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SOAH DOCKET NO. 473-18-3006.WS
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APPLICATION OF LIBERTY UTILITIES §
(SILVERLEAF WATER) LLC FOR §
AUTHORITY TO CHANGE WATER AND §
SEWER RATES §

BEFORE THE STATE OFFICE OF
FILING CLERK
OF
ADMINISTRATIVE HEARINGS

**LIBERTY RESIDENTIAL WATER ASSOCIATION AND
HOLLY LAKE RANCH ASSOCIATION'S THIRD REQUEST
FOR INFORMATION TO LIBERTY UTILITIES (SILVERLEAF WATER) LLC**

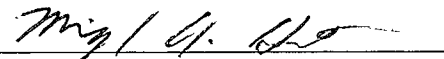
To: Liberty Utilities (Silverleaf Water) LLC, by and through its attorney of record, Jay L. Shapiro, Shapiro Law Firm, PC, 1819 East Morten Avenue, Suite 280, Phoenix, Arizona 85020.

Pursuant to 16 Tex. Admin. Code Ann. § 22.144 (TAC), the Liberty Residential Water Association ("LRWA") and Holly Lake Ranch Association requests that Liberty Utilities (Silverleaf Water) LLC, and its various parent, subsidiary, and affiliated entities ("Liberty Silverleaf") provide the following information and answer the following question(s) under oath. The question(s) shall be answered in sufficient detail to fully present all of the relevant facts, within 20 days after receipt in accordance with 16 TAC § 22.144(c). Please copy the question immediately above the answer to each question, and state the name of the person preparing the response *and* the sponsoring witness.

Responses should be provided to: Miguel A. Huerta, Law Office of Miguel A. Huerta, PLLC, 7500 Rialto Blvd., Ste. 250, Austin, Texas 78735.

Respectfully submitted,

By:



Miguel A. Huerta
State Bar No. 00787733

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7500 Rialto Blvd., Ste. 250
Austin, Texas 78735
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ATTORNEYS FOR LRWA/HLRA

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record in this proceeding on the 19th day of December, 2018, by hand-delivery, facsimile, electronic mail, and/or First-Class Mail.



Miguel A. Huerta

DEFINITIONS

- A. "Liberty Silverleaf," "the Company," "Silverleaf Water," "Applicant," or "you" refers to Liberty Utilities (Silverleaf Water) LLC, the same entity with a prior name, any parent or subsidiary company, any affiliated company, and any person acting or purporting to act on their behalf, including, without limitation, attorneys, agents, advisors, investigators, representatives, employees, or other persons.
- B. The terms "document" or "documents" are used in their broadest sense to include, by way of illustration and not limitation, all written or graphic matter of every kind and description; whether printed, stored, produced, or reproduced by any process, whether visually, magnetically, mechanically, electronically, or by hand, whether final or draft or deleted, original or reproduction, whether or not claimed to be privileged or otherwise excludable from discovery, and whether or not in your actual or constructive possession, custody, or control. The terms include, but are not limited to, writings, correspondence, telegrams, memoranda, studies, reports, surveys, statistical compilations, diagrams, schematic and other drawings, engineering plans and drawings, maps, studies, notes, calendars, tapes, computer disks, data on computer drives, existing and deleted e-mail, electronic recordings, tape recordings, cards, records, contracts, agreements, easements, invoices, licenses, diaries, journals, accounts, ledgers, pamphlets, books, publications, microfilm, microfiche, photographs, video recordings, and any other data compilations from which information can be obtained and translated, by you if necessary, into reasonably usable form. "Document" or "documents" shall also include every copy of a document where the copy contains any commentary or notation of any kind that does not appear on the original or any other copy.

INSTRUCTIONS

- A. Pursuant to 16 TAC § 22.144(c)(2), LRWA requests that answers to the requests for information be made under oath. Each answer should identify the person responsible for preparing that answer (other than the purely clerical aspects of its preparation) and the name of the witness in this proceeding who will sponsor the answer and who can vouch for its accuracy.
- B. In producing documents pursuant to this request for information, please indicate the specific request(s) to which the document is being produced.
- C. These requests are continuing in nature, and should there be a change in circumstances which would modify or change an answer supplied by you, such changed answer shall be submitted as a supplement to your original answer within five working days of acquiring the information, pursuant to 16 TAC § 22.144(i).
- D. Please answer each request and sub-request in the order in which they are listed and in sufficient detail to provide a complete and accurate answer to the request.

