

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

**Illinois Commerce Commission,  
On Its Own Motion**

**-vs-**

<b>Crystal Clear Water Company</b>	<b>01-0488</b>
<b>Highland Shores Water Company</b>	<b>01-0489</b>
<b>McHenry Shores Water Company</b>	<b>01-0490</b>
<b>Northern Illinois Utilities, Inc.</b>	<b>01-0491</b>
<b>Wonder Lake Water Company</b>	<b>01-0492</b>

<b>Citations for failure to comply with a Commission Order</b>	<b>(consol.)</b>
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**ADMINISTRATIVE LAW JUDGES' PROPOSED ORDER**

**INTRODUCTION**

These matters concern five small water companies serving residential customers in McHenry County, Illinois, that are owned and managed by Thomas P. Matthews. These Companies, Crystal Clear Water Company ("CCWC"), Highland Shores Water Company ("HSWC"), McHenry Shores Water Company ("MSWC"), Northern Illinois Utilities, Inc. ("NIU"), and Wonder Lake Water Company ("WLWC") (collectively, the "Respondents" or "Companies") were respondents in Dockets 97-0605, 97-0606, 97-0607, 97-0608, 97-0609. On June 16, 1999, Respondents were ordered in those dockets to file reports and make various improvements to their water systems.

On July 11, 2001, the Illinois Commerce Commission ("Commission") adopted Staff Reports and issued Citations against each of the Respondents alleging that Respondents had failed to comply with the requirements of the previous Orders of the Commission. The cases listed in the caption are the docket numbers of those citation proceedings.

The five cases were consolidated for trial. On April 29, 2002, Illinois-American Water Company ("IAWC") filed a petition for leave to intervene and a petition for declaratory relief. Evidentiary hearings were held on December 17, 2002, and April 14, 2003.

On June 24, 2003, Supplemental Citation Orders were entered by the Commission in the instant cases. The Supplemental Citations expanded the inquiry to include a determination of whether Respondents' failure to pay their electric bills from 1998 until 2003 diminishes their ability to provide safe, adequate and reliable service to the public, or demonstrates a lack of sufficient technical, financial, or managerial resources and abilities to provide such service. On July 10, 2003, Respondents filed a Petition for Reconsideration of the Commission decision allowing the Supplemental Citations. On July 23, 2003, the Commission denied the Petition.

On September 26, 2003, these cases were stayed generally, pending a ruling by the United States Bankruptcy Court in cases 03 B 70464 through 03 B 70468 on Motions filed by the Respondents seeking sanctions against the Commission. In September, 2004, the Administrative Law Judges were advised that the matter of sanctions in the Bankruptcy Court had been resolved, whereupon an agreed schedule was implemented for further proceedings on the Supplemental Citations. Testimony was filed according to the schedule, and on February 6, 2005, a further evidentiary hearing was held. These cases were marked "heard and taken" at the conclusion of that hearing. All parties filed post-trial briefs, and a Proposed Order was prepared and served upon the parties.

## **ALLEGED VIOLATIONS**

Staff alleges the following violations of the 1999 Orders. Item numbers correspond to the Citation Orders issued July 11, 2001; parenthetical references correspond to Staff exhibits.

### ***Crystal Clear Water Company (01-0488):***

- Item 1—meter reading program (Ex. 1.0, at 9-10; and Ex. 3.0, at 5.)
- Item 2—meter replacement/installation program (Ex. 1.0, at 10; Ex. 3.0, at 6-7; and Ex. 9.0, at 9.)
- Item 3—quarterly reports: meters and customer refunds (Ex. 1.0, at 10-11; and Ex. 3.0, at 7-8.)
- Item 4—meter testing program (Ex. 1.0, at 15; Ex. 3.0, at 8-9; and Ex. 9.0, at 9.)
- Item 5—hydrants and other work (Schedules) (Ex. 1.0, at 11-13 and Sch. 1.01; and Ex. 3.0, at 9-12 and Sch. 3.01.)
- Item 6—uncapped mains (Ex. 1.0, at 12-13; Ex. 3.0, at 11; and Ex. 9.00 at 7-8.)
- Item 7—storage tank (Ex. 1.0, at 12 and 14; Ex. 3.0, at 12-14; and Ex. 9.0, at 6-7.)

- Item 8–8-inch mains program (Ex. 3.0, at 14.)
- Item 9–continuing property records (Ex. 1.0, at 16; Schedule 1.02; Ex. 3.0, at 14; Ex. 6.0; and Ex. 9.0, at 4 and Group Schedule 9.01; and Ex. 14.)

***Highland Shores Water Company (01-0489):***

- Item 1–meter installation program (Ex. 1.0, at 9-10; Ex. 3.0, at 6-7; and Ex. 9.0, at 9.)
- Item 2–quarterly reports: meters and customer refunds (Ex. 1.0, at 10-11; and Ex. 3.0, at 7-8; and Ex. 9.0, at 7-8.)
- Item 3–meter testing program (Ex. 1.0, at 9-10; Ex. 3.0, at 4-6; and Ex. 9.0, at 9.)
- Item 4–hydrants and other work (Schedules) (Ex. 1.0, at 12-13 and Sch. 1.01; and Ex. 3.0, at 8-10 and Sch. 3.01.)
- Item 5–hydrants on uncapped mains (Ex. 1.0, at 13-14 and Sch. 1.01.; Ex. 3.0, at 9-10 and Sch. 3.01; and Ex. 9.0, at 8.)
- Item 6–storage tank (Ex. 1.0, at 14; Ex. 3.0, at 10-11; and Ex. 9.0, at 6.)
- Item 7–8-inch mains program (Ex. 3.0, at 12.)
- Item 8–continuing property records (Ex. 1.0, at 16; Schedule 1.02; Ex. 6.0; and Ex. 9.0, at 4 and Group Schedule 9.01; and Ex. 14.)
- Item 9–Install alternative source of power for wellhouse (Ex. 1.0, at 8; and Ex. 3.0, at 4.)

***McHenry Shores Water Company (01-0490):***

- Item 1–meter installation program (Ex. 1.0, at 9-10; Ex. 3.0, at 6-7; and Ex. 9.0, at 8.)
- Item 2–quarterly reports: meters and customer refunds (Ex. 1.0, at 10; and Ex. 3.0, at 7-8; and Ex. 9.0, at 6-7.)
- Item 3–meter testing program (Ex. 1.0, at 9-10; Ex. 3.0, at 5-7; and Ex. 9.0, at 8.)
- Item 4–hydrants and other work (Schedules) (Ex. 1.0, at 13-15 and Sch. 1.01; and Ex. 3.0, at 8-9 and Sch. 3.01.)
- Item 5–hydrants on uncapped mains (Ex. 1.0, at 13-15 and Sch. 1.01.; and Ex. 3.0, at 8-9 and Sch. 3.01.)

