

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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| New Landing Utility, Inc.              | : |         |
|  | : | 04-0610 |
| Proposed general increase in water and | : |         |
| Sewer rates.                           | : |         |

**STAFF OF THE ILLINOIS COMMERCE COMMISSION'S  
MOTION TO DISMISS**

Pursuant to 83 Ill. Adm. Code 200.190, Staff of the Illinois Commerce Commission (“Staff” and “Commission”), by and through its attorneys, hereby files its Motion to Dismiss. In support thereof, Staff respectfully states as follows:

**I. INTRODUCTION**

On September 3, 2004, New Landing Utility, Inc. (“New Landing” or “Company”) filed tariffs for a proposed general increase in rates pursuant to Section 9-201 of the Public Utilities Act (“Act”). (220 ILCS 5/9-201) The Commission entered an order suspending the tariffs and initiating this proceeding, Docket No. 04-0610, on October 6, 2004.

New Landing had filed similar tariffs on March 11, 2004. The Commission entered an order suspending those tariffs and initiating Docket No. 04-0321 (“original rate proceeding”) on April 7, 2004. At a status hearing on August 24, 2004, New Landing announced its intent to withdraw the original rate filing. New Landing through counsel explained:

...after analyzing the current situation, which includes outstanding affiliated interest agreements, rental agreements, legal services agreements, a stock sale and some other agreements that may exist have not been

approved by the Commission. And we feel that it's in our best interest and prudent for us to seek approval of those agreements.

So we feel the most prudent matter at hand is for us to withdraw the current rate case pending before the Commission and refile it next week and in addition to that file a petition to approve the affiliated interest agreements. (04-0321, Tr., p. 42)

On September 3, 2004, the Company filed a Motion to Withdraw the Tariff Schedules it filed on March 11, 2004.<sup>1</sup> On September 28, 2004, the Commission granted the Company's motion and the tariff sheets were permanently cancelled and annulled.

On November 9, 2004, New Landing filed a Petition for Approval of Agreements with Affiliated Interests, which was docketed as No. 04-0666. In Docket No. 04-0666, the Company seeks approval of affiliate agreements in regards to legal services and office space. (See Docket No. 04-0666, Verified Petition)

At a status hearing on October 20, 2004, the Company asserted in the current rate proceeding, to the extent it was necessary, it would update, revise or supplement the data request responses from the original rate proceeding. (Docket No. 04-0610, Tr., pp. 33-35) The Company committed to providing a list of data requests that would need to be supplemented by the end of October.

## **II. NEW LANDING HAS FAILED TO COMPLY WITH SECTION 7-203 OF THE ACT**

Section 7-203 of the Act (formally Ill. Rev. Stat. 1981, ch. 111 2/3, par. 29) provides, "No franchise, license, permit or right to own, operate, manage or control any public utility shall be assigned, transferred or leased nor shall any contract or agreement with reference to or affecting any such franchise, license, permit or right be valid or of

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<sup>1</sup> Note that the tariff filing, which led to the initiation of the instant proceeding, was also made on September 3, 2004.

any force or effect whatsoever, unless such assignment, lease, contract, or agreement shall have been approved by the Commission.” (220 ILCS 5/7-203) Thus, under Section 7-203 of the Act, the transfer of the right to control any public utility, such as a transfer of stock ownership, requires Commission approval. (See Peoples Energy Corporation et al., v. Illinois Commerce Commission, 142 Ill.App.3d 917,930, 492 N.E.2d 551, 561 (1986))

According to the Commission order in Docket Nos. 79-0673 and 79-0675 consolidated, in 1976, American Mortgage Investors (“AMI”) acquired ownership of all outstanding shares of New Landing’s common stock. (See Final Order Docket Nos. 79-0673/79-0675 Cons., p. 2 (entered Jan. 14, 1981)) According to testimony provided by the Company, Dame Co. owns all the stock issued by New Landing. (See Direct Testimony of Gene L. Armstrong (“Armstrong Testimony”), p. 1) The Company provided data request responses stating that the stock of New Landing was purchased from AMI by Dame Co. in 1984. (See attached Exhibit A) Staff is unaware of, and the Company has failed to provide evidence of, the Commission ever approving the stock transfer of New Landing from AMI to Dame Co.

## **II. STAFF’S RECOMMENDATION**

Section 9-201 of the Act provides, “... no change shall be made by any public utility in any rate or other charge or classification...” with out providing notice to the Commission and the public. Section 3-105 of the Act defines a public utility as “... every corporation, company, ... that owns, controls, operates or manages, within this State, ... any plant, equipment or property uses or to be used for or in connection with ... the production, storage, transmission, sale, delivery or furnishing of heat, cold, power,

electricity, water, ...". (220 ILCS 5/3-105) To Staff's knowledge, the only public utility that the Commission has acknowledged is New Landing under AMI ownership.

However, in the instant proceeding, witness Gene L. Armstrong, who has been the President of New Landing since June 1984 and is also the President of Dame Co., provides support for the requested increase in rates. (Armstrong Testimony, p. 1) It is New Landing under Dame Co. ownership that is seeking a general increase in rates pursuant to Section 9-201 of the Act. Dame Co. has failed to receive Commission approval to own, operate, manage or control a public utility. As a result, New Landing under Dame Co. ownership is not the proper party to seek a general increase in rates. Until Dame Co. has sought and received Commission approval as required under Section 7-203 of the Act, Dame Co. does not have standing to come before the Commission to seek an increase in rates charged by New Landing. Staff recommends that the instant proceeding be dismissed without prejudice.

### **III. CONCLUSION**

For the foregoing reasons, Staff of the Illinois Commerce Commission respectfully requests that the Commission dismiss the instant proceeding without prejudice.

Respectfully submitted,



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Janis E. Von Qualen  
Carla Scarsella  
Staff Attorneys

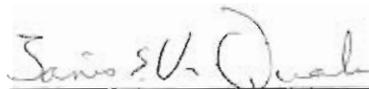
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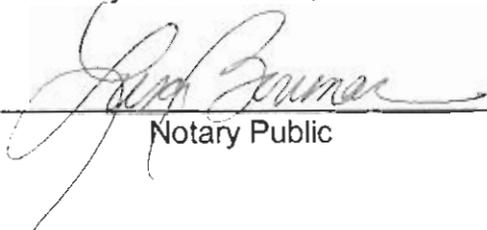
VERIFICATION

I, Janis E. Von Qualen, being first duly sworn, depose and state that I am an attorney for the Staff of the Illinois Commerce Commission; that I have read the foregoing Motion to Dismiss and know the contents thereof; and that the statements contained in the Motion are true, correct to the best of my knowledge, information and belief.



Janis E. Von Qualen  
Illinois Commerce Commission

Subscribed and sworn to before me  
this 2nd day of December, 2004.

  
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Notary Public

04-0610  
Motion to Dismiss

## **EXHIBIT A**

New Landing Utility, Inc.

Application  
for General Rate Increase

Ill.C.C. Docket No. 04-0321

Applicant's Response to Staff Data Request

**Staff Data Request FD-12**

*FD-12 Gene Armstrong's Direct Testimony indicates DAME Co. holds all of the stock issued by New Landing (p. 1). The Commission Order in Docket Nos. 79-0673/0675 Consolidated indicates Associated Mortgage Investors ("AMI") holds all of New Landing's stock (p. 2). When did DAME Co. acquire New Landing's stock from AMI? If DAME Co. did not acquire New Landing's stock directly from AMI, please specify when DAME Co. acquired all of New Landing's stock.*

Response:

DAME Co. acquired all of the Utility's common stock from AMI on May 24, 1984.