

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

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

RESPONSE TO STAFF’S MOTION TO COMPEL

COMES NOW Confluence Rivers Utility Operating Company, Inc. ("Confluence Rivers") and for its *Response to Staff’s Motion to Compel* respectfully states to Missouri Public Service Commission ("Commission") as follows:

Background

1. On June 26, 2023, the Staff of the Commission (“Staff”) filed its *Motion to Compel*.
2. Rule 20 CSR 4240-2.090(1) states “[d]iscovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court.” General provisions regarding discovery in Missouri’s circuit courts are set forth in Supreme Court Rule 56.01, which states in relevant part:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter in the pending action . . . provided the discovery is proportional to the needs of the case considering the totality of the circumstances, including but not limited to . . . the parties’ relative access to relevant information . . . the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit.

Information within the scope of discovery need not be admissible in evidence to be discoverable if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The party seeking discovery shall have the burden of establishing relevance.

3. In *State ex rel. Bostelmann v. Aronson*, 361 Mo. 535 (1951), the Missouri Supreme Court held the mere institution of a legal action “could not be ‘good cause’ for an unlimited

inspection and search . . .” of a litigant’s records or information. *Id.* at 548 (quoting *State ex rel. Cummings v. Witthaus*, 358 Mo. 1088, 219 S.W.2d 383 (Mo. 1949)). “Under the guise of discretion the trial judge cannot authorize a mere ‘fishing expedition.’” *Id.* Consequently, in addition to the limitations previously noted, Staff’s discovery requests must be rejected unless they are reasonably designed to lead to the discovery of evidence admissible in a hearing on Confluence River’s request for increased rates.

4. Moreover, matters placed at issue in that request are limited in both number and scope:

The basic question involved in rate making is this: what is the utility company’s total *cost of service*? Stated another way, this question asks: how much *total revenue* should the public utility be authorized to collect through the rates charged for its sales of service? (Emphasis original) . . .

The cost of service of a public utility is defined as the sum of: (a) proper operating expenses; (b) depreciation expense; (c) taxes; and (d) a reasonable return on the net valuation of property.

. . .

After the cost of service and revenue requirement have been determined by decision of the regulatory commission, the next and final step in the rate-making process involves pricing the service, or designing schedules of rates that are intended to produce the total revenue that the utility is authorized to collect from the public.

Paul J. Garfield and Wallace F. Lovejoy, *Public Utility Economics* (Prentice-Hall, 1964) at pp. 44-45.

5. Discovery in this case should be limited to documents and information germane to matters placed at issue by the rate case filing: i.e., the determination of an appropriate revenue requirement and rate design for Confluence Rivers. Staff should not be allowed to use the rate case as a vehicle to obtain discovery on issues and affiliated companies that have no impact on those issues.

Data Requests at Issue**DR 0425**

6. Staff's DR 0425 states:

1. How are exit interviews conducted for employees that end employment with the company? List and explain each method that is used to conduct an exit interview. For example, telephone, virtual meeting, online via survey or email, US mail, in-person, etc.

2. For each method identified in item 1 above, explain how human resources (and/or any other employees) maintain a record of each exit interview completed. For example, electronically, hardcopy, voice recording, etc.

3. For the period covering October 1, 2019 through January 31, 2023, identify each former employee by job title and provide a complete copy of each completed exit interview (this should include, but not be limited to, all questions that were asked and all answers that were provided) separately for each employee that ended employment with the company. All former employee names may be redacted in copies of the completed exit interviews. If a copy does not exist provide access to virtual conferences, voice recordings and all other methods that have not been transcribed either electronically or in hardcopy format.

7. Confluence Rivers served a timely objection to this data request, which stated as

follows:

- as the information sought is not relevant to the subject proceeding and not proportional to the needs of the case considering the totality of the circumstances to include, but not limited to, a) the fact that the regulated entity that is the subject of this case (Confluence Rivers) has no employees; and b) the information sought concerns human resources practices and matters related to former employees of a non-regulated entity, and c) the information sought concerns matters not related to the establishment of the revenue requirement or rates in this case; and,

- given the over three year period for which information is sought, the request is unduly broad and overly burdensome.