- Item 6– polling of customers (Ex. 1.0, at 16; and Ex. 3.0, at 9-10.)
- Item 7–8-inch mains program (Ex. 3.0, at 11.)
- Item 8–continuing property records (Ex. 1.0, at 17; Schedule 1.02; Ex. 6.0; and Ex. 9.0, at 4 and Group Schedule 9.01; and Ex. 14.)
- Item 9–Install alternative source of power for wellhouse (Ex. 1.0, at 15; and Ex. 3.0, at 10.)
- Item 10–Loop Beech Street (Ex. 1.0, at 15; and Ex. 3.0, at 10.)

***Northern Illinois Utilities, Inc. (01-0491):***

- Item 1–meter installation program (Ex. 1.0, at 10 and 11; Ex. 3.0, at 7-8; and Ex. 9.0, at 10.)
- Item 2–quarterly reports: meters and customer refunds (Ex. 1.0, at 10-11; and Ex. 3.0, at 9; and Ex. 9.0, at 8-9.)
- Item 3–meter testing program (Ex. 1.0, at 9-10; Ex. 3.0, at 6-7; and Ex. 9.0, at 10.)
- Item 4–hydrants and other work (Schedules) (Ex. 1.0, at 13-14 and Sch. 1.01; and Ex. 3.0, at 9-10 and Sch. 3.01.)
- Item 5–hydrants on uncapped mains (Ex. 1.0, at 14 and Sch. 1.01.; and Ex. 3.0, at 9-10 and Sch. 3.01.)
- Item 6–polling of customers (Ex. 1.0, at 14-15; Ex. 3.0, at 10-11; and Ex. 9.0, at 10.)
- Item 7–8-inch mains program (Ex. 3.0, at 13.)
- Item 8–continuing property records (Ex. 1.0, at 17; Schedule 1.02; Ex. 6.0; and Ex. 9.0, at 4 and Group Schedule 9.01; and Ex. 14.)
- Item 9–Install alternative source of power for wellhouse (Ex. 1.0, at 8 (#13).)
- Item 10–Paint elevated storage tank (Ex. 1.0, at 8 (#13).)
- Item 11–Completion of a second well (Ex. 1.0, at 8-9; Ex. 3.0, at 5-6; and Ex. 9.0, at 7-8.)
- Item 12–Replace 1,770 feet per year of 2-inch diameter main for a period of five years (Ex. 1.0, at 15-16; Ex. 3.0, at 11-12; and Ex. 9.0, at 6-7.)

**Wonder Lake Water Company (01-0492):**

- Item 1—meter installation program (Ex. 1.0, at 8-9; Ex. 3.0, at 4-6; and Ex. 9.0, at 11.)
- Item 2—quarterly reports: meters and customer refunds (Ex. 1.0, at 10; and Ex. 3.0, at 7-8; and Ex. 9.0, at 8.)
- Item 3—meter testing program (Ex. 1.0, at 9-10; Ex. 3.0, at 6-7; and Ex. 9.0, at 11.)
- Item 4—hydrants and other work (Schedules) (Ex. 1.0, at 12-14 and Sch. 1.01; and Ex. 3.0, at 8-10 and Sch. 3.01.)
- Item 5—loop dead-end mains on Thompson Road (Ex. 1.0, at 14; Ex. 3.0, 8-9; and Ex. 9.0, at 9-10.) Item 6—8-inch mains program (Ex. 3.0, at 12.)
- Item 7—continuing property records (Ex. 1.0, at 15; Schedule 1.02; Ex. 6.0; and Ex. 9.0, at 4 and Group Schedule 9.01; and Ex. 14.)

**Supplemental Citation of All Respondents**

The Supplemental Citation Order (June 24, 2003, at 1-2), which is applicable to all five Respondents, finds in pertinent part that:

- (4) evidence has been uncovered of a pattern of non-payment of electric bills by Respondents;
- (5) the Respondents' failure to pay their electric bills for years goes to the questions of the Respondents' provision of safe, adequate and reliable service and the Respondents' possession of sufficient technical, financial, or managerial resources and abilities to provide service, which are issues being considered in these Citations[.]

**RELIEF SOUGHT**

The Citation Orders (July 11, 2001, Finding 5) and Supplemental Citation Orders (June 24, 2003, Finding 6) contemplate mandamus or injunction under Section 4-202 of the Public Utilities Act (220 ILCS 5/1-101 *et seq.*) (hereinafter the "Act"); civil penalties under Section 5-202 of the Act; appointment of a receiver under Section 4-501 of the Act; or acquisition by a capable public utility under Section 4-502 of the Act. The latter two require a determination that Respondents, in essence, are unable or unwilling to provide safe, adequate, or reliable service, no longer possess sufficient technical, financial, or managerial resources and abilities to provide safe, adequate, or reliable service, have been actually or effectively abandoned by their owner or operator, or have willfully failed to comply any provision of the Act. The Citation Orders additionally contemplate penalties under Section 5-109 for the failure to file required reports.

Staff argues that acquisition by a capable public utility is the only adequate remedy. Exacting civil penalties, Staff asserts, is futile with respect to these Respondents, and will only lead to further declines in service quality. Furthermore, no independent owner exists to bring utility management into compliance with its legal obligations. Staff contends that actions seeking injunctions and mandamus essentially would require Staff to become a de facto supervisor of the daily operations of Respondents, which it indicates is not workable in terms of available resources. Furthermore, that form of relief would forgive the brinkmanship of Respondents with respect to their non-payment of electric bills.

The only viable relief, according to Staff, is acquisition by a capable utility. Staff states that, although municipal and cooperative water providers within five miles of Respondents were contacted, only IAWC demonstrated interest in acquiring Respondents. Staff notes that Commission approval of the acquisition would lead to an eminent domain action by IAWC against Respondents pursuant to Section 4-502(g) of the Act, presuming that the Bankruptcy Court permits the suit.

Staff again emphasizes that the violations compiled by Respondents, and their failure to pay their electric bills, demonstrates Respondents' willful failure both to comply with prior Commission Orders and to meet its statutory obligation to provide safe, adequate, reliable service to the public. They also show that Respondents no longer possess the technical, financial, or managerial resources required to provide utility service. Therefore, Staff contends that Respondents meet the statutory conditions for acquisition by a capable utility pursuant to Section 4-502. IAWC appeared in these matters to set forth its position relative to the possible acquisition of Respondents. (*See infra.*)

## **STAFF'S EVIDENCE**

### ***Failures Common to All Respondents***

#### **A. Bank loans (Failure to Properly File Annual Reports)**

Staff contends that the Commission approved bank loans to Respondents in Dockets 97-0313 to 97-0317, and ordered Respondents in Dockets 97-0605 through 97-0609 (hereinafter, the "1997 Citations") to report these loans properly, beginning with the 1998 annual report. Although Respondents argue that the loans no longer exist, Staff asserts that Respondents neither satisfied the 1997 Citations by reporting the loans on their annual reports, nor offered any evidence demonstrating that the loans were satisfied. According to Staff, the continuing failure of the Respondents amounts to a willful refusal to comply with the Commission Orders in the 1997 Citations.

