

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 12th day of
July, 2023.

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)

File No. WR-2023-0006
Tracking Nos. YW-2023-0113
and YS-2023-0114

**ORDER DENYING IN PART AND GRANTING IN PART STAFF'S
REQUEST TO COMPEL DISCOVERY ANSWERS**

Issue Date: July 12, 2023

Effective Date: July 12, 2023

On June 26, 2023,¹ the Staff of the Commission (Staff) filed its *Motion to Compel* (Motion).² On July 6, 2023, Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers or "the Company") filed its *Response to Staff's Motion to Compel* (Response). At issue are two data requests (DRs) submitted by Staff, DR 425 related to exit interviews and DR 231.1 related to board minutes.

The Commission's rules of procedure provide that discovery before the Commission may be obtained by the same means and under the same conditions as in civil actions in circuit court.³ Particular to the Commission, parties may use DRs as a means of discovery.⁴

¹ All dates refer to 2023 unless otherwise indicated.

² The discovery issues were raised in a discovery conference held on June 14, thus meeting the discovery motion filing requirements of Commission Rule 20 CSR 4240-2.090(8).

³ Commission Rule 20 CSR 4240-2.090(1).

⁴ Commission Rule 20 CSR 4240-2.090(2).

Missouri Supreme Court Rule 56.01(b)(1), provides that parties may obtain discovery regarding any matter, not privileged, that is relevant to a pending action or reasonably calculated to lead to the discovery of admissible evidence. Missouri's courts have indicated that there are two aspects to relevance - logical relevance and legal relevance.⁵ Logical relevance simply means that the questioned evidence tends to make the existence of a material fact more or less probable.⁶ In determining legal relevance, the court, or administrative agency, must weigh "the probative value of the evidence against the dangers to the opposing party of unfair prejudice, confusion of the issues, undue delay, waste of time, cumulativeness, or violations of confidentiality. Evidence is legally relevant if its probative value outweighs its prejudicial effect."⁷ Supreme Court Rule 56.01 also provides that the party seeking discovery has the burden of establishing relevance.

The Company's Response argued that discovery should be limited to documents and information germane to the rate case, such that Staff 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 determining the utility's cost of service and total revenue authorized – two examples of matters at issue in a general rate case.

DR 425 – Exit Interviews

At the June 14 discovery conference, Confluence agreed to provide requested information regarding former employees, except for exit interview questions and former employees' responses. Staff argued that the exit interviews are relevant because

⁵ *State v. Kennedy*, 107 SW 3d 306, 311 (Mo. App. W.D. 2003).

⁶ *State v. Kennedy*, 107 SW 3d 306, 311 (Mo. App. W.D. 2003).

⁷ *Jackson v. Mills*, 142 SW 3d 237, 240 (Mo. App. W.D. 2004).

employee turnover may cost ratepayers money. Staff's Motion also argued the exit interviews may indicate other problems, issues of leadership style, or concerns with certain human resources benchmarks. Staff's Motion stated that Confluence Rivers conducted fewer than 16 exit interviews and they are available in electronic format and are thus easily accessed and not overly burdensome to produce.

The Response noted that of the 16 employees who left the Company in the subject time period, exit interviews did not commence until October 2020 – effectively cutting off the first year of the subject time period. The Commission is unsure if this statement means there are less than 16 exit interviews.

The Response argued that the nature of the information requested by Staff must be considered by the Commission. Confluence Rivers stated that exit interview responses need to be open and honest for them to be of assistance to the Company. However, the Response argued that requiring the exit interviews be released to a state organization will not encourage open and honest communications. The Company added that the context of the exit interviews, which will be important to understanding their value, is something an outside viewer will not have.

The Response also argued that the low turnover number of 16 employees controverts Staff's stated reason to seek the exit interviews – to uncover unsound management practices, inefficiencies, or lack of controls or policies among other proffered rationales including attempting to uncover an institutional culture which may lead to litigation. The Response stated that the 16 positions identified do not exhibit an undue amount of turnover - especially given that the subject time period included the pandemic.

The Response added that the exit interviews are irrelevant as they are, at best, only tangentially related to the establishment of the revenue requirement and rate design in this case. Confluence Rivers added that even if the Commission finds Staff's stated reasons are related to the establishment of the revenue requirement and rate design, the generic statement made by Staff provides no basis to think that exit interviews would provide any light on these issues beyond that found in the other materials available to Staff.

The Company stated that evidence of litigation would be found elsewhere, not from exit interviews. Confluence Rivers concluded that even if relevant, given the nature of the information, requiring the discovery of these exit interviews is not proportional to the needs of the case considering the totality of the circumstances. This information should be held close by the employer in order to encourage open and honest responses from employees in the future.

The Commission finds that Staff has failed in its burden to show that the probative value of the exit interviews outweighs concerns of potential confusion of the issues, undue delay, and waste of time. The Commission finds that Staff's request for exit interviews is not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Commission will deny Staff's motion with regard to the answers to DR 425.

DR 231.1 – Board Minutes

The data request is marked as confidential, thus the Commission will speak in general terms in order to maintain confidentiality of the information.⁸

⁸ Information not marked as confidential in Confluence Rivers' Response will be treated as public information.

Confluence Rivers' Response defines several of the corporations involved, which will help inform the discussion.

