri American Water Company filed, without a specific regulatory requirement, depreciation studies in its 2010 (WR-2010-0131); 2015 (WR-2015-0301); and 2020 (WR-2020-0344) rate cases.[25]

For this reason, Confluence Rivers should be allowed to recover the cost of its depreciation study.

Evidence: Allis Direct, Allis Rebuttal, Allis Surrebuttal.

7. Acquisition-Related Costs:

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

Position: Confluence Rivers acquires the assets of small, distressed water and sewer utilities. In acquiring these assets, Confluence Rivers incurs certain costs both before and immediately subsequent to the acquisition that primarily arise from necessary legal and engineering expenditures directly related to the acquisitions. These costs include expenditures that allow the Company to determine the feasibility of capital improvements that will need to be made to the system. They also include the legal and other costs associated with securing clean title to the property, confirming proper easement access to the system components, and the costs to appropriately file required acquisition documentation with the Commission.[26] Much like the costs associated with purchasing a house, these acquisitions cannot close without incurring these costs.

Consistent with Uniform System of Accounts, Confluence Rivers books such legal and preliminary engineering costs to Account 183 – Preliminary Survey and Investigation Charges.

> This account shall be charged with all expenditures for preliminary surveys, plans, investigations, etc. made for the purpose of determining the feasibility of project under contemplation. If construction results, this account shall be credited and the appropriate utility plant account charged.[27]

Recognizing that Account 183 holds Utility Plant expenditures, the balance in that account is capitalized and included in rate base.

While consistent with the Uniform System of Accounts, Staff seeks to disallow these costs. Such a position represents a drastic shift in course for Staff. Specifically, Staff has allowed these costs for all previous rate cases including WR-2016-0064; SR-2016-0065; SR-2016-0202; and WR-2017-0259.[28]

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[25] Allis Rebuttal, page 4.
[26] Thies Rebuttal, page 10.
[27] *Id.*
[28] *Id.*, page 12.

Given that these costs are recorded and capitalized with the Uniform System of Accounts, that Staff has previously allowed recovery of these costs, and that acquisitions cannot occur without incurring such costs, the Commission should reject Staff's disallowance.

Evidence: Thies Rebuttal, pages 10-12; Thies Surrebuttal, pages 7-8.

8. Retirements:

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

Position: When an asset is retired, the plant in service account associated with that asset is debited for the value of the retirement. In the course of its audit, Staff was provided detail of plant additions and plant retirements. Inexplicably, Staff included a level of plant retirements for accounts that did not have a positive beginning plant in service value. The practical effect of Staff's retirements is to create a negative plant in service balance for certain accounts. Recognizing that all accounts are then summed to create rate base, the Staff's mishandling of plant retirements, reduces rate base. "This created a negative value for a particular asset or account that, when summed with the other asset values, reduced the total Utility Plant in Service."

Staff's position is illogical. As Mr. Thies points out, "[t]his treatment is in error as an asset and its value cannot be retired if its historical value does not exist." Given this, Staff's error must be corrected and "the missing asset value of $298,637 should be added back to Utility Plant in Service."

Evidence: Thies Rebuttal, pages 8-9.

9. Cost of Capital:

With respect to the cost of capital—

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

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

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

Position:

(a) The appropriate capital structure consists of 68.56% common equity and 31.44% long term debt. This capital structure reflects the debt issuance authorized by the Commission in December 2022. Confluence Rivers' rates do not provide for the free cash flow for it to pay operating expenses and to cover the interest cost on any additional debt. In the event that additional cash flow is generated in the future, Confluence Rivers will seek to issue additional debt.

(b) The appropriate cost of debt is 6.60% and reflects the debt cost from the debt issuance approved by the Commission in December 2022.

(c) The appropriate return on common equity for a company the size of Confluence Rivers with the business risk associated with acquiring distressed systems and incurring net operating losses is 11.35%.

Evidence: D'Ascendis Direct, Rebuttal, and Surrebuttal; Thies Rebuttal, pages 30-31.

10. Call Center Expense:
What amount of call center expense should Confluence recover?

Position: In an effort to better provide professional call center operations on a 24x7 basis, Confluence Rivers, like all the CSWR affiliates, contracts with Nitor. In its rebuttal testimony, Staff recommends that the Commission disallow 50% of the costs that the Company incurs from its use of Nitor Billing Services ("Nitor") as a third-party customer service and call center vendor. Staff justifies this disallowance on the basis of "amended services, quality of service issues, and Confluence's failure to submit a Request for Proposal prior to engaging Nitor."[29]

As Mr. Thies explains, the change in the nature of the services provided by Nitor did not represent a decrease in the amount of services:

> Historically, the Company used Nitor as its customer service and billing vendor. Beginning in fall 2022, Confluence Rivers internalized billing services. As such, these services are no longer performed by Nitor but, instead, by CSWR, LLC, Confluence Rivers' parent. When billing services were internalized at CSWR, LLC, the move coincided with increased services provided by Nitor including increasing call center hours to 24 x 7 x 365. . . Because Nitor is no longer performing all of the services reflected in the original Nitor agreement (i.e., billing services), Staff recommended a 50% disallowance of costs paid to Nitor. The Company believes that this number is arbitrary and punitive. The disallowance ignores the additional services that are being provided by Nitor (increased call center coverage) and also fails to recognize the critical nature of the call center and customer service functions.[30]

Relative to Confluence Rivers' failure to engage in competitive bidding for these customer service functions, Mr. Thies explains that this was a result of Nitor's unique understanding of Confluence Rivers and all the CSWR operating utilities:

> Nitor was originally retained when CSWR was largely just a Missouri utility. Nitor was an attractive customer service solution as it was located in St. Louis. This allowed for easier and more frequent communications between the parties. Nitor also provided the ability to rapidly scale to provide these services as the Company grew to numerous systems in numerous states. Today, Nitor provides customer service functionality to all of the CSWR-affiliated systems in eleven states. That history with the Company, understanding of the Company systems and tariffs, and familiarity with the Company's senior leadership provides a level of institutional

[29] Dhority Rebuttal, page 2.
[30] Thies Rebuttal, page 11.

> memory that would be virtually impossible to replace. Moreover, as I mentioned, Nitor provides customer service for all CSWR states. As such, there are economies of scale that result from Nitor providing services for all of these states. If CSWR were to retain another party to provide customer service just for the Confluence operations, these economies of scale would be reduced. As a result, if Confluence Rivers were to change customer service vendors at this point, I have no doubt that customer service would suffer and costs for Missouri operations would increase. For this reason, CSWR has not moved towards a bidding process for the services provided by Nitor.[31]

Given Nitor's unique familiarity with the Confluence Rivers and the other CSWR systems, its ability to rapidly scale to meet Confluence Rivers' growth, and its ability to provide 24x7 customer service, Staff's disallowance of 50% of the Nitor costs is misplaced.

Evidence: Thies Surrebuttal, pages 10-13; Cox Rebuttal, pages 8-12; Cox Surrebuttal, pages 6-7 and 8-19.

11. Customer Feedback:

With respect to customer feedback—

a. 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?

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

Position: In its direct testimony, Staff simply recommended that "Confluence should examine methods available to solicit the opinions of its customers regarding the service that they are receiving."[32] Suddenly, in its surrebuttal testimony, Staff became much stricter and argued that Confluence Rivers "should be required to work with Staff and OPC to submit a competitive RFP for a third-party customer survey and this survey should be submitted within one year of rates going into effect."[33] Interestingly, Staff's sudden insistence on customer surveys came after acknowledging that opinion surveys are not always the best solution to gather feedback.[34]

Public Counsel goes even further. Specifically, Public Counsel asserts that, based upon Confluence Rivers' "failure to comply with an explicit Commission order or take into account the apparent historical negligence in this area to date," Confluence Rivers should bear the cost, up to $100,000, for a competitive RFP for a third-party customer opinion survey up to $100,000.[35]

[31] Thies Rebuttal, pages 11-12.
[32] Glasgow Direct, page 9.
[33] Glasgow Surrebuttal, page 6.
[34] Glasgow Direct, page 9.
[35] Marke Rebuttal, page 16.

