STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Kevin Grens	:	
vs-	:	
Illinois-American Water Company	:	
	:	
Complaint as to billing/charges in Lemont, Illinois.	:	**05-0681**
	:	
People of the State of Illinois	:	
-vs-	:	
Illinois-American Water Company	:	
	:	
Investigation of failure to provide service on just and reasonable terms, and violation of the Public Utilities Act and Commission rules.	:	**06-0094**
	:	
Village of Homer Glen	:	
-vs-	:	
Illinois-American Water Company	:	
	:	
Complaint as to billing/charges in Homer Glen, Illinois.	:	**06-0095**

<u>ADMINISTRATIVE LAW JUDGES' PROPOSED ORDER</u>

February 23, 2007

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-vs-	:	
Illinois-American Water Company	:	
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Complaint as to billing/charges in Homer Glen, Illinois.	:	**06-0095**

ADMINISTRATIVE LAW JUDGES' PROPOSED ORDER

I. Procedural History

Mr. Kevin Grens, the Office of the Illinois Attorney General ("AG") and the Village of Homer Glen ("Homer Glen") filed Complaints with the Illinois Commerce Commission ("Commission") against Illinois-American Water Company ("IAWC", the "Company", or "Respondent") on October 20, 2005, February 2, 2006 and February 8, 2006, respectively. These Complaints were consolidated by an Order issued on February 17, 2006. The AG Complaint and Homer Glen Complaint seek an audit of certain operations of IAWC, civil penalties, and other relief. The Grens Complaint seeks a review of IAWC's rates for water and wastewater service. On February 21, 2006, the Citizens Utility Board ("CUB") filed a petition to intervene, which was granted.

On November 14, 2005, the Company filed a Motion to Dismiss the Grens Complaint in its entirety. On September 15, 2006, the Company's Motion to Dismiss the Grens Complaint was denied. On August 14, 2006, the Company filed Motions to Strike and Dismiss the Grens Complaint, and certain portions of the AG Complaint and the Homer Glen Complaint. The AG and Homer Glen responded on August 25, 2006 and

on September 1, 2006, the Company replied. The Administrative Law Judges ("ALJs") denied the Motion to Strike with respect to the Grens Complaint, and granted the Company's Motion to Strike and Dismiss in part with respect to the AG Complaint and Homer Glen Complaint, striking Paragraph 40(e), item (ii) of the AG Complaint and the portion of Homer Glen's Complaint which alleged that IAWC had failed to repair water mains and assign sufficient personnel the duty of hearing customer disputes in-person.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, an evidentiary hearing was held in this matter before duly authorized ALJs of the Commission on October 30, October 31, and November 1, 2006. Appearances were entered by counsel on behalf of the AG, Homer Glen, CUB, Staff, and IAWC. Mr. Grens appeared *pro se*. The Direct, Rebuttal, and Surrebuttal Testimony of Scott J. Rubin was entered into the record on behalf of the AG and Homer Glen. Homer Glen also offered the Direct, Rebuttal, and Surrebuttal Testimony of Mary Niemiec, and the Direct Testimony of Deborah Finnegan, Jim Jilet, and Debbie Litoborski. On behalf of IAWC, the Direct and Rebuttal Testimony of Frederick L. Ruckman and Karen H. Cooper and the Direct Testimony of John A. Zerbe were entered into the record. On behalf of Staff of the Commission, the Direct and Rebuttal Testimony of William R. Johnson and Joan Howard were entered. At the conclusion of the hearing on November 1, 2006, the record was marked "Heard and Taken."

Initial briefs were filed by the AG, Homer Glen, Staff, CUB, and the Company. Reply briefs were filed by the AG, Homer Glen, Staff, and the Company. A Proposed Order was filed by IAWC on January 12, 2007.

II. Issues in Dispute

A. Civil Penalties

1. AG/Homer Glen Position

The AG and Homer Glen ("Complainants") have asked the Commission to impose civil monetary penalties on IAWC for its alleged violation of various Commission rules. In response, IAWC, among other things, points to the language of Section 5-203 that provides in relevant part:

> No penalties shall accrue under this provision 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.

The Complainants argue that their complaints satisfy the Section 5-203 notice requirement and put IAWC on notice of allegations that it was in violation of Commission rules. Complainants note that the Company has had a full opportunity to respond and to be heard, both with testimony and in cross-examination. Accordingly, they contend penalties may be determined under Section 4-203, that provides in relevant part:

> (a) All civil penalties established under this Act shall be assessed and collected by the Commission. Except for the penalties provided under Section 2-202, civil penalties may be assessed only after notice and opportunity to be heard. In determining the amount of the penalty, the Commission shall consider the appropriateness of the penalty to the size of the business of the public utility, corporation other than a public utility, or person acting as a public utility charged, the gravity of the violation, such other mitigating or aggravating factors as the Commission may find to exist, and the good faith of the public utility, corporation other than a public utility, or person acting as a public utility charged in attempting to achieve compliance after notification of a violation. Nothing in this Section, however, increases or decreases any minimum or maximum penalty prescribed elsewhere in this Act.

2. IAWC Position

IAWC counters with several arguments. It contends that 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.

IAWC claims it 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. As a result, there is no basis for the Commission to conclude that penalties are appropriate.

Next, IAWC says no civil penalties would accrue unless the Commission elects to issue a notice of violation. Although the AG and Homer Glen assert that their Complaints provided the requisite notice, IAWC says this is incorrect for several reasons. Homer Glen also asserts, without explanation, that the "violations" were intentional, but according to IAWC, offers no support for this assertion.

IAWC's first notice argument is that the Complaints contain only unproven allegations of violations of the Act and Commission rules, most of which according to IAWC are baseless. Neither the AG nor Homer Glen has cited any authority providing that mere allegations in a complaint can provide the requisite notice. IAWC says it would not be appropriate regulatory policy for parties to trigger Section 5-202 with unsubstantiated claims of violations.

Second, IAWC asserts that it is clear from the Commission's statutory authority with respect to civil penalties, as well as past Commission orders, that the Commission, rather than complaining parties are responsible for determining whether penalties are appropriate and for issuing the 15-day notice. For instance, under Section 4-201 of the Act, 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 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, IAWC argues that 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.

IAWC points out that 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. According to IAWC, 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. IAWC notes that 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. at 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). IAWC contends that although no notice of violation has been 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.

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, the Company asserts that no civil penalties should be assessed.

3. AG Response to IAWC

The AG argues that IAWC received appropriate notice of the violations alleged by Complainants. The AG argues that there is little more a party or the Commission can do to provide a respondent with notice and an opportunity to be heard than to identify violations in a complaint and afford the respondent the opportunity to respond with discovery, testimony, cross-examination, and briefs.

The AG contends that the efforts IAWC has made to address the violations identified in the Complaints do not undo the fact that violations occurred. Although the Commission may choose to impose less than the maximum sanctions allowed, an administrative penalty for violating public safety rules (hydrants and valve inspections and maintenance), violating metering and back billing rules, and violating other consumer protection rules, as laid out above, is appropriate under the evidence presented in this case.

4. Staff Position

Staff acknowledges that the complaints from the AG and Homer Glen seek the imposition of civil penalties on IAWC. In response to the arguments of the AG and Homer Glen that their complaints should constitute notice, Staff notes the general civil penalty provision of Section 5-202 states that:

> <u>No penalties shall accrue under this provision until 15 days after the mailing of a notice</u> 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. (emphasis added)

Staff asserts generally that the "mailing of a notice" language is inconsistent with the process of serving complaints under Section 10-108 of the Act, and 83 Ill. Adm. Code 200.150(a). Staff asserts this language mandates that, except for intentional violations, no civil penalties can be assessed until 15 days after a notice of a violation is issued.

Moreover, Staff does not recommend the assessment of civil penalties in this case. Staff did not identify any violation of the Act or the Commission rules which, in its opinion, constituted an intentional violation. Staff argues that the Complaints themselves do not constitute a 15-day notice although what is sufficient notice for Section 5-202 purposes has not been defined by rule or case law.

Staff recommends the final order in this cause be treated as the notice for Section 5-202 purposes. Thereafter, if IAWC fails to meet the ordered time limits, a civil penalty can be imposed. Because Staff recommends a completion date of a year or more after the issuance of the Commission's order, it hesitates to call the order a 15-day notice.

However, the 15-day notice provision of Section 5-202 is the minimal notice required under the provision and, therefore, the order can function as the notice if the specified violations are not timely corrected. Failure to comply with the notice should, in Staff's opinion, trigger an additional proceeding. This interpretation is bolstered by the

requirements of Subsection 4-203 (a) of the Act, 220 ILCS 5/4-203(a), i.e., the assessment of the penalty mandates a consideration of mitigating factors and the good faith of the respondent.

Staff further notes that a number of actions which Staff has recommended and IAWC has agreed to carry out are not violations of the Act or the rules, but are improvements in meeting the regulatory requirements. For example, the Staff Witnesses' testimony found that the utility was compliant with the Commission rules concerning recordkeeping, but the time and ease of reviewing the required records could be improved. While the Commission is clearly empowered to order such improvements (See Section 9-250), in the absence of any previous requirement or decision finding that these improvements were minimal compliance requirements, Staff argues that it is inappropriate to treat IAWC as being in violation of the regulations on these matters. Only if IAWC fails to carry out the improvements in a timely manner would there be a violation of the Commission order establishing the new requirements.

Therefore, the Staff Witnesses ask that the final order in this case be treated as notice of violation for Section 5-202 civil penalty purposes only on the following matters, showing the applicable time period for correction/completion:

1. 600.140(c) (Records of hydrants): Chicago-Metro (Homer Glen)

   (Records of valves): Champaign, Chicago-Metro (Homer Glen) & Chicago-Metro (Orland Hills)

   Recommended Time period: (IAWC Ex. 4.01, pp.4-5, within one year)

2. 600.150 (Customer Meter Test Records): Chicago-Metro (Orland Hills)

   Because this violation will be part of IAWC's effort to improve its recordkeeping generally, the two-year suggestion in Staff Ex. 1.0, p. 24, (which is directed to the improvements in recordkeeping as well) seems appropriate.

   Recommended Time period: (IAWC Ex. 4.01, p. 5, within two years of the Commission order.)

3. 600.240 (Maintenance/ inspection of hydrants): Champaign, Chicago-Metro (Homer Glen), & Chicago-Metro (Orland Hills)

   (Maintenance/ inspection of valves): Chicago-Metro (Homer Glen), & Chicago-Metro (Orland Hills)

   Recommended Time period: (IAWC Ex. 4.01, pp. 4-5, hydrants and valves within one year (which is what 83 Ill. Adm. Code 600.240 requires)).

4. 600.340/variance Docket 76-0491 (Meter test frequency): Champaign

   Recommended Time Period: No later than one year after the date of the Commission order.

Finally, Staff asks that the final order in this case state that if IAWC fails either to meet the time limits specified in the order for the corrective action or, on other matters, to meet other imposed requirements in a reasonable time, the Commission will initiate a proceeding against IAWC to impose civil penalties pursuant to Sections 5-202 and 4-

203 of the Act. Because of the evidentiary requirements of Subsection 4-203(a) of the Act concerning mitigation, aggravation and good faith, Staff argues that additional proceedings would be necessary, if the Commission finds that the notice provision of Section 5-202 of the Act, *supra*, has been satisfied.

