

**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 OPC’S MOTION TO COMPEL

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

Background

1. On May 11, 2023, the Office of the Public Counsel (“OPC”) filed its *Motion to Compel*. Also on May 11, 2023, the Commission issued its *Order Directing and Shortening Response Time Regarding Motion to Compel* directing Confluence Rivers to provide a response to the *Motion to Compel* by May 17, 2023.

2. On May 15, 2023, Confluence Rivers filed a *Motion for Extension of Time* requesting additional time until May 22, 2023, to file a response to the *Motion to Compel*. Also on May 15, 2023, the Commission issued its *Order Granting Extension*, extending the time for Confluence Rivers to file a response to the *Motion to Compel* until May 22, 2023.

Discovery Parameters

3. 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.

4. Missouri courts have held that rules relating to discovery were designed to (1) eliminate, as far as possible, concealment and surprise in the trial of lawsuits, *Combellick v. Rooks*, 401 S.W2d 460, 464 (Mo. banc 1966) and, (2) provide parties access to information “relevant” to the subject matter of a case that is not protected by privilege. *State ex rel. Danforth v. Riley*, 499 S.W.2d 40, 42 (Mo.App. 1973). However, Missouri courts also recognize discovery rules “are not talismans without limitations,” *State ex rel. Kawasaki Motors Corp. U.S.A. v. Ryan*, 777 S.W.2d 247, 251 (Mo.App.1989), and therefore have imposed limitations on the scope of permissible discovery.

5. For example, in *State ex rel. Anheuser v. Nolan*, 692 S.W.2d 325 (1985), the Missouri Supreme Court concluded discovery has its limits, and urged trial judges to exercise their discretion to prevent a “war of paper.” “While the tendency is to broaden the scope of discovery when necessary to expedite justice and guard against surprise, *the evidence requested must appear relevant and material, or tend to lead to the discovery of admissible evidence*” (emphasis added). *Id.* at 327. The court further stated the “[d]etermination of the appropriate boundaries of discovery requests involves ‘the pragmatic task of weighing the conflicting interests of the interrogator and the respondent.’ . . . Thus, even though the information sought is properly discoverable, upon

objection the trial court should consider whether the information can be adequately furnished in a manner less intrusive, less burdensome or less expensive than that designated by the requesting party.” *Id.* at. 328. The court concluded its analysis by noting the consequences of failure to apply appropriate discovery limitations: “Subversion of pre-trial discovery into a ‘war of paper’ . . . is approaching the point of being a national disgrace to the honor of the legal profession. It is the affirmative duty and obligation of trial judges to prevent such subversion.” *Id.*

6. 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, OPC’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.

7. 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.

8. 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. OPC 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.

9. The arguments presented below show each of the data request objections contested in OPC's *Motion to Compel* are reasonable in light of the standards for limited discovery described in the preceding paragraphs. The information OPC seeks is largely either not relevant on its face or is not reasonably calculated to lead to the discovery of evidence admissible in a hearing on the limited matters placed at issue by Confluence Rivers' request to increase rates. Moreover, in several cases, Confluence Rivers has provided the response it has, or can obtain, and no further information is available. Therefore, OPC's motion must be denied.

Data Requests at Issue

DR 2002

10. OPC's DR 2002 states:

Please provide a list, including location, date acquired, service provided, and number of customers of each of the 798 water and/wastewater systems referenced in direct testimony of Josiah Cox p. 3, 12-14. If additional systems have been added since this testimony was filed. [sic] Please include those systems.

11. On April 14, 2023, Confluence Rivers timely objected to the DR stating:

Confluence Rivers objects to this data request a) as the responsive information 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, the fact that the information concerns entities not regulated by the Commission; b) the request is unduly burdensome in that it will require considerable time and resources to compile the information requested for each of the 798 systems referenced; c) the requested information is immaterial to the issues in this case; and, d) the Missouri system information is equally available to OPC in an EFIS search.

12. OPC requests “location, date acquired, service provided, and number of customers of each of the 798 water and/wastewater systems” from ten states (CSWR now has 844 systems in eleven states). Only the systems in Missouri are owned and operated by a Missouri public utility – Confluence Rivers.

