

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>KEVIN GRENS, THE PEOPLE OF THE STATE OF</b>	)	
<b>ILLINOIS, AND THE VILLAGE OF HOMER GLEN</b>	)	
COMPLAINANTS	)	
v.	)	DOCKET NOS.
<b>ILLINOIS-AMERICAN WATER COMPANY</b>	)	<b>05-0681, 06-0094, and 06-0095</b>
RESPONDENT	)	<b>(cons.)</b>
	)	
Complaint as to billing/charges in Lemont, Illinois,	)	
etc.	)	

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**REPLY BRIEF  
OF THE STAFF WITNESSES**

Now come the Staff Witnesses of the Illinois Commerce Commission (“Staff Witnesses”) and present its reply brief in the above case. Because this proceeding is a complaint case, the Staff Witnesses are participants in this proceeding and have not addressed every issue between the parties. Consequently, this Reply Brief only addresses issues related to Staff testimony and does not address every issue raised in the various Initial Briefs.

On the issue of unaccounted-for water, no party has raised an argument in their initial briefs concerning unaccounted-for water. Either expressly or implicitly, there seems to be an agreement that issues related to unaccounted-for water will be dealt with in IAWC’s current purchased water case (Ill.C.C. Docket No. 06-0196) and with the recent tariff filings required by Subsection 8-306(m) of the Public Utilities Act, 220 ILCS 5/8-306(m).

**I. RESPONSE TO INITIAL BRIEF  
OF THE PEOPLE OF THE STATE OF ILLINOIS**

**A. IAWC should not be punished for its efforts to bring Chicago Metro service area into compliance with the meter rules**

The meters in the Chicago Metro service area need replacing because of improper testing and replacement by the former owners, Citizens Utilities Company of Illinois, Inc. (the Complainants' witness Scott Rubin, AG/HG Exhibit 2.0, p.4). This complaint case arises in part because of IAWC's meter replacement program (IAWC Exhibit 1.0, p. 7). IAWC expects that full replacement of old meters, aside from the Bolingbrook area, will be completed by the end of 2007 (IAWC Ex. 4.0, pp. 16-17). To the extent the Company's plan of meter replacement for the Chicago Metro service area is satisfactory to the Commission, Staff recommends that the Commission order the Company to comply with the plan and its timelines.

Although 83 Ill. Adm. Code 600.340 speaks to testing the meters after a certain time or usage in order to maintain the standards of 83 Ill. Adm. Code 600. 310, IAWC like most water utilities replaces the meters at the time specified in 83 Ill. Adm. Code 600.340 rather than testing the old meters. As far as any evidence in this case is concerned, IAWC has complied with 83 Ill. Adm. Codes 600. 310 and 600.330 when it has installed the new meters (ICC Staff Ex. 1.0, p. 14 and 16).

The People rely in part on a study done by IAWC which indicates that about half of the "inside" meters of the removed odometer-style meter sets, which IAWC tested after replacement, were not meeting the standards of 83 Ill. Adm. Code 600.310 (Ruckman Cross Ex. 12, Response to AG DR 5.8, pp. 6-7 of Ex.). A study of said "inside" meters is limited to Chicago Metro and shows the inadequacies of such odometer-style meters generally. Given the totality of the evidence in this case, that these meters installed by

Citizens Utilities Company of Illinois, Inc., the previous owner, are malfunctioning is not surprising. However, if the historical meters were seriously underreporting, then claims of high bills and even spiking against IAWC become questions of whether similar high usage had been missed in the past because of malfunctioning meters. This rationale could even explain some of the unaccounted-for water.

In a perfect world, an acquiring utility could either replace all old meters within a short time or follow its predecessor's replacement schedule. IAWC has implemented a meter replacement schedule, and as discussed above, the complaint case arose because of that replacement schedule. That said, the AG even agrees that IAWC's replacement schedule meets the testing schedule required by Commission regulations (AG/HG Ex. 2.0, pp. 4-5). Examining the old meter records would only indicate whether Citizens Utilities Company of Illinois, Inc. had or had not followed Commission rules, not whether IAWC had done so.