As an initial matter, it is important to recognize that CSWR takes customer service and customer communications seriously. For this reason, CSWR has amended its service agreement with Nitor, its third-party customer service agent, to provide customer service on a 24x7 basis. Moreover, CSWR has recently created a corporate communications department to enhance communications both to and from customers.

Relative to Public Counsel's assertion of "failure to comply with a Commission order" and "apparent historical negligence," such hyperbolic assertions were misplaced. In its testimony, Public Counsel blindly piggybacks on the testimony of Staff in which Staff claimed that Confluence Rivers failed to provide a complaint log that complied with the Commission rule because it did not include complaints from the "Attorney General's Office, Better Business Bureau, Department of Natural Resources and government officials." In its rebuttal, however, Confluence Rivers demonstrated that the Commission rule, because it relies on the definition of "complaint" contained in Commission rule 2.070, is limited to "formal and informal complaints with the Commission."[36] As such, Public Counsel's reckless assertions of "historical negligence" and "failure to comply with a Commission order" are misplaced.

That all said, Confluence Rivers is and will continue to explore ways to better communicate with customers. For instance, as suggested at a local public hearing, Confluence Rivers is exploring, in addition to its website, emails, door hangers and posted community signage, the use of text messages for boil water advisories.[37] In addition, Confluence Rivers is exploring the use of a focused customer opinion inquiry at the end of customer service calls. Specifically, after completing a customer service call, a customer will be asked if the customer service representative was able to resolve their inquiry, if they were satisfied with the information that was received, and to otherwise their customer service experience. Confluence Rivers is willing to share both the nature of this tailored customer service inquiry, as well as the results of that inquiry with Staff and the Commission.

All of these demonstrate a focus on ever increasing customer service through <u>targeted</u> communications. What Confluence Rivers resists, however, is a <u>blind</u> mailer to 9,000 customers. As Mr. Thomas describes, such customer surveys, within the utility industry, are not cost effective. In fact, a CSWR Louisiana conducted such a survey and discovered that most of the replies were focused on rates and not on customer service.[38]

Moreover, Confluence Rivers resists Public Counsel's willingness to spend investor funds. Specifically, in support of its recommendation that Confluence Rivers' investors be required to spend $100,000 for a competitive RFP for a customer opinion survey, Public Counsel points to other <u>large</u> utilities that have agreed to such undertakings. Importantly, however, Public Counsel fails to account for the size of the utility when it agreed to such an RFP. Specifically, whereas Missouri American has annual revenues of $382,292,545, Confluence Rivers had 2022 annual revenues of $4,945,422. Thus, Missouri American is 77 times larger than Confluence Rivers. So,

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[36] In its surrebuttal testimony, Staff did not refute Confluence Rivers interpretation of the scope of the required complaint log. That said, Staff did notice incompleteness in that complaint log that Confluence Rivers readily acknowledges.
[37] Cox Surrebuttal, page 19.
[38] Thomas Rebuttal, pages 24-25.

Dr. Marke's expectation that all utilities should be willing to shoulder a $100,000 expense to conduct a third-party audit is misguided. Just for perspective, if Confluence Rivers were to devote the same relative percentage amount of revenue to Dr. Marke's recommended audit as Missouri American, Confluence Rivers' required expenditure would be $1,294.[39]

Bottom line, as previously mentioned, Confluence Rivers continually strives to improve in all areas of its operations, including customer service. Consistent with this focus on superior service, CSWR has recently commissioned a study of its customer service operations. That report has recently been finalized and provides recommendations for areas of improvement. Confluence Rivers stands ready to provide the results of that study as well as its customer service metrics with the Commission and its Staff. This commitment to transparency is reflected in its willingness to conduct quarterly customer service meetings with Staff.[40] That said, Confluence Rivers resists Public Counsel's continual efforts to insert itself into the operations of the Company as well as Public Counsel's increasing willingness to spend investors' funds.

Evidence: Thomas Direct, pages 16-20; Thomas Rebuttal, pages 22-25; Thomas Surrebuttal, pages 17-20.

12. Uncollectible Expense:

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

Position: Uncollectible expense is the cost which a company must record when it is unable to collect an amount owed to it by one of its customers. It is sometimes known as bad debt expense. In its determination of uncollectible expense, "[t]the Company used an allowance methodology to record uncollectible expense. This methodology records a small expense, currently 1% of each month's revenue, into an allowance for doubtful accounts."[41]

Evidence: Thies Rebuttal, pages 3-6.

13. Fire Protection:

With respect to fire protection--

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

b. 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?

Position: At the Farmington local public hearing, the Terre du Lac fire chief complained that the Company's water assets at Terre du Lac are not capable of providing fire suppression services. While Confluence Rivers understands the fire chief's concerns, it is important to recognize that the Terre du Lac system was designed to provide safe drinking water to the public and not fire suppression. As the Department of Natural Resources has indicated:

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[39] Thomas Surrebuttal, page 20.

[40] Thomas Rebuttal, page 23.

[41] Thies Rebuttal, page 4.

> The primary purpose of a public water system is to produce and deliver adequate quantities of safe drinking water to the public. Failure to fulfill this purpose has serious adverse effects on public health. Use of the public water systems for any other purpose such as irrigation, recreation, industrial production, or fire protection is of secondary importance to the primary purpose. No secondary use of a public water system shall be allowed to degrade the safety and sanitary quality of the drinking water or system.[42]

The inability of the Terre du Lac system to provide fire suppression services is not surprising. As the American Water Works Association indicated in 2008:

> The decision to provide water for fire protection means that a utility must explicitly consider fire flow requirements in sizing pipes, pumps, and storage tanks. In larger systems, fire protection has a marginal effect on sizing decisions, but ***<u>in smaller systems these requirements can correspond to a significant increase in the size of many components</u>***. In general, the impact of providing water for fire protection ranges from being minimal in large components of major urban systems to being very significant in smaller distribution system pipes and small distribution systems.
>
> The most significant impacts are installing and maintaining fire hydrants, providing adequate storage capacity, and meeting requirements for minimum pipe sizes (e.g., 6-in. [150-mm] pipes in loops and 8-in. [200-mm] dead ends) in neighborhood distribution mains when much smaller pipes would suffice for delivery of potable water only. These requirements make designing distribution systems easier for the engineer but more costly for the water utility. Other impacts include providing extra treatment capacity at plants and extra pumping capacity at pump stations.[43]

Consistent with the AWWA assertion that the cost of sizing a water distribution system to provide fire suppression is "very significant," Mr. Cox conducted an analysis that showed the incremental cost of upgrading the mains at approximately $13 million:

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[42] Minimum Design Standards for Missouri Community Water Systems, effective December 10, 2013, Section 7.1.1, as published by Missouri Department of Natural Resources. Minimum Design Standards for Missouri Community Water Systems - PUB2489 | Missouri Department of Natural Resources (mo.gov)

[43] Cox Surrebuttal, page 16 (citing to Distribution System Requirements for Fire Protection, American Water Works Association, AWWA Manual 4th edition, 2008, at page 1 (emphasis added). Distribution System Requirements for Fire Protection, Fourth Edition M31 (awwa.org)

> According to its 2020 Annual Report, the Terre du Lac water system consists of 590,749 feet of water mains. Of this, approximately 43% (256,485 feet) are 4" or 6" mains that would need to be upgraded in order for the system to provide fire suppression. Given the rocky nature of the ground at Terre du Lac, I conservatively estimate a cost of $50 / linear foot for pipe, labor, and excavation. Thus, the incremental cost of simply upgrading the mains to provide adequate fire suppression would be $12,824,250. Recognizing that the current rate base for the Terre du Lac system is approximately $1.4 million, the upgrade of just the mains would increase system rate base by roughly 816%.[44]

Given that the cost to the initial developer of installing a water distribution system that would allow for fire suppression and recognizing that the Missouri Department of Natural Resources has declared that fire suppression is "secondary" to the delivery of "adequate quantities of safe drinking water," it is not surprising that the Terre du Lac system is not capable of providing fire suppression services.

