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

REPLY BRIEF OF THE MISSOURI OFFICE OF THE PUBLIC COUNSEL

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Response to Confluence's "Introduction"

The brief filed by Confluence Rivers ("Confluence" or "the Company") begins with an introduction that includes an unwarranted attack on the character of both the Office of the Public Counsel ("OPC") and the Commission's Staff ("Staff"). *Initial Brief of Confluence Rivers Utility Operating Company, Inc.*, pgs. 2 – 4 (EFIS Item no. 283) (hereinafter "*Confluence's brief*"). This is followed by the recitation of a great deal of irrelevant information designed to mislead the Commission into believing that Confluence should be granted rates in excess of what is required to provide service to its customers. *Id*. pgs. 5 – 10. While the OPC would have preferred to use the briefing to address only the issues relevant to this case (as the OPC did in its own initial brief), these statements by the Company require the OPC to respond. Consequently, before being able to directly discuss the issues, the OPC will take a moment to rebut the spurious allegations and duplicitous arguments made in Confluence's introduction.

The OPC and Staff have consistently sought to work with Confluence and help the Company acquire distressed systems in the State of Missouri

As already indicated, the Company's brief begins with an attack on the OPC and Staff. *Id*. at pgs. 2 – 4. For example, Confluence claims that "Public Counsel has been steadfastly opposed to Confluence Rivers' efforts to address" the problems facing Missouri's water and wastewater systems and that "its obstruction has been ever present." *Id*. at pgs. 3 – 4. Nothing could be further from the truth. To demonstrate this, the OPC will first review what evidence the Company relies upon and then show what evidence the Company ignored.

What Confluence relies upon

Confluence's biggest piece of "evidence" for claiming that the OPC opposes their activities in the state is a citation from the rebuttal testimony of OPC witness Ted Robertson filed in case WO-2014-0340. *Id.* at pg. 4, n. 8. There are several things to note. First, this case was the application for a CCN made by Hillcrest Utility Operating Company. *Joint Application and, If Necessary, Motion for Waiver*, WO-2014-0340, (EFIS Item no. 1). This is the very first system Confluence ever acquired in **any** state. Consequently, the OPC had some serious concerns regarding the qualifications of CSWR's then main employee, Mr. Josiah Cox, who, up to that point, had no experience whatsoever in operating or managing a Commission regulated public utility. *Rebuttal Testimony of Ted Robertson NP,P and HC)*, WO-2014-0340, pg. 12 lns. 19 – 20 ("[Mr. Cox] has no experience operating and managing a Commission regulated public utility."). The OPC also had severe misgivings about the nature of Confluence's proposed financing, which concerned a loan from an entity named Fresh Start Ventures LLC. *Id.* at pg. 14 lns. 5 – 6. As it turns out, the OPC would be **100% vindicated** in its concerns regarding the Fresh Start Ventures loans, as the Commission would ultimately find them to be self-dealing. Ex. 225, *Indian Hills Report and Order from WR-2017-0259*, pg. 50 ¶1, 56 (EFIS Item no. 256). However, that all pales in comparison to the real problem.

Confluence is citing to the testimony of Mr. Robertson filed in case WO-2014-0340 to support the proposition that the OPC has been "steadfastly opposed" to the Company's attempts to acquire distressed water and wastewater systems.

Confluence's brief, pg. 3. What Confluence fails to tell the Commission, however, is what Mr. Robertson ultimately recommended in case WO-2014-0340:

> Q. WHAT IS PUBLIC COUNSEL'S RECOMMENDATION?
>
> A. Public Counsel recommends **that the Commission authorize the purchase of Brandco's water and sewer operations by Hillcrest, and that the current Brandco CC&N either be transferred to Hillcrest or a new one provided**. Further, Public Counsel recommends that the Commission authorize all other conditions as listed in the MPSC Staff's August 26, 2014 Recommendation to Conditionally Approve the Transfer of Assets, and Issuance of a Certificate of Convenience and Necessity. However, Public Counsel also recommends that the Commission specifically describe in its authorization order that no ratemaking of any kind for the proposed financing or future construction or operations of Hillcrest, except for the identification of the July 31, 2014 net rate base for both the water and sewer operations, is either implicitly or explicitly authorized in this case. Lastly, Public Counsel recommends that the Commission order Josiah Cox and his group of affiliates not to enter into or request of the Commission authorization of any additional acquisitions or mergers of small water or sewer operations in this State **until they have completed one full rate case cycle for the operations being contemplated in the instant case and that of Case No. SM-2015-0014**.

Rebuttal Testimony of Ted Robertson NP,P and HC), WO-2014-0340, pg. 19 ln. 8 – pg. 20 ln. 3. Confluence's big evidence that the OPC is being obstructionist is actually a case where the OPC recommended the Commission **approve** Confluence's acquisition of a system. *Id*. The OPC's only two requests to the Commission in that entire case was: (1) the Commission's order specify no ratemaking treatment, and (2) Confluence's predecessor not purchase any more utilities until they had completed their first **ever** rate case. *Id*. Far from being obstructionist, this shows that the OPC

was bending over backwards, despite its very real and ultimately validated concerns regarding the Company's finances, to support Confluence Rivers. *Id*.

The fact that Confluence's main citation to show how the OPC has been "steadfastly opposed" to the Company's attempts to acquire distressed water and wastewater systems comes from a case where the OPC recommended the Commission approve the Company's request to acquire a distressed system shows just how perfidious Confluence's brief is. Nor is this an isolated incident of the Company simply fabricating information or misrepresenting facts, which the OPC intends to show several times throughout this brief. First, however, the OPC must show how the remaining "evidence" cited in the Company's "introduction" is equally dishonest or deceitful when actually reviewed.

Confluence claims the OPC has "refus[ed] to entertain stipulations" by citing cases SM-2015-0014 and SM-2017-0150. *Confluence's brief*, pg. 4. Unsurprisingly, this statement is utterly untrue. The nonunanimous stipulation and agreement filed in case SM-2015-0014 states: "The Office of the Public Counsel ("OPC"), while not a signatory, has indicated through its counsel that it does not oppose nor request a hearing as to this Stipulation." *Nonunanimous Stipulation and Agreement (NP and HC)*, WM-2015-0014, pg. 1 (EFIS Item no. 15). The nonunanimous stipulation and agreement filed in case SM-2017-0150, meanwhile, literally states: "[t]his Stipulation and Agreement was reached as the result of negotiations between, Elm Hills, Staff, **and the Office of the Public Counsel (OPC)**." Non-Unanimous Stipulation and Agreement (Appendix B - HC), SM-2017-0150, pg. 1 (EFIS Item no. 37). Far from

"refusing to entertain stipulations" as Confluence claims, these cases show the OPC has been actively involved in reaching settlement but simply made the decision not to sign the final agreement in at least two cases.[1]

Confluence next states that the OPC has engaged in "outright opposition of other acquisition applications" citing cases WA-2019-0185 and WA-2019-0299. *Confluence's brief*, pg. 4. While this is technically more true, it is openly deceitful because it overlooks the fact that the OPC did not oppose these acquisitions of its own accord. Instead, the OPC was joining third party interveners who were otherwise representing the public. In case WA-2019-0185, for example, opposition to the acquisition was brought by (1) Reflections Condominium Owners Association, Inc., (2) Cedar Glen Condominium Owners Association, Inc., (3) Public Water Supply District No. 5 of Camden County, Missouri, (4) Lake Area Waste Water Association, Inc., and (5) Missouri Water Association, Inc. see *Reflections Condominium Owners Association, Inc.'s Response to Staff Recommendation and Memorandum (Public & Confidential)*, WA-2019-0185 (EFIS Item no. 26); *Cedar Glen Condominium Owners Association, Inc.'s Response to Staff Recommendation, and Motion to Schedule a Procedural Conference (Public & Confidential)*, WA-2019-0185 (EFIS Item no. 27); *Response in Opposition to the Staff Recommendation*, WA-2019-0185 (EFIS Item no. 28). Similarly, in case WA-2019-0299 the opposition to the acquisition was brought by the Lake Perry Lot Owners' Association. *Response to Staff Recommendation,*

[1] The OPC has internal policies that dictate whether the office will sign a stipulation and agreement or simply not oppose it. These can change with each subsequent Public Counsel appointed to the position.

Request for Hearing and Renewal of its Motion to Dismiss of Lake Perry Lot Owners Association, WA-2019-0299 (EFIS Item no. 10). As can be plainly seen, these are not instances where the OPC attempted to block Confluence's acquisition of its own volition. Instead, the OPC was acting in conjunction with a sometimes very large number of other interveners who all opposed the acquisition. Moreover, these isolated instances are the exception not the rule, as is shown when one considers all the evidence that Confluence failed to mention.

What Confluence failed to mention

As part of its ill-conceived *ad hominem* attack on the OPC, Confluence deliberately chooses to ignore the far larger number of cases that show how the OPC has been willing to work with and support Confluence. For example, the OPC signed a stipulation in case WM-2018-0116 requesting the Commission approve Confluence's acquisition of eleven (11) water and sewer systems, including Smithview, MPB Inc., Mill Creek, Roy-L, Evergreen, Gladlo, Willow, Majestic Lakes, Eugene, Calvey Brook and Auburn Lake Estates. *Unanimous Stipulation and Agreement*, WM-2018-0116, pg. 1 (EFIS Item no. 85). The same is also true for the Terre Du Lac Utilities Corporation. Ex. 218, *Terre Du Lac Unanimous Stipulation from WM-2020-0403* (EFIS Item No. 249). Confluence also fails to mention the OPC's decision not to oppose the Company's acquisition of fifteen (15) other water and sewer systems, including Branson Cedars, Fawn Lake, Prairie Heights, Freeman Hills, DeGuire, Missing Well, Spring Branch, Cedar Green, Deer Run, Tan-Tar-A, Gleandmeadows, Stone Ridge Meadows, Oasis HHP, Lost Valley and Four Seasons North. *Order Approving*

Acquisition of Water and Sewer Assets and Granting Certificates of Convenience and Necessity, WM-2020-0282 (EFIS Item no. 31); *Order Granting Certificate of Convenience and Necessity*, WA-2021-0425 (EFIS Item no. 15); Order Granting Certificate of Convenience and Necessity, SA-2022-0299, (EFIS Item no. 9); *Order Approving Acquisition of Assets and Granting Certificate of Convenience and Necessity*, WA-2023-0026, (EFIS Item no. 11); *Order Approving Acquisition of Assets and Granting Certificate of Convenience and Necessity*, WA-2023-0092, (EFIS Item no. 11); *Order Granting Authority to Acquire Sewer Assets and Certificate of Convenience and Necessity*, SA-2023-0187 (EFIS Item no. 7); *Order Approving Acquisition of Assets and Granting a Certificate of Convenience and Necessity*, SA-2023-0215 (EFIS Item no. 17); and *Order Approving Acquisition of Assets and Granting a Certificate of Convenience and Necessity*, WA-2023-0284 (EFIS Item no. 11).

In addition to those acquisitions, the Company also fails to acknowledge that the OPC filed a recommendation for this Commission to approve Confluence's merger request in case WM-2021-0412. *Response to Staff Recommendation*, WM-2021-0412, pg. 3 (EFIS Item no. 7). It further fails to mention the OPC's willingness to join the Company in settlement in its prior rate case. *Unanimous Agreement Regarding Disposition of Small Utility Company Revenue Increase Request*, WR-2020-0053 (EFIS Item no. 15). It also fails to give any consideration to the OPC's willingness to settle issues in this case and to not oppose the settlement of other issues. *Unanimous Partial Stipulation and Agreement*, (EFIS Item No. 167); *Non-Unanimous Partial*

Stipulation and Agreement, (EFIS Item no. 259) ("The Office of the Public Counsel ("OPC"), while not a signatory, has indicated it will not oppose this Stipulation."). Taken together, this vast listing of cases paints a picture that is the complete opposite of what the Company seeks to portray in its introduction. Again, far from being obstructionist, the OPC has proven its willingness to work cooperatively with Confluence over and over again.

Conclusion

The fact that Confluence's brief devolves so quickly into making *ad hominem* attacks demonstrates the weakness of its positions.[2] The fact that these *ad hominem* attacks can so easily be proven categorically false shows the level of dishonesty that Confluence and its legal counsel are willing to stoop to in arguing this case. This Commission should be concerned that the Company's opening remarks in its brief, similar to the dishonest attacks it made in its opening remarks during the hearing,[3] are so obviously intended to distract the Commission with the false narrative that the OPC and Staff are creating "regulatory obstacles" or somehow caused "obstruction." The Company, on the other hand, should recognize that these types of slanderous tactics will not result in future cases being any less contentious. On the contrary, the unnecessary vitriol Confluence has offered only serves to damage the relationship between the Company and regulators in this State.

[2] To quote the famous Roman Orator Marcus Tullius Cicero: "When you have no basis for an argument, abuse the plaintiff."

