

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

KEVIN GREENS)	
)	
-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.)	

REPLY BRIEF OF ILLINOIS-AMERICAN WATER COMPANY

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REPLY BRIEF OF ILLINOIS-AMERICAN WATER COMPANY

This is the Reply Brief of Illinois-American Water Company ("IAWC" or the "Company") to the Initial Briefs filed in this proceeding by the Office of the Attorney General ("AG"), the Village of Homer Glen ("Homer Glen") and the Illinois Citizens Utility Board ("CUB").

I. SUMMARY OF IAWC'S REPLY

Neither the AG nor Homer Glen has met its burden of proof with regard to the claims set forth in their respective Complaints (or the Complaint filed by Mr. Grens, which is referenced by the AG in its Initial Brief). The arguments of these parties in their Initial Briefs (i) are unsupported by the record evidence, (ii) mischaracterize the evidence presented, or (iii) ignore the plain language of the relevant statute or Commission rules. In each case, IAWC has shown either that the concerns raised by the AG and Homer Glen are unfounded, or that, where the Company or Staff has identified valid concerns in this proceeding, IAWC has either addressed, or committed to address, those concerns. IAWC has demonstrated that it has been addressing customer concerns as needed since before the Complaints were filed. As a result, there is no basis for the Commission to conclude that an outside audit is needed, that penalties are appropriate, or that any of the other relief requested by the AG or Homer Glen should be granted. The proposals offered by CUB in its Initial Brief are unsupported by the testimony of any witness and also should be rejected.

II. ARGUMENT

Neither the AG nor Homer Glen mentions the burden of proof in their Initial Briefs. However, the three Complainants in this case, the AG, Homer Glen and Mr. Grens (who did not file a brief), as well as CUB on its issue of concern, bear the burden of proof by a preponderance of the evidence. The following discussion will show that the Complainants and CUB have failed

to carry that burden, and that neither an independent outside audit of IAWC's practices and procedures, nor civil penalties, is factually or legally justified.

A. Neither Homer Glen Nor the AG Has Demonstrated Violations of the Act or the Commission's Rules That Justify an Audit, Investigation, or Penalties

Although few if any violations of the Commission's rules were alleged in the testimony offered by the AG and Homer Glen, both the AG and Homer Glen maintain in their Initial Briefs that IAWC violated a number of Commission rules and provisions of the Illinois Public Utilities Act ("Act"). As discussed below, the majority of these allegations are baseless. Where valid concerns have been identified, IAWC has taken the appropriate steps to address them. IAWC notes that the AG adopts the term "consumer protection rules" when discussing many of the alleged "violations" (although there is no formal classification of any of the Commission's rules as "consumer protection rules"). (AG Init. Br., p. 19.) As shown in its Initial Brief and this Reply Brief, IAWC has responded to the AG's allegations of "consumer protection rule" violations where the AG has identified a particular rule for which it claims a violation. IAWC has also addressed the AG's general concerns about "consumer protection" issues through the steps it has taken in response to customer concerns (for example, improving the bill format, halting the issuance of odometer meter device-related back bills, or establishing the customer service "specialty desk"). (See IAWC Ex. 4.01.)

1. Homer Glen's and the AG's Arguments That Higher Bills as Compared to Other Months Signify a Concern with IAWC's Billing Practices Are Without Merit

a. There Is Nothing Improper About "High Bills" That Reflect Actual Customer Usage

As used by Homer Glen, the term "high bills" refers to billed amounts for a given billing period that are relatively high as compared to bills of the customer involved for other billing

periods. Homer Glen and the AG argue, in their Initial Briefs (HG Init. Br., pp. 7-21; AG Init. Br., pp. 9-10) that IAWC has issued, and continues to issue, high bills to customers, implying that this is improper. Homer Glen also asserts that "unrebutted evidence" supports the claim that issues related to such high bills continue. (HG Init. Br., p. 18.) These arguments, however, ignore both the fact that there is nothing improper about bills that reflect actual usage by the customer (whether the usage, relative to other months, is high or not) and the substantial evidence demonstrating that the AG's and Homer Glen's concerns about high bills are either baseless or have been addressed. (*See* IAWC Init. Br., pp. 14-19, 24-40.) In this regard, a utility is required to bill its customers at the approved tariffed rates for service rendered (220 ILCS 5/9-240), and, as Homer Glen's and the AG's witness Mr. Rubin acknowledges, a utility is not entitled to provide free or reduced-rate service. (AG/HG Ex. 1.0, p. 17.) Therefore, it is entirely proper for IAWC to bill customers for their actual usage, which may be higher or lower than the customer's usage in another billing period. Homer Glen and the AG offer no evidence that the majority of bills they characterize as high bills reflects anything other than actual usage by the customer. As described below, in those few instances where IAWC determined there was a possibility that high bills were related to back billing beyond twelve months or were not related to a customer's actual usage, IAWC took steps to address the concerns of the affected customers, and has resolved all such concerns.

The evidence shows that the bills characterized by Homer Glen and the AG as high bills (HG Init. Br., pp. 8-12; AG Init. Br., pp. 9-10) reflect actual customer usage. In the case of the 95,000 gallon monthly usage shown in HG Exhibit 6.02 (HG Init. Br., p. 12), IAWC's billing system selected this account for review after the billing system identified high usage in July, 2006 under IAWC's high bill procedures. (Tr. 241-42.) During the review, Company records

indicated that the customer informed a field service representative that the customer had a new irrigation system installed and new sod laid in July, 2006, and had been extensively watering the new lawn. (*Id.*) Company records further indicated that the October bill (issued after the review was complete) reflected the customer's actual usage related to the lawn watering. (*Id.*) The customer paid the bill at issue in full on October 23, 2006 (a week before the due date) and did not dispute the bill. (*Id.*) Likewise, the account shown with a 50,000 gallon usage for July, 2005 (HG Init. Br., p. 10) was found by Staff Witness Johnson to have had similarly elevated usage levels of 35,000 gallons in the same time period in 2001. (ICC Staff Ex. 1.0, p. 45.) With respect to accounts identified as having high bills in Homer Glen's Complaint, Staff Witness Johnson found: "It is apparent that, while some of these monthly usages appear to be very high, in some cases these customers had a history of high monthly water usage during these same summer months in some previous years." (*Id.*) Similarly, the bills cited by the AG as showing "bill spikes" (AG Init. Br., p. 10) were in fact bills based on usage recorded from actual reads of the customers' meters. (*See* HG Ex. 1.07, pp. 15-17.)

Moreover, Homer Glen's arguments about bills considered high as compared to a previous month ignores the testimony of Mr. Ruckman concerning valid reasons why bills may increase by 50% or more from one month to the next (IAWC Ex. 1.0, pp. 28-29), a number of which were accepted by Mr. Rubin. (AG/HG Ex. 2.0, p. 13.) Homer Glen's arguments further ignore the evidence regarding the clear impact of the 2005 drought on water usage in the Homer Glen area. (*See* IAWC Init. Br., pp. 14, 24.) As IAWC's Exhibit 4.02 shows, the total system delivery to Homer Glen (and Chicago Metro as a whole) rose dramatically in the summer months of 2005. Therefore, the bills issued to Homer Glen customers would reflect a similar increase (*i.e.* a "spike") in water use. (*See id.*, p. 14.) For example, of the 13 high bills cited in Paragraph

33 of Homer Glen's Complaint, nine were from June, July and August 2005, and the remaining four were from April 2005. (HG Compl. ¶ 33.) Thus, Homer Glen's references in its Initial Brief to "high" or "spiking" bills are not a ground for criticism of IAWC's billing practices.

b. Homer Glen's Arguments That High Bills Are Not Related to Any Particular Season or Year Are Inapposite

Homer Glen argues that high bills were also received in non-summer months of 2005, as well as into 2006, and so cannot be attributed to the drought in the summer of 2005. (HG Init. Br., pp. 8-14.) However, IAWC has never taken the position that all bill increases in Homer Glen in 2005 were the sole result of drought. Rather, IAWC stated that the issues raised by Homer Glen in its Complaint related primarily to events in Chicago Metro in the summer of 2005, which included both the drought and the Chicago Metro Meter Replacement Program. (See IAWC Init. Br., pp. 24-25.) On this latter point, the AG acknowledges that "complaints about bill spikes . . . nearly tripled in 2005, as the meter replacement program expanded." (AG Init. Br., p. 9.) (As will be discussed, all customers that may have been billed improperly in connection with the Meter Replacement Program have received a full credit with interest.)

Homer Glen's argument also ignores the fact that, as described above and in IAWC's Initial Brief (pp. 36-37), a bill may be high as compared to other billing periods for any number of reasons. Accordingly, the fact that certain customers in Homer Glen received bills in non-summer months that were high as compared to bills in other months does not indicate a violation of applicable rules or a concern with IAWC's billing practices.

