ORIGINAL

STATE OF ILLINOIS

APPELLATE COURT THIRD DISTRICT
OTTAWA

A NOTICE OF ISSUANCE OF MANDATE

DATE: 12/05/03

TO: Illinois Commerce Commission
160 N. LaSalle Street
Suite C-800
Chicago, IL 60601

CASE NO. 3-03-0113

ICC No. 01-0832

TITLE: THE CITY OF PEKIN and
THE CITY OF PEORIA,
Petitioners-Appellants,
v.
ILLINOIS COMMERCE COMMISSION;
ILLINOIS-AMERICAN WATER COMPANY;
THAMES WATER AQUA HOLDINGS,
GMBH; RWE; and THE VILLAGE OF
ORLAND HILLS,
Respondents-Appellees.

Dear Clerk:

Pursuant to Supreme Court Rule 368 I am returning to you for filing the Mandate in the above entitled cause.

Please sign the enclosed copy and return to this office.

Mike Flechman

Clerk of the Appellate Court

Received Mandate: _____ By: _____

ORIGINAL

ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS

APPELLATE COURT THIRD DISTRICT
OTTAWA

At a term of the Appellate Court, begun and held at Ottawa, on the 1st Day of January in the year of our Lord Two Thousand three, within and for the Third District of Illinois -

Present -

HONORABLE MARY W. McDADE, Presiding Justice

HONORABLE WILLIAM E. HOLDRIDGE, Justice

HONORABLE KENT SLATER, Justice

HONORABLE DANIEL L. SCHMIDT, Justice

HONORABLE TOBIAS G. BARRY, Justice

HONORABLE TOM M. LYTTON, Justice

GIST FLESHMAN, Clerk

ILLINOIS COMMERCE COMMISSION
2003 DEC 11 A 11:09
CHIEF CLERK'S OFFICE

STATE OF ILLINOIS

APPELLATE COURT THIRD DISTRICT
OTTAWA

3-03-0113

THE CITY OF PEKIN and
THE CITY OF PEORIA,
Petitioners-Appellants,
v.
ILLINOIS COMMERCE COMMISSION;
ILLINOIS-AMERICAN WATER COMPANY;
THAMES WATER AQUA HOLDINGS,
GMBH; RWE; and THE VILLAGE OF
ORLAND HILLS,
Respondents-Appellees.

ICC No. 01-0832

BE IT REMEMBERED, that, to-wit: On the 29th day of October, 2003 an Order of the aforementioned Court was entered of record and in accordance with the views expressed in the attached Order the judgment of the Illinois Commerce Commission is Order of ICC Commission is affirmed.

In accordance with Supreme Court Rule 368, this mandate is issued.

Costs to be taxed in accordance with the law.

ILLINOIS
COMMERCE COMMISSION
2003 DEC 11 A 11:09
CHIEF CLERK'S OFFICE

STATE OF ILLINOIS

3-03-0113

City of Pekin
& Peoria v. ICC

APPELLATE COURT THIRD DISTRICT

OTTAWA

At a term of the Appellate Court, begun and held at Ottawa, on the 1st Day of January in the year of our Lord Two thousand three, within and for the Third District of Illinois:

Present -

HONORABLE MARY W. McDADE, Presiding Justice

HONORABLE WILLIAM E. HOLDRIDGE, Justice X

HONORABLE KENT SLATER, Justice X

HONORABLE DANIEL L. SCHMIDT, Justice

HONORABLE TOBIAS G. BARRY, Justice X

HONORABLE TOM M. LYTTON, Justice

GIST FLESHMAN, Clerk

BE IT REMEMBERED, that afterwards on October 29, 2003 the Summary Order of the Court was filed in the Clerk's Office of said Court, in the words and figures following viz:

NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 3--03--0113

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2003

CITY OF PEKIN and CITY OF PEORIA,	)	Petition for Review of the Orders of the Illinois Commerce Commission Entered in Docket No. 01-0832
Petitioners-Appellants,	)	
v.	)	
ILLINOIS COMMERCE COMMISSION; ILLINOIS AMERICAN WATER COMPANY; THAMES WATER AQUA HOLDINGS, GMBH; RWE AKTIENGESELLSCHAFT; and THE VILLAGE OF ORLAND HILLS,	)	"Not To Be Published"
Respondents-Appellees.	)	

SUMMARY ORDER

Illinois-American Water Company ("IAWC") and Thames Water Aqua Holdings GmbH ("Thames) filed a joint application with the Illinois Commerce Commission ("Commission") for approval of a proposed reorganization pursuant to section 7--204 of the Public Utilities Act ("Act") (220 ILCS 5/7--204 (West 2000)). Appellant City of Pekin and City of Peoria were granted leave to intervene and they subsequently filed a motion to dismiss the application on the basis that Thames and IAWC had not disclosed that the planned reorganization included the creation of an intermediate holding company, Thames Water Aqua US Holdings, Inc. ("TWUS"). TWUS is a wholly owned subsidiary of Thames; its purpose is to

hold the common stock of Thames's water businesses in the United States, making it possible to file a consolidated tax return.

Following an evidentiary hearing, the motion to dismiss was denied by the hearing officer. Appellants filed a petition for interlocutory review with the Commission which was also denied. On November 20, 2002, the Commission entered an order approving the application for reorganization, and this appeal followed.

Appellants contend that the application for reorganization was insufficient as a matter of law because TWUS, the intermediate holding company, was not disclosed in the application, nor was it even in existence at the time the application was filed. We disagree.

The record shows that Exhibit G of the application depicts a diagram of the post-merger corporate structure which indicates that IAWC would be owned directly by Thames "or by an intermediary holding company which will be owned directly by Thames." When details about the holding company were requested, IAWC and Thames were granted leave to file additional evidence. The testimony of Stephen Smith, corporate finance and tax director for Thames, indicated that TWUS was established to permit filing of a consolidated tax return. Neither the existence of TWUS or the filing of the consolidated return would have an effect on IAWC or on the nature of the reorganization, nor would IAWC incur any costs related to TWUS.

In its order approving the reorganization, the Commission concluded:

"The Commission finds that the proposed reorganization, including inclusion of TWUS as an intermediate holding company, satisfies subsection (b)(5) because, following the reorganization, IAWC will continue to exist in the same corporate form as it does today and will continue to be *** subject to the Commission's jurisdiction under the Act and the Commission's rules. In addition, Staff's proposed condition -- [that IAWC will seek approval of any future changes to corporate structure] -- is reasonable and should be adopted."

The Commission's interpretation of statutory standards is entitled to deference. Nevertheless, a reviewing court is not bound by the Commission's interpretation of law. Citizens Utility Board v. Illinois Commerce Comm'n, 166 Ill. 2d 111, 651 N.E.2d 1089 (1995). We find no error.

Accordingly, the order of the Illinois Commerce Commission is affirmed in accordance with Supreme Court Rule 23 (c) (5), (6), (166 Ill. 2d R. 23 (c) (5), (6)).

SLATER, J., with BARRY and HOLDRIDGE, JJ., concurring.

STATE OF ILLINOIS

APPELLATE COURT THIRD DISTRICT
OTTAWA

STATE OF ILLINOIS,)
APPELLATE COURT,) ss.
THIRD DISTRICT)

As Clerk of the Appellate Court, in and for said Third District of the State of Illinois, and the keeper of the Records and Seal thereof, I do hereby certify that the foregoing is a true, full and complete FINAL ORDER of the said Appellate Court in the above entitled cause, now of record in my said office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court, at Ottawa, this 5th day of December in the year of our Lord two thousand and three

Clerk of the Appellate Court