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Exhibit No. 108

Staff – Exhibit 108
Gateley Direct
File No. WR-2023-0006

Exhibit No.:
Issue(s): *Quality of Service*
Witness: *Curt B. Gateley*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Direct Testimony*
Case No.: *WR-2023-0006*
Date Testimony Prepared: *May 26, 2023*

MISSOURI PUBLIC SERVICE COMMISSION

INDUSTRY ANALYSIS DIVISION

WATER, SEWER, & STEAM DEPARTMENT

DIRECT TESTIMONY

Cost of Service

OF

CURT B. GATELEY

CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.

CASE NO. WR-2023-0006

Jefferson City, Missouri
May 26, 2023

1 **DIRECT TESTIMONY OF**

2 **CURT B. GATELEY**

3 **CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC.**

4 **CASE NO. WR-2023-0006**

5 Q. Please state your name and business address.

6 A. My name is Curtis B. Gateley. My business address is 200 Madison Street,
7 Jefferson City, Missouri 65101.

8 Q. By whom are you employed and in what capacity?

9 A. I am employed by the Missouri Public Service Commission (“Commission”) as
10 the Manager of the Water, Sewer, and Steam Department.

11 Q. Please describe your educational background, work experience, and any cases
12 in which you have previously filed testimony before this Commission.

13 A. My credentials and a listing of cases in which I have filed testimony previously
14 before this Commission are attached to this direct testimony as Schedule CBG-d1.

15 Q. What is the purpose of your direct testimony?

16 A. The purpose of my direct testimony is to bring to the Commission’s attention
17 certain data collection and management problems, as well as staffing and logistical problems
18 with Confluence Rivers Utility Operating Company, Inc. (“Confluence”), and recommend the
19 Commission order Confluence to rectify these problems within the next year.

20 **DATA COLLECTION AND MANAGEMENT**

21 Q. Why is it important for Staff to have accurate usage data?

22 A. As part of the audit that Staff conducts to determine revenue requirement, Staff
23 must know the amount of water a company sold during the test year. Staff must also know the

1 amount of non-revenue water during the test year. This is used to calculate any adjustments
2 Staff makes to variable costs associated with producing water, such as electricity, chemicals,
3 etc. Staff also uses this information to ensure that a company is taking appropriate steps to
4 control non-revenue water.

5 Q. What is “non-revenue water” and why is it important to control non-revenue
6 water?

7 A. Some amount of water produced by a utility is always “lost”, whether to leaks,
8 theft, faulty meters, flushing, fire fighting, etc. This “lost” water has a cost to produce, and is
9 a missed opportunity for a company to collect revenue. Knowing how much water a company
10 produces, and how much it sold, is critical so that a company can take steps to mitigate the
11 causes of water loss. A small amount of water will be lost to leaks, as no distribution is perfectly
12 leak proof.

13 Q. How did Staff calculate non-revenue water in this case?

14 A. Staff submitted data requests (“DRs”) requesting sales volumes at customer
15 meters, as well as the volumes read by the master meters where the water is produced.^{1 2}
16 For Confluence, the water source is almost entirely from company-owned wells. Staff then
17 attempted to subtract water produced from gallons sold. Water loss is then expressed as a
18 percentage. For example, if the master meter shows the company pumped 10,000 gallons to
19 customers, but customer meters showed only 8,000 gallons sold, then 2,000 gallons, or 20%,
20 was lost. Unfortunately, because the data submitted by Confluence has many errors and blanks,
21 Staff is unable to examine the percentage of non-revenue water at any of Confluences systems.

¹ Confluence response to DR Nos. 0070 and 0071.

² A master meter measures the water produced at the water treatment system or well. It shows how much water was sent out to customers.

1 Q. Can you describe these errors and blanks?

2 A. Examples include master meter readings that appear to have the decimal in the
3 wrong place, inconsistencies in volume pumped from one month to the next, and increases and
4 decreases in volume over the course of the last two years at a system with a steady number of
5 customers. There are also many records of Confluence not billing a customer for any usage,
6 such as a customer using approximately 5,000 gallons for two months, then zero usage for two
7 months, then back to previous usage totals. It is possible for a person to be gone from their
8 home for two months, or for a home to be vacant because it is up for sale. But the number of
9 records where Confluence did not record the customer usage does not reflect an occasional
10 vacant home.

11 Q. Does Confluence's master meter records accurately reflect the volume produced
12 for any system?

13 A. Yes, there are some systems for which master meter records do appear
14 reasonable.

15 Q. Does Confluence have accurate customer usage information for any system?

16 A. It is possible that some of this data during some months is accurate. But overall,
17 I do not consider the data reliable.

18 Q. Why are you certain that the volumes are inaccurate?

19 A. Because the percentage of non-revenue water reflected by these volumes is
20 highly improbable at most of the systems, and physically impossible at others. For example, at
21 Majestic Lakes, Confluence's data shows they lost between 96% and 70% of the water they
22 produced. A small system losing 96% of the water it produces would mean the system likely
23 wasn't even pressurized, and water wouldn't be getting to customers. In some months at

1 various systems, Confluence's records show they sold more water than they produced. Some
2 examples of this analysis are shown in Schedule CBG-d2.

3 Q. Besides harming the company financially, what are the ramifications to
4 customers experiencing too much water loss?

5 A. If water is not accurately metered, a company may seek additional revenue to
6 cover their cost of service. To cover this inflated cost of service the company may collect more
7 money from the customers than is necessary.

8 Q. Could some of the inaccurate customer sales records be due to employees
9 reading the customer meters incorrectly?

10 A. Yes. While some of the records could be from poorly functioning meters,
11 employees could also be reading meters incorrectly. Or, in the case of some of the records
12 showing no water sold, failing to read the meters at all.

13 Q. Have these inaccurate readings caused problems with customer bills?

14 A. Yes. These inaccurate readings translate into customers not receiving accurate
15 bills. I did not attempt to analyze every instance of legitimate zero usage versus instances of
16 Confluence incorrectly billing due to estimated bills or failure to bill for usage. There are errors
17 in the data representing too much usage as well. On one occasion Confluence issued a bill for
18 4.7 million gallons of usage, which was found to be an incorrect meter read.³

19 Q. Isn't it standard practice for a utility's billing software to flag usage that is out
20 of the normal for review, so that bills that are obviously incorrect do not get issued?

21 A. Yes. Most utility companies' billing systems will flag bills that are obviously
22 incorrect. It is not clear whether Confluence's system does this. A billed usage of 4.7 million

³ DR No. 0071.3.

1 gallons is unrealistic for a residential customer, and Confluence should not have issued that bill.
2 It is physically impossible for that much water to flow through a 1” meter in a month, much
3 less a 5/8” meter. It turned out this customer used less than 15,000 gallons the first month that
4 meter was reread. This illustrates the need for more oversight and auditing of data collection.

5 Q. What is Staff’s recommendation for the Commission to order resolve the
6 problems with data collection?

7 A. It is Staff’s recommendation that the Commission orders that Confluence:

- 8 • Test all of its master meters for accuracy within six months of the effective date
9 of the report and order in this case, except for master meters that have passed
10 testing or were installed within the past 12 months;
- 11 • Install master meters at any of its facilities that presently lack a master meter
12 within 12 months of the report and order in this case;
- 13 • Test or install a master meter at any future acquisitions within 90 days of closing
14 on the assets; and
- 15 • Test or replace all customer meters in accordance with 20 CSR 4240-10.030(38)
16 within five years, or before its next rate case, whichever comes first. For any
17 system Confluence has acquired for which it has no record of the age of
18 the meters, it should be ordered to assume that all meters are greater than
19 ten years old.

