

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

KEVIN GRENS)	
)	
vs.)	DOCKET NO. 05-0681
)	
ILLINOIS-AMERICAN WATER COMPANY)	
Complaint as to billing/charges)	
in Lemont, Illinois)	
)	
PEOPLE OF THE STATE OF ILLINOIS,)	
ex rel Lisa Madigan, Attorney)	
General of the State of Illinois)	
)	
vs.)	DOCKET NO. 06-0094
)	
ILLINOIS-AMERICAN WATER COMPANY)	
)	
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)	DOCKET NO. 06-0095
)	(consolidated)
Complaint as to billing/charges in Homer Glen,)	
Illinois)	

INITIAL BRIEF OF THE PEOPLE OF THE STATE OF ILLINOIS

December 5, 2006

PEOPLE OF THE STATE OF ILLINOIS

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INITIAL BRIEF OF THE PEOPLE OF THE STATE OF ILLINOIS

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I. Introduction

This case involves three complaints filed against Illinois American Water Company (IAWC) in 2005 and early 2006. The events that gave rise to these complaints include unexpected and excessive bill spikes (many over 100%), high levels of unaccounted-for-water, high rates, billing errors, numerous consumer complaints and fire department concerns about fire hydrant maintenance.¹

The key issues raised in the People's complaint (06-0094) are whether IAWC violated Commission rules concerning metering, billing, and customer service, and whether IAWC violated Commission rules requiring the inspection and maintenance of fire hydrants and valves. The high level of unaccounted-for-water is being addressed in ICC Docket 06-0196 and will be the subject of a tariff filing required under the new Section 8-306 of the Public Utilities Act. 220 ILCS 5/8-306. The question of whether IAWC has properly handled boil orders is being addressed by the Citizens Utility Board.

The Complaint of the Village of Homer Glen ("the Village")(06-0095) raised similar concerns: whether the complaints of the Village residents were caused by IAWC's violation of Commission rules. Mr. Grens's complaint (05-0681) questioned whether IAWC's rates were just, reasonable, and fair in light of the significantly lower charges for water and sewer service in

¹ The People alleged an excessive charge for unaccounted-for-water and IAWC's failure to properly notify consumers of boil orders. First Amended Verified Complaint, ¶¶ 22, 37. The People and the Village of Homer Glen have pursued that issue in the ICC Docket 06-0196, which is the reconciliation of IAWC's purchased water charge. That issue was not pursued by the People in this consolidated docket. However, the high charges resulting from the unaccounted-for-water charge contributed to consumer complaints about unreasonably high rates. Although the People are not addressing boil orders in this Brief, the Citizens Utility Board is addressing the issues associated with boil orders in its Initial Brief.

neighboring communities. These complaints were consolidated on February 17, 2006 (Tr. at 14), and proceeded together.

The evidence showed that many of the problems experienced by IAWC customers stemmed from (1) the belated and poorly handled meter replacement program in IAWC's Chicago Metro area and (2) poor metering and billing practices statewide that failed to properly track repeated estimated bills, zero consumption bills, and bill spikes or incorporate Commission consumer protections. Further evidence demonstrated that the bills received by customers were confusing and did not clearly show what the customer was being billed for. These billing issues were revealed when the problems associated with the replacement of meters in Chicago Metro were investigated.

IAWC did not follow the Commission's consumer protection rules regarding estimated billing, bill spikes, and other disputes in both meter replacement and other situations, leaving consumers frustrated and subject to demands for immediate payment of unreasonably high bills (resulting from bill spikes or other billing errors). Evidence of untimely and inadequate hydrant and valve inspections and record-keeping was also presented.

Mr. Grens presented evidence comparing his IAWC bill with the charges of neighboring communities for water and sewer service. He showed that for the same amount of average water usage (7824 gallons), IAWC customers paid \$119.77 -- two to three times more than consumers in Woodridge, Darien, and Downers Grove pay. Grens Ex. 1.² The bill comparisons presented by Mr. Grens both highlight the need for closer scrutiny of IAWC's charges and the need for the

² The bill comparisons are IAWC: \$119.77; Woodridge: \$51.97; Darien: \$49.94 and Downers Grove: \$35.58.

Commission to strictly enforce its consumer protection rules so that consumers who are paying such comparatively high rates receive the protections necessary in a monopoly environment.

During the course of this docket, IAWC made certain commitments to address the issues raised by the plaintiffs and by the Staff of the Commission. IAWC Ex. 4.01. These commitments included no further back-billing when odometer style meters in the Chicago Metro area are replaced, an “accelerated” meter change-out program, monitoring of “higher than historical bills” and consecutive zero consumption bills, clarifying the bill format, and the representation that all hydrants and valves will have been tested and repaired by the end of 2006. Id. These commitments are a step in the right direction, although an Order from the Commission confirming that remedial steps are being taken is necessary.

Last session the General Assembly demonstrated its concern that the rights of water and sewer consumers who take service from private companies regulated by the Commission must be vigorously protected. In House Bill 5555, the General Assembly codified the rights of water consumers, reflecting and extending many of the Commission’s existing rules. P.A. 94-0950, adding section 8-306 to the Public Utilities Act. The hearing and evidence in this docket demonstrates that IAWC has not complied with many existing consumer and public protections. The Commission should hold IAWC accountable by entering an order: (1) identifying the rules IAWC has violated; (2) directing IAWC to comply with the rules by taking specified actions; (3) ordering an independent audit of IAWC’s meter exchange refunds as well as of its statewide metering and billing practices; and (4) assessing fines under section 5-202 of the PUA.

II. IAWC’s Failure to Maintain Meter Accuracy Led to IAWC’s Violation of Several Commission Rules Related to Back-billing, Bill Spikes, and Dispute Resolution.

A. IAWC has violated Commission metering rules and has not maintained meter accuracy because of its failure to replace outdated and inaccurate meters in a timely and reasonable manner.

The Public Utilities Act provides that: “A public utility shall furnish, provide, and maintain such service instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and public and as shall be in all respects adequate, efficient, just, and reasonable.” 220 ILCS 5/8-101. All water service is to be “furnished by metered measurement,” 83 Ill. Admin. Code 600.260, and the Commission rules require meter testing to ensure accuracy. Section 600.340 provides:

Unless otherwise approved by the Commission, each service water meter shall be periodically inspected and tested in accordance with the following schedule, or as often as the results may warrant, to insure that the meter accuracy is maintained within the limits set out in Section 600.310: 5/8 inch meter – 10 years or for each 100,000 cubic feet registered.

83 Ill. Admin. Code 600.340.³ Section 600.310 contains the accuracy standards to which each meter should conform. 83 Ill. Admin. Code 600.310.

In 2002, there were 40,516 meters in the Chicago Metro area. IAWC Ex. 1.03 at 17. IAWC witness Frederick Ruckman testified that when IAWC acquired the Chicago Metro service area on January 15, 2002, the “meter infrastructure was outdated, and its [the seller’s] meter change program was well behind schedule.” IAWC Ex. 1.0 at 7. Notwithstanding the outdated meter infrastructure, IAWC did not initiate a meter replacement program until 2003,

³ There are shorter periods for inspections for 3/4 inch and 1 inch meters (6 years or for each 300,000 cubic feet registered); meters 1 1/2 inch and over (4 years). 83 Ill. Adm. Code 600.340.

when 1200 larger, primarily non-residential meters of 1" to 8" were replaced. [AG] Ruckman Cross Ex. 12, Response to Request No. AG 5.3.B. ; Tr. 264 (Oct. 31, 2006).

