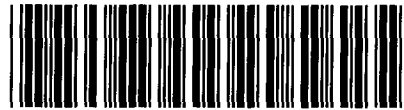




Control Number: 46256



Item Number: 1504

Addendum StartPage: 0

**SOAH DOCKET NO. 473-17-1641.WS
PUC DOCKET NO. 46256**

RECEIVED

**APPLICATION OF LIBERTY
UTILITIES (WOODMARK SEWER)
CORP. AND LIBERTY UTILITIES
(TALL TIMBERS SEWER) CORP. TO
CHANGE RATES FOR SEWER
SERVICE IN SMITH COUNTY,
TEXAS**

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BEFORE THE STATE OFFICE

2017 FEB 13 PM 2:18
PUBLIC UTILITY COMMISSION
OF
FILING CLERK

ADMINISTRATIVE HEARINGS

INTERIM APPEAL OF SOAH ORDER NO. 4

COMES NOW Silverleaf Resorts, Inc. ("Silverleaf") and files this interim appeal of Order No. 4 denying Silverleaf's intervention in the above-referenced docket, and in support thereof, respectfully shows as follows:

I. INTRODUCTION

Silverleaf represents approximately 80% of the total revenues paid to Liberty Utilities (Liberty Silverleaf) LLC ("Liberty Silverleaf") and is currently the complainant in P.U.C. Docket No. 46642 that the Public Utility Commission ("Commission") has referred to SOAH to determine whether Liberty Silverleaf provided false information to the Commission and is significantly over-earning.¹ Although Silverleaf does not pay rates directly to Liberty Silverleaf's affiliates Liberty Woodmark and Liberty Tall Timbers, Silverleaf absolutely will be affected by the rate decisions made in this rate case and therefore has standing under Commission rules. As Silverleaf argued in its motion to intervene, Liberty Silverleaf has admitted that it commingled plant and depreciation expense among its affiliates.² The Commission in its Preliminary Order in P.U.C. Docket No. 46642 acknowledged this

¹ See Preliminary Order.

² See P.U.C. Docket No. 46642, Liberty's Response and Motion to Dismiss at 5.

commingling of assets and expense among Liberty affiliates when it expressly included as an Issue to Be Addressed “Do any inaccuracies in Liberty’s 2015 annual report affect the pending rate case involving Liberty’s affiliates in Docket No. 46256?” This issue recognizes that because Liberty has improperly commingled plant and depreciation expense, rate decisions made in one affiliate’s proceeding potentially impacts other affiliates’ cost of service. Further, early discovery responses from Liberty Silverleaf suggest the problem with commingled plant and expense may be more extensive than Liberty Silverleaf has so far acknowledged. As explained below, Liberty Silverleaf in attempting to recalculate its Annual Report could not interpret its own General Ledger account, so it just uploaded new plant numbers to try and get to a pre-determined depreciation expense number,³ despite being unsure of what the plant entries should be for the consolidated companies.⁴

Importantly, the Commission’s standard for intervention does not limit standing to those persons actually paying rates to the utility at issue, but rather any party with a justiciable interest that is affected by the rates being established can intervene. The Commission’s decisions in this docket related to depreciation and affiliate expense will necessarily carry over into the Liberty Silverleaf cost of service when Liberty’s errors are corrected. Furthermore, because the Commission is simultaneously reviewing Liberty Silverleaf’s (Docket No. 46642) and Tall Timbers/Woodmark (Docket No. 46256) cost of service in separate open dockets, now is the time to rectify Liberty’s errors resulting from the commingling of assets and expense.

Finally, the ALJ in Order No. 4 listed as one reason for denying intervention the potential impact on rate case expenses. Silverleaf’s expenses for participation in this docket will not be charged to ratepayers, so its intervention should not have an impact on that account. Silverleaf’s

³ Liberty Silverleaf’s accountant characterized the GL entry as “nasty” and that he could not “tell what the entry would look like.” See Exhibit A, email from Eric Joplin dated December 23, 2016.