20 **STAFFING AND LOGISTICS**

21 Q. Can you describe the staffing and logistical problems at Confluence?

22 A. Based on information collected by Staff from Confluence, before and during this
23 general rate case, in response to complaint investigations, and in response to compliance issues

1 discovered during inspections, it has been demonstrated that Confluence's lack of dedicated
2 personnel needed to oversee operations and contract operators in Missouri cannot continue. In
3 addition, Confluence currently lacks sufficient personnel to provide necessary access to its
4 utility systems for routine or emergency inspections.

5 Q. How does Confluence operate its utility systems now?

6 A. It is Staff's understanding that Confluence utilizes contract operators to run all
7 of its treatment, distribution, and collection systems. Confluence does not employ operators of
8 its own, unlike the majority of water and sewer utilities in Missouri. Confluence and its
9 affiliates through Central States Water Resources own over 750 facilities in ten states.⁴ This
10 means there is enormous potential for problems across the country if significant oversight is not
11 provided by Confluence employees to ensure that safe and adequate service is provided at all
12 of these systems.

13 Q. What problems is this causing, from Staff's perspective?

14 A. In any situation where contractors are utilized to perform critical functions, there
15 must be routine oversight of those contractors. In short, Confluence must ensure that ratepayers
16 are getting their money's worth for the expense of these contracts and that ratepayers'
17 investment in the systems is adequately protected. It is not the responsibility of the contractors
18 to ensure safe and adequate service, it is the responsibility of the regulated utility.

19 In addition to exercising an apparent lack of oversight, Confluence will not allow Staff
20 access to its utilities via a contract operator, and instead requires a Confluence employee
21 familiar with operations to attend. However, Confluence appears to lack full time employees
22 dedicated to Missouri to fulfill this role. When Staff seeks to conduct routine inspections of the

⁴ Josiah Cox Direct, page 3, lines 12-18.

1 facilities owned by Confluence, or verify installation of new plant investments as part of a
2 prudence review, Confluence has constrained these inspections to a time when a specific
3 Confluence employee is in the state. While scheduling for inspections associated with this rate
4 case were eventually accommodated within a few weeks, this is not an appropriate or
5 sustainable situation.

6 Q. If Staff has an immediate need to inspect a facility, such as due to a complaint
7 of unsafe service, how will Confluence accommodate such an immediate need with personnel
8 familiar with operating a water or sewer system?

9 A. Staff does not have confidence that an urgent inspection can be conducted. Since
10 access is controlled at drinking water and sewage treatment facilities, Staff must have a
11 Company representative on site capable of unlocking gates, doors, etc.

12 Q. If Confluence does not have any employees overseeing Missouri contract
13 operations full time, how do they ensure the contract employees are doing what they are
14 supposed to do?

15 A. Based on Confluence personnel's statements, and the examples below, Staff
16 does not believe adequate oversight of contract employees is being conducted.

17 Q. Doesn't Confluence purchase and rehabilitate challenged systems in Missouri?

18 A. Confluence does purchase systems that are struggling to maintain compliance or
19 in need of significant investment, and it is Staff's position that Confluence has generally done
20 a good job at this effort. However, installing necessary plant repairs or upgrades is not enough
21 to ensure safe and adequate service. As Confluence is moving from a new company
22 establishing its presence in Missouri to a large utility with thousands of customers and growing,
23 Confluence must have dedicated personnel overseeing continued operations as well. When

1 Confluence purchases a system that needs significant repair or upgrades it must pursue those
2 investments as quickly as feasible, and it must operate those systems in such a way that they
3 perform to the best of their ability until the investments are completed, and beyond.

4 Q. Do you have recent examples of this lack of oversight that have caused Staff
5 concern?

6 A. Yes. On December 7, 2022, and December 12, 2022, Staff received complaints
7 about the water service at Auburn Lake Estates.⁵ Customers complained of excessive air in the
8 distribution system and provided pictures showing discolored water. Customers also noted
9 incidents of occasional excessive chlorine and a lack of responsiveness by Confluence
10 personnel. Staff's investigation revealed that the number of customers had been steadily
11 increasing due to home construction, but Confluence had not expanded the water system
12 capacity to keep up with growth. The system does not have adequate storage to allow flushing
13 of the water mains to remove sediment associated with naturally occurring iron in the
14 groundwater. While chlorine addition can be more carefully regulated to prevent the spikes of
15 chlorine described by customers, flushing of water lines is essential for removal of sediment,
16 removing biofilm, preventing taste and odor issues, and maintaining capacity within water
17 mains. Staff intends to address the concerns at Auburn Lake Estates in greater detail in its
18 rebuttal testimony.

19 As of the filing of this testimony, it is Staff's understanding that the issues at Auburn
20 Lake Estates remain unresolved. Customers continue to complain of Confluence being
21 unresponsive.⁶ The Company has stated they plan to complete upgrades in the future, but

⁵ C202300495 and C202300502, respectively.

⁶ Email from customer, May 5, 2023.

1 appropriate capital planning could have avoided this problem. Confluence must respond
2 promptly to customer inquiries, and ensure ongoing operational and future capital investment
3 needs are met.

4 Q. Has Staff raised capital planning as an issue in this case?

5 A. Yes, please see the Direct Testimony of Staff witness David C. Roos.

6 Q. Do you have additional examples?

7 A. Yes. On April 11, 2023, Staff inspected systems owned by the Company in the
8 Kansas City area. At the Fox Run sewer treatment plant, Staff observed a bypass of partially
9 treated sewage and a non-functioning recirculating sand filter bed. Staff observed dead
10 vegetation where the sewage escaped the filter bed due to saturated soils, large pools of sewage
11 outside the perimeter fencing in which algae had begun to grow, and a saturated filter bed with
12 surfacing sewage.⁷ The condition of the facility appears to indicate the bypass had been
13 occurring for several days to a few weeks. The Clean Water Act, Section 402, prohibits sewage
14 dischargers from bypassing untreated or partially treated sewage.⁸ Bypassing is also prohibited
15 under the Company's operating permit.⁹ In addition to being a significant nuisance to those
16 nearby and downstream, partially treated sewage exposes the public to pathogens, and can cause
17 significant harm to the environment.

18 Staff later inquired to the local Department of Natural Resources ("DNR") regional
19 office and confirmed that the bypass had been reported within 24 hours of its discovery, as is
20 required by DNR. In addition to DNR addressing the issue, the Company has conveyed to Staff
21 they would immediately arrange for pumping of sludge and wastewater to alleviate the bypass.

⁷ Schedule CBG-d3 through CBG-d7.

⁸ 40 CFR 122.41(m)(4)(i).

⁹ Standard Condition Part I, Section C.2.c.

1 Alleviating a dry-weather bypass can be as simple as removing a blockage from a pipe or
2 correcting a power failure. On the other hand, it can include significant repairs to pipes, pumps,
3 or other equipment. The Company should immediately be made aware of any serious failures
4 at their sewage treatment facilities, and should promptly begin evaluating the corrective action
5 and any needed investment. In the interim, emergency pumping and hauling of the sewage to
6 another treatment facility should have been enacted unless it was demonstrated to be infeasible.
7 In no event should the bypassing of sewage been allowed to continue without immediate
8 corrective action.

9 Q. But isn't Confluence operating under compliance agreements with DNR for the
10 Fox Run sewer treatment plant?

11 A. Yes, but the compliance agreement, called an Administrative Order on Consent
12 ("AOC"), does not authorize bypassing. The AOC requires¹⁰ Confluence to make good faith
13 efforts to operate the Fox Run system in compliance with its operating permit¹¹ and the Missouri
14 Clean Water Law.¹² Following Confluence's purchase of Fox Run, bypassing occurred causing
15 the system to be non-functional. The AOC establishes that DNR will not take further
16 enforcement action for previous effluent limit exceedances, or similar exceedances in the future,
17 so long as Confluence complies with a schedule to upgrade the facilities. The AOC is attached
18 as Schedule CBG-d8.

