

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

In the Matter of the Joint Application of	)	
Silverleaf Resorts, Inc. and Algonquin Water	)	
Resources of Missouri, LLC for Authority	)	
for Silverleaf Resorts, Inc. to Sell Certain	)	Case No. WO-2005-0206
Assets to Algonquin Water Resources of	)	SO-2005-0207
Missouri, LLC and, in Connection Therewith,	)	
Certain Other Related Transactions.	)	

**MOTION FOR SUMMARY DETERMINATION**

COME NOW Silverleaf Resorts, Inc. (Silverleaf) and Algonquin Water Resources of Missouri, LLC (Algonquin) (collectively, Applicants), by and through their counsel, and, pursuant to 4 CSR 240-2.117, move this Commission to enter its Order in the nature of Summary Determination in Applicants' favor concerning all issues remaining for decision in the above-captioned matter. In support of this Motion, Applicants respectfully state the following:

**Motion**

For the reasons set forth in more detail in the accompanying Suggestions In Support, the issues presented by the instant Joint Application are appropriate for summary determination in Applicants' favor. Summary determination is warranted in this matter because there is no dispute that Algonquin has the necessary experience, general financial health and ability to operate the subject assets.

**Undisputed Facts**

1. Silverleaf is a Texas corporation with its principal office and place of business at 1221 River Bend Drive, Suite 120, Dallas, Texas 75247. Silverleaf currently provides water and sewer service to the public in the Ozark Mountain Resort near Kimberling City, Missouri and in

the Timber Creek Resort near Desoto, Missouri. Silverleaf also provides water service to the public in the Holiday Hills Resort near Branson, Missouri. Silverleaf currently provides water service to approximately 721 customers and sewer service to approximately 248 customers. Silverleaf operates in the State of Missouri pursuant to certificates granted by the Commission in Cases Nos. WA-94-60, WA-94-246 and WA-98-129. Silverleaf is primarily in the business of timeshare vacation sales, marketing and development. However, the described water and sewer systems subject it to the jurisdiction and supervision of the Commission as provided by law. (Joint Application; Conner Direct).

2. Algonquin is a Missouri limited liability company. The sole member of Algonquin Water Resources of Missouri, LLC is Algonquin Water Resources of America (AWRA), a Delaware Corporation. AWRA is an indirect wholly owned subsidiary of the publicly traded entity Algonquin Power Income Fund. This fund was established to own energy and infrastructure related assets in the United States and Canada. Since its inception in 1997, the Algonquin Power Income Fund has grown to hold approximately \$800 million in such assets. (Joint Application; Weber Direct).

3. AWRA currently serves approximately 50,000 water and wastewater connections in southern parts of the United States through its numerous subsidiary companies such as the Litchfield Park Service Company (LPSCO) of Phoenix, AZ, Bella Vista Water Company of Sierra Vista, AZ, Black Mountain Sewer Company of Carefree, AZ, Gold Canyon Sewer Company of Pinal County, AZ, and Tall Timbers Utility Company and Woodmark Utilities Inc. of Tyler, TX. (Joint Application; Weber Direct).

4. Silverleaf and Algonquin have entered into an Asset Purchase Agreement dated

August 29, 2004, as amended (Agreement), a copy of which, along with its amendments, has been filed in this case as an attachment to the Joint Application and which is incorporated by reference in accordance with Commission Rule 4 CSR 240-2.130(2). Pursuant to the Agreement, Algonquin proposes to obtain and acquire certain assets of Silverleaf. Such assets include the Silverleaf water and sewer utility assets located in the State of Missouri, as well as utility assets in the states of Texas and Illinois. The total purchase price under the Agreement is \$13.2 million. The Agreement contains a provision allocating \$3,800,000 of this amount to the Missouri assets. (Joint Application; Conner Direct; Weber Direct).

5. Algonquin's parent has a robust team of utility professionals who would be available to assist in the management and operation of the systems. These resources include in-house engineering, development services, accounting, environmental/safety compliance, customer service, and operations work groups. (Weber Direct).

6. On January 4, 2005, Silverleaf and Algonquin initiated this case by filing a Joint Application with this Commission.

7. The Applicants seek the Commission's order: (A) authorizing Silverleaf to sell the assets identified herein; (B) authorizing Silverleaf and Algonquin to perform in accordance with the terms described in the Asset Purchase Agreement, as amended, that is attached to this Joint Application and to take any and all other actions which may be reasonably necessary and incidental to the performance of the sale; and, (C) transferring Silverleaf's water and sewer certificates to Algonquin or, in the alternative, granting Algonquin water and sewer certificates to serve those areas for which Silverleaf currently holds certificates. (Joint Application).

