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 Service and Sewer Service Provided in Missouri Service Areas	)))))))	Case No. WR-2023-0006

INITIAL BRIEF OF THE MISSOURI OFFICE OF THE PUBLIC COUNSEL

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Issue 4: Income Taxes

As stated in the *Amended Joint List of Issues, List and Order of Witnesses, Order of Cross-Examination, and Order of Opening Statements*, issue four consist of two parts:

> With respect to income tax—
>
> a. How should income tax expense be set for purposes of establishing the revenue requirements?
>
> b. If the Commission allows Confluence to recover income tax expense in an amount greater than what would be remitted to the IRS in a given tax year, should the excess income tax expense be booked to a deferred liability account that will offset rate base?

While the issue is expressed in terms of setting income tax expense, the only disagreement amongst the parties concerns the proper regulatory treatment of what are termed "net operating losses." *See*, *e.g.*, Ex. 101, *Direct Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 2 ln. 14 – pg. 6 ln. 15 (EFIS Item No. 196). To be more specific, the central question is simply this: should Confluence's NOLs be given "normalization" treatment for ratemaking purposes. *See id*. at pg. 5 lns. 3 – 10. The answer to this question is no. Confluence's NOLs should not be given normalization treatment for ratemaking purposes. Ex. 123, *Surrebuttal Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 5 ln. 21 – pg. 6 ln. 4 (EFIS Item no. 219); Ex. 203 *Surrebuttal Testimony of John S. Riley*, pg. 8 lns. 1 – 6 (EFIS Item No. 235). This will unnecessarily delay the recognition of the benefits created by these NOLs for ratepayers and may further bestow on Confluence an unwarranted windfall at the ratepayer's expense. *See* Ex. 123, *Surrebuttal Testimony of Kimberly K. Bolin (Public*

and Confidential), pg. 4 lns. 11 – 13 (EFIS Item no. 219); *Surrebuttal Testimony of John S. Riley*, pg. 7 lns. 16 – 18 (EFIS Item No. 235); Tr. vol. 9 pg. 118 lns. 16 - 25. The NOLs should instead be given what is called "flow-through" treatment. *See* Ex. 123, *Surrebuttal Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 5 ln. 21 – pg. 6 ln. 4 (EFIS Item no. 219). This "immediately passes on the benefits" associated with these NOLs to Confluence's ratepayers. *Id*. at pg. 4 ln. 15.

If the Commission nevertheless decides to order Confluence's NOLs to be normalized for ratemaking purposes, it should order any income tax expense included in rates that is in excess of the amount actually remitted to the IRS by Confluence to be booked to a deferred liability account that will offset rate base, as expressed in the second part of this issue. *Id*. at pg. 6 ln. 14 – pg. 7 ln. 2; Ex. 203, *Surrebuttal Testimony of John S. Riley*, pg. 8 lns. 1 – 6 (EFIS Item No. 235).

What is a Net Operating Loss?

A net operating loss ("NOL") is a taxable deduction that may be claimed on a federal income tax return. *See* 26 USC 172(a). An NOL is specifically defined by the US tax code: "[f]or purposes of this section, the term 'net operating loss' means the excess of the deductions allowed by this chapter over the gross income." *Id*. at 172(c). Stated differently, "[a]n NOL results when a utility does not have enough taxable income to utilize all of the tax deductions to which it would otherwise be entitled." Ex. 123, *Surrebuttal Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 1 lns. 18 – 20 (EFIS Item no. 219). The value of this NOL, from a taxpayer's prospective, is that it can be "carried forward" into future tax years (where the taxpayer's

deductions do not exceed the taxpayer's gross income), at which point the NOLs can offset the taxpayer's taxable income for that tax year. 26 USC 172(a); Ex. 101*, Direct Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 4 lns. 2 - 5 (EFIS Item No. 195) ("If a company has taxable income and a NOL, the NOL can be used to offset taxable income, thus the company's taxes due will be reduced. If the NOL is greater than the taxable income and can be used to offset all of the taxable income the company will not have to pay income taxes for that year.").[1]

Does Confluence Have any Net Operating Loss tax deductions available?

According to Staff witness Ms. Kimberly Bolin, as of December 31, 2021, Confluence had ** ———— ** of NOLs available. Ex. 101*, Direct Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 3 lns. 10 - 11 (EFIS Item No. 195). The same witness further concluded that, taking Confluence's projected revenues into account, the Company expected to have $9.77 million in NOLs by the time rates became effective in this case. *Id*. at pg. 4 lns. 11 – 13; Ex. 133, *Staff Errata Sheet (Public and Confidential)*, pg. 1 ¶ 1 (EFIS Item no. 229).

[1] Please note that the Tax Cut and Jobs Acts imposed certain limits on the use of NOLs, in that, for NOLs generated after January 1, 2018, "A taxpayer will only be able to utilize 80% of the NOL to offset taxable income." Ex. 101, *Direct Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 5 lns. 14 - 15 (EFIS Item No. 195). However, "NOLs generated prior to January 1, 2018 are not subject to the 80% NOL limitation and can be deducted at 100%." *Id*. at lns. 15 – 16.

Why does Confluence have Net Operating Loss deductions?

Given their legal definition, the Company's NOLs are necessarily the result of tax deductions Confluence incurred in past years that were in excess of the gross income the Company reported for tax purposes in those same years. 26 USC 172(c). The Company wants this Commission to believe that these NOLs were the result of expense deductions incurred to operate the systems being greater than the taxable income generated by those systems. *See* Ex. 16, *Rebuttal Testimony of Bradley M. Seltzer*, pg. 8 lns. 2 – 4 (EFIS Item no. 187). Yet, that is not a truly accurate portrayal of the situation. In reality, a very large portion of the NOLs generated by the Company are simply the result of Confluence claiming interest deductions on a loan that the Company essentially made to itself. Tr. vol. 10 pg. 55 ln. 22 – pg. 56 ln. 3; Ex. 230, *Murray Worksheet* (EFIS Item no. 262). In fact, removal of that interest expense from that self-dealing loan would reduce Confluence's accumulated NOLs by more than half its expected value. Tr. vol. 10 pg. 149 lns. 21 – 25. Understanding this point is important because it means Confluence's customers have received no real benefits from the creation of the majority of these NOLs and, for those systems where the self-dealing loan was included in rates, have actually been directly harmed by the same factors that gave rise to NOL's creation. It is therefore necessary to examine the facts giving rise to the NOLs.

The Fresh Start loan

Prior to their consolidation into what is now Confluence Rivers, several of the individual Missouri systems owned by Central States Water Resources ("CSWR")

were operated as independent utility companies. *See* Ex. 107, *Direct Testimony of Ashley Sarver (Public and Confidential)*, pg. 20 lns. 19 – 22 (EFIS Item no. 202). Examples include Hillcrest, Elm Hills, Raccoon Creek, and Indian Hills. *Id*. Apart from all being owned and operated by CSWR, these companies all individually entered into contractual loan agreements with an entity known as Fresh Start Venture, LLC ("Fresh Start"). Ex. 209, *Direct Testimony of David Murray (Public and Confidential)*, pg. 7 lns. 4 – 10 (EFIS Item no. 241); Ex. 225, *Indian Hills Report and Order from WR-2017-0259*, pg. 51 ¶ 5 (EFIS Item no. 256). The problem with this arrangement, though, is that Fresh Start was funded and indirectly controlled by two men: Robert Glarner, Jr. and David Glarner ("the Glarners"). Ex. 225, *Indian Hills Report and Order from WR-2017-0259*, pg. 52 ¶¶ 6 – 7 (EFIS Item no. 256). These two men also happened to constitute the officers and board of directors for CSWR, which owned the subordinate utility and utility operating companies. *Id*. These facts ultimately led this Commission to find, for at least one of the subordinate utility companies, that the "cost of debt is the result of dealings among entities closely inter-related with Indian Hills through chains of common ownership on both sides of the transaction." *Id*. at pg. 50 ¶ 1. The Commission further concluded that "the loan does not resemble an arm's-length transaction because the Glarners are behind each end of the transaction." *Id*. at pg. 56. To state the matter simply, Confluence was loaning money to itself. Tr. vol. 10 pg. 53 lns. 15 – 17.

The issues related to the Fresh Start loan are fortunately not germane to the question of the proper capital structure raised in this case. However, the loans are

important to understanding the NOLs, which are at the center of the income tax expense issue. This is because Confluence has been reporting the interest payments on the Fresh Start loan as a deduction on the individual tax returns filed for each of its predecessor companies. Tr. vol. 10 pg. 52 ln. 25 – pg. 53 ln. 7. As such, the interest payments made on the Fresh Start loan have been directly contributing to the NOLs being generated by the Company. *See*, Ex. 222, *Indian Hills Tax Return (Public and Confidential)*, pg. 6 (EFIS Item no. 253); Ex. 223; *Indian Hills Annual Report 2018*, pg. W-1 ln. 20, pg. 9 (EFIS Item no. 254); Ex. 224, *Indian Hills Annual Report 2019*, pg. W-1 ln. 20, pg. 9 (EFIS Item no. 255). However, while the Company has been permitted to utilize these interest deductions in producing a "loss" for income tax purposes, the Company itself has not experienced a genuine loss in revenue because it has effectively been making these interest payments to itself.[2] Tr. vol. 10 pg. 91 lns. 1 – 12. Therefore, while the Company may have a NOL for tax purposes, it has not really suffered that much of a loss in terms of actual revenue.

The amount of NOLs attributable to Fresh Start loan interest deductions

During the evidentiary hearing, the OPC demonstrated that the interested deductions included in the Company's filed tax returns related to the Fresh Start loan were the same or nearly the same as those included in the Company's annual reports

[2] The OPC seeks to question neither the legality of this arrangement, nor legal relationship between entities. The OPC only asks the Commission to understand and appreciate the very real financial reality of the situation. As this Commission itself stated in the Indian Hills rate case, "[t]he Commission cannot ignore financial reality." Ex. 225, *Indian Hills Report and Order from WR-2017-0259*, pg. 56 (EFIS Item no. 256).

filed with the Commission. Tr. vol. 10 pg. 47 ln. 4 – pg. 48 ln. 25; *see also*, Ex. 222, *Indian Hills Tax Return (Public and Confidential)*, pg. 6 (EFIS Item no. 253); Ex. 223; *Indian Hills Annual Report 2018*, pg. W-1 ln. 20, pg. 9 (EFIS Item no. 254); Ex. 224, *Indian Hills Annual Report 2019*, pg. W-1 ln. 20, pg. 9 (EFIS Item no. 255). Based on this, it is possible to calculate the total impact of the interest deductions paid on the various Fresh Start Loans entered into by the predecessor companies to Confluence Rivers using the annual reports filed by those companies. This is precisely what OPC witness Mr. David Murray did. Tr. vol. 10 pg. 148 ln. 24 – pg. 149 ln. 20. The result of Mr. Murray's calculations shows that $5,517,208 dollars in interest deductions on the Fresh Start loan have been included in Confluence's previous income tax filings. *Id*. at pg. 149 lns. 16 – 20; Ex. 230, *Murray Worksheet* (EFIS Item no. 262). Because a NOL is legally defined as taxable deductions in excess of taxable income, removing these interest deductions from consideration would directly reduce the Company's accumulated NOLs by the same amount. Tr. vol. 10 pg. 149 lns. 21 – 25.

Conclusion to be drawn

As stated previously, the purpose of this digression was to address the Company's argument regarding why the NOLs exist and who has benefited from them. In particular, Confluence seeks to argue that these NOLs are all the result of its business model of acquiring systems and making capital improvements while maintaining existing rates. Ex. 16, *Rebuttal Testimony of Bradley M. Seltzer*, pg. 8 lns. 2 – 4 (EFIS Item no. 187). This, the Company argues, results in deficient cash flow to properly serve the acquired systems, and thus net losses. *Id.* Apart from this

supposed problem being, in reality, just the result of the Company's purposefully chosen business model, the evidence presented shows that NOLs are not actually being driven by the cost to operate newly acquired systems.[3] Instead, the vast majority of the NOLs were created due to the Company claiming interest deductions on the loan it made to itself. Tr. vol. 10 pg. 148 ln. 24 – pg. 149 ln. 25; Ex. 230, *Murray Worksheet* (EFIS Item no. 262).

Confluence Rivers' customers do not receive any benefit from the Company making large interest deductions for a loan that it made to itself. As such, Confluence Rivers' customers have not benefited from the creation of the majority of these NOLs. In fact, those customers for whom the Fresh Start loans were previously included in rates have actually been directly paying for the creation of these NOLs. If anything, they have therefore been directly harmed by the creation of these NOLs. The Commission should consider these factors in determining the proper answer to the issue at hand.

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[3] Please consider the following exchange:

> Q. Now, you would agree with me that it lists total revenues at the top of about $537,000?
> A. Yes.
> Q. And lists plant operating expenses at line 7 at $161,000?
> A. Yes.
> Q. So you would agree with me that the revenues being generated by the Company far exceeded the actual cost to operate its plant according to this annual report. Correct?
> A. Yeah. Based on those two figures, I would agree with that.

Tr. vol. 10 pg. 92 lns. 9 – 20.

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Should Confluence's Net Operating Losses deductions be given normalization treatment for ratemaking purposes?

No, Confluence's NOLS should not be given normalization treatment for ratemaking purposes. There are three reasons for this:

1. Normalizing the NOLs would force Confluence customers to pay more than what is required to serve them;
2. Some customer have already been paying for the creation of these NOLs and it is unfair to force those customers to pay a second time; and
3. If the Commission orders Confluence to normalize the NOLs, then the Commission runs the risk of granting the Company an unwarranted permanent tax benefit.

Each of these three reasons will be addressed in turn, but first, it is necessary to address briefly whether the Commission is required to normalize NOLs

Is the Commission required to normalize Net Operating Losses?

Under the US tax code, some tax-timing differences – like those associated with the use of accelerated depreciation – are required to be normalized. Ex. 123, *Surrebuttal Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 4 lns. 16 – 22 (EFIS Item no. 219). These are often referred to as "protected" tax timing differences. *Id*. at pg. 4 lns. 22 – pg. 5 ln. 1. "Other tax timing differences for which the IRS Code does not mandate normalization treatment are referred to as 'unprotected' differences." *Id*. at pg. 5 lns. 1 – 2. This case does not concern issues of accelerated depreciation. *Id.* at lns. 3 – 5. There is nothing in the record that states the Commission is required to normalize NOLs. Instead, the Commission has generally assed unprotected tax-timing difference on a case-by-case basis. *Id*. at lns.

6 – 8. Confluence's own witness admitted that the Commission is not required to normalize in this case. Tr. vol. 9 pg. 103 lns. 3 – 5. It is therefore within the Commission's discretion whether these NOLs should be normalized or flown-through to customers.

Normalizing the NOLs would force Confluence customers to pay more than what is required to serve them

This argument is exceedingly straightforward and simple. "Confluence is not expected to have taxable income in the near future and the available NOL balance will cover the taxable income in these rates." Ex. 203, *Surrebuttal Testimony of John S. Riley*, Pg. 5 lns. 7 – 9 (EFIS Item No. 235). As such, no additional income tax expense beyond what Staff already calculated and included in the revenue requirement is necessary. "Given that Confluence has not paid any income taxes to taxing authorities in recent years, and is projected not to pay income taxes for several years out in the future, there is simply no compelling reason to increase Confluence's customer rates at this time for 'phantom' income tax expense." Ex. 123, *Surrebuttal Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 6 lns. 1 – 4 (EFIS Item no. 219).

The purpose of this rate case, and indeed all rate cases, is to bring a utility's rates in line with its cost of service. Tr. vol. 9 pg. 82 lns. 2 – 6. That term, cost of service, refers to the cost incurred by a utility to meet its operation costs and continue serving customers. *Id*. at lns. 7 – 10. In this instance, the issue at hand is the inclusion of income tax expense. *Id*. at 12 – 14. Income tax expense is, naturally, the amount

included in rates to pay income taxes. If an amount is included in rates and collected from customers so as to pay income taxes but then is not actually used to pay income taxes, then customers have been charged more than what the Company needed to provide service. This "is punitive and unjust to the Company's captive customers." Ex. 203, *Surrebuttal Testimony of John S. Riley*, Pg. 7 ln. 21 (EFIS Item No. 235). Again, as the Commission's own Staff pointed out: "there is simply no compelling reason to increase Confluence's customer rates at this time for 'phantom' income tax expense." Ex. 123, *Surrebuttal Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 6 lns. 1 – 4 (EFIS Item no. 219).

Some customer have already been paying for the creation of these NOLs and it is unfair to force those customers to force them to pay a second time

This point has been effectively already addressed, so it will be touched upon only briefly here. Several of Confluence's customers have already been saddled with paying rates calculated to include the interest payments made on the Fresh Start loan. Ex. 209, *Direct Testimony of David Murray (Public and Confidential)*, pg. 7 lns. 4 – 10 (EFIS Item no. 240). These interest payments, which the Company effectively made to itself, are responsible for the majority of the NOLs now at issue. Tr. vol. 10 pg. 53 lns. 15 – 17, pg. 149 lns. 21 – 25; Ex. 230, *Murray Worksheet* (EFIS Item no. 262). These customers have therefore already been paying for the creation of these NOLs. Under the matching principle, because these customers have been paying for the creation of these NOLs, they should be entitled to the benefit created by these NOLs. Allowing Confluence to reap the rewards generated by forcing customers to

pay interest on the Company's self-dealing loan not only violates the matching principle, if unfairly punishes those customers who will now have had to pay twice.

If the Commission orders Confluence to normalize the NOLs, then the Commission runs the risk of granting the Company an unwarranted permanent tax benefit

It is important for the Commission to understand the distinction between this case and other cases that have come before the Commission where a company had a NOL that was caused by accelerated depreciation. *See* Tr. vol. p pg. 130 lns. 7 – 13. Accelerated depreciation is a fairly common way that a utility can develop a temporary book/tax timing difference between what is "recorded for financial (i.e. regulatory) purposes as opposed to the amount applied within a tax return." Ex. 203, *Surrebuttal Testimony of John S. Riley*, Pg. 5 lns. 14 – 15 (EFIS Item No. 235). However, key to these book/tax timing differences is the idea that the tax benefit will eventually "turn around" and ultimately lead to increased taxes later on. Because the book/tax timing differences resulting from accelerated depreciation result in a higher tax being paid later, they are referred to as deferred tax liability. Ex. 215, *Statement of Financial Accounting Standards No. 109*, pg.5 ("A deferred tax liability is recognized for temporary differences that will result in taxable amounts **in future years**" (emphasis added)). However, this is not what happens with an NOL.

An NOL is, by definition, a deduction. 26 USC 172(a); Tr. vol. 9 pg. 109 lns. 17 - 20. That means that it does not result in new taxes in a future year and does not increase taxes in a future year. Tr. vol. p pg. 109 ln. 22 – pg. 110 ln. 6. As such, an NOL creates a deferred tax **asset**, not a deferred tax liability. *Id.* at pg. 111 lns. 9 –

17; Ex. 203, *Surrebuttal Testimony of John S. Riley*, Pg. 6 ln. 27 – pg. 7 ln. 2 (EFIS Item no. 219) ("To state that there is a 'liability' necessarily infers a future amount will come due. Because there is nothing due in the future based on this NOL, it is therefore not a 'liability' as [Confluence's witness] Mr. Seltzer states."). Consequently, these NOLs "will not eventually 'turn around' by way of expiring temporary deferred tax benefits" in the same way that accelerated depreciation would. Ex. 203, *Surrebuttal Testimony of John S. Riley*, Pg. 7 lns. 5 – 6 (EFIS Item No. 235).

This difference between NOLs and accelerated depreciation is important because it means that, unless some system is put into place to track the income tax expenses being collected from customers but not remitted to the IRS, Confluence will experience a permanent tax benefit from the normalization of the NOLs. *Id*. at pg. 7 lns. 16 – 18 ("If the Commission were to include an income tax expense in the cost of service without including an offsetting deferred tax liability, the Company would enjoy a permanent tax savings due to the ratepayer funding an expense that does not exist." (emphasis in original)); Tr. vol. 9 pg. 118 lns. 16 - 25. Even if the Commission were to order some mechanism to track the income tax expenses being collected from customers but not remitted to the IRS, however, there is still a risk of creating a long-term issue with the Company's taxes:

> You know, even [though] it's called income tax expense, it's not going to be paid to the IRS. And what I was getting at was if you do that -- and you were asking when would the deferred tax start to be reduced. It technically would not ever reduce.

> Q. Okay. Let's drill down on that, let's make sure we have that understanding. Let's say -- let's assume the Company has used up all of its net operating losses carryforwards.
>
> A. Okay.
>
> Q. It has no net loss carryforwards, it has this deferred income tax.
>
> A. Yeah.
>
> Q. What is it using to pay income taxes moving forward?
>
> A. Well, if you -- by then it would be -- you know, we're making some assumptions here By then they would be coming back in for a rate increase or rate adjustment. And with no net operating losses probably both Staff and I would be calculating an income tax expense to include in rates then.
>
> Q. I understand. So because income tax expense would be include at that point you would never use the money in the deferred tax account to actually pay income taxes. Is that what you're saying?
>
> A. Yes.

Tr. vol. 9 pg. 219 ln. 8 – pg. 220 ln. 11 (Testimony of John Riley). Given these concerns, it is altogether more safe and sensible for the Commission to order a flow-through of the NOLs in this case, as opposed to ordering them to be normalized, in order to avoid the potential for any future complications including the creation of an unwarranted permeant tax benefit for the Company.

<u>What should the Commission do if it allows Confluence to recover income tax expense in an amount greater than what would be remitted to the IRS in a given tax year?</u>

Should the Commission not agree with the prior points and nevertheless order that Confluence's NOLs be given normalization treatment for ratemaking purposes, "the Commission should [further] order . . . that any amounts of income tax expense

collected in rates that exceed the amount of income taxes actually paid to federal and state taxing authorities in future years to be used as an offset to rate bases in future rate proceedings to recognize the capital being forcibly contributed to Confluence by its ratepayers." Ex. 123, *Surrebuttal Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 6 ln. 20 – pg. 7 ln. 2 (EFIS Item no. 219); Ex. 203, *Surrebuttal Testimony of John S. Riley*, Pg. 8 lns. 4 – 6 (EFIS Item No. 235) ("[I]f [the Commission] believes a normalization needs to be established then a corresponding deferred liability, tax or otherwise, should be included to offset the amount."). This is necessary in order to recognize the reality that "customers would be contributing cost-free capital to Confluence." Ex. 123, *Surrebuttal Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 6 lns. 19 – 20 (EFIS Item no. 219); *see also* Tr. vol. 9 pg. 118 lns. 1 – 11. It is further necessary to avoid the creation of the permanent tax benefit discussed previously. Ex. 203, *Surrebuttal Testimony of John S. Riley*, pg. 7 lns. 16 – 18 (EFIS Item No. 235); Tr. vol. 9 pg. 118 lns. 16 - 25. This is the same standard that the Commission has consistently applied in the past when other deferred tax items have been normalized. *See* Ex. 123, *Surrebuttal Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 6 lns. 5 – 13 (EFIS Item no. 219); Tr. vol. 9 pg. 118 lns. 12 – 15. Moreover, the president of CSWR, Mr. Josiah Cox, testified during the hearing that this outcome would be acceptable to the Company. Tr. vol. 9.5 pg. 38 lns. 5 – 6 ("You know, the methodology recommended by Staff as a secondary option we could live with.").

Issue 6: Acquisition Related Costs

This issue consists of a single question posed to the Commission: "What legal and preliminary engineering costs related to acquisitions and applications for certificates of convenience and necessity should be capitalized?" The correct answer is that none of the legal and preliminary engineering costs related to acquisitions and applications for certificates of convenience and necessity should be capitalized. *See* Ex. 110, *Direct Testimony of Keith Majors*, pg. 14 lns. 19 – 20, pg. 15 lns. 1 - 9 (EFIS Item no. 205). To the extent that they should be recovered by the Company at all, they should only be amortized. Tr. vol. 9.5 pg. 70 ln. 20 – pg. 71 ln. 4.

What kinds of costs are included in the completion of an acquisition?

Staff witness Mr. Keith Majors outlines the two types of costs included in the completion of an acquisition:

> There are two categories of acquisition costs: transaction and transition costs. Transaction costs are costs incurred by the purchaser and seller to effectuate the financial, legal, and regulatory requirements of the merger. These costs are incurred prior to and immediately after the merger or acquisition. Transition costs are costs incurred to combine the entities participating in the acquisition to combine the operations and are incurred ratably as the operations of the merged or acquired entities are combined.

Ex. 110, *Direct Testimony of Keith Majors*, pg. 14 lns. 12 – 17 (EFIS Item no. 205). Further detail was provided by Mr. Majors in his surrebuttal testimony:

> There are two general categories [of costs incurred in the completion of an acquisition], transaction and transition costs. Transaction costs

> include investment banker fees, and consulting and legal fees associated with the evaluation, bid, negotiation and structure of the deal.
>
> Transition costs are costs incurred to integrate the acquired utility into the acquiring entity. These costs are necessary to ensure that the synergy savings are achieved and that the merger process is effective. These costs can include severance and retention costs and costs associated with process integration.

Ex. 129, *Surrebuttal Testimony of Keith Majors (Public and Confidential)*, pg. 4 lns. 6 – 12 (EFIS Item no. 225).[4]

What has been the Commission's position on these two types of cost and why?

As explained by Mr. Majors: "[t]he Commission has consistently denied recovery in cost of service of transaction costs as costs of ownership that should be retained by the purchaser or investors." Ex. 110, *Direct Testimony of Keith Majors*, pg. 14 lns. 19 – 20 (EFIS Item no. 205). Transition costs, by contrast, "have been included in cost of service in some prior rate cases depending on the individual circumstances in those cases." *Id.* at lns 21 – 22. The denial of the recovery of transaction costs is done with "[t]he intent of protecting ratepayers from providing unreasonable returns to utilities" that "would be circumvented if rates were developed by considering a return on investments above net depreciated original

[4] In regards to the use of the term "senergy savings," Mr. Majors explains that these are "are reductions in costs from combining the operations of merging utilities as compared to the combined costs of the entities standing alone." Ex. 129, *Surrebuttal Testimony of Keith Majors (Public and Confidential)*, pg. 4 lns. 19 – 20 (EFIS Item no. 225). Examples of such savings "include benefits of scale, improved efficiency in support functions, economies of scale in purchasing, and savings from combining customer service and field operations in the same geographic area." *Id.* at pg. 5 lns. 1 – 3.

costs." Ex. 129, *Surrebuttal Testimony of Keith Majors (Public and Confidential)*, pg. 6 lns. 29 – 31 (EFIS Item no. 225). "This concept has been described as being the net original cost rule" and has been previously outlined and explained by the Commission as follows:

> As a general rule, only the original cost of utility plant to the first owner devoting the property to public service, adjusted for depreciation, should be included in the utility's rate base. That principle is known as the net original cost rule. The net original cost rule was developed in order to protect ratepayers from having to pay higher rates simply because ownership of utility plant has changed, without any actual change in the usefulness of the plant. If a utility were allowed to revalue its assets each time they changed hands, it could artificially inflate its rate base by selling and repurchasing assets at a higher cost, while recovering those costs from its ratepayers. Thus, ratepayers would be required to pay for the same utility plant over and over again. The sale of assets to artificially inflate rate base was an abuse that was prevalent in the 1920s and 1930s and such abuses could still occur.

Id. at pg. 6 ln. 31 – pg. 7 ln. 13. It is extremely important to note that this rule does not exclude cost recovery of any expenditures made by the Company to improve the quality of the system. Tr. vol. 9.5 pg. 69 ln. 18 – pg. 70 ln. 7. For example, any plant additions or maintenance that would need to be done to ensure a water and or wastewater system was providing safe and adequate services would be either capitalized or expensed accordingly. *Id*.

Are the costs included in this issue transaction costs or transition costs and why?

The acquisition costs capitalized by Confluence that are concerned in this issue are all transaction costs. *Ex. 110, Direct Testimony of Keith Majors*, pg. 14 lns. 22 – 23 (EFIS Item no. 205). "There were no transition costs incurred in the test year." *Id.*

at ln. 23. To illustrate that point, let us consider some examples. One major cost driver in this dispute are engineering feasibility studies and related costs. Ex. 221, *DR 66 Work Papers*, pg. 4 (EFIS Item no. 252). These make up $434,706 of the total $987,852 amount at issue. *Id.* These kinds of costs are incurred not on behalf of either the individuals being purchased or the ratepayers Confluence already serves. Instead, "[t]hese costs were incurred on behalf of the purchaser (Confluence shareholders) and **would not be incurred but for the determination of bid amount and terms of the offer**." Ex. 129, *Surrebuttal Testimony of Keith Majors (Public and Confidential)*, pg. 8 lns. 4 – 6 (EFIS Item no. 225) (emphasis added). "If Confluence chose not to acquire the subject utility there would be no recourse for these costs as they are incurred by and benefit the purchaser (Confluence shareholders)." *Id.* at pg. 8 lns. 6 – 7.

