

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

In the Matter of the Tariff Filing of Algonquin )  
Water Resources of Missouri, LLC, to Implement )  
A General Rate Increase for Water and Sewer )  
Service Provided to Customers in its Missouri )  
Service Areas. )

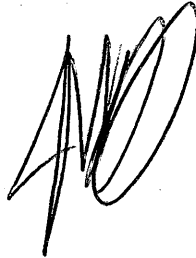
**Case No. WR-2006-0425**

**NOTICE REGARDING EXTERNAL COMMUNICATIONS**

Issue Date: February 5, 2008

On February 4, 2008, I was copied on the attached letter to Governor Blunt from  
Raymond Prosser.

Dated at Jefferson City, Missouri,  
on this 5th day of February, 2008.  
Davis, Chairman



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January 31, 2008

The Honorable Matt Blunt  
Governor, State of Missouri  
State Capital Room 216  
Jefferson City, MO 65101

**Re: *In the Matter of the Tariff Filing of Algonquin Water Resources of Missouri, LLC***  
**Case No. WR-2006-425**

Dear Governor Blunt,

While I am certain you are extremely busy with your responsibilities as governor of the State of Missouri, I would respectfully request that you take a couple of minutes to read this letter because I submit that the Missouri Public Service Commission (hereinafter "PSC"), comprised of five commissioners appointed by you, has made an egregious regulatory error for which thousands of Missouri consumers are paying a very high price due to the fact that their water and sewer rates have been increased 200% - 300% by the PSC's decision in the above-captioned case.

On December 21, 2007, my wife, Diane Prosser, sent a letter of complaint to you regarding the recent 200% to 300% increase in water and sewer rates which the PSC granted to Algonquin Water Resources of Missouri, LLC (hereinafter "Algonquin"). By letter dated January 14, 2008, Contessa King, Consumer Services Coordinator, Missouri Public Services Commission, sent a response citing the Report And Order of the PSC in the above-cited case. My wife asked me to read the Report And Order of the PSC and determine if a reply would be appropriate. After reading the Report And Order, I respectfully submit that the PSC reached several erroneous conclusions in issuing this Report And Order.

The basis for my conclusion that the PSC issued an erroneous decision is as follows:

The Report And Order states on page 29 in pertinent part:

Also, Algonquin reminds the Commission that *75% of its revenues come from a single customer, Silverleaf, and that having one customer with so much control is a risk of unprecedented proportion*, regardless of the type of business the customer is in. In addition, *Silverleaf itself is in a risky business, the development and sales of timeshares*. Moreover, Algonquin serves less than 1,000 accounts in Missouri, whereas Empire serves roughly 215,000 customers in four states, and KCPL serves about 500,000 customers in two states. (Emphasis added)

After further discussion of the issues, the PSC entered the following finding:

Finding: The Commission finds that Algonquin's *operating risk is greater than that of a typical regulated water and sewer company, due to its being largely captive to one customer, which, in turn, is also in a risky business venture*. The Commission therefore finds Algonquin's proposed return on equity recommendation more reasonable than that of Staff. (Emphasis added)

After entering this Finding, the Commission accepted Algonquin's proposed tariff increase which would provide Algonquin with a return on equity of 11.25% which, according to the decision, did not include any purchase premium Algonquin paid Silverleaf.

This rate increase applies to Algonquin's water and sewer utility service at Ozark Mountain Resort near Kimberling City, Holiday Hills Resort near Branson, and Timber Creek Resort near DeSoto.

#### **DISCUSSION OF ISSUES:**

**The reasoning and Finding by the PSC regarding risk demonstrates a complete lack of understanding of the concept of risk as it relates to the resort developments at issue in this case, which include condominiums and time share units, and further demonstrates a complete lack of knowledge of the composition of the customers served by Algonquin at these resorts.**

#### **1. The fallacy of the "revenues dependant on one customer who makes up 75% of the revenues - great risk" conclusion:**

At Ozark Mountain Resort there are 101 condos which are, of course, wholly owned and each unit owner is responsible for paying their own bill. The other 147 units are time shares which are part of Silverleaf's time share development. At Holiday Hills Resort there are

244 condos and 485 timeshare units. The PSC concluded that 75% of Algonquin's revenues come from one customer, Silverleaf Resorts Inc., who is in a risky business venture of developing time shares.

According to Section 407.600(11) of the Missouri Revised Statutes, a timeshare is an ownership form of real estate whereby a purchaser receives one or more time-share periods or use of accommodations which is less than a full continuous, uninterrupted year during any given year and which exceeds three years.