Despite the fact that the Terre du Lac water system was not designed to provide fire suppression, Public Counsel asserts that the investment in hydrants at Terre du Lac should be removed from rate base on the basis that they are not used and useful. Such an assertion reflects a blind assumption on the part of Public Counsel that "all hydrants are meant to provide fire suppression."[45] As Mr. Cox points out, however, while there are hydrants at the Terre du Lac system, "they were likely to provide system flushing or tank filling, but not fire suppression."[46] Therefore, these hydrants, and the associated investment, are used and useful. As a result, Public Counsel's adjustment should be rejected.

That said, relative to subissue (b), Confluence Rivers has expressed its willingness to engage in conversations with the Terre du Lac fire chief in the event that he can locate federal grants to upgrade the water distribution system to provide fire suppression.[47] In fact, Confluence Rivers has already met with the Terre du Lac fire chief to commence such communications. Additionally, to the extent that Public Counsel identifies any such funds, available to an investor-owned utility, Confluence Rivers welcomes Public Counsel to direct its attention to such funds.

<u>Evidence</u>: Cox Surrebuttal, pages 15-19.

14. Operations, Maintenance, and Oversight:

With respect to operations, maintenance, and oversight--

a. 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?

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[44] Cox Surrebuttal, page 17. Importantly, this cost estimate only considers the upgrade of distribution mains. "In addition to the upgrade in mains, providing fire suppression services would mandate an upgrade in storage and pumps as well as the installation of fire hydrants."

[45] Cox Surrebuttal, page 18.

[46] *Id.*

[47] *Id.*

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

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

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

Position: (a) In its surrebuttal testimony, Staff and Public Counsel proposed specific recommendations regarding formalities that it seeks to impose around the retention and management of third-party operators. As an initial matter, while Confluence Rivers may not have the abundance of formal policies and procedures that Staff and Public Counsel now seek, it is important to recognize that, through a documented RFP process, Confluence Rivers was able to reduce monthly operation costs for third-party operators by 5.53%.[48] Importantly, while criticizing Confluence Rivers, neither party failed to acknowledge this operational cost savings derived by Confluence Rivers without the necessity of the policies and procedures that Staff and Public Counsel seek to impose.

That said, it is important to recognize that corporate policies and procedures and reporting formalities are more critical in larger companies. For instance, procurement policies are more critical at Exxon than they are for a single gas station. This is because it is much easier for a company the size of CSWR (75 employees) to have a hands-on approach to such corporate functions. For this reason, it is illogical for Staff and Public Counsel to expect that CSWR will have developed all of the policies and procedures that are in place for Missouri American.

Despite such obvious considerations, Staff and Public Counsel, without any formal operations experience from either, now seek to impose themselves into the position of running the utility. Specifically, Staff and Public Counsel, seek to require policies and procedures and corporate formalities surrounding the third-party operations function.

Interestingly, the Chairman has previously criticized Staff and Public Counsel for their ambitious efforts to impose themselves into the management of utilities.

> These companies that come before us we've always allowed them to operate and run their companies as they see fit especially when it comes to personnel and normal business operations. . . We've always allowed deference to the companies of which, this is your business, you are a private business and you run that, yes we regulate you. I do not remember us getting into the weeds.[49]

These facts aside, it is important to recognize that CSWR employees, despite the lack of formal written policies that Staff and Public Counsel now seek, have day to day communications with third-party operators.[50] Moreover, CSWR has compliance auditors to inspect the functions undertaken by these operations. Additionally, CSWR has implemented a number of technological

[48] Thomas Direct, page 12.

[49] July 12, 2023 agenda session.

[50] Thomas Surrebuttal, page 9.

tools (i.e., geofencing) that allows it to supervise the third-party operators.[51]

As support for its recommendations, Staff and Public Counsel point to three isolated incidents.[52] Staff and Public Counsel fail, however, to acknowledge that Confluence Rivers operates sixty-eight (68) systems in Missouri. Staff and Public Counsel also fail to acknowledge that the systems acquired by Confluence Rivers are distressed and have suffered from a lack of maintenance, capital investment, and professional operations under previous owners. It is for this reason that the Department of Natural Resources has lauded the improved operations provided by Confluence Rivers upon acquisition.

> In Missouri, Confluence Rivers Utility Operating Company, Inc. (CRUOC) is one of the few utility operating companies who is willing to acquire some of the most difficult failing systems. CRUOC has consistently taken swift actions after taking control of these systems to bring them into compliance by employing qualified operators, effectively administering and managing the systems, and investing in repairs and upgrades.[53]

While Confluence Rivers strives to attain perfect compliance, given the condition of the acquired systems, it is unreasonable to set such impossible expectations. Rather than seek to impose such impossible expectations, Staff and Public Counsel should recognize the improvements that Confluence Rivers has made to these systems and the lives of Missourians. Moreover, Staff and Public Counsel should also strongly weigh the opinion of the Department of Natural Resources as the entity with primary supervision of these systems. Given this, the examples listed by Staff should be viewed as isolated incidents and not indicative of systemic problems that require the imposition of excessive formalities and policies and procedures.

(b) As mentioned, based upon isolated incidents at Fox Run and Auburn Lakes, Staff recommends that the Commission order Confluence Rivers to hire a Missouri dedicated employee to oversee Missouri operators and assist Staff in its inspections. While Confluence Rivers currently has a Missouri state manager, Staff appears to be dissatisfied with the fact that this individual is also responsible for operations in Tennessee.

As an initial matter, the Commission should take some comfort in knowing that CSWR, on behalf of all of its operating utilities, seek to properly deploy employees in an economical manner that best manages costs and customer rates. While Staff undoubtedly heard the complaints at local public hearings regarding the proposed rate increases, Staff nevertheless seeks to require Confluence Rivers to hire a Missouri specific employee thereby increasing costs and rates.[54]

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[51] *Id.* at pages 8-9.
[52] Fox Run, Auburn Lakes, and Lake Virginia.
[53] Cox Rebuttal, Schedule JMC-R-2
[54] Interestingly, while making such a recommendation, Staff refuses to include the cost of such an employee in Missouri rates or, in the context of a future rate case, to even acknowledge that the hiring of such an employee is prudent.

As Mr. Cox points out:

> It is important to recognize that, while insisting that Confluence Rivers be required to retain the dedicated Missouri employee(s), Mr. Gateley's proposal lacks any substance. For instance, when asked to identify the specific number of additional position(s) that Mr. Gateley "believes should be created solely for Missouri operations," Mr. Gateley indicate that he "has not attempted to determine this." Similarly, Mr. Gateley did not attempt to quantify the costs of such additional position(s) or the impact on rates of such additional position(s). Given this lack of cost analysis, it is not surprising then that Staff does not include any of the costs associated with such an employee. Rather, Staff simply indicated that, while insisting that such positions be created, that it "will examine costs as part of a future rate case." Worse still, Staff refused to even indicate whether it believed that the creation of such a position was "prudent".
>
> In any event, Confluence Rivers is opposed to Mr. Gateley's proposal that it be required to retain new dedicated Missouri personnel. While Confluence Rivers currently has a regional manager (Brad Thibault) that performs many of the duties identified by Staff, he is not dedicated exclusively to Missouri. As with all aspects of its operational oversight and improvements, Confluence Rivers must consider the impact on rates.
>
> It would be easy for Confluence Rivers to accept Staff's recommendation and simply hire additional employees to satisfy Staff. As previously indicated, however, Confluence Rivers was exposed to significant criticism at local public hearings for the magnitude of the rate increases in this case. To the extent that additional costs are included, as suggested by Staff, the recommendation will further increase those rate increases. At this point, given the number of systems in Missouri, Confluence Rivers is hesitant to add Missouri specific personnel and expose ratepayers to those additional costs. Instead, I believe that Mr. Thibault can continue to handle these duties as a shared asset for both Missouri and Tennessee.[55]

(c) Recognizing that Public Counsel has been able to identify any cost implications or damage to ratepayers, and in light of the fact that Confluence Rivers has achieved a 5.53% reduction in third-party operational costs through its RFP process, a disallowance of costs is unwarranted.