2. Neither the AG Nor Homer Glen Has Identified Improper Back Billing Not Related to Odometer Meters in Chicago Metro

a. The AG and Homer Glen Offer No Evidence That Concerns About Back Billing Are Ongoing

In September 2005, IAWC determined that, with regard to certain meter exchanges undertaken during the Meter Replacement Program in Chicago Metro, the difference between the inside meter and an under-registering odometer device may have related to customer usage during a period more than twelve months prior to the meter reading. (IAWC Ex. 1.0, pp. 15-16.) As a result, the Company discontinued the practice of billing customers included in the Meter Replacement Program for past unbilled water use detected at the time of the meter change and undertook a comprehensive audit to identify Chicago Metro customers who may have been improperly back billed following odometer meter exchanges. All such customers received appropriate credits, with interest, on or before October 1, 2006. (*Id.*, pp. 15-17; *see* IAWC Init. Br., pp. 16-19.) The halt to back billing for odometer meter exchanges and the completion of the audit have resolved all concerns regarding improper back billing by IAWC.

Homer Glen argues that the September, 2005 discontinuance of back billing is "revisionist history" based on a letter sent by IAWC to Homer Glen customers in October, 2005 (HG Ex. 1.06) regarding the drought. Homer Glen takes that letter out of context: the purpose of the letter was to address the impact of the drought, not back billing. IAWC addressed the back bill issue in a separate letter that IAWC sent to Homer Glen's Mayor on October 6, 2005: "We have ceased the practice of back billing in the case of meter change-out and will revisit this issue with you at a future date. (You will note, however, that this change had already been put in place prior to our meeting yesterday.)" (HG Ex. 1.05.) Thus the decision to stop back billing is not "revisionist history."

Homer Glen continues to argue that improper back billing continued after September, 2005. (HG Init. Br., pp. 12, 18-19.) However, neither Homer Glen nor the AG has demonstrated that any improper back billing has occurred since September, 2005. IAWC's evidence confirms that no back bills related to the Meter Replacement Program were issued after September, 2005 (IAWC Ex. 1.0, p. 16), and neither Homer Glen, the AG, nor any other party in this proceeding has identified even one improper back bill for any customer for any billing period in Homer Glen, Chicago Metro or any other Illinois service area that was issued after September, 2005. In arguing that back billing continued after September 2005, Homer Glen refers to Mr. Rubin's analysis of IAWC's data. (*Id.*) Homer Glen, however, ignores the evidence demonstrating that Mr. Rubin had no basis to conclude from the data he considered that back bills were issued after September, 2005. (*See* IAWC Init. Br., pp. 35-40.) Thus, Homer Glen has not demonstrated that back billing is an ongoing problem.

b. Neither the AG Nor Homer Glen Has Shown Any Violation of the Commission's Rules Governing Unbilled Service

As IAWC explained in its Initial Brief, Section 280.100 of the Commission's rules, 83 Ill. Admin. Code § 280.100, permits a utility to issue a bill for residential utility service rendered within the previous twelve months. (IAWC Init. Br., p. 16.) Thus, back bills for service within the past twelve months do not violate Commission rules. Mr. Rubin acknowledged that the issuance of back bills to assure that customers are properly billed for all service provided is appropriate. (AG/HG Ex. 1.0, p. 17.) Further, neither the AG nor Homer Glen has offered direct evidence of any residential customer who was in fact billed for usage extending more than twelve months. Moreover, as described above, IAWC addressed concerns about potential back billing beyond twelve months when it stopped issuing back bills in Chicago Metro in September, 2005 and undertook the back bill audit. (IAWC Ex. 1.0, p. 4.)

Section 280.100(d) sets forth rules regarding review of back bills with the customer and the establishment of payment plans for customers issued back bills (also referred to as "make-up" bills):

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 or 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%.

With regard to Section 280.100(d), the AG alleges that IAWC did not review back bills with customers or offer payment plans to customers for the same period over which the back bill accrued. (AG Init. Br., pp. 11-12, 14.) However, the AG's arguments ignore the plain language of Section 280.100(d). Under Section 280.100(d), the requirement to "review the bill with the customer" and offer payment terms is triggered by two events: (i) the occurrence of a past due bill following issuance of a make-up bill, and (ii) "the 'make-up' bill exceeds the otherwise normal bill for such billing period by 50%." The AG points to no record evidence that IAWC issued bills that were both past due and 50% above normal as the rule requires. Thus, the AG has not demonstrated that Section 280.100(d)'s provisions were violated. IAWC's policy, however, is to offer a payment plan to any customer who indicates that they are having difficulty paying their bills, including customers who receive back bills. (IAWC Ex. 1.0, p. 32.)

3. Neither the AG Nor Homer Glen Has Identified Any Violations of Commission Rules Regarding Estimated Bills

The AG and Homer Glen also allege violations of Commission rules with respect to issuance of consecutive estimated bills. (AG Init. Br., p. 25; HG Init. Br., p. 24.) First, both the AG and Homer Glen assert that IAWC is not tracking estimated bills. (*Id.*) However, IAWC has procedures in place to address consecutive estimates on a customer-specific basis. (IAWC Ex. 1.0, p. 36.) The E-CIS system has a standard report which identifies customers that are receiving consecutive estimates. (*Id.*) IAWC investigates these consecutive bills based on the E-CIS system reports. When a back bill is issued following consecutive estimates, IAWC sends a letter to the customer indicating the affected period, the reason for the back bill, and the payment terms available. (*Id.*; Tr. 320-21.)

The AG also asserts that the level of estimates by IAWC was high, and suggests that the situation would improve with a reduction of estimates to 2%. (AG Init. Br., pp. 25-26.) However, the AG appears to have overlooked Mr. Rubin's data, which show the number of estimates decreasing. As of May, 2006 (the last month for which data were available), the level of estimates by IAWC was at 2.40%. This percentage is in line with what Mr. Rubin's argues is a reasonable percentage of estimates for a "typical water utility." (AG/HG Exs. 2.0, p. 16; 1.11; Tr. 118-20.) Indeed, as Homer Glen acknowledges, the overall level of estimates at IAWC statewide "does not appear to be out of line with the national average." (HG Init. Br., p. 23.)

Homer Glen expresses concern about consecutive estimates in Homer Glen itself. (HG Init. Br., p. 23.) However, Homer Glen ignores the fact that, as Mr. Rubin acknowledged, "as the Company implements more radio-read meter reading devices, the number of estimated bills . . . should be declining." (AG/HG Ex. 1.0, p. 25; Tr. 123-28.) In fact, a decrease in

estimates in Chicago Metro (which includes Homer Glen) is already being seen. For Chicago Metro, estimates dropped below 4% in January, 2006, and below 2% in March, 2006, and have been approximately 2% since that time. (IAWC Ex. 4.0, p. 22.) Thus, Homer Glen's concerns have already been resolved. (IAWC Init. Br., pp. 43-45.)

With respect to allegations that IAWC has violated the Commission's rules at 83 Ill. Admin. Code 280.80, regarding estimated bills (HG Init. Br., p. 44; AG Init. Br., pp. 24-25), neither the AG nor Homer Glen identify any specific instance in the record where IAWC has estimated a customer's account in contravention of the rules, or otherwise provided evidence that IAWC has at any time improperly issued estimated bills. IAWC has explained, in its Initial Brief (pp. 41-43), that the Commission's rules permit estimates every other billing period (*i.e.*, up to 50% of the time) and in a variety of other circumstances, and estimated bills are necessary. IAWC also explained that there is no concern with meter reader staffing. (IAWC Init. Br., pp. 41-43.) Therefore, because IAWC's level of estimates is declining, and IAWC has procedures in place to track consecutive estimates, there are no outstanding concerns that justify further investigation, an audit, or penalties.

4. Neither the AG Nor Homer Glen Has Established Any Violation of Commission Rules Related to IAWC's Tracking of Zero Use Bills

There are no Commission rules regarding consecutive zero bills (IAWC Ex. 1.0, p. 39), and Mr. Rubin admitted on cross examination that "there is no standard utility practice regarding consecutive zero consumption bills." (Tr. 126.) IAWC has also demonstrated, and Mr. Rubin has acknowledged, that many zero usage bills are valid, particularly for residences that are unoccupied at some time during the year. (IAWC Init. Br., pp. 45-47.) In addition, Mr. Rubin acknowledged, with regard to consecutive zero-consumption bills, that "[t]he Company's written

procedures are fully consistent with the recommendations in my direct testimony." (AG/HG Ex. 2.0, p. 17.) Nevertheless, the AG and Homer Glen both assert that IAWC does not track zero consumption bills, and the AG further suggests that failure to track consecutive zero bills can lead to violations of Commission rules. (HG Init. Br., pp. 21-23; AG Init. Br., pp. 24, 26-27.) Both the AG's and Homer Glen's arguments are baseless.

Contrary to the AG's and Homer Glen's assertions, IAWC does track zero usage bills. Mr. Ruckman explained that the Company generates a report from the E-CIS system that identifies consecutive zero usages. (IAWC Ex. 1.0, p. 39; Rubin Cross Ex. 9.) The AG's assertion that the Company does not track repeated zero bills (AG Init. Br., pp. 26-27) mischaracterizes Mr. Zerbe's testimony. Mr. Zerbe was asked how difficult it would be to program the E-CIS system to list the accounts that have three consecutive zero bills. (Tr. 400.) Mr. Zerbe testified that that would require significant modification to the system and that the system does not automatically track accounts based on prior zero usage in that way. (Tr. 400-01.) However, the Company can still query the system to identify accounts with three or more consecutive zero bills. (Rubin Cross Ex. 9.) As Mr. Ruckman explained, IAWC district personnel verify the accuracy of the zero usage bills, and procedures are in place to investigate three or more consecutive zero bills. (IAWC Exs. 1.0, p. 40; 4.01, p. 1.)

