STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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

BRIEF ON EXCEPTIONS

OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, pursuant to Section 200.830 of the Rules of Practice (83 Ill. Adm. Code 200.830) of the Illinois Commerce Commission's ("Commission"), respectfully submits its exceptions to the Proposed Order ("PO") issued by the Administrative Law Judge ("ALJ") on June 14, 2005 in the above-captioned matter.

I. INTRODUCTION

Staff believes that the Administrative Law Judge has provided a sound, well reasoned PO in this proceeding in which New Landing Utility, Inc. ("New Landing", "NLU" or the "Company") requested a general increase in water and sewer rates. However, the PO errs in regards to certain findings and should be modified. Staff also suggests changes to the PO, in order to fully explain certain issues addressed therein. Finally, Staff suggests inclusion of additional Commission conclusions in the Findings and Ordering paragraphs.

II. EXCEPTIONS

A. Tank Repair

1. Discussion

On page 10 of the PO, the amortization period allowed for the cost of the water tank repair is 5 years instead of the 10-year period recommended by Staff. Staff agrees that "the Commission anticipates that NLU may file a new rate case well before ten years has passed." (PO, p. 10) However, the 10-year amortization period recommended by Staff is not meant to anticipate the life of the new rates but rather to anticipate the life of the maintenance work. Generally, for ratemaking purposes, it is more appropriate to recover the cost of such repairs over the life of the repair work because this helps assure that the utility will not over recover or under recover the cost of the repairs from ratepayers. Also, Staff is concerned that the language in the PO could be used in future Commission proceedings to recommend shorter amortization periods for maintenance work. Therefore, Staff continues to recommend that the 10-year amortization period be accepted in this proceeding.

2. Replacement Language

Staff respectfully suggests the following replacement language:

> Having reviewed the record, the Commission finds that the 2005 tank repair expenses under the contract qualify as a pro forma adjustment to the test year operating expenses. Under the Commission's rules, the subsequent expenses under the contract fall outside the period for acceptable pro forma adjustments to the test year. Additionally, because these significant tank repair expenses are the result of deferred maintenance and because these expenses do not reflect a normal ongoing level of operating

expenses, the Commission finds it appropriate to amortize the expenses over some period of time. ~~While Staff recommended a 10-year amortization period, the Commission concludes that a shorter amortization period would be appropriate for the tank repair expenses at issue here. Given the nature and magnitude of the particular expenses combined with the requirement that the Company undertake certain plant improvements, the Commission anticipates that NLU may file a new rate case well before ten years has passed.~~ The Commission ~~therefore~~ concludes that a ten ~~five~~ year amortization period for the $88,946 tank repair expenses is appropriate. Thus, the Commission approves a pro forma increase in test year operating expenses of ~~$17,789~~$8,895 for tank repair expense.

In the alternative, if Staff's primary position, the 10 year amortization period, is not adopted, Staff recommends that language be added to the second paragraph on page 10, as follows:

> Having reviewed the record, the Commission finds that the 2005 tank repair expenses under the contract qualify as a pro forma adjustment to the test year operating expenses. Under the Commission's rules, the subsequent expenses under the contract fall outside the period for acceptable pro forma adjustments to the test year. Additionally, because these significant tank repair expenses are the result of deferred maintenance and because these expenses do not reflect a normal ongoing level of operating expenses, the Commission finds it appropriate to amortize the expenses over some period of time. While Staff recommended a 10-year amortization period, the Commission concludes that a shorter amortization period would be appropriate for the tank repair expenses at issue here. Given the nature and magnitude of the particular expenses combined with the requirement that the Company undertake certain plant improvements, the Commission anticipates that NLU may file a new rate case well before ten years has passed. The Commission therefore concludes that a five year amortization period for the $88,946 tank repair expenses is appropriate given the issues in this case. This conclusion should not be used to determine the appropriate amortization period for water tank maintenance expense in future cases before the Commission.