8. The Staff of the Commission filed its Staff Recommendation on March 28, 2005.

The Staff Recommendation did not identify any objection to the proposed transaction, other than a variety of issues related to the calculation of rate base and their relation to whether or not there is an acquisition premium associated with this transaction. (Staff Recommendation).

9. Staff has stated that it has no reason to believe that Algonquin does not have the technical, managerial and financial capabilities necessary to provide the services encompassed by the Joint Application. (Staff Response to Algonquin Data Request 1-4 (See Appendix A attached hereto; see also Staff Recommendation, Official Case File Memorandum, p. 6-7).

10. Algonquin will continue to utilize the rates, rules and regulations and other tariffs currently on file with and approved by the Commission for Silverleaf's operations and will continue to operate under those rates, rules and regulations, until such time as they may be modified by the Commission. (Joint Application; Weber Direct).

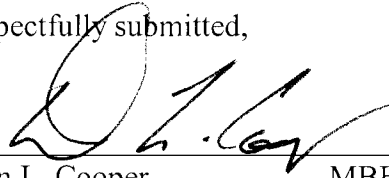
11. Algonquin is not asking the Commission to address recovery, or any other aspect, of acquisition premium in this case. (Weber Direct).

12. Algonquin understands that if an acquisition premium is ultimately determined to exist that it is a possibility that Algonquin will not recover any of the premium in rates. If the Commission finds an acquisition premium to exist and Algonquin does not recover any of the premium, Algonquin has the financial resources to allow it to continue to operate the Missouri assets and provide safe and adequate service. (Weber Direct).

WHEREFORE, Algonquin and Silverleaf, for all of the reasons set forth above and in their Suggestions In Support filed concurrently herewith, respectfully request that this Commission enter an Order finding for Applicants, in that there are no genuine issues of material fact and Applicants are entitled to determination as a matter of law and:

- (A) authorizing Silverleaf to sell the assets identified in the Asset Purchase Agreement;
- (B) authorizing Silverleaf and Algonquin to perform in accordance with the terms described in the Asset Purchase Agreement, as amended, and to take any and all other actions which may be reasonably necessary and incidental to the performance of the sale; and,
- (C) granting Algonquin water and sewer certificates to serve those areas for which Silverleaf currently holds certificates and provides service.

Respectfully submitted,



Dean L. Cooper MBE#36592  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 E. Capitol Avenue  
P. O. Box 456  
Jefferson City, MO 65102  
(573) 635-7166  
(573) 635-3847 facsimile  
[dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)

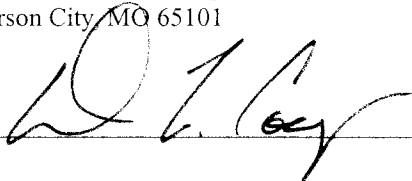
ATTORNEYS FOR SILVERLEAF RESORTS, INC.  
AND ALGONQUIN WATER RESOURCES OF  
MISSOURI, LLC

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by U.S. Mail, postage prepaid, or electronic mail, on May 25<sup>th</sup>, 2005, to the following:

Mr. Bob Berlin  
Office of the General Counsel  
Governor Office Building, 8<sup>th</sup> Floor  
Jefferson City, Mo 65101

Office of the Public Counsel  
Governor Office Building, 6<sup>th</sup> Floor  
Jefferson City, MO 65101



A handwritten signature in black ink, appearing to read "W. L. Gray", is written over a horizontal line.

**Staff Responses to the First Set of Data Requests Received from Algonquin Water Resources of Missouri, LLC in MO PSC Case Nos. WO-2005-0206 and SO-2005-0207**

- 1-1 Would the existence or non-existence of an acquisition premium in this transaction have an impact on whether this transaction is "not detrimental to the public interest"? If so, please explain.

**Staff Response:** The existence or non-existence of an acquisition premium does not in and of itself have an impact upon the whether a transaction would be detrimental to the public interest. However, if a decision to allow the recovery of any of the costs relating to acquisition premiums in rates was made, then the transaction would be detrimental to the customers who would be forced to pay rates based, in part, upon recovery of a system cost exceeding the net original cost.

- 1-2 Would the existence or non-existence of an acquisition premium have any bearing on rates and tariffs charged to a customer or any aspect of service to the customer? If so, how?

**Staff Response:** The existence or non-existence of an acquisition premium would only have a bearing on the rates charged to the customers of a system if the Commission allowed the Company to include the acquisition premium in the cost of service instead of recording it below the line, which is the historical treatment of this item.

- 1-3 a) Please identify each case where the Missouri Public Service Commission has granted a utility recovery of an acquisition premium?

