

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	
-vs.-	)	
	)	
Apple Canyon Utility Company;	)	Docket No. 06-0360
Cedar Bluff Utilities, Inc.;	)	
Charmar Water Company;	)	
Cherry Hill Water Company; and	)	
Northern Hills Water and Sewer Company.	)	
	)	
Citation for failure to comply with Commission	)	
Order and with Commission rules.	)	

**VERIFIED ANSWER OF UTILITIES, INC. TO CITATION ORDER**

Utilities, Inc., on behalf of Apple Canyon Utility Company, Cedar Bluff Utilities, Inc., Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company ("UI" or the "Companies"), and by its undersigned counsel, hereby responds to the Citation Order issued by the Illinois Commerce Commission ("Commission") on May 3, 2006, as follows.

**INTRODUCTION**

The Citation Order is not a "Formal Complaint" under the Commission's Rules of Practice, 83 Ill. Admin. Code 200.170. Similarly, the Citation Order is neither a "complaint" nor a "pleading" under the Illinois Code of Civil Procedure because, *inter alia*, the Citation Order's allegations, to the extent they can be identified, are not "separately pleaded, designated and numbered" or "divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation." 735 ILCS 5/2-603(b). As a result, the particular requirements for answers to complaints found in the Commission's rules (83 Il. Admin. Code 200.180) and the Code of Civil

Procedure can not be clearly applied to the Citation Order. Nevertheless, UI makes the following answer, consisting of both a general response and a specific answer to the statements made in the Citation Order, in keeping with the requirements of the Commission's rules that "[a]nswers shall contain an explicit admission or denial of each allegation of the pleading to which they relate and a concise statement of the nature of any defense," 83 Ill. Admin. Code 200.180(a), and of the Code of Civil Procedure, which requires that "pleadings shall contain a plain and concise statement of the pleader's cause of action, counterclaim, defense, or reply," 735 ILCS 5/2-603(a), and that "pleadings shall be liberally construed with a view to doing substantial justice between the parties." 735 ILCS 5/2-603(c).

#### **GENERAL RESPONSE**

The Commission Order issued April 7, 2004 in Docket Nos. 03-0398/03-0399/03-0400/03-0401/03-0402 (Consol.) ("Rate Case Order") ordered the Companies to establish and maintain continuing property records ("CPRs") in compliance with the Commission's rules, and to file a report with the Manager of the Commission's Accounting Department as to the successful implementation of the CPR program within 12 months after the final order in the proceeding.

Since the entry of the Rate Case Order, UI has been working diligently to implement a CPR system for all twenty-five UI subsidiaries in Illinois, including the Companies, that complies with Accounting Instruction 28 of the National Association of Regulatory Utility Commissioners Uniform System of Accounts for Class A Water Utilities (1996), adopted by the Commission at 83 Ill. Adm. Code 605.10, and the requirements of 83 Ill. Admin. Code 615 Appendix A (Item 22). As a result of these

efforts, UI's CPR system is complete and in place. The CPR system began functioning on a retrospective basis in the first quarter of 2006, and includes CPR data from 2005 onward. However, entry of data into the CPR system has proved extremely time consuming. Currently, UI is continuing to input historical CPR information into the system. Clearing this backlog of data has been an unexpectedly slow process due to lack of computing<sup>1</sup> and staff resources. Additional personnel to support the data entry were only added to UI's staff in the last quarter of 2005. UI also notes that the CPR system covers all twenty-five UI subsidiaries in Illinois, not just the five Companies in this proceeding.

Due to the unanticipated delay in data entry, UI was unable to meet the April 7, 2005 deadline for CPR implementation set forth in the Rate Case Order and the required report was not filed by April 7, 2005. However, UI made several good faith efforts to inform the Commission of its progress in implementing the CPR requirement after the deadline passed. On May 27, 2005, UI filed the first in a series of four motions (the "Motions") seeking an extension of time to comply with the CPR requirement.<sup>2</sup> That the Motions were made in a good faith effort to inform the Commission of the status of the CPR implementation is clear from the fact that UI could have pursued the alternative of not informing the Commission at all regarding the delay in implementing the

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<sup>1</sup> The CPR system is run on a mainframe computer housed at the offices of UI's parent in Northbrook, Illinois. This computer handles data management for all of UI's operating subsidiaries nationwide, and has experienced slowdowns related to the large amounts of data that must be processed for each subsidiary. As described below, UI is committed to upgrading its hardware and software systems to alleviate these data management issues.

<sup>2</sup> UI acknowledges that it should have consulted with counsel prior to filing the Motions. Nevertheless, in filing the Motions, UI was acting in a good faith manner to inform the Commission of the status of compliance with the CPR requirements. Moreover, UI believed that Commission Rule of Practice 200.90(c), 83 Ill. Admin. Code § 200.90(c), allowed a UI officer to appear and to file the Motions.

continuing property records. Instead, UI sought to timely inform the Commission that despite its diligent efforts, it was unable to meet the one-year deadline.

