

**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 August 4, 2023, the Office of the Public Counsel (“OPC”) filed its *Motion to Compel*. Also on August 4, 2023, the Commission issued its *Order Shortening Time For Responses to OPC’s Motion*, therein directing OPC to provide a clarification by close of business on August 4, 2023, and directing Confluence Rivers to provide a response to the *Motion to Compel* by noon, on August 9, 2023. Also, on August 4, 2023, OPC filed its *Response to Commission Order and Motion for Expedited Treatment*.

Data Request at Issue

DR 3069

2. OPC’s DR 3069 states:

In response to Staff Data Request No. 231.1, Confluence provided Staff copies of CSWR presentations made to US Water Systems LLC’s (“US Water”) Board of Directors. These presentations indicate CSWR prepares and transmits quarterly Investment Memorandums to US Water for purposes of requesting funding. Please provide CSWR’s Investment Memorandums for the period January 1, 2019 through June 30, 2023.

3. On October 3, 2023, Confluence Rivers timely objected to the DR stating:

Confluence Rivers objects in that the information sought is not relevant to the subject proceeding and is not reasonably calculated to lead to the discovery of admissible evidence when considering the totality of circumstances and is not proportional to the needs of the case in establishing the revenue requirement and the rate design for Confluence Rivers and to the extent the data request requests documents from CSWR, LLC, an entity not regulated by the Commission. Additionally, the data request is overly broad in that it seeks documents for a four and a half year period and without regard to the relationship of any such information to Confluence Rivers, the Missouri utility operating company and subject of this general rate case.

4. As a starting place, we note that the request does not request information related to any Confluence Rivers presentation. It references presentations and memoranda created by CSWR, LLC. While OPC asserts that the Commission may have jurisdiction over CSWR, LLC based on a prior Commission order, such interpretation is contrary to prior Commission decisions.

5. The Commission has 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). *See also*, Order Closing Case, *In the Matter of the Proposed Acquisition of Missouri-American Water Company and American Water Works Company by the German Corporation RWE AG*, Case No. WO-2002-206 (December 13, 2001) (Generally indicating that although Missouri-American Water Company operates as a regulated utility in Missouri, and would be under the jurisdiction of the Missouri Commission, the parent company, American Water Works Company is not a regulated utility.).

6. More immediate is that CSWR, LLC is not a party to this case. Data requests are available to "parties." "A data request is 'an informal written request for documents or information

that may be transmitted directly between attorneys, agents, or employees of the commission, public counsel, or other parties.’”¹ CSWR, LLC is not a party to this proceeding.

7. OPC suggests that the requested information related to “potential” investments is “likely” to “provide US Water information directly related to potential risks of investments in utility assets as it compares to expected returns.” (Motion, para. 19). However, the data request itself asserts that the information sought is not “US Water information,” but a presentation by CSWR, LLC. Additionally, as the operating companies are rate regulated by various state utility commissions, the information presented could not possibly contain “expected” returns, but, at best, aspirational returns.

8. Even if there were information related to an investor “expectation,” such is not relevant to the decision to be made by the Commission in regard to a fair and reasonable rate of return on capital actually invested in Missouri. The Missouri Court of Appeals has stated as follows:

In determining whether public-utility rates are just and reasonable, we are guided by the seminal United States Supreme Court decisions in *Hope and Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed. 1176 (1923) (*Bluefield*). In *Bluefield* the Court established a standard for “just and reasonable” public-utility rates as follows:

What annual rate will constitute just compensation depends upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to

¹ 20 CSR 4240-2.090(2)(A).

maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.²

9. The expectation of any individual investor has no import as to the question the Commission must decide. That is, a “public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties”

10. In addition to being generally irrelevant to this case, the information sought by the data request is further overly broad for two reasons. First, it does not limit its request for investment memoranda associated with Confluence Rivers or potential Missouri acquisitions. Thus, it necessarily requests information for separate corporate entities operating in states other than Missouri and for transactions having nothing to do with Missouri. Even if the Missouri information were deemed to be relevant, information related to other states has no relevance to the determination of any issue in this rate case.

11. Second, the request for investment memoranda covering four and a half years of information necessarily involves dated information that is not relevant to the prospective rates at issue in this case. OPC suggests that this information will “likely provide US Water information directly related to potential risks of investments in utility assets as it compares to expected returns.” (Motion, para. 19). Given the change in the size of Confluence Rivers and the other affiliated CSWR, LLC operating companies, as well as the general economy and interest rates, over the

² *State ex rel. Mo. Gas Energy v. PSC*, 186 S.W.3d 376, 384 (Mo. Ct. App. 2005) (emphasis added).

requested of four and a half year period, in addition to being irrelevant the information requested is greatly overly broad for the stated purpose. As referenced above, the courts have acknowledged that a “rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.”

12. In its *Order Granting, In Part, and Denying, In Part, Request to Compel Discovery Answers*, issued June 7, 2023, the Commission addressed an OPC data request concerning pending acquisitions in states other than Missouri (OPC DR 2003). The Commission denied the OPC’s Motion to Compel a response as to that data request and stated as follows:

Confluence Rivers’ Response argues that 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. The Commission already set the test year as the twelve month period ending June 30, 2022, with an updated/known and measurable period through January 31, 2023. Thus the Response argues that any acquisitions closed after January 31, 2023, would have no impact on this case, allocations, or Confluence Rivers’ revenue requirement.

The Commission agrees that pending acquisitions in other states outside of the test year and updated period in this case are not relevant. Those pending applications may not result in acquisitions. Confluence Rivers has already provided a list of pending Missouri acquisitions. The Commission finds that out-of-state pending acquisitions by affiliates outside of the test year and update period are not relevant to the subject matter of this case.

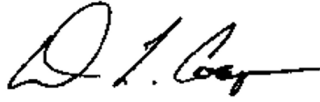
(Order, pp. 5-6 (emphasis added)).

13. Investment Memorandum information regarding potential transactions in other states and outside the test year are similarly not relevant to this case and, thus, the request for such is overly broad.

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 9th day of August 2023, to all counsel of record.