19 Q. Does the Fox Run example indicate a lack of oversight by Confluence, or a lack
20 of communication by Confluence's contract operator?

¹⁰ Page 8, paragraph 30, Order No. 2021-WPCB-1667.

¹¹ MO-0120006.

¹² Chapter 644 RSMo.

1 A. It appears to indicate both. But Confluence is the owner of the system and is
2 therefore responsible for providing safe and adequate service.

3 Q. You previously stated this was a problem before the initiation of this general rate
4 case. Has Staff urged Confluence to rectify the situation?

5 A. Yes. As Confluence has grown in Missouri, Staff has had several conversations
6 with the Company about expanding their personnel to coincide with the growth of the
7 Company. Confluence has created several additional positions,¹³ but has continued to rely on
8 contractors for operating the treatment systems. While Staff has had concerns, the scope of the
9 problem was not fully revealed until Staff was attempting to arrange customary inspections as
10 part of the prudency review and rate case investigation.

11 Q. Has Confluence indicated that they have recently designated a manager for
12 Missouri?

13 A. Yes. On April 19, 2023 Confluence updated their answer to DR No. 0177 to
14 indicate that Brad Thibault is the Regional Manager for Missouri. In response to DR No. 0081,
15 Confluence provided a description of the duties of a Regional Manager, which includes, but is
16 not limited to, the following:

- 17 • Responsible for overall management of all aspects of the water and wastewater
18 contract at respective regional location.
- 19 • Directly responsible for overseeing the various O&M Partners operating and
20 maintaining the water and wastewater systems as well as oversight of all
21 sub-contractors, consultants and vendors.

¹³ Response to DR No. 0037.

- 1 • Develops and implements policies and procedures, and activity reporting
2 systems to ensure efficient and effective service levels as well as compliance
3 with all contractual requirements.

4 This is not consistent with the Company's response to DR Nos. 0212 through 0228, which
5 indicate that Senior Vice President Todd Thomas is responsible for overseeing operators and
6 system repairs, while Director of Engineering Jacob Freeman is responsible for overseeing
7 capital improvement projects.

8 Q. If the Regional Manager is responsible for overseeing contract operator
9 performance, why is this not sufficient to allay Staff's concerns?

10 A. There are several issues. This Regional Manager position is not dedicated to
11 Missouri, but also oversees Tennessee operations as well, and Staff is uncertain how many other
12 states this position may also support.¹⁴ Confluence has not stated whether there are employees
13 under the Regional Manager position that oversee contract operations. Confluence has
14 provided contradicting answers to the question of who is in charge of this activity. Finally, the
15 two examples above show that simply hoping that contract operators will perform without
16 oversight is not working.

17 Based on the information available to Staff, it appears that Confluence has generally
18 done a good job upgrading and replacing the failing water and sewer treatment systems it has
19 purchased. Staff has become concerned however that improper operations now and in the future
20 may cause additional problems. It is Staff's position that while Confluence's failures to

¹⁴ Staff conversation with Confluence employee Jake Freeman, May 2, 2023.

1 properly operate their systems do not appear to be widespread, changes are necessary to ensure
2 safe and adequate service continues to be provided.

3 Q. Do any other water or sewer utilities that operate in Missouri do so without
4 personnel dedicated specifically for Missouri operations?

5 A. No, not to my knowledge. Other large companies generally employ a mix of
6 contract operators and company employees as operators, while owners of very small companies
7 operate small systems themselves.

8 Q. Your solution is for Confluence to create or designate some positions for
9 Missouri Operations. Please describe how you envision such positions would function.

10 A. The persons who fill these positions, which would be funded by Missouri
11 ratepayers after Confluence's rate case following this one, would not be allowed to split their
12 time amongst Confluence operations in other states and must be based within Missouri. While
13 these positions could conceivably conduct several tasks, the primary duties of these positions
14 must include:

- 15 • Oversight of contract operators, including frequent communications, scheduled
16 and unscheduled spot checks at facilities, audits of contractor performance, and
17 ensuring that Confluence personnel are aware of any problems at facilities or
18 customer concerns.
- 19 • The ability to rapidly respond to needs for facility inspections, treatment plant
20 upsets,¹⁵ significant damage due to weather, etc.

¹⁵ This arises when the biological treatment process is not working correctly due to an unhealthy habitat, whether due to poor operations, the dumping of toxic materials, or other factors that affect the biological treatment process.

1 • The ability to respond and schedule routine inspections with Staff within two
2 days, and the ability to allow access to conduct said inspections within two
3 weeks in the majority of circumstances.

4 • Maintain a familiarity with each system. Understand and track the plan for
5 complying with schedules of compliance ordered by the DNR, significant
6 maintenance and planned upgrades, and other facts about individual systems
7 necessary to understand challenges and how the Company plans to overcome
8 them.

9 Q. Are you stating Staff will recommend approval of funding for however many
10 positions Confluence dedicates to Missouri in rates?

11 A. No. Staff will examine costs as part of a future rate case. However, it would be
12 typical for utility company positions to be funded by Missouri customer rates if they are
13 dedicated to Missouri operations and do not devote a percentage of their time to tasks in other
14 states, other affiliates, or other corporate activities. Staff reserves the right to review
15 appropriate salary levels, and the number of positions necessary to carry out the tasks mentioned
16 above.

17 Q. Is Staff suggesting that decision-making authority must be vested in these
18 positions?

19 A. No. Staff finds that personnel dedicated solely to Missouri operations for the
20 purposes of oversight, responsiveness, and communication are necessary. Authority for
21 approval or decision making beyond these routine operational concerns should reside at
22 whatever level Confluence finds appropriate while still maintaining enough agility to ensure
23 provision of safe and adequate service.

1 Q. To summarize, what is Staff recommending the Commission order?

2 A. After starting as a small company in Missouri, Confluence has grown to serve
3 thousands of customers in Missouri via approximately 70 water and wastewater facilities.¹⁶
4 They continue to rapidly grow in Missouri through acquisitions.¹⁷ It is Staff's position that
5 recent efforts to work with the Company through this rate case, efforts to conduct routine
6 regulatory activities before this rate case, and the number of operational problems at Auburn
7 Lake Estates demonstrate that change is necessary. Staff recommends that the Commission
8 order Confluence to establish not less than two positions dedicated to oversight of operations
9 of facilities in Missouri, as described above. The necessary number of positions should be
10 determined by Confluence, and will be reviewed for appropriateness at the next rate case.

11 Q. Does this conclude your testimony?

12 A. Yes.

¹⁶ Based on Staff's review of systems purchased by Confluence

¹⁷ Josiah Cox Direct, page 3, lines 17-18; SA-2023-0215; WA-2023-0284.

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

AFFIDAVIT OF CURT B. GATELEY

STATE OF MISSOURI)
)
COUNTY OF COLE) ss.

COMES NOW CURT B. GATELEY and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Direct Testimony of Curt B. Gateley*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.


CURT B. GATELEY

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 24th day of May 2023.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: April 04, 2025
Commission Number: 12412070


Notary Public

Curt B. Gateley

Credentials

I am the Regulatory Compliance Manager of the Water, Sewer, & Steam Department, in the Industry Analysis Division of the Missouri Public Service Commission. I have been employed by the State of Missouri for 22 years, and have been with the Commission eight years. My duties as Manager involve all aspects of the Commission's regulation of the water, sewer, and steam industries including customer complaints, reviewing testimony, setting policy, and working with the utilities to promote best practices in their provision of safe and adequate service at just and reasonable rates.