**B. A further investigation or audit of IAWC on a company-wide basis is not justified by the record in this docket**

One of the issues in this case has been whether there is a basis to further investigate IAWC on a company-wide basis. Although the position of the People remains that every service area of IAWC should be investigated after the conclusion of this case (People's IB, p.31), the evidence submitted in this case does not support such a broad-ranged, further investigation in Staff Witnesses' opinion. Most of IAWC's service territories have not been examined in the evidence of this docket and their compliance or noncompliance with the Commission's administrative rules is merely conjecture. Also, because of recordkeeping improvements which IAWC has agreed to

undertake, there is little point in auditing the records at the present time (Staff Witnesses' Initial Brief, pp. 33-37).

The complaints concerning meters, which have been submitted in this cause, were limited to the Homer Glen and Orland Hills service areas of Chicago Metro. Complaints related to hydrants and valves were limited to the Champaign service area and the Homer Glen and Orland Hills service areas of Chicago Metro. Only the issue concerning fire protection was more broadly based, if still limited to the Champaign and Chicago Metro service areas. {This latter issue is resolved by the fire-flow tests which IAWC has agreed to conduct.}

The People (People's IB, pp. 6 and 30) pointed out that the testimony of the Staff Witnesses (ICC Staff Exs. 1.0 and 3.0) was limited to three of the service areas of IAWC (involving over 100 municipalities and townships) and only two of the forty municipalities and townships of the Chicago Metro service area. It should be noted that the Cairo service area did not appear to the Staff Witnesses to have any significant violations of the various administrative rules cited in the People's Amended Complaint. Certainly Staff Witnesses' Initial Brief, pp. 31-33 did not seek that the Commission's order in this case be used as a notice of violation for civil penalty purposes for the Cairo service area.

As stated in the Staff Witnesses' Initial Brief, this record does not support a company-wide, further investigation. The Staff Witnesses do not believe the necessary findings for a statutory investigation under 220 ILCS 5/8-102 can be made. Since the Staff Witnesses' Initial Brief, pp. 33-37, contained a complete response concerning additional audits, nothing further will be argued.

### **C. Civil Penalties Issues**

The People (People's IB, p.12) suggest that its Complaint and Homer Glen's Complaint constitute the 15-day notice for purposes of Section 5-202 of the Act, 220 ILCS 5/5-202, a provision which the People do not cite at that point. The Staff Witnesses' Initial Brief, pp. 28-33, has already responded to this issue. The Staff Witnesses do note, however, that Section 5-202 of the Act, *supra*, starts the 15-day period with the "mailing of a notice" which is inconsistent with the process of complaints under Section 10-108 of the Act, 220 ILCS 5/10-108, and 83 Ill. Adm. Code 200.150(a). Because of the evidentiary requirements of Subsection 4-203(a) of the Act, 220 ILCS 5/4-203(a), concerning mitigation, aggravation and good faith, it is not clear to the Staff Witnesses that additional proceedings are not necessary, assuming the Commission finds that the notice provision of Section 5-202 of the Act, *supra*, has been satisfied.

### **D. Section 10-107 of the Public Utilities Act does not provide for audits by independent auditors**

On pages 16-17 of the People's IB, after citing a number of provisions concerning the powers and duties of the Commission, *e.g.*, 220 ILCS 5/4-101, 4-201, and 10-107, 1<sup>st</sup> ¶, the People cite to the 2<sup>nd</sup> ¶ of Section 10-107 of the Act, 220 ILCS 5/10-107, 2<sup>nd</sup> ¶, for the right of

"[a]ny 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.'"

It appears to the Staff Witnesses that the People are misinterpreting the Second Paragraph of Section 10-107 of the Act, *supra*. The entirety of said Second Paragraph provides:

Any party to a proceeding before the Commission shall have the right to inspect the records of all hearings, investigations or inquiries conducted by or under the authority of the Commission, which may relate to the issues involved in such proceeding; and 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.