Homer Glen also asserts that customers are "harmed" by not tracking zero usage bills. (HG Init. Br., p. 22.) This assertion disregards the fact that, as discussed above, IAWC does track and review zero usage bills. In addition, Homer Glen offers no evidence that any zero use bill has been issued improperly or that any customer has been "harmed" by a zero use bill. As a result, neither the AG nor Homer Glen has demonstrated that IAWC's procedures with respect to zero use bills warrant further audit or investigation.

5. IAWC's Meter Replacement Program Does Not Reflect Violations of the Commission's Meter Test Rules

The AG argues that IAWC's Meter Replacement Program in Chicago Metro is proceeding too slowly. (AG Init. Br., p. 5.) However, the AG's witness, Mr. Rubin, stated that IAWC's meter replacement is proceeding "slightly faster" than Commission rules require. (AG Ex. 2.0, p. 5.) Moreover, the AG ignores the practical considerations surrounding the replacement of thousands of meters, which requires a substantial investment of time and resources by the Company. (IAWC Ex. 4.0, p. 17.) IAWC has prioritized meter replacement to replace meters in those areas where the deadline for testing under Commission rules is first approaching, and the AG overlooks the fact that many of the meters that are scheduled to be replaced between now and 2010 are not yet due for testing or did not become due for testing until recently. (*Id.*) The AG also ignores the fact that all 2" meters in Chicago Metro (which must be tested or replaced every four years – *see* 83 Ill. Admin. Code Section 600.340) were replaced in 2003. (IAWC Ex. 1.0, p. 7.) In fact, aside from the Bolingbrook meters, all other meter replacements in Chicago Metro will be completed by the end of 2007. (*Id.*)

The AG's arguments that IAWC is not in compliance with the Commission's meter testing rules (AG Init. Br., pp. 6-7) also disregard the history of the Meter Replacement Program in Chicago Metro. IAWC acquired the assets of Citizens Utilities Company of Illinois ("Citizens"), which now make up IAWC's Chicago Metro District, in 2002, and Citizens' meter infrastructure was outdated at that time. (IAWC Ex. 1.0, p. 7.) As Staff pointed out, improper meter testing and replacement by Citizens meant that the meters in Chicago Metro needed to be replaced. (Staff Init. Br., p. 20.) IAWC immediately initiated capital programs for 2003 designed to accelerate meter change-outs and improve valve and hydrant testing. (IAWC Ex. 1.0, p. 7.) By employing an outside contractor and working evenings and weekends, IAWC has

accelerated the meter replacement process. (*Id.*, p. 9.) As Staff also pointed out, the Cairo, Homer Glen and Orland Hills service areas met the meter testing requirements of Section 600.340. (Staff Init. Br., p. 6.) Although the AG argues that this review only covered areas where meters had already been replaced, "[e]xamining the old meter records . . . would only indicate whether Citizens had or had not followed Commission rules, not whether IAWC had." (Staff Init. Br., p. 21.) Thus, there is no basis to conclude that the Meter Replacement Program is proceeding too slowly. In its review, Staff found that only the Champaign District (which is outside Chicago Metro) was non-compliant with Section 600.340, and IAWC has agreed to accept Staff' recommendations regarding meter records and testing in Champaign. (IAWC Ex. 4.01, p. 5.)

In summary, the AG has not identified any valid concerns with IAWC's meter testing or replacement. By contrast, Staff states in its brief, "[Mr. Johnson] found nothing indicating that IAWC has a Company-wide meter problem." (Staff Init. Br., p. 8.) IAWC has demonstrated that it is aggressively moving to complete the Meter Replacement Program, which will result in installation of accurate radio read meters throughout Chicago Metro (IAWC Ex. 1.0, p. 8), and has accepted Staff's recommendations with regard to meter record and testing improvements. (IAWC Ex. 4.01, p. 5.) Therefore, there is no basis for the AG's recommendation for accelerated meter testing or civil penalties. (AG Init. Br., p. 8.)

6. The AG's Argument About the Accuracy of IAWC's Meters Is Misleading

The AG argues that a high percentage of IAWC's meters are out of compliance with the Commission's meter accuracy standards because IAWC's random testing of meters removed in the Meter Replacement Program showed, in results provided in response to the AG's Data Request 5.8 ("AG 5.8"), that over 50% of the meters did not meet the testing standard for new

meters in 83 Ill. Admin. Code Section 600.310. (AG Init. Br., pp. 7-8; Ruckman Cross Ex. 12.) However, the AG's arguments ignore the fact that the Section 600.310 standards apply to *new* or *repaired* meters, and that the meters tested in IAWC's random sample were meters that had been removed from service and replaced with new radio read meters as part of the Meter Replacement Program. (Ruckman Cross Ex. 12; Response to AG 5.8.) These meters were not new meters, and so there was no requirement that they meet the Section 600.310 standards. The AG's attempt to characterize these meters as not meeting the Commission's accuracy standards is therefore misleading.

The AG also asserts that the under-registration shown in these replaced meters "could expose the consumer to excessive back billing." (AG Init. Br., p. 7.) These assertions have no support in the record. The AG has offered no evidence that even one customer was issued an improper back bill due to the alleged meter inaccuracies in AG 5.8. The AG has also offered no evidence that any customer complaint (much less "many customer complaints" as the AG asserts) was triggered by a meter inaccuracy (as discussed above, the back bill concerns in Chicago Metro were related to problems with the remote odometer reading device, not inside meter inaccuracies). (AG Init. Br., p. 8.)

7. No System-wide Investigation of IAWC's Valves and Hydrants Is Warranted

Both the AG and Homer Glen assert that IAWC has widespread problems with hydrant and valve inspections. (AG Init. Br., p. 29; HG Init. Br., pp. 24-27.) As Staff points out, however, neither the AG nor Homer Glen has provided evidence of hydrant problems across all IAWC service areas. (Staff Init. Br., p. 11.) The AG's and Homer Glen's witness, Mr. Rubin, based his recommendation that the Commission "oversee or conduct a full investigation of IAWC's hydrant testing and maintenance programs throughout Illinois" on correspondence from

four municipalities. (AG/HG Ex. 1.0, p. 6.) Two of these municipalities, Lisle and Prospect Heights, are located in IAWC's Chicago Metro District; the other two, Urbana and Champaign, are located in IAWC's Champaign District. (AG/HG Ex. 1.17.) Thus, as Staff observed in its Initial Brief, "The record in this case is silent on fire-related or fire-flow related complaints associated with any other IAWC service areas other than the Chicago Metro Service area and Champaign service area." (Staff Init. Br., p. 12.) Further, Mr. Rubin admitted to not having "investigated" the Company's fire hydrant maintenance and testing practices "in any depth." (AG/HG Ex. 1.0, p. 5.) The issues raised in the correspondence cited by Mr. Rubin have, as Mr. Ruckman testified, been addressed and resolved (IAWC Ex. 1.0, pp. 42-46), a fact which the AG ignores. (AG Init. Br., p. 29.) Thus, a full investigation of IAWC's hydrant testing is unwarranted.

Moreover, Homer Glen's assertion that, for Homer Glen, "[t]he evidence is clear that these [hydrant] inspections are not being done" is incorrect. Homer Glen's hydrants were all inspected in 2006. (IAWC Ex. 4.0, p. 3.) As Mr. Ruckman testified: "With respect to hydrants, in 2006 to date, all hydrants in Homer Glen, Champaign, Urbana, Alton, Lincoln, Pekin and Pontiac have been inspected." (*Id.*) Furthermore, Mr. Ruckman added, "All hydrants in other areas will be inspected by year-end, and all hydrants will continue to be inspected annually as required by the Commission's rules." (*Id.*)

The AG's and Homer Glen's assertions also overlook IAWC's current and planned actions with regard to valve and hydrant testing and inspection. The only hydrant and valve investigation in this proceeding was performed by Staff witness Johnson, who undertook his own review of IAWC's hydrant and valve maintenance records. (ICC Staff Ex. 1.0, pp. 25-37.) Mr. Johnson found that a statewide investigation of IAWC's hydrant testing and maintenance was not

warranted. (*Id.*, p. 29.) Mr. Johnson also testified that he was not aware of any valve problems in the Cairo, Champaign or other service areas besides the Chicago Metro service area. (*Id.*, p. 35.)

Mr. Johnson recommended that the Commission order the Company to inspect valves and hydrants only in Champaign and Chicago Metro. (ICC Staff Ex. 1.0, pp. 30-31, 36-37.) The Company accepted these recommendations in their entirety. (IAWC Ex. 4.01, pp. 4-5.) The Company is hiring an additional 38 employees in 2006 to help complete these recommendations. (IAWC Ex. 1.0, p. 43.) Thus, IAWC has not only committed to address any concerns with valve and hydrant inspections, it has in fact already acted on those commitments. As a result, there is no basis to conclude that further review of IAWC's valve and hydrant inspection program is needed.

