BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Tariff Filing of Algonquin Water Resources of Missouri, LLC, to Implement a General Rate Increase for Water and Sewer Customers in its Missouri Service Areas.	))))))	**Case No. WR-2006-0425**

POST-HEARING BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

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COMES NOW the Office of the Public Counsel (Public Counsel) and states for its Post-Hearing Brief as follows:

A. Plant

1. What amount if any, should be reflected as plant-in-service for pre-1993 property?

Plant-in-service should only include plant that documentation shows was invested in by the utility. Algonquin Water Resources of Missouri, LLC (Algonquin) contends in its testimony that adjustments should be made to include pre-1993 property "for which no investment cost is recorded" in the books of Silverleaf Resorts (Silverleaf), the previous owner. However, the evidence shows that the "unrecorded plant" investment does not exist and that the adjustments Algonquin proposes is an attempt to recover the full acquisition price it paid to Silverleaf.

The physical presence of plant equipment at the resorts before 1993 does not mean the utility itself invested the money. (Tr. Pg. 220) Instead, the issue is whether the costs of that plant were already recouped by Silverleaf, as the developer, through its sales

of land, timeshares and condominiums. If the costs were already recouped by Silverleaf, then those costs cannot be recouped a second time through utility rates.

Silverleaf already recouped its pre-1993 utility costs from the sale of land, timeshares and condominiums. Staff witness Featherstone testified that Silverleaf, as both developer and utility, would have no incentive before 1993 to separately account for their infrastructure costs. (Tr. Pg. 199) Mr. Featherstone stated the pre-1993 property would have been a developer cost that would have been passed back through timeshare and condominium sales. (Tr. Pg. 200) Algonquin witness Loos testified that Silverleaf's primary line of business was a timeshare developer and operator, and not a public utility. (Tr. Pg. 42) Mr. Loos stated that a developer like Silverleaf would primarily recover development costs through the sales of land, timeshares and condominiums. (Tr. Pg. 42-43)

Mr. Loos stated that it was his understanding that water and sewer utility main extensions in Missouri were typically handled by contributions from the developer to the utility. (Tr. Pg. 63) He stated that the inclusion of a swimming pool and other amenities were incidental to a developer's marketing effort to recover those costs through sales at a market price which included the value added by the addition of those amenities. (Tr. Pg. 49) A developer would bank on the fact that the availability of swimming pools and other amenities would make a timeshare or condominium more marketable and, therefore, would attract a sale price higher than one without such amenities. Mr. Loos in his direct testimony stated that Silverleaf likely viewed the utility property not much differently than the swimming pools at the resort. (Ex. 1, Pg. 13-14) Mr. Featherstone testified that these assets would have been developer's costs that would have been

recovered through the timeshare sales and condominium sales. (Tr. Pg. 107) Mr. Loos also agreed that Silverleaf may not have identified the plant as utility property but may have rolled it in with the other development costs. (Tr. Pg. 54) Certainly land, timeshares and condominium with water and sewer utilities would be more marketable, and cost more, than those without water and sewer utilities. Therefore, Silverleaf, as the developer, would have recovered the costs of the utility, as it did the costs of the swimming pools, through the increase in market price of the land, timeshares and condominiums it sold.

Silverleaf is a profitable resort development company which has been in business for many years. Mr. Loos testified that Silverleaf and its predecessors have been in the land development business since about 1982 with many different resort properties in many states. (Tr. Pg. 50-51) He agreed that Silverleaf, as primarily a developer, reaped its profits from the selling of residential property, timeshares and condominiums. (Tr. Pg. 344) A profitable company like Silverleaf does not pay out money and operate with a loss for over 20 years while continuing to sell land, timeshares and condominiums. To be profitable, those costs must have been reflected in the sale price of each parcel of land, timeshare and condominium Silverleaf sold.

Algonquin had notice prior to its purchase of the utilities that a portion of the utility plant was not available for use in determining rates. Silverleaf's rate base was determined in 1993 when the Commission granted Silverleaf a certificate of convenience as a public water and sewer utility. Mr. Loos stated that Algonquin was informed of Staff's determination that a portion of the utility had been contributed because in the Silverleaf to Algonquin sale case, the Staff brought up the contribution issue. (Tr. Pg.

