

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	
-vs.-	)	
	)	
Apple Canyon Utility Company;	)	Docket No. 06-0360
Cedar Bluff Utilities, Inc.;	)	
Charmar Water Company;	)	
Cherry Hill Water Company; and	)	
Northern Hills Water and Sewer Company.	)	
	)	
Citation for failure to comply with Commission	)	
Order and with Commission rules.	)	

**DRAFT ORDER**

Dated: February 13, 2007

## **I. PROCEDURAL HISTORY**

On April 7, 2006, the Staff of the Financial Analysis Division ("Staff") of the Illinois Commerce Commission ("Commission") issued a Staff Report concerning the maintenance of continuing property records ("CPRs") by the following utilities: Apple Canyon Utility Company; Cedar Bluff Utilities, Inc.; Charmar Water Company; Cherry Hill Water Company; and Northern Hills Water and Sewer Company (collectively "the Companies"). The companies are subsidiaries of a holding company, Utilities, Inc. ("UI"). The Staff Report recommended that the Commission initiate a citation proceeding to determine whether the Companies had failed to comply with the Commission's Order in Docket Nos. 03-0398/03-0399/ 03-0400/03-0401/03-0402 (Consol.) entered on April 7, 2004 ("Rate Case Order"), 83 Ill. Adm. Code 605, and 83 Ill. Adm. Code 615, and to determine what civil penalties should attach.

This proceeding was then initiated by a Citation Order of the Commission dated May 3, 2006, requiring that a proceeding be commenced to determine whether the Companies failed to maintain continuing property records as required by the Rate Case Order, Instruction 28 C of the Uniform System of Accounts for Class A Water Utilities (1996) of the National Association of Regulatory Utility Commissioners, adopted by the Commission at 83 Ill. Adm. Code 605.10, and 83 Ill. Adm. Code 615.Appendix A (Item 22) and to determine whether civil penalties should be imposed pursuant to Section 5-202 of the Public Utilities Act ("Act").

The Verified Answer of Utilities, Inc. to Citation Order was filed on behalf of the Companies on June 12, 2006. On July 13, 2006, UI filed a Report on Implementation of Continuing Property Records System ("CPR Report").

On October 24, 2006, Staff filed the Direct Testimony of Dianna Hathhorn.

On November 21, 2006, UI and the Companies filed the Direct Testimony of Steven M. Lubertozzi.

Pursuant to proper legal notice, an evidentiary hearing was held in this matter before a duly authorized Administrative Law Judge of the Commission on December 6, 2006. Appearances were entered by counsel on behalf of UI and Staff. At the conclusion of the hearing on December 6, 2006, the record was marked "Heard and Taken."

## **II. POSITION OF THE PARTIES**

### **A. Staff**

Staff testified that on April 7, 2004, the Commission entered the Rate Case Order approving a general increase in water and/or sewer rates. (ICC Staff Ex. 1.0, pp. 2-3.) Staff stated that the Commission set forth several conditions for its approval, including that:

Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company, and Northern Hills Water and Sewer Company shall establish and maintain continuing property records ["CPRs"] in compliance with the Commission's rules, and must file a report with the Manager of the Commission's Accounting Department as to the successful implementation of the property record program within 12 months after the final order in this proceeding. (Order, Docket Nos. 03-0398/03- 0399/ 03-0400/03-0401/03-0402 (Consol.), p. 26).

(*Id.*) Staff stated that the deadline for filing the CPR Report with the Manager of the Commission's Accounting Department was April 7, 2005, and the Companies provided the CPR Report on July 13, 2006, over one year after the deadline. (*Id.*, p. 3.)

Staff explained that the CPR Report indicates the Companies CPRs are updated for the years 2004, 2005, and 2006 to date, and that the Companies confirmed in Staff data request response DLH-2.01 that its continuing property records database has not yet been updated for years prior to 2004. (ICC Staff Ex. 1.0, p. 3.)