5. Commission Analysis and Conclusion

Construction and application of the notice provision in Section 5-202 of the Act as a prerequisite to the imposition of civil penalties appears to be a case of first impression. We have limited clues to aid us in discerning the intention of the legislature or in devising reasonable procedures to implement that intention. Section 5-202 states:

> No penalties shall accrue under this provision 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.

On one hand it is patent that IAWC has, through the Complaints at issue here, been on notice since early 2006 of the various alleged violations of Commission regulations charged therein. Moreover, it has had an opportunity to appear and defend as required by Section 4-203(a). On the other hand, a complaint is an accusation by an interested party rather than an order or decision from the body empowered by the legislature to decide these issues.

It is not unreasonable to posit that the legislature intended that a prerequisite for the imposition of civil penalties is that the party in jeopardy be specifically informed by the Commission that reasonable grounds exist or that a determination has been made that it has committed one or more violations and that, as a consequence, monetary penalties may be imposed.

This interpretation is bolstered by other relevant language in the Act. For instance, under Section 4-201 of the Act, 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. Moreover, under Section 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."

The language of Section 4-203 stating that 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 [entity] . . .

lends further credence to the view that the "notice" must be predicated on action initiated by the Commission because it implies that additional evidence on these factors must be adduced to determine the magnitude of the penalty. Read together, the

various provisions lead us to conclude that, except in those instances, if any, where we find intentional violations, the legislature intended that the 15 day notice provision requires action initiated by the Commission and is not met by the filing of a complaint. We find that the imposition of civil penalties in this Docket would not be consistent with legislative intent. Should IAWC fail to conform to the directives contained in this Order consistent with the time schedule set forth herein, this Order may subsequently serve as the required Section 5-202 notice to initiate an action seeking to impose civil penalties.

B. Meter Issues

1. Rule 600.150 Customer Meter Test Records

The rule states that:

> Each utility shall keep a record for each meter showing the make, size, style, number and date of purchase of the meter. Such record shall also reflect at all times the results of the latest test conducted on the meter, the reason for the test and the testing method used.

a.) Staff Position

According to Staff, the Cairo, Champaign, and Homer Glen service areas met the requirements of Rule 600.150. There was information missing on some accounts, which Staff testimony characterized as minor violations. Staff recommends that the Company bridge the gap between its computerized meter information and the separately kept "hard-copy" meter information. According to Staff, the goal is to be able to trace a meter and its test results over the course of its service life. IAWC should be able to take an account number or meter number and trace it back to its initial purchase and installation in a simpler and quicker fashion. The Orland Hills service area was missing a large amount of the information required by this Rule and, therefore, was not in compliance with the Rule in the opinion of the Staff.

2. Rule 600.300 Testing Facilities

The rule states that:

> Each utility furnishing water service to any of its customers on a metered basis shall, unless specifically excused by the Commission, make provision for a suitable meter testing laboratory and equipment or apparatus as may be necessary to make the tests required by this Part and other orders of this Commission. Meter testing equipment shall, at all reasonable hours, be accessible for inspection and use by authorized representatives of the Commission.

a.) Staff Position

According to Staff, all areas inspected met the requirements of Rule 600.300.

3. Rule 600.310 Test and Allowable Error

Rule 600.310 states in relevant part:

a) The accuracy of a water meter shall be tested by comparing the actual amount of water passing through it with the amount indicated on the dial.

b) The test shall be conducted in accordance with the standards for testing Cold Water Meters as prescribed by the American Water Works Association (AWWA C705-60) with quantities and flows for positive displacement meters as follows . . .
No meters shall be placed in service when the accuracy is different than follows . . .

c) The utility may make such additional tests as it may deem necessary but in a manner that will not unreasonably inconvenience the customer.

a.) AG Position

According to the AG, IAWC reported that a random sample of 1000 meters showed that over 50% did not meet the standards for new meters in Section 600.310. The AG notes that IAWC argues that of that 50% only 20% were recording above the ranges specified, but the AG argues that a meter is out of compliance whether it tests above or below the specified range. Moreover, the AG argues that if a meter is under reading, it could expose a customer to excessive back billing. The AG argues that the bills for these 500 meters were not as accurate as the rules require and many consumer complaints were triggered, at least in part, by meter inaccuracies.

The AG argues that this violation of the Commission's rules harms consumers by exposing them to back-billing and by exposing them to higher unaccounted-for-water charges or rates. Also, the AG asserts that it can also lead to rate hikes if the Company seeks to increase revenue due to the loss of revenues caused by under-recording meters.

b.) Staff Position

Staff contends that overall the areas inspected met the requirements of Rule 600.310. According to Staff, the meter test results reviewed were all in compliance but, as discussed in connection with Rule 600.150, the Company needs to be able to take an account number or meter number and trace it back to its initial purchase and installation in a simpler and more organized fashion. Test results can be located, but in some cases it took a lot of effort to locate them. Also, the records associated with the Chicago Metro Service area were not as organized as the Cairo and Champaign service areas, but this could be due to the relatively recent acquisition from Citizens. Staff saw nothing during its inspections of any of the service areas that would lead it to believe that meters are not tested prior to installation or that the meter test results were not within the guidelines established in Rule 600.310.

In response to the AG's reliance on a study done by IAWC which indicated 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 Rule 600.310, Staff notes that the study of inside meters is limited to Chicago Metro and shows the inadequacies of such odometer-style meters generally. Staff notes that IAWC has implemented a

meter replacement program and expects full replacement of old meters, aside from the Bolingbrook area, by the end of 2007.

c.) IAWC Position

IAWC asserts that the AG's argument that a high percentage of IAWC's meters are out of compliance because random testing of meters removed in the meter replacement program showed 50% to not meet the testing standard is misleading. The Company avers that Section 600.310 standards apply to new or repaired meters and that the meters in IAWC's random sample were meters that had been removed from service and replaced. The Company states that these were not new meters and, therefore, there was no requirement that they meet the Section 600.310 standards.

Further, IAWC disputes that the under-registration shown in these replaced meters could expose the consumer to excessive back billing. The Company clarifies that what triggered the back-billing complaints related to problems with the remote odometer reading device, not inside meter inaccuracies.

4. Rule 600.320 Meter Tests on Premises

Rule 600.320 states that:

> Tests may be made at the place the meter is installed, provided the method employed by the utility for so testing a meter has been submitted to and has received the approval of the Commission.

a.) Staff Position

The Rule provides the Company with the option to test meters at the place of installation with Commission approval. The Company does not test residential meters on site. According to Staff, there is no indication the Company is non-compliant with this Rule.

5. Rule 600.330 Installation of Meters

The rule states that:

> No meter shall be placed in service unless it has been tested previous to its installation and found accurate within the limits prescribed in Section 600.310. This test shall be made either by the utility or the meter manufacturer. If made by the latter, the utility must obtain a copy of the result of the manufacturer's test.

a.) Staff Position

Overall, Staff maintains that the service areas inspected met the requirements of Rule 600.330. Staff witness Johnson saw nothing during his inspections in any service area that would lead him to believe that meters are not tested prior to installation or that the meter test results were not within the guidelines established in Rule 600.310.

6. Rule 600.340 Frequency of Tests

Rule 600.340 states:

> Unless otherwise approved by the Commission, each service water meter shall be periodically inspected and tested in accordance with the following schedule, or as often as the results may warrant, to insure that the meter accuracy is maintained within the limits set out in Section 600.310:
>
> ⅝ inch meter – 10 years or for each 100,000 cubic feet registered
> ¾ inch meter – 6 years or for each 300,000 cubic feet registered
> 1 inch meter – 6 years or for each 300,000 cubic feet registered
> Meter 1½ inch and over – 4 years

a.) AG Position

According to the AG, there were 40,516 meters in the Chicago Metro area in 2002, when IAWC acquired the area from Citizens. The AG notes that IAWC witness Ruckman testified that the seller's infrastructure was outdated and its meter change program was well behind schedule, but IAWC did not initiate a meter replacement program until 2003. The AG states that: in 2003, 1200 larger, primarily non-residential meters of 1" to 8" were replaced; in 2004, 6,350 meters were replaced; in 2005, over 6,000 meters were replaced. According to the AG, that, while 18,200 meters have been replaced, 19,500 still need to be replaced.

Further, the AG notes that IAWC plans to replace 18,050 meters in the Bolingbrook area by 2010, which is five years later than 2005, when the Bolingbrook meters came due for testing.

The AG contends that because Citizens, the former owner of the Chicago Metro service area, did not comply with meter testing regulations and because IAWC has delayed testing for another 4-8 years, some meters will effectively be in place and untested for 20 years or longer.

With respect to Staff's findings, the AG initially notes that Staff's review was of only 3 service areas of more than 100 municipalities and townships statewide, i.e. Cairo, Champaign, and Homer Glen/Orland Hills. For Champaign, the AG points out that meter records showed that a large portion of the meter records reviewed were in service longer than the 15 year variance that IAWC's predecessor had obtained in Docket 76-0491. For Homer Glen/Orland Hills, the AG notes that Staff only reviewed new meter records and did not look at whether the substantial number of existing meters in the Chicago Metro area were being inspected and replaced at a rate required by Section 600.240 of the rules. The AG argues that Staff's conclusions about whether IAWC is complying with Commission's rules are irrelevant, because IAWC admitted that it is not in compliance in the Chicago Metro area and Staff only sampled the area where meter replacements have already occurred.

The AG states that IAWC admitted that the meters in its Chicago Metro area had not been inspected and tested in compliance with Commission rules when it acquired the service territory and that the service area will not be fully compliant with

Commission's meter testing and accuracy rules until 2010. Further, the AG argues that Staff's limited investigation demonstrated that, of the three areas reviewed, one showed that 30 of 75 meters (in Champaign) were in service for greater than 15 years and 34 of 75 meters were not tested as required. According to the AG, the record shows that IAWC is not in compliance with Section 600.340's meter testing and maintenance requirements.

b.) IAWC Position

According to IAWC, at the beginning of 2003 (one year after the acquisition of Citizens), approximately 19,400 accounts (45-50% of the customer base) had meters that had not been tested in accordance with Commission timelines. The Company asserts that it then made replacement of all meters in Chicago Metro a priority. IAWC maintains that is has prioritized meter replacement in those areas where the deadline for testing under Commission rules is first approaching and has employed an outside contractor in order to accelerate the meter Replacement Program. IAWC notes that it has replaced approximately 16,700 meters in Chicago Metro, leaving about 15,700 meters as of March 2006 (additional meters having come due for testing since 2003). IAWC maintains that it intends to complete the Meter Replacement Program by 2010. Moreover, all meter replacements in Chicago Metro will be completed by the end of 2007, aside from the Bolingbrook area. In Homer Glen, the Company replaced all but 300 of the 7,000 meters with radio read meters. The Company notes that Homer Glen/AG witness Rubin allowed that IAWC's meter exchanges are proceeding slightly faster than Commission rules require.