Another such example are costs incurred to secure clean title to the property, which are simply a cost of ownership. *Id.* at pg. 5 lns. 21 – 21. Such costs are part of the basic due-diligence that any prospective property purchaser would be expected to undertake. Tr. vol. 9.5 pg. 68 ln. 24 – pg. 69 ln. 5. "Lastly, any costs related to the filing of an acquisition case before the Commission are owner's costs as there is no benefit to ratepayers for these costs and these costs are not required for utility service." Ex. 129, *Surrebuttal Testimony of Keith Majors (Public and Confidential)*, pg. 5 lns. 21 – 23 (EFIS Item no. 225). As with the other legal fees, these costs would be incurred any time a new owner acquired the system because every transfer of

utility property requires Commission approval. Tr. vol, 9.5 pg. 68 lns. 20 – 23; RSMo. § 393.190.

For all the reasons laid out in Mr. Major's testimony, the costs that Confluence self-identified as acquisition costs should be properly excluded from rate recovery under the Commission's long-standing precedent. See Ex. 110, *Direct Testimony of Keith Majors*, pg. 14 lns. 19 – 20 (EFIS Item no. 205). They are all "most analogous to the due diligence that an acquiring company completes prior to acquiring the utility." Ex. 129, *Surrebuttal Testimony of Keith Majors (Public and Confidential)*, pg. 5 lns. 10 – 11 (EFIS Item no. 225). Because these are costs that Confluence's ultimate shareholders choose to incur in order to complete its acquisition transactions, and thus expand their operations and earn a profitable return in this state, it is reasonable that the costs be shouldered by Confluence's shareholders and not their ratepayers.

<u>If the Commission were to order that these acquisition costs be recovered, what would be the proper mechanism for doing so?</u>

If, despite the evidence discussed above, the Commission decided to nevertheless allow Confluence to recover any portion of the acquisition costs relevant to this issue, the proper means of doing that would be thorough an amortization. As explained by Staff witness Mr. Kieth Majors:

> Q. . . . You would agree with me that there is a way that you could potentially recover costs that were deemed transaction costs outside of rate basing them. Correct?
>
> A. Yes. I think that by the same token we've had these other systems I think some of them have had rate based treatments, some of them

haven't, for these costs. I think we would be more open to doing some kind of perhaps an amortization like the other systems. But, I think they're certainly not directly categorizable as plant costs. Certainly they're current reasonable costs to -- that were incurred to acquire the systems to eventually make improvements to the system.

Q. So if I understand you correctly your ultimate recommendation is to not allow these costs to be included, but if the Commission would allow recovery of these costs at some level a secondary recommendation would be to have them be amortized instead of rate based?

A. I think that's -- that would be a fair conclusion considering we have allowed some amount in prior cases and can be heard from the testimony of the Company these costs were incurred in efforts to acquire these systems and get them operating in compliance.

Q. If the Commission were to order an amortization what would be the proper amortization period?

A. Well, I think part of the -- part of our consternation about including these as plant items is that the plant items they were capitalized to -- collection, sewers, distribution lines, things of that nature -- can have a fifty year life span. I don't think it's -- certainly not fair to the customers who really these costs don't, they're not plant costs and so I don't think it's appropriate to include them on a fifty year life span and get rate based treatment for the next forty, fifty years. I think perhaps five years is a nonarbitrary number. When you look at other acquisitions in the state we've had a five year amortization of transition costs, not transaction costs, and so I think that might be an appropriate amortization. Certainly for one or two of the other systems that these costs were allowed it was a five year amortization.

Tr. vol. 9.5 pg. 70 ln. 9 – pg. Mr. Majors later clarified that he was referring to amortization to an expense in regards to this alternative. *Id*. at pg. 92 lns. 5 – 7.

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Issue 8: Timesheets

As with Issue six, there is only a single question posed to the Commission regarding this issue: Should the Commission order Confluence to require its employees, including executives, to keep timesheets that show the activities performed and where they were performed? The answer to this question is yes, the Commission should order Confluence to require its employees, including executives, to keep timesheets that show the activities performed and where they were performed. The Company has agreed to this in the past, they have shown they are capable of doing it now, and the information is important to properly understand and evaluate what portions of Confluence's overhead and general administrative costs should be paid by its Missouri customers.

Confluence's prior commitment to keep timesheets and its breach of that commitment

As part of the Unanimous Disposition and Agreement that concluded Confluence's last general rate case (WR-2020-0053), the Company agreed to the following terms:

> Within ninety (90) days of the effective date of an order approving this Disposition Agreement, the Company shall begin tracking all work conducted on its behalf by CSWR, LLC in the form of a time record. This time record will include a description of the job performed, length of time to complete, name/title of the employee who conducted the work, and tracked by each system. The time record information should be maintained in sufficient detail to capture the amount of time each employee spends on operation and maintenance activities, as opposed to construction activities. The Company also agrees that detailed timesheets will be maintained for any future employees Confluence Rivers Utility Operating Company, Inc. may retain. The Company

> agrees to provide proof of implementing the recommendations to the Manager of the Commission's Auditing Department[.]

Ex. 220, *Confluence Rivers Disposition Agreement from WR-2020-0053*, pgs. 3 – 4 (EFIS Item no. 251). This provision was entered into by Confluence Rivers Utility Operating Company, Inc., the same entity now seeking to adjust rates, and nothing in this agreement limited its terms to only a portion of the systems then currently owned by the Company. *Id*. Moreover, the Commission issued an *Order Approving Unanimous Disposition Agreement and Small Company Rate Increase with Accompanying Tariffs* in that same case on April 8, 2020, that ordered, among other things, parties to comply with the terms of the *Unanimous Agreement Regarding Disposition of Small Utility Company Revenue Increase Request*.[5] *Order Approving Unanimous Disposition Agreement and Small Company Rate Increase with Accompanying Tariffs*, WR-2020-0053, pg. 5 ¶2, EFIS Item no. 36. There is thus no question that Confluence has previously agreed and this Commission has previously ordered Confluence to keep timesheets for all CSWR, LLC employees conducting work on behalf of Confluence Rivers.

Despite these facts, Confluence did not abide by the terms of its written agreement or the Commission's order. First, for those employees who did begin keeping time sheets, the Company did not begin maintaining their time until January 2021. Ex. 107, *Direct Testimony of Ashley Sarver (Public and Confidential)*, pg. 18 ln. 21 – pg. 19 ln. 1 (EFIS Item no. 202). This is at least 180 days from when the

[5] The Commission's *Order* became effective July 1, 2020.

Commission's *Order* became effective, or twice what the Company agreed to in the settlement. Even more egregious, however, is the fact that at least seven CSWR employees who performed work on behalf of Confluence Rivers did not provide timesheets at all. *Id.* at pg. 17 lns. 8 – 14; Ex. 239, DR 0037 (EFIS Item no. 272). During the hearing, counsel for the Company openly admitted that the Company had not abided by the terms of the agreement or the Commission's order. Tr. vol. 9.5 pg. 96 lns. 2 – 7. This should be a problem to this Commission.

If this Commission values that ability of parties that appear before it to settle cases, then it is absolutely essential that the Commission uphold and enforce the settlement agreements that are presented to the Commission. Without breaching the confidentiality concerns related to settlement discussions, it should be immensely obvious that any consideration regarding the settlement of the timesheet issue that arose in this case would have been necessarily colored by the Company's failure to honor its past commitments. Even if the Commission were to disregard the issues related to possible future settlement, this Commission *should* at least be concerned for the legitimacy of its **own** orders when parties openly defy them. If the Commission were to now "reward" the Company by eliminating the most basic function of recording the time spent working on Missouri issues after the Company failed to honor its past agreement to do just that, the Commission will be sending a clear message: in Missouri it is better to beg forgiveness than ask permission.

Notwithstanding the foregoing, there is one last point that needs to be addressed here. In addition to the provision concerning the keeping of time sheets,

the *Unanimous Agreement Regarding Disposition of Small Utility Company Revenue Increase Request* includes the following provision: "Staff or Public Counsel may file a formal complaint against the Company, if the Company does not comply with the provisions of this Disposition Agreement." Ex. 220, *Confluence Rivers Disposition Agreement from WR-2020-0053*, pg. 4 (EFIS Item no. 251). In addition, RSMo. section 386.570.1 imposes a penalty "of not less than one hundred dollars nor more than two thousand dollars for each offense" when a public utility "fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission[.]" Subsection two of the same statute further states that "[e]very violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense." Given the Commission's *Order* in the WR-2020-0053 case became effective July, 1, 2020, there has likely been over a thousand days since the Company violated the Commission's order.[6] This would create the potential for a penalty between $100,000 and $2 million if enforcement of section 386.570 were sought. The OPC has considered these factors as it continues to pursue all available opportunities to ensure Confluence is maintaining clear and accurate time reporting.

[6] There are exactly 1,164 days between the effective date of the Commission's order and September 8, 2023, the day this brief is filed.

The importance of keeping accurate timesheets

Staff witness Ashley Sarver succinctly explained the importance of having accurate timesheet information as it relates to the audit Staff performed for Confluence Rivers:

> Staff reviews the timesheets to determine what activities are performed by employees and in which state these activities occur, in order to include an accurate and appropriate amount of employee related expenses in Confluence's cost of service. Due to the fact that employee payroll and benefits are incurred at CSWR and then allocated to Confluence and other CSWR affiliates, timesheets are even more important for Staff's analysis and general rate case use. As Mr. Cox states, the affiliated operating companies continue to grow at a rapid pace. This would imply that a great deal of Mr. Cox's time, as well as possibly other executive time, is being spent acquiring new systems and many of those new systems may be located in Missouri or other states. This produces even more of a reason for creating and maintaining accurate timesheets.

Ex. 131, *Surrebuttal Testimony of Ashley Sarver (Public and Confidential)*, pg. 2 lns. 11 – 20 (EFIS Item no. 227). There is an important element to this statement that may be easy to overlook. Staff has generally disallowed time spent on acquisitions and business development. Ex. 107, *Direct Testimony of Ashley Sarver (Public and Confidential)*, pg. 19 lns. 14 – 17 (EFIS Item no. 202). The existence of accurate timesheet data is therefore necessary to determine what amount of time is spent on acquisitions compared to the time spent on day-to-day operations of Confluence's existing systems. This is doubly so considering the rapid expansion of Confluence Rivers and its affiliates as a whole.

Much of Confluence's arguments concerning why its executive class should not be keeping timesheets is centered on its parent company's continued rapid growth. Ex. 5, *Rebuttal Testimony of Josiah Cox (Public and Confidential)*, pg. 32 lns. 14 – 17, 35 13 – 15 (EFIS Item no. 176). However, what the Company fails to consider is how this factor makes the maintenance of good timekeeping records all the more essential. Given this rapid rate of expansion, it is reasonable to assume that the majority of the executives at Central States Water Resources will be spending their time working on these acquisitions in other states. Ex. 131, *Surrebuttal Testimony of Ashley Sarver (Public and Confidential)*, pg. 2 lns. 11 – 20 (EFIS Item no. 227). Absent any form of timekeeping, however, there would be no way to remove these costs from the amount apportioned to Confluence Rivers. The result is that Confluence River's customers will be burdened "with salaries and benefit costs that should have been borne by another state's customer base." *Id*. at pg. 12 lns. 15 – 15.

Finally, it is worth touching briefly on the issue of whether these timekeeping requirements are truly as "burdensome" as Confluence would have the Commission believe. In addressing that point, the Commission should consider the work requirements it has imposed on its own Staff. As Ms. Sarver explains:

> Staff themselves, including Division Directors, maintain daily timesheets on a multitude of different case types, utility types, and other job duties that they perform. This specific detail is necessary so as to properly charge each investor owned utility with the correct amount of annual Public Service Commission ("PSC") assessment. Staff develops its PSC assessment based upon a combination of Staff employee time reporting on the various utility types and specific utility companies and the amount of revenues that are reported in the statement of revenues within the annual reports supplied to the Commission each year. If Staff

> does not do this, then there is no way to ensure accuracy in determining the amount of PSC assessment to distribute to the individual utility types as well as by each individual company within a utility type.

Ex. 131, *Surrebuttal Testimony of Ashley Sarver (Public and Confidential)*, pg. 13 ln. 18 – pg. 14 ln. 4 (EFIS Item no. 227). The irony of this issue is that Staff's own timekeeping requirements are effectively imposed for the same reason that Staff and OPC is asking the Company to keep timesheets: ensuring a proper allocation of costs. It is easy to imagine a situation where this issue is reversed. Instead of complaining about timesheets, Confluence is protesting the PSC assessment imposed on it on the grounds that there is no evidence showing what work the Staff did on cases that Confluence had brought. In that circumstance, Confluence would be well within its right to demand Staff keep timesheets in order to show how the PSC assessment was being calculated and assigned. In this case, all the OPC and Staff want is for the Commission to maintain the inverse to ensure that Confluence's Missouri customers are not paying for the acquisition of water and wastewater systems in other states.

The importance of understanding how Central States Water Resources employees are spending their time, and more specifically whether it is on operations or acquisitions, cannot be understated from the standpoint of determining proper cost allocation. This Commission should not hobble its own Staff's efforts to secure important, reliable data that is necessary to the determination of just and reasonable rates. Therefore, the Commission should order all Confluence Rivers employees and/or Confluence Rivers affiliate employees doing work on behalf of Confluence

Rivers, including executives, to keep timesheets that show the activities performed and for which state they were performed.

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Issue 13: Cost of Capital

The *Amended Joint List of Issues, List and Order of Witnesses, Order of Cross-Examination, and Order of of Opening Statements* breaks issue thirteen into three parts:

> With respect to the cost of capital—
>
> a. What is the appropriate capital structure to use in calculating the Company's rate of return?
>
> b. What is the appropriate cost of debt to use in calculating the Company's rate of return?
>
> c. What is the appropriate return on common equity to use in calculating the Company's rate of return?

The answer to these three questions is as follows: First, the Commission should set Confluence's allowed rate of return based on a capital structure consisting of 45.00% common equity and 55.00% long-term debt. Ex. 209, *Direct Testimony of David Murray*, pg. 2 lns. 10 – 16 (EFIS Item no. 241). Second, the Commission should apply a 6.23% cost of long-term debt to the 55% long-term debt ratio. Ex. 209, *Direct Testimony of David Murray*, pg. 19 lns. 14 – 16 (EFIS Item no. 241). Third, the Commission should apply a 9.65% allowed return on common equity to the 45% common equity ratio. Ex. 209, *Direct Testimony of David Murray*, pg. 22 ln. 18 – pg. 23 ln. 2 (EFIS Item no. 241).

When considering the matter of the proper rate of return there are two essential elements that must be discussed: (1) the percentage rates appropriate for the allowed return on common equity and the cost of debt, and (2) the common equity

ratio and the debt ratio (also known as the capital structure) to which these rates are applied. We shall discuss these two components separately, beginning with the capital structure.

Capital Structure

The proper, just, and reasonable capital structure that should be used for the purpose of setting Confluence's allowed rate of return is 45.00% common equity and 55.00% long-term debt, as set forth in the direct testimony of OPC witness Mr. David Murray. Exhibit 209, *Direct Testimony of David Murray*, pg. 2 lns. 10 – 16 (EFIS Item no. 241). The basis for Mr. Murray's recommended capital structure is simple and objective; it is the maximum amount of debt Confluence is allowed under its December 5, 2022, Credit Agreement with CoBank, ACB, ("CoBank"). Exhibit 209, *Direct Testimony of David Murray,* pg. 6 lns. 1 – 22 (EFIS Item no. 241) (** [redacted] ** (emphasis added)). This capital structure is the only company-specific, third-party identified capital structure which meets the market-test standard for setting Confluence's ROR based on the proportion of debt its assets can support. Exhibit 210, *Rebuttal Testimony of David Murray,* pg. 8 lns. 7 – 13 (EFIS Item no. 242).

Setting Confluence's authorized ROR based on a 55% debt ratio allows Confluence to maintain its credit, but also charge ratepayers a reasonable ROR. The

financial experience of Confluence's legacy utility operating subsidiaries proves that past rate increases for these legacy companies have produced financial results that create debt capacity much higher than the maximum debt-to-capital covenant. For example, based on CoBank's 6x debt-to-EBITDA (earnings before interest, taxes, depreciation and amortization) financial covenant, Mr. Murray found that the financial performance of Confluence's legacy utility operating subsidiaries, Hillcrest Utility Operating Company ("Hillcrest"), Raccoon Creek Utility Operating Company ("Raccoon Creek"), and Indian Hills Utility Operating Company ("Indian Hills"), could support a percentage of debt in their capital structures of 117.15%, 103.39% and 82.04%, respectively. Ex. 211, *Surrebuttal Testimony of David Murray (Public and Confidential)*, pg. 7 lns. 1 – 11 (EFIS Item no. 243). OPC witness Mr. Murray is the only witness in this case that sponsored a detailed financial analysis of the historical financial performance of these companies before they were merged into Confluence. As demonstrated in Mr. Murray's financial analysis of these legacy companies, their ratepayers have provided more than adequate cash flows to support well over 55% debt in their capital structure if they continued as stand-alone companies. *Id*. Despite these facts, Confluence is suggesting that its current ratepayers should continue to subsidize acquisitions of new systems by charging them for an equity-rich capital structure. In fact, Confluence's witnesses do not even see a problem with his request. *See* Ex. 18, *Rebuttal Testimony of Brent Thies*, pg. 30 ln. 19 – pg. 31 ln. 4 (EFIS Item no. 189).

Not only have Confluence's legacy utility operating companies subsidized the capital needs of newly acquired Missouri systems, but they have subsidized the losses of CSWR's systems in other states. Exhibit 211, *Surrebuttal of David Murray,* pg. 3 lns. 1 – 18 (EFIS Item no. 243). This is not fair to Confluence Rivers' ratepayers. It should be CSWR's equity investors funding new acquisitions, not ratepayers of Confluence's existing systems. *Id.* at pg. 11 lns. 21 – 25. Nor is this subsidization minimal in impact. On the contrary, considering the earned ROE's for Hillcrest, Raccoon Creek, Indian Hills, Elm Hills Utility Operating Company ("Elm Hills") and Confluence Utility Operating Company (legacy systems prior to the merger of all companies and systems into Confluence) were 34.26%, 35.09%, 12.79%, 11.71% and 14.51%, respectively as of the updated test year in this case, this subsidization has been very significant. *Id.* at pg. 3 ln. – 23, pg. 4 ln. 7. The Commission needs to ensure that the ratepayers of Confluence's current systems are only charged for a capital structure consistent with the business risk profile of the systems **subject to this rate case**, not for a capital structure managed to subsidize future acquisitions.

Company witness Dylan W. D'Ascendis maintains that his recommended capital structure of 68.56% common equity and 31.44% long-term debt is based on Confluence's actual capital structure. Ex. 7, *Direct Testimony of Dylan W. D'Ascendis*, pg. 2 l. 21 – pg. 3 l. 5 (EFIS Item no. 178). However, these percentages are not truly supported. For example, Mr. D'Ascendis' Schedule DWD-1 noted that his capital structure ratios were based on percentages Confluence provided to him. *Id.* at Schedule DWD-1. Yet, Confluence's per-books actual capital structure is not obvious

based on Confluence's balance sheet. Staff witness Christopher C. Walters concluded that Confluence's capital structure contained only 16.19% common equity rather than 68.56% common equity. Ex. 109, *Direct Testimony of Christopher C. Walters,* pg. 23 lns. 1 – 4 (EFIS Item no. 204). The discrepancy is due to the approximate ** ——— ——— ** balance of "Payable to Associated Companies" recorded on Confluence's December 31, 2022, balance sheet. Ex. 209, *Direct Testimony of David Murray*, pg. 6 lns. 17 – 22 (EFIS Item no. 241). For purposes of determining Confluence's per books capital structure, Mr. Murray and Confluence classified this affiliate payable as equity rather than debt. Ex. 210, *Rebuttal Testimony of David Murray,* pg. 4 lns. 4 – 11 (EFIS Item no. 242). Mr. Murray attempted to discover how US Water Systems LLC ("US Water") funded the affiliate payable to Confluence, but Confluence objected to such requests maintaining it was not was "not relevant to the subject proceeding and is not proportional to the needs of the case to the extent it seeks information not regulated by the Commission." *Order Granting, In Part, and Denying, In Part, Request to Compel Discovery Answers*, pgs. 15 – 19 (EFIS Item no. 70). However, because CoBank treats this affiliate payable as equity for purposes of determining if Confluence's capital structure complies with its financial covenants, Mr. Murray concluded that such treatment formed a basis for an investor's view of the amount of financial risk, *i.e.* the amount of debt, Confluence's assets can support. Exhibit 209, *Direct Testimony of David Murray*, pg. 6 lns. 1 – 22 (EFIS Item no. 241).

Confluence maintains that it only borrowed $7 million from CoBank because this was the maximum amount of debt its current cash flows and a "successful rate

case" outcome would allow. Ex. 211, *Surrebuttal of David Murray,* pg. 5 ln. 17 – pg. 6 ln. 4 (EFIS Item no. 243). However, Confluence did not provide analysis, in its testimony or otherwise in the record, to support its claim. *Id.* at pg. 5, ln. 17 – pg. 6, ln. 4. Mr. Murray's credit metric analysis of the *pro forma* impact of the Company's, Staff's and OPC's rate of return recommendations in this case indicate that OPC's ROR comfortably supports at least an investment grade credit rating and easily complies with CoBank's financial covenants. *Id.* at pg. 9 ln. 20 – pg. 10 ln. 8. Confluence's ROR recommendation, on the other hand, resulted in credit metrics that show that "Confluence could **triple** the amount of debt in its capital structure post rate adjustment." *Id.* pg. 9 ln. 28 – pg. 10 ln. 1 (emphasis in original). Clearly, setting Confluence's ROR based on it taking advantage of the full amount of debt CoBank would lend it, provides the most reasonable ROR charged to ratepayers while maintaining financial stability for the systems that are subject to this rate case.

One of the more important points for the Commission to consider is that Confluence Rivers' ultimate parent company, US Water, has a conflict of interest as it relates to allowing CSWR's utility operating companies to achieve a lower cost of capital. The more debt issued at the utility operating company level, the less cash flow available for US Water's owners, the Sciens Water Opportunity Fund ("SWOF"), to leverage at the holding company level. Ex. 209, *Direct Testimony of David Murray,* pg. 17 lns. 14 – 17 (EFIS Item no. 241). Further, ** ——————————————————————————————— ** Ex. 210, *Rebuttal Testimony of David Murray,* pg. 6 lns. 11 – 18 (EFIS Item no. 242). In order to seek to better

understand and analyze the potential impact of these financial conflicts of interest, the OPC requested Confluence provide US Water financial statements and company records. Confluence repeatedly objected to providing such information based on its view that this information was "not relevant to the subject proceeding and is not proportional to the needs of the case to the extent it seeks information not regulated by the Commission." *Order Granting, In Part, and Denying, In Part, Request to Compel Discovery Answers*, pgs. 16 – 19 (EFIS Item no. 70). However, based on CSWR's 2022 budget presentation to US Water, CSWR specifically stated the following:

**

> _____
> _____
> _____
> _____
> _____
> _____

**

Ex. 210, *Rebuttal Testimony of David Murray,* Schedule DM-R-2, pg. 24 (EFIS Item no. 242) (emphasis added). CSWR's 2022 budget presentation to US Water also described various ** _____ _____ ** Exhibit 210, *Rebuttal Testimony of David Murray,* pg. 6 lns. 3 – 10 (EFIS Item no. 242). ** _____ _____

** *Id.*

Despite Confluence not identifying its affiliation with other entities within the SWOF family of companies, through its own research, OPC discovered SWOF created a financing subsidiary, Sciens Water Financing Corporation ("SWFC") which "provides debt and other alternative financing solutions to water-related hard asset projects originated by the SWOF portfolio companies and third-parties." Ex 209, *Direct Testimony of David Murray*, pg. 18 lns. 9 – 19 (EFIS Item no. 241). However, because Confluence never provided information regarding financing transactions between its other affiliates, the Commission does not know if SWFC is indirectly loaning funds to US Water for purposes of contributing equity capital to CSWR and then Confluence. ** ** it has a conflict of interest. Because neither Staff nor OPC has been able to audit these affiliate financing transactions, the Commission should rely on the third-party lender, *i.e.* CoBank's, financial covenant of up to 55% long-term debt, for purposes of setting a market-based authorized ROR for Confluence.

Despite Confluence's claim that it intends raise more debt capital at the utility operating company level in the near future, CSWR's presentations to US Water do not support this claim. CSWR's May 25, 2022 presentation to US Water showed that it did not plan on financing its capital structure with more than **** Ex. 228, *CSWR Presentation*, (EFIS Item No. 260). This plan is consistent

with ensuring US Water can leverage as much cash flow as possible at the holding company level.

Staff witness Christopher C. Walters recommends a ratemaking capital structure consisting of 50% common equity and 50% long-term debt. Ex. 109 *Direct Testimony of Christopher C. Walters,* pg. 25 lns. 5 – 14 (EFIS Item No. 204). Mr. Walter's recommended ratemaking capital structure is based on his analysis of the capital structures of the proxy group he used to estimate a fair and reasonable ROE. *Id.* at pg. 23 ln. 1 – pg. 24, ln. 13. Mr. Walters notes that his recommended capital structure is consistent with those authorized for Confluence's Kentucky affiliate, Bluegrass Water Utility Operating Company, and its Louisiana affiliate, Magnolia Utility Operating Company. *Id.* at pg. 24 ln. 16 – pg. 25 ln. 4. His recommended capital structure is also consistent with that which this Commission authorized the legacy Missouri operating utility company, Indian Hills, in Case No. WR-2017-0259. Ex. 225, *Indian Hills Report and Order from WR-2017-0259*, pg. 45 (EFIS Item no. 256).

Mr. Walter's recommended ratemaking capital structure is also consistent with ** _____

_____

_____ ** Exhibit 210, *Rebuttal Testimony of David Murray,* pg. 7 lns. 1 – 8 (EFIS Item no. 242). However, ** _____

_____ ** relies on internal capital transactions to meet this target. *Id.* at lns. 9 – 13. CSWR's actual and targeted capital structures for its

utility operating companies are therefore not a function of market-based, arms-length transactions. *Id.* The only capital structure that meets the market-based test is that identified in CoBank's financial covenants, which specifies Confluence can have a proportion of debt of up to 55% in its capital structure. *Id.* at pg. 8, lns. 7 – 13. For this reason, the Commission should utilize the CoBank loan covenant as the basis for setting Confluence's debt and order a capital structure that consists of 45.00% common equity and 55.00% long-term debt. Exhibit 209, *Direct Testimony of David Murray*, pg. 2 lns. 10 – 16 (EFIS Item no. 241).

Cost of Debt

Confluence's effective cost of long-term debt is 6.23%. Ex. 209, *Direct Testimony of David Murray*, pg. 19 lns. 14 – 16 (EFIS Item no. 241). This is the cost that should be applied to the debt ratio in the Commission's authorized capital structure. The appropriate cost of debt is not a complex issue. It is simply a matter of whether it is appropriate to consider the patronage credit CoBank has ** ——————— ——— ** *Id.* at pg. 19 lns. 9 – 13. The most disturbing revelation related to the appropriate cost of debt is the fact that OPC witness Mr. Murray could not rely on Confluence's response to OPC Data Request No. 3028 for purposes of determining the impact the patronage credit would have on Confluence's cost of debt. Specifically, Confluence's response to OPC Data Request No. 3028 indicated that the Company did not have a formulaic means of calculating the amount of the patronage credit, but didn't expect this amount to be material. *Id.* at pg. 19, lns. 1 – 7. This is wrong. OPC witness Mr. Murray was able to easily quantify the impact of the patronage credit,

and his quantification showed that it was material. *Id.,* lns. 12 – 13. Confluence's numerous objections and incorrect responses to OPC's data requests in this case consistently hindered OPC's ability to verify Confluence's DR responses. Through OPC DR Nos. 3002 – 3005, the OPC requested correspondence between CoBank, Confluence, and several of Confluence's holding companies. Confluence objected to these DRs as not relevant and not proportional to the needs of this case. *Order Granting, In Part, and Denying, In Part, Request to Compel Discovery Answers*, pg. 9 (EFIS Item no. 70). If the Commission had not required Confluence to provide such correspondence, the OPC would not have discovered the evidence that allowed it to determine that Confluence's response to OPC DR No. 3028 was inaccurate. OPC's discovery of the amount of patronage credit, and how it is calculated, allowed the OPC to quantify the material impact this credit has on Confluence's cost of debt, reducing Confluence's cost of debt from 6.6% to 6.23%. Ex. 209, *Direct Testimony of David Murray*, pg. 19 lns. 14 – 16 (EFIS Item no. 241). Although Confluence offered to track this credit for consideration in a future rate case,[7] this known and measurable credit

[7] Counsel for Confluence stated the following during openings arguments on this issue:

> Now, having said this, it was suggested by the OPC witness that an alternative to reducing the debt cost for purposes of the rate of return would be to compare any patronage credits actually received by the Company -- excuse me -- to capture any patronage credits actually received by the Company on a going-forward basis a regulatory liability account for treatment in the next rate case. The Company believes that approach would be an acceptable treatment of this issue.