(emphasis supplied)

Any reading of this paragraph would indicate that it speaks to the production of information during a pending proceeding. When this language was first passed in 1913, pervasive modern discovery was not known to all Illinois courts. It follows provisions concerning the taking of testimony and testimonial immunity (220 ILCS 5/10-105) and subpoenas (220 ILCS 5/10-106) and proceeds the filing of complaints (220 ILCS 5/10-108 and 10-109). This provision does not provide for an independent audit to be conducted at shareholders' expense (People's IB, p. 17). It does provide that these complaint cases cannot be terminated until the public utility provides the information required. Yet the People are not seeking additional information from IAWC which is what the Second Paragraph of Section 10-107 of the Act, *supra*, is directed.

Clearly, the Commission can order a public utility to provide a formal report about any regulatory matter. 220 ILCS 5/4-101 and 5-109. Certainly, the People as well as other parties may suggest additional investigations, although audits by independent

auditors are subject to other provisions (Staff Witnesses' Initial Brief, pp. 35-37). However, the Second Paragraph of Section 10-107 of the Act, *supra*, has nothing to do with independent auditors and the payment of their expenses.

**E. The testimony of Staff Witness Johnson did not aver that IAWC had failed to display its principal rates on its bills**

On page 24 of the People's IB, the People incorrectly claim that Staff Witness Johnson agreed that IAWC "failed to comply with the Commission rule that principal rates be displayed on the bill. ICC Staff Ex. 1.0 at 39-41, referring to 83 Ill. Adm. Code 600.160." As shown on lines 1049-1056 on p. 41 of ICC Staff Ex. 1.0, Staff Witness Johnson testified that heretofore the display of purchased water rates was not considered to be required by 83 Ill. Adm. Code 600.160.

While Staff Witness Johnson and the Staff Witnesses support that IAWC be ordered to display of "the fixed and variable purchased water and purchased sewage treatment charges, along with gallons used in the calculation," Staff Witnesses do not agree that IAWC's failure to display previously is a failure to comply with 83 Ill. Adm. Code 600.160.

**II. RESPONSE TO INITIAL BRIEF  
OF THE VILLAGE OF HOMER GLEN**

**A. Claim by Homer Glen concerning treatment of public contacts is misleading and is not supported by their own evidence**

The Village of Homer Glen ("Homer Glen") on page 7 of its Initial Brief ("HGIB") still claims "Despite receiving 593 complaints, HG Ex. 1.03 at 2, the Commission Staff declined to take any action or initiate any investigation." This claim is still stated despite the testimony of Staff Witness Joan Howard who testified to the procedures of

the Consumer Services Division in dealing with informal complaints (ICC Staff Ex. 2.0, pp. 6-7, lines 107-127; hearing 11/1/06, Tr. 564-570 and 578-579). The claim is contradicted by the evidence which Homer Glen submitted in this cause (HG Ex. 1.03, Part 1, pp. 1-2) which lists the 161 informal complaints which were investigated by the Consumer Services Division following the usual procedures outlined in Staff Witness Howard's testimony. The other 432 contacts were not informal complaints within the meaning of the procedures of the Commission. Homer Glen's claim is unsupported by its own evidence.

**B. Not every high bill/bill spike presented by Homer Glen was unprecedented**

Homer Glen on pages 8-12 of the HGIB discusses examples of bill spikes/high bills. The contrast was to compare the high bill with the usage shown in the monthly bills for the previous 12-months or in the same month for the previous year. It is admitted that there was a severe drought throughout Illinois in 2005 (ICC Staff Ex. 1.0, p. 43).

Although the Staff Witnesses did not investigate every high bill/bill spike claim raised in this case, in some of the cases submitted by Homer Glen, a high usage similar to the summer of 2005 had occurred in the accounts previously. IAWC had provided to the Staff Witnesses the monthly bills from January 2000 through the most current billing period for the nineteen accounts Homer Glen discussed in their petition (ICC Staff Exhibit 1.0, p. 44). Staff Witness Johnson determined that some of these customers had a history of high monthly water usage during the summer months in past years (ICC Staff Exhibit 1.0, pp. 44-45). Thus, some of the bill spikes are not unprecedented.