8. IAWC Has Addressed All Concerns with the Presentation of Information on Its Bills

The AG also argues that IAWC does not provide the information required by 83 Ill. Admin. Code Section 600.160(a) on its bills. (AG Init. Br., pp. 23-24.) The AG's arguments are two-fold: (1) that IAWC does not include the principal rates on its bills (in particular, the purchased water Supply Charge); and (2) that IAWC does not show the period in which water was used on bills for unbilled service. (*Id.*) As an initial matter, the AG has not met its burden of proof with regard to this issue, relying instead on unsupported assertions that IAWC has failed to provide "consumer protections" in violation of Commission rules. (AG Init. Br., p. 24.) As an example, the AG contends that, with respect to the customer in IAWC Exhibit 1.07 that received a back bill, IAWC "did not review the bill with customer, identify the period of time it covered, or explain that he could pay it over the same time period it accrued." (AG Init. Br., pp. 11-12.)

However, the AG offers no record evidence to support that contention. Similarly, the AG asserts that certain bills referenced by Homer Glen include previously unbilled usage that is not disclosed on the bill. (AG Init. Br., pp. 9-10.) However, the AG offers no evidence that the referenced bills include unbilled usage. The AG also asserts that certain of these bills reflect usage "spikes" and do not show on the bill that a meter was changed. (*Id.*) The AG, however, presents no evidence that there was a meter change for those accounts that should have been shown on the bill. Thus the AG has not met its burden of proof with respect to 83 Ill. Admin. Code Section 600.160(a).

The Company believes that its bill format is in accord with the Commission's requirements. (*See* IAWC Init. Br., p. 21.) With regard to the AG's first argument regarding principal rates, the AG incorrectly asserts that Staff found that IAWC "failed to comply" with the Commission's rules related to showing the principal rates on the bill. (AG Init. Br., p. 24.) In fact, Staff does not believe that IAWC is in violation of Section 600.160 with regard to the Supply Charge. (Staff Init. Br., p. 24.) As Staff Witness Johnson testified, traditionally, principal rates referred to the base charges such as the customer charge and usage charge, and therefore, with regard to showing the Supply Charge as a principal rate:

I believe this to be a change from past practice and, therefore, do not think the Company was unreasonable for not considering purchased water charges as a principal rate up to this point. The rule does not provide a definition of what constitutes a principal rate and, as I stated, traditionally base rates have been considered principal rates. However, in light of the changed circumstances I described above, I think that it would be very beneficial to the customer and the Company if the Company were to show the purchased water charge on the bill on an ongoing basis.

(ICC Staff Ex. 1.0, pp. 41-42.) IAWC has agreed to incorporate the Supply Charge's volumetric rate into its bill. (IAWC Ex. 4.01, p. 2; Tr. 322-24.)

The AG's second argument regarding the time period shown on IAWC's bills ignores IAWC's testimony that, when a back billing is identified during the billing process, the billing representative will issue a letter to the customer which indicates the affected period, the reason for the back bill, and offers payments terms should the customer wish to enter into an agreement. (IAWC Exs. 1.0, p. 32; 4.01, p. 1.) Likewise, the AG ignores the fact that, where an actual meter reading follows an estimated reading, the following message displays as a bill message: "The reading used for this bill corrects previous estimate reading." (IAWC Ex. 1.0, p. 41.) The AG has, therefore, failed to demonstrate that IAWC is in violation of Section 600.160.

Nevertheless, in response to customer workshop feedback and concerns raised by Homer Glen and the AG, IAWC has identified areas where its bill can be enhanced to improve a customer's ability to understand the billing information, including the time period. (IAWC Ex. 1.0, p. 41.) IAWC will inform the customer about the time period the bill covers when there is more than one consecutive estimate or there is a back bill. (IAWC Ex. 4.01, p. 2.) The revised bill format will also comply with the recent requirements of 220 ILCS 5/8-306, which requires, *inter alia*, that the bill show any amount billed that is for service provided prior to the date covered by the billing statement.

9. The AG and Homer Glen Have Not Identified Any Violations of Commission Rules Related to IAWC's Customer Service

a. The AG and Homer Glen Have Not Demonstrated a Violation of Section 280.160(a) of the Commission's Rules

Both Homer Glen and the AG continue to argue that IAWC did not assign personnel the duty of hearing disputes in person in violation of 83 Ill. Admin. Code Section 280.160(a) (AG Init. Br., p. 21; HG Init. Br., pp. 30-33), despite the fact that this allegation was stricken from both the AG's and Homer Glen's Complaints by ruling of the ALJs on September 15, 2006.

Nevertheless, in the event that the Commission chooses to consider the merits of this allegation, both the AG and Homer Glen ignore the plain language of Section 280.160(a). Section 280.160(a) provides: "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." Thus, under this rule, IAWC is only required to assign personnel in offices where its transacts business to hear complaints in person. Neither the AG nor Homer Glen has offered any evidence that IAWC does not assign personnel to hear disputes in person in its offices. Instead, Homer Glen argues that IAWC did not have a person located in Homer Glen to hear customer disputes. (HG Init. Br., pp. 31-32.) This argument ignores the plain language of the rule that the personnel assigned to hear complaints must be located in "offices where [the utility] transacts business." 83 Ill. Admin. Code § 280.160(a). IAWC does not have an office in Homer Glen. (HG Ex. 5.03.) Therefore, there is no requirement that IAWC have personnel in Homer Glen to hear complaints in person.

In fact, the testimony cited by Homer Glen (HG Init. Br., p. 32) demonstrates that IAWC does have a person assigned to hear complaints in person in its Woodridge office, which is the "home office" for the Chicago Metro District. (Tr. 224.) Mr. Ruckman testified that: ". . . Mr. Hillen would be one of the few people who could hear complaints in the Woodridge office. Mr. Hillen is the manager, he's the top person in the Woodridge office." (Tr. 223.) Moreover, IAWC agreed to post a customer service representative in the Homer Glen Village Hall in October, 2005 to handle customer calls and face-to-face visits by customers. (HG Ex. 5.03.)

In fact, it was Homer Glen's decision not to have an in-person representative from IAWC located in Homer Glen, as explained in the portion of HG Exhibit 5.03 conveniently omitted from Homer Glen's Initial Brief (pages 31-32):

In an email from the Homer Glen Village Manager to Illinois American Water dated October 6, 2005, included as Attachment to IAWC 1.9-B, the Village Manager stated that the level of calls did not justify having an Illinois American Water employee stationed in the Village Hall, and he suggested that Illinois American Water have a designated person to focus on Homer Glen customer service issues who would be located somewhere in the Homer Glen general area, and that Homer Glen would have that person's name and individual phone number to provide to residents who call.

Michael A. Rumer, Business Process Supervisor for Illinois American Water, was placed in the Woodridge, Illinois office of Illinois American Water during the period of October 11, 2005, through October 13, 2005, and again on October 18, 2005. After those initial periods, the Village of Homer Glen was provided with a local telephone number that rang either directly in Mr. Rumer's Belleville, Illinois office or the Woodridge office of Illinois American Water Network Operations Supervisor Mr. Dan McCloon.

(HG Ex. 5.03.)

b. The AG and Homer Glen Have Not Demonstrated a Violation of Section 280.160(b) of the Commission's Rules

Both the AG and Homer Glen argue that IAWC did not comply with the complaint procedures set forth in 83 Ill. Admin. Code Section 280.160(b). (HG Init. Br., pp. 33-35; AG Init. Br., p. 21.) However, IAWC's evidence demonstrates that it does in fact comply with Section 280.160(b). Section 280.160(b) first requires that, where a customer dispute cannot be resolved, the utility must inform the customer of the right to have the problem considered and acted upon by supervisory personnel. The record shows that when a customer calls IAWC's Customer Service Center ("CSC") with a concern that cannot be resolved, that customer's concern is forwarded to an Account Resolution Team ("ART") for follow-up and resolution. (IAWC Ex. 2,0, p. 12; Tr. 467-68.)

Second, Section 280.160(b) requires that the utility direct the supervisory personnel to inform the customer of their right to have their complaint heard by the Commission. Homer Glen, citing Ms. Cooper's testimony, asserts that IAWC does not provide customers with notice of the right to have their complaint heard by the Commission, referring to IAWC's "blatant

disregard for customer's [sic] rights." (HG Init. Br., p. 34.) However, Homer Glen ignores that portion of Ms. Cooper's testimony in which she confirms that IAWC's ART personnel do inform customers of their right to have their complaint heard by the Commission:

Q. Okay. If that dispute is not resolved by that group, would the customer -- is it your testimony today that at that point the company -- somebody from that group [ART] will inform the customer of their right to come to the Illinois Commerce Commission?

A. Yes. Our -- when a customer calls and the first line agent -- the call-handling agent is not able to resolve their issue, they don't automatically call the Commission. They'll work through our escalation process sending it to dispute. They'll try to work through that issue. At some point if they cannot reach a resolution or the customer's asking for something and that would be outside the rules, of course, we do tell them that they have the right to contact the Commission and we do keep that information in our database that we can give that to them. Also, if at any point they say they want to call the Commission, we give them that information.