13. Neither Confluence Rivers nor CSWR LLC maintain a list identifying the specific items requested by OPC - location, date acquired, service provided, and number of customers - for each of the 844 water and wastewater systems currently owned by affiliates. Thus, any such list would have to be compiled for 844 systems.

14. OPC argues that its avenue of inquiry is relevant because it is exploring a matter included in the Direct Testimony of a Confluence Rivers witness. However, if confirming that testimony is the objective, information regarding location, date acquired, and number of customers is not necessary.

15. As referenced in the *Motion to Compel*, Confluence Rivers previously provided information identifying water and sewer connections for each state that CSWR LLC has operating subsidiaries. Further, Confluence Rivers has subsequently provided information related to the number of water and wastewater systems held by such operating affiliates in each of the states.

16. Any additional information requested is not something that is “proportional to the needs of the case considering the totality of the circumstances,” especially in light of the lack of

importance of this information in regard to resolving the issues in this case. In other words, the burden of the proposed discovery outweighs its likely benefit.

DR 2003

17. OPC's DR 2003 states:

Please provide a list, including location, service provided, and number of customers of all applications pending for water and wastewater systems referenced in the direct testimony of Josiah Cox p. 3, 14-18.

18. On April 14, 2023, Confluence Rivers timely objected to the DR stating:

Confluence Rivers objects to this data request a) as the responsive information 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, the fact that the information concerns entities not regulated by the Commission; b) the request is unduly burdensome in that it will require considerable time and resources to compile the information requested for the 9 states of applications referenced; c) the requested information is immaterial to the issues in this case; and d) the Missouri application information is equally available to OPC in EFIS.

19. Pending applications for acquisitions in states other than Missouri by separate corporate entities have no relevance to the determination of any issue in this rate case and this data request is not reasonably calculated to lead to the discovery of evidence that would be admissible in the current rate case.

20. Confluence Rivers has provided a list of the applications that Confluence Rivers, the subject of this case, had pending. Any further response would be for separate corporate entities operating in states other than Missouri.

21. OPC argues that this information is necessary to "establish the veracity of the witness' statement." (Motion, p. 8). To the extent the OPC wants to check the veracity of this statement, pending applications in the states mentioned would be publicly available through state commission databases.

22. OPC further suggests that this information is relevant to the extent that these additions will affect the proper allocation of corporate resources, and the Confluence Rivers revenue requirement. Of course, the Commission has already established the test year for this case as “the twelve month period ending June 30, 2022, with an updated/known and measurable period through January 31, 2023.” (*Order Establishing Test Year* issued February 14, 2023). Information regarding systems owned and operated through the true-up period by the affiliate group of which Confluence Rivers is a member already has been provided. Any acquisitions closed after January 31, 2023, would have no impact on this case, allocations, or Confluence Rivers’ revenue requirement.

23. For these reasons, 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.

OPC 2004

24. OPC’s DR 2004 states:

Please provide verification that Central States is the single largest owner of individual domestic wastewater treatment plants in the United States and one of the largest owners of individual drinking water systems in the United States as referenced in the direct testimony of Josiah Cox, p. 10, 12-14

25. On April 14, 2023, Confluence Rivers timely objected to the DR stating:

Confluence Rivers objects to this data request as the responsive information is immaterial to the issues in this case.

26. It is unclear what additional information is desired by OPC. The data request asks for “verification.” “Verification” is the “confirmation of correctness, truth, or authenticity, by an affidavit, oath, or deposition.” (*Black’s Law Dictionary* 808 (Abridged 5th ed. 1983)). The cited portion of testimony is a statement of opinion based on Mr. Cox’s extensive knowledge and experience in such matters. The testimony itself is verified by an affidavit.

27. Having said this, Confluence Rivers also provided a response indicating that confirmation could be found by searching unique NPDES permit numbers in the Environmental Protection Agency ECHO (Enforcement and History Online) data base, although that is not how Mr. Cox arrived at his opinion. If “compelled” to provide further response to this data request, it is unclear what Confluence River could provide.