UI was recently acquired by a new parent, Hydrostar, LLC. UI's new parent is committed to upgrading the hardware and software of UI's data management system to improve functionality and to improve the reporting process, which will alleviate the data processing bottleneck. As a result, UI's management team has met with various consulting firms to discuss acquiring new data management systems, including a new general ledger and billing systems. These systems also have the capabilities to create, track, store and generate continuing property records. These systems will also be able to calculate depreciation and accumulated deferred income taxes without the need for manual recordation and tracking. Implementation of such a new system will allow the backlog of historical CPR data to be input and cleared much more quickly.

Although there has been a delay in implementing the CPR system, this delay has not had an adverse effect on UI's customers in Illinois or on UI's provision of adequate, safe and reliable service. As the Rate Case Order (p. 18) points out, the purpose of CPRs is to provide proof of the value and the prudence of investments, information that is particularly critical at the time of a rate case filing. Absent a rate case filing, however, the delay in implementing CPRs has not had a substantial impact on UI's operations or its provision of service.

#### **RESPONSE ON ISSUE OF CIVIL PENALTIES**

As a result of its continuing good faith efforts to implement the CPR system, UI does not believe that civil penalties are appropriate in this case. Section 4-203(a) of the Public Utilities Act ("Act"), 220 ILCS 5/4-203(a), provides that:

In determining the amount of the penalty, the Commission shall consider the appropriateness of the penalty to the size of the business of the public utility, corporation other than a public utility, or person acting as a public utility charged, the gravity of the violation, such other mitigating or aggravating factors as the Commission may find to exist, and the good faith of the public utility, corporation other than a public utility, or person acting as a public utility charged in attempting to achieve compliance after notification of a violation.

Thus the Commission may consider mitigating factors when assessing civil penalties, as well as the good faith of the utility. UI believes that the unexpectedly slow process of entering data for the CPRs, and in particular the difficulty with the mainframe computer system into which the data is being entered, represents a significant mitigating factor against imposing civil penalties. In addition, UI has acted in good faith both in its efforts to implement the CPR system and in its efforts to apprise the Commission of the delay in the implementation. Furthermore, UI is committed to obtaining a new software package and corresponding hardware that will facilitate the CPR recordation. UI also notes that the Companies meet the definition of "Small Utility" as found in Section 4-502 of the Act, 220 ILCS 5/4-502. Based on these factors, UI believes civil penalties are not appropriate in this case.

#### **ANSWER TO SPECIFIC STATEMENTS IN CITATION ORDER**

The following is a sentence by sentence reply, containing express admissions or denials, to the statements made in the Citation Order.

1. "In a Staff Report dated April 7, 2006, the Staff of the Financial Analysis Division ("Staff") of the Illinois Commerce Commission ("Commission") issued a Staff Report concerning the following utilities: Apple Canyon Utility Company; Cedar Bluff Utilities, Inc.; Charmar Water Company; Cherry Hill Water Company; and Northern Hills Water and Sewer Company (collectively "the Companies")."

RESPONSE: Admit.

2. "The companies are subsidiaries of a holding company, Utilities, Inc."

RESPONSE: Admit.

3. "In the Staff Report, Staff recounts that, in the Order issued April 7, 2004 in Docket Nos. 03-0398/03-0399/ 03-0400/03-0401/03-0402 (Consol.) ("rate case order"), the Commission ordered the Companies to:

establish and maintain continuing property records in compliance with the Commission's rules, and must file a report with the Manager of the Commission's Accounting Department as to the successful implementation of the property record program within 12 months after the final order in this proceeding. (rate case order, p. 26)"

RESPONSE: UI admits that the Staff Report accurately quotes the Rate Case Order as described in this statement. UI denies any and all other allegations in this statement.

4. "The required report was not filed by April 7, 2005, as required by the rate case order."

RESPONSE: UI admits that it did not file a report on implementation of its CPR program on or before April 7, 2005. To the extent this statements makes a legal conclusion about the requirements of the Rate Case Order, no response is required from UI. UI denies any and all other allegations in this statement.

5. "As described in the Staff Report, Staff has contacted the Companies in an effort to obtain the report."

RESPONSE: UI admits that it had at least one discussion with Staff regarding the status the CPR program in or around April, 2005. UI is without knowledge or information sufficient to form a belief as to the truth of any and all remaining allegations in this statement and therefore denies those allegations.

6. "The efforts have not been successful."

RESPONSE: UI admits that it has not filed a report with the Commission on implementation of its CPR program as of the date of this Answer. UI denies any and all other allegations in this statement.

7. “The alleged failure to maintain continuing property records would be a violation not only of the rate case order, but also violations of rules previously adopted by the Commission.”

RESPONSE: This statement presents a legal conclusion, and therefore no response is required from UI.