(Tr. 480-81.) Thus, far from being in violation of Section 280.160(b), IAWC has demonstrated that it complies with the rule, and Homer Glen's position is baseless.

c. The AG and Homer Glen Have Not Demonstrated a Violation of Section 280.160(c) of the Commission's Rules

Both the AG and Homer Glen allege that IAWC has violated the customer dispute provisions of 83 Ill. Admin. Code Section 280.160(c), which provide:

When a customer disputes a particular bill, a utility shall not discontinue service for nonpayment so long as the customer

- 1) pays the undisputed portion of the bill or an amount equal to last year's bill at the location for the same period normalized for weather, whichever is greater; and
- 2) pays all future periodic bills by the due date; and
- 3) enters into bona fide discussions with the utility to settle the dispute with dispatch.

Thus, the rule requires that the utility not discontinue service for nonpayment if three elements are met. However, neither the AG nor Homer Glen has established that any customer met each of the three elements of the rule and then had their service shut off; in fact, neither the AG nor

Homer Glen has identified even one customer that had its service shut off while a bill was in dispute. For example, neither Ms. Litoborski nor Ms. Finnegan, both examples cited by the AG (AG Init. Br., p. 22), had their service shut off. (IAWC Ex. 1.0, pp. 61, 63-66.) Thus, the AG and Homer Glen have failed to demonstrate any violation of this rule.

The AG also recommends that the Commission order that a customer's account be placed on hold for at least 30 days while a dispute is being resolved by the ART and that the customer be informed of their right to contact the Commission. (AG Init. Br., pp. 22-23.) First, as described, above, ART supervisory personnel already inform a customer of their right to contact the Commission when a dispute cannot be resolved. Second, the AG provides no basis for its assertion that consumers have no way of knowing the status of an ART investigation. Ms. Cooper testified that ART personnel handling a dispute may contact customers for more information and have a target for responding of ten days (the Executive Resolution Team ("ERT"), for its part, must acknowledge a customer's inquiry within one day). (Tr. 45-51, 470-71.) Ms. Cooper testified that "[i]f there's a customer dispute and there's an issue being worked on, the customer account would be placed on hold" for 10 to 30 days. Since the ART targets a customer response in ten days, and the AG has not identified any basis to require a 30-day hold in all situations, the AG's recommendation should be rejected.

d. Homer Glen Has Not Demonstrated That IAWC Has Harassed or Intimidated Customers

Homer Glen argues that IAWC "systematically" harassed and intimidated customers. (HG Init. Br., p. 35.) However, IAWC has demonstrated that it does not harass or intimidate customers. (IAWC Init. Br., pp. 59-61.) Moreover, Homer Glen offers no evidence to support

its claims that the Company "undertook various steps to harass and intimidate the customer."
(HG Init. Br., p. 35.)

Homer Glen's Initial Brief alleges three instances of "harassment." (*Id.*, pp. 35-39.) The first was with regard to Ms. Finnegan's allegations, which IAWC has demonstrated that it resolved. (IAWC Exs. 1.0, pp. 57-61; 2.0, p. 15.) IAWC also demonstrated that it appropriately dealt with the customer service employee she expressed concern about. (IAWC Ex. 1.0, p. 60; HG Ex. 1.12). The second instance was Ms. Litoborski's complaint that she was receiving collections calls on her cell phone. IAWC has shown that its customer service personnel do not conduct IAWC business by intentionally harassing or intimidating customers, but because IAWC has a responsibility to collect amounts due for water service provided, the Company attempts to contact past due customers in accordance with Fair Debt Collection Practices Act ("FDCPA") rules and regulations. (IAWC Init. Br., pp. 59-60.) Ms. Cooper further explained that customer service representatives are trained to verify customer telephone numbers and update the customer information system accordingly each time a customer calls in to the CSC. (IAWC Ex. 2.0, p. 17.) Therefore, because Ms. Litoborski's cell phone number was provided to IAWC, the cell phone number was recorded as a point of contact. (*Id.*) Telephone numbers on the account are also used for outbound calls to notify customers of past due accounts and how they can avoid shut off and related reconnection fees. (*Id.*) However, neither the collection of past due accounts, nor the use of a cell phone as an updated point of contact, represents harassment.

Lastly, Homer Glen complains of the photos taken of customers' yards in Homer Glen in 2005. IAWC first notes that these photos were not taken after Homer Glen's Complaint was filed, as Homer Glen claims (HG Init. Br., p. 2), but rather in August and September of 2005. (IAWC Ans., Ex. A.) The photos were taken as part of IAWC's investigation of customer concerns

about high bills in Homer Glen and there was no customer contact (much less harassment) involved. (IAWC Ex. 1.0, p. 53.) The photos were taken from the public right of way, and there was nothing illegal about them. (HG Ex. 1.0, p. 14.)

Homer Glen argues for penalties for the so-called "harassment," but does not identify any statute or rule that was violated. (HG Init. Br., p. 39.) Because Homer Glen has not established that there was any harassment or intimidation, much less any pattern or harassment or intimidation, there is no basis for penalties.

10. IAWC Has Demonstrated That It Investigates Customer Complaints and Resolves Them

Both the AG and Homer Glen also accuse IAWC of not investigating customer complaints as required by Section 8-303 of the Act, which requires investigation of high bill complaints from customers. (AG Init. Br., p. 19; HG Init. Br., p. 44.) Although Section 8-303's language is directed to investigation of illegal taps on a utility line, IAWC's evidence in this proceeding demonstrates that IAWC has gone to great lengths to investigate and understand customer complaints about high bills—before, during and after the drought. For example, IAWC investigated the account referenced in HG Exhibit 6.02, which was selected for review after the billing system identified this customer's high usage in July, 2006 under high bill procedures recently implemented by IAWC. (Tr. 241-42.) The review determined that the high usage was actual customer usage and the customer paid the bill in full. (IAWC Init Br., pp. 33-34.) IAWC also investigated the accounts of Ms. Finnegan, Ms. Litoborski, and Mr. Jilet, and resolved the issues in those accounts. (IAWC Ex. 1.0, pp. 57-66.) With respect to Ms. Litoborski's duplicate serial number, Homer Glen argues that IAWC's billing system should have caught the problem. (HG Init. Br., p. 16.) However, the fact that Ms. Litoborski's water meter happened to have a

duplicate serial number was a highly unusual situation. As Mr. Ruckman testified, "I'm only aware of one instance in my 34-year career where we have found that. And that is in the case of Mrs. Litoborski . . ." (Tr. 250.) Thus, Ms. Litoborski's case does not represent a potentially recurring situation that requires costly modification of the billing system.

In other examples, IAWC investigated, and resolved the concerns of, the account referenced in HG Exhibit 6.01 (IAWC Init. Br., p. 33) and the two accounts in AG/HG Exhibit 2.3. (*Id.*, pp. 38-40.) IAWC also has received certain customer complaints (*e.g.* related to high usage) from the Commission for investigation. (Tr. 565-66; IAWC Ex. 2.0, p. 12.) In addition, IAWC conducted broader investigations, such as the back bill audit, to understand and address customer concerns. IAWC's evidence also shows that the CSC's representatives investigate customer complaints, or where appropriate, forward those concerns to the ART or ERT for resolution. (IAWC Init. Br., pp. 48-55; Tr. 448-51, 467-68, 487-88.) As Staff stated in its Initial Brief, "[F]rom its records, IAWC appears to have investigated the complaints made by its customers." (Staff Init. Br., p. 18.) Therefore, there is no basis to conclude that IAWC is not properly investigating customer complaints.

11. There Are No Outstanding Concerns with IAWC's Provision of Information to Customers

The AG asserts that IAWC did not distribute any drought alert or water conservation information in 2005. (AG Init. Br., pp. 17-18.) This is incorrect. While IAWC did not distribute the information on water restrictions in its filed tariff, contrary to the AG's assertions, IAWC is not required to do so. (Staff Init. Br., p. 28.) (However, IAWC has committed to provide this information on an annual basis. (IAWC Ex. 4.01.)) Moreover, IAWC did provide a letter to

Homer Glen customers describing the drought, its impact on usage, and recommendations for reducing water use, including:

- Don't water lawns, landscaping or flowers during the heat of the day. Best time to water is early morning because water has some time to soak in. In the heat of the day, it will evaporate. Also, watering too late in the evening can cause mold if the water sits on the lawn too long.
- Use a broom -not a hose -to clean porches and driveways.
- Check faucets and pipes for leaks. Even the smallest drip from a worn shower head can waste 20 or more gallons of water per day.

With regard to a "customer information booklet" (AG Init. Br., p. 28), IAWC already provides information to customers regarding IAWC's credit and collections practices, payment assistance and payment plans, and other regulatory information. (IAWC Ex. 1.0, p. 54.)

However, to further improve the provision of relevant information to customers, IAWC is currently developing a customer information booklet containing the information described by 83 Ill. Admin. Code Section 280.200, which will be provided to all IAWC customers. (*Id.*, IAWC Ex. 4.01, p. 3.) Therefore, IAWC has taken steps to address this concern as well.