DR 2005

28. OPC’s DR 2005 states:

Please provide a five-year breakdown by year and water/waste water system of Confluence customer accounts that have been transferred to a collection agency.

a. Please provide a narrative explanation for what threshold (if any) point triggers the transfer to the collection agency.

b. Additionally, please provide a narrative explanation if this practice has changed at any point over the past five years.

29. On April 14, 2023, Confluence Rivers timely objected to the DR stating:

Confluence Rivers objects to this data request as the request is unduly burdensome in that it will require considerable time and resources to compile the information requested by year and individual system.

Without waiving any objection, Confluence Rivers will provide a response that includes the number of customers transferred to collection statewide for each of the five years requested and the requested narrative responses.

30. A five (5) year break down of the requested information for Confluence Rivers would have little import, given the increased size of Confluence Rivers over that time period, both as a result of acquisitions and the merger of several other Missouri operating companies into Confluence Rivers.

31. Having said this, Confluence Rivers, as of May 18, 2023, has provided a breakdown of water and wastewater accounts transferred to a collection agency during the period March through December 2022 and year to date 2023. In the narrative responses, Confluence Rivers described its practices for such referrals and further explained that it had entered into a new

contract in March of 2022 for this service, that it had not referred accounts to a collection agency as a result of COVID for approximately the prior two years, and that it no longer had a relationship with the collection agency that provided this service prior to COVID.

32. Any additional information is not relevant to the subject proceedings and not proportional to the needs of the case considering the totality of the circumstances for the reasons stated above.

DR 2007

33. OPC's DR 2007 states:

Please provide the following information regarding Central State's Water Resource utilities over the past three-years:

- a. The name of the water affiliate and operating U.S. state;
- b. Regulatory case number;
- c. Requested and ordered rate increase; and
- d. Requested and awarded Return on Equity

34. On April 14, 2023, Confluence Rivers timely objected to the DR stating:

Confluence Rivers objects to this data request a) as the responsive information 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, the fact that the information concerns entities not regulated by the Commission; b) the request is unduly burdensome in that it will require considerable time and resources to compile the information requested for each of the affiliates; c) the requested information is immaterial to the issues in this case; d) the Missouri system information is equally available to OPC in an EFIS search, and other state information is equally available to OPC through its own research. The Missouri discovery rules do not require a party to conduct research for the requesting party.

35. Information for separate corporate entities operating in states other than Missouri has no relevance to the determination of any issue in this rate case and this DR is not reasonably calculated to lead to the discovery of evidence that would be admissible in the current rate case.

36. OPC has stated that it will shorten the information sought to only items a. (name of utility) and b. (regulatory case number). (Motion, p. 13).

37. On April 24, 2023, Confluence Rivers provided a response to this data request that identified affiliate and corresponding case identification numbers pertaining to any affiliate that either has a rate case open at this time or has completed a rate case within the last three years. OPC has been a party to three of the seven such rate cases. As to the other four, Confluence Rivers' response provided OPC with the associated regulatory case number so the cases may be reviewed through publicly available sources.

38. Given OPC's stated focus on only items a and b, it is unclear what additional information is sought or could be provided in response to the subject data request.

DR 3002-3005

39. OPC's DR 3002 states:

Please provide all correspondence between CoBank and Confluence Rivers Utility Operating Company Inc. since June 1, 2022.

40. OPC's DR 3003 states:

Please provide all correspondence between CoBank and CSWR, LLC since June 1, 2022.

41. OPC's DR 3004 states:

Please provide all correspondence between CoBank and Missouri CSWR, LLC since June 1, 2022.

42. OPC's DR 3005 states:

Please provide all correspondence between CoBank and Confluence Rivers Utility Holding Company, LLC since June 1, 2022.

