

**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 Areas)	and YS-2023-0114

STAFF'S STATEMENT OF DISCOVERY DISAGREEMENTS AND CONCERNS

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

1. Staff's concerns are as follows:

A. DRs 2 and 3 were propounded on January 9, 2023, and responded to on January 25, 2023. However, the responses were inadequate in that the Company did not break down the additions or retirements by vintage year; instead, it provided only a snapshot of a single year, 2021. Staff requires the complete set of data that was used for the depreciation study in order to complete its analysis.

B. DR 25 was propounded on January 11, 2023, and responded to on January 31, 2023. The Company also submitted a timely objection letter on January 19, 2023. DR 25 stated:

DR0025 1. Please identify the external auditors currently engaged by Confluence Rivers and/or CSWR, LLC. 2. Provide access to all correspondence between Confluence Rivers (or any affiliated entity on Confluence Rivers behalf) and the external auditors from January 1, 2019 through December 31, 2022, including but not limited to, all Confluence Rivers and CSWR management letters. 3. Please arrange a time for the Staff to review all external auditor workpapers, if any, related to Confluence Rivers operations and Confluence Rivers parent that allocate or charge costs to Confluence Rivers during the period covering January 1, 2019 through December 31, 2022.

The Company's objections stated:

Objection: Confluence Rivers objects to DR 0025 for the following reasons: a) the information is privileged (accountant-client privilege – Section 326.332, RSMo); b) the responsive information is not relevant to the subject proceeding, not proportional to the needs of the case considering the totality of the circumstances, nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information about companies that are not regulated by the Missouri Public Service Commission; c) the request is unduly burdensome and overbroad as it requests four (4) years of information; and, d) as the requested workpapers belong to the external auditors, the information is beyond Confluence Rivers’ possession, custody, and control.

Despite its objections, the Company did provide the information requested in DR 25, subpart 1, the identity of the external auditors. “Subject to Confluence Rivers’ previous objection, the external auditor engaged by Confluence Rivers and CSWR is RSM US, LLP.” However, the Company did not provide the information, or otherwise comply, with the other subparts of DR 25, to-wit: subparts 2 and 3. Staff still needs access to correspondence between Confluence Rivers and the external auditor as well as contact information to set up a review of those workpapers by Staff. Staff requires that information and that cooperation in order to complete its analysis.

The Company’s first objection is that the requested information is protected from discovery by the accountant-client privilege. The Company also cites to Section 326.332, RSMo. In fact, there is no such section. However, an accountant-client privilege is created by Section 326.322, RSMo., which provides:

1. Except by permission of the client for whom a licensee performs services or the heirs, successors or personal representatives of such client, a licensee pursuant to this chapter shall not voluntarily disclose information communicated to the licensee by the client relating to and in connection with services rendered to the client by the licensee. The information shall be privileged and confidential, provided, however, that nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in investigations, in ethical investigations conducted by private professional organizations, or in the

course of peer reviews, or to other persons active in the organization performing services for that client on a need-to-know basis or to persons in the entity who need this information for the sole purpose of assuring quality control.

2. A licensee shall not be examined by judicial process or proceedings without the consent of the licensee's client as to any communication made by the client to the licensee in person or through the media of books of account and financial records, or the licensee's advice, reports or working papers given or made thereon in the course of professional employment, nor shall a secretary, stenographer, clerk or assistant of a licensee, or a public accountant, be examined, without the consent of the client concerned, regarding any fact the knowledge of which he or she has acquired in his or her capacity as a licensee. This privilege shall exist in all cases except when material to the defense of an action against a licensee.

Section 326.325, RSMo., provides for the ownership of the workpapers, etc., of an accountant and the rights of a client to access those records, outlining the scope of the privilege created in Section 326.322:

1. Subject to the provisions of section 326.322, all statements, records, schedules, working papers and memoranda made by a licensee or a partner, shareholder, officer, director, member, manager or employee of a licensee, incident to, or in the course of, rendering services to a client while a licensee, except the reports submitted by the licensee to the client and except for records that are part of the client's records, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary. No statement, record, schedule, working paper or memorandum shall be sold, transferred or bequeathed without the consent of the client or the client's personal representative or assignee to anyone other than one or more surviving partners, stockholders, members or new partners, new stockholders or new members of the licensee, or any combined or merged firm or successor in interest to the licensee. Nothing in this section should be construed as prohibiting any temporary transfer of workpapers or other material necessary in the course of carrying out peer reviews or as otherwise interfering with the disclosure of information pursuant to section 326.322.

2. A licensee shall furnish to a client or former client, upon request and reasonable notice:

(1) A copy of the licensee's working papers to the extent that the working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; and

(2) Any accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received for the client's account. The licensee may make and retain copies of such documents of the client when they form the basis for work done by the licensee.

3. Nothing in this section shall require a licensee to keep any paperwork beyond the period prescribed in any other applicable statute, nor shall it prohibit a licensee from charging a reasonable fee for furnishing the requested materials.

Although the statutory privilege applies to DR 25, Missouri law provides that the accountant-client privilege is waived where the client, the owner of the privilege, has initiated litigation that places its financial condition at issue. ***State ex rel. Sw. Bell Publications v. Ryan***, 754 S.W.2d 30, 31–32 (Mo.App. E.D. 1988). A general rate case is just such a litigation and the Company initiated the case, thereby acting affirmatively to place its financial condition at issue. The Commission should hold that this objection is not well-taken because the Company has waived its privilege.

The Company's second objection is "the responsive information is not relevant to the subject proceeding, not proportional to the needs of the case considering the totality of the circumstances, nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information about companies that are not regulated by the Missouri Public Service Commission[.]" This triple objection does not pass the "straight-face test," that is, it is so clearly fatuous that Company counsel should be ashamed to have raised it.