#### **B. Meter Issues**

According to Staff, Respondents have failed and continue to fail to comply with the Commission's rules concerning meter testing installation, and

replacement, which were adopted thirty years ago (see 83 Ill. Adm. Code 600), and with the 1997 Citations which explicitly addressed these meter issues. Staff argues that it established during the 1997 Citation proceedings the harm from Respondents' failure to comply with the meter testing, installation and replacement rules, and that Staff need not re-prove the matter to enforce the Commission Order in the 1997 Citations.

Staff further states that the many missing or inoperative meters identified during the 1997 Citations, and Respondents' testimony that they collectively replace only one meter a year (Resp. Ex. 1.0 revised, p. 12, lines 509-514) or six meters from 1999-2005, indicates that illegal flat billing is still occurring in violation of Sections 9-240 and 9-241 of the Act and 83 Ill. Adm. Code 600.260. Unless all the missing meters and all inoperative meters are promptly replaced, Respondents necessarily must issue estimated bills two or more consecutive times, a violation of 83 Ill. Adm. Code 280.80. Finally, Staff alleges that Respondents' chronic intransigence and their argument in these proceedings demonstrates that their failure to comply is willful.

### **C. Customer Refunds**

This includes the untariffed, and therefore illegal, \$15 Non-Sufficient Fund fee for all five Respondents. It also includes illegal tap-on fees for Northern Illinois Utilities, Inc. (NIU) and Wonder Lake Water Co. (WLWU). Staff argues that, although Respondents argue that no customers complained about not receiving a refund, Respondents themselves bear the burden of proof that the refunds actually were made. (See 220 ILCS 5/4-502(e)(1); *Citizens Utilities Co. v. Illinois Commerce Commission*, 49 Ill. 2d 458, 464 (1971).) Staff points out that Respondents did not offer any accounting or documentary evidence to show that the refunds were made.

Respondents instead rely upon the unsupported testimony of Mr. Mathews, their owner-operator, that the refunds were made. Staff argues that his statements themselves are not credible. They do demonstrate that the recordkeeping by the Respondents is grossly insufficient, however, in that even items as basic as the repayment of monies to customers are undocumented.

### **D. Hydrants and valves**

Respondents treat their partial compliance of three to five years to repair or replace malfunctioning or missing equipment as sufficient because they do not offer fire protection. Respondents have not demonstrated that all of the hydrant and other work ordered by the Commission from the 1997-1999 period has been completed. Respondents are required at all times "to furnish, provide, and maintain their service instrumentalities, equipment, and facilities that promote the safety, health, comfort and convenience of its customers, employees, and the public and that are in all respects adequate, efficient, just and reasonable." (220 ILCS 5/8-101.) Staff argues that Respondents' decision only to comply in part with the Commission Orders in the 1997 Citations violates their statutory duties

under Sections 5-101 (duty to comply with Commission Orders) and 8-101 of the Act (*supra*).

### **E. Uncapped Mains**

Staff contends that the Commission determined that the uncapped mains were a violation of 83 Ill. Adm. Code 600.210 in the 1997 Citation cases. Respondents can not claim that there is no need to perform the work, or choose to ignore the Order by attempting to relabel the work.

### **F. Undersized Mains**

Pursuant to the 1997 Citation Orders, all of the Respondents were ordered to "establish a program so that all future mains installed will be 8 inches in diameter." (See Orders (June 16, 1999) 97-0605, at 14; 97-0606, at 13; 97-0607, at 14; 97-0608, at 15; and 97-0609, at 13. See also *infra* (discussion of prior mandate to NIU to replace 8,845 feet of 2-inch diameter mains over five years).) Staff contends that five years have elapsed with no indication that any of the Respondents have taken any steps to comply with this provision of the Orders entered in the 1997 Citation cases.

According to Staff, Respondents argue that they fall under an exception to the Main Extension Rule. Staff counters that the Main Extension Rule is not at issue in these cases, because the Commission already has ordered Respondents to establish a program for installation of 8-inch mains. Staff notes that the 8-inch main reflects the minimum standard under 83 Ill. Adm. Code 600.370, and, in any event, Respondents' argument merely is an attempt to relitigate provisions of the Orders already entered in the 1997 Citation cases.

### **G. Continuing Property Records**

For regulated entities such as public utilities, proper record keeping is the most basic of service requirements. Staff states that the Uniform System of Accounts has been in place since 1962. (See 83 Ill. Adm. Code 605 at "Source.") Failure to keep such records fundamentally shows a lack of managerial and technical ability of the present management of the Respondents. Notwithstanding Respondents' contention to the contrary, their failure to maintain sufficient records is unlawful pursuant to Section 5-102 of the Act. Staff opines that the Respondents may have failed to maintain the required records in the hope that the estimate of the original cost will exceed the actual expenditures for a particular rate base item.

Respondents state that "Staff should work with the Respondents to make sure those records are properly maintained." (Reply Br., at 7.) Notwithstanding the rules (83 Ill. Adm. Code 605 and 650), the Commission Orders in the 1997 Citations, and the years of contact with Staff concerning such matters, Staff views Respondents to be trying to shift their own recordkeeping burden to the Commission or its Staff. Staff asserts that Respondents' failure to keep lawful accounts is inexcusable under any circumstance, and is especially egregious

given the more than 50 years experience in running public utilities that the present management of the Respondents has.

#### **H. Unpaid Electric Bills**

Respondents claim that they have been involved in a billing dispute with Commonwealth Edison Company ("ComEd") for ten years. (Reply Br. at 8.) Staff points out that the Respondents disclosed the claimed long-standing dispute to the Commission—the agency that regulates both the Respondents and ComEd—only with the present Citation cases. Despite Respondents' allegation that the dispute has gone on since 1998, Staff notes that Respondents' argument that ComEd overcharged them was made in these dockets in October, 2004 (Resp. Ex. 4, at 1), and addressed at hearing on February 16, 2005. Respondents claim that is presumptive and inappropriate for the Staff (and by extension the Commission) to dispute the justification for the creation of the large, unpaid debt by these Respondents. (Reply Br., at 11, 14.) Respondents also claim that the nonpayment of their electric bills for many years is a "routine business practice." (*Id.* at 13.)

Respondents do not explain why they provided Staff with altered copies of their ComEd bills. Respondents argue that the altered copies are of no matter because ComEd provided the original bills. (*Id.* at 11.) The originals, which showed large unpaid amounts, were obtained by Staff without the cooperation of Respondents. Staff contends that Respondents offer only the testimony of their owner-operator. In light of Respondents' production of altered bills (see Staff Ex. 3.0, Sched. 3.02(a)-(b)), Staff contends that the testimony of Mr. Mathews is not credible. Even if taken as true, however, Respondents still have a statutory duty to provide service to their customers that is in all aspects "safe, adequate, and reliable." (220 ILCS 5/4-501; see *also* 220 ILCS 5/8-101 and 8-401.) To risk a termination of electric service for non-payment, and thereby risk a cessation in the ability to provide service to its own customers, is unreasonable.