Tr. vol. 10, pg. 10 lns. 13 – 22.

should be considered in the cost of debt for purposes of setting Confluence's revenue requirement.

Return on Equity

The Commission should award Confluence an allowed return on equity (ROE) of 9.65%, which is a point recommendation based on Mr. Murray's ROE range of 9.25% to 9.9%. Ex. 209, *Direct Testimony of David Murray*, pg. 22 ln. 18 – pg. 23 ln. 2 (EFIS Item no. 241). Mr. Murray determined that the water utility industry's cost of equity ("COE") had not changed much since he recommended Missouri American Water Company ("MAWC") be authorized an ROE in the range of 8.4% to 9.25% in Case No. WR-2022-0303. *Id.* pg. 39 lns. 5 – 13. Based on Mr. Murray's analysis of the financial performance of Confluence's legacy operating utility companies and consideration for the significant upfront capital investment needed to rehabilitate Confluence's many individual systems, Mr. Murray recommended a 65 basis point upward adjustment to the ROE he considered appropriate for MAWC. *Id.* pg. 3 lns. 7 – 16.

In addressing this issue, the Commission should consider the proximity of recommended ROEs to that of national averages. In the past, the Commission has utilized a "'zone of reasonableness [("ZOR")] standard' for purposes of setting an allowed ROE[.]" Ex. 209, *Direct Testimony of David Murray*, pg. 21 lns. 9 - 11 (EFIS Item no. 241). This is understood to be a range of 100 basis points above and below the national average. *Id.* at pg. 22 lns. 13 – 17. "The average allowed ROE for water utilities for 2022 was 9.61%, based on eight cases (range of 9.1% to 10.0% with a

median of 9.65%)." *Id.* at lns. 7 – 8; Ex. 226, *S&P Global Water Rate Case Report 2022* (EFIS Item no. 257). "In 2023, the average allowed ROE for water utilities through May 3, 2023 was 9.4%." Ex. 209, *Direct Testimony of David Murray*, pg. 23 lns. 10 – 11 (EFIS Item no. 241); Ex. 227, *S&P Global Water Rate Case Report May 9, 2023* (EFIS Item no. 258). Mr. Murray chose to utilize the 9.6% to make a conservative estimate. Considering the Commission's consistently cited ZOR standard of plus and minus 100 basis points around a recent average of authorized ROEs, Mr. Murray determined the Commission's ZOR in this case would be approximately 8.6% to 10.6%. Ex. 209, *Direct Testimony of David Murray*, pg. 23 lns. 13 – 17 (EFIS Item no. 241). Therefore, Mr. Murray applied his 65 basis point adjustment to the 8.6% and the 9.25% high-end of his recommended range for purposes of his final range of 9.25% to 9.9%. *Id.* at pg. 22 ln. 18 – pg. 23 ln. 2. However, because the water utility industry has a lower cost of capital than that of the local natural gas distribution and electric utility industries, Mr. Murray recommends that the 65 basis point adjustment be applied to the 9% point ROE he considered reasonable for MAWC, which forms the basis for his 9.65% ROE recommendation. *Id.* at pg. 21, lns. 15 – 21.

Mr. Murray performed a cost of equity ("COE") analysis on the water utility proxy group consisting of the same six companies used by Confluence's ROR witness, Dylan D'Ascendis. *Id.* at pg. 36 lns. 8 – 20. Mr. Murray applied two primary methodologies, a discounted cash flow ("DCF") method and the Capital Asset Pricing Model ("CAPM"), commonly used by investors to estimate the COE and fair values for utility stocks. *Id.* at pg. 34 lns. 17 – 23. Mr. Murray applied the multi-stage version

of the DCF to his water utility proxy group because he determined utility industry equity investment analysts use this version in practice. *Id.* at pg. 35 lns. 9 – 13. Mr. Murray's DCF analysis explicitly emphasizes "'consensus analysts' estimated dividends and the modeled growth of dividends." *Id.* at pg. 24 lns. 22 – 23. "When the DCF method is applied to dividends as the proxy for cash flow, it is more specifically defined as the dividend discount model ("DDM")." *Id.* at lns. 23 – 25.

Mr. Murray used equity analysts' consensus estimates of discrete dividends per share ("DPS") for the period June 30, 2023, through December 31, 2027, then he estimated annual DPS estimates for the annual periods 2028 through 2038 based on a transition of each company's dividend payout ratio in 2027 to a sustainable dividend payout ratio (DPS/EPS) in 2039, which allows for all the water utility companies to grow at a perpetual growth rate of 3.75% to 4.25%. *Id.* at pg. 37 lns. 1 – 19. Mr. Murray's approach and assumptions are similar to those of analyses that equity investment analysts actually use in practice. *See Id.* at pg. 35 lns. 9 – 13, pg. 37 lns. 16 – 19, and pg. 38 lns. 3 – 14. The result of Mr. Murray's multi-stage DCF analysis was a COE estimate in the range of 6.38% to 6.86%. *Id.* at pg. 37 ln. 20 – pg. 38 ln. 2. Considering Mr. Murray's analysis used similar methods and assumptions as investors use in **actual practice,** it should be no surprise that his COE estimate is corroborated by the 6.5% COE Wells Fargo applies to its own DCF analysis to determine fair values for water utility stocks. *Id.* at pg. 35 lns. 18 – 21.

Mr. Murray also applied the CAPM to the water utility proxy group. *See* Ex. 209, *Direct Testimony of David Murray*, pgs. 40 – 42 (EFIS Item no. 241). Mr. Murray used market risk premium estimates available from authoritative investor reference sources such as Kroll and Ibbotson Associates' Stocks, Bonds, Bills and Inflation database. *Id.* at pg. 41 lns. 7 – 14. However, due to recent higher long-term bond yields, his CAPM COE estimates of 8% to 8.25% were significantly higher than his multi-stage DCF COE estimates. *Id.* at pg. 42 lns. 1-3. Mr. Murray's current CAPM COE estimates were also over 200 basis points higher than his CAPM COE estimates for the water utility industry in the 2020 MAWC rate case, Case No. WR-2020-0344. *Id.* at lns. 4 – 6. Mr. Murray consequently placed greater emphasis on his multi-stage DCF methodology. *Id.* at pg. 27 ln. 26 – pg. 27 ln. 5; pg. 42 lns. 9 – 14; pg. 43 lns. 6 – 15; pg. 44 lns. 6 – 8.

Mr. Murray also applied a simple test of reasonableness of his and other COE estimates by applying a method suggested in Chartered Financial Analyst ("CFA") Program's curriculum, which to simply add a 3% to 4% equity risk premium to the subject company's bond yield. *Id.* at pg. 42 ln. 15 – pg. 43 ln. 5. Because Confluence, nor its parent companies, have publicly-traded debt, Mr. Murray used recent yields on BBB-rated and A-rated utility bond yields to determine an implied COE of 8.25% to 8.55%. *Id.* Again, similar to his CAPM estimates, because of recent high bond yields, this test implies that the water utility industry's COE increased by 240 basis points since 2020. *Id.* pg. 43, lns. 4 – 5.

Because a multi-stage DCF analysis directly incorporates utility stock prices into the COE estimate rather than using bond yields, Mr. Murray analyzed changes in the water utility proxy group's dividend yields for the period since January 1, 2020. *Id.* at lns. 6 – 15. This analysis suggests that the maximum increase in the water utility industry's COE since 2020 was in the range of 35 to 50 basis points. *Id.* However, Mr. Murray's review of his and Staff's multi-stage DCF COE estimates since 2017 suggest that the water utility industry's COE has not varied by more than 25 basis points since 2017. *Id.* pg. 39 lns. 5 – 13. This stability in the water utility industry's COE, despite significant swing in long-term bond yields since the beginning of the Covid-19 pandemic, should cause an analyst to assign less weight to interest-rate sensitive COE estimation methods. *Id.* at pg. 25 ln. 19 – pg. 28 ln. 11. Utility stocks have not traded consistent with historical patterns since April 2020. *Id.* at pg. 27 ln. 12 – pg. 28 ln. 11. In fact, utility stocks underperformed the S&P 500 when long-term interest rates declined dramatically during 2020 to 2021, but then outperformed the S&P 500 when long-term interest rates increased precipitously. *Id.* at pg. 27 lns. 14 – 25. It is these unusual trading patterns, as well as Mr. Murray's observation that water utility P/E ratios traded at consistently higher levels, which formed the basis for Mr. Murray's decision to place more emphasis on his DCF analysis to estimate a reliable COE in the current market environment, as well as to compare COE estimates over time. *Id.* at pg. 27 ln. 26 – pg. 28 ln. 11.

Addressing Company Witness D'Ascendis' Cost of Equity Analysis

Confluence's ROR witness, Dylan D'Ascendis, estimates a COE for his water utility proxy group in the range of 10.36% to 11.36%. Ex. 7, *Direct Testimony of Dylan W. D'Ascendis*, pg. 4 Table 2 (EFIS Item no. 178). After making two company-specific COE adjustments, Mr. D'Ascendis estimates a COE range of 10.85% to 11.85% for Confluence. *Id.* Mr. D'Ascendis used three methodologies—a constant-growth DCF, CAPM (a standard version and an "empirical" version), and numerous Risk Premium Methods ("RPM") applied to both his water utility proxy group and a non-price-regulated proxy group. *Id.* pg. 3 ln.17 – pg. 4 ln. 6. OPC witness Mr. Murray identified several problems with Mr. D'Ascendis' analyses.

Mr. D'Ascendis' average constant-growth DCF results for his water utility proxy group are 9.73%, whereas his CAPM and RPM results are much higher at 12.00% and 11.84%, respectively. *Id*. at pg. 4 Table 2. Instead of recognizing the fact that his water utility proxy group's common stock valuation levels have been sustained during recent increases in long-term bond yields, Mr. D'Ascendis assigned equal weight to the high-end of his COE estimate using the CAPM and RPM and low-end of his COE estimate derived using the constant-growth DCF. Exhibit 210, *Rebuttal Testimony of David Murray,* pg. 9 lns. 11 – 21 (EFIS Item no. 242). This is but one reason for his inflated estimates of the water utility proxy groups' COE. Mr. D'Ascendis' assumptions in all of his COE methods are very aggressive, implying much higher required returns than are rational in the current market environment. *Id.* at pg. 10 ln. 5 – pg. 22 ln. 22 This explains why Mr. D'Ascendis' COE estimates

are much higher than the CFA Program curriculum's basic test of reasonableness, which indicates a water utility industry COE in the range of 8.25% to 8.55%. Ex. 209 *Direct Testimony of David Murray,* pg. 42 ln. 16 – pg. 43 ln. 5 (EFIS Item no. 241).

Unlike Mr. Murray's explanation that utility valuation levels have been maintained during rising long-term bond yields, Mr. D'Ascendis does not provide a rational explanation as to why his COE estimates of near 12% are rational as compared to the basic, CFA curriculum sponsored test of reasonableness. In fact, as Mr. Murray testifies throughout his rebuttal testimony, it is Mr. D'Ascendis' irrational assumptions and widely variant results in his more complex methods that support dismissing the high-end of Mr. D'Ascendis COE estimates out of hand. Ex. 210, *Rebuttal Testimony of David Murray,* pg. 10 ln. 5 – pg. 22 ln. 22 (EFIS Item no. 242). Mr. D'Ascendis application of his Predictive Risk Premium Method ("PRPM") to the water utility proxy group produces individual company COE estimates that range from 7.97% to 15.91%. *Id*. at pg. 11 lns. 8 – 10. "… [T]he fact that this model produces individual results that vary by almost 100% for a proxy group of relatively homogenous regulated water utility companies should have caused Mr. D'Ascendis to question the reliability of this method." *Id.* lns. 14 – 18. "Instead, he gave it more weight than the approximate 4.2% and 5.0% weighting he applied to each of his eleven other risk premium estimates." *Id.* (footnote omitted). For purposes of his final RPM estimate of 11.84% for his water utility proxy group, Mr. D'Ascendis applied 50% weight to the PRPM of 12.20% and 50% weight to the 11.48% RPM estimate Mr. D'Ascendis derived from eleven other RPM estimates. Ex. 7, *Direct Testimony of*

Dylan D'Ascendis, Schedule DWD-4 pg. 1 (EFIS Item no. 178). While the use of eleven other RPM estimates to derive an 11.48% COE estimate gives the appearance of a robust analysis, Mr. D'Ascendis did not critically analyze the reasonableness of the individual COE estimates from these eleven scenarios to determine if any should be discarded. Ex. 210, *Rebuttal Testimony of David Murray* pg. 12 ln. 6 – pg. 20 ln. 5 (EFIS Item no. 242). Instead, Mr. D'Ascendis took a simple average of six risk premium estimates in his "Beta-Adjusted Market Return RPM" (6.77%) and a simple average of five risk premium estimates in his "Utility Index RPM" (4.70%) to arrive at a 5.74% (6.77% plus 4.70% divided by two) estimated risk premium. Ex. 7, *Direct Testimony of Dylan D'Ascendis,* Schedule DWD-4, p. 7 (EFIS Item no. 178). Mr. D'Ascendis individual market risk premium estimates in his "Beta-Adjusted Market Return RPM" ranged from 6.13% to 11.17%. Ex. 210, *Rebuttal Testimony of David Murray*, pg. 12 lns. 22 – 24 (EFIS Item no. 242).

Mr. D'Ascendis market risk premium estimates imply investors expect long-term market (S&P 500) returns to be in the range of 11.87% to 16.91%. *Id.* pg. 13 lns. 1 – 6. Despite this wide range of market returns, via Mr. D'Ascendis simple average of all of these estimates, he assigns the high-end result as much weight as the low-end results. *Id.* at pg. 13 lns. 7 – 9 and pg. 16 lns. 9 – 12. Mr. D'Ascendis market risk premium estimates imply investors in the S&P 500 expect to achieve a 14.56% compound annual growth in share prices (capital gains through 14.56% EPS growth) forever into the future. *Id.* pg. 13 lns. 10 – 13. These are irrational assumptions that do not pass logical or empirical tests. The CFA Program curriculum maintains that

the long-term EPS growth for the S&P 500 is constrained by economic growth – "**If the analyst has chosen a broad-based equity index, the excess corporate growth adjustment, if any, should be small."** *Id.* pg. 14, lns. 20 – 27. This logic can be tested by simple comparisons of the ratio of the total capitalization of the stock market as compared to the size of the United States economy as measured by Gross Domestic Product ("GDP"). If the market (as measured by the Wilshire 5000) achieved a 14.56% annual compound growth rate over the next fifty years as compared to the projected 4% sustainable growth in GDP over the next fifty years, the market would have a total capitalization of $35.64 quadrillion as compared to GDP of $188.23 trillion. This would imply that the stock market is valued at 189 times the level of GDP. As of March 2023 this ratio was 1.5 times the GDP. *Id.* pg. 15 lns. 9 – 25. Additionally, Mr. D'Ascendis long-term EPS growth for the S&P 500 is approximately triple that of Goldman Sachs' estimate of S&P's EPS growth in the range of 4.9% to 5.4% over the next twenty years. *Id.* pg. 15, lns. 1-5.

Mr. D'Ascendis takes an average of five individual risk premium estimates for purposes of his "Utility Index RPM" estimate of 4.70%. Ex. 7, *Direct Testimony of Dylan D'Ascendis,* Schedule DWD-4, pg. 11 (EFIS Item 178). Adding this risk premium estimate to Mr. D'Ascendis estimate of an 'A3' bond yield of 5.74% results in a COE estimate of 10.44%. *Id*. at pg. 3. Again, Mr. D'Ascendis assigns equal weight to his range of five risk premium estimates of 3.97% to 5.51%. *Id*. at pg. 11 Although the Utilities Index RPM COE estimates are more reasonable than Mr. D'Ascendis other RPM estimates, it is still unreliable due to the fact that the Utilities Index is

composed of many companies that are exposed to risky non-regulated business segments. Ex. 210, *Rebuttal Testimony of David Murray*, pg. 16 ln. 22 – pg. 18 ln. 3 (EFIS Item no. 242). Additionally, Mr. D'Ascendis subtracted only the income returns on bonds from the total returns on the Utilities Index. *Id*. at pg. 19 lns. 16 – 25. Investors in both bonds and utilities receive unexpected capital gains and losses due to changes in interest rates. *Id*. at lns. 19 – 21. Excluding these unexpected capital gains from one, but not the other, causes an upward bias of approximately 100 basis points in Mr. D'Ascendis COE estimates. *Id*. at pg. 20 lns. 1 – 5.

Because Mr. D'Ascendis CAPM COE estimates use the same approach as the Beta-Adjusted Market Return RPM, his CAPM COE estimated are biased by the same irrational assumptions OPC discussed previously in this brief. *Id.* pg. 20 lns. 6 – 21. Therefore, OPC will not repeat these arguments.

Although Mr. D'Ascendis' constant-growth DCF COE estimate of 9.73% is in the range of reasonableness for an authorized ROE to award Confluence, the Commission should reject Mr. D'Ascendis' argument that because average authorized ROEs are consistent with this figure, this corroborates the reasonableness of this DCF COE estimate. As it relates to this matter, the Commission should just simply observe the following quotes from investors Mr. Murray provided in his surrebuttal testimony at pg. 18:

> Evercore ISI consistently provides the following commentary related to various projected scenarios for the utility industry:

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> Our historical base case ("case 1") assumed an orderly transition to higher interest rates, with authorized ROEs falling to 9.25% from 9.75%, and 10-year Treasury yields rising over the next several years, resulting at the end in a **2.50%** spread between the return on equity and the calculated cost of equity (emphasis in original).[8]

Morningstar stated its view about the spread more generally as follows:

> Morningstar currently rates American Water as 2 out of 5 stars and that its stock price is overvalued, but Morningstar states it is confident that American Water's "**returns on invested capital will remain at a healthy spread over its cost of capital for the foreseeable future"** (emphasis added)[9]

Wells Fargo identifies the 6.5% COE it uses to estimate the value of American Water Works Company Inc.'s stock price in the following commentary:

> Our $156/sh [share] price target is based on a blend of (1) a P/E multiple analysis (~$156/sh) – apply a 0-5% discount to the '23 median P/E multiple of our covered pure play water utilities of 31.0-31.5x to our 24E EPS of $5.13 and (2) a DDM [dividend discount model or DCF in utility regulatory terminology] analysis (~$155/sh), which assumes a **6.5% discount rate [cost of equity]** (emphasis added).[10]

Ex. 211, *Surrebuttal Testimony of David Murray (Public and Confidential)*, pg. 18 lns. 4 – 24 (EFIS Item no. 243).

[8] Dugesh Chopra, Michael Lonegan and Sharon Wang, "How it's Divvied Up – A Look at June Sector Allocation Survey Results," Evercore ISI, June 25, 2023, p. 8.
[9] Andrew Bischof, "American Water's Regulated Water Growth Should Top Most Electric Utilities," Morningstar Investor, November 8, 2022.
[10] Jonathan Reeder and Neil Kalton, CFA, "AWK: EPS Outlook Updated Following Q1'23 Report; Muni M&A Momentum Continues," Wells Fargo, April 27, 2023, p. 4.

Although the information establishes investors do not equate authorized ROEs as being at parity with the COE, Mr. Murray explained a few of the serious flaws in Mr. D'Ascendis' constant-growth DCF analysis that proves even his lower 9.73% COE estimate is biased too high. Ex. 210, *Rebuttal Testimony of David Murray*, pg. 21 ln. 1 – pg. 22 ln. 22 (EFIS Item no. 242). The simple fact that the individual COE estimates for the six companies in Mr. D'Ascendis' presumably homogeneous water utility proxy group ranged from 5.08% to 14.28% implies serious problems with his analysis. *Id.* Mr. D'Ascendis error is similar that which he made when estimating long-term returns on the market for purposes of his RPM estimates. *Id.* at lns 11 – 14. For one company, SJW Group, Mr. D'Ascendis assumes investors will achieve a compound annual capital gain of 11.9% perpetually. *Id.* at lns 15 – 20. For another company, Middlesex Water Company, Mr. D'Asendis assumes investors will achieve a compound annual gain of 3.60% perpetually. *Id.* at lns 21 – 22. Although a 3.6% perpetual compound annual gain in a water utility stock is more rational than an 11.9%, Mr. D'Ascendis considers the 5.08% COE estimate for Middlesex as unreasonable, but not the 14.28% COE estimate for SJW Group. *Id.* at pg. 21 ln. 5 – pg. 22 ln. 9. This is just another example of Mr. D'Ascendis selectively choosing methods and assumptions that allow for COE estimates that he believes provides evidence the Commission can cite to support an acceptable authorized ROE. As Mr. Murray explains when discussing the principles of *Hope* and *Bluefield*, the Commission does not need to pretend the COE is in the 9% range for purposes of

justifying an authorized ROE in this range. Ex. 211, *Surrebuttal Testimony of David Murray,* pg. 14, ln. 14 – pg. 19 ln. 7 (EFIS Item no. 243).

Company-specific adjustments

A key issue in this case regarding is whether Confluence's risk profile warrants any additional adjustments to the ROE. Mr. D'Ascendis recommends a downward adjustment of 51 basis points because he recommends a ratemaking capital structure that is much more equity-rich than that of his proxy group. Exhibit 7, *Direct Testimony of Dylan D. Ascendis*, pg. 52 ln. 8 – pg. 55 ln. 14 (EFIS Item no. 178). Mr. Walters does not recommend an adjustment to his base ROE for his proxy group because he recommends a capital structure consistent with that of his proxy group and Mr. D'Ascendis' proxy group. Ex. 119, *Rebuttal Testimony of Christopher C. Walters* pg. 9 lns. 8 – 11 (EFIS Item no. 214). Mr. Murray, unlike Mr. D'Ascendis, performed a detailed credit analysis of Confluence's legacy utility operating companies – Hillcrest, Raccoon Creek and Indian Hills – because these companies' water and sewer utility systems serve as the best proxies to compare not only the risk differences caused by varying amounts of debt supporting investments in the systems, but also the impact of the business risk, *i.e.* fluctuations in revenues and expenses irrespective of the use of debt. Ex. 209, *Direct Testimony of David Murray*, pg. 9 ln. 8 – pg. 15 ln. 22 (EFIS Item no. 241). Mr. Murray's credit risk analysis of these similarly situated systems, post rate increases approved by the Commission in 2017 for Hillcrest and Raccoon Creek and 2018 for Indian Hills, provides the most relevant information as to the risk profile of all systems subject to this rate case. Ex.

209, *Direct Testimony of David Murray*, pg. 11 lns. 5 – 10 (EFIS Item no. 241). Mr. Murray acknowledges that Confluence's current credit profile, which now includes the legacy operating utilities that on an individual basis have strong investment grade credit profiles, is very weak. *Id.,* pg. 16 lns. 1 – 5. This is due to the fact that Confluence has acquired additional systems which are currently operating at a loss. However, the historical performance of these additional systems is irrelevant to the expected performance subsequent to rate adjustments in this case. Ex. 211, *Surrebuttal Testimony of David Murray,* pg. 9 lns. 10 – 19 (EFIS Item no. 243). As Mr. Murray testified during the hearing in this case, ratepayers of the systems that have been rehabilitated and are subject to this rate case should not pay a higher ROR to subsidize Confluence's growth strategy:

> Q. Right. So when you talk about, you know, the credit rating of the company, you know, only including the existing systems, would you agree with me it just -- it just ignores reality, correct, as to what the Company's going to look like on the first day new rates come into effect?
>
> A. But ratepayers of these systems are not paying for the Company's financial and investment strategy. The Company's -- the ratepayers of the systems are paying for the risk of their assets. And, you know, investments have been made in their assets and the cost of capital rate of return should be consistent, which as I've seen with Hillcrest and Raccoon Creek -- well, let's just take, you know, that for example. Hillcrest -- Hillcrest has been wrapped into Confluence and, you know, I calculated a 30 percent ROE. · If you start just wrapping them up and saying that they could not raise more debt than even 55 percent, I would -- I would claim that that's wrong because I got information in my testimony that shows they could -- they could have a hundred percent debt. · And so that's just not fair. I mean, it's the reality, but it's not -- that's not fair to the current rate payers.
>
> Q. But ultimately we're talking about the risk of the Company itself. Right? And you were asked -- and you were asked before about the, you know, the Company's strategy essentially, its approach to business. And

> I think you agreed you have not seen -- was that you that said you had not seen any other company that had that sort of focus on –
>
> A. No. This was very –
>
> . . .
>
> A. A very aggressive growth strategy that should be -- fall on to the investors.

Tr. vol. 10 pg. 144 ln. 18 – pg. 146 ln. 3.

Mr. Murray's credit analysis in this case adjusted the legacy utility operating companies' financial results to remove the illegitimate Fresh Start Venture LLC loan which had charged each of these companies a 14% interest rate. Ex. 209, *Direct Testimony of David* Murray, pg. 11 ln. 17 – pg. 12 ln. 2 (EFIS Item no. 241). This financing arrangement was a result of self-dealing because the owners of CSWR LLC and Fresh Start Venture LLC were and still are the same investors. *Id.*; Ex. 211, *Surrebuttal Testimony of David Murray*, pg. 14 lns. 1 – 13 (EFIS Item no. 243). The Commission rightfully dismissed this affiliate financing agreement in the Indian Hills' rate case, Case No. WR-2017-0259, in setting the authorized ROR in that case. Ex. 225, *Indian Hills Report and Order from WR-2017-0259*, pg. 56 (EFIS Item no. 256). After removing the impact of this illegitimate loan, Mr. Murray imputed a debt obligation based on the 6.6% interest rate CoBank charged on its loan to Confluence, despite the fact that if these entities had received loans from CoBank prior to 2022, they would have likely been charged a rate as low as 4.5%. Ex. 209 *Direct Testimony of David Murray,* pg. 13 lns. 1 – 3 (EFIS Item no. 241). Mr. Murray's credit analysis also assumed that these legacy entities had borrowed up to the 55% Total Debt to

Total Capitalization allowed under CoBank's financial covenants. *Id.* at pg. 12 lns. 3 – 5. Based on these assumptions, the credit profile of these legacy companies was consistent with credit ratings in the range of 'BBB' to 'A-'. *Id.* at pg. 13, lns. 10 – 13. According to Staff's witness, Mr. Walters, Mr. Murray's ratings assessment assigned more business risk to Confluence's than Mr. Walters believes S&P Global Ratings would assign. Mr. Walters compared Confluence's credit metrics to S&P Global Ratings' "low volatility" tables rather than the "medial volatility" tables. Tr. vol. 10. Pg. 79 ln. 13 – pg. 80 ln. 1. To ensure clarity, OPC followed up on this response during the hearing as follows:

> Q. I want to make sure I understood that. You're telling me that your analysis was -- the only difference between your analysis and Mr. Murray's was that you felt Mr. Murray was actually holding the Company to a higher standard than investors would hold it to?
>
> A. Yes.
>
> Q. But Mr. Murray's –
>
> A. Yeah.
>
> Q. I'm sorry, please continue.
>
> A. I would just say, like I said, I'm not aware of any water utility that is assessed on the medial volatility metric table by S&P. That's more for electric utilities, multi-utilities, and some -- some gas. The low volatility table is -- all water utilities that I'm aware of are assessed against that as well as some gas utilities.
>
> Q. But under both circumstances the Company was found to have a credit rating that would support an extremely strong investment-grade rating?
>
> A. Yeah. The indicated rating analyses would show that they would have a very strong investment grade on either -- which regardless of the table used to assess the Company's metrics.

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Tr. vol. 10 pg. 80 lns. 2 – 25. Despite this demonstrated strong investment grade credit profile, Mr. Murray **still** made a 65 basis point upward adjustment to recognize the significant upfront capital investment before rate stabilization associated with Confluence's systems. *Id.* at pg. 3 lns. 3 – 16.

Mr. D'Asceendis recommends an upward company-specific adjustment of 100 basis points based on Confluence's small-size. Ex. 7, *Direct Testimony of Dylan W. D'Ascendis,* pg. 49, ln. 1 – pg. 52, ln. 7 (EFIS Item no. 178). Mr. D'Ascendis relies on the same generic "small-size" risk premium studies he relied on in the 2017 Indian Hills rate case. Ex. 210, *Rebuttal Testimony of David Murray*, pg. 24 lns. 12 – 22 (EFIS Item no. 242). In that case, Mr. D'Ascendis quantified the generic small-size risk premium adjustment to be in the range of 134 to 394 basis points. *Id.* In this case Mr. D'Ascendis testifies that Confluence's small-size could justify a small-size adjustment of up to 391 basis point, yet he arbitrarily made a much smaller adjustment of 100 basis points. Ex. 7, *Direct Testimony of Dylan W. D'Ascendis,* pg. 52, lns. 4 – 7 (EFIS Item no. 178). In justifying his opinion that Confluence's small size warrants a risk premium adjustment, Mr. D'Ascendis testifies that rating agencies do not reflect size in their bond ratings, but he does not provide supporting evidence. *Id.* pg. 12 lns. 7 -11. However, Mr. Murray provides a specific citation from Standard & Poor's Global Ratings on York Water Company indicating S&P Global considers York Water's small size when assessing York Water's credit risk profile. Ex. 210, *Rebuttal Testimony of David Murray*, pg. 28 lns. 3 – 9 (EFIs Item no. 242). Even if a small-size risk premium were warranted, Mr. D'Ascendis should not have

applied this adjustment to his DCF analysis. Because the DCF method incorporates proxy companies' stock prices, if investors discount a company's stock price due to its small size, such discount would be captured in the DCF method. *Id.* at pg. 25 lns. 15 – 19. In other words, Mr. D'Ascendis would be double-counting the adjustment.

