

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

**CONFLUENCE RIVERS’ RESPONSE TO OPC’S  
MOTION FOR RECONSIDERATION OR,  
IN THE ALTERNATIVE, APPLICATION FOR REHEARING**

COMES NOW, Confluence Rivers Utility Operation Company (“Confluence Rivers” or “Company”) and for its response to the Office of the Public Counsel’s (“OPC”) November 3, 2023 *Motion for Reconsideration or, in the Alternative, Application for Rehearing* (“Motion”), respectfully states as follows:

1. In its Motion, OPC posits that, since Confluence Rivers did not file testimony on the issue of advanced meter infrastructure (“AMI”) capital investment, that OPC must necessarily prevail on this issue. OPC appears to be under the misunderstanding that the evidence that can support a Commission must be in the nature of prefiled testimony.

2. Confluence Rivers did not need to file testimony on this issue because OPC’s own testimony provided justification for the AMI investment costs. Specifically, OPC witness Marke attached, as a Schedule to his Direct Testimony, a data request response that provided the rationale underlying the installation of AMI meters. Importantly, once Dr. Marke’s testimony was accepted into evidence, that data request response was also accepted into evidence and could provide evidentiary support for the Commission’s findings of fact.

3. While Dr. Marke's testimony ignored a large portion of that response, the data request response<sup>1</sup> stated:

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 expenses by eliminating manual meter reading.

Thus, contrary to OPC's Motion, there is evidentiary support for the Commission's finding of fact concerning customer benefits.<sup>2</sup>

4. The Commission has in the past described the presumption of prudence as follows:

In the context of a rate case, the parties challenging the conduct, decision, transaction, or expenditures of a utility have the initial burden of showing inefficiency or improvidence, thereby defeating the presumption of prudence accorded the utility. The utility then has the burden of showing that the challenged items were indeed prudent. Prudence is measured by the standard of reasonable care requiring due diligence, based on the circumstances that existed at the time the challenged item occurred, including what the utility's management knew or should have known. In making this analysis, the Commission [\*46] is mindful that "[t]he company has a lawful right to manage its own affairs and conduct its business in any way it may choose, provided that in so doing it does not injuriously affect the public."<sup>3</sup>

5. By introducing the DR response into the record, OPC provided the support for the "presumption of prudence" referenced by Commission.<sup>4</sup>

6. Confluence Rivers having met this presumption of prudence, through the evidence offered by OPC, OPC was left with the burden of proceeding on this issue. Clearly, given the Commission's decision in this matter, the Commission found that sufficient evidence existed,

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<sup>1</sup> Exhibit 206, Marke Direct, Schedule GM-2 (response to OPC DR 2009).

<sup>2</sup> Footnote 190, Report and Order, p. 60.

<sup>3</sup> *In the Matter of Missouri-American Water Company's Tariff Sheets*, Report and Order, Case No. WR-2000-281 (August 31, 2000), quoting *State ex rel. City of St. Joseph v. Public Service Commission*, 30 S.W.2d 8, 14 (Mo. banc 1930).

<sup>4</sup> See, Paragraph 43 of Motion (citing to Report and Order, paragraphs BB and EE).

through the DR response offered by OPC, to find that the Company should prevail on this issue as OPC failed to provide sufficient justification to overcome the established presumption of prudence.

WHEREFORE, Confluence Rivers respectfully requests that the Commission deny OPC's *Motion for Reconsideration or, in the Alternative, Application for Rehearing.*

Respectfully submitted,



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**ATTORNEYS FOR CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.**

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 13<sup>th</sup> day of November 2023, to all counsel of record.

