

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

In the Matter of Liberty Utilities (Missouri)
Water) LLC's Application for a Rate Increase.)

File No. WR-2018-0170
SR-2018-0171

**SILVERLEAF'S RESPONSE TO "ORDER ESTABLISHING TIME TO RESPOND TO
LATE-FILED EXHIBIT"**

Silverleaf Resorts, Inc. and Orange Lake Country Club, Inc. (collectively "Silverleaf") file this Response to the Commission's September 20, 2018 Order regarding the late-filed non-unanimous stipulation and agreement. For its cause, Silverleaf states:

1. On August 3, 2018 Staff of the Missouri Public Service Commission filed a non-unanimous stipulation and agreement entered into with Liberty Utilities (Missouri Water), LLC. This non-unanimous stipulation and agreement purports to resolve a number of issues between Staff and Liberty Utilities in this case, although not all issues.

2. Silverleaf was not a signatory to this stipulation and agreement and does not support its terms or positions in regards to Liberty Utilities': 1) allowed return on equity, 2) the absence of a stated capital structure, and 3) the rate design reflected in attachments to the non-unanimous stipulation and agreement.

3. Portions of the non-unanimous stipulation and agreement were discussed in sur-rebuttal testimony and at the evidentiary hearing in this case.¹ However, as Staff points out, "the Stipulation includes agreements by Liberty Utilities that are otherwise unavailable from the evidence presented at hearing." Staff's Initial Brief, p. 9. Clearly, if the Commission were bound by the technical rules of evidence (which it is not) the admission of the stipulation and agreement, in its entirety at this late date, would be problematic. Portions of the stipulation and

¹ See e.g., Exhibit 303, Stannard, Surrebuttal Testimony, P. 3-11.

agreement would be without evidentiary foundation and would constitute hearsay testimony. However, the Commission is not bound by the technical rules of evidence for good reason.

4. Silverleaf does not object to the admission of the non-unanimous stipulation and agreement into the record *so long as* it is treated as what it actually is: *a non-unanimous stipulation and agreement which pursuant to 4 CSR 240-2.115(2)(D) should be treated as merely a position statement among its signatories*. In the unlikely event the Commission is to follow Staff's suggestion -- to use a similar procedural oversight by Silverleaf to declare the stipulation and agreement "unanimous" -- then Silverleaf would object vehemently to the late-filed admission of the non-unanimous stipulation and agreement.²

5. Assuming though that the Commission rejects Staff's suggestion, Silverleaf declines the opportunity to pounce upon a minor procedural error in an attempt to abrogate the core duty of the Commission. Rather Silverleaf believes that the Commission should fairly evaluate the non-unanimous stipulation and agreement for the *position statement* that it is, and the lack of evidence supporting the positions expressed therein. The Commission should render a judgment within the bounds of Missouri law based upon the competent and substantial evidence.

6. Unlike other pending evidentiary issues in this case³, Liberty and Staff's technical failure to offer the non-unanimous stipulation and agreement into the record has not and does not prejudice Silverleaf.

² See, Staff's "No Objections to Non-unanimous Stipulation and Agreement, Request to Modify Hearing Schedule, and Motion for Expedited Treatment", filed August 13, 2018.

³ See, Silverleaf's "Motion to Strike Surrebuttal Testimony of Keith Magee and Motion for Expedited Treatment" filed August 8, 2018.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been e-mailed to all counsel of record this 24th day of September 2018.

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