B. Cost of Capital/Rate of Return

1. Capital Structure

a) Discussion

Staff cautions against the possible implication in the second paragraph of page 12 of the PO that capital structure is a test year item. Capital structure is not a test year item as indicated in the Commission's Order in Docket No. 99-0534 (MidAmerican Energy Company gas rate proceeding, July 11, 2000, p. 11), which states:

> …the cost of capital, and therefore its components, are not subject to the Commission's test year rules. In *Business and Professional People for the Public Interest et al. v. The Illinois Commerce Commission et al., 585 N.E.2d 1032* (December 16, 1991) ("BPI II"), the Supreme Court found, in part, that, "Because the post--in--service carrying charges are not operating expenses, they are not test—year items. Therefore, we agree with Edison and the Commission that recovery of deferred financing charges does not violate test--year principles." (BPI II at 1060) The implication of the Court's finding is that the balance of short--term debt, as a component of a utility's authorized rate of return, is not subject to test--year rules.

b) Replacement Language

Staff respectfully requests revising the second paragraph of page 12 of the PO to read as follows:

> The Commission accepts Staff's proposed capital structure. Given the lack of information particular to NLU, it is reasonable to estimate a capital structure based upon the companies which comprise the proxy groups also used in the cost of equity analysis. The numbers proposed by the AG appear to be assigned without adequate support.

> Even if the capital structure assigned by Mr. Effron is close to that adopted here, the lack of underlying data or a model renders the chosen numbers unexplained. The use of the 1979 capital structure, urged by NLU, simply does not reflect ~~test year~~ current conditions. It therefore is not meaningful in setting rates in this case, and must be rejected.

2. Typographical Errors

Staff also recommends that two typographical errors be corrected. First, Staff recommends that the paragraph following ***Overview*** on page 11 of the PO be corrected to read as follows:

> Mr. Armstrong requests a 10.3% rate of return for the Company, primarily based upon the 16% debt and 84% equity which NLU attributes to 79-06~~2~~73/7~~0~~9-06~~2~~75 (cons.). Mr. Effron, on behalf of the AG, proposes a 7.60% rate of return for NLU. Staff witness Phipps recommends an 8.38% overall cost of capital for NLU. The AG disagrees with Staff witness Phipps' proposed debt and equity costs. Both NLU and the AG disagree with Ms. Phipps' hypothetical capital structure.

Second, Staff recommends that page 14, footnote 8, of the PO be corrected to read as follows:

> At present, the failing plant and finances appear to exacerbate NLU's illiquidity...

3. Service Quality Considerations and Rate of Return

a) Discussion

Staff does not take exception to the PO's conclusion regarding consideration of service quality in the context of the rate of return to be set by the Commission. However, Staff suggests that the conclusion be removed from the

Cost of Common Equity section and placed in a section entitled Service Quality Considerations and Rate of Return. Additionally, Staff has provided changes to the descriptive language.

b) Replacement Language

In light of these suggestions, Staff proposes the following:

Cost of Common Equity

NLU proposes a 10.3% cost of equity based on historical rates of return for stocks, corporate bonds, and T-bills. Mr. Armstrong calculated the average return for each category over the period 1980-1999, and then averaged those results. (Armstrong Dir. at 18.) As Staff points out, the Commission has repeatedly rejected the use of historical data for determining the cost of capital for the utility.[1]

AG witness Effron proposes a 10.00% cost of equity for NLU. (AG Ex. 1, at 12-13; Sch. DJE-5.) Mr. Effron, however, does not offer any calculation or explanation to justify his proposal. He simply adopts it "in the absence of other, more developed, financial analyses." (AG Ex. 1 at 12-13.) Staff, however, estimates a cost of equity by applying the discounted cash flow and risk premium models. The Commission declines to adopt the Mr. Effron's inadequately supported numbers over those derived from the cost of equity models.

~~The AG and Staff also discuss a zero rate of return based on the poor quality of service provided by NLU. While it appears that poor service quality may justify decreasing the rate of return,[2] it~~

[1] *See* Staff Init. Br. at 29 and Staff ex. 3.0 at 28-29, *citing* Order, 92-0357 (July 21, 1993), 66; Order, Docket 95-0076 (Dec. 20, 1995), 69; Order, 99-0121/01330 Consol. (Aug. 25, 1999), 10; Order, 01-0528/0628/0629 Consol. (Mar. 28, 2002), 12; Order, 02-0837 (Oct. 17, 2003), 37; and Order, 03-0403 (Apr. 13, 2004), 42.