Educational Background and Work Experience

I have a Bachelor of Science degree in Fisheries and Wildlife from the University of Missouri-Columbia. Prior to joining the Public Service Commission I was employed by the Missouri Department of Natural Resources from 2000-2014, as an Environmental Specialist and a Unit Chief. During my time with the agency I worked in compliance and enforcement, industrial and domestic wastewater permitting, industrial stormwater permitting, and eventually oversaw a staff of eight Permit Writers. I have served as expert witness before the Administrative Hearing Commission, as well as expert witness in State and Federal enforcement cases.

Previous Testimony Before the Public Service Commission

| <u>Case No.</u> | <u>Company</u> | <u>Type of Filing</u> | <u>Issue</u> |
|-----------------|---|--|--|
| SR-2014-0153 | Peaceful Valley | Live Testimony only | Compliance with Dept. of Natural Resources Regulations |
| WR-2015-0301 | Missouri American Water Company | Direct and Rebuttal Testimony | Class Cost of Service Report |
| SR-2016-0202 | Raccoon Creek Utility Operating Company | Direct and Rebuttal Testimony | Rate Design and Tariff Review |
| WO-2017-0236 | Ridge Creek Utility Company, LLC | Live Testimony only | Petition for Interim Receiver |
| WR-2017-0110 | Terre Du Lac Utilities Corporation | Direct Testimony | Rate Design and Tariff Review |
| WR-2017-0259 | Indian Hills Utility Operating Company | Direct, Rebuttal and Surrebuttal Testimony | Rate Design |
| WR-2017-0285 | Missouri American Water Company | Direct, Rebuttal and Surrebuttal Testimony | Class Cost of Service, Rate Design |
| WR-2018-0285 | Liberty Utilities | Direct Testimony | Contract Services, Miscellaneous Service Charges, Tariff Revisions |
| WR-2020-0344 | Missouri American Water Company | Direct Testimony | Class Cost of Service Report |

cont. Curt B. Gateley Credentials

| | | | |
|--------------|------------------------------------|----------------------------------|------------------------------------|
| WA-2020-0397 | Liberty Utilities | Direct and Rebuttal Testimony | Staff Recommendation, Rate Base |
| WA-2021-0376 | Missouri American Water Company | Rebuttal Testimony | Staff Recommendation |

| | Jan-22 | Feb-22 | Mar-22 | Apr-22 | May-22 | Jun-22 | Jul-22 | Aug-22 | Sep-22 | Oct-22 | Nov-22 | Dec-22 | Jan-23 |
|---------------------|-----------|-----------|-----------|-----------|-----------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Indian Hills | | | | | | | | | | | | | |
| Customer Usage | 1,623,664 | 1,034,451 | 885,577 | 764,231 | 929,740 | 1,474,003 | 1,953,455 | 849,122 | 917,642 | 1,084,497 | 966,318 | 691,996 | 836,800 |
| Master Usage | 1,878,940 | 2,350,790 | 1,385,935 | 1,670,275 | 1,695,320 | 2,452,135 | 1,888,465 | 3,150,360 | 2,083,660 | 1,658,670 | 2,594,480 | 1,751,820 | 1,929,900 |
| Gallon Loss | 255,276 | 1,316,339 | 500,358 | 906,044 | 765,580 | 978,132 | (64,990) | 2,301,238 | 1,166,018 | 574,173 | 1,628,162 | 1,059,824 | 1,093,100 |
| % Loss | 13.59% | 56.00% | 36.10% | 54.25% | 45.16% | 39.89% | -3.44% | 73.05% | 55.96% | 34.62% | 62.75% | 60.50% | 56.64% |
| Port Perry | | | | | | | | | | | | | |
| Customer Usage | 301,770 | 326,560 | 312,940 | 394,910 | 486,603 | 734,550 | 814,009 | 544,661 | 699,700 | 589,264 | 473,330 | 259,517 | 411,244 |
| Master Usage | 784,000 | 738,000 | 663,000 | 406,286 | 809,716 | 1,041,835 | 1,391,669 | 859,502 | 984,001 | 966,000 | 1,180,000 | 964,250 | 853,750 |
| Gallon Loss | 662,300 | 590,320 | 516,620 | 233,246 | 597,466 | 676,475 | 937,869 | 612,541 | 615,631 | 616,406 | 940,350 | 869,884 | 649,550 |
| % Loss | 84.48% | 79.99% | 77.92% | 57.41% | 73.79% | 64.93% | 67.39% | 71.27% | 62.56% | 63.81% | 79.69% | 90.21% | 76.08% |
| Terre Du Lac | | | | | | | | | | | | | |
| Customer Usage | 4,825,295 | 5,405,521 | 3,937,290 | 4,338,996 | 4,866,688 | 11,284,076 | 14,339,115 | 13,332,769 | 9,597,199 | 11,937,963 | 8,894,164 | 3,957,427 | 4,737,727 |
| Master Usage | 5,790,918 | 5,797,925 | 5,906,925 | 5,312,748 | 4,263,646 | 4,457,650 | 5,195,391 | 5,244,643 | 3,804,228 | 4,110,290 | 4,962,895 | 2,412,214 | 527,538 |
| Gallon Loss | 965,623 | 392,404 | 1,969,635 | 973,752 | (603,042) | (6,826,426) | (9,143,724) | (8,088,126) | (5,792,971) | (7,827,673) | (3,931,269) | (1,545,213) | (4,210,189) |
| % Loss | 16.67% | 6.77% | 33.34% | 18.33% | -14.14% | -153.14% | -176.00% | -154.22% | -152.28% | -190.44% | -79.21% | -64.06% | -798.08% |
| Cedar Glen | | | | | | | | | | | | | |
| Customer Usage | 145,800 | 86,800 | 109,000 | 110,200 | 134,100 | 253,500 | 301,700 | 328,160 | 170,960 | 162,250 | 130,900 | 14,116 | 97,700 |
| Master Usage | 335,860 | 309,580 | 317,550 | 407,110 | 458,020 | 599,260 | 542,980 | 893,090 | 613,380 | 568,120 | 263,380 | 234,150 | 344,060 |
| Gallon Loss | 190,060 | 222,780 | 208,550 | 296,910 | 323,920 | 345,760 | 241,280 | 564,930 | 442,420 | 405,870 | 132,480 | 220,034 | 246,360 |
| % Loss | 56.59% | 71.96% | 65.67% | 72.93% | 70.72% | 57.70% | 44.44% | 63.26% | 72.13% | 71.44% | 50.30% | 93.97% | 71.60% |
| Chelsea Rose | | | | | | | | | | | | | |
| Customer Usage | 112,609 | 82,838 | 82,084 | 81,842 | 96,501 | 137,171 | 125,514 | 42,440 | 41,852 | 49,877 | 48,751 | 79,905 | 91,016 |
| Master Usage | 212,763 | 246,304 | 261,051 | 301,345 | 268,265 | 340,475 | 361,814 | 432,548 | 262,216 | 364,313 | 212,236 | 188,496 | 220,845 |
| Gallon Loss | 100,154 | 163,466 | 178,967 | 219,503 | 171,764 | 203,304 | 236,300 | 390,108 | 220,364 | 314,436 | 163,485 | 108,591 | 129,829 |
| % Loss | 47.07% | 66.37% | 68.56% | 72.84% | 64.03% | 59.71% | 65.31% | 90.19% | 84.04% | 86.31% | 77.03% | 57.61% | 58.79% |
| Cimmaron Bay | | | | | | | | | | | | | |
| Customer Usage | 28,110 | 9,610 | 17,210 | 21,210 | 28,550 | 47,650 | 52,570 | 71,090 | 46,740 | 30,550 | 13,720 | 12,376 | 17,567 |
| Master Usage | 168,300 | 160,900 | 169,100 | 218,700 | 201,900 | 328,500 | 255,500 | 461,400 | 336,400 | 351,700 | 272,300 | 317,400 | 372,600 |
| Gallon Loss | 140,190 | 151,290 | 151,890 | 197,490 | 173,350 | 280,850 | 202,930 | 390,310 | 289,660 | 321,150 | 258,580 | 305,024 | 355,033 |
| % Loss | 83.30% | 94.03% | 89.82% | 90.30% | 85.86% | 85.49% | 79.42% | 84.59% | 86.11% | 91.31% | 94.96% | 96.10% | 95.29% |
| Eaglewoods | | | | | | | | | | | | | |
| Customer Usage | 123,154 | 68,930 | 82,959 | 99,246 | 113,998 | 148,221 | 136,552 | 147,044 | 104,979 | 136,060 | 81,076 | 85,938 | 104,756 |
| Master Usage | 108,700 | 95,700 | 81,700 | 113,600 | 105,600 | 123,500 | 111,400 | 160,600 | 27,900 | 248,300 | 98,900 | 104,700 | 122,000 |
| Gallon Loss | (14,454) | 26,770 | (1,259) | 14,354 | (8,398) | (24,721) | (25,152) | 13,556 | (77,079) | 112,240 | 17,824 | 18,762 | 17,244 |
| % Loss | -13.30% | 27.97% | -1.54% | 12.64% | -7.95% | -20.02% | -22.58% | 8.44% | -276.27% | 45.20% | 18.02% | 17.92% | 14.13% |