As I'm certain you are aware, each and every time share owner pays an assessment fee, either monthly or annually, which is designed to cover that time share unit owner's portion of expenses, including utilities, and other expenses. Thus, the simple fact of the matter is that, assuming the time share portion of Silverleaf's Ozark Mountain Resort is 147 connections, the annual cost of *each* of those connections is split among 52 time share owners. In addition, Holiday Hills has 485 time shares splitting the annual cost among 52 owners for *each* of the time share units. Thus, the numbers are:

Ozark Mountain Resort:		
Time shares:	$(147 \times 52) =$	7,644
Condominiums:	=	<u>101</u>
TOTAL		7,745
Holiday Hills Resort:		
Time shares:	$(485 \times 52) =$	25,220
Condominiums:	=	<u>244</u>
TOTAL		<u>25,464</u>
<b>TOTAL ACTUAL CUSTOMERS:</b>		<b>33,209</b>

Moreover, Silverleaf is merely a management conduit for the money paid in the form of assessment fees by the 32,864 time share unit owners for Algonquin's utility services at Ozark Mountain and Holiday Hills, not including Timber Creek.

Therefore, 75% of Algonquin's risk is not centered on one customer, Silverleaf, as the PSC incorrectly concluded, but instead is spread over 33,209 customers. Incidentally, the website [www.sellmytimesharenow.com](http://www.sellmytimesharenow.com) discloses that *each* of these time share owners pay between \$550 - \$700 a year in time share assessments.

The inescapable conclusion is that Algonquin's customer base is definitely not reliant on one customer responsible for 75% of its business. In fact, Algonquin's customer base is spread over 32,209 customers at Ozark Mountain Resort and Holiday Hills.

## **2. The fallacy of the "time share risky business" conclusion:**

Neither Ozark Mountain Resort nor Holiday Hills Resort is a brand new development. These developments have been substantially completed for more than 10 years. While I do not have access to Silverleaf's actual sales figures, I think it is safe to assume since Silverleaf continues to build new time share units at Ozark Mountain and Holiday Hills that, except for a couple of new buildings built or being built in the last year or so, Silverleaf's time share units have been completely sold out for years. Likewise, the condominium portions of Ozark Mountain Resort and Holiday Hills has been completely sold out for almost 10 years. Thus, the PSC's conclusion that Silverleaf is in a risky business venture in this development is totally without basis in fact. The mere fact that Silverleaf continues to build new buildings at both of these developments, under the circumstances, speaks loudly about the lack of risk involved.

Moreover, even if Silverleaf, who has sold most, if not all, time share units and is now merely earning what is essentially a management fee at Ozark Mountain and Holiday Hills (and probably Timber Creek), were to go into bankruptcy, a receiver would be appointed to take over Silverleaf's management duties including collecting the assessment fees from the thousands of time share unit owners and paying the utility bills. Algonquin would still get paid for supplying its water and sewer services and Silverleaf's bankruptcy would not increase Algonquin's risk in the least.

Thus, the PSC failed to realize that any risk in these time share and condominium developments was long ago dissipated by the sale of most, if not all, of the time share units and that there was at the time of this tariff increase request no longer any risk whatsoever to either Silverleaf or Algonquin.

## **3. The Commission's finding that this is a high risk utility while rewarding Algonquin for its admitted poor business judgment in purchasing this utility defies logic:**

Any "risk" assessment was entirely obvious certainly to a sophisticated purchaser like Algonquin who presumably did their due diligence. Assuming Algonquin, a company in the business of running utilities, did their due diligence and concluded, however incorrectly, that 75% of this utility's business depended entirely on one customer, Silverleaf, and further assuming this was a high risk purchase, as the Commission concluded in order to approve Algonquin's requested 11.25% return on equity, why should Algonquin be rewarded with a 200% - 300% tariff increase for such a "high risk" purchase?

On page 15 of the Report And Order, the PSC found that 2.4 million dollars of the 3.8 million dollars paid for all of Silverleaf's Missouri assets (of which Ozark Mountain is less than half of these assets) was an acquisition premium for this high risk purchase. This finding

logically means that 63% of the purchase price Algonquin paid was, according to the PSC, a premium paid for this high risk venture. Why would the Commission reward Algonquin's exercise of such poor business judgment (not only paying 1.4 million dollars for these utilities but purchasing a utility reliant for 75% of its revenues on one customer who is in a risky business) with an 11.25% return on equity? Using the Commission's logic, Algonquin should have run from this potential investment as fast as possible. Note that Algonquin argued before the PSC that this was, to use Algonquin's own words as set forth on page 29 of the Report and Order, a "risk of unprecedented proportions."

