

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

OFFICE OF THE PUBLIC COUNSEL’S APPLICATION FOR REHEARING

COMES NOW the Office of the Public Counsel and for its Application for Rehearing states that rehearing is warranted and the Report and Order should be reheard because the decision is unlawful, unjust, and unreasonable and is arbitrary, capricious, unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is in violation of constitutional provisions of due process, is unauthorized by law, and constitutes an abuse of discretion, all as more specifically and particularly described in this motion and as follows:

I. Introduction

The Office of the Public Counsel (Public Counsel), pursuant to Section 386.500, RSMo. 2000 and 4 CSR 240-2.160, specifically sets forth the reasons warranting a rehearing and moves the Missouri Public Service Commission (Commission) for rehearing of its Report and Order of March 13, 2007, effective March 23, 2007, rejecting the tariffs (JW-2006-0847 and JS-2006-0848) filed by Algonquin Water Resources of Missouri, LLC (Algonquin) and ordering Algonquin to file proposed water and sewer service tariff sheets in compliance with that Report and Order.

This Commission's authorization of Algonquin's recovery of \$174,954 in rate case expense alone¹ is unlawful, unjust and unreasonable and is not supported by competent and substantial evidence on the record and is against the weight of the evidence and constitutes an abuse of discretion. This amount of rate case expense is unreasonable and not supported by the record in that the record shows that there are fewer than 1000 total connections and this amount for a system which has fewer than 1000 total connections is unreasonable and imposes an undue burden on customers given the approved rates for service. This will result in each customer having to pay several dollars per month in rate case expense alone. By comparison, the Staff of the Public Service Commission (Staff) stated the amount of rate case expense allowed in a recent KCPL rate case would cost each ratepayer about eleven cents per month, and rate case expense allowed in a recent Aquila case would cost each ratepayer about seven cents per month, on monthly bills that are much larger than Algonquin's bills for water and sewer service.²

Section 393.150.2, RSMo. provides that in any hearing involving a request for a rate increase, the burden of proof is on the water or sewer corporation to show that the increased rate or proposed increased rate is just and reasonable. The record evidence shows that incurring rate case expenses of \$174,954 was not prudent and approval of that amount is unlawful, unjust and unreasonable and is not supported by competent and substantial evidence on the record and is against the weight of the evidence and constitutes an abuse of discretion. The Report and Order also gives no guidance regarding how the rate case expense is to be allocated among the ratepayers. Given that there are two separate classes of ratepayers, commercial (Silverleaf) and non-commercial, there is controversy among the parties as to how to allocate the rate case

¹ *Report & Order*, Case No. WR-2006-0425, March 13, 2007.

² Commission Case No. WR-2006-0425, *Staff's Brief*, filed 2-20-2007.

expense among the customer charges for the classes to insure that proposed rate is just and reasonable.

II. Not All Of Algonquin's Rate Case Expense Was Prudently Incurred

Staff's testimony regarding the \$174,954 in rate case expense came from information Algonquin provided to Staff in a Data Request.³ This amount was not verified as entirely prudent by the Staff, only that it was a number provided by Algonquin.⁴ The burden of proving that its costs were prudent was on Algonquin, and the Commission should not reward Algonquin for its failure to do so in the evidentiary record.

Algonquin could have avoided the substantial cost of a formal rate case by filing a small company rate case to resolve some of the issues in the case. Even if it could not have reached agreement with Staff and Public Counsel on all issues, it could have then proceeded to hearing on the unresolved issues, as was done in the Hickory Hills and Aqua Missouri cases. By doing so, it could have obtained more immediate rate relief and could have significantly reduced its rate case expense. But Algonquin made no attempt to pursue the small company rate case process. Of course, that is their right. They are not obliged, by statute or rule or otherwise, to file a small company rate case. They can choose to spend their money any way that they wish. But, Algonquin is spending the ratepayers' money when it asks the Commission to allow it to recover this expense from the ratepayers. The Commission can only allow Algonquin to recover its rate case expenses if the expenditures are reasonable and prudent. Public Counsel submits that the record does not support that the \$174,954 Algonquin claimed as rate case expense was prudently incurred.

