

**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) **Case No. WR-2006-0425 et al.**
for Water and Sewer Service Provided to)
Customers in its Missouri Service Areas.)

**STAFF'S MOTION TO DISMISS THE APPLICATION OF ALGONQUIN WATER
RESOURCES OF MISSOURI, INC. FOR A RATE INCREASE OR, IN THE
ALTERNATIVE, TO MODIFY THE PROCEDURAL SCHEDULE**

COMES NOW the Staff of the Missouri Public Service Commission and, for its Motion to Dismiss the Application of Algonquin Water Resources of Missouri, Inc. for a Rate Increase or, in the Alternative, to Modify the Procedural Schedule ("Motion"), states to the Missouri Public Service Commission as follows:

1. On May 5, 2006, Algonquin Water Resources of Missouri, LLC ("Algonquin") submitted to the Commission proposed tariff sheets intended to implement a general rate increase for water and sewer service provided in its Missouri service area, together with the Direct Testimony of Larry W. Loos.

2. Algonquin and the Staff have both filed pleadings recommending that the Commission establish the twelve months ending September 30, 2005, as the test year, to be adjusted and updated for known and measurable changes through September 30, 2006. The Commission has not issued an order establishing a test year for this case.

3. Algonquin acquired the service areas that are the subject of this rate case from Silverleaf Resorts, Inc. ("Silverleaf") on August 15, 2005. Prior to that time, Silverleaf owned and operated the water and sewer facilities that serve Algonquin's service territory. As a result, the assumed test year reflects the results of eleven months of operation (October 2004 through August 2005) by Silverleaf and just one month of operation (September 2005) by Algonquin.

4. On July 5, 2006, the Commission issued its Order Setting Procedural Schedule, in which it: ordered Algonquin to file its case updated for known and measurable changes through September 30, 2006, by October 31, 2006; ordered all other parties to file their direct testimony on the revenue requirement issues by November 15, 2006 and their direct testimony on the rate design issue by December 1, 2006; ordered all parties to file their rebuttal testimony by December 28, 2006 and their surrebuttal testimony by January 12, 2007; and scheduled an evidentiary hearing to be held January 22-26, 2007.

5. Because of the very short time period that exists between the date on which Algonquin must file its updated case (October 31, 2006) and the date on which the Staff must file its direct testimony (November 15, 2006), it is crucial that the Staff have a timely opportunity to review and audit Algonquin's most current financial information and that Algonquin provide timely responses to the Staff's data requests.

6. Algonquin's application for a rate increase must be based on its own prudent investment and its own prudently incurred expenses, and not upon the investment and expenses of its predecessor, Silverleaf. Although Algonquin filed this case in May, 2006, the information that it filed was primarily based upon the expenses of Silverleaf. In fact, the assumed test year includes eleven months of operating data for Silverleaf, and just one month of operating data for Algonquin. The case that Algonquin filed was inadequate and the tariffs were not supported by operating data pertaining to Algonquin. It is fair to say that the Staff has not had Algonquin's case since May 2006, and in fact, the Staff still does not have Algonquin's case and will not have Algonquin's case until at least October 31.

7. The Staff did not have a timely opportunity to review and audit Algonquin's most current financial information, in the following respects:

- In its Data Request No. 11, dated August 17, 2006, the Staff requested that Algonquin furnish its complete ledger. Algonquin's response to this data request was due September 6, 2006. If Algonquin had timely provided this information to Staff, the Staff would have had the use of this information for 70 days before the Staff's direct testimony must be filed. In fact, Algonquin did not furnish the complete ledger until October 17, 2006, just 29 days before the Staff's direct testimony must be filed.
- Algonquin's initial response to Data Request No. 11, on September 7, indicated that the ledgers were too voluminous, and that Staff would have to travel to Branson, Missouri to examine them. On September 21 and 22, Staff met with Algonquin officials for plant tours and interviews regarding Algonquin operations, and to review documents, including the ledgers. The Staff was then informed that the former owner of these utility properties, Silverleaf, had maintained the ledgers, but discontinued some of its financial records at the beginning of 2005, because of the pending sale of the utility properties to Algonquin, even though the Commission had not yet authorized such sale transaction. Algonquin therefore only provided the ledgers for the first three months of the test year (October, November, and December 2004), during the Staff's visit to Algonquin's Missouri headquarters in Branson.
- The Staff then asked Algonquin to provide the ledgers for the remaining months of the test year, and was informed that Silverleaf had this information. The Staff was promised that it would promptly receive the missing financial information – the ledgers for the months of January through August 2005.