**C. A company-wide audit of valves and hydrants is not supported by the record**

Homer Glen on pages 25-27 of the HGIB seeks a company-wide audit of inspection and maintenance of valves and hydrants. However, the record of this case does not support a company-wide audit, since the ambit of the evidence herein is limited to three service areas of IAWC, one of which (Cairo) was in compliance with all rules and regulations (ICC Staff Ex. 1.0, pp. 3-4). Similarly, not every service territory contained identical problems, e.g., the Champaign service area, while not inspecting hydrants annually as required by 83 Ill. Adm. Code 600.240, met the requirements of 83 Ill. Adm. Code 600.140 for hydrants (ICC Staff Ex. 1.0, p. 28).

As explained in the Staff Witnesses' Initial Brief, further investigation of the hydrant and valve recordkeeping and inspection is unnecessary, given the changes which IAWC has agreed to carry out (Staff Witnesses' Initial Brief, p. 33). Since the Staff Witnesses' Initial Brief, pp. 33-37, contained a complete response concerning additional audits, especially the ordering of an independent auditor (HGIB, pp. 30 and 41-43), nothing further will be argued.

**D. Claims of Homer Glen concerning the Staff involvement with the cover letter and the refunds related to the cover letter are contrary to the record evidence**

In its original testimony, IAWC indicated that it would be refunding the backbills related to the odometer style meter replacements:

To ensure that no residential customer receives a back bill for a period in excess of twelve months, IAWC stopped issuing back bills in Chicago Metro in September, 2005 for unbilled service related to the exchange of odometer-style

meters. IAWC will also issue a full credit (with interest) on or before October 1, 2006 to all customers in Chicago Metro who received a back bill related to an odometer meter exchange.

IAWC Exhibit 1.0, p. 3, lines 73-78

In response to this proposal, the Staff Witnesses requested that IAWC provide the cover letter which was to be issued with the refunds for review and comment:

I recommend that IAWC provide a draft of any information to customers related to the refund, including the language that will identify the refund, to Consumer Services Division staff for review and comment prior to implementation.

ICC Staff Exhibit 2.0, p. 3, lines 40-43

Review for comment of such materials as the template of the refund cover letter is a routine regulatory function of the Commission Staff and is not conducted as a public matter (HG Ex. 6.03, approx. p. 17, Ans. to DR 2.21). It is a voluntary matter done by a public utility, since usually there is no requirement that a public utility get Staff or Commission review of such a document. Certainly, no one objected to the request of the Staff Witnesses which was made on August 21, 2006. Since Homer Glen claims that the Staff's review of the template of the refund cover letter was "undisclosed" until the filing of the "ex parte" reports on September 7 and 8, 2006, apparently Homer Glen had not reviewed ICC Staff Exhibit 2.0 closely. However, Homer Glen's claim is patently false.

After the fact of the review and comment of the template of the refund cover letter by the Staff, Homer Glen has been attempting to make much more of this routine matter than is warranted. Homer Glen claims hyperbolically that the Staff has "blessed" the refund (HGIB, pp. 27-30). However, evidence submitted by Homer Glen, over Staff Witnesses' objection (Hearing 10/30/06, Tr. 48 and 85-87), contradicts the statement and even the implication that the refund was "approved" by the Staff or the Staff

Witnesses (HG Ex. 6.03, approx. pp. 16 and 19-20, Ans. to DRs 2.11, 2.25, and 2.26). Indeed no one in this case sought to stop IAWC from issuing these voluntary refunds (Hearing 10/30/06, Tr. 84). The refund cover letter itself contains no reference to a Staff or Commission review (IAWC Ex. 4.03).

Staff did not seek to review the refund calculations themselves prior to implementation precisely because of this on-going docket where the calculation of those refunds might be an issue. This is despite the request made in ICC Staff Ex. 2.0, p. 3, lines 47-51. Also Staff did not want to delay the issuance of the refunds.