[3] Tr. vol. 8 pg. 18 ln. 9 – pg. 19 ln. 1.

Confluence will recover every cent it spent prudently improving the quality of water and wastewater systems in Missouri

On pages five through ten of its opening, Confluence discusses the improvements it has made for two water and wastewater systems: Indian Hills and Missouri Utilities. *Confluence's brief*, pgs. 5 – 10. But for the deployment of AMI meters at Indian Hills, the plant improvements made at each of these systems has absolutely no bearing on this case. Why then has Confluence devoted so much time to discussing them? The answer is rather obvious: it is part of the Company's larger attempt to have this Commission ignore the fundamental purpose of a rate case.

The fundamental purpose of any general rate increase case is to bring the subject utility's rates in line with its cost of service. *See* 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. Confluence, however, wants to make this case about something different. It wants this case to turn on whether this Commission will "reward" the Company for the work it has done improving Missouri water and wastewater systems by ordering rates that exceed the cost of service. This not only contradicts the essential tenants of utility regulation, it is also immensely unnecessary.

Every single capital improvement that Confluence has made for each one of its systems (save for the AMI investments disputed in issue 16) have already been included in rates in this case and are not subject to dispute. That means Confluence will not only recover the cost of those investments, it will also be able to earn a profit

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on those investments. That fact alone is sufficient to reward Confluence for the improvements it has made, just as it is for every single other utility that operates in this State. Nor can one suggest that the individual people who are working for Confluence have not been more than adequately compensated for their work. Consider the following table from the surrebuttal of Staff witness Ashley Sarver:

Name	CSWR Title	CSWR Annual Base Salary	MERIC Job Title	MERIC Annual Base Salary	Cost Of Living Increase Based on MERIC
Josiah Cox	President	** **	Chief Executive	$225,566	$259,656
Mike Duncan	Vice President	** **	Managers, All Other	$127,303	$146,543
Todd Thomas	Senior Vice President	** **	General and Operations Manager	$110,404	$127,090
Martin Moore	Chief Financial Officer	** **	Financial Managers	$145,103	$167,033
Brent Thies	Vice President / Corporate Controller	** **	Managers, All Other	$127,303	$146,543
Cheryl Waites	Chief of Staff	** **	First-Line Supervisors of Office and Administrative Support Work	$66,701	$76,782
Jo Anna McMahon	Vice President of Government Affairs	** **	Disallowed due to job description.		

Ex. 131, *Surrebuttal Testimony of Ashley Sarver (Public and Confidential)*, pg. 2 lns. 11 – 20 (EFIS Item no. 227). What this table shows is that individuals who work for Confluence (through its parent company: CSWR LLC) are receiving considerably more in base salaries than what would otherwise be expected. The Commission does not need to overinflate this level of compensation even more by ruling in the Company's favor on the issues addressed in this brief.

Confluence will be more than made whole through this rate case without the Commission ordering the unnecessary additional costs for which the Company now

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advocates. The Company's insinuation that this Commission needs to give it more than what is required to provide service should therefore be disregarded. Moreover, Confluence cites to no statutory provision to support this as a proper consideration in setting the rates for small water and sewer systems across Missouri. Missouri statutes and the Commission's longstanding approach of allowing recovery of costs and a reasonable return on investments, should be the sole focus in this case. That is an approach that encourages investments, just as it encouraged all of Confluence's acquisitions.

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Issue 4: Income Taxes

Because the OPC and the Staff have effectively taken the same position on this issue, the OPC will only respond to the arguments presented in the brief filed by Confluence Rivers.

Confluence's ratepayers are not the "root cause" of the Company's Net Operating Losses

The first argument raised in Confluence's brief predictably attempts to paint the Company's captive customers as the "root cause" of its net operating losses ("NOLs"). *Confluence's brief,* pgs. 16 – 17. This is demonstrably untrue. As the OPC explained thoroughly in its own initial brief, the majority of Confluence's NOLs are actually the result of the Company claiming interest deductions on its income taxes because of a loan that Confluence essentially made to itself. *Initial Brief of the Office of the Public Counsel*, pgs. 10 – 14 (hereinafter "*OPC' brief*"). The OPC's witness Mr. David Murray was able to calculate the total amount of those interest deductions as $5,517,208. Tr. vol. 10 pg. 149 lns. 16 – 20; Ex. 230, *Murray Worksheet* (EFIS Item no. 262). The removal of these interest deductions from consideration in Confluence's tax returns would have directly reduced the Company's accumulated NOLs by the same amount. Tr. vol. 10 pg. 149 lns. 21 – 25.

Because this issue was already addressed in detail in the OPC's initial brief, the OPC will not dwell on it long here. However, it is worth taking just a moment to consider how significant an impact these interest deductions had. Consider, for example, the Indian Hills system that Confluence chose to discuss at length in its

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brief. *Confluence's brief*, pgs. 5 – 7. During the evidentiary hearing, Counsel for OPC had the following exchange with Mr. Brent Thies, on behalf of Confluence, regarding this particular system:

> Q. And again I'm going to ask you to go to the 2019 annual report.
>
> A. Okay.
>
> Q. And again I'm going to ask you to go to page W1.
>
> A. Okay.
>
> Q. And you would agree with me in this case that line 23, the net income is $201,273?
>
> A. Correct.
>
> Q. And that the interest expense is $274,121?
>
> A. That's correct.
>
> Q. And you would agree with me that if I removed the interest expense for the loan that the Company made to itself, the Company's actual net total income would become positive?
>
> A. Yes. Removing the interest expense would result in positive income.
>
> Q. So **but for the interest payments made on the loan the Company made to itself, the Company would have had positive income in the year 2019 for Indian Hills**?
>
> A. That's correct.

Tr. vol. 10 pg. 54 ln. 17 – pg. 55 ln. 12 (emphasis added). As shown in this excerpt: but for claiming the interest deductions for the loan that the Company made to itself, the Company would have had positive income for calendar year 2019 for the Indian Hills system and thus not generated the NOL the Company otherwise claimed. *Id*. Moreover, the workpaper developed by the OPC's witness Mr. Murray shows that the interest deductions were by no means isolated to Indian Hills. Ex. 230, *Murray*

Worksheet (EFIS Item no. 262). It is therefore immensely disingenuous for Confluence to blame its captive customers for the creation of all these NOLs when, in reality, it is the Company's own double-dealing lending that resulted in more than $5 million being recorded as a "loss" for income tax purposes. Tr. vol. 10 pg. 55 ln. 22 – pg. 56 ln. 3; Ex. 230, *Murray Worksheet* (EFIS Item no. 262).

As stated in the OPC's initial brief, Confluence's current customers have received no benefit from the Company paying large amounts of interest to itself. Nor, for that matter, has the Company experienced any actual loss in revenue resulting from these loans, despite the fact that they have been recorded as a loss for tax purposes. Tr. vol. 10 pg. 91 lns. 1 – 12. Moreover, a portion of Confluence's customers that have been paying for the very same self-dealing loans that have given rise to these NOLs. Exhibit 209, *Direct Testimony of David Murray*, pg. 8 lns. 3 – 4 (EFIS Item no. 241) ("Hillcrest and Raccoon Creek . . . had their revenue requirements set based on the 14% rate assigned to the Fresh Start financing agreements."). Far from benefiting from these NOLs, as the Company claims, the customers at these two systems have actually been **directly harmed** by their creation. Based on the Company's own logic, it would be immensely unfair for the Company to reap the benefit of both the unacceptably high, self-dealing loan that Confluence made to itself *and* claim all the tax benefits arising from those same loans after they were repaid by Confluence's customers.

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This is not a departure from prior cases

The next argument regarding this issue in Confluence's brief starts by claiming: "historically, Staff and Public Counsel have set rates for all regulated utilities on a normalized basis." *Confluence's brief*, pg. 17 (emphasis in original). This is simply not accurate. As Staff witness Ms. Bolin expressed in her surrebuttal testimony:

> Q. What has been the practice of the Commission regarding the question of normalization or flow-through of income tax expense?
>
> A. The Commission has always normalized tax timing differences that are "protected;" i.e., accelerated tax depreciation. For "unprotected differences," the Commission has assessed **on a case-by-case basis** whether the timing difference should be normalized or flowed-through.

Surrebuttal Testimony of Kimberly K. Bolin (Public and Confidential), pg. 5 lns. 6 – 11 (EFIS Item no. 219) (emphasis added). Ms. Bolin repeated this point on the stand in the very same section that Confluence erroneously cites to in its brief for support of the prior, inaccurate statement. Tr. vol. 10 pg. 130 lns. 5 – 6. ("We look at things on a case-by-case basis."). This is an important point to understand, because Confluence's present tax situation is unlike any other Missouri utility.

As Ms. Bolin explained in the excerpt above, which was repeated several other times during the hearing, IRS regulations **require** normalization for income tax deductions arising from accelerated depreciation. *See*, *e.g.*, Tr. vol 9 pg. 172 ln. 15 – 174 ln. 2. However, there is no accelerated depreciation at issue in this case. *See* Ex. 203, *Surrebuttal Testimony of John S. Riley*, Pg. 5 lns. 18 – 19 (EFIS Item No. 235).

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Confluence's witness acknowledged that in his testimony. *Id*; Ex. 16, *Rebuttal Testimony of Bradley M. Seltzer*, pg. 4 lns. 17 – 19 (EFIS Item no. 187) ("the net operating loss balance does not reflect deferred taxes attributable to accelerated depreciation and that, therefore, **the normalization rules of the Internal Revenue Code do not apply to the instant situation**") (emphasis added). That means that the present case is not analogous to all the other cases upon which Confluence relies. Tr. vol. 10 pg. 174 lns. 3 – 8. "It's an apples to oranges comparison[.]" *Id*. If one properly acknowledges this important point, one will understand that there has been no departure from practice by Staff in this case.[4]

After trying to argue that this case is somehow a departure from Staff's prior practice by citing situations that are completely different from what is now before the Commission, Confluence attempts to outline three "practical effects" that result. Lack

[4] Confluence also argues that Staff's approach in this case is different than the outcomes that have occurred in prior, staff-assisted small rate cases. *Confluence's brief*, pg. 18. This, however, fails to take into consideration the nature of a staff-assisted small rate case. As the name implies, a staff-assisted small rate case requires the Commission's staff to "effectively perform a large degree of the functions of bringing a normal rate case on its own[.]" Tr. vol. 9 pg. 175 lns. 7 – 11. This results in Staff having to take on a much higher workload and also requires the work to be done over a much shorter time period. *Id*. at lns. 12 – 15. This, in turn, increases the possibility of error. *Id*. at 16 – 18. In addition, these staff-assisted small rate cases should concern a much lower income tax amount than the present case. *Id*. at lns. 19 – 22. This would significantly affect the impact and appearance of any issues regarding NOLs. *Id*. at pg. 176 lns. 3 – 9. Given these factors, it should be no surprise that this issue has not been previously addressed in prior Confluence rate cases. That does not in any way, however, diminish the validity of the arguments presented by Staff and the OPC in their respective initial briefs.

of any real departure from practice notwithstanding, each of these three "practical effects" are independently wrong. The OPC will address all three.

Debunking the first "practical effect"

First, the Company claims "Staff's methodology serves to deny Confluence Rivers of a significant level of revenues." *Confluence's brief*, pg. 18. This is false for several reasons. To begin, Confluence states that the Company "is not even expected to begin recognizing such net operating losses for tax purposes for several years." There is no citations to this statement, because it is not true. As explained by Ms. Bolin on the stand:

> Q. And the taxes coming due in the future will be able to make use of any existing net operating loss carryforward?
>
> A. Yes.
>
> Q. So the taxes -- sorry, the rates -- the taxes paid on rates set in this case will **immediately** be able to make use of the benefit of net operating loss carryforwards, correct?
>
> A. For a certain period of time, yes. As long as the NOLs are still available.
>
> . . .
>
> Q. Until they are fully used up?
>
> A. Correct.

Tr. vol. 10 pg. 121 ln. 14 – pg. 122 ln. 9 (emphasis added). Therefore, Confluence will be able to begin making use of these NOLs immediately after rates are set in this case. *Id*.

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Next Staff is only recommending to disallow income tax expense, which is the amount included in rates to pay future income taxes. *Id.* at pg. 121 lns. 14 – 16. Because income tax expense is used to pay income taxes, it is by definition not supposed to constitute "revenue" for the Company to spend on other expenses or simply pocket as profit. Stated differently, income tax expense should be revenue neutral to the Company's cost of operations and bottom line, as it is only included in the cost of service in order to pay future income taxes and nothing more. *Id.* Finally, Confluence's argument that Staff is depriving the Company of revenue fails to consider that the systems Confluence is acquiring (which the Company incorrectly blames for creating the NOLs)[5] would **also** already have income taxes included in their rates. *Id.* at pg. 119 lns. 8 – 13. As such, "if the Company is in a net operating loss position after acquiring that system the amount that is currently in rates to pay taxes for that system will ultimately be profit for the Company." *Id.* at lns. 14 – 20.

