

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the matter of Liberty Utilities (Missouri) File No. WR-2018-0170
Water) LLC's Application for Rate Increase.) SR-2018-0171

**SILVERLEAF AND ORANGE LAKE COUNTRY CLUB'S
RESPONSE TO STAFF'S PROPOSED PROCEDURAL SCHEDULE**

COMES NOW, Silverleaf Resorts, Inc. and Orange Lake Country Club, Inc. (herein "Silverleaf") responding to the Non-Unanimous Proposed Procedural Schedule filed by the Staff of the Missouri Public Service Commission ("Staff"). Silverleaf does not oppose the dates proposed in the proposed schedule, but writes to emphasize that Liberty Utilities (Missouri Water), LLC ("Liberty Utilities"), the applicant and the party with the burden of proof in this proceeding, is compelled by law to file evidence in support of all contested issues, including the proposed tariff that itself is contested in this case.

I. BACKGROUND

1. On April 3, 2018 Silverleaf filed a request for an evidentiary hearing in this case. Silverleaf in that filing explained that a failure to hold an evidentiary hearing on contested issues in this case would result in a violation of basic due process.

2. At the April 4, 2018 Agenda Meeting the Commission denied Silverleaf's motion to dismiss this case. In that Agenda meeting, part of the rationale expressed for denying the motion to dismiss was that Silverleaf would eventually be given an opportunity for an evidentiary hearing, thereby assuaging some of Silverleaf's due process concerns stemming from Liberty Utilities' use of the Small Utility Rate Procedure (SURP) in this case.

3. On April 11, 2018 Liberty Utilities filed its Suggestions in Opposition to the [Silverleaf's] Request for an Evidentiary Hearing.

4. On April 20, 2018 a procedural conference was held to take up the matter of an evidentiary hearing. In that procedural conference the administrative law judge indicated his intent to not rule on Silverleaf's request for an evidentiary hearing until submission of the "150-day Disposition Agreement."

5. On May 24, 2018 Staff filed a non-unanimous partial disposition agreement and request for an evidentiary hearing.

6. On May 29, 2018 (nearly 2 months after Silverleaf's initial request for an evidentiary hearing) the Commission issued its Order Directing Filing of Proposed Procedural Schedule.

7. On June 5, 2018 Staff filed a non-unanimous proposed procedural schedule. That proposed schedule, over Silverleaf's objection, does not require Liberty Utilities to file as part of its direct evidence the proposed tariff that will implement the rates for which it seeks approval.

II. THE MISSOURI APA REQUIRES THAT LIBERTY UTILITIES FILE DIRECT EVIDENCE SUPPORTING EACH CONTESTED ISSUE

8. Although Silverleaf is generally supportive of the proposed procedural schedule filed by Staff, Silverleaf refused to be a signatory to the non-unanimous proposed procedural schedule because it fails to require Liberty Utilities to file its proposed tariff with its direct evidence.

9. Liberty Utilities' proposed tariff is itself a contested issue in this case. Clearly the rates reflected in the tariff will result from the Commission's decision on contested cost of service issues. But the proposed tariff also encapsulates at least three issues that require specific

evidence separate and apart from the cost of service issues: (1) whether and how to consolidate separate service areas; (2) allocation of costs between water and sewer and across customer classes; and (3) design of the rates themselves (i.e., customer charge vs. volumetric rate). Notably, Staff in this case has identified these issues as remaining in dispute in its Partial Disposition Agreement. Thus the tariff in this case remains heavily contested and should not be viewed as merely a compliance filing to reflect prior decisions. The tariff is itself a fundamentally contested issue upon which parties have a right to provide evidence and argument.

10. The Missouri APA requires that “[r]easonable opportunity shall be given for the preparation and presentation of evidence bearing on any issue raised or decided or relief sought or granted.” Section 536.063.

11. Any order resulting from this docket must comply with principles of due process, comply with statutory authority, and be supported by competent and substantial evidence. Section 536.140(2).

12. A failure to provide an opportunity for parties to contest in evidence and argument the proposed tariff violates principles of due process and fails to comply with the Missouri APA. A failure by Liberty to provide direct evidence in support of its contested tariff cannot be supported by competent and substantial evidence.

