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AUDIO RECORDING
IN THE MATTER OF CONFLUENCE RIVERS UTILITY OPERATING
COMPANY, INC.'S REQUEST FOR AUTHORITY TO IMPLEMENT A
GENERAL RATE INCREASE FOR WATER SERVICE AND SEWER
SERVICE PROVIDED IN MISSOURI SERVICE AREAS
CASE NUMBER: WR-2023-0006

PREHEARING CONFERENCE

JULY 28, 2023

(Due to the quality of the recorded media, portions were unable to be transcribed and include inaudible portions. The transcript may also include misinterpreted words and/or unidentified speakers. The transcriber was not present at the time of the recording; therefore, this transcript should not be considered verbatim.)

TRANSCRIBED BY: HEATHER FACTOR

1 JUDGE: Hey Mr. Mitton. Good morning! Would you do
2 me a favor and drop out of Teams, I think that got added to
3 the invitation accidentally? Come on over to WebEx.
4 Alright. Thanks. See you there.

5 MR. CLIZER: Your Honor, can you hear me?

6 JUDGE: Yes.

7 MR. CLIZER: Oh, good. Thanks. WebEx was being
8 weird.

9 JUDGE: No, that might've been me. Apparently the
10 Calendar invite, the top half of it says, "Welcome to the
11 Teams Meeting", before you scroll down and find the.see
12 somebody else just joined the Teams Meeting. Hey Emily are you on?
13 Anyway, Mr. Clizer.so I'm talking to them at the same time. I
14 see Mr. Mitton has joined the WebEx. I'm gonna mute and go see
15 who has joined the Teams.

16 JUDGE: Okay. I think we have everyone that we are
17 expecting. I have not had anybody else pop up in Teams, and I
18 have Emily, has her Teams open, just to re-direct in case
19 anybody does go there. And sorry about that, apparently that's a
20 new thing with the subscriptions that the Commission has, so it
21 did this to me earlier. I was trying to schedule a meeting, for
22 myself and some others, and it popped up as a Teams meeting. So,
23 that was obviously an accident--and there goes somebody else.
24 Emily, go ahead and grab that person. Thank you. Ok everyone, we
25 will give it a moment and see who that last person is and then
we will get started.

1 JUDGE: And there we go. Miss Lions, that's who that was.
2 Ok, let us, here we go. Let's go on the record. This is a
3 pre-hearing conference. We do not have a court
4 reporter on the line. The meeting is being recorded, will be
5 available in a transcript, if any party so requests. You can
6 email
7 or file a motion, either way. Ok, let's jump right in. We are
8 discussing Data Request 231.1, and I should mention also for the
9
10 record, this is the Confluence Rivers General Rate Case
11 WR-2023-0006. Let me summarize some basic facts so maybe
12 we can skip ahead a little bit. 231.1 has 3 questions to it, and
13 Staff issued that, gosh, sometime, it was early on. On the 12th
14 of July, the Commission ruled on it, in Agenda, and directed
15 Confluence to respond in full to the DR. My reading of Staff's
16 Memo leads me to understand that Confluence told Staff that
17 the order was just for the 1 November 2021 meeting, just
18 those documents. Staff also noted that there are no Meeting
19 Minutes, which they've requested, and they did not get the date
20 range of Board Meeting information, as well. In Confluence's
21 response, they basically repeated the same fact pattern,
22 however, I note, and I did not note what paragraph, but it says
23 that Confluence, on July 26, that's the day after Staff filed
24 their
25 motion, that Confluence Rivers delivered to counsel for Staff,

1 copies of dated presentations it had made to U.S. Water System
2 Board of Director meetings between certain dates. Ok, I'd like
3 to
4 jump in now. Staff, this is your request, so go ahead.