IAWC also emphasizes that the review by Staff looked at individual IAWC records in light of the relevant Commission rule. As such, the Company argues that Staff's review was more focused and detailed than the sweeping allegations made by Homer Glen/AG witness Rubin and deserves significant weight and demonstrates that no further audit or investigation in IAWC's practices is needed.

IAWC emphasizes that it has prioritized meter replacement to replace meters in those area where the deadline for testing under Commission rules is first approaching and states that 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.

Moreover, it notes that 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's recommendations regarding meter records and testing in Champaign.

c.) Staff Position

The Cairo, Homer Glen, and Orland Hills service areas met the requirements of Rule 600.340, according to the examination by Staff witness Johnson. Although the AG and Homer Glen question whether IAWC's Chicago Metro Service area, which includes Homer Glen and Orland Hills service areas, will meet 83 Ill. Adm. Code 600.340 in all cases, Staff recognizes that IAWC is intending to replace the meters in the Chicago Metro Service area before the deadlines of Rule 600.340 when measured from IAWC's acquisition of the Chicago Metro Service area.

However, IAWC's Champaign service area had thirty-four (34) removed meters that had not been tested within the frequency required by Commission order in Docket 76-0491 or by Rule 600.340. (The Commission, in Docket 76-0491, allowed IAWC's predecessor in the Champaign service area to test its 5/8" meters every fifteen (15) years instead of every ten (10) years as required in Rule 600.340.) Staff allows that, because records for cubic feet were not kept, it is possible that had such records been available, other violations of either the variance allowed in Docket 76-0491 or the requirements of Rule 600.340 would have been identified.

Staff considers the Champaign service area to be noncompliant with Rule 600.340 and, if applicable, the exemption allowed by the Commission in Docket 76-0491. Moreover, Staff questions the need for the variance in the Champaign service area, when the rest of IAWC's service areas use the normal ten (10) year time-period for testing 5/8" meters, Staff recommends that the Commission order IAWC to file a petition (within one year from the date of this order) to enable the Commission to review whether the fifteen (15) year meter testing period variance is appropriate for IAWC's Champaign Division.

Staff argues that the meters in the Chicago Metro service area need replacing because of improper testing and replacement by the former owner. Staff notes that although Rule 600.340 speaks to testing the meters after a certain time or usage in order to maintain the standards of Rule 600.310, IAWC, like most water utilities, replaces the meters at the time specified in Rule 600.340, rather than testing the old meters. Staff reasserts that, as far as any evidence in this case is concerned, IAWC has complied with Rule 600.310 and 600.330 when it has installed the new meters

7. Rule 600.350 Meter Tests Requested by Customer

a.) Staff Position

Staff notes that all four service areas have tariff sheets on file with the Commission explaining customer-requested meter tests and, therefore, meet the requirements of Rule 600.350. Staff found, however, after reviewing the Company's rules, regulations, and conditions of service within the tariffs, that the tariffs are confusing, repetitive, and inconsistent. There are, in fact, three different meter testing tariffs for the Champaign, Cairo, and Chicago Metro service areas. It would be much simpler to condense them to one tariff representing all service areas or to provide identical language in each District's tariffs. Staff recommends that IAWC create one unified set of rules, regulations, and conditions of service for all of its service areas in the State of Illinois, to be completed within two years of the date of the final order in this proceeding.

8. Rule 600.360 Commission Referee Tests

a.) Staff Position

According to Staff, the Rule does not apply to the Company. Staff did not find any evidence of a violation on the Company's part.

9. Commission Analysis and Conclusion

Not all parties addressed all meter rules. In fact, although Staff reviewed many code parts, only Rule 600.310 and 600.340 appear to be at issue and are addressed by the AG, IAWC, and Staff.

We adopt the following Staff recommendations, which the Company has accepted:

(a) Begin the process of consolidating its meter information for all service areas in the State of Illinois so that a meter can be traced from initial purchase and installation in a simpler and more organized fashion. This will make it easier for the Commission to verify compliance with Section 600.150, 600.310, 600.330, and 600.340. This is to be completed within two years of the date of the final order in this proceeding;

(b) Amend its tariffs to provide one unified set of rules, regulations, and conditions of service for all of its service areas in the State of Illinois, which is to be completed within two years of the date of the final order in this proceeding; and

(c) Order IAWC to file a petition with the Commission (within one year from the date of this order) to enable the Commission to review whether the fifteen (15) year meter testing period variance is appropriate for IAWC's Champaign Division.

The evidence is clear that these improvements are necessary to ensure compliance with the Commission's rules. A failure by the Company to complete these actions in accordance with the timeframes herein will subject the Company to civil penalties.

The AG's argument regarding the 50% of the random sample of removed inside meters is not persuasive as these meters were installed by the prior owner of the utility and have already been removed and replaced as part of the Company's meter replacement program.

Staff witness Johnson found that while there were some compliance issues, we note that he found nothing indicating IAWC has a Company-wide meter problem. Additionally, while some of the older meter records reviewed in the Champaign area were not tested or replaced in the time frame required under Rule 600.340, the records indicate that IAWC does have a meter replacement program in place. The Commission will hold the Company to its proposed schedule for meter replacements, i.e., complete the Meter Replacement Program by 2010 and all meter replacements in Chicago Metro completed by the end of 2007, aside from the Bolingbrook area. Similar to the commitments agreed to above, if the Company fails to complete its meter replacement program as stated herein, the Company may be subject to civil penalties.

We find that the Company's agreement to comply with Staff's recommendations and completion of the meter replacement program as proposed is sufficient to the issues raised herein.

C. Valves and Hydrants

1. AG Position

The AG points out that the water system operated by IAWC supplies water to public safety or fire districts. This requires that fire hydrants, and the valves that control the flow of water to the hydrants and to other parts of the distribution system, be fully operational. When IAWC acquired the Chicago Metro area in January, 2002, the prior owner's "[v]alve and hydrant testing practices were also not fully compliant with Commission Rules." IAWC Ex. 1.0 at 7. The evidence presented established that in 2005, several fire districts in IAWC territory encountered fire hydrants that did not work or required maintenance. Commission rules requiring annual inspections, testing, and maintenance should have prevented these kinds of problems.

The AG notes that Staff witness Johnson did a limited review of IAWC's records of hydrant and valve testing and maintenance. He only reviewed a very small sample of records from four communities and did not physically inspect any hydrants or valves. Nevertheless, he found that the testing and maintenance records were not complete or up-to-date. In Homer Glen, no history of maintenance, date of installation, or make or model were shown for any hydrants and only four of the twenty hydrants he reviewed listed its size. None of valve records showed the maintenance history, date of installation, or the make or model of the hydrant. Ten of the twenty hydrant records he reviewed did not list the size of the valve. Mr. Johnson's review of the Orland Hills hydrant records also revealed significant lapses, with maintenance history, size and date of installation missing for some of the 20 hydrants. According to the records inspections occurred only every two years.

The AG argues that the Orland Hills valve records were even worse. Of the twenty one records reviewed, eleven "showed that the most recent inspections had taken place in the years 1981-1982," more than *20* years ago! Another nine valves showed no maintenance history at all. Id. Clearly, the inspections and maintenance required by Rule 600.240, "Inspection and Maintenance of Valves and Hydrants," were not done in these communities. Despite these problems, Mr. Johnson did not review other data for the Chicago Metro area even though there are about 40 separate municipalities or townships served by IAWC in Chicago Metro alone. See Municipalities List, filed March 24, 2006.

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

The AG notes that in Exhibit 4.01, attached to IAWC Exhibit 4.0, Mr. Ruckman represents that IAWC has inspected or will inspect all hydrants and valves in its service territory by the end of 2006. The AG argues that this demonstrates that IAWC can complete the required annual inspections each year, and that the Commission should hold IAWC to that standard going forward.

The AG argues that public fire protection is one of the most important functions of a public water supply, and having working valves and hydrants is a matter of public safety. The AG says that IAWC's representation that it will complete the inspection and repair of the valves and hydrants in all of its service areas is welcome, but should not be accepted by the Commission without review. Mr. Johnson's very limited review of IAWC's hydrant and valve records revealed widespread inspection and record-keeping lapses. The AG argues that to ensure that hydrants and valves throughout IAWC's service area are properly inspected and maintained and that necessary records are kept, the Commission should conduct a full investigation of IAWC's valve and hydrant testing, maintenance and record-keeping.

The AG contends that the limited investigation Mr. Johnson was able to conduct, in light of time and resource constraints, confirm that IAWC has not been complying with Commission rules. Fire hydrants and valves have not been inspected annually, and records are incomplete. A comprehensive investigation of IAWC's entire system is necessary to ensure that the public safety is not jeopardized by faulty or ill-maintained hydrants and valves.

The AG notes that the evidence showed substantial lapses in compliance with the hydrant and valve testing requirements of Commission Rules from the date that IAWC acquired the Chicago Metro service area in 2002. IAWC has not indicated that it has inspected the valves on its system, which control the flow of water to the hydrants and to other parts of the distribution system. The AG asserts that the gap in time during which hydrants went un-inspected, and the apparent lack of valve inspections, are not mere technical violations. Several fire departments identified inoperable hydrants, including those at the scene of two fires. See AG/HG Ex. 1.7.

2. Homer Glen Position

Homer Glen notes that, as part of its investigation of the AG's Complaint, the ICC Staff uncovered more deficiencies in IAWC's practices that affect health and safety. For example, IAWC is severely deficient in complying with Commission Rules regarding the frequency of inspections of critical valves and fire hydrants. Public fire protection is one of the most important functions of a public water supply system. The maintenance and testing of the ability to provide fire flows when and where needed is a critically important health and safety function of a water utility. It is not an understatement, Homer Glen avers, to say that lives are in danger if the fire protection infrastructure is not properly maintained.

Homer Glen says that under 83 Ill. Adm. Code 600.240 the Company must establish a valve and hydrant inspection program. The regulation requires the Company to keep records of all inspections and repairs of valves and hydrants. Staff witness Johnson found that based on IAWC's records for Homer Glen and Orland Hills the Company does "not have an adequate valve inspection program and do[es] not meet the requirements of either Sections 600.140(c) or 600.240 or the Commission's Order in Docket 04-0651." ICC Staff Ex.1.0, at 35/882-885. When asked about his inspection of the value inspection records of IAW for the Homer Glen area, Mr. Johnson stated that the records were not filled out.

Homer Glen argues that an independent third-party investigation is needed because significant safety issues remain in the exclusive domain of IAWC when it has been proven that IAWC has not performed these safety-related inspections.

Homer Glen asserts that as with the Company's failure to inspect and to maintain critical valves, the failure of IAWC to inspect and to maintain fire hydrants is a violation of Commission regulations for which the Commission should assess a civil penalty. The Commission should order as part of a company-wide audit that IAWC provide a written compliance plan so that inspections and maintenance of fire hydrants is no longer ignored by the Company. The Commission further should order that a schedule of fire hydrant inspections, a report of the results of the inspections and any maintenance and flow tests be provided to each local fire department and municipality where IAWC provides water service.

3. Staff Position

Staff witness Johnson evaluated IAWC's compliance with 83 Ill. Adm. Code 600.140(c) and 600.240 (Staff Ex. 1.0, pp. 25-30). Mr. Johnson checked a small number of records in Cairo, Champaign, Homer Glen, and Orland Hills to see if the records for hydrants were kept, showing the date of installation, size, make and model (if known), location, number and history of maintenance as required by Rule 600.140(c). The record of the maintenance history for hydrants helps verify IAWC's compliance with 83 Ill. Adm. Code 600.240.