| | | | | | | | | | | | | | |
|-----------------|-----------|---------|-----------|-------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Euguene | | | | | | | | | | | | | |
| Customer Usage | 256,448 | 190,897 | 161,961 | 144,797 | 167,505 | 178,067 | 163,630 | 149,517 | 157,155 | 163,729 | 134,302 | 32,504 | 9,266 |
| Master Usage | 459,664 | 574,050 | 634,370 | 857,590 | 713,670 | 727,630 | 437,860 | 223,750 | 225,190 | 254,230 | 276,300 | 505,200 | 668,750 |
| Gallon Loss | 203,216 | 383,153 | 472,409 | 712,793 | 546,165 | 549,563 | 274,230 | 74,233 | 68,035 | 90,501 | 141,998 | 472,696 | 659,484 |
| % Loss | 44.21% | 66.75% | 74.47% | 83.12% | 76.53% | 75.53% | 62.63% | 33.18% | 30.21% | 35.60% | 51.39% | 93.57% | 98.61% |
| Evergreen Lakes | | | | | | | | | | | | | |
| Customer Usage | 221,213 | 146,429 | 335,428 | 235,315 | 256,487 | 309,843 | 297,374 | 321,926 | 218,725 | 250,470 | 298,313 | 221,932 | 214,714 |
| Master Usage | 605,010 | 684,323 | 527,953 | 666,324 | 534,819 | 577,766 | 813,928 | 558,288 | 784,155 | 531,409 | 520,115 | 643,557 | 838,744 |
| Gallon Loss | 383,797 | 537,894 | 192,525 | 431,009 | 278,332 | 267,923 | 516,554 | 236,362 | 565,430 | 280,939 | 221,802 | 421,625 | 624,030 |
| % Loss | 63.44% | 78.60% | 36.47% | 64.68% | 52.04% | 46.37% | 63.46% | 42.34% | 72.11% | 52.87% | 42.64% | 65.51% | 74.40% |
| Gladlo | | | | | | | | | | | | | |
| Customer Usage | 286,553 | 199,954 | 226,283 | 5,017,120 | 276,905 | 283,219 | 323,016 | 281,174 | 233,731 | 286,195 | 334,589 | 323,283 | 189,702 |
| Master Usage | 286,680 | 261,210 | 363,410 | 267,810 | 270,230 | 253,930 | 289,470 | 320,820 | 274,780 | 265,360 | 285,910 | 263,340 | 278,720 |
| Gallon Loss | 127 | 61,256 | 137,127 | (4,749,310) | (6,675) | (29,289) | (33,546) | 39,646 | 41,049 | (20,835) | (48,679) | (59,943) | 89,018 |
| % Loss | 0.04% | 23.45% | 37.73% | -1773.39% | -2.47% | -11.53% | -11.59% | 12.36% | 14.94% | -7.85% | -17.03% | -22.76% | 31.94% |
| Hillcrest | | | | | | | | | | | | | |
| Customer Usage | 912,339 | 750,936 | 753,869 | 2,700 | 808,997 | 995,592 | 858,253 | 854,900 | 806,237 | 749,798 | 862,912 | 735,611 | 857,818 |
| Master Usage | 1,014,500 | 942,000 | 1,029,000 | 990,000 | 1,121,000 | 1,065,000 | 1,127,000 | 1,062,000 | 1,035,000 | 1,052,000 | 1,020,000 | 1,114,800 | 1,174,200 |
| Gallon Loss | 102,161 | 191,064 | 275,131 | 987,300 | 312,003 | 69,408 | 268,747 | 207,100 | 228,763 | 302,202 | 157,088 | 379,189 | 316,382 |
| % Loss | 10.07% | 20.28% | 26.74% | 99.73% | 27.83% | 6.52% | 23.85% | 19.50% | 22.10% | 28.73% | 15.40% | 34.01% | 26.94% |
| Roy-L | | | | | | | | | | | | | |
| Customer Usage | 60,830 | 47,170 | 54,380 | 41,360 | 56,070 | 62,760 | 63,700 | 32,287 | 49,790 | 73,497 | 55,644 | 35,320 | 55,330 |
| Master Usage | 78,604 | 67,896 | 63,531 | 63,979 | 63,385 | 60,736 | 73,484 | 69,447 | 60,080 | 73,344 | 80,600 | 80,755 | 86,514 |
| Gallon Loss | 17,774 | 20,726 | 9,151 | 22,619 | 7,315 | (2,024) | 9,784 | 37,160 | 10,290 | (153) | 24,956 | 45,435 | 31,184 |
| % Loss | 22.61% | 30.53% | 14.40% | 35.35% | 11.54% | -3.33% | 13.31% | 53.51% | 17.13% | -0.21% | 30.96% | 56.26% | 36.05% |









Case No. WR-2023-0006
Schedule CBG-d6



BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Elm Hills Utility Operating)
 Company, Inc.) **Order No. 2021-WPCB-1667**
)
 Proceeding under the)
 Missouri Clean Water Law)

ABATEMENT ORDER ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2021-WPCB-1667, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because the Department acknowledges that Elm Hills Utility Operating Company, Inc. (Respondent) is and will be in violation of the Missouri Clean Water Law (MCWL) due to the Respondent's acquisition of the wastewater treatment facilities (WWTFs) known as or currently serving Berkshire Glenn, Country Hills Estates, Countryside Meadows, Fox Run, Park Estates, Private Gardens, and Wilmar Estates. This AOC is issued under the authorities of Sections 644.056 and 644.079, Revised Statutes of Missouri (RSMo). Failure to comply with this AOC is, by itself, a violation of Section 644.076.1, RSMo, which may activate penalties and other forms of relief. Litigation may occur without further notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements for the MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the Respondent of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil or administrative penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

