

Docket Nos.: 05-0071 & 05-0072 (Cons.)
Bench Date: 12-21-05
Deadline: 12-27-05

MEMORANDUM

TO: The Commission
FROM: John D. Albers, Administrative Law Judge
DATE: December 13, 2005
SUBJECT: Aqua Illinois, Inc.

Proposed general increase in water and sewer rates for the Woodhaven Water Division. (Tariffs filed on December 22, 2004)

Proposed general increase in water rates for the Oak Run Water Division. (Tariffs filed on December 29, 2004)

RECOMMENDATION: Deny the applications for rehearing and other requests.

On November 8, 2005, the Commission entered an Order in Docket Nos. 05-0071 and 05-0072 (Cons.) approving a water and sewer rate increase for Aqua Illinois, Inc.'s ("Aqua") Woodhaven Water Division and a water rate increase for Aqua's Oak Run Water Division. On November 10, 2005, Monica Sadler filed a pleading entitled "Motion to Hold Oral Argument, Motion for Additional Hearing, Motion to Admit Post-Record Data." Aqua responded to Ms. Sadler's filing on November 23, 2005. On December 7, 2005, the Woodhaven Association ("WA") filed an application for rehearing. On December 8, 2005, Ms. Sadler filed an application for rehearing. The deadline for Commission action on WA's application for rehearing is December 27, 2005 and the deadline on Ms. Sadler's application for rehearing is December 28, 2005. The last scheduled Commission meeting before the deadlines is the December 21, 2005 Bench Session.

Sadler's Pleadings

Ms. Sadler's November 10 filing consists of fourteen pages and twenty-five attachments concerning only Aqua's Oak Run Water Division. In the filing, she questions whether Staff and myself have properly performed our duties and whether counsel for Aqua and the Oak Run Property Owner's Association honestly provided all relevant information. While at no time does she ask for rehearing or cite Section 200.880, the section of the Commission's Rules of Practice governing rehearing, she requests that her twenty-five attachments be admitted into the record, that additional

hearings be held, and that oral argument be heard. Ms. Sadler's underlying argument is that the covenants applicable to Aqua's customers in the Oak Run Water Division limit what they can be charged for water service. For a better understanding of Ms. Sadler's arguments, I encourage the Commission to review the November 10 filing.

In response to the November 10 filing, Aqua points out that Ms. Sadler was notified of the rate case at its outset yet did not intervene until a few days before the Proposed Order was issued. In accordance with Section 200.200, Aqua reminds Ms. Sadler that unless good cause is shown an intervenor accepts the status of the record as it exists when they intervene. Aqua states that Ms. Sadler has not presented good cause for failing to intervene and submit her documents during the evidentiary phase of this case. Aqua also discusses the three sections of the Commission's Rules of Practice cited by Ms. Sadler as the basis for her November 10 filing: Sections 200.850 "Oral Argument," 200.870 "Additional Hearings," and 200.875 "Post-Record Data." Aqua argues that the first of the three sections is of no assistance to Ms. Sadler because oral argument is to be based on information already in the record. Aqua points out that none of the allegations in the November 10 filing are in the record. Aqua states further that the latter two sections do not provide a means of getting her allegations in the record because these two sections are inapplicable on their face. Specifically, Aqua observes, they only apply *before* the issuance of a final order by the Commission.

Aqua is correct in its analysis of the November 10 filing. There is no basis in the Public Utilities Act or Commission's Rules of Practice to grant any of Ms. Sadler's untimely motions. Had Ms. Sadler intervened earlier and participated in the proceeding, her arguments could have been considered. The Commission should therefore deny the requests in Ms. Sadler's November 10 filing. As discussed in the context of Ms. Sadler's application for rehearing, however, she is not without options.

In her application for rehearing, Ms. Sadler explains that she was unaware of the entry of the Order on November 8, 2005 when she made her November 10 filing. She adds that she could not have anticipated that the Commission would enter the Order before the deadline. She also states that she intervened late because it was only then that she realized that certain information had not been provided. Ms. Sadler's application for rehearing repeats many of the same arguments and criticisms contained in her November 10 filing. She insists that rehearing is necessary to correct the wrong perpetrated against Oak Run customers in this docket, as well in the last rate case for Aqua's Oak Run Water Division. Despite the length of her application for rehearing, Ms. Sadler has not offered sufficient reason for granting rehearing. Moreover, a proper analysis of the issue raised by Ms. Sadler would appear to require more than the 150 days available for rehearing. As noted in the memorandum accompanying the Post-Exceptions Proposed Order, her claim is better suited for a complaint proceeding. Nothing prevents Ms. Sadler from filing a formal complaint concerning the issue she raises now. Therefore, Ms. Sadler's application for rehearing should be denied.

WA's Application for Rehearing

WA seeks rehearing on two issues affecting Aqua's customers in the Woodhaven Water Division. The first concerns the allocation methodology for management expenses in Accounts 634 and 734. Previously, Aqua allocated such expenses across all divisions using the rate base of each division. The November 8, 2005 Order, however, approved the use of a customer count methodology. WA complains that this change results in an unwarranted increase in the revenue requirement for the Woodhaven Water Division and urges the Commission to grant rehearing for the purpose of requiring the use of the rate base allocation methodology. WA argues that the change in allocation methodology is not supported and considers it arbitrary, unreasonable, and capricious. The arguments WA raises in opposition to the customer count allocation methodology were previously considered. No reason exists to revisit this issue. Therefore, WA's request for rehearing regarding the allocation methodology should be denied.

The second issue on which WA seeks rehearing concerns the rate design for sewer customers in the Woodhaven Water Division. Previously, commercial sewer customers paid a rate equal to 130% of the billing for water service. Although Aqua's proposed rates retained this rate design, in response to objections by Staff, the parties agreed to a flat monthly rate for commercial sewer customers. The Order, however, rejected the parties' elimination of the 130% billing rate. Instead, the Order retains the 130% billing rate in light of the absence of any cost of service study. The Order also notes that the parties' alternative proposal reallocates more than \$15,000 from commercial customers to residential customers. The Order seeks to avoid such an impact on residential customers in the absence of any cost of service study. WA prefers the flat monthly sewer rate for commercial customers and urges the Commission to adopt such a rate on rehearing. WA's arguments do not warrant rehearing on this issue. Therefore, WA's request for rehearing regarding rate design should be denied.

JDA