- E. LRWA requests that each item of information be made available as it is completed, rather than upon compilation of all information requested.
- F. Pursuant to Tex. R. Civ. P. 196.4, LRWA specifically requests that any electronic or magnetic data (which is included in the definition of "document") that is responsive to a request herein be produced in a format that is compatible with Microsoft and be produced with your response to these requests.
- G. The terms "and" and "or" shall be construed both disjunctively and conjunctively as necessary to make the request inclusive rather than exclusive.
- H. "Each" shall be construed to include the word "every" and "every" shall be construed to include the word "each."
- I. "Any" shall be construed to include "all" and "all" shall be construed to include "any."
- J. The term "concerning," or one of its inflections, includes the following meanings: relating to; referring to; pertaining to; regarding; discussing; mentioning; containing; reflecting; evidencing; describing; showing; identifying; providing; disproving; consisting of; supporting; contradicting; in any way legally, logically or factually connected with the matter to which the term refers; or having a tendency to prove or disprove the matter to which the term refers.
- K. The term "including," or one of its inflections, means and refers to "including but not limited to."
- L. "Relating to," "regarding," "concerning" and similar terms mean addressing, analyzing, referring, discussing, mentioning in any way, explaining, supporting, describing, forming the basis for, or being logically or causally connected in any way with the subject of these discovery requests.
- M. "Explain the basis" means provide all information on or describe every fact, statistic, inference, estimate, consideration, conclusion, study, and analysis known to Liberty Utilities that was relied upon in support of the expressed contention, proposition, conclusion or statement.
- N. Words used in the plural shall also be taken to mean and include the singular. Words used in the singular shall also be taken to mean and include the plural.
- O. The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense.
- P. Pursuant to 16 TAC § 22.144(c)(2)(E), if the response to any request is voluminous, please provide a detailed index of the voluminous material to permit LRWA to locate and to identify, as readily as the Company, the records from which the answers may be ascertained.

- Q. If the information requested is included in previously furnished exhibits, workpapers, responses to other discovery inquiries or otherwise, in hard copy or electronic format, please furnish specific references thereto, including Bates Stamp page citations and detailed cross-references.
- R. If a data response is available in Excel format, provide the Excel version of the data response.
- S. If any document is withheld under any claim of privilege, please furnish a privilege log identifying each document for which a privilege is claimed, together with the following information: date and title of the document, the preparer or custodian of the information, to whom the document was sent and from whom it was received, subject matter of the document, and an explanation of the basis upon which the privilege is claimed as required by § 22.144(d)(2).
- T. Words and phrases used in this request that also are used in the PUC Chapter 24 Rules shall have the same meaning as given to those words and phrases in those rules.

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HOLLY LAKE RANCH ASSOCIATION'S THIRD REQUEST
FOR INFORMATION TO LIBERTY UTILITIES (SILVERLEAF WATER) LLC**

LRWA 3-1 Mr. Garlick's rebuttal testimony on page 6 lines 6 through 15 discusses "dual connections" situations where one service supplies water to two customers, please describe in detail how the fixed and variable portions of the monthly service bills are allocated between the two homes on one metered connection and provide copies of any tariff provisions that support your response.

LRWA 3-2 On page 3 line 8 of his rebuttal testimony, Mr. Garlick states that "customers don't pay for utility plant or improvements". Is that statement based upon any Texas statute, regulation, commission precedent, or court precedent? If so, please identify the Texas precedent, statute, or rule (including section or subsection if applicable) Mr. Garlick is relying on to support his statement?

LRWA 3-3 On page 3 line 9-11 of his rebuttal testimony, Mr. Garlick states that "The costs of reasonable and necessary capital improvements are considered in determining the cost of service and rates customers pay." Please, explain what Mr. Garlick means by "capital improvements" and the regulatory basis for his assertion. In your response, provide examples of what would constitute "capital improvements" under Mr. Garlick's meaning of that term.

LRWA 3-4 On page 11 line 1 of his rebuttal testimony, Mr. Garlick states the "our records indicate that the difference between Goundwater Pumped and Treated Water Sold was 24% for the Test Year." Please, provide the computation that resulted in the 24% and the records that support the inputs used for that computation.

LRWA 3-5 With respect to Mr. Garlick's rebuttal testimony on page 11 lines 16-22, is it Liberty Silverleafs' contention that factors and/or behaviors outside the Test Year should be considered when determining water and sewer rates that are based upon a Test Year?

LRWA 3-6 With respect to Mr. Garlick's rebuttal testimony on page 13 line 47 continuing to page 14 line 2, when did Liberty Silverleaf first become aware of "the potential for there to be unmetered connections within the distribution system installed by the prior owners that never received a water meter"?

