

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

In the Matter of Confluence Rivers)	
Utility Operating Company, Inc.'s,)	
Request for a Water Rate Increase)	<u>Case No. WR-2020-0053</u>
And)	
In the Matter of Confluence Rivers)	
Utility Operating Company, Inc.'s,)	
Request for a Sewer Rate Increase)	

STAFF RESPONSE TO COMMISSION ORDER

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), through counsel, and for its *Response to Commission Order*, respectfully states:

1. Confluence Rivers Utility Operating Company, Inc. (Confluence), the Staff of the Missouri Public Service Commission (Staff) and the Office of the Public Counsel (OPC) (collectively, Parties) filed a *Unanimous Agreement Regarding Disposition of Small Utility Company Revenue Increase Request* on February 10, 2020. The Commission ordered Staff and Confluence make certain filings related to the settlement reached and embodied in that *Agreement* due no later than noon February 18, 2020. Staff now files its *Response* in relation to the requests specifically addressed to Staff in that *Order*.

2. The Commission asked the Staff Auditing Department to file a copy of its report/memorandum, including an analysis of the cost of service that supports the rates being proposed, presumably referring to those rates included in the *Unanimous Disposition Agreement* of the Parties. Pursuant to the requirements of Commission rule 20 CSR 4240 10.075(8)(F), Staff provided to all Parties, its report of its preliminary investigation, audit, analysis, and workpapers by Day 90. Pursuant to the requirements of Commission rule 20 CSR 4240-10.075(9)(A), Staff, including Staff's

Auditing Department, provided Staff's confidential settlement proposal and disposition containing its position to carry into a settlement negotiation for Days 120 and 150 of the procedure. Through continued negotiations, the specific elements of Staff's Auditing Department reports were not included in the ultimate disposition agreement reached by the Parties and memorialized in the February 10, 2020, filing. However, Staff did include its Water and Sewer Department Report and its Customer Experience Department Report as attachments to the *Unanimous Disposition Agreement* due to the fact that elements of those reports were incorporated into the *Unanimous Disposition Agreement* as accepted recommendations for Confluence going forward.

3. Settlement negotiations are privileged to protect the dissemination of information contained in such discussions as codified in the Commission rules at 20 CSR 4240 2.090.7, "Facts disclosed in the course of a prehearing conference and settlement offers are privileged... Additionally, pursuant to case law, "...offers of compromise of an existing controversy are privileged and inadmissible and the offeree may object to testimony as to another's offer of compromise." *Chase Third Century Leasing Co., Inc. v. Williams* 782 S.W.2d 408, 412 (Mo.App.W.D. 1989), citing *Vineyard v. Herman* 578 S.W.2d 938, 941 (Mo.App.1979). Further stated in *Vineyard v. Herman* is the principle that, "This rule is based upon public policy, which favors the settlement of disputed claims out of court..." The Commission itself has previously expressed similar sentiment in its *Order Granting Staff's Motion to Strike and Extending the Date for Filing Testimony* filed in, *In the Matter of the Application for a Rate Increase Request for Liberty Utilities (Missouri Water), LLC d/b/a Liberty Utilities* Case No. WR-2018-0170; "Public policy encourages settlement by making settlement offers privileged." The *Order* goes on

to say, “Both the settlement offer and the work product produced in preparation of the settlement offer are privileged.” Further, the Staff Assisted Rate Case Procedure Rule specifically states that “Any settlement proposal, including any draft disposition agreement, and all supporting documents attached thereto are strictly intended for settlement negotiations only.”¹ In this case, the Auditing Department report is the work product of settlement negotiations, no elements of which were directly incorporated into the final *Unanimous Disposition Agreement* filed in the case. Therefore, for the reasons found in both the Commission’s rules and prior statements, as well as Missouri case law, the Auditing Department memo is not properly to be filed in the present matter.

4. Commission rule 20 CSR 4240-10.075 is intended to ease the burden of the rate case process for small utilities, as well as to limit the case work in an attempt to reduce the burdens of rate case expense. In the Staff Assisted Rate Case Procedure Staff attempts to ensure that disposition agreements filed with the Commission contain all necessary information to provide the Commission with the information it needs when reviewing such agreements. Staff also makes itself available in agenda meetings to address points of confusion in filed disposition agreements in an attempt to further ease the staff assisted rate case procedure.

5. Staff’s availability on the requested dates for an on-the-record presentation of the *Unanimous Disposition Agreement* is: Monday February 24th or the morning of Tuesday February 25th.

¹ 20 CSR 4240-10.075(9)(B).

WHEREFORE, Staff prays that the Commission will accept this *Response to Commission Order*, and grant such further and other relief as is just in the circumstances.

Respectfully submitted,

/s/ Whitney Payne

Whitney Payne

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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 18th day of February, 2020, to all counsel of record.

/s/Whitney Payne