

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

In the Matter of the Application of Confluence)
Rivers Utility Operating Company, Inc., for) **File No. WF-2023-0023**
Authority to Issue Long-Term Debt and to Secure)
Same with a Lien on its Property)

REPLY IN OPPOSITION TO OPC RESPONSE TO STAFF RECOMMENDATION

COMES NOW Confluence Rivers Utility Operating Company, Inc. (“Confluence Rivers” or “Company”), and for its *Reply in Opposition to the OPC Response to Staff Recommendation* states it opposes each of the conditions proposed by the Office of the Public Counsel (“OPC”) in its *Response to Staff Recommendation*. As discussed more fully below, OPC’s proposed conditions are unreasonable, are contrary to state statutes authorizing utilities like Confluence Rivers to issue bonds and other forms of indebtedness and the Missouri Public Service Commission’s (“Commission”) interpretation of those statutes, and greatly exceed both the scope of OPC’s authority under applicable law and the role it was envisioned to play in the utility regulatory process. In support of its opposition to OPC’s proposed conditions, Confluence Rivers states as follows:

INTRODUCTION

1. On August 1, 2022, Confluence Rivers submitted applications requesting authority to issue long-term debt to CoBank, ACB (“CoBank”) in an amount not to exceed \$7.2 million. Confluence Rivers also seeks authority to secure this long-term indebtedness by granting CoBank a lien on all equity Confluence Rivers owns now and will own in the future.

2. On October 7, 2022, the Staff of the Commission (“Staff”) filed its *Staff Recommendation* and supporting *Memorandum* (“Staff Memorandum”) recommending approval of Confluence Rivers’ *Application*, subject to the conditions described in the Staff Memorandum.

Confluence Rivers filed its *Response to Staff Recommendation* on October 17, 2022, and, therein, stated that it had no objection to the Staff's proposed conditions.

3. Also, October 17, 2022, the OPC filed its response to Staff's recommendation, which supported Staff's recommendation that the Commission approve Confluence River's requested financing authority along with Staff's proposed conditions, and an additional three conditions proposed in OPC's response. The Commission issued its *Order Directing Response* on October 17, 2022, directing that the parties respond to OPC's *Response to Staff Recommendation* by Friday, October 21, 2022.

STANDARD

4. This case arises under Sections 393.190, RSMo (for encumbrance), and 393.200, RSMo (evidence of indebtedness). The Commission standard under Section 393.190 is whether the proposed transaction is "not detrimental to the public." (*See State ex rel. St. Louis v. Public Service Commission*, 73 S.W.2d 393 (Mo. 1934)). The Commission has similarly used the "not detrimental to the public" standard in regard to Section 393.200. (*See Application of Union Electric Company d/b/a AmerenUE*, Order Granting Application, Case No. EF-2006-0278, 2006 Mo. PSC LEXIS 193, *4 (February 28, 2006) ("The Commission finds that the transaction AmerenUE proposes would not be detrimental to the public interest, and will therefore approve the transaction, subject to the above conditions."); *see also* Staff Memorandum, p. 4 ("Staff applies the 'not detrimental to the public interest' standard to financing applications.")).

5. Another relevant statute is Section 386.710, RSMo, which prescribes OPC's role and the scope of its authority in the utility regulatory process. As stated in subsection (2) of that statute, that role is limited to representing the interests of the public "in any proceeding before or appeal from" this Commission.

CONFLUENCE RIVERS OBJECTS TO OPC PROPOSED CONDITIONS

6. OPC suggests that the Commission only approve the proposed financing if the following conditions are included in the Commission's order:

- a. Confluence shall provide all correspondence provided to and received from current or prospective lenders/debt investors as it relates to the current or potential additional debt financing.
- b. If Confluence has substantive discussions with its current or prospective lenders/debt investors, Confluence will involve Public Counsel (and Staff, to the extent it wants to be involved) in such discussions. Confluence, CSWR, LLC, and their Missouri affiliates agree to permit Public Counsel to discuss confidential information regarding CSWR, LLC, Confluence, and their Missouri affiliates with current and potential lenders in conjunction with these discussions.
- c. Subject to the Commission rules governing discovery, Confluence agrees to provide Staff and Public Counsel data and documents necessary to discuss the financial situation of CSWR, LLC, Confluence, and their Missouri affiliates with current and potential lenders. These data and documents will include correspondence between Confluence, CSWR, LLC, and their Missouri affiliates, on one hand, and potential lenders, on the other hand, including all attachments and requests for information made by the potential lenders.

