

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Kevin Grens, The People of the State of Illinois, and the Village of Homer Glen)	
Complaints,)	
v.)	Docket Nos.
Illinois-American Water Company)	05-0681, 06-0094 and
Respondent.)	06-0095
)	(cons.)
Investigation of the failure to provide service on just and reasonable terms and violation of the Public Utilities Act and Commission Rules.)	

INITIAL BRIEF OF THE CITIZENS UTILITY BOARD

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INTRODUCTION

In the fall of 2005, the Citizens Utility Board (“CUB”), the Illinois Attorney General’s Office and the Village of Homer Glen received numerous consumer complaints concerning Illinois American Water Company’s (“IAWC”) failure to provide adequate and reasonable customer service. To date the company has failed to adequately and resolve these issues. The Attorney General’s Office and the Village of Homer Glen filed their respective Complaints on February 1, 2006 and February 2, 2006. On February 21, 2006, CUB filed a Petition to Intervene in support of those Complaints.

CUB’s main concern in this proceeding is the numerous complaints from customers regarding the company’s failure to adequately notify its customers of boil orders. State regulations require IAWC to notify customers when there is a substantial risk that drinking water may be contaminated. IAWC’s primary and most frequent means of boil order notification going door-to-door making personal contact or fastening a paper notice on each door. This method of notice is inadequate for several of reasons. First, a customer must actually see the notice by exiting their dwelling thus increasing the risk that the customer may drink contaminated water prior to seeing the notice. Second, the elements may detach the paper flyer from the door prior to the customer seeing the notice. Third, human error may cause a paper flyer not be fastened on a customer’s door or the paper flyer may be fastened in a location that is not the most visible to the customer.

CUB believes that the company must address this problem by supplementing its current procedure with an automated messaging system that will be used every time a boil order is issued to notifying all affected customers, municipalities and fire

departments. The company has indicated that it plans to implement an automated messaging system voluntarily, but CUB submits that the implementation of an automated messaging system should be mandatory. For these reasons and those more fully developed in the brief below the Illinois Commerce Commission (“the Commission”) should direct IAWC to implement procedures that will improve the company’s method of notifying customers when a boil order is issued so that any risk to the public’s health and safety is decreased.

STATEMENT OF FACTS

Illinois American Water (“IAWC”) is the largest privately owned water utility in Illinois. IAWC Ex. 1.03. IAWC provides retail and sale-for-resale water service to approximately one million people in 125 communities throughout Illinois, from as far south as Cairo to the suburbs of Chicago. IAWC Ex. 1.03.

State regulations require IAWC to notify customers whenever there is evidence of persistent microbial contamination in the water system or if any portion of the distribution system falls below 20psi. 35 Ill. Admin. Code 607.103. *See also* October 31, 2006 Tr. at 354. However, state regulation does not prescribe the method that IAWC must use to notify customers of boil orders. *See* 35 Ill. Admin. Code 607.103 and 83 Ill. Admin. Code 600.220. IAWC’s primary means of boil order notification is going door-to-door making personal contact or fastening the notice to a customer’s door. Cooper Cross Ex. 22 at 1 ¶1 and October 31, 2006 Tr. at 367. Customers do not always receive notification of boil orders. Cooper Cross Ex. 22, 25, 26 and Ruckman Cross Ex. 14. Lack of customer notice increases the risk that customers may consume contaminated water, which poses a health risk to customers. October 31, 2006 Tr. at 379 and 381.

In addition to the residential contacts, IAWC's boil order policy requires the company to contact each municipality on an individual basis to determine how each individual municipality wants to be contacted in the event of a boil order. October 31, 2006 Tr. at 407-408. IAWC does not always notify municipalities when a boil order is issued. Ruckman Cross Ex. 14 at 2. IAWC relies on municipalities to notify commercial customers in the event of a boil order. October 31, 2006 Tr. at 354.

IAWC also has a responsibility to notify local fire departments when a boil order is issued. October 31, 2006 Tr. at 419. A local fire department's ability to respond to a fire is effected when the pressure in the water distribution system falls below 20psi. October 31, 2006 Tr. at 420. IAWC does not notify local fire departments every time a boil order occurs. October 31, 2006 Tr. at 419.

IAWC's parent company American Water recognizes the importance of adequate boil order notification and has issued a Request for Proposal ("RFP") seeking a vendor to provide an automated message to customers in the event of a boil order. Cooper Cross Ex. 24 at 6. IAWC has never sought to implement an automated message system to notify customers of a boil order. October 31, 2006 Tr. at 359 and November 1, 2006 Tr. at 492.

IAWC also fails to maintain a complete set of records regarding the issuance of boil orders. Ruckman Cross Ex. 15 and 19 at ¶(c). IAWC does not track the cost associated with notifying customers when boil orders occur. Ruckman Cross Ex. 15. IAWC also does not keep a list of every boil order that occurs. Ruckman Cross Ex. 19 at ¶(c).

I. Standard of Review

A. Standard of Proof

Section 10-15 of the Illinois Administrative Procedure Act provides that “[u]nless otherwise provided by law or stated in the agency’s rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.” 5 ILCS 100/10-15. The Commission has observed that the Administrative Procedure Act standard appears to be: “the appropriate standard in all contested cases[.]” Order at 4, Illinois Commerce Commission on its Own Motion: Amendment of 83 Ill. Admin. Code Part 200, ICC Docket No. 92-0024 (April 29, 1992). CUB establishes by a preponderance of the evidence that IAWC’s method of notifying customers is inadequate and creates an unreasonable health and safety risk. Consequently, the Commission must use its regulatory authority to improve IAWC’s method of notifying customers when a boil order is issued.