Starting in 2004, two years after IAWC found the meter infrastructure to be outdated, it replaced 6,350 meters, and starting in 2005, it replaced "over 6,000" meters in the Derby Meadows and Chickasaw areas which include Homer Glen and Orland Township. Ruckman Cross Ex. 12, Response to Request No. AG 5.3.B.1; IAWC Ex. 1.0 at 7. The slow pace of meter replacement is demonstrated by the fact that through 2006, IAWC had replaced fewer than half of the meters that needed replacement as of that year. Tr. 269 (Oct. 31, 2006). While 18,200 meters have been replaced, 19,500 still needed to be replaced. [AG] Ruckman Cross Ex. 12, Response to AG 5.3 (18,050 in Bolingbrook plus 1,450 in the Fernway or Orland Hills area).

IAWC's plan to replace 18,050 meters in the Bolingbrook area extends into 2010, four years from today, and five years from 2005, when the Bolingbrook meters (which were installed in 1995) came due for testing. [AG] Ruckman Cross Ex. 12, Response to AG 5.3.A.1; IAWC Ex. 1.03 at 17. IAWC admitted that the meter infrastructure in Chicago Metro was outdated when it acquired the service area; that 19,400 customers (or 45-50% of its customer base) had meters that did not meet ICC standards as of 2003. By 2005, Bolingbrook's 18,050 meters had been in service 10 years. IAWC Ex. 1.0 at 7; IAWC Ex. 1.03 at 16.

As Citizens Utilities, the former owner of the Chicago Metro service area, had not complied with meter testing regulations, and IAWC has delayed another 4-8 years to test and replace more than half of the meters subject to testing as of 2006, it appears that IAWC will effectively be leaving some meters in place and untested for perhaps 20 years or even longer. AG/HG Ex. 2.0 at 4-5. This is not a prompt and reasonable attempt to comply with Commission

rules.

Staff witness William Johnson testified that he reviewed samples of meter records in *three* of IAWC's service areas, notwithstanding the fact that IAWC serves more than *100* municipalities and townships statewide. List of Municipalities, filed Feb. 24,2006. The records he reviewed were limited to Cairo, Champaign, and Homer Glen/Orland Hills. Staff Ex. 1.0 at 18-19. The Champaign meter records showed that a large portion of the 5/8" meter records he reviewed (30 of 76) were in service longer than the 15 year variance that IAWC's predecessor had obtained in Docket 76-0491, and 34 meters were not tested within the parameters established in Section 600.340 or the extended parameters allowed by Docket No. 76-0491. Staff Ex. 1.0 at 18. In addition, Staff witness Johnson stated that "there could have been other meters that failed to meet those parameters" because records of throughput were not kept (and are not required to be kept). *Id.*

Staff witness Johnson testified that his review of records in two Chicago Metro areas (Homer Glen and Orland Hills) was limited to *new* meter records. Staff Ex. 1.0 at 19. Accordingly, he did not look at whether the substantial number of existing meters in the Chicago Metro area (more than 25,000⁴) were being inspected and replaced at a rate required by Section 600.340 of the Commission rules. By looking at records for new meters only, the Staff witness did not look at the relevant set of meters – those that have been in service since IAWC acquired the service area in January, 2002.

Mr. Johnson's conclusions about whether IAWC is complying with the Commission's meter testing rules in the Chicago Metro area are not relevant. IAWC admitted that it is not in

⁴IAWC Ex. 1.03 at 17. Meters in 2005 (43,521) less meter exchanges (14,137 + 2,595).

compliance with the Commission’s meter testing rules in the Chicago Metro area, yet Mr. Johnson’s investigation failed to identify these violations because he only sampled the area where meter replacements have already occurred. AG/HG Ex. 1.0 at 21.

The importance of regular meter testing and replacement is demonstrated by the high percentage of removed meters that IAWC itself found to be out of compliance with the Commission’s meter accuracy standards. IAWC reported that a random sample of 1,000 meters showed that “over 50% of the sample did not meet the standards for new meters in Section 600.310.” [AG] Ruckman Cross Ex. 12, Response to AG 5.8. The rule, “Test and Allowable Error,” mandates that: “No meters shall be placed in service when the accuracy is different than” provided in the rule. 83 Ill. Adm. Code 600.310. Yet, over 50% of the meters did not meet the standards for new meters, meaning that consumers were paying amounts that were not within the accuracy range allowed by the rule.

IAWC’s Response to AG 5.8 adds: “however, only approximately 20 were recording above the ranges specified in Section 600.130.” [AG] Ruckman Cross Ex. 12, Response to AG 5.8. Meters that record above the ranges in the rule would bill customers for more than actual usage. The meters that record below the ranges specified in the rule would charge less than actual usage, and, as discussed in more detail below, could expose the consumer to excessive back billing. Section 600.310 mandates performance levels for new and repaired meters, for low, intermediate, and maximum range flows. Each of these ranges includes under-recording as well as over-recording ranges of 1.5 to 5%.⁵ A meter is inaccurate irrespective of whether it errs by

⁵ Section 600.310 has ranges for new and repaired meters. The range for repaired meters at minimum flow range is 90-101.5%, compared to 95-101.5% for new meters. For the intermediate and maximum flow ranges the standard for new and repaired meters is the same:

under-recovery or over-recovery.

The Commission's water meter rules are in place to protect both consumers and the company by ensuring as accurate measurement as possible. However, of the 1,000 meter sample taken by IAWC, more than 500 deviated from the Commission's standards. Clearly the bills based on those meters were not as accurate as the rule requires, and many consumer complaints were triggered, at least in part, by meter inaccuracies. The consequences of not complying with the Commission's metering rules were borne by consumers who either over-paid or received large back-up bills and by the Company, which billed and received payment based on inaccurate usage measurement.

The evidence demonstrates that IAWC did not comply with the Sections 600.340 (testing requirements) and 600.310 (accuracy standards) of the Commission's rules about meter testing and maintenance in the Chicago Metro and Champaign areas. IAWC's meter replacement plan in the Chicago Metro area was slow-paced, leaving its outdated and insufficient plant in place for an extended period of time. In Champaign, meters have been left in place without testing beyond the 15 year extension that IAWC's predecessor sought in 1976 – 30 years ago. The Commission should find that IAWC has violated Section 600.340 and Section 600.310, require IAWC to bring the Chicago Metro area and the Champaign areas into compliance within 90 days through meter testing or replacement, and impose penalties.

B. The consumer complaints stemming from the back-billing tied to meter replacement revealed numerous violations of the Commission's consumer protection rules.

IAWC witness Ruckman testified that the meters needing replacement in Chicago Metro

98.5% to 101.5% accuracy is acceptable. 83 Ill. Adm. Code 600.310(b).

used an “odometer style” reading device that in some cases malfunctioned. IAWC Ex. 1.0 at 8; AG/HG Ex. 1.0 at 15. According to IAWC, the outside, odometer style reading device did not record the same usage as the inside meter, leading the company to bill customers for less than true usage. IAWC Ex. 1.0 at 8. When the meter was replaced, the company billed the customer for the difference. Id. at 15.

Consumer complaints about bill spikes and poor customer service nearly tripled during 2005, as the meter replacement program expanded. HG Ex. 1.0 at 13; IAWC Ex. 1.0 at 13; IWAC Ex. 4.02. As set out in the Direct Testimony of Mary Niemiec of the Village of Homer Glen, residents began complaining to the Village about usage spikes and unusually high water bills in early 2005. The Village received complaints from 466 people, filling nine pages. HG Ex. 1.0 at 8; HG Ex.1.02. Hundreds of customers in Chicago Metro received bills from August 2003 through September 2005 showing usage several times greater than any previous month, but without indicating that any portion of the bill was for prior service. See, e.g., AG/HG Ex. 1.0 at 13-14; AG/HG Ex. 1.4; HG Ex. 1.07; IAWC Exhibit 1.07.

