

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

KEVIN GRENS	)	
	)	
-vs.-	)	
	)	
ILLINOIS-AMERICAN WATER COMPANY	)	
Complaint as to billing/charges in Lemont, Illinois.	)	
	)	Docket No. 05-0681
	)	
PEOPLE OF THE STATE OF ILLINOIS	)	Docket No. 06-0094
	)	
-vs.-	)	Docket No. 06-0095
	)	
ILLINOIS-AMERICAN WATER COMPANY	)	(Cons.)
Investigation of failure to provide service on just and reasonable terms, and violation of the Public Utilities Act and Commission rules.	)	
	)	
	)	
VILLAGE OF HOMER GLEN	)	
	)	
-vs.-	)	
	)	
ILLINOIS-AMERICAN WATER COMPANY	)	
Complaint as to billing/charges in Homer Glen, Illinois.	)	

**MOTION TO DISMISS**

Pursuant to 83 Ill. Admin. Code 200.190(a), Illinois-American Water Company ("IAWC" or the "Company"), by and through its undersigned attorneys, moves to dismiss Complainant Kevin Grens's amended complaint in its entirety with prejudice. In support, IAWC states as follows:

## Background

1. Mr. Grens filed a formal Complaint with the Illinois Commerce Commission ("Commission") on October 20, 2005.

2. The Company moved to dismiss Mr. Grens' Complaint on November 14, 2005, on the grounds that the Complaint did not reflect the issues raised in his informal complaint to the Commission filed prior to his formal Complaint, and that his formal Complaint only alleged that Mr. Grens' rates high were high, an inappropriate subject for a formal Complaint. The Motion was dismissed by order of the Administrative Law Judge ("ALJ") on January 31, 2006.

3. On February 21, 2006, Mr. Grens moved to consolidate his Complaint with Dockets 06-0094 and 06-0095.

4. At a hearing on March 16, 2006, Mr. Grens was ordered to file an amended complaint. Mr. Grens filed an Amended Complaint on March 27, 2006. The Amended Complaint alleged that Mr. Grens' sewer rates were unreasonably high.

5. At a hearing on April 6, 2006, the Company renewed its Motion to Dismiss, directing it to Mr. Grens' Amended Complaint. The ALJ ordered Mr. Grens' Amended Complaint consolidated with Dockets 06-0094 and 06-0095 and denied the Company's Motion to Dismiss. (Tr. 91.) However, the ALJ stated that the denial was without prejudice to the Motion to Dismiss being raised again in the consolidated Dockets. (Id.)

6. The Company hereby moves to dismiss Mr. Grens' Amended Complaint on the grounds that he has not offered any evidence in support of it, and the Company renews its Motion to Dismiss on the grounds that the Commission should dismiss complaints that allege rates are too high.

Grens' Complaint Should be Dismissed Because He Has Failed to Offer Any Evidence in Support of His Amended Complaint

7. Commission rule 200.610(b) states that "the rules of evidence and privilege applied in civil cases in the circuit courts of the State of Illinois shall be followed." Thus the standard Illinois rules of evidence regarding burdens of proof and production apply to this case. As the complainant in this case, Mr. Grens has the ultimate burden of proof in the case, i.e. the burden of persuading the trier of fact on its claims. However, Mr. Grens also has the initial burden of producing evidence in support of each allegation in its complaint sufficient to make out a *prima facie* case in support of such allegations. Such burden is generally referred to as the "burden of production," the "burden of producing evidence" or the "burden of going forward" on an issue. See *Consolidated Communications Consultant Serv., Inc. v. Illinois Bell Tel. Co.*, Docket 99-0429, 2001 Ill. PUC LEXIS 568, \*12-14 (June 4, 2001) (discussing the two-fold nature of the burden of proof in Commission proceedings).

8. The standard for a making out a *prima facie* case in Illinois can generally be stated as "A plaintiff establishes a prima facie case by proffering at least 'some evidence on every element essential to [the plaintiff's underlying] cause of action,'" *Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003), or "The plaintiff must have presented some evidence, more than a scintilla, on every essential element of his cause of action," *Happel v. Mecklenburger*, 101 Ill. App. 3d 107, 111 (1st Dist 1981). Thus, in order to make a *prima facie* case and meet its burden of production on an allegation, the plaintiff must offer at least some evidence to support the allegation. If the plaintiff fails to meet this burden by producing no evidence on an allegation, the court should enter judgment in the defendant's favor. *Sherman*, 203 Ill. 2d at 275.

