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 Assets to Algonquin Water Resources of Missouri LLC and, in Connection Therewith, Certain Other Related Transactions.	)))))))	Case No. WO-2005-0206 SO-2005-0207

SILVERLEAF AND ALGONQUIN'S STATEMENT OF POSITION AND SUPPLEMENTAL ISSUE

COMES NOW Silverleaf Resorts, Inc. (Silverleaf) and Algonquin Water Resources of Missouri, LLC (Algonquin) (collectively, Applicants), and, as their Statement of Position and Supplemental Issue, state as follows to the Missouri Public Service Commission (Commission):

STATEMENT OF POSITION

1. The Commission's Order Adopting Procedural Schedule, issued May 10, 2005, directed that the parties file their statement of position by July 20, 2005. Accordingly, Applicants provide the following positions concerning the issues contained in the Issues List, Witness Lists, Order of Opening Statements and Order of Cross-Examination filed on July 13, 2005.

A. Is the proposed sale of Silverleaf's water and sewer utility assets to Algonquin "not detrimental to the public interest"?

Applicants' Position: Yes. Section 393.190.1, RSMo provides that a public utility may not sell certain assets without the Commission's authorization. In interpreting Section 393.190, the Missouri Supreme Court has stated that the right to sell property is "incident important to ownership." *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393, 400 (Mo. banc 1934). Therefore, in the context of public utilities, the Court has found that a "property owner should be

allowed to sell his property unless it would be detrimental to the public." *Id.*

The courts have further said of Section 393.190 that "[t]he obvious purpose of this provision is to ensure the continuation of adequate service to the public served by the utility." *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980).

There is no dispute that Algonquin has the necessary experience, general financial health and ability to operate Silverleaf's assets and to provide safe, reliable and adequate services. Algonquin will continue to utilize the rates, rule 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.

B. Must the Commission rule whether or not Algonquin can recover any acquisition premium that may exist as a result of *State ex rel AG Processing, Inc. v. Pub. Serv. Comm'n*, 120 S.W.3d 732 (Mo. Banc 2003)? If so, what standard must be applied?

Applicants' Position: Recovery of acquisition premium does not need to be addressed in this case. The Applicants have not requested the Commission to address recovery, or any other aspect, of acquisition premium. The Applicants' Motion for Summary Determination and Suggestions in Support thereof address in detail the reasons why Applicants believe the acquisition premium recovery issue is not relevant to this case. This includes the fact that Staff has stated, and Applicants have agreed, that there are no facts or situations that would require the Commission to grant a utility the recovery of acquisition premium.

Moreover, in the most recent examination of the rates being charged by Silverleaf (Cases Nos. WO-2002-1040 and SO-2002-1039), the Staff suggested that Silverleaf was slightly under earning between its water and sewer operations, even under Staff's view of Silverleaf's rate base. This further confirms that the rate base issues are not detrimental to the public.

If the Commission does decide that it must determine the recoverability of any acquisition premium that may exist, the Commission must first determine what standard will be applied to such possible recovery. The Commission stated several years ago that, "on a policy basis, it was not necessarily opposed to consideration of acquisition adjustment." *In the Matter of Missouri-American Water Company*, 4 Mo.P.S.C.3d 205, 216 (1995). The Commission went on to find in the same order "that it does not wish to discourage companies from actions which produce economies of scale and savings which can benefit ratepayers and shareholders alike." *Id.* However, the Commission has never articulated a clear standard that it could apply, or that a utility could assess from a litigation perspective.

Further, establishing the standard that Commission intends to apply to possible recovery may eliminate the need to address the issue at the time of acquisition. If the standard to be applied by the Commission makes it clear that recovery of acquisition premium will only be allowed where it is deemed to be in the public interest and to result in just and reasonable rates, there would appear to no longer be a need to address the issue in detail at the time of acquisition. In fact, there is no difference between arguments being made by the Staff and Public Counsel and what would result if the Commission were to approve just and reasonable rates in the next rate case for these properties.

C. If the Commission does not rule at this time that the acquisition premium will be excluded from rates in future rate case proceedings, must the Commission determine the amount of the acquisition premium that may exist in order to determine whether the transaction is detrimental to the public interest?

Applicants' Position: No. As stated above, the existence of an acquisition premium does not equal recovery of such premium. Ratepayers are protected on a going forward basis by Section 393.130, of the Revised Statutes of Missouri, which requires that rates to be charged by a public utility must

"be just and reasonable." Thus, rates must always be those that are deemed by the Commission (and the courts) to be just and reasonable.

The ratepayers are further protected in this case by practical factors. As stated above, the Commission Staff suggested in Cases No. WO-2002-1040 and SO-2002-1039 that Silverleaf was slightly under earning between its water and sewer operations, even under Staff's view of Silverleaf's rate base. No greater recovery is possible unless it is justified and consented to by the Commission in a future rate case. The Commission should be entrusted to make the right decision in such a rate case.

Further, this is not the appropriate forum to determine what amount of acquisition premium, if any, may exist as a result of this transaction. The primary issues raised by the Staff in this case are related to contributions in aid of construction (CIAC), allegations of imprudent expenditures, depreciation reserves and allegations of excess capacity. These are standard rate case issues and Algonquin should be allowed to address these issues at the appropriate time (when it is the owner) in the appropriate forum (a rate case).

The Commission recognized in *In the Matter of the Joint Application of Missouri-American Water Company and Warren County Water & Sewer Company*, Report and Order, Case No. WM-2004-0122 (November 20, 2003) that determining the value of assets for ratemaking treatment is a proper issue for the purchaser's next rate case. "By considering the value of the assets in the context of a rate case, the Commission can be assured of considering all the necessary factors in determining just and reasonable rates." *Id.* Moreover, addressing the issues in a rate case allows for the adjustment of rates at the time of decision. Addressing the issues in this case will require the parties to litigate the matters twice - here and in a future rate case.

Attempting to address these issues now serves only to frustrate a transaction agreed to by a

willing seller and a willing buyer, who is qualified to operate these assets in a safe and reliable manner.

D. In order to decide if the transaction is detrimental to the public interest, must the Commission determine the maximum amount of acquisition premium that Algonquin may seek to recover in future rate proceedings?

Applicants' Position: No. If the Commission determines that recovery of an acquisition premium will only be allowed where it is in the public interest and results in rates that are just and reasonable, there is no need to determine any maximum amount of acquisition premium at this time.

E. If the Commission determines that some amount of the acquisition premium may be recoverable in rates, must the Commission rule on the issues raised by the Staff regarding the following matters?

- **Plant in Service**
- **Contributions in Aid of Construction**
- **Costs related to the Well No. 2 Project in Holiday Hills**
- **Depreciation Reserves**

Applicants' Position: No. See the above positions. These are all questions that are best addressed within a rate case. There is no need to address specific recoverability of acquisition premium or these specific issues at this time.

SUPPLEMENTAL ISSUE

2. In addition to the issues described in the Issues List, Witness Lists, Order of Opening Statements and Order of Cross-Examination, Applicants state that they oppose Staff's recommendation that depreciation rates be changed within the context of this acquisition case. The appropriate time to address depreciation rates is within a rate case where rates to be paid by customers can be adjusted simultaneously to properly reflect recovery. Adjusting depreciation rates without adjusting customer rates to provide the cash reflective of this return/consumption of capital has no purpose but to create an intentional mismatch between the depletion of the rate base and the

return to the investor that is supposed to mirror that depletion.

WHEREFORE, Silverleaf and Algonquin respectfully request that the Commission consider this Statement of Position.

Respectfully submitted,

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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 July 20th, 2005, to the following:

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