8. “The rules adopted by the Commission at 83 Ill. Adm. Code 605, Uniform System of Accounts for Water Utilities and at 83 Ill. Adm. Code 615, The Preservation of Records for Water Utilities, both require the maintaining of continuing property records.”

RESPONSE: This statement presents a legal conclusion, and therefore no response is required from UI.

9. “Section 605.10 adopts the Uniform System of Accounts for Class A Water Utilities (1996) of the National Association of Regulatory Utility Commissioners. The System of Accounts contains Instruction 28 C, which states:

Each utility shall maintain records in which, for each plant account, the amounts of the annual additions and retirements are classified so as to show the number and the cost of the various retirement units or other appropriate record units included therein

Appendix A (Item 22) to Part 615 requires the following preservation of utility records:

- (a) Ledgers of utility plant accounts, including land and other ledgers, showing the cost of utility plant by prime accounts. – Period to be retained: Permanently.
- (b) Continuing plant inventory records, showing description, location, quantity, cost, etc. of physical units (or items) of utility plant owned. – Period to be

retained: Until record is superseded or 6 years after plant is retired, provided mortality data are retained as provided in Item 31.”

RESPONSE: These statements present legal conclusions, and therefore no response is required from UI.

10. “The Staff of the Commission has recommended that the Commission initiate a citation proceeding to determine whether the Companies have failed to comply with the rate case order, 83 Ill. Adm. Code 605, and 83 Ill. Adm. Code 615 and to determine what civil penalties should attach.”

RESPONSE: UI admits that the Staff Report of April 7, 2006 recommended the initiation of a citation proceeding for non-compliance with the Commission’s rules and the Rate Case Order and the imposition of civil penalties. UI denies any and all other allegations in this statement.

11. “Section 5-202 of the Public Utilities Act provides in relevant part:

Any public utility, any corporation other than a public utility, or any person acting as a public utility, that violates or fails to comply with any provisions of this Act or that fails to obey, observe, or comply with any order, decision, rule, regulation, direction, or requirement, or any part or provision thereof, of the Commission, made or issued under authority of this Act, in a case in which a penalty is not otherwise provided for in this Act, shall be subject to a civil penalty imposed in the manner provided in Section 4-203. A small public utility, as defined in subsection (b) of Section 4-502 of this Act, is subject to a civil penalty of not less than \$500 nor more than \$2,000 for each and every offense. All other public utilities, corporations other than a public utility, and persons acting as a public utility are subject to a civil penalty of up to \$30,000 for each and every offense, except as provided in this Section and in Sections 13-101, 13-304, 13-305, and 5-202.1 of this Act. Every violation of the provisions of this Act or of any order, decision, rule, regulation, direction, or requirement of the Commission, or any part or portion thereof, by any corporation or person, is a separate and distinct offense, provided, however, that if the same act or omission violates more than one provision of this Act, or of any order, decision, rule, regulation, direction, or requirement of the Commission, only one penalty or cumulative penalty may be imposed for such act or omission. In case of a continuing violation, each day’s continuance thereof shall be a separate and distinct offense, provided, however, that the cumulative penalty for any continuing violation shall not exceed \$500,000, except in the case of a small utility, as defined in subsection (b) of

Section 4-502 of this Act, in which case the cumulative penalty for any continuing violation shall not exceed \$35,000, and provided further that these limits shall not apply where the violation was intentional and either (i) created substantial risk to the safety of the utility's employees or customers or the public or (ii) was intended to cause economic benefits to accrue to the violator.”

RESPONSE: This statement presents a legal conclusion, and therefore no response is required from UI.

12. “Section 4-203(a) of the Act provides:

All civil penalties established under this Act shall be assessed and collected by the Commission. Except for the penalties provided under Section 2-202, civil penalties may be assessed only after notice and opportunity to be heard. In determining the amount of the penalty, the Commission shall consider the appropriateness of the penalty to the size of the business of the public utility, corporation other than a public utility, or person acting as a public utility charged, the gravity of the violation, such other mitigating or aggravating factors as the Commission may find to exist, and the good faith of the public utility, corporation other than a public utility, or person acting as a public utility charged in attempting to achieve compliance after notification of a violation. Nothing in this Section, however, increases or decreases any minimum or maximum penalty prescribed elsewhere in this Act.”

RESPONSE: This statement presents a legal conclusion, and therefore no response is required from UI.

The remainder of the Citation Order contains the Commission’s findings and ordering paragraphs initiating the citation proceeding, which require no response from UI.

WHEREFORE, UI respectfully requests that the Commission enter an Order (i) finding that UI has implemented a system for tracking CPRs; (ii) finding that civil penalties are inappropriate under the circumstances of this case; and (iii) dismissing this citation proceeding.

Dated: June 12, 2006

Respectfully submitted,  
UTILITIES, INC.

By: /s/ Albert D. Sturtevant

One of their attorneys

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