(d) Recognizing that Public Counsel has been able to identify any cost implications or damage to ratepayers, and in light of the fact that Confluence Rivers has achieved a 5.53% reduction in third-party operational costs through its RFP process, a disallowance of costs is unwarranted.

<u>Evidence</u>: Cox Direct, Rebuttal, and Surrebuttal; Thomas Direct, Rebuttal, and Surrebuttal.

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[55] Cox Rebuttal, page 45.

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

Position: As indicated in its position on issue #11, Confluence Rivers is and will continue to explore ways to better communicate with customers. For instance, as suggested at a local public hearing, Confluence Rivers is exploring, in addition to its website, emails, door hangers and posted community signage, the use of text messages for boil water advisories.[56]

Evidence: Cox Surrebuttal, page 19.

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

Position: Commission Rule 20 CSR 4240-10.030(38) provides a schedule for the testing of customer meters. Specifically, for 5/8" inch meters, water utilities are required to conduct testing every ten years.

> Unless otherwise ordered by the commission, each water service meter installed shall be periodically removed, inspected and tested in accordance with the following schedule. . . :
>
> (A) Five-eighths inch (5/8") meter—ten (10) years or two hundred thousand (200,000) cubic feet whichever occurs first;

While Confluence Rivers does not object to the concept of meter testing, it is concerned with Staff's recommendation that, absent accurate age data for customer meters, all meters should be assumed to be "greater than ten years old."[57]

As Mr. Thomas explains:

> Confluence Rivers buys distressed water systems, both regulated and unregulated, for which age data for assets, like meters, is not readily available. As such, Mr. Gateley's recommendation would effectively impose a requirement that Confluence Rivers test all customer meters within the first year after completion of this rate case. The practical effect then is that Confluence Rivers' testing requirements would be characterized by dramatic spikes in testing and costs. That is, for all current meters (since most are lacking accurate age data), Confluence Rivers would be required to test in year 1. Confluence Rivers would then not have any meter testing for the next nine years (years 2-10) followed by another dramatic spike in year 11.[58]

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[56] Cox Surrebuttal, page 19.
[57] Gateley Direct, page 5.
[58] Thomas Rebuttal, pages 7-8.

Instead, Confluence Rivers requests, under the retained authority in the rule ("unless otherwise ordered by the commission"), that the Commission order a more measured approach. "Confluence Rivers recommends that it be required to assume, for each water system, an equal disbursement of meters across the ten-year time period contemplated by the rule. Specifically, for each water system, Confluence Rivers would test 10% of all customer meters in year 1. Similarly, Confluence Rivers would test another 10% of all customer meters in year 2. Therefore, by the end of the ten-year period, all customer meters will have been tested and, if necessary, replaced."

Recognizing that as meters age and begin to deteriorate, they will begin to read low, a deteriorating meter will work towards that specific customer's benefit. For this reason, Confluence Rivers' recommendation should not be detrimental to customers.

Evidence: Thomas Rebuttal, pages 6-9.

17. Advanced Meter Infrastructure Investments:
Should the Commission disallow any costs related to AMI meter investments?

Position: No. On an initial basis, it is important to recognize that the vast majority of this metering infrastructure has already been included in rates. As such, there has been some fundamental finding that such investment is prudent. Beyond this, however, Public Counsel's disallowance fails to acknowledge the fact that the AMI meter investment allows for an operational savings associated with meter reading. Specifically, third-party operators are no longer required to conduct monthly meter reads. It is inequitable for Public Counsel to assert that such investment should be disallowed while simultaneously accepting the benefits of such investment.

Evidence: Thomas Direct

18. Use of Employees rather than Contractors:
Should the Commission order Confluence to begin transitioning from using contract wastewater and drinking water operators to Confluence employees performing these functions?

Position: Similar to portions of the issue #15, based upon perceived deficiencies in Confluence Rivers' utilization of third-party contract operations, Public Counsel proposed to "disallow $1,094,426 from the Company's combined water and wastewater operations expense budget, which is currently pegged at $1,694,426 annually."[59] Instead, Public Counsel claims that these operations could be internalized at a cost of $600,000. "The remaining balance of $600,000 should be used to hire and train nine full-time employees to oversee the Company's Missouri water and wastewater assets full time. These new full-time employees would then replace the need for Confluence to rely on their currently contracted vendors for water and wastewater operations."[60]

The entirety of Public Counsel's analysis amounts to: (1) a map with drawn on squares to justify its hypothesis that operations can be done by 9 employees and (2) utilization of the MERIC database for a total compensation of $60,000 for these nine employees. "The remaining $60,000

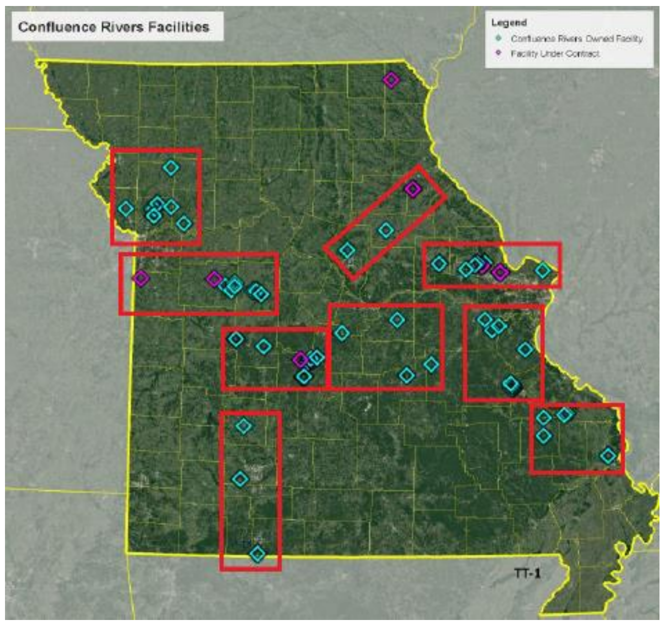
[59] Marke Rebuttal, page 9.
[60] *Id.* at pages 9-10.

being used to cover any overtime or extra expenses."[61]

As reflected in the analysis in the Company's surrebuttal testimony, Public Counsel's recommendation fails both as to: (1) the estimated number of operators needed to staff internal operations and (2) the cost per employee.

►<u>Number of Operators</u>

For instance, Dr. Marke bases his assertion that Confluence Rivers can fill an operational staff with nine employees based upon the following map of Confluence Rivers systems and randomly drawn boxes.



Source: Marke Rebuttal, page 12.

As Mr. Cox points out:

> At the most basic level, it is impossible to staff internal operations simply by drawing a box. The illogical nature of Dr. Marke's method is apparent from his own chart on page 3. Specifically, as a result of Dr. Marke's elementary analysis, he would hire one operator (operator #6) to operate two systems in Boone and Audrain County. Meanwhile, Dr. Marke concludes that operator #3 should be responsible for operating 13 water and wastewater systems across roughly 2,150 square miles. There is an obvious disparity in the delegation of responsibilities here. Moreover, recognizing that Confluence Rivers inspects all mechanical facilities three times a week, operator #3 would have to make approximately 39 system inspections in a five-day week. If each inspection took just one hour, operator #3 would have 39 hours / week devoted to just inspections. This would leave one hour in the week for his travel time across the 2,150 square mile area of

[61] *Id.* at page 10.