LRWA 3-7 With respect to Mr. Garlick's rebuttal testimony on page 13 line 47 continuing to page 14 line 2, please describe in detail, including dates, what steps Liberty Silverleaf has taken to investigate "the potential for there to be unmetered connections within the distribution system installed by the prior owners that never received a water meter" And, if unmetered connections were found, please describe in detail, including dates, the steps Liberty Silverleaf has taken to mitigate or eliminate those unmetered connections.

LRWA 3-8 With respect to Mr. Garlick's rebuttal testimony on page 16 lines 16-25, Admit or Deny that Liberty Silverleaf has plans to within the next six months engage a professional independent 3rd party to conduct a water loss audit of CCN 13131 pursuant to the Water Loss Manual for Texas Utilities as promulgated by the Texas Water Development Board.

LRWA 3-9 With respect to Mr. Garlick's rebuttal testimony on page 17 lines 23-25, is it Mr. Garlick's contention that lost revenues from lost or stolen water cannot significantly impact the rate calculations?

LRWA 3-10 With respect to Mr. Garlick's rebuttal testimony on page 19 lines 15-22, Admit or Deny that Liberty Silverleaf (as opposed to the Residential Rate Payers) bears sole responsibility for mitigating systemic water losses.

LRWA 3-11 With respect to Mr. Garlick's rebuttal testimony on page 22 lines 8-9, when did Mr. Garlick first become aware of "the need for a water rate case relating to the Big Eddy, Holly Lake Ranch and Piney Shores systems..."? Please describe in detail what circumstances existed at that time that led to Mr. Garlick's or Liberty Utilities' awareness of the need for a rate case?

LRWA 3-12 With respect to Mr. Garlick's rebuttal testimony on page 33 lines 6-8, is the agreement that Mr. Garlick refers to (i.e. "the two parties got together and came up with a means of acquiring and funding capacity the Resort would need...") that Services Agreement between Silverleaf Resorts, Inc. As Customer, and Algonquin Water Resources of Texas, LLC and Algonquin Water Resources of America, Inc. and Algonquin Power Income Fund dated as of March 8, 2005 previously produced as LU 009655-LU 009670? If not, please, produce the agreement to which Mr. Garlick refers.

LRWA 3-13 With respect to Ms. Girardi's rebuttal testimony page 3 line 9, 2015 Total Contract Work Water is shown to be \$749,028 while Schedule II-8 Contract Work of the Rate Application Package reports 2015 Contract Work as \$394,197. Please provide a detailed explanation, and all documents to support the explanation, as to how the 2015 Contract Work amount increased by \$354,831, or 90% since the rate application was filed.

LRWA 3-14 Please see Ms. Girardi's rebuttal testimony on page 6 lines 11-13, page 7 lines 10-14, page 8 lines 24-25, page 9 lines 9-14 and lines 22-page 10 line 4, page 13 lines 14-21, page 14 lines 15-17, page 15 lines 11-page 16 line 19. Admit or Deny that Liberty Silverleaf's inclusion in the APUC CAM gains Liberty Silverleaf the attributes of APUC (for example, including but not limited to, economies of scale with respect to capital structure, cost of capital, risk assessments, etc.).

LRWA 3-15 With respect to Ms. Girardi's rebuttal testimony on page 8 lines 24-25, please provide, or identify with specificity including LU page number, all documents that support Ms. Girardi's claim that "Liberty Silverleaf benefits from that structure through reduced labor and payroll expenses."

LRWA 3-16 With respect to Ms. Girardi's rebuttal testimony on page 9 lines 9-12, please, provide, or identify with specificity including LU page number, all documents that support each assertion in Ms. Girardi's statement that "There is little doubt that if Liberty Silverleaf had to operate on a stand-alone basis prospectively (as Mr. Sneed seems to suggest) Liberty Silverleaf would experience either greater costs or a reduction in service quality as well as reduced access to capital."

LRWA 3-17 With respect to Ms. Girardi's rebuttal testimony on page 9 lines 9-12, Admit or Deny that Paragraph 3.2.4 of the Services Agreement between Silverleaf Resorts, Inc. As Customer, and Algonquin Water Resources of Texas, LLC and Algonquin Water Resources of America, Inc. and Algonquin Power Income Fund dated as of March 8, 2005 previously produced as LU 009655-LU 009670 states "For purposes of establishing and modifying rates charged by Provider for Utility Services for unregulated utilities, each Unregulated Utility shall be treated as a stand-alone operation."

LRWA 3-18 With respect to Ms. Girardi's rebuttal testimony on page 9 lines 1-23, please describe in detail how the CAM's shared services model does not result in APUC's capital structure and cost of capital being applied to Liberty Silverleaf when it comes to regulatory rate making.