Staff Witnesses found that the Cairo service area records were available, the information was not easily accessible. The Cairo service area is inspecting its hydrants on an annual basis as required by Rule 600.240. The Staff Witnesses conclude that the Cairo service area is in compliance with Rules 600.140(c) and 600.240 (Staff Exhibit 1.0, p.28).

The Champaign service area appears to have the information required by Rule 600.140. The Champaign service area was also inspecting most of its hydrants on an annual basis but had not annually checked six (6) hydrants out of the thirty-seven (37) records inspected since 2000-2002. Rule 600.240 clearly states that hydrants should be inspected at least annually. Therefore, the Champaign service area was not complying with Rule 600.240.

Of the two Chicago Metro service areas municipalities, IAWC failed to inspect both Homer Glen and Orland Hills hydrants annually as required by Rule 600.240. In addition, the hydrant records for the Homer Glen service area did not meet the requirements of Rule 600.140(c) for record keeping (Staff Exhibit 1.0, pp. 28-29).

Despite a failure to comply in three of four municipalities, based upon a small unscientific survey, Staff Witnesses disagree with the proposal of AG and Homer Glen that the Commission oversee or conduct a full investigation of IAWC's hydrant testing and maintenance programs throughout Illinois (Staff Exhibit 1.0, p. 29). Of the four towns whose records were reviewed only Cairo appears to be in compliance with the requirements of Rules 600.140(c) and 600.240.

Staff says the Complainants have neither alleged nor provided evidence that there are hydrant problems throughout all IAWC service areas. AG and Homer Glen

witness, Mr. Rubin, alleged fire service problems but has only provided information in this regard for the Chicago Metro and Champaign service areas (AG/HG Exhibit 1.0, pp. 37-39). 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. The Staff Witnesses are not aware of any reports of fire service problems in the Cairo service area or IAWC's other service areas besides the Chicago Metro area and Champaign areas. Staff Witnesses believe that a state-wide investigation of IAWC's hydrants and fire-flows is not warranted (Staff Exhibit 1.0, pp. 28-29).

The Staff Witnesses recommend that the Commission order IAWC to complete hydrant testing and maintenance inspection for both its Chicago Metro Service area and Champaign service areas within one year of the final order in this case (Staff Exhibit 1.0, pp. 30-31 and Staff Ex. 3.0, pp. 1-2). IAWC should be required to file a report on e-Docket under these dockets within sixty (60) days of completing the inspection, as a late filed exhibit, detailing the inspection, identifying the individual hydrants inspected by number, maintenance performed, problems found, and any corrective action performed. The report should also include all information required under Section 600.140(c) (*i.e.*, date of installation, size, make and model (if known), location, number and history of maintenance where applicable).

Staff further recommends that a copy of the report should be provided to the Manager of the Water Department of the Commission. In the event that all existing hydrants cannot be inspected or any corrective action cannot be performed within one year from the date of the final order, the Commission should require IAWC to request, well in advance of the year deadline, an extension that would include written justification and a timeline for repairs to the Manager of the Water Department. The Manager of the Water Department would have the authority to accept or reject such an extension request. If IAWC needs longer than one year and receives written approval from the Manager of the Water Department of the Commission, then the Company should also be required to file a report on e-Docket under these dockets detailing the results of the corrective action taken during the extension period within thirty (30) days after the end of the extension.

Staff recommends that the Commission should order that hydrant inspection include fire-flow tests of the systems within Chicago Metro Service area and Champaign service areas. Because fire-flow issues had been raised in these Complaints, but the matter had not been specially mentioned in his original testimony, Staff witness Johnson in his rebuttal testimony clarified that the hydrant testing and maintenance inspection for both IAWC's Chicago Metro Service area and Champaign service areas should include fire flow tests (Staff Ex. 3.0, pp. 1-2).

IAWC accepted all of Staff's hydrant recommendations, including fire flow tests, in its rebuttal and supplemental rebuttal testimony (IAWC Ex. 4.0, pp. 2-3, IAWC Ex. 4.01, p. 4, and IAWC Ex. 6.0, pp. 4-5). IAWC has suggested that (1) where an ISO Public Fire Protection Survey has been done within two years of the Commission order in this case, that Survey will be accepted as the fire flow test for the service area examined in the Survey and (2) in all other service areas within the Chicago Metro Service area and the Champaign service area, IAWC will perform an ISO test of the fire-

flows, using said methodology in the selection of hydrants, performance of the fire flow test, and identification of hydrants to be tested. IAWC intends to do these additional fire-flow tests within the same one-year period as the hydrant testing and maintenance inspection. These suggestions are acceptable to the Staff Witnesses and should be incorporated into the Commission order (Hearing of November 1, 2006, Tr. 532-3).

According to Staff, the record of this case does not support a company-wide audit, because the evidence herein is limited to four service areas of IAWC, because (one of three service areas or four municipalities) 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).

Staff argues that further investigation of hydrant and valve recordkeeping and inspection is unnecessary, because of the improvements that IAWC has agreed to carry out (Staff Witnesses' Initial Brief, p. 33).

4. Commission Analysis and Conclusion

As Homer Glen and the AG have stated, public fire protection is one of the most important functions of a public water supply system. It is imperative that this service be operational and well maintained in all service areas. We are particularly concerned about reports in the record that inoperable hydrants impeded fire suppression efforts on two occasions.

The Commission is troubled by Staff's conclusions and recommendations on these issues. Staff examined a small sample of IAWC's hydrant records in four of the 120 communities that IAWC serves in the state. The record evidence is that three of the four service areas were found not to be in compliance with either record keeping or maintenance requirements. According to Staff, a 75% failure rate is not sufficient to trigger system-wide remedial action. While we find this conclusion troubling, we do agree with Staff that it is more important that the systems be brought into compliance than that an immediate investigation be commenced.

We order IAWC to complete hydrant testing, fire flow tests or the substitute ISO test described above and maintenance inspection for all of its Illinois service areas (not just the Chicago Metro and Champaign areas) within one year of the final order in this case. Staff's suggestions regarding fire flow testing are accepted and incorporated as directives in this Order. This requirement is consistent with Commission rules. IAWC shall also be required to file a report with the Commission with copies served on the parties to these dockets within sixty (60) days of completing the inspection, listing all required data and documenting remedial actions taken and those remaining to be taken with estimated completion dates.

Because the record in this case will be closed after the entry of this Order, we do not concur with Staff's suggestion that this report be made a late filed exhibit to a closed record. On the basis of the report to be filed, interested parties may petition the Commission, or the Commission, or our Staff may take further appropriate action that may include a proceeding to determine civil penalties for non-compliance.

D. Back Billing and Refunds related to Meter Replacement program

1. Homer Glen Position

Homer Glen asserts that IAWC's internal audit of customers that are eligible for refunds based on odometer meter changes should be subject to third-party oversight. Moreover, Homer Glen notes that IAWC did not provide any means for a customer to calculate, check or contest the amount of the refund. Indeed, Homer Glen claims that the refund notice, which was approved by Staff, did not even include information on how to contact the ICC in the case of a dispute.

Homer Glen contends that the Company's audit only covers those customers who had their meters changed since 2003. Second, Homer Glen argues that the criteria further restricted the audit to customers whose recorded usage was different for the inside and outside meter. Of those, IAWC audited only 474 accounts, of which if found that 335 were entitled to a credit. Homer Glen concluded from this that of the accounts IAWC self-selected and self-audited over 71% were entitled to credit and, therefore, a more detailed audit is necessary by an impartial, outside auditor.

Homer Glen also disputes the Company's claim that it stopped back billing customers where meter changes occurred in September 2005, based on a review by Homer Glen/AG witness Rubin of accounts where a meter change occurred between 2005 and 2006. He asserts that some of those back-bills are substantial and that the back-billing issue continues.

According to Homer Glen, IAWC is attempting to sweep the whole matter under the rug by stating that it has made refunds based on its calculations so there is no need to have an independent audit. Homer Glen claims that IAWC had Staff sign off on the letter sent with the refunds, which was done without notifying any parties to this proceeding that there were negotiations between IAW and Staff.

2. AG Position

The AG notes that consumer complaints about bill spikes and poor customer service nearly tripled during 2005, as the meter replacement program expanded. The Village of Homer Glen received complaints from 466 people and hundreds of customers in Chicago Metro received bills from August 2003 through September 2005 showing usage several times greater than any previous month, but without indicating that any portion of the bill was for prior service.

According to the AG, Commission rules require that all water service be furnished by metered measurement, 83 Ill, Adm. Code 600.260, and that customer bills provide certain basic information. Water bills must show the date and the reading of the meter at the beginning and the end of the period for which the bill is rendered, the due date of the bill, the volume of water used, the amount of the bill and a condensed statement of the principal rates. 83 Ill. Adm. Code 600.160(a). The rules allow a water and sanitary sewer utility to send consumers a bill for service beyond the period for which a bill is rendered, subject to certain limitations. Section 280.100, Unbilled Service, authorized utilities to bill customers for service not previously recorded or billed if the usage occurred within one year for residential consumers and the consumer is given certain information and options. This rule requires the utility to inform the

customer that the bill is for past service, and to give the customer the option of paying the increased amount over the period of time that the service was provided.

The AG asserts that IAWC did not comply with Commission rules when it did the back-billing associated with the meter exchanges in the Chicago Metro area. Further, the AG argues that IAWC did not inform consumers what time period the back-billing covered, did not offer to investigate the bill spike, failed to offer a significant number of customers the opportunity to pay the bill over the time period it accrued, insisted on payment while the bills were in dispute, and threatened shut off while bills were being investigated. Because of these alleged violations, the AG maintains that penalties may be determined under Section 4-203 of the PUA.

According to the AG, the Company eventually determined that the back-billing related to meter changes may have related to customer usage during a period of more than 12 months. In September, 2005, IAWC discontinued back-billing customers for the difference between the odometer meter and the inside meter readings and a year later, in October, 2006, it provided a credit to customers for back-billing related to the meter changes. According to IAWC, the Company reviewed over 10,000 Chicago Metro meter exchanges but found only 474 accounts that required review and 335 accounts were issued credits. AG witness Rubin, however, found 7,900 accounts that had a meter exchange in 2005 or 2006, and one bill at least 50% higher in the first six months of 2006 than in the same month of 2005. The AG asserts that an independent audit is necessary to ensure that all of the customers who were back-billed due to meter exchanges are appropriately credited. The AG argues that because IAWC found a 50% accuracy variance when it tested 1000 removed meters, one would expect significantly more than 335 of the 10,000 accounts with replaced meters to have been back-billed and, therefore, to require refunds or credits.