FINDINGS OF FACT

1. The Respondent, originally formed on March 22, 2016, is a domestic, for-profit business registered and in good standing with the Missouri Secretary of State, which purchased the seven WWTFs on or about June 30, 2020.
2. The Elm Hills - Berkshire Glenn WWTF consists of a septic tank effluent pump (STEP) system with recirculating sand filter. The WWTF has a design population equivalent of 185, a design flow of 18,500 gallons per day (gpd), and is located in Clay County, Missouri. Effluent from the WWTF discharges to a tributary to Holmes Creek, subject to the conditions and requirements of Missouri State Operating Permit No. MO-0128511 (Berkshire Glenn Permit), which was effective December 1, 2018, and expires September 30, 2023.
3. On July 17, 2019, prior to the Respondent acquiring the facility, Department staff inspected the Elm Hills – Berkshire Glenn WWTF and found the facility in non-compliance due to a failure to meet final permitted effluent limitations for E. coli.
4. Discharge Monitoring Reports (DMRs) submitted by the previous owner of the Elm Hills – Berkshire Glenn WWTF indicate that effluent produced by the WWTF violated the permitted effluent limitations. Additionally, Department records indicated that the previous owner failed to submit a DMR for the monitoring period ending December 2018. See Exhibit A of this AOC for a list of effluent violations.
5. The Elm Hills – Country Hills Estates WWTF consists of septic tanks with recirculating sand filter. The WWTF has a design population equivalent of 111, a design flow of 11,000 gpd with an adjusted design flow of 6,999 gpd, and is located in Clinton County, Missouri. Effluent from the WWTF discharges to a tributary to Brushy Creek, subject to the

conditions and requirements of Missouri State Operating Permit No. MO-0132144 (Country Hills Estates Permit), which was effective September 1, 2018 and expires September 30, 2021.

6. On August 30, 2019, prior to the Respondent acquiring the facility, Department staff inspected the Elm Hills – Country Hills Estates WWTF and found the facility in non-compliance due to failure to submit DMRs.

7. The Elm Hills - Countryside Meadows WWTF consists of a STEP system with anaerobic digester and recirculating sand filter. The WWTF has a design population equivalent of 74, a design flow of 5,520 gpd, and is located in Ray County, Missouri. Effluent from the WWTF discharges to a tributary to East Fork Rollins Creek, subject to the conditions and requirements of Missouri State Operating Permit No. MO-0119822 (Countryside Meadows Permit), which was effective February 1, 2019 and expires December 31, 2023.

8. On April 3, 2013, prior to the Respondent acquiring the facility, Department staff inspected the Countryside Meadows WWTF and found the facility in non-compliance for failure to submit DMRs, failure to clearly mark the outfall, failure to place warning signs on all fences and gates, failure to maintain the fence so that plants and vegetation would not cause damage, and failure to have enough gravel carefully placed over distribution lines.

9. DMRs submitted by the previous owner of the Elm Hills – Countryside Meadows WWTF indicate that effluent produced by the WWTF violated the permitted effluent limitations. Additionally, Department records indicated that the previous owner failed to submit a DMR for the monitoring period ending December 2018. See Exhibit B of this AOC for a list of effluent limitations.

10. The Elm Hills - Fox Run WWTF consists of a STEP system with recirculating sand filter and chlorination. The WWTF has a design population equivalent of 152, a design flow

of 11,400 gpd, and is located in Clay County, Missouri. Effluent from the WWTF discharges to a tributary to Rock Creek, subject to the conditions and requirements of Missouri State Operating Permit No. MO-0120006 (Fox Run Permit), which was effective June 1, 2019 and expires March 31, 2024.

11. On July 7, 2015, prior to the Respondent acquiring the facility, Department staff inspected the Elm Hills – Fox Run WWTF and found the facility in non-compliance for failure to comply with effluent limits contained in Part A of the Fox Run Permit and failure to upgrade facilities to comply with final effluent limitations for Fecal Coliform bacteria as required by Part D of the Fox Run Permit.

12. DMRs submitted by the previous owner of the Elm Hills – Fox Run WWTF indicate that effluent produced by the WWTF violated the permitted effluent limitations. Additionally, Department records indicated that the previous owner failed to submit DMRs for the monitoring periods ending December 2018 and March 2019. See Exhibit C of this AOC for a list of effluent limitations.

13. The Elm Hills – Park Estates WWTF consists of a STEP system with recirculating sand filter. The WWTF has a design population equivalent of 196, a design flow of 20,000 gpd, and is located in Clay County, Missouri. Effluent from the WWTF discharges to a tributary to Clear Creek, subject to the conditions and requirements of Missouri State Operating Permit No. MO-0126004 (Park Estates Permit), which was effective June 1, 2019 and expires March 31, 2024.

14. On July 8, 2019, prior to the Respondent acquiring the facility, Department staff inspected the Elm Hills – Park Estates WWTF and found the facility in non-compliance due to a failure to meet final permitted effluent limitations for pH and E. coli.

15. DMRs submitted by the previous owner of the Elm Hills – Park Estates WWTF indicate that effluent produced by the WWTF violated the permitted effluent limitations. Additionally, Department records indicated that the previous owner failed to submit DMRs for the monitoring periods ending December 2018 and March 2019. See Exhibit D of this AOC for a list of effluent limitations.

16. The Elm Hills – Private Gardens WWTF consists of a STEP system with recirculating sand filter. The WWTF has a design population equivalent of 240, a design flow of 18,037 gpd, and is located in Clay County, Missouri. Effluent from the WWTF discharges to a tributary to Fishing River, subject to the conditions and requirements of Missouri State Operating Permit No. MO-0129691 (Private Gardens Permit), which was effective May 1, 2019 and expires March 31, 2024.

17. On January 25, 2018, prior to the Respondent acquiring the facility, Department staff inspected the Elm Hills – Private Gardens WWTF and found the facility in non-compliance due to failure to comply with final permitted effluent limitations, failure to upgrade the facility with disinfection technology, and discharge of water contaminants to waters of the State which reduced the quality of such waters below applicable water quality standards.

18. DMRs submitted by the previous owner of the Elm Hills – Private Gardens WWTF indicate that effluent produced by the WWTF violated the permitted effluent limitations. Additionally, Department records indicated that the previous owner failed to submit a DMR for the monitoring period ending December 2018. See Exhibit E of this AOC for a list of effluent limitations.

19. The Elm Hills – Wilmar Estates WWTF consists of a STEP system with recirculating sand filter. The WWTF has a design population equivalent of 296, a design flow of

29,600 gpd, and is located in Clay County, Missouri. Effluent from the WWTF discharges to a tributary to Rock Creek, subject to the conditions and requirements of Missouri State Operating Permit No. MO-0124931 (Wilmar Estates Permit), which was effective June 1, 2019 and expires March 31, 2024.

20. On April 12, 2018, prior to the Respondent acquiring the facility, Department staff inspected the Elm Hills – Wilmar Estates WWTF and found the facility in non-compliance due to failure to comply with final permitted effluent limitations for Ammonia as Nitrogen and Biochemical Oxygen Demand, and discharge of water contaminants into waters of the State which reduced the quality of such waters below water quality standards.

21. DMRs submitted by the previous owner of the Elm Hills – Wilmar Estates WWTF indicate that effluent produced by the WWTF violated the permitted effluent limitations. Additionally, Department records indicated that the previous owner failed to submit DMRs for the monitoring periods ending December 2018 and March 2019. See Exhibit F of this AOC for a list of effluent limitations.

22. Holmes Creek, Brushy Creek, East Fork Rollins Creek, Rock Creek, Clear Creek, Fishing River, and their tributaries are waters of the State as the term is defined by Section 644.016(27), RSMo.