[5] Once again, the OPC points out that the cost of plant operating expense associated with acquired systems is often exceeded by the revenues generated by those same systems:

> 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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This would constitute an obvious benefit to the Company. *Id*. at lns. 21 – 23. For all these reasons, Staff's methodology does not "deny Confluence Rivers of a significant level of revenues." *Confluence's brief*, pg. 18. Instead, it only limits Confluence to recovering its actual cost of service.

Debunking the second "practical effect"

The Company's next claimed "practical effect" is that *not* allowing Confluence to collect money that the Company will *not* pay to the IRS "places Missouri at a major disadvantage when it comes to the attraction of limited capital for the purpose of acquiring and rehabilitating distressed water and wastewater utilities." *Confluence's brief*, pg. 18. As with the first "practical effect" Confluence suggested, there are several problems with this claim. As a starting point, it is important to understand that this statement means Confluence expects its current customers to subsidize the expansion of its operations in Missouri. This concept was explored through cross-examination of Staff witness Ms. Kimberly Bolin:

> Q. And to the extent that we're including this to incentivize what that means is that Confluence's current customers are being expected to front free money to the Company in order to encourage the Company's continued expansion in Missouri?
>
> A. That is -- yes.
>
> . . .
>
> Q. If Confluence . . . acquires a system and allows the rates that are in effect to in essence continue, those new customers will not be paying the free money generated by these rates?
>
> A. If they -- if Confluence adopts the current rates the Company is charging, that is correct.

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Tr. Vol. 10 pg. 177 ln. 15 – pg. 178 ln. 8. Confluence is thus asking the Commission to force its current customers to not only pay the cost of providing service to them, but also pay for the services provided to prospective new customers. This is, quite obviously, grossly unfair to Confluence's existing customers, especially since the record shows that this kind of subsidization is completely unnecessary to encourage investment in Missouri's small water and wastewater systems.

Confluence is not the only water and wastewater provider in this state to acquire small systems. Consider the following exchange between Staff witness Ms. Bolin and OPC Counsel:

> Q. . . .[Y]ou would agree with me that such a phantom tax is not necessary to incentivize acquisitions of systems, correct?
>
> A. I would agree.
>
> Q. You would agree with me that other utilities in the state are acquiring small systems without the need of such a phantom tax, correct?
>
> A. That is correct.
>
> Q. And to your knowledge, does any of the other systems that are acquired by other utilities, do those utilities request this phantom tax treatment?
>
> A. Missouri American pays taxes, so no.

Tr. vol. 10 pg. 123 lns. 6 – 18. As stated in this excerpt, Confluence is requesting special treatment with regard to the calculation of its income tax expense that other Companies in this State do not receive. *Id.* Yet these other Companies are also seeking out and acquiring small, distressed water and wastewater systems. *Id.*

Moreover, there is other evidence that clearly shows Confluence *in particular* does not require any incentive to make continued capital investments in this State.

Commission rule 20 CSR 4240-10.085 is entitled "Incentives for Acquisition of Nonviable Utilities." The rule's stated purpose, as recorded in the code of state regulations, "is to create a process for a water or sewer utility to propose an acquisition incentive to encourage acquisition of nonviable water or sewer utilities by a water or sewer utility with the resources to rehabilitate the acquired utility within a reasonable time frame." Confluence and/or its predecessor companies has previously sought to make use of this rule twice. The first time was through the Osage Utility Operating Company ("Osage"), which was a predecessor to Confluence that was ultimately merged into Confluence. Tr. vol. 9.5 pg. 48 lns. 12 – 22. Osage sought an acquisition incentive under Commission Rule 20 CSR 4240-10.085 during its application for a CCN with this Commission. *Id.* at pg. 48 ln. 23 – pg. 49 ln. 1; Ex. 216, *Osage Amended Application from WA-2019-0185* (EFIS Item no. 247). The Commission, however, did not grant this acquisition incentive. Tr. vol. 9.5 pg. 49 lns. 8 – 9. The second application for an incentive was made by Confluence itself while requesting a CCN to serve Terre Du Lac. *Id.*at pg.50 lns. 11 – 23; Ex. 217, *Terre Du Lac Application from WM-2020-0403* (EFIS Item no. 248). This request was ultimately withdrawn by the Company. Tr. vol. 9.5 pg. 51 ln. 9 – pg. 52 ln. 2; Ex. 218, *Terre Du Lac Unanimous Stipulation from WM-2020-0403* (EFIS Item No. 249). Yet, despite twice seeking and failing to receive an acquisition incentive under the

Commission's rules, there has been no slowing of the Company's expansion in this State.

Confluence's brief is riddle with repeat suggestions that, absent the Commission ruling in the Company's favor, Confluence will limit if not cease investment in Missouri. The Company's pattern of behavior shows this not to be true. As Confluence's president, Mr. Josiah Cox, admitted on the stand, the Company has continued to acquire numerous systems in this state without receiving any extra incentive to do so. Tr. vol. 9.5 pg. 49 ln. 25 – pg. 50 ln. 4. Nor has any of the arguments presently made by either Staff or OPC in this case stopped the Company from continuing to seek new Missouri acquisitions. Confluence has literally filed yet another request for a CCN to acquire a new system in Warren County Missouri on August 25, 2023, just a week after the close of the evidentiary hearing in this case. *Application and Motion for Waiver (Public and Confidential)*, SA-2024-0049 (EFIS Item no. 1). Given these factors, the Commission should understand that it is in no way necessary for Confluence's current customers to pay excess income tax expense (that Confluence will then be permitted to pocket) in order to incentivize the Company to continue investing in Missouri systems.

As one final point, the OPC would suggest the Commission carefully consider the fact that Confluence currently has ** [redacted] ** Ex. 131, *Surrebuttal Testimony of Ashley Sarver (Public and Confidential)*, pg. 25 ln. 22

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– pg. 26 ln. 120 (EFIS Item no. 227). Staff witness Ms. Ashely Sarver even included a chart showing the amounts in her surrebuttal testimony:

**

**

Id. at pg. 26 ln2. What this definitely proves is that Confluence's executives and decision makers have **

** The Commission cannot allow itself to be fooled into thinking that failure to normalize Confluence's NOLs will, in any possible way, affect what systems Confluence does or does not acquire in this State.

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Debunking the third "practical effect"

The third claimed "practical effect" of Staff's position, according to Confluence, is that it "introduces a significant level of regulatory uncertainty to the Missouri ratemaking paradigm." *Confluence's brief*, pg. 19. This is really just a restatement of the second point the Company is attempting to make on this issue. As already stated, though, this point is not true. The Commission, and by extension its Staff, have always looked on "unprotected" tax timing differences on a case-by-case basis. *Surrebuttal Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 5 lns. 6 – 11 (EFIS Item no. 219)*;* Tr. vol. 10 pg. 130 lns. 5 – 6. ("We look at things on a case-by-case basis."). Confluence is therefore really attempting to argue for a Commission precedent that just does not exist and, regardless, would not bind the Commission. *Spire Mo., Inc. v. Pub. Serv. Comm'n*, 618 S.W.3d 225, 235 (Mo. banc. 2021) ("The Court also rejects Spire's contention that the PSC's decision regarding the sale of the Forest Park property was arbitrary and capricious because it departed from approaches taken by the PSC in prior cases. An administrative agency is not bound by *stare decisis*, nor are PSC decisions binding precedent on this Court." (internal quotations omitted)).

While it could leave the issue there, there is one slight point the OPC wishes to address. Confluence conveniently forgets to mention in its brief that the supposed "regulatory certainty" it claims to exist in regards to this matter is something that the OPC has, in fact, consistently challenged. To begin, the OPC's witness, Mr. John Riley, explained on the stand that, as far as he is concerned, the Staff's proposed

treatment of the income tax expense in this case would not be any sort of departure from how he would treat said costs. Tr. vol. 9 pg. 204 lns. 4 – 7 ("However, to be honest with you it would not be a departure on how I treat it. I would never have -- would always try and reduce taxes down to what they actually are."). Further, the OPC has been no stranger to litigating the impact of NOLs on income tax expense calculations and has challenged such issues in numerous cases, including through appeal. *See*, *e.g.*, *Mo.-American Water Co. v. Office of the Pub. Counsel (In re Mo.-American Water Co.)*, 637 S.W.3d 121 (Mo. App. W.D. 2021). Consequently, Confluence had, and continues to have, no justifiable basis for believing that the normalization of its NOLs was a *fait accompli*. On the contrary, had the Company properly surveyed the legal landscape (and positions taken previously by other parties), it would have known that the OPC, at a minimum, could be expected to raise this issue. There is, consequently, no loss in "regulatory certainty" that arises from normalizing Confluence's NOLs.

Confluence is attempting to confuse the record by misconstruing normalization for tax and bookkeeping purposes

The Company's fourth argument[6] on this issue argues that Staff's position regarding income tax normalization "is 180° contrary to its typical ratemaking

[6] The Company's third argument is not really an argument regarding this issue. Instead, it is an attempt to address the fact that Confluence has violated the terms of previous settlement documents in the course of presenting its case. *Confluence's brief*, pg. 20. Regardless, what Confluence asserts in this section is still simply false. Specifically, Confluence claims that income tax expense is "not a subject of settlement[,]" which is quite obviously wrong. *Id*. Each of these disposition agreements would have settled the **total** revenue requirement for the Company, which would have included income tax expense. *See* Ex. 134, *Hillcrest Disposition Agreement from WR-2016-0064* (EFIS Item no. 230) (. . . the agreed-upon **overall**

position." *Confluence's brief*, pg. 20. In making this argument, the Company attempts to sow confusion by arguing that Staff routinely normalizes "with regard to all other aspects of operating expense and revenues" and thus demands to know why taxes are any different. *Id*. The simple answer to this supposed "dilemma" is that normalization for tax purposes and normalization for bookkeeping purposes are very different things. Tr. vol. 9 pg. 113 lns. 17 – 22. ("Q. Would you agree with me that normalization for tax purposes and normalization for bookkeeping purposes are very different things? A. They are different, I would agree with you." (cross of Staff witness Bolin)).

Normalization for bookkeeping purposes refer to what are called "normalization adjustments." Ex. 110, *Direct Testimony of Keith Majors*, pg. 7 lns. 11 – 14 (EFIS Item no. 205). As explained by Staff witness Mr. Keith Majors:

> Utility rates are intended to reflect normal ongoing operations. A normalization adjustment is required when the test year does not reflect the level of costs going forward or reflects the impact of an abnormal event. One example of this type of adjustment is maintenance expenses.

Id. For tax purposes, meanwhile, normalization simply means that income tax expense is calculated at the statutory rate. Tr. vol .9 pg. 102 lns. 16 – 18. These two concepts have nothing in common. *Id*. at pg. 113 lns. 17 – 22. As stated, Confluence is simply attempting to spread confusion by suggesting a non-existent relationship

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cost of service for the Company is $177,008 (emphasis added)). Consequently, there is nothing in the record whatsoever to support Confluence's claim that "the terms of a settlement only concerned the items of differences between the Company and Staff" as this is actually directly refuted by the language found in those same agreements. *Id*. However, the OPC does not consider this issue to merit significant discussion, so it will not provide any further analysis in this brief.

between two completely separate concepts. In the same vein, the Company ends its discussion of this issue with a completely irrelevant citation to Federal Energy Regulatory Commission ("FERC") rules. The OPC would point out two obvious problems with this. First, this Commission is in no way required to follow FERC rules for purpose of ratemaking in Missouri generally. *Surrebuttal Testimony of Kimberly K. Bolin (Public and Confidential)*, pg. 3 lns. 17 – 20 (EFIS Item no. 219). Second, FERC regulates electric and gas utilities, but not water utilities like Confluence. WHAT IS FERC, https://www.ferc.gov/what-ferc, (last updated on April 13, 2023) ("The Federal Energy Regulatory Commission, or FERC, is an independent agency that regulates the interstate transmission of **natural gas, oil, and electricity**." (emphasis added)).

