

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 4<sup>th</sup> day of  
April, 2018.

In the Matter of the Application of Rate        )  
Increase Request for Liberty Utilities        )  
(Missouri Water), LLC d/b/a Liberty Utilities    )

**File No. WR-2018-0170**

**ORDER DENYING MOTION TO DISMISS**

Issue Date: April 4, 2018

Effective Date: April 4, 2018

On December 15, 2017, Liberty Utilities (Missouri Water), LLC d/b/a Liberty Utilities (“Liberty”) submitted a request to implement a general rate increase in its water and sewer rates, under 4 CSR 240-3.050, the Small Utility Rate Case Procedure (Small Rate Procedure).

On February 8, 2018, Orange Lake Country Club, Inc. and Silverleaf Resorts, Inc. (“Movants”) filed a *Motion to Dismiss, or in the Alternative, to Order Liberty Utilities (Missouri Water), LLC to File a Tariff Pursuant to Section 393.140(11)*. Parties were ordered to respond to the motion no later than February 23, 2018. The Commission’s Staff (“Staff”) and Liberty timely filed responses in opposition. Movants supplemented their motion to dismiss with a reply clarifying their position. All parties were permitted to brief the timeshare issue set out in Movants’ reply, and the parties filed timely briefs on March 7, 2018.

The requirements for a water or sewer utility to use the Small Rate Procedure are simply that the utility serves 8,000 or fewer customers. Movants essentially put forth three

reasons they believe the case should be dismissed, or that in the alternative Liberty should have to file a tariff as in a general rate case. First, Movants argue that Liberty is not the kind of small utility that the Small Rate Procedure was designed to assist. Second, Movants argue that Liberty has in excess of the 8,000 customers required by the Small Rate Procedure. Third, Movants argue indirectly that because they bear the majority of any rate case expense that would be factored into Liberty's rates, good cause exists to defer the rate case filing preference to Movants, who would rather pay the higher cost of rate case expense in exchange for greater due process participation.

**1) Is Liberty the kind of small utility that the Small Rate Procedure was designed to assist?**

Movants state that Algonquin Power & Utilities ("Algonquin") is the corporate parent of Liberty. The motion to dismiss asserts that Algonquin has annual revenue of two billion dollars, total assets of ten billion dollars, and over 2,200 employees. Movants' motion states: "The [Small Rate Procedure] is not necessary to advance Liberty Utilities (Missouri Water) interests because it is not the type of small, unsophisticated utility for which the [Small Rate Procedure] was designed." Movants point to the parent company Algonquin as evidence that Liberty is too large and sophisticated to use the Small Rate Procedure. Algonquin may be a large company with resources that could be deployed in a general rate making case; however, nothing in the Small Rate Procedure rule indicates that parent companies are a considered factor.

Statutory construction requires first looking to the plain language of the rule for ambiguity before attempting to decipher its meaning through intent. Here there is no ambiguity in the language of 4 CSR 240-3.050: "Notwithstanding the provisions of any

other commission rule to the contrary ... a water or sewer utility serving eight thousand (8,000) or fewer customers ... shall be considered a small utility under this rule.” While it is true that Liberty may be more sophisticated than a great many smaller water and sewer utilities for which the rule may have been designed, its use of the Small Rate Procedure is acceptable provided it has 8,000 or fewer customers.

**2) Does Liberty have in excess of the 8,000 customers required by the Small Rate Procedure rule?**

Movants state in their motion to dismiss:

“Silverleaf Resorts is an intermediary entity between Liberty Utilities (Missouri Water) and the 36,686 time-share vacation homeowners of these resort properties which pay Liberty Utilities (Missouri Water) for water and sewer services. Interpreted consistently with the purpose of the [Small Rate Procedure], Liberty Utilities (Missouri Water's) actual number of end-user customers greatly exceeds the 8,000 customer threshold for filing under [Small Rate Procedure].”

Commission Rule 4 CSR 240-3.010(7) defines customer: “Customer means any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, etc., that accepts financial and other responsibilities in exchange for services provided by one (1) or more public utilities.

Liberty’s tariff defines a customer as: “Any person, firm, corporation or governmental body which has contracted with the company for water service or is receiving service from company, or whose facilities are connected for utilizing such service.”

Silverleaf contends that they have 36,686 timeshare owners who are also customers of Liberty as defined by Rule 4 CSR 240-3.010(7), and also under Liberty's tariff. Movants point out that Rule 4 CSR 240-3.010(7), does not require a contractual relationship between the customer and the public utility, only that they accept financial responsibility for the utilities services. Movants believe that timeshare owners meet that criterion as they are financially responsible to the resort for utility services, and a portion of their maintenance fees go to pay invoices from Liberty.