Further, as to Homer Glen's claim of "sign-off" on the template of the refund cover letter (HGIB, pp. 27-28), the fact is that the Company provided Staff with the opportunity to review and to comment on the template of the cover letter, which was to be attached to the refunds before the refunds were issued. As is clear from the above quote, Staff sought only to review and comment on the language of the template of the refund cover letter. The Company did not give Staff veto or approval power over the template.<sup>1</sup>

Homer Glen argues that public policy should bar the Staff of the Commission from reviewing any material tangentially connected to a pending complaint case (HGIB, pp. 28-29). Staff Witnesses argue that the regulatory functions of the Commission staff should not be vetoed or interrupted because of a pending complaint case. Public policy is better served if routine regulatory functions continue despite a tangential connection to a pending complaint case. Otherwise routine regulatory functions will become

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<sup>1</sup> It should be noted that Homer Glen is quoting its own characterization and not the Staff Witnesses' statement in the last sentence in the top paragraph on page 28 "When Homer Glen questioned..." Compare with IAWC Ex. 6.03, approx. pp. 17 and 20, Ans. to DRs 2.21 and 2.26. Staff Witnesses do not agree with Homer Glen's characterization.

disrupted. Review and comment of the template of the refund cover letter is, at most, tangential to the issues in this cause.

While the Staff Witnesses have the rights of a party in this complaint proceeding, the Commission Staff has a broader regulatory role that it must fulfill. When a public utility, as IAWC did in this case, offers the Commission Staff the opportunity to review and comment on a template of a cover letter issuing refunds to customers, Staff endeavors to fulfill its regulatory role by making suggestions to the company so the letter is as clear to customers as possible. That said, in a case where the Company has not been ordered by the Commission to issue refunds but rather voluntarily engages in that activity, the Company does not have any obligation to accept Staff's comments (as was also true in this case).

Finally, also absurd is Homer Glen's characterization of the fact that the template of the refund cover letter did not provide an ICC Consumer Services' number as somehow "thwart[ing] the customer's ability to speak to an impartial representative concerning the customer's right to contest the amount of the refund." (HGIB, p. 29). The first course of action for a customer that does not understand a refund or bill or questions its validity is to seek an explanation from the Company (Hearing 11/1/06, Tr. 575-7). If after discussing their concerns with the Company the matter is still in dispute, then the Company is required to inform the customer of its right to file an informal complaint with the Commission.

There are good reasons for this to be the procedure. It would only delay resolution of issues if the customer were to go to the Commission first. The Consumer Counselors at the Commission does not have customer records at his/her disposal.

The representative needs to go to the Company to get the information and, while it is helpful **after** the parties know they have a dispute to have an impartial intermediary involved, it is cumbersome and inefficient for the Commission to be involved **before** the parties know they have a dispute. At any rate, the cover letter from the Company does not in any way thwart the customer's ability to get a Commission Consumer Counselor involved after the parties fail to resolve the customer's concern. Homer Glen's brief on this point is simply in error.

#### **E. Audit of Refunds**

Homer Glen argues that the payment of refunds by IAWC to those customers that were backbilled in an odometer style meter change out does not eliminate the need for an independent audit of such refunds (HGIB, pp. at 4 & 27: "...IAW's responses are too little and too late....To ensure refunds are made to the proper customers and in the right amount, this Commission should require an independent audit of IAW.") Homer Glen takes issue with the fact that IAWC's issuance of refunds is based upon the Company's own audit of its records and was not independently verified, although Homer Glen raises no specific concerns with the refunds or with the Company's identification of the customers receiving refunds (HGIB, pp. 27-30). Essentially, Homer Glen argues that IAWC is not trustworthy because Homer Glen believes the Company's statements as to the causes of the high and spiking bills are contradictory and do not explain all high and spiking bills (HGIB, pp. 12-17).

