

**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	)	<b><u>Case No. WR-2006-0425</u></b>
Rate Increase for Water and Sewer	)	
Customers in its Missouri Service	)	
Areas.	)	

**PUBLIC COUNSEL’S PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its  
Proposed Findings of Fact and Conclusions of Law states as follows:

**PROPOSED FINDINGS OF FACT**

1. Algonquin Water Resources of Missouri, LLC (Algonquin) is a limited liability corporation owned by Algonquin Water Resources of America (AWRA), who in turn is an indirect, wholly owned subsidiary of Algonquin Power Income Fund. (Ex. 1, Pg. 5)
2. Silverleaf Resorts, Inc. (Silverleaf) is a developer, marketer, and operator of timeshare resorts, who also develops and sells condominium properties and single family lots within the resort boundaries. (Ex. 1, Pg. 6)
3. Algonquin purchased certain water and sewer utilities from Silverleaf, including those at Timber Creek Resorts, Holiday Hills Resorts and Ozark Mountain Resorts in 2004. (Ex. 1, Pg. 5)
4. The total purchase price paid by Algonquin was \$13.2 million dollars of which \$3.8 million dollars is attributable to Missouri properties acquired. (Ex. 1, Pg. 5)

5. The transfer of Silverleaf's utility to Algonquin was approved by this Commission in Case No. WO-2005-0206 (Consolidated). (Ex. 8, Pg. 3)
6. During the transfer case, Algonquin was informed of Staff's determination that a portion of the utility had been contributed. (Tr. Pg. 82)
7. During the transfer case, Algonquin was informed that Staff believed an acquisition premium existed in the sale. (Tr. Pg. 104)
8. During the transfer case, Algonquin made a statement that it would not seek recovery of an acquisition premium. (Tr. Pg. 82)
9. Silverleaf's primary line of business was a timeshare developer and operator, and not a public utility. (Tr. Pg. 42)
10. Silverleaf, as primarily a developer, reaped its profits from selling residential property, timeshares and condominiums.
11. A developer like Silverleaf would primarily recover development costs through the sales of land, timeshares and condominiums. (Tr. Pg. 42-43)
12. 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. (Tr. Pg. 44)
13. No such documentation such as invoices, checks and construction contracts has been submitted or determined to exist for the pre-1993 plant Staff recommending be disallowed. (Tr. Pg. 44)
14. Silverleaf may have been paid twice for the utility plant, first by the ratepayers and again by Algonquin. (Tr. Pg. 71)

15. Algonquin has reviewed the past two years of water demand data for the three resorts and has agreed with Staff's peak hour calculations for each well site. (Tr. Pg. 148, 150)

16. Although Staff has 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 there was still some excess capacity in the water utilities at those developments. (Tr. Pg. 140)

17. Staff determined the cost of the project to improve Well No. 2 was imprudently high or unreasonable. (Tr. Pg. 292)

18. Staff based their disallowance due to construction cost overrun on the Well No. 2 project on the difference between what price Silverleaf could have obtained the work and what price it actually obtained the work at because of the way it handled the matter. (Tr. Pg. 296)

19. The difference in the price on the Well No. 2 project 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.

20. Algonquin witness Hernandez admitted 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 lowest bidder who took over the case; neither were a witness in this case. (Tr. Pg. 263-265, 268-269)

21. Mr. Hernandez performed no independent analysis to determine the costs of continuing with Larry Schneider Construction, the original contractor in the Well No. 2 project, versus changing contractors. (Tr. Pg. 267)

22. In Missouri, water and sewer utility mains are typically handled by contributions from the developer to the utility. (Tr. Pg. 63)

23. 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)

24. Silverleaf's (now Algonquin's) tariffs stated that main extensions are handled by contribution by the developer. (Tr. Pg. 63)

25. Silverleaf had reported contributions in aid of construction (CIAC) in its 2004 Annual Report to this Commission.

26. 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 to the Commission. (Tr. Pg. 326)

27. 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)

28. 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)

29. In order to lower the depreciation rates, Algonquin first determined what reserve ratio they wanted then calculated the service lives that would be necessary for that reserve ratio. (Tr. Pg. 354)

30. The outcome of Algonquin witness Loos 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)

31. 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)

32. 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)

33. Algonquin relies on the consolidated capital structure of its parent company, Algonquin Power, for ratemaking purposes. (Ex. 1, Pg. 30)

34. Algonquin Power is not a comparable company to Algonquin, Missouri in that Algonquin Power is a Canadian company, not an American publicly traded company and Algonquin Power is not organized as a publicly traded water corporation as Algonquin, Missouri is. (Tr. Pg. 374, 406)

35. 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)

36. Staff recommended a return on equity in the range of 8.06 % to 9.06 % be applied to Algonquin's rate base. (Tr. Pg. 415)

37. Algonquin witness Loos recommended that the return on equity be in the range of 11.25% to 12.00%. (Tr. Pg. 398)

38. Algonquin and Staff used basically the same data set for their calculations, but the difference was basically in the way each applied the numbers, in that Algonquin

eliminated what it considered to be “inconsistencies” to come up with higher values than Staff. (Tr. Pg. 400, 402)

39. Algonquin witness 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)

40. 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)

41. Algonquin is requesting the Commission allow it to recover over \$225,000 of rate case expense from the ratepayers. (Tr. Pg. 480)

42. Algonquin has fewer than eight thousand customers, making it eligible to apply for the small water company and small sewer company rate increase procedure.

