

**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

**OFFICE OF THE PUBLIC COUNSEL’S MOTION FOR RECONSIDERATION OR,
IN THE ALTERNATIVE, APPLICATION FOR REHEARING**

COMES NOW the Office of the Public Counsel (“OPC”) and for its *Motion for Reconsideration or, in the Alternative, Application for Rehearing*, states as follows:

1. The Missouri Public Service Commission (“the Commission”) issued a *Report and Order* in the above styled case on October 25, 2023. (Report and Order, pg. 1, EFIS Item No. 291).

2. As it regards the issue of advanced metering infrastructure (“AMI”), the Commission’s *Report and Order* contains clear misapplications of fact and law.

3. Consequently, the OPC now requests the Commission reconsider its October 25, 2023, *Report and Order*, or, in the alternative, order a rehearing to address those misapplications of fact and law pursuant to Commission rule 20 CSR 4240-2.160.

4. In support of its motion, the OPC sates as follows.

Background

5. This issue was first raised by the OPC's expert witness Dr. Geoff Marke in his direct testimony. (Ex. 206 – Direct Testimony of Geoff Marke (Public & Confidential), pg. 8 ln. 22, EFIS Item no. 238).

6. Specifically, Dr. Marke presented evidence that clearly showed there was, at present, no justifiable reason for Confluence Rivers Utility Operating Company, Inc. ("Confluence") to have undertaken its investment in AMI meters and concluded by recommending "the Commission disallow the AMI attachment costs associated with Indian Hills and Hillcrest included in the test year and order the Company to cease further deployment of AMI attachments until such an appropriate business case can be made to justify this excessive needless cost." *Id.* at pg. 12 lns. 9 – 12.

7. Dr. Marke reiterated this position in his rebuttal testimony. (Ex. 207 – Rebuttal Testimony of Geoff Marke (Public and Confidential), pg. 17 ln. 1, EFIS Item no. 239).

8. Dr. Marke addressed the issue still further in his surrebuttal testimony. (Ex. 208 – Surrebuttal Testimony of Geoff Marke, pg. 13 ln. 22, EFIS Item no. 240).

9. Yet, despite the numerous opportunities presented by the OPC, Confluence chose to never file any testimony to rebut Dr. Marke at any level.

10. Further, the Company agreed to waive cross of Dr. Marke on this issue during the hearing, again choosing not to challenge any statement he made on this issue.

11. Consequently, the only evidence in the record that directly address the issue of AMI meters is the testimony of the OPC's witness who recommended that the costs be disallowed.

12. Sadly, the *Report and Order* issued by this Commission has chosen to ignore this fact by concluding that Confluence has met its burden of proof regarding the prudence of costs for which the Company provided no evidence whatsoever.

13. This would appear to result from the Commission misapplying the facts presented by Dr. Marke in an attempt to reach a pre-determined conclusion.

Misapplication of the Facts

14. At page 64 of its *Report and Order*, the Commission states at follows:

OPC's analysis fails to consider the unique geographical locations of the Confluence Rivers' water systems. The Indian Hills and Hillcrest systems are both the only system that Confluence Rivers operates in their respective counties. The location of these two systems relative to each other and other Confluence Rivers systems would likely indicate that operational savings would not only include a meter reader salary, which OPC acknowledged, but would also include additional operation cost saving and saving worker travel time between systems.

(Report and Order, pg. 64, EFIS Item No. 291)

15. The Commission's decision in this paragraph is unreasonable and not supported by anything in the evidentiary record.

16. As the Commission itself acknowledges, Confluence Rivers does not itself employ any meter readers because the Company relies on third-party O&M contractors to fulfil this work. (Report and Order, pg. 62 ¶203, EFIS Item No. 291).

17. Because Confluence employs no meter readers, the Commission's statement that AMI would induce operations savings that are automatically equivalent to a meter reader's salary is obviously false.

18. In addition, there is no evidence to support that AMI "would also include additional operation cost saving and saving worker travel time between systems."