Why would the PSC, a commission charged according to its website with the duty to "ensure Missouri consumers have access to safe, reliable and reasonably priced utility service.," reward a company for knowingly taking on, as Algonquin admitted it did, a "risk of unprecedented proportions?" Why, especially when the burden of proof under the PSC's rules is on the company seeking the rate increase?

#### **4. Conclusion regarding the Report And Order:**

The simple conclusion one is forced to draw from the Report And Order is that the PSC, its staff, and the Public Counsel, all of whom should be knowledgeable experts in the public utility field, totally misunderstood the realities behind Algonquin's purchase of this utility and the lack of risk present in the utilities Algonquin purchased. Because of their failure to appreciate these realities, they have failed to "ensure Missouri consumers have access to ...reasonably priced utility service...." (Missouri Public Service Commission Website)

On the other hand, Algonquin and Silverleaf understood the concept of risk in this transaction very well. They knew that over 33,000 people would be paying these water and sewer utility bills. With Silverleaf's obvious agreement not to oppose a rate increase since it is clear Silverleaf would not bear any of the increased costs, Algonquin was willing to take the risk that the PSC would not comprehend the realities of the situation at Ozark Mountain, Holiday Hills, and Timber Creek. The only risk Algonquin faced in this entire transaction was that the PSC would recognize the true nature of Algonquin's customer base and deny the requested tariff increase. Clearly Algonquin evaluated that risk correctly when it decided to proceed to purchase Silverleaf's utilities and, shortly thereafter, seek a rate increase which was generously granted by the PSC.

**5. The water rate:**

For your information here are the old and new rates.

Old Charge:	Water	Sewer
Base rate (1000 gal)	3.00	6.00
Plus (Add'l per 1000 gal)	3.02	7.57

New Charge:	<u>Increase</u>	<u>Increase</u>
Base rate (1000 gal)	8.96 (298%)	16.00 (267%)
Plus (Add'l per 1000 gal)	5.96 (197%)	17.24 (228%)

Ms. King, in her letter, assumed a usage of 6,000 gallons per month which is reasonable based on industry studies which show that on average one person uses 100 gallons of water a day. Thus, as Ms. King concluded, two people would use approximately 6,000 gallons a month. Doing the computation discloses that the cost to a condominium owner and spouse residing all year at either of these resorts after this rate increase is approximately \$2,178.00 per year. Frankly, this is an outrageous amount to pay for water and sewer services. When you compare these new rates to the prior rates, you can easily see that under the old rates, this volume of usage would run around \$600 - \$700 per year.

According to a recent article in USA Today, a consumer in the community paying the highest water rate in the State of New York pays \$634 per year. The American Water Works Association reports that the median cost of residential water and sewer service in the United States is \$554.00. Chicago water rates are even less. In fact, the annual water and sewer bill for a metered four unit apartment building in Chicago which has 8 occupants, presumably using four times the water and sewer services, is less than half of the annual cost two people are now forced to endure at Ozark Mountain Resort, Holiday Hills or Timber Creek.

Ms. King's valiant attempt to justify the PSC's grant of this enormous increase of 200%-300% by citing the fact that Algonquin sought an even more outrageous rate increase, is, quite frankly, disingenuous.

As a result of Algonquin's and Silverleaf's astute business judgment, affirmed by the misguided Report And Order of the PSC, the thirty thousand or so customers of Algonquin at Ozark Mountain, Holiday Hills, and Timber Creek will have the opportunity to pay one of the highest utility rates in Missouri, if not in the whole United States.

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**6. Conclusion:**

Governor Blunt, I respectfully submit to you that the Report And Order of the PSC, graphically demonstrates that the PSC, the Public Counsel, and the General Counsel's office of the PSC made an egregious error in handling Algonquin's request for a rate increase. The Commissioners at the PSC are appointed by you and I believe you should be made aware of this flagrantly erroneous decision. The PSC's grant of this exorbitant rate increase has caused thousands of Missouri consumers to be irreparably harmed.

Thank you for your attention to this matter. Should you have any questions or comments, please feel free to contact me.

Sincerely,

Raymond J. Prosser

RJP/d  
Encl.

cc: ~~The Honorable Jeff Davis, Chairman, Public Service Commission~~  
Christina L. Baker, Esq., Office of the Public Counsel  
Keith R. Krueger, Esq., General Counsel's Office  
Dean L. Cooper, Esq., Brydon, Swearingen & England, P.C.