5 MISS BRETZ: Thanks Judge. First of
6 all, I'll describe the meeting materials that we received. We
7 did receive 9 Power Points on July 26 that appeared to be
8 presentations that CSWR, LLC made to the U.S. Water Board.
9 And I keep handy by my desk a copy of the org. chart that was
10 attached to our Motion to Compel. And so CSWR is the holding
11 company right below U.S. Water. So, these appear to be
12 Presentations/Power Points that CSWR made to the U.S. Water
13 Board. There's 9 of them, it appears that these presentations
14 were made quarterly, although Staff's been told there were no
15 meetings in 2020. So, I don't know how much detail you want us
16 to go into, Judge, on this. I guess the nutshell is, is that
17 what
18 we've received does not satisfy the Commission's Order and
19 it doesn't give us what Staff needs. In fact, these
20 presentations
21 actually bolster Staff's case and shows that there is a lot
22 of oversight, by the U.S. Water, LLC of the CSWR Board. It shows
23 that the CSWR Board is making presentations to U.S. Water to get
24 U.S. Water's permission to make acquisitions, all kinds of
25 funding decisions are made by U.S. Water. There's a. it's a very

1 close relationship between the two--between the two
2 companies, and we don't see any reason why we shouldn't get
3 these. I'd like to.

4 JUDGE: You are talking about the documents for U. S.
5 Water?

6 MISS BRETZ: Right. For.

7 JUDGE: Ok.

8 MISS BRETZ: The Board Minutes and
9 then the Agendas.

10 JUDGE: Before we get too far down that path,
11 I'd like to take a step back and find out what company it is
12 that is the subject of DR 261--231.1.

13 MISS BRETZ: Ok. If you have a couple
14 minutes Judge, maybe I'll walk you through what our basic
15 understanding is and it might be helpful for you to look at the
16 corporate entity organizational chart, the chart which was
17 attached to our Motion to Compel.

18 JUDGE: I'm grabbing it now.

19 MISS BRETZ: Ok. I've got a few
20 windows open here. I'm not sure which Exhibit it was, but it
21 shouldn't be too hard to find.

22 JUDGE: Well, I also have one taped to my wall.
23 So if it's.

24 MISS BRETZ: Oh, ok.

25 JUDGE: The one that was filed in, in I think the

1 Application, then I have it right here. It has U.S. Water, LLC
2 and could we please use "LLC" or "Inc." after we reference CSWR?

3 MISS BRETZ: Sure.

4 JUDGE: I ask that because one of them is
5 actually named CSWR, one of them has the very long name, and
6 I think both parties, if not myself included, have completely
7 messed that up at one time or another. So, if we can add on that
8
9 "Inc. or LLC", to me, that's how I'm distinguishing the two when
10
11 I'm reading through the abbreviations in testimony, and what-
12 not.

13 MISS BRETZ: Sure.

14 JUDGE: Thank you.

15 MISS BRETZ: Sure. So, at the bottom
16 is...I'm looking at the Exhibit that was in our Motion to
17 Compel.so at the bottom left-hand corner is Confluence Rivers,
18 so that is the company whose writ case we are dealing with
19 now. And Dean, jump in if I'm, if I'm misstating something here.

20

21 JUDGE: Um., ,

22 MISS BRETZ: It's our basic
23 understanding and it's taken us..

24 JUDGE: I'd like to jump in because I think that I
25 see the road that you're going, and that's not where I want to

1 go.

2 MISS BRETZ: Ok.

3 JUDGE: You're gonna to tell me how closely U.S.
4 Water is, perhaps, overseeing Confluence. Correct?

5 MISS BRETZ: Yes. Well.

6 JUDGE: Ok.

7 MISS BRETZ: Overseeing.(inaudible) the LLC.

8 JUDGE: That's the second part of your request.

9 JUDGE: That's the second part of your request.

10 MISS BRETZ: Ok.

11 JUDGE: Your request to me asked for, hey, would
12 the Commission repeat their statement that Confluence has to
13 answer this DR? And then a second request was, hey, we
14 haven't asked for U.S. Water stuff before, in the underlying DR
15 or in the Motion to Compel; however, it's really closely related
16
17 and the Judge's Opinion seemed to say that they're already
18 found to be controlling that, so can we have Sanctions, or maybe
19 in lieu of Sanctions, can we have the U.S. Water information? Is
20 that correct?