Homer Glen offered several examples of bills showing large spikes in usage. HG Ex. 1.07 The first bill (account no. 09-0047652-4) in the exhibit shows a spike to 17,000 gallons usage in April, 2005, substantially exceeding the last highest usage, which was slightly more than 8,000 gallons. A note on the bill says “Meter changed Mar 04, 2005” but does not indicate that previously unbilled usage is included in the bill.⁶ Other bills, however, including the bill included in Mr. Ruckman’s testimony as an example of back billing, do not indicate that the

⁶This is the same bill shown in AG/HG Ex 1.4, p. 2, but HG 1.07 shows the Water Usage Comparison chart.

meter was changed. See IAWC Ex. 1.0 at 33; IAWC Ex. 1.07, page 2; see also HG Ex. 1.07, account nos: 09-0050340-0 (Nov. 2005 bill spike); 09-0055325-6 (Dec. 2005 bill spike); 09-0588268-1 (Jan. 2006 bill spike).

The Commission rules require that all water service be furnished by “metered measurement,” 83 Ill. Adm. Code 600.260, and that customer bills provide certain basic information. Water bills must “show the date and the reading of the meter at the beginning and the end of the period for which the bill is rendered, the due date of the bill, the volume of water used, the amount of the bill and a condensed statement of the principal rates.” 83 Ill. Adm. Code 600.160(a). This rule is designed so that consumers receive the information they need to understand and manage their water usage.

The rules allow a water and sanitary sewer utility to send consumers a bill for service beyond the period for which a bill is rendered, subject to certain limitations. Section 280.110, “Unbilled Service,” authorizes utilities to bill customers for service not previously recorded or billed if the usage occurred within one year for residential consumers and the consumer is given certain information and options. The rule provides in relevant part:

- a) A utility may render a bill for services or commodities provided to:
 - 1) a residential customer only if such bill is presented within one year from the date the services or commodities were supplied, or
 - 2) a non-residential customer only if such bill is presented within two years from the date the services or commodities were supplied.

- b) No customer shall be liable for unbilled or misbilled service after expiration of the applicable period except in those instances to which 83 Ill. Adm. Code 500.240(a)[gas utilities], 83 Ill. Adm. Code 410.260(c)[electric utilities], or the following subsections of this Section apply.

c) Tampering...

d) When past due bills occur following the issuance of a ‘make-up’ bill for previously unbilled utility service resulting from two or more consecutive estimated bills, utility billing error, *meter failure*, or undetected leakage of undetected loss of service, except in situations where tampering is involved, *and where the “make-up” bill exceeds the otherwise normal bill for such billing period by 50%, a utility shall review the bill with the customer, and shall offer to accept payments toward the liquidation of the amount over a normal bill over a period mutually agreed to by the utility and the customer. This period of time shall be at least as long as the period over which the excess amount accrued.* Where the excess billing resulted from undetected leakage or loss of service, the period shall be extended so that the bill rendered will not be greater than a normal bill, plus 50%.

83 Ill. Adm. Code 280.100 (italics added). This rule requires the utility to inform the customer that the bill is for past service, and to give the customer the option of paying the increased amount over the period of time that the service was provided. Limiting the period of time over which a utility can back-bill gives the utility “an incentive to properly maintain its metering and meter reading equipment and to properly train and supervise its personnel.” AG/HG Ex. 1.0 at 17. It also protects consumers from unfair surprise and the burden of unexpected charges.

The record shows that IAWC identified about 474 customers who received a back-bill in Chicago Metro during the meter exchange period. AG/HG Ex. 1.0 at 18. The billing did not show the period of time that the usage accrued, and consumers’ inquiries met inconsistent and often inaccurate responses. The letter that IAWC sent some consumers whose meters were changed failed to include the period of time over which the bill accrued, simply stating that the bill covered one month of service, and reiterating the due date on the bill. IAWC Ex. 1.07. In the example included in Mr. Ruckman’s testimony, the customer received a bill for \$1,446.20, apparently for one month of service, due 21 days from the date the bill was mailed. Id. IAWC

did not review the bill with the customer, identify the period of time it covered, or explain that he could pay it over the same time period it accrued.

IAWC did not comply with Commission rules when it did the back-billing associated with the meter exchanges in the Chicago Metro area. IAWC did not inform consumers what time period the back-billing covered, did not offer to investigate the bill spike, failed to offer a significant number of customers the opportunity to pay the bill over the time period it accrued, insisted on payment while the bills were in dispute, and threatened shut off while bills were being investigated. Further, customers were not given a customer information booklet on credit and collection practices, as required by the rules, and were not told how to contact the Commission to have their claims reviewed. Had these rules been followed, consumers would not have experienced the level of frustration evident in this docket (see, e.g., HG Ex. 1.03, HG Ex. 2.0, HG Ex. 3.0, HG Ex. 4.0).

Consumers rely on the Commission to protect their rights and to ensure that the Commission's rules are followed. The People's complaint and the Village of Homer Glen's complaint put IAWC on notice of allegations that it was in violation of Commission rules, and the Company has had a full opportunity to respond and to be heard, both with testimony and in cross-examination. Accordingly, penalties may be determined under Section 4-203 of the PUA.⁷

Section 4-203 provides in relevant part: "(a) 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

In response to the evidence adduced in this case, IAWC has ceased back-billing customers when odometer style meters are exchanged and there is a difference between the inside and the outside meters. IAWC intends to refrain from back-billing for Chicago Metro meter exchanges until all odometer style meters are replaced, and has no objection to including such a condition in an Order in this case. Tr. 220 (Oct. 31, 2006). This policy should be incorporated into the Commission's final order. It will not only protect consumers, but give IAWC an incentive to promptly address the meter problems in the Chicago Metro district, because it cannot depend on back-billing to recover for usage that was incorrectly not recorded.

C. The credits IAWC unilaterally gave consumers appear inadequate to the problem and must be subject to an independent audit to ensure that the correct customers were identified and the correct amounts were credited.

In response to customer complaints about bill spikes, IAWC eventually determined that the back-billing “may have related to customer usage during a period of more than twelve months.” IAWC Ex. 1.0 at 15. IAWC did not know how long the individual meters were malfunctioning or have procedures in place to ensure that its back-billing was limited to 1 or 2 years. Tr. at 218-219 (Oct. 31, 2006); AG/HG Ex. 1.0 at 18. Without knowing the period over which the prior usage accrued, IAWC was unable to confirm that its back-billing did not exceed the one year limitation in the rule, or to offer consumers a bill payment plan that was “at least as long as the period over which the excess amount accrued.” 83 Ill. Adm. Code 280.100(c).

or decreases any minimum or maximum penalty prescribed elsewhere in this Act.” (Italics added.)

IAWC identified about 474 back billing customers, but only 15 received payment plans. AG/HG Ex. 1.0 at 18. The evidence shows, however, that at least 45 of these bills exceeded the previous month's bill by over 200%. AG/HG Ex. 1.5. Because usage affects only the variable portions of the bill, changes in usage account for the lion's share of the bill increases shown on this exhibit. See, e.g., HG Ex. 1.01, Parts 2A and 2B (Components of Bill).