Mr. Murray performed a multi-stage DCF analysis on publicly-traded water utility companies that are smaller than Confluence's parent company, CSWR LLC. The COE for the smaller water utilities was 25 basis points lower than that of the larger water utilities. *Id.* pg. 29 lns. 15 – 22. Additionally, the Kentucky Public Service Commission dismissed Mr. D'Ascendis' small-size risk premium adjustment for Confluence's affiliate, Bluegrass Water Utility Operating Company. Tr. vol. 10 pg. 41 lns. 18 – 21. For all these reasons, this Commission should also dismiss Mr. D'Ascendis' small-size risk premium adjustment.

Summation

OPC's witness Mr. Murray performed a detailed analysis of the *pro forma* credit metrics of Confluence's legacy utility operating companies. Ex. 209, *Direct Testimony of David Murray*, pg. 9 ln. 8 – pg. 15 ln. 22 (EFIS Item no. 241). Mr. D'Ascendis did not evaluate the past financial performance of these companies and the implied credit risk related to such financial performance. As Mr. Murray testified, the financial performance of the legacy utility operating companies was remarkably stable, even with Mr. Murray's *pro forma* assumption that they were financed with 55% debt in their capital structures. *Id*. The Commission should rely on Mr. Murray's

detailed analysis of the financial performance of Confluence's legacy systems that have developed financial experience post rate increases. This experience demonstrates that any company-specific risk premium adjustment should be limited to the 65 basis points recommended by Mr. Murray. Mr. Murray's 65 basis point adjustment is based on his analysis and assessment of both the financial risk and business risk of these investments.

Conclusion

There are three issues at play with regard to a fair and reasonable rate of return to charge Confluence's ratepayers. The first is a reasonable ratemaking capital structure. On this topic, the OPC recommends the use of the capital structure identified in an arms-length transaction, Confluence's loan with CoBank. *Id.* pg. 4 lns. 14 – 21. The parties and the Commission have rarely been able to trust or verify the legitimacy of financing practices involving Confluence, its legacy subsidiaries and its holding companies. *Id.* pg. 7 lns. 4 – 22, pg. 11 ln. 17 – pg. 12 ln. 2, pg. 18 ln. 3 – pg. 19 ln. 13; Ex. 210, *Rebuttal Testimony of David Murray*, pg. 5 ln. 1 – pg. 7 ln. 25 (EFIs Item no. 242); *Surrebuttal Testimony of David Murray,* pg. 5 ln. 17 – pg. 6 ln. 23, pg. 10 lns. 9 – 19, pg. 14 lns. 1 – 13 (EFIS Item no. 243); Ex. 225, *Indian Hills Report and Order from WR-2017-0259*, pgs. 46 – 62 (EFIS Item no. 256). This continues to be the case. However, at least in the instant case, as opposed to prior rate cases involving the legacy companies, a third party, CoBank, is involved in providing capital to Confluence. CoBank's financial covenant indicates Confluence can borrow up to 55% of debt for purposes of financing its capital structure. Not doing

so results in an uneconomic cost of capital, which is magnified in Confluence's circumstance considering the fact that CoBank would have charged the same rate, 6.6%, even if it borrowed more debt to finance up to 55% of its capital structure. Ex. 209, *Direct Testimony of David Murray,* pg. 19 lns. 17 – 23 (EFIS Item 241). The Commission should rely on the terms of this arms-length transaction to ensure Confluence's ratepayers are charged a ROR consistent with a capital structure managed to achieve a lower cost of capital.

The second is the cost of debt. Again, the cost assigned to the CoBank debt is based on an arms-length transaction. However, Confluence does not want to recognize the patronage credit it expects to receive in the cost of debt it is authorized in this rate case. Ex. 211, *Surrebuttal Testimony of David Murray*, pg. 13 lns. 1 – 19 (EFIS Item no. 243). Confluence's initial reaction to this patronage credit was that this amount would be immaterial. But after OPC discovered information in its audit of correspondence between CoBank and Confluence, this credit results in 42 basis point lower cost of debt. Ex. 209, *Direct Testimony of David Murray*, pg. 19 lns. 9 – 13 (EFIS Item no. 241). OPC's recommended cost of debt, 6.23%, appropriately captures this credit, which apparently is now material enough to Confluence that Company is arguing that it should be allowed to recover the stated interest rate of 6.6% rather than the effective rate of 6.23%. The Commission should authorize 6.23% applied to a 55% debt ratio.

The third issue is a fair and reasonable authorized ROE. Fortunately, the parties and the Commission are no longer "flying blind" as it relates to setting a fair

and reasonable ROE for Confluence's systems. Despite past arguments for additional significant risk premiums due to the uncertainty related to investing in distressed water and sewer systems, the financial performance of these investments has been steady and healthy. *Id.* at pg. 13 ln. 10 – pg. 15 ln. 22. In fact, in some circumstances, the financial performance has been equal to or better than that of Missouri's larger utility companies, which had been awarded ROE's in the 9.25% to 9.5% range. *Id.* at pg. 2 lns. 2 – 9; pg. 15 lns. 7 – 12. Consequently, the Commission does not need to award Confluence an ROE significantly higher than Missouri's larger utility companies. OPC recommends the Commission authorize a 9.65% ROE applied to a 45% equity ratio.

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Issue 16: AMI Investments

There is only one question to issue 16: Should the Commission disallow any costs related to AMI meter investments? The answer is yes, the Commission should disallow costs related to advanced meter infrastructure ("AMI") investments. The easiest way to get to this answer is to break it down into several simple questions.

Does Confluence Rivers have any AMI investments?

Yes, but only for two of its systems. "Confluence utilizes the Badger Disc Series meters and has rolled out AMI attachments called Orion Cellular Water Endpoints in at least two of their systems: Indian Hills and Hillcrest." Ex. 206, *Direct Testimony of Geoff Marke (Public & Confidential)*, pg. 8 lns. 24 – 26 (EFIS Item no. 238). "[T]he Orion Cellular Water Endpoint is an attachment that enables the traditional Badger meters to have interoperable capability to Internet of Things ("IOT") cellular infrastructure[,]" which differs from the more common AMI investments that have been made by electric utilities. *Id*. at pg. 9 lns. 2 – 5. These meters were installed after Confluence acquired the systems. Tr. vol. 10 pg. 4 lns. 19 – 24.

What benefits do these AMI investments provide?

At the moment, virtually none. Ex. 206, *Direct Testimony of Geoff Marke (Public & Confidential)*, pg. 10 lns. 1 – 3 (EFIS Item no. 238). "Confluence has not made the software investment to enable those customers to visualize 15-minute interval data of water usage (e.g., personalized online customer portal)." *Id*. at lns. 3 – 4. "If a customer experiences a higher than expected water usage due to a possible

leak the only way that customer would be aware of it is in their monthly bill." *Id*. at lns. 5 – 6. Moreover making the investments necessary to unlock these supposed benefits would not be prudent. *Id*. at pg. 11 lns. 2 – 7. As the OPC's expert, Dr. Geoff Marke, explained:

> The Orion AMI attachments are not a prudent investment. Spending more money to enhance an already imprudent investment would be doubling down on the mistake and needlessly increasing rate base. I would be hard pressed to find a present scenario where investing in water AMI attachments and accompanying customer service software would be a prudent investment.

Id. For this reason, Dr. Marke "recommended the Commission disallow the AMI attachment costs associated with Indian Hills and Hillcrest included in the test year and order the Company to cease further deployment of AMI attachments until such an appropriate business case can be made to justify this excessive needless cost." *Id*. at pg. 12 lns. 9 – 12.

What amount should the Commission disallow related to AMI investments?

The Commission should disallow at least "$26,768 for imprudent AMI investment in the Hillcrest and Indian Hills water systems." Ex. 208, *Surrebuttal Testimony of Geoff Marke*, pg. 14 lns. 1 – 2 (EFIS Item no. 240). This amount "represents ¾'s of the sum of the net plant for accounts 346 and 347 (which represent meters and meter installation respectively) multiplied by the OPC's recommended rate of return (as developed by OPC witness David Murray at 7.77%) plus the annual depreciation expense related to those same accounts for the Hillcrest and Indian Hills

systems." *Id*. at lns. 4 – 8. This amount may need to be increased if the Commission orders a higher rate of return. The ¾ factor is based on Dr. Marke's "discussion with water meter distributors at Midwest Meter a standard Model 25 5/8 inch x ¾ inch water meter utilized by Confluence would run approximately $75.00 and the additional Orion Cellular Water Endpoint that the Company is utilizing would be an additional $220." *Id*. at lns. 11 – 14.

Issue 17: Operations, Maintenance, and Oversight

This issue originally comprised of four sub-questions. Of those, only sub-question (d) remains. That means the only question now before this Commission is this: "[s]hould the Commission order a disallowance related to Confluence's contract-based business model, and if so, how much?" To answer this question properly, two things are necessary. First, one must examine Confluence's current method of operating its water and wastewater systems deeply and carefully. Second, one must employ a degree of commons sense. Through this brief, the OPC will offer a detailed analysis capable of providing the former and further outline the key points that require consideration for the latter. Before moving directly to the merits of the issue, thought, it is best to take a moment to review the policy rationale that underlie the recommendations made by the OPC's witness.

As explained by OPC witness Dr. Geoff Marke, Confluence and its parent Company, Central States Water Resources ("CSWR"), "largely operates as an intermediary middleman operating as a vehicle to allow private equity partners (who are most likely leveraging their equity returns using debt capital) to invest in these distressed systems while handing off the majority of the operation and maintenance tasks associated with those systems to local contracted services." Ex. 206, *Direct Testimony of Geoff Marke (Public and Confidential)*, pg. 4 lns. 4 – 8 (EFIS Item no. 238). In this regard, "CSWR may be singularly unique amongst all utilities in the United States, if it is even appropriate to call a company based entirely on third-party contracts a utility." Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and*

Confidential), pg. 2 lns. 13 – 14 (EFIS Item no. 239). However, the OPC has become concerned that this over-reliance on third-party contractors has created a situation where "ratepayers have experienced suboptimal service and are exposed to considerable risk in the future if the Company does not adapt and start emulating traditional utility models." *Id*. at lns. 16 – 18. Dr. Marke outlined numerous examples of this in his testimony.

Staring on page five of his rebuttal testimony and continuing through page nine, Dr. Marke outlined ten separate "snapshot examples" where he concluded Confluence Rivers' "business model has failed to evolve because of its over-reliance on third- and fourth-party contracts." *Id*. at pg.5 lns. 24 – 25. These included issues related to: customer billing, chemical procurement, capital budgeting, lack of transparency and oversight, concerns regarding health and safety, and issues with proper corporate governance among others. *Id*. at pg. 6 ln. 1 – pg. 9 ln. 5. Moreover, Dr. Marke noted how Staff witness Curt B. Gateley recommended that Confluence Rivers be required to have a full-time Missouri employee dedicated to its Missouri water systems as further evidence that Staff shared at least part of his concerns. *Id*. at pg. 9 lns. 6 – 8. With regard to that last point in particular, the Dr. Marke stated as follows:

> I would like to point out how bizarre this request is. That the Commission Staff has to request to the Commission to order CSWR to hire at least one person who can oversee the Missouri contracts alone and be present—in Missouri. That is where we are at.

Id. at lns. 7 – 10. Based on these points, Dr. Marke ultimately came to the conclusion that Confluence Rivers' current business model was not sustainable. *Id*.at ln. 17. That is the reason why Dr. Marke chose to take a hard look into how Confluence was currently addressing the operation and management of its systems and to consider whether a better solution was available.

Confluence has made a business decision to operate differently than any other utility in this state, if not the country. Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 2 lns. 13 – 14 (EFIS Item no. 239). It is therefore Confluence's burden to prove to the Commission that this detached and novel approach at running a utility is an efficient use of ratepayer dollars. The investigation performed by its expert witnesses have led the OPC to believe that this unusual method of operating water and wastewater systems is not, in fact, the most efficient or prudent approach. Instead, the OPC provided an example of what it believed would be a more efficient model. Whether or not the Commission ultimately agrees with the specifics of the OPC's recommendation (or the costs that the OPC calculated that recommendation would result in) is ultimately ancillary, however, in the face of the overarching question that needs to be addressed: is this really the best way to operate a water/wastewater utility?

<u>An outline to this issue</u>

This issue is multi-faceted and requires some significant degree of attention to properly understand all the relevant points. To help the reader to navigate its argument, the OPC has broken it down into several steps. They are as follows:

1. First, the OPC will provide a high-level review of Confluence's current method of operation in terms of (1) the number of operators the Company currently has assigned to its systems, (2) the degree of certification those operators possess, and (3) the costs that must be presently being incurred by the third-party operation and management firms Confluence Rivers is currently contracting with. The purpose of this step is to demonstrate an important incongruity inherent in Confluence's position:

   > how can the third-party operation and management firms Confluence Rivers is currently contracting with be making any profit given Confluence's claims regarding both the amount of work that is required to operate its current systems and the costs a company would incur to employ the existing number of operators?

   The OPC intends to show throughout the rest of the analysis how this apparent paradox created by Confluence's arguments demonstrates the innate fallacy of the Company's claims.

2. Second, the OPC will examine in depth the amount of work that must be undertaken **currently** in providing operation and management services to Confluence's existing systems. The OPC will do this by using one subset of systems, all being managed by the same individuals, as a case study. This portion of the analysis will further test the veracity of Confluence's claims and show how several statements made by Confluence's witnesses were either suggestively misleading or simply false.

3. Third, beginning with the sub-set of systems identified in the second step, the OPC will walk through the Company's **current** method of operating its systems to show how, with relatively minor adjustments, this can be adapted to Dr. Marek's recommendation in a manner that results in hiring far fewer in-house operators than the Company claims would be required. Again, this step is intended to show that Confluence has significantly over-stated the number of in-house operators that would be required to manage its systems and instead show how as few as fifteen operators would be required to manage Confluence Rivers' systems based on Confluence's own **current** method of operations, with slight modifications.

4. Fourth an finally, the OPC will show what it would cost to employ fifteen in-house operators using both what the Company argued it would cost per operator and that same number adjusted very slightly to reflect the most up-to-date evidence regarding the mean average salary for a water/wastewater operator in the State of Missouri. This portion of the analysis will show that Confluence could still be achieving significant cost savings for customers, based on its own evidence and using the Company's **current** method of operation (with only slight modifications).

Taken together, these four steps lead to the OPC's ultimate recommendation in this case, which is for the Commission to limit Confluence's rate recovery to those costs that would be incurred for the Company to employ an in-house team of water and wastewater operators. With this outline in mind, it is possible to proceed with the deep analysis of Confluence's current method of operation

Step 1: The High Level Examination of the Confluence's Current Method of Operations

This first step involves an examination of Confluence's current method of managing and operating its water and wastewater systems. The step is broken down into finding the answer to three simple questions and then considering the results.

Question 1: How many operators does Confluence currently have operating its systems?

To determine how many operators Confluence currently has managing and operating its systems, the OPC will rely on the Company's response to data request number 2034. This exhibit has a breakdown of the majority[11] of Confluence's systems

[11] As will be discussed later, the OPC was unable to find an operator listed for either Fawn Lake and Stone Ridge Meadows Subdivision in this exhibit. Ex. 231, *DR 2034* (EFIS Item no. 263).

with indicators for the "Chief Operator" and "Other Employees" assigned to each. Ex. 231, *DR 2034* (EFIS Item no. 263). Now there are several things to consider about this exhibit. First, for the fourth column (which is labeled "Other employees but not a complete list of staff" and which would have been column "D" in the native excel file) the OPC asked an additional data request to identify who these "other employees" are along with their responsibilities. Ex. 244, *DR 2036* (EFIS Item no. 277). The Company's response reads as follows:

> "Other Staff" includes individuals classified as a Certified Operator (any individual holding a valid water treatment or water distribution certification of any level issued by the department), or as an Operator (any individual who operates or determines the method of operating a wastewater treatment system, either directly or by order).

Id. Based on this answer, it is safe to say that every person listed inside the table provided by Confluence Rivers in exhibit 231 is being held out as an "operator" by the company, whether certified or not. *Id*.; Tr. vol. 11 pg. 27 lns. 10 – 19.

The second point to consider is whether this table includes **all** the operators confluence is employing. This question exists because the top of the fourth column reads: "other employees but not a complete list of staff." In answering this, it is important to understand that the OPC data request that produced exhibit 231 was actually an update to a prior Staff data request (Staff DR 0241), and what the OPC specifically requested the Company to do was "list the names of all staff not included in Column D" from the prior Staff data request. Ex. 231, *DR 2034* (EFIS Item no. 263). At the hearing, there was some dispute as to whether the Company actually

complied with this request.[12] *See* Tr. vol. 11 pg. 27 ln. 25 – pg. 29 ln. 25. Notwithstanding that issue, however, it should be clear (given the Company's response in exhibit 242) that this list contains all employees that the Company considers to be "operators." Tr. vol. 11 pg. 27 lns. 10 – 19. The third point to address is the fact that there is some degree of overlap between the "chief operator" column and the "other employees" column. For example, Brady Graves appears in both the chief operator column (under Auburn Lakes, for example) and the "other employees" column (under Branson Cedar, for example). This is important to recognize when reviewing the table to determine the number of total operators. The fourth and final point to consider is that there are five names listed below the table in this response. It is not completely clear how these five names fit into the response (or whether they are or are not also "operators"), but for now one need only recognize they are there.

Keeping these four points in mind, it is a simple matter to collect the names on the table in exhibit 231 to three groups: (1) Chief operators, (2) Other operators

[12] During the hearing, Mr. Cox attempted to suggest that the OPC only asked for "operators" with regard to data request 2034. Tr. vol. 11 pg. 28 lns. 8 – 10. This is objectively false. Again, the OPC asked the Company to provide "the names of **all staff** not included in Column D" of Staff's original data request 0241. Ex. 231, *DR 2034* (EFIS Item no. 263) (emphasis added). At no point anywhere in either the OPC's data request or the accompanying excel file was there any indication or even the bare suggestion that "all staff" meant anything less than *every* individual assigned to a system, whether they be qualified as an operator or not. Moreover, Mr. Cox could not be relying on anything contained in the original staff DR 0241 as the basis for his claim, because he expressly stated that he was not familiar with it. Tr. vol. 11 pg. 28 lns. 19 – 21 ("Q. Now are you familiar with the original staff data request 0241? A. I am not.").

(excluding repeated chief operators), and (3) Positions listed under the table. Completion of this task is seen in the table below:

Position	Chief operators	Other operators (excluding repeated chief operators)	Positions listed under the table
Names	1. Brady Graves 2. James Crawford 3. Andrew Griffin 4. Chris Wallen 5. Brian Strickland 6. Mike Hornbuckle	1. Brett Wiebking 2. Nicholas Geissinger[13] 3. Victor Wright 4. Joshua Pulliam 5. Rob Ludwig 6. Brandon McCoy 7. David Kent 8. Logan Essmeyer 9. Jacob Reed 10. Jeff Morris 11. Matthew Eaton 12. Robert Allard 13. Marie Rock 14. Jamie Davidson 15. Franklin Nelson 16. Terell Sauls 17. David Duncan 18. Charlie Staffeldt	1. Heath Loven 2. Joseph Stoops 3. John Rogers 4. Darryll Waller 5. Joe Cason
Total	6	18	5

As this table shows, Confluence has listed at least 24 people it is holding out to be "operators" and five additional people listed below the table who may or may not be operators.

Question 2: How many of these operators are certified?

After determining how many operators currently serve Confluence's systems, the next question to answer is how many of those operators are certified. Before

[13] This name is spelled differently in the Missouri Department of Natural Resource's database where the first (i) and the first (e) are reversed to read Giessinger. Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264).

answering that, though, it is wise to first determine what it means to be "certified." The certification of water and wastewater operators is handled by the Department of Natural Resources. 10 CSR 60-14.020; 10 CSR 20-9.030. The standards for certification of water operators is found in 10 CSR 60-14.020, and the standard for certification of wastewater operators is found in 10 CSR 20-9.030. There are four levels of certification for wastewater operators, with the lowest being class D and the highest being class A. 10 CSR 20-9.030. For water operators, there are two types of certification. The first is a water treatment certification, which ranges from class D to class A, and the second is a water distribution system certification that begins at level 1 and goes up to level 3. 10 CSR 60-14.020. The level of certification directly correlates to the complexity of the water or wastewater system and sets the standard for who can be an operator. *See*, *e.g.*, 10 CSR 60-14.010(3)(A); (4)(A)1 ("The department will classify each treatment facility by considering the treatment facility complexity, source of water, type of treatment performed, and size. . . ." "The chief operator shall possess a valid certificate equal to or greater than the classification of the treatment facility or distribution system.").

Determining how many of the number of water and wastewater operators the Company currently has managing its systems that are certified is somewhat difficult. Here are four simple factors to consider:

1. During the evidentiary hearing, counsel for Confluence attempted to stipulate that the Company had 21 certified operators. Tr. vol. 11 pg. 36 lns. 3 – 5.

2. The table provided in the response to the OPC's data request 2034 lists 24 names (with an additional five underneath). Ex. 231, *DR 2034* (EFIS Item no. 263).

3. The Company's response to OPC data request 2036 clearly draws a distinction among the "other employees" by indicating that some are certified (*i.e.* "holding a valid water treatment or water distribution certification of any level issued by the department") and others are not. Ex. 244, *DR 2036* (EFIS Item no. 277). This necessarily implies that at least some of the individuals listed in the "other employee" column are not certified operators.

4. The OPC was able to compile a list of 16 people included in the table in exhibit 231 who were listed as certified at some level in the Department of Natural Resources certified water and wastewater operator database. Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264).

Based on these factors, the only thing that can be certain is that *some* of the people listed in the table in exhibit 231 are certified and some are not. Who and how many fall into each category is currently unknown, but the number of certified individuals ranges somewhere between 16 and 21 out of 24.

Question 3: What is the cost of the current operators to the third-party operations and management firms with whom Confluence has contracted?

Currently, all operation of Confluence's water and wastewater systems are handled by third-party contract operators. Ex. 206, *Direct Testimony of Geoff Marke (Public and Confidential)*, pg. 7 lns. 6 – 11 (EFIS Item no. 238). Specifically, Confluence employees two firms. The first is ** ——————————— **, which provides contracted operator services for ** ——————————— **. Ex. 233, *DR 0040 (Public and Confidential)* (EFIS Item no. 265). In order to avoid further confidentiality, the brief will refer to this firm as "the minor operator." The second

firm is ** ———————————— ** which provides service to all of Confluence's remaining systems. Ex. 238, *DR 0040.1 (Public and Confidential)* (EFIs Item no. 271). Again, to avoid confidentiality, the OPC will refer to this firm as "the major operator."

By cross-referencing the systems each firm is responsible for with the table in exhibit 231, it is easy to assign the number of operators each firm is contributing. The minor firm is contributing three operators (** ———————————— ———————— **) because those are the operators associated with the systems that it is servicing. Ex. 233, *DR 0040 (Public and Confidential)* (EFIS Item no. 265). By process of elimination, the major firm is providing the remaining 21. It is unclear which firm is providing the five listed below the table, so, for now, they will be held separate.

Next we can consider how much each firm must be spending to employee these individuals. For this end, let us use the data that Confluence itself presented. According to Confluence witness Mr. Thies, it would cost $2,248,018 to employ 22 operators. Ex. 19, *Surrebuttal Testimony of Brent Thies*, Schedule BT-SR-1 (EFIS Item no. 190). If we remove the cost to employ just one operator, which Mr. Thies identifies as $91,463, then the cost to the major firm for its 21 operators must be at least $2,156,555. *Id*. For the minor firm, we shall take the lowest cost of an operator (again, $91,463) and multiply it by three to get the total cost of employing its three individuals: $274,389. *Id*. For the five individuals who are included under the table

in exhibit 231, we shall again multiply the lowest cost of an operator ($91,463) to provide at least an idea of their cost. That would yield $457,315. *Id.*

Now, before going any further, it is important to note that Mr. Thies's schedule seems to suggest that the lowest cost is for non-certified operators. This is because the next column in his table is listed as "Certified Operators," as seen in the figure below.

Confluence Rivers Utility Operating Company, Inc.
Internalized Operations Annual Cost Scenario **BT-SR-1**

	Water/Wastewater Operator	Water/Wastewater Certified Operator	Missouri Director of Utility Operations
Salary (Average)	55,508	83,261	124,892
Payroll Tax & Benefits Costs	23,227	31,383	46,028
Equipment Costs:			

Id. Given that Confluence has at least 16 certified operators, this would suggest that the figures calculated above are grossly understated (at least according to the Company). To provide Confluence the benefit of the doubt, however, the OPC will proceed with its prior calculations. To simplify, and provide an easy visual, the figures now calculated will be included in a table:

Firm	Major	Minor	Unknown five individuals
Yearly cost of employing operators assuming Confluence's salary numbers	$2,156,555	$274,389	$457,315

The next step in the analysis is to determine how much Confluence is paying to each of these firms for the services being provided. That is easy to accomplish,

given the contracts for service are in the record. Each contract has the base operator fee for the systems being served stated in terms of a monthly fee. Ex. 233, *DR 0040 (Public and Confidential)* (EFIS Item no. 265); Ex. 238, *DR 0040.1 (Public and Confidential)* (EFIs Item no. 271). Multiplying that amount by twelve (for each month of the year) yields the total yearly cost for each third-party management and operation firm. This can then be added to the previous table:

Firm	Major	Minor	Unknown five individuals
Yearly cost of employing operators assuming Confluence's salary numbers	$2,156,555	$274,389	$457,315
Amount paid by Confluence each year	** _____ **	** _____ **	
Net yearly profit to third-party contracting firm	** _____ **	** _____ **	($457,315)

What this table immediately makes clear is that, according to confluence's data, both firms are not recovering the full cost of employing their respective staff (at least the operators). This is not unexpected though. These two firms are, after all, service companies, and service companies rarely charge the full price of employing any one given agent to any one given customer. In a law firm, for example, a client will not be charged the full cost to the firm to employ a single lawyer, but rather, will be charged only for the work that lawyer did for that client. However, this

arrangement is premised on a single necessary point: **the agent/employee in question must be doing work for multiple different clients**.

Consider again the law firm example: if a lawyer only performs work for one client and that one client is charged less than it costs to employ that one lawyer, then the firm must necessarily be losing money in retaining that one lawyer. In the same vein, the operators employed by the two firms that contract with Confluence Rivers must necessarily be doing work for other, non-Confluence Rivers utility companies or else the two firms are quite obviously losing money, as seen in the table above. This brings us the critical question for this analysis: can the contract operators providing service to Confluence Rivers simultaneously perform all tasks necessary to maintain Confluence Rivers' existing systems **and** perform additional work for other, non-Confluence Rivers' systems? If not, then something is clearly wrong with Confluence's projected cost data.

The problem with this issue is that Confluence Rivers has approached it with a rather extreme degree of hyperbole regarding both the amount of work necessary to maintain its existing system and the cost to employ the operators needed to do that work. By doing so, however, Confluence Rivers has produced an absurd scenario. If you believe at face value everything the Company claims, then it is not possible for the third-party operation and maintenance contracting firms employed by Confluence Rivers to be making a profit. Since the third-party contracting firms need to remain profitable themselves, one will quickly see how Confluence Rivers' claims begins to fall apart upon examination. To that end, let us consider the **current** arrangement

of Confluence Rivers' systems and their respective operators based on just the systems found in Camden County Missouri.

Step 2: Examination of the Camden County Systems

OPC witness Dr. Geoff Marke provided a proposed method for the division of labor among Confluence's water and wastewater systems. Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239). One of these divisions was labeled operator #3 and consisted of the systems found in Camden and Benton Counties. *Id*. This division serves as an excellent case-study for Confluence's current method of operating its water and wastewater systems for two reasons. First, it is the division/operator that Mr. Josiah Cox of Confluence Rivers provided the most analysis of in his surrebuttal. Ex. 6, *Surrebuttal Testimony of Josiah Cox*, pg. 34 lns. 8 – 17 (EFIS Item no. 177). Second, it has an even mix of water and wastewater systems.