⁴ See Exhibit A, email from Crystal Greene dated December 13, 2016.

intervention may cause Liberty Tall Timbers/Woodmark to incur additional rate case expenses, but these efforts should benefit the accuracy and quality of the analysis as it relates to all Liberty customers, not just Silverleaf. Finally, Silverleaf notes that Liberty has already incurred rate case expenses related to two materially deficient applications. Any impact on rate case expenses caused by Silverleaf's intervention will pale in comparison to the expenses incurred by Liberty to just get this docket started. Moreover, this potential impact on rate case expenses, whatever it may be, should not control the decision on whether Silverleaf can participate in this docket. By rule, Silverleaf's intervention should be granted if it has a justiciable interest and is affected by the rates being established. Because Silverleaf meets the Commission's standard, Order No. 4 should be reversed and Silverleaf's intervention granted.

II. SILVERLEAF IS AFFECTED BY THE RATE DECISIONS MADE IN THIS DOCKET

Order No. 4 denies Silverleaf's requested intervention because Silverleaf pays rates to Liberty Silverleaf and not Liberty Tall Timbers or Liberty Woodmark.⁵ Silverleaf submits that the order relies upon an overly restrictive interpretation of the applicable standard for intervention. Commission Rule 22.103 grants standing to intervene to any person "with a justiciable interest that may be adversely affected by the outcome of the proceeding."⁶ In determining whether Silverleaf has a justiciable interest, it is helpful to look at the Commission's definition of "affected party." In relevant part the definition states "any person or corporation whose utility service or rates are *affected by* any proceeding before the regulatory authority."⁷ Thus, the definition does not restrict affected persons to those directly paying rates, but rather

⁵ Order No. 4 at 3.

⁶ 16 TEX. ADMIN. CODE § 22.103(b)(2).

⁷ *Id.* at § 24.3 (5).

looks more broadly at whether that person's utility service or rates are "affected" by the proceeding.

As noted above, Liberty in Silverleaf's complaint docket (P.U.C. Docket No. 46642) has admitted to including plant properly part of Liberty Silverleaf's cost of service on its affiliates' books and commingling depreciation expense.⁸ Moreover, according to discovery responses produced in that docket, Liberty's accountants have little certainty about where to draw the line between consolidated plant and each individual utility's specific plant and appear to have recalculated plant and expense balances to achieve a pre-determined return rather than relying on the utility's own general ledger entries.⁹ For instance:

- Email from Alysia Maya dated September 12, 2016 (Bates # 117). This document describes Ms. Maya's efforts to change the balance sheet, plant, and income balances to get a lower return number. Significantly, this email, sent two days before Liberty filed its annual report, shows a return of either 23% or 26% rather than the 12% included in the filed report.¹⁰ This communication also expresses Ms. Maya's concern about changing cost of service information based solely on a spreadsheet.
- Email from Crystal Greene dated December 13, 2016 (Bates # 150). In this email Ms. Greene states she is unsure of the correct plant numbers for the consolidated companies. This communication comes after Liberty Silverleaf filed its initial annual report and after Liberty Tall Timbers/Woodmark filed its rate case, indicating that Liberty accountants remain unsure of the accuracy of consolidated plant numbers months after the close of the test year for Silverleaf Tall Timbers/Woodmark.
- Email from Eric Joplin dated December 21, 2016 (Bates # 135-36). This email remarks that the general ledger entries for plant assets are "nasty" and Mr. Joplin cannot tell what the true entry should look like. Mr. Joplin also describes a plan to up-load a new plant file and change the depreciation method in order to come close to a pre-determined depreciation expense number. Mr. Joplin confirms that he followed through on this plan in an email included in the chain.

⁸ See *Complaint of Silverleaf Resorts, Inc. Against Liberty Utilities (Silverleaf Water) LLC, F/K/A Algonquin Water Resources of Texas, LLC*, P.U.C. Docket No. 46642, Liberty's Response and Motion to Dismiss at 5.

⁹ The discovery responses described herein are attached as Exhibit A.

From these communications in addition to Liberty Silverleaf's admission in its Response to Silverleaf's complaint, it is clear that the plant accounts among affiliates have been commingled and must be segregated. It is also clear that Liberty itself does not have the general ledger records to substantiate how this segregation must be done. Accordingly, the separation of plant and the assignment of depreciation expense will necessarily rely on the Commission's decision, and that decision to re-allocate shared plant and expense will impact all of the Liberty affiliates, including Liberty Silverleaf. No other party to the Liberty Tall Timbers/Woodmark rate case shares Silverleaf's interest in assuring that no more than the proper amount of plant gets shifted into Liberty Silverleaf's cost of service. In fact, the incentive for ratepayers in this case is to shift as much plant as possible to other affiliates in order to reduce the rate base applicable to Liberty Tall Timbers/Woodmark. Silverleaf should be allowed to both investigate and provide evidentiary support for its position regarding how plant and expense should be reallocated among affiliates because it will be impacted by the decision that is ultimately made.