Movants see their role as merely an intermediary situated between the individual timeshare owners and the utility in their motion to dismiss, stating:

"Where there is an intermediary entity which simply passes through the utility bills, it is the number of end-user customers which should count for the purposes of determining [Small Rate Procedure] eligibility, not the number of intermediary entities, which do not own, control or manage any of the assets which provide service to the end-user customer."

Liberty in its sur-reply stated that under its approved tariff an affirmative act is required on the part of the customer to request service and be charged for it. Liberty's tariff P.S.C. MO No. 2, Orig. Sheet No. 10, Rule 4(a) states:

A written application for service, signed by the customer, stating the type of service required and accompanied by any other pertinent information, will be required from each customer before service is provided to any unit. Every customer, upon signing an application for any service rendered by the company, or upon taking of service, shall

be considered to have expressed consent to the company's rates, rules and regulations.

No information provided by any party indicates who applied for the water and sewer services.

The Commission's Staff in *Staff's Response to Movant's Reply* are of the opinion that, "The definition of "customer" under Commission regulation 4 CSR 240-3.010(7), leads Staff to calculate the number of customers by the number of meters served by a utility." Staff cites no authority for this assertion and "meter" does not appear in the 4 CSR 240-3.010(7), definition of customer.

The language of Rule 4 CSR 240-3.010(7), states clearly that a customer accepts financial responsibility in *exchange* for services provided by a public utility. An exchange is a two-way trade. While Movants state that no contractual relationship need exist between the customer and the public utility, this stretches the plain meaning. The public utility is *exchanging* services for the customers' acceptance of financial responsibility; any other reading misses the rules plain meaning: That the customer is directly financially responsible to the utility. Movants 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.

Additionally, prior to Liberty acquiring the water and sewer systems they were constructed for and owned by the resort. In August of 2005, Silverleaf sold the water and sewer assets to Algonquin, Liberty's parent company. In its brief on timeshare owners as

customers, Movants quote WO-2005-0206, *Order Approving Sale of Assets* in support of their proposition that the Commission recognizes timeshare owners as utility customers, "These customers will still need service when Algonquin buys Silverleaf's assets. There is clearly a need for sewer and water service." Movants failed to quote the preceding sentence in the order which states in part, "...Silverleaf currently serves 720 water and 250 sewer customers." Given that Silverleaf did not object to the classification of them having fewer than 1000 customers at the time of the sale of assets, it appears that Silverleaf did not then consider timeshare owners as utility customers.

**3) Should the Commission make Liberty file a general rate case at the preference of Movants as the utility's largest customer?**

Movants assert that they account for 60% of Liberty's revenues in Missouri, and accordingly will bear a majority of the rate case expense that is factored into rates. Movants imply that they would rather tolerate potentially greater rate case expense for what they view as greater due process in a general rate case. Most of what Movants are classifying as a deprivation of due process is the procedural content of the Small Rate Procedure rule. As specified before, Liberty meets the minimal requirements to avail itself of the Small Rate Procedure.

Movants read the Small Rate Procedure too narrowly. Movants state that there is no provision in the Small Rate Procedure by which an intervening party may request an evidentiary hearing; however, there is no provision indicating that intervenors may not request an evidentiary hearing. The Small Rate Procedure is silent on intervenors. Movants seek instruction from the Commission on how intervenors participate. There may be some limitations on what an intervenor may be able to do under the Small Rate

Procedure rule, and Movants may test those limitations, but those limitations are best addressed by application of the rules and not an advisory opinion.

The Commission will deny Movant's motion to dismiss.

**IT IS ORDERED THAT:**

1. Orange Lake Country Club, Inc. and Silverleaf Resorts, Inc.'s *Motion to Dismiss, or in the Alternative, to Order Liberty Utilities (Missouri Water), LLC to File a Tariff Pursuant to Section 393.140(11)* is denied.
2. This order shall be effective when issued.



**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Chm., Kenney, Rupp, Coleman, and  
Silvey, CC., concur

Clark, Regulatory Law Judge

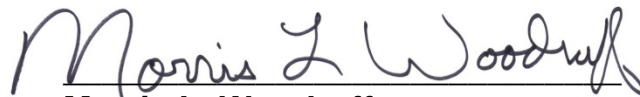
**STATE OF MISSOURI**

**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 4<sup>th</sup> day of April 2018.



  
Morris L. Woodruff  
Secretary



**MISSOURI PUBLIC SERVICE COMMISSION**

**April 4, 2018**

**File/Case No. WR-2018-0170**

**Missouri Public Service  
Commission**

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

**Sincerely,**



**Morris L. Woodruff  
Secretary**

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