Staff testified that continuing property records show a history of individual assets. According to the Uniform System of Accounts for Water Utilities (83 Ill. Adm. Code 605 "USOA"), continuing property records are a system of preserving original cost of plant in a manner so that it is possible to identify, locate, and obtain cost and age of all used and useful property. The proof of the value of utility assets should be readily available on the books of the regulated utility. This information is required for the determination whether an investment is prudent and thus should be capitalized and to the quantification of the capitalization. (ICC Staff Ex. 1.0, pp. 3-4.) Staff further testified that absent continuing property records, the Companies are not in compliance with 83 Ill. Adm. Code 615. (*Id.*)

Staff asserted that, in the past rate cases, the failure to maintain continuing property records in compliance with Parts 605 and 615 resulted in the Companies being unable to locate invoices to support its rate base additions, and therefore the Commission adopted several Staff adjustments to disallow the Companies' unsupported rate base. (ICC Staff Ex. 1.0, p. 5.) The continued failure to establish and maintain CPRs will result in the same problem being repeated in the next rate case filed by the Companies. (*Id.*) Staff explained that the Companies have made progress with their CPRs but the CPRs are not yet complete. (*Id.*) Therefore, Staff recommended that the Commission find in this docket that the procedure used in the past Rate Cases to disallow rate base additions which had no CPR support be followed in future rate cases. (*Id.*)

Staff also asserted that the Commission has authority to impose civil penalties under Section 5-202 of the Act, in accordance with the standards set forth in Section 4-203, including (1) the appropriateness of the penalty to the size of the business of the public utility, (2) the gravity of the violation, (3) other mitigating or aggravating factors as the Commission may find to exist, and (4) the good faith of the public utility in attempting to achieve compliance after notification of a violation. (ICC Staff Ex. 1.0, p. 6.)

With regard to the size of the Companies, Staff noted that the Companies are wholly-owned subsidiaries of UI, and together, these five companies provide water and/or sewer service to approximately 1,500 customers in various Illinois counties, while UI owns and operates approximately 81 water and/or wastewater systems in 17 different states. (ICC Staff Ex. 1.0, p. 6.) With regard to the gravity of the violation, Staff alleged that failure to maintain continuing property records in compliance with Parts 605 and 615 results in the Companies being unable to support the increase to plant for plant additions since the last rate case. (*Id.*, p. 7.) Staff explained that if the Companies continue to maintain the CPRs on a prospective basis, the Companies will have support for all plant additions since 2004. (*Id.*) Staff also asserted that the fact that the parent company, UI is not a small utility as defined by the Act but has twenty-four subsidiaries, with 17,400 customers in the state was an aggravating factor the Commission should consider. (*Id.*)

With regard to good faith, Staff asserted that the Rate Case Order that ordered the Companies to establish and maintain a CPR system in compliance with the Commission's rules was not the first time that the Commission has told Utilities Inc to maintain a CPR system. (ICC Staff Ex. 1.0, pp. 7-8.) Staff testified that the Commission's Order in Apple Canyon Utility Co., Docket 94-0157, (March 22, 1995, 1995 Ill. PUC Lexis 203) required the Companies to maintain Continuing Property Records using the "Will County Continuing Property Records" as a model. (*Id.*) In addition, Staff claimed that the Companies do not appear to have been diligent in complying with the consolidated rate order entered April 7, 2004, because the Rate Case Order required the Companies to file a report as to the successful implementation of CPRs by April 7, 2005, but, UI did not meet that deadline and instead filed several motions for extension of time to comply with the Commission's Rate Case Order. (*Id.*)

In conclusion, Staff recommended that the Commission impose a civil penalty on each of the Companies of \$1,000, for a total of \$5,000. (ICC Staff Ex. 1.0, p. 9.) Staff further recommended that the Commission order put UI on notice that all of its companies must comply with the Commission's rules regarding the maintenance of CPRs or be subject to disallowances of plant additions to rate base in future rate cases.