The Commission has already acknowledged the potential impact of commingled plant and expense on affiliates when it included in its Preliminary Order in Docket No. 46642 an issue that expressly looks at the impact of Silverleaf's cost of service on that of Liberty Tall Timbers/Woodmark. The reverse is equally true. Accordingly, the Commission should reverse Order No. 4 and grant Silverleaf's intervention.

III. THE POTENTIAL IMPACT ON SILVERLEAF AS THE SINGLE LARGEST RATEPAYER TO LIBERTY IS SUBSTANTIAL

Silverleaf as the ratepayer responsible for paying about 80% of the revenues to Liberty Silverleaf through rates stands to be substantially affected by any action in this docket that affects the Liberty Silverleaf cost of service. Accordingly, Silverleaf has a justiciable interest. Moreover, this interest is far from *de minimis*. Although Liberty Silverleaf's accounting for the

error apparently cannot be trusted, we can safely assume that the amount of plant associated with the consolidated Liberty companies that is then allocated among affiliates is significant. For instance, Liberty Silverleaf reported a net plant balance of about \$6.4 million in its last rate case (2009). From 2010 through 2015, Liberty Silverleaf claims direct investment in the Liberty Silverleaf system of about \$2.5 million and depreciation expense of about \$2.0 million. Simple math tells us that Liberty Silverleaf's rate base should increase by about \$500,000 over that time. But Liberty Silverleaf now claims a rate base of more than \$9.0 million as of year-end 2015, an increase of about \$2.6 million, or more than five times as much as the actual investment in the Liberty Silverleaf system would suggest. The difference is likely attributable to allocated corporate overhead, which would impact all of the affiliates, including Liberty Tall Timbers/Woodmark. To the extent this allocated corporate plant has been commingled among affiliates, as acknowledged by Liberty Silverleaf and corroborated in discovery, the impact of fixing the errors could be significant.

IV. SILVERLEAF'S IMPACT ON RATE CASE EXPENSES IS NEGLIGIBLE AND SHOULD NOT BE CONSIDERED FOR PURPOSES OF INTERVENTION

Order No. 4 provides a secondary reason for denying Silverleaf's requested intervention—that allowing Silverleaf to intervene “will likely increase rate case expenses in this docket.”¹¹ As an initial matter, the potential impact of a party on recoverable rate case expenses should not be a consideration for determining intervention. Commission rules regarding intervention do not speak to rate case expenses, but rather focus on whether the party has a justiciable interest.¹² As Silverleaf explains above, it has a justiciable interest and will be impacted by the rate decisions made in this docket. That should end the inquiry. But even if the

¹¹ Order No. 4 at 3.

¹² See 16 TEX. ADMIN. CODE § 22.103(b)(2).

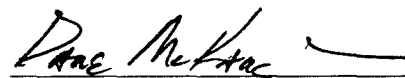
Commission were to consider the impact on recoverable rate case expenses, any impact is surely negligible. Unlike Liberty Tall Timbers/Woodmark, Silverleaf cannot recover its expenses from ratepayers. All legal fees and consultant expenses will be borne by Silverleaf alone. And any impact on Liberty's rate case expenses caused by Silverleaf will likely be minimal. With or without Silverleaf's participation, Liberty Tall Timbers/Woodmark has the burden to prove that its rate base is used and useful in providing service to Tall Timbers/Woodmark ratepayers and that its depreciation expense is just and reasonable. Silverleaf will not be raising any issue that Liberty does not already have to carry to prove its case. Finally, while Silverleaf can appreciate the concern that ratepayers not be made to pay rate case expenses unnecessarily, Silverleaf's participation should not be the focus of that concern. Liberty Tall Timbers/Woodmark has already had to re-file its case twice due to its first two applications being deemed materially deficient. Its latest application has been dismissed, a ruling currently on appeal and before the Commission.¹³ Duplicative and unnecessary legal expenses incurred by Liberty Tall Timbers/Woodmark to make its *prima facie* case would provide a far more fruitful target for reducing rate case expenses.