According to Dr. Marke, Division/operator #3 consisted of the following systems in the following counties:

County	Water System	Wastewater System
Benton	Spring Branch	
	The Missing Well	The Missing Well
Camden	Cedar Glen	Cedar Glen
	Chelsea Rose	Chelsea Rose
	Cimarron Bay	Cimarron Bay
	Eagle Woods/Rte. KK	Eagle Woods/Rte. KK
	Cedar Green	Cedar Green

Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239). Cross-referencing this with exhibit 231, it is possible to

determine the current Confluence operators assigned to each of these systems, which looks as follows:

County	Water System	Operator	Wastewater System	Operator
Benton	Spring Branch	Chris Wallen, Jamie Davidson		
	The Missing Well	Chris Wallen, Jamie Davidson	The Missing Well	Chris Wallen, Jamie Davidson
Camden	Cedar Glen	James Crawford, Brady Graves, Victor Wright	Cedar Glen	James Crawford, Brady Graves, Victor Wright
	Chelsea Rose	James Crawford, Brady Graves, Victor Wright	Chelsea Rose	James Crawford, Brady Graves, Victor Wright
	Cimarron Bay	James Crawford, Brady Graves, Victor Wright	Cimarron Bay	James Crawford, Brady Graves, Victor Wright
	Eagle Woods/Rte. KK	James Crawford, Brady Graves, Victor Wright	Eagle Woods/Rte. KK	James Crawford, Brady Graves, Victor Wright
	Cedar Green	James Crawford, Brady Graves, Victor Wright	Cedar Green	James Crawford, Brady Graves, Victor Wright

Id.; Ex. 231, *DR 2034* (EFIS Item no. 263). For the sake of simplifying the analysis, the OPC shall remove the three systems in Benton County from this table (they will be addressed much later in the analysis). Doing so leaves this:

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County	Water System	Operator	Wastewater System	Operator
Camden	Cedar Glen	James Crawford, Brady Graves, Victor Wright	Cedar Glen	James Crawford, Brady Graves, Victor Wright
	Chelsea Rose		Chelsea Rose	
	Cimarron Bay		Cimarron Bay	
	Eagle Woods/Rte. KK		Eagle Woods/Rte. KK	
	Cedar Green		Cedar Green	

The OPC will refer to this grouping of systems as "the Camden County Systems." Using this group as a standard, it is quite easy to consider several simple questions regarding the current method of Confluence's operations of its water and wastewater systems

How many times does Confluence claim each system needs to be inspected?

Turning to the surrebuttal testimony of Mr. Cox, the following is stated with regard to division/operator #3:

> Moreover, recognizing that Confluence Rivers **inspects all mechanical facilities three times a week**, operator #3 would have to make approximately 39 system inspections in a five-day week.

Ex. 6, *Surrebuttal Testimony of Josiah Cox*, pg. 34 lns. 8 – 10 (EFIS Item no. 177) (emphasis added). The important segment of this statement is the phrase "Confluence Rivers inspects all mechanical facilities three times a week." What Mr. Cox is referring to here is the standard for inspections found in the scope of work clause of

the respective contracts for operation. In this case, we need only consider the major firm's contract,[14] which has the following provisions:

**

_____
_____
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**

Ex. 238, *DR 0040.1 (Public and Confidential)* (EFIs Item no. 271). What the Commission should notice is that the need to distinguish "mechanical facilities" from "non-mechanical facilities" only applies to wastewater operation services. *Id*. There is no similar distinguishing language with regard to water operation services. *Id*. So right off the bat, Mr. Cox's statement is already quite misleading.

According to the contractual scope of work, an operator would only need to visit the water facilities once a week. *Id*. The operator would also only need to visit the wastewater facilities once a week **unless** they were mechanical. *Id*. Therefore, based on the scope of work listed in the contracts, the ten systems in Camden County would

[14] Only the major firm provides contracted services for the Camden County systems.

require *at most* a total of 20 visits a week (each of the five water systems once for a total of five visits, and each of the wastewater systems three times – assuming mechanical systems – for a total of 15). However, all of this was suddenly thrown into confusion during the evidentiary hearing.

During the evidentiary hearing, Mr. Cox suddenly announced, for the first time in the case, that water systems had to be inspected five times a week. Tr. vol. 11 pg. 25 ln. 21 – pg. 26 ln. 17; pg. 41 lns. 15 – 24. Before going any further, the OPC would point out the inherent oddity of Mr. Cox filing testimony implying the water systems were being inspected three times a week and then taking the stand to testify they were being inspected five times a week. This is especially true given how the "five times a week" claim substantially strengthens the argument he was attempting to make previously in testimony. It would almost appear that Mr. Cox did not know how many times water systems were being inspected when he wrote his surrebuttal testimony. In reality, though, the answer to this odd twist is rather simple: Confluence's water systems are only being inspected once a week, per the contractual scope of work, and Mr. Cox was not really being honest. However, that is a point that will be addressed later in this brief. *See infra* pgs. 110 - 113. For now, let us proceed with what Mr. Cox said on the stand and continue to the next question.

How long does Confluence claim each site visit takes?

In his testimony, Mr. Cox assumed an hour for each inspection. *Surrebuttal Testimony of Josiah Cox*, pg. 34 lns. 10 – 11, EFIS Item no. 126. During the evidentiary hearing, new numbers were produced. Mr. Cox explained that it would

take a minimum of two hours to inspect a water system and between two to four hours for a wastewater system. Tr. vol. 11 pg. 43 ln. 18 – pg. 44 ln. 12; pg. 46 ln. 9 – pg. 47 ln. 2. The OPC intends to show that there are significant flaws with these numbers as well, but this too shall be addressed later. *See infra* pgs. 117 – 120.

What is the total time needed inspect all ten of the Camden County systems on a weekly basis?

So far, there have been several options put forward for how many site visits each system would require and potentially how long each site visit would last. To keep things simple, the OPC will review three contenders: (1) the number of site visits in the scope of work at one hour each, (2) the number of site visits in the scope of work at the number of hours Mr. Cox testified to on the stand, and (3) the number of site visits Mr. Cox testified to on the stand at the number of hours Mr. Cox testified to on the stand. Considering that there are exactly five water systems and five wastewater systems being managed by Confluence Rivers in Camden County, the total number of man hours need is quite simple to compute:

1. Assuming one visit per week for each water system and three visits per week for each wastewater system (per the scope of work) and one hour per visit to either (as assumed in Mr. Cox's written surrebuttal testimony):
    - Five water systems x one visit per week x one hour per visit + Five wastewater systems x three visits per week x one hour per visits = 20 hours total per week

2. Assuming one visit per week for each water system and three visits per week for each wastewater system (per the scope of work) and two hours per visit to either (per Mr. Cox's testimony on the stand):
    - Five water systems x one visit per week x two hours per visit + Five wastewater systems x three visits per week x two hours per visits = 40 hours total per week

3. Assuming five visit per week for each water system and three visits per week for each wastewater system (per Mr. Cox's testimony on the stand) and two hours per visit to either (per Mr. Cox's testimony on the stand):
    - Five water systems x five visit per week x two hours per visit + Five wastewater systems x three visits per week x two hours per visits = 80 hours total per week

As can easily be seen, the total man-hours need to properly inspect all ten of the systems in Camden County on a weekly basis should be about eighty hours, if one believes everything Mr. Cox said while testifying on the stand. Given that there are three persons assigned as operators to these ten systems, this may still be a possible task. After all, eighty hours divided by three yields just a little more than 26 hours per person per week. Unfortunately, this apparent harmony immediately runs up against several major problems.

Problem 1: Brady Graves and Victor Wright are not consistently vising/inspecting the Camden County systems

After James Crawford being listed as "Chief Operator," there are two other people listed as "other employees" in the table in exhibit 231: Brady Graves and Victor Wright. Ex. 231, *DR 2034* (EFIS Item no. 263). The simple problem is that neither of these two people can truly be expected to be consistently involved in the operation or inspection of the Camden County systems on a weekly basis because of their other duties. To explain, let us consider each in turn.

Brady Graves lives in Jonesburg in Montgomery County Missouri. Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264); Tr, vol. 11 pg. 60 lns. 11 – 13. That is north of the Missouri river and east of St. Louis along 1-70. Cross-referencing Dr.

Marke's rebuttal with Ex. 231 shows that Mr. Graves is listed as either a chief operator or an "other employee" in the following counties and systems:

County	**System**	**System Type**
Camden	Cedar Glen	Water
Camden	Cedar Glen	Wastewater
Camden	Chelsea Rose	Water
Camden	Chelsea Rose	Wastewater
Camden	Cimarron Bay	Water
Camden	Cimarron Bay	Wastewater
Camden	Eagle Woods/Rte. KK	Water
Camden	Eagle Woods/Rte. KK	Wastewater
Camden	Cedar Green	Water
Camden	Cedar Green	Wastewater
Polk	Prarie Heights	Wastewater
Green	The Willows	Water
Green	The Willows	Wastewater
Taney	Branson Cedar Resorts	Water
Taney	Branson Cedar Resorts	Wastewater
Cole	Eugene	Water

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Phelps	Glado	Water
Phelps	Glado	Wastewater
Crawford	Indian Hills	Water
Boone	Smithview	Water
Audrain	Freeman Hills	Wastewater
Montgomery	Roy L	Water
Montgomery	Roy L	Wastewater
Lincoln	Majestic Lakes	Water
Lincoln	Majestic Lakes	Wastewater
Lincoln	Auburn Lakes	Water
Lincoln	Auburn Lakes	Wastewater
Lincoln	Glen Meadows	Water
Lincoln	Glen Meadows	Wastewater
St. Louis	Castlereagh	Wastewater
Franklin	Calvey Brook	Water
Franklin	Calvey Brook	Wastewater
Franklin	Evergreen	Water
Franklin	Villa Ridge	Wastewater
Jefferson	Lake Virginia	Wastewater
Madison	Degurire	Wastewater
Madison	Deer Run Estates	Wastewater

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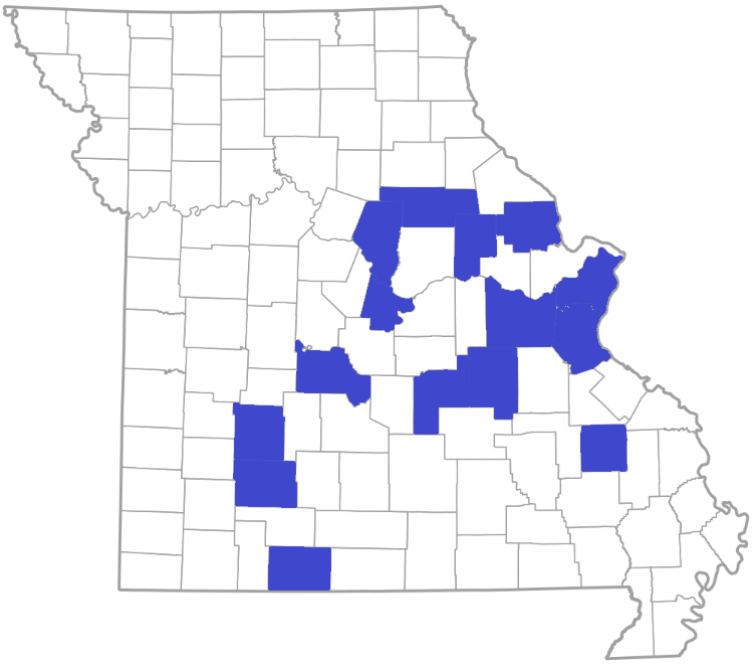
Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239); Ex. 231, *DR 2034* (EFIS Item no. 263). As a point of visual reference, please consider this map showing what counties Mr. Graves is operating in:



See Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239); Ex. 231, *DR 2034* (EFIS Item no. 263). What this clearly shows is that Mr. Graves is overseeing a large number of systems in a very large geographic area of the State. Moreover, this is consistent with what Mr. Cox described Mr. Grave's job as being:

> A. A chief operator, so Brady in particular, I know Brady, Brady is a technical expert, so he is a -- he is, you know, one of the top operators over there, he manages a bunch of other personnel, he is the guy -- because these systems we buy are completely dilapidated, which is one

> of the reasons why we -- Mr. Marke's thing made no sense to us, we buy Missing Well, we buy Freeman Hills, Freeman Hills has failed wells, failed electrical, the -- you know, the system is on its last leg, we have to continue to provide service until such a time we get all of the engineering done, permitting to do new construction, so a guy like Brady goes in and says, Hey, electricians, we need you to do this rewiring, we need you to watch these pumps, we need you to do all of this triage work, and ongoing inspection work, in order to keep this thing running until the new thing is going to go into -- new improvements get built. So he is managing a number of systems because he is a technical expert that can direct all of our trades skill people to watch individual components until such time we get new improvements done.
>
> Q. Okay. So that -- so he's a manager? He's managing on top of everybody else?
>
> A. Managing and operating at the same time, riding boss.
>
> Q. Is he going to each of these systems?
>
> A. **He goes to some systems, it depends on the week**.

Tr. vol. 11 pg. 58 ln. 20 – pg. 59 ln. 23 (emphasis added). The problem with Mr. Graves being effectively a manger/supervisor that is visiting multiple systems all across the state, however, is that it means he cannot really be contributing much to the inspections taking place in Camden County on a consistent, weekly basis. He may be showing up to help or to observe individual inspections on an occasional basis, but not every system every week, as Mr. Cox acknowledges. Tr. vol. 11 pg. 59 lns. 22 – 23 ("He goes to some systems, it depends on the week"). He therefore simply cannot be any meaningful part of the division of labor of those 80 hours Mr. Cox says needs to be put into the Camden systems on a **consistent** weekly basis given all the other work he is said to be performing. The same is also true of Victor Wright.

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Victor Wright lives in Eolia in Pike county Missouri. Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264). That puts him further north and further east than Mr. Graves. Despite that, Mr. Wright has a schedule that resembles Mr. Graves in many ways. Again, cross-referencing Dr. Marke's rebuttal with Ex. 231 shows that Mr. Graves is listed as an "other employee" in the following counties and systems:

County	**System**	**System Type**
Camden	Cedar Glen	Water
Camden	Cedar Glen	Wastewater
Camden	Chelsea Rose	Water
Camden	Chelsea Rose	Wastewater
Camden	Cimarron Bay	Water
Camden	Cimarron Bay	Wastewater
Camden	Eagle Woods/Rte. KK	Water
Camden	Eagle Woods/Rte. KK	Wastewater
Camden	Cedar Green	Water
Camden	Cedar Green	Wastewater
Phelps	Glado	Water
Phelps	Glado	Wastewater
Crawford	Indian Hills	Water

Boone	Smithview	Water
Audrain	Freeman Hills	Wastewater
Montgomery	Roy L	Water
Montgomery	Roy L	Wastewater
Lincoln	Majestic Lakes	Water
Lincoln	Majestic Lakes	Wastewater
Lincoln	Auburn Lakes	Water
Lincoln	Auburn Lakes	Wastewater
Lincoln	Glen Meadows	Water
Lincoln	Glen Meadows	Wastewater
St. Louis	Castlereagh	Wastewater
Franklin	Calvey Brook	Water
Franklin	Calvey Brook	Wastewater
Franklin	Evergreen	Water
Franklin	Villa Ridge	Wastewater

Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239); Ex. 231, *DR 2034* (EFIS Item no. 263). As with Mr. Graves, please consider this map as a visual representation of this distribution of work:

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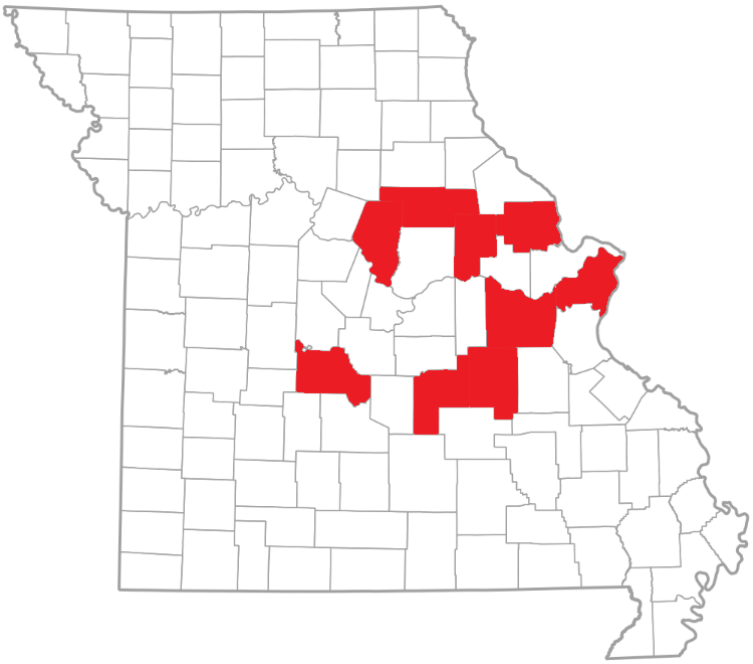

See Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239); Ex. 231, *DR 2034* (EFIS Item no. 263). There is not the same testimony in the record regarding what role Mr. Wright plays in the operation of Confluence's systems. Apparently, Mr. Cox was not familiar with the man listed as an operator on nearly a third of the Missouri systems. Tr. vol. 11 pg. 60 lns. 16 – 17 ("Q. Victor Wright, do you know Victor Wright? A. I do not."). Regardless, the distribution of the work shows that his job must be fairly similar to Mr. Graves as it would be physically impossible for him to be contributing to every system for which he is listed on a consistent, weekly basis. It is instead far more logical to assume that Mr. Wright is also moving around and visiting systems to lend support where needed, just like Mr. Graves.

At any rate, its seems highly unlikely that Mr. Wright is traveling from his home north of St. Louis to the Lake of the Ozarks in Camden County, quite possibly every day of the week, to assist in the division of labor for the Camden County Systems. This creates complications though, because if you remove Mr. Graves and Mr. Wright from being a consistent part of the group inspecting and overseeing the Camden County systems, that leaves just Mr. Crawford to shoulder the eighty-hour workload predominantly on his own. Ex. 231, *DR 2034* (EFIS Item no. 263). This becomes even more problematic when you factor in the other major problem.

Problem 2: Mr. Cox insists that one person alone cannot manage a system

In both his written surrebuttal testimony and his statements on the stand, Mr. Cox appeared quite insistent that a single individual would not be able to handle the day-to-day operation of a system. For example, his written testimony describes issues with "confined spaces" and the interplay with OSHA regulations:

> Specifically, OSHA regulations mandate that, when work is performed in a confined space, an attendant be stationed outside the confined space. In addition, an entry supervisor must also be present. Therefore, contrary to Dr. Marke's suggestion that a single operator can handle all functions in his assigned area, OSHA would deem such actions unlawful.

Ex. 6, *Surrebuttal Testimony of Josiah Cox*, pg. 37 lns. 12 – 14 (EFIS Item no. 177). This is not the only thing Mr. Cox claimed would require more than one operator:

> . . . [V]irtually all of the repair functions will require multiple operators. The replacement of a pump, blower, or aerator all will require multiple operators to handle. Moreover, simply inspecting a corrective action on

> a leaking pipe will typically take multiple operators – one to open a valve and another to inspect the repair on a leak.

Id. at lns. 21 – 24. On its face, those two statements probably seem pretty reasonable. The question is whether someone has the intuitive wisdom to ask this very basic question: if all this is true, then how is Confluence Rivers managing to deal with these problems **right now**?

James Crawford lives in Lebanon in Laclede County, Missouri. Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264). Mr. Graves and Mr. Wright, as have already been established live in Montgomery and Pike Counties respectively. *Id*. These are the only thee "operators" listed for the ten Camden County systems. Ex. 231, *DR 2034* (EFIS Item no. 263). Moreover, it would strongly appear that neither Mr. Graves nor Mr. Wright could be consistently spending that much time in Camden County considering the length and breadth of their other responsibilities. So how is this current system meeting the OSHA requirements and repair issues that Mr. Cox identifies? Does this mean that every time there is a repair issue in Camden County, Mr. Crawford has to wait for one of the other two to drive over from across the state? Is either Mr. Graves or Mr. Wright necessary to watch Mr. Crawford enter confined spaces during every inspection? Above all else, how do these requirements effect the division of the 80 hours of work that Mr. Cox testified was necessary to maintain these ten systems? During the hearing, Mr. Cox seemed to suggest that the inspections would require more than one person. *See* Tr. vol. 11 pg. 44 lns. 15 – 21; pg. 47 lns. 3 – 6. If this is true, then it is quickly becoming impossible for the three

men assigned to these ten systems to perform the level of work Mr. Cox claims is necessary in a forty-hour workweek. However, Mr. Cox has an answer ready for that.

The Phantom Technicians

In short, Confluence Rivers' answer to the problem of how its **current** operators are actually managing to perform the work assigned to them is to claim that there is a legion of additional technicians (mechanics, electricians, plumbers, *etc.*) who are assigned to the plants as well. *See* Tr. vol. 11 pg. 27 lns. 14 – 24. Therefore, it would appear that Mr. Cox's position is that someone like Mr. Crawford is able to complete the nearly 80 hours of inspections that Mr. Cox claims is necessary (with potentially *some* help from Mr. Graves and Mr. Wright) primarily by relying on some unknown number of additional technicians to do part of that work for him. There are two obvious problems with this idea.

Problem 1: it does not appear from the record that the addition of any technicians reduce the workload of the original operator

During the evidentiary hearing, counsel for OPC asked Mr. Cox a fairly simple question: how long does it take to check a wastewater system. Here is the response:

> Q. How long does it take to check a wastewater system?
>
> A. A couple of hours.
>
> Q. A couple of hours.
>
> A. Lift stations, I mean, you -- so both Hillcrest and Port Perry have lift stations, so Port Perry is half forced main, and half gravity, so each of the lift stations has to be visited as well.
>
> Q. Can you give me an estimate, it is two, three hours?

A. Sure, but that does not include when you have to do some of your routine maintenance, so any of the preventative maintenance schedules that go along with each mechanical components, that doesn't include that.

Q. I'll put two hours.

A. That's not what I said, sir, it's –

Q. Oh, I'm sorry.

A. -- two hours sometimes, four hours other times.

Q. Two to four hours?

A. It depends on the day. And that's not one person, that's multiple people, because your technicians go out there and do preventative maintenance schedules.

Tr. vol. 11 pg 46 ln. 7 – pg. 47 ln. 6. Based on this answer, it would appear that at least three things can be established: (1) it takes a minimum of two hours for an operator to visit each wastewater system; (2) that the operator is inspecting the plant at the system including, for example, the lift stations; and (3) that the operator is not going alone, but bringing a technician with him (at least some times). *Id*. However, if all of these statements are true, then it also means the operator (Mr. Crawford in Camden County, for example) would still be required to make the three visits to each wastewater system and would still be spending two hours at each. This means the issue regarding how Confluence is currently managing its systems remains relevant.

Counsel for OPC addressed its difficulty in understanding the means by which the current operators were meeting their workload during the hearing with Mr. Cox and got this response:

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I actually know this Central Rivers system very well, so I would say this is a great example of how what you're proposing doesn't work, because this system is forced main, so there are multiple lift stations across the entire system, and it requires -- since they're sand filters, it requires much more inspection work than a traditional plant.

Q. And that's where I'm getting confused by, how is [the Operator] managing to inspect all of these systems in a week?

A. He's not managing all of these -- he's a operator listed on there, there is technicians that are inspecting this on top of [the Operator].

Q. So you have noncertified people making the inspections?

A. We have technical people working looking at the mechanical systems, looking at the pump systems, looking at the lift stations, that would be a plumber, an electrician, or a mechanic.

Q. I understand. **Are the operators themselves inspecting the system?**

A. The operators themselves examine the plant.

Q. I just -- I want to make sure I'm clear, do the operators participate in the inspection?

A. It depends on which inspection you're talking about. For a lift station, or, for example, for this, because it's a forced main system, they have individual water pumps at every house, it doesn't take a certified operator to look at a lift station, it does take a certified mechanic and/or electrician to look at a lift station.

Q. Let's just come back to this. The inspection has to be done three times a week, is that by an operator?

A. By an operator.

Id. at pg. 48 ln. 19 – pg. 50 ln. 4 (emphasis added). Let us look back at the three points discussed earlier and see if they still hold true. The first point was that it takes a minimum of two hours for an operator to visit each wastewater system. Mr. Cox supported this by reference to having to visit the lift stations. *Id*. at pg 46 ln. 7 – pg. 47 ln. 6. Now, however, it no longer looks like the operator *is* inspecting the lift

stations. *Id*. at pg. 46 lns. 20 – 25 ("For a lift station, or, for example, for this, because it's a forced main system, they have individual water pumps at every house, it doesn't take a certified operator to look at a lift station, it does take a certified mechanic and/or electrician to look at a lift station."). That begs the question: what is the operator doing for those two hours at each inspection? Is the operator watching the mechanic or electrician inspect the lift station? Is that to comply with OSHA? While there has certainly been some more confusion added, there is no reason to doubt the two hours, for now.[15]

The next point was that the operator is inspecting the plant at the system including, for example, the lift stations. It should be obvious that this has now become confused. On the one hand, Mr. Cox says quite clearly: "[t]he operators themselves examine the plant." *Id*. at ln. 16. On the other hand, there is the statement that the operator isn't necessary to inspect the lift stations. *Id*. at pg. 46 lns. 20 – 25. Because not being necessary does not directly contradict the statement that the operators examine the plant, it is probably safest to assume that Mr. Cox meant the operators are still examining the plant during inspections.

The third point was that the operator is not going alone, but bringing a technician with them (at least some times). Well there is no doubt that Mr. Cox is testifying there is a technician involved in both cases, but the more pertinent question is now whether the technician is inspecting the system without the operator present.

[15] In reality, the Operator is not visiting the lift stations during each inspection, but rather, only when there is a problem. This is discussed later. *See infra* pgs. 119 – 120.

To state it another way, does the technician eliminate the need for the operator to make one of the three inspections themselves? The answer to that still appears to be no. At the end. Mr. Cox was asked directly: "[t]he inspection has to be done three times a week, is that by an operator?" *Id*. at pg. 50 ln. 1 – 3. Mr. Cox replied: "[b]y an operator." *Id*. at ln. 4. This brings us right back to where we began. Each system needing to be visited by an operator at least three times a week (for mechanical wastewater treatment facilitates) and each visit taking at least two hours. That is a problem for Confluence Rivers.

Again, the whole point of this has been to try and establish just how Confluence has been managing to **currently** serve the Camden County systems based on the amount of work Confluence claims is necessary. Right now, the testimony of Mr. Cox suggests that it takes 80 man-hours to serve just Camden County. *See* Tr. vol. 11 pg. 25 ln. 21 – pg. 26 ln. 17; pg. 41 lns. 15 – 24; Ex. 231, *DR 2034* (EFIS Item no. 263). Neither Mr. Graves nor Mr. Wright would appear able to participate consistently in that endeavor considering their respective workloads, which leaves Mr. Crawford handling the work, for the most part, on his own. *See* Tr. vol. 11 pg. 58 ln. 20 – pg. 59 ln. 23 (Where Mr. Cox testifies how Mr. Graves "goes to **some** systems" that he is assigned to depending on the week (emphasis added)) Even if you ignore the obvious problems and argue that Mr. Wright *is* contributing consistently to the Camden System, an equal division of labor would still leave both Mr. Crawford and Mr. Wright with a forty-hour workweek **without** considering, as Mr. Cox explained in surrebuttal, that this would leave effectively no time for travel or additional duties.

Ex. 6, *Surrebuttal Testimony of Josiah Cox*, pg. 34 lns. 11 – 17 (EFIS Item no. 177). The only other possible explanation put forward by Confluence Rivers to address these problems was to claim that there is a legion of phantom technicians who were doing a large portion of work at each system. As was just demonstrated, however, these technicians would not reduce the workload for the operators in terms of either the number or length of the inspections for each individual system. So even with the technicians supporting the operators, there is still no logical way that Confluence's **current** method of operations is meeting the required workload that the Company itself claims is necessary to serve the Camden County systems. In addition, there is a whole second problem with the phantom technicians to consider.

Problem 2: How can the third party operation and maintenance firms that contract with Confluence afford to hire the technicians?

As Mr. Cox explained during the hearing, Confluence Rivers hires the regional contract operators, and then those regional contract operators hire the operators and technicians who work for them. Tr. vol. 11 pg. 39 ln. 21 – pg. 40 ln. 2. As such, Confluence Rivers is not hiring the technicians that Confluence is referring to; those are hired by the third-party operations and maintenance firms. *Id*. Moreover, Mr. Cox further testified that these technicians "[o]ftentimes . . . make more money than the operators themselves." Tr. vold 11 pg. 27 lns. 22 – 24. This raises some common sense questions.

As was already shown, the major and minor firms that Confluence Rivers currently contracts with are both losing considerable amounts of money if one

compares just the cost to those firms to hire operators versus the revenues generated by the contracts. *See supra* pgs. 80 - 85. Moreover, that comparison did not take into consideration any overhead costs for the contracting firms, any executive pay for the contracting firms, any recovery of taxes for the contracting firms, any profit to be earned by the contracting firms or any other factor that would need to be considered. Consequently, those two firms must clearly find a way to use the existing operators they have hired to do work for Confluence Rivers to do even more work for some other water and wastewater systems or else the companies will most certainly be losing money. However, this is going to be a problem given that we have also now seen that the existing operators cannot really be covering the amount of work that Confluence is claiming is necessary as is, let alone do other work for other water and wastewater systems. Now Confluence is claiming that in addition to the cost to hire all the operators being supplied, these third party operation and maintenance firms are going to incur even more costs to hire an unknown number of people to serve as technicians.[16] This should really be straining the limits of credibility.