IAWC witness Ruckman testified that in September, 2005 IAWC discontinued back-billing customers for the difference between the odometer meter and the inside meter readings, and that a year later, in October, 2006, it provided a credit to customers for back-billing related to the meter changes. IAWC Ex. 1.0 at 16. It said that it reviewed "over 10,000 Chicago Metro meter exchanges" but found only "474 accounts that required review." Id. This conflicts with Mr. Rubin's analysis, which showed 7,900 accounts that had a meter exchange in 2005 or 2006, and one bill at least 50% higher in the first six months of 2006 than in the same month of 2005. AG/HG Ex. 1.0 at 16.

An independent audit is necessary to ensure that all of the customers who were back-billed due to meter exchanges are appropriately credited. The number of customers IAWC has identified is unreasonably small. Of the 474 accounts the Company identified as being back-billed, IAWC issued credits to 335 accounts. Id. In total, IAWC refunded \$14,400. [AG] Ruckman Cross Ex. 12, Response to AG 5.23. Given the 50% accuracy variance IAWC found when it tested 1000 removed meters, one would expect significantly more than 335 of the 10,000 accounts with replaced meters to have been back-billed, and therefore, to require refunds or credits.

IAWC witness Ruckman listed several criteria the Company used to determine to which accounts it would provide credits. IAWC Ex. 1.0 at 16. It is unclear whether it excluded all accounts that met any one of the criteria, or whether those accounts were subject to further review. In any event, the small number of accounts receiving credits and the small size of the credits cast significant doubt on the thoroughness and accuracy of the Company's review, and require independent review.

Mr. Ruckman testified that the average credit was \$43.00 per customer, and that "ten customers represented the vast majority of the discrepancies by volume." Id. at 17. Of the more than 400 customers whom the Company admits received back bills after meter exchanges, AG/HG witness Rubin identified 45 bills that alone were \$64,916.99 more than the previous month's bill (\$71,539.82 - \$6,622.83). AG/HG Ex. 1.0 at 14; AG/HG Ex. 1.5. Although IAWC has claimed that the drought conditions in 2005 accounted for a significant part of the bill spikes experienced in 2005, if the nine bills for June, July and August, 2005 shown on AG/HG Ex.1.5 are removed, customers were still back-billed \$61,375.74 (\$67,375.17 - \$5,999.43) more after meter exchanges. If the one customer with a \$44,000 overage is eliminated, the amount billed over the previous month is \$22,451, although there no reason to treat this account differently from other accounts that had meter exchanges and bill spikes.

The \$14,400 credit issued by the Company clearly does not capture the true scope of the back-billing problem. These figures do not include back billing increases of less than 200%, although Mr. Ruckman testified that over 80% of the accounts (or over 268 accounts) were credited for 5,000 gallons or less. IAWC Ex. 1.0 at 17. Clearly the \$14,400 credit was insufficient to cover the back-billing that people in the Chicago Metro area have been protesting.

The People appreciate that IAWC has stopped back-billing customers after their odometer style meters are replaced, and agree that this will eliminate this category of problem going forward. However, the credits given to customers to date do not appear to be adequate to the size of the problem. An outside, independent review of IAWC back-billing, including the billing history of the 10,000 customers whose meters were changed before the moratorium on back-billing, should be ordered by the Commission to determine whether all customers entitled to a credit receive it. The results of the Company's review showed that over 71% of the accounts reviewed were entitled to a credit. HG Ex. 5.0 at 5. As Ms. Niemiec testified, "this indicates that a more detailed audit is necessary by an impartial, outside auditor." Id. Customers should not be required to continue to complain to the Commission to be assured that the back-billing problem is truly remedied.

The Commission has broad authority to order a review of IAWC's records to confirm that the proper accounts were identified and the proper amounts credited. The PUA grants the Commission "general supervision of all public utilities," directs the Commission to inquire into the management of the utility and to "keep itself informed as to the manner and method in which the business is conducted." 220 ILCS 5/4-101. Further, it is the Commission's duty "to see that the provisions of the Constitution and statutes of this State ...affecting public utilities are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the State therefor recovered and collected." 220 ILCS 5/4-201. Finally, the PUA authorizes the Commission "to inspect the papers, books, accounts and documents" of a public utility in relation to any matter within the Commission's jurisdiction. 220 ILCS 5/10-107. Any party to a proceeding before the Commission may request that the Commission conduct an investigation,

and the Commission is authorized to “enter an order requiring the investigation to be made or the questions to be answered.” Id.⁸

An independent review of IAWC’s billing during the meter exchanges of the last four years is necessary both to ensure that the right customers were compensated and to ensure that the proper amounts were credited. IAWC has consistently referred to the drought conditions of 2005 as the cause of bill spikes. IAWC Ex. 1.0 at 14; IAWC Ex. 4.0 at 7-8; IAWC Ex. 4.02 AG/HG Ex. 2.4; HG Ex. 1.0 at 10. An independent review is necessary so that the public can be assured that the Company, which clearly has an interest in providing the fewest and smallest credits possible, has properly determined the accounts that are entitled to a credit, notwithstanding the 2005 drought. This review should be conducted by an outside auditor, paid for by IAWC out of shareholder funds.

D. Failure to notify consumers of summer water restrictions during 2005 aggravated the high bills resulting from back billing and unfairly burdened consumers.

Notwithstanding IAWC’s claim that drought conditions caused the high bills experienced in 2005, IAWC did not distribute any water conservation or drought alert information in 2005.

⁸ The relevant language of Section 10-107 states: The Commission ... shall have the right, at any and all times to inspect the papers, books, accounts and documents, plant, equipment or other property of any public utility, ...

Any party to a proceeding before the Commission shall have the right ... to submit suggestions as to other matters to be investigated or as to questions to be propounded. If the Commission is satisfied that such suggested investigation should be made or such suggested questions answered, and that the information desired is within the power of either party to furnish, it shall enter an order requiring the investigation to be made or the questions to be answered, and upon failure or refusal to comply with such order, the Commission shall either refuse to grant the relief prayed for by the party refusing to comply, or may grant the relief prayed for by the opposing party against the party refusing to comply.

HG Ex. 1.0 at 15. No water restrictions were either communicated or imposed. Id. Yet, in 2005 IAWC had a tariff applicable to Chicago Metro “which restrict[ed] water usage from May 15 through September 15 for any customer supplied with Lake Michigan water.” Staff Ex. 1.0 at 45. Although Staff witness Johnson testified that there is no Commission rule specifically requiring IAWC to notify consumers of water restrictions, IAWC’s tariff contains summer water restrictions that should have been communicated to consumers. Further, as Mr. Ruckman testified: “All entities having a Lake Michigan water allocation are subject to certain water use restrictions.” IAWC Ex. 1.0 at 55. In a year of drought and growing complaints about high water bills, IAWC’s tariff required IAWC to inform the public about both the drought and water restrictions before consumers experienced the high bills that IAWC attributes to the drought. That would have been reasonable, prudent, and responsible thing to do.

In 2006, IAWC informed consumers of the need to restrict the use of Lake Michigan water during the summer. IAWC Ex. 1.0 at 55. This is the better practice, and is especially important given the high cost of IAWC’s Lake Michigan and the volume of water needed for irrigation. Given IAWC’s failure to inform consumers of the higher than normal demand for water in 2005, and its tariff which restricts water usage during the summer months, the Commission should order IAWC to notify consumers each month from May 15 through September 15 of all water restrictions, and further to notify consumers of the effect of drought conditions should they arise in the future.

III. The Back Billing Associated with the Meter Exchanges Revealed Other Violations of the Commission’s Consumer Protection Rules.

