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

INITIAL BRIEF OF SILVERLEAF RESORTS, INC. AND ORANGE LAKE COUNTRY CLUB, INC.

I. Introduction

In virtually every way, Algonquin Power & Utilities, Corp. has treated its Missouri water company and its Missouri customers with ***benign negligence***. This is reflected in Liberty Utilities (Missouri Water)'s ("LU-MW") customer service,[1] the way the company keeps its books in violation of Missouri law,[2] and the managerial delinquency with which LU-MW has failed to request a rate increase in nearly ten years resulting in rate-shock for its Missouri customers.[3] Only the Public Service Commission of the State of Missouri has the authority to send a clear signal to Oakville, Canada that the consequences of this negligence to Missouri rate-payers are not benign and will not be tolerated.

II. Background

On December 15, 2017 LU-MW filed a letter requesting a rate increase under 4 CSR 240-3.050, the Small Utility Rate Case Procedure ("SURP"). The letter asked for "an increase of 995,844 in annual water system operating revenues and an increase of $196,617 in its annual

[1] Exhibit No. 401, Direct Testimony, Don Allsbury; Exhibit 111, Surrebuttal Testimony, Dana Parish; Exhibit 112, Rebuttal Testimony, David Roos.
[2] Exhibit No. 105, Direct Testimony, Paul Harrison, 7:3-18.
[3] Exhibit No. 302, Rebuttal, William Stannard, 25:12-16; Exhibit 106, Rebuttal Testimony, Paul Harrison, 3:13-16 (explaining Staff's recommendation for a five year normalization of rate case expense "based upon an analysis of how often Liberty Utilities has filed for rate increase over the past several years. It has been seven to eleven years since any component of Liberty Utilities water and sewer systems has had a rate increase.")

sewer system operating revenues was for both water and sewer revenues."[4] LU-MW did not file a tariff or direct testimony explaining or justifying the increase.

On December 19, 2017 Staff of the Missouri Public Service Commission ("Staff") filed a "Small Utility Rate Case Timeline" which set forth various procedural benchmarks established under the SURP. On January 17, 2018, Silverleaf Resorts Inc. and Orange Lake Country Club, Inc. ("Silverleaf") filed an application to intervene in the case and on January 29, 2018 the application for intervention was granted by the Commission.

On February 8, 2018 Silverleaf filed its "Motion to Dismiss, or in the Alternative, To Order Liberty Utilities (Missouri Water), LLC to File a Tariff Pursuant to Section 393.140(11)("Motion to Dismiss or File a Tariff"). In the Motion to Dismiss or File a Tariff, Silverleaf argued *inter alia* that LU-MW was not a small utility and that its number of "customers" should be determined by the number of "end-use customers" or those financially responsible that benefit from the utility service.[5] The Motion to Dismiss or File a Tariff also explained Silverleaf's concern that the SURP regulation would fail to protect Silverleaf's due process rights given the corporate structure and actual size of LU-MW.[6]

> Finally, by applying this consistent and inclusive definition of "customer" the Commission will prevent serious violations of the due process rights of these 36,686 property owners and customers. Because the SURP both expedites and eliminates many of the due
> process safeguards provided by a general rate case, the 36,686 property owners and utility customers affected are in substantial jeopardy, as Liberty Utilities attempts to negotiate a rate increase with Staff outside of

[4] Request for Increase Letter, filed December 12, 2017.
[5] *See*, Motion to Dismiss or File a Tariff, 8-9.
[6] Motion to Dismiss or File a Tariff, 3-4, 7, 10; *See also*, Brief of Orange Lake Country Club, Inc. and Silverleaf Resorts, Inc. on Timeshare Owners as Customers of Liberty Utilities ("Silverleaf Customer Brief").

the transparent process and lawful burdens of proof provided by a general rate case.[7]

The Commission denied Silverleaf's Motion to Dismiss or File a Tariff on April 4, 2018 explaining that in order to be a "customer" one must be "directly financially responsible to the utility."[8]

On April 3, 2018, the day before the Commission issued its Order Denying Motion to Dismiss or File a Tariff, Silverleaf filed a Request for an Evidentiary Hearing. On April 11, 2018 LU-MW filed its "Suggestions in Opposition" to Silverleaf's Request for an Evidentiary Hearing, questioning Silverleaf's legal standing to request an evidentiary hearing.[9] On April 20, 2018 the Commission held a Procedural Conference in which it was stated that no ruling would be made on Silverleaf's request for an evidentiary hearing until after the "150 disposition agreement is filed."[10]