In particular, Homer Glen points to early statements from the Company that the high bills were caused by "an unusual set of problems that occurred in Chicago Metro

and were exacerbated by the severe drought experienced in 2005” and finds the later admission by the Company that backbilling may have also caused spiking bills to be troubling (HGIB, p. 12, citing IAWC Ex. 1.0, p. 2, lines 38-39, and p. 14). Although not entirely clear, Homer Glen appears to argue that the Company’s identification of drought conditions as a cause of high bills rather than backbilling is a cause for concern over the accuracy of the Company’s internal audit and calculation of the refunds. (“Second, the ‘audit’ was conducted by IAW internally with no independent third party oversight. In light of the Company’s reluctance in the first instance to even admit there was a problem [with backbilling?], Homer Glen questions the validity of an audit that had no independent third party oversight.” HGIB, p. 20).

From Staff Witnesses’ perspective, the Company has carried out an internal investigation and indicated that both of these causes, as well as some other causes related to particular customer circumstances, were at play in connection with the high spikes in bills. Staff Witnesses do not view the Company’s statements as contradictory but rather as suggesting multiple causes. The Company has provided verified evidence in the form of testimony identifying causes behind the high bills, including backbilling:

To the extent a problem arose with "back billing" in Chicago Metro in 2005, that problem was not the result of billing system errors, but rather, a combination of unique circumstances in Chicago Metro, including among other things a program to exchange water meters. The Company has moved to address the problems that arose in that situation.

IAWC Exhibit 1.0, p. 3, lines 60-64.

In the case of those bills related to backbilling, the Company has admitted to being unable to verify that the differential between the remote reader and the inside meter related to service supplied in the 12 months preceding the backbilling.

In connection with the Chicago Metro District meter exchange program, the Company may have issued bills for previously unbilled service (commonly called "back bills" or "make up bills") for more than the twelve months permitted by Commission rules to certain residential customers.

IAWC Exhibit 1.0, p. 3, lines 67-70.

Homer Glen contends that this admission by the Company is in and of itself an admission that the Company violated the Commission's rule regarding backbilling (Part 280.100). The Staff Witnesses point out, however, that this has not been proven. It is possible that the backbills are compliant with Part 280.100 because the differential may fall entirely within the 12 month period preceding the issuance of the backbill. The Company, however, cannot prove this but Homer Glen has also not proven otherwise. Because the Commission's rule regarding backbilling (Part 280.100) prohibits the Company from issuing bills for service rendered more than one year after the date the service was supplied, and the Company could not verify the period of usage, the Company refunded the entire differential, with interest (*Id.*, pp. 15-16, lines 328-343). Consequently, if the refunds were properly executed, the customers were made whole and, in some sense, they received a benefit because it is quite probable that some of the refunded backbill related to the malfunctioning odometer style meters occurred in the 12 months before replacement, even though the Company could not prove that to be the case.

As the complainant, Homer Glen has the burden of showing by the preponderance of the evidence that these explanations by the Company have no veracity, that rules were violated and/or that a system-wide problem exists. 5 ILCS 100/10-15. A complainant cannot be permitted to prevail solely because it does not trust the Company's evidence. Rather, to seek an audit of the refunds, the complainant

must provide by its own evidence that the refunds are insufficient or that the customers selected for the refund were too few or in error. In the Staff Witnesses' view, it is not enough for Homer Glen to merely point out the Company identified 474 accounts which had been backbilled and found that only 335 were entitled to a credit (HGIB, p. 18, citing HG Ex. 5.0, p. 5, lines 104-6 and 123) when there are obvious reasons why not all customers that were backbilled may have been entitled to a credit, e.g., the customers never paid their backbills or were already given a credit (IAWC Ex. 4.0, p. 26, lines 570-575).

As noted in the preceding Section of this Brief, the Staff Witnesses had requested in testimony that the Company provide an explanation during the course of this docket as to the criteria they used to identify customers eligible for refunds and how they calculated those refunds:

Q. Are the efforts of IAWC adequate to correct past problems of back billing related to meter exchange in the Chicago Metro area?

A. The Company's efforts to date seem to me to be a reasonable approach to correct past problems, assuming that IWAC issues credits as promised and assuming that the internal audit conducted by the Company appropriately identifies customers entitled to a credit. During the course of this docket, the Company should provide evidence to staff to confirm that appropriate credits were or will be issued by the Company to all of the customers who were improperly billed.