~~[2] *See Citizens Utilities Co. v. O'Connor*, 121 Ill. App. 3d 533, 540 ("While we agree that the Commission 'need not' deny a reasonable rate increase pending service improvement (*Village of Apple River v. Ill. Commerce Com.* (1960), 18 Ill. 2d 518, 525), we find nothing in the Illinois authorities that prevents the consideration of that matter in order to determine whether a proposed rate increase results in a fair and reasonable return."). Upon consideration of the totality of the circumstances, the Commission does not see a need to further reduce the rate of return for NLU. NLU also is subject to a judgment in *People v. NLU*, as well as absorption of the costs attributable to unapproved transactions with affiliated interests. In light of this, it is unclear to the Commission that a further reduction in the authorized rate of return would provide a useful~~

~~seems unreasonable, if not confiscatory, to deny outright any return on rate base. The Commission also is concerned that a zero rate of return would not provide appropriate incentives to investors or lenders. This determination, however, should not be construed to absolve NLU from its responsibilities to comply with applicable laws, service quality standards, and other regulations.~~

Applying discounted cash flow ("DCF") and risk premium models to two samples she believes represent a reasonable level of financial and operating risk for a water and sewer public utility, Staff witness Phipps estimates the investor-required rate of return of common equity for NLU is 12.36%. (Staff Ex. 3.0, Sch. 3.01.) Ms. Phipps averaged the DCF-derived estimates of the required rate of return on common equity for the two proxy groups, or 9.66%; did the same for the risk premium-derived estimates, or 10.14%; and took their midpoint, or 9.90%, for a base cost of equity estimate. No party successfully contested this methodology. As explained below, Ms. Phipps added 246 basis points, resulting in her 12.36% recommendation, to account for liquidity costs. As discussed further below, the AG contests Ms. Phipps' liquidity adjustment.

...

Service Quality Considerations and Rate of Return

The AG and Staff also discuss a zero rate of return based on the poor quality of service provided by NLU. Staff argued it would be well within the Commission's authority to consider the Company's inadequate quality of service to set a fair rate of return between 8.38% and 0%.

Staff's primary position was that a receiver should be appointed to manage New Landing.[3] In the alternative, Staff argued that if the Commission declines to proceed to Circuit Court for the appointment of a receiver and concludes that NLU has not been providing adequate service, the Commission could reduce NLU's authorized rate of return to better reflect the value of service and to establish just and reasonable rates. Staff reasoned that the Commission exists for the function of balancing the rates charged

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~~incentive to the utility. In this case, however, such a reduction may discourage potential lenders from offering access to capital.~~

[3] Staff filed a Motion Requesting the Illinois Commerce Commission to Authorize the Filing of a Petition in the Illinois Circuit Court to Seek the Appointment of a Receiver and to Order the Company to Desist from Making Payments to Affiliated Interests for Which No Commission Approved Affiliated Interest Agreement Exists on March 30, 2005.

by the utilities and the services performed by the utilities (citing *Village of Apple River et al., v. Illinois Commerce Commission*, 18 Ill. 2d 518, 523 (S Ct 1960)) and that the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests (citing *Citizens Utility Board v. Illinois Commerce Com'n*, 276 Ill. App. 3d 730, 736, 658 N.E. 2d 1194, 1200, (1995)). Staff then concluded that quality of service may be a relevant consideration in determining whether a proposed rate schedule is fair and reasonable (citing *Citizens Utility Company of Illinois v. Phillip R. O'Connor et al.*, 121 Ill. App. 3d 533, 540; 459 N.E.2d 682, 687 (1984)).