Through the course of this entire case, Silverleaf was invited to *two* meetings with Staff and LU-MW to discuss settlement of the substantive issues in this case; one came on March 28, 2018 (to discuss the 90-Day Report produced by Staff) and the other on May 9, 2018 (the "130-Day Conference" to discuss the 120-Day Report produced by Staff).[11]

On May 24, 2018 Staff filed a Partial Disposition Agreement and Request for Evidentiary Hearing. On June 5, 2018 Staff filed a "Non-Unanimous Proposed Procedural Schedule." On

[7] Silverleaf Customer Brief, 7.
[8] Order Denying Motion to Dismiss or File a Tariff, 5.
[9] Opposition to Request, 3.
[10] Procedural Conference Tr., 15:24-16:2.
[11] Silverleaf sincerely hopes that the mere mentioning of these two meetings is not considered a violation of the "confidential settlement privilege" which has been ruled to be an all-encompassing privilege for Staff work-papers and analysis prior to the filing of direct testimony in this case. Silverleaf is not alleging that either Staff or LU-MW had a legal obligation to invite Silverleaf to any negotiations between them. Silverleaf mentions this because of the lack of transparency inherent in the SURP in general, and this case specifically.

June 11, 2018 Silverleaf filed its Response to Staff's Proposed Procedural Schedule arguing that the procedural schedule's failure to require LU-MW to file a tariff was both a violation of Silverleaf's due process rights and contrary to the requirements of Missouri law.[12] On June 13, 2018 the Commission issued its "Order Setting Procedural Schedule and Other Procedural Requirement" adopting Staff's "Non-Unanimous Proposed Procedural Schedule" without comment or analysis regarding the tariff and due process issue argued by Silverleaf.

On August 2, 2018 the Commission struck the rebuttal testimony of Silverleaf's witness William Stannard finding that all work-product and analysis produced by Staff after LU-MW's filed request for a rate increase constituted privileged settlement communications. That same day the Commission struck portions of the rebuttal testimony of Staff witness David Murray on motion from Silverleaf.[13]

On August 3, 2018 the deposition of Jill Schwartz ("Schwartz"), the Senior Director of Rates and Regulatory Affairs for LU-MS, was taken, primarily by legal counsel for Silverleaf. Although, legal counsel for the Office of Public Counsel ("OPC") also participated in the deposition, as well as, legal counsel for Staff of the Missouri Public Service Commission. That same day Staff and LU-MW filed a Non-unanimous Partial Stipulation and Agreement. Silverleaf was unaware of the on-going negotiations between Staff and LU-MW which resulted in this Non-Unanimous Partial Stipulation and Agreement.

On August 7, 2018 LU-MW filed the surrebuttal testimony of Keith Magee ("Magee"). On August 8, Silverleaf filed a motion to strike the surrebuttal testimony of Magee arguing that LU-MW's failure to disclose Magee as an expert witness until the August 3rd deposition of

[12] Silverleaf's Response to Staff's Proposed Procedural Schedule, ¶¶ 7, 9-13, 17.
[13] Order Granting Silverleaf Resorts, Inc. and Orange Lake County Club, Inc.'s Motion to Strike and Extending the Date for Filing Testimony.

Schwartz prevented Silverleaf from conducting any discovery on the witness and constituted an unfair and prejudicial surprise.

On August 9, 2018 the Commission denied Silverleaf's motion for expedited treatment of the motion to strike Magee's surrebuttal testimony and provided that it would consider the motion in its report and order.[14] Magee's surrebuttal testimony was "provisionally" admitted into the legal record at the evidentiary hearing on August 16, 2018. Notably during the evidentiary hearing, the deposition testimony of Schwartz was offered into evidence, but not admitted into evidence.[15]

III. Evidentiary Issues in this Case

Silverleaf disagrees with the decision to not allow the deposition testimony of witness Schwartz into evidence on general policy grounds. Better public policy decisions are made with more information, not less. It is recognized in both Missouri statute and Missouri case law for over 100 years, the Commission is unique and not a trier of fact which must be protected by the technical rules of evidence. *See,* Section 386.410.1, RSMo., "All hearings before the commission or a commissioner shall be governed by rules to be adopted and prescribed by the commission and in all investigations, inquiries or hearings the commission or commissioner ***shall not be bound*** by the technical rules of evidence." (Emphasis added.) Missouri courts have further provided, "The Commission…because of its ***unique nature*** does not have to apply the technical rules of evidence 'with the same force and vigor as in an action brought in a court of law.'"(Emphasis added.) *State ex rel. American Tel. & Tel. Co. v. Public Service Com'n,,* 701 S.W.2d 747, 755 (Ct. App. W. D. 1985)(quoting *State ex rel. Potashnick Truck Service, Inc. v.*

[14] Order Denying Motion for Expedited Treatment.
[15] Evidentiary Hearing Tr., 92:6-20.