8. After discussion of these issues at the June 14, 2023 Discovery Conference, and without waiving any objection, a response was provided to Staff on June 15, 2023. As noted by Staff, all requested information was provided "except for exit interview questions and responses." (Motion, para. 4).

9. The response to Staff DR 0425 explained that exit interviews are attempted, but not required, during the employee's last week of work and that while the goal is to complete them in person, field and remote employees exit interviews, if any, are to be completed via telephone. Additionally, while a list of sixteen (16) employees who left the company between October 1, 2019, and January 31, 2023 was provided, it was noted that exit interviews did not commence until October 2020.

10. Confluence Rivers believes that the nature of the information requested by Staff must be considered in reaching a decision on Staff's *Motion to Compel*. What is being requested are the actual responses from employees as they leave the business. For this information to be of assistance to the employer, the employer needs those responses to be open and honest. Requiring that the content of these conversations be released to a state organization is not the sort of treatment that will encourage open and honest communications. Additionally, as always, the context of those responses will be important to understanding their value, something an outside viewer will not have.

11. Staff's list of reasons that it believes this information is relevant covers broad range of general areas, without any direct relevance to this general rate case. Staff speaks of:

- "turnover costs ratepayers money and signals a lack of sound management practices that may indicate other needlessly expensive inefficiencies";
- "exit interviews may also reveal other problems that may exist, such as lack of policies and procedures, lack of controls, raise questions about the integrity of the organization";

- “employee turnover may evidence an institutional culture of bigotry, discrimination, and intolerance that exposes Confluence to expensive litigation, settlements, and/or judgments”;
- “exit interviews may shed light into management leadership styles and effectiveness, lend insight into employee perceptions of the organization, and learn about human resources benchmarks (for salary and benefits) in comparison to competing organizations.”

12. Of course, whether turnover is providing “expensive inefficiencies” can be seen by the employee numbers. The sixteen positions identified do not exhibit an undue amount of turnover. This is especially true given that the period identified by Staff includes the pandemic, an extraordinary period for all employers.

13. Staff additionally suggests that somehow exit interviews will help assess the policies and procedures, controls, and the integrity of the organization. Again, these are all matters that are at best only tangentially related to the establishment of the revenue requirement and rate design in this case. However, even if related, the generic statement made by Staff provides no basis to think that exit interviews would provide any light on these issues beyond that found in the other materials available to Staff.

14. Similarly, if there were an institutional culture leading to “expensive litigation, settlements, and/or judgments,” that would be evident from the existence of such “litigation,” not exit interviews. There are public means of determining any litigation in which Confluence Rivers may be involved. Exit interviews are not a likely place to find such information.

15. Lastly, Staff’s curiosity about “management leadership styles,” “employee perceptions of the organization,” and “human resources benchmarks” are equally non-related to the questions of revenue requirement and rate design and unlikely subjects for exit interviews.

16. In short, none of the reasons cited by Staff should call for the production of employee exit interviews. Supreme Court Rule 56.01(1) provides, in part, as follows:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter in the pending action . . . provided the discovery is proportional to the needs of the case considering the totality of the circumstances, including but not limited to . . . the parties’ relative access to relevant information . . . the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit.

17. The information requested by Staff in regard to DR 0425 is not relevant to the issues to be decided in this general rate case. Further, even if “relevant,” given the nature of the information, requiring the discovery of these interviews is not “proportional to the needs of the case considering the totality of the circumstances.” This information should be held close by the employer in order to encourage open and honest responses from employees in the future. Staff has not carried the burden of establishing the relevance and need for this sensitive information.