13. While the SURP generally allows for the filing of a tariff as a compliance filing to implement the Disposition Agreement, that only works if the Disposition Agreement is uncontested. *See*, Section 536.060. By its own terms, the Partial Disposition Agreement leaves open numerous contested issues, including several tariff-related issues. Pursuant to Section

536.063, Silverleaf must be given the opportunity to provide evidence and argument on the tariff. Otherwise, any resulting order could be fatally flawed and cannot stand up on appeal.

III. WHEN A UTILITY REQUESTS A RATE CHANGE IT MUST FILE TARIFF(S)

14. It has been suggested that Liberty Utilities need not file its proposed tariff because this is a SURP proceeding, and the SURP rules view the tariff as a compliance filing intended to implement the Disposition Agreement. As noted above, that only works if the Disposition Agreement stipulates to all issues, leaving nothing contested. Where contested issues remain, parties must be allowed the opportunity to provide evidence and argument pursuant to the Missouri APA, which in this case requires that Liberty Utilities file its proposed tariff with its direct evidence.

15. In addition to the clear requirements of the Missouri APA, Silverleaf also disagrees with Staff's understanding that Commission rules do not require Liberty Utilities to file its proposed tariff with its direct evidence.

16. Silverleaf believes that in processing a rate case, the Commission is not specifically limited to the "file and suspend" procedure found in Section 393.150, RSMo. The specific authority of the Commission to change a utility's rates can be found in several different statutes. *See generally*, Sections 393.150.1 (the file and suspend method) and 393.260 (customer complaints). Also, several statutes refer to the Commission's authority to change rates upon its own motion within the context of a hearing. *See*, Sections 393.140(5), 393.150, 393.270, RSMo.

17. However, Missouri courts have found that a utility is limited to Section 393.150, RSMo. (file and suspend) in requesting a rate change. *See State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 27 (Mo. en banc 1975). A utility cannot initiate a "complaint"

against its own rates in order to skirt the filing of a rate schedule when requesting a rate change. *Id.* So, while the Commission may not be limited to a specific process for initiating and reviewing a change in rates for a utility, a utility initiating a rate increase on its own authority is.

18. Liberty Utilities has explicitly requested "an increase of \$995,844 in its annual water system operating revenues and an increase of \$196,617 in its annual sewer system operating revenues." Liberty Utilities Request for Increase in Annual Water and Sewer System Operating Revenues filed December 15, 2017. Accordingly, Liberty Utilities initiated this rate case, and the process must follow the requirements associated with that fact.

19. To overcome this fact it has been suggested that under the SURP the Commission is acting upon its own "motion" or "initiative" to change the utility's rates -- thereby alleviating the requesting utility's need to file a tariff. Silverleaf believes this to be a disingenuous fiction. This argument requires: 1) ignoring the utility's actual rate increase request and 2) the belief that the Commission can make a motion through the operation of a regulation, 4 CSR 240-3.050(3). Under this argument the Commission acts upon its own initiative without ever having to take an action, but rather through the automatic operation of a regulation. Further, the regulation at issue does not allow the Commission any choice of action, to wit: "Upon receipt of the letter, the secretary of the commission will cause a rate case to be opened..." See, Sections 3.050(3) ("when a small utility's letter is filed, the secretary shall cause a rate case to be opened..."(rescinded)), and, 10.075(3)(A)2 ("Upon receipt of the letter, the secretary of the commission will cause a rate case to be opened...").

20. This interpretation of a Commission "motion" or "initiative" would unlawfully seek to act on behalf of and to bind future commissions to a specific course of action.

21. Silverleaf does not believe that the Missouri legislature ever intended, or authorized, a utility to seek a rate increase without filing a proposed tariff at some point in the process – especially one with the size and sophistication of Liberty Utilities.

WHEREFORE, Silverleaf Resorts, Inc. and Orange Lake Country Club, Inc. respectfully request that the Commission require Liberty Utilities (Missouri Water), LLC to file its proposed tariffs at the time it files the rest of its direct case in this docket, consistent with the requirements of law. Silverleaf further requests such additional relief to which it may be entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 11th day of June 2018.

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