> responsibility. Additionally, this leaves zero time for paperwork and documentation. Finally, this leaves zero time for additional duties. For instance, if operator #3 identifies a problem at a system, he would have no time to take corrective actions as such actions would prevent the operator from getting to his next system of responsibility and conducting an inspection. Such simple considerations are completely ignored by Dr. Marke's elementary map drawing.[62]

Moreover, Dr. Marke's elementary map drawing fails to take into account considerations such as: (1) the lack of operators caused by the aging of the industry;[63] (2) OSHA regulations that require certain tasks be conducted by a team of operators;[64] (3) the nature and complexity of the Confluence Rivers systems;[65] (4) the need for operators to not only operate, but also repair these distressed systems; and (5) the scattered nature of the Company's systems.[66]

For instance, showing the immediate failings in his map drawing, Dr. Marke suggests that each box of systems can be staffed by a single operator. Reflecting his lack of understanding of water and wastewater operations, however, Dr. Marke fails to recognize that OSHA regulations require many duties at wastewater systems, because they involve "confined spaces," require 2 and sometimes 3 operators. For instance, an OSHA fact sheets states that "confined spaces in sewer systems are extensive."

> Sewer systems are extensive and include many different components that are considered confined spaces, including pipelines, manholes, wet wells, dry well vaults, and lift / pump stations. Therefore, employers conducting work in sewer systems will likely have workers who will encounter confined spaces.
>
> Sewer systems also consist of wastewater treatment plants, where confined spaces include digestion and sedimentation tanks, floating covers over tanks, sodium hypochlorite tanks, and wastewater holding tanks, among others. Many of these components may also qualify as permit-required confined spaces.[67]

Therefore, since confined spaces are involved, work cannot be performed by a single individual. Instead, "OSHA regulations mandate that, when work is performed in a confined space, an attendant be stationed outside the confined space. In addition, an entry supervisor must also be present. Therefore, contrary to Dr. Marke's suggestion that a single operator can handle all functions in his assigned area, OSHA would deem such actions unlawful."[68]

Given all of these considerations, and given his decade of experience in the water / wastewater industry, Mr. Cox estimates "that it would require 22 operators to appropriately staff an internal operations team."[69]

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[62] Cox Surrebuttal, page 34.
[63] *Id.* at pages 34-36.
[64] *Id.* at pages 36-38.
[65] *Id.* at pages 38-39.
[66] *Id.* at page 39.
[67] Schedule JMC-S-3.
[68] Cox Surrebuttal, page 37.
[69] *Id.* at page 39.

►Cost Per Operator

Much like his misguided estimate of the number of operators required to staff a Confluence Rivers' internal operations staff, Dr. Marke also underestimated the cost per employee. As Mr. Thies pointed out, "I believe that Dr. Marke's estimation lacks detail and significantly underestimates the costs not only of employing an individual operator but of the costs that are and would be required to run an internal operations department."[70]

While Confluence Rivers has demonstrated numerous problems with the MERIC database upon which Dr. Marke relies,[71] even a basic refinement of that database shows fundamental problems with Dr. Marke's estimation of a cost of $60,000 per employee. For instance, since the MERIC database relies upon 2021 salary levels, it must be factored up for cost of living adjustments. In her analysis, Staff witness Sarver suggests that cost of living adjustments of 5.9% and 8.7% for 2022 and 2023 were necessary. As a result, Dr. Marke's suggested salary of $48,220 / year suddenly increases to $55,508 / year.[72] Moreover, recognizing that the Bureau of Labor Statistics suggests that taxes and benefits comprise 29.5% of a total compensation package. Therefore, "Dr. Marke's compensation level, even with the problems inherent in MERIC, would be $78,734 for the entry level operator."[73] Obviously then, senior operators and the overall state manager would have an increased compensation level.

The shortcomings in Dr. Marke's analysis go beyond compensation. "The primary problem in his analysis, other than the glaring compensation issues, is that Dr. Marke does not include any costs besides salary and benefits in his analysis. Especially given that in the analysis provided, individual operators would cover large geographic areas (some as large as 3,000 square miles), a cost for vehicle expense, supplies, tools and personal protective equipment must be included." Schedule BT-SR-1 attached to the testimony of Mr. Thies accounts for both of these shortcomings in Dr. Marke's remedial analysis.

►Total Cost

Given both an appropriately sized staff of 22 operators, as well as the necessary cost per operator, including a vehicle and tools, Confluence Rivers estimates that the cost of an internal operations department is $2,248,019. "Contrary to Dr. Marke's opinion, such an amount greatly exceeds the current cost of a third-party operator ($1,694,426). Given this, I reject Dr. Marke's assertion that his adjustment is necessary "to make customers whole for the Company's imprudent business decisions."[74]

Evidence: Cox Surrebuttal, pages 31-40; Thies Surrebuttal, pages 4-7.

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[70] Thies Surrebuttal, page 5.
[71] Thies Rebuttal, pages 16-18.
[72] Thies Surrebuttal, page 5.
[73] *Id.* at page 6.
[74] Marke Rebuttal, page 15.

19. Capital Improvement Plan:

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:

1. Projected budgets for the tasks to be completed
2. A brief summary of the improvement
3. Projects shall be broken out by system, and by utility type
4. A schedule for testing of existing master meters, and installation of master meters where none are presently installed.

Position: As reflected in the Rebuttal Testimony of Mr. Cox, "Confluence Rivers is willing to develop and provide a five-year capital plan similar to that ordered for Missouri American when the Commission began consolidating its rates." Such a capital plan should not only satisfy a portion of Staff's concerns with regard to the consolidation of rates, it will also satisfy a statutory requirement for Confluence Rivers' eventual use of the WSIRA mechanism (Section 393.1506).

Importantly, however, the timing and details of that plan were conveniently withheld by Staff until it filed its surrebuttal testimony. That is to say, while Mr. Roos simply recommended that such a plan be filed in direct testimony, Staff waited until surrebuttal testimony to recommend timing and details. As such, Staff has denied Confluence Rivers the opportunity to analyze and comment on the contents of Staff's recommendation. For this reason, Confluence Rivers simply recommends that the Commission order Staff and Confluence Rivers to meet, within 90 days of the effective date of rates, to discuss the contents and timing of a capital plan.

Evidence: Cox Rebuttal, pages 28-29.

20. Late Fees:

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

Position: In its testimony, Public Counsel recommends that the Commission eliminate late fees for Confluence Rivers. Such a position stands in stark contrast to the position of both Staff and Confluence Rivers that recommend that Confluence Rivers charge a late fee on all delinquent bills of $5 or 3% of the balance. Public Counsel supports its recommendation to eliminate the late payment fee on: (1) the perception that late payment fees do not act as a deterrent to non-payment and (2) the fact that Missouri American recently agreed to eliminate its late payment charge.[75]

Public Counsel's position is misplaced. "Late fees are not only prevalent in the utility industry, they are also prevalent in all aspects of our economy including service contracts, banking fees, and credit cards. Interestingly, the State of Missouri also apparently believes in the effectiveness of late fees in deterring non-payment. For instance, relative to sales and use tax, Section 144.250 RSMo mandates the imposition of a late payment charge of 5% per month. Additionally, relative

[75] Marke Direct, pages 12-13.

to income tax, Section 143.225 RSMo mandates a 5% penalty for underpayment of quarter-monthly remittance."[76]

Secondly, the elimination of late fees is actually detrimental to customers that timely pay their bills.