43. On March 30, 2023, Confluence Rivers timely objected to DRs 3002-3005, stating:

Confluence Rivers objects to data requests 3002-3005 as information sought in these requests is not relevant to the subject proceeding and is not proportional to the needs of the case to, the extent the information concerns entities not regulated by the Commission ("CSWR, LLC," "Missouri CSWR, LLC" and "Confluence Rivers Utility Holding Company, LLC"). In addition, Confluence Rivers believes much if not all the information sought in these requests was

provided through discovery conducted in Commission File No.WF-2023-0023 and/or in response to obligations imposed by the final order in that case.

44. These four data requests ask for correspondence between “CoBank” and various entities since June 1, 2022. Only one of these entities – Confluence Rivers Utility Operating Company, Inc. – is a Missouri regulated entity and a party to this case.

45. Any correspondence between CoBank and CSWR, Missouri CSWR, and Confluence Rivers Utility Holding Company, LLC that may exist would have no relevance to the determination of any issue in this rate case and this data request is not reasonably calculated to lead to the discovery of evidence that would be admissible in the current rate case. While OPC suggests that correspondence between these entities and CoBank could have import in regard to the setting of a rate of return for Confluence Rivers, none of these entities have third party debt with CoBank, or any other institution.

46. Confluence Rivers has attempted to provide all correspondence with CoBank (as well as any other relevant financial institution) in response to Staff DR 17 in File No WF-2023-0023, which is available to OPC. However, while the information requested in these DRs may have been relevant in File No. WF-2023-0023 (a case where Confluence Rivers sought authorization to enter into financing with CoBank), it is not relevant here because the final loan agreement between CoBank and Confluence Rivers is in place.

47. As OPC noted in its Motion, Confluence Rivers also provided correspondence with CoBank in its response to OPC DR 3002. OPC expresses its dissatisfaction with that response because there is correspondence in File No. WF-2023-0023 response that was not in the OPC DR 3002 packet. Confluence Rivers does not see this as a deficiency as OPC admits it has access to both responses and Confluence Rivers referenced those File No. WF-2023-0023 documents in its objection.

48. OPC further alleges that there are “unjustified redactions” in the responsive documents. Confluence Rivers has supplied documents and information concerning the entities requested. Any redactions concern other entities and would not be responsive to these data requests or relevant to this rate case.

49. Lastly, OPC closes its argument by reference to several statutes and rules – Section 393.140(8), RSMo (power to examine certain books and records); Section 393.140(9) (power to issue subpoenas); Section 386.450, RSMo (power to order production); Commission Rule 20 CSR 4240-20.015(6) (electric corporation affiliate transactions); and, Commission Rule 20 CSR 4240-40.015(6) (natural gas corporation affiliate transactions). None of these statutes and rules are applicable to the situation at hand. This matter concerns data requests related to a water and sewer rate case (neither electric nor natural gas). Further, the mechanism chosen – data requests - may be served on “parties.” (Commission Rule 20 CSR 4240-2.090). None of the cited statutes or rules extend this process beyond Confluence Rivers Utility Operating Company, Inc.

DR 3006-3009

50. OPC’s DR 3006 states:

Please provide all correspondence between potential lenders/debt investors and Confluence Rivers Utility Operating Company Inc. since June 1, 2022.

51. OPC’s DR 3007 states:

Please provide all correspondence between potential lenders/debt investors and CSWR, LLC since June 1, 2022.

52. OPC’s DR 3008 states:

Please provide all correspondence between lenders/debt investors and Missouri CSWR, LLC since June 1, 2022.

53. OPC’s DR 3009 states:

Please provide all correspondence between lenders/debt investors and Confluence Rivers Utility Holding Company, LLC since June 1, 2022.

54. On March 30, 2023, Confluence Rivers timely objected to DRs 3006-3009, stating:

Confluence Rivers objects to data requests 3006-3009 a) as the information sought in these requests is not relevant to the subject proceeding and is not proportional to the needs of the case to the extent the information concerns entities not regulated by the Commission (“CSWR, LLC,” “Missouri CSWR, LLC” and “Confluence Rivers Utility Holding Company, LLC”).

55. These four data requests ask for correspondence between “lenders/debt investors” and various entities “since June 1, 2022.”