**Staff Response:** To Staff's knowledge this Commission has never allowed recovery on an acquisition premium. The Commission's Second Report and Order in Case No. EM-2000-292 regarding the St. Joseph Light & Power Company merger with UtiliCorp United Inc. issued February 26, 2004 specifically stated the following with respect to the recovery of acquisition premiums:

This Commission has consistently applied the net original cost standard when placing a value on assets for purposes of establishing a utility's rates. No party has cited a single instance in which the Commission has allowed a utility to directly recover an acquisition premium through its rates. In support of its request for recovery of the acquisition premium, UtiliCorp cites two Commission cases for the proposition that this Commission is not unalterably opposed to a utility's recovery of an acquisition premium. In both cited cases, In re Missouri-American Water Company and In re Kansas Power and Light Company, the Commission did make statements suggesting that it was not unalterably opposed to the recovery of an acquisition premium in an appropriate case. However, in both cases, the Commission refused to allow the requesting utility to recover the premium in question.

UtiliCorp also cites two Commission cases in which it argues that the Commission has allowed for the indirect recovery of acquisition premium. UtiliCorp indicates that in the case in which the Commission approved Union Electric Company's merger with Central Illinois Public Service Company, it allowed for the recovery of the acquisition premium through operation of an earnings-sharing grid. UtiliCorp also points out that in the case in which the Commission approved Kansas City Power & Light Company's plan to merge with Western Resources, Inc., it approved a rate freeze that would allow enough time for the company to recover the acquisition premium through the operation of regulatory lag. While what UtiliCorp's says about those two cases is correct, it is important to note that both cases were resolved through unanimous stipulations and agreement that were approved by the Commission. In neither case did the Commission purport to establish any policy that would apply to UtiliCorp's request to recover its acquisition premium in this case.

For many years, the Commission has used a net original cost standard to place a value on utility plant after a merger. That standard has proven to be fair to utilities as well as to ratepayers. There is no reason to vary from that standard in this case. The Commission concludes that UtiliCorp should not be allowed to recover any of the acquisition premium in its rates.

- b) Are there any facts or situations where the Missouri Public Service Commission is required to grant a utility recovery of an acquisition premium. If so, please identify those facts and/or situations.

**Staff Response:** Staff has no knowledge of any facts or situations that would require the Commission to grant a utility the recovery of an acquisition premium.

- 1-4 Does Staff believe that Algonquin has the technical, managerial and financial capabilities necessary to provide the services encompassed by the Application in this case? If not, please explain why not?

**Staff Response:** Based on the information currently available, Staff has no reason to believe that Algonquin does not have the referenced "capabilities" necessary to provide the services encompassed by the Application in this case.

- 1-5 On page 3 of the Staff's Case File Memorandum in this case, Staff states that "{c}onsistent with established policy, it is Staff's position that Algonquin should not be allowed to recover any of the acquisition premiums discussed below, either directly or indirectly, through adjustments to the calculation of its customer rates."

- a) Is the "established policy" referenced in the Case File Memorandum a Staff policy or a Missouri Public Service Commission Policy?



**Staff Response:** In every case of similar circumstances, the Staff's recommended treatment has consistently been that acquisition premiums should not be recovered. Also, to Staff's knowledge, the Commission has never allowed the recovery of an acquisition premium. As a result, the Staff's recommended treatment that acquisition premiums should not be recovered can be considered a Staff "policy". While the Commission has never allowed the recovery of an acquisition premium, Staff cannot speak for the Commission and thus cannot state that it is a Commission "policy" that acquisition premiums should not be recovered.

b) Please describe the basis for this policy.

**Staff Response:** Prior Staff testimony, recommendations, etc. and prior Commission orders (such as the order referenced in the response to question 1-3) regarding cases involving the possible recovery of an acquisition premium.

c) Please provide copies of documents that describe, reference and/or provide the basis for this policy.

**Staff Response:** Staff is not aware of any documents, other than prior Staff testimony, recommendations, etc. and prior Commission orders (such as the order referenced in the response to question 1-3) regarding cases involving the possible recovery of an acquisition premium, which would describe, reference and/or provide the basis for the referenced policy. Also, to the extent Staff's use of the phrase "established policy" implies the existence of a written document setting forth such a policy, perhaps use of the phrase "established practice" would have been more appropriate.

The above Staff responses were developed through discussions held between the following Staff members: Cary Featherstone; Phil Williams; Graham Vesely; Scott Clark; Dale Johansen; Jim Russo; Jim Merciel; Bob Berlin and Keith Krueger. The responses were also reviewed by Wess Henderson and Bob Schallenberg.

/s/ Dale W. Johansen

Dale W. Johansen – Manager  
Water & Sewer Department  
Utility Operations Division  
Missouri Public Service Commission

May 12, 2005

Date