DR 0231.1

18. Staff’s DR 0231.1 states:

** _____

1. _____

_____.

2. _____

_____.

3. _____

_____. **

19. Before moving forward with the response, it may be helpful to be clear in regard to the primary entities that will be referenced by Confluence Rivers:

- “Confluence Rivers” is a Missouri general business corporation and is a “water corporation,” a “sewer corporation,” and a “public utility,” as those terms are defined in Section 386.020, RSMo, and is subject to the jurisdiction and supervision of the Commission. Confluence Rivers’ statement that it has no board of directors reflects the fact that it has one director, which can be seen by its filings with the Missouri Secretary of State. Staff DR 0231, subpart 1 asked about a board of directors . . . that meet[s] intermittently where there is a discussion regarding corporate strategy, approval of acquisitions, [etc.]”;
- “CSWR, LLC” is a Missouri limited liability company and parent of numerous state utility operating companies. As a Missouri limited liability company, CSWR, LLC has no statutory requirement to have a board of directors, nor does its operating agreement create a board of directors; and,
- “Central States Water Resources, Inc.” is a Missouri general business corporation that, as is relevant to this matter, acts as the “manager” of CSWR, LLC. Central States Water Resources, Inc. has a board of directors, which can be seen by its

filings with the Missouri Secretary of State. It does not have an ownership interest in any of the CSWR, LLC subsidiaries.

20. The document Staff references in its data request was apparently viewed by Staff as a part of its “review of external auditor workpapers.” These workpapers are compiled by, and belong to, the external auditor. Confluence Rivers does not have context or background related to the referenced document.

21. Assuming the document may be notes taken by one of the external auditors, Confluence Rivers previously suggested that the referenced meeting (although the document references “CSWR”) was likely that of U.S. Water Systems, LLC and further indicated its belief that a mention of Josiah Cox as a board member of U.S. Water Systems, LLC would be erroneous in that context.

22. After further examination, Confluence Rivers believes that the referenced notes may have utilized an unfortunate abbreviation (“CSWR”) for “Central States Water Resources, Inc.,” rather than representing “CSWR, LLC.” A review of the Central States Water Resources, Inc. directors as found in its annual report submitted to the Missouri Secretary of State reveals directors generally in line with those listed in the subject notes (See **Attachment A**). Further, Staff notes that the document it reviewed reflects that “** _____ **.” Mr. Moore is listed as an officer of Central States Water Resources, Inc. (See **Attachment A**). Accordingly, it appears that Staff DR 0231.1 requests information related to Central States Water Resources, Inc. and not US Water Systems.

23. Staff also makes an unsupported suggestion that “As an investor of CSWR, LLC and its subsidiaries, US Water is likely a water corporation as defined in § 386.020(59), RSMo, and comes within the Commission’s jurisdiction.” (Motion, para. 12). While US Water Systems

has an interest in CSWR, LLC, it has no direct ownership in Confluence Rivers itself. Confluence Rivers is unaware of any Court or Commission authority for the proposition that any investor in a corporate structure containing a Missouri water corporation is itself a Missouri water corporation. In fact, any such interpretation (which would seem to suggest, for example, that every shareholder of publicly traded American Water is a Missouri water corporation) would have a great number of regulatory consequences. It would further be contrary to a decision issued by the Commission on February 17, 2021, which recognized that a holding company is a non-regulated entity, even where it owns entities that ultimately own an electric corporation that is subject to the Commission's statutory authority. (Order Dismissing Joint Application, *In the Matter of the Joint Application of GridLiance High Plains LLC, et al.*, File No. EM-2021-0114 (February 17, 2021)).