Public Service Commission, 129 S.W.2d 69, 74 (Mo.App. 1939). Admitting the deposition testimony of witness Schwartz would have helped this Commission better understand the subsidiary operating company and its parent company at issue in this case, even if portions of the deposition were struck at a later date. It is for this very policy reason that the technical rules of evidence do not apply to the Commission.

The "provisional" admission of disputed evidence is exactly what the administrative law judge allowed with the surrebuttal testimony of LU-MW's witness Magee, but denied for the deposition testimony of witness Schwartz. The admission of Magee's surrebuttal testimony into evidence is entirely inconsistent with the rationale provided for refusing admission of witness Schwartz's deposition testimony. As explained by the administrative law judge in the evidentiary hearing:

> But the problem with a deposition is a deposition is kind of unbounded. [If] the deposition comes in and as Mr. Boudreau points out, it comes in wholesale, then it comes in essentially unfiltered with -- with whatever subjects were -- were asked about, whether or not they would be admissible or not in this proceeding.[16]

Because Silverleaf was denied any opportunity to conduct any discovery on Magee it was essentially asked to conduct an "unbounded" and "unfiltered" cross-examination of Magee during the evidentiary hearing.

The stark inconsistency of these rulings compounds the prejudice to Silverleaf from Magee's testimony and is a clear violation of its due process rights. It is also manifestly inequitable and unfair. The Commission must strike both the pre-filed, written surrebuttal testimony of Magee and his testimony offered at the evidentiary hearing in its entirety.

[16] Evidentiary Hearing Tr., 263:18-24.

IV. Positions of the Parties

a. Revenue Requirement

"At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increase rate is just and reasonable shall be upon the…water corporation…" Section 393.150.2, RSMo. See also, *Matter of Water Rate Request of Hillcrest Utility Operating Company, Inc. v. Mo. PSC*, 533 S.W.3d 14, 19 (Ct. App. W. D. 2017) (discussing the difference between the presumption of prudence afforded a utility versus the burden of proof remaining on a utility when it has requested a rate increase.) On the issue of cost of capital, LU-MW has failed clearly to meet its burden in this case.

Silverleaf is in agreement with Staff's calculation of LU-MW's revenue requirement with the exception of cost of capital. Silverleaf does not dispute Staff's revenue requirement calculations as it pertains to operations and maintenance, investment in plant, and depreciation. There is no doubt that when a utility's management fails to request a rate increase for almost ten years there will be significant cost increases when they do. Silverleaf does not dispute this basic fact. It is the basis for Silverleaf's proposed phase-in as discussed *infra*.

Silverleaf's witness Stannard recommends a return on equity (ROE) range for LU-MW of 8% to 9%.[17] This recommendation is based on the Duff & Phelp's equity risk premium.[18] As explained by Staff's own witness David Murray ("Murray"), Duff & Phelps is an "authoritative source as it relates to estimating the cost of capital" and is used routinely by Staff in its cost of

[17] Exhibit 302, Refiled Rebuttal Testimony, Stannard, 10:1-2.
[18] *Ibid.* at 9:17-21; See also, Exhibit 110, Surrebuttal Testimony, Murray, 2:6-9.

capital recommendation.[19] Witness Murray's analysis results in an ROE ***significantly below*** the range provided by witness Stannard.[20]

> Duff & Phelp's equity risk premium estimate is conditioned on a "normalized" risk-free rate of 3.5%. Adding the 5% conditional equity risk premium to this yield results in a market cost of equity of 8.5%...Utility stocks are less volatile than the broader market. This lower volatility is typically measured by calculating the beta of utility stocks. Typically, betas of utilities are in the range of 0.6 to 0.8. Applying a typical utility beta of 0.7 to the market risk premium of 5%, results in an industry adjusted risk premium of 3 .5%. Adding this 3 .5% adjusted risk premium to Duff & Phelp's normalized risk-free rate of 3.5% results in a cost of equity of 7%.[21]