82) Mr. Featherstone stated that the Staff discussed with Algonquin its belief that an acquisition premium existed in the sale. (Tr. Pg. 104) Mr. Loos also testified that in that sale case Algonquin made a statement that it would not seek recovery of an acquisition premium that the Commission found. (Tr. Pg. 82) In an attempt to recover the full acquisition price, Algonquin now claims that "unrecorded plant" should be added to the amount of plant as rate base. The Commission should deny this "unrecorded plant" since Algonquin was very aware that the existence of pre-1993 plant would not be available for use in rate determination.

Staff is not refusing to include any pre-1993 plant in Algonquin's rate base. But, the utility has the burden of showing the amount of utility investment in plant. (Tr. Pg. 125) Mr. Loos stated that the Staff told Algonquin that it would include any pre-1993 property for which Algonquin could provide proper documentation, such as invoices, checks and construction contracts, but admitted that no such documentation has been located. (Tr. Pg. 44) Since there was no documentation, Mr. Loos made an estimate of the cost to build the improvements that must have been in place prior to 1993. (Tr. Pg. 60) He found a lack of investment in certain plant that was obviously there, so he called it "unrecorded" and determined that it should be added into rate base. (Tr. Pg. 82-83) But, the issue is the physical plant that was there, but rather who paid for it. Algonquin should not be allowed to include as plant in service any pre-1993 property for which Algonquin cannot provide proper documentation of utility investment.

An argument can be made that if Algonquin is not allowed to recover the price it paid for the utility, Silverleaf would have a windfall. Mr. Loos agreed that Silverleaf may have indeed been paid twice for the plant. (Tr. Pg. 71) This would only be true if

Algonquin paid Silverleaf for a plant for which Silverleaf had already been repaid through the sales of the land, timeshares and condominiums. Therefore, the cause of Silverleaf's windfall would be Algonquin itself and ratepayers should not be required to pay for Algonquin's mistake of paying an acquisition premium for the utility.

Given the lack of documentation, evidence and testimony at the evidentiary hearing, the Commission should adopt Staff's recommendation regarding the amount of pre-1993 plant-in-service to be reflected in the rate base.

2. What is the appropriate level of post-1992 plant that should be included as plant-in-service?

During the evidentiary hearing, several Staff witnesses provided testimony regarding the appropriate level of post-1992 plant that should be included as plant-in-service. The testimony centered on disallowance of post-1992 plant determined to be contributions in aid of construction (CIAC), excess capacity and construction cost overruns. Each of these disallowances will be discussed individually below. Given the evidence regarding these disallowances, the Commission should adopt Staff's recommendation regarding the appropriate level of post-1992 plant that should be included as plant-in-service.

B. Excess Capacity

1. Do Algonquin's facilities include plant held for future use, which should not be included in plant in service, because they include excess capacity? If so, what is the value of the facilities that should not be included as plant-in-service?

The issue in this case is whether all of the utility is used and useful to the ratepayers. New plant should be sized to provide service to current customers plus an additional amount of plant for additional new customers that will connect within a reasonable time frame. Any excess capacity reflects investment that should not be included in plant-in-service and customers should not bear the financial burden of that excess capacity. Algonquin witness Loos agreed that it is unfair to expect a small number of ratepayers to accept the cost of excess capacity that is not useful. (Tr. Pg. 157-158)

Staff witness Merciel stated that Staff did not find any excess capacity at the Ozark Mountain Resort water system or in any of the resorts' sewer systems. (Tr. Pg. 163) However, he said that Staff did find excess capacity at the Holiday Hills Resort and the Timber Creek Resort water systems. (Tr. Pg. 160) Mr. Merciel stated that Staff's position regarding the excess capacity is a fair approach to the ratepayers, considering that this is a developer system. (Tr. Pg. 159) Algonquin witness Hamrick revised his prefiled testimony to say that he reviewed the past two years of water demand data for the three resorts and he agreed with Mr. Merciel's peak hour calculations for each well site. (Tr. Pg. 148, 150) But Mr. Hamrick also stated he believed some of the extra storage tank capacity was necessary for fire flow protection. (Tr. Pg. 150) Although Staff had revised its calculations of excess capacity for Timber Creek Resort and Holiday Hills Resort to include additional capacity to support fire flow protection in Algonquin's rate base, the Staff determined that there is still some excess capacity in the water utilities at those developments. (Tr. Pg. 140)

Investment in excess capacity should not be included as plant-in-service when determining Algonquin's rate base because not all of the water utility capacity in Timber Creek Resort and Holiday Hills Resort is used and useful to the ratepayers. Therefore, the Commission should adopt Staff's determination of excess capacity at these utilities.