24. In attempting to establish relevance of the material sought, Staff makes a misplaced argument as to the standard it seeks to apply in setting rates. Staff states as follows in regard to US Water System documents:

These materials may tend to show that Confluence is not making decisions that benefit Missouri ratepayers, but rather is compelled to implement decisions that benefit US Water – the private equity firm which owns CSWR and its subsidiaries, including Confluence – at the expense of Confluence ratepayers. Such board decisions affect the expenses and costs that the regulated entity and ultimately, Confluence's ratepayers, will bear. In sum, this information is necessary to verify the legitimacy of the expenses and costs, including capital, that Confluence seeks to recover from ratepayers, and thus it is a valid area of discovery.

(Motion, para. 14).

25. This position attempts to vilify a corporate entity acting in the best interests of its investors. In fact, an entity has the duty to act in the best interest of its investors. This does not necessarily make such decisions adverse to customers and it certainly is not a test of the “legitimacy of the expenses and costs, including capital, that Confluence seeks to recover from ratepayers.” The legitimacy of capital investments, for example, are tested by their use and

reasonableness given other options for address the needs of customers. This is especially true as to capital investments in water and sewer plant, which are heavily regulated and driven by requirements for health, safety and environment.

26. There is no suggestion in the *Motion Compel* that the records sought by Staff are records of Confluence Rivers, the only jurisdictional public utility in this case. Accordingly, Confluence Rivers is unable to produce the documents sought by Staff DR 0231.1, whether they concern US Water Systems LLC or Central States Water Resources, Inc.

27. This Commission has previously recognized that the power and control in a corporate structure flows down, and not up, the corporate chain:

As to Staff's suggestion that Missouri-American should be required to attempt to obtain the information Staff seeks on the theory that, as an affiliate or subsidiary, Missouri-American enjoys superior access to the information in question, such superior access is an assumption and has not been demonstrated. Certainly, Missouri-American has no legal authority to obtain information and documents from its corporate parent and affiliates. An order requiring Missouri-American to attempt to acquire the information and documents from its parent and affiliates is likely to be unworkable in practice.

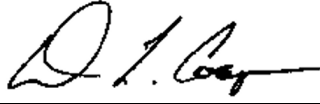
In the Matter of Missouri-American Water Company's Tariff, et al., Case No. WR-2003- 0500, 2003 Mo. PSC LEXIS 1552, *19 (Mo. P.S.C. December 2, 2003) (emphasis added).

28. Accordingly, while Confluence Rivers takes the position that the requested documents are not relevant to this general rate case, it is also the situation that an order compelling Confluence Rivers to produce documents of a parent or affiliate would have no effect.

WHEREFORE, Confluence Rivers Utility Operating Company, Inc. respectfully requests

the Commission deny the Staff's *Motion to Compel*.

Respectfully submitted,



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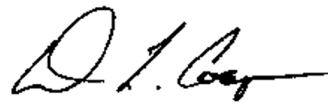
Des Peres, MO 63131

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 6th day of July 2023, to all counsel of record.



John R. Ashcroft Secretary of State
 2023 ANNUAL REGISTRATION REPORT
 BUSINESS

01372666
Date Filed: 4/18/2023
John R. Ashcroft
Missouri Secretary of State

* SECTION 1, 3 & 4 ARE REQUIRED

REPORT DUE BY: 4/30/2023

01372666
 Central States Water Resources, Inc.
 C T CORPORATION SYSTEM
 120 S CENTRAL AVE
 SAINT LOUIS MO 63105

RENEWAL MONTH:
JANUARY
 I OPT TO CHANGE THE CORPORATION'S RENEWAL MONTH TO FOR A \$25.00 FEE

1 PRINCIPAL PLACE OF BUSINESS OR CORPORATE HEADQUARTERS: *

1630 Des Peres Rd (Required)

Suite 140

STREET

Saint Louis MO 63131-1504

CITY / STATE ZIP

2 If changing the registered agent and/or registered office address, please check the appropriate box(es) and fill in the necessary information.

The new registered agent _____

IF CHANGING THE REGISTERED AGENT, AN ORIGINAL WRITTEN CONSENT FROM THE NEW REGISTERED AGENT MUST BE ATTACHED AND FILED WITH THIS REGISTRATION REPORT.