Conclusion

Confluence's position has no legal basis whatsoever. For example, during the evidentiary hearing the OPC demonstrated that Confluence's witness Mr. Seltzers' cited sources directly contradicted his own testimony. Tr. vol 9 pg. 108 ln. 7 – pg. 110 ln. 6 (showing that while Mr. Seltzer repeatedly claimed deferred taxes result in a tax "liability" while his own relied upon source, the Statement of Financial Accounting Standards 109, clearly defined deferred taxes as a tax "asset"). So instead, the Company's entire position is boiled down into three points: (1) we lost money acquiring these systems so we want our customers to retroactively make us whole through inflated income tax expense; (2) we have normalized NOLs in the past; and (3) if the Commission doesn't give us this, we won't continue to buy distressed systems

in Missouri and instead invest elsewhere. With regard to the first of these three points, the OPC has shown that the majority of the NOLs are actually the result of Confluence's own self-dealing loan and not the cost of operating new systems they acquire. *See Initial Brief of the Office of the Public Counsel*, pgs. 10 – 14. The second point is an attempt to confuse this case with other cases that have involved accelerated depreciation. However, Confluence's own witness admitted "the [Company's] net operating loss balance does not reflect deferred taxes attributable to accelerated depreciation and that, therefore, **the normalization rules of the Internal Revenue Code do not apply to the instant situation**." Ex. 16, *Rebuttal Testimony of Bradley M. Seltzer*, pg. 4 lns. 17 – 19 (EFIS Item no. 187) (emphasis added). As for the third point, the Company has made this claim before, twice, and been denied special treatment, twice, only to keep coming back to Missouri. Tr. vol. 9.5 pg. 48 ln. 12 – pg. 52 ln. 2 ("Q. So you would agree with me that twice now Confluence has come to this Commission requesting an incentive to continue acquiring systems, twice now it has not gotten that incentive, and yet the company continues to acquire systems in this state. Is that correct? A. I believe that is correct."); Ex. 216, *Osage Amended Application from WA-2019-0185* (EFIS Item no. 247); Ex. 217, *Terre Du Lac Application from WM-2020-0403* (EFIS Item no. 248); Ex. 218, *Terre Du Lac Unanimous Stipulation from WM-2020-0403* (EFIS Item No. 249). The Commission should not allow this Company to force its current customers to subsidize future acquisitions through the creation of a "phantom income tax." For all the reasons laid out in the OPC's initial brief, and in light of all the arguments against

the Company's position expressed in this brief, the Commission should order the income tax expense included in rates in this case be calculated consistent with the recommendation of Staff witness Ms. Bolin.

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Issue 6: Acquisition Related Costs

Instead of attempting to address the myriad of inaccuracies in this portion of Confluence's brief, the OPC will constrain its discussion in reply to addressing the main problem with the Company's position and only briefly touch on several minor points in a conclusory footnote.

The main problem: Confluence is attempting to conflate acquisition costs with the cost of plant improvements made at the acquired systems

Take a step back and consider this issue in broad generic terms. Imagine a water system that is currently in operation. The system has made investments to allow for the procurement and distribution of water and is further incurring regular expenses to maintain operations. Now imagine that this water system changes ownership. In the process of effecting that change in ownership, the new owner incurs certain costs (legal, regulatory, *etc.*). However, these costs do not **themselves** change any part of the current operation of the water system. This is simply because the new owner has yet to make any change to the system or its method of operations. Thus, the system is still being operated the exact same way under the new owner as it was under the previous owner. Under these circumstances, the costs that have so far been incurred have **only** been incurred to "to effectuate the financial, legal, and regulatory requirements of the" acquisition, and are therefore considered transaction costs. Ex. 110, *Direct Testimony of Keith Majors*, pg. 14 lns. 13 – 14 (EFIS Item no. 205). However, the new owner does not stop there.

After acquiring control of the system, the new owner begins to incur costs to change the nature of the system or its operations. For example, the new owner may install new equipment (like a new pump) to improve the quality of the system. These second types of costs will change the nature of the system and hence are not incurred only to effectuate the financial, legal, and regulatory requirements of the acquisition. They are therefore not transaction costs. *Id*. They are also not transition costs. *See id*. lns 14 – 17. They are instead simply the cost of plant improvements needed to provide utility service:

> Q. . . . Any plant investments that were made to bring a system back online -- for example, putting a new pump in, etc. -- would those fall into transaction or transition costs?
>
> A. I don't believe so. **No, those are costs of plant improvements that provide a utility service**.
>
> Q. And that doesn't matter if it would happen within that first fifty-one days or not? If it was in that fifty-one days it would be plant improvements?
>
> A. No. I think that -- well, **if it was related to a distinct plant improvement it's really not categorizable as a transaction cost or a transition cost or a cost of acquisition**.

Tr. vol. 9.5 pg. 69 ln. 18 – pg. 70 ln. 4 (emphasis added). The simple test to distinguish these two types of costs when considering an acquisition is to ask this question: did this cost incurred **itself** result in a change to the quality or state of the system? If yes, then it is a cost of plant improvements that provide a utility service and thus not a transaction cost. If no, then it is just a cost to effectuate the transfer of ownership

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and thus a transaction cost. With that in mind, it is possible to consider Confluence's argument.

The argument presented in Confluence's brief can basically be boiled down to this: any costs incurred to **facilitate** future improvements to the system are themselves costs to improving the system. *Confluence's brief*, pg. 27 ("The steps necessary for Confluence Rivers to acquire the assets of small, distressed water and sewer utilities ultimately facilitate the provision of utility service and aid in the provision of safe and adequate service as to those systems."). The problem with that logic, though, is that **every single cost incurred to acquire a system facilitates future improvements**.[7] This means that every single transaction cost, as defined, would also become a plant improvement cost under Confluence's theory. This would effectively eliminate the concept of transaction costs, as the Commission has previously defined them, in their entirety.

If the Commission accepts Confluence's logic and allows every transaction cost to be considered a cost of improving the plant of a system simply because it **facilitates** future plant improvements, then there will be no justification for excluding transaction costs from recovery in any case. This is because it is necessary that every utility company will eventually have to make some improvement to the

[7] A utility cannot make improvements to a system that it does not own, so in order to make improvements the utility must acquire the system, which means all acquisition costs facilitate improving the system.

existing system just to keep it operational.[8] However, if all transaction costs can be included in rates because they simply *facilitate* future plant improvements without resulting in any immediate change in the usefulness of the plant, then ratepayers ultimately have to pay higher rates simply because ownership of utility plant has changed, which is exactly what the Commission imposed the net original cost rule to avoid. Ex. 129, *Surrebuttal Testimony of Keith Majors (Public and Confidential)*, pg. 6 ln. 31 – pg. 7 ln. 13 (EFIS Item no. 225). The obvious solution to this problem is to maintain the existing precedent as outlined in the testimony of Staff witness Mr. Keith Majors, and only allow the costs incurred during an acquisition that **directly and immediately** result in improvements to the system, or cost savings to customers, to be included in rates. This, however, does not include any of the costs Confluence now seeks to recover.

Not a single one of the costs that Confluence now seeks to recover will itself directly or immediately change the quality or nature of the system being acquired. The engineering surveys, for example, may lead to some *future* investment, but the survey itself will not change how the system is currently built. Legal costs incurred to ensure clean title to real-estate *might* mitigate cost impacts in future (if title is challenged for some reason), but it will not change where pipes are in the ground at the moment of acquisition and thus will not result in any direct or immediate change to the current system. If one employs the test outlined earlier, each of these costs are

[8] All utility plant will eventually break down and need to be replaced.

properly considered a transaction cost and should not be recovered by the Company. *Ex. 110, Direct Testimony of Keith Majors*, pg. 14 lns. 22 – 23 (EFIS Item no. 205).

Conclusion

The Commission should maintain the standards espoused in its prior decisions and refrain from allowing Confluence to recover transaction costs through base rates. *Id*. at lns. 19 – 20. All of the acquisition costs at issue in this case fall into that category. *Id*. at lns. 22 – 23. This is because none of those costs either directly or immediately change the nature or quality of the system being acquired. Confluence may be correct that these costs *facilitate* future improvements, but that is necessarily true of all transaction costs in all cases. Acquiring ownership over a system/utility will **always** be necessary to making improvements. Consequently, accepting the Company's logic would eliminate the Commission's precedent in its entirety. The Commission should abstain from taking such a drastic and unnecessary step. Instead, the Commission should disallow recovery of the transaction costs identified by Commission Staff.[9]

[9] There are only two other points from Confluence's brief on this issue that the OPC wishes to address. First, Confluence claims that these acquisition costs were booked pursuant to USOA guidelines. *Confluence's brief*, pg. 24. This is incorrect:

> Q. On page 10, lines 13-22 of his rebuttal testimony, Mr. Thies references the National Association of Regulatory Utility Commissioners ("NARUC") Uniform System of Accounts for Class A & B Water and Wastewater ("USOA") account 183 – Preliminary Survey and Investigation Charges, and the Company's procedure to charge this account for the expenses at issue. Does this procedure represent proper accounting?

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> A. No. The response to Staff DR No. 0066.1 specifically states regarding the acquisition costs: "Expense is booked to account 183 prior to acquisition. Upon closing, expenses are booked to 107 and any expense in 183 related to the acquired system are moved to 107." Costs incurred prior to the acquisition, such as these, are clearly related to the evaluation and due diligence on behalf of Confluence in determination of bid amount and terms of the offer. These costs are property retained at the Confluence ownership level, or booked "below the line" and not recovered in the cost of service.

Ex. 129, *Surrebuttal Testimony of Keith Majors (Public and Confidential)*, pg. 7 lns. 14 – 25 (EFIS Item no. 225). Second, Confluence's brief insinuates that Staff is departing from prior practice because the same costs at issue here were included in prior rate cases. *Confluence's brief*, pgs. 24 – 25. This is also false:

> Q. On page 12, lines 4-14 of his rebuttal testimony, Mr. Thies references costs similar to the acquisition costs included in prior rate cases. Are these comparable costs?
>
> A. No. Staff did include some deferred maintenance costs for leak repairs, line location, smoke testing, and sludge removal for the Indian Hills, Elm Hills, and Raccoon Creek systems. These costs were deferred and amortized over 5, 10, or 20 years as applicable. These costs differ from those at issue here because they were specifically agreed to in a disposition agreement in the applicable cases. As Mr. Thies notes on page 28, lines 15-20 of his rebuttal testimony concerning Stipulation and Agreements, it is uncertain what the parties to the disposition agreement may have conceded in agreeing to defer and amortize these expenses.
>
> More importantly, Confluence was never given carte blanche authority by the Commission to defer acquisition costs. I am not aware of any utility acquisition in which the Commission has authorized or Staff has recommended deferral of transaction costs.

Ex. 129, *Surrebuttal Testimony of Keith Majors (Public and Confidential)*, pg. 8 lns. 8 – 19 (EFIS Item no. 225).

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Issue 8: Timesheets

The OPC will stand on the arguments made in its initial brief regarding this issue save for the following three points:

(1) If the Commission were to order "Project Time-Tracking" instead of timesheets, as the Company suggests, then the time spent working on projects that pertain to a single or small subset of CSWR's affiliates should be updated on a daily basis. This is to ensure accuracy and to prevent any loss of record that might otherwise occur if the "Project Time-Tracking" were carried out on a less frequent basis.

(2) If the Commission were to order "Project Time-Tracking" instead of timesheets as the Company suggests, then the Commission needs to order the Company to record time spent working on behalf of **all** CSWR's affiliates, and not just Confluence. If the Company is able to only record the time it spends working on Confluence projects, then it will create a system where all costs are either allocated directly to Confluence or partially allocated indirectly to Confluence. The Company needs CSWR employees to track the time **not** spent working on Confluence related matters if the Commission wishes that Missouri customers not pay for those costs.

(3) Confluence's brief misses an important point to this issue, which is that 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). Therefore, whatever this Commission does order regarding time tracking for Confluence needs to be capable of separating acquisitions and business development activities from all other activities. If the Commission were to order "Project Time-Tracking" instead of timesheets as the Company suggests, then it needs to directly order the Company to specifically track time spent performing acquisitions and business development independently for all employees.

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Issue 13: Cost of Capital

Given the close proximity between the OPC and Staff positions, the OPC elects not to respond to the brief filed on behalf of the Commission's staff. Instead, the OPC will focus exclusively on addressing the many false claims and other inaccuracies found in Confluence's brief.

Confluence Rivers is asking this Commission to violate the standards of *Hope* and *Bluefield*

Confluence's brief begins this issue by reviewing the standard a Commission should follow when determining a just ROE that was set down in the US Supreme Court cases *Hope* and *Bluefield*. *Confluence's brief*, pgs. 34 – 35. Perhaps unsurprisingly, the Company only selectively quotes the *Bluefield* case and ignores the more important portions of the decision:

> A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; **but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures**.

Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n, 262 U.S. 679, 692-693 (1923) (emphasis added). With regard to *Hope*, the Company does cite to the more salient portions, which effectively repeat the same statement from *Bluefield*:

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> From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks.

Fed. Power Com. v. Hope Nat. Gas Co., 320 U.S. 591, 603, (1944) (internal citations omitted). Together, these two important decisions set a fairly simple standard: the return on equity awarded by this Commission should be the same as what would be expected of other, similar companies but should not be set so high as to put it in the same category as a highly profitable enterprise or speculative venture.[10] *Bluefield*, 262 U.S. at 693; *Hope*, 320 U.S. at 605 – 606. Yet, despite its simplicity, Confluence now requests this Commission to violate the *Hope* and *Bluefield* standard by awarding it a return on equity substantially higher than what its own affiliates (which clearly constitute "enterprises having corresponding risks" to Confluence) have been granted.