The PUA and the Commission’s rules give customers various rights when they contact a public utility in connection with a bill. When consumers contacted IAWC, whether in response to a bill spike, a meter exchange, or other question, certain rights provided in the Commission’s rules were not respected. Specifically, IAWC (1) failed to conduct adequate investigations into bill spikes, or to use the words of the statute, into “unreasonably high” bills, (220 ILCS 5/8-303, 83 Ill. Adm. Code 280.100); (2) failed to follow the dispute resolution procedures contained in the Commission’s rules, including the obligation to not subject consumers to disconnection if a bill is disputed, 83 Ill. Adm. Code 200.160; (3) failed to inform consumers of the period the bill spike covered, and did not show the principal rates being charged, particularly the 1,000 gallon rate for purchased water, 83 Ill. Adm. Code 600.160(a); (4) failed to track estimated bills and zero consumption bills in violation of Commission rules and policy and exposed consumers to large back-bills; and (5) failed to provide customer information booklets to explain the Company’s credit and collection practices. 83 Ill. Adm. Code 280.200.

A. Failure to investigate reasons for bill spikes and cease collection efforts while bill is disputed.

The Public Utilities Act provides that: “Where, within 30 days of receipt of a utility bill, a customer alleges that the level of consumption reflected in his utility bill is unreasonably high, *it shall be the responsibility of the public utility furnishing ... water to that customer to investigate the allegation.* 220 ILCS 5/8-303. The Commission’s rules incorporate this requirement in Section 280.100. 83 Ill. Adm. Code 280.100. Consumers of public utilities are entitled to have

their complaints about usage spikes taken seriously and properly investigated.

The evidence showed that when IAWC customers called about bill spikes, IAWC's explanation was that due to the drought in 2005, their usage was higher than normal, and therefore their bill was higher. HG Ex. 1.0 at 10. IAWC relied on this explanation to the extent that IAWC took photographs of customers' green lawns to prove its point, evidently believing that in 2005 the grass should have been brown. See Tr. 241 (Oct. 31, 2006); IAWC Answer to Complaint of Village of Homer Glen, at pages 3-4 & ¶ 36 & Ex. A to Answer. The Company gave people water saving tips, but otherwise failed to investigate or inform customers about the meter exchanges that were happening in their community. *Id.* & AG/HG Ex. 2.4. The customer service process in place for IAWC and all other American Water Works Company customers helps explain why customers' specific complaints were not investigated.

In February of 2005, American Water, IAWC's parent, completed its transition from state-based customer service to a national system, with calls answered in either Alton, Illinois or Pensacola, Florida. Tr. at 435 (Nov. 1, 2006). These two call centers answer calls from 19 different states, with Illinois representing only 9% of American Water's customers. *Id.* at 445-446. IAWC witness Karen Cooper estimated that Illinois generates only about 9% of the calls to customer service. *Id.* at 446.

Calls are received by "call handlers" who are trained to respond to questions, but who lack the authority to make bill adjustments or to investigate problems. Tr. 439-441; 449-450. When they cannot resolve a problem, they take the customer's information and forward the problem to a member of the "Account Resolution Team" or ART. This is done electronically, and the ART personnel have ten days to call the customer back or complete their investigation.

Tr . 459-460, 467. The customer is not given contact information for the ART personnel, but must await a return call. Tr. 449-450; 467-471 (Nov. 1, 2006). Face-to-face meetings with consumers are rare, and not part of the customer service procedure. Id.

Rule 280.160 provides a comprehensive process for addressing consumer complaints and questions. It states that a utility “shall assign to one or more of its personnel in each of its offices where it transacts business with the public, the duty of hearing, in person, any dispute by an applicant, customer or user. Such personnel shall consider the complainant’s allegations and shall explain the complainant’s account and utility’s contention in connection therewith. Such personnel shall be authorized to act on behalf of the utility in resolving the complaint and shall be available during all business hours for the duty hereinbefore described.” 83 Ill. Adm. Code 280.160(a). Further, the rule provides that if the customer expresses “nonacceptance of the decision,” the person reviewing the customer’s complaint must inform him/her of the right to have a supervisor consider the problem. If the customer does not accept the resolution offered by the supervisor, the supervisor is to inform the customer of “his/her right to have the problem reviewed by the Commission, and shall furnish him/her with the telephone number and address of the Consumer Assistance Section of the Illinois Commerce Commission.” Id. at 280.160(b).

The consumer correspondence in the record demonstrated that customers were frustrated in their efforts to get their complaints investigated. Bill spikes, whether resulting from meter exchanges or other factors, were not investigated by the call handlers, and consumers, both in Chicago Metro and in other IAWC service areas, were left with unexplained, substantial usage spikes. See AG/HG Ex. 1.0 at 19-20; AG/HG Ex. 2.3 and bills described in the Initial Brief of the Village of Homer Glen, discussing pattern of high and spiking bills.

Further, consumers reported that collection efforts continued even when they had called to dispute a bill and the matter was as yet unresolved. For example, one consumer stated that shortly after he initiated a complaint against IAWC he received a letter of disconnection. HG Ex. 1.03, Bates No. HG 0481. Another customer complained that she received a call from IAWC collections despite a promise that her account would be placed on hold until the matter was resolved. HG Ex. 1.03, Bates No. HG 0555. HG witness Deborah Finnegan also received a shut-off notice while her complaint was being addressed, HG Ex. 2.0 at 5; as did HG witness Debbie Litoborski. HG Ex. 4.0 at 4.

The Commission rules are intended to protect consumers from coercion while their dispute with a public utility is pending by prohibiting disconnection while the complaint is pending. Regardless of the source of the original complaint (whether it stemmed from a meter exchange, an estimated bill, or other issue), it is vital that the Commission ensure that its rules protecting consumers' right to dispute a bill are protected. Consumers are obligated to pay the "undisputed portion of the bill or an amount equal to last year's bill at the location normalized for weather, whichever is greater" and to enter into "bona fide discussions with the utility to settle the dispute with dispatch." 83 Ill. Adm. Code 280.160(c).

In response to IAWC's violation of this rule, the Commission should specify that IAWC not disconnect or threaten disconnection, nor demand payment of disputed amounts, while a dispute is being investigated. If IAWC's investigation involves giving the consumer information to ART personnel, and the consumer is removed from the process, IAWC should be directed to take no collection or disconnection action while a matter is pending with ART, but in any event, for no fewer than 30 days or after the consumer is informed of the results of the ART

investigation and given contact information for the ICC. Because the consumer has no way of knowing the status of an ART investigation, IAWC should be ordered to tell consumers that they are protected for 30 days or so long as the ART process is pending, and that they will receive notice of resolution. The Commission should further order that in the notice to consumers of the ART resolution, consumers should also be given information about filing a complaint at the ICC.

B. The bills received by Chicago Metro consumers did not contain the information required by Rule 600.160.

The Commission requires that bills sent to water consumers show the beginning and end of the billing period, the volume of water used, the amount of the bill and a condensed statement of the principal rates. 83 Ill. Adm. Code 600.160(a). The meter exchange bills that contained back-billing due to a difference between the inside and outside meters did not show the period for which the bill applied. AG/HG Ex. 1.0 at 17-18. Consumers' bills had no information to explain the spike attributable to back billing.