³ Tr. 512 line 10-14.

⁴ *Id.*

A. The Costs For Algonquin's "Unrecorded Plant" Argument Were Not Prudently Incurred Costs.

Algonquin was well aware that what it called "unrecorded plant" was not an allowable item in rate base. In the sale case, Case No. WO-2005-0206, Staff warned Algonquin that it considered roughly \$2.4 million of the \$3.8 million purchase price for Silverleaf's Missouri utility assets to be an acquisition premium that Algonquin could not recover from ratepayers.⁵ Even knowing this, Algonquin agreed to the purchase of Silverleaf's Missouri utility assets. At that time, Algonquin also agreed not to attempt to recoup any acquisition premium the Commission may determine in a future rate case.⁶

Staff argued that Algonquin's attempt to recover any amount over Staff's rate base number was an "end run" around Algonquin's promise to not recover any acquisition premium from the ratepayers. This Commission agreed with Staff's position and found that \$2.4 million of the \$3.8 million purchase price for Silverleaf's Missouri jurisdictional assets was an acquisition premium and, therefore, unrecoverable from Missouri jurisdictional ratepayers.

Algonquin's attempt to recover an acquisition premium through its "unrecorded plant" argument not only cost Algonquin time and money, but also took an enormous amount of the Staff's, Public Counsel's and this Commission's time and money. Algonquin's decision to pursue its "unrecorded plant" argument given its knowledge that Staff had previously determined there was an acquisition premium was its own choice and an imprudent choice. However, any rate case expense incurred due to this meritless argument was not prudently incurred.

⁵ Commission Case No. WO-2005-0206, *Staff Recommendation* (filed March 28, 2005).

⁶ Tr. 55, Algonquin Statement of Position as to Acquisition Premium and Motion to Cancel Hearing (filed July 25, 2005).

Ratepayers should not be required to reimburse Algonquin for the expenses of pursuing this unnecessary and imprudent decision.

During the evidentiary hearing Mr. Loos stated Algonquin incurred about 30% of its rate case expense to present its “unrecorded plant” theory.⁷ Therefore, the record shows that Algonquin’s rate case expense should be reduced by 30% due to this undisputed evidence by Algonquin’s witness since the rate case expenses incurred to present this argument were not prudently incurred.

B. Premature Filing Costs Were Not Prudently Incurred Costs.

Algonquin should not be allowed to recover the portion of the rate case expenses incurred due to the premature filing of this case. Algonquin acquired the assets of Silverleaf on August 15, 2005, and then filed this rate case based on a test year ending September 30, 2005. Of necessity, this required the Company to utilize 10-1/2 months of Silverleaf’s operating data and only 1-1/2 months of Algonquin’s operating data. The use of a combination of such data would be misleading, at best. As a result, the Commission ordered Algonquin to update this test year data by one full year to September 30, 2006. Company witness Loos testified that Silverleaf’s records were poor. He admitted that he had to gather 10-1/2 months of data from Silverleaf, gather 1-1/2 months of data from Algonquin, and then merge the data just so he could file a pro forma test year, and said that this process was time-consuming and expensive.⁸ At an even greater expense to Algonquin, he then had to spend more time collecting and assembling data in order to update the test year data so that it would include 12 months of Algonquin’s operations,

⁷ Tr. 484, line 20-25 & Tr. 485, line 1-5.

⁸ Tr. 470, line 6 & Tr. 471, line 21.

which is “[u]nder ideal circumstances,” a good thing.⁹ This resulted in tremendous duplication of effort. Mr. Loos acknowledged that it cost perhaps \$40,000 to assemble this data the first time (for the 12 months ending in September 2005) and a similar amount for the second time (for the update through September 2006).¹⁰

The premature filing served only to drive up the costs for both the Company and the Staff and made the case more difficult to analyze, with no discernible benefit to anyone. The Commission should not reward this imprudent premature filing and should not require the ratepayers to bear this imprudent expense. Therefore, the rate case expense should be reduced by the uncontroverted evidence in the record that Algonquin imprudently incurred \$40,000 to prematurely file this rate case based on a test year ending September 30, 2005.

