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with Staff's case-in-chief presented in testimony<sup>1</sup> and is different in only a few places due to the compromise reached between Staff and Liberty Utilities. For the reasons argued in *Staff's Initial Brief*, and incorporated herein by reference, Staff's recommended resolution of the contested issues is the most just and reasonable. Thus, because Staff's filed testimony and the weight of the evidentiary record support the terms of the *Stipulation*, Staff recommends that the Commission approve the *Stipulation*—or alternatively make findings and conclusions consistent with the *Stipulation's* terms.

The opponents to the *Stipulation* are the intervenors Silverleaf Resorts, Inc., and Orange Lake Country Club, Inc. (together, "Silverleaf Resorts"), and intervenor Ozark Mountain Condominium Association ("OMCA"). While those parties have proposed alternative cases that are different from Staff's or the *Stipulation's* revenue requirement, *neither party has provided any testimony that calculates the actual dollar value for their issues.*

For example, Silverleaf Resorts states in its *Initial Brief* that "Silverleaf is in agreement with Staff's calculation of LU-MW's (Liberty Utilities) revenue requirement with the exception of cost of capital."<sup>2</sup> However, nowhere in the filed testimony of Silverleaf Resorts' expert witness is there a dollar value of the difference between Staff and Silverleaf Resort's proposed return on equity.<sup>3</sup>

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<sup>1</sup> Compare, Ex. 105, Harrison Direct, Schedule PRH-d2 and EFIS Item No. 72, *Non-Unanimous Stipulation and Agreement*; see also, *Non-Unanimous Stipulation and Agreement*, Attachment A. No other party presented a full discussion of the methodology of its proposed revenue requirement.

<sup>2</sup> EFIS Item No. 136, *Initial Brief of Silverleaf Resorts Inc. and Orange Lake Country Club, Inc.*, p. 7, § IV.a, ¶ 2.

<sup>3</sup> See, Ex. 302 Stannard Refined Rebuttal, 8-10 (discussion of percentages, but no dollar figure); Ex. 303, Stannard Surrebuttal Testimony, 3-7 (discussion of percentages, but no dollar figure).

Similarly, OMCA's *Post-Hearing Brief* appears to suggest that the Commission should consider denying some amount of the rate increase due to historical customer service concerns.<sup>4</sup> However, neither this suggestion, nor the recommended fixes, have corresponding dollar values;<sup>5</sup> nor is there any testimony or evidence in the record of the amount of these proposed adjustments.<sup>6</sup>

Because there is no evidentiary support for these positions, the only course of action is to reject them. As a result, the only relevant evidence in the record before the Commission is the positions of Staff and Liberty, which support the terms of the *Stipulation*. For those foregoing reasons, Staff recommends the Commission approve the *Stipulation*.

**Nothing in the evidentiary record supports Ozark Mountain Condominium Association's Post-Hearing Brief requests.**

OMCA provided through its witness, Don Allsbury, direct testimony describing historical events and issues experienced by OMCA relating to water service provided by Liberty Utilities.<sup>7</sup> This testimony did not contain any recommended action or suggestions for improvement.<sup>8</sup> As pointed out by OMCA in its brief, Commissioner Rupp asked during opening statements what OMCA would like the Commission to do with respect to

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<sup>4</sup> EFIS Item No. 135, *Post-Hearing Brief of Ozark Mountain Condominium Association*, p. 11-12.

The suggestion from OMCA's *Post-Hearing Brief*, although unstated, is that "past customer service deficiencies" (*Post-Hearing Brief* p.10) are either ongoing, or rise to the level of violations of Commission statute, rule or company tariff sufficient to support an evidentiary finding or legal determination by the Commission under §§ 386.310(1), 393.140(2), or 393.140(5) RSMo. OMCA has provided no evidence or expert opinion to support the finding of a past, present, or ongoing violation of any Commission operations or customer service statutes, rules, or tariffs sufficient to warrant a remedial Commission order pursuant to the cited statutes.

<sup>5</sup> *Id.*

<sup>6</sup> See argument below.

<sup>7</sup> *OMCA Post-Hearing Brief* at 4 (citing Ex. 401, 2:21- 8:8).

<sup>8</sup> Ex. 401, Allsbury Direct, 1:1-8:10.

customer service.<sup>9</sup> The response to this inquiry may be summarized as: utilizing an employee who can provide timely response, prompt reporting of issues from a contractor to Liberty Utilities, and having a live person to answer the phone for customer service calls.<sup>10</sup> The *Stipulation* resolves these requests.

Although Mr. Allsbury provided testimony at the evidentiary hearing, his testimony did not include any recommended action or suggestions for improvement.<sup>11</sup> And as presented in testimony and at hearing, Staff determined the incidents described in Mr. Allsbury's Direct Testimony have been resolved, in part because the water system has been repaired and is currently a reliable source of water.<sup>12</sup> Despite this lack of supporting testimony, OMCA nevertheless provided in its brief six (6) specific recommendations for actions or suggestions for improvement.