3. IAWC Position

IAWC explains that it acquired the water and wastewater facilities that make up its Chicago Metro District - an area that consists of portions of Cook, DuPage, Will, Kendall, Grundy, Kane and McHenry Counties - when IAWC acquired the assets of Citizens Utilities Company of Illinois ("Citizens") on January 15, 2002, pursuant to the Order of the Commission in Docket 00-0476. According to IAWC, many of the meters Citizens installed (prior to Citizens' acquisition by IAWC) employed "pulse" reading devices (known as odometer devices) that can under-register the amount of water being used by the customer. Odometer-style meters consist of a meter inside a customer's residence that sends a pulse to an odometer reading device outside the residence as water was used, allowing the outside odometer device to display the meter reading and therefore eliminating the need for a meter reader to enter a residence to read the meter. In some cases, however, the external odometer device did not function properly and would under-register the amount of water flowing through the meter. As a result, the Company avers that for some customers, actual usage as recorded on the inside meter was higher than the reading from the outside odometer meter device. This odometer device technology does not exist anywhere in IAWC's service territories other than in Chicago Metro.

In 2003, IAWC initiated its Meter Replacement Program to install Automatic Meter Reading systems (also known as radio-read systems) throughout the Chicago Metro District, including Homer Glen. According to IAWC, the radio read system sends actual meter readings from the inside meter via radio signals to the meter reader, so the system is accurate. At the time of the meter change out, IAWC's contractor reported the odometer reading and the actual level of water used by the customer as recorded on the inside meter. IAWC argues that Section 280.100 of the Commission's rules permits a utility to issue a bill for residential utility service rendered within the previous 12 months. IAWC explains that actual usage information was put into the billing system, which issued back bills to customers for the previously unbilled amount of their actual usage.

According to IAWC, however, in certain cases, the difference between the inside meter and under-registering odometer device may have related to customer usage for a period more than twelve months prior to the meter reading. IAWC asserts that to bill for such usage is inconsistent with the Company's billing guidelines and the applicable Commission rule. Therefore, IAWC maintains that as of September 2005, 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.

IAWC also conducted an audit of Chicago Metro Customers who may have received back bills following odometer meter exchanges and issued credits to all customers who received bills for unbilled service based on a meter discrepancy identified during a meter exchange, in order to ensure, IAWC argues, that there was no possibility that customers were back billed from more than 12 months. Customers received credits on or before October 1, 2006.

IAWC maintains that the results of its internal audit were submitted to Homer Glen and the AG with the Company's Direct Testimony on August 11, 2006. In response to Homer Glen's and the AG's call for an audit of the refund, the Company asserts that neither party has identified any instance where a customer's refund was incorrectly calculated or where a customer who should have received a credit did not.

4. Staff Position

Based on the commitments of the Company to stop back billing related to meter change outs and to issue credits where appropriate, Staff witness Howard testified that the Company's efforts to date seemed to be a reasonable approach to correct past problems, assuming that IAWC issued credits as promised and assuming that the internal audit conducted by the Company appropriately identifies customers entitled to a credit. In addition, Staff witness Howard recommended that IAWC provide a draft of any information to customers related to the refund, including the language that will identify the refund, to the Consumer Services Division Manager for review and comment prior to implementation, which has been done by IAWC.

Further, Staff recommended that the Commission direct the Company to not issue back bills in connection with meter exchanges in the Chicago Metro Service area until all exchanges involving odometer meters in the Chicago Metro Service area have been completed.

With respect to an independent audit of the refunds, Staff opines that, other than the Complainants' deep distrust of IAWC and its records, there does not appear to any evidence that the recent refund was miscalculated or misdirected by IAWC.

5. Homer Glen Reply

According to Homer Glen, the Company knew that in May 2003 it would be back-billing customers if it used inside meter reading numbers that differed from the outside meter numbers. Moreover, Homer Glen asserts that IAWC was not been forthright with customers and that all action taken by the Company was in response to complaints from Homer Glen.

In response to IAWC's assertion that no audit of its billing is necessary because the Company's computer system produces accurate bills, Homer Glen maintains that the problem lies in the data that is fed into the system to produce the bills. Homer Glen also notes that IAWC did not have procedures in place to limit back bills to 12 months for residential or 24 months for commercial as required by Illinois law.

Homer Glen contends that IAWC's self-audit of which customers should receive a refund is flawed and limited in scope. Homer Glen notes that IAWC found only 335 accounts that should receive a credit for a total proposed refund of $14,400. Homer Glen maintains that a full, independent audit is required so that the Company's numbers can be corrected and verified.

In response to Staff's opposition to an audit verifying the amount of the refunds, Homer Glen claims that this opposition is not surprising because Staff met privately with the Company to approve the refunds without attempting to verify the accuracy of the amounts.

6. AG Reply

The AG notes that IAWC admitted when it found that the odometer meters had under-registered usage, it did not know what portion of that usage was for what period of time. As a result, prior to September, 2005, when IAWC stopped back-billing for odometer meter replacements, IAWC violated the 12 month limitation on back-billing. Further, the back-billing rule requires that consumers be given the option to pay back the previously unbilled amounts at least over the same period they accrued. According to the AG, consumers were not given this option when they received the back-bills and were not informed of the reasons for the bill spikes.

The AG agrees that it was appropriate to refund the amount back-billed, but does not believe that it is reasonable to expect the public or the Commission to accept IAWC's self-audit. According to the AG, the many steps in the self-audit that IAWC describes in its Initial Brief can only be assessed by an independent party with full access to the same data used by IAWC.

Moreover, the AG asserts that the Commission's order should be clear that IAWC may not charge consumers past, unbilled usage when odometer meters are replaced. The AG maintains that this is appropriate to confirm IAWC's pledge to discontinue back-billing and because IAWC has admitted that it cannot determine the period over which the unbilled usage accrued.

7. IAWC Reply

IAWC reiterates that it 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. The Company states that all such customers received appropriate credits, with interest, on or before October 1, 2006. According to IAWC, 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.

Moreover, IAWC asserts that 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. Thus, IAWC contends that Homer Glen has not demonstrated that back billing is an ongoing problem.

With respect to the AG's argument that the Company has violate Section 280.100(d), which requires that customers be offered payment plans, IAWC points out that the AG has not shown that this section applies. According to IAWC, this section only applies in situations where the issued bills were both past due and 50% above normal, which the AG has not shown was the case here.

The Company also asserts that the AG and Homer Glen have not shown that it has violated Section 280.100 which permits a utility to issue a bill for residential utility service rendered within the previous twelve months by not offering any direct evidence of any residential customer who was in fact billed for usage extending more than 12 months. Moreover, IAWC asserts that it has addressed any 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.

In response to the AG argument that the 50% accuracy variance found by IAWC in a random sample of removed meters suggests that more than 335 of the 10,000 accounts review would have been back billed, the Company notes that 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.

With respect to the request for an audit of the refunds issued for back billing related to the meter replacement program, the Company asserts that neither the AG nor Homer Glen has identified any errors in the back bill audit. Moreover, the Company notes that Staff witness Howard testified that IAWC's efforts to correct back billing through the audit were a reasonable approach to correct past problems.

Homer Glen also argues that customers were not given an opportunity to contest the back bill audit, but the Company notes that the letter issued to customers with the back bill credit provided the phone number for the Customer Service Center and the phone number and e-mail of IAWC's manager of the Chicago Metro District, so that customers could contact the Company with any concerns.

8. Staff Reply

In response to Homer Glen's claims regarding Staff's involvement with the cover letter to the refunds, Staff asserts that the claims are contrary to the record evidence. Staff notes that in IAWC's initial testimony, the Company indicated that it would be refunding the back-bills related to the odometer style meter replacements. Staff recommended, in responsive testimony, that IAWC provide a draft of any information to be sent to customers to the Commission's Consumer Services Division staff for review and comment. According to Staff, reviewing information such as that sent by IAWC with the refunds is a routine regulatory function of the Commission Staff. Homer Glen claims that this review was undisclosed until the filing of an *ex parte* report on September 7 and 8, 2006, but Staff points out that its testimony with the recommendation that Staff review the information was filed on August 21, 2006.

Moreover, Staff asserts that Homer Glen claims that Staff approved the amount of the refund, however, according to Staff, the record is clear that Staff's review was limited only to review and comment on the language of the template of the rend cover letter. Staff argues that its regulatory function of reviewing and commenting on the template of the refund cover letter is, at most, tangential to the issues in this cause.

Staff notes Homer Glen's request for an independent audit of the refunds is not based on any specific concerns with the refunds or with the Company's identification of the customers receiving refunds. Although Homer Glen claims the Company has made inconsistent statements in explaining the back-billing, Staff argues that the Company's statements have merely suggested multiple causes. Staff submits that the burden is on Homer Glen, as the Complainant in this matter, to show that the refunds are insufficient or that too few customers were selected for the refund. Staff maintains that Homer Glen has not made this showing.

Staff recommends that no independent audit be ordered, but that if the Commission finds that the refunding should be further investigated, Staff makes the alternative proposal to either provide the information to Staff witnesses for review or 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.

9. Commission Analysis and Conclusion

IAWC has voluntarily refunded customers, with interest, for back-billing based on the meter exchange program. The Commission finds this to be appropriate based on evidence that the Company cannot verify the time period for which the back-billing occurred and could possibly be beyond the 12 month period (or 24 months for commercial accounts) allowed. Moreover, we agree with the AG that our Order should be clear that while the Company has voluntarily agreed to stop back-billing in these instances, the Company is hereby directed to not back-bill when odometer meters are replaced, based on its inability to identify the time-frame of the back-billing.

We will not require an audit at this time. The parties were provided the results of the Company's audit, yet point to no specific problems. We agree with Staff that if a customer files an informal or formal complaint, the issue can be addressed at that time.

As Staff notes, IAWC's efforts to correct back billing through the audit were a reasonable approach to correct past problems.

With respect to Homer Glen's unsupported claims that Commission Staff inappropriately reviewed and approved the refunds, we find no support in the record. Staff was merely fulfilling its regulatory duties and its intent to do so was clearly outlined in pre-filed testimony.

E. Other Back Billing Concerns - Consecutive Zero Usage Bills & Consecutive Estimated Bills

1. Homer Glen Position

According to Homer Glen, the Company's back-billing problems are not limited to the meter exchange program. Homer Glen asserts that zero consumption bills should be tracked and asserts that there are very limited circumstances under which a customer would really use no water for an entire month. Moreover, the problem for customers is that the customer has most likely actually used water and will later receive a large make up bill from the Company. Also, Homer Glen/AG witness Rubin testified that zero consecutive bills affect all customers in that IAWC's water is purchased from another utility and that if there is water that is not being properly metered then all other customers' rates will increase in order to cover the cost of that water.

Homer Glen notes that the Company has a written policy dealing with zero consumption billing that is consistent with Mr. Rubin's recommendations that zero consumption bill be tracked, but that IAWC is not following it.

Also, Homer Glen is concerned that estimated bills for Homer Glen are excessive in number and prolonged in time. Homer Glen maintains that while IAWC's overall rate of estimated bills statewide does not appear to be out of line with the national average, a number of Homer Glen residents appear to have been subjected to repeated estimated bills.

Homer Glen argues that evidence regarding IAWC's failure to read radio-meter routes may indicate that IAWC is inadequately staffed to perform meter reading. As with zero consumption bills, Homer Glen maintains that IAWC should be ordered to track estimated bills to determine why they are occurring and the frequency of such estimation. Further, Homer Glen recommends that IAWC should be required, as part of a Company wide audit, to present a written plan for it to come into compliance with the Commission's rule on estimated billing.

