

**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)	<u>Case No. WR-2023-0006</u>
Increase for Water Service and Sewer)	Tariff Nos. YW-2023-0113
Service Provided in Missouri Service)	and YS-2023-0114
Areas)	

**STAFF'S MOTION FOR DISCOVERY CONFERENCE AND
STATEMENT OF DISCOVERY DISAGREEMENTS AND CONCERNS**

COMES NOW the Staff of the Missouri Public Service Commission and for its *Motion for Discovery Conference and Statement of Discovery Disagreements and Concerns*, states as follows:

1. Although the *Order Setting Procedural Schedule* issued herein on February 16, 2023, provides for regular discovery conferences, the next of which is set for March 22, 2023, Staff hereby prays that the Commission will set an earlier discovery conference, as soon as possible, because Staff's issues cannot wait until March 22.

2. Staff's concerns are as follows:

A. In its responses to Staff's DRs submitted up to March 1, Confluence failed to include the verification required by Rule 20 CSR 4240-2.090(2)(B), "Answers to data requests need not be under oath or be in any particular format, **but shall be signed by a person who is able to attest to the truthfulness and correctness of the answers.**" These verifications are important because they identify the particular Company expert for each topic and therefore permit Staff and other parties to follow-up as necessary. Such follow-ups are most often performed via informal telephone conferences rather than by way of follow-up DRs. Staff and the Company discussed this issue and, in a spirit of cooperation, Staff allowed the

Company to submit a “blanket” verification as to all of those DRs rather than a verification for each of them by the appropriate subject-matter expert (“SME”). Because the person attesting to the blanket attestation for those responses for the Company was not the subject-matter expert (“SME”) that had provided the responsive information for any of the DRs and, therefore, was not actually “able to attest to the truthfulness and correctness of the answers,” Staff followed up on March 2, 2023, with a DR, No. 0158, seeking the identities of those SMEs:

1. For each and every data request response that has been provided to Staff’s discovery for data requests 1 – 157, in Case WR-2023-0006, provide the employee name and job title that is responsible for providing the information contained in each response. 2. Please include this information in all Confluence Rivers responses subsequent to Staff data request 157 and through the pendency of this rate case. Data Request submitted by Lisa Ferguson (lisa.ferguson@psc.mo.gov)

Although a response was not due until March 22, 2023, the Company responded on March 2:

(1) As reflected in the Verification provided on March 2, Aaron Silas (Director of Regulatory Affairs) is responsible for compiling and providing the information contained in each response. Moreover, as reflected in the direct testimony filed in this case, these individuals have supervisory responsibilities for the following subjects: a. Todd Thomas, Sr. Vice President: Operations and Maintenance; Customer Experience; and Business Development; b. Brent Thies, Vice President & Corporate Controller: financial controls and accounting policy; recording of revenues, expenses and capital expenditures; billing operations; and regulatory annual reports; c. Jake Freeman, Director of Engineering: engineering, surveying, facility construction, capital upgrades. (2) These individuals will maintain these responsibilities through the pendency of this proceeding. Confluence Rivers will notify Staff of any change of responsibilities.

The response provided, and set out above, is inadequate in that it does not either meet the requirement of the cited rule nor respond to the actual request set out in DR 0158. The named individuals are not “able to attest to the truthfulness and correctness of the answers,” nor are they the persons that provided the information

conveyed in the responses to Staff's DRs. As the Company explained, "Aaron Silas (Director of Regulatory Affairs) is **responsible for compiling** and providing the information contained in each response." As a mere compiler, Mr. Silas does not personally know whether the answers are truthful or correct. The other listed individuals are executive employees of the Company; they are the supervisors of the SMEs that actually provided the responsive information. These are not the names that Staff sought and the Company frankly appears to be evading its obligation to provide the names of the SMEs as requested by Staff. Staff's DR is clear and unmistakable on its face: "provide the employee name and job title that is responsible for providing the information contained in each response."

To the extent that the Company does not cooperate with Staff's audit, Staff's recommendation will necessarily be negatively affected.

B. DR 0065 requires supplementation as noted: "Please update the supplemental response with the rest of the Staff's original request: (a) Confluence Rivers initially provided a list of contracts for costs allocated from CSWR LLC to Confluence Rivers but did not provide the same list for direct charge contract information. In its first supplemental response the Company provided a list of direct charge contracts but did not provide the associated information for parts 4, 5, 6, and 7 as Company has already provided for the allocated contracts. Confluence River's supplemental response to this data request also included the following response for subpart e, "the Company has 30 licenses, of which 27 are in use. Licensing is based on hiring practices within the accounting department." This response evokes further questions on the part of Staff such as: Why is CSWR LLC only using 27 of 30 licenses? Is CSWR LLC paying for the 3 licenses that are not

being used? Are the costs for those 3 unused licenses being allocated to Confluence Rivers? If yes, provide the amount and provide the vendor, amount, date, and USOA account. Please supplement in EFIS.