[16] Should the Company for any reason attempt to claim that the costs associated with hiring the unknown number of "technicians" is not already included in the contract price, then the Commission needs to recognize the impact that has on the overall argument. The OPC's recommendation was based on comparing the cost of hiring in-house operators against the cost Confluence was presently incurring by employing third-party contract operators. *See* Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 9 ln. 22 – pg. 10 ln. 2 (EFIS Item no. 239). If the cost of employing any technicians over and above the 24 operators already identified is not already included in the contract price for the third-party operators, then it is irrelevant for the purposes of the OPC's comparison. Stated another way, they would be costs that can be assumed to be incurred regardless of whether Confluence employs in-house operators or contact operators. The only way that the unknown number of technicians could be relevant to this issue is if they are an additional asset provided

As was said at the beginning of this section, this issue requires one to employ a degree of common sense. Ask the basic question: how is it possible for these contracting firms to be hiring the number of operators in the record, at the wages that Confluence claims, to do the work Confluence claims, with the added cost of the technicians that Confluence claims, at the contract price that is in the record, and still be making any sort of profit? The answer is that it simply is not possible, which should lead one to recognize that something is wrong.

The current operation of the Camden County systems makes no sense based on the Company's claims

To briefly summarize, here are the main points so far developed. According to Mr. Cox, a water system needs to be inspected five times a week. Tr. vol. 11 pg. 25 ln. 21 – pg. 26 ln. 17; pg. 41 lns. 15 – 24. According to Mr. Cox, each inspection will take two hours *minimum*. Tr. vol. 11 pg. 43 ln. 18 – pg. 44 ln. 12. According to Mr. Cox, each wastewater system needs to be inspected three times a week (if mechanical). Tr. vol. 11 pg. 25 ln. 24 – pg. 26 ln. 5. According to Mr. Cox, this inspection will take between two and four hours. Tr. vol. 11 pg. 46 ln. 9 – pg. 47 ln. 2. There are five water systems in Camden County and five wastewater systems in Camden County. Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239). Therefore, it will take a *minimum* of 80 hours a week to inspect all the

by the third-party operation and maintenance firms that were included in the contract price but not accounted for by the OPC. If that is the case, though, it brings the issue back to the question of how the third-party operation and maintenance firms can possibly afford to employ **both** the operators listed and the unknown number of technicians at the contract price in the record and still remain profitable.

systems, according to Mr. Cox. There are three operators assigned to these ten systems (James Crawford, Brady Graves, and Victor Wright). Ex. 231, *DR 2034* (EFIS Item no. 263). Of those, two (Brady Graves and Victor Wright) are working all across the state and thus cannot be expected to making consistent, significant contributions towards the man-hours needed to inspect all the Camden County systems on a weekly basis. *Id.*; Tr. vol. 11 pg. 58 ln. 20 – pg. 59 ln. 23. This leaves Mr. Crawford on his own to accomplish the bulk of the 80 or more hours of inspection Mr. Cox claims is needed every week. There may be some technicians assisting Mr. Crawford, but he still needs to make the inspections each week and he still needs to inspect the plant, so those technicians do not diminish the 80 hour or more workload. Tr. vol. 11 pg. 48 ln. 19 – pg. 50 ln. 4. If one were to believe all of these things are true, then one would be stuck with the singular problem that it does not appear possible for Confluence Rivers to be meeting what it claims is required under its **current** standards of operation. This simply does not make sense.

How to make Confluence's current standard of operations make perfect sense

The answer to all the problems that the OPC has pointed out are relatively simple. However, they require one to acknowledge a simple truth: Mr. Cox was less than honest when he took the stand. Let us take a moment to walk through the Camden County systems again, but this time look at what the Company told the OPC in data requests.

How many times does each system need to be inspected?

Each wastewater system is inspected either three times a week or once a week, depending on the type of system, per the scope of work portion of the respective contract. Ex. 233, *DR 0040 (Public and Confidential)* (EFIS Item no. 265); Ex. 238, *DR 0040.1 (Public and Confidential)* (EFIs Item no. 271). This is not controversial. Tr. vol. 11 pg. 25 ln. 24 – pg. 26 ln. 5. Each water system, however, is inspected only once a week, also as included in the scope of work portion of the respective contract, and not the five times that Mr. Cox claimed. This is easily proven because the OPC sent Confluence a data request that stated:

> Referencing Company response to Staff DR 0241, please explain how the Company verifies site visits, including the number and identity of the personnel who attend each site, and provide a sample of the verification for the following systems for the past month:
>
> - Port Perry Water and Wastewater
> - Freeman Hills
> - Terre Du Lac Water and Wastewater
> - The Missing Well
> - Cimarron Bay Water and Wastewater

Ex. 234, DR 2038 (EFIS Item no. 266). It is important to note that of these five, one, Cimarron Bay, is in Camden County. Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239). The Company responded to the OPC's request with this statement:

> The Company verifies site visits in multiple ways. There are records of Project Manager (PM) and Construction Manager (CM) workorders that happen at the facilities, third-party internal bench sheets that are accessible by staff from the Company, and internal inspections from staff from the Company that come from various internal departments.

> Additionally, the Company's Operations Management software, Utility Cloud, contains a geofencing feature which verifies each site visit. Please refer to the attached documents regarding site visit verification.

Ex. 234, DR 2038 (EFIS Item no. 266). The OPC introduced this response, along with the attached excel spreadsheet for Cimarron Bay, as an exhibit during the hearing. The attached spreadsheet can be seen below.

Facility: Cimmaron Bay

June	FF D.O mg	EFF ph:	lor Residi	Temp/C:	FF Flow	gater Read	mmonia te	mbient ter	ather Pre	Chlor BEFOR E Contact	Chlor AFTER Contact Chambe	Time:	Initals:	Comments:
1					0			69	0			730	JC	No discharge
2														
3														
4														
5					0			90	0			2:00	JM	No Discharge
6														
7					0			67	0			715	JC	No Discharge
8														
9					0			62	0			715	JC	No Discharge
10														
11														
12					0			60	0			8:00	JC	No Discharge
13														
14					0			67	0			945	JC	No discharge
15														
16					0			78	0			1015	JC	No Discharge
17														
18														
19					0			72	0			915	JC	No Discharge
20														
21					0			73	0			815	JC	No Discharge
22														
23					0			73	0			815	JC	No Discharge
24														
25														
26					0			73	0			830	JC	No Discharge
27														
28					0			77	0			830	JC	No Discharge
29														
30					0			92	0			10:30	JC	No Discharge
31														

Facility: Cimmaron Bay

June	Meter Re	Well Leve	Flow	Ambient t	Weather	Time:	Initials:	Comments:
1	3.4E+07	50	14600	73	0		JC	Checked well
2			2400					
3			2400					
4			2400					
5			2400					
6			2400					
7			2400					
8	3.4E+07	55	2400	69	0		JC	Checked well
9			25866					
10			25866					
11			25866					
12			25866					
13			25867					
14			25867					
15			25867					
16			25867					
17			25867					
18			25867					
19			25867					
20	3.4E+07	36	25867	71	0	800	JC	Checked well
21			18775					
22			18775					
23			18775					
24			18775					
25			18775					
26			18775					
27			18775					
28	3.4E+07	50	18775	77	0	815	JC	Checked well
29			18320					
30			18320					
31								

Id. What this spreadsheet shows is the wastewater facility was inspected three times a week, just as the contract required. *Id.* The spreadsheet also shows quite clearly that the water system is being inspected only once a week, just as the contract required. *Id.* Incidentally, the same can also be seen, for the Missing Well. *Id.*

During the evidentiary hearing, the OPC confronted Mr. Cox with this information. His response was as follows:

> Q. And it shows on the right-hand side for the water system, checked about once a week, yeah, slightly less?
>
> A. It's missing a water testing that has happened every day, **this is just the inspection, which is different than the water testing.**

P

Q. So what you're telling me is that when the OPC asked you how you verified site visits, you only verified certain site visits?

A. We verified the site visits going on with operations and maintenance, not routine testing. It's a technical question, we're giving you a technical answer.

Tr. vol. 11 pg. 66 lns. 4 – 16 (emphasis added). Please consider that statement in conjunction with these two other statements provided by Mr. Cox during the same hearing:

Q. All right. How many times does an operator need to **inspect** a water system?

A. **Five times a week**.

Q. Five times a week. How many times do they need to inspect a wastewater system?

A. We require three days, three times a week for a mechanical plant. One, sometimes three, on our MBBR plants. A MBBR is a Moving Bed Bio Reactor, so it's a secondary plant that post-processes waste from lagoons or sand filters.

Q. Can you see what I've written?

A. I can.

Q. All right. So we've got -- do I have this right, **water is five times a week**, wastewater is three times a week?

A. That's correct; **for basic inspections**, that doesn't take care of, you know, repairs, work orders, all of that good stuff.

Id. at pg. 25 ln. 21 – pg. 26 ln. 17 (emphasis added).

Now, help me out here, how often does Mike Hornbuckle have to **inspect** the system? You said it was five times; correct?

A. **The water site, five times**.

Q. Five times.

A. He has to test the water five times, once a day.

Q. Five times a week?

A. Five times a week. **So he inspects and tests, both**.

Id. at pg. 41 lns. 15 – 24. (emphasis added). What should be evident here is that Mr. Cox had already misstated the truth repeatedly *before* being shown the evidence that demonstrated that untruth. He initially claimed that water systems had to be both tested *and* inspected five times a week. However, when confronted with the evidence showing that this is not what was actually occurring, he attempted to pivot his answer to claim that he only meant they had to be tested five times a week and that this was different from the inspections. Hopefully the Commission can recognize this behavior as the problem that it is. However, this has sadly introduced a new issue has now been interjected into the case: water testing.

How often does each water system need to be tested?

The standards for monitoring drinking water systems in the State of Missouri are found in 10 CSR 60-4. That is Title 10 (Department of Natural Resources), Division 60 (Safe Drinking Water Commission), Chapter 4 (Contaminant Levels and Monitoring). This chapter contains numerous monitoring requirements for various contaminants that might affect the safety of drinking water. However, for the majority of these contaminants, the number of samples is quite small and is measured on a monthly or quarterly basis, not daily. To illustrate, 10 CSR 60-4.022 provides the standard to measure for the presence of coliform bacteria, of which Escherichia coli (E. Coli) would be the most well-known. 10 CSR 60-4.022 (purpose section). The

minimum monitoring frequency for E. Coli is based on several different factors including the population being served by the system. *See* 10 CSR 60-4.022(3)(A)2. For community water systems serving a thousand or fewer people using only ground water, for example, the monitoring frequency is one sample **per month**, "except that systems practicing iron removal or lime softening must collect at least five (5) routine samples **per month**." 10 CSR 60-4.022(5)(B) (emphasis added). Even for public water systems that serve more than a thousand people, the minimum number of samples required in a single **month** does not rise above five unless the system is serving more than 4,900 people. 10 CSR 60-4.022(7)(B). Please recall that Confluence, *in its totality*, only serves 4,400 water connections. Ex. 4, *Direct Testimony of Josiah Cox*, Pg. 4 lns. 14 – 15 (EFIS Item no. 175). Moreover, nothing in any of these standards mandate daily testing.

Of course, E. Coli isn't the only thing that water systems have to test for. However many of the other monitoring requirements are equally less burdensome than Mr. Cox's testimony suggested. 10 CSR 60-4.030 sets the monitoring requirement for a large number of inorganic chemicals components. For example, most systems require asbestos contamination to be monitored over a multi-year period, unless there has been a compliance violation, in which case monitoring has to be conducted quarterly. 10 CSR 60-4.030(2)(A). In a similar vein, antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, and thallium are all subject to a yearly sampling requirement. 10 CSR 60-4.030(2)(B). 10 CSR 60-4.040, meanwhile, sets a quarterly sampling requirement for an even

larger number of synthetic organic chemicals for all community and nontransient, noncommunity water systems. 10 CSR 60-4.040(2)(A). Again, though, none of these sampling requirements demand **daily** testing as Mr. Cox claimed. However, there is one provision that does potentially impose that standard, and that s 10 CSR-4.080.

10 CSR 60-4.080 sets the criteria for operation and operational monitoring. The rule requires that "[p]ublic water systems utilizing any treatment process must perform sufficient analyses to maintain control of the treatment process." 10 CSR 60-4.080(1). The rule further sets forth the applicable analyses and testing frequencies in a table. 10 CSR 60-4.080(3). There are some items on this table, such as disinfection residual, that can require testing five days a week (depending on the system). *Id*. This would be consistent with what Mr. Cox claimed on the stand. However, there is a catch. The Department of Natural Resource's rule specifically allows for continuous monitoring of the items required by this rule using "automatic instrumentation." 10 CSR 60-4.080(2),(3). In other words, the rule allows for autonomous remote monitoring to meet these requirements. *Id*. That is how Confluence is actually meeting its testing requirements for the majority of its water systems.

In his direct testimony, Confluence Witness Mr. Todd Thomas explained how the company had deployed remote monitoring for the majority of its systems. Ex. 20, *Direct Testimony of Todd Thomas*, pg. 14 lns. 1 - 3 (EFIS Item no. 191) ("As of November 21, 2022, Confluence Rivers has installed remote monitoring on 92% of its facilities. The remote terminals for the remaining 8% have been received and shall

be installed in the very near future."). Mr. Thomas described the capabilities of this remote monitoring as follows:

> The remote monitoring sensors on each system are set to provide ongoing 10 utility system operational performance monitoring and early warnings to Confluence Rivers and its O&M contractors in the event there are operational issues. In most cases, those warnings are broadcast before the issue adversely affects customer service. Examples of the types of problems the remote monitoring system is designed to detect include power outages at water wells and sewage lift stations, **chlorine residual readings on water distribution systems**, low pressure issues on water distribution systems, high level alarms on sewage system lift stations, and low levels in water storage tanks.

Id. at pg. 13 lns. 9 – 16 (emphasis added). The OPC highlighted the chlorine residual readings section because this is the disinfection residual identified in 10 CSR 60-4.080. *See* 10 CSR 60-4.055(3) Disinfection Requirements ("For any water system adding a disinfectant, only free available chlorine or chloramines will be accepted as the disinfectant entering the distribution system."). Therefore, while it is true that Confluence's water systems may be subject to testing requirements five days a week, these requirements are not being met by sending an individual human being to every system every day. They are being met by the remote monitoring Confluence has deployed to almost all of its systems. Ex. 20, *Direct Testimony of Todd Thomas*, pg. 14 lns. 1 - 3 (EFIS Item no. 191); 10 CSR 60-4.080(2),(3).

The fact that the Commission needs to consider is simply this. Mr. Cox was asked how many times a water system needed to be **inspected**. Tr. vol. 10 pg. 25 lns. 21 – 23. He told the Commission it was five times a week. *Id*. When the OPC showed

Mr. Cox that its systems were not **currently** being inspected five times a week, but rather once per week as the contractual scope of work required, he pivoted to saying that he meant they had to be tested five times a week. *Id*. at pg. 66 lns. 4 – 16. However, the only testing that would need to be done on that frequent of a basis, per DNR regulations, is being handled with remote monitoring. Ex. 20, *Direct Testimony of Todd Thomas*, pg. 14 lns. 1 - 3 (EFIS Item no. 191); 10 CSR 60-4.080(2),(3). This brings us back to the central point, which is that Confluence's water systems are being inspected only once per week, just as the contractual scope of work requires. Mr. Cox's suggestions that it was more frequent in light of the point-blank question of how often the systems needed to be inspected, should cause the Commission to question the credibility of this witness' testimony.

How long does each site visit take?

As has been previously discussed, it is manifestly unreasonable for a person to expect that either Mr. Graves or Mr. Wright are **consistently** appearing in Camden County to perform inspections on the systems there given their geographic distance and breadth of work. This leaves James Crawford to handle the necessary inspections of the systems himself. Moreover, this is supported by the fact that the Cimarron Bay site visit information shows the operator for all but one visit has the initials JC (*i.e.* James Crawford). *Ex. 234, DR 2038 (EFIS Item no. 266).* Now, if one takes just the number of visits for Cimarron Bay for a week (say July 1 through July 7) and apply that to all the other systems, one would arrive at 20 site visits (one per water system, three per wastewater). Even this, however, does not fully alleviate the problem. If the

Commission still accepts Mr. Cox's claims that it takes two hours *minimum* to inspect either a water or wastewater system, Mr. Crawford is still facing down at least a forty-hour workweek just to perform the necessary inspections. That is not a feat that Mr. Crawford can accomplish according to Mr. Cox.

Mr. Cox explained the problem that the Company's current operations method appears to be facing quite well in his surrebuttal testimony:

> Moreover, recognizing that Confluence Rivers inspects all mechanical facilities three times a week, operator #3 would have to make approximately 39 system inspections in a five-day week. If each inspection took just one hour, operator #3 would have 39 hours / week devoted to just inspections. This would leave one hour in the week for his travel time across the 2,150 square mile area of responsibility. Additionally, this leaves zero time for paperwork and documentation. Finally, this leaves zero time for additional duties. For instance, if operator #3 identifies a problem at a system, he would have no time to take corrective actions as such actions would prevent the operator from getting to his next system of responsibility and conducting an inspection.

Ex. 6, *Surrebuttal Testimony of Josiah Cox*, pg. 34 lns. 8 – 11 (EFIS Item no. 177). Given the problem that Mr. Cox has himself identified, it appears quite obvious that Mr. Crawford cannot possibly be spending two hours at each inspection (given his twenty inspections a week), as this would leave Mr. Crawford no time to perform other necessary tasks. Moreover, we have already discussed how neither the addition of any technicians nor the attachment of Mr. Graves and Mr. Wright to these systems are going to significantly alleviate this problem. However, there is a quite obvious solution.

If you simply assume, as Mr. Cox did in his testimony, that each system inspection takes just one hour or less, that means Mr. Crawford now only has 20 hours or less of time to devote to inspecting the Camden systems. Now, Mr. Crawford has plenty of time do his inspections, drive between the systems, fill out needed paperwork, and repair systems as needed. This is by far the most sensible way to view the **existing** Confluence operations. In support of that position, the OPC points to yet another example of how Mr. Cox attempted to distort the record in this case with highly misleading if not outright false statements.

During the evidentiary hearing, the OPC asked Mr. Cox a very simple question: how long does it take to check a waste water system. Here is the exchange that occurred:

> Q. How long does it take to check a waste water system?
>
> A. A couple of hours.
>
> Q. A couple of hours.
>
> A. Lift stations, I mean, you -- so both Hillcrest and Port Perry have lift stations, so Port Perry is half forced main, and half gravity, **so each of the lift stations has to be visited as well**.

Tr. vol. 10 pg. 46 lns. 7 – 14 (emphasis added). Please consider that in conjunction with the following statement from the direct testimony of Confluence witness Mr. Todd Thomas:

> As I mentioned in my previous answer, the remote monitoring system is programmed to monitor high level alarms **at sewage lift stations**. Absent remote monitoring, prudent operation would require contractors to check levels in sewage lift stations daily. So, absent the remote

> monitoring system, the O&M contractor would have to dispatch an employee each day to check lift station levels. These daily visits are costly and would lead to higher rates. With the remote monitoring system, however, **daily visits are not needed unless the system detects a problem**.

Ex. 20, *Direct Testimony of Todd Thomas*, pg. 14 lns. 1 - 3 (EFIS Item no. 191) (emphasis added). As is evident from these two citations, if Mr. Cox was attempting to insinuate that inspecting a wastewater facility would take several hours due to the need to inspect all the sewer lift stations, then he was being disingenuous. Because Confluence has already deployed remote monitoring at 92% of its systems, there is no reason its third-party operators would need to check the sewer lift stations "unless the system detects a problem." *Id*. at lns. 1 – 3, ln. 14. This only furthers justification for conclusion that Mr. Cox's two-hour minimum figures cited earlier in this brief are simply wrong.

But what of OSHA?

Mr. Cox attached an OSHA fact sheet entitled Confirmed Spaces in Construction: Sewer Systems to his surrebuttal testimony. Ex. 6, *Surrebuttal Testimony of Josiah Cox*, Schedule JMC-S-3 (EFIS Item no. 177). This fact sheet states that "[s]ewer systems are extensive and include many different components that are considered confined spaces, including pipelines, manholes, wet wells, dry well vaults, and lift/pump stations." *Id*. at pg. 2. The fact sheet went on to say '[s]ewer systems also consist of wastewater treatment plants, where confined spaces include digestion and sedimentation tanks, floating covers over tanks, sodium hypochlorite tanks, and wastewater holding tanks, among others." *Id*.

To better understand this issue, the OPC sent Confluence Rivers a data request (OPC DR 2042) that asked the Company to "[p]lease identify the Confluence wastewater systems that have the following: i. Wet Wells, ii. Dry well vaults, iii. Lift/pump stations, iv. Digestion and sedimentation tanks, v. floating covers over tanks, vi. sodium hypochlorite tanks, and vii. wastewater holding tanks." Ex. 235, *DR 2042* (EFIS Item no. 267). Please note that these are the same items listed in the OSHA fact sheet. The OPC then sent a further data request (OPC DR 2043) that referenced the prior data request and asked Confluence Rivers to "please identify whether each of the sub-bullet points listed need to be entered into on a weekly or tri-weekly inspection basis and why physical entry would automatically need to be made." Ex. 236, *DR 2043* (EFIS Item no. 269). The Company's response was that "[n]one of the sub-bullet points listed in DR 2042 need to be entered into on a weekly or tri-weekly basis" and that "[e]ntry to the listed sub-bullet points is completed on an as-needed basis." *Id*.

Based on the Company's answer to the OPC's data request, entry into OSHA defined enclosed spaces does not happen during regular inspections. It is instead only done on an "as needed basis." *Id*. Incidentally, this is further supported by the testimony quoted from Mr. Thomas' direct testimony above that identified sewer lift stations, one of the items identified on the OSHA list of enclosed spaces, did not need to be inspected "unless the system detects a problem." Ex. 20, Direct Testimony of Todd Thomas, pg. 14 ln. 3 (EFIS Item no. 191). Once again, this makes perfect sense when considered in light of how Confluence is already operating. It means that Mr.

Crawford is free to do inspections on his own, and then, if and only if it becomes necessary, Mr. Crawford can call in someone (perhaps Mr. Graves or Mr. Wright) to assist if he is required to enter an enclosed space.

But what of repairs?

The other big issue that Mr. Cox raised as to why a single operator could not manage a group of systems concerned repairs. Ex. 6, *Surrebuttal Testimony of Josiah Cox*, pg. 37 lns. 21 – 24 (EFIs Item no. 177). So how is Mr. Crawford currently handling a situation if something breaks down in one of the Camden systems? The first answer is that he could be waiting for either Mr. Graves or Mr. Wright to arrive from across the state. The second is that he could be utilizing the requirement found in the third-party operator contract which requires the contactor to ** ——————

——————

—————— ** Ex. 233, *DR 0040 (Public and Confidential)* (EFIS Item no. 265); Ex. 238, *DR 0040.1 (Public and Confidential)* (EFIs Item no. 271). The important point is that both of these options would allow one contractor, in this case Mr. Crawford, to oversee these systems for the majority of the time while on his own, which is in essence exactly what the OPC proposed. Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 10 ln. 21 – pg. 11 ln. 1 (EFIS Item no. 239).

Conclusion regarding the Camden County Systems

The primary thrust of the Company's arguments for why Dr. Marke's recommendation was unfeasible all hinged on the idea that one person could not oversee a single grouping of systems such as those found in Camden and Benton

counties. Ex. 6, *Surrebuttal Testimony of Josiah Cox*, pg. 34 lns. 8 – 11 (EFIS Item no. 177). The reality of the situation, however, is that, for ten out of those thirteen systems grouped together by Dr. Marke, there already is effectively just one operator who can be expected to be consistently serving the systems. That man is James Crawford. Ex. 231, *DR 2034* (EFIS Item no. 263). The other two men who are attached to those systems, Brady Graves and Victor Wright, are really more like supervisors. *See Id*.; Tr. vol. 11 pg. 58 ln. 20 – pg. 59 ln. 23. Importantly, this means that all the issues that Confluence Rivers argued as to why one person could not handle those systems as a group are also problems Confluence has to address when explaining its **current** method of operation.

If one but observes the current assignment of operators to the Camden County system, and the respective workload each of those operators must have, then one can begin to see how Confluence's system can be managed with far fewer people than the Company claims. The next step of the analysis will be to determine just how few people by expanding the analysis to encompass the whole of Confluence's systems.

Step 3: Adapting Dr. Marke's recommendation to Confluence's current method and standards of Operation

Having thoroughly discussed the Camden County systems in step 2, it is not necessary to reiterate much to show the differences and similarities between Dr. Marke's recommendation and the current state of Confluence's assignment of operators. The only difference between what Dr. Marke proposed and the actual operation of Confluence's systems currently is (1) the inclusion of the Benton County

systems with the Camden county systems and (2) the omission of the two supervisor operators (Mr. Graves and Mr. Wright). To rectify this, the OPC will endeavor to show how Dr. Marke's recommendation can be adapted to reflect the current state of Confluence Rivers' operations by developing a table that outlines the current state of Confluence's system broken down broadly along the lines of Dr. Marke's recommendation. For example, the OPC will start with Dr. Marke's proposed division/operator #3 from his testimony, remove the Benton County systems, and then add the three operators currently assigned to these systems but distinguish their respective roles. Making these changes will result in a table that looks like this:

Complete Distribution of Operators			
Division	System	Main Operator	Supervising Operators
3	Cedar Glen (Water)	James Crawford	Brady Graves Victor Wright
	Cedar Glen (Wastewater)		
	Chelsea Rose (Water)		
	Chelsea Rose (Wastewater)		
	Cimarron Bay (Water)		
	Cimarron Bay (Wastewater)		
	Eagle Woods/Rte. KK (Water)		
	Eagle Woods/Rte. KK (Wastewater)		
	Cedar Green (Water)		
	Cedar Green (Wastewater)		

As it currently stands, this table is no different from Confluence's current assignment of operators save for the designation of some operators as "supervisors." In other words, there have been no additions or subtractions to the total number of operators, yet. Right now, for these ten systems, there are three operators. From here, the

analysis will consider each of the remaining division/operators proposed by Dr. Marke in turn.

Division 4: Polk, Greene, and Taney Counties

According to Dr. Marke's recommendation, Division/operator #4 consisted of the following systems in the following counties:

County	Water	Wastewater
Polk		Prairie Heights
Greene	Willows	Willows
Taney	Branson Cedar Resort	Branson Cedar Resort

Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239). Cross-referencing this with exhibit 231, the current Confluence operators assigned to each of these systems is as follows:

County	Water	Operator	Wastewater	Operator
Polk			Prairie Heights	James Crawford, Brady Graves, Josh Pulliam, Robert Allard
Greene	Willows	Brady Graves, James Crawford, Joshua Pulliam	Willows	James Crawford, Brady Graves, Josh Pulliam
Taney	Branson Cedar Resort	James Crawford, Brady Graves, Josh Pulliam	Branson Cedar Resort	James Crawford, Brady Graves, Josh Pulliam

Id.; Ex. 231, *DR 2034* (EFIS Item no. 263). The first thing that one should notice about this arrangement is the return of some familiar names: Mr. Crawford and Mr. Graves. Given the amount of work that Mr. Crawford is implied to be dealing with in

division 3, it seems reasonable to move him into the "supervisor" position with regard to division 4. Naturally, it appears that Mr. Graves would also fall into that category as well. *See* Tr. vol. 11 pg. 58 ln. 20 – pg. 59 ln. 23. As such, it becomes possible to clean up the table yet further:

County	Water	Operator	Wastewater	Operator	Supervisors over both water and wastewater
Polk		Joshua Pulliam	Prairie Heights	Josh Pulliam, Robert Allard	James Crawford, Brady Graves
Greene	Willows		Willows	Josh Pulliam	
Taney	Branson Cedar Resort		Branson Cedar Resort		

Whether or not one agrees with the designation of Mr. Crawford or Mr. Graves as supervisors is ultimately irrelevant as they are already included in the number of operators. This then leaves only two new people to consider: Mr. Pulliam and Mr. Allard.

Josh Pulliam

There is one issue with Josh Pulliam that needs to be addressed. Mr. Pulliam is assigned to three wastewater treatment facilities according to Confluence. Because Mr. Pulliam is listed under "other employees" in the table in exhibit 231 he is being qualified as an "operator" according to Confluence. Ex. 242, *DR 2035* (EFIS Item no. 275). However, examination of the Department of Natural Resources ("DNR") database information regarding Mr. Pulliam shows that he does not currently possess

any level of wastewater certification. Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264). This is a problem.