B. Neither the AG Nor Homer Glen Has Demonstrated That an Audit of IAWC Practices and Procedures Is Needed

1. Neither the AG Nor Homer Glen Has Identified Any Errors in the Back Bill Audit

Staff Witness Howard testified that IAWC's efforts to correct back billing through the audit were "a reasonable approach to correct past problems." (ICC Staff Ex. 2.0, p. 3.) IAWC submitted the results of the audit to Homer Glen and the AG with its Direct Testimony on August 11, 2006. (IAWC Ex. 1.02.) Although the AG and Homer Glen have not identified any errors in the back bill audit, both the AG and Homer Glen continue to argue that IAWC's audit lacks credibility. (AG Init. Br., pp. 14-15; HG Init. Br., p. 20.)

The AG asserts that the small number of customers receiving credits and the small size of the credits "cast significant doubt on the thoroughness and accuracy of the Company's review." (AG Init. Br., p. 15.) However, neither the AG nor Homer Glen can point to any evidence that a customer's refund was incorrectly calculated or that a customer who should have received a credit did not. As Staff states in its Initial Brief, "[O]ther than a deep distrust of Illinois-American and its records (October 30, 2006, hearing, Tr. 84-85), there does not appear to be, again in Staff Witnesses' opinion, any evidence in this proceeding that the recent refund was miscalculated or misdirected by Illinois-American." (Staff Init. Br., p. 35.)

Much of the AG's argument that an independent review is needed of the back bill audit is conjecture that is not based on record evidence. For example, the AG's statement that the Company "clearly has an interest in proving the fewest and smallest credits possible" is entirely unsupported by the evidence. (AG Init. Br., p. 17.) Similarly, the AG offers no evidentiary support for the statement that "the credits given to customers to date do not appear to be adequate to the size of the problem."

In other instances, the AG's arguments about the back bill audit are either incorrect or mischaracterize the evidence presented. The AG's argument that, because Mr. Rubin identified 45 bills in AG/HG Exhibit 1.5 that in total were over \$64,000 more than the previous month's bill, the \$14,000 in credits issued by IAWC are too small, is specious. (AG Init. Br., p. 15.) AG/HG Exhibit 1.5 shows "Homer Glen Area Customers Receiving Bills More Than Three Times Previous Bill, 2003-2005." Mr. Rubin's rebuttal testimony indicates that the 50 accounts in AG/HG Exhibit 1.5 were drawn from the 474 accounts subject to the back bill audit. (AG/HG Ex. 2.0, pp. 8-9.) In the audit (IAWC Ex. 1.02), these accounts were analyzed and the proper amount of the billing credit (if applicable) was determined. AG/HG Exhibit 1.5, on the other

hand, shows only the total amount of a customer's bill and the amount of the previous bill. The back bill credit is based on the difference between the inside meter and outside odometer device, which is not the same as the total bill for a month or the difference between a monthly bill and the previous monthly bill. In addition, AG/HG Exhibit 1.5 does not consider the reason for the higher bill, or otherwise give any indication that these bills are related to an odometer meter discrepancy and not something else (*i.e.*, actual usage during the period of the drought). Therefore, there is no reason whatsoever to expect that the data shown on AG/HG Exhibit 1.5 should correspond to the back bill credits, and no basis for comparison of the dollar amounts in AG/HG Exhibit 1.5 to the back bill credits.

Likewise, the AG's argument that Mr. Rubin's analysis of 7,900 accounts with a different meter in 2006 than in 2005 that had exactly one bill at least 50% higher in 2006 than the same month in 2005 (AG/HG Ex. 1.0, p. 16) conflicts with IAWC's identification of 474 accounts requiring review also misconstrues the evidence. (AG Init. Br., p. 14.) To begin with, IAWC's back bill audit covered 10,000 accounts in Chicago Metro that had meter changes before September, 2005 (IAWC Ex. 1.0, p. 16), while Mr. Rubin's analysis covered accounts statewide, some of which had meter exchanges after September, 2005. (AG/HG Ex. 2.0, p. 13.) Thus, the two sets of data are not comparable. Moreover, the AG's argument ignores the fact that, in response to Mr. Ruckman's explanations concerning 50% bill variations, Mr. Rubin altered his criteria with respect to the 7,900 accounts, thereby reducing the number of accounts that "looked like" back billing to only 480 accounts statewide (out of 80,000 in the initial data set). (IAWC Init. Br., p. 37.) As IAWC explains in its Initial Brief, these 480 accounts do not demonstrate that back billing concerns exist because they represent an unwarranted extrapolation from a small data set and because Mr. Rubin undertook no investigation to determine whether any of the

480 accounts he identified involved improper back billing. (*Id.*, pp. 36-37.) In fact, neither the AG nor Homer Glen identifies even one of the 480 accounts that actually received an improper back bill.

To the extent the AG and Homer Glen argue that, because "71% of the accounts reviewed were entitled to a credit" a more detailed audit is needed (AG Init. Br., p. 16; HG Init. Br., p. 18), the AG and Homer Glen mischaracterize the record. As the evidence shows, IAWC issued credits to 335 accounts out of over 10,000 accounts initially reviewed (IAWC Ex. 1.0, p.16), making the percentage of accounts receiving credits approximately 3%. The AG also appears to misunderstand the nature of the odometer meter discrepancy that led to IAWC's concerns about back billing. The AG argues that the 50% accuracy variance IAWC found in a random sample of removed meters (discussed above) suggests that more than 335 of 10,000 accounts reviewed would have been back billed. (AG Init. Br., p. 14.) However, the under-registration of odometer devices in the accounts in the back bill audit was not in any way related to the accuracy of a customer's inside meter. For the accounts in the back bill audit, back bills were issued because a customer's outside odometer remote reading device improperly recorded the amount of usage shown on the customer's inside meter, creating a discrepancy with the actual reading that was taken from the inside meter. (IAWC Ex. 1.0, pp. 14-17.) As discussed above, the AG has offered no evidence in this proceeding that any back bill was issued as a result of an inside meter inaccuracy. Thus, there is no relationship between inside meter accuracy and the back bills subject to the back bill audit.

Homer Glen also argues that customers were not given an opportunity to contest the back bill audit. (HG Init. Br., pp. 17, 28-29.) This is incorrect. As Homer Glen acknowledges, the letter issued to customers with the back bill credit provided the phone number for the CSC and

the phone number and email of IAWC's manager of the Chicago Metro District, so that customers could contact the Company with any concerns. (HG Init. Br., p. 29; Tr. 222; IAWC Ex. 4.03.) Homer Glen has not offered any evidence that even one customer sought to contest a credit or otherwise register a concern with the back bill credits. Therefore, for the reasons discussed above, neither the AG nor Homer Glen has offered any evidence that an independent audit of the back bill credit is necessary.

2. Neither the AG Nor Homer Glen Has Provided Justification for a Statewide Audit of IAWC's Operations

IAWC has demonstrated that nothing Mr. Rubin said in his testimony suggests that a general audit of IAWC's practices is required, and to the extent that Ms. Niemiec also proposes a Company-wide audit, she relies on Mr. Rubin's findings and establishes no independent basis for an audit. (IAWC Init. Br., pp. 34-57.) As described above, none of the arguments raised by the AG or Homer Glen justifies an audit. Staff agrees that nothing has been identified in this proceeding which would justify an audit. (Staff Init. Br., p. 33.) Staff also points out that there is no point to an audit when records (and other IAWC practices) are about to change as a result of IAWC's commitments to Staff's recommendations and changes in IAWC's procedures. (*Id.*)

IAWC notes that the detailed audit plan described by Homer Glen in its Initial Brief (HG Init. Br., pp. 41-43) was not set forth in testimony and is unsupported by the evidentiary record. For example, no party introduced evidence suggesting that a full of audit of the procedures of the CSC was warranted. IAWC also notes that it already takes or has committed to take some of the actions recommended by Homer Glen, such as tracking repeated estimates and consecutive zero bills, and implementing a valve and hydrant inspection program.

Neither the AG nor Homer Glen submitted evidence describing in detail the statewide audit they are seeking, nor do these parties identify the source of authority for imposing such an audit, although both recommend an independent audit by a third-party auditor. (AG Init. Br., p. 3; HG Init. Br, p. 41.) The Commission, however, has only those powers granted to it by statute. *Business & Prof. People for the Pub. Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 201 (1989). As Staff has indicated, the Commission has authority to order an audit under either Section 5-105 of the Act, 220 ILCS /5-105, which permits Commission employees to review the books, records and accounts of a utility, or Section 8-102 of the Act, 220 ILCS 5/8-102, which authorizes a management audit of a utility conducted by the Commission or an independent auditor (the cost of an independent auditor being recovered through normal ratemaking procedures). (Staff Init. Br., pp. 35, 37.) As Staff correctly notes, an independent audit of the type requested by the AG and Homer Glen would not be an audit under Section 5-105. (*Id.*, p. 34.) As described above, IAWC does not believe an audit (or the associated cost) is appropriate or necessary. However, should an audit be ordered, the audit should be undertaken pursuant to Section 8-102, consistent with the AG's and Homer Glen's request for an audit by an independent third party overseen by the Commission. (*See* HG Init. Br., p. 41.)