The new registered office address _____

Must be a Missouri address, PO Box alone is not acceptable. This section is not applicable for Banks, Trusts and Foreign Insurance.

<p style="text-align: center;">OFFICERS</p> <p>NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT ACCEPTABLE). MUST LIST PRESIDENT AND SECRETARY BELOW</p> <p>A</p> <p><u>PRESIDENT</u> <u>Cox, Josiah M</u></p> <p>STREET <u>1630 Des Peres Rd</u></p> <p> <u>Suite 140</u></p> <p>CITY/STATE/ZIP <u>Saint Louis MO 63131-1504</u></p> <p><u>SECRETARY</u> <u>Thomas, F. Todd</u></p> <p>STREET <u>1630 Des Peres Rd</u></p> <p> <u>Suite 140</u></p> <p>CITY/STATE/ZIP <u>Saint Louis MO 63131-1504</u></p> <p><u>TREASURER</u> <u>Moore, Martin W.</u></p> <p>STREET <u>1630 Des Peres Rd</u></p> <p> <u>Suite 140</u></p> <p>CITY/STATE/ZIP <u>Saint Louis MO 63131-1504</u></p> <p>STREET</p> <p>CITY/STATE/ZIP</p>	<p style="text-align: center;">BOARD OF DIRECTORS</p> <p>NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT ACCEPTABLE). MUST LIST AT LEAST ONE DIRECTOR BELOW</p> <p style="text-align: right;">B</p> <p><u>NAME</u> <u>Cox, Josiah M</u></p> <p>STREET <u>1630 Des Peres Rd</u></p> <p> <u>Suite 140</u></p> <p>CITY/STATE/ZIP <u>Saint Louis MO 63131-1504 USA</u></p> <p><u>NAME</u> <u>Standen, Daniel J.</u></p> <p>STREET <u>667 Madison Ave</u></p> <p> <u>FL 3</u></p> <p>CITY/STATE/ZIP <u>New York NY 10065 USA</u></p> <p><u>NAME</u> <u>Rooney, Tom</u></p> <p>STREET <u>667 Madison Ave.</u></p> <p> <u>FL 3</u></p> <p>CITY/STATE/ZIP <u>New York NY 10065 USA</u></p> <p><u>NAME</u> <u>Rigas, John</u></p> <p>STREET <u>1135 Bowline Dr.</u></p> <p>CITY/STATE/ZIP <u>Vero Beach FL 32963 USA</u></p>
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NAMES AND ADDRESSES OF ALL OTHER OFFICERS AND DIRECTORS ARE ATTACHED

4 The undersigned understands that false statements made in this report are punishable for the crime of making a false declaration under Section 575.060 RSMo. Photocopy or stamped signature not acceptable. *

Authorized party or officer sign here Madison McIntosh (Required)

Please print name and title of signer: Madison McIntosh / Other

NAME TITLE

REGISTRATION REPORT FEE IS:

___ \$20.00 If filed on or before 4/30/2023

___ \$35.00 If filed on or before 5/31/2023

___ \$50.00 If filed on or before 6/30/2023

___ \$65.00 If filed on or before 7/31/2023

ADD AN ADDITIONAL \$25.00 FEE IF CHANGING THE RENEWAL MONTH.

WHEN THIS FORM IS ACCEPTED BY THE SECRETARY OF STATE, BY LAW IT WILL BECOME A PUBLIC DOCUMENT AND ALL INFORMATION PROVIDED IS SUBJECT TO PUBLIC DISCLOSURE

E-MAIL ADDRESS (OPTIONAL): jim@bl-stl.com

REQUIRED INFORMATION MUST BE COMPLETE OR THE REGISTRATION REPORT WILL BE REJECTED
 RETURN COMPLETED REGISTRATION REPORT AND PAYMENT TO: Secretary of State, P.O. Box 778, Jefferson City, MO 65102