

**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 and Sewer Service)
Provided in Missouri Service Areas.)

File No. WR-2023-0006

**MOTION FOR AN ORDER REQUIRING IMMEDIATE COMPLIANCE WITH THE
COMMISSION'S DISCOVERY ORDER AND
MOTION FOR EXPEDITED CONSIDERATION**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), through counsel, and moves the Commission to order Confluence Rivers Utility Operating Company, Inc. ("Confluence") to comply immediately with the Commission's discovery order and to produce ordered documents. Staff also requests that the Commission order Confluence to produce a list of the dates of all US Water/CSWR, Inc. board meetings that took place between October 1, 2019, and April 30, 2023, and state who was present at each of these meetings. Staff moves for expedited consideration of both motions. Staff states as follows:

1. Staff sent the following DR, which is DR 231.1, to Confluence on April 26, 2023:

** [REDACTED]

1. [REDACTED]

2. [REDACTED]

3. [REDACTED]

**

2. Confluence initially objected to this data request in its entirety, but later supplemented it on June 22, 2023, without providing meeting materials. Staff filed a statement of discovery disagreements and concerns on June 8, 2023, and the parties attended a discovery conference on June 14, 2023. Thereafter, on June 26, 2023, Staff filed a motion to compel Confluence to fully respond to DR 231.1. Staff argued that US Water and/or Central States Water Resources, Inc. (“CSWR, Inc.”) is involved in decisions concerning Missouri acquisitions and improvements; CSWR, LLC’s executive salaries; Confluence’s budgets and funding; and cost allocations such that board meeting materials are probative to key decision-making processes involving Confluence’s Missouri systems.

3. On July 12, 2023, the Commission granted Staff’s motion to compel Confluence to respond to DR 231.1. The Commission found that the level of control US Water and/or CSWR, Inc. exercises over Confluence is “beyond a mere investor, and more indicative of active management.”¹ The Commission also found these meeting

¹ *Order Denying in Part and Granting in Part Staff’s Request to Compel Discovery Answers*, P. 7-8 (July 12, 2023).

materials are in Confluence's possession, custody, or control. The Commission ordered that "[n]o later than July 19, 2023, Confluence Rivers shall respond to DR 231.1."²

4. On July 18, 2023 Confluence provided documents in EFIS which Confluence represented as meeting materials from US Water's November 2, 2021, board meeting.³ However, Confluence did not provide minutes from the November 2, 2021, board meeting. Confluence suggested in its response to Staff's motion to compel that the document attached as Exhibit 1 to Staff's motion to compel are not meeting minutes, as Staff stated in its motion,⁴ but are notes taken by external auditors.⁵

5. But more significantly, Confluence did not provide meeting materials from US Water/CSWR, Inc. board meetings that occurred between October 1, 2019, and April 30, 2023, as Staff requested in DR 231.1.

6. Staff Counsel emailed Confluence, requesting all meeting materials from meetings held between October 1, 2019, and April 30, 2023. Counsel for Confluence responded that it is only required to provide meeting materials for the November 2, 2021, board meeting. However as stated above, Confluence has not done even that, because it has not provided minutes from the November 2, 2021, board meeting.

7. Confluence's position is inconsistent with the July 12, 2023, order, in which the Commission recognized that US Water and/or CSWR, LLC are integrally involved in making decisions about Confluence's Missouri systems and that the requested documentation is reasonably calculated to lead to the admissible evidence.⁶

² *Id.* at 8.

³ Confluence's supplemental response to DR 231.1 and the five documents it filed in EFIS in response to the Commission's order are attached.

⁴ *Motion to Compel*, § 10 (June 26, 2023).

⁵ *Response to Staff's Motion to Compel*, § 21 (July 6, 2023).

⁶ *Order Denying in Part and Granting in Part Staff's Request to Compel Discovery Answers*, P. 8 (July 12, 2023).

Production of partial meeting materials from a single board meeting does not assist Staff in analyzing and evaluating the extent of the boards' decision-making process.

8. Commission Rule 20 CSR 4240-2.090(2) provides that “[s]anctions for abuse of the discovery process or failure to comply with commission orders regarding discovery shall be the same as those provided for in the rules of civil procedure.”

9. Missouri Rule of Civil Procedure 61.01(d) provides:

(d) Failure to Produce Documents, and Things or to Permit Inspection. If a party fails to respond that inspection will be permitted as requested, fails to permit inspection, or fails to produce documents and tangible things as requested under Rule 58.01, or timely serves objections thereto that are thereafter overruled and the documents and things are not timely produced or inspection thereafter is not timely permitted, the court may, upon motion and reasonable notice to other parties, take such action in regard to the failure as are just and among others the following:

(1) Enter an order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibit the disobedient party from introducing designated matters in evidence;

(2) Enter an order striking pleadings or parts thereof or staying further proceedings until the order is obeyed or dismissing the action or proceeding or any part thereof or render a judgment by default against the disobedient party;

(3) Enter an order treating as a contempt of court the failure to obey; or

(4) Enter an order requiring the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

10. Because Confluence has failed to comply with the Commission's July 12, 2023, order regarding Staff DR 231.1, Staff could request that the Commission sanction Confluence, for example, by reducing its rate of return and/or disallowing all executive

salaries in Confluence's cost of service. However, it is not Staff's object to punish Confluence; rather, Staff wants to receive the requested – and ordered – materials so that it can complete its audit. Despite producing what it purports to be meeting materials from the November 2, 2021, board meeting, Confluence has not produced any minutes from any meetings. As Staff explained in its motion to compel, these meeting materials are probative to show how decisions affecting Missouri ratepayers are made at the corporate parent levels. Staff has no other access to this decision-making process, because neither Confluence nor CSWR, LLC evidently have a board of directors.⁷ Confluence's willful disregard of the Commission's order is hindering Staff's ability to complete its analysis and evaluation and imperiling Missouri ratepayers.

11. Staff did not request a list of US Water/CSWR, Inc. board meeting dates in its DR or motion to compel, but considering Confluence's refusal to respond to Staff DR 231.1 as ordered, an order stating that Confluence must produce board meeting dates, as well as identify who was present at each of these meetings, is appropriate. This list will allow Staff to verify that Confluence is producing meeting materials (agendas, minutes, presentations, and any other meeting documentation) from all board meetings that occurred during the time period requested.

12. The Hearing is scheduled to begin in this matter on August 10, 2023. Therefore, Staff also requests expedited consideration of these motions.

13. All parties filed surrebuttal testimony Friday, July 21, 2023. These US Water/CSWR, Inc. board meeting materials are material to Staff's positions. If

⁷ See *Motion to Compel*, § 11 (June 26, 2023).

Confluence produces these documents, Staff will likely seek leave of the Commission to supplement its testimony to incorporate discussion of them, if needed.

WHEREFORE, Staff requests that the Commission issue its peremptory order to Confluence to fully respond to Staff's DR 231.1. Staff also requests that the Commission order Confluence to provide a list of all US Water/CSWR, Inc. board meeting dates between October 1, 2019, and April 30, 2023, and identify who was present at each of these meetings. Staff requests expedited consideration of these motions. Staff prays as well for such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Karen E. Bretz

Karen E. Bretz

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing have been electronically mailed to all counsel of record on this 25th day of July, 2023.

/s/ Karen E. Bretz

STAFF DATA REQUEST NO. 0231.1

HAS BEEN DEEMED

CONFIDENTIAL

IN ITS ENTIRETY