Homer Glen asserts that IAWC should be assessed a civil penalty for its failure to comply with the Commission's rules for estimated billing.

2. AG Position

The AG asserts that IAWC's back-billing problem is not limited to only the meter exchange problem. The AG notes that PUA is based on the premise that customers receive bills based on their actual, measured usage. Further, the AG contends that all public utilities shall make an actual meter reading at least every second billing period, but recognizes that the Commission's rules allow situations were estimated bills are acceptable.

The AG asserts that the Company's tariff provision that states it may issue estimate bills if it cannot read meters for any reason contradicts Section 8-303 of the PUA as well as Commission rules. The AG maintains that it has shown that IAWC has violated Rules 280.80, 280.100 and 600.260.

AG witness Rubin found that in one month almost 30% of bills in Illinois were estimates, while in January, 2005 and January, 2006, 16% and 13% of bills were estimated, respectively. Further, Mr. Rubin's review of IAWC's billing records showed that more than 300 customers in the Homer Glen area received three or more consecutive estimated bills.

The AG notes that the Company asserts that it has reduced the number of estimated bills considerably through the installation of remote read meters, i.e. to 2%. AG witness Rubin testified that a tracking system for those accounts that still have repeated estimated bills will help the Company flag problem meters, determine whether there is a systemic problem, and remedy the problem identified.

Moreover, AG witness Rubin found several instances of consecutive zero usage bills, which can also lead to bill spikes. Mr. Rubin stated that an account with repeated zero usage bills should trigger an investigation by the utility, which is consistent with IAWC's procedures. According to the AG, if those procedures were followed, the risks of back-billing would be reduced because metering issues would become apparent upon investigation of whether the premises were occupied or an actual read was taken at the meter.

Based on the testimony of IAWC witnesses, the AG asserts that the Company's billing system could be modified to track consecutive zero usage bills, repeat estimated bills, and bills 50% or more than the prior month of the same month in the prior year. Moreover, the AG recommends that the Company designate personnel to be responsible for following up on the identified accounts. The AG recommends that the Company be required to implements these recommendations within 60 days from the date of the Commission's Order.

3. IAWC Position

According to IAWC, much of Mr. Rubin's analysis regarding consecutive estimates is based on data from Homer Glen. The Company asserts, however, that any concerns about estimated read in Homer Glen are being addressed by the Company's estimated bill review procedures and the installation of radio read meters. IAWC argues that Mr. Rubin has not otherwise shown that there is a Company-wide concern with estimated bills.

IAWC notes that Mr. Rubin conceded that the overall level of estimates issued by IAWC, which he calculated at 7%, was not unreasonable. The Company points out that Chicago Metro estimates dropped below 4% in January 2006 and below 2% in March 2006, and have been approximately 2% since that time.

Moreover, the Company notes that its tariff and the Commission's rules allow for estimated read in proper circumstances. IAWC argues that Mr. Rubin has not provided evidence that the Company has at any time improperly issued estimated bills. Further, Mr. Rubin's alleged examples of staffing problems were isolated incidents.

The Company asserts that it has procedures in place to track and investigate estimated bills. As a result, IAWC contends that if a customer account experiences multiple consecutive estimates, it has procedures for conducting a review and informing the customer of any back billing.

IAWC maintains that its number of estimated bills are decreasing and that as the odometer-style devices are replaced by radio-read meter reading devices, the number of estimated bills will continue to decrease.

With respect to zero consumption bills, IAWC witness Ruckman opined that it is not uncommon for a residence to have a zero usage bill. For example, many people leave their homes on a seasonal basis, homes for sale may still have an active account with no usage, or landlords may request that service remain on between renters. Further, Company witnesses explained that the Company's system generates a report that identifies consecutive zero usages, which is then verified by district personnel. According to IAWC, Mr. Rubin acknowledged that the Company has these procedures in place and failed to identify any instance where they were not being followed.

The Company states that in response to Mr. Rubin's concerns, it has sent letters to district managers to emphasize the review and investigation of consecutive zero bills on a going forward basis. Also, in all service areas when zero consumption is shown for three or more billing periods, IAWC reviews that account and, if required, takes actions. Accordingly, the Company asserts that there is no outstanding concerns with zero use bills that warrant further audit or investigation. Moreover, IAWC notes that there are no Commission rules regarding consecutive zero bills and that its procedures are adequate.

4. Commission Analysis and Conclusion

The Commission agrees that zero consecutive bills should be tracked, consistent with the Company's policy. Without a Commission rule and no evidence of a particular customer being harmed, the Commission can make no further demands on the Company.

Without specific examples of improper estimates, the Commission cannot find this rule to be violated, because estimates are allowed in certain circumstances. Moreover, estimated bill problems appear to have been greatly alleviated with the installation of the Automatic Meter Reading devices. The need for further action has not been shown.

Also, Homer Glen's claims regarding other, unexplained bill spikes are unsupported. We agree with Staff that many of Homer Glen's examples are not unprecedented and reflect actual usage resulting from, among other things, the 2005 drought, leaks, and newly installed irrigation systems. No need has been shown for a company-wide billing audit.

F. Drought Issues

1. AG Position

The AG asserts that notwithstanding the Company's claim that drought conditions caused the high bills experienced in 2005, IAWC did not distribute any water

conservation or drought alert information in 2005. Although there is no Commission rule specifically requiring IAWC to notify consumers of water restrictions, the AG notes that IAWC's tariff contains summer water restrictions that should have been communicated to consumers. The AG recommends that the Commission order IAWC to notify consumers each month from May 15 through September 15 of all water restrictions and further to notify consumers of the effect of drought conditions should they arise in the future.

The AG notes that in 2006 the Company informed its customers about water restrictions to conserve Lake Michigan water, but that in 2005 when Illinois faced drought condition, consumers were not informed of water restrictions despite the existence of such restrictions in IAWC's tariffs and the need to conserve Lake Michigan water. According to the AG, IAWC's failure to communicate water restrictions to consumers in a reliable and consistent manner was a violation of its obligation under its tariff to conserve Lake Michigan water and cost consumers thousands of dollars.

2. IAWC Position

According to IAWC, much of Illinois, and particularly southwest suburban Chicago, which includes Homer Glen, experienced a severe drought in 2005. IAWC asserts that the drought caused an increase in lake Michigan water usage in Chicago Metro and Homer Glen for lawn watering and other drought-related uses.

With regard to notice of water use restrictions required by the Illinois Department of Natural Resources, IAWC states that it communicated water conservation guidelines to customers in various ways throughout the summer of 2006 and that it will continue to provide this information in the future.

The Company asserts that while it did not distribute the information on water restrictions in its filed tariff, it did provided a letter to customers describing the drought, its impact on usage and recommendations for reducing water use.

3. Staff Position

Staff points out that IAWC has an existing Commission-approved tariff which restricts water usage from May 15 through September 15 for any customer supplied with Lake Michigan water. Staff notes that this tariff was in effect during 2005 and applies to customers in Homer Glen and a majority of Chicago Metro customers, but that customers were not notified of these restrictions. Staff states that IAWC has agreed to notify of customers of water restrictions through an initial mailing prior to the water restriction period and through reminders to customers of water restrictions within the customer bills during the water restriction period. This water restriction notification was implemented for 2006.

Staff recommends that the Commission order IAWC to notify its customers of any applicable water restrictions annually. According to Staff, the Company has agreed to continue these annual notifications.

In response to Homer Glen's examples of bill spikes/high bills in its Initial Brief, Staff notes that there was a severe drought throughout Illinois in 2005. Although Staff witnesses that that they did not investigate every high bill/bill spike claim raised in this case, they note that in some of the cases submitted by Homer Glen, a high usage

similar to the summer of 2005 had occurred in the accounts previously. Thus, Staff maintains that some of the bill spikes are not unprecedented.

4. Commission Analysis and Conclusion

We agree with Staff that the Company should notify customers annually of any water restrictions. We note that the Company has agreed to these annual notifications.

G. Information Booklet - Rule 280.200

1. Homer Glen Position

According to Homer Glen, in its answer to the Complaint and in the testimony it filed, IAWC admitted that it failed to provide a customer information booklet to residential customers. Homer Glen asserts that civil penalties should be assessed for this violation of the Act.

2. AG Position

The AG states that Rule 280.200 requires that "[a] customer information booklet which contains a utility's credit and collection practices shall be provided by each utility to all applicants for service and shall be available to customers at all business offices." The AG notes that IAWC admits that it has not provided a customer information booklet to applicants for service and this it does not currently have such a booklet. The AG maintains that that the Commission should set a date certain for the development and distribution of this information.

3. IAWC Position

IAWC asserts that it provides information to customers regarding its credit and collection practices in its Rules, Regulations and Conditions of Service, which are available for public inspection at its business offices and at the Commission. In addition, the Company maintains that information regarding payment assistance and payment plans is provided through IAWC's website, which also provides "Regulatory Information" that includes a link to the Commission's website. Moreover, customers are provided with information on collection practices and late payments in the "Messages from IAWC" section of each bill, which also refers to its website. Payment plan information is also provided in the letters issued to customers receiving back bills. IAWC states, however, that in order to further improve the provision of relevant information to customers, it is developing a customer information booklet containing the information described in Rule 280.200, which will be provided to all its customers and will also include the customer "Bill of Rights" discussed in Section 8-306 of the Act.

4. Staff Position

According to Staff, 83 Ill. Adm. Code 280.200 requires the Company to provide a customer information booklet containing the utility's credit and collection practices to all applicants for service and to make such a booklet available to customers at all business offices. Staff witness Howard testified that IAWC was not complaint with Rule 280.200 and recommended that the Company correct this violation. Ms. Howard also recommended that customer information booklet also include the customers' rights information that is required in recent legislation. Staff recommended that a draft of its booklet be provided to the Manager of the Consumer Services Division for review and

comment prior to finalizing the booklet for distribution to its customers and applicants for service.

5. Commission Analysis and Conclusion

The evidence is clear that the Company is in violation of this rule. Within 30 days of the date of this Order, the Company should provide a draft of its booklet to the Manager of the Consumer Services Division for review and comment prior to finalizing the booklet for distribution to its customers. The finalized booklet should be distributed to all IAWC customers within 60 days of this Order. Failure to do so will subject the Company to civil penalties.

H. Customer Service

1. AG Position

The AG cites Section 5/8-303 of the Act which states in part:

> Where, within 30 days of receipt of a utility bill, a customer alleges that the level of consumption reflected in his utility bill is unreasonably high, *it shall be the responsibility of the public utility furnishing ... water to that customer to investigate the allegation*.

The Commission's rules incorporate this requirement in 83 Ill. Adm. Code 280.100. Consumers of public utilities are entitled to have their complaints about usage spikes taken seriously and properly investigated.

When IAWC customers called about bill spikes, IAWC's explanation was that due to the drought in 2005, their usage was higher than normal, and therefore their bills were higher. IAWC relied on this explanation to the extent that IAWC took photographs of customers' green lawns to prove its point, evidently believing that in 2005 the grass should have been brown. The Company offered customers water saving tips, but otherwise failed to investigate or inform customers about the meter exchanges that were happening in their community. The customer service process in place for IAWC and all other American Water Works Company customers helps explain why customers' specific complaints were not investigated.