21 MISS BRETZ: Our original DR, we -- we got
22 a copy of that document. That November 2nd, 2021 document and we
23 weren't sure where that came from. The document, as you might
24 recall, it was -- it was vague, where that came from. And so,
25 I'm looking at our original request right now. So we asked for

1 the
2 name of the entity that that came from and then the Board
3 Meeting Minutes and Agendas and whatnot, from that. So,
4 it's. I don't think that it's accurate to say that we did not
5 specify
6 that we were asking for U.S. Water, we were asking who that
7 company was and then the Board Minutes that went with it.

8 JUDGE: Absolutely. Can you tell me what
9 company that is now?

10 MISS BRETZ: It's our understanding
11 it's U.S. Water.

12 JUDGE: What?

13 MISS BRETZ: Although. I'm sorry.

14 JUDGE: I need to pause Miss Bretz. Mr. Cooper,
15 can you tell me what that company is?

16 MR. COOPER: I'm gonna. I believe Mr. Mitton's
17 on, I'm going to let him speak to that.

18 JUDGE: Ok.

19 MR. COOPER: If he's on. I can see his.

20 MR. MITTON: Judge, the problem originated
21 here from the fact that Staff's data request was based upon its
22 review of auditor's work papers. We don't have access to those
23 auditor's work papers. And there was a document referenced in
24 those work papers which I think Staff then identified in some
25 notes it took regarding those work papers. So, neither we, nor

1 Staff was completely clear from Day 1, whether or not the
2 reference in the work papers was to U.S. Water Resources or
3 CSWR. The additional confusion occurred because Staff had
4 asked for Board Minutes for CSWR, LLC, which does not have a
5 Board of Directors. Based on the Commission's Order, and I
6 guess based upon some additional investigation that we were able
7 to do with the outside auditors, it became clear to us that the
8 information referenced in the auditor's work papers was, in
9 fact, U.S. Water Resources, LLC. Initially, I focused on the
10 concluding paragraph of the Commission's Order compelling us to
11 produce that information that dealt exclusively with the
12 November 2022 meeting, so that's what I produced when Miss
13 Bretts pointed out that the Ordered Section was much broader
14 than that. I endeavored to produce all of the documents that
15 were responsive to Staff Data Requests that are in our
16 possession. And that's what I've done thus far.

17 JUDGE: No, I hate to disagree, Mr. Mitton. First,
18 your answer now is different than what was filed in EFUS (ph), I
19
20 don't recall the attorney of record who filed it, but Confluence
21
22 earlier filed a response to the Motion to Compel that said we
23 first told Staff we thought it was U.S. Water and then later we
24 found out that it's. and they didn't state it as a fact, but
25 stated

1 that they believe that the document "A" references.it does
2 reference CSWR, I've seen the document.but that that CSWR
3 meant the "comma Inc.", I think. Can I get a nod?

4 MR. MITTON: (inaudible) Resources, Inc.

5 MR. COOPER: Yes, you're.Judge, you're
6 accurate.

7 JUDGE: Ok.

8 MR. COOPER: The Central States Water
9 Resources, Inc. was what was suggested there. And all of which
10 kind of goes back to what Mr. Mitton was saying, I mean, we've
11 been trying to do our best investigation on this end about
12 document, a document, being referenced that was from the
13 auditors, not.

14 JUDGE: But it has the date of the meeting. Have
15 you asked anybody for their calendar? Your clients?

16 MR. MITTON: And that's how we determined
17 that the reference in the auditor's minutes was the U.S. Waters
18 Resources.

19 JUDGE: Ok. So please tell me how you
20 determined that because I was fully on board that this was
21 CSWR, Inc., based on the very convincing case Mr. Cooper put
22 forward--CSWR, same board members, same board meeting
23 dates, so.how did we jump to U.S. Water Systems?

24 MR. MITTON: Well. again, I'm not. I'd have to
25 go back and review the pleading, but I can't believe that we put

1 in there that there were the same dates because Central States
2 Water Resources, Inc., has a board of directors that consists
3 of one person. They do not have in-person meetings, whatever
4 Board action is required is done by unanimous consent. CSWR,
5 LLC does not have a Board of Directors. U.S. Water Resources,
6 although it's a Limited Liability Company, does have a Board of
7 Directors. And again, based upon some information we received
8 from the outside auditor, we were able to determine that the
9 November 2nd meeting referenced in the auditor's work papers,
10 was in fact, a U.S. Water Resources Board Meeting.