> Eliminating the late fee, as proposed by Dr. Marke, simply shifts the cost burden of late or non-payment from the customer in question to all remaining customers. In any rate case, total revenues are netted against the revenue requirement to determine the necessary rate increase. Included in total revenues are revenues from miscellaneous charges such as late fees. To the extent that a miscellaneous charge is excluded, such as the elimination of the late fee proposed by Dr. Marke, then miscellaneous revenues in the next rate case will be reduced. Absent these miscellaneous revenues, total revenues will be less, and the base rate charged will be increased. Since this overall rate increase will be recovered through rates from all customers, Dr. Marke's proposal essentially shifts the cost impact of the late fee from the affected customer to all customers, including the customers that are conscientious about paying their bills on time.[77]

Finally, the reliance on Missouri American is misplaced. The elimination of the Missouri American late payment charge occurred in the context of a Stipulation. Given this, it is uncertain how much rate increase Public Counsel may have conceded in order to obtain Missouri American's agreement to waive its late payment charge. More importantly, however, given the difference in operations between Missouri American and Confluence Rivers, the Missouri American settlement is of questionable import. As Mr. Thies points out, Missouri American is overwhelming a water utility. Specifically, Missouri American generates 95.9% of its revenue from water operations. In contrast, Confluence Rivers generates approximately 60% of its revenue from sewer operations.[78]

> The importance of the relative magnitude of revenues for Missouri American as opposed to Confluence Rivers is that, as a predominantly water utility, Missouri American has unfettered ability to manage bad debt, and any resulting decrease in earnings, through water service disconnection. Specifically, through the water shutoff valve, a water utility can disconnect a customer that refuses to pay its bill. As such, for 95.9% of its revenues, and the resulting earnings from water operations, Missouri American can limit bad debt through a disconnection. Given this, Missouri American does not rely on late payment charges and its earnings are not threatened by eliminating this late payment charge.
>
> In contrast, for a predominantly sewer utility, like Confluence Rivers, there is no sewer shutoff valve. Instead, disconnection is achieved by excavating the sewer line and physically disconnecting the customer's sewer service from the Company's collection lines. This is an expensive process. As such, a sewer utility, like Confluence Rivers, is effectively limited to the use of late fees to attempt to

[76] Thies Rebuttal, page 27.
[77] *Id.* at page 28.
[78] *Id.* at page 29.

> entice customers to pay their bills. Given this, Dr. Marke's reference to Missouri American's willingness to eliminate the late payment charge, when it is predominantly a water utility, is of questionable relevance to Confluence Rivers, largely a sewer utility.[79]

Given that its recommendation is not well reasoned and imposes a burden on customers that pay their bills, the Commission should reject Public Counsel's recommendation to eliminate Confluence Rivers' late payment charge.

21. Budget Billing:

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

<u>Position</u>: As a practical matter, since all Confluence Rivers' sewer customers are charged a flat monthly charge, all of these customers are automatically on a budget billing option – there are no monthly fluctuations. Relative to water usage, however, a customers' water usage does not see the monthly fluctuations that are present with the heating / cooling loads of electric or gas utilities. That is to say, unless a customer uses water for irrigation, washing cars, or filling the swimming pool, there is not a great deal of monthly or seasonal variation in customer usage. Customers will continue to use a base amount of water for bathing, laundry and dishes regardless of the month. Given that there are no large variations in monthly usage, the need for a budget billing option is largely unnecessary.

22. Capital v. Expense:

Should certain costs be expensed or capitalized, for example, smoke testing, sewer jetting, and tank painting?

<u>Position</u>: In the course of its audit, Staff reclassified $1,169,131 of expenditures that Confluence Rivers had designated as a capital improvement to a maintenance expense. Such expenditures involved tank painting expense, vegetation management, leak repairs, sewer jetting, water and sewer line repairs, fencing repairs, and sewer system smoke testing.[80] As Mr. Thies points out, "In the ordinary course of water and sewer utility operations, it would be logical to record a simple repair expense in the NARUC USOA accounts for water and sewer maintenance rather than utility plant accounts. However, the Company believes that Staff misunderstood the nature of the work that was performed to produce certain of the expenditures that were disallowed from rate base and reclassified as maintenance expenditures."[81]

For Confluence Rivers, recognizing the distressed nature of these systems, and the fact that these systems had been deprived of maintenance, capital investment, and professional operations, these expenditures were not made to <u>maintain</u> an asset's life. Rather, given the condition of these systems, the expenditures were made to <u>restore</u> an asset's life. As such, the expenditures should not be classified as "repairs".

> Many of the expenditures were made in the first weeks and months after Confluence Rivers purchased the systems and were made to bring the system into

[79] *Id.* pages 29-30.
[80] Thies Rebuttal, page 13.
[81] *Id.*

> environmental or safety compliance, correct long overdue deferred maintenance, bring the system components back into working order or refurbish a particular system component to extend its useful life.[82]

As one example, Mr. Cox discusses the life restoration efforts made at Port Perry.

> The Port Perry lagoons were suffering from years of neglect. Large trees had grown around the berms but were actually growing in the lagoon. Mature trees threatened the efficacy of the system. Mature trees produce large root beds. The roots in the berm threaten the stability of the berm and can produce sanitary sewage overflows. Roots from trees in the lagoon also undermine the ability of the lagoon to maintain storage per DNR. As a result, significant efforts needed to be made to restore the life of this facility.[83]

Six days after Confluence Rivers acquired Port Perry, the Department of Natural Resources conducted an inspection and issued a Report of Unsatisfactory Findings. DNR issued a "required action" of "by January 1, 2021, have all large vegetation removed from lagoon berms and lagoon cells, while ensuring the structural integrity of the system is not compromised."[84] Previous inspections contained similar required action and showed the operational neglect experienced by that system.

> The vegetation should be removed and the clay liner inspected by a professional engineer, registered in the state of Missouri. The engineer's report should evaluate the integrity of the clay seal and its ability to collect, hold, and treat domestic wastewater to comply with 10 CSR 20-8.020 and all applicable laws and regulations. The report should clarify that the percolation losses do not exceed 1/16 inch per day and make recommendations for any replacement and or necessary repairs to the seal.[85]

The following before and after photos depict the neglected nature of the system and, given that the large vegetation undermined the lagoon's ability to "hold and treat domestic wastewater", also demonstrate the fact that such expenditures were necessary to restore, not maintain, the useful life of the lagoons.

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[82] *Id.*
[83] Cox Rebuttal, page 46.
[84] *Id.* at page 47.
[85] *Id.* at page 48.

Before life restoration efforts:

After life restoration efforts:

Source: Cox Rebuttal, pages 49-52.

Recognizing that these Port Perry expenditures were made to restore the life of these assets, Staff incorrectly labeled these expenditures as "repair" expenses. As such, the Commission should reject Staff's mischaracterization of certain capital expenditures as repair expense.

Staff's mischaracterization of expenditures as an expense, rather than a capital costs, extends to other restoration efforts. For instance, "a storage tank at a water facility that has been denied regular painting and maintenance will begin to rust and leak. As a result of previous owner's refusal to maintain such facilities, the life of the storage tank has been undermined. When Confluence Rivers purchases the facility and sands, patches, primes, and paints the storage tank, it is not conducting repairs. Rather, it is restoring the life of the storage tank."[86]

Similarly, a wastewater facility that is impacted with accumulated sludge loses all of its treatment ability. Instead of holding wastewater for treatment, the wastewater simply passes across the accumulated sludge and discharges out of the facility into receiving waterbodies. Additionally, the tank will prematurely rust and begin to leak.

> When Confluence River purchases such a facility, it will immediately pump out the accumulated sludge and haul it for disposal. Similarly, Confluence Rivers will then check the ability of the tank to hold wastewater and patch, prime and paint any leaks. These efforts are not simply repairs to be expensed. Rather, these efforts by Confluence Rivers restore the life of the facility.[87]

Finally, Staff reclassified significant capital costs as repair expense at the Terre du Lac sewer system. "At a total capitalized cost of $25,500, the Company refurbished and remediated the critical issues associated with 27 manholes by placing a coating on the vertical walls of the manholes to stop future leaks so that the useful life of the manholes was materially extended."[88]

Recognizing that these expenditures were not incurred to "maintain" the facilities, as Staff insists, but rather to "restore" the useful life of these systems, the Commission should reject Staff's reclassification of these costs and, instead, capitalize them to plant in service.