C. Construction Cost Overrun

1. Were some of the costs of constructing the facilities imprudently incurred? If so, how much should the plant-in-service accounts be reduced?

Ratepayers should only be required to pay rates based on reasonable expenditures of the utility. Staff has recommended a portion of the costs of the project to improve Well No. 2 at Holiday Hills Resort be disallowed. Staff witness Vesely stated that the cost of the project to improve Well No. 2 was imprudently high or unreasonable. (Tr. Pg. 292) Staff based their disallowance on the difference between what price Silverleaf could have obtained the work at and what price it actually obtained the work at because of the way it handled the matter. (Tr. Pg. 296) This difference in price was due to Silverleaf awarding the contract prematurely and losing the benefit of being able to carry out the work using the low bidder after delaying the low bidder for two years on a project that was supposed to take six months. (Tr. Pg. 296) Therefore, Silverleaf's expenditures on the Well No. 2 project at Holiday Hills were not a fair reflection of the necessary and prudent cost of the work received and, therefore it is unreasonable to record the project at actual cost in Silverleaf's (now Algonquin's) utility accounts.

Mr. Vesely testified that it was the accumulation of delays that became extraordinary. (Tr. Pg. 287) He stated that the evidence showed that Silverleaf was not

adequately prepared to go forward with construction when it awarded the contract for the Well No. 2 project and, therefore, the cost overruns were a result of Silverleaf's own imposed delays, rather than a contractor failure. (Tr. Pg. 274-275) Mr. Vesely stated he had reviewed extensively the information that was provided regarding this specific contract and found no indication of excessive change orders from the original contractor. (Tr. Pg. 277) The change orders and delays were required by Silverleaf itself to address such issues as moving the location of a building and a late determination that it could not send chlorinated water to the golf course for irrigation as it had planned to do. (Tr. Pg. 282-286, 299-300) Mr. Vesely performed an audit of Silverleaf's operations shortly after the Well No. 2 project completed which included an extensive review of documentation provided by Silverleaf as to how the construction project progressed. (Tr. Pg. 278-279)

Algonquin claimed that a failing contractor was the reason for the delay and cost overruns in the Well No. 2 project. But, Larry Schneider Corporation, the original contractor in the Well No. 2 project, was well known to Silverleaf and had performed many projects at the various resorts. Mr. Vesely testified that Silverleaf was in the best position to make a business assessment about the reliability of the original contractor in the Well No. 2 project, Larry Schneider Corporation, because Silverleaf was well experienced and familiar with Larry Schneider Corporation and had selected it as the successful bidder on the project. (Tr. Pg. 279-280) Mr. Vesely also stated that he had reviewed documentation regarding two other major projects accomplished by Larry Schneider Corporation, and found that those projects appeared to have been completed successfully with no mention of any contractor difficulties. (Tr. Pg. 277)

Algonquin witness Hernandez confirmed that Larry Schneider Corporation had performed other construction contracts for Silverleaf at Timber Creek Resort and Holiday Hills Resort near the time of the Well No. 2 project. (Tr. Pg. 261-262) However, Mr. Hernandez has no first hand knowledge of the actual construction process of the Well No. 2 project. (Tr. Pg. 270) He admitted that his knowledge and conclusions regarding the Well No. 2 project came only from Silverleaf staff member, Mike Brown, and Stan Giliham, a staff member of the second low bidder who took over the project; neither were a witness in this case. (Tr. Pg. 263-265, 268-269) Mr. Hernandez performed no independent analysis to determine the costs of continuing with Larry Schneider Construction versus changing contractors. (Tr. Pg. 267) Therefore, there is no verifiable proof that Mr. Hernandez's knowledge and conclusions are correct.