Poor service quality may justify decreasing the rate of return. *See Citizens Utilities Co. v. O'Connor*, 121 Ill. App. 3d 533, 540 ("While we agree that the Commission 'need not' deny a reasonable rate increase pending service improvement (*Village of Apple River v. Ill. Commerce Com.* (1960), 18 Ill. 2d 518, 525), we find nothing in the Illinois authorities that prevents the consideration of that matter in order to determine whether a proposed rate increase results in a fair and reasonable return."). Upon consideration of the totality of the circumstances, the Commission does not see a need to reduce the rate of return for NLU. The Commission granted Staff's motion requesting it to authorize the filing of a petition for receiver in circuit court on May 10, 2005. A receiver with the technical and managerial resources to operate a water and sewer utility would eliminate NLU's pervasive service quality issues. In light of this, it is unclear to the Commission that a reduction in the authorized rate of return would prove useful in encouraging the utility to improve its service quality. In this case, such a reduction may discourage potential lenders from offering access to capital. As a result, the Commission declines to reduce the Company's rate of return based upon the Company's poor service quality. This determination, however, should not be construed to absolve NLU from its responsibilities to comply with applicable laws, service quality standards, and other regulations.

C. Affiliated Interests

1. Discussion

The Proposed Order correctly notes that "… this case is unusual for … NLU's numerous departures from regulatory requirements and standards." (PO, p. 2) Specifically, NLU has failed to obtain Commission approval for various

transactions with affiliated interests. (PO, pp. 2-3) In fact, in its Second Interim Order in this proceeding, the Commission found that "[d]espite NLU's financial difficulties, the utility has been making payments to affiliated interests, for which no Commission-approved affiliated interest agreement exists." (Second Interim Order, dated May 10, 2005, p. 2) The Second Interim Order noted payments to Gene L. Armstrong's family (Matthew Armstrong and Ann Armstrong) and businesses (Gene L. Armstrong & Associates, P.C., CAM Properties, and DAME, Co.). (Id.) As a result, the Commission ordered NLU to

> … desist from making payments to CAM Properties, Gene L. Armstrong & Associates, P.C., DAME Co., Ann H. Armstrong, and Matthew Armstrong, until such affiliated interest agreements are approved by the Commission, and until all outstanding balances relating to the maintenance and operations of utility plant , including to certified water ad sewer plant operators, site managers, chemical suppliers, and maintenance contractors are paid in full. (Id at p. 4)

However, the Second Interim Order expires upon the entry of the final Order in this proceeding or on July 30, 2005. (Id.) Staff is concerned that if a receiver is not appointed by the Circuit Court[4] by the time the Second Interim Order expires, NLU will resume making payments to affiliated interests for which there are no Commission-approved agreements, in violation of Section 7-101 of the Public Utilities Act. (220 ILCS 5/7-101)

[4] Pursuant to the Commission's granting of Staff's Motion Requesting the Illinois Commerce Commission to Authorize the Filing of a Petition in the Illinois Circuit Court to Seek the Appointment of a Receiver on May 10, 2005.

2. Proposed Language

Staff recommends the following language be included on page 22 of the PO:

> IT IS THEREFORE ORDERED that New Landing Utility, Inc. desist from making payments to CAM Properties, Gene L. Armstrong & Associates, P.C., DAME Co., Ann H. Armstrong, and Matthew Armstrong, and all other affiliated interests for which no Commission-approved agreement exists until such affiliated interest agreements are approved by the Commission.

D. Water Main Replacement

1. Discussion

In Docket No. 57952, the Commission conditioned its issuance of a Certificate of Public Convenience and Necessity to NLU based upon NLU installing water mains no smaller than six (6) inches in diameter except where the mains will serve a limited number of customers on the cul-de-sacs. (Docket No. 57952, Order, Dated November 14, 1973, p. 5) NLU claims that it does not own the undersized water mains (water mains less than six inches in diameter) and that it is barred from replacing the undersized water mains by the Commission's Uniform Main Extension Rule (83 Ill. Adm. Code 600.370). (NLU Exhibit 1, pp. 7-8 and NLU IB, pp. 19-20) In response to NLU's claims, the PO correctly notes that the record clearly demonstrates that the undersized water mains in the south half of the Lost Nation Lakes subdivision are located within the Company's certificated service area. (PO, p. 3) Further, the PO notes that the terms and conditions of the Commission's Uniform Main Extension Rule do not apply here

because the Rule does not apply to the replacement of existing water mains serving existing customers. (Id.)