<u>Evidence</u> Thies Rebuttal, pages 12-14; Cox Rebuttal, pages 46-53.

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

<u>Position</u>: No. In Case No. WR-2020-0053, Confluence Rivers' predecessor company agreed to implement soft that allows all employees to accurately complete timesheets. While this commitment was ultimately reflected in the employee handbook, and while software was implemented and many employees actually kept timesheets, "the requirement did not translate to all employees."[89] Specifically, with regards to executives, timesheets were not kept. Confluence Rivers readily acknowledges these shortcomings.

Moreover, Confluence Rivers understands the predicament that this failing caused Staff in attempting to calculate an appropriate level of executive compensation to include in this rate case.

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[86] *Id.* at page 53.
[87] *Id.*
[88] Thies Rebuttal, page 14.
[89] Cox Rebuttal, page 31.

"Recognizing that CSWR employees have oversight responsibilities for multiple jurisdictions, the Staff's efforts to include the proper amount of payroll, without any supporting documentation like timesheets, becomes more difficult."[90]

That said, however, such timesheets would have been of questionable value in this case.

> [B]ecause both Confluence Rivers and its other affiliated operating companies continue to grow at a rapid pace, it is doubtful even full compliance with the timekeeping obligations to which the Company agreed would have produced results that would be particularly useful in this case. The changes in our affiliate group are happening so rapidly that timesheet allocations are likely to differ not only year-to-year but quarter-to-quarter. So, timesheet entries covering past periods are unlikely to be accurate predictors of how each employee's time should currently be allocated or will be in the future.[91]

In his testimony, Mr. Cox provides some justification for the failure to keep executive timesheets.

> While not an excuse, ultimately the failure to meet this commitment is a result of the tremendous growth experienced at CSWR since the time of that commitment. Since December 31, 2020, CSWR has entered six additional states and closed on 157 acquisitions with a total of approximately 95,000 connections. As mentioned throughout this case, this is done in an effort to achieve economies of scale across the entire CSWR national footprint, and to minimize, as much as possible, rate increases for customers served by the systems our affiliated group acquires.[92]

Ultimately, Confluence Rivers asks to be relieved of the requirement to keep timesheets.

> Given the tremendous pace of growth which has demonstratively benefited Missouri customers and made CSWR the 11th largest water and sewer IOU in the United States, historical time sheets are not reflective of payroll allocations currently or what they should be in the future. As such, I would ask that the need to maintain timesheets should be withdrawn until such time as timekeeping can provide a useful estimate of ongoing operations.[93]

Mr. Cox then suggests an alternative which Confluence Rivers understands is consistent with the timekeeping approach of executives at other Missouri utilities.

> In the alternative, Confluence Rivers believes that the requirement to keep daily time sheets is onerous for executives that are responsible for the day-to-day operations of a company that is operating in twelve different states. These executives move dozens of times, throughout the course of the day, from issues arising in each of the CSWR states. It is extremely time-consuming to expect these executives to keep accurate time sheets of the multitude of projects that each

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[90] *Id.* at page 31.7.56%
[91] Cox Rebuttal, pages 31-32.
[92] *Id.* at page 32.
[93] *Id.*

> address on a day-to-day basis. As such, Confluence Rivers asks that the Commission modify the requirement to keep daily timesheets such that directors and above be permitted to engage in exception timekeeping.[94]

In his testimony, Mr. Thies provides details to the alternative suggested by Mr. Cox.

> The executive and director level of employees of CSWR are involved in setting procedures, monitoring operations performance, supervising employees and contractors and setting strategic direction for the Company. A significant portion of their time is spent discussing these items at a level that impacts all customers of CSWR's subsidiaries and not just those in one individual entity or another. One example of this is the time spent by executives and directors in managing their staff teams, which would include monitoring employee development, holding departmental meetings, and directing staff in the management and supervision of vendor relationships. This portion of time spent managing at a level which affects all subsidiaries, and all customers, is time and compensation expense that should be allocated based on the Company's three-factor overhead allocation methodology. This is the methodology described in my direct testimony and commented on in the direct testimony of Staff witness Sarver. While much of the compensation expense of executive and director level employees could be handled this way, there are certain exceptions and special projects that these employees could allocate time to on a monthly basis. These projects might include annual audits, the rate cases of individual entities, large construction projects, certain company initiatives including software implementations or vendor selection processes and similar activities. The Company proposes a Project Time-Tracking plan in which executives and directors track their time spent on these special projects on a monthly basis. The time would be allocated and appropriately expensed according to the particular project parameters. Any time remaining after the project allocations would be expensed using the 3-factor methodology that the Company uses for its other overhead allocation costs.[95]

24. Payroll:

With respect to payroll—

a. What is the appropriate amount of payroll expense to include in Confluence's cost of service?
b. What amount, if any, of executive compensation should be recovered in rates?
c. Should MERIC be used in setting salaries?
d. Should a rate for unemployment be applied to Staff's proposed amount of salaries in setting such amounts?

Position: (a) The Commission should include that level of payroll expense associated Confluence Rivers' salaries. As described in the testimony of Mr. Cox and Mr. Thies, the rapidly growing nature of CSWR's operations, as well as the operations in numerous states, has required CSWR "to continually add to its workforce."[96] That said, however, given that CSWR is still largely seen as a "start-up" company, "it has been even more difficult to locate, attract, and retain necessary

[94] *Id.* at pages 35-36.
[95] Thies Rebuttal, pages 19-20.
[96] *Id.* at page 15.

talent."[97]

> The difficulty of attracting and retaining talented employees also has been more difficult over the last few years as unemployment rates have remained historically low and fewer jobseekers have been on the market. For these reasons, CSWR has recognized that in order to attract the workforce capable of serving its customers well, salary and benefit packages would need to be above averages generally applicable to the utility market. Moreover, because the CSWR workforce is comprised of administrative and executive employees who are largely engaged in activities different than those of more static, well-established utilities, compensation market references are not limited to other utilities. It requires CSWR to understand the job market and pay rates for professional roles across all industries – not just utilities. Said another way, CSWR is not only competing with other utilities to fill engineer, accountant, executive, and other administrative jobs; it is competing against companies in all industries who are hiring those positions.[98]

Recognizing the competition for these skilled employees, CSWR has had to provide a competitive compensation package. As such, the Commission should include the payroll reflect in Confluence Rivers' cost of service.

<u>Evidence</u>: Thies Rebuttal, pages 14-18.

(b) Missouri ratepayers have benefitted from the rapid growth experienced at CSWR. As Mr. Cox points out, "the amount of CSWR corporate overheads allocated to Missouri has decreased as a result of the tremendous CSWR group's growth." As the following table depicts[99], Missouri customers have seen a rapidly decreasing share of the CSWR allocated costs as a result of the growth effectuated by the CSWR executives.

Quarter / Year	**Missouri Allocation[100]**
Q1 2020	26.42%
Q2 2020	26.42%
Q3 2020	17.67%
Q4 2020	17.67%
Q1 2021	16.17%
Q2 2021	16.58%
Q3 2021	15.05%
Q4 2021	12.93%
Q1 2022	10.50%
Q2 2022	12.55%

[97] *Id.*
[98] *Id.* at pages 15-16.
[99] *Id.* at page 33.
[100] Prior to 2021, allocations to each individual state utility operating company were only calculated semi-annually. For this reason, the allocation for Q1 2020 and Q2 2020 were the same. Additionally, this does not provide an exact apples-to-apples comparison, as CSWR slightly changed its cost allocation approach at the beginning of 2022. That said, however, one can get a relative sense that the allocation percentage to Missouri operations as decreased dramatically as a result of the acquisitions of additional systems.