Staff has recommended disallowing the unnecessary costs and recording the project at the cost that the available evidence indicates Silverleaf would have incurred absent the avoidable delays. Since ratepayers should only be required to pay rates based on reasonable expenditures of the utility, the Well No. 2 project at Holiday Hills should be recorded at the cost that Staff has calculated Silverleaf would have incurred absent the avoidable delays.

D. Contributions in Aid of Construction (CIAC)

1. What is the amount of contributions in aid of construction that should be used to reduce Algonquin's plant-in-service accounts?

Plant-in-service should only include plant that documentation shows was invested in by the utility. Ratepayers should not be asked to pay rates based on water and sewer mains which were a contribution in aid of construction of a customer or developer.

Algonquin witness Loos stated that it was his understanding that water and sewer utility main extensions in Missouri were typically handled by contributions from the developer to the utility. (Tr. Pg. 63) Staff witness Johansen agreed that Staff's application of the tariff provisions in Algonquin's tariffs were consistent with Staff's treatment of similar tariff provisions for other water and sewer utilities. (Tr. Pg. 244) Staff witness Featherstone testified that contributed property typically includes the actual distribution of the water system and the collection of the sewer system back from the resort facilities to the wastewater treatment. (Tr. Pg. 119) Silverleaf's (now Algonquin's) tariffs stated that main extensions are handled by contribution by the developer. (Tr. Pg. 63) The tariff required a customer or developer to pay for the actual cost of extending water distribution mains and sewer collection mains as needed to provide service to that customer. Mr. Loos claimed that the tariff provisions regarding CIAC were never applied by Silverleaf. (Tr. Pg. 337) However, Staff witness Vesely testified that Algonquin should have been aware that a tariff was in place, and would have had to become familiar with that tariff when it purchased the utilities from Silverleaf. (Tr. Pg. 201-202) He also stated that Silverleaf had reported CIAC in its 2004 Annual Report to the Commission. (Tr. Pg. 212) Mr. Loos testified that Algonquin knew before it purchased the utility that there was a provision regarding CIAC in Silverleaf's tariff and knew that Silverleaf had reflected CIAC in its Annual Reports the Commission. (Tr. Pg. 326) Therefore, the evidence shows Algonquin was on notice from both Silverleaf's tariff and Annual Reports to this Commission that main extensions were routinely being handled through contribution by the developer as set forth in the tariff provisions.

Mr. Loos agreed that under Algonquin's present tariff, if Silverleaf the developer were to build an extension of the water main today, Silverleaf would pay for those costs. (Tr. Pg. 64) Mr. Featherstone testified that if plant was contributed there should not be a return since there is no investment made by the utility. (Tr. Pg. 120) So, despite the fact that Silverleaf, the developer, was required to pay for the main water and sewer lines, this did not increase the investment base of Silverleaf, the utility company, and no return should be earned by the utility on those contributed lines. Therefore, any customer or developer payment for water and sewer mains was a contribution in aid of construction, including those payments by Silverleaf, the developer.

The evidence and testimony shows that Silverleaf had acknowledged that the water and sewer mains were contributions in aid of construction. Therefore, the Commission should adopt Staff's recommendation that the post-1992 plant should not include water and sewer mains and no return should be earned by Algonquin on those contributed lines.

E. Depreciation Rates

1. What depreciation rates should be applied to the various elements of Algonquin's plant-in-service?

Ratepayers should only be required to pay rates based on reasonable depreciation rates based on average service lives of the utility equipment. A reasonable overall depreciation rate should fall around 2% to 3% and the reserve ratios should generally fall below 50%. (Tr. Pg 351) But, many times the numbers are higher as is reflected in Staff's recommendation which includes rates as high as 14.3%. (Tr. Pg. 355) Staff witness Schad testified that Staff's depreciation rates accurately reflect the average

service lives for water and sewer plant equipment and their respective functions at Algonquin. (Tr. Pg. 361) No salvage values were noted by either Staff or Algonquin. (Tr. Pg. 363-364) Staff's depreciation calculations do not include the "unrecorded plant" or contributed plant as Algonquin's calculation do. (Tr. Pg. 350, 360) Therefore, Staff's depreciation calculations more accurately reflect the actual utility investment in the three resorts.