C. There Is No Legal or Factual Basis for Imposing Civil Penalties on IAWC

Homer Glen's witness Ms. Niemiec was the only witness to recommended penalties in testimony in this case. Ms. Niemiec proposed penalties for each incident identified where the Company has inappropriately back billed Homer Glen residents. (HG Ex. 1.0, p. 17.) As described in IAWC's Initial Brief (p. 59), there is no basis for Ms. Niemiec's recommendation. Both the AG and Homer Glen now recommend in their Initial Briefs that penalties be assessed for alleged violations of the Commission's rules. (AG Init. Br., pp. 8, 28; HG Init. Br., p. 45.)

However, neither the AG nor Homer Glen has met its burden of proof with regard to the claims set forth in their Complaints, the allegations of violations, or the recommendations for civil penalties that they propose. In each case, IAWC has shown either that the AG's and Homer Glen's concerns are unfounded, or that, where appropriate, IAWC has addressed the concerns. IAWC has also demonstrated that it has been addressing customer concerns as needed since before the Complaints were filed, and Staff has not recommended that penalties be imposed. (Staff Init. Br., p. 29.) As a result, there is no basis for the Commission to conclude that penalties are appropriate.

Moreover, no civil penalties would accrue unless the Commission elects to issue a notice of violation (which it should not do for the reasons discussed herein). 220 ILCS 5/5-202 ("No penalties shall accrue . . . until 15 days after the mailing of a notice to such party or parties that they are in violation of or have failed to comply with the Act or order, decision, rule, regulation, direction, or requirement of the Commission or any part or provision thereof, except that this notice provision shall not apply when the violation was intentional"). Although the AG and Homer Glen assert that their Complaints provided the requisite notice (AG Init., Br., p. 27; HG Init. Br., pp. 40-41), this is incorrect for several reasons. (Homer Glen also asserts, without explanation, that the "violations" were intentional, but offers no support for this assertion. (HG Init. Br., p.41.) By contrast, Staff did not identify any violation that constituted an intentional violation. (Staff Init. Br., p. 29.)) First, the Complaints contain only unproven *allegations* of violations of the Act and Commission rules, most of which, as discussed herein and in IAWC's Initial Brief, are baseless. Neither the AG nor Homer Glen has cited any authority providing that mere allegations of a complaint can provide the requisite notice. Nor would it be appropriate regulatory policy for parties to trigger Section 5-202 with unsubstantiated claims of violations.

Second, it is clear from the Commission's statutory authority with respect to civil penalties, as well as past Commission orders, that the Commission is responsible for determining whether penalties are appropriate and for issuing the 15-day notice. Under Section 4-201 of the Act, 220 ILCS 5/4-201, it is the Commission's duty to see that the provisions of the Act and other state laws affecting public utilities are enforced, and that violations are prosecuted and penalties are collected. Under Section 4-202, 220 ILCS 5/4-202, when the Commission believes that a utility is violating a law or rule, the Commission "must" file an action to prevent the violation. Similarly, under Section 4-203, "All civil penalties established under this Act shall be assessed and collected by the Commission." Therefore, under Sections 4-201, 4-202, and 4-203, as well as Section 5-202, it is the Commission's responsibility to determine when a violation of the Act has occurred and whether penalties should be assessed. Neither the AG nor Homer Glen has authority to determine that there has been a violation of the Act. Because the responsibility for determining whether a violation of the Act has occurred and whether prosecution of a violation is warranted rests with the Commission, it is the Commission which has the sole responsibility to determine when the Section 5-202 notice should be issued. This conclusion is supported by past Commission orders, in which the notice required by Section 5-202 was issued by the Commission, typically in the form of a Citation Order requiring a utility to demonstrate that it should not be subjected to penalties for violations of the Act. *See, e.g. Illinois Commerce Comm'n v. Utilities Unlimited, Inc.*, Docket 98-0846, 2000 WL 34446575 at 1 (June 7, 2000); *Illinois Commerce Comm'n v. Crystal Clear Water Co. ("Crystal Clear Water")*, Docket 97-0605, 1999 WL 33915111 at 1 (June 16, 1999); *Illinois Commerce Comm'n v. Carroll Heights Util. Co.*, Docket 97-0352, 1998 WL 34302197 at 1 (Aug. 28, 1998).

In addition, Section 4-203 of the Act requires that the Commission, in assessing penalties, consider the size of the utility, the gravity of the violation, and the good faith of the utility in attempting to achieve compliance after notification of a violation. 220 ILCS 5/4-203. Neither the AG nor Homer Glen addresses the analysis required by Section 4-203. For example, Homer Glen provides no justification for its request for over \$3.5 million in penalties. (HG Init. Br., p. 45.) As discussed above, the total amount of refunds required as a result of the back bill audit referenced by Ms. Niemiec in connection with her penalty proposal was only \$14,000, a small fraction of Homer Glen's suggested penalty.

In considering whether penalties should be assessed under Section 4-203 of the Act, the good faith of the utility in responding to the notice of violation is an important consideration. 220 ILCS 5/4-203; *see Illinois Commerce Comm'n v. Peoples Gas Light & Coke Co. ("Peoples Gas")*, Docket 05-0341, Order at 7-23 (Mar. 22, 2006) (assessing under the Natural Gas Pipeline Safety Act the gravity of the violation, the fairness of penalties, and the utility's good faith). Although no notice of violation has been (or should be) issued in connection with the allegations in this proceeding, IAWC has already demonstrated its good faith in the actions taken to address concerns of customers and the Complainants, including those involving alleged violations of the Act or rules of the Commission. (IAWC Init. Br., pp. 11-14, 16-23, 25-27; IAWC Ex. 4.01.)

Moreover, the Commission can determine not to impose penalties in citation proceedings when other solutions will better serve the public interest. *See Crystal Clear Water*, 1999 WL 33915111 at 9-14 (finding in citation proceeding that utility was in violation of Commission rules but adopting Staff recommendations with regard to remedial actions the utility must take to come into compliance without imposition of penalties). Therefore, for all of the reasons discussed above and in IAWC's Initial Brief, no civil penalties should be assessed.

D. The Issue of Unaccounted-for Water Is Properly Addressed Outside This Proceeding

With regard to unaccounted-for water, IAWC agrees with the AG's conclusion that appropriate levels of unaccounted-for water will be addressed by IAWC's tariff filings pursuant to Section 8-306(m) of the Act, 220 ILCS 5/8-306(m). (AG Init. Br., pp. 31-34.) However, IAWC has concerns with certain aspects of the AG's discussion of the unaccounted-for water issue. First, the AG's arguments about IAWC's levels of non-revenue water ("NRW") ignore the standards for reasonable levels of NRW and unaccounted-for water set forth in IAWC's testimony. (See IAWC Init. Br., pp. 61-63.) In fact, IAWC's level of 17.2% NRW cited by the AG (AG Init. Br., p. 32) is well within a reasonable range for NRW and, therefore, a reasonable level of unaccounted-for water (a subset of NRW). (IAWC Ex. 1.0, p. 18; IAWC Init. Br., pp. 62-63.) Second, the AG apparently confuses unaccounted-for water with Unaccounted-for Flow ("UFF"), which is a measurement required under Illinois Department of Natural Resources ("IDNR") rules for public water supplies with a Lake Michigan water allocation. UFF differs from unaccounted-for water in that, *inter alia*, it includes an estimate of system leakage. The terms are not interchangeable. (IAWC Init. Br., p. 64.) Finally, the AG's arguments that IAWC's figure for UFF for all users of Lake Michigan water (9.02%) is too high is also misplaced. (AG Init. Br., pp. 32-33.) As Mr. Ruckman testified, the 4.2% figure cited by the AG is a simple average, not the weighted average figure of 9.02% that Mr. Ruckman used, and would not account for the size of each water system. (Tr. 283.) Moreover, the AG's reference to the 4.2% figure also ignores IDNR's own threshold for UFF of 8%. (IAWC Init. Br., p. 64.) The average UFF for IAWC's 13 systems using Lake Michigan water in 2004 was 6.45%, which compares favorably to the IDNR threshold. (*Id.*, pp. 64-65.)

E. There Is No Basis for the Relief Mr. Grens Requests

Mr. Grens did not file a brief. In support of Mr. Grens' position, however, the AG argues that there is a great discrepancy between IAWC's cost of service and the cost of service of the municipal systems referenced by Mr. Grens, and that the Commission should therefore require IAWC to produce a cost of service study. (AG Init. Br., p. 35.) However, as discussed in IAWC's Initial Brief, Mr. Grens offered no evidence regarding IAWC's cost of service or revenue requirement, or the cost of service or revenue requirement of the municipalities he referenced. (*See* IAWC Init. Br., pp. 67-68.) In fact, as the AG acknowledges, no party offered evidence of IAWC's cost of service. (AG Init. Br., p. 35.) Thus, as discussed in IAWC's Initial Brief, neither the AG nor Mr. Grens has demonstrated that IAWC's approved rates are unjust or unreasonable. (IAWC Init. Br., pp. 67-70.)

