



settlement conference. The parties were unable to agree on this issue and on May 3, 2005, the Commission set a procedural schedule.

According to the procedural schedule, the parties filed testimony, an issues list and position statements. The hearing was set for July 28 and 29, 2005. All of the contested issues had a bearing on the rate base (or current book value) of Silverleaf, and the resulting acquisition adjustment. Staff and the Office of the Public Counsel argued that there was an acquisition premium and that if the premium could be passed on to ratepayers, then the sale of assets would be detrimental to the public interest. Absent this concern, Staff and Public Counsel agreed that the transaction was not detrimental to the public interest. Applicants, however, insisted that if there was an acquisition premium it need not be discussed in this case but would be better addressed in a rate case.

After further discussion between the parties, Algonquin filed a Statement of Position as to the acquisition premium and moved the Commission to cancel the hearing. In its pleading, Algonquin stated that it would not seek to recover, through customer rates, any acquisition premium associated with this transaction that may be determined by the Commission in a rate case. Satisfied with this statement, Staff and Public Counsel agree that a hearing is no longer necessary and that the proposed transaction is not detrimental to the public interest.

## **Discussion**

### Jurisdiction

Section 393.190, RSMo 2000, requires water and sewer companies to obtain Commission approval prior to selling assets. Silverleaf is a water and sewer company as defined in Section 386.020. The Commission therefore has jurisdiction over this matter.

Section 393.190 also requires that a statement be included in the application as to what impact the sale will have on the tax revenues of the political subdivisions in which the company is located. Joint Applicants state that there will be no impact on the tax revenues.

#### Filing Requirements

Commission rules 4 CSR 240-3.310 and 3.605 set out information that must be provided to the Commission by a sewer and water company proposing to sell its assets. Briefly, that information includes: (1) a description of the property being sold; (2) a copy of the sales contract; (3) verification by the proper authority or resolution of the board of directors; (4) the reason the proposed sale is not detrimental to the public interest; (5) financial information from the purchaser showing the effect of the acquisition; and (6) the impact on tax revenues of the political subdivision where the property being sold is located.

Upon review of the application the Commission finds that the Joint Applicants have satisfied the limited requirements of the Commission's rules. Therefore, "[t]he Commission may not withhold its approval unless it can be shown that [the sale] is detrimental to the public interest."<sup>1</sup>

#### Public Interest

Initially, Staff and Public Counsel opined that the sale of Silverleaf's assets to Algonquin would be detrimental to the public interest because of the possibility of an acquisition premium being passed on to ratepayers in a future rate case. As discussed above, however, Algonquin has stated that it will not seek to recover in a rate case any

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<sup>1</sup> *State of Missouri ex rel. Fee Fee Trunk Sewer, Inc. v Litz*, 596 S.W.2d 466 (Mo. App. E.D. 1980).

acquisition premium found by the Commission to exist. Based on this statement, Staff and Public Counsel agree that the proposed sale is not detrimental to the public interest.

#### Certificates of Convenience and Necessity

As noted in Staff's Memorandum, filed on March 28, 2005, Silverleaf currently serves 720 water and 250 sewer customers. These customers will still need service when Algonquin buys Silverleaf's assets. There is clearly a need for sewer and water service.

Staff also notes that Algonquin is a newly formed Missouri limited liability company with Algonquin Water Resources of America as its sole member. Algonquin Water Resources is an indirect, wholly-owned subsidiary of Algonquin Power Income Fund, a publicly traded Canadian income trust which holds approximately \$800 million in energy and infrastructure-related assets in the U.S. and Canada. Staff states that Algonquin has a very high level of stability and that the proposed transaction will not adversely affect the financial condition of Algonquin. With its financial backing, Algonquin is financially able to run a water and sewer company.

Lastly, Staff notes that Algonquin's parent company, Algonquin Water Resources, serves approximately 50,000 water and sewer connections in Arizona and Texas. This is evidence that the company has the technical and managerial competency to operate water and sewer companies. Staff also states that it has been advised that Silverleaf's local managers and operations personnel, who have performed competently, will remain in their current positions.