Q3 2022	10.94%
Q4 2022	10.05%
Q1 2023	7.99%
Q2 2023	7.56%

Thus, while CSWR executives failed to keep the mandated timesheets because of their focus on growth in other states, there is certainly a substantial indication that Missouri ratepayers benefitted from this focus on growth.

Because of the failure of CSWR executives to keep the mandated timesheets, however, Staff simply disallowed the entirety of the compensation associated with these executives. As Mr. Cox explains, "Staff's approach is extremely punitive."

> Effectively, the result of Staff's elimination of the entirety of executive payroll and benefits is that Staff believes that Confluence Rivers can effectively be managed without an executive team. Such a conclusion is nonsensical. It is unquestioned that Missouri ratepayers receive a benefit from the efforts of this management team. Most obviously, the executive team for which Staff has removed all salaries and benefits for the team responsible for bringing 50 Missouri systems back into compliance with health, safety, and environmental compliance. This executive team took at least 13 Commission-regulated utilities out of receivership. This utility took numerous utilities over at the behest of MDNR and/or the Commission staff. In addition this executive team was responsible for securing the debt financing recognized in this case. The benefits of those efforts are reflected in a lower overall cost of capital in this case. Moreover, assuming a sufficient level of cash flow resulting from the rates in this case, that same executive team will be responsible for securing additional debt financing. All of this means Missouri customers now have safe drinking water and can now safely play in numerous lakes, rivers, and streams that are protected from environmental degradation. As such, to accept the benefits of the CSWR executive team and reflecting those benefits in rates without also acknowledging at least some costs underlying that same team does not seem consistent with Staff's duty to balance the interests of the utility and ratepayers.[101]

Mr. Cox then suggests a more equitable approach, even without timesheets to recovering executive compensation in rates – simply use the general corporate allocator.

> As with many corporate costs that are not easily assigned to a particular jurisdiction, a general allocation, such as that produced by the corporation allocation manual, would provide a reasonable level of executive salaries and benefits to include in rates. For instance, costs associated with rent at the corporate headquarters, payroll administration expenses, and various software expenses are allocated to the various state utility operating companies on the basis of the general allocator described in the Cost Allocation Manual. Applying the same general allocator that is used for rent and other corporate costs to executive salaries and benefits would allow

[101] Cox Rebuttal, page 34.

> recognition of the fact that these executives provide services that are necessary to the operations of the Missouri utility while also only recognizing a reasonable amount of the associated salaries and benefits.[102]

Therefore, recognizing that a complete disallowance of executive compensation is punitive, Confluence Rivers asserts that the Commission should simply use a general allocator to reflect an appropriate level of CSWR executive compensation in rates for Confluence Rivers.

Moreover, contrary to Public Counsel's assertions, CSWR executive compensation is not excessive. Specifically, in his testimony, Mr. Cox presents an analysis of the compensation package for the top 5 executives at CSWR relative to those at similarly sized water and wastewater utilities. Based upon that analysis, Mr. Cox concludes that CSWR executives likely "lag" behind that of other utilities in the industry.

> The compensation for the five highest paid executives at CSWR almost exactly matches the average of the two identified similarly sized national water and wastewater utilities with significantly smaller state footprints and, regards to individual operating systems, lower operational complexity by orders of magnitude. As mentioned, recognizing that these other utilities routinely offer other compensation in the form of bonuses and stock options, I submit that the CSWR executive salaries are not only reasonable, they actually lag behind that of other utilities in the industry.

Given this, Confluence Rivers asserts that CSWR executive salaries are reasonable.

<u>Evidence</u>: Cox Rebuttal, pages 30-42.

(c) No. As reflected in Mr. Thies rebuttal testimony, MERIC is a poor tool to use comparison and benchmarking in this case. CSWR continues to be viewed as a start-up company. As a result, it is forced to pay above market wages in some cases to attract and retain employees. Second, since the MERIC database is based upon 2021 data, it does not reflect any type of hiring market conditions that may have changed since that time. As Mr. Thies points out, "[o]ne example of a market change is the unemployment rate. As published by the Bureau of Labor Statistics, the unemployment rate for the state of Missouri in 2021 stood at 4.1% and reduced to 2.5% in 2022. This change means that fewer individuals were looking for work and the cost to attract an employee could be higher as a result. This also means that wage increases and benefits packages might need to be higher to retain current employees."[103] That said, however, the biggest defect with the MERIC database stems from an inability to determine the nature of the information that was included in the database.

> Employers are not legally required to provide information regarding the salaries and other compensation paid to their employees, so it is reasonable to believe many employers do not do so. Therefore, it is impossible to determine by just looking at the MERIC results whether it is representative of the employment market as a

[102] *Id.* at page 35.
[103] Thies Rebuttal, page 17.

> whole or only of those employers who agreed to provide salary and benefit information. If the study reflects the latter group, it is likely the salary ranges shown are skewed downward as information regarding compensation provided to those at or near the tops of their employment groupings was not included in the study.[104]

Evidence: Thies Rebuttal, pages 16-18.

25. Employee Benefits:
What is the appropriate amount of employee benefits to include in Confluence's cost of service?

Position: The Commission should include that level of benefits contained in the Company's cost of service study. Much like the salary package, that level of employee benefits was determined necessary to attract and retain qualified employees.

26. Corporate Allocations:
What is the appropriate percent of corporate expenses to be allocated from CSWR to Confluence?

Position: The Commission should allocate 7.99% of CSWR costs to Confluence Rivers.

Evidence: Thies Direct, pages 12-13.

27. Cell Phone/Internet Reimbursement:
Should the Commission allow recovery of cell phone and Internet reimbursement?

Position: Rather than purchase cell phones for 24 employees, Confluence Rivers has implemented a policy to reimburse certain employees for personal cell phones. Similarly, Confluence Rivers reimburses these employees for home internet access. Such a policy recognizes that certain employees must be accessible on a 24x7 basis. As Ms. O'Reilly points out cell phone reimbursement is necessary for several reasons.

> The Commission is obviously aware, from recent tornadoes, ice storms, and flooding, that utility issues can arise at any time – not just when employees are in the office. Second, given the distressed nature of the water and wastewater systems that Confluence Rivers acquires, system problems can arise independent of the weather or the time of day. Third, given the critical nature of utility services, Confluence Rivers has found that stakeholders (including Commissioners, Staff members, environmental regulators, and legislators) want to be able to reach their utilities beyond normal work hours. Fourth, as was detailed in Confluence Rivers witness Todd Thomas' Direct Testimony, while Confluence Rivers retains a customer service entity (Nitor) to address customer inquiries, issues that Nitor is unable to address are escalated to a Confluence Rivers employee. As such, these employees are needed to be accessible throughout the day, not just during the workhours when they are near their office phone.[105]

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[104] *Id.* at pages 17-18.
[105] O'Reilly Rebuttal, page 8.

Given this, access to these employees on a 24x7 basis is critical to Confluence Rivers' ability to provide safe and adequate service. Despite the obvious customer benefit from cell phone reimbursement, Staff proposes to disallow these cell phone / internet costs under the theory that "employees that have an office phone . . . should not be reimbursed for their personal cell phones."[106] Staff's position implicitly suggests that utility issues only arise between the hours of 8:00 to 5:00 when employees are near their office phones.

Interestingly, Staff's position is inconsistent with its own practices. "For many of the same reasons that Confluence Rivers provides cell phone reimbursement, the State of Missouri provides cell phones to necessary Commission employees. Interestingly, these employees also have office phones. Given that the State of Missouri recognizes that certain employees need to be accessible beyond work hours, it seems inconsistent for Staff to deny the same accessibility to the utilities that own and operate these utility systems."[107]

[106] Sarver Direct, page 16.
[107] O'Reilly Rebuttal, page 9.