In order for consumers to take advantage of Rule 280.100, which allows them to pay previously unbilled service over the period it accrued, they have to know that the bill is for a prior period. IAWC's practice of failing to provide that information frustrated the mandate of Section 280.100. Although IAWC has pledged not to back-bill for the difference between inside and outside meters in Chicago Metro, the Commission should order IAWC to include the period of time that usage accrued on *all* bills, including actual bills following *estimated bills* and *consecutive zero usage* bills. Section 280.100 applies to "make-up" bills "for previously unbilled utility service resulting from two or more consecutive estimated bills, utility billing

error, meter failure, or undetected leakage or undetected loss of service.” 83 Ill. Adm. Code 280.100(d). Clearly, consumers receiving back-bills due to repeated estimated bills or erroneous consecutive zero reads are entitled to the same protections as consumers who are back-billed due to meter exchanges. IAWC failed to provide those protections in violation of the Commission rules, and should be ordered to show evidence of compliance with these rules going forward.

Staff witness Johnson also testified that the IAWC bills in the Chicago Metro area failed to comply with the Commission rule that principal rates be displayed on the bill. Staff Ex. 1.0 at 39-41, referring to 83 Ill. Adm. Code 600.160. He agreed with AG/HG witness Scott Rubin that the purchased water supply charge is a principal rate, and should be shown on all bills. Mr. Johnson noted the “increased usage of purchased water and the high percentage of the bill related to purchased water” as justification for requiring that the per 1,000 gallon rate be separately stated on the bill.

IAWC witness Ruckman has agreed that IAWC will change its bill so that consumers can see the purchased water unit. IAWC Ex. 4.0 at 3. From IAWC’s “Summary of Actions Taken,” IAWC Ex. 4.01, it appears that the new bill format is already being worked on. An additional factor in the bill confusion is the use of historical district names, such as Chickasaw and Fernway. The purchased water charges should be consistently named so that there are as few disparate labels as possible, and the source of the water is described.

C. IAWC failed to track estimated and consecutive zero consumption bills, putting consumers at risk of large back-bills and violating Commission billing policy.

The Public Utilities Act is based on the premise that customers receive bills based on their actual, measured usage. Section 8-303, after providing that consumers have certain rights in

connection with an “unreasonably high” bill, states:

In order to enable the customer to ascertain whether the level of consumption is greater than the amounts billed in other billing periods and to eliminate to the fullest extent practicable consecutive estimated bills, *the public utility shall make an actual meter reading at least every second billing period*. If a meter reader is unable to gain access to the meter for the purpose of making an actual reading, the public utility shall take other appropriate and reasonable measures to read the meter.

220 ILCS 5/8-303. Commission rules confirm these policies at sections 600.260⁹ and 280.80.

Although section 280.80 recognizes situations where estimated readings are acceptable, the general policy is that “[a]ll utilities shall make an actual meter reading at least every second billing period.” 83 Ill. Adm. Code 280.80(a).

AG/HG witness Scott Rubin testified that actual, monthly bills provide the consumer with an accurate measure that can be relied upon to predict and manage consumption and detect leaks, malfunctions or other unusual water usage. AG/HG Ex. 1.0 at 24 (Revised). This concern to have regular and accurate billing information is also the basis of Section 8-303 of the PUA quoted in the preceding paragraph.

Mr. Rubin found that in one month almost 30% of bills in Illinois were estimates, while in January, 2005 and January, 2006, 16% and 13% of bills were estimated, respectively. AG/HG Ex. 1.0 at 25. Further, Mr. Rubin’s review of IAWC’s billing records showed that more than 300 customers in the Homer Glen area received three or more consecutive estimated bills. Id. at 26. IAWC lacks a system to track estimated bills. AG/HG Ex. 2.0 at 3.

IAWC testified that it has reduced the number of estimated bills considerably through the

⁹ Section 600.260 states: “All general water service furnished within the State of Illinois shall be by metered measurement, unless otherwise approved by the Commission.” 83 Ill. Adm. Code 600.260.

installation of remote read meters. The reduction of estimated bills to 2%, as represented by IAWC, combined with a system to track consecutive estimated bills, would (1) provide consumers with important consumption information; (2) protect consumers from unexpected bill spikes; and (3) ensure that the Company correctly bills consumers for usage. A tracking system for those accounts that still have repeated estimated bills will help the Company flag problem meters, determine whether there is a systemic problem, and remedy the problem identified.

In addition to finding a large number of estimated bills, Mr. Rubin found several instances of consecutive zero usage bills, which can also lead to bill spikes. AG/HG Ex. 1.0 at 30-34. An occupied residence or other premises will very rarely have no water usage in a given month. An account with repeated zero usage bills should trigger investigation by the utility. Id. at 30. In fact, IAWC's procedures already call for the investigation of accounts with three months of zero consumption. AG/HG Ex. 2.0 at 17 & AG/HG Ex. 2.6 (Confidential). If those procedures were followed, the risks of back-billing would be reduced because metering issues would become apparent upon investigation of whether the premises were occupied or an actual read was taken at the meter.

IAWC witness Zerbe testified that the billing and records system used by IAWC and its parent American Water Works currently create nightly reports showing zero consumption bills, high bills, and estimated bills. Tr. 393, 397, 398 (Oct. 31, 2006); AG/HG Ex. 2.0 at 18-19. These reports are generated in the Alton billing center, but Mr. Zerbe did not know who saw them, nor did he know whether these nightly reports contained few or many accounts. Tr. 397, 399 (Oct. 31, 2006). He believed they were sent to the Alton billing department. Id. at 393-394.

Mr. Zerbe also testified that the American Water billing system could be modified to

accommodate state specific needs. Tr. at 395 (Oct. 31, 2006). For example, the parameters for reporting for high bills varies by state and by customer class. Id. at 402. In some cases , changes to the parameters of the exception reporting can be done directly, and in other cases, programming is required. Id. at 400-401. Although it does not currently track repeated zero usage bills (despite the policy to track them), the billing system could be modified to do so. Id. at 401.

Mr. Ruckman's testimony and Mr. Zerbe's testimony both indicate that IAWC could be taking more action to monitor its billing and to ensure that consumers receive timely and correct bills. Mr. Zerbe testified that the central billing system can be modified to address state specific needs, and Mr. Ruckman has expressed the desire to comply with all ICC rules. It is apparent that if the right reports are requested, such as reports of three consecutive zero usage bills, repeat estimated bills, and bills 50% or more than the prior month or the same month in the prior year, American Water's billing system could produce them. Further, IAWC must designate personnel to be responsible for regularly reviewing these reports and following up on accounts that are listed.

The Commission should order IAWC to more fully utilize the resources that Mr. Zerbe testified are available to it to track billing anomalies, and that IAWC designate specific personnel as responsible for investigating the accounts identified by the reports. IAWC should be required to have these systems in place promptly, but not later than 60 days from the date of the Order. IAWC has been on notice of its violations of Commission rules since February 1, 2006 when this Complaint was filed, and its efforts to comply with Illinois specific rules should be well underway.

D. IAWC customers are entitled to a Customer Information Booklet.

Commission rule 280.200 requires that “[a] customer information booklet which contains a utility’s credit and collection practices shall be provided by each utility to all applicants for service and shall be available to customers at all business offices.” IAWC admitted that it has not provided a customer information booklet to applicants for service, and that it does not currently have such a booklet. Answer of IAWC to the First Amended Verified Complaint of the People of the State of Illinois, ¶36 (March 29, 2006). Although IAWC stated that it is “developing” such a booklet to distribute to all customers, to date that booklet has not been available. IAWC Ex. 4.01 at page 3. This is a further violation of Commission rules. In its Order, the Commission should set a date certain for the development and distribution of this information.

E. Summary

Commission rules establish a system of customer service obligations that respect consumers’ right to question unreasonably and unusually high bills, and that protect consumers who exercise that right. The many complaints received by the Commission and other parties demonstrated that IAWC was not following the Commission’s customer service rules, and consumers often felt their efforts to resolve their concerns were not treated appropriately. The above shows that several Commission rules were violated, and that penalties and closer scrutiny of IAWC practices are required.