When it comes to identifying companies similar to Confluence Rivers, the Company's own affiliates present a rather obvious choice. In this case, there is evidence in the record for two such affiliates. The first is Bluegrass Water Utility Operating Company ("Bluegrass") in Kentucky. *See* Ex. 109, *Direct Testimony of Christopher C. Walters*, pg. 24 lns. 18 – 20 (EFIS Item no. 204). Bluegrass was awarded a 9.9% ROE in its most recent rate case. Tr. vol. 10 pg. 98 lns. 8 – 10; Ex.

[10] It is also worth pointing out that nothing in either of these cases even remotely suggests that Confluence's ROE must be set based on the utility as a stand-alone entity without consideration of its parent company (Central States Water Resources) as confluence suggests. *Confluence's brief*, pg. 35.

210, *Rebuttal Testimony of David Murray*, DM-R-2-C pg. 4 (EFIS Item no. 242). That is despite the Company's request for an 11.8% ROE. Tr. vol. 10 pg. 98 lns. 8 – 10. The second utility is Magnolia Utility Operating Company in Louisiana ("Magnolia"). *See* Ex. 109, *Direct Testimony of Christopher C. Walters*, pg. 24 lns. 18 – 20. Magnolia was awarded an ROE of 9.5% in its most recent rate case, which is directly consistent with the recommendation of the Commission's staff in this case. Ex. 210, *Rebuttal Testimony of David Murray*, DM-R-2-C pg. 4 (EFIS Item no. 242); Ex. 109, *Direct Testimony of Christopher C. Walters*, pg. 53 lns. 7 – 9 (EFIS Item no. 204).

If the Commission intends to comply with the requirements of the *Hope* and *Bluefield* cases, then it needs to authorize an ROE that is consistent with the "returns on investments in other enterprises having corresponding risks." *Fed. Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 603, (1944); *see also Bluefield*, 262 U.S. at 692 – 93. Confluence's own affiliate entities, which are operated in the same manner by the same parent company, present a very obvious starting point for meeting this goal. *See* Ex. 4, *Direct Testimony of Josiah Cox*, Ex. JMC-1 (EFIS Item no. 175). Therefore, The Commission should clearly consider setting an ROE that is consistent with what the Kentucky and Louisiana Commissions awarded Bluegrass and Magnolia, respectively. That would suggest an ROE somewhere in the range of 9.5% to 9.9%. Ex. 210, *Rebuttal Testimony of David Murray*, DM-R-2-C pg. 4 (EFIS Item no. 242). The OPC's recommended ROE of 9.65% obviously fits extremely well into this standard. Ex. 209, *Direct Testimony of David Murray*, pg. 22 ln. 18 – pg. 23 ln. 2 (EFIS Item no. 241). The Company's requested ROE of 11.35%, on the other hand, is well

beyond the *Hope* and *Bluefield* standards. It is instead approaching the level of "profits such as are realized or anticipated in highly profitable enterprises or speculative ventures." *Bluefield*, 262 U.S. at 693. This is exactly what the US Supreme Court told Commissions they should **not** award.

Review of Witness Qualifications

While the OPC does not generally feel it necessary to specifically identify the qualifications of its experts in briefing, the OPC will respond to Confluence's decision to address the qualifications of its witness, Dylan D'Ascendis, by doing the same now. *Confluence's brief*, pg. 35 – 36. The expert witness who provided testimony on this issue for the OPC is Mr. David Murray. *See* Ex 209, *Direct Testimony of David Murray*, pg. 2 lns. 10 – 16 (EFIS Item no. 241). Unlike Mr. D'Ascendis, who possesses a Bachelor of Arts degree in Economic History, Mr. Murray has a Bachelor of Science degree in Business Administration with an emphasis in Finance and Banking, and Real Estate. *Confluence's brief*, pg. 36; Ex 209, *Direct Testimony of David Murray*, DM-D-1 (EFIS Item no. 241). Both men, though, possess a Masters in Business Administration. *Confluence's brief*, pg. 36; Ex 209, *Direct Testimony of David Murray*, DM-D-1 (EFIS Item no. 241). Both men have also been awarded the professional designation Certified Rate of Return Analyst ("CRRA") by the Society of Utility and Regulatory Financial Analysts ("SURFA"). *Confluence's brief*, pg. 36; Ex 209, *Direct Testimony of David Murray*, DM-D-1 (EFIS Item no. 241). However, only Mr. Murray and Staff witness Christopher C. Walters have met the standards required to use the Chartered Financial Analyst ("CFA") designation. Ex 209, *Direct Testimony of David*

Murray, DM-D-1 (EFIS Item no. 241) and Ex. 109, *Direct Testimony of Christopher C. Walters,* pg. 1 (EFIS Item No. 204). The use of this designation "requires the passage of three rigorous examinations addressing many investment related areas such as valuation analysis, portfolio management, statistical analysis, economic analysis, financial statement analysis and ethical standards" as well as "four years of relevant professional work experience." Ex 209, *Direct Testimony of David Murray*, DM-D-1 (EFIS Item no. 241).

While the OPC would prefer to restrict its argument to the merits of the case, as opposed to credentials of the witnesses, it does note that Mr. D'Ascendis failure to acquire the CFA designation would explain several issues with his recommendation. For example, in performing his analysis Mr. Murray relied in part on a method suggested in the CFA Program's curriculum for testing the reasonableness of a COE estimate by adding a 3% to 4% equity risk premium to the subject company's bond yield. *Id.* at pg. 42 ln. 15 – pg. 43 ln. 5. The use of this method showed support for Mr. Murray's ultimate COE determinations. *Id*. Mr. D'Ascendis, on the other hand, could not explain why his 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%. *Id*. It would also help to explain why Mr. D'Ascendis found no issue with the fact that his 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% earnings per share growth) forever into the future. Ex. 210, *Rebuttal Testimony of David Murray*, pg. 13 lns. 10 – 13 (EFIS

Item no. 242). Had Mr. D'Ascendis studied the CFA Program and demonstrated mastery of the curriculum by achieving the CFA designation, he would have at least been aware of how that curriculum explains these are irrational assumptions that do not pass logical or empirical tests.[11] Instead, the CFA Program curriculum maintains that the long-term earnings per share growth for the S&P 500 is constrained by economic growth, stating: "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.

Return on Equity

Confluence chose to address the issue of the proper return on equity to be awarded to the Company first, so the OPC will follow suit in response. This discussion can be broken down into three parts.

Addressing the flaws in Mr. D'Ascendis' analysis

Confluence's brief begins by regurgitating the analysis its expert, Mr. D'Ascendis, provided in testimony. *Confluence's brief*, pgs. 36 – 37. The OPC already addressed the issues with Mr. D'Ascendis' analysis in its initial brief, so the OPC will only provide the highlights here:

- Mr. D'Ascendis achieves the high-end of his COE range by using irrational market return assumptions to develop his market risk premium estimates. For example, Mr. D'Ascendis assumes investors expect to achieve compound annual market returns of up to 16.91% indefinitely. Even the low end of Mr. D'Ascendis COE estimates assume investors will achieve a compound annual market return of 11.87% infinitely. Mr. D'Ascendis achieves these irrational market

[11] Frankly, Mr. D'Ascendis should have recognized these are irrational assumptions that do not pass logical or empirical tests even without proper training as a CFA.

returns by assuming the S&P 500's earnings per share ("EPS") will grow at constant compound annual growth rates of 14.56% and 10.02% respectively. However, these assumed growth rates are 2 to 3 times higher than what Goldman Sachs considers sustainable for the S&P 500 over the next twenty years. Ex. 210, *Rebuttal Testimony of David Murray*, pg. 13 ln. 1 – pg. 15 ln. 5 (EFIS Item No. 242).

- Mr. D'Ascendis' risk premium COE estimate assigns undue weight to his PRPM despite the fact that for his six homogeneous water utility companies, the PRPM produced a range of risk premium estimates that range from 7.97% to 15.91%. He also inexplicably assigned this risk premium estimate of 12.2% more weight than any other risk premium estimate. *Id.* pg. 11 lns. 1 – 18.

- Mr. D'Ascendis included unexpected capital gains and losses on utility stocks, but excluded such on bonds when determining historical earned risk premiums. This caused a 100 basis point upward bias in risk premium estimates. *Id.* pg. 11 lns. 1 – 18.

- Mr. D'Ascendis' constant-growth DCF analysis on his homogeneous utility proxy group had a range of COE estimates of 5.08% to 14.28%. This wide disparity is due to his erroneous assumption that investors expect to achieve compound annual capital gains forever into the future consistent with equity analysts' projected 5-year compound annual growth rates (CAGR) in EPS. For example, SJW's projected 5-year CAGR in EPS is 11.90% compared to Middlesex's projected 5-year CAGR in EPS of 3.60%. Moreover, despite 3.6% being more rational for a constant growth rate Mr. D'Ascendis applied less weight to his Middlesex COE estimate than his SJW COE estimate. *Id.* pg. 21 ln. 1 – pg. 22 ln. 22.

Again, for a more thorough review of the errors committed by Mr. D'Ascendis in developing his ROE recommendation, please review the OPC's initial brief.

Discussing the Commission's Zone of Reasonableness test

The OPC acknowledges that the zone of reasonableness ("ZOR") is by no means a mandate for this Commission to follow. That is why the OPC did not intend to spend

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significant time discussing it in briefing. However, the Company has seen fit to misstate the law regarding the ZOR test, so the OPC must now address it.

The ZOR test, which has been endorsed by the Courts of this State, relies on using a national average. *Kan. City Power & Light Co.'s Request v. Mo. Pub. Serv. Comm'n*, 509 S.W.3d 757, 768 (Mo. App. W.D. 2016) ("This Court has previously approved a 'zone of reasonableness' established by the PSC that considered a return on equity within 100 basis points (i.e. 1.0% above or below) **the national average** as presumptively reasonable." (emphasis added)). There have been several attempts to challenge the use of the national average as part of the ZOR test, and they have been consistently denied. *See State ex rel. Praxair, Inc. v. PSC*, 328 S.W.3d 329, 341 (Mo. App. W.D. 2010) ("But we have previously rejected a similar argument that the commission erred in using the national, instead of the regional, average rate of return on equity as its baseline." (internal citations omitted)); *State ex rel. Nixon v. PSC (State ex rel. Pub. Counsel)*, 274 S.W.3d 569, 574 (Mo. App. W.D. 2009) (Holding that Commission did not err in using a national average and noting that "the commission found that UE was seeking to raise capital across the entire nation, which supported the commission's using the national average."). Despite these cases, Confluence now seeks once again to have this Commission re-define the ZOR test.

The argument presented in Confluence's brief can be boiled down to simply this: if you use one of the values taken from the ROE range developed by our expert as the starting point of the ZOR instead of a national average, then our expert's ROE recommendation falls within the modified ZOR test. *Confluence's brief*, pg. 38. This

is a rather obvious and also rather pointless argument.[12] It also fails to understand the purpose of the ZOR test, which is to link the Commission's decision to the *Hope* and *Bluefield* standard discussed earlier in this brief. As explained by the US Supreme Court:

> By long standing usage in the field of rate regulation, the "lowest reasonable rate" is one which is not confiscatory in the constitutional sense. Assuming that there is a zone of reasonableness within which the Commission is free to fix a rate varying in amount and higher than a confiscatory rate, the Commission is also free under § 5 (a) to decrease any rate which is not the "lowest reasonable rate." It follows that the Congressional standard prescribed by this statute coincides with that of the Constitution, and that the courts are without authority under the statute to set aside as too low any "reasonable rate" adopted by the Commission which is consistent with constitutional requirements.

FPC v. Nat. Gas Pipeline Co., 315 U.S. 575, 585-86 (1942) (internal citations omitted). In other words, the ZOR test uses a national average of the ROEs awarded to utilities providing the same type of service to determine whether the Commission's proposed ROE is "commensurate with returns on investments in other enterprises having corresponding risks" and thus meet Constitutional requirements. *Fed. Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 603, (1944). Changing the starting point for the ZOR would invalidate this function, thus fundamentally eliminating the test's purpose.

To the extent that the Commission chooses to employ the ZOR test, it should use the national average for water utilities, as has been endorsed by the Courts of

[12] It goes without saying that if you change the starting point of the ZOR test, then the ends of the range (which are always just 100 basis points above and below the starting point) will also change.

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this state. *Kan. City Power & Light Co.'s Request v. Mo. Pub. Serv. Comm'n*, 509 S.W.3d 757, 768 (Mo. App. W.D. 2016). To do this, the Commission should follow the recommendation of the OPC's expert witness, Mr. David Murray:

> I recommend the Commission use an allowed ROE of approximately 9.60% as the starting point for its zone of reasonableness standard. Subtracting 100 basis points from this average authorized ROE forms the basis for the low-end of the Commission's zone of reasonableness of 8.6% with 10.6% representing the high end of the Commission's zone of reasonableness.

