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APPLICATION OF LIBERTY SILVERLEAF UTILITIES (SILVERLEAF WATER) LLC (CCN NOS. 13131 AND 20815) TO CHANGE RATES FOR WATER AND SEWER SERVICE IN SMITH, WOOD, MONTGOMERY, AND COMAL COUNTIES, TEXAS.	§	PUBLIC UTILITY COMMISSION OF TEXAS
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PUBLIC UTILITY COMMISSION
FILING CLERK

SILVERLEAF'S MOTION TO COMPEL AND MOTION TO STRIKE

COMES NOW, Silverleaf Resorts, Inc. ("SRI"), and files this Motion to Compel and in support thereof respectfully shows as follows:

I. INTRODUCTION

On June 19, 2018, Applicant Liberty Silverleaf Utilities (Silverleaf Water) LLC ("Liberty Silverleaf") served its responses to SRI's first Requests for Information ("RFI"). Nineteen of the RFI responses list as the sponsor an individual that has not been identified as a testifying witness. Of those responses, fourteen purport to provide substantive information not otherwise contained in Liberty Silverleaf's filing package, and SRI asks that Liberty Silverleaf be compelled to identify a testifying witness as sponsor to whom questions can be directed at hearing or at deposition. In addition, several of the RFI responses are non-responsive, and SRI asks that Liberty Silverleaf be compelled to answer the question asked. Finally, Liberty Silverleaf in one RFI response provides a narrative response that is outside the scope of the question and thus constitutes impermissible supplemental direct testimony. Accordingly, SRI asks that the portions of the responses outside the scope of the question be struck.

II. LACK OF SPONSORING WITNESS

The following RFI responses list as a sponsor a person that has not been identified as a testifying witness, as required by Commission Rule 22.144(c)(2)(A): 1-1, 1-4, 1-5, 1-6, 1-36, 1-37, 1-38, 1-39, 1-40, 1-41, 1-42, 1-43, 1-44, 1-46, 1-48, 1-49, 1-50, 1-51, and 1-52.

Commission Rule 22.144(c)(2)(A) requires that each response “shall identify the preparer or person under whose direct supervision the response was prepared, and the sponsoring witness, if any.” Some of the responses listed above simply provide workpapers or direct parties to information already contained in other filed documents. SRI in these cases believes that a listing of the preparer is sufficient as the response does not itself provide new information. In other cases, however, Liberty Silverleaf in the response provides new information or some narrative in response to the RFI. In these situations, parties are entitled to know to whom they can direct their questions about the response either at deposition or at trial. Liberty Silverleaf should not be allowed to avoid answering questions about its own RFI responses by claiming no witness is available to answer the questions. Either the individuals listed as the “sponsor” on these RFIs must testify and/or sit for deposition, or Liberty Silverleaf must designate an already testifying witness to sponsor the responses.

The following RFI responses contain substantively new information that require a testifying sponsor: 1-4, 1-5, 1-6, 1-36, 1-37, 1-38, 1-40, 1-42, 1-43, 1-48, 1-49, 1-50, 1-51, and 1-52. SRI asks that Liberty Silverleaf be compelled to identify a testifying witness as sponsor for each of these responses consistent with the requirements of Commission Rule 22.144.

III. MOTION TO COMPEL

The obligations of a party responding to a discovery request are well established. Commission Rule 22.141(a) broadly permits parties to obtain discovery regarding any matter that is

not privileged or exempted under the Texas rules of evidence and civil procedure, that is relevant to the subject matter in the proceeding, and that is reasonably calculated to lead to the discovery of admissible evidence.¹ The standard governing the scope of discovery under the Commission's procedural rules is very broad and must be construed liberally, consistent with the goal of discovery to allow parties to fully analyze the evidence in order to present the most well-informed positions possible.² In each of the responses identified below, Liberty Silverleaf fails to fully answer the question asked as required by Commission rules and the applicable legal standards. Accordingly, SRI asks that Liberty Silverleaf be compelled to fully respond. Below, SRI reproduces the request, the response, and an explanation of why further response by Liberty Silverleaf is necessary.