As a result, the PO "… directs NLU to repair, replace, or construct new water mains …" and to undertake actions necessary to provide safe, adequate, reliable water service to all of its customers. (Id.)

2. Proposed Language

Staff requests that the following sentence be added to the FINDINGS PARAGRAPHS on page 22 of the PO:

> (15) NLU shall replace the undersized water mains in order to meet the terms of the Certificate of Public Convenience and Necessity Order entered in Docket 57592.

Staff recommends the following language be added to the ORDERING PARAGRAPHS on page 22 of the PO:

> IT IS FURTHER ORDERED that, within six (6) months of the entry of this Order, New Landing Utility, Inc. shall submit a plan to replace the undersized water mains in accordance with Finding (15) of this Order, to the Manager of the Water Department at the Commission for approval. The plan shall include a timeline for obtaining bids, signing contracts, requesting rate increases, and replacing undersized water mains within ten (10) years.

E. Water rates – Replacement Language

Staff would like to insert the rate per 1,000 gallons of water to ensure the rate is clear in the order.

Thus, Staff respectfully requests revising the second paragraph of page 16 of the PO to read as follows:

> Staff does not agree with the Company's proposals noted above and advocates establishing a monthly customer charge of $10.00. The monthly customer charge would replace the minimum bill that is currently in the tariffs. Staff's proposal allows recovery of service costs that are independent of the actual volumetric usage, such as the costs of meter reading, billing and fixed costs on plant and equipment. Staff also recommends a flat charge of $2.34 per 1,000 gallons used by the water customers. Staff claims a multiple-block structure of usage charges is not necessary in this case because all of the NLU customers are residential customers.

F. Availability Rates

1. Discussion

Staff agrees with the PO when it states on page 17, "[t]he Commission agrees … that the Company did not support its proposed charges" in relation to availability charges. At the time of the Company's last rate case, the Commission found:

> At the present time there are only 106 residences connected to the water system and seven residences connected to the sewer system. No reasonable rates could be assessed on these few user customers, which would produce sufficient revenues to cover the operating expenses of Respondent. No other alternative seems to exist than to allow Respondent to collect availability charges. … it is necessary and in the public interest to allow availability charges.

(See Staff Exhibit 4.0-R, pp. 8-9, ll. 159-166, quoting Order, Docket 79-0195, pp. 6-7)

From the time the Order was issued in its last rate case to the time it filed its current rate case, the Company has increased its customer base by an additional 203 water customers for a total of 309 water customers and an additional 153 sewer customers for a total of 160 sewer customers. Contrary to

the situation that existed at the time the Order was issued in NLU's last rate case, reasonable rates can now be assessed on the current number of customers that will produce sufficient revenues to cover the operating expenses. No other alternatives at the time of the last rate case existed but to collect availability charges. The subdivision has grown and the number of customers connected to the service can support the costs that are borne by the Company. As a result, an availability charge is no longer necessary for the viability of the Company. It is not in the public interest to continue to promote availability charges when the subdivision has grown as was intended. Accordingly, availability charges should not increase in this rate case.

2. Replacement Language

Thus, Staff respectfully requests revising the second paragraph of page 17 of the PO to read as follows:

> ~~The Commission views cost of service for availability customers to have risen in connection with recent expenditures, and known and measurable impending expenditures, to upgrade or maintain utility plant. It is not appropriate to attribute the investments included in rate base solely to metered customers and not to availability charge customers.~~ The Commission agrees with Staff, ~~however~~, that the Company did not demonstrate that the cost of service has increased for availability customers~~support its proposed charges~~. Accordingly, increases in the availability rate for water ~~should by the same percentage as the net increase for metered water customers~~. ~~The increase in the availability charge should offset the increase that would otherwise be applied to volumetric charge~~

~~assessed through the metered rate.~~ ~~The Commission also does not find evidence of any substantial improvements to the sewer plant. An similar increase to the availability charge for~~ and sewer ~~therefore is~~ are not warranted.