56. First, only one of these entities – Confluence Rivers Utility Operating Company, Inc. – is a Missouri regulated entity and a party to this case. Second, the requested correspondence with “potential lenders” has no relevance to the determination of any issue in this rate case and this DR is not reasonably calculated to lead to the discovery of evidence that would be admissible in the current rate case.

57. OPC suggests there is relevance because Confluence Rivers may have “deliberately under-leveraged its capital structure.” (Motion, p. 22). Confluence Rivers has struggled to obtain third party financing. It was successful in regard to the CoBank financing addressed in File No. WF-2023-0023. Other attempts to obtain financing were discussed in that case in regard to the prudence of the CoBank financing. If Confluence Rivers is again able to move forward with additional financing in the future, its options may again be relevant in a future financing case, but the correspondence has no import here.

58. OPC additionally asserts that its arguments as to OPC DRs 3002-3005 are also applicable to OPC DRs 3006-3009. (Motion, p. 22). Confluence Rivers likewise refers the Commission to its response to OPC DRs 3002-3005.

DR 3010-3011

59. OPC's DR 3010 states:

Please provide information detailing all outstanding loans/debt for all of out-of-state affiliates of Confluence Rivers Utility Operating Company. This information shall include current outstanding balance, terms and conditions of the outstanding debt, and the name of the financial institution/debt investors loaning funds to the affiliate.

60. OPC's DR 3011 states:

Please identify the current ratemaking capital structure allowed for out-of-state affiliates of Confluence Rivers Utility Operating Company.

61. On March 30, 2023, Confluence Rivers timely objected to DRs 3010-3011, stating:

Confluence Rivers objects to data requests 3010 and 3011 as the information sought in these requests is not relevant to the subject proceeding and is not proportional to the needs of the case to the fact that the information concerns entities not regulated by the Commission ("out-of-state affiliates of Confluence Rivers Utility Operating Company"). In addition, the information sought in these requests is, in whole or in part, available to OPC from public records.

62. Debt held by out of state affiliates and the ratemaking capital structure of those out of state affiliates has no relevance to the determination of any issue in this rate case and this DR is not reasonably calculated to lead to the discovery of evidence that would be admissible in the current rate case.

63. Having said this, Confluence Rivers responded to OPC DR 3010 on April 10, 2023, by indicating that only two out of state affiliates – Bluegrass Water Utility Operating Company in Kentucky and Magnolia Water Utility Operating Company in Louisiana – have completed financing cases. Information regarding Kentucky Public Service Commission Case No. 2022-00217 and Louisiana Public Service Commission Docket No. U-36519 can be found on the respective state regulatory commission websites.

64. Confluence Rivers further responded to OPC DR 3011, on April 10, 2023, by identifying the affiliates for whom a capital structure has been identified for ratemaking purposes, along with the docket numbers for those cases.

65. The responses provided by Confluence Rivers to OPC DRs 3010 and 3011 are sufficient for the purposes identified by OPC.

DR 3012

66. OPC's DR 3012 states:

(See Confluence Rivers Utility Operating Company's response to Staff Data Request No. 17 in Case No. WF-2023-0023) Please provide the documents Marty Moore provided to Bryan Ervin as it relates to the email exchange starting on June 28, 2021.

67. On March 30, 2023, Confluence Rivers timely objected to the DR stating:

Confluence Rivers objects to data request 3012 as the information responsive to this request is not relevant to the subject proceeding. In addition, Confluence Rivers believes much if not all the information sought in this request was provided through discovery conducted in Commission File No. WF-2023-0023.

68. The requested correspondence since June 28, 2021, between Marty Moore and Bryan Ervin (a representative of CoBank) has no relevance to the determination of any issue in this rate case and this DR is not reasonably calculated to lead to the discovery of evidence that would be admissible in the current rate case. While the information requested in this data request may have been relevant in File No. WF-2023-0023, it is not relevant here because the final loan agreement between CoBank and Confluence Rivers (which was previously provided) is the only evidence of the terms of Confluence Rivers' debt.