WHEREFORE, PREMISES CONSIDERED, Silverleaf respectfully requests that the Commission reverse Order No. 4 as it relates to Silverleaf's motion to intervene, grant the intervention, and for such further relief to which it may be entitled.

¹³ Silverleaf notes that the deadline for filing a motion to intervene in this docket was January 25, 2017, the date on which Silverleaf filed. Silverleaf could not have waited for a final determination on the dismissal order before seeking intervention.

Respectfully submitted,

GREENBERG TRAURIG, LLP




w/ permission
TK

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Austin, Texas 78701
512-320-7200 Office
512-692-2930 Fax
mckaughand@gtlaw.com

**ATTORNEYS FOR SILVERLEAF
RESORTS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February, 2017, a true and correct copy of the above and foregoing was served on all parties of record by Registered E-mail and/or facsimile to all parties of record.


Dane McKaughan

w/ permission
TK

EXHIBIT A

Alysia Maya

From: Alysia Maya
Sent: Monday, September 12, 2016 6:22 AM
To: Crystal Greene
Cc: Gerry Becker
Subject: SL Annual Report
Attachments: SL Asset detail for 2008 RC.xls.xlsx; SL TX 2015 Class_B_Water-Sewer_Annual_Report_2015_and_later.xls

Good Morning,

So I recalculated the report using the numbers from Friday. When I do that, I get 23% return and then I plugged in the formula from the TT/WM case and it increased it to 26% (still high). I highlighted all of my changes on the annual report in purple (balance sheet, plant, income). Please take a look and let me know if you have any questions. I still feel uneasy about adjusting these based on a spreadsheet.

Thanks,
Alysia

Alysia Maya | Liberty Utilities (Arizona) | Rates Analyst
P: 623-298-3773 | C: 623-224-7550 | E: Alysia.Maya@libertyutilities.com
12725 W. Indian School Rd., D101, Avondale, AZ 85392

Crystal Greene

From: Crystal Greene
Sent: Tuesday, December 13, 2016 9:48 AM
To: Chris Alario
Subject: FW: Silverleaf asset entry

Please approve this entry.

Crystal Greene | Liberty Utilities (Arizona) | Senior Accounting Manager
P: 623-298-3739 | C: 623-208-2802 | E: Crystal.Greene@libertyutilities.com

From: Mini Samuel
Sent: Tuesday, December 13, 2016 8:53 AM
To: Crystal Greene <Crystal.Greene@libertyutilities.com>; Luisa Read <Luisa.Read@libertyutilities.com>; Jennifer Perez <Jennifer.Perez@libertyutilities.com>
Subject: RE: Silverleaf asset entry

Thanks Crystal,
Please could you get approval from someone at your end that the amounts suggested for the silver leaf assets reg books are what they should be per your calc (similar to when Greg approved the Missouri assets true up amounts). We will then review the consol company entries on our end.
Thanks

Mini Samuel | Liberty Algonquin Business Services | Director, Accounting
P: 905-465-4557 | C: 416 407 0642 | E: Mini.Samuel@libertyutilities.com

From: Crystal Greene
Sent: Wednesday, December 07, 2016 11:07 PM
To: Mini Samuel; Luisa Read; Jennifer Perez
Subject: Silverleaf asset entry

Hi,

Here you go. Please review the consolidation accounts as I'm not exactly sure on the entries for the consolidation companies. I'm still waiting to hear back from Terese so we can get access to the test database again. If we can get in and test it then we should be good to go on uploading it this month before year end. Call me in the morning if you have questions.

Best Regards,

Crystal Greene | Liberty Utilities (Arizona) | Senior Accounting Manager
P: 623-298-3739 | C: 623-208-2802 | E: Crystal.Greene@libertyutilities.com
12725 W. Indian School Rd., D101, Avondale, AZ 85392

Alysia Maya

From: Eric Joplin
Sent: Friday, December 23, 2016 8:41 AM
To: Alysia Maya
Cc: Crystal Greene
Subject: Re: SL ACQ ASSETS

It still has to be posted to the sub ledger and I have to run depreciation through Dec...

Eric Joplin | Liberty Utilities (Arizona) | Supervisor, Finance
P: 623-298-3767 | C: 623-238-5129 | E: eric.joplin@libertyutilities.com

On Dec 23, 2016, at 8:38 AM, Alysia Maya <Alysia.Maya@libertyutilities.com> wrote:

Morning

So are you done with the entry now?