LRWA 3-19 With respect to Ms. Girardi's rebuttal testimony on page 11 lines 3-9, please, provide a complete copy of the "November 14, 2017 Unanimous Stipulation and Settlement Agreement filed with the Commission" in the Liberty Tall Timbers and Liberty Woodmark rate case.

LRWA 3-20 With respect to Ms. Girardi's testimony on page 11 lines 3-9, Admit or Deny that "Section E of the CAM in the Liberty Tall Timbers and Liberty Woodmark November 14, 2017 Unanimous Stipulation and Settlement Agreement filed with the Commission" is the same NARUC guideline document to which you refer in your rebuttal testimony on page 10 lines 6-13.

LRWA 3-21 If your response to LRWA 3-21 is anything other than "admit" please detail the differences between Section E of the CAM identified in LRWA 3-21 and the NARUC Guidelines.

LRWA 3-22 With respect to Ms. Girardi's testimony on page 11 lines 3-9 and page 27 lines 6-14, Admit or Deny that the PUC has the authority to require a utility to provide an independent attestation of Texas regulatory compliance and suitability report on the CAM with the cost thereof shared between the regulated and non-regulated operations consistent with the allocation of similar common costs under the CAM.

LRWA 3-23 If your answer to LRWA 3-23 above is anything other than "admit", please explain in detail why your response is not "admit."

LRWA 3-24 With respect to Ms. Girardi's rebuttal testimony on page 11 lines 11-18, how much in the way of "unrelated costs" does TAC Chapter 24.31 (b) allow in allowable expenses for Cost of Service purposes?

LRWA 3-25 With respect to Ms. Girardi's rebuttal testimony on page 11 lines 20-27, Admit or Deny that the costs and activities described in her testimony are capital activities.

LRWA 3-26 With respect to Ms. Girardi's rebuttal testimony on page 12 lines 3-10, Admit or Deny that mistakes are just one of the bona fide reasons for the PUC to require an independent Texas regulatory compliance audit of the APUC CAM.

LRWA 3-27 With respect to Ms. Girardi's rebuttal testimony on page 14 lines 10-22, Admit or Deny that the American Institute of Certified Public Accountants' generally accepted accounting principles require that all intercompany transactions be eliminated in the consolidation of parent and subsidiary financial statements.

LRWA 3-28 If your response to LRWA 2-28 above is anything other than "admit" please state your position as to why not, and provide any documents supporting that position.

LRWA 3-29 With respect to Ms. Girardi's rebuttal testimony on page 14 lines 24 through page 15 line 5, Admit or Deny that NARUC presumes that utilities have a natural business incentive to shift costs from non-regulated competitive operations to regulated monopoly operations.

LRWA 3-30 With respect to Ms. Girardi's rebuttal testimony on page 14 lines 24 through page 15 line 5, please distinguish between APUC's fiduciary responsibility to its shareholders and APUC's fiduciary responsibility to the residential rate payers of CCN 13131.

LRWA 3-31 With respect to Ms. Girardi's rebuttal testimony on page 15 line 21 "or to unaffiliated persons or corporations" describe in detail the methodology used to charge equity-method investees for administrative services rendered pursuant to Footnote 18-Related Party Transactions-Equity-method investments of the 2017 APUC Notes to Consolidated Financial Statements included in the APUC 2017 Form 40 F annual filing with the U.S. Securities and Exchange Commission and provide any and all documents supporting that methodology.

LRWA 3-32 With respect to Ms. Girardi's rebuttal testimony on page 20 lines 6 and 7, Admit or Deny that the CCN 13131 Tariff provides the Utility cost free access to capital.

LRWA 3-33 With respect to Ms. Girardi's rebuttal testimony on page 23 lines 4-8 and Ms. Girardi's response to OPUC RFI 3-4, please, identify the individual that created the schedule produced as LU 003744 that culminates in the Company's supporting documentation for its 21% INDOH and the date of its origination.

LRWA 3-34 With respect to Ms. Washington's rebuttal testimony on page 3 lines 5-18, what month and year did Liberty Silverleaf implement the internal controls to which she refers?

LRWA 3-35 With respect to Ms. Washington's rebuttal testimony on page 3 lines 5-18, where she describes implementation of internal controls to "prevent and detect potential issues". Please describe in detail what caused Liberty Silverleaf to implement the referenced 'internal controls.'

LRWA 3-36 With respect to Ms. Washington's rebuttal testimony on page 3 lines 5-18, please identify what new internal controls were implemented and in your response include when each of the controls were implemented.