DNR regulations 10 CSR 20-9.020(2)(C) states that "All operators of wastewater treatment systems included in subsection (2)(A) of this rule shall possess, **as a minimum**, a level D certificate of competency issued by the department" (emphasis added). Incidentally, the same rule defines an "operator" as "[a]ny individual who operates or determines the method of operating a wastewater treatment system, either directly or by order." 10 CSR 20-9.020. This is relevant because Confluence Rivers copied and pasted this definition into its response to OPC data request 2035. Ex. 242, *DR 2035* (EFIS Item no. 275). So Confluence is very clearly indicating that Mr. Pulliam is an operator **as defined by the DNR regulation**. This then creates one of three possibilities: (1) the DNR's own database of water and wastewater operators is wrong,[17] (2) Confluence is in violation of the DNR regulations, or (3) Confluence Rivers was not being truthful about Mr. Pulliam's assignments.

This issue is one that the OPC believes the Commission should consider important enough to demand answers. However, it is not immediately necessary to the question regarding the number of operators Confluence needs for its system. Therefore, the OPC will move on.

[17] This seems the least likely given the testimony elicited during the hearing. Tr. vol. 11 pg. 103 lns. 1 7 – 22 (Q. Are you familiar with the Department of Natural Resources operator search database? A. I am. Q. Would you expect an operator who has a certification to appear in that database? A. Yes.).

Robert Allard

Robert Allard appears only once in exhibit 231, and that is as assigned to Prairie Heights. In other words, Mr. Allard appears to be only serving one single wastewater system. The OPC finds this odd given the following statement by Mr. Cox in surrebuttal:

> At the most basic level, it is impossible to staff internal operations simply by drawing a box. The illogical nature of Dr. Marke's method is apparent from his own chart on page 11. Specifically, as a result of Dr. Marke's elementary analysis, he would hire one operator (operator #6) to operate two systems in Boone and Audrain County. Meanwhile, Dr. Marke concludes that operator #3 should be responsible for operating 13 water and wastewater systems across roughly 2,150 square miles. **There is an obvious disparity in the delegation of responsibilities here**.

Ex. 6, *Surrebuttal Testimony of Josiah Cox*, pg. 34 lns. 1 – 7 (EFIS Item no. 177). In this regard, the OPC actually agrees with Mr. Cox. There is an obvious disparity in the delegation of responsibilities when it comes to Mr. Allard.

Using the same figures discussed in step 2 regarding the number of visits each system requires, the five systems in this division would necessitate 11 visits maximum (one for each water and three for each wastewater per the scope of work). Ex. 238, *DR 0040.1 (Public and Confidential)* (EFIs Item no. 271). Even assuming a two-hour minimum site visit. That would only require 22 hours in the week. Given that what Mr. Crawford is doing in division 3 is already far more extensive than what would be asked of Mr. Pulliam, it seems exceedingly difficult to justify having Mr. Allard attached to just one system. This is true even if one factors in the roughly one

hour drive between Branson and Bolivar Missouri (which would reflect the trip from Branson Cedars to Prairie Heights). For all these reasons, the OPC will proceed by removing Mr. Allard from this one system to rectify the "obvious disparity in the delegation of responsibilities" identified by Mr. Cox. Ex. 6, *Surrebuttal Testimony of Josiah Cox*, pg. 34 lns. 1 – 7 (EFIS Item no. 177).

Conclusion of Division 4

The OPC can now update the table it began at the conclusion of division 3. A new column will be added to reflect the proposed removals by the OPC.

Complete Distribution of Operators				
Division	System	Direct Operator	Supervising Operators	Removed by OPC
3	Cedar Glen (Water)	James Crawford	Brady Graves Victor Wright	
	Cedar Glen (Wastewater)			
	Chelsea Rose (Water)			
	Chelsea Rose (Wastewater)			
	Cimarron Bay (Water)			
	Cimarron Bay (Wastewater)			
	Eagle Woods/Rte. KK (Water)			
	Eagle Woods/Rte. KK (Wastewater)			
	Cedar Green (Water)			
	Cedar Green (Wastewater)			

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4	Prairie Heights (Wastewater)	Josh Pulliam	Brady Graves James Crawford	Robert Allard
	Willows (Water)			
	Willows (Wastewater)			
	Branson Cedar Resort (Water)			
	Branson Cedar Resort (Wastewater)			

With only one individual removed from only one system under Confluence's current assignment of operators, this results in four operators across two divisions.

Divisions 5 and 6: Jeff Morris and Mathew Eaton

The OPC will take up Divisions/operators #5 and #6 of Dr. Marke's recommendation together. They consisted of the following systems in the following counties:

Division	County	Water	Wastewater
5	Cole	Eugene	
	Phelps	Gladlo	Gladlo
	Crawford	Indian Hills	
6	Boone	Smithview	
	Audrain		Freeman Hills

Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239). Cross-referencing this with exhibit 231, the current Confluence operators assigned to each of these systems is as follows:

Division	County	Water	Operator	Wastewater	Operator
5	Cole	Eugene	Brady Graves, Jeff Morris, James Crawfrod		
	Phelps	Gladlo	Brady Graves, Jeff Morris, Mathew Eaton, Victor Wright	Gladlo	Brady Graves, Jeff Morris, Mathew Eaton, Victor Wright
	Crawford	Indian Hills	Brady Graves, Jeff Morris, Mathew Eaton, Victor Wright		
6	Boone	Smithview	Brady Graves, Jeff Morris, Victor Wright		
	Audrain			Freeman Hills	Brady Graves, Jeff Morris, Victor Wright

Id. Ex. 231, *DR 2034* (EFIS Item no. 263). As with division 4, the repeat names will be pulled out into a supervisor column. This gives the following:

Division	County	Water	Operator	Wastewater	Operator	Supervisors over both water and wastewater
5	Cole	Eugene	Jeff Morris			Brady Graves,

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						James Crawford
	Phelps	Gladlo	Jeff Morris, Mathew Eaton	Gladlo	Jeff Morris, Mathew Eaton	Brady Graves, Victor Wright
	Crawford	Indian Hills	Jeff Morris, Mathew Eaton			
6	Boone	Smithview	Jeff Morris			
	Audrain			Freeman Hills	Jeff Morris	

Pulling aside the repeat names shows only two new names for the list: Jeff Morris and Mathew Eaton. The OPC will not be proposing any new removals. However, the OPC does wish to point outs its concern regarding the fact that Jeff Morris is assigned as an operator to two wastewater systems. Review of the DNR database information compiled by the OPC, however, shows that he does not currently possess any level of wastewater certification. Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264). As with Mr. Pulliam in Division 4, this would appear to be a problem.

As for Mr. Eaton, the OPC has never been able to find any form of certification for him for either water or wastewater. *See Id*. While this is, again, not necessary for determining the **number** of operators, the OPC would hope the Commission would take consideration of this in light of its mandate to ensure safe and adequate

service.[18] If the OPC is correct about these individuals respective certifications, that would bring the total number of operators without necessary certification up to three.

Conclusion of Divisions 5 and 6

Again, the OPC can now update the table it began at the conclusion of division 3. The OPC will make a slight change, though, by moving the Eugene water system from division five to division six. With that change, the updated table looks like this:

Complete Distribution of Operators				
Division	System	Direct Operator	Supervising Operators	Removed by OPC
3	Cedar Glen (Water)	James Crawford	Brady Graves Victor Wright	
	Cedar Glen (Wastewater)			
	Chelsea Rose (Water)			
	Chelsea Rose (Wastewater)			
	Cimarron Bay (Water)			
	Cimarron Bay (Wastewater)			
	Eagle Woods/Rte. KK (Water)			
	Eagle Woods/Rte. KK (Wastewater)			
	Cedar Green (Water)			
	Cedar Green (Wastewater)			

[18] The OPC encourages the reader to go check the Department of Natural Resource's database for themselves: https://apps5.mo.gov/operator/index.do.

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4	Prairie Heights (Wastewater)	Josh Pulliam	Brady Graves James Crawford	Robert Allard
	Willows (Water)			
	Willows (Wastewater)			
	Branson Cedar Resort (Water)			
	Branson Cedar Resort (Wastewater)			
5	Gladlo (Water)	Jeff Morris Mathew Eaton	Brady Graves Victor Wright	
	Gladlo (Wastewater)			
	Indian Hills (Water)			
6	Eugene (Water)	Jeff Morris	Brady Graves James Crawford	
	Smithview (Water)		Brady Graves Victor Wright	
	Freeman Hills (Wastewater)			

This results in six operators across four divisions.

Division 7 and Franklin County: Brett Weibking, Nicholas Geissinger, and Marie Rock

Next on the list of Dr. Marke's recommended divisions is division/operator #7. The OPC will take up this one alongside the four systems in Franklin County that were previously with division/operator #8. With that in mind, this section consists of the following systems in the following counties:

Division	County	Water	Wastewater
7	Montgomery	Roy L	Roy L
	Lincoln	Majestic Lakes	Majestic Lakes
	Lincoln	Auburn Lakes	Auburn Lakes
	Lincoln	Glen Meadows	Glen Meadows
	Lincoln/Warren	Fawn Lake	

	St. Charles		Stone Ridge Meadows
	St. Louis		Castlereagh
8	Franklin	Calvey Brook	Calvey Brook
	Franklin	Evergreen	
	Franklin		Villa Ridge

Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239). The next step is to again cross-reference this with exhibit 231. In this case, the OPC will save time and space by removing the repeat names to the supervisor column immediately:

Division	County	Water	Operator	Wastewater	Operator	Supervisor over both water and wastewater
7	Montgomery	Roy L	Marie Rock, Brett Weibking, Nicholas Geissinger	Roy L	Marie Rock, Brett Weibking, Nicholas Geissinger	Brady Graves, Victor Wright
	Lincoln	Majestic Lakes	Brett Weibking, Nicholas Geissinger	Majestic Lakes	Brett Weibking, Nicholas Geissinger	
	Lincoln	Auburn Lakes		Auburn Lakes		
	Lincoln	Glen Meadows		Glen Meadows		
	Lincoln/Warren	Fawn Lake				
	St. Charles			Stone Ridge Meadows		
	St. Louis			Castlereagh	Brett Weibking, Nicholas Geissinger	Brady Graves, Victor Wright
8	Franklin	Calvey Brook	Brett Weibking, Nicholas Geissinger	Calvey Brook	Brett Weibking, Nicholas Geissinger	

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	Franklin	Evergreen	Brett Weibking, Nicholas Geissinger			
	Franklin			Villa Ridge	Brett Weibking, Nicholas Geissinger	

Id. Ex. 231, *DR 2034* (EFIS Item no. 263).

Where is Fawn Lake and Stone Ridge Meadows Subdivision?

The OPC has been unable to locate two to of the systems included in Dr. Marke's recommendation (Fawn Lake and Stone Ridge Meadows Subdivision) in the table provided by Confluence. Ex. 231, *DR 2034* (EFIS Item no. 263). Fawn Lake at least appears on the list of systems in the executed contract with the major firm, so it should be on the list provided by the Company. Ex. 238, *DR 0040.1 (Public and Confidential)* (EFIs Item no. 271). For the purpose of this exercise, the OPC will leave it out of the master list generated at the end of the division. Alternatively, one can assume, based on the pattern that quickly emerges from these systems, that it is being operated by Brett Weibking and Nicholas Geissinger, who are otherwise serving every other system in this geographic area, with support from Brady Graves and Victor Wright.

Brett Weibking

Brett Wiebking was another name for which the OPC could not find any verification of certification in either water or wastewater treatment. *See* Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264). If the OPC is correct in this regard,

that would bring the number of non-certified operators assigned to wastewater systems up to four.

Marie Rock

As with Mr. Allard in Division 4, it appears that Ms. Rock is serving only one water/wastewater pair: Roy L. As Mr. Cox said in his surrebuttal, "[t]here is an obvious disparity in the delegation of responsibilities here." Ex. 6, *Surrebuttal Testimony of Josiah Cox*, pg. 34 lns. 6 – 7 (EFIS Item no. 177). Even including Fawn Lake and Stone Ridge Meadows, there are seven water systems and eight wastewater systems in this grouping. At one inspection per week per water system, and assuming three per week per wastewater system, that comes out to just 31 inspections needed per week divided between two people (Brett Weibking and Nicholas Geissinger), with two more people supervising (Brady Graves and Victor Wright). Therefore, as with Mr. Allard, the OPC will remove Ms. Rock from the Roy L systems.

Conclusion of Division 7 and Franklin County

The OPC will again update its master table of water and wastewater operators with only the minor changes of moving the four systems from Franklin County into division 7 and removing Marie Rock from the Roy L systems. With those changes, the updated table looks like this:

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Complete Distribution of Operators				
Division	System	Direct Operator	Supervising Operators	Removed by OPC
3	Cedar Glen (Water)	James Crawford	Brady Graves Victor Wright	
	Cedar Glen (Wastewater)			
	Chelsea Rose (Water)			
	Chelsea Rose (Wastewater)			
	Cimarron Bay (Water)			
	Cimarron Bay (Wastewater)			
	Eagle Woods/Rte. KK (Water)			
	Eagle Woods/Rte. KK (Wastewater)			
	Cedar Green (Water)			
	Cedar Green (Wastewater)			
4	Prairie Heights (Wastewater)	Josh Pulliam	Brady Graves James Crawford	Robert Allard
	Willows (Water)			
	Willows (Wastewater)			
	Branson Cedar Resort (Water)			
	Branson Cedar Resort (Wastewater)			
5	Gladlo (Water)	Jeff Morris Mathew Eaton	Brady Graves Victor Wright	
	Gladlo (Wastewater)			
	Indian Hills (Water)			
6	Eugene (Water)	Jeff Morris	Brady Graves James Crawford	

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	Smithview (Water)			
	Freeman Hills (Wastewater)			
7	Roy L (Water)	Brett Wiebking Nicholas Geissinger	Brady Graves Victor Wright	Marie Rock
	Roy L (Wastewater)			
	Majestic Lakes (Water)			
	Majestic Lakes (Wastewater)			
	Auburn Lakes (Water)			
	Auburn Lakes (Wastewater)			
	Glen Meadows (Water)			
	Glen Meadows (Wastewater)			
	Castlereagh (Wastewater)			
	Calvey Brook (Water)			
	Calvey Brook (Wastewater)			
	Evergreen (Water)			
	Villa Ridge (Wastewater)			

With only two individual operators removed from three systems in total, this results in eight operators (James Crawford, Josh Pulliam, Jeff Morris, Mathew Eaton, Brett Wiebking, Nicholas Geissinger, Brady Graves, and Victor Wright) across five divisions. Again, the reader should remember that, but for the OPC's removal of Robert Allard from the Prairie Heights wastewater system and Marie Rock from the Roy L water and wastewater systems, this is how Confluence Rivers is **currently** managing the operation of its water and wastewater systems.

Division 2 and Benton County: Chris Wallen, Jamie Davidson, and Franklin Nelson

The pattern should be well established by now, so the OPC will move straight to cross-referencing Dr. Marke's rebuttal with exhibit 231. The only caveat for this one is that the OPC will include in this group the three systems found in Benton County, which were previously part of division/operator #3, in this analysis. Here is the result:

Division	County	Water	Operator	Wastewater	Operator
2	Pettis	Missouri Utilities	Chris Wallen, Jamie Davidson, Franklin Nelson	Missouri Utilities	Chris Wallen, Jamie Davidson, Franklin Nelson
	Pettis			Hunter's Ridge	
	Cass			Oasis Mobile Home Park	
	Johnson			South Walnut Hills	
	Johnson			Village of Whiteman	
	Johnson			Rainbow Acres	
	Johnson			State Park Village	
	Johnson			Twin Oaks Estates	
3	Benton	Spring Branch	Chris Wallen, Jamie Davidson		
	Benton	The Missing Well	Chris Wallen, Jamie Davidson	The Missing Well	Chris Wallen, Jamie Davidson

Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239); Ex. 231, *DR 2034* (EFIS Item no. 263).There is nothing really remarkable here other than the fact that the OPC could not find any verification of certification in either water or wastewater treatment for Franklin Nelson. *See* Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264). If the OPC is correct in this regard, that would bring the number of non-certified operators assigned to wastewater systems up to five.

The OPC will add the new division into the master table with only the small change of moving the Benton systems from Dr. Marke's recommended division/operator #3 into the new division 2. With that change, the updated table looks like this:

Complete Distribution of Operators				
Division	System	Direct Operator	Supervising Operators	Removed by OPC
2	Missouri Utilities (Water)	Chris Wallen Jamie Davidson Franklin Nelson		
	Missouri Utilities (Wastewater)			
	Hunter's Ridge (Wastewater)			
	Oasis Mobile Home Park (Wastewater)			
	South Walnut Hills (Wastewater)			
	Village of Whiteman (Wastewater)			
	Rainbow Acres (Wastewater)			

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	State Park Village (Wastewater)			
	Twin Oaks Estates (Wastewater)			
	Spring Branch (Water)	Chris Wallen Jamie Davidson		
	The Missing Well (Water)			
	The Missing Well (Wastewater)			
3	Cedar Glen (Water)	James Crawford	Brady Graves Victor Wright	
	Cedar Glen (Wastewater)			
	Chelsea Rose (Water)			
	Chelsea Rose (Wastewater)			
	Cimarron Bay (Water)			
	Cimarron Bay (Wastewater)			
	Eagle Woods/Rte. KK (Water)			
	Eagle Woods/Rte. KK (Wastewater)			
	Cedar Green (Water)			
	Cedar Green (Wastewater)			
4	Prairie Heights (Wastewater)	Josh Pulliam	Brady Graves James Crawford	Robert Allard
	Willows (Water)			
	Willows (Wastewater)			
	Branson Cedar Resort (Water)			

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	Branson Cedar Resort (Wastewater)			
5	Gladlo (Water)	Jeff Morris Mathew Eaton	Brady Graves Victor Wright	
	Gladlo (Wastewater)			
	Indian Hills (Water)			
6	Eugene (Water)	Jeff Morris	Brady Graves James Crawford	
	Smithview (Water)			
	Freeman Hills (Wastewater)			
7	Roy L (Water)	Brett Wiebking Nicholas Geissinger	Brady Graves Victor Wright	Marie Rock
	Roy L (Wastewater)			
	Majestic Lakes (Water)			
	Majestic Lakes (Wastewater)			
	Auburn Lakes (Water)			
	Auburn Lakes (Wastewater)			
	Glen Meadows (Water)			
	Glen Meadows (Wastewater)			
	Castlereagh (Wastewater)			
	Calvey Brook (Water)			
	Calvey Brook (Wastewater)			
	Evergreen (Water)			
	Villa Ridge (Wastewater)			

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This results in eleven operators (Chris Wallen, Jamie Davidson, Franklin Nelson, James Crawford, Josh Pulliam, Jeff Morris, Mathew Eaton, Brett Wiebking, Nicholas Geissinger, Brady Graves, and Victor Wright) across six divisions.

Division 1: Terell Sauls and David Duncan

As before, cross-referencing Dr. Marke's rebuttal with exhibit 231 provides the following table of counties and systems:

Division	County	Wastewater	Operator
1	Platte	Clemstone	Chris Wallen, Jeff Morris, Terell Sauls, David Duncan
	Clay	Berkshire Glenn	
	Clay	Fox Run	
	Clay	Park Estates	
	Clay	Private Garden	
	Clay	Wilmar Estates	
	Clay	Prairie Field	
	Clinton	County Hills Estates	
	Ray	Countryside Meadows	

Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239); Ex. 231, *DR 2034* (EFIS Item no. 263).There are three things to note here. The first is that, again, the OPC could not find any verification of certification in either water or wastewater treatment for Terell Sauls. Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264). If the OPC is correct in this regard, that would bring the number of non-certified operators assigned to wastewater systems up to six.

The second thing to note is the re-appearance of Jeff Morris. This is odd for three reasons. First, Mr. Morris lives in Troy in Lincoln County near the border with

Illinois. Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264). That is on the complete opposite side of the State from these systems. Second, Mr. Morris is already involved in six other systems that are much closer to where he actually lives but also very spread out geographically (ranging from Boone to Crawford and Audrain to Phelps). Ex. 231, *DR 2034* (EFIS Item no. 263). It is not clear how Mr. Morris can be operating these six systems and be involved in the nine wastewater systems found in this division. Third, Mr. Morris again does not appear to have wastewater certification and all the systems included in this division are wastewater systems. Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264). Given these factors, the OPC cannot begin to fathom why Mr. Morris has been included in the list of operators for these systems.

The third thing to note is that Chris Wallen has now appeared over two separate divisions spanning 19 systems. Much like Mr. Graves and Mr. Wright, the OPC will move Mr. Wallen into a supervisory role. As stated before, it does not actually matter if this is correct or not because the total number of operators will remain the same.

With those three things in mind, the OPC will update its master table making the following changes: (1) moving Chris Wallen into a supervisory role across both division 1 and 2, and (2) removing Jeff Morris from the division 1 systems.

Complete Distribution of Operators				
Division	System	Direct Operator	Supervising Operators	Removed by OPC
1	Clemstone (Wastewater)	Terell Sauls David Duncan	Chris Wallen	
	Berkshire Glenn (Wastewater)			
	Fox Run (Wastewater)			
	Park Estates (Wastewater)			
	Private Garden (Wastewater)			
	Wilmar Estates (Wastewater)			
	Prairie Field (Wastewater)			
	County Hills Estates (Wastewater)			
	Countryside Meadows (Wastewater)			
2	Missouri Utilities (Water)	Jamie Davidson Franklin Nelson		
	Missouri Utilities (Wastewater)			
	Hunter's Ridge (Wastewater)			
	Oasis Mobile Home Park (Wastewater)			
	South Walnut Hills (Wastewater)			
	Village of Whiteman (Wastewater)			
	Rainbow Acres (Wastewater)			
	State Park Village (Wastewater)			

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	Twin Oaks Estates (Wastewater)			
	Spring Branch (Water)	Jamie Davidson		
	The Missing Well (Water)			
	The Missing Well (Wastewater)			
3	Cedar Glen (Water)	James Crawford	Brady Graves Victor Wright	
	Cedar Glen (Wastewater)			
	Chelsea Rose (Water)			
	Chelsea Rose (Wastewater)			
	Cimarron Bay (Water)			
	Cimarron Bay (Wastewater)			
	Eagle Woods/Rte. KK (Water)			
	Eagle Woods/Rte. KK (Wastewater)			
	Cedar Green (Water)			
	Cedar Green (Wastewater)			
4	Prairie Heights (Wastewater)	Josh Pulliam	Brady Graves James Crawford	Robert Allard
	Willows (Water)			
	Willows (Wastewater)			
	Branson Cedar Resort (Water)			
	Branson Cedar Resort (Wastewater)			
5	Gladlo (Water)	Jeff Morris	Brady Graves	

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	Gladlo (Wastewater)	Mathew Eaton	Victor Wright	
	Indian Hills (Water)			
6	Eugene (Water)	Jeff Morris	Brady Graves James Crawford	
	Smithview (Water)			
	Freeman Hills (Wastewater)			
7	Roy L (Water)	Brett Wiebking Nicholas Geissinger	Brady Graves Victor Wright	Marie Rock
	Roy L (Wastewater)			
	Majestic Lakes (Water)			
	Majestic Lakes (Wastewater)			
	Auburn Lakes (Water)			
	Auburn Lakes (Wastewater)			
	Glen Meadows (Water)			
	Glen Meadows (Wastewater)			
	Castlereagh (Wastewater)			
	Calvey Brook (Water)			
	Calvey Brook (Wastewater)			
	Evergreen (Water)			
	Villa Ridge (Wastewater)			

This results in thirteen operators (Chris Wallen, Terell Sauls, David Duncan, Jamie Davidson, Franklin Nelson, James Crawford, Josh Pulliam, Jeff Morris, Mathew

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Eaton, Brett Wiebking, Nicholas Geissinger, Brady Graves, and Victor Wright) across seven divisions.

Divisions 8 and 9: the problem children

We come at last now to the real problem. This is where everything stops making sense. Having removed Franklin County from division/operator #8, there remains only three systems from Dr. Marke's original recommendation. Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239). Those three are: Terre Du Lac (which has a water and wastewater system) and Lake Virginia (wastewater only). *Id.* Division/operator #9, meanwhile, has six systems: (1) Hillcrest (water and wastewater); (2) Port Perry (water and wastewater); (3) Deguire (wastewater only); and (4) Deer Run Estates (wastewater only). *Id.* If you count the water and wastewater systems separately, that is a total of nine systems between the remainder of division/operator #8 and division/operator #9. *Id.* That is, in total, one less than the total number of systems in the new division 3, which has three operators assigned to it (two of those being the supervisors Brady Graves and Victor Wright). It is also three systems less than the new Division 2, which also has three men assigned to it (one of which, Mr. Wallen, is also working division 1). Given that, it would make perfect sense to expect these nine systems could be handled by two or three operators dedicated solely to them. Yet, that is not the case. Instead, Confluence has **nine** additional operators spread across just these nine systems, and that is **not** counting Mr. Graves who makes a return for two of the nine. Ex. 231, *DR 2034* (EFIS Item no. 263). Again, this is where things stop making sense.

Terre Du Lac, Deguire, and Deer Run Estates

Terre Du Lac, Deguire, and Deer Run Estates each have assigned as operators the following people: Andrew Griffin, Rob Ludwig, Brandon McCoy, David Kent, Jacob Reed, and Logan Essemeyer. Ex. 231, *DR 2034* (EFIS Item no. 263). In addition to these, Brady Graves is also listed as the chief operator for just Degurie and Deer Run Estates. *Id*. Of these individuals, the OPC was not able to find any verification of certification in either water or wastewater treatment for Brandon McCoy, David Kent, Jacob Reed, or Logan Essemeyer. *See* Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264). If the OPC is correct in this regard, that would bring the number up to ten people serving as operators of wastewater systems absent certification (and in violation of DNR regulations). With that in mind, and to pare down the number of operators, the OPC will remove these four from the list, leaving Mr. Griffin, Mr. Ludwig, and Mr. Graves to handle these four systems. This is justified given the respective workloads shouldered in other operators in the previous divisions.

Lake Virginia

This system is currently assigned to Brady Graves as a chief operator with Brett Weibking, Andrew Griffin, and Logan Essemeyer as support. Ex. 231, *DR 2034* (EFIS Item no. 263). Given that Mr. Essemeyer was already removed by the OPC from Terre Du Lac, Deguire, and Deer Run Estates, the OPC will remove him from Lake Virginia as well. The OPC also proposes to lighten Mr. Weibking's load by having Mr. Griffin and Mr. Ludwig take over the operation of this system as well.

Hillcrest and Port Perry

Hillcrest and Port Perry are currently both assigned two operators, Brian Strickland and Mike Hornbuckle, who alternate position as "chief operator" and "other employee." Ex. 231, *DR 2034* (EFIS Item no. 263). They are joined by Charlie Staffeldt in Port Perry only. *Id*. It is necessary at this point to recall the number of systems that other operators groups are handling:

1. Mr. Crawford, in Camden County, is currently handling five water and five wastewater systems with only the distant Mr. Graves and Mr. Wright to assist;

2. Mr. Wiebking and Mr. Geissinger have some eleven or more systems in hand (again with only sporadic help from Mr. Graves and Mr. Wright) across at least four counties;

3. Mr. Sauls and Mr. Duncan are presently handle nine wastewater systems in the counties of Platte, Clay, Clinton, and Ray with some assistance by Mr. Wallen (when he is not busy assisting Mr. Davidson and Mr. Nelson in the counties of Pettis, Cass, Johnson, or Benton) and/or possibly Mr. Morris (from the other side of the state); and

4. Mr. Davidson and Mr. Nelson can handle twelve systems between them in the counties of Pettis, Cass, Johnson, and Benton with some help from Mr. Wallen (when he is not busy assisting Mr. Sauls and Mr. Duncan).

Id. Based on this existing distribution of labor, the OPC posits that that Mr. Griffin and Mr. Ludwig should be able to absorb Hillcrest and Port Perry. This would bring Mr. Griffin and Mr. Ludwig's total count of systems to nine, which again, is consistent with what many of Confluence's other operators are doing.