- On October 12, 2006, the Staff called and e-mailed Algonquin personnel to inquire about the status of the missing financial information. Algonquin told the Staff that Silverleaf had not supplied this information, but that Algonquin would check on its status.

- The Staff finally received the missing ledger information on October 17, 2006. The Staff is still evaluating the information, to see if the data is usable. As of the date of this pleading, the Staff may still be missing some of the financial information, which the Staff requested on August 17, 2006, and which is necessary to construct the financial records for the year ended September 30, 2005 – the test year that Algonquin proposed.

- In preparing its direct testimony, the Staff needs to examine and audit the ledgers of both Algonquin and its predecessor, Silverleaf. Both Algonquin and Silverleaf were required to maintain their ledger in accordance with the Uniform System of Accounts. However neither company maintained its ledger in accordance with USOA, as required by regulation. This failure to comply with the USOA has made the Staff's audit much more difficult and time-consuming, through no fault of the Staff.

8. Algonquin has not submitted timely responses to the Staff's data requests, in the following respects:

- The Staff has submitted a total of 34 data requests to Algonquin, for which responses were due on or before the date of this Motion. Algonquin's responses to 17 of those data requests have been late by three days or more, making it much more difficult for the Staff to prepare its direct testimony, through no fault of the Staff.

- To date, Algonquin has still not provided certain information that is essential to the preparation of the Staff's direct testimony. Specifically, the Staff issued Data Request No. 26 on August 24, 2006, in which it requested certain information, including data concerning customer numbers and gallons of water sold, by meter size, by month, for January through August 2005, the last eight months of the assumed test year. Algonquin finally responded to this data request on October 12, 2006 – 49 days after the request was issued. Algonquin's response did not provide the necessary information, so the Staff had to issue a follow-up Data Request 26.1, on October 13, 2006. That request is still outstanding.

9. Algonquin's use of test year data that pertain to the operations of another company, Silverleaf, its failure to provide the Staff with a timely opportunity to audit Algonquin's books, and its failure to submit timely responses to the Staff's data requests have made it impossible for the Staff to prepare a response to Algonquin's rate increase request.

10. The Staff therefore respectfully submits that Algonquin's pending rate increase request should be dismissed. If this request is granted, Algonquin could submit a new rate case at such time as it has all the operating data that is necessary for the Commission to determine what rates are just and reasonable for the service that Algonquin provides to its ratepayers.

11. The Staff suggests that the effort that Algonquin has devoted to the instant case would not be wasted. The principal issues in this case pertain to the proper determination of Algonquin's rate base. The facts that are relevant to determining Algonquin's rate base will not change significantly between the time when the instant rate case was filed and the time when Algonquin will be able to next file a complete rate case suitable for determination by the Commission.

12. If the Commission overrules the Staff's motion to dismiss this case, the Staff submits, in the alternative, that the Commission modify the procedural schedule to allow the Staff adequate time to respond to Algonquin's updated case filing.

13. Because the Commission's hearing schedule is very crowded at the present time, and the operation-of-law date for the tariffs that Algonquin has filed is April 4, 2007, it will be difficult, if not impossible, to reschedule the time for the evidentiary hearing in this case. If the Commission decides to modify the procedural schedule, the Staff suggests the following:

<u>Event</u>	<u>Present Date</u>	<u>Revised Date</u>
Other parties file direct testimony on revenue requirement	November 15, 2006	December 1, 2006
Other parties file CCOS and rate design testimony	December 1, 2006	December 11, 2006

Other events in the procedural schedule would not need to be changed.

WHEREFORE, the Staff respectfully moves the Commission for its order dismissing the application of Algonquin Water Resources of Missouri, Inc. for a rate increase or, in the alternative, respectfully moves the Commission for its order modifying the procedural schedule, as set forth above.

Respectfully Submitted,

/s/ **Keith R. Krueger**

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CERTIFICATE OF SERVICE

I hereby certify that copies of this Motion have been mailed with first class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel and/or parties of record this 23rd day of October 2006.

/s/ **Keith R. Krueger**