43. 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)

44. Staff witness 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)

45. Algonquin knew that the Commission had an informal procedure for small system rate increase requests when it filed this formal case. (Tr. Pg. 469)

46. Algonquin's reasoning for not filing an informal rate increase request was that it took too long, 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)

47. Algonquin witness 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)

48. 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)

49. 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 seek a formal case later on the remaining issues it had. (Tr. Pg. 565)

50. Algonquin could have resolved at least 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)

51. 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)

52. 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)

53. 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)

54. 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)

### **PROPOSED CONCLUSIONS OF LAW**

1. The utility has the burden of proof of showing the amount of utility investment in plant.

2. The physical presence of plant equipment at the resorts before 1993 does not mean the utility itself invested the money.

3. Algonquin's "unrecorded plant" investment does not exist and the adjustment Algonquin proposes is an attempt to recover the full acquisition price it paid to Silverleaf.

4. Silverleaf already recouped its pre-1993 utility costs from the sale of land, timeshares and condominiums.

5. Costs already recouped by Silverleaf cannot be recouped a second time through utility rates.

6. 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.



7. Algonquin's proposed inclusion of "unrecorded plant" should be denied since Algonquin was very aware that the existence of pre-1993 plant would not be available for use in rate determination.

8. 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.

9. It is unfair to expect a small number of ratepayers to accept the cost of excess capacity that is not useful.

10. 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.

11. 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.

12. Ratepayers should only be required to pay rates based on reasonable expenditures of the utility.

13. 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.

14. 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.

15. Plant-in-service should only include plant that documentation shows was invested in by the utility.

16. 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.

17. If plant was contributed there should not be a return since there is no investment made by the utility.

18. Any customer or developer payment for water and sewer mains was a contribution in aid of construction, including those payments by Silverleaf, the developer.

19. Staff's recommendation that the post-1992 plant should not include water and sewer mains should be adopted and no return should be earned by Algonquin on those contributed lines.

20. Ratepayers should only be required to pay rates based on reasonable depreciation rates based on average service lives of the utility equipment.

21. Staff's depreciation calculations more accurately reflect the actual utility investment in the three resorts.

22. 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.

23. Staff's recommended depreciation rates and average service lives are reasonable and should be applied to the various elements of Algonquin's plant-in-service.

24. 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.

25. Staff's hypothetical capital structure based on a selection of comparable companies is appropriate and should be adopted for the determination of the proper rate of return on Algonquin's rate base.

26. Algonquin's calculations of return on equity in the range of 11.25% to 12.00% in determining a proper rate of return are suspect because they are not based on a procedure used by anyone else but Algonquin and are not described in article or textbooks.

27. Staff calculations of return on equity in the range of 8.06% to 9.06% were performed using the same procedures that have been approved by this Commission and should be applied in determining a proper rate of return for Algonquin.

28. The general rule governing rate case expense provides that those expenses which are known and measurable, reasonable, necessary and prudently incurred in the preparation and presentation of the Company's case may be included in the expenses of the Company. *In the matter of Missouri-American Water Company's tariff revisions designed to increase rates for sewer service provided to customers in the Missouri service area of the company*, 4 Mo. P.S.C. 3d 205 (1995).

29. Algonquin's projected rate case expense with their revenue requirement using a five year amortization 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, indicating that the rate case expense in this case is not reasonable and prudent.

30. Algonquin should have pursued the small company rate increase procedure before filing a formal rate case.

31. The small water utility and small sewer utility rate increase procedures apply to water and sewer utilities having eight thousand or fewer customers. 4 CSR 204-3.330 & 3.635.

32. The utility general rate increase request procedure applies to water and sewer utilities that have more than five thousand customers. 4 CSR 204-3.030.

33. The informal rate procedure should 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.

34. 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.

35. 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.

36. Algonquin should not be allowed to include any rate case expense in the rates that will be charged to the ratepayers due to the fact that 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.

37. Rate shock is a very real concern when proposing a rate increase.
38. Rate mitigation and the effect of a rate increase on the ratepayer are important considerations in any rate increases.
39. Even at the level of Staff's proposed increase, ratepayers deserve the consideration of a phase-in of the increase.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

By:\_\_\_\_\_

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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 20<sup>th</sup> day of February 2007:

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**/s/ Christina L. Baker**

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