69. OPC suggests that the information is needed because it "concerns the due diligence that CoBank performed on Confluence and its affiliates for purpose of determining whether or not to provide debt capital." (Motion, p. 26). This issue may have been relevant to the financing case

where the debt was considered. However, we, of course, know that CoBank did provide debt to Confluence Rivers Utility Operating Company, Inc. Again, the evidence of that fact is the financing agreement between Confluence Rivers and CoBank, which is available to the parties to this case.

70. Further, OPC indicates that this information would “represent the objective opinion of a third-party debt investor regarding the company.” (Motion, p. 26). Of course, the information sought in the data request is not the opinion of that third-party debt investor. It is information provided by Confluence Rivers to the third-party. Not only is the data request not relevant to this case, in this instance, the reason provided by OPC is not related to the information sought.

DR 3018-3020

71. OPC’s DR 3018 states:

For quarterly periods March 31, 2020, through December 31, 2022, please provide quarterly financial statements for US Water Systems LLC, CSWR LLC, Missouri CSWR LLC, Hillcrest Utility Operating Company, Raccoon Creek Utility Operating Company, Elm Hills Utility Operating Company, Indian Hills Utility Operating Company, Osage Utility Operating Company and Confluence Rivers Utility Operating Company.

72. OPC’s DR 3019 states:

For annual periods December 31, 2020, through December 31, 2022, please provide annual financial statements for US Water Systems LLC, CSWR LLC, Missouri CSWR LLC, Hillcrest Utility Operating Company, Raccoon Creek Utility Operating Company, Elm Hills Utility Operating Company, Indian Hills Utility Operating Company, Osage Utility Operating Company and Confluence Rivers Utility Operating Company.

73. OPC’s DR 3020 states:

For annual periods December 31, 2020, through December 31, 2022, please provide annual audited financial statements and notes to financial statements for US Water Systems LLC, CSWR LLC, Missouri CSWR LLC, Hillcrest Utility Operating Company, Raccoon Creek Utility Operating Company, Elm Hills Utility Operating Company, Indian Hills Utility Operating Company, Osage Utility Operating Company and Confluence Rivers Utility Operating Company.

74. On March 30, 2023, Confluence Rivers timely objected to DRs 3018-3020, stating:

Confluence Rivers objects to data requests 3018-3020 as information responsive to these requests is not relevant to the subject proceeding and is not proportional to the needs of the case to the extent it seeks information regarding entities not regulated by the Commission. (US Water Resources, LLC, CSWR, LLC, and Missouri CSWR, LLC). In addition, to the extent the requests seek information regarding US Water Systems, that information is not within Confluence Rivers' possession, custody, and control.

75. Hillcrest Utility Operating Company; Racoon Creek Utility Operating Company; Elm Hills Utility Operating Company; Indian Hills Utility Operating Company; and Osage Utility Operating Company were merged into Confluence Rivers Utility Operating Company as of December 31, 2021, and no longer exist as separate corporate entities.

76. Quarterly financial statements are not prepared for CSWR, LLC; Missouri CSWR, LLC; Hillcrest Utility Operating Company; Racoon Creek Utility Operating Company; Elm Hills Utility Operating Company; Indian Hills Utility Operating Company; Osage Utility Operating Company; and Confluence Rivers Utility Operating Company.

77. On April 17, 2023, Confluence Rivers responded to OPC DRs 3018 and 3019 and indicated that Confluence Rivers was not provided and does not have copies of financial statements for US Water Systems. To the extent unaudited financial statements for the aforementioned companies exist, Confluence Rivers further indicated that those financial statements were addressed in response to Staff DRs 0155 and 0005.

78. Also on April 17, 2023, Confluence Rivers responded to OPC DR 3020 and again indicated that Confluence Rivers does not have copies of audited financial statements for US Water Systems. Confluence Rivers further indicated that audited financial statements for the other companies, with the exception of CSWR, LLC, do not exist. However, information regarding each

of those companies is included in audited financials for CSWR LLC. Those audited financial statements were provided to OPC along with the response to OPC DR 3020.