Having just been presented with these recommendations in OMCA's brief, Staff makes no conclusion as to the appropriateness of these recommendations. Staff notes, however, that there is little to no support for these recommendations in either written or live testimony. Furthermore, because of this lack of support, it follows that there is no corresponding necessary adjustment to revenue requirement due to any purported misdoing by Liberty Utilities relating to customer service at OMCA.

Nothing in the evidentiary record suggests that the historical operations problems are either ongoing or unresolved violations of Commission statute, rule or tariff. OMCA

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<sup>9</sup> Hrg. Tr. Vol. 5, 75:7-11 ("So you -- Ozark Mountain agrees with Silverleaf positions and then you separated out customer service. What would you like this Commission to do that is not in the Silverleaf's position when it just comes to customer service.").

<sup>10</sup> *Id.* at 75:12-77:77:14.

<sup>11</sup> *Id.* at 165:13-178:21.

<sup>12</sup> Ex. 112, Roos Rebuttal 3:17-19. Mr. Allsbury did not file any surrebuttal testimony responding to or otherwise rebutting Staff's conclusion on these matters. Hrg. Tr. Vol. 5, 201:1-10.

witness Allsbury had ample opportunity to file surrebuttal testimony or provide live testimony confronting or contradicting Staff's testimony and conclusions.<sup>13</sup> OMCA did not file or otherwise provide such testimony.

**Silverleaf Resorts, Inc.'s argument that its phase-in mitigates rate shock is without merit because its proposed ultimate rate exceeds Staff's proposed rate.**

Silverleaf Resorts argues in its brief that Silverleaf Resorts' proposed phase-in of the rate increase over a four year period will mitigate the rate shock caused by Liberty Utilities' timing of this rate case.<sup>14</sup> However, for reasons stated in *Staff's Initial Brief*, the potential for any rate shock is mitigated by the nature of how utility bills are actually paid by the Silverleaf Resorts Subset.<sup>15</sup> Additionally, testimony by Staff Witness Matthew Barnes further illustrates that such an argument is misplaced and thus Silverleaf Resorts' phase-in proposal could lead to confusion and frustration.

Mr. Barnes completed a bill comparison with different levels of customer usage that shows the impact of Staff's rate design compared to the final, post-phase-in rate of Mr. Stannard's alternative rate design proposal for the Silverleaf Resorts Subset.<sup>16</sup>

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<sup>13</sup> The only apparent contradiction was the factual nature of a meeting between OMCA and a Liberty Utilities operations manager, Hrg. Tr. Vol. 5, 171:3-174:15. The rest of Mr. Allsbury's testimony focused on historical issues, not any present or continuing issues. See, Hrg. Tr. Vol. 5 168:4-178:5.

<sup>14</sup> *Initial Brief of Silverleaf Resorts, Inc. and Orange Lake Country Club, Inc.* at 12 (citing Ex. 302, *Stannard* Refiled Rebuttal 16:15-20).

<sup>15</sup> See, EFIS Item No. 133, *Staff's Initial Brief*, p. 21-22.

<sup>16</sup> Ex. 102, Barnes Surrebuttal, 4:9-13.

<b>Table 1</b>					
<b>Water</b>					
	2,000 Gallons		3,000 Gallons		4,000 Gallons
Staff	\$	40.34	\$	47.09	\$ 53.84
Mr. Stannard	\$	36.78	\$	47.28	\$ 57.78
Difference	\$	3.56	\$	(0.19)	\$ (3.94)
		<u>Fixed Charge</u>		<u>Commodity Charge</u>	
Staff	\$	26.84	\$	6.75	
Mr. Stannard	\$	15.78	\$	10.50	

<b>Table 2</b>					
<b>Sewer</b>					
	2,000 Gallons		3,000 Gallons		4,000 Gallons
Staff	\$	85.50	\$	111.08	\$ 136.66
Mr. Stannard	\$	86.18	\$	115.61	\$ 145.04
Difference	\$	(0.68)	\$	(4.53)	\$ (8.38)
		<u>Fixed Charge</u>		<u>Commodity Charge</u>	
Staff	\$	34.34	\$	25.58	
Mr. Stannard	\$	27.32	\$	29.43	

This comparison shows that Staff's rate design and the final year of Mr. Stannard's rate design are not much different in terms of resulting rates (for water, a \$3.56 difference at 2,000 gallons of use, a difference of only \$0.19 at 3,000 gallons). However, rather than providing rate stability, Silverleaf Resorts' phase-in proposal under-collects in years one (1), two (2), and three (3), to be deferred to following periods, and then over-collects in years three (3) and four (4) with rates higher than the final rate proposed by Silverleaf Resorts, above.<sup>17</sup> This proposal sends inconsistent price signals,<sup>18</sup> could result in customer confusion and frustration,<sup>19</sup> and

<sup>17</sup> Ex. 103, Busch Surrebuttal, 5:8-14.

<sup>18</sup> Ex. 103, Busch Surrebuttal, 7:6-7.

