

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application for a Rate)
Increase Request for Liberty Utilities) **File No. WR-2018-0170**
(Missouri Water), LLC d/b/a Liberty Utilities)

ORDER GRANTING STAFF'S MOTION TO STRIKE AND EXTENDING THE DATE FOR FILING TESTIMONY

Issue Date: August 2, 2018

Effective Date: August 2, 2018

On July 30, 2018, the Staff of the Missouri Public Service Commission filed a motion asking the Commission to strike portions of the prefiled rebuttal testimony of Silverleaf Resorts, Inc. and Orange Lake Country Club Inc. ("Silverleaf"). Staff also included a motion for expedited treatment of the motion to strike.

Staff requested that a telephone conference be held with Silverleaf and the regulatory judge to resolve the issue. On July 30, 2018, a telephone conference was scheduled for the morning of August 2, 2018. On July 31, 2018, Silverleaf filed a response to Staff's motion to strike. On August 2, 2018, Staff and Silverleaf presented their respective arguments during the scheduled telephone conference.

Staff asks the Commission to strike portions of Silverleaf's rebuttal testimony referencing Staff's settlement offer and work product produced in support thereof. Staff supports its proposition with Commission Rule 4 CSR. 240-2.090(7) which concerns settlement offers and pre-hearings before the Commission, and states:

Facts disclosed in the course of a pre-hearing conference and settlement offers are privileged and, except by agreement, shall not be used against participating parties unless fully substantiated by other evidence.

Silverleaf, in its response, agrees that Staff's proposed disposition agreement is a "confidential settlement communication." However, Silverleaf disagrees that work product produced in support of Staff's settlement offer is confidential. Silverleaf supports this proposition with Commission Rule 4 CSR 240-2.135(2)(5), which states in part:

Reports, work papers, or other documentation related to work produced by internal or external auditors, consultants, or attorneys, except that total amounts billed by each external auditor, consultant, or attorney for services related to general rate proceedings shall always be public[.]

Commission Rule 4 CSR 240-2.135(2) concerns Confidential Designation, not privilege. Confidential information may be used against participating parties but must be designated confidential and not open to the public. Privileged information, by contrast, may not be used against participating parties absent being fully substantiated by other evidence, waiver, or a Commission order.

Public policy encourages settlement by making settlement offers privileged. A public policy which is not simple to follow is useless as a guideline for the parties. It would make little sense for public policy to require a ruling on a per document basis regarding whether privilege applied to that particular document. Commission rule 4 CSR 240-2.090(7) contemplates this when it states, "**Facts** disclosed **in the course of** ...settlement offers are privileged..." (emphasis added). Both the settlement offer and the work product produced in preparation of the settlement offer are privileged. The Commission will order portions of Silverleaf's rebuttal testimony stricken. Silverleaf shall file rebuttal testimony compliant with this order, but is not limited to merely redacting its present filing.

THE COMMISSION ORDERS THAT:

1. Staff's *Motion to Strike and Motion for Expedited Treatment* is granted.
2. Portions of Silverleaf's rebuttal testimony referencing the settlement offer or work product produced in preparation of the settlement offer are stricken.
3. Silverleaf shall file substitute rebuttal testimony in compliance with this order no later than August 3, 2018.
4. The deadline to file surrebuttal testimony is extended until August 7, 2018.
5. This order shall be effective when issued.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

John T. Clark, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 2nd day of August, 2018.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 2nd day of August 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 2, 2018

File/Case No. WR-2018-0170

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

Office of the Public Counsel
Hampton Williams
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Liberty Utilities
Paul A Boudreau
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
PaulB@brydonlaw.com

Liberty Utilities
Dean L Cooper
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

Missouri Public Service Commission
Jacob Westen
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
jacob.westen@psc.mo.gov

Orange Lake Country Club, Inc.
Joshua Harden
1201 Walnut St., Suite 2900
Kansas City, MO 64106
Joshua.Harden@stinson.com

Ozark Mountain Condominium Association, Inc.
Sarah E Giboney
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
giboney@smithlewis.com

Silverleaf Resorts, Inc.
Joshua Harden
1201 Walnut St., Suite 2900
Kansas City, MO 64106
Joshua.Harden@stinson.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.