Algonquin witness Loos testified that he had adjusted Staff's proposed depreciation rates and service lives. (Tr. Pg. 352) Algonquin first determined what reserve ratio they wanted then calculated the service lives that would be necessary for that reserve ratio. The reason for this adjustment was to lower the depreciation rates. (Tr. Pg. 354) But, Mr. Loos admitted that the outcome of his tinkering with the numbers until he got a reserve ratio that was more acceptable to him was that the service lives in his proposal were not reasonable. (Tr. Pg. 353, 355) Mr. Loos reasoning for this tinkering was that the reserve ratios were too high. But, this is not necessarily an indication that Staff's proposal is incorrect. Ms. Schad testified that work needs to be done on getting retirement of equipment posted on the company books, and then the reserve ratios would look very different. (Tr. Pg. 370) Mr. Loos agreed that in reality, the large reserve ratio that Staff had calculated, and that he was attempting to recalculate, was indicative that Algonquin needs to start planning to retire some of the equipment and invest in updated equipment. (Tr. Pg. 358) Therefore, Algonquin's proposed depreciation rates are based on the numbers they would like to use in order to increase what the ratepayers must pay, not on the actual realities of the evidence and reasonable service lives of the utility equipment.

Reasonable depreciation rates must be based on average service lives of the utility equipment. Algonquin's recommendations are not based on reasonable service lives and the calculations have been manipulated to obtain a desired outcome. Therefore, the Commission should adopt Staff's recommended depreciation rates and average service lives to be applied to the various elements of Algonquin's plant-in-service.

F. Capital Structure

1. What capital structure should the Commission apply to Algonquin's investment in determining the proper rate of return on Algonquin's rate base?

The capital structure chosen in this case must provide assurance that the utility's rates are just and reasonable for the ratepayers. Mr. Barnes testified that Staff used a hypothetical capital structure based on a selection of comparable companies, as of December 31, 2005 as the basis for the Staff's capital structure recommendation for Algonquin, Missouri. (Ex. 11, Pg. 4) Algonquin relies on the consolidated capital structure of its parent company, Algonquin Power, for ratemaking purposes. (Ex. 1, Pg. 30)

Staff witness Barnes testified that Algonquin Power is not a comparable company to Algonquin, Missouri. (Tr. Pg. 406) Algonquin Power is a Canadian company, not an American publicly traded company. (Tr. Pg. 374) Algonquin Power is not organized as a publicly traded water corporation as Algonquin, Missouri is. (Tr. Pg. 406) Mr. Barnes testified that the reliance on Algonquin Power's consolidated capital structure for ratemaking purposes is inappropriate because it is not based on Algonquin's own capital

structure and Algonquin Power is a Canadian company which is not organized as a typical publicly traded water utility corporation. (Ex. 29, Pg. 3-4)

Algonquin's reliance on a Canadian company which is not organized as a typically publicly traded water utility corporation is inappropriate as a comparison for Algonquin, Missouri. Therefore, the Commission should apply Staff's hypothetical capital structure based on a selection of comparable companies for the determination of the proper rate of return on Algonquin's rate base.

G. Return on Equity

1. What return on equity should the Commission apply to Algonquin's investment in determining the proper rate of return on Algonquin's rate base?

Rate of return should be based on standard industry accepted methods and should be fair and equitable for the ratepayers. Staff witness Barnes testified that Staff's calculations of return on equity were performed using the same procedures that have been approved by this Commission in other water and sewer cases and are fair and equitable to the ratepayers. (Tr. Pg. 406-407) Mr. Barnes testified that a return on equity in the range of 8.06 percent to 9.06 percent should be applied to Algonquin's rate base. (Tr. Pg. 415) Algonquin witness Loos recommended that the return on equity be in the range of 11.25% to 12.00%. (Tr. Pg. 398) Mr. Loos agreed that he and Staff used basically the same data set for their calculations, but stated that the difference was basically in the way each applied the numbers. (Tr. Pg. 400) He also noted that it was only when he eliminated what he considered to be "inconsistencies" that he came up with higher values than Staff. (Tr. Pg. 402)