#### ***Failures of Individual Respondents to Comply with the Requirements of the Orders Entered on June 16, 1999.***

##### **A. Polling of Customers (MSWC and NIU)**

The polling of the customers was ordered by the Commission after the completion of an independent study concerning iron removal and costs. The customers were to be given three choices. (Orders (June 16, 1999), 97-0607, at 13; 97-0608, at 14.) Respondents state that a survey was conducted, but Staff questions whether it was done properly or at all since no documentary evidence was offered to substantiate the statement by Respondents' owner-operator. Absent evidence of an appropriate survey, Staff asks that the Commission find NIU and MSWC to have failed to comply with this aspect of the Orders entered.

##### **B. Painting Water Tank (NIU)**

The 1997 Citations required NIU to have the water tank painted within six months of the issuance of that Order. The tank was not painted at the time the

instant proceeding against NIU was initiated. (See violations, *supra*.) Staff asserts that NIU did not respond to its testimony or argument about this issue (see Staff ex. 1.0, at 8 (#13); see also Tr. 333-334, (April 14, 2003) and MLJ-4, at 2, ll. 34-45), and that its silence is an admission by NIU of its violation.

**C. Second Well (NIU),  
Dead End Mains on Thompson Road (WLWC),  
Looping of Beech Street (MSWC),  
Alternative Power Sources (HSWC and NIU), and  
Storage Tanks (CCWC and HSWC)**

For each of these issues, Staff asserts that Respondents now seek to relitigate the 1997 Citations even though they agreed to the service mandated in those orders. Staff contends that any adverse claim should have been pursued in the 1997 Citations, and Respondents' present claim that the improvements are not necessary was waived in the settlement of the 1997 Citation cases.

**D. Replacing Two-inch Mains (NIU)**

For this issue as well, Staff asserts that Respondents agreed to the required service improvements. Staff contends that any adverse claim should have been pursued in the 1997 Citations, and Respondents' present claim that the improvements are not necessary was waived in the settlement of the 1997 Citation cases.

Unlike the more general requirement in the Commission Orders in the 1997 Citations that all future mains will be a minimum of 8 inches in diameter (see *supra*), NIU was specifically ordered to replace its smallest (2-inch) mains with standard 8-inch mains over a five year period. NIU treats the Commission-ordered requirement as a mere proposal that it has chosen to ignore (See Reply Br., at 18-19).

***Claimed Insufficiency of Revenues from Present Rates***

The 1997 Citations were more than just Citation cases. The Commission also conducted a rate case on behalf of the Respondents and their customers. The 1997 Citations established just and reasonable rates for the Respondents, allowing the reasonable operating expenses and a 9.53% return on the provable investment in the Respondents.

Despite the testimony of the Respondents' owner-operator that he understands how rates are set at the Commission (tr. 460), the Respondents apparently believe that rates can be set to recover the cost of investment that is "prudently incurred and used and useful in providing service" (*but see* 220 ILCS 5/9-212). Respondents' claim of "lack of money" is merely an excuse for not completing the improvements they were ordered to perform.

If the Respondents believed that the improvements mandated by the Orders in the 1997 Citation cases could not be done for lack of money, that issue should have been raised during the scope of those cases. Staff asserts that it

was inappropriate to agree to do this work for sake of the rate increase, and subsequently disregard the Orders mandating the improvements. Staff therefore believes that Respondents never intended to comply with the required improvements.

Staff further asserts that the Respondents challenge the costs that IAWC has presented for rehabilitation by referencing the expenditures which Respondents have failed to undertake themselves. Staff finds no merit in Respondents' comparison because IAWC's estimates represent a ten-year program of improvement that goes beyond the minimum required for compliance with the 1997 Citations. (See IAWC Ex. MLJ-1 at 5-6, MLJ-3, and MLJ-4 at 3-4; tr. 279). According to Staff, the expenditures upon which the Respondents rely have meaning only to a public utility that intends to make the ordered improvements.

## **RESPONDENTS' EVIDENCE**

Respondents' evidence admits many of the facts asserted by Staff but asserts a variety of defenses and/or rationalizations for the failures to comply. Respondents addressed common issues and issues concerning less than all of the companies in separate sections of their briefs, although there is some overlap.

### ***Issues Common Among Respondents***

#### **A. Bank Loans**

Staff notes that Respondents have failed to record bank loans. Staff asserts that this represents a willful refusal to comply with the 1997 Citation Orders. Respondents acknowledge that they have failed to provide any evidence in response to this charge but assert in their brief that there are no loans to record.

#### **B. Meter Issues**

Respondents acknowledge a failure to institute a meter installation and replacement program or to file quarterly reports indicating the location of installed meters. CCWC agrees that it failed to test meters. Respondents assert that these are "technical violations" and that there is no evidence of harm to Respondents' customers. There have been no complaints by any customer, or any record evidence, that a meter was not recording properly.

With regard to CCWC's alleged failure to test meters, Respondents' witness, Thomas P. Mathews, Sr., testified that meter tests are done on an "as needed" basis by an outside contractor. There is no evidence indicating that the procedure is inappropriate. No customer complaints have been made to the Commission asserting that Respondents' water meters are not recording proper usage, or need replacement.

### **C. Customer Refunds**

Staff contends that each of the Respondents failed to refund to customers a \$15.00 Non-Sufficient Fund Fee required in the 1997 Citation Orders. Respondents contend that no customer is owed a refund or has complained about not receiving one.

### **D. Hydrants**

Respondents state that Staff acknowledges that Respondents have made improvements in replacing hydrants, but complain that it has taken too long to do so. The companies' response is that they do not provide fire protection, which is ordinarily the principal purpose for having hydrants. Respondents not only do not provide fire protection, they are also not required to do so. The implication here is that despite the Commission's prior orders, hydrants are not really necessary, therefore replacements are not required.

### **E. Uncapped Mains**

Staff contends that Respondents' uncapped mains are a safety concern. In response, Mr. Mathews alleges that the mains are not really mains but "valves" that do not have valve plates. Therefore, according to Matthews, there is no violation. Respondents allege that Staff has not demonstrated that the issue of uncapped mains has anything to do with non-potable drinking water.

### **F. Undersized Mains**

All of Respondents' mains are undersized. Respondents should have instituted a program to replace them pursuant to Commission order in the earlier dockets. Because Respondents' mains are undersized (less than eight inches in diameter), Staff argues that Respondents' water pressure to their customers is inadequate. Staff also contends that the failure to replace mains violates the 1997 Citation Orders and 83 Ill. Adm. Code 600.370, known as the Main Extension Rule.

Respondents argue that a replacement program would be extremely expensive, not cost effective and ultimately a burden on customers. In fact, IAWC witness Mark L. Johnson estimated the replacement of small mains over a ten year period would cost \$1 million. Respondents argue that over the past seven years there has been no growth in the business. It has therefore been unnecessary to replace mains that are less than eight inches in diameter. They also argue without growth in Respondents' service territories requiring new mains, such an expense for main replacement would be unnecessary, overly expensive to these small companies and would ultimately result in higher rates.

