

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 SILVERLEAF RESORTS, INC. AND ORANGE LAKE COUNTY CLUB, INC.'S MOTION TO STRIKE, AND EXTENDING THE DATE FOR FILING TESTIMONY

Issue Date: August 2, 2018

Effective Date: August 2, 2018

On August 1, 2018, Silverleaf Resorts, Inc. and Orange Lake Country Club Inc. ("Silverleaf") filed a motion asking the Commission to strike portions of the prefiled rebuttal testimony of Staff witness David Murray. On August 2, 2018, a telephone conference was held with the Silverleaf, Staff, and the regulatory judge regarding a motion to strike filed by Staff. No party was opposed to addressing Silverleaf's motion to strike as well, and the parties argued their respective positions.

Silverleaf asks the Commission to strike portions of David Murray's rebuttal testimony, specifically attached schedules DM-r1 and DM-r2 as improper supplementation of Staff's direct testimony. Silverleaf supports its position under Commission Rule 4 CSR. 240-2.130(10) which states:

No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing. This provision does not forbid the filing of supplemental direct testimony for the purpose of replacing projected financial information with actual results.

What the supplement means is to augment testimony after it has been filed. This definition of supplement is also supported by schedule A attached to Silverleaf's motion to strike, *Staff's Response to Commission's Order Directing Filing*, which summarizes KCP&L and KCP&L GMO's position: "The Companies conclude by requesting the Commission enforce its rule, and not allow OPC to supplement its case-in-chief, direct testimony with ***new affirmative positions or additional revenue requirement adjustments*** in rebuttal or surrebuttal testimony." (emphasis added). The rule does not preclude the attachment of exhibits to that testimony. The problem with the included schedules is not that it may supplement Staff's direct testimony but that the included information is excessive to the issues to which he is responding.

Silverleaf also argues that the testimony is not responsive. Liberty Utilities is adopting expert testimony from a prior Liberty Utilities gas rate case as part of Jill Schwartz's direct testimony. Silverleaf is not objecting to that, Silverleaf is objecting to David Murry adopting Staff's report on the GR-2018-0013 as well as his own prior testimony in that rate case as the entirety of his testimony in the present water rate case. This creates two distinct problems regarding the inclusion of Staff's report and David Murray's prior testimony:

The first is the inclusion of confidential information relating to the Liberty Utilities gas case. Staff acknowledges that this is inappropriate and agrees that confidential information from the gas case should be removed.

The second is that it opens the door to transferring testimony from one case to another where that testimony is actually a response to an entirely different rate case.

While the issues may be the same, and the cases may have similarities, it forces the other parties and the Commission to determine what specifically the adopted testimony is responding to. The implication is that the Commission should just insert the word “water” wherever the word “gas” is used, and that is not sufficient. Staff’s witness may certainly use his analysis from the gas case in responding to the water case but must actually respond to the water case.

Commission Rule 4 CSR 240-2.130(7) contemplates rebuttal testimony as actual testimony, and not an attachment from another case. The Commission finds that David Murray’s adoption of Staff’s report and his testimony from GR-2018-0013 as his testimony in the above captioned file is non-responsive. Staff shall file rebuttal testimony for David Murray compliant with this order, but is not limited to merely removing the schedules from that testimony.

THE COMMISSION ORDERS THAT:

1. Silverleaves’s *Motion to Strike the Rebuttal Testimony of Staff Witness David Murray* is granted.
2. Schedule DM-r1 and DM-r2 are stricken.
3. Staff shall file substitute rebuttal testimony for David Murray 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". The signature is written in a cursive style.

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

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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**

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