Ex 209, *Direct Testimony of David Murray*, pg. 22 lns. 13 – 17 (EFIS Item no. 241). This will result in the Commission assigning an ROE that is consistent with what has been awarded to Confluence's affiliates in other states. *See* Ex. 210, *Rebuttal Testimony of David Murray*, DM-R-2-C pg. 4 (EFIS Item no. 242). This will also, therefore, place the Commission's decision squarely within the bounds laid out by the Supreme Court in the *Hope* and *Bluefield* cases. *Bluefield*, 262 U.S. at 693; *Hope*, 320 U.S. at 605 – 606.

Debunking the size adjustment

The rest of Confluence's brief dedicated to return on equity makes a number of fatuous claims, but none require direct discussion save for the repeated references to a small size adjustment. *Confluence's brief*, pg. 38-41. The Company raises this issue in an attempt to claim that its small size demands an ROE above those proposed by the OPC and Staff. *Id.* However, this argument is wrong for several reasons.

First, Confluence is a subordinate affiliate entity of Central States Water Resources LLC ("CSWR"). Ex. 4, *Direct Testimony of Josiah Cox*, pg. 3 ln. 21 (EFIS

Item no. 175). CSWR is itself, a subordinate affiliate of Sciens Capital Management LLC ("Sciens"). Ex 209, *Direct Testimony of David Murray*, pg. 7 ln. 12 (EFIS Item no. 241). "Therefore, Sciens owned the rights to all cash flows generated by CSWR's investments[.]" *Id.* at lns. 15 – 17. Because "Sciens is invested in CSWR through its ownership of membership units in US Water Systems LLC" it is therefore necessary "to analyze the size of CSWR" when determining the appropriateness of any size adjustment that should be made. Ex. 210, *Rebuttal Testimony of David Murray*, DM-R-2-C pg. 4 (EFIS Item no. 242). This is important because CSWR is not a small entity at all. On the contrary, CSWR president Mr. Josiah Cox explained the relative size of CSWR in testimony as follows:

> In December of 2022 CSWR became the single largest owner of individual domestic wastewater treatment plants and one of the largest owners of individual drinking water systems in the US.

Ex. 4, *Direct Testimony of Josiah Cox*, pg. 10 lns. 12 – 15 (EFIS Item no. 175).

> [T]he tremendous pace of growth . . . [has] made CSWR the 11th largest water and sewer IOU in the United States[.]

Ex. 5, *Rebuttal Testimony of Josiah Cox (Public and Confidential)*, pg. 32 lns. 14 – 17, 35 13 – 15 (EFIS Item no. 176). This should be obvious, but it is extremely disingenuous for Confluence to claim that its small size necessitates the need for an increased ROE when Confluence's equity investors, Sciens, are really investing in what the Company's own witness describes as "11th largest water and sewer IOU in the United States." *Id.*

Second, Mr. D'Ascendis testified that because rating agencies do not consider company size in assigning credit ratings, this necessitates a "relative size analysis." Ex. 7, *Direct Testimony of Dylan W. D'Ascendis*, pg. 12 lns. 7 – 11 (EFIS Item no. 178). However, the evidence shows Mr. D'Ascendis is wrong. Consider, for example, the York Water Company ("York") which, based on Mr. Cox's testimony discussed above, is smaller than CSWR based on the number of connections and definitely smaller than CSWR based on common equity balances. Ex. 210, *Rebuttal Testimony of David Murray*, pg. 27 lns. 7 – 11 (EFIS Item no. 242). S&P Global Ratings stated the following related to its assignment of an 'A-' rating to York:

> Our business risk profile assessment of York Water incorporates its low-risk, rate-regulated water and wastewater utility operations in a supportive regulatory environment, as well as its effective management of regulatory risk. **Its small size partly offsets these strengths.**

Id. pg. 28 lns. 1 – 17 (emphasis added). Because rating agencies do, in fact, consider the size of companies in assigning credit ratings, any risk associated with such small size would already be captured in analysis that relies on said ratings to compare the subject company to the proxy group without needing to make a small size adjustment.

Third, Mr. Murray was able to perform a credit metric analysis on Confluence's legacy utility operating subsidiaries (Hillcrest, Raccoon Creek and Indian Hills) because they each had several years of financial experience following their respective rate increases granted by this Commission. *Id*. at pg. 30 lns. 14 – 21. These credit metric analyses implicitly considered the companies' respective small size when compared to Confluence itself, as each system individually would necessarily be

smaller than Confluence given they were all eventually merged into Confluence. Mr. Murray's credit metric analysis demonstrated that these small utility operating companies performed as well, if not better than Missouri's large electric, gas and water utilities. *Id*. at lns. 22 – 25. Most alarming is the fact that according to Staff's revenue requirement models, Hillcrest and Raccoon Creek earned around 35% ROEs. Ex. 211, *Surrebuttal Testimony of David Murray (Public and Confidential)*, pg. 3 lns. 21 – 23 (EFIS Item no. 243). This demonstrates the small size of regulated water and sewer utilities have not impeded their ability to achieve extremely high profitability.

Fourth, OPC witness Mr. Murray performed a multi-stage DCF analysis on several smaller water utility companies to test the applicability of the "small size" theory to regulated water utility companies. Ex. 210, *Rebuttal Testimony of David Murray*, pg. 29 lns. 1 – 10 (EFIS Item no. 242). According to his analysis, the COE for these small water companies would be 6.15% compared to his 6.4% COE calculated for large water utilities. *Id*. at lns. 18 – 22. This, again, directly refutes Mr. D'Ascendis' recommended small size risk adjustment. *Id*. at pg. 30 lns. 1 – 4.

Finally, it is worth noting that 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.

Conclusion

For all the reasons stated in the OPC's initial brief and in this reply brief, the Commission should authorize a 9.65% allowed return on common equity for Confluence, as recommended by the OPC's witness Mr. David Murray.

Capital Structure

After discussing the return on equity, Confluence's brief turns to addressing the issue of the proper capital structure. The OPC will again address the Company's argument by breaking it down into three parts.

Confluence's long-term plans contradict the Company's statements and demonstrate an intention to remain underleveraged into the foreseeable future.

Confluence's brief starts this topic by discussing the current state of its capital structure and concludes with a statement that "[i]n the event that additional cash flow is generated in the future, Confluence Rivers will seek to issue additional debt." *Confluence's brief*, pg. 42. This statement, made without citation to any support, is clearly intended to suggest that Confluence would prefer a more balanced debt-to-equity ratio but cannot currently reach that goal. However, the reality of the situation is that Confluence has no intention of working toward a more leveraged (*i.e.* higher debt) portfolio and the Company expects to continue to remain underleveraged into the foreseeable future as a means to maximize equity returns for its investors. *See* Ex. 228, CSWR Presentation (Public and Confidential), pg. 63 (EFIS Item no. 260).

During the evidentiary hearing, the OPC introduced an exhibit that contained a CSWR presentation to US Water systems LLC Board of Directors.[13] *Id*. This presentation included discussion of CSWR's proposed use of third party debt. *Id*. at pg. 62. This presentation shows that the Company's expected total debt to capital ratios projected out to 2026 ** _____ _____ ** *Id*. at pg. 63. For the Company to maintain this level of debt-to-equity ratio would be imprudent. Tr. vol. 10 pg. 103 lns. 2 – 12. As Staff witness Mr. Walters explained on the stand:

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Tr. vol. 10 (In Camera Portion) pg. 106 ln. 16 – pg. 107 ln. 13. Moreover, Mr. Walters further confirmed that, ** _____

[13] US Water Systems LLC is CSWR's parent company. Ex. 4, *Direct Testimony of Josiah Cox*, Ex. JMC-1 (EFIS Item no. 175);Tr. vol. 10 pg. 99 ln. 21 – pg. 100 ln. 3.

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——— ** *Id*. at pg. 107 ln. 24 – pg. 108 ln. 12. This directly refutes the statement Confluence makes in its brief.

As has been demonstrated in the past, CSWR will execute affiliate internal finance transactions to attempt to justify a higher-than-reasonable authorized ROR. Ex. 225, *Indian Hills Report and Order from WR-2017-0259*, pg. 50 ¶1, 56 (EFIS Item no. 256). Now that the Fresh Start loan has been dismissed as unreasonable, however, CSWR has switched to arguing that it needs more equity in its capital structure than what was identified as reasonable by third party lenders. This represents a common strategy that private equity investors use to maximize equity returns:

> The more debt issued at the utility operating company level with a known and objective cost, the more likely the authorized ROR will be consistent with the level required to service the utility company's costs of capital. If cash flows produced by the utility must service debt at the operating subsidiary, then this reduces the cash flows available to the ultimate parent company and its investors. The lower the cash flows to the ultimate parent company, the less debt it can issue to lever its equity returns. The more cash flow available to the ultimate parent company, the more it can enhance the returns for its equity investors through leverage.

Ex. 210, *Rebuttal Testimony of David Murray*, pg. 5 lns. 15 – 22 (EFIS Item no. 242). As seen in the Company's internal documents, the Company expects to continue to remain underleveraged into the foreseeable future. *See* Ex. 228, CSWR Presentation (Public and Confidential), pg. 63 (EFIS Item no. 260). The clear and obvious reason

for this is so that Confluence can maximize the cash flow to its ultimate parent company and thereby enhance the returns for its equity investors. Ex. 210, *Rebuttal Testimony of David Murray*, pg. 5 lns. 15 – 22 (EFIS Item no. 242).

A 55% debt ratio will not cause Confluence to violate its loan covenants

At page forty-three of its brief, Confluence claims that the OPC's proposed capital structure consisting of 55% debt to 45% common equity would violate one of the financial covenants found in the December 5, 2022, Credit Agreement with CoBank, ACB, ("CoBank"), upon which the OPC based its recommendation. *Confluence brief*, pg. 43. Specifically, Confluence claims that a 55% debt ratio would violate a requirement that the Company's total debt not exceed six (6) times its EBITDA (defined as "operating revenues minus operating expenses, plus depreciation and amortization expense and non-cash expense for Holding Company Management fees"). *Id*. This is simply false.

OPC witness Mr. David Murray performed a series of *pro forma* financial metrics evaluations based on each parties' respective revenue requirement recommendations. Ex. 211, *Surrebuttal Testimony of David Murray (Public and Confidential)*, DM-S-4 pg. 2 (EFIS Item no. 243). This evaluation shows that, using the OPC's proposed capital structure consisting of 55% debt and 45% common equity, Confluence's Debt/EBITDA ratio would be 4.0x. *Id*. This is well below the 6.0x Debt/EBITDA ratio required in the financial covenants. Confluence's proposed capital structure, meanwhile, would result in a Debt/EBITDA ratio of 2.0x. *Id*. This

means Confluence could **triple** the amount of debt in its capital structure and still comply with the Debt/EBITDA covenant.[14] *Id.* at pg. 9 ln. 26 – pg. 10 ln. 1.

Contrary to what Confluences' brief attempts to assert, a 55% debt ratio would not in any way jeopardize the Company's ability to adhere to the financial covenants of its loan agreement. *Id.* pg. 10 lns. 6 – 7. It is also worth noting that the Company's argument is inherently self-contradictory. In its rushed attempt to discredit the OPC, the Company states: "[r]egardless of the total debt percentage, [the Debt/EBITDA ratio requirement] indicates a pre-rate case total debt capacity limit of $5,840,028." *Confluence's brief*, pg. 43. In the very next line, however, the Company acknowledges that it "was able to borrow slightly more than $7 million based on the authority granted by the Commission." *Id.* This should not need to be pointed out, but if the Company is correct that its Debt/EBITDA ratio requirement "indicates a **pre-rate case** total debt capacity **limit** of $5,840,028[,]" then the Company obviously could not have borrowed "slightly more than $7 million" **before** the rate case even began. *Id.* Again, this is because the Company's position regarding the Debt/EBITDA ratio required in the financial covenants is simply false.

[14] To further prove the reasonableness of Mr. Murray's *pro forma* calculations, the Commission should note that Mr. Murray determined Debt/EBITDA ratios (assuming 55% debt in the capital structure) based on legacy utility operating companies (Hillcrest, Raccoon Creek and Indian Hills) and determined these companies' post rate cash flows allowed Debt/EBITDA ratios of 2.82x, 3.19x and 4.02x, respectively, in 2021. Ex. 210, *Rebuttal Testimony of David Murray*, DM-R-7 (EFIS Item no. 242).