Witness Murray provides that Staff's recommendation of a 10% ROE is solely based on the Commission's ROE decision in Case Nos. GR-2017-0216 and GR-2017-0217, *In the Matter of Spire Missouri, Inc.'s Request to Increase Its Revenues for Gas Service*.[22]

Staff did not attempt to show that LU-MW and Spire Missouri were similarly situated utilities in any meaningful way. Witness Murray provides no basis in his surrrebuttal testimony, or his testimony at the evidentiary hearing, for why it is reasonable to diverge from the "authoritative source" on cost of capital -- *by 300 basis points* -- to follow the "guidance" of the Commission in an unrelated natural gas case. No evidence was offered showing that the Commission knew it was providing "guidance" in docket number GR-2017-0216 (Spire Missouri's natural gas case) for the cost of capital for LU-MW in a small utility rate procedure. Silverleaf does not believe that other utility industries cannot be used to a *limited extent* to inform a cost of capital decision in a different industry, but absolutely no evidence was presented

[19] Exhibit 110, Surrebuttal Testimony, Murray, 2:6-9.
[20] *Ibid*. at 2:15-3:6.
[21] *Ibid.*
[22] *Ibid.*

which justifies a 300 basis point difference solely on an ROE decision in a different industry with a markedly different utility company.

Silverleaf has provided lawful evidence in this case regarding cost of capital which attempts to provide an ROE for LU-MW's actual investor expectations and company risk.[23] LU-MW merely grafts the ROE analysis of an affiliate natural gas company onto the water company.[24]

Witness Murray identifies several key differences between the natural gas industry and water industry which suggest that boot-strapping an ROE from Spire Missouri's natural gas case onto LU-MW would be unreasonable, arbitrary and capricious. For instance, Murray points to the obvious difference between water and natural gas – water does not explode.[25] Also, Murray points to Missouri's infrastructure replacement surcharge mechanism (ISRS) as a difference between water and natural gas in Missouri which affects the risk.[26] Despite these differences, the ROE recommendation of Staff and LU-MW is based upon the expedient conclusion that all utility industries are essentially the same in risk and investor expectation, so the Commission can apply an ROE from a recent case regardless of industry or actual utility similarities.[27] Staff's apparent position is that this uniformity between utility industries (water, natural gas, electric) justifies a 300 basis point divergence from the authority source and methodology that they routine rely upon.[28]

Finally, Silverleaf objects to any ROE determination without a corresponding capital structure. As explained by Staff witness Murray, one cannot simply "back into" finding the

[23] Exhibit No. 302, Refiled Rebuttal Testimony, Stannard, 10:1-2.
[24] Exhibit No. 1, Direct Testimony, Schwartz, JSM-1.
[25] Evidentiary Hearing Tr., 118:13.
[26] *Ibid.* at 117:21-118:4.
[27] *See generally*, Evidentiary Hearing Tr., 117-118.
[28] Exhibit No. 110, Surrebuttal Testimony, Murray, 2:6-9.

capital structure if they just have an over-all revenue requirement and an authorized ROE.[29] In order to mathematically solve for the capital structure, the parties would need to have the exact dollar value (revenue requirement) for the return to investors.[30] Only then could it solve for the capital structure.

An ROE without a capital structure is inherently, mathematically incomplete information which can be used opportunistically in future rate cases or for utility financial research and consulting entities. [31]

b. Phase-In to Mitigate Rate-Shock

The customers of LU-MW are facing the possibility of severe rate shock without the mitigation of the Missouri Public Service Commission. Silverleaf has proposed a phase-in of the rate increase which is designed to allow LU-MW full recovery of its costs.[32] Staff's proposed rate increase for water and sewer rates are 75% and 68% respectively.[33]

Staff would not peg a percentage increase or even a range to a rate increase or bill impact which they would deem rate-shock.[34] Staff's rather callus position appears to be that rate-shock is the justifiable price customers pay for having their rates low for an extended period of time.[35] Staff's witness James Busch ("Busch") provides in his surrebuttal testimony that customers have the "advantage" of paying lower rates when a utility company does not come in for a rate case for over nine years.[36] Following up on this written testimony in the evidentiary hearing, witness

[29] Evidentiary Hearing Tr., 111:15-12:5.
[30] *Ibid.*
[31] See e.g., Evidentiary Hearing Tr., 113:10-22.
[32] Exhibit No. 302, Refiled Rebuttal Testimony, Stannard, 25-28.
[33] *Ibid* at 12:11-12.
[34] Evidentiary Hearing Tr., 62-63.
[35] See, Exhibit 103, Surrebuttal Testimony, Busch, 8:4-11; Evidentiary Hearing Tr., 241-243.
[36] Exhibit No. 103, Surrebuttal Testimony, Busch, 8:6.