As of February of 2005, American Water, IAWC's parent, completed its transition from state-based customer service to a national system, with calls answered in either Alton, Illinois or Pensacola, Florida. These two call centers answer calls from 19 different states. Illinois represents only 9% of American Water's customers and generates only about 9% of the calls to customer service. (Tr, at 446.)

Calls are received by "call handlers" who are trained to respond to questions, but who lack the authority to make bill adjustments or to investigate problems. They take the customer's information and forward the problem to a member of the Account Resolution Team ("ART"). (Tr. 459-460, 467.) The customer is not given contact information for the ART personnel, but must await a return call. (Tr. 449-450; 467-471). Face-to-face meetings with consumers are rare, and not part of the customer service procedure.

The AG notes that Rule 280.160 provides a comprehensive process for addressing consumer complaints and questions. It states that a utility:

> shall assign to one or more of its personnel in each of its offices where it transacts business with the public, the duty of hearing, in person, any dispute by an applicant, customer or user. Such personnel shall consider the complainant's allegations and shall explain the complainant's account and utility's contention in connection therewith. Such personnel shall be authorized to act on behalf of the utility in resolving the complaint and shall be available during all business hours for the duty hereinbefore described." 83 Ill. Adm. Code 280.160(a).

Further, the rule provides that if the customer expresses "non-acceptance of the decision," the person reviewing the customer's complaint must inform him/her of the right to have a supervisor consider the problem. If the customer does not accept the resolution offered by the supervisor, the supervisor is to inform the customer of "his/her right to have the problem reviewed by the Commission, and shall furnish him/her with the telephone number and address of the Consumer Assistance Section of the Illinois Commerce Commission." Id. at 280.160(b).

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

The AG cites at least four instances when the evidence shows that collection efforts continued even when customers had called to dispute a bill and the matter was as yet unresolved. (See, HG Ex. 1.03, Bates No. HG 0481. HG Ex. 1.03, Bates No. HG 0555. HG Ex. 2.0 at 5 and HG Ex. 4.0 at 4.

The AG points out that Commission rules are intended to protect consumers from coercion while their dispute with a public utility is pending by prohibiting disconnection while the complaint is pending. Consumers are obligated to pay the "undisputed portion of the bill or an amount equal to last year's bill at the location normalized for weather, whichever is greater" and to enter into "bona fide discussions with the utility to settle the dispute with dispatch." 83 Ill. Adm. Code 280.160(c).

The AG argues that the Commission should specify that IAWC not disconnect or threaten disconnection, nor demand payment of disputed amounts, while a dispute is being investigated. If IAWC's investigation involves giving the consumer information to ART personnel, and the consumer is removed from the process, IAWC should be directed to take no collection or disconnection action while a matter is pending with ART, but in any event, for no fewer than 30 days or after the consumer is informed of the results of the ART investigation and given contact information for the ICC. The AG points out that the consumer has no way of knowing the status of an ART investigation. Therefore IAWC should be ordered to tell consumers that they are protected for 30 days or so long as the ART process is pending, and that they will receive notice of resolution. The Commission should further order that in the notice to consumers of the ART

resolution, consumers should also be given information about filing a complaint at the ICC.

In response, IAWC argues that the accounts of customers' contacts with its customer service representatives should be disregarded because its internal customer service surveys show that consumers are satisfied with IAWC's service. The AG contends that IAWC ignores the fact that its customer service surveys cover a national system of which Illinois is only 9% and does not directly reflect the experience of Illinois ratepayers.

The AG says that the direct evidence of customer complaints in Illinois is: 1) that their complaints were not investigated as Rule 280.160 requires; 2), that their efforts to get answers from the Call Handlers who answered their calls were fruitless; and, 3) that they were subject to collection and shut-off efforts before their concerns were addressed. The AG argues that IAWC's later efforts to establish a Chicago Metro desk to address these problems was precipitated by violations of Rule 280.160. The AG states it has proved these violations of Commission Regulations by a preponderance of the evidence

2. Homer Glen Position

Homer Glen alleged in its Complaint that IAWC violated 83 Ill. Adm. Code Sec. 280.160 in that it failed to assign a person to hear billing disputes in person in Homer Glen. The ALJs granted IAWC's motion to strike after briefing by both sides because the pre-filed testimony did not present evidence on this issue. Homer Glen's arguments attempting to re-litigate this issue now are inappropriate.

Homer Glen notes that billing disputes are referred to the company's Account Resolution Team (ART) for resolution. The procedure does not include a hearing, however. In 10 days, the customer will either receive a letter or a telephone call from ART stating the company's response to the complaint. A customer disputing his bill does not have an opportunity to have a face-to-face meeting with anyone. Homer Glen notes that whether the customer gets to discuss the problem with a customer representative is totally up to the discretion of the IAWC representative. Contrary to 83 Ill. Adm. Code Sec. 280.160 the Company does not inform the customer of their right to a hearing despite the Commission rule requiring IAWC to inform customers of their rights. Homer Glen argues that this policy merits a civil penalty.

Homer Glen argues that IAWC harassed and attempted to intimidate customers who complained. They contend that these methods included threats to immediately terminate service, calling customers at their work numbers, calling customers on their cell phones and sending out photographers to take pictures of the customer's home and vehicles and then posting some of those pictures on the Internet via e-docket.

Homer Glen evidence established that Deborah Finnegan and her husband received a bill from IAWC for 64,000 gallons at a cost of $532 for the month of July 2005. Ms. Finnegan contested the alleged usage number and requested that IAW check for leaks. She also requested an explanation as to how the supply charge was calculated. The Finnegan's paid a portion of the bill but not the supply charge and told the Company they were disputing the amount. On September 15 the Finnegan's filed a

complaint with the ICC. On September 19, 2005 the Finnegan's received a shut off notice from IAW demanding that the bill be paid in full, HG Ex. 2.0 at 3/59-62, which they did.

On January 19, 2006 IAW left a message on the Finnegan's answering machine and a red cut off tag was put on the Finnegan's door stating that service would be cut off because they denied access to IAW to replace their meter. In a follow up conversation an IAWC employee threatened to cut off her water without notice. Finally on March 11, 2006, the meter was changed. HG Ex. 2.0 at 5/109-110. On March 30, 2006, they received another "Final Important Notice" stating they had five days before the water would be shut off because the company needed access to the just replaced meter.

At least one other customer, Mrs. Litoborski reported that an IAWC representative called repeatedly threatening to cut off the water unless the bill in dispute was paid in full immediately. The company also took pictures of the homes of complaining customers and filed them on e-docket allegedly to intimidate the customer. Homer Glen argues that the Commission should condemn IAW for these invasions of privacy of its customers and penalize it for these violations. It also urges the Commission to audit IAWC's customer service operation to ensure that the Company's customers are treated properly and that the Commission's rules are followed.

3. Staff Position

Staff found the records of the examined service areas contained all information required by Rule 600.170(b). Additionally, the quarterly reports which IAWC provided to the Staff Witnesses had all pertinent information required under Rule 600.170(c) (Staff Exhibit 1.0, pp. 38-39). Thus, Staff Witnesses could find no violations of Rule 600.170 by IAWC. From its records, Staff concluded IAWC appears to have investigated the complaints made by its customers. Staff did not comment on the alleged threats and intimidation by IAWC of complaining customers.

4. IAWC Position

IAWC alleges that its customer service, as provided through the Customer Service Center ("CSC"), is extremely good. The CSC is a group within American Water Works Service Company, Inc. ("Service Company") that provides customer contact and billing services in support of all of American Water's regulated subsidiaries, including IAWC and its customers. (IAWC Ex. 2.0, p. 3.) Operating out of service centers in Alton, Illinois, and in Pensacola, Florida, the CSC responds to virtually all customer inquiries nationwide from American Water's regulated operations in 19 states, including customers located in Illinois who are served by IAWC. (*Id.*, p. 3.) Customer Service Representatives ("CSR"s) are available to customers 24 hours per day, seven days per week, 365 days per year. (*Id.*)

IAWC presented evidence that CSC employees receive comprehensive training in customer service procedures and processes. (IAWC Ex. 2.0, p. 5.) State-specific information is readily accessible to agents via the on-line Service Order and Billing and Collections resources, as well as the Call Handling Process Manual. CSC employees also receive substantial training in state-specific service requirements. (Tr. 445-46.) In

addition, CSC employees receive training on customer relations, courtesy, and handling upset or angry callers. (IAWC Ex. 2.0, p. 5.) Call quality monitoring is conducted by specialized quality assurance specialists, and the CSC monitors calls to ensure that agents resolve customers' issues efficiently and courteously. (*Id.*, p. 6.)

IAWC asserts that neither the AG nor Homer Glen have disputed the overall quality of the service provided by CSC, as measured in the service studies and surveys above, and have offered no basis to assert that there is any weakness with CSC operations or training. IAWC argues that even the documentation of customer complaints proffered by Homer Glen acknowledges that the CSRs were courteous and helpful. It notes that Staff Witness Johnson's review of IAWC's complaint records found that they were kept in accordance with the Commission's rules. (ICC Staff Ex. 1.0, pp. 38-39.)

Two types of inquiries typically go beyond the CSC. The first type includes records of customer complaints that cannot be resolved by a CSR. They are referred to the Account Resolution Team ("ART"), which follows up to resolve the issue. (*Id.*) The second type includes records of complaints that went directly to a manager or executive within IAWC and not to the CSC. (*Id.*) A specialized Executive Resolution Team is responsible for the follow-up and resolution of these complaints. (*Id.*) IAWC also maintains records of informal complaints made to the Commission, although these complaints were not "made to a utility" as referenced in 83 Ill. Admin. Code Section 600.170(a). (*Id.*) Such records are maintained separately by IAWC and not by the CSC. (*Id.*) However, American Water is working to develop a database that will include records of informal complaints to the Commission so that such records can be accessed along with complaint information maintained by the CSC. (*Id.*)

IAWC says the fact that every inquiry by an IAWC customer to the CSC is not recorded as a complaint is not indicative of any system-wide concern with complaint handling by the CSC.

IAWC's response to the Homer Glen Customer Witnesses, Ms. Finnegan, Ms. Litoborksi, and Mr. Jilet, is that the concerns of the Homer Glen Customer Witnesses have been investigated and resolved, and these customers have no outstanding balances or disputes with IAWC. (IAWC Ex. 1.0, pp. 57-66.) IAWC has not heard from Ms. Finnegan since March 31, 2006, and her bills have been based on radio reads for the past several months. (*Id*, p. 61.) Mr. Jilet's concerns were addressed through the bill credits that were issued. (*Id*, p. 63.) Ms. Litoborski was found to have a duplicate serial number on her meter and the problem was corrected by changing the meter serial number on the meter installed at Ms. Litoborski's residence. (*Id.*, p. 65.) Ms. Litoborski is now receiving regular monthly bills based on actual radio reads. (*Id.*)

In addition, according to IAWC, any specific customer service concerns raised by the Homer Glen Customer Witnesses were also investigated and addressed. (IAWC Ex. 2.0, pp. 15-17.) For example, IAWC reviewed the records pertaining to Ms. Litoborski's account and noted numerous contacts recorded regarding meter change out, billing and collections. (*Id.*, p. 16.) Contrary to Ms. Litoborksi's assertion that the CSC had no record of her calls (HG Ex. 4.0, pp. 2-3), the CSC records support the conclusion that there were in fact records of her previous calls available. (IAWC Ex.

