

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the matter of the tariff filing of                     )  
Algonquin Water Resources of Missouri,                )  
LLC to implement a general rate increase             )  
for water and sewer service provided to               )  
customers in its Missouri service areas.               )

**Case No. WR-2006-0425**

**STAFF'S RESPONSE TO ORDER DIRECTING FILING**

**COMES NOW** the Staff of the Missouri Public Service Commission and submits the following Response to Order Directing Filing.

1. On March 1, 2007, the Commission issued an Order Directing Filing, in which it ordered all parties to state their position on what legal authority, if any, the Commission has to order Algonquin to file emergency tariffs to permit it to immediately charge for the water it supplies to Holiday Hills golf course for irrigation. The Commission also ordered the parties to state what objection, if any, they have to such an emergency tariff.

2. The Staff is unable to find legal authority for the Commission to issue an emergency tariff for the water that Algonquin furnishes to Silveleaf for golf course irrigation.

3. The Western District of the Court of Appeals addressed the issue of an emergency tariff most notably and most exhaustively in *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561. In that case, Laclede filed a rate case, and shortly thereafter filed a request for an interim rate increase, claiming that the rates then in effect amounted to a confiscation of its property, in violation of the due process clauses

of the United States and Missouri constitutions. The court there relied upon its interpretation of Sections 386.270 and 386.430, to hold that Laclede failed to carry its burden of proving facts amounting to confiscation. The theory is that if the company is earning a rate of return that is so unreasonably low as to show such a deteriorating financial condition that would impair the utility's ability to render adequate service or render it unable to maintain its financial integrity, an emergency increase may be granted.

4. However, in the present case, there is no claim that Algonquin may be or become unable to render adequate service unless an emergency rate increase is granted. Algonquin has not made such a claim, and no evidence has been offered in support of such a claim. Rather, an interim increase is being considered because Silverleaf is presently paying nothing whatsoever for the water it uses for irrigation, and that is an unjust result. Accordingly, the Staff knows of no basis for granting an emergency rate increase.

5. The Staff does believe, nonetheless, that the Commission could order authorize Algonquin to file a tariff that would go into effect immediately and would require Silverleaf to promptly begin paying for the water it uses for irrigation.

6. When Algonquin filed its application for a rate increase in this case, it filed a tariff sheet, which would require Silverleaf to pay \$1.25 per thousand gallons for irrigation water, beginning at the effective date of the tariff. The Commission subsequently suspended that tariff sheet, along with all others that Algonquin filed with its application.

7. Silverleaf received notice of Algonquin's proposal to charge \$1.25 per thousand gallons for irrigation water, and had an opportunity to be heard on that matter.

Nonetheless, Silverleaf did not intervene in this case. The Commission may now withdraw the suspension of the tariff sheet that Algonquin filed, and order that the new rates become effective within 10 days, or perhaps less.

8. Based upon the Order Directing Scenarios that the Commission issued on March 1, 2007, and upon discussions of this case in Agenda meetings, the Staff believes that the Commission's ultimate resolution of the issues in this case will result in an irrigation rate that is at least \$1.25 per thousand gallons. This is also the rate that the Company has requested, and the Staff believes that the Office of the Public Counsel does not oppose this rate. It therefore appears that all parties agree that the permanent rate for irrigation should equal or exceed \$1.25 per thousand gallons.

9. If the Commission would enter an order, by March 8, 2007, authorizing Algonquin to implement an irrigation tariff such as that described above, with an effective date eight or 10 days later, this new rate would be in effect for just a little more than two weeks before the operation of law date for Algonquin's rate case, when the permanent irrigation rate would take effect. The revenue generated by this increase would be minimal, if water usage is normal for this time of year. However, making the new irrigation rate effective as soon as possible would serve to discourage Silverleaf from drawing down an excessive amount of water before the effective date of the Commission's Report and Order in this rate case.

10. The Staff does not object to the issuance of an irrigation tariff, at the rate of \$1.25 per thousand gallons, to become effective as soon as possible.

**WHEREFORE**, the Staff submits its Response to Order Directing Filing.

Respectfully submitted,

/s/ Keith R. Krueger

Keith R. Krueger  
Deputy General Counsel  
Missouri Bar No. 23857

Attorney for the Staff of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-4140 (Telephone)  
(573) 751-9285 (Fax)  
[keith.krueger@psc.mo.gov](mailto:keith.krueger@psc.mo.gov) (e-mail)

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 5th day of March, 2007.

/s/ Keith R. Krueger