G. Sewer Rates

1. Discussion

The Company's Initial Brief urged "…the Commission to ignore the revised testimony and revised exhibits filed by Staff witnesses on March 30, 2005" (NLU IB, p. 1). The Company's argument would only recognize Staff's rebuttal testimony, recommending a $35.23 sewer rate. (ICC Staff Exhibit 8.0, Schedule 8.01) However, as the PO correctly states with respect to the Company's argument, it "… does not offer a persuasive argument why the subsequent figures should be discarded." (PO, p. 4) Staff recommends a monthly sewer rate of $34.08. (See ICC Staff Exhibit 12.0, Schedule 12.01) The Commission should adopt Staff's $34.08 monthly rate as the correct and approved sewer charge for NLU customers.

2. Replacement Language

Therefore, Staff respectfully requests revising the second paragraph of page 18 under "Sewer Rates" of the PO to read as follows:

> Staff contested the proposal to leave the sewer rate at 120% of the water bill for metered customers because Staff believes it is not a cost-based charge. Instead, Ms. Harden recommended a flat charge for sewer service, which allocates the sewer revenue

requirement equally among the sewer customers. Staff recommends a flat rate of ~~$35.23~~ $34.08 in ICC Staff Exhibit 12.0, Schedule 12.01. The Company agrees with a flat rate for sewer service, however, it suggests that the flat rate should be a rounded amount. NLU suggests in its brief that the flat rate be $36.00, $35.00, $35.25, $35.50 or $35.75." (NLU IB, 29.) Staff replies that if it were to suggest a rounded rate, it would round to the next lower increment, with the result that the Company would recover less than its approved revenue requirement. (Staff Reply Br. 28.) The Commission views the goal of properly and precisely matching rates to the revenue requirement to carry a much higher priority than to design rates with rounded amounts. The Commission therefore rejects the Company's proposal to round the amount of the flat rate and a flat monthly rate for sewer services is set at ~~$35.23~~$34.08.

H. Tariff Terms and Conditions

1. Discussion

Staff recommended numerous changes to the Company's proposed Rules, Regulations, and Conditions of Service tariffs for water and sewer service. (Staff RB, p. 29) Staff also recommended that the Commission order the Company to file revised Rates, Rules, Regulations, and Conditions of Service tariffs for water and sewer service, within ten (10) days of the final Order, with an effective date of not less than ten (10) working days after the date of filing, for service rendered on and after their effective date, with individual tariff sheets to be corrected within that time period, if necessary. (Staff Ex. 4.0-R, p. 21, ll. 493-497; Staff IB, p. 41) The Company agreed to

Staff's recommended tariff compliance filing dates. (NLU IB, p. 6) Due to the extensive amount of changes recommended by Staff to the Company's proposed Rates, Rules, Regulations, and Conditions of Service tariffs for water and sewer service and the Company's history of not making responses or filings in a timely manner, Staff requests the full 10 working days to review the Company's tariff compliance filing and to have corrections made to the tariffs by the Company.

In addition, the Staff recommended various changes to the Company-proposed Rules, Regulations, and Conditions of Service tariffs for water service (Ill. C.C. No. 7, Section No. 2). Many of the proposed changes were unopposed. (NLU IB, p. 6) Several of the proposed changes were objected to by the Company, but were adopted by the PO, nonetheless. Staff suggests that for clarity, the Commission Order should identify the changes it is ordering to the Company's proposed Rules, Regulations, and Conditions of Service tariffs for both water (Ill. C.C. No. 7, Section No. 2) and sewer service (Ill. C.C. No. 8, Section No. 2).