23. Domestic wastewater is a water contaminant as the term is defined by Section 644.016(24), RSMo.

24. Sections 644.051.1(3) and 644.076.1, RSMo, make it unlawful to violate permitted effluent limitations as contained in Part “A” of the Permits, or any other condition listed in the permit.

STATEMENT OF VIOLATIONS

25. The Department and the Respondent acknowledge that the Respondent has acquired seven WWTFs with histories of MCWL violations that require improvements in order to meet final permitted effluent limitations. The Department and the Respondent acknowledge that after the Respondent's acquisition of these WWTFs, the WWTFs accrued and will continue to accrue violations of the MCWL of the same kind as the violations listed below, or violations that are a consequence of the existing conditions of the WWTFs until the Respondent completes upgrades to the WWTFs as set forth in the compliance schedule and plan described in Paragraphs 30 through 43 below. Anticipated violations of the MCWL and its implementing regulations are as follows:

26. Failing to comply with final permitted effluent limitations for the Berkshire Glenn Permit, Country Hills Estates Permit, Countryside Meadows Permit, Fox Run Permit, Park Estates Permit, Private Gardens Permit, and Wilmar Estates Permit, in violation of Sections 644.051.1(3) and 644.076.1, RSMo; and

AGREEMENT

27. The Department and the Respondent desire to amicably resolve all disputes or claims that could arise against the Respondent after acquiring the WWTFs for any and all past violations of the MCWL, including but not limited to penalties proposed in or arising from violations of the MCWL and its implementing regulations, as well as past acknowledged and future anticipated violations that may occur during the time period from the Respondent's acquisition of the WWTFs set forth above until the AOC expires.

28. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees,

including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not affect the responsibilities of the Respondent under this AOC.

29. The Department and the Respondent agree that by entering into this AOC, the Respondent is not admitting liability. The AOC shall not be deemed an admission of liability for any purpose whatsoever.

30. Immediately upon execution of this AOC, the Respondent agrees to make all efforts in good faith to operate the WWTFs in compliance with applicable permits and the MCWL and its implementing regulations.

31. Within six months of the effective date of the AOC, the Respondent is ordered and agrees to complete operational monitoring and assessment at each of the WWTFs.

32. Within 60 days of completing operational monitoring and assessment for each WWTF, if repairs or construction are required to achieve and maintain compliance with the respective Permits and MCWL, the Respondent is ordered and agrees to consult with the Department's Engineering Section regarding submission of all applicable Engineering Reports, Facility Plans, permit applications, and permit fees as set forth in 10 CSR 20-6 Permits and 10 CSR 20-8 Minimum Design Standards. If a Facility Plan or an Engineering Report contains a construction improvements schedule, the Respondent is ordered and agrees to implement the construction improvements schedule, which is incorporated herein as an enforceable condition of this AOC.

33. Within 12 months of completion of the operational monitoring and assessment of the WWTFs, the Respondent is ordered and agrees to complete construction of facility

improvements for any facility that cannot achieve compliance through operational improvement alone. Such construction shall be according to Department-approved plans and specifications to allow effluent produced by the WWTF to comply with final permitted effluent limitations.

34. Within 60 days of completing construction of the upgrades specified in the construction improvements schedule for each WWTF, the Respondent is ordered and agrees to submit to the Department a Statement of Work Completed Form, signed, sealed, and dated by a professional engineer registered in the State of Missouri certifying that the project is complete and operable in accordance with Department-approved plans and specifications.

35. This AOC shall terminate 90 days after upgrades to the WWTFs are completed, or two years from the date the AOC was executed, whichever date occurs first.

36. Except for stipulated penalties for violations of this AOC pursuant to Paragraph 40, the Department agrees not to bring, or cause to be brought, any administrative action against the Respondent for penalties arising out of the above-referenced violations of the MCWL and its implementing regulations, provided that the Respondent complies in good faith with the Department-approved compliance schedule and plan.

37. Upon completion of the compliance schedule and plan, the Respondent is ordered and agrees to obtain all necessary permits and approvals.

SUBMISSIONS

38. All other documentation submitted to the Department for compliance with this AOC shall be submitted within the timeframes specified to:

Emmanuel Babalola
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

OTHER PROVISIONS

39. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondent shall notify the Department by telephone or electronic mail: i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five days of notifying the Department, the Respondent shall submit to the Department, for review and approval, a written request containing the same basic provisions of i, ii, and iii listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of the Respondent’s right to request an extension and may be grounds for the Department to deny the Respondent an extension.

40. Should the Respondent fail to meet the terms of this AOC, including the deadlines set out in Paragraphs 16 through 24, the Respondent shall be subject to pay stipulated penalties in the following amount:

| <u>Days of Violation</u> | <u>Amount of Penalty</u> |
|--------------------------|--------------------------|
| 1 to 30 days | \$100 per day |
| 31 to 90 days | \$250 per day |
| 91 days and above | \$500 per day |

Stipulated penalties will be paid in the form of a check made payable to “[Appropriate] County Treasurer, as custodian of the [Appropriate] County School Fund.” Any such stipulated penalty shall be paid within ten days of demand by the Department and shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

41. Compliance with this AOC resolves only the specific past acknowledged and anticipated violations described herein, and this AOC shall not be construed as a waiver or modification for any other requirements of the MCWL, its implementing regulations, the Missouri Drinking Water Law, or any other source of law. Nor does this AOC resolve any future violations of this AOC or any law or regulation after this AOC expires. Consistent with 10 CSR 20-3.010(5), this AOC shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

42. Nothing in this AOC forgives the Respondent from future non-compliance with the laws of the State of Missouri, nor requires the Department or State of Missouri to forego pursuing by any legal means for any non-compliance with the laws of the State of Missouri. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they expressed or implied, oral or written, except those expressly set forth herein. The terms of this AOC supersede all previous memoranda of understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.

43. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.

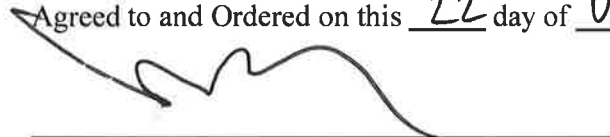
44. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to the Respondent for their records.

NOTICE OF APPEAL RIGHTS

45. By signing this AOC, the Respondent consents to its terms and waives any right to appeal or otherwise challenge the terms and conditions of this AOC, pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

SIGNATORY AUTHORITY

Agreed to and Ordered on this 22 day of OCTOBER, 2021



Josiah Cox, President
Elm Hills Utility Operating Company, Inc.