B. Service Obligations

Section 8-501 of the Public Utilities Act states as follows:

Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find the rules, regulations, practices, equipment, appliances, facilities or services of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the Commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed and it shall fix the same by its order, rule or regulation. The Commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility.

220 ILCS 5/8-501.

Section 8-501 gives the Commission the responsibility to protect the public's health and safety. The statute provides the Commission with the regulatory authority to improve IAWC's inadequate method of notifying customers when a boil order is issued.

II. Statements in Support of Service Improvements

A. IAWC fails to provide adequate boil order notice to those affected

An essential part of any public utility's obligation is to provide adequate, safe and reasonable service to its customers. At a minimum, a public utility's service obligation requires the utility to employ methods of operation that lessens the risks to the public's health and safety. IAWC's method of notifying the public when a boil order is issued is inadequate, and poses an unreasonable health and safety risk to the public. IAWC's Network Supervisor Fredrick Ruckman testified on cross-examination that boil orders are issued to prevent the public from consuming contaminated water. October 31, 2006 Tr. at 379 and 381. Mr. Ruckman further testified that a loss of pressure below 20psi in the distribution system affects the local fire department's ability to respond to a fire. October 31, 2006 Tr. at 420. IAWC's primary and most frequent means of notifying its customers of a boil order situation is to go door-to-door and either inform an individual in-person or fasten a paper notice to the door. October 31, 2006 Tr. at 367. IAWC does not have a universal plan to notifying municipalities in the event of a boil order and does not always notify local fire departments when the

pressure in the distribution drops below 20psi. October 31, 2006 Tr. at 408 and 419.

IAWC's policy of providing door-to-door notice may be fast in some cases, but alone this method is inadequate. Door-to-door notice is inadequate because the risks associated with that method are too great in light of the potential health concerns associated with the consumption of the contaminated water.

The following examples demonstrate the inadequacy of IAWC's door-to-door notification policy. After four separate boil orders within a nine-day period one IAWC customer complained: "[w]hat needs to be known is that in each instance the notification was not attached to our doors and in at least two occasions the notification was put in our driveways or yards after the water was shut off. Some of the neighbors have never found their notices." Cooper Cross Ex. 22 at 2. *See also* Cooper Cross Ex. 25 and 26. The IAWC customer further stated: "that our local elementary school was affected by the boil order and did not get their notice until well into the school day. The notice was found on some side door[.]" Cooper Cross Ex. 22 at 3. The same IAWC customer also complained: "[her] final notice was completely blank with no dates or times filled in and thrown into [her] driveway." Cooper Cross Ex. 22 at 3. IAWC Business Process Supervisor Michael Rumer acknowledged that the paper boil order notices that IAWC fastens to doors can be blown off by the wind. Cooper Cross Ex. 22 at 1. During cross-examination IAWC employee Ms. Cooper acknowledged that a customer must actually see the door notification in order to

have actual knowledge of a boil order. November 1, 2006 Tr. at 510-511. These are not the only flaws with IAWC's boil order policy.

IAWC's Network Supervisor Fredrick Ruckman testified during cross-examination that pursuant to IAWC's boil order policy each municipality is contacted on a municipality-by-municipality basis to determine how each individual municipality wants to be contacted in the event of a boil order. October 31, 2006 Tr. at 407-408. IAWC's policy is contrary to a universally consistent notification process. IAWC's failure to provide universally consistent municipal notification leads to unequal notification process where some municipalities receive additional services that others do not. All municipalities should receive the same universal boil order notification so that local governments are able to respond in a timely and informed manner. Furthermore, IAWC must be required to notify municipalities each time a boil order is issued. *See Ruckman Cross Ex. 14 at 2.*

Mr. Ruckman also testified during cross-examination that IAWC does not always notify local fire departments when the pressure in the distribution drops below 20psi. October 31, 2006 Tr. at 419. Mr. Ruckman also testified during cross-examination that loss of pressure below 20psi affects the local fire department's ability to respond to a fire. October 31, 2006 Tr. at 420. IAWC's failure to notify the local fire department when a boil order is issued is not appropriate in light of the risk of injury, loss of life and damage to property. During cross-examination, Mr. Ruckman admitted that the cost associated with faxing notice was not a deterrent to sending notice via fax machine. October 31,

2006 Tr. at 357. Since the cost of faxing is not prohibitive IAWC should fax or telephone local fire department when a boil order is issued.

IAWC has not taken any steps to initiate the implementation of an automated messaging system. October 31, 2006 Tr. at 359 and November 1, 2006 Tr. at 492. IAWC's parent company American Water is taking steps to initiate the implementation of an automated messaging system. Cooper Cross Ex. 24 at 6. CUB supports the use of an automated messaging system to notify affected customers when a boil order occurs. However, IAWC has not presented any evidence on how the automated system will be used.

B. Recommendations for the improvement of IAWC's boil order policy

Based on the evidence in the record IAWC fails to provide adequate notice when a boil order is issued. CUB recommends that the Commission direct IAWC to implement and use an automated messaging system to inform all affected customers, municipalities and fire departments when a boil order is issued. CUB recognizes that in some cases notifying customers via door-to-door notification may be fast, but the automated messaging system should be used in conjunction with the door-to-door method in order to increase awareness of a boil order. Furthermore, IAWC should establish a universally consistent method of notifying municipalities when a boil order is issued. This method of notice will allow each affected municipality to respond in the appropriate manner.

CONCLUSION

For the reasons discussed herein, CUB respectfully requests that the Commission to direct IAWC to improve the company's boil order policy.

Respectfully submitted,

CITIZENS UTILITY BOARD

A handwritten signature in black ink, appearing to read "Melville Nickerson", with a long horizontal flourish extending to the right.

By: _____

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