#### **Conclusion**

The Commission finds that there has been no showing that the sale of Silverleaf to Algonquin will be detrimental to the public interest. Therefore, the sale will be approved.

The Commission also finds that it is necessary and convenient for the public interest to grant Algonquin certificates of service authority to provide water and sewer service and will grant the certificates.

The Commission places Algonquin on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against the company. These obligations include, but are not limited to, the following:

1. The requirement to file an annual report, subject to a penalty of \$100 and an additional \$100 per day for each day the Company remains in noncompliance, pursuant to Section 393.140(6), RSMo 2000.
2. The requirement to pay an annual assessment fee, pursuant to Section 386.370. Because assessments are facilitated by order of the Commission, failure to comply with the order will subject the Company to penalties ranging from \$100 to \$2000 per each day of noncompliance, pursuant to Section 386.570, RSMo 2000.
3. The requirement to provide safe and adequate services at just and reasonable rates, pursuant to Section 393.130, RSMo 2000.
4. That the Company comply with all relevant state and federal statutes and rules, including but not limited to, rules of this Commission, the Department of Natural Resources, and the Environmental Protection Agency.
5. That the Company comply with all orders of this Commission, subject to penalties for noncompliance ranging from \$100 to \$2,000 per day, pursuant to Section 386.570.

Moreover, if the Commission finds, upon conducting a hearing, that Algonquin fails to provide safe and adequate service or has defaulted on any indebtedness, the Commission shall petition the Circuit Court for an order attaching the assets and placing the Company under the control of a receiver.<sup>2</sup> Furthermore, the Commission has the authority to appoint a temporary receiver until such time as the Circuit Court grants or

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<sup>2</sup> Section 393.145, RSMo 2000.

denies the petition for receivership.<sup>3</sup> Algonquin is also placed on notice that the Commission can, without first holding a hearing, issue an order in any case, “in which the commission determines that the failure to do so would result in the likelihood of imminent threat of serious harm, to life or property.”<sup>4</sup>

**IT IS THEREFORE ORDERED:**

1. That Silverleaf Resorts, Inc., is authorized to sell its assets, as identified in the Asset Purchase Agreement, to Algonquin Water Resources of Missouri, LLC.

2. That Silverleaf Resorts, Inc., and Algonquin Water Resources of Missouri, LLC, are authorized to perform in accordance with the terms described in the Asset Purchase Agreement, as amended, and to take any and all other actions which may be reasonably necessary and incidental to the performance of the agreement.

3. That Algonquin Water Resources of Missouri, LLC, is granted a certificate of convenience and necessity to operate a water system to serve the areas for which Silverleaf Resorts, Inc., currently holds a certificate and provides service.

4. That Algonquin Water Resources of Missouri, LLC, is granted a certificate of convenience and necessity to operate a sewer system to serve the areas for which Silverleaf Resorts, Inc., currently holds a certificate and provides service.

5. That Algonquin Water Resources shall file a pleading with the Missouri Public Service Commission informing the Commission of when the transaction has been completed. The Commission will then cancel the certificates Silverleaf Resorts, Inc., currently holds.

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<sup>3</sup> Section 393.145.2 RSMo (Cum Supp 2005).

<sup>4</sup> Section 386.310, RSMo 2000.

6. That Algonquin Water Resources of Missouri, LLC, is authorized to operate Silverleaf Resorts, Inc.'s existing tariffs until Algonquin has adopted Silverleaf's tariffs.

7. That Algonquin Water Resources of Missouri, LLC, shall adopt Silverleaf Resorts, Inc.'s existing tariffs, which will necessitate the submission of a tariff title page, a tariff adoption page, and an index page for each of Silverleaf's tariffs.

8. That Algonquin Water Resources of Missouri, LLC, shall submit those items described in ordered paragraph 7 to the Staff of the Commission. Only if a conflict arises with the submission will it become a contested matter and be filed with the Commission.

9. That this order shall become effective on August 14, 2005.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Jones, Regulatory Law Judge