11 MR. COOPER: I would.I think they're not to
12 cut Mr. Mitton off, but I think that there's one thing that
13 certainly, the Confluence Rivers Utility Operating Company, Inc.
14
15 Board, I believe, is just a single member. I think that in our
16 earlier Pleading, there was reference to an annual report filing
17
18 for Central States Water Resources, Inc. that showed more than
19 that. But, just.I don't know that that changes Mr. Mitton's
20 point, I just want to kind of track that, Judge.

21 JUDGE: No, I appreciate that. Ok, let me then
22 backtrack my comments. Sorry, Miss Bretz, you were correct, I
23 was incorrect. You were making your case that U.S. Water is
24 exhibiting some managerial and are pursuing that in the form
25 of.well, no let's go back to the underlying DR, because the DR

1 now is for the Board Meeting Minutes surrounding:

2 A. November 2, 2021 meeting;

3 B. Naming the Board, we now have the name, and;

4 C. Board Meeting Minutes from the.in the date range for

5 the company that is named in B., which is U.S. Water

6 Resources. U.S..I don't want to mis-state the name,

7 but I note that it says U.S. Water, LLC, in the diagram. I

8 thought it was U.S. Water System Resources, but now I'm not sure

9 about the "System".

10 MR. MITTON: I think you're right, Judge. I think it can
11 get referred to sometimes as U.S. Water Resources just because
12 they use the "Resources" in other entities that we have, but,
13 yeah.

14 JUDGE: Ok.

15 MISS BRETZ: It's the same company, is my understanding.

16 MR. MITTON: And it's listed as it is in the box because of
17 the size of the box.

18 JUDGE: Ok. That all makes sense. So, back to then.we all
19 have a lot of windows open. Back to the question, now that it is
20 not a Sanctions that I understand that Staff is seeking, their
21 request is restate the Discovery Order, issued by the
22 Commissioners. Staff, why did you ask for the Commission to
23 re-state it's Order?

24 MISS BRETZ: So, we believe that the Commission's Order is
25 to provide a response, a full response, to DR 231.1 and that

1 even after the materials we've received on Wednesday, the 26th,
2 that Confluence still has not fully responded to it and that we
3 don't have the Meeting Minutes and Agendas for those dates.

4 JUDGE: Why are you pursuing this particular remedy, is
5 what I mean?

6 MISS BRETZ: As opposed to a different type of motion?

7 JUDGE: Like a Sanctions Motion, or a Show Cause, or a.I
8 don't know what, but repeating the Order struck me as an odd
9 request.

10 MISS BRETZ: That was a decision that was made internally,
11 Judge.that's about the best I can do for you.

12 JUDGE: Ok. Sometimes parties talk to each other through
13 filings, so I get that. Let's move back to Confluence Rivers. My
14 question is, is that Confluence River's final answer, that they
15 do not have access to U.S. Water records or Board Meeting
16 records, other than what they presented?

17 MR. MITTON: That's correct. If we are invited to make a
18 presentation at a Board Meeting, that's all we are invited to
19 do. We don't get a copy of the Agenda, we don't get a copy of
20 the Minutes, once the presentation is completed and whatever
21 questions the Board members may have are answered, we leave the
22 room.

23 JUDGE: Ok. I'm gonna leave with a lot more questions than
24 I have answers, but this is not the time for follow-up. This
25 meeting was to see if there was some solution, some meeting of

1 the minds, between the parties, and we still have until Monday
2 for responses. So, any Commission response won't be coming until
3 at least then, or I guess until at least Tuesday. But we are all
4 here, before I ask if there is any other case-related items,
5 Staff, would you like to say anything else on 231.1?

6 MISS BRETZ: Would the would it be helpful for the
7 Commission to receive additional briefing? Or anything from us?

8 JUDGE: Um.

9 MISS BRETZ: Maybe you could direct us to something that
10 might be useful.

11 JUDGE: Yeah. Let me call on Mr. Kliser, he has a hand
12 raised.

13 MISS BRETZ: Sure.

14 JUDGE: Go ahead, Mr. Clizer.

15 MR. CLIZER: I didn't want to interrupt her, I just wanted
16 to...

17 JUDGE: No, you're fine.

18 MR. CLIZER: Sorry. With regard to the document that
19 Confluence provided to Staff on the 26th, as referenced in the
20 report, the OPC would like to see those. I just wanted to kind
21 of throw that in there at the last minute. I know that's not the
22 direct reason why this was called but because it was related, I
23 felt like bringing it up now. Is that--can we get an
24 authorization to view those with Staff, or?