SILVERLEAF RFI 1-9 Please provide a copy of all policies and procedures used by Liberty Silverleaf to ensure that it pays the lower of fully allocated cost or prevailing market prices in its dealings with affiliates including but not limited to Algonquin Power and Utilities Corp.

RESPONSE: The APUC CAM outlines the corporate services provided to Liberty Silverleaf and describes how costs for those services are allocated. The CAM has been completed in accordance and conformance with the NARUC Guidelines for Cost Allocations and Affiliate Transactions ("NARUC Guidelines") in order to prevent subsidization from, and ensure equitable cost sharing among, the regulated entity and its affiliates, and vice versa. That is achieved by direct charging to the receiving entity as much as possible for services rendered to Liberty Silverleaf and establishing an equitable cost causation methodology for the allocation of indirect services/charges as described in the CAM. The costs allocated can take the form of: direct labor, direct material, direct purchased services and indirect charges (as described in Tables 1, 4a and 4b in this CAM). These costs are charged by the providing party to the receiving party at fully distributed costs and the charges are based on actual costs without any affiliate profit. The shared services provided to Liberty Silverleaf are specific to its being part of APUC's business model where shared

¹ 16 TAC § 22.144(e); TEX. R. CIV. P. 192.3(a); see *In re Fort Worth Children's Hosp.*, 100 S.W. 3d 582, 589 (Tex. App.—Fort Worth 2003, orig. proceeding). Information is relevant for discovery purposes if it is relevant to the subject matter of the pending action, claim, or defense and is reasonably calculated to lead to the discovery of admissible evidence.

² 16 TAC § 22.141(a); TEX. R. CIV. P. 192.3; see *Axelson, Inc. v. McIlhany*, 798 S.W. 2d 550, 553 (Tex. 1990).

services are provided using economies of scale and utilizing specialized company personnel expertise and established business practices, process and procedures (e.g., treasury or legal services), which would otherwise not be available to Liberty Silverleaf on a stand-alone basis.

In this request, SRI requested a copy of all policies and procedures used by Liberty Silverleaf to ensure that it pays the lower of fully allocated cost or prevailing market prices in its dealings with affiliates including but not limited to Algonquin Power and Utilities Corp. The question goes to the legal requirement that a utility not charge an affiliate any more for the same service than it could acquire from an unaffiliated entity. No such policy or procedure was provided by Liberty Silverleaf and its answer did not address the central question in Silverleaf RFI 1-9. Neither does Liberty Silverleaf state that no such policy or procedure exists. Instead Liberty Silverleaf addresses allocation methodology, which is not responsive. The requested information is relevant to the subject matter in this proceeding because it directly relates to the costs that Liberty Silverleaf asserts that it should be permitted to recover in retail rates in this docket.³ Therefore, SRI asks that Liberty Silverleaf be ordered to provide all responsive materials.

SILVERLEAF RFI 1-12 Please explain the rationale behind weighing customer count double the other factors in utility - Four Factor Methodology.

RESPONSE: The methodologies and processes set forth in the CAM are built around the NARUC guidelines for cost allocations. The fundamental principles of those guidelines, and the CAM, is to directly charge costs based on incurrence as much as possible and use reasonable allocators where allocation of indirect costs is necessary. The CAM is typically reviewed and updated annually to incorporate the latest size and scope of affiliates. If a significant acquisition occurs (as was the case with the acquisition of the Empire District Electric Company in 2017), the CAM is reviewed to ensure the correct balance of utilities size and scope and the overall cost structure. Here, the revised four factor methodology below reflects the size and scope of the Liberty

³ See 16 TAC § 24.24(a) (“The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including, but not limited to, accounts and records of joint or general expenses, any portion of which may be applicable to those transactions”).