Busch was unable to think of a scenario where customers could be hurt by a utility's failure to seek a rate adjustment.

> Q. Sure. So using the rationale that the customers benefit from a utility company not coming in for a rate case because the -- the rates remain low, is -- sort of using that as the basis, is there ever a situation where customers would suffer unjustifiable rate shock from a utility's failure to come in for a rate case?
>
> A. It is very difficult to say something would never happen. I'm trying to think of a situation where that would occur. And – and nothing -- no example is coming to my head right now.
>
> …
>
> A. If -- if I understand what you're suggesting is that you're creating a situation where a utility is coming in routinely, say every three or four years, something like that.
>
> Q. Sure. Right, right.
>
> A. Because they believe that they need higher revenues to cover their cost-of-service.
>
> Q. Absolutely.
>
> A. Okay. I can make that assumption.
>
> Q. Okay. Second assumption -- or the second scenario is one where the company -- the utility company does not come in. For whatever reason it is, they simply do not come in. And -- and so the customers are -- don't see any kind of rate increase for a prolonged period of time. And then they do come in.
>
> A. Okay.
>
> Q. Okay. In those -- given those two scenarios, can you see in that second scenario any harm done to the customers?
>
> A. Not necessarily.[37]

As the largest customer of LU-MW, Silverleaf respectfully disagree with Mr. Busch – the harm is a potential 75% and 68% rate increase for water and sewer service, respectively.

[37] Evidentiary Hearing Tr., 241:21-243-16.

Regulators should seek rate stability in designing rates, which means avoiding sudden, unexpected and significant changes to rates.[38] Silverleaf has proposed a phase-in of the rate increase over a four year period which helps mitigate the rate-shock caused by LU-MW's failure to seek incremental rate increases as they became justified over the last decade.[39]

Silverleaf's proposal does not include the de minimis carrying-cost associated with the proposed phase-in. This is because the cause of the rate shock, and thus the *need* for the phase-in of rates, appears to be simple corporate negligence. Witness Schwartz indicated that she did not know why LU-MW had not requested a rate increase prior to 2015, the year she started her employment with Liberty Utilities.[40] No evidence was presented of extraordinary cost increases in recent years which would explain LU-MW failure to seek a rate increase. Rather, the rate increase sought now by LU-MW appears to be the culmination of steady increases in operations and maintenance expenses, as well as investment in plant, which was incurred gradually for over ten years.[41]

c. *Rate-Design*

The rate-design proposed by Staff takes a bad and preventable situation and makes it much worse by packing virtually all of the rate increase into the fixed customer charge, resulting in an increase of **174%** and **112%** water and sewer fixed customer charge respectively.[42] This rate design is astoundingly out of sync with recent Commission policy which seeks water and energy conservation through rate-design. It is also duplicitous in its rational.

[38] Exhibit No. 302, Refiled Rebuttal Testimony, Stannard, 16:15-20.
[39] *Ibid.* at 26.
[40] Evidentiary Hearing Tr., 232.
[41] Exhibit No. 1, Direct Testimony, Schwartz, 10:10-21.
[42] *Ibid.* at 13, Table 5.

In case number WR-2015-0301, *In the Matter of Missouri-American Water Company's Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Areas*, the Commission provided the following policy analysis in reference to rate-design which highlighted volumetric rate design (specifically inclining block rates) as means for conservation and energy efficiency:

> 13. It is also possible to design volumetric rates using inclining blocks. Under such a structure, customers would pay more for water as they increase their usage. Such a structure would be designed to encourage water conservation by discouraging discretionary water usage, such as outdoor watering or other summer use.
>
> 14. Conservation of water is important for more than just a need to conserve the supply of water. Water and wastewater supply processes are energy intensive. Large amounts of electricity are required to pump water through the pumping stations, treatment facilities and distribution system.95 Thus, the promotion of water efficiency leads to the promotion of energy efficiency.96
>
> …
>
> **Customer Charge**
>
> 17. A customer charge is the fixed amount a customer is charged on each bill without regard to the amount of water they consume. In contrast, volumetric charges on the customer's bill vary with the amount of water consumed. Missouri-American's revenue requirement has already been determined, and the company will be allowed an opportunity to recover that revenue requirement through a combination of a customer charge and volumetric rates. That means a decrease in the allowed customer charge will necessarily increase the volumetric charge. Of course, that also means an increase in the customer charge will decrease the volumetric charge.
>
> 18. Customer charges should be established at a level that will allow the utility to recover ***"customer-related costs"*** based on the number of customers served by a utility, not based on the amount of water they consume. In general, customer-related costs would include things like

> meter-reading, billing, and meter and service line-related costs. (Emphasis added).[43]

Clearly, Staff's rate design runs contrary to any conservation or efficiency rate-design policy or objectives which seek to conserve water or energy.[44] Staff's rate-design shifts all risk to LU-MW customers, hurts the smallest users the most, and represents an environmentally retrograde policy. It should be rejected.

Additionally, Staff's rationale for this policy is duplicitous within the context of this case. Staff's wants to define "***customers***" narrowly in terms of eligibility under the SURP, but for rate-design Staff becomes interested in Silverleaf's "***water users.***" As explained by Staff witness Barnes the proposed 174% and 112% increase in Silverleaf's customer charge:

> Staff considers Silverleaf's ***water users*** to be unique in that a majority of Silverleaf's properties do not house permanent residents. Rather, Silverleafs properties consist of timeshare and condominium owners who rent these units to thousands of their customers each year. There are times that these units are not occupied, generally in the off-season such as late fall through the winter; therefore, a unit will have little to zero usage for that particular month. At times when there is little to zero usage, an operator must still maintain the system so water is readily available to meet peak demands. The costs to maintain the system from zero usage to peak demand is generally a fixed cost. This is one reason Staff shifted more dollars to the fixed charge.[45]

Putting aside the incorrect legal description of Silverleaf's time-share owners as "renters"[46] – Staff appears to want to apply a different definition of "customer" for different issues. The time-share owners of Silverleaf are either customers of LU-MW or they are not.

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[43] *In the Matter of Missouri-American Water Company's Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Areas*, Docket No. WR-2015-0301, 34-35.
[44] Exhibit No. 302, Refiled Rebuttal Testimony, Stannard, 17:15-18:1.
[45] Exhibit No. 102, Surrebuttal Testimony, Barnes, 2:5-12.
[46] *Ibid*.

They cannot be customers (i.e. "water users") for purposes of rate-design, but non-customers for SURP eligibility. Staff's creative euphemism for customers as "water users" is a transparent attempt to apply a different definition of customer for a different issue in this case.

As explained by the Commission in Docket Number WR-2015-0301, "Customer charges should be established at a level that will allow the utility to recover ***'customer-related costs' based on the number of customers served by a utility, not based on the amount of water they consume.***"(Emphasis added).[47] As explained by this Commission, in this case, to be a "customer" one must be "directly financially responsible to the utility."[48] The basis of Staff's rate-design proposal is entirely inconsistent with the previous ruling in this case and seeks to apply a different definition of "customer" based upon the issue. In this case, the "customer-related costs" are the costs to serve Silverleaf, and not the amount of water its time-shareowners consume.

Staff's rate-design recommendation is wrong from a policy perspective and duplicitous from a legal perspective. Silverleaf has recommended retaining the existing rate-design and applying any rate increase across the board.[49]

d. Staff's Recommended Rate Case

Staff has recommended that the Commission order LU-MW to file another rate case in no more than two years.[50] The basis for this recommendation is that LU-MW's acquisition of Ozark

[47] *In the Matter of Missouri-American Water Company's Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Areas*, Docket No. WR-2015-0301, 34-35.
[48] Order Denying Motion to Dismiss or File a Tariff, 5.
[49] Exhibit No. 302, Refiled Rebuttal Testimony, 22-23.
[50] Exhibit No. 104, Direct Testimony, Curtis Gately, 5.

International necessitates a recalculation of shared-services and corporate allocations among all of LU-MW customers.[51] Additionally, another rate case in two years would allow Liberty to "demonstrate they are now in compliance with § 393.140(4) RSMo., 4 CSR 240-50.030(1) and 4 CSR 204-61.020(1), the use of *The Uniform System of Accounts.*"[52]

Silverleaf has incurred significant rate case expenses in this case. However, if Silverleaf had not intervened in this case, it is likely that it would be overpaying by over a hundred-thousand dollars annually for water and sewer service.[53] Obviously Silverleaf will need to intervene in future LU-MW rate cases to protect its interests.