- Confluence Rivers is a water and sewer corporation. Confluence Rivers' statement that it has no board of directors reflects the fact that it has one director.
- CSWR, LLC is the parent of numerous state utility operating companies. No board of directors has been created by its operating agreement. The Commission infers this description to mean that CSWR, LLC has no board of directors.
- Central States Water Resources, Inc. is a Missouri general business corporation that acts as the "manager" of CSWR, LLC. Central States Water Resources, Inc. has a board of directors, but has no ownership interest in any of the CSWR, LLC subsidiaries.
- US Water Systems, LLC (US Water) is a private equity company which acquired CSWR, LLC and all of its wholly-owned subsidiaries in November 2018. Central States Water Resources, Inc. was CSWR's parent company before it was acquired by US Water.⁹

This discovery concern arose from a document found by Staff that references the acronym CSWR and appears to be meeting minutes from a board meeting held in 2021 (the 2021 Meeting). The document references Josiah Cox as a board member. Staff requested all documents related to the 2021 Meeting, asserting that it appears to be the

⁹ Motion to Compel, filed June 26, 2023, para. 12.

minutes from a CSWR board meeting. Confluence Rivers objected, but answered that it did not have access to any such records. Confluence Rivers initially informed Staff that it believed the document was meeting minutes from US Water, and that mention of Josiah Cox as a board member was in error.

Confluence Rivers updated its response to reflect its belief that the 2021 Meeting minutes appears to misuse the acronym CSWR as an abbreviation for Central States Water Resources, Inc. and it is not as a reference to CSWR, LLC. In support, the Company cites Josiah Cox being a board member, similar board meeting timing, and similar personnel in attendance to support the argument that the 2021 Meeting minutes relate to Central States Water Resources, Inc., not CSWR, LLC. Nevertheless, the Company states that is unable to produce the documents sought whether they concern US Water or Central States Water Resources, Inc.

Staff's Motion also argued that CSWR stated to the Texas Public Utility Commission (the Texas Commission) that since US Water's acquisition of CSWR (which includes CSWR's wholly-owned subsidiaries, such as Confluence Rivers), US Water's "financial statements contain activity for the acquired business." Staff argued that US Water's financial statements likely include aspects of Missouri business since Confluence Rivers is part of the acquired businesses being discussed.

Staff stated that many costs that are approved for funding at the US Water level relate to CSWR and the individual utility operating companies such as Confluence Rivers. In addition, costs incurred at the CSWR level are allocated to the individual utility operating companies including Confluence Rivers. Staff noted that the Company

additionally stated to the Texas Commission that US Water is committed to investing the necessary capital in the acquisition and improvement of CSWR's Missouri operations.

Staff argued that such board decisions affect the expenses and costs that the regulated entity and ultimately, Confluence Rivers' ratepayers, will bear. Staff argued the information is necessary to verify the legitimacy of the expenses and costs, including capital, that Confluence Rivers seeks to recover from ratepayers, and thus, it is a valid area of discovery.

Staff argued that as an investor of CSWR, LLC and its subsidiaries, US Water is likely a water corporation as defined in § 386.020(59), RSMo, and thus comes within the Commission's jurisdiction. Confluence Rivers argued that it is unaware of any authority for the proposition that any investor in a corporate structure containing a Missouri water corporation is itself a Missouri water corporation.

Staff further argued that US Water is making decisions about Confluence executives' salaries.¹⁰ While the underlying salary information is confidential, the Commission will note the salient phrase pointed out by Staff's Motion that the executive salary decisions were "per board". Staff argued that because the Company claims that neither it nor CSWR have a board of directors, that this necessarily implies decision making regarding Confluence Rivers by the US Water board of directors or the Central States Water Resources, Inc. board of directors. Confluence Rivers' Response did not address the salary issue.

Although there is no authority cited for a general investor to be treated as a water corporation, the statements made to the Texas Commission, the approval of funding of

¹⁰ Motion to Compel, filed June 26, 2023, para. 15.

Confluence Rivers, the allocation of costs, and the setting executive salary levels indicate a level of control by US Water and/or Central States Water Resources, Inc., beyond a mere investor, and more indicative of active management.

The Commission finds that Staff's request for documentation related to the 2021 Meeting – whether it was a board meeting of US Water or Central States Water Resources, Inc. - meets the requirement of being reasonably calculated to lead to admissible evidence. The Commission also finds that these meeting materials are in Confluence Rivers' possession, custody, or control. Therefore, the Commission will grant Staff's motion with regard to the answers to DR 231.1.

THE COMMISSION ORDERS THAT:

1. The request to compel answers to discovery is granted, in part, and denied, in part.
2. No later than July 19, 2023, Confluence Rivers shall respond to DR 231.1.
3. Staff's request to compel answers to DR 425 is denied.
4. This order shall be effective when issued.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

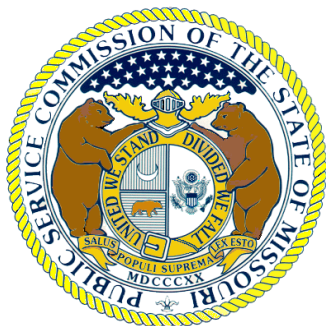
Hatcher, Senior Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 12th day of July, 2023.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

July 12, 2023

File/Case No. WR-2023-0006

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Nancy Dippell
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.