IAWC should be ordered to track consecutive zero usage bills, repeat estimated bills, and bill spikes of 50% or more over the same month in the preceding year or the preceding month. Further, IAWC’s notices to consumers for these situations should be reviewed by the

Commission and the parties to ensure that they comport with the Commission's rules.

IV. Annual Hydrant and Valve Inspections Are Essential to the Public Safety and Should Not Be Delayed.

The water system operated by IAWC supplies water to public safety or fire districts. This requires that fire hydrants, and the valves that control the flow of water to the hydrants and to other parts of the distribution system, be fully operational. See Tr. at 546-547 (Nov. 1, 2006). When IAWC acquired the Chicago Metro area in January, 2002, the prior owner's "[v]alve and hydrant testing practices were also not fully compliant with Commission Rules." IAWC Ex. 1.0 at 7.

In 2005, several fire districts encountered fire hydrants that did not work. Some, like the Prospect Heights Fire Protection District, inspected the hydrants in their districts and identified several that required maintenance. AG/HG Ex. 1.7 at 10-13. The Lisle-Woodridge Fire District found that "there are less than adequate amounts of water available for firefighting purposes from the Illinois American Water Company system," and contacted IAWC to both remedy the problem and request annual hydrant test data. Id. at 4, 2. Both Urbana Fire Rescue and the City of Champaign faced inoperable fire hydrants when called to fight a fire. Id. at 14-17. Commission rules requiring annual inspections, testing, and maintenance should have prevented these kinds of problems.

Staff witness William Johnson did a limited review of IAWC's records of hydrant and valve testing and maintenance. Staff Ex. 1.0 at 25-37. He only reviewed a very small sample of records, and did not physically inspect any hydrants or valves. Id. at 26, 32. Nevertheless, he found that the testing and maintenance records were not complete nor all up-to-date. Id. at 30,

33-35. In Homer Glen, no history of maintenance, date of installation, or make or model were shown for any hydrants and only four of the twenty hydrants listed size. Id. at 27. None of valve records showed the maintenance history, date of installation, or make or model, and ten of the twenty reviewed did not list the size of the valve. Id. at 33. Mr. Johnson's review of Orland Hills hydrant records also revealed significant lapses, with maintenance history, size and date of installation missing for some of the 20 hydrants, and inspections occurring only every two years. The Orland Hills' valve records were even worse. Of the twenty one records reviewed, eleven "showed that the most recent inspections had taken place in the years 1981-1982," more than 20 years ago! Id. at 34. Another nine valves showed no maintenance history at all. Id. Clearly, the inspections and maintenance required by rule 600.240, "Inspection and Maintenance of Valves and Hydrants," were not done in these communities. Mr. Johnson did not review other data for the Chicago Metro area despite the fact that there are about 40 separate municipalities or townships in Chicago Metro alone. See Municipalities List, filed March 24, 2006.

The hydrant records for Champaign showed inspections every two years – not annually as required by the rule. Id. at 27. The valve records, although better than the ones in Homer Glen and Orland Hills, showed the most recent inspection in 2004, but the dates of installation were missing, and 69 of 121 valve records did not state the make or model. Id. at 33. The 21 valve records Mr. Johnson reviewed in Cairo were more complete, including the date of installation and make and model on most, but not all records. However, the records also showed that there were less than annual inspections in that district as well. Id. at 33.

In Exhibit 4.01, attached to IAWC Exhibit 4.0, Mr. Ruckman represents that IAWC has inspected or will inspect all hydrants and valves in its service territory by the end of 2006. This

demonstrates that IAWC can complete the required annual inspections each year, and that the Commission should hold IAWC to that standard going forward.

Public fire protection is one of the most important functions of a public water supply, and having working valves and hydrants is a matter of public safety. AG/HG Ex. 1.0 at 37. IAWC's representation that it will complete the inspection and repair of the valves and hydrants in all of its service areas is welcome, but should not be accepted by the Commission without review. Mr. Johnson's very limited review of IAWC's hydrant and valve records revealed multiple, widespread inspection and record-keeping lapses. To ensure that hydrants and valves throughout IAWC's service area are properly inspected and maintained and that necessary records are kept, the Commission should conduct a full investigation of IAWC's valve and hydrant testing, maintenance and record-keeping. If the Commission lacks the resources to conduct this investigation, it should retain an independent agent to conduct the investigation, at IAWC's expense.

The limited investigation Mr. Johnson was able to conduct, in light of time and resource constraints (Tr. 535, Nov. 1, 1006), confirm that IAWC has not been complying with Commission rules. Fire hydrants and valves have not been inspected annually, and records are incomplete. A comprehensive investigation of IAWC's entire system is necessary to ensure that the public safety is not jeopardized by faulty or ill-maintained hydrants and valves. See also AG/HG Ex. 1.0 at 38-39.

V. Although IAWC's Unaccounted-for Water Level Is Excessive, the Appropriate Maximum Level Going Forward Will Be Addressed in the December 31 Tariff Filing Required by Section 8-306(m).

In paragraph 39 of their First Amended Verified Complaint, the People alleged that

IAWC charged consumers “unreasonably high charges due to the inclusion of an ‘unaccounted for’ water charge. The record demonstrates that in the Homer Glen area, where consumers have complained about high rates, IAWC reported 18% of their water lost and non-revenue producing. HG Ex. 1.0 at 7. In IAWC’s entire system, the level of non-revenue water (which is a greater subset than “unaccounted-for-water”¹⁰), averages 17.2%. AG/HG Ex. 2.1. The variation among districts is considerable, with a low of 11.2% in Pontiac and Pekin, and highs of 28.5% in Streator and 38.5% in Cairo. Id. These levels of non-revenue water mean that system-wide, IAWC had to purchase or produce 121 gallons of water for each 100 gallons sold. Although only Chicago Metro has a purchased water charge, these lost water levels represent a tremendous amount of waste and should be a statewide concern for IAWC. AG/HG Ex. 2.0 at 7.

IAWC’s witness Mr. Ruckman claimed that the unaccounted-for water (or unaccounted-for-flow, or UFF) among users of Lake Michigan water was 9.02%, while all of IAWC’s Lake Michigan water districts averaged 6.45% unaccounted-for water in 2004, and the Southwest Suburban District averaged 9.5%. IAWC Ex. 1.0 at 21. Mr. Ruckman argued that IAWC’s unaccounted-for water level “compares very favorably with the other public water supplies.” Id.

The unaccounted-for water figure that Mr. Ruckman used, however, was not the calculation made by the Department of Natural Resources, which oversees the allocation and use of Lake Michigan water. As shown in Ruckman Cross Exhibit 13, the Department of Natural Resources calculated the unaccounted-for water (or unaccounted for flow) on a per system basis.

¹⁰ Unaccounted-for-water is water that is not related to any use. Water used for flushing the system or other maintenance functions, that is lost to known leakage, or that is used for public purposes but is not revenue producing would be “unaccounted-for-water.” AG/HG Ex. 2.0 at 5-6.

Tr. 283 (Oct. 31, 2006). Using that approach, among the systems using Lake Michigan water, the average unaccounted-for water level is only 4.2% – not the 9.02% that Mr. Ruckman identified. Id. The latter percentage is a weighted average, which is driven up by the City of Chicago, which used close to half of the total Lake Michigan water in Illinois, and reported 12% unaccounted-for water.¹¹ Id. at 283-284. When systems are compared to each other, and IAWC is compared to other suburban systems, it becomes clear that IAWC’s Chicago Metro unaccounted-for water level is considerably higher than other suburban water systems that have a Lake Michigan allocation.