Confluence should be acquiring new systems using equity infusions from its parent company

The last part of the Company's brief contends that Confluence cannot afford to use the maximum amount of debt allowable under its current Credit Agreement with CoBank because it is continuing to acquire new systems. *Confluence's brief*, pg. 44. To begin with, the OPC once again points out that even with a 55% debt ratio, the Company's Debt/EBITDA ratio is only "4.0x or 2/3 of the maximum allowed pursuant to Confluence's financial covenant." Ex. 211, *Surrebuttal Testimony of David Murray (Public and Confidential)*, pg. 10 lns. 7 – 8 (EFIS Item no. 243). So, contrary to anything Confluence claims, acquiring new systems will not result in a violation of the covenants. Moreover, this claim ignores the fact that Confluence can expect significant equity infusions through its parent Company CSWR. **

** Ex. 210, *Rebuttal Testimony of David Murray*, DM-R-2C pg. 49, DM-R-3C pg. 65 (EFIS Item no. 242). This was again confirmed by the Staff's witness Mr. Walters when asked to review Confluence's internal reports while on the stand. Tr. vol. 10 (In Camera Portion) pg. pg. 107 ln. 24 – pg. 108 ln. 12. **

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Conclusion

For all the reasons stated in the OPC's initial brief and in this reply brief, the Commission should set Confluence's allowed rate of return utilizing a capital structure comprised of 45.00% common equity and 55.00% long-term debt, as recommended by the OPC's witness Mr. David Murray.

Cost of Debt

Confluence's argument regarding the inclusion of the CoBank patronage credit really just comes down to stating that "credits are not referenced in Confluence Rivers' loan agreement and are not guaranteed to be paid." This simply ignores the fact that ** [redacted] ** Ex. 211, *Surrebuttal Testimony of David Murray (Public and Confidential)*, pg. 13 ln. 13, pg. 12 lns. 6 – 7 (EFIS Item no. 243). However, if the Commission declines to acknowledge this fact, then the best secondary option would be to "require this amount to be tracked on a cumulative basis, with carrying costs based on the 6.6% interest rate." *Id.* at pg. 13 lns. 16 – 17. Confluence's brief indicates the Company finds this acceptable. *Confluence's brief*, pg. 46.

Conclusion

Confluence began this section of its brief with a reference to the US Supreme Court cases of *Hope* and *Bluefield*. In this one regard, the OPC agrees with the Company; the Commission **should** follow the standards of *Hope* and *Bluefield* in this

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case by setting Confluence's rates consistent with how other Commissions have treated the Company's affiliate brethren. This, incidentally, would mean adopting a ROE that is consistent with the proposal of the OPC. Regardless of that point, however, the Commission should have no reason to believe any of the hyperbolic statements provided by the Company's witnesses on this issue. The myriad of flaws in Company witness D'Ascendis' analysis and the inherent contradictions in the Company's Debt/EBITDA ratio discussion should be all the Commission needs to dismiss the Company's positions on ROE and capital structure. Further, the Commission should consider carefully how close the OPC's ROE recommendation is to (1) the Commission Staff's independent analysis; (2) national averages; and (3) the ROEs awarded to Confluence's affiliates in other States. There is simply no reason for this Commission to deviate from the established trend. Finally, the Commission needs to remember that this is a Company with a history of dubious capital management. Ex. 225, *Indian Hills Report and Order from WR-2017-0259*, pg. 50 ¶1, 56 (EFIS Item no. 256). The OPC already had to fight tooth and nail to force the Company to sincerely attempt to secure available third-party debt from traditional sources rather than suspicious self-dealings. Ex. 211, *Surrebuttal Testimony of David Murray*, pg. 6 lns. 5 – 17 (EFIS Item no. 243). Yet the Company has still yet to embrace a truly honest approach to finance its capital structure. Instead, its internal documents show how Confluence intends to stay under leveraged into the future. Unless this Commission acts to preserve and protect ratepayers' interests, this company will continue to capitalize in a purposefully inefficient manner in order to

drive excess returns for its capital investors. It has done it before and it will do it again.

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Issue 16: AMI Investments

The OPC's witness Dr. Marke addressed the issue of AMI meters in his direct testimony. Ex. 206, *Direct Testimony of Geoff Marke (Public & Confidential)*, pg. 8 ln. 22 (EFIS Item no. 238). He addressed the topic again in rebuttal. Ex. 207, *Rebuttal Testimony of Geoff Marke (Public and Confidential)* pg. 17 ln. 1 (EFIS Item no. 239). He addressed it yet further in surrebuttal. Ex. 208, *Surrebuttal Testimony of Geoff Marke*, pg. 13 ln. 22 (EFIS Item no. 240). Despite the numerous opportunities presented by the OPC, Confluence chose to never file any testimony to rebut Dr. Marke at any level. During the hearing, the Company agreed to waive cross of Dr. Marke, again choosing not to challenge any statement he made on this issue. As it stands, Dr. Marke's testimony is therefore the **only** testimony to directly address the issue of AMI meters. It is thus unsurprising that Confluence's brief must now resort to making nonsensical and absurdist claims in an attempt to rebut Dr. Marke. The OPC will quickly demonstrate each of these claims to be false.

The "other benefits" that Confluence claims are all dependent on investments the Company hasn't made

Confluence claims that Dr. Marke has overlooked "other benefits" associated with the AMI investments at Indian Hills and Hillcrest, *Confluence's brief*, pg. 47. This is simply false. Here is the complete text of the testimony provided by Dr. Marke's testimony upon which Confluence is relying:

> Q. What are the benefits of AMI attachment?
>
> A. According to Confluence River's response to OPC DR-2009:

> Benefits anticipated for customers are a greater level of accuracy and visibility into their utility accounts and usage, quicker identification of high-use events and leak detection, and a decrease in operational expense by eliminating manual meter reading.
>
> Q. Do you agree these are benefits being realized by existing customers in Hillcrest and Indian Hills?
>
> A. No. 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). 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. As seen in Figure 2, Confluence's customer bill is void of any information that would convey that information.

Ex. 206, *Direct Testimony of Geoff Marke (Public & Confidential)*, pg. 9 ln. 8 – pg. 10 ln. 7 (EFIS Item no. 238). As this testimony shows, Dr. Marke did not overlook the "other benefits" associated with the AMI investments at Indian Hills and Hillcrest *Id*. Instead, he considered them and noted that these benefits do not presently exist because the Company has not made the necessary investments to utilize them. *Id*. There is no reason in the record or elsewhere for this Commission to conclude differently.

Confluence's exceptionally bad math

Confluence's next point relies on a statement made by Confluence witness Todd Thomas regarding O&M savings achieved as a result of a recent request for proposal ("RFP"). *Confluence's brief*, pgs. 47 – 48. Here is the critical portion of the testimony:

> Q. How have O&M costs changed as a result of the recent O&M RFP?
>
> A. Given that Confluence Rivers' operations (i.e., number of systems) change rapidly during the course of a year, it is difficult to make a strict apples-to-apples comparison. That said, however, on a per-system basis, Confluence Rivers believes that monthly O&M expense per system has decreased by 5.53% as a result of the recent RFP.

Ex. 20, *Direct Testimony of Todd Thomas*, pg. 14 lns. 1 - 3 (EFIS Item no. 191). Confluence proceeds to take the 5.53% **per system** savings identified in this statement and multiply it by the Company's total annual third-party O&M costs of $1,694,426 to reach a total O&M savings figure of $93,701. *Confluence's brief*, pg. 48. The Company then declares that "A significant portion of this O&M savings is associated with the 'decrease in operational expense by eliminating manual meter reading' at systems like Hillcrest and Indian Hills that results from the installation of AMI meters." *Id*. There is no citation or support offered for this conclusion, because it is completely false.

Again, the cited material from Mr. Thomas makes no mention of the AMI investments and there is literally nothing in the record linking the 5.53% **per system** savings to AMI investments. Ex. 20, *Direct Testimony of Todd Thomas*, pg. 14 lns. 1 - 3 (EFIS Item no. 191). More importantly, though, is what the OPC has been emphasizing in the quote, which is that the savings are **per system**. *Id*. To therefore properly do the math that Confluence is attempting, it is first necessary to find the **per system** O&M savings. To do this, one must first determine the per system O&M cost and then multiply that by the 5.53% per system O&M savings. Once that is calculated, it is possible to multiply the per system O&M savings by the number of

systems that received AMI investments to determine the O&M savings that could *possibly* be attributed to AMI investments.

To determine the per system O&M cost, one must divide the total annual third-party O&M costs of roughly $1,694,426 by the number of systems. According to Confluence's president, Mr. Josiah Cox, Confluence has "42 wastewater facilities acquired or expects to acquire by December 31" and "26 drinking water systems Confluence Rivers has acquired or has been approved to acquire[.]" Ex. 4, *Direct Testimony of Josiah Cox*, Pg. 5 ln. 12, pg. 8 lns. 17 – 18 (EFIS Item no. 175). That would be a total of 68 systems. Dividing the total annual third-party O&M costs of roughly $1,694,426 by these 68 systems yields $24,918 in O&M costs per system. The next step is to multiply this by Mr. Thomas' estimates of 5.53% in savings per system to yield $1,378 in O&M savings per system.

The final step is to multiply the $1,378 in O&M savings per system by the number of systems that received AMI investments. Only two of Confluence's systems received AMI investments: Hillcrest and Indian Hills. Ex. 206, *Direct Testimony of Geoff Marke (Public & Confidential)*, pg. 8 lns. 23 – 26 (EFIS Item no. 238). That means that the **total** AMI related savings that could be attributed to AMI using Confluence's proposed math is $2,756.[15] This is about one-tenth the **annual** cost ($26,768) of the Hillcrest and Indian Hills AMI investments. *Confluence's brief*, pg. 48. Instead of the O&M savings greatly exceeding the investment costs, as Confluence

[15] $1,378 x 2 = $2,756.

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claims, they are actually overwhelmingly dwarfed by the investment costs. This is clearly one of the reasons that Dr. Marke ultimately concluded that these AMI attachments were not prudent. Ex. 206, *Direct Testimony of Geoff Marke (Public & Confidential)*, pg. 11 ln. 3 (EFIS Item no. 238).

Confluence's discussion of the Margaritaville service area is an irrelevant straw-man argument

Confluence's third argument regarding AMI meters claims that "[u]nderlying Public Counsel's disallowance is the premise that Confluence Rivers has invested in more expensive AMI meters for the purpose of receiving enhanced earnings by earning a return on this investment." *Confluence's brief*, pg. 48. Again, Confluence offers no citation to support this claim for the simple fact that the Company just made it up. Confluence then makes an attempt to show that the previous statement, which the OPC stresses was never said to begin with, isn't true because the Company chose not to invest in meters in the Margaritaville service area. *Id*. This is an obvious straw-man argument.[16] The OPC will not waste time defending a position it never held. Whether or not Confluence's decisions regarding AMI meters was driven by the desire

[16] FALLACIES, *Stanford Encyclopedia of Philosophy*, (First published Fri May 29, 2015; substantive revision Thu Apr 2, 2020), https://plato.stanford.edu/entries/fallacies/ ("The fallacy of *ignoratio elenchi*, or irrelevant conclusion, is indicative of misdirection in argumentation rather than a weak inference. . . . A variation of *ignoratio elenchi*, known under the name of the straw man fallacy, occurs when an opponent's point of view is distorted in order to make it easier to refute. For example, in opposition to a proponent's view that (a) industrialization is the cause of global warming, an opponent might substitute the proposition that (b) all ills that beset mankind are due to industrialization and then, having easily shown that (b) is false, leave the impression that (a), too, is false. Two things went wrong: the proponent does not hold (b), and even if she did, the falsity of (b) does not imply the falsity of (a).").

to make unnecessary meter investments is completely irrelevant to the present question of whether those investments were prudent.

Conclusion

During a general rate increase "the burden of proof to show that the increased rate or proposed increased rate is just and reasonable" is on the water or sewer corporation. RSMo. § 393.150.2. There is no evidence in this case that directly addresses this issue save for what has been filed by the OPC. Consequently, Confluence cannot meet its burden of proof. The best the Company can do is present clearly faulty math and an unsupported claim that attempts to show customers have somehow benefited from the AMI investments. Once that math has been properly corrected, however, the truth become plain: these AMI investments are not cost beneficial for ratepayers. As such, these AMI investments are simply not prudent. Ex. 206, *Direct Testimony of Geoff Marke (Public & Confidential)*, pg. 11 ln. 3 (EFIS Item no. 238). The Commission should therefore order the $26,768 disallowance recommended by OPC witness Dr. Geoff Marke for these imprudent AMI investments installed in the Hillcrest and Indian Hills. 208, *Surrebuttal Testimony of Geoff Marke*, pg. 13 ln. 23 – pg. 14 ln. 2 (EFIS Item no. 240).

Issue 17: Operations, Maintenance, and Oversight

The OPC's initial brief contained an extensive review of this issue that inadvertently addressed the majority of the arguments made in Confluence's initial brief. *OPC's brief*, pg. 71 – 174. Therefore, the OPC will limit its response to addressing only the most crucial points here and otherwise stand on its initial brief.