79. Neither CSWR, LLC, nor any of its affiliates has copies of audited or unaudited annual or quarterly financial statements for U.S. Water Systems, LLC. OPC argues that certain individuals have access to the requested US Water Systems information, to the extent it exists. While that may or may not be true, this argument ignores the fact that these data are addressed to the party to the case - the corporate entity Confluence Rivers. Neither Confluence Rivers (as a subsidiary), nor Confluence Rivers' officers or employees, in their capacity of officers of Confluence Rivers or employees of CSWR, have possession, custody or control over US Water Systems documents.

DR 3023

80. OPC's DR 3023 states:

Please provide copies of all materials/minutes from member meetings pursuant to the US Water Systems LLC Agreement.

81. On March 30, 2023, Confluence Rivers timely objected to the DR stating:

Confluence Rivers objects to data request 3023 as the information sought is not relevant to the subject proceeding and is not proportional to the needs of the case because the information sought concerns an entity not regulated by the Commission. In addition, the request is overly broad and unduly burdensome in that it requests "all materials/minutes," and is not limited in timeframe. The request also seeks information that is beyond Confluence Rivers' possession, custody, and control.

82. Information regarding member meetings for U.S. Water Systems, LLC, has no relevance to the determination of any issue in this rate case and this DR is not reasonably calculated to lead to the discovery of evidence that would be admissible in the current rate case. US Water Systems is four levels of corporate ownership above the subject of this rate case – Confluence Rivers.

83. Moreover, Confluence Rivers notes that statutes concerning limited liability companies do not generally require member meetings and the operating agreement for US Water Systems LLC (which OPC has) does not have a provision requiring member meetings. Further, Confluence Rivers has no knowledge of any member meetings of U.S. Water Systems and has no copies of materials/minutes from such meetings.

84. Again, OPC argues that certain individuals may have access to the requested US Water Systems information, to the extent it exists. While that may or may not be true, this argument ignores the fact that these data requests are addressed to the party in this case - the corporate entity Confluence Rivers. Neither Confluence Rivers (as a subsidiary), nor Confluence Rivers officers or employees (in their capacity of officers of Confluence Rivers or employees of CSWR) have possession, custody or control over US Water Systems documents.

DR 3025

85. OPC's DR 3025 states:

For the period January 1, 2020,t [sic] through March 31, 2023, please provide a copy of all investor presentations CSWR LLC's management has made to U.S. Water Systems LLC investors (to include, but not be limited to Sciens Capital Management LLC and affiliates' representatives).

86. On March 30, 2023, Confluence Rivers timely objected to the DR stating:

Confluence Rivers objects to data request 3025 as the information sought is not relevant to the subject proceeding and not proportional to the needs of the case in that it seeks information concerning entities not regulated by the Commission and/or that is beyond Confluence Rivers' possession, custody, and control.

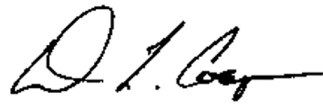
87. Information regarding investor presentations made by CSWR LLC's, management has no relevance to the determination of any issue in this rate case to the extent any such presentations included information regarding affiliates other than Confluence Rivers or information regarding pending or potential future acquisitions that are not related to the rate case

test year. In addition, to the extent such presentations contained information regarding Confluence Rivers beyond its financial performance, the requested information has no relevance to the determination of any issue in this rate case and this DR is not reasonably calculated to lead to the discovery of evidence that would be admissible in the current rate case.

88. Again, OPC argues that certain individuals may have access to the requested US Water Systems information, to the extent it exists. While that may or may not be true, this argument ignores the fact that these data requests are addressed to the party in this case - the corporate entity Confluence Rivers. Neither Confluence Rivers (as a subsidiary), nor Confluence Rivers officers or employees (in their capacity of officers of Confluence Rivers or employees of CSWR) have possession, custody or control over US Water Systems documents.

WHEREFORE, Confluence Rivers Utility Operating Company, Inc. respectfully requests the Commission deny the Office of the Public Counsel's *Motion to Compel*.

Respectfully submitted,



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**ATTORNEYS FOR CONFLUENCE
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 22nd day of May 2023, to all counsel of record.