Silverleaf Utilities entities following the Empire acquisition. As such, the Utility Four Factor Methodology reflects a weighting as described in the table below:

Table 2: Utility Four-Factor Methodology Factors and Weightings

<u>Factor</u>	<u>Weight</u>
Customer Count	40%
Utility Net Plant	20%
Non-Labor Expenses	20%
Labor Expenses	20%
Total	100%

SRI requested an explanation of why Liberty Silverleaf proposes to use an allocation methodology that weighs customer count double the other factors for allocation. No rationale was provided in response by Liberty Silverleaf and its answer does not address the central question in Silverleaf RFI 1-12, which goes to why Liberty Silverleaf chose to weight the factors as it did, not why it chose to re-weight them. The requested information is relevant to the subject matter in this proceeding because it directly relates to the costs that Liberty Silverleaf asserts it should be permitted to recover in retail rates at issue in this docket.⁴ Therefore, SRI asks that Liberty Silverleaf be ordered to provide a response to Silverleaf RFI 1-12.

SILVERLEAF RFI 1-34 Admit or deny that pursuant to the Note and Credit Agreement, the principal of the loan was to be reduced by Upgrade Cost Payments made to SRI by Liberty Silverleaf under the Wastewater Facilities Extension Agreement. If you deny, please explain Liberty Silverleaf’s understanding of the inter-relationship between the Note and Credit Agreement and the Wastewater Facilities Extension Agreement.

⁴ See 16 TAC § 24.24(a) (“The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including, but not limited to, accounts and records of joint or general expenses, any portion of which may be applicable to those transactions”).

RESPONSE:

The terms of the Extension Agreement and the Note and Credit Agreement speak for themselves. Under the terms of the Extension Agreement, the Utility's payment of Upgrade Costs to Developer is subject to the conditions set forth in Exhibit C to the Extension Agreement. Further, Exhibit C states "Utility shall have no obligation to pay Upgrade Cost Payments in respect of any portion of the Upgrade Cost that is not permitted by the Commission to be included in the asset base value upon which the Utility is allowed the opportunity to earn a fair and reasonable rate of return (the "Rate Base"), and Utility shall have the right to require, and the Developer shall make, the full and immediate refund of all or any part of any Upgrade Cost Payment that had previously been made to Developer in respect of amounts which Utility has attempted to include in the Rate Base but which it is not successful in getting so included in Rate Base in the first rate case immediately following the Upgrade Cost Payment." Article I of the Note and Credit Agreement defines "Upgrade Cost Payment" as "any Upgrade Cost Payment to Borrower pursuant to, and as defined in, the Extension Agreement." Further, Section 4.1(b) of the Note and Credit Agreement states "Upon receipt of any Upgrade Cost Payment pursuant to the Extension Agreement, Borrower shall promptly pay to Lender the amount of such Upgrade Cost Payment, which, upon the implementation of interim rates in respect of the rate case pertaining to that portion of the Upgrade Cost included in the Rate Base (as each are defined in the Extension Agreement) and giving rise to such Upgrade Cost Payment under the Extension Agreement, shall be a payment in partial retirement of principal hereunder, provided that any portion of any such Upgrade Cost Payment not permitted, upon subsequent hearing by the TCEQ or otherwise, to be applied to the Rate Base of Algonquin shall be subject to full and prompt refund to Algonquin in accordance with the terms of the Extension Agreement, and, if Algonquin shall be required, by TCEQ or otherwise, to refund or pay to any person any portion of any interim rates charged during the period prior to such adverse rate case disposition, Borrower shall pay such amount in full to Lender contemporaneously with the refund of the Upgrade Cost Payment required under the Extension Agreement, which such amount shall be a fee and shall not be applied against the interest or principal due hereunder."

Liberty Silverleaf's answer to Silverleaf RFI 1-34 is both irrelevant and nonresponsive.