LRWA 3-37 With respect to Ms. Washington's rebuttal testimony on page 3 lines 5-18, have the Liberty Silverleaf internal accounting controls ever been independently tested for effectiveness? If so, when and by whom? Please, provide the test results.

LRWA 3-38 With respect to Ms. Washington's rebuttal testimony on page 3 lines 14-16, what month and year did the regulatory accounting and ratemaking staff assume responsibility for the CCN 13131 "accounting records".

LRWA 3-39 With respect to Ms. Washington's rebuttal testimony on page 3 lines 5-18, explain with specificity the use and purpose of all the different sets of accounting books that the Utility keeps or has kept for CCN 13131.

LRWA 3-40 With respect to Ms. Washington's rebuttal testimony on page 10 lines 5-14, please state what is meant by "retroactively recharacterize rate base" and what would its effects be on Liberty Silverleaf and the rate payers? Additionally, would refunds to rate payers of prior years of overpayments be appropriate (i.e. like retroactively applied reduced water rates)?

LRWA 3-41 With respect to Ms. Washington's rebuttal testimony on page 10 lines 20-21, Admit or Deny that in the case that the PUC determine that the water system costs incurred prior to Liberty Silverleaf's acquisition of the CCN 11072 be justly classified as Customer Contributions in Aid of Construction, the Services Agreement Between Silverleaf Resorts, Inc. As Customer, and Algonquin Water Resources of Texas, LLC and Algonquin Water Resources of America, Inc., and Algonquin Power Income Fund Dated as of March 8, 2005 (previously produced as LU 009655-LU 009670) would provide financial relief to Liberty Silverleaf pursuant to, at least, Section 5 therein. If your response is anything other than "admit" please explain your answer in detail.

LRWA 3-42 With respect to Ms. Washington's rebuttal testimony on page 12 lines 1-14, Admit or Deny that Silverleaf Resorts, Inc., by virtue of its Services Agreement Between Silverleaf Resorts, Inc. As Customer, and Algonquin Water Resources of Texas, LLC and Algonquin Water Resources of America, Inc., and Algonquin Power Income Fund Dated as of March 8, 2005 (previously produced as LU 009655-LU 009670) enjoys special rights and privileges from Liberty Silverleaf not afforded to any other customers within CCN 13131.

LRWA 3-43 With respect to Ms. Washington's rebuttal testimony on page 12 lines 12-14, Admit or Deny that the Services Agreement Between Silverleaf Resorts, Inc. As Customer, and Algonquin Water Resources of Texas, LLC and Algonquin Water Resources of America, Inc., and Algonquin Power Income Fund Dated as of March 8, 2005 (previously produced as LU 009655-LU 009670) effectively established Silverleaf Resorts, Inc. as a unique customer class. If your response is anything other than "admit" please explain your answer in detail.

LRWA 3-44 With respect to Ms. Washington's rebuttal testimony on page 12 lines 7-8, Admit or Deny that "A growth pays for growth concept with respect to new development" is the fundamental underlying cost causation principle behind requiring developers to make contributions in aid of construction. If your response is anything other than "admit" please explain your answer in detail.

LRWA 3-45 With respect to Ms. Washington's rebuttal testimony on page 12 lines 1-14, Admit or Deny that failure to require customer and developer contributions in aid of construction without directly assigning those costs to the responsible party payer class serves to subsidize the customer class/developer requiring the system upgrade. If your response is anything other than "admit" please explain your answer in detail.

LRWA 3-46 With respect to Ms. Washington's rebuttal testimony on page 14 lines 8-22, please, provide a copy of the prior utility owners' exemption certificate (or tangible evidence or legal theories of other exemption claims) from developer and customer classification under the Tariff for CCN 11072.

LRWA 3-47 With respect to Ms. Washington's rebuttal testimony on page 16 lines 21-24, please, identify the basis for her conclusion and provide all documents to support her conclusion that the Resort deemed its investment utility invested capital.

LRWA 3-48 With respect to Ms. Washington's rebuttal testimony on page 18 lines 6-13, please identify the basis for her contention that "Liberty Utilities was not aware that any party would try to hold the Company accountable to information allegedly not disclosed at the time of acquisition..." and provide any related documents supporting that contention.

LRWA 3-49 With respect to Ms. Washington's rebuttal testimony on page 18 lines 6-13, Admit or Deny that before its acquisition of CCN 11072 from Silverleaf Resorts, Inc., Liberty Silverleaf fully recognized the possibility that the rate base was at risk of being reclassified as CIAC as reflected in Schedule 7.06 of the Asset Purchase Agreement.