7. None of the conditions OPC proposes relate to a "proceeding before or appeal from" this Commission. The "proceeding before" this Commission related to the specific financing proposed by Confluence Rivers in this case, which both Staff and OPC support. All of the OPC's proposed conditions instead relate to actions the Company (and its affiliates) may take to obtain additional debt in the future. Indeed, if adopted, these conditions would give OPC "a seat at the table" in negotiations between Confluence Rivers and potential lenders regarding such future debt issuances. That is not the role the General Assembly envisioned when it created the OPC more than forty years ago. The OPC's role is as an advocate for the public in *proceedings* before the Commission and in appeals resulting from those proceedings. The OPC was never intended to act as a partner or participant in the day-to-day business activities of Missouri's regulated utilities.

In fact, Confluence Rivers is unaware of any other Missouri public utility that must comply with similar conditions.

8. Missouri courts have clearly stated that the Commission is not authorized to manage the utilities it regulates. *State ex rel. Harline v. Public Serv. Com'n*, 343 S.W.2d 177, 182 (Mo. App. 1960) (“The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation, and does no harm to public welfare.”). There is no statutory or case law supporting the notion a different rule applies to the OPC.

9. Confluence Rivers proposes to use the subject financing to refinance existing debt. By refinancing the existing high interest debt, Confluence Rivers seeks to obtain a lower interest rate and reduce Confluence Rivers’ interest costs. Staff estimates interest rate decrease will allow Confluence Rivers to pay roughly 50% to 68% less on payments. (*See Staff Memorandum*, p. 5-6). Such a reduction will be of benefit to Confluence Rivers’ customers.

10. OPC provides no explanation as to why the proposed financing would be detrimental to the public in the absence of its additional conditions. This attempt to force OPC’s extensive involvement in every step of Confluence Rivers’ (and its parent, an unregulated entity) financial transactions is unreasonable – especially in a case where no party suggests any detriment associated with the proposed financing that is the subject of this case.

11. OPC suggests its proposed conditions are consistent with the *Nonunanimous Disposition Agreement Regarding Disposition of Small Utility Company Revenue Increase*

Request in Case No. WR-2020-0275 (a general rate case involving Elm Hills Utility Operation Company, Inc., which was then an affiliate of Confluence Rivers and has since been merged into Confluence Rivers) (“Disposition Agreement”). But that agreement provides no justification for the conditions OPC proposes in this financing case, as that agreement expressly states that the conditions agreed upon in the Disposition Agreement “reflect compromises between OPC and the Company” that were specific to that case. They are not precedent for similar conditions in this case – especially since Confluence Rivers is unwilling to stipulate or agree to such conditions.

12. Further, OPC can easily perform its function in regard to the Company’s future financings through the mechanisms provided by statute and applicable Commission rules without the extensive involvement OPC seeks through its proposed conditions. Before it can obtain additional long-term debt financing, Confluence Rivers must come before the Commission and seek approval for such financing. At that time, OPC can assess whether the proposed financing is detrimental to the public interest and can take appropriate action based on that assessment.

13. It also should be noted that the proposed debt financing has no immediate impact on Confluence Rivers’ rates, and all issues related to the impact of debt capital on rates will be fully vetted in a future rate case. Confluence Rivers has already given notice of its intent to file a general rate case in the near-term future.¹ That case also will afford OPC the chance to enquire regarding Company’s plans to add additional debt to its capital structure.

14. Given the above, the conditions proposed by OPC are neither reasonable nor lawful within the context of this case and should not be adopted by the Commission.

NEXT STEPS

15. As most are aware, the country is currently in the midst of a volatile time for interest

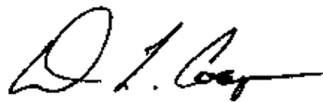
¹ Confluence Rivers has provided Notice of Intended Case filing in regard to a rate case (File Nos. WR-2023-0006 and SR-2023-0007).

rates. Many predictions suggest interest rates may continue to rise for some time into the future. Accordingly, Confluence Rivers believes that reaching a decision in this case sooner, rather than later, would most likely benefit its customers.

16. For this reason, Confluence Rivers does not request an evidentiary hearing as to OPC's proposed conditions and would instead request that the Commission resolve this issue based on the pleadings. If the OPC's proposed conditions are not adopted, Confluence Rivers would be free to move forward more quickly with the proposed financing as expeditiously as possible, subject only to the Staff conditions.

WHEREFORE, Confluence Rivers requests the Commission consider this *Reply in Opposition to the OPC Response to Staff Recommendation* and, thereafter, issue an order approving Confluence Rivers' *Application*, subject to the conditions found in Staff's *Memorandum*, and for such other and further relief as deemed appropriate in the circumstances.

Respectfully submitted,



Dean L. Cooper, Mo. Bar #36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
Telephone: (573) 635-7166
Facsimile: (573) 635-0427
dcooper@brydonlaw.com

David L. Woodsmall MBE #40747
Central States Water Resources
1630 Des Peres Rd., Suite 140
Des Peres, MO 63131
dwoodsmall@cswrgroup.com

**ATTORNEYS FOR CONFLUENCE RIVERS
UTILITY OPERATING COMPANY, INC.**

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 21st day of October 2022 to all counsel of record.