## **B. The Companies' Position**

Mr. Lubertozi testified that after the Rate Case Order, UI created an in-house database system, which would interface with UI's existing systems, software and hardware and would contain the information required for CPRs. (UI Ex. 1.0, pp. 2-3.) However, Mr. Lubertozi explained that due to unanticipated delay in data entry and system limitations of UI's computer system (which was not originally designed to handle CPRs and has to search all invoices keyed into UI's general ledger system for all operating subsidiaries throughout the United States for the past five years to locate the correct transaction number), UI was unable to meet the April 7, 2005 deadline for CPR implementation set forth in the Rate Case Order. (*Id.*; UI Ex. 1.01.)

Mr. Lubertozi explained that UI sought to inform the Commission of its progress in implementing the CPR requirement after the deadline passed through a series of four

motions, beginning May 27, 2005, seeking an extension of time to comply with the CPR requirement. (UI Ex. 1.0, p. 3.) UI contends that this delay has not had an adverse effect on UI's customers in Illinois or on UI's provision of adequate, safe and reliable service because the issue of CPRs would generally only arise in the context of a rate filing. (UI Ver. Ans., p. 4.) UI also contends, in its Answer, that the delay, and UI's good faith attempts to inform the Commission of the delay, represent mitigating factors and civil penalties are therefore not appropriate. (*Id.*, pp. 4-5.)

Mr. Lubertozi explained that the Companies have now developed a CPR system, which is currently in place and functioning for the Companies, and has been implemented retroactively to 2004. (UI Ex. 1.0, p. 3.) The CPR Report regarding the implementation of the CPR program was filed on July 13, 2006. (UI Ex. 1.01.)

UI also pointed out that UI was recently acquired by a new parent, Hydrostar, LLC. (UI Ex. 1.01.) UI's new parent is committed to upgrading the hardware and software of UI's data management system to improve functionality and to improve the reporting process, which will alleviate the data processing bottleneck. (*Id.*) UI explained that its management team has met with various consulting firms to discuss acquiring new data management systems, including a new general ledger and billing systems, and that these systems also have the capabilities to create, track, store and generate continuing property records. (*Id.*)

With respect to Staff's recommendations, UI stated that it agreed that, for all of its regulated Illinois subsidiaries, it will not seek rate base additions that are not supported by CPRs. (UI Ex. 1.0, p. 4.) Further, UI testified that, while not necessarily expressing agreement with Ms. Hathhorn's characterization of UI's diligence and good faith with respect to implementing CPRs, for the purposes of resolving this proceeding, UI agrees to pay civil penalties of \$1,000 for each of the Companies, for a total of \$5,000 for all the Companies. (*Id.*)

UI also asserted that, because UI intends to implement the CPR system described in UI Exhibit 1.01 for all of its Illinois subsidiaries and UI agrees that, for all of its regulated Illinois subsidiaries, it will not seek rate base additions that are not supported by CPRs, UI has addressed Ms. Hathhorn's concerns regarding other UI subsidiaries. (UI Ex. 1.0, p. 4.)

### **III. COMMISSION CONCLUSION**

Based on the record, the Commission finds that UI failed to file the CPR Report on April 7, 2005 as required by the Rate Case Order, and that the CPR Report was not in fact filed until July 13, 2006. The Commission finds that, based on the record in this proceeding, the Companies now have CPRs in place for 2004 to the present. Therefore, the Commission concludes that, because the CPR Report was filed on July 13, 2006 and because UI has demonstrated that it has a CPR system in place from 2004 on, UI is now in compliance with the Rate Case Order and the Commission's rules regarding CPRs for 2004 forward.

With respect to CPRs for years prior to 2004, UI has indicated that it is working to implement CPRs for prior historical years. In light of this, the Commission finds that Staff's proposal, which UI has accepted, to disallow rate base additions which have no CPR support in future rate cases by the Companies, is reasonable. The Commission notes that UI has agreed that, for all of its regulated Illinois subsidiaries, it will not seek rate base additions that are not supported by CPRs.

With regard to the assessment of penalties, the Commission has authority under Section 5-202 of the Act (220 ILCS 5/5-202) to assess penalties. Staff recommended civil penalties of \$1,000 for each of the Companies, for a total of \$5,000 for all the Companies. UI agreed to pay these penalties.