### **G. Property Records**

Staff contends that Respondents' failure to maintain proper records forced the withdrawal of Respondents' 2001 "short form" rate requests. The failure to keep records "imperils the continuation of its service to the public, because even when the Respondent makes an operating or capital expenditure, the

Respondent will be unable to receive recovery in a rate case before the Commission.”

Mr. Mathews acknowledged that Respondents did not maintain continuing property ledgers. However, in his reply, Mathews stated “continuing property records for the Respondents are not an absolute necessity.” For ratemaking purposes, continuing property records are not necessary when alternate means are available to determine property values. Respondents assert that Staff should work with Respondents to make sure that records are properly maintained.

#### **H. Billing Dispute With ComEd**

Respondents allege that a billing dispute has existed between Respondents and ComEd for approximately ten years. Respondents characterize Staffs zealous attention to this matter as a misuse of its powers to investigate. According to Respondents, Staff is hopeful that the stronger case it can make for acquisition of Respondents by IAWC, on the other elements of Section 4-502, the greater likelihood that it can overcome those elements of Sections 4-502 where its case is clearly deficient. Having identified a capable utility, Staff has employed inappropriate tactics to assure its ends are accomplished.

Respondents acknowledge that they stopped paying any of their electric bills to Commonwealth Edison Co. in 1998. Staff alleges:

- 1) Respondents “prepared altered documents” to ‘hide’ and ‘cover-up’ nonpayment of electric bills;
- 2) Respondents had insufficient grounds for not paying electric bills and they failed to timely pursue their claims against ComEd at the ICC;
- 3) Respondents respective level of rates reflecting authorization of test year electric expenses to be utilized in future years, were diverted for unknown and presumably improper purposes;
- 4) Respondents improperly “leveraged” an unrelated dispute to avoid paying electric bills; and
- 5) Respondents’ nonpayment of electric bills constituted a willful violation of an ICC Order and raised the threat of electric service termination. It also represented a failure to provide safe, adequate and reliable service.

In response:

- 1) Respondents deny preparation of “altered” documents to “hide” and “cover up” nonpayment of electric bills. Respondents assert there could not be any “cover up” when the original bills were provided by ComEd.

2) Respondents assert that Staffs contention that Respondents had insufficient grounds for nonpayment of electric bills is presumptuous and inappropriate in a dispute which remains legally unresolved.

Mr. Mathews explained that he was led to believe that when ComEd installed new demand meters, Respondents' bills would be reduced. Those meters were not installed for two and one-half years. If Respondents, as Staff suggests paid any portion of the disputed bills prior to resolution of the matter, ComEd would, of course, apply that payment to the first billings and Respondents would forfeit any claim with respect thereto; also, any credit fully proportionate to the entire alleged outstanding balance, would be lost in the event of a percentage-based settlement.

When ComEd finally threatened termination of service, the Respondents filed bankruptcy petitions. As Mr. Mathews explained, the bankruptcy filings prevented service termination by ComEd and also prevented water service interruptions to Respondents' customers. Thus, at the present time, "the actuality of discontinuance of electric service is illusory." Finally, Respondents assert that their actions are consistent with routine business practice.

3) Regarding the alleged diversion of funds earmarked for electric expenses and the assertion that the funds must have been used for improper purposes, Respondents contend that given the deficiencies in Respondents' respective rate and revenue levels, Staffs allegations in this regard are unwarranted.

4) Respondents argue that any claimed set-off or counterclaim by Respondents has nothing to do with the merits of the pending issue between the Respondents and ComEd. Whether Mr. Mathews, individually or otherwise has a valid claim regarding the easement violation is a separate issue tied to the disputed ComEd billings only because Mr. Mathews, erroneously, but in good faith, believed he had sufficient justification to claim an offset for the easement violation.

5) Respondents argue that Staffs final contention that Respondents failure to pay its electric bills is a violation of Section 4-502(a)(1) should be rejected. Staffs characterization of the billing dispute by Respondents as a ruse to avoid paying the electric bills is unsupported by the evidence. These bills will be paid in due course upon resolution of the ongoing dispute. Because the dispute has remained unresolved for eight years and remains unresolved, Staff is in no position to determine its outcome.

***Failures of Individual Respondents to Comply with the Requirements of the Orders Entered on June 16, 1999.***

**A. Elevated Storage Tanks**

In Dockets 97-0605 and 97-0606, Mr. Mathews, on behalf of CCWC and HSWC, agreed to install elevated 40,000 gallon and 20,000 gallon storage tanks

in their respective service areas. In these Dockets, Mr. Mathews testified that the agreed tanks, which had not been installed in the intervening years, were too expensive and impractical. CCWC has only 296 customers and has in excess of 30,000 gallons of storage capacity. CCWC asserts additional storage is not needed to serve CCWC's customers.

Mr. Mathews acknowledged that additional storage is needed for HSWC but stated the Company cannot afford it.

### **B. Alternate Sources of Power**

Notwithstanding orders in previous cases that required HSWC and NIU to acquire additional power sources, Mr. Mathews testified that the alternate power source requirement is not necessary. He further stated that Staff has not identified a single instance where these Respondents required the use of an alternate power source.

### **C. Polling of Customers**

In connection with a required iron study, MSWC and NIU were required to poll their customers (as ordered by the ICC in Dockets 97-0607 and 97-0608) to determine if they preferred: (1) the existing situation; (2) a different source of water; or (3) treatment for the existing water source with the projected increase in costs. On this issue Mr. Mathews stated, "The survey has never been specifically requested by Mr. King, or any other Staff member. If Mr. King had reviewed the survey, he would have seen that less than 3% of our customers showed an interest in having an iron treatment facility. Moreover, if customer polling was so critical in Staff's view, Staff could have done the polling."

### **D. Looping Beech Street**

MSWC agreed to loop the mains on Beech Street in Docket 97-0607 as required in that June 16, 1999, Order. Despite this Order, Mr. Mathews has decided: "With the flushing hydrants, looping of Beech Street has not been necessary." According to Mr. Mathews, it also represents an unnecessary expense in light of Mr. King's projected cost of \$40,000.

### **E. Paint Water Tank**

Painting water tanks is preventive maintenance that prevents corrosion that shortens the useful life of the tanks. Although painting the NIU tank was part of the agreed order from the citation cases, the tank still badly needs painting. NIU failed to address this issue in these proceedings.

### **F. Second Well**

A second well for NIU was to be completed in early 2000. It has not been completed. Mathews noted that the cost of the second well is \$20,000. Mathews says a new rate increase would be required to cover these costs.

