

**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 a Rate Increase.) SR-2018-0171

**REPLY OF LIBERTY UTILITIES TO SILVERLEAF RESORTS, INC.
AND ORANGE LAKE COUNTRY CLUB, INC.’S RESPONSE TO STAFF’S
NOTICE OF NO OBJECTIONS TO NONUNANIMOUS STIPULATION
AND AGREEMENT, REQUEST TO MODIFY HEARING SCHEDULE AND
MOTION FOR EXPEDITED TREATMENT**

COMES NOW Liberty Utilities (Missouri Water) LLC (“Liberty Utilities”), by and through counsel, and, for its Reply to **Silverleaf Resort, Inc. and Orange Lake Country Club’s Response to Staff’s Notice of No Objections to Nonunanimous Stipulation and Agreement, Request to Modify Hearing Schedule and Motion for Expedited Treatment** (the “Response”), states as follows to the Missouri Public Service Commission (“Commission”):

1. On August 13, 2018, the Silverleaf Resort, Inc. and Orange Lake Country Club, Inc. (collectively “Silverleaf”) filed a Response to Staff’s **Notice of No Objections to Nonunanimous Stipulation and Agreement, Request to Modify Hearing Schedule and Motion for Expedited Treatment** (“Notice and Motion”) in which Silverleaf claims that it timely objected to the Nonunanimous Stipulation and Agreement filed on August 3, 2018 (“Agreement”). Silverleaf’s claims – that it was not aware of ongoing settlement discussions and effectively was surprised by the filing of the Agreement and that Mr. Stannard’s surrebuttal testimony constitutes its objection to the Agreement – is not credible, and an apparent after-the-fact justification for its failure to meet the time for objection under Commission rule 4 CSR 240-2.115(2).

2. A long-standing Commission rule, of which Silverleaf's counsel must be aware, provides that "[e]ach party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection. **Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing.**" See, 4 CSR 240-2.115(2)(B) (emphasis added). As Staff clearly demonstrated in its Notice and Motion, Silverleaf was served with a copy of the Agreement when filed on August 3. Silverleaf's assertion in paragraph 1 of its Response that it was unaware that Staff and the Company were contemplating the filing of a stipulation and agreement in this case is not credible. There were extensive discussions over a number of weeks between all parties about a possible framework to resolve the case with the filing of a unanimous agreement. Ultimately, Staff and the Company came to an agreement which should not be a surprise given the ongoing settlement discussions that were taking place.

3. In an attempt to cover its failure to timely file an objection to the Agreement, Silverleaf now claims that the pre-filed surrebuttal testimony of Mr. Stannard constitutes its objection as required by the rule. Yet nowhere in Mr. Stannard's testimony does he state that it constitutes Silverleaf's objection to the Agreement under the rule, nor does any communication from Silverleaf's counsel at the time it was filed. Silverleaf cannot now claim this constitutes its objection.

4. Furthermore, as noted in a filing by Silverleaf on August 13¹, pre-filed testimony is not in evidence until it is admitted by the Commission at hearing:

Please note that Silverleaf's initial rebuttal testimony is included on this list. The only reason for including it is: *Filing the rebuttal testimony on EFIS is not the legal equivalent of offering testimony into evidence.* I believe that technically one cannot strike testimony which has not been offered into evidence. So I plan on actually offering the rebuttal testimony into evidence at which point your honor can strike the testimony

¹ March 13, 2018 Silverleaf electronic mail transmission of exhibit list, included herein as **Attachment A**.

pursuant to your August 2, 2018 Order, if you so desire. This is strictly procedural to ensure that I have preserved my client's appeal rights on this issue.

(Emphasis added) Consequently, Silverleaf cannot rely on a document that, by its own admission, is not part of the record in this case.

5. Additionally, the Silverleaf companies are incorporated entities and, consequently, must be represented by counsel in all legal proceedings in this state. Mr. Stannard has not entered his entry of appearance as counsel for Silverleaf. He is being offered as a fact and/or expert witness on the issues identified in his pre-filed rebuttal and surrebuttal testimony. He cannot be said to be representing Silverleaf in any capacity that would allow him to speak on behalf of Silverleaf on matters of case practice or procedure. Only an officer of Silverleaf or its counsel of record may speak on its behalf and submit a binding and actionable objection. In paragraph 7 of its Response, Silverleaf further contends that it lodged an objection on August 13, 2018, 3 days beyond the 7-day time period provided in the Commission's rule. Even if one were to assume that this was an effective objection, it is merely an admission that it was untimely made.

6. Finally, Silverleaf's counsel requests "leniency" in the application of the rule because he was attending to another matter, that is, dealing with the filing of Mr. Magee's surrebuttal testimony by Liberty Utilities. But Silverleaf's objection to Mr. Magee's surrebuttal testimony was filed on August 8, two days prior to the last day for filing of a timely objection. At no time did Silverleaf's counsel seek an extension of time to object or file a simple objection to meet the requirement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail on this 14th day of August, 2018, to:

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