25 JUDGE: From me, or from Confluence Rivers?

1 MR. CLIZER: Well, I guess the real question, would
2 Confluence object to our being able to view the documents they
3 provided to Staff?

4 MR. MITTON: We have no objection, Judge.

5 MR. CLIZER: All right, there we go, thank you. Karen,
6 I'll meet with you offline to discuss that, if you are willing.

7 MISS BRETZ: Yes, will do. Thanks for bringing that up,
8 John.

9 MR. CLIZER: Alright. That was the only issue I had related
10 to this. I have one other thing I might want to bring up, which
11 is not terribly important, but I'll wait until you're finished
12 with this.

13 JUDGE: Ok. So, Staff's question is, does the Commission
14 want any further input? At this point, I'm gonna say no, just
15 out of due-process concerns. I've already set a deadline for
16 Monday. Let's get to Tuesday and then I'll see where I'm at and
17 if I have any directions to seek further input. And I'll give
18 the same opportunity to Confluence Rivers. Any last comments
19 from Confluence Rivers?

20 MR. MITTON: Judge, the only thing I would add is we we
21 can't produce what we don't have. And that's the situation we
22 are facing right now.

23 JUDGE: I understand. I would. I understand. Ok. I think
24 that will take care of our informal conversation on DR 231.1.
25 Let's move on to. yes? Ok. Let's move on to just general

1 information/dialogue.anything we want to discuss about our
2 upcoming General Rate Case Hearing? And Mr. Clizer called dibs
3 first.

4 MR. CLIZER: There was one thing.

5 JUDGE: Yes.

6 MR. CLIZER: And the problem is actually, it looks like
7 resolved itself, but I wanted to flag it to your attention, just
8 to notify. Yesterday, the Commission issued an order in the
9 Everyg FAC Case, that's ER-2023-0210, setting a procedural
10 schedule for August 17th in the hearing room. I sent an email
11 to Judge Keeling, sorry, Judge Ross, who appears to have issued
12 an order to reschedule that for the 18th. I bring it up now,
13 mostly because I'm slightly concerned about whether or not this
14 case goes long, and I just wanted to flag that to your
15 attention, that you've got that there, and I don't know if you
16 can work out internally, if there's some way to fix that, but
17 that was it, I just wanted to bring that up. You guys ordered
18 the 14th, right?

19 JUDGE: Yes.

20 MR. CLIZER: Ok.

21 JUDGE: Judge Keeling and I had an arm wrestling match, I
22 won, I got Thursdays. I don't know if anyone in the building
23 could hear him cussing, sometime after Agenda, when he came by
24 my office to ask if I had anything planned on the 17th. So yes,
25 the pre-hearing conference on his case is getting moved. Yes,

1 we are now, both Judges, aware of the closeness of the schedule
2 and probably the overlap of some of the participants. So,
3 keeping an eye on it. Thank you, Mr. Kliser.

4 MR. COOPER: Judge.

5 MR. CLIZER: I want to point out that I am the attorney on
6 both issues, so that's why I'm very concerned about it.

7 JUDGE: Excellent. Excellent. See that won't make it onto
8 the transcript, the Judge giving the evil laugh and rubbing his
9 hands. Except, now that I said it. Mr. COOPER.

10 MR. COOPER: Yes, Judge, yeah, and based upon your
11 conversation, I think I know the answer, but I just want to
12 clarify. In your, in your order about the hearing dates, I
13 think it says 14-18, but then in parens says Monday through
14 Thursday, I take it from this conversation the intention is
15 14-17, Monday through Thursday, is that correct?

