

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Confluence Rivers Utility)	
Operating Company, Inc.'s Request for)	
Authority to Implement a General Rate)	<u>Case No. WR-2023-0006</u>
Increase for Water Service and Sewer)	Tariff Nos. YW-2023-0113
Service Provided in Missouri Service)	and YS-2023-0114
Areas)	

**STAFF'S SUPPLEMENTAL STATEMENT OF
DISCOVERY DISAGREEMENTS AND CONCERNS AND
ALTERNATIVE REQUEST FOR SPECIAL DISCOVERY CONFERENCE**

COMES NOW the Staff of the Missouri Public Service Commission and for its *Supplemental Statement of Discovery Disagreements and Concerns and Alternative Request for Special Discovery Conference*, states as follows:

1. On March 17, Staff filed its *Statement of Discovery Disagreements and Concerns* for the regularly-scheduled Discovery Conference set for March 22, 2023. Now, Staff brings forward certain additional concerns that have arisen since March 17. If these cannot be taken up at the Discovery Conference set for March 22, 2023, Staff accordingly requests a special Discovery Conference for these concerns to be held next week at the latest.

2. Staff's additional concerns are as follows:

A. **DR 37.1:** Response is overdue at 22 days.

Additionally, the Company objected to DR 37.1. The DR and objection are set out below:

DR 37.1: Please reference the Company's response to Staff data request 37, specifically the response that states: "Each state in which CSWR affiliates operate has at least one state holding company, which has no employees and conducts no business, at least one intermediate holding company which has no employees and conducts no business, and at least one regulated state operating company which provides the utility service

and owns all utility assets.” Please explain why a state holding company which has no employees and conducts no business as well as an intermediate holding company which has no employees or conducts business is necessary. What is the purpose of these holding companies that have no employees and conducts no business?

The Company’s objection follows:

Confluence Rivers objects to this data request as the responsive information is not relevant to the subject proceeding and not proportional to the needs of the case considering the totality of the circumstances.

Without waving any objection, Confluence Rivers will continue its review and indicate to Staff if there is responsive information that can and will be provided.

The Company’s objections, that the DR is irrelevant and not proportional, are without merit and should be overruled. Discovery in PSC proceedings may be obtained by the same means and under the same conditions as in civil actions in the circuit court.¹ Sanctions for abuse of the discovery process or failure to comply with commission orders regarding discovery are the same as those provided for in the rules of civil procedure.² Privileges apply in Commission proceedings just as they do in circuit court.³ The party raising objections has the burden of establishing them.⁴

¹ Rule 20 CSR 4240-2.090(1); see § 386.420.2, RSMo. (authorizing depositions) and 536.073, RSMo., 1. (authorizing depositions) and 2. (authorizing adoption by rule of other methods of civil discovery). The Commission was authorized to provide for interrogatories by rule even before Chapter 536 was amended to make that option generally available to administrative agencies. See **State ex rel. Southwestern Bell Telephone Company v. Public Service Commission**, 645 S.W.2d 44, 50-51 (Mo. App., W.D. 1983).

² Rule 20 CSR 4240-2.090(1) and see **State ex rel. Arkansas Power & Light Company v. Public Service Commission**, 736 S.W.2d 457, 460 (Mo. App., W.D. 1987) (“This court holds the PSC may impose sanctions pursuant to Rule 61.01.”). However, in imposing discovery sanctions, the Commission must take care that the “punishment fits the crime.” **Arkansas Power & Light**, *supra*, 736 S.W.2d at 461 (it was an abuse of discretion to exclude vital evidence as a discovery sanction).

³Rule 20 CSR 4240-2.130(5).

⁴**Hutchinson v. Steinke**, 353 S.W.2d 137, 144 (Mo. App. 1962).

The scope of discovery in proceedings before the Commission is the same as in civil cases generally:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.⁵

“Relevant” evidence, in turn, is that which tends to prove or disprove a fact of consequence to the pending matter.⁶ In civil cases, relevance is generally determined by reference to the pleadings.⁷ In a rate case, where there are no issue-framing pleadings, particularly at the audit stage, as here, relevance is necessarily a broad thing. Simply put, Staff’s audit at the outset of a rate case is intended to determine what the revenue requirement should be and whether or not there is a revenue shortfall (justifying a rate increase) or a revenue surplus (requiring a rate reduction). Where, as here, the utility operates in multiple jurisdictions, enmeshed in a welter of unregulated parents, affiliates, and subsidiaries, at the whim and caprice of one man,⁸ Staff’s audit must be more searching. In particular, Staff must determine whether improper subsidization is occurring: are costs being shifted to the ratepayers from

⁵Rule 56.01(b)(1), Mo. R. Civ. Pro.

⁶W. Schroeder, 22 *Missouri Practice—Missouri Evidence*, § 401.1(a) (1992).

⁷See *St. ex rel. Anheuser v. Nolan*, 692 S.W.2d 325, 327-28 (Mo. App., E.D. 1985).

⁸ Staff reads the Company’s response to DR 147 as stating that Josiah Cox, in and of himself, is the Board of Directors, responsible only to himself.

unregulated operations? Are costs being shifted to Missouri ratepayers from other jurisdictions? Consequently, the Corporate structure within which the Company operates is entirely relevant and may very well lead to the discovery of admissible evidence concerning the revenue requirement, rate of return, allocations, income taxes, and other matters.

B. **DR 45.1:** Response is overdue at 22 days.

3. The requested information is necessary for Staff to prepare its case and to audit the Company's compliance with applicable Missouri statutes, Commission regulations, orders, and approved stipulations. In a general rate case such as this one, all of the necessary information is in the possession of the utility. Without the cooperation of the requesting utility, Staff cannot determine whether or not a rate increase is needed or how much of an increase is actually needed. Such a situation is necessarily deeply prejudicial to the Company's ratepayers and cannot be permitted.

WHEREFORE, Staff submits this *Supplemental Statement of Discovery Disagreement or Concern* in advance of the Discovery Conference currently scheduled for March 22, 2023, at 10:00 a.m.; alternatively, if this supplement is filed too late to be taken up on the 22nd, Staff requests a special Discovery Conference no later than next week; and seeks such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this **21st day of March, 2023**, to all parties and/or counsels of records.

/s/ Kevin A. Thompson