III. No Guidance is Given in the Report and Order as to How Rate Case Expense is to be Allocated Among the Ratepayers

The Report and Order also gives no guidance regarding how the rate case expense is to be allocated among the ratepayers. Given that there are two separate classes of ratepayers, commercial (Silverleaf) and non-commercial, there is controversy among the parties as to how to allocate the rate case expense among the customer charges for the classes to insure that proposed rate is just and reasonable.

The evidentiary record shows that Silverleaf has slightly less than 50% of the connections¹¹ but is responsible for approximately 75% of the water billed and 85% of the sewer service billed.¹² Once the golf course, which is owned by Silverleaf, begins paying for its irrigation water usage, the amount of water billed to Silverleaf will go up substantially.

⁹ Tr. 471, line 22 & Tr. 472, line 24.

¹⁰ Tr. 473, line 10 & Tr. 474, line 16.

¹¹ Ex. 1, *Direct Testimony of Larry Loos*, Schedule LWL-0, Item 3.

¹² Ex. 1, *Direct Testimony of Larry Loos*, Schedule LWL-1, Sheet 1 of 1.

Given the large difference in usage, non-commercial ratepayers should not be treated the same as the commercial ratepayer, Silverleaf. A large portion of the rate increase request was to allow Algonquin to establish a rate in its tariff for providing water to the Silverleaf golf course for irrigation. It is not just and reasonable to expect the non-commercial ratepayers to bear the same share of the rate case expense as Silverleaf. Therefore, Public Counsel requests that the Commission consider this relevant factor that was not determined in the case and give guidance regarding the equitable allocation of rate case expense among the commercial (Silverleaf) and non-commercial ratepayers.

IV. Conclusion

The award of \$174,954 in rate case expense is not supported in the record. Uncontradicted evidence of the imprudent expenses came from the Company's own witness Mr. Loos, who was in a position to know the amount of these imprudent expenses and who testified at the evidentiary hearing. The competent and substantial evidence in the record does not support reimbursement from ratepayers. With such a large burden being placed on the ratepayers, it is extremely important that the Commission take extra care to review the record so that only those rate case expenses that the evidence shows have been prudently incurred are approved. The evidence in the record of the evidentiary hearing in this case demonstrates that the \$174,954 this Commission approved was in error and should be reduced because it was not prudently incurred and supported in the record. The record shows that evidence from the Company's own witness contradicts the case expenses approved in the Report and Order.

The Report and Order also gives no guidance regarding how the rate case expense is to be allocated among the ratepayers. It is not just and reasonable to expect the non-commercial ratepayers to bear an equal share of the rate case expense as Silverleaf. Therefore, Public

Counsel requests guidance from the Commission regarding the equitable allocation of rate case expense among the commercial (Silverleaf) and non-commercial ratepayers.

WHEREFORE, Public Counsel respectfully requests that the Commission grant rehearing of its Report and Order of March 13, 2007 and make a proper determination regarding the amount of prudently incurred rate case expense based on the evidence and provide guidance to the parties regarding the equitable allocation of rate case expense among the commercial (Silverleaf) and non-commercial ratepayers.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

By: _____
Christina L. Baker (#58303)
Assistant Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-5565
(573) 751-5562 FAX
christina.baker@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 21st day of March 2007:

Missouri Public Service Commission

Service List for Case No. **WR-2006-0425** Last Updated: **3/1/2007**

Office General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Keith Krueger
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Keith.Krueger@psc.mo.gov

Dean L Cooper
Algonquin Water Resources of Missouri, LLC
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

Paul A Boudreau
Algonquin Water Resources of Missouri, LLC
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102

/s/ Christina L. Baker