Thank you,
Alysia Maya

Alysia Maya | Liberty Utilities (Arizona) | Rates Analyst
P: 623-298-3773 | C: 623-224-7550 | E: Alysia.Maya@libertyutilities.com

On Dec 22, 2016, at 3:14 PM, Eric Joplin <Eric.Joplin@libertyutilities.com> wrote:

Here is what spit in production for the SL ACQ Assets. I sent them to Kate and Raman to investigate which accounts are inactive so these can be posted through the subledger.

Eric Joplin | Liberty Utilities (Arizona) | Supervisor, Finance
P: 623-298-3767 | C: 623-238-5129 | E: eric.joplin@libertyutilities.com

From: Eric Joplin
Sent: Thursday, December 22, 2016 10:29 AM
To: Alysia Maya; Crystal Greene
Subject: RE: SL ACQ ASSETS

I just got done running depreciation on the SL Acq Assets and I came up with 7.7M thru 1/1/16. I have attached screenshots showing the 10.2M in asset additions and the 7.7M of depreciation. Do you want me to run depreciation through 11/30/2016 to get that number as well? Also let me know if you want through production.

Thanks!

Eric Joplin | Liberty Utilities (Arizona) | Supervisor, Finance
P: 623-298-3767 | C: 623-238-5129 | E: eric.joplin@libertyutilities.com

From: Alysia Maya
Sent: Thursday, December 22, 2016 9:42 AM

To: Eric Joplin
Subject: RE: ACQ ASSETS

I am crossing mine too!

Alysia Maya | Liberty Utilities (Arizona) | Rates Analyst
P: 623-298-3773 | C: 623-224-7550 | E: Alysia.Maya@libertyutilities.com

From: Eric Joplin
Sent: Thursday, December 22, 2016 9:39 AM
To: Alysia Maya
Subject: RE: ACQ ASSETS

Haha. I will. Fingers crossed this time.

Eric Joplin | Liberty Utilities (Arizona) | Supervisor, Finance
P: 623-298-3767 | C: 623-238-5129 | E: eric.joplin@libertyutilities.com

From: Alysia Maya
Sent: Thursday, December 22, 2016 9:38 AM
To: Eric Joplin
Subject: RE: ACQ ASSETS

You go with your bad self! Let me know how it works.

Alysia Maya | Liberty Utilities (Arizona) | Rates Analyst
P: 623-298-3773 | C: 623-224-7550 | E: Alysia.Maya@libertyutilities.com

From: Eric Joplin
Sent: Thursday, December 22, 2016 9:37 AM
To: Alysia Maya
Subject: RE: ACQ ASSETS

I already am working on it. I had Sam re-upload with new numbers. I just did the mass change and now I'm going to run depreciation.

Eric Joplin | Liberty Utilities (Arizona) | Supervisor, Finance
P: 623-298-3767 | C: 623-238-5129 | E: eric.joplin@libertyutilities.com

From: Alysia Maya
Sent: Thursday, December 22, 2016 9:37 AM
To: Eric Joplin
Subject: RE: ACQ ASSETS

We can try that. Want me to resave the file with new numbers?

Alysia Maya | Liberty Utilities (Arizona) | Rates Analyst
P: 623-298-3773 | C: 623-224-7550 | E: Alysia.Maya@libertyutilities.com

From: Eric Joplin
Sent: Wednesday, December 21, 2016 8:56 PM
To: Alysia Maya
Subject: ACQ ASSETS

Alysia,

I worked with the mass change on those assets, but the GL posting is nasty and can't tell what the true entry would look like. I can't post it due to the inactive accounts. I suggest we re-upload the assets tomorrow. How do we go about updating the upload file? We can just make all of the assets be 81XX-002XXXXXX instead of them currently being 81XX-001XXXXXX? We can re-upload the assets with new asset id's. Then we can do a mass change to change the depreciation method. Then we can run the depreciation. That should bring us close to the 7.8M. Thoughts?

Thanks!

Eric Joplin | Liberty Utilities (Arizona) | Supervisor, Finance
P: 623-298-3767 | C: 623-238-5129 | E: eric.joplin@libertyutilities.com
12725 W. Indian School Rd., D101, Avondale, AZ 85392

<Production SL Acq Assets w-Depreciation thru 1-1-16.xlsx>