

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 10th day of
August, 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 REGARDING OPC'S MOTION TO COMPEL

Issue Date: August 10, 2023

Effective Date: August 10, 2023

Procedural History

On July 31, 2023,¹ the Office of the Public Counsel (OPC) issued data request (DR) 3069, which requested copies of the quarterly Investment Memorandums that are prepared by "CSWR" and transmitted to US Water Systems LLC (US Water) for the purposes of requesting funding.²

On August 4, OPC filed its *Motion to Compel* (Motion) regarding DR 3069. The Commission subsequently sought further detail as to what corporate entity OPC intended, Central States Water Resources, Inc. (commonly abbreviated to "CSWR") or the corporate entity named with the acronym, CSWR, LLC. OPC responded that the

¹ All dates refer to 2023 unless otherwise indicated.

² DR 3069 reads in full: 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.

documents that reference the quarterly memoranda are titled with the name “Central States Water Resources” without either an Inc. or LLC designation.

OPC stated its belief that the document is referencing Central States Water Resources, Inc. (CSWR, Inc.); however, OPC stated its understanding that CSWR, Inc. does not have any employees. Thus, OPC suggested that the quarterly Investment Memorandums would have to be prepared by employees of CSWR, LLC, as it is the only Central States Water Resources entity to have employees.

Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers or “the Company”) is owned by Confluence Rivers UHC, LLC³, which is owned by Missouri CSWR, LLC, which is owned by CSWR, LLC, which is owned by US Water. CSWR, Inc. was the previous parent company until CSWR, LLC was purchased by US Water from CSWR, Inc. CSWR, Inc. now acts as the manager of CSWR, LLC and Confluence Rivers.

On August 9, the Company filed its response (Response). Confluence Rivers raised an objection as to relevance, argued that CSWR, LLC is not a party, and objected that DR 3069 is overly broad.

Discovery

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.⁴ Particular to the Commission, parties may use DRs as a means of discovery.⁵

³ The Commission interprets UHC to mean Utility Holding Company, but allows that the organizational chart being referenced may include abbreviations.

⁴ Commission Rule 20 CSR 4240-2.090(1).

⁵ 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.⁶ Logical relevance simply means that the questioned evidence tends to make the existence of a material fact more or less probable.⁷ 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."⁸ Supreme Court Rule 56.01 also provides that the party seeking discovery has the burden of establishing relevance.

Relevance

OPC's Motion stated that CSWR, LLC drafts and submits quarterly memorandums to US Water for purposes of requesting funding (i.e. financing) to capitalize its investments in CSWR's current systems and in its acquisitions of new systems.⁹ OPC noted that cost of capital and capital structure are major drivers of Confluence's requested rate increase. Thus, OPC argues, CSWR's request for capital is directly relevant.

The Company's Response argued that the information presented by CSWR, LLC is not relevant as the Commission must decide just and reasonable rates, and any expectation of an individual investor has no import to the question of what rates the

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

⁷ *State v. Kennedy*, 107 SW 3d 306, 311 (Mo. App. W.D. 2003).

⁸ *Jackson v. Mills*, 142 SW 3d 237, 240 (Mo. App. W.D. 2004).

⁹ Motion, para. 16.

Commission should order. The Response did not address cost of capital or capital structure.

CSWR, LLC is not a party

Confluence Rivers' Response argued that DR 3069 does not limit its request to presentations regarding Confluence Rivers, but included all presentations and memoranda created by CSWR, LLC, which Confluence Rivers argued is not regulated by the Commission. Confluence Rivers argued that the Commission has previously recognized that a holding company is a non-regulated entity, even when it owns an entity that is regulated. The Company asserted that CSWR, LLC is not a party and DRs are limited to parties. However, OPC's DR 3069 is not an inquiry to CSWR, LLC; rather, it is a request to Confluence Rivers.

OPC's Motion argued that the Commission previously stated that CSWR, Inc. appears to meet the definition of a water and sewer corporation. OPC's Motion connected CSWR, Inc. to CSWR, LLC because CSWR, LLC has employees and CSWR, Inc. does not.

Overly Broad

The Response argued that DR 3069 is overly broad, as it is not limited to 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.

The Response also argued that DR 3069 is overly broad as it requests four and a half years of information, which necessarily involves dated information that is not relevant to a rate determination in this case.

Decision

The Commission is expressly required by Section 393.140(12), RSMo, to examine the dealings of regulated entities with their unregulated counterparts to review if operations are kept substantially separate and apart. Further, costs incurred at the CSWR level may be allocated to the individual utility operating companies such as Confluence Rivers. Therefore, it is necessary to verify the legitimacy of the expenses and costs, including capital, which Confluence seeks to recover from ratepayers. Ultimately, in a general rate case the Commission inquires as to, and prescribes the apportionment of, capitalization, earnings, debts and expenses where necessary. Additionally, Section 393.270.4, RSMo, allows the Commission to inquire into any factor it deems relevant when determining a proper rate.

The President of Confluence Rivers, Josiah Cox, is also the President of CSWR, LLC and the President of CSWR, Inc. – each of which is an affiliate of Confluence Rivers.¹⁰ Mr. Cox names CSWR, LLC as the managing affiliate for Confluence Rivers, and indicates that CSWR, LLC's corporate communications department is involved in boil advisory notifications for Confluence Rivers.¹¹ Confluence Rivers witness Todd Thomas described CSWR, LLC as a holding company that operated utility companies.¹² Mr. Thomas also described CSWR, LLC's role as having operational/managerial

¹⁰ Cox Direct, p. 1.

¹¹ Cox Rebuttal, p. 12.

¹² Thomas Direct, p. 1.

oversight over Confluence Rivers.¹³ The above facts indicate a greater involvement in utility operations and management by CSWR, LLC than that of a typical holding company.

The Commission finds that the requested information is relevant as it involves funding requests for CSWR, LLC's current systems – which includes Confluence Rivers. As to Confluence Rivers' argument that CSWR, LLC is simply a holding company, the Commission distinguishes its prior decisions as those cases did not involve questions that the holding company and its individual officers were working for both or were managing or operating the regulated utility or providing regular financing to the regulated utility. This finding of relevance is consistent with the statutory requirements of Section 393.140(12) to examine the dealings of regulated entities with their unregulated counterparts to review if operations are kept substantially separate and apart, and to inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the regulated utility.

The Commission finds that, in this case, the time period of four and half years for requested documents is not overly broad. However, the Commission agrees with Confluence Rivers that DR 3069 is overly broad in that it necessarily requests information for separate corporate entities operating in states other than Missouri and for transactions having nothing to do with Missouri. Therefore, the Commission will limit Confluence Rivers' required answer to Investment Memoranda associated in total or in any part with Confluence Rivers or potential Missouri acquisitions.

¹³ Thomas Direct, p. 1.

THE COMMISSION ORDERS THAT:

1. OPC's Motion to Compel is granted in part. Confluence Rivers shall respond to and provide a full and complete response to OPC's DR 3069, limited to those Investment Memoranda or portions thereof that are associated in total or in any part with Confluence Rivers or potential Missouri acquisitions.
2. This order shall be effective immediately upon issuance.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

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

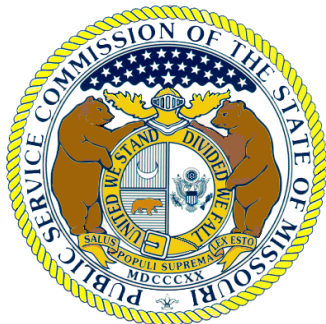
Hatcher, Senior Regulatory Law Judge

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 10th day of August, 2023.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 10, 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.