Agreed to and Ordered on this 28th day of October, 2021



DEPARTMENT OF NATURAL RESOURCES
Chris Wieberg, Director
Water Protection Program

c: Karen Rouse, Director, Kansas City Regional Office
Operating Permits Section
General Counsel's Office
Accounting Program

Exhibit A. Permitted Effluent Limitation Violations – Elm Hills – Berkshire Glenn WWTF

| Reporting Date | Effluent Parameter | Daily | | | | Weekly | | | | Monthly | | | |
|----------------|--------------------------|----------------|----------------|--------------------------|-----|----------------|----------------|--------------------------|-----|----------------|----------------|--------------------------|-----|
| | | Effluent Limit | Reported Value | Exceeds limit by (times) | SNC | Effluent Limit | Reported Value | Exceeds limit by (times) | SNC | Effluent limit | Reported value | Exceeds limit by (times) | SNC |
| 6/30/2018 | <i>E. coli</i> (#/100mL) | 1030 | 2420 | 2.3 | Y | | | | | 206 | 2420 | 11.7 | Y |
| 9/30/2018 | <i>E. coli</i> (#/100mL) | 1030 | 2420 | 2.3 | Y | | | | | 206 | 2420 | 11.7 | Y |
| 3/31/2018 | Ammonia as N (mg/L) | 8.4 | 12.2 | 1.5 | Y | | | | | 2.8 | 43.7 | 15.6 | Y |
| 6/30/2018 | Ammonia as N (mg/L) | 4.1 | 12 | 2.9 | N | | | | | 1.4 | 51.4 | 36.7 | Y |
| 9/30/2018 | Ammonia as N (mg/L) | 4.1 | 3.4 | 0.8 | N | | | | | 1.4 | 30.9 | 22.1 | Y |
| 3/31/2018 | pH | 9 | 9.25 | 1.0 | N | | | | | 9 | 9.25 | 1.0 | N |

Exhibit B. Permitted Effluent Limitation Violations – Elm Hills – Countryside Meadows

| Reporting Date | Effluent Parameter | Daily | | | | Weekly | | | | Monthly | | | |
|----------------|---------------------|----------------|----------------|--------------------------|-----|----------------|----------------|--------------------------|-----|----------------|----------------|--------------------------|-----|
| | | Effluent Limit | Reported Value | Exceeds limit by (times) | SNC | Effluent Limit | Reported Value | Exceeds limit by (times) | SNC | Effluent limit | Reported value | Exceeds limit by (times) | SNC |
| 6/30/2018 | Ammonia as N (mg/L) | 3.6 | 52.8 | 14.7 | N | | | | | 1.4 | 52.8 | 37.7 | Y |
| 9/30/2018 | Ammonia as N (mg/L) | 3.6 | 1.77 | 0.5 | N | | | | | 1.4 | 1.77 | 1.3 | N |
| 3/31/2018 | pH | 6.5 (Min) | 5.98 | | | | | | | 6.5 (Min) | 5.98 | | |
| 9/30/2018 | pH | 9.0 (Max) | 9.41 | | | | | | | 9.0 (Max) | 9.41 | | |

Exhibit C. Permitted Effluent Limitation Violations – Elm Hills – Fox Run

| Reporting Date | Effluent Parameter | Daily | | | | Weekly | | | | Monthly | | | |
|----------------|--------------------|----------------|----------------|--------------------------|-----|----------------|----------------|--------------------------|-----|----------------|----------------|--------------------------|-----|
| | | Effluent Limit | Reported Value | Exceeds limit by (times) | SNC | Effluent Limit | Reported Value | Exceeds limit by (times) | SNC | Effluent limit | Reported value | Exceeds limit by (times) | SNC |
| 6/30/2018 | E. coli (#/100mL) | 1030 | 2420 | 2.3 | Y | | | | | 206 | 2420 | 11.7 | Y |
| 9/30/2018 | E. coli (#/100mL) | 1030 | 2420 | 2.3 | Y | | | | | 206 | 2420 | 11.7 | Y |
| 3/31/2018 | pH | 6.5 (Min) | 6.44 | | | | | | | 6.5 (Min) | 6.44 | | |
| 9/30/2018 | pH | 9.0 (Max) | 9.53 | | | | | | | 9.0 (Max) | 9.53 | | |

Exhibit D. Permitted Effluent Limitation Violations – Elm Hills – Park Estates

| Reporting Date | Effluent Parameter | Daily | | | | Weekly | | | | Monthly | | | |
|----------------|---------------------|----------------|----------------|--------------------------|-----|----------------|----------------|--------------------------|-----|----------------|----------------|--------------------------|-----|
| | | Effluent Limit | Reported Value | Exceeds limit by (times) | SNC | Effluent Limit | Reported Value | Exceeds limit by (times) | SNC | Effluent limit | Reported value | Exceeds limit by (times) | SNC |
| 6/30/2018 | E. coli (#/100mL) | 1030 | 2420 | 2.3 | Y | | | | | 206 | 2420 | 11.7 | Y |
| 9/30/2018 | E. coli (#/100mL) | 1030 | 2420 | 2.3 | Y | | | | | 206 | 2420 | 11.7 | Y |
| 9/30/2018 | Ammonia as N (mg/L) | 2.1 | 1.68 | 0.8 | N | | | | | 1.5 | 1.68 | 1.1 | N |
| 3/31/2018 | pH | 6.5 (Min) | 6.09 | | | | | | | 6.5 (Min) | 6.09 | | |
| 3/31/2018 | pH | 6.5 (Min) | 6.15 | | | | | | | 6.5 (Min) | 6.15 | | |
| 9/30/2018 | pH | 9.0 (Max) | 9.11 | | | | | | | 9.0 (Max) | 9.11 | | |

Exhibit E. Permitted Effluent Limitation Violations – Elm Hills – Private Gardens

| Reporting Date | Effluent Parameter | Daily | | | | Weekly | | | | Monthly | | | |
|----------------|---------------------|----------------|----------------|--------------------------|-----|----------------|----------------|--------------------------|-----|----------------|----------------|--------------------------|-----|
| | | Effluent Limit | Reported Value | Exceeds limit by (times) | SNC | Effluent Limit | Reported Value | Exceeds limit by (times) | SNC | Effluent limit | Reported value | Exceeds limit by (times) | SNC |
| 6/30/2018 | E. coli (#/100mL) | 1030 | 2420 | 2.3 | Y | | | | | 206 | 2420 | 11.7 | Y |
| 9/30/2018 | E. coli (#/100mL) | 1030 | 2420 | 2.3 | Y | | | | | 206 | 2420 | 11.7 | Y |
| 3/31/2018 | Ammonia as N (mg/L) | 9.7 | 45.3 | 4.7 | Y | | | | | 2.8 | 45.3 | 16.2 | Y |
| 6/30/2018 | Ammonia as N (mg/L) | 3.8 | 62.5 | 16.4 | Y | | | | | 1.4 | 62.5 | 44.6 | Y |
| 9/30/2018 | Ammonia as N (mg/L) | 3.8 | 54.3 | 14.3 | Y | | | | | 1.4 | 54.3 | 38.8 | Y |
| 3/31/2018 | pH | 9.0 (Max) | 9.05 | | | | | | | 9.0 (Max) | 9.05 | | |
| 9/30/2018 | pH | 6.5 (Min) | 6.45 | | | | | | | 6.5 (Min) | 6.45 | | |

Exhibit F. Permitted Effluent Limitation Violations – Elm Hills – Wilmar Estates

| Reporting Date | Effluent Parameter | Daily | | | | Weekly | | | | Monthly | | | |
|----------------|---------------------|----------------|----------------|--------------------------|-----|----------------|----------------|--------------------------|-----|----------------|----------------|--------------------------|-----|
| | | Effluent Limit | Reported Value | Exceeds limit by (times) | SNC | Effluent Limit | Reported Value | Exceeds limit by (times) | SNC | Effluent limit | Reported value | Exceeds limit by (times) | SNC |
| 6/30/2018 | BOD (mg/L) | | | | | 45 | 34 | 0.8 | N | 30 | 34 | 1.1 | N |
| 3/31/2018 | Ammonia as N (mg/L) | 7.5 | 43.6 | 5.8 | Y | | | | | 2.9 | 43.6 | 15.0 | Y |
| 6/30/2018 | Ammonia as N (mg/L) | 3.6 | 35.5 | 9.9 | Y | | | | | 1.4 | 35.5 | 25.4 | Y |
| 9/30/2018 | Ammonia as N (mg/L) | 3.6 | 46.6 | 12.9 | Y | | | | | 1.4 | 46.6 | 33.3 | Y |
| 3/31/2018 | pH | 9.0 (Max) | 9.06 | | | | | | | 9.0 (Max) | 9.06 | | |