ICC Staff Exhibit 2.0, p. 3, lines 47-51.

However, the Staff Witnesses did not seek to review the refund calculations themselves prior to implementation precisely because of this on-going docket where the calculation of those refunds might be an issue. Also the Staff Witnesses did not want to delay the issuance of the refunds. Thus, the Staff Witnesses did not press this matter.

If the Commission believes that the refunding should be further investigated, the Staff Witnesses have alternative suggestions to make. One, if the Commission finds that it is in the public interest for the Company to provide this information in order for the Commission to determine if the payment of refunds in the cases of meter change outs and subsequent backbilling were proper, the Staff Witnesses recommend that the Commission order the Company to provide this information to the Commission. In the event this information, once provided, raises concerns as to the adequacy of the refunds, the Commission can order an independent audit of such refunds. Alternatively, as was suggested at hearing (Hearing 11/1/06, Tr. 574-9), the Commission could opt to wait until customers file informal or formal complaints at the Commission concerning these refunds and act once there are specific issues to address.

#### **F. Civil Penalties Issues**

Homer Glen (HGIB, pp. 40-41 and 44-45) suggests that its Complaint and the People's Complaint constitute the 15-day notice for purposes of Section 5-202 of the Act, 220 ILCS 5/5-202. The Staff Witnesses' Initial Brief, pp. 28-33, has already responded to this issue. The Staff Witnesses do note, however, that Section 5-202 of the Act, *supra*, starts the 15-day period with the "mailing of a notice" which is inconsistent with the process of complaints under Section 10-108 of the Act, 220 ILCS 5/10-108, and 83 Ill. Adm. Code 200.150(a). Because of the evidentiary requirements of Subsection 4-203(a) of the Act, 220 ILCS 5/4-203(a), concerning mitigation, aggravation and good faith, it is not clear to the Staff Witnesses that additional proceedings are not necessary, assuming the Commission finds that the notice provision of Section 5-202 of the Act, *supra*, has been satisfied.

### **III. RESPONSE TO INITIAL BRIEF OF CITIZENS UTILITY BOARD**

CUB's Initial Brief ("CUB IB"), p.1, seeks to have a finding from this Commission that the use of door-to-door contact in person or by paper notice is an inadequate notice of the issuance of a boil order (Hearing 10/31/06, Tr. 367 and 378). Admittedly, most of CUB's contentions are directed to the paper notice rather than an "in person" contact.

As CUB admits (CUB IB, p.2), neither the Illinois Environmental Protection Agency nor this Commission proscribes the method for contacting customers concerning the issuance of boil orders. To some extent, the Illinois Department of Public Health and Illinois municipalities are involved with the method of issuing notices of boil orders (Hearing 10/31/06, Tr. 354-355, 357, 407- 408 and 419; IAWC Ex. 1.03, p. 9 (Champaign District)).

Thus, it is admitted that IAWC is not in violation of any existing rule of the Commission. CUB (CUB IB, pp. 4-5) is seeking to proscribe the use of the door-to-door notice of boil orders, pursuant to Section 8-501 of the Public Utilities Act, 220 ILCS 5/8-501.

The Staff Witnesses are concerned that, if the Commission were to find that knocking on doors and leaving sticker/notices are *per se* inadequate notice of the issuance of a boil order, such a finding would lead to an end of this practice. Many water companies, much smaller than IAWC, use this very same method for contacting their customers of their boil orders. Unless the finding is limited to IAWC's use of this notice "system," which given the general nature of the evidence does not seem likely,

allowing the finding of inadequate notice in this case could have far-reaching, industry-wide consequences.

The Staff Witnesses do not believe the record in this case affords an adequate basis for proscribing this method of boil order notice for all Illinois water utilities. Given the vital interest in the notice of the issuance of boil orders and the number of parties involved in the process, if the Commission were to decide to regulate the method or methods of notice for boil orders, additional proceedings involving the interested parties, including all the affected public utilities, are necessary in the opinion of the Staff Witnesses.