<sup>19</sup> Ex. 3, Schwartz Surrebuttal, 6:21-23.



should be denied by the Commission. Most importantly, Silverleaf Resorts' argument that Staff's proposed rate creates rate shock, while Silverleaf Resorts' mitigates rate shock, is contrary to their own logic because for two years customers would *pay more* than the ultimate rate under Silverleaf Resorts' proposal.

**Silverleaf Resorts Inc.'s counter arguments against Staff's Rate Design are without merit.**

Silverleaf Resorts, Inc., and Orange Lake Country Club, Inc., as represented to the Commission in their Application to Intervene,<sup>20</sup> and as determined by the Commission after argument, are the customers of Liberty Utilities:

Movants [Silverleaf Resorts, Inc., and Orange Lake Country Club, Inc.] frame themselves as an intermediary, **but they are the customer, as they are financially responsible to the utility; the individual timeshare customers are separately responsible to the resort for utility services and other maintenance fees.** This is most clearly evidenced by the penalties for failure to pay such fees to the resort, which are liens and foreclosure, but not disconnection of utility services.<sup>21</sup>

Moreover, as already argued in Staff's *Initial Brief*, Silverleaf Resorts, Inc., and Orange Lake Country Club, Inc., pay the Liberty Utilities utility bills, and recover those costs in a maintenance fee invoiced to the resort timeshare owners.<sup>22</sup>

Nevertheless, Silverleaf Resorts has argued in its *Initial Brief* and in testimony, that Staff's rate design "hurts the smallest *users* the most"<sup>23</sup> or "the lowest volume *customers* are hurt the most."<sup>24</sup> Silverleaf Resorts' argument should be rejected because it ignores the fact *that only Silverleaf Resorts, Inc., and Orange Lake Country*

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<sup>20</sup> EFIS Item No. 12, *Application to Intervene of Orange Lake Country Club and Silverleaf Resorts Inc.*, p. 1, ¶ 5 ("a uniquely situated ratepayer").

<sup>21</sup> EFIS Item No. 25, *Order Denying Motion to Dismiss*, p. 5.

<sup>22</sup> See, EFIS Item No. 133, *Staff's Initial Brief*, p. 26-28.

<sup>23</sup> EFIS Item No. 136, *Initial Brief of Silverleaf Resorts*, p. 14 (emphasis added).

<sup>24</sup> Ex. 302, Stannard Refiled Rebuttal, 18:2 (emphasis added).

*Club, Inc., are responsible for the 371 metered accounts billed by Liberty Utilities.*<sup>25</sup> Silverleaf Resorts, then, *is* the “lowest volume customer” or “smallest users.” It is also, logically speaking, the highest volume customer and biggest users of its same system. These costs are not borne by the timeshare owners, month-by-month, in the form of bills by Liberty Utilities, but instead in the form of “maintenance fees.”<sup>26</sup> Thus, any argument raised by Silverleaf Resorts about any potential harm to the lowest volume customer, where the implication Silverleaf Resorts was making was that a timeshare owner was a direct customer, must be dismissed as irrelevant.

And, *assuming* that timeshare owners *are* customers, any alleged rate shock would be mitigated by the fact that the purported 36,686 timeshare owners<sup>27</sup> ultimately pay the cost of water service at 371 meters.<sup>28</sup> Mathematically, this means that *approximately 99 customers pay toward one meter* and any increase would then be “passed through” under the maintenance fee provision of the Declaration to that volume of timeshare owners.<sup>29</sup>

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<sup>25</sup> EFIS Item No. 25, *Order Denying Motion to Dismiss*, p. 5; Ex. 304, Affidavit of Hugh Rosenblum.

<sup>26</sup> Ex. 304, Affidavit of Hugh Rosenblum.

<sup>27</sup> Ex. 302, Stannard Refiled Rebuttal, 5:2 (“36,686 timeshare owners”).

<sup>28</sup> Hrg. Tr. Vol. 5, 278:18-24.

<sup>29</sup> It is troubling that, in Staff’s attempt to present this argument to the Commission and parties, it is labelled as “duplicitous.” EFIS Item No. 136, *Initial Brief of Silverleaf Resorts*, p. 14. There is nothing duplicitous about trying to show how Staff’s development of a rate design based on the actual usage and actual costs associated with Silverleaf Resorts’ own 371 meters does not cause rate shock to either Silverleaf Resorts, or, as raised by Silverleaf Resorts in its own testimony, the Silverleaf Resorts timeshare owners.

## CONCLUSION

For all of the reasons provided above, Staff recommends that Commission treat the *Stipulation* as unanimous, and enter an order approving the terms of the *Stipulation*. Alternatively, Staff recommends that if the Commission does not treat the *Stipulation* as unanimous, that it make findings and conclusions consistent with the terms of the *Stipulation*. As presented in its testimony, at hearing, and as argued in this brief and its *Initial Brief*, Staff's recommended resolution to the various issues presented supports the terms of the *Stipulation*.

**WHEREFORE**, Staff respectfully submits its *Staff's Reply Brief* in the above-captioned matter.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all parties and or counsel of record on this 11th day of September, 2018.

**/s/ Jacob T. Westen**