19. On the contrary, based on the testimony of Confluence's witness Mr. Josiah Cox, these O&M operators are required to visit the Hillcrest and Indian Hills Systems five times a week. Tr. vol. 11 pg. 25 ln. 21 – pg. 26 ln. 17; pg. 41 lns. 15 – 24.

20. Because the O&M operators are already visiting both Hillcrest and Indian Hills five times a week, and because these O&M operators are the ones performing the meter reading, there is absolutely no evidence in the record that supports the idea that AMI would result in any "operation cost saving and saving worker travel time between systems" whatsoever.

21. The only evidence that even remotely comes close to supporting the idea espoused in the Commission's *Report and Order* is the Commission's finding that an RFP recently issued by Confluence Rivers for third-party operating and maintenance resulted in \$93,701 in cost savings. (Report and Order, pg. 62 ¶200, EFIS Item No. 291).

22. However, there is no evidence anywhere in the record that suggests this \$93,701 in savings is at all related to AMI deployment at Hillcrest or Indian Hills.

23. Moreover, the \$93,701 cited by the Commission represents annual savings for all of Confluence Rivers' systems, which the Commission's *Report and Order* acknowledges. *Id.* at fn. 248.

24. According to Confluence Rivers' president, Mr. Josiah Cox, Confluence Rivers 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).

25. This means that Confluence Rivers has, in total, 68 water and wastewater systems in operation in this state.

26. \$93,701 divided by 68 systems results in savings of only \$1,377.96 per system.

27. Therefore, even if the Commission were to assume some portion of the \$93,701 it cited could be attributed to the installation of AMI at Hillcrest and Indian Hills, which is again completely unsupported by anything in the record, the total savings attributable to the AMI investments at just those two systems would be \$2,756, absent any additional evidence demonstrating these systems had savings greater than the system average.¹

28. The OPC's recommendation was to disallow "\$26,768 for imprudent AMI investment in the Hillcrest and Indian Hills water systems." (Ex. 208 – Surrebuttal Testimony of Geoff Marke, pg. 14 lns. 1 – 2, EFIS Item no. 240).

¹ \$1,378 x 2 = \$2,756.

29. This amount “represents $\frac{3}{4}$'s of the sum of the net plant for accounts 346 and 347 (which represent meters and meter installation respectively) multiplied by the OPC's recommended rate of return (as developed by OPC witness David Murray at 7.77%) plus the annual depreciation expense related to those same accounts for the Hillcrest and Indian Hills systems.” *Id.* at lns. 4 – 8.

30. Therefore, the maximum possible cost savings that can be attributed to the AMI investments made at Hillcrest and Indian Hills according to the evidence that is **actually in the record** (\$2,756) is slightly less than one-tenth the annual cost to Customers associated with those same AMI investments.

31. The Commission further misrepresents the facts in this statement from the *Report and Order*:

Regardless that its customers cannot currently access 15-minute intervals for their water usage, there are significant benefits to Confluence Rivers and its customers to have access to the AMI meter technology – more accurate meter reading; leak detection; and reduced operation costs.

(Report and Order, pg. 64, EFIS Item No. 291)

32. This statement is also not supported by the factual record.

33. The closest the Commission comes to supporting this statement is a citation to a data response that Confluence Rivers supplied to the OPC that indicated what the **anticipated** benefits of AMI would be. *Id.* at pg. 60 ¶ 190.

34. What the Commission has failed to understand, however, is that there is no evidence in the record to show that these *anticipated* benefits have been, or will be, realized by customers.

35. In fact, the evidentiary record shows the exact opposite.

36. With regard to the supposed “leak detection” benefit, for example, the only evidence in the record is the statement of OPC witness Dr. Geoff Marke, which reads as follows:

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.**

(Direct Testimony of Geoff Marke (Public and Confidential), pg. 10 lns. 1 – 7, EFIS Item no. 238 (emphasis added)).