First, Liberty Silverleaf fails to address the request for an admission. Moreover, it fails to address

Liberty Silverleaf's understanding of the inter-relationship between the Note and Credit Agreement

and the Wastewater Facilities Extension Agreement or whether the principal of the loan was to be reduced by Upgrade Cost Payments made to SRI by Liberty Silverleaf under the Wastewater Facilities Extension Agreement. These questions directly relate to the rate base on which Liberty Silverleaf seeks to recover costs through rates and as such are highly relevant to this proceeding.⁵ Consequently, the requested information is relevant and Liberty Silverleaf should be compelled to provide it.

SILVERLEAF RFI 1-35 Admit or deny that the facilities constructed by Silverleaf giving rise to the 80,000 gpd became used and useful in 2010. If Liberty Silverleaf denies that the facilities constructed by Silverleaf giving rise to the 80,000 gpd in wastewater treatment capacity became used and useful in 2010, please explain the denial and provide all supporting documentation for the denial.

RESPONSE: Liberty Silverleaf can neither admit nor deny this request. This rate case involves a 2017 test year and Liberty Silverleaf has not analyzed whether the additional treatment capacity purchased by Silverleaf Resort from GBRA in 2010 was used and useful in 2010.

Liberty Silverleaf's answer to Silverleaf RFI 1-35 is both irrelevant and nonresponsive. The question asked Liberty Silverleaf to confirm that facilities constructed by SRI became used and useful to Liberty Silverleaf beginning in 2010. These facilities continue to be in use today in the provision of service to Liberty Silverleaf's customers. Liberty Silverleaf seeks to add to its rate base an amount equal to the investment in facilities that created additional wastewater treatment capacity. Accordingly, when these facilities became used and useful is completely relevant. Further, as the entity that is actually using these facilities to provide sewer service, Liberty Silverleaf is uniquely situated to have the information requested. A responsive answer is relevant to this proceeding because it relates to the plant in service and Liberty Silverleaf's cost of service.⁶

⁵ See 16 TAC § 22.144(e); TEX. R. CIV. P. 192.3(a); see *In re Fort Worth Children's Hosp.* at 589.

⁶ See 16 TAC § 22.144(e); TEX. R. CIV. P. 192.3(a); see *In re Fort Worth Children's Hosp.* at 589.

SILVERLEAF RFI 1-37

For each year since 2009, please identify each corporate plant allocation, along with a narrative description of its purpose, the method of allocation, and why each investment was prudently incurred and related to the provision of service to Liberty Silverleaf ratepayers.

RESPONSE:

The Company inadvertently omitted corporate plant from the original water and sewer rate applications. The gross corporate plant to be allocated to Silverleaf water and sewer is \$41,503 and \$29,258, respectively.

NARUC	Description	Water	Sewer
904	Lease	\$ 9,681	\$ 6,825
940	Furniture/Equipment	277	195
940.1	Computers/Software	31,545	22,238
	Total	\$ 41,503	\$ 27,258

The answer offered by Liberty Silverleaf not only is not responsive to the question asked in Silverleaf RFI 1-37, it improperly seeks to insert new costs into the docket. The newly claimed costs should be struck as they are unresponsive and the RFI is an improper vehicle by which to assert new costs that should have been included in the Applicants' direct case consistent with the notice provided at the outset of this docket. Inclusion of these newly claimed costs into this case would render the proposed annual revenue increases listed in the Notice of Proposed Rate Change that Liberty Silverleaf sent to its customers inaccurate. The notice sent by Liberty Silverleaf and which was part of the Commission Staff's sufficiency analysis included proposed new rates and proposed increases in Liberty Silverleaf's revenues. The addition of new costs via a discovery response would be inconsistent with the Commission's notice requirements and would create serious concerns

regarding the due process rights of Liberty Silverleaf's customers.⁷ "Due process at a minimum requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner."⁸ Slipping in new costs outside of the Commission established process defies customers' rights to reasonable notice. Further, it would violate 16 TAC § 24.22(b) which requires that the utility use the Commission's rate filing package form and required schedules. A response to a RFI does not comport with the rate filing package requirement. As such, SRI asks that Liberty Silverleaf's nonresponsive response to Silverleaf RFI 1-37 be struck.