16 JUDGE: Yes, God. Now they're gonna hear me cussing in the
17 hallways.

18 MR. COOPER: Sorry to be the cause of that.

19 JUDGE: No, no, no. Should read my own stuff before it
20 goes out, a little closer. Ok, Miss Bretz.

21 MISS BRETZ: Mr. Thompson is going to be trying the case,
22 to the best of my knowledge, I mean, you know, it's going to be
23 the usual set up with the attorneys and their individual
24 witnesses, but it's going to be mainly Mr. Thompson's case. I
25 think things are going pretty well. The only thing ..I'll make

1 the Commission aware, is that we will likely be filing an
2 amended List of Issues and...

3 UNIDENTIFIED: (inaudible)

4 MISS BRETZ: That document. So.

5 JUDGE: I understand.

6 MISS BRETZ: Yeah.

7 JUDGE: And there have been several requests for witnesses,
8 who appear by WebEx or Notations, that they are going to all
9 approved, I don't know if any attorneys had planned on that,
10 also approved. Nothing else for the...

11 MR. COOPER: (inaudible) With regard to pre-trial
12 testimony, does the Commission want paper copies--or should I
13 just--or will the Commission pull the copies from
14 EFUS (ph) as they have in the past?

15 JUDGE: Yes. I will take responsibility, or someone in my
16 office, will pull them off of the internet. If you have
17 corrections, an errata sheet is preferred. And as is my usual
18 practice, at the end of the hearing, I will produce a list of
19 all of the admitted Exhibits.

20 MISS BRETZ: So Judge, just to make sure I have that
21 clear, so you are not expecting us to have paper copies at the
22 hearing and we don't need to email them to the.that email
23 address?

24 MR. COOPER: Yeah, that was gonna be my question, Judge, is
25 whether we're still emailing a copy to exhibits@psc.mo.gov prior

1 to the hearing, or how you want to handle that?

2 JUDGE: No, don't bring paper copies, we'll--no paper
3 copies. What's going on is, I don't want to be the first Judge
4 that switches, and says ok, everybody do it the old way. This
5 has been working fine, I haven't gotten any negative feedback.
6 Skip the paper copies, I'll take care of that. Any pre-filed
7 stuff, I'll take care of. You guys take care of the errata
8 sheets and any extra Exhibits.

9 MISS BRETZ: Ok. So, no emailing then either to the
10 psc.mo.gov?

11 JUDGE: No. The only ones to email are going to be the
12 Exhibits you--that are not pre-filed--that you know you are
13 going to offer during the hearing.and I don't know how to phrase
14 thisand you don't mind letting everybody know.

15 MISS BRETZ: Ok.

16 JUDGE: For lack of actual lawyer wording.

17 MR. COOPER: One other question with regard to Openings, in
18 the event that anybody wants to use any kind of visual media
19 format, so PowerPoint, Video, etc., are we licensed to contact
20 the technical staff directly, and would that be Brian, or.

21 JUDGE: Yes.

22 MR. COOPER: Or is there another person to send it to?

23 JUDGE: No. Brian is the man.

24 MR. COOPER: Ok.

25 JUDGE: He is somewhere in between the Adjudication and the

1 IT Department. He's our contact for all of this. He's your
2 contact. Same for the private counsel, any type of media, you
3 can just contact Brian directly.

4 UNIDENTIFIED MALE: Alright.

5 JUDGE: Ok, I'm feeling a little nervous, but we are two
6 weeks out. I will let everyone get back to work. Any last
7 minute issues before I hang up? Yay! We solved everything. Ok,
8 meeting is off the record and adjourned. I'll talk to you all
9 later. Thanks.

10 UNIDENTIFIED MALES: Thank you, Judge.

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CERTIFICATE OF REPORTER

1
2 I, Heather L. Factor, Transcriptionist, do
3 hereby certify that I was asked to prepare a
4 transcript of proceedings had in the above-mentioned
5 case, which proceedings were held with no court
6 reporter present utilizing an open microphone system
7 of preserving the record.

8 I further certify that the foregoing pages
9 constitute a true and accurate reproduction of the
10 proceedings as transcribed by me to the best of my
11 ability and may include inaudible sections or
12 misidentified speakers of said open microphone
13 recording.

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16 

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18 Heather L. Factor

19
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22
23 Date: August 6, 2023

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