#### **IV. RESPONSE TO INITIAL BRIEF OF ILLINOIS-AMERICAN WATER COMPANY**

The Staff Witnesses continue to be concerned about two inconsistencies in the IAWC's Initial Brief when compared with its Appendix A.

On page 21 of IAWC's Initial Brief, IAWC states that "[t]he Company intends to change the description of the Supply Charges and will show the base volumetric rate for the Supply Charge on the bill. (*Id.*; Tr. 322-24.) IAWC will also inform the customer about the time period the bill covers when there is more than one consecutive estimate or there is a back bill." On page 30 of IAWC's Initial Brief, IAWC states that "Ms. Howard also made a recommendation that IAWC's bill include the rate for the Supply Charge as a separate line item in any service territory having a Supply Charge. (ICC Staff Ex. 2.0, p. 5.) IAWC accepted this recommendation. (IAWC Ex. 4.0, p. 3.)" Yet on pages 2 and 5 of the attached Appendix A, it is stated

The Company also plans to revise its billing practices to show the base volumetric rate for the “Supply Charge” (which reflects the Purchased Water Surcharge applied to Chicago Metro customers for their use of Lake Michigan water), or alternatively, provide copies of the volumetric rate to customers on an annual basis in accordance with 83 Ill. Admin. Code 600.160.”

\* \* \* \* \*

“IAWC will identify the fixed and variable purchased water and sewage treatment charges, along with gallons used in the calculation, on customers’ bills, or alternatively, provide copies of the rates to customers on an annual basis in accordance with 83 Ill. Admin. Code 600.160. (emphasis supplied)

Staff Witnesses Initial Brief, pp. 25-26, opposes the use of the alternatives of 83 Ill. Adm. Code 600.160. We assume that IAWC has failed to correct its Appendix A when compared with its agreement within the body of its Initial Brief.

Similarly, IAWC on page 28 of its Initial Brief indicates that the Company will do the fire-flow tests suggested by Staff Witness Johnson (Staff Witnesses Initial Brief, pp. 13-14). IAWC’s Appendix A is silent about anything to do with fire flow tests. Again, Staff Witnesses believe that this is an oversight by IAWC.

**CONCLUSION**

Wherefore the Commission Staff Witnesses ask that the Commission adopt the recommendations contained in the Staff Witnesses’ Initial Brief as provisions in its final order. In addition, to the extent the Company’s plan of meter replacement for the Chicago Metro service area is satisfactory to the Commission, Staff recommends that the Commission order the Company to comply with its plan and timelines.

Respectfully submitted,

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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

---

<b>KEVIN GRENS, THE PEOPLE OF THE STATE OF ILLINOIS, AND THE VILLAGE OF HOMER GLEN</b>	)	
COMPLAINANTS	)	
v.	)	DOCKET NOS.
<b>ILLINOIS-AMERICAN WATER COMPANY</b>	)	<b>05-0681, 06-0094, and 06-0095</b>
RESPONDENT	)	<b>(cons.)</b>
	)	
Complaint as to billing/charges in Lemont, Illinois, etc.	)	
	)	

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**NOTICE OF FILING**

TO: Parties on Service List

**PLEASE TAKE NOTICE** that I have, on this 12<sup>th</sup> day of January, 2007 A.D., filed with the Chief Clerk of the Illinois Commerce Commission, the Reply Brief of the Staff Witnesses of the Illinois Commerce Commission, a copy of which is hereby served upon you.

/s/ James E. Weging  
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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a copy of attached Notice, together with the Document referred to therein, was served on the parties shown on the service list by e-mail on January 12, 2007, A.D.

/s/ James E. Weging  
James E. Weging

**ICC Docket Nos. 06-0094, 06-0095 & 05-0681 Consolidated**

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**ICC Docket Nos. 06-0094, 06-0095 & 05-0681 Consolidated**

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Bill Johnson	Case Staff
Nora A. Naughton	Staff Attorney
James E. Weging	Staff Attorney