Additionally, the answer is nonresponsive. The question asked for Liberty Silverleaf to "identify each corporate plant allocation, along with a narrative description of its purpose, the method of allocation, and why each investment was prudently incurred and related to the provision of service to Liberty Silverleaf ratepayers." The response failed to separately identify each corporate plant investment that has been allocated, provide a narrative description of purpose, allocation methodology or an explanation of why the investment was prudent. The requested information is relevant to this proceeding because Liberty Silverleaf is only entitled to recover in rates prudently incurred costs that relate to the provision of retail service to Liberty Silverleaf's customers, *i.e.*, items that are used and useful.⁹ SRI asks that Liberty Silverleaf be ordered to provide a responsive answer to Silverleaf RFI 1-37.

SILVERLEAF RFI 1-38 For each year since 2009, identify the total amount of corporate plant allocated to Liberty Silverleaf and the method of allocation?

⁷ An agency's decision is arbitrary when its final order denies parties due process of law. *See Lewis v. Metropolitan Sav. & Loan Ass'n*, 550 S.W.2d 11, 16 (Tex.1977). "[P]arties must be able to know what is expected of them in the administrative process." *Starr Cnty. v. Starr Indus. Servs., Inc.*, 584 S.W.2d 352, 356 (Tex. Civ. App.-Austin 1979, writ ref'd n.r.e.).

⁸ *Texas Workers' Comp. Comm'n v. Patient Advocates*, 136 S.W.3d 643, 658 (Tex. 2004).

⁹ *See* 16 TAC § 22.144(e); TEX. R. CIV. P. 192.3(a); *see In re Fort Worth Children's Hosp.* at 589. "Under ordinary circumstances, the rate base consists only of those items that are used and useful in providing service to the public." 16 TAC § 24.31(c)(4). "Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses." 16 TAC § 24.31(b).

RESPONSE: See response to Silverleaf RFI 1-37.

As with Silverleaf RFI 1-37, Liberty Silverleaf failed to adequately answer Silverleaf RFI 1-38. In particular, the response fails to address the allocation methodology used by Liberty Silverleaf to assign corporate plant. Moreover, the response suggests that absent improper supplement to corporate plant costs inserted in the response to Silverleaf RFI 1-37 Liberty Silverleaf has not assigned any corporate plant costs to its retail customers since 2009. If this is in fact the case, then Liberty Silverleaf should say so as this would be responsive to Silverleaf RFI 1-38. If it is not the case, then the responses to Silverleaf RFI 1-37 and Silverleaf RFI 1-38 are inaccurate and should be amended or struck. An accurate response to this question is relevant in this docket because it directly relates to the cost of service assigned to Liberty Silverleaf's customers and to Liberty Silverleaf's proposed rates.

SILVERLEAF RFI 1-40 Please explain the increase in the contract labor expense in 2017 compared to 2016 and before.

- a. How much of the increase was due to hiring contracted staff to operate local utilities?
- b. How much of the increase was due to changes in allocated corporate overhead costs?
- c. Please explain why there was no salaries and wages expense in 2017.

RESPONSE: The contract labor for water increased by approximately \$191k and contract labor for sewer increased by \$131k in 2017.

- a. Approximately \$240k of the contract labor increase for water was due to local operations. The contract labor increase for sewer due to local operations was about \$113k.
- b. Corporate contract labor allocations decreased by \$49k for water and increased by \$18k for sewer.

c. Liberty Silverleaf doesn't have any employees. The personnel working for Liberty Silverleaf are employed by Liberty Silverleaf Utilities Service Corp., which employs all of the Liberty Silverleaf Utilities employees in Texas. The salaries and wages charges for Liberty Silverleaf are recorded on the income statement under Contractual Services: Professional.