37. As a result, Confluence’s customers **do not** “have access to the AMI meter technology” **because** “its customers cannot currently access 15-minute intervals for their water usage[.]”

38. This is directly contrary to what the Commission appears to have determined in the absence of any evidentiary support.

Misapplication of the Law

39. Revised Missouri Statute 393.150.2 states that “[a]t any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the . . . water corporation or sewer corporation.”

40. Consequently, the burden of proving that the inclusion of AMI investments in rates is just and reasonable rests with Confluence.

41. Confluence cannot have met that burden for the rather obvious reason that it presented no evidence on this issue whatsoever during the case.

42. The Commission attempts to circumvent this obvious problem by relying on the so-called “presumption of prudence.”

43. However, the “presumption of prudence will “not survive a showing of inefficiency or improvidence that creates serious doubt as to the prudence of an expenditure.” *Spire Mo., Inc. v. Pub. Serv. Comm'n*, 618 S.W.3d 225, 232 (Mo. banc 2021) (citing *Office of the Pub. Counsel v. Mo. PSC*, 409 S.W.3d 371, 376 (Mo. banc 2013)). “If such a showing is made, the presumption drops out and the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.” *Id.*

44. In order to get around that problem, this Commission has concluded the AMI section in its *Report and Order* with the statement that the “OPC has not shown an inefficiency or improvidence that creates serious doubt as to the question of prudence in installing AMI attachments in Indian Hills and Hillcrest” and has further failed to “show a detrimental impact to customers.”

45. In making this claim, the Commission is establishing an impossible burden for the OPC to achieve.

46. For example, the previous discussion shows how the evidence that is actually in the record demonstrates that AMI meters cost customers more than ten times what it saves.

47. An investment that costs ten times more than what it saves is inefficient and imprudent on its face.

48. Moreover, the detrimental impact to customers is the obvious fact that they are paying for AMI meters that the evidentiary record fails to show are producing benefits sufficient to justify their costs.

49. Yet, despite this obvious demonstration of inefficiency, imprudence, and customer detriment, the Commission now claims the OPC has failed to “show[] an inefficiency or improvidence that creates serious doubt as to the question of prudence in installing AMI attachments in Indian Hills and Hillcrest” or a “detrimental impact to customers” from making these investments.

50. This is clearly because the Commission has chosen to “assume” benefits from AMI investments, in contradiction to the evidentiary record, in order to reach a desired conclusion.

Conclusion

51. AMI investments that cost ten times what the record shows they are able to save either customers or the Company are inefficient and imprudent on their face.

52. AMI investments that cost considerable sums to implement yet which cannot produce their anticipated benefits (due to a lack of additional investments) are inefficient and imprudent on their face.

53. Allowing a utility to recover imprudent and inefficient expenditures from customers results in a detrimental impact to customers on its face.

54. The Commission’s decision is unlawful and/or unreasonable because the Commission found AMI investments would generate savings in a manner that is not supported, and in fact contradicted by, the evidentiary record.

55. The Commission’s decision is unlawful and/or unreasonable because the Commission assumed AMI investments have generated “significant benefits to Confluence Rivers and its customers” despite the evidentiary record not only failing to support that claim, but also directly contradicting it.

56. The Commission’s decision is unlawful and/or unreasonable because the Commission found the OPC had failed to show an inefficiency or improvidence that creates serious doubt as to the question of prudence in installing AMI attachments in Indian Hills and Hillcrest and further failed to show a detrimental impact to customers, despite the OPC providing uncontroverted evidence that demonstrated AMI meters were costing more than \$26,000 to customers annually but were not providing any of the anticipated benefits and there being nothing in the record to prove the AMI investments have resulted in savings greater than their cost.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission reconsider the *Report and Order* issued on October 25, 2023, or, in the alternative, orders a new hearing to address the issues raised herein, as well as any other relief that is just and reasonable under the circumstances.

Respectfully submitted,

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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 third day of November, 2023.

 /s/ John Clizer