In his calculations, Mr. Loos relied on higher growth rates and used a historical book value dividend yield in making his determination of the discounted cash flow growth rate. (Tr. Pg. 384-388) When making these calculations, Mr. Loos concluded that Algonquin required a higher return on equity than other comparable companies. (Tr. Pg. 382) Mr. Loos did not rely on decisions from other states, cases or other academic works, but instead relied exclusively on his own version of a discounted cash flow method for determining return on capital. (Tr. Pg. 376-377) The procedure used by Mr. Loos is not described in any of the textbooks or articles, and is not used by anyone Mr. Loos is aware of but himself. (Tr. Pg. 392-393) Mr. Barnes testified that no weight should be given to Algonquin's high growth rates as it appears it chose different time periods to arrive at a wide growth rate range, and therefore a higher return on equity. (Ex. 12, Pg. 4-5) Mr. Barnes also testified that Algonquin's use of a historical book value dividend yield is inappropriate because this is not what investors expect to receive in the future, and it is not supported by any financial literature Staff is aware of. (Ex. 12, Pg. 2)

Staff and Algonquin utilized basically the same data set, but the evidence shows that the differences are in the elimination of what Algonquin calls "inconsistencies" to produce a higher return on equity. Algonquin's calculations are suspect because they are not based on a procedure used by anyone else but Algonquin and are not described in article or textbooks. Therefore, the Commission should apply Staff's recommended return on equity in the range of 8.06 percent to 9.06 percent to Algonquin's rate base.

H. Payroll Expense

1. What is the appropriate level of payroll expense that Algonquin should be allowed to recover in its rates?

Public Counsel took no position and makes no statement on this issue.

I. Rate Case Expense

1. Should the Commission allow Algonquin to recover in its rates any allowance for the rate case expenses that it incurred in presenting this case to the Commission? If so, how much rate case expense did Algonquin prudently incur, and over how many years should the rate case expense be amortized?

Rate case expense charged to the ratepayers must be based on reasonable and prudent expenditures based on the rate case procedures available to the utility. Algonquin witness Loos testified that Algonquin is requesting the Commission allow it to recover over $225,000 of rate case expense from the ratepayers. (Tr. Pg. 480) Staff witness Boateng stated that because the expense was not prudently incurred, Staff recommended no rate case expense be recovered, or in the alternative, that rate case expense recovery be no more than $5000 which is what Staff estimates the expenses would have been using the small company rate case procedure. (Tr. Pg. 504-505, 522) Mr. Boateng testified that, if you compare Algonquin's projected rate case expense with their revenue requirement using a five year amortization, it would result in every customer of Algonquin having to pay $3.79 per month just for rate case expense as compared to 11 cents per month for a customer of KCPL or 7 cents per month for a customer of Aquila. (Tr. Pg. 518) Mr. Boateng stated that even at Staff's alternative of

$5000 in rate case expense recovery, the impact on the customer would still be 42 cents per month. (Tr. Pg. 522)

Algonquin should have pursued the small company rate increase procedure before filing a formal rate case. Mr. Loos testified that Algonquin knew that the Commission had an informal procedure for small system rate increase requests when it filed this formal case. (Tr. Pg. 469) Algonquin claimed the reason they filed a formal rate case was because the informal procedure took too long. Mr. Loos stated that this was based on the fact that Silverleaf's 1997 small company rate case took about seventeen months before the rates were changed. (Tr. Pg. 474-475) Staff witness Merciel agreed that although a substantial number of informal small company water or sewer cases take longer than eleven months, the delays are not necessarily the fault of the small rate case process. (Tr. Pg. 168) He testified that delays are also not typically due to the actions or inactions of the Staff. (Tr. Pg. 171) Mr. Merciel pointed out that an important way to keep a small company case moving forward is for the company to have their books and records ready for the Staff to review. (Tr. Pg. 168) However, Mr. Merciel noted that many times the records are not available or are in poor shape so that the Staff is unable to use the records available to them. (Tr. Pg. 170) Mr. Loos testified that he knew there were delays of over seven months in the Silverleaf 1997 rate case due only to the fact that Silverleaf made the request while Ascension Resort held the certificate at that time, and after that delay for the merger to take place it took less than eight months to process the request and agree to an increase. (Tr. Pg. 475-476)

Mr. Loos claims that in a small rate case, if there is a result that is not acceptable, then there would be almost two years before the utility would have relief. (Tr. Pg. 81)