### **G. Replace 2-inch Mains**

NIU was ordered to replace its many two-inch mains over a five-year period. It has not even begun to do so. Staff contends that the existing undersized mains do not provide adequate water pressure and violate the Main Extension Rule. Mr. Mathews, in his Rebuttal Testimony acknowledged the failure to replace any of the mains but noted: 1) no engineering study or historical data was used in making the proposal; 2) 2-inch mains provide an adequate water supply at a pressure of 35 pounds or more per square inch; 3) the actual costs of the proposed main replacements are three times greater than the \$59,000 estimated by Staff because streets would have to be reconstructed; and 4) the cost to be shared by NIU customers is unnecessary.

### **H. Dead End Mains on Thompson Road**

Staff contends that WLWC's failure to loop the dead-end mains on Thompson Road is a safety concern under 83 Ill. Adm. Code 600.210. WLWC denies this is a concern.

### ***Respondents Have Insufficient Revenues To Rehabilitate Water Systems***

Respondents' witness Mathews stated that the 1997 Citation Orders, which contained agreed rate increases, failed to give him sufficient revenues to comply with the directives of those Orders. Respondents argue that a review of the 1997 Citation Orders bears out Mr. Mathews assertion that the revenues provided by the Commission to the Respondents in those Orders are woefully inadequate, not only to make capital improvements, but also continue to pay day-to-day expenses.

Respondents note that those Orders are all based on a 1997 test year. Therefore, the expenses associated therewith were below the 1999 levels. Even with these rate increases, all Respondents were still operating at an annual loss. Therefore large capital improvements could not be undertaken. No financial institution would lend any Respondent money with this bleak outlook. Moreover this was only the second rate increase for these Respondents in the last twenty-five years. All five Respondents, collectively, have only 2,200 customers. CCWC has only 296 customers with no growth potential and HSWC, the largest Respondent, has only 644 customers. Until recently, no opportunities for growth could be anticipated in Respondents' respective service territories.

Staff, IAWC and Respondents presented evidence regarding the costs to rehabilitate Respondents' water systems. In general, Mr. Mathews agreed with Mr. King's analysis as set forth in his testimony. Mr. Mathews estimated that the total cost to appropriately rehabilitate Respondents' systems was around \$1 million. This contrasts with IAWC witness Johnson's total estimate of \$6.751 million as detailed on his Exhibit MLJ-3.

## **IAWC'S EVIDENCE**

IAWC has intervened in these proceedings seeking declaratory relief under the provisions of Section 4-502 of the Act. Under this statute, the Commission can provide for the acquisition of a small public utility by a larger one if the Commission determines that the small public utility is failing meet its statutory obligations, including the obligation to provide safe, reliable service. IAWC has expressed interest in acquiring the water systems in question.

IAWC has introduced evidence that it is the largest investor owned water utility in Illinois, providing water and waste water services in 124 communities throughout the state. It is a subsidiary of American Water Works Company, Inc. ("AAW"). AAW's subsidiaries provide similar services in 27 states and 3 Canadian provinces. AAW is the largest investor owned water utility in the United States.

IAWC provides water service in Terra Cotta, Illinois. Its system is located less than seven miles from all of the Respondents. It can provide service from its Terra Cotta facility for a distance of seven miles to service all of the Respondents customers.

IAWC has inspected the Respondents' systems. IAWC presented a preliminary engineering report about the systems. IAWC's witness states that the systems are in poor condition and have not been properly maintained. He recommended new and larger storage tanks and demolition of the existing, poorly maintained tanks. Iron/manganese treatment was needed in 4 of the five systems. Small mains in all systems needed to be enlarged to provide fire flow. He recommended that existing well treatment facilities be replaced, that two new wells be dug, that emergency generators be installed and that hydrants, meters and valves be replaced over a ten year period.

In May, 2000, Illinois Environmental Protection Agency ("IEPA") inspection reports cite all of the Respondents for complaints about rusty water, black water, and low pressure, as well as various water quality violations. IAWC believes the existing systems are without value and need to be replaced because existing capital needs are \$6.7M. There is little potential for growth in Respondents' service areas and there are significant engineering, operational and financial challenges to bringing them up to modern standards.

Despite these problems IAWC is willing to acquire and operate the Respondents' systems. If it is not able to negotiate a reasonable price it urges the Commission to authorize IAWC to use eminent domain to acquire the systems. IAWC requests that the Commission enter declaratory judgment finding that its acquisition costs should be included in rate base. IAWC also requests that the Commission authorize a separate tariff at Chicago-Metro rates and if necessary a surcharge to insure that its return remains at a reasonable level. IAWC's interest in these acquisitions is contingent upon the Commission granting these requests. IAWC would not object to the acquisition of the Respondents by another company with the necessary resources.

In its reply brief, IAWC argues that its system is proximate to the Respondents as required by Section 4-502(c)(2). IAWC objects to and denies Respondents' assertions of improper collusion between it and Staff to acquire Respondents' property.

IAWC presented evidence that the discrepancy between its estimate and Staffs of the cost required to bring Respondents' systems into compliance is that Staffs estimate does not include IEPA water quality issues or fire flow concerns. IAWC points out that its projected 152% increase in rates would occur over a ten year period and would amount to \$26 per month. In response to arguments that it is improper for IAWC to set terms and conditions on its willingness to acquire the systems, IAWC notes that Section 4-502(d)(2) specifically requires that the larger utility agree to the acquisition. If the acquisitions are not on financially reasonable terms, it would not agree to them.

### **STIPULATION BETWEEN STAFF AND IAWC**

Subsection 4-502(h) provides that the Commission may, in its discretion and for a reasonable period of time, allow the acquiring public utility to collect rates from the customers of the acquired public utility under a separate tariff. IAWC mentions certain concerns about rate recovery depending on possible contingencies. (IAWC Br. 9, 13-14.) In order to provide a smooth transition from the present management to IAWC, both IAWC and Staff have stipulated to the following:

- (1) Upon acquisition by IAWC through either the negotiation of an agreed sale approved by the Commission or the exercise of eminent domain by IAWC, the customers of the acquired utility or utilities will be placed on IAWC's Chicago Metro Division rates;
- (2) After acquisition, IAWC is authorized to make expenditures for necessary improvements to be incurred over a ten-year period up to \$6,751,000:

New or improved sources of water supplies	\$ 400,000
Iron and manganese removal/treatment	2,430,000
Installation of standby power and SCADA systems	475,000
Storage tanks, new or improved	2,000,000
Improvements in the distribution system and lines	1,160,000
Meters for customers expenses	<u>286,000</u>
	<u>\$ 6,751,000</u>

IAWC will consult with the customers in the system(s) acquired regarding the necessity, type, quality, and timeline of and for improvements prior to making any improvements; provided that customer preference shall not control improvements that IAWC, in its sound engineering judgment, determines are necessary to bring the system(s) acquired into regulatory compliance on a reasonable timeline.