Clearly, when to request a rate increase or otherwise seek adjustment of rates is a management decision of the utility company. Ordering LU-MW to file a rate-case within two years crosses the line into the Commission acting as management for LU-MW. "It is obvious that the P.S.C. has no authority to take over general management of any utility." *State ex rel. Laclede Gas Co. v. Public Service Commission*, 600 S.W.2d 222, 228 (Ct. App. W. D., 1980). Silverleaf ***understands*** the temptation for Staff to step into a managerial role given LU-MW's history of managerial negligence which kept it from seeking a rate increase for nearly ten years. But it is fundamentally unlawful (and absurd) for the Commission to commandeer a basic management decision by Algonquin Power & Utility, Corp. and LU-MW to seek a rate adjustment. This is a management decision.

Furthermore, Staff's request to order LU-MW to seek a rate adjustment is based on the LU-MW's acquisition of the Ozark International system.[54] If LU-MW cannot be trusted to make prudent management decisions as to when to seek a rate adjustment, one has to question the

[51] *Ibid.*
[52] *Ibid.*
[53] Exhibit No. 302, Refiled Rebuttal Testimony, Stannard, 11-17.
[54] Exhibit No. 104, Direct Testimony, Gately, 5:6-12

Commission's approval of the acquisition to begin with. Certainly, if the Commission does feel it necessary to order LU-MW to seek a rate adjustment within two years, under no circumstances should it approve any additional acquisitions by LU-MW, a utility that it cannot trust to make prudent management decisions as to when to come in for a rate case. The other reason Staff provides for its rate case recommendation is to ensure that LU-MW is "in compliance with *§* 393.140(4) RSMo., 12 4 CSR 240-50.030(1) and 4 CSR 204-61.020(1), the use of *The Uniform System of Accounts.*"[55] Silverleaf should not have to incur substantial rate-case expense to ensure that LU-MW is complying with Missouri law.

V. Stipulation and Agreement

On August 3, 2018 LU-MW and Staff filed a non-unanimous stipulation and agreement on the issue of ROE and rate-design, among other issues. No intervenor in this case (Silverleaf, Ozark Mountain Condominium Association, or the Office of Public Counsel) filed a stand-alone objection to the non-unanimous stipulation and agreement by Friday, August 10, 2018. Rather all three intervenors filed a stand-alone objection on Monday, August 13, 2018.[56]

Silverleaf's objection to the non-unanimous stipulation and agreement was *clear and explicitly expressed* in the surrebuttal testimony of Stannard[57] filed on August 7, 2018. The surrebuttal testimony of Stannard, in addition to dealing with the surprise witness of Magee, specifically references the August 3 non-unanimous stipulation and agreement. The surrebuttal

[55] *Ibid.*
[56] Here again, it is worth noting for context that this is not a situation where all of the parties were engaged in the negotiations leading up to the August 3 non-unanimous stipulation and agreement. Silverleaf was not invited to, or even made aware of, any negotiations leading up to this non-unanimous stipulation and agreement. In fact after the deposition of Schwartz, legal counsel for Silverleaf extended an offer to discuss settlement of the case with legal counsel for LU-MW and nothing was said regarding an agreement having been reached with Staff.
[57] Exhibit No. 303, Surrebuttal Testimony, Stannard.

testimony of Stannard expressly objects to: 1) lack of a capital structure in the non-unanimous stipulation and agreement,[58] 2) the ROE expressed in the non-unanimous stipulation and agreement,[59] and 3) the rate design expressed in the non-unanimous stipulation and agreement.[60]

In no way did the failure of the Intervenors to file a stand-alone objection on Friday, August 10 to the non-unanimous stipulation and agreement prejudice LU-MW. The positions of the parties were and are exceeding clear.

Silverleaf Resorts, Inc. and Orange Lake Country Club, Inc. respectful submit this Initial Brief for the consideration of the Public Service Commission of the State Missouri.

Respectfully Submitted,

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[58] *Ibid.* at 7:8-13.
[59] *Ibid.* at 6:13-7-2.
[60] *Ibid.* at 9-17.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been e-mailed to all counsel of record this 31st day of August 2018.

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