The Commission assesses penalties in accordance with section 4-203(a) (220 ILCS 5/4-203(a)), which states in relevant part:

In determining the amount of the penalty, the Commission shall consider the appropriateness of the penalty to the size of the business of the public utility, corporation other than a public utility, or person acting as a public utility charged, the gravity of the violation, such other mitigating or aggravating factors as the Commission may find to exist, and the good faith of the public utility, corporation other than a public utility, or person acting as a public utility charged in attempting to achieve compliance after notification of a violation.

With regard to the size of the Companies, Staff reported that the five Companies together provide water and/or sewer service to approximately 1,500 customers in various Illinois counties. The Companies are thus "small utilities" under Section 4-502 of the Act (220 ILCS 5/4-502), although their parent, UI, would not be a small utility if all of its subsidiaries were aggregated together. The Commission concludes that the \$1,000 penalty level is not unreasonable given the size of the Companies and their parent UI.

With regard to the gravity of the violation, Staff states that failure to maintain CPRs results in the Companies being unable to support the increase to plant for plant additions since the last rate case. However, UI points out that outside of a rate filing, there is no significant adverse impact on customers of failing to maintain CPRs. The Commission notes that customers do not appear to have been harmed. However, the Companies must fully comply with the Act, the Commission's rules, and its Orders. Therefore, the Commission finds the assessment and level of penalties appropriate to the gravity of the violation.

With regard to other aggravating factors, Staff also asserted that the fact that the parent company, UI, is not a small utility as defined by the Act, but has twenty-four subsidiaries with 17,400 customers in Illinois, was an aggravating factor. With regard to mitigating factors, UI asserts that the difficulty it had in entering data for the CPRs represents a significant mitigating factor. The Commission concludes that UI's commitments in this proceeding to implement CPRs across all its Illinois subsidiaries

and, for all of these subsidiaries, to not seek rate base additions that are not supported by CPRs, is sufficient to alleviate Staff's concerns.

With regard to good faith, Staff questioned the Companies' diligence and good faith in coming into compliance with the CPR requirements, noting that Commission orders dating back to 1995 had required implementation of CPRs. UI did not express agreement with Staff's characterization of UI's diligence and good faith with respect to implementing CPRs, but for the purpose of resolving this proceeding, agrees to pay the Staff recommended penalty.

The Commission notes that the parties are in agreement on the amount of penalties, and for that reason, and the reasons above, the Commission finds that the penalty of \$1,000 per each of the Companies is reasonable.

#### **IV. FINDING AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company provide water and/or sewer service to the public within the State of Illinois, and, as such, are "public utilities" within the meaning of the Public Utilities Act;

(2) the Commission has jurisdiction over Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company and of the subject-matter herein;

(3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law for purposes of this Order;

(4) in future rate cases involving Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company, the Commission should disallow rate base additions which have no continuing property record support;

(5) pursuant to Section 5-202 of the Act, Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company should be required to pay a civil penalty of \$1,000 each, for a total of \$5,000.

IT IS THEREFORE ORDERED by the Commission that in future rate cases involving Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company, rate base additions which have no continuing property record support shall be disallowed.

IT IS FURTHER ORDERED that pursuant to Section 5-202 of the Public Utilities Act, Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company are each hereby assessed a fine in the amount of \$1,000.00, said fine shall be paid by check made out to the Illinois Commerce Commission and delivered to the Financial Information Section of the Commission's Administrative Services Division within thirty (30) days of the entry of this Order.

IT IS FURTHER ORDERED that Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company shall file with the Commission's Chief Clerk a certification attesting that the Company has paid the ordered fine. Said certification is to be filed under Docket No. 06-0360, served upon the parties to this docket and a copy is to be provided to the Manager of the Commission's Water Department within thirty (30) days of the entry of this Order.

IT IS FURTHER ORDERED that any petitions, objections or motions made in this proceeding and not otherwise specifically disposed of herein are hereby disposed of in a manner consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this \_\_\_\_ day of \_\_\_\_\_, 2007.

(SIGNED) CHARLES E. BOX

Chairman

Dated: February 13, 2007

Respectfully submitted,

UTILITIES, INC.

By: /s/ Albert D. Sturtevant

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