C. DR 0066 requires supplementation as follows: For parts 1 and 2, at a minimum, the Company will need to provide the following information: Are there any costs related to acquisitions that CSWR LLC or Confluence Rivers is currently considering but have not finalized that have been expensed in the test year or have been capitalized through January 31, 2023? If there are none, then please so respond. If there are some, please provide the vendor, amount, date, and USOA account in EFIS so that Staff can remove it from its case.

For part 3, Staff requested the following information: “3. Identify and quantify any acquisition cost, transaction and/or transition cost incurred since October 1, 2019, through current that have been recorded on Confluence River’s books and provide a copy of all supporting documentation for transitions and transaction costs. Provide the amount by tariffed rate district, USOA account charged, delineating if the cost was a transition or transaction cost and a description of the cost itself.” The Company provided a spreadsheet, “DR 66-3 Acquisition Related cost invoice listing,” which, however, does not include whether the cost listed is a transition or transaction cost, nor does it provide the USOA account or description of what the cost was related to as part of the acquisition. If the costs in this spreadsheet are supposed to be represented by USOA account in the other spreadsheet provided, “DR 66-3 Acquisition Accounting,” please explain why the total dollar amounts are not the same in both documents. If it is not meant to be represented by that other spreadsheet then the spreadsheet “DR 66-3 Acquisition Related cost invoice listing” needs to be

updated with the whether the cost listed is a transition or transaction cost, the USOA account and description of what the cost was related to as part of the acquisition.

D. DR 0067 requires supplementation as follows, “For states other than Missouri, does Column B, in the response attachment, represent rate districts or systems? Do columns E-G in the response attachment represent metered connections or a customer count?”

It should be noted that the Company objected to DRs 0066 and 0067 and provided responses subject to its objections, which were: “Confluence Rivers objects to DR 0066 and 0067 for the following reasons: (a) the responsive information is not relevant to the subject proceeding, not proportional to the needs of the case considering the totality of the circumstances, nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information about companies that are not regulated by the Missouri Public Service Commission; (b) the request is unduly burdensome and overbroad and, (c) the information is beyond Confluence Rivers’ possession, custody, and control.”

These objections are without merit and should be overruled. The first raises two points: (1) the discovery is not relevant to the subject proceeding nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information about companies that are not regulated by the Missouri Public Service Commission; and (2) the discovery is not proportional to the needs of the case considering the totality of the circumstances. One analysis suffices for both prongs of this objection: Confluence is enmeshed in a conglomerate of 49 distinct corporate entities, based upon Schedule jmc-1 filed with the Company’s direct testimony.

One aspect of Staff's audit is to determine whether Missouri ratepayers are being asked improperly to pay costs not incurred by the company that serves them, or not incurred in the course of serving them, but by an affiliate or for some unrelated purpose. Obviously, the scope of Staff's audit must be broad in order to determine whether unlawful cost-shifting is occurring. Once that is understood, it is clear that the discovery is both relevant and proportional.

The second objection is that the discovery is unduly burdensome and overbroad. Again, Staff's audit must be both broad in scope and thorough to ensure that unlawful cost-shifting is not occurring. Any well-operated business necessarily has the information Staff seeks readily available.

The third objection is that the information sought is beyond Confluence Rivers' possession, custody, and control. This assertion is simply untrue. Josiah Cox testifies, in his direct testimony, that he is "President of Confluence Rivers Utility Operating Company, Inc. ("Confluence Rivers" or "Company");] ... President of CSWR, LLC, ("CSWR") and Central States Water Resources, Inc., ("Central States"), each of which is a Confluence Rivers affiliate." A glance at Schedule jmc-1 reveals that CSWR and Central States own or control all of the affiliates except, possibly, US Water, LLC. All of the information sought is under Mr. Cox' control. If he wants a rate increase, he needs to provide it.

E. DR 0071 must be supplemented with a clarification of Confluence Rivers' response and supplemental response. Confluence River's initial response states: "1) Please refer to the attachments entitled "DR 71-1 - MO Usage" for the requested information; due to a change in billing service providers from Starnik to Munilink, usage information is only available for June-December 2022.