2. Proposed Language

Staff proposes the following additional section be inserted into the PO:

> ***Tariff Terms and Conditions***
>
> The Staff recommended various changes to the Company-proposed Rules, Regulations, and Conditions of Service tariffs for water service (Ill. C.C. No. 7, Section No. 2). The proposed changes to the following were unopposed and are adopted by the Commission:

- Rule 8 CROSS-CONNECTIONS should be deleted (See Staff Ex. 5.0, p. 5);

- Rule 10(D) FIRE SERVICE CONNECTIONS should be deleted (See Staff Ex. 5.0, p. 6);

- Rule 13(B) METERS REGISTERING FAST OR SLOW BEYOND ALLOWABLE LIMITS should be revised (See Staff Ex. 5.0, p. 6);

- Rule 14 METERS NOT REGISTERING should be revised (See Staff Ex. 5.0, p. 7);

- Rule 17(F) DISCONTINUANCE OF WATER SERVICE should be revised (See Staff Ex. 5.0, pp. 7-8);

- Rule 21(A) BILLS FOR WATER SERVICE should be revised (See Staff Ex. 5.0, p. 8);

- Rule 22(A) TERMS OF PAYMENT should be revised (See Staff Ex. 5.0, p. 9);

The Staff recommended various changes to the Company-proposed Rules, Regulations, and Conditions of Service tariffs for sewer service (Ill. C.C. No. 8, Section No. 2). The proposed changes to the following were unopposed and are adopted by the Commission:

- The second sentence of Rule I(F) DEFINITIONS should be deleted (See Staff Ex. 5.0, p. 12);

- Rule IV(B) BILLS AND PAYMENT FOR SERVICES should be revised (See Staff Ex. 5.0, pp. 12-13);

- Rule IV(C) BILLS AND PAYMENT FOR SERVICES should be revised (See Staff Ex. 5.0, p. 13);

- Rule IV(F) BILLS AND PAYMENT FOR SERVICES should be added (See Staff Ex. 5.0, p. 16);

- Rule IV(G) BILLS AND PAYMENT FOR SERVICES should be revised (See Staff Ex. 5.0, p. 16);

- Rule IV(I) BILLS AND PAYMENT FOR SERVICES should be deleted (See Staff Ex. 5.0, p. 17);

- Rule XII(D) GENERAL CONDITIONS should be deleted (See Staff Ex. 5.0, p. 17);

Other Staff recommended changes to the Company's proposed Rules, Regulations, and Conditions of Service tariffs for water and sewer service are adopted by the Commission. On page 18 of the PO, the Commission finds that the definition of "side yard lot" should be deleted from NLU's tariffs consistent with the rejection of the side yard rate. On page 20, the Commission adopts Staff's recommendation to revise Rule 26(A), consistent with the determination *supra* that NLU is responsible for providing safe, adequate, reliable service to all customers in its service territory. On page 20, the Commission finds against the Company and rules that the Company's proposed language to recover attorney fees shall be excluded from NLU's tariffs. Thus the following Staff recommendations are adopted by the Commission:

- Rule 2(N) DEFINITIONS (water) should be deleted (See Staff Ex. 5.0, p. 6);

- Rule 22(E) TERMS OF PAYMENT (water) should be deleted (See Staff Ex. 5.0, pp. 9-11);

- Rule 26(A) LIABILITY OF COMPANY (water) should be revised (See Staff Ex. 5.0, p. 11);

- Rule I(L) DEFINITIONS (sewer) should be deleted (See Staff Ex. 5.0, p. 12);

- Rule IV(F) BILLS AND PAYMENT FOR SERVICES (sewer) should be deleted (See Staff Ex. 5.0, pp. 14-16)

Consistent with the adoption of all of Staff's recommended changes to the Company's proposed Rules, Regulations, and Conditions of Service tariffs for water and sewer service and with the foregoing argument regarding the necessity of a full 10 working days to review the Company's tariff compliance filing and to have corrections made to the tariffs by the Company, Staff

respectfully requests revising **FINDINGS PARAGRAPH** (14) on page 22 of the PO to read as follows:

> (14) Staff's recommended changes to the Company's proposed Rules, Regulations, and Conditions of Service tariffs for water and sewer service are approved. NLU shall file revised Rates, Rules, Regulations, and Conditions of Service tariffs for water and sewer service, within ten (10) days of this Order, with an effective date of not less than ~~five~~ ten (~~5~~10) working days after the date of filing, for service rendered on and after their effective date, with individual tariff sheets to be corrected within that time period, if necessary.

III. CONCLUSION

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in this proceeding.

June 21, 2005

Respectfully submitted,

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