- (3) IAWC is authorized to institute a monthly surcharge to the customers from the acquired utilities to recover the additional costs on forty-five days notice. Said surcharge is limited to the difference between IAWC's Chicago Metro Division current rate and \$42.03. If any such surcharge is proposed to be established, Commission Staff will investigate the installed facilities and the expenditures to determine if the amount imposed in the surcharge is accurate and does not exceed the \$42.03 (Chicago Metro Division's rates and the surcharge) cap.
- (4) If any surcharge or other rate recovery mechanism is established because of the acquisition of a utility or utilities as permitted by the Commission Order, said surcharge shall stay in place until the next general rate case involving IAWC's Chicago Metro Division. During that rate case, the separate surcharge will be examined to determine whether the surcharge should be continued or eliminated under the Commission's general ratemaking powers.
- (5) Pursuant to IAWC's contingent request for declaratory ruling, the Commission agrees to use the purchase price approved by the Commission or established by the court through eminent domain proceedings as the original cost rate base in any rate proceeding for the acquired systems. To this end, IAWC will account for the Commission or court approved purchase price by debiting the Utility Plant Acquisition Adjustment Account (Account No. 114) for the court approved purchase price and crediting Cash for such same amount. IAWC shall amortize the recorded acquisition adjustment to Account No. 406, Amortization of Utility Plant Acquisition Adjustment, above-the-line, over a 20-year period, commencing with the effective date of rates in this Order. In all future rate proceedings, IAWC will be authorized by the Commission to include both the return of (by amortization of the Utility Plant Acquisition Adjustment) and the return on (by including the unamortized balance of the Utility Plant Acquisition Adjustment in rate base) the Utility Plant Acquisition Adjustment in rates.
- (6) In the event that the approved or court-established purchase price for the acquired utilities is so high that, in the opinion of IAWC, the rate of return, using the existing Chicago Metro Division rate of return, on the original cost rate base of the acquired utility or utilities (including the amortization of and the return on the unamortized balance of the acquisition adjustment), plus the expenditures to improve the acquired utility or utilities and the costs of operation would cause the rates of the acquired utility or utilities to exceed the \$42.03 limit, IAWC may seek to recover the additional costs through a simplified rate case procedure application. For purposes of any such case, the \$300,000 revenue limit in 83 Ill. Adm. Code 255.20 (g) is waived. However, if such an application is filed, then the customers from the acquired utility will become their own distinct district and no longer be considered part of the Chicago Metro Division.

- (7) IAWC agrees to account for the assets acquired from the acquired utility or utilities in accordance with the provisions of the Uniform System of Accounts for Water Utilities Operating in Illinois (83 Ill. Adm. Code 605). IAWC further agrees to use the current Commission approved depreciation rates for Chicago Metro Division to determine the proper depreciation expense for any assets of the acquired utility or utilities and any assets acquired pursuant to Paragraph (2) above.
- (8) Staff withdraws its request that the amounts received under the surcharge be treated as capital contributions of the customers.

## **COMMISSION ANALYSIS AND CONCLUSIONS**

Section 4-502(b) of the Act defines a “small public utility” as a public utility “that regularly provides service to fewer than 7,500 customers.” There is no disagreement that Respondents meet this definition. Indeed, Respondents concede that “all five Respondents, collectively, have only 2,200 customers..the largest Respondent has only 644 customers.” (Reply Br. at 21.)

Section 4-502(a) of the Act sets forth six types of failures, any one of which is sufficient to justify acquisition of a small public utility by a “capable public utility” pursuant to this Section. Although one is sufficient, Respondents meet at least the following three:

- (1) the small public utility or telecommunications carrier is failing to provide safe, adequate, or reliable service; [or]
- (2) the small public utility or telecommunications carrier no longer possesses sufficient technical, financial, or managerial resources and abilities to provide the service or services for which its certificate was originally granted; [or]
- (5) the small public utility or telecommunications carrier has willfully failed to comply with any provision of this Act, any other provision of State or federal law, or any rule, regulation, order, or decision of the Commission[.]

The failures of each of the Respondents to implement the investments in plant ordered in the 1997 Citations also indicate multiple failures by each to comply with a Commission Order; failure by each to provide safe, adequate, reliable service to its customers; and a lack of sufficient technical, financial, or managerial resources and abilities to provide utility service.

By the terms of the 1997 Citation Orders, to which they agreed, Respondents were required to make various improvements to their water systems. The evidence demonstrates that, by and large, Respondents have failed to do what they agreed to do. Respondents repeatedly assert that they have not failed to comply because in many instances compliance is not really

necessary. Respondents allude to the prior Orders of the Commission as if they are well-meaning but misguided advisory opinions which Respondents may ignore at their discretion. That is not true. Respondents are required to meet the standards encompassed by the Act and the relevant regulations. Respondents' Certificates are dependent upon their ability to provide safe and reliable service to their customers. The Commission's prior Orders were directives to the Respondents designed to bring them into compliance on these core issues. Respondents' across-the-board failure to come into compliance requires that the Commission take appropriate and decisive action.

The non-payment of electric bills, and the alteration of the bills submitted by Respondents to Commission Staff to show only the current amounts and not the hundreds of thousands of dollars owed in past-due bills and late charges (see Staff ex. 3.03(b)), demonstrates a lack of financial and managerial ability. The accrual of large overdue amounts also creates the possibility of a disconnection of electrical service, and therefore endangers Respondents' ability to provide safe, adequate, reliable service to its customers.

Section 4-502(d) of the Act defines a "capable public utility" as a public utility that:

- (1) regularly provides the same type of service as the small public utility or telecommunications carrier, to 7,500 or more customers, and provides safe, adequate, and reliable service to those customers;
- (2) is not an affiliated interest of the small public utility or telecommunications carrier;
- (3) agrees to acquire the small public utility...under the terms and conditions contained in the Commission order approving the acquisition; and
- (4) is financially, managerially, and technically capable of acquiring and operating the small public utility or telecommunications carrier in compliance with applicable statutory and regulatory standards.

The record reflects that IAWC meets all four of these provisions. IAWC provides water and wastewater service to approximately 304,230 customers representing approximately 938,400 persons throughout its Illinois service territories. IAWC is not affiliated with any of the Respondents. IAWC states that it is the largest investor-owned water utility in Illinois, and that its systems meet all applicable water quality and quantity standards. IAWC also notes that its Terra Cotta system is located between Respondent CCWC and Respondent MSWC, and approximately seven miles from the other three Respondents, and that responsive service can be provided from such distance.

The Commission notes that IAWC has agreed to acquire any or all of the Respondents under Section 4-502 of the Act, subject to the determination of a reasonable price for the Respondents' systems to be considered as the original price and included in rate base. Staff and IAWC reached an agreement regarding the rate proposals and the procedures for the development and design of the rates, which are contained in the stipulation included *supra*. The Commission finds that the proposals in that stipulation between Staff and IAWC are reasonable and should be adopted for this proceeding. The Commission notes that these findings collectively satisfy the requirements of Section 4-502(d) with respect to IAWC.