The Direct Testimony of Josiah Cox filed in this case, which is in the nature of an admission, clearly outlines the nature of these business organizations and their interrelationships. Cox testifies that he is president of Confluence Rivers Utility Operating Company, Inc. ("Confluence"), the entity seeking these rate increases, as well as CSWR, LLC ("CSWR"), and Central States Water Resources, Inc. ("Central States").

According to the chart accompanying Cox's testimony, Confluence is owned by Confluence Rivers Utility Holding Company, LLC ("Holding Co."), which is owned by Missouri CSWR, LLC ("MoCSWR"), which is in turn owned by CSWR, which is owned by US Water, LLC, whose manager is Central States. Central States is also the manager for Holding Co. and MoCSWR. These entities are inexplicably intertwined and the fact of ownership and the right of management and control Cox admits shows that each of them is, pursuant to Section 386.020, (43), (49), and (53), RSMo., a water corporation, a sewer corporation, and a public utility subject to the jurisdiction of this Commission, because each of them, through its owned or controlled subsidiaries, owns, controls, operates, or manages plant or property that distributes water for gain; or a sewage system, plant, or property for the collection and treatment of sewage for gain with more than 25 outlets; and those facts make each of these entities a public utility subject to the jurisdiction, control and regulation of the Commission. Among the Commission's powers over these regulated entities are the following at Section 393.140, RSMo.:

(8) Have power to examine the accounts, books, contracts, records, documents and papers of any such corporation or person, and have power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.

(9) Have power to compel, by subpoena duces tecum, the production of any accounts, books, contracts, records, documents, memoranda and papers. In lieu of requiring production of originals by subpoena duces tecum the commission or any commissioner may require sworn copies of any such books, records, contracts, documents and papers, or parts thereof, to be filed with it. The commission may require of all such corporations or persons specific answers to questions upon which the commission may need information, and may also require such corporations or persons to file periodic reports in the form, covering the period and filed at the time prescribed by the commission. If such corporation or person shall fail to make specific answer to any question or shall fail to make a periodic report when required by the commission as herein provided within the time and in the form prescribed by the commission for the making and filing of any such report or answer, such corporation or person shall forfeit

to the state the sum of one hundred dollars for each and every day it shall continue to be in default with respect to such report or answer. Such forfeiture shall be recovered in an action brought by the commission in the name of the state of Missouri. The amount recovered in any such action shall be paid to the public school fund of the state.

(10) Have power in all parts of the state, either as a commission or through its members, to subpoena witnesses, take testimony and administer oaths to witnesses in any proceeding or examination instituted before it, or conducted by it, in reference to any matter under sections 393.110 to 393.285.

The information sought by Staff is directly relevant to this general rate case, absolutely proportional to the needs of the case considering the totality of the circumstances, undeniably likely to lead to the discovery of admissible evidence, and has nothing whatever to do with companies not regulated by this Commission. The Commission should overrule this objection.

The Company's third objection is "the request is unduly burdensome and overbroad as it requests four (4) years of information[.]" Staff has already agreed with the Company that it could provide the information starting from the cutoff date in its last rate case, which was September 2019. If it provides the information subsequent to that date through January 31, 2023, then the period will be consistent with what the Company has provided in other DR responses.

General rate cases occur only at intervals of some years. Therefore, the data of multiple years is generally necessary in order for Staff to complete its analyses. So, the requests are not overbroad but are commensurate with Staff's need given the Company's rate requests. Nor are they likely to be unduly burdensome for any well-run business, that files and preserves such records carefully in an orderly manner that facilitates retrieval – or is the Company admitting that its business is not well-run? If so, additional audit activities will be necessary. The Commission should overrule this objection.

The Company's fourth objection is "as the requested workpapers belong to the external auditors, the information is beyond Confluence Rivers' possession, custody, and control." Sections 326.322 and 326.325, previously relied on by the Company, make it clear that the correspondence and workpapers of the outside auditors are available to the Company upon request. Therefore, they are within the Company's control and must be produced. The Commission should overrule this objection.

D. DR 27 was propounded on January 11, 2023, and responded to on January 31, 2023. A supplementary response was received on February 16, but Staff still lacks necessary information. Further supplementation is required.

DR 27 requested:

1. Please list all water and sewer systems that were acquired by Confluence Rivers in Missouri since the cutoff date (September 30, 2019) in its prior rate case, WR-2020-0053. 2. For each system in part (1), please provide the Commission CCN Case number, the type of system acquired, the number of customer connections separately by type of system (if the system is both water and sewer), the tariffed rate(s) ordered by the Commission, and **the plant and reserve balances** and date those balances were ordered by the Commission.

Staff needs the total rate base separated by plant, reserve, CIAC and CIAC amortization in order to determine the appropriate rate base components for each new system. The Company admits the responses received to date do not show plant, reserve, or CIAC balances.

E. DR 49 was propounded on January 19, 2023, and no response has yet been received despite the passage of 28 days.

F. DR 65 was propounded on January 23, 2023, and no response has yet been received despite the passage of 24 days.

2. 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 Statement of Discovery Disagreement or Concern in advance of the Discovery Conference currently scheduled for February 22, 2023, at 10:00 a.m.

Respectfully submitted,

/s/ Kevin A. Thompson
KEVIN A. THOMPSON
Chief Staff Counsel
Mo. Bar No. 36288

Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-6514 (Telephone)
(573) 522-6969 (Facsimile)
kevin.thompson@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission.

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 **17th day of February, 2023**, to all parties and/or counsels of records.

/s/ Kevin A. Thompson