However, he ignores the fact that the small rate case procedure could have been used for many of the issues in this case. Mr. Boateng testified that the informal rate procedure could have been pursued first before filing a formal rate increase application, so that the number of issues to be addressed in the later formal filing could be reduced and the rate case expense could also be reduced. (Tr. Pg. 497) He stated that some of the issues might have been settled in an informal rate case and that would have reduced the costs of the rate case. (Tr. Pg. 505) Staff witness Johansen agreed that Algonquin could have come to the Commission utilizing the small rate case procedure, resolved some of its issues and gained the benefit of a rate increase based on those resolved issues, and sought a formal case later on the remaining issues it had. (Tr. Pg. 565) Staff witness Vesely testified that Algonquin could certainly have resolved the issue of obtaining a rate for irrigation in a small rate case procedure because there was no rate set for that water and there had already been full agreement by all the parties that that kind of relief needed to be provided quickly. (Tr. Pg. 555) Mr. Merciel agreed that some of the people who have participated in the small company rate case process for water and sewer companies are not very satisfied with the process or the outcome. (Tr. Pg. 169) However, Mr. Johansen testified that generally, utilities are satisfied with the small company rate increase process, with very few exceptions. (Tr. Pg. 581) Although one instance of receivership after participating in a small rate case procedure was mentioned by Mr. Merciel, he stated that the procedure itself worked, it was just the outcome the company was not happy with. (Tr. Pg. 242) Mr. Merciel also pointed out a formal case would not have gotten them anything they did not already have because, in that case, the company had the opportunity to have a hearing. (Tr. Pg. 242-243) Algonquin could have initiated a

small rate case and implemented increased rates based on those issues immediately. This would have resulted in the utility having increased rates and protected the ratepayers from the unnecessary cost of a full rate case for many of Algonquin's issues. For those few issues that required an evidentiary hearing, a full rate case could have been initiated.

The filing of this formal rate increase request was premature given the fact that very little Algonquin-specific data for the test year existed on which to set rates at the time of the Company's filing. Mr. Loos agreed that very little Algonquin-specific data for the test year existed on which to set rates at the time that Algonquin filed this case. (Tr. Pg. 469) Algonquin had only one and one-half months of Algonquin's operations and had to gather ten and one-half months of operating data from Silverleaf in order to file this rate case in May 2005. (Tr. Pg. 470) Mr. Loos admitted that Silverleaf's records were not in good condition and gathering the data from Silverleaf necessary for this rate case was time consuming and expensive. (Tr. Pg. 470) Mr. Loos also admitted that by filing the case in May 2005 Algonquin had to spend more time and money collecting and assembling the data in preparing updated schedules than if Algonquin had filed the original case sometime after September 2006. (Tr. Pg. 472-473)

Algonquin should not be allowed to include any rate case expense in the rates that will be charged to the ratepayers. The rate case expense requested by Algonquin was not reasonably and prudently incurred because Algonquin should have pursued the small company rate increase procedure before filing a formal rate case and Algonquin's filing was premature. Therefore, no rate case expense incurred in presenting this case to the Commission should be charged to the ratepayers.

J. Rate Design

1. Should the Commission's order establish separate rates for each of Algonquin's three service territories, or should the Commission's order establish a unified rate for water service to Algonquin's service to Ozark Mountain and Holiday Hill service territories?

Public Counsel took no position and makes no statement on this issue.

K. Rate Mitigation

1. Should any increase in rates be phased in, or be otherwise mitigated? If so, how?

Rate mitigation and the effect of a rate increase on the ratepayer should be important considerations in any rate increases, especially when rates are increased significantly over 10%. Staff witness Russo agreed that rate shock is a very real concern when proposing a rate increase. (Tr. Pg. 189) Algonquin witness Loos stated that Algonquin had proposed a two step phase in of their proposed rate increase for rates not including irrigation for the golf course. (Tr. Pg. 178) Mr. Loos stated the first step increase should be in effect for approximately a year before the second step increase would be effective. (Tr. Pg. 179) Mr. Loos also stated that even at the level of Staff's proposed increase, ratepayers deserve the consideration of a phase-in of the increase. (Tr. Pg. 182)

Algonquin's proposal and testimony reflects an understanding that mitigating a rate increase is important to avoid rate shock and other adverse effects a rate increase would have on the ratepayers. Therefore, the effect on the ratepayers of rate increases should be mitigated by phasing in the rate increase over time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 20th day of February 2007:

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