Argument regarding cost of providing O&M services

Confluences' brief argues that the OPC has underestimated the cost of employing operators at its systems. *Confluence's brief*, pgs. 55 – 57. The OPC has three points in response.

First, the OPC's initial brief reviewed Confluence's **existing** third-party operator deployment to show that, with only minor modifications to its **existing** method, Confluence could easily manage its systems with as few as fifteen operators (broken down into twelve standard operators and three supervisors). *OPC's brief*, pg. 123 – 166. The OPC further calculated the cost of employing those fifteen operators using the **exact** numbers that Confluence provided. *Id.* at pgs. 166 – 167. Even if every single one of Confluence's arguments regarding costs is taken as correct, it is still cheaper for the Company to employ fifteen in-house operators than to use the existing third-party contract operators. *Id.* at 167.

Second, with regard to Confluence's attack on the MERIC data employed by the OPC, the OPC showed that data was produced in conjunction with, and corroborated by, the US Bureau of Labor Statistics. Ex. 245, *2022 Occupational*

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Employment and Wage Statistics (EFIS Item no. 278); Ex. 247. *May 2022 Occupational Employment and Wage Estimates* (EFIS Item no. 279). Confluence itself relied on data from the US Bureau of Labor Statistics to support its arguments against the OPC. *OPC's brief*, pg. 56; Ex. 19, *Surrebuttal Testimony of Brent Thies*, pg. 6 lns. 4 – 6 (EFIS Item no. 190). It is immensely hypocritical for the Company to attack as inadequate data provided by the same source upon which Confluence itself relied.

Third, any argument related to unemployment levels or the so-called "Silver Tsunami" that the Company raises in its brief are equally applicable to the third-party contractors that Confluence currently uses. In other words, any increased costs to hire an operator driven by scarcity in the job market would be equally as true for the third-party contractor as it would be for Confluence. Because the third-party contractor firm is not a charity, it will also have to recover any increased costs from its customers, *i.e.* Confluence. To believe that unemployment would raise costs only for in-house employees and not contracted employees is consequently extremely naïve.

Arguments regarding costs missing from OPC's evaluation

Confluence next argues that there are costs missing from the OPC's evaluation. *Confluence's brief*, pgs. 57 – 59. This is somewhat difficult to address because Confluence does not actually provide any support for what it states in this portion of the brief. The Company instead just demands the Commission rely on assumptions.

However, the OPC will do its best to address these unsupported claims with what is in the record.

Confluence identifies several costs in the second to last paragraph of this portion of its brief. The OPC will address each in turn:

1. "Dr. Marke's O&M expense estimate includes no costs for tools, equipment, and supplies those employees would need to fulfill their job responsibilities." *Confluence's brief*, pgs. 58.

Answer: Mr. Thies included $1,000 per operator in "Job Supplies & Personal Protective Equipment" in his calculation of the cost of hiring each operator and an additional $1,000 for "Other Costs (training, office supplies, misc)." Ex. 19, *Surrebuttal Testimony of Brent Thies*, schedule BT-SR-1 (EFIS Item no. 190). The OPC included this combined $2,000 when it calculated the full cost to hire fifteen operators in its initial brief. *OPC's brief*, pg. 123 – 170. These costs have thus now been accounted for. In addition, the OPC would point out that Confluence's third party contracts include the following provision:

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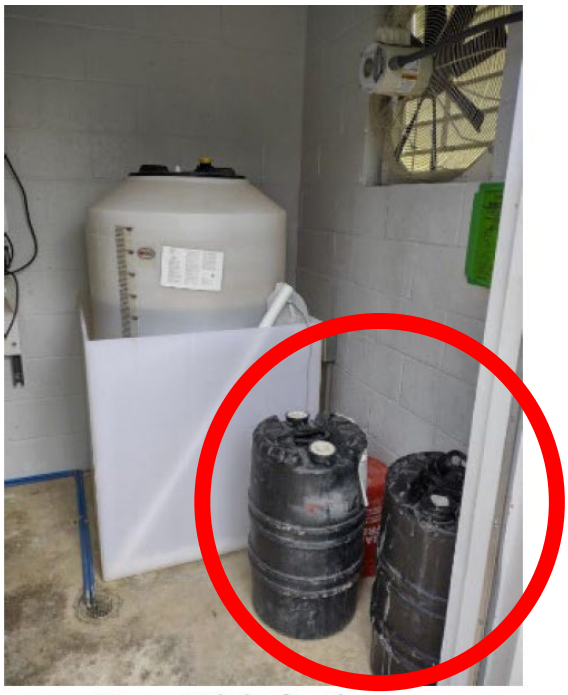
Ex. 233, *DR 0040 (Public and Confidential)* (EFIS Item no. 265); Ex. 238, *DR 0040.1 (Public and Confidential)* (EFIs Item no. 271). To the extent that any "tools, equipment, and supplies" would not be included in the $2,000 per operator that is now included in both OPC and Staff's analysis, it would fall into the terms of this provision and hence would be recovered outside the base cost of hiring the operator (*i.e.* the "Fee for Basic Services"). As a result, Confluence is receiving no cost savings related to these costs as a result of hiring third-party operators.

2. There is no allowance for vehicles, vehicle maintenance, or fuel that would allow each employee to traverse the hundreds or thousands of square miles for which he or she is responsible.

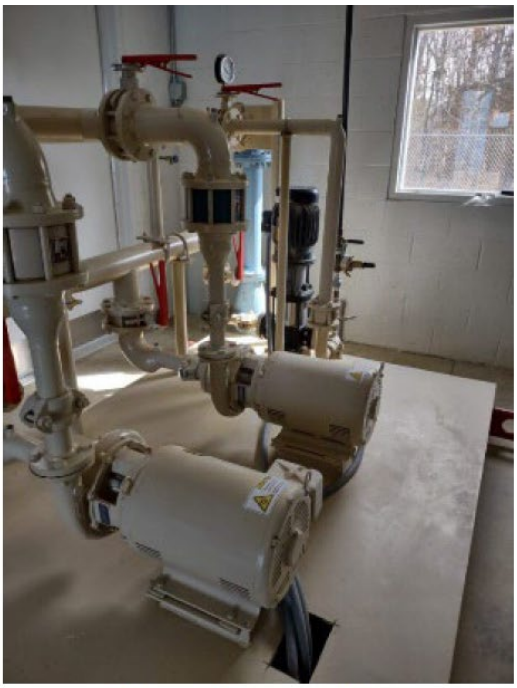
Answer: Mr. Thies included $ 10,729 per operator for "vehicle" costs. Ex. 19, *Surrebuttal Testimony of Brent Thies*, schedule BT-SR-1 (EFIS Item no. 190). The OPC included this $ 10,729 per operator when it calculated the full cost to hire fifteen operators in its initial brief. *OPC's brief*, pg. 123 – 170. These costs have thus now been accounted for.

3. Dr. Marke's cost estimate also includes nothing for tools, supplies, or a place to store both.

Answer: This is just a repeat of the first item but for the addition of storage. As far as storage goes, chemicals and other supplies would be stored on site at the systems in the adjoining structures, as was shown in the pictures Confluence included in its brief:



New Disinfection



New Booster Pumps

Confluence's brief, pg. 7. Tools could either be stored on site or carried from site to site in a toolbox or tool belt and may even be taken home at the end of the workday.

4. Heavy equipment—like mowers and backhoes—also aren't included in the estimate, even though such equipment would be required to complete many of the tasks currently performed by third-party contractors.

Answer: These costs are again subject to the reimbursement clause cited earlier. *See* Ex. 233, *DR 0040 (Public and Confidential)* (EFIS Item no. 265); Ex. 238, *DR 0040.1 (Public and Confidential)* (EFIs Item no. 271) (** _____

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_____ **). As such, Confluence is not receiving any savings

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related to these costs by hiring third-party operators because they would still have to independently compensate the third-party operators.

5. Dr. Marke's estimate also includes no costs for spare parts inventories, generators, and other similar types of fixtures and equipment necessary to keep systems operational day in and day out.

__Answer:__ These are capital costs that would be recovered in Confluence's rate base, not through the third-party operator contracts. Even if they were recovered through the contract, which again makes no sense because Confluence would want them to be capitalized so the Company could earn a return on them, they would be subject to the reimbursement clause. *See id.* (** **). Again, this means that Confluence would see no savings because they would have to independently compensate the third-party contractors.

Even if it were to disagree with any of the points raised here, the OPC would ask the Commission to remember the crucial point raised in the OPC's initial brief: according to Confluence's numbers, the third-party contract operating firms Confluence has engaged are already losing a significant amount of money in providing services to Confluence. *OPC's brief*, pg. 83. Confluence wants this Commission to believe that it has somehow found firms who are able to do **__all__** the work Confluence claims is required, with **__all__** the additional fixed costs Confluence is now asking the Commission to consider, at a price that the Company argues is well

below what it would cost to supply the contractors that are now operating Confluence's system. If this is true, then how are these firms possibly remaining profitable? What magic secrets do these firms possess that allows them to achieve the enormous cost savings that Confluence implicitly argues they must be achieving? Above all else, why is Confluence so incapable of achieving the same?

Arguments regarding the effect on service and operational practicalities

The OPC will address the next two sections of Confluence's brief together. The OPC's response to all of the claims made by the Company in these two sections can be reduced to simply this: but it works for Camden County.

There are five water systems 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). There are three operators assigned to these ten systems: James Crawford, Brady Graves, and Victor Wright. Ex. 231, *DR 2034* (EFIS Item no. 263). James Crawford lives in Laclede County while Mr. Graves and Mr. Wright live in Montgomery and Pike Counties respectively. Ex. 232, *Certified Operators Print Out* (EFIS Item no. 264). In addition, Mr. Graves and Mr. Wright are working on a large number of systems spread all across the state. Ex. 231, *DR 2034* (EFIS Item no. 263). As such, these two men cannot be expected to be consistently involved in the inspection of all the Camden County systems. *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)). Any person viewing these facts through an objective lens should consequently recognize the stark reality of this

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situation: James Crawford is managing the ten Camden County systems predominantly on his own.

Given the current state of affairs regarding the operation of the Camden County systems, the OPC would ask the Commission to consider the Company's brief in light of two important questions:

1. How are the issues raised by Confluence being dealt with in light of how the Camden County systems are currently being operated?

2. If the Company's current method of operations (*i.e.* one dedicated operator and two supervisors) works for Camden County, why can that same method not be applied to the remaining Confluence systems?

The OPC believes that the current operation of the Camden County systems demonstrates that the Dr. Marek's proposal is not the "half-baked" idea that Confluence derisively refers to it as. On the contrary, the OPC demonstrated in its initial brief how, with a little tweaking, Confluence's current method of operating its water and wastewater systems can be managed by as few as fifteen people. *OPC's brief*, pg. 123 – 166. Regardless of anything Confluence has to say about how many operators are necessary to manage its systems, the evidence of what the Company is **already doing** shows that the number can be much smaller than what Confluence claims when some basic common sense is applied. *See OPC's brief*, pg. 123 – 166.

Regarding the Staff and Company alternative

A future study will not reduce costs for customers now. It is as simple as that. The OPC is happy that the study is going to be performed and intends to engage with

Staff and the Company in developing and analyzing that study. However, given the level of hyperbole the Company has offered in this case (when considered in light of the current method by which the Company operates) and considering the false statements provided by Confluence witnesses on the stand who testified to this issue (*see OPC's brief*, pgs. 110 – 113, 117 – 120), the OPC is not optimistic regarding the likelihood that the study will be conducted in a manner that will resolve this issue. That, however, will be an issue for the next case.

Conclusion

The OPC will amend to the end of this paragraph a copy of the final table developed in its initial brief that outlined how Confluence is **currently** operating save for a view minor changes. The OPC simply requests the Commission to consider this table carefully and thoroughly and then ask itself one simple question: does this make sense? Because if the Commission were to consider the table and recognize that it does make sense, then the Commission should also recognize that hiring just these fifteen people will reduce the cost Confluence is incurring to operate its system. *OPC's brief*, pg. 166 – 167. This is true even if you use the Company's own numbers. *Id*. And if the OPC's most up-to-date Bureau of Labor Statistics data is correct, those savings grow even larger. *Id*. at pgs. 167 – 170. Contrary to everything Confluence claims, the OPC's recommendation is not extreme when compared to how Confluence is already dividing its labor.

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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	Jeff Morris (still included as an operator in divisions five and six and therefore not a reduction to the overall number of operators)
	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)			

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5	Gladlo (Water) Gladlo (Wastewater) Indian Hills (Water)	Jeff Morris Mathew Eaton	Brady Graves Victor Wright	
6	Eugene (Water) Smithview (Water) Freeman Hills (Wastewater)	Jeff Morris	Brady Graves James Crawford	
7	Roy L (Water) 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)	Brett Wiebking Nicholas Geissinger	Brady Graves Victor Wright	Marie Rock

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

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this *Reply 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 nineteenth day of September, 2023.

/s/ John Clizer

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