Liberty Silverleaf's answer fails to explain the increase in the contract labor expense in 2017 compared to 2016 and before. Therefore, it is nonresponsive. SRI asks that Liberty Silverleaf be compelled to provide a responsive answer. Liberty Silverleaf provided dollar figures to account for the mathematics related to the increase but failed to address *why* the figures are larger as the question asked. An explanation of why contract labor costs have increased is relevant in this proceeding because they directly relate to the reasonableness of the cost of service that Liberty Silverleaf seeks to recover in this docket.

SILVERLEAF RFI 1-43 Please explain in detail the increase in depreciation expense since 2014.

a. Were any assets depreciated at a higher rate in 2015, 2016, or 2017 than in 2014 or earlier?

RESPONSE:

The depreciation expense increased after 2014 as a result of the Company appropriately recording the Silverleaf assets and the associated depreciation expense in 2016 as explained in the Silverleaf Complaint docket 46642. The Company included estimates related to the 2016 adjustment entries in the 2015 Annual Reports.

a. The Company began depreciating the Silverleaf assets at the appropriate rates as prescribed by the NARUC guidelines in 2016.

Liberty Silverleaf's answer to Silverleaf RFI 1-43 is nonresponsive. Liberty Silverleaf attempts to answer the question by reference to a document filed in another docket in which some of the parties in this docket did not participate. To be responsive, Liberty Silverleaf either needs to

explain in narrative fashion its response, or attach a document if it thinks such document fully answers the question. This response does neither.

In addition, the answer to sub-question (a) is also entirely unresponsive. Liberty Silverleaf offers no information in response to the question were any assets depreciated at a higher rate in 2015, 2016, or 2017 than in 2014 or earlier. Instead, it responds that it opted to use the NARUC guidelines in 2016. Use of the NARUC guidelines in 2016 does not provide any response to the changes in depreciation rates which Liberty Silverleaf has applied prior to this case. The requested information directly relates to Liberty Silverleaf's claimed cost of service in this docket because it implicates the depreciation rates applied by Liberty Silverleaf and it affects the rates that it seeks to charge its customers. Therefore it is highly relevant.¹⁰ SRI asks that Liberty Silverleaf be compelled to provide a responsive answer to Silverleaf RFI 1-43

IV. MOTION TO STRIKE

In addition to the portion of Liberty Silverleaf's response to 1-37 that should be struck (explained above), another of Liberty Silverleaf's responses, seeks to testify into the record outside of the scope of the question asked. Liberty Silverleaf filed its direct case along with its application consistent with Commission rules. It will be allowed to file rebuttal testimony to any issues raised by intervening parties in their respective witness testimonies. But Liberty Silverleaf cannot now seek to supplement its direct testimony through discovery responses by providing a narrative that was not requested. Accordingly, SRI asks that the offending portions of the response be struck.

SILVERLEAF RFI 1-26 Admit or deny that SRI paid \$2,243,983.63 for the construction of facilities giving rise to the 80,000 gpd in additional wastewater treatment capacity at GBRA's Canyon plant. To the extent Liberty Silverleaf denies that SRI paid this amount for construction of these

¹⁰ See 16 TAC § 22.144(e); TEX. R. CIV. P. 192.3(a); see *In re Fort Worth Children's Hosp.* at 589.

facilities, please explain and provide all documents supporting Liberty Silverleaf's denial.

RESPONSE:

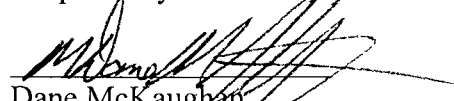
Admit. Further, in 2010, Liberty Silverleaf Water Co., now known as Liberty Silverleaf Utilities (Sub) Corp., loaned \$2,245,000 to Silverleaf Resort for Silverleaf Resort to make that payment to GBRA. As stated in Mr. Garlick's direct testimony, Silverleaf Resort agreed to pay \$2,245,000 for the rights to 80,000 gpd of additional treatment capacity at the GBRA Canyon Plant. In early 2009, GBRA informed Silverleaf Resorts that payments for expansion of the Canyon Plant would be coming due as construction progressed. Liberty Silverleaf didn't have any control over the timing of need for additional treatment capacity relating to Silverleaf Resort's Hill Country Resort. Rather, expansion of Hill Country Resort was entirely in the hands of Silverleaf Resort. Given the uncertainty over when that capacity would become used and useful, Liberty Silverleaf was reluctant to pay for additional capacity from GBRA in 2009. In turn, Silverleaf Resort and Liberty Silverleaf Utilities began discussion on funding for the additional GBRA treatment capacity. Eventually, Silverleaf Resort and Liberty Silverleaf Utilities (Sub) Corp. agreed that Liberty Silverleaf Sub Corp. f/k/a Liberty Silverleaf Water Co.—the parent of Liberty Silverleaf—would lend \$2,245,000 to Silverleaf Resort to purchase the additional 80,000 gpd of capacity in the Canyon Plant. Liberty Silverleaf Sub Corp. and Silverleaf Resort entered into a Note and Credit Agreement, dated July 29, 2010, under which Liberty Silverleaf Sub Corp. advanced \$2,245,000 to Silverleaf Resort and Silverleaf Resort then purchased the additional 80,000 gpd of capacity from GBRA. Under the Credit Agreement, Silverleaf Resort was obligated to pay Liberty Silverleaf Sub Corp. principal and interest on that \$2,245,000.

With the exception of the first word of its response, *i.e.*, “Admit,” Liberty Silverleaf’s answer to Silverleaf RFI 1-26 should be struck because it falls far outside the question. The question asks that Liberty Silverleaf admit the stated proposition, which Liberty Silverleaf does. Everything following that admittance lies outside the scope of the question. Further, the narrative portion of the response is irrelevant to this proceeding. Texas Rules of Evidence 402 and the Commission’s Procedural Rules bar the admission of irrelevant evidence. Evidence is only relevant if it is “of consequence in determining the action.” The Commission’s Procedural Rules state that “irrelevant,

immaterial, or unduly repetitious evidence shall be excluded.”¹¹ The loan discussed in the majority of Liberty Silverleaf’s response has no bearing on the rates being proposed by Liberty Silverleaf in this docket nor can that eight year old loan impact Liberty Silverleaf’s current cost of service to the retail customers impacted by Liberty Silverleaf’s proposed rate increase. Therefore, with the exception of the word “Admit,” Liberty Silverleaf’s answer is both unresponsive and irrelevant to this proceeding and should be struck.

WHEREFORE, PREMISES CONSIDERED, SRI respectfully asks that the administrative law judge compel Liberty Silverleaf to identify a testifying witness to sponsor the responses to 1-4, 1-5, 1-6, 1-36, 1-37, 1-38, 1-40, 1-42, 1-43, 1-48, 1-49, 1-50, 1-51, and 1-52; compel Liberty Silverleaf to fully and adequately respond to 1-9, 1-12, 1-34, 1-35, 1-37, 1-38, 1-40, and 1-43 consistent with the above discussion, strike the portion of the response to 1-37 that seeks to add new costs to the proposal and strike the entire response to 1-26 following the word “Admit,” and for such further relief to which it may be entitled.

Respectfully submitted,



Dane McKaughan

Email: dane.mckaughan@hklaw.com

Todd Kimbrough

Email: todd.kimbrough@hklaw.com

HOLLAND & KNIGHT, LLP

111 Congress Ave. Suite 540

Austin, Texas 78701

Telephone: (512) 954-6528

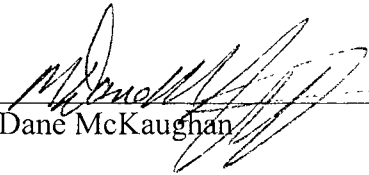
Fax: (512) 472-7473

ATTORNEY FOR SILVERLEAF
RESORTS, INC.

¹¹ 16 TAC § 22.221(a).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document will be served on all parties of record on June 26, 2018, in accordance with 16 TAC §22.74.


Dane McKaughan