2) Please refer to attachment "DR 71-2 - MO- Estimated_Readings - 2021-2022" for the requested information." In the attachment that Company provided, only six months of data (only one month of it being during the test year) was provided. Staff informally followed up with Confluence Rivers asking the Company to obtain the historical customer usage data for the time period prior to June 30, 2022 (end of the test year) from Starnick. Confluence River's supplemental response provided multiple excel data files and the following response: "In response to PSC's Supplemental Data Request: Please refer to the additional files provided on 3/6/2023 in the folder entitled "CONFIDENTIAL Confluence Rivers Starnik Data" in the Data Room shared by Confluence Rivers on 1/21/2023. Upon termination of services with Starnick, the Company was informed by Starnick that they would charge a fee to turn over historical data. The Company could not reach an agreement with Starnick on the amount of said fee and Starnick informed the Company that they would not archive historical data. As such, this data cannot be obtained from Starnick." Is the data that was provided in the supplemental response on March 6th the **actual customer usage data for the remainder of the historical time period that was requested for all tariffed rate districts?** Did the files that were supplemented come from Starnick? If the data came from Starnick, please also explain in detail how the situation with Starnick regarding the dispute in obtaining Confluence Rivers' own data and the incurrence of fees for acquiring the historical data was ultimately resolved.

F. DR 0079 must be supplemented with an explanation of the format of the provided spreadsheet (79-3): If Staff multiplies each employee's salary as of 12/2022 by 12 months – will that provide Staff with the annual amount of pay

for each employee? Also, did those salaries change on January 31, 2023? If so, please update this spreadsheet and supplement the response to DR 79 by March 15 per the ordered procedural schedule.

G. DR 0081 must be supplemented as follows: Staff has provided to the Company a list of employees for whom job titles are required. After a comparison of job titles to the job descriptions attached in the response to DR 0081, it appears there is no job duty name that corresponds to the job title for the items highlighted in yellow in the spreadsheet provided to Company. The Company must provide supplementation explaining which job description relates to each of these individuals. For those employees that do not have a job description/job duties – please explain in detail why they do not. Please explain why some job descriptions/duties are detailed and others are summaries. Are these job descriptions/job duty documents what you provide to employees to demonstrate that these are the duties that they are to complete and are to be evaluated on? For part 5, the supplemental response states: “5. As part of tracking their time, employees choose the entity to which their time should be assigned and the function. Please see the listing provided in response to DR 81-3 for these timesheet categories. The function is used to determine whether the time is capital. Employees understand the functions they are performing and the payroll staff understands which of those functions are capital.” Is this narrative describing the process of analyzing timesheets formally or verbally explained? If there is a written policy that is disseminated to employees explaining this, please provide this; and, if not, please explain in detail why this is not a documented process for employees to be cognizant of and consistent in application.

H. DR 0082 must be supplemented as follows: For the incentive compensation/bonuses that are for business development and that are at management discretion, as described in the response, please provide the information requested in Part 2 which states “2. Please provide the actual and accrued incentive compensation and/or bonus by month, by employee, for the period of October 1, 2019, through December 31, 2022.” Although these bonuses for business development were not recorded on Confluence Rivers’ books, they are part of CSWR LLC’s employee compensation package. Staff needs to see the full amount of those compensation packages. For part 4 – Staff needs overtime hours by employee, by type, and by month and year.

I. DR 0083 must be supplemented as follows: In the supplemental attachments of monthly lists/invoices provided, the following months are missing and must be provided: 10/21, 12/21, 1/22, 2/22, 4/22 and 6/22. Are there any monthly lists/invoices prior to September 2021? If so, please provide them in EFIS as far back through October 1, 2019, as available, or whenever service with that particular vendor began.

J. DR 0086 must be supplemented as follows: The dates and amounts of payroll taxes that were paid to the appropriate taxing authorities must be provided. If necessary, CSWR must obtain the dates these payroll taxes were paid from Paycor.

3. The requested information is necessary for Staff to prepare its case and to audit the Company’s compliance with applicable Missouri statutes, Commission regulations, orders, and approved stipulations. In a general rate case such as this one, all of the necessary information is in the possession of the utility. Without the cooperation of the

requesting utility, Staff cannot determine whether or not a rate increase is needed or how much of an increase is actually needed. Such a situation is necessarily deeply prejudicial to the Company's ratepayers and cannot be permitted.

WHEREFORE, prays that the Commission will set a Discovery Conference, as soon as possible, because Staff's issues cannot wait until the regularly-scheduled discovery conference on March 22. Staff submits this *Statement of Discovery Disagreements and Concerns* to facilitate the convening of a Discovery Conference as soon as possible.

Respectfully submitted,

/s/ Kevin A. Thompson
KEVIN A. THOMPSON
Chief Staff Counsel
Mo. Bar No. 36288

Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-6514 (Telephone)
(573) 522-6969 (Facsimile)
kevin.thompson@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this **9th day of March, 2023**, to all parties and/or counsels of records.

/s/ Kevin A. Thompson