The General Assembly addressed the problem of lost water in its last session in House Bill 5555. That bill, which added section 8-306(m) to the PUA, requires water utilities to file, by December 31, 2006, a tariff setting forth the maximum lost water or unaccounted-for water percentage that would be considered in setting rates or surcharges. 220 ILCS 5/8-306(m).¹² Although the appropriate level of lost water has been the subject of some testimony in this docket, the People believe that this question is better addressed in the context of the December 31 tariff filing and the pending IAWC purchased water case, ICC Docket 06-0196.

The need to address lost water in the Chicago Metro district is plain. Mr. Ruckman

¹¹ Chicago took 576.5 million-gallons-a-day of the total 1,018 million-gallons-a-day tracked by the Department of Natural Resources. Ruckman Cross Ex. 13.

¹²Section 8-306(m) provides: “Water and sewer public utilities; unaccounted-for water. By December 31, 2006, each water public utility shall file tariffs with the Commission to establish the maximum percentage of unaccounted-for water that would be considered in the determination of any rates or surcharges. The rates or surcharges approved for a water public utility shall not include charges for unaccounted-for water in excess of this maximum percentage without well-documented support and justification for the Commission to consider in any request to recover charges in excess of the tariffed maximum percentage.”

testified that IAWC's parent, American Water, "recently created and filled the position of of Non Revenue Water Manager for the Central Region, which includes IAWC. ... [T]he purpose of the Non Revenue Water Manager is to create a more systematic approach to evaluating the sources, contributing factors and volumes of NRW." IAWC Ex. 4.0 at 19-20. He also described steps being taken at the state level to address NRW.

In light of the high cost of Lake Michigan water sold by IAWC in its Chicago Metro system , and the December 31 filing under Section 8-306(m), it is incumbent upon IAWC to address both the appropriate lost water level and the need to maintain its system to minimize the cost of lost water to consumers. The People will review IAWC's December 31 tariff filing, and anticipate that the appropriate amount of NRW, or unaccounted-for water in Chicago Metro as well as in other IAWC service areas, will be the subject of hearings in connection with the December 31 filing.

VI. IAWC Operations Should Be Compared to Neighboring Systems To Determine Why IAWC Chicago Metro Rates Are So High.

Consumer Kevin Grens filed a formal complaint against IAWC alleging that its rates were too high, particularly as compared to neighboring water systems. ICC Docket 05-0681. As a consumer, he found the rates to be "ridiculous," "really high," and "crazy." Tr. 179-181 (Oct. 31, 2006). He presented clear and compelling evidence that the consumers taking service from IAWC pay two to three times more for the same water and sewer service than consumers pay in three neighboring communities. Grens Ex. 1. These four communities are also in the western suburbs of Chicago, and all but Lemont use Lake Michigan water. Tr. at 178 (Oct. 31, 2006). As Grens Exhibit 1, page 2, makes clear, the charges for an average consumer using 7,000

gallons per month (Tr. 286, Oct. 31, 2006) in the IAWC system are substantially higher than neighboring communities, being \$112.98 per month, which is more than 200% higher than the charges assessed by Woodridge (\$47.41), Darien (\$44.81), Downers Grove (\$32.42) and Lemont (\$45.35). Grens' Exhibit 1, page 2 shows that variable water charges are \$50.62 compared to \$23.80, \$29.82, \$19.04 and \$37.85. The sewer charges are even more disparate, with IAWC charging \$45.52 per month, compared to \$13.86, \$13.86, \$7.88 and \$7.50.

Grens Exhibit 1.

Neither Mr. Grens nor any other party offered evidence of IAWC's cost of service. However, it is plain that other neighboring water systems are providing water and sewer service at substantially lower rates. The great discrepancy between IAWC's cost of service and the cost of service of neighboring systems should cause the Commission to carefully examine IAWC's cost of service. Further, the Commission should require IAWC to produce a cost of service study for the Chicago Metro district, which in August, 2003 was allowed a rate increase of 44.19% for water and 33.98% for sewer. ICC Docket 02-0690, Order, App. at Sch. CMS at 1 & Sch. CMW at 1 (Aug. 12, 2003). Requiring the Company to prepare a cost of service study for Chicago Metro will both require the Company to examine what costs are driving its high rates, and provide an opportunity for the Company to address those high costs, and determine what costs the Company believes are causing its rates to be higher than those of neighboring communities.

IAWC has suggested that its charges cannot be compared to neighboring public systems because those systems are subsidized by real estate tax dollars. IAWC is mistaken. Illinois law authorizes counties to operate water and sewer systems, but requires that those systems cover

their costs with revenues paid by users.

Illinois law makes it clear that the rates for a county and a municipal water or sewer system must be sufficient to cover the system's costs. In authorizing counties to establish a department of public works, Illinois law provides: "Rates and charges for the use and service of the waterworks properties, or sewage facilities, or waste management facilities, ... shall be sufficient at all times to pay the cost of maintenance and operation, to pay the principal of and interest upon all revenue bonds under the provisions of this Division, to provide a reasonable depreciation fund ..." 55 ILCS 5/5-15020. A similar provision applies to municipalities that operate water utilities. 65 ILSC 5/11-117-12. Further, the law requires municipalities to prepare public, annual reports showing "the true and complete financial results of municipal ownership or ownership and operation, as the case may be." Id. at 11-117-13. The reports must include, among other things, the actual cost of the municipality of each public utility owned; all costs of maintenance, extension, and improvement; and all operating expenses of every description, in case of municipal operation. Id. Therefore, information about the costs of water systems under municipal ownership is publicly available.

Mr. Grens offered a document filed with the state Comptroller's office, which contained portions of a Village of Woodridge report that showed Woodridge's expenditures and receipts for its water, sewer and other utilities. Ruckman Cross Exhibit 10. That Report showed that Woodridge operates its water and sewer services through an "enterprise fund" meaning that operations are financed and costs recovered primarily through user charges. Id. In addition to this document on file with the Comptroller, the law also makes the financial results of water and sewer operations publicly available.

Mr. Grens was clear about what he expected from his complaint. In his live testimony he said:

Water is the most abundant natural resources on the planet, and I really don't think anyone should have to live like this in modern day America. I'm just trying to raise awareness that these rates are just way out of line with what everyone else is paying throughout the Chicagoland area.

...

Illinois American should be forced to operate more efficiently. Maybe it's not just that their profits are too high, maybe their costs are out of control. They should be forced to meet with local municipalities and maybe learn how to operate a water system more efficiently. I mean, I don't know what the answer is. I feel that that's kind of up to the Commerce Commission to look into that. I'm just here to raise that awareness today.

Tr. 186-187 (Oct. 31, 2006). Mr. Grens is correct that the Commission should not consider IAWC's costs in isolation. The Commission should open a docket to examine the costs of both IAWC and publicly operated utilities to determine why IAWC's rates, and its underlying costs, are so much higher than neighboring systems that also deliver Lake Michigan water.

VII. Conclusion

The People of the State of Illinois, along with the Village of Homer Glen, the Citizens Utility Board and Kevin Grens, presented substantial evidence demonstrating that IAWC has failed to comply with numerous provisions of the Public Utilities Act and with Commission rules. In response, IAWC has taken action to address many of the violations. IAWC's actions to respond to the Complaints, and the additional requests contained in this brief, should be included

in a final order, along with a clear statement identifying IAWC's violations, the steps necessary to remedy them, and a provision for penalties.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

By Lisa Madigan, Attorney General

December 5, 2006

By: _____

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