Conclusion of Division 8 and 9

As the OPC has alluded to several times, there is a point where basic common sense must come into play. The examination of Confluence's current operations shows that many of its systems can easily be grouped into clusters; sometimes the exact same clusters that the OPC proposed, sometimes almost what the OPC proposed with slight variations. Among those system clusters, Confluence has operators assigned. In many cases, there are only two such operators dedicated **solely** to a cluster that can have nine or more systems in it. If one follows this basic pattern, outlined by what Confluence is **already** doing, then having just two operators assigned to the remaining portions of divisions eight and nine makes perfect sense. This is especially true if a supervisor, like Mr. Graves, is included in the mix (which is reasonable given that he is already the chief operator for two of the nine systems). Therefore, the OPC will update its table with one last, admittedly larger, change. What remains of Dr. Marke's recommended division/operator #8 will be consolidated with Dr. Marke's recommended division/operator #9, with Andrew Griffin and Rob Ludwig assigned as operators over the whole and Brady Graves tasked with supervising. With this change, the table looks like this:

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Complete Distribution of Operators				
Division	System	Direct Operator	Supervising Operators	Removed by OPC
1	Clemstone (Wastewater)	Terell Sauls David Duncan	Chris Wallen	
	Berkshire Glenn (Wastewater)			
	Fox Run (Wastewater)			
	Park Estates (Wastewater)			
	Private Garden (Wastewater)			
	Wilmar Estates (Wastewater)			
	Prairie Field (Wastewater)			
	County Hills Estates (Wastewater)			
	Countryside Meadows (Wastewater)			
2	Missouri Utilities (Water)	Jamie Davidson Franklin Nelson		
	Missouri Utilities (Wastewater)			
	Hunter's Ridge (Wastewater)			
	Oasis Mobile Home Park (Wastewater)			
	South Walnut Hills (Wastewater)			
	Village of Whiteman (Wastewater)			
	Rainbow Acres (Wastewater)			
	State Park Village (Wastewater)			

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	Twin Oaks Estates (Wastewater)			
	Spring Branch (Water)	Jamie Davidson		
	The Missing Well (Water)			
	The Missing Well (Wastewater)			
3	Cedar Glen (Water)	James Crawford	Brady Graves Victor Wright	
	Cedar Glen (Wastewater)			
	Chelsea Rose (Water)			
	Chelsea Rose (Wastewater)			
	Cimarron Bay (Water)			
	Cimarron Bay (Wastewater)			
	Eagle Woods/Rte. KK (Water)			
	Eagle Woods/Rte. KK (Wastewater)			
	Cedar Green (Water)			
	Cedar Green (Wastewater)			
4	Prairie Heights (Wastewater)	Josh Pulliam	Brady Graves James Crawford	Robert Allard
	Willows (Water)			
	Willows (Wastewater)			
	Branson Cedar Resort (Water)			
	Branson Cedar Resort (Wastewater)			
5	Gladlo (Water)	Jeff Morris	Brady Graves	

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	Gladlo (Wastewater)	Mathew Eaton	Victor Wright	
	Indian Hills (Water)			
6	Eugene (Water)	Jeff Morris	Brady Graves James Crawford	
	Smithview (Water)			
	Freeman Hills (Wastewater)			
7	Roy L (Water)	Brett Wiebking Nicholas Geissinger	Brady Graves Victor Wright	Marie Rock
	Roy L (Wastewater)			
	Majestic Lakes (Water)			
	Majestic Lakes (Wastewater)			
	Auburn Lakes (Water)			
	Auburn Lakes (Wastewater)			
	Glen Meadows (Water)			
	Glen Meadows (Wastewater)			
	Castlereagh (Wastewater)			
	Calvey Brook (Water)			
	Calvey Brook (Wastewater)			
	Evergreen (Water)			
	Villa Ridge (Wastewater)			
8	Terre Du Lac (Water)	Andrew Griffin Rob Ludwig	Brady Graves	Brandon McCoy David Kent Logan Essemeyer Jacob Reed
	Terre Du Lac (Wastewater)			
	Deguire (Wastewater)			

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	Deer Run Estates (Wastewater)			
	Lake Virginia (Wastewater)			Logan Essemeyer
	Port Perry (Water)			Brian Strickland
	Port Perry (Wastewater)			Mike Hornbuckle
	Hillcrest (Water)			Brian Strickland
	Hillcrest (Wastewater)			Mike Hornbuckle Charlie Staffeldt

This results in fifteen operators (Chris Wallen, Terell Sauls, David Duncan, Jamie Davidson, Franklin Nelson, James Crawford, Josh Pulliam, Jeff Morris, Mathew Eaton, Brett Wiebking, Nicholas Geissinger, Brady Graves, Victor Wright, Andrew Griffin, and Rob Ludwig) across eight divisions.

Where does Dr. Marke's recommendation stand in comparison with Confluence's current Operations?

When Dr. Marke conducted his analysis of Confluence Rivers' systems, he divided the Company's geographic footprint into nine distinct areas and assigned one operator to each. *See* Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 10 lns. 21 – 24 (EFIS Item no. 239). Having now completed the review of Confluence's **current** operations, it is quite easy to see that Dr. Marke's geographic breakdown was directly on point. But for a few small changes (*i.e.* moving Benton County from Division 3 to Division 2; moving Cole County from Division 5 to Division 6; and moving Franklin County from Division 8 to Division 7), Dr. Marke

would have perfectly predicted the distribution of Confluence's systems and operators save for the southeast corner of Missouri. Instead, the only really significant difference between Dr. Marke's recommendation and the actual current operation of Confluence River's systems was the number of operators assigned to each geographic division. In this regard, there are two differences. First, for several systems, there are two or more identifiable operators dedicated solely to those divisions. Second, there are at least three individuals who would appear to be holding some form of supervisory role.

With regard to the first difference, Dr. Marke was still not completely off the mark. Excluding the supervisory positions held by Mr. Graves and Mr. Wright, divisions three and six are already being operated by effectively one operator (Mr. Crawford and Mr. Morris, respectively). Ex. 231, *DR 2034* (EFIS Item no. 263). Division five could perhaps be added to this list as well, but for the inclusion of Mr. Allard being assigned to exactly one of the five systems otherwise all assigned to Mr. Pulliam. Ex. 231, *DR 2034* (EFIS Item no. 263). However, for several other geographic divisions (one, two, and seven, for example) there is unmistakably two identifiable people who are serving that division and that division only. Ex. 231, *DR 2034* (EFIS Item no. 263). That would suggest that perhaps Dr. Marke was a little too hasty assigning just one person to these divisions. However, there is one important counterbalancing idea that the OPC expressed all the way back in step 1 of this discussion that would contradict such a conclusion.

The individual operators employed by the third-party operation and maintenance firms have to be working other water and wastewater systems if the third-party operation and maintenance firms are to cover its costs or turn a profit.

There are three basic ideas that should not be in dispute. First, the third-party operation and maintenance firms are hiring the individual operators who are servicing Confluence Rivers' systems. Tr. vol. 11 pg. 39 ln. 21 – pg. 40 ln. 2. Second, Confluence Rivers has calculated the expected *minimum* cost of hiring these operators at $91,463 each. Ex. 19, *Surrebuttal Testimony of Brent Thies*, Schedule BT-SR-1 (EFIS Item no. 190). Third, multiplying this by the number of contractors supplied by each firm results in costs significantly higher than the revenue produced by the contracts Confluence Rivers has with each firm. *See* Ex. 233, *DR 0040 (Public and Confidential)* (EFIS Item no. 265); Ex. 238, *DR 0040.1 (Public and Confidential)* (EFIs Item no. 271); *supra* pgs. 80 - 86. Given these factors, any person with common sense has to appreciate that the only possible way that these third-party operation and maintenance firms could possibly stay in business is if the individual operators they hire are working for multiple different water and wastewater utilities, thus generating multiple revenue streams for the third-party operation and maintenance firms. Based on that, it is eminently logical to conclude that an individual in-house operator, who is dedicated exclusively to Confluence Rivers' systems, should be able to take on more responsibility than one of the contracted operators.

The basis of Dr. Marke's recommendation is grounded in the logic addressed in this brief and the OPC's observations of Confluence Rivers' actual system of operation. Even if the Commission should fail to agree with the Dr. Marke's analysis

as set forth in this case, the OPC will continue to pursue this issue in future Confluence Rivers cases. However, there is one aspect to the operation of Confluence Rivers' systems that the present analysis suggest Dr. Marke has overlooked, and that would the question of supervisory operators.

Supervising or Senior Operators

As has been expressed at length in this brief, there are at least three operators currently assigned to Confluence Rivers' systems that serve an abnormally large number of systems. Those would be Brady Graves (whose name appears as a chief operator on 23 systems and and as an "other employee" on 12 additional systems in exhibit 231), Victor Wright (who is listed as an "other employee" on 25 systems in exhibit 231), and Chris Wallen (who is listed as the "chief operator" on 19 systems in exhibit 231). Ex. 231, *DR 2034* (EFIS Item no. 263). Given the breadth of their responsibilities, it is reasonable to conclude that these three are serving as supervisory or senior operators for Confluence's systems. This is effectively confirmed, with regard to Mr. Graves, by Confluence Rivers' witness Mr. Cox. Tr. vol. 11 pg. 58 ln. 20 – pg. 59 ln. 23.

As previously stated, the OPC concedes that Dr. Marke did not include any supervisory or senior operator positions. Given the current state of Confluence's operation and operator assignment, the OPC has no reason to dispute the use of these three as supervisory or senior operators.

Conclusion

As laid out in the analysis of Confluence Rivers' current methods of operation, the OPC believes that Dr. Marke's recommendation can be adapted to largely match what the Company is already doing. With only the changes already laid out, this would result in an increase from Dr. Marke's original recommendation of nine operators to a total of fifteen. Of these, three would be senior or supervisory operators and the remaining twelve would be standard operators. From here the brief will examine what it would cost to employ these fifteen operators in order to show that, even after a two-thirds increase to the number Dr. Marke recommended, it would still be less expensive for Confluence to hire in-house operators. Before that, however, it is necessary to briefly address the five names under the table in exhibit 231.

The Five Names at the Bottom

Exhibit 231 lists five names and their corresponding position underneath the table included with the data request response. There is no indication where these five fit in with regard to the operators listed in the table, nor is there any indication whether these five are operators at all. Regardless, none of these five need to be considered as part of the overall equation for rather simple reasons.

Regional Manager

The first name on the list is a regional manager. This position us unnecessary because Confluence already has a large number of internal regional managers. OPC exhibit 239 shows the current employee organizational chart for CSWR. Ex. 239, *DR 0037* (EFIS Item no. 272). As seen, there are already four individuals serving as a

"Regional Manager," and that is not including the one regional manager dedicated solely to Louisiana (who independently has their own subordinate employee). Ex. 239, *DR 0037* (EFIS Item no. 272). The OPC also admitted exhibit 241, which includes a breakdown of the responsibilities of certain CSWR employees. With regard to Regional Managers, these duties include, among others:

- Responsible for overall management of all aspects of the water and wastewater contract at respective regional location
- Directly responsible for overseeing the various O&M Partners operating and maintaining the water and wastewater systems as well as oversight of all sub-contractors, consultants and vendors
- Responsible for overseeing the coordination and training of updates of System Operation Plans, Quality Management Plans, Computerized Maintenance Management Plans, Emergency Preparedness and Response Plans, as well as other CSWR standardized processes and procedures
- Ensures open, clear and direct communications for all support services provided by CSWR and others
- Responsible for timely reporting of all emergencies, critical and major events
- Ensures proper assistance and support are given to customer service-related functions as well as O&M Partners needing direction
- Responsible for asset management, planning and preparation of capital and operating budgets

Ex. 241, *DR 0081* (EFIs Item no. 274). Given these responsibilities and the number of regional managers already employed by Confluence Rivers, there is clearly not a need for an additional regional manager beyond those Confluence already employs. Moreover, Confluence River's own witness effectively confirms this point:

> CSWR has a Regional Manager that is responsible for overseeing and assisting third-party O&M functions in Missouri. CSWR's decision to take that step was based on two factors. First, the size of the operations in Missouri made it prudent and reasonable from a cost standpoint to

> add an employee devoted exclusively to Confluence Rivers. Second, having an employee exclusively responsible for Missouri helps CSWR to ensure that Confluence Rivers is fulfilling its commitment to providing safe and reliable water and wastewater service to its customers.
>
> In addition to other corporate operational duties, Arthur Faiello is the Regional Manager in Missouri who is responsible for the Confluence Rivers' systems.
>
> . . .
>
> Mr. Faiello serves as the Confluence Rivers' primary "in person" customer representative. While customers are encouraged to bring issues to the customer experience department; to the extent the matters require an in person visit from a Confluence Rivers' representative, Mr. Faiello fills this responsibility.
>
> Finally, Mr. Faiello serves as Confluence Rivers' representative and liaison to state and local water and wastewater organizations to share information and promote cooperation among industry participants. Similarly, Mr. Faiello serves as Confluence Rivers' primary, local point of contact for state and local government officials having regulatory responsibility for Confluence Rivers' operations to ensure the Company timely addresses any questions or concerns that may arise regarding our Missouri operations.

Ex. 20, *Direct Testimony of Todd Thomas*, pg. 15 ln. 3 – pg. 16 ln 10 (EFIS Item no. 191). Mr. Faiello's contributions to Confluence clearly eliminate the need for the Mr. Loven listed at the bottom of the OPC's exhibit 231. Ex. 231, *DR 2034* (EFIS Item no. 263).

Compliance and Safety

The next name on the list is simply associated with "compliance and safety." As with the regional manager, there is already a job filling that position internally within CSWR. OPC exhibit 239 shows there are three individuals currently employed as a "EHS Compl. inspector." Ex. 239, *DR 0037* (EFIS Item no. 272). Turning to OPC

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exhibit 241, this can be seen as standing for "Environmental Health and Safety Compliance Inspector. Ex. 241, *DR 0081* (EFIs Item no. 274). The Position summary for this position reads:

> Under the general supervision of higher-level staff, develops and implements laboratory, monitoring, testing, and administrative duties to ensure CSWR's compliance with applicable federal, state, and local regulatory agency requirements pertaining to water and wastewater.

Ex. 241, *DR 0081* (EFIs Item no. 274). These jobs include, among others, the following duties:

- Track and prepare reports on all permits and environmental compliance testing across CSWR's wastewater and drinking water systems.
- Act as liaison on behalf of CSWR with local, state, and federal regulatory governing agencies.
- Track progress and completion on all permit compliance schedules, and term s and conditions, tasks, and dates of completion of Settlement Agreements/Consent Orders.
- Assist in developing and maintaining a process to provide real-time notifications of violation notices and incidents that have the potential to impact the public, i.e. spill, boil water notice, low pressure notice, effluent discharge limit exceedance or sanitary sewer overflows from O&M providers or CSWR auditors along with any potential penalties that could result from such notices or incidents.
- Support Auditors in completing the CSWR required site visits
- Coordinate with the O&M Partner on the following:
  - State inspections
  - ESG inspections
  - Rate case inspection
  - AOC removed facility audits
  - Annual inspections
- Runs reports and track violations with the regulatory database that has been established for all CSWR sites.
- Partake in the monthly operations meetings that are held with contractors to review any monthly violations.

- Ensure that proper sampling schedules are established within the CMMS so that sampling requirements are completed.

Ex. 241, *DR 0081* (EFIs Item no. 274). As can be seen by the job responsibilities, these three individuals already oversee compliance and safety concerns for Confluence's systems thus rendering the position found below the table in Exhibit 231 redundant.[19]

Process Evaluation Manager

The third position listed is for a process evaluation manager. Here again, there is a comparable position internally with Confluence already. The orginzation chart shows three individuals listed holding the position of "Regulatory Coordinator." Ex. 239, *DR 0037* (EFIS Item no. 272). This position is detailed in the job description for a regulatory project coordinator found in exhibit 241 as follows:

> The Regulatory Analyst/Project Coordinator will play a key role in collecting, interpreting, and communicating information that is used throughout multiple different business processes by various internal and external stakeholders. This position will also be responsible for coordinating with legal counsel and various other 3rd parties to ensure business processes are running effectively and efficiently. Additionally, this position requires the ability to organize and juggle multiple different functions for multiple operating units simultaneously.

Ex. 241, *DR 0081* (EFIs Item no. 274). These jobs include the following duties:

- Collecting, interpreting, and effectively communicating information on all aspects of water/wastewater utility operations
- Responding to regulatory information requests to ensure consistency, accuracy, and timeliness
- Assisting in the preparation of regulatory applications across multiple operating units with varying requirements
- Documenting processes to ensure repeatability and accountability
- Tracking and projecting key milestones across multiple operating units
- Working closely with key stakeholders (internal and external) to provide necessary information

[19] The OPC also notes additional positions for and EHS auditor, a water compliance manger, and an EHS compliance manager.

- Analyzing business processes to identify deficiencies and areas for improvement
- Ensuring timely filings for regulatory compliance requirements
- Documenting and following up on important actions and decisions from meetings
- Ensuring stakeholder views are managed towards the best solution

Ex. 241, *DR 0081* (EFIs Item no. 274). Based on these job descriptions, these individuals are again clearly performing the necessary task of evaluating Confluence Rivers' different business processes. *Id*. As such, these positions eliminate the need for a further process evaluation manager.

Floater repair and maintenance

The fourth position listed is labeled "Floater – repair and maintenance" There is no specific CSWR position currently tasked with floater repair and maintenance. However, the existence of this job would be unnecessary if Confluence were to hire in-house operators simply because Confluence would then have sufficient direct control over those in-house operators to ensure they were properly trained and equipped to handle any necessary forms of maintenance themselves.

Backup Operator for Cuba area

The final position listed is for a backup operator for the Cuba area. Cuba Missouri is in Crawford country. Currently, Confluence only owns one system in Crawford County Missouri, and that is Indian Hills. Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 11 ln. 1 (EFIS Item no. 239). It is not clear how big the "Cuba area" is, but the only system in a county adjacent to Crawford is the Gladlo water and wastewater systems in Phelps County. *Id*. Both Gladlo systems

and Indian Hills already have one operator assigned solely to them: Mathew Eaton. Ex. 231, *DR 2034* (EFIS Item no. 263). In addition, both systems are also being served by Jeff Morris, Brady Graves, and Victor Wright. *Id*. Given these factors, it makes no sense to retain an additional operator for just the Cuba Missouri area.

Conclusion

Given the positions already included and staffed internally with Confluence River's parent Company (who is providing all necessary management of Confluence itself) and the current distribution of the assignment of operators, there is no justification for including any of the five positions/names listed under the table in exhibit 231. Therefore, the OPC will not include them in the calculations to be performed in step 4.

Step 4: determining the cost of hiring in-house operators

As discussed previously, the OPC has put forward that, based on Confluence Rivers' current method of operation and using only a few changes, it would be possible to operate Confluence Rivers' systems with fifteen operators. The final step of the analysis is to determine what that would cost. The OPC will approach this first from the standpoint of using the Company's numbers completely unaltered before then demonstrating why the Company's cost estimates are wrong.

Cost to employ fifteen operators at the Company's cost figures

Confluence Rivers witness Mr. Brian Thies presented an analysis in surrebuttal that suggested the cost of an individual water/wastewater operator was

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$91,463. Ex. 19, *Surrebuttal Testimony of Brent Thies*, Schedule BT-SR-1 (EFIS Item no. 190). Multiplying this number by 15 yields $1,371,945. The total cost of Confluence Rivers' third-party contracts for water operations is ** _____ ** *See* Ex. 233, *DR 0040 (Public and Confidential)* (EFIS Item no. 265); Ex. 238, *DR 0040.1 (Public and Confidential)* (EFIs Item no. 271). As is quite obvious, even using Confluence's numbers it would still cost less money to higher fifteen in-house operators.

However, it is necessary to consider the fact that three of those fifteen will be senior operators. Mr. Thies arbitrarily chose to increase the base salary for senior operators by 50%. Ex. 19, *Surrebuttal Testimony of Brent Thies*, pg. 7 lns. 3 – 5 (EFIS Item no. 190). By his estimates, each senior operator would therefore cost $127,373. *Id*. at Schedule BT-SR-1. Including this in the prior math results in an all in cost for the OPC's fifteen operators of $1,479,675.[21] Surprisingly, even with this increase, the OPC's fifteen operators is **still** producing cost savings for customers. Moreover, that is before taking into account the fact that Mr. Thies's numbers are overstated.

Recalculating the cost of an operator

Dr. Marke determined the cost of employing a water or wastewater operator using the Missouri Economic Research and Information Center ("MERIC") database on Occupational Employment and Wage Estimates ("OEWS"). Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 10 lns. 5 – 6 (EFIS Item no.

[20] ** _____ **

[21] ($91,463 x 12) + ($127,373 x 3) = $1,479,675

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239). According to that data, "there are an estimated 2,290 Water and Wastewater Treatment Plant and System Operators in Missouri who make an annual mean wage of $48,220." *Id*. at lns. 6 – 8. Using this as a basis point, Dr. Marke recommended including $60,000 per water and wastewater operator. *Id*. at lns. 8 – 10.

Mr. Thies raised several objections to Dr. Marke's analysis. First, he suggested that the MERIC data Dr. Marke use was out of date. Ex. 19, *Surrebuttal Testimony of Brent Thies*, pg. 5 lns. 13 – 21 (EFIS Item no. 190). He consequently increased the base salary using cost of living adjustments. *Id*. Second, he questioned Dr. Marke's total cost for payroll taxes and benefits. *Id* at pg. 6 lns. 1 – 9. He calculated Dr. Marke had included only 19.6% increase over base salary, where he argued that it should be 29.5%. *Id*. Third, he argued costs needed to be included for "vehicle expense, supplies, tools and personal protective equipment." *Id*. at lns. 15 – 16. According to him, the total cost for these items would be $12,729. *Id*. at Schedule BT-SR-1. To keep things simple, the OPC will only challenge the first of these edits by Mr. Theis.

When Dr. Marke field his rebuttal testimony, he used MERIC data from2021. *Id*. at pg. 5 lns. 16 – 17. Since then, the data has been updated. The OPC introduced two exhibits showing the updated mean average salary for water/wastewater operators in Missouri as determined by both MERIC and the US department of labor. Ex. 245, *2022 Occupational Employment and Wage Statistics* (EFIS Item no. 278); Ex. 247. *May 2022 Occupational Employment and Wage Estimates* (EFIS Item no. 279). This data shows that the mean average wage had not increased as Mr. Thies

predicted it would. Rather, it had decreased down to $47,800. *Id*. Using this salary, it is possible to recreate the other changes Mr. Thies made.

First, the employee payroll taxes and benefits. Mr. Theis argued that this should be 29.5%, so the OPC will use 29.5%. Ex. 19, *Surrebuttal Testimony of Brent Thies*, pg. 6 lns. 1 – 9 (EFIS Item no. 190). That would result in additional benefits of $14,101.[22] Adding this to the salary yields $61,901. Next was the vehicle expense, supplies, tools and personal protective equipment." *Id*. Mr. Thies calculated this to be $12,729. *Id*. adding that to the salary as well yields $74,630.

Unfortunately, we are not yet finished. Again, there are the senior operators to contend with. Mr. Thies arbitrarily increased wages for these operators by 50%. *Id*. pg. 7 lns. 3 – 5. That would bring the mean wage up to $71,700.[23] Following through with the 29.5% benefits would yield $21,152, which, when added alongside the $12,729 for vehicle expense, supplies, tools and personal protective equipment, would bring the total up to $105,581.[24] We now have the new figures to use based on the updated MERIC and Department of Labor wages with Mr. Thies adjustments on top: $74,630 per operator and $105,581 per senior operator.

Using these new numbers with the 12 operators and 3 senior operators the OPC has argued would be sufficient to manage Confluence's system, results in a total cost of $1,212,303. This would yield just over ** ——— ** in cost savings to

[22] $47,800 x 0.295 = $14,101.
[23] $47,800 x 1.5 = $71,700
[24] $71,700 + ($71,700 x 0.295) + $12,729 = $105,581

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Confluence customers if adopted. If this seems insignificant, keep in mind where this amount stands is in comparison to the value of either issue 4 (NOLs) or issue 13 (Cost of Capital), which are also still questions to be determined by the Commission.

Conclusion

If one considers carefully the manner by which operators are currently assigned among Confluence's water wastewater systems, and further employs a degree of common sense and healthy skepticism, then one inevitably begins to question the Company's claim regarding the number of operators actually needed to manage its existing portfolio of systems in Missouri. For example, Mr. Cox testified, "that it would require 22 operators to appropriately staff an internal operations team." Ex. 6, *Surrebuttal Testimony of Josiah Cox*, pg. 39 lns. 14 – 15 (EFIS Item no. 177). Mr. Thies broke this down into "17 operators; 4 senior certified operators; and 1 director of utility operations." Ex. 19, *Surrebuttal Testimony of Brent Thies*, pg. 7 lns. 2 – 3 (EFIS Item no. 190). Confluence currently has twenty operators assigned to its systems. Ex. 231, *DR 2034* (EFIS Item no. 263). The OPC has argued to remove nine of those, and further assumed three of the remaining fifteen **existing** operators were supervisors. That means there are twelve "standard" operators in the OPC's proposal compared to Confluence's seventeen. The question to thus be asked is: where is Confluence putting the other five people it claims it needs? Stated another way, of the nine individuals that the OPC argued to be removed, which five does Mr. Cox believe were absolutely essential?

Is Mr. Cox's entire claim based on the assumed necessity of having Mr. Allard to look after one system in Polk County, despite three other people being assigned to it? Is it based on the need for Marie Rock to manage the Roy L systems despite four other people being assigned to it? Or is Mr. Cox legitimately arguing that it would not be possible to manage the DeGuire system with only three operators and therefore another four are required? None of these options make any sense. On top of that, why is the Company claiming it needs four senior operators? The Company only has about three people *now* that could really be considered to fall into the category of a supervisor or "senior" operator (unless one double-counts Mr. Crawford as both an operator and senior operator). Finally, how can the Company seriously claim to need a "director of utility operations" when it already has Mr. Faiello who, according to Confluence witness Mr. Thomas, "oversees the operations of the Confluence Rivers' third-party O&M contractors" with the express purpose of ensuring:

- Each of Confluence Rivers' systems complies with all federal, state, and local public health and environmental regulations;
- The Company's third-party O&M contractors operate consistent with all federal, state, and local safety regulations;
- Confluence Rivers' third-party O&M contractors fulfill all their contractual obligations; and
- All necessary preventive and corrective maintenance is timely and competently performed on the Confluence Rivers' systems to keep them functioning and to avoid outages that adversely affect customers.

Among other responsibilities. Ex. 20, *Direct Testimony of Todd Thomas*, pg. 15 lns. 11 – 22 (EFIS Item no. 191). It is these sorts of questions that should lead one to doubt the Company claim.

The proposal put forward by the OPC in this brief of a means by which Confluence could staff an internal operations team is far from unreasonable in light of the Company's current situation. That brings up one last interesting question. The same question, incidentally, that Commissioner Holsman effectively posed to the OPC's witness Dr. Marke when he took the stand: if the OPC is correct on this point, then why has the Company not moved toward employing in-house operators of its own volition? *See* Tr. vol. 11 pg. 126 lns. 3 – 12. Dr. Marke's response to that question was this:

> So why didn't the company do this? Quite frankly because I believe their priority has been on acquiring systems in other states and not on operating the systems that they have here. I think it's very easy to go ahead and sign a contract and forget about it. And you see that in the examples that we're paying marked-up cost for chemicals, we're paying marked-up cost for out-of-pocket expenses, and so forth. Again, we're -- ultimately at the end of the day we're on the same page in terms of finding efficiencies, or we should be in terms of finding efficiencies, because the outcome we're putting forward for the company is one where they can make more money.

Tr. vol. 11 pg. 127 ln. 22 – pg. 128 ln. 10.[25] The OPC's frustration on this issue stems from the Company's apparent unwillingness to seriously pursue the idea of moving

[25] Dr. Marke's reference to "paying marked-up cost for chemicals" comes from the fact that if Confluence purchases its chemicals through the contracted operations and maintenance firm, there is a 10% markup. Ex. 240, *DR 0075.1* (EFIS Item no. 273). Dr. Marke's reference to "paying marked-up cost for out-of-pocket expenses" comes from the following term from the contracts entered into between Confluence and the contracted operations and maintenance firm:
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some or all of its operation and maintenance services in-house. An unwillingness that is borne out in the illogical and frankly misleading positions that the Company and its witnesses chose to take in this case that have been outlined throughout this brief.

As stated at the beginning of this section, the ultimate question the Commission should ask here is simply: is this really the best way to operate a water/wastewater utility? The OPC believes the answer to this question is no. This is not the best way to operates a water/wastewater utility and, as a result, "ratepayers have experienced suboptimal service and are exposed to considerable risk in the future if the Company does not adapt and start emulating traditional utility models." Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)*, pg. 2 lns. 16 – 18 (EFIS Item no. 239). The OPC originally put forward what it believes would be the reasonable cost of maintaining an in-house operation team of nine people to remedy these problems. *Id*. at pg. 10 lns. 21 – 24. Over the course of this brief, the OPC has offered, as an alternative, the cost of maintaining fifteen operators in a manner that is that is primarily consistent with the assignment of operators that Confluence already uses. Even with this much higher number of operators, and further

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[redacted]

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Ex. 233, *DR 0040 (Public and Confidential)* (EFIS Item no. 265); Ex. 238, *DR 0040.1 (Public and Confidential)* (EFIs Item no. 271).

increasing the cost to hire each individual operator per the Company's arguments, this proposal would still result in cost savings for Customers. The Commission should therefore order a disallowance related to Confluence's contract-based business model of any amount between Dr. Marke's original recommendation and the figures computed in step four of this brief.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this *Initial Brief* and rule in the Office of the Public Counsel's favor on all matters addressed herein.

Respectfully submitted,

By: /s/ John Clizer
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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this eighth day of September, 2023.

/s/ John Clizer

P