9. The Commission's rules, 83 Ill. Admin. Code 200.550, also require that a complainant diligently prosecute its case. Failure to do so is grounds for dismissal of the case or

claims that are not diligently prosecuted. *See* 83 Ill. Admin. Code 200.190(a). In cases where a complainant does not produce any evidence in support of claim, the complainant is considered to have abandoned those claims and they are properly dismissed. *Shah v. Illinois Bell Tel. Co.*, Docket 03-0494, Order at 8 (Nov. 23, 2004).

10. The ALJs in this proceeding set a deadline of June 30, 2006, for the presentation of complainants' direct testimony. On that date, Mr. Grens was required to produce his direct evidence in support of the allegations in its complaint.

11. Before his case was consolidated into the instant Dockets, the ALJ advised Mr. Grens that "we are going to go to hearing on your complaint. And what that means is that you are going to be required to produce evidence with regard to this disparity you allege in the water rates that you are paying. And that evidence can take the form of testimony, documentation, whatever you can come up with that is relevant to those water rates. And that will be up to you to determine." (Tr. 40.) As a result, Mr. Grens was aware that he would need to produce evidence to support his claims.

12. Mr. Grens filed no testimony and did not otherwise produce any evidence on June 30, 2006. As a result, Mr. Grens has failed to meet his burden of going forward, and has abandoned his claims. His Amended Complaint must therefore be dismissed. *Shah*, Docket 03-0494, Order at 8.

Grens' Complaint Should Be Dismissed Because He Is Improperly Asking the Commission to Conduct a Rate Analysis

13. In his Amended Complaint, Mr. Grens alleges that the Company's flat-fee sewer rates are excessive. He asks the Commission to order a formal rate investigation such that the flat fee "be changed . . . to a rate based on water usage." (Amend. Compl. Intro. ¶.)

14. At an earlier hearing in this case, Mr. Grens explained that "the fact that we're forced to pay a flat, ridiculously high sewer rate as opposed to a sewer rate based on water usage is essentially what I'd like to focus on from here on out." (Tr. 76.) Later in the same hearing, Mr. Grens acknowledged that his claim involved "a tariff that has been fully litigated and approved by the Commission," and that he was "requesting . . . the Commission to essentially conduct a rate analysis." (Tr. 79-80.)

15. The Commission approved the rates that are the subject of Mr. Grens's claim in Docket No. 02-0690. The proceeding that resulted in the approval of these rates followed all the procedures set forth under the applicable law, including evidentiary hearings. At the conclusion of the evidence, the Commission issued an Order setting the current rates. Mr. Grens alleges no facts that would suggest that circumstances have occurred to alter the Commission's findings.

16. In similar situations, the Commission has appropriately dismissed complaints alleging that rates are too high. *Mandel Bros., Inc. v. Chicago Tunnel Terminal Co.*, 2 Ill. 2d 205 (1954); *Independent Voters of Ill. v. Illinois Commerce Comm'n*, 139 Ill. App. 3d 957, *aff'd in part and rev'd in part on other grounds*, 117 Ill. 2d 90, (1985).

17. Mr. Grens has not alleged any problems with his service or bill. His complaint relates solely to the high price of sewer service in general. Accordingly, under the authority cited in paragraph 16 of this motion, Mr. Grens' claims should be dismissed in their entirety with prejudice.

WHEREFORE, Illinois-American Water Company requests that this Court dismiss  
Complainant Kevin Grens' Amended Complaint in its entirety with prejudice.

August 11, 2006

Respectfully submitted,

ILLINOIS-AMERICAN WATER  
COMPANY

By: /s/ Albert D. Sturtevant

One of its attorneys

Boyd J. Springer  
Albert D. Sturtevant  
JONES DAY  
77 West Wacker Drive  
Suite 3500  
Chicago, IL 60601-1692  
Phone: (312) 782-3939  
Fax: (312) 782-8585  
bjspringer@jonesday.com  
mprotatori@jonesday.com  
adsturtevant@jonesday.com

Mary G. Sullivan  
John J. Reichart  
Illinois-American Water Company  
727 Craig Road  
St. Louis, MO 63141  
314-996-2287  
Mary.sullivan@amwater.com  
John.reichart@amwater.com