Section 4-502(c) provides that the determination of whether to approve an acquisition by a capable public utility requires consideration of all of the following:

- (1) The financial, managerial, and technical ability of the small public utility or telecommunications carrier.
- (2) The financial, managerial, and technical ability of all proximate public utilities or telecommunications carriers providing the same type of service.
- (3) The expenditures that may be necessary to make improvements to the small public utility or telecommunications carrier to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety, or reasonableness of utility service.
- (4) The expansion of the service territory of the acquiring capable public utility or telecommunications carrier to include the service area of the small public utility or telecommunications carrier to be acquired.
- (5) Whether the rates charged by the acquiring capable public utility or telecommunications carrier to its acquisition customers will increase unreasonably because of the acquisition.
- (6) Any other matter that may be relevant.

As set forth above, the record contains an abundance of evidence demonstrating that the Respondents lack the financial, managerial, and technical ability necessary to provide safe, adequate, reliable service. The record also demonstrates that IAWC is a proximate capable public utility that possesses the requisite financial, managerial, and technical abilities, and a lack of interest by any other entity to acquire Respondents. IAWC has demonstrated that it will implement the improvements to bring the acquired systems into compliance with applicable statutory and regulatory standards. IAWC and Staff have proposed terms to address the service territory and rate issues associated with an acquisition and subsequent investment in infrastructure.

The Commission also notes that these acquisitions under Section 4-502 of the Act are consistent with the public interest. Respondents' systems are in poor condition, and the present owner-operator is very unlikely to bring the systems into compliance with applicable regulations and prior Commission Orders. The evidence contains numerous examples of Respondents' lack of financial, managerial, and technical ability necessary to provide safe, adequate, reliable service. Accordingly, the Commission finds that acquisition of Respondents by a capable public utility pursuant to Section 4-502 of the Act is warranted.

## **FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Each of the Respondents and Illinois-American Water Company all provide water service to the public within the State of Illinois, and, as such, are public utilities as defined in Section 3-105 of the Act;
- (2) the Commission has jurisdiction over each Respondent and Illinois-American Water Company, as well as the subject matter herein;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record, and are hereby adopted as findings of fact and conclusions of law;
- (4) Respondents are in violation of prior Commission Orders and no longer possess the necessary financial, managerial, and technical ability necessary to provide safe, adequate, reliable utility service to their customers;
- (5) acquisition of Respondents by a capable public utility pursuant to Section 4-502 of the Act is the most appropriate remedy among those contemplated by the Citation and Supplemental Citation Orders previously entered in the instant Dockets, and is in the public interest;
- (6) Illinois-American Water Company is a capable public utility within the meaning of Section 4-502 of the Act;
- (7) the rate proposals and the procedures for the development and design of the rates under certain contingencies, as proposed in the stipulation of Staff and Illinois-American Water Company and as set forth earlier in this Order, are reasonable and should be adopted for this proceeding;
- (8) the price for the acquisition of each Respondent should be determined by agreement between the Respondent and Illinois-American Water Company within ninety days and that, upon

agreement, a joint petition be filed in a new docket for determination if the price is reasonable in accordance with Section 4-502(g) of the Act;

- (9) if Illinois-American Water Company and any Respondent are unable to agree on the acquisition price within ninety days, Illinois-American Water Company shall be authorized herein to acquire that Respondent by following the procedure prescribed for the exercise of the powers of eminent domain in accordance with 5/4-502(g) of the Act;
- (10) the Commission accepts as the original cost of plant in service for utility accounting and ratemaking purposes the court-determined purchase price established in a Section 4-502 condemnation proceeding;
- (11) Illinois-American Water Company's current depreciation rates shall be adopted to determine the proper depreciation expense for Respondents' facilities;
- (12) Respondents' service area should be merged with the Chicago Metro Division of Illinois-American Water Company;
- (13) if, instead of a complete merger, Respondents' former service territory is separately tariffed, any allowed surcharge shall be accounted as a contribution from the customers; and
- (14) Illinois-American Water Company shall be required to file in a separate docket, within ninety days of agreeing on a purchase price or of obtaining a price through condemnation, its plan for bringing Respondents' systems and businesses into compliance with applicable statutory and regulatory standards, in accordance with Section 4-502(i) of the Act.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that approval is granted for acquisition of Respondents by a capable public utility pursuant to Section 4-502 of the Act in accordance with Findings (4) through (14) of this Order.

IT IS FURTHER ORDERED that Illinois-American Water Company is accepted as a capable public utility as defined by Section 4-502 of the Act.

IT IS FURTHER ORDERED that, upon acquisition of one or more of Respondents' systems by Illinois-American Water Company through agreement with one or more Respondents approved by the Commission or through the exercise of eminent domain by Illinois-American Water Company, (i) the customers of the acquired utility or utilities be placed on Illinois-American Water Company's Chicago Metro Division rates, (ii) the current depreciation rates for

Chicago Metro Division be used as the depreciation rate for the acquired utility or utilities, (iii) the purchase price established by the approved agreement or through eminent domain proceedings shall be accounted for as an acquisition adjustment, amortized above-the-line, over a twenty-year period, (iv) the purchase price established by the approved agreement or through eminent domain proceedings shall be used as the original cost rate base of the acquired utility or utilities, and (v) Illinois-American Water Company shall be allowed to earn a return of the purchase price through the twenty-year amortization and a return on the unamortized balance of the purchase price in any rate case filed during such amortization period.

IT IS FURTHER ORDERED that Illinois-American Water Company is authorized to make expenditures for necessary improvements pursuant to its stipulation with Staff as set forth herein, to be incurred within a ten-year period. Illinois-American Water Company is authorized to establish a separate surcharge of the acquired customers, up to the \$42.03 (including Chicago Metro Division's rates and the surcharge) limit established earlier in this Order, on forty-five days notice, during which time Commission Staff will investigate the installed facilities and the expenditures to determine if the amount imposed in the surcharge is accurate and does not exceed the \$42.03 (Chicago Metro Division's rates and the surcharge) cap.

IT IS FURTHER ORDERED that, if any surcharge or other rate recovery mechanism is established through the permissions granted in this Order, said surcharges or rate recovery mechanisms will continue until the next general rate case involving Chicago Metro Division, at which point further rate recovery will be taken up under the Commission's general ratemaking powers and the surcharge either merged into general rates or retained.

IT IS FURTHER ORDERED that, in the event that the Company determines that the agreed or court-imposed purchase price would cause the rates to exceed the \$42.03 limit under Illinois-American Water Company's Chicago Metro Division rates, in order to recover the additional amounts not being recovered by Chicago Metro Division rates, Illinois-American Water Company may seek to recover the additional costs through a simplified rate case procedure application. Application of the \$300,000 revenue limit in 83 Ill. Adm. Code 255.20(g) shall be and is hereby waived. However, if such an application is filed, then the customers from the acquired utility will become their own distinct district and will no longer be part of the Chicago Metro Division.

IT IS FURTHER ORDERED that any outstanding motions, petitions, or objections are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED: December 9, 2005  
BRIEFS ON EXCEPTIONS DUE: December 30, 2005  
REPLIES ON EXCEPTIONS DUE: January 12, 2006

Terrance Hilliard  
Ian Brodsky  
Administrative Law Judges