The AG suggests in its Initial Brief that Mr. Grens presented "clear and compelling evidence" that IAWC's customers in Homer Glen pay two or three times more for water and sewer service than customers of neighboring municipal utilities. (AG Init. Br., pp. 34-35.) This is not the case. As discussed in IAWC's Initial Brief, Mr. Grens offered no evidence regarding how much customers in the municipalities he referenced actually pay for water service, for example through taxes or fees not reflected on the water bill, or through support of municipal utility operations from other municipal departments. (*See* IAWC Init. Br., pp. 68-69; Tr. 206.) Moreover, the comparative rates paid by customers of municipal systems are not relevant to the Commission's determination of IAWC's rates. The Commission is required, by statute, to approve rates that provide a reasonable rate of return on rate base, not set rates based on a comparison to rates in other jurisdictions. *See Union Elec. Co. v. Illinois Commerce Comm'n*, 77 Ill. 2d 364, 383-84 (1979) (holding that, for a utility serving customers in both Missouri and

Illinois, the Commission could not order Missouri rates applied in Illinois, but must set rates that produce a reasonable return on the value of the utility's property as required by Illinois law, even if Missouri rates were lower); *see also Complaint by Home Depot, USA, Inc., and LNT, Inc.*, New York Pub. Serv. Comm'n Case Nos. 05-W-0707, 06-W-1080, 2006 N.Y. PUC LEXIS 276, *10-13 (dismissing retailers' complaint that alleged that, *inter alia*, water rates were excessive compared to other locations, and stating, "Comparing [water utility]'s rates to those paid by Complainants' stores in other locations is inappropriate. Rates are set on a case-by-case basis, and are based on reasonable costs of the company.")

The AG argues that certain statutory provisions require that municipalities cover all of their utility costs through rates. (AG Init. Br., pp. 35-36.) This argument is incorrect and misleading. Section 5-15020 of the Counties Code, 55 ILCS 5/5-15020, applies to waterworks or sewage facilities acquired by a *county*. While some of the bills relied on by Mr. Grens are from DuPage County Public Works, neither the AG nor Mr. Grens has offered evidence showing that DuPage County Public Works is governed by Section 5-15020. Further, neither the AG nor Mr. Grens offered evidence that Section 5-15020's provisions would apply to the other municipalities Mr. Grens refers to. In any event, Section 5-15020—the section the AG cites for the assertion that "Illinois law makes it clear that the rates for a county . . . system must be sufficient to cover the system's costs," (AG Init. Br., p. 36)—applies to a county system financed by "revenue" bonds. *See* 55 ILCS 5/5-15017 ("Revenue bonds"); 5/5-15018 ("Ordinances relative to issuance of revenue bonds"); 5/5-15019 ("Use of revenues"); 5/5-15020 ("Rates and charges; rights of bondholders"). However, the AG fails to note that revenue bonds are just one method of financing county waterworks: Division 5-15 of the Counties Code provides two additional means of funding waterworks or sewage facilities. First, under Section 5-15005, "[i]n

order to effectuate the purposes of this Division, any [] county may levy annually, in excess of any other limit prescribed by law, a tax of not to exceed .02% of the value . . . on all taxable property in such county." 55 ILCS 5/5-15005. Second, under section 5-15022, counties "may issue general obligation bonds for the purposes of either planning for, acquiring, or operating and maintaining waterworks properties. . . ." 55 ILCS 5/5-15022.

Similarly, neither the AG nor Mr. Grens has offered evidence to support the AG's contention that Section 11-117-12 of the Municipal Code, 65 ILCS 5/11-117-12, applies in this case. Section 11-117-12's requirements that municipal utility charges be "sufficient at least to bear all cost of maintenance and operation, to meet interest charges on the bonds and certificates issued on account thereof, and to permit the accumulation of a surplus or sinking fund to meet all unpaid bonds or certificates at maturity" says nothing about how other costs, in addition to maintenance, operation and bond interest (such as investment in new plant or system expansion), must be borne.

In fact, as with counties, municipalities may, by statute, fund utility operations from sources other than rates and charges, such as through property taxes or special assessments. *See* 65 ILCS 5/11-128-1 (municipality may fund waterworks through a property tax); 65 ILCS 5/11-131-1 (same); 65 ILCS 5/11-143-1 (municipality may fund sewer systems through a property tax); 65 ILCS 5/11-117-8 (municipality may issue bonds to acquire public utilities); 65 ILCS 5/11-117-10 (municipality may use special assessment to acquire public utility property). The proceeds from such taxes may be used, along with utility rate charges, to cover the costs of bond interest and operation and maintenance of the system. *See, e.g.,* 65 ILCS 5/11-128-7 ("[R]entals or rates shall be made sufficient, together with the proceeds of the special tax provided in this Division 128, to pay at maturity the interest and principal of bonds issued under the provisions of

this article, and also for the proper maintenance and operation of the waterworks, and for all repairs thereon.") However, such taxes would not necessarily appear on a customer's water bill in a manner that permits a direct comparison to IAWC's rates.

As explained by Mr. Ruckman, municipal utility operations are subsidized both by tax funding and by support from other municipal departments. (Tr. 195, 206.) Neither the AG nor Mr. Grens has presented evidence demonstrating otherwise. Accordingly, neither the AG nor Mr. Grens has shown that the total charges imposed on the customers of the municipal utilities he refers to is less than the charges for service under IAWC's approved rates.

F. There Is No Basis for the Relief CUB Requests

CUB argues that IAWC does not adequately provide notice to customers of boil orders, and the Commission must order IAWC to improve its boil order notification procedures. (CUB Init. Br., p. 1.) However, CUB offers no evidence to support its position, relying instead on unsubstantiated assertions. Moreover, CUB's request for relief would require the installation of an automated dialer system to alert customers of boil orders (*id.*, p. 8), which IAWC has testified is already being acquired by IAWC's parent, American Water, for use in IAWC's service territory. (Tr. 359, 519.) Thus, there is no basis for CUB's recommendations.

The applicable rules regarding boil orders, at 35 Ill. Admin. Code Section 607.103 ("Section 607.103"), are promulgated by the Illinois Pollution Control Board ("IPCB") and overseen by the Illinois Environmental Protection Agency. These rules apply to all public water supplies in Illinois, whether a municipal or investor-owned utility. 35 Ill. Admin. Code § 601.102. IAWC issues boil orders in accordance with Section 607.103 (Tr. 354), and CUB has alleged no violation of Section 607.103. Nonetheless, CUB asserts that IAWC's boil order

notification is somehow inadequate. (CUB Init. Br., pp. 5-6.) However, CUB offers no evidence that justifies the relief it seeks. For example, the claim that going door to door to alert customers of boil orders is inadequate "because the risks associated with that method are too great in light of potential health concerns associated with consumption of contaminated water" is unsupported by evidence regarding the purported risk of door-to-door notification compared to other means of notification or evidence of the potential health concerns. (CUB Init. Br., p. 6.) Moreover, CUB offers no evidence to show why IAWC should be treated differently than any other public water supply subject to Section 607.103, or why IAWC should be subject to different or more stringent rules than other municipal water suppliers or investor-owned utilities.

With regard to notification of municipalities, CUB identifies no requirement that a municipality receive boil order notices. In fact, Section 607.103 only requires notice of boil orders to "consumers affected," and not to municipal entities. 35 Ill. Admin. Code § 607.103. CUB offered no evidence to support the argument that all municipalities should receive the "same universal boil order notification," no evidence that there are municipalities that want boil order notification but are not getting it, no evidence as to what a "universally consistent notification process" is or why such a process would be appropriate, and no evidence to justify a requirement that municipalities be notified. Mr. Ruckman explained that IAWC notifies municipalities that have requested notification in accordance with the municipalities' preferences. (Tr. 354, 365.)

CUB's assertion that fire departments should be notified of boil orders is also unsupported. (CUB Init. Br., p. 7.) CUB cites no provision of Illinois law requiring that fire departments be notified of boil orders, nor does it provide evidence that fire departments would be interested in receiving notification of boil orders. CUB also provides no evidence to support

the claim that failure to notify the local fire department when a boil order is issued creates a "risk of injury, loss of life [or] damage to property". (*Id.*)

CUB's argument that boil order notice is inadequate essentially relies on the complaints of two customers, which IAWC investigated and resolved (Cooper Cross Exs. 22 & 25), and the unproven allegations of the City of Champaign in a complaint filed in Docket 05-0599. These limited complaints are not a sufficient basis for finding IAWC's boil order notification inadequate, and CUB offers no other evidence that boil order notice presents a concern. CUB also offers no rationale as to why IAWC should be subject to boil order requirements that are different from other water suppliers.

CUB makes much of the fact that IAWC has not itself taken any steps to implement an automated messaging system for boil orders. (CUB Init. Br., p. 8.) However, as CUB acknowledges, IAWC's parent is taking steps to implement an automated messaging system (*id.*, p. 8), and this system will be implemented in Illinois. (Tr. 519.) An RFP for the system has already been issued, and the system will be able to provide emergency notification to all customers in a specified geographic area. (Cooper Cross Ex. 24.) As Mr. Ruckman testified, having American Water implement the automated messaging system is more cost-effective than having IAWC implement it. (Tr. 359.) Thus, CUB's concern that IAWC is not independently implementing a messaging system is meaningless. Because American Water and IAWC are already addressing CUB's main recommendation, and CUB has not established a basis for any of its other recommendations, CUB's request for relief should be denied.

III. CONCLUSION

For the reasons discussed above and in IAWC's Initial Brief, the relief requested by the AG, Homer Glen, CUB and Mr. Grens should be denied.

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Respectfully submitted,

ILLINOIS-AMERICAN WATER
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