

DIRECT TESTIMONY

OF

THOMAS L. GRIFFIN

ACCOUNTING DEPARTMENT

FINANCIAL ANALYSIS DIVISION

ILLINOIS COMMERCE COMMISSION

NEW LANDING UTILITY, INC.

DOCKET No. 04-0666

REQUEST FOR APPROVAL OF AGREEMENTS WITH AFFILIATED  
INTERESTS

MARCH 10, 2005

1 **Witness Identification**

2 **Q. Please state your name and business address.**

3 A. My name is Thomas L. Griffin. My business address is 160 North LaSalle St.  
4 Chicago, Illinois 60601.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am an Accountant in the Accounting Department of the Financial Analysis  
7 Division of the Illinois Commerce Commission ("Commission").

8 **Q. Please describe your qualifications.**

9 A. For sixteen years prior to my employment with the Commission, I served private  
10 industry in various capacities, ranging from Staff Accounting positions to Manager  
11 of Accounting and encompassing all areas of accounting and internal auditing.  
12 Since joining the Commission's Accounting Department in 1978 I have  
13 participated in or supervised the accounting activity in cases involving gas,  
14 electric, telephone and water utilities as well as cases involving companies in the  
15 transportation industry. On behalf of the Commission and the US Government I  
16 have prepared training material and taught Utility Accounting and other Utility  
17 Regulation issues in the Republic of Kazakhstan. I have also made presentations  
18 on Utility Regulation Issues to delegates from the nations of Egypt, Brazil and  
19 Romania.

20 I have a degree in Business Administration with a concentration in Accounting  
21 from Governors State University and a degree in Advanced Accounting from  
22 International Accountants.

23 **Q. Have you previously offered expert testimony?**

24 A. Yes, I have testified in numerous cases before the Illinois Commerce  
25 Commission. I have also testified as an expert accounting witness before the  
26 Circuit Courts in Rock Island, Illinois and Chicago, Illinois.

27 **Q. What are your responsibilities in this case?**

28 A. I have been assigned to this case by the Manager of the Accounting Department  
29 of the Commission. I am to review New Landing Utility, Inc.'s ("New Landing" or  
30 "Company" or "Utility") filing that requests Commission approval of agreements  
31 with affiliated interests. I am also to review the filed petition, analyze the  
32 underlying data and make recommendations where appropriate.

33 **Purpose of Testimony**

34 **Q. What is the purpose of your testimony in this proceeding?**

35 A. The purpose of my testimony is to make a recommendation to the Commission  
36 regarding the Company's requests for Commission approval of agreements with  
37 two affiliates pursuant to Section 7-101 of the Public Utilities Act (Act).

38 **Legal Services**

39 **Q. Have you reviewed the Company's petition requesting Commission**  
40 **approval of an agreement for legal services performed by Gene L.**  
41 **Armstrong & Associates, P. C., an affiliate?**

42 A. Yes, I have

43 **Q. Do you recommend that the Commission approve the agreement?**

44 A. No, I recommend that the Commission not approve the agreement for the  
45 following reasons:

46 1) There really is no agreement that the Commission can approve. The only  
47 document submitted by the Company for approval is a letter dated September 11,  
48 2004 ("letter") from Gene L. Armstrong, as Attorney for Gene L. Armstrong &  
49 Associates, P.C., to Gene L. Armstrong, as President of New Landing, which  
50 memorializes legal work done in the past by Gene L Armstrong & Associates,  
51 P.C. for New Landing Utility, Inc. The letter also asks Mr. Armstrong to confirm to  
52 himself that the legal arrangements were properly stated. There is no statement  
53 listing what services will be provided in the future or indicating what the billing  
54 rates will be.

55 2) During the time that Mr. Armstrong served as President of New Landing Utility,  
56 Inc. and also as the Utility's legal counsel, the Utility has often not been served

57 well by Mr. Armstrong in his role as attorney. For example, this very docket,  
58 which belatedly requests statutorily required Commission approval of affiliate  
59 agreements, is an example of the Utility not following Commission's rules. Mr.  
60 Armstrong, who has been providing legal services to the Company since 1974  
61 (letter, page 1), became President and sole Director of Company in 1984  
62 (Petition, p.2). In 1984, the Company became a wholly-owned subsidiary of  
63 DAME Co, which is wholly-owned by Mr. Armstrong and an affiliated interest with  
64 its attorney. (Docket 04-0610, Company response to ICC data request FD-12)  
65 Thus, the Utility should have sought to receive Commission approval long ago.  
66 Another example is the fact that under counsel of Mr. Armstrong, the Utility has  
67 never filed a Federal or State tax return as required by law. (Docket No. 04-0610,  
68 ICC Staff Exhibit 2.0-R, Revised Direct Testimony of Thomas L. Griffin, p. 11)

69 3) Item 14 of the Petition in this case describes the economic benefits for the  
70 Company related to having Mr. Armstrong as legal counsel. The Company  
71 argues that Mr. Armstrong would not have to devote billable hours providing  
72 background information to another attorney. This argument sounds reasonable.  
73 However, Mr. Armstrong is the only person who functions as management for the  
74 Company. As a result, in all litigated matters before the Commission or the  
75 courts, he must hire additional outside counsel to represent him anyway. Further,  
76 Company records show that, at least in some cases, such as Docket 04-0610, the  
77 outside counsel's rates are lower than those that Mr. Armstrong charges the  
78 Company.

79 For the above reasons, I do not recommend that the Commission approve the  
80 agreement between the Company and Gene L. Armstrong & Associates, P. C.

81 **Office Lease**

82 **Q. Have you reviewed the Company's petition requesting Commission**  
83 **approval of an agreement with CAM Properties for an Office Lease?**

84 A. Yes, I have.

85 **Q. Do you recommend that the Commission approve the agreement?**

86 A. Yes, I recommend that the Commission approve the Office Lease provided there  
87 is one modification to the proposed lease agreement.

88 **Q. What modification do you suggest?**

89 A. I suggest eliminating the \$100.00 per day penalty that would be required of the  
90 Company as Lessee if the Lessee fails to yield possession of the property upon  
91 termination of the lease. While this provision is reasonable in most cases, it  
92 poses a danger to New Landing. The Company leases its furnished office space  
93 from CAM Properties, an Illinois partnership. (Petition, pp. 4-5) Mr. Armstrong is  
94 the majority partner and managing partner of CAM Properties. (Petition, p. 5)  
95 Since Mr. Armstrong owns, directly or indirectly, both the Lesser (CAM Properties)  
96 and the Lessee (Company), he could refuse as the Lessee to yield possession to  
97 the Lesser (himself) when the lease terminates and thereby cost the Utility

98 \$100.00 per day for as long as he wishes. Of course, I have no reason to believe  
99 that Mr. Armstrong would take such action, but the possibility should not be  
100 available in the agreement that the Commission approves.

101 **Q. Does this end your direct testimony?**

102 **A.** Yes it does.