2.0, p. 16.) Moreover, Company records indicate that, on June 7, 2006, a CSC representative called Ms. Litoborski to explain how her account had been corrected, and later Ms. Litoborski also received a call from another CSC employee who apologized for all of the issues Ms. Litoborski experienced in getting the unusual situation of duplicate serial numbers resolved. (*Id.*) Therefore, IAWC's records related to these accounts demonstrate that IAWC worked diligently and in good faith to resolve these customers' concerns. (IAWC Ex. 1.0, p. 66.)

Mr. Rubin asserted (AG/HG Ex. 2.0, p. 14) that he was aware of additional complaints regarding IAWC's billing from outside Chicago Metro. IAWC argued that the allegations of the two individual complaints Mr. Rubin cited (AG/HG Ex. 2.3) did not reflect any customer service concerns. (IAWC Ex. 4.0, p. 12.) Instead, IAWC argued the resolution of the concerns regarding these accounts showed that IAWC's customer service operates effectively.

5. Commission Analysis and Conclusion

The evidence shows that IAWC has two call centers nationally that monitor all incoming calls including those from Illinois. Those centers, known collectively as the CSC, keep records of all customer inquiries and complaints that comport with Commission regulations about required records. The calls are received by "call handlers" who are trained to respond to questions, but who lack the authority to make bill adjustments or to investigate problems. They take the customer's information and forward the problem to a member of the "Account Resolution Team" or ART.

The customer is not given contact information for the ART personnel, but must await a return call or a letter. Under the current system, whether the customer gets to discuss the problem with a customer representative authorized to resolve it is totally up to the discretion of the IAWC representative.

Commission rules require that utilities have personnel on duty authorized to act on behalf of the utility in resolving the complaint and available during all business hours. 83 Ill. Adm. Code 280.160(a).

Further, the rule provides that if the customer expresses "non-acceptance of the decision," the person reviewing the customer's complaint must inform him/her of the right to have a supervisor consider the problem. If the customer does not accept the resolution offered by the supervisor, the supervisor is to inform the customer of "his/her right to have the problem reviewed by the Commission, and shall furnish him/her with the telephone number and address of the Consumer Assistance Section of the Illinois Commerce Commission." 83 Ill. Adm. Code 280.160(b). The record indicates that ART personnel have not informed complaining customers of their right to contact the Commission.

The Commission finds that IAWC's present procedures are inadequate. We direct IAWC to modify its procedures so that all written communications from ART responsive to customer complainants will provide a toll free telephone number that will connect the customer with supervisory personnel authorized to act on behalf of the company to resolve the complaint. Any such written communication will also advise the customer of his/her right to have the problem reviewed by the Commission, and shall

furnish him/her with the telephone number and address of the Consumer Assistance Section of the Commission. If the communication from ART is by telephone, the person making the call shall have authorization to resolve the complaint. IAWC is ordered to tell consumers that they are protected for 30 days or so long as the ART process is pending, and that they will receive notice of resolution. In the event that the complaint is not resolved to the customer's satisfaction, the caller shall also provide the required information about the right to contact the Commission. IAWC is directed to report back to the Commission within 60 days of the effective date of this Order on its implementation of these directives.

The record indicates that in at least one instance, an IAWC customer received a threat of a service cutoff after a complaint was filed with the Commission. This is a clear violation of Commission rules. In addition to this there have been several other instances where it is alleged that IAWC has tried to intimidate those persons disputing a bill through the internal complaint process before the dispute was resolved. These are also violations. The subsequent resolution of the issues involved (after the filing of these cases) is irrelevant. Threatening a service termination while a dispute is pending is inappropriate behavior. Should this or similar conduct reoccur, Commission Staff is directed to take appropriate action including the initiation of a proceeding to seek civil penalties from IAWC.

I. Incomplete Bill Information

1. AG Position

The AG asserts that the Commission's rules require that bills sent to water consumers show the beginning and end of the billing period, the volume of water used, the amount of the bill and a condensed statement of the principal rates. The AG argues that the Commission should require the Company to include this information on all bills, including actual bills following estimated bills and consecutive zero usage bills.

Also, the AG claims that Staff witness Johnson testified that the IAWC bills in the Chicago Metro area failed to comply with the Commission rule that principal rates be displayed on the bill, i.e. the purchased water supply charge. The AG notes that the new bill format is already being worked on, but argues that the Company should be ordered to show evidence of compliance with these rules going forward.

Additionally, the AG contends that bill confusion is caused by the use of historical district names, such as Chicasaw and Fernway. The AG states that the purchased water charges should be consistently named so that there are as few disparate labels as possible and the source of the water is described.

2. IAWC Position

Although the Company asserts that its bills are in accord with the Commission's requirements, IAWC intends to change the description of the Supply Charges and will show the base volumetric rate for the Supply Charge on its bills. 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. IAWC states that the revised bill format will be submitted to the Commission for approval.

Also, the Company has made improvements to its billing procedures to help identify bill spikes, consecutive zero bills and back billing information.

3. Staff Initial Brief

Staff witness Johnson found that the Chicago Metro area is the only IAWC service area with a purchased water surcharge, which is based upon the purchase of Lake Michigan water. Staff states that the Company's bills for this area have a separate line item for the variable purchased water supply charges with a total bill, but no indication of the purchased water supply charge per thousand gallons.

Mr. Johnson testified that traditionally with water public utilities principal rates referred to base charges (customer charge and usage charge). Because the purchased water supply charge is similar to a usage charge and represents a high percentage of the bill received by the affected customers, Staff asserts that the rate for IAWC's purchased water charges should now be deemed a principal rate. Staff argues, however, that because there has been no previous Commission ruling concerning the presentation of the Lake Michigan purchased water charges on consumer bills, the Company is not in violation of Rule 600.160. Staff also avers that the rule does not provide a definition of what constitutes a principal rate.

In order for customers to better understand the charges that apply and also to benefit the Company by eliminating possible billing inquiries, Staff recommends that the Commission order IAWC to publish the fixed and variable purchased water and purchased sewage treatment charges, along with gallons used in the calculation on its customers' bills.

Staff witness Howard pointed out that recent legislation (P.A. 94-0950) requires water and sewer utilities to disclose on each billing statement any charge that is for service provided prior to the date covered by the billing statement. Pursuant to P.A. 94-0950, the disclosure must include the dates for which the prior services were billed. Also, bills must include a copy of customer information and a statement of current Commission rules concerning unbilled or misbilled services. Further, Ms. Howard recommend that IAWC revise its bills to indicate the rate for the supply charge as a separate line item in any service territory have a supply charge.. Staff opposed the Company's proposal to use an alternative method of providing copies of the volumetric rate to customers on an annual basis.

Staff recommends that the Company provide a draft of the new bill to the Managers of the Consumer Services Division and the Water Department of the Commission for review and comment prior to finalizing the format of the new bill.

4. Staff's Position

Staff clarifies that it does not believe that the Company has violated Rule 600.160, but that Staff does support requiring the Company to display the fixed and variable purchased water and purchased sewage treatment charges, along with gallons used in the calculation.

Staff notes that on page 30 of IAWC's Initial Brief, it states that "Ms. Howard also made a recommendation that IAWC's bill include the rate for the Supply charges 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 in Appendix A to the Company's brief, it provides that the Company may use the alternative of providing annual notice of the volumetric rate. Staff states that it believes that Appendix A is an oversight and that the Company intended to adopt Staff's position.

5. Commission Analysis and Conclusion

Based on the testimony in this proceeding, we agree that it is reasonable to require the Company to publish the fixed and variable purchased water and purchased sewage treatment charges, along with gallons used in the calculation, on its customers' bills. We also agree with Staff that these charges should be a separate line item on the IAWC's bills and that annual notice is not appropriate. Moreover, we find it reasonable to require IAWC inform the customer about the time period the bill covers when there is more than one consecutive estimate or there is a back bill.

The Company is directed to provide a draft of the new bill to the Managers of the Consumer Services Division and the Water Department of the Commission for review and comment prior to finalizing the format of the new bill.

J. Grens Complaint

1. Grens Position

Mr. Grens appeared pro se. He complains that his residential water rates are too high. His mailing address is in Lemont but his home is in a part of Woodridge that receives its water from IAWC pursuant to contract. In his Amended Complaint, Mr. Grens alleges that the Company's rates are too high, and in particular that the flat-fee sewer rates are excessive. He asks the Commission to order a formal rate investigation. He suggested that the sewer charge flat fee "be changed . . . to a rate based on water usage."

Mr. Grens presented a chart (Grens Ex. 1) that he prepared comparing water and sewer rates for IAWC service with those of four surrounding communities: Woodridge, Darien, Downers Grove and Lemont for the amount of usage reflected on his monthly bills. This Exhibit demonstrated that over a two year period from September 2004 to September 2006 his IAWC bill for water and sewer was roughly 250% of what it would have been for the same usage in the other communities. The chart also showed that the rates in the other areas were not only far lower and that the variation in rates from town to town was not large.

In December 2004, Grens' water usage was 0 but his monthly bill was $59.81, mostly because of an almost $46 per month charge for sewer service. In the other communities, his bill for sewer only would have been less than $10. His average monthly bill is $120. Although these rates have been approved by the Commission, they are disproportionately high when compared to other similarly situated communities. He stated that the current rates were so high that he and his family curtailed their water usage for non-essential purposes. He believed that water and sewer rates were so high that they depressed property values. He requested that the Commission initiate an investigation of these rates.

2. IAWC Position

IAWC notes that the rates that Mr. Grens complains of were approved in Docket 02-0690, a rate proceeding in which all of the procedures and ratemaking principles established by Illinois law were applied. Under Illinois law, rates set by the Commission must produce revenues sufficient to cover the utility's operating expenses and provide a reasonable return on the utility's investment in property devoted to the provision of utility service.

Mr. Grens provides no evidence with regard to IAWC's operating expenses, rate base, rate of return, or any component of IAWC's revenue requirement. IAWC argues that he has not demonstrated that IAWC's rates for water or sewer service are excessive, unjust, or unreasonable. (Tr. 186-87.)

IAWC argues that Mr. Grens' position is based on a comparison of IAWC's approved rates for water and sewer service to the rates charged in certain municipalities, without consideration of the extent to which the municipalities he references subsidize their water and sewer operations with tax revenue or operational support from other municipal departments. As Mr. Ruckman testified, the comparison systems are municipally owned, and, as a result, do not incur costs paid by IAWC for items such as property and income taxes, each of which is a significant component of IAWC's expenses. (Tr. 195) In addition, according to IAWC, Mr. Grens fails to include in his comparisons the full cost incurred by customers in his comparison communities in connection with water or sewer service. Mr. Ruckmann testified that in order to fund water and sewer operations and investment, municipally owned systems rely not only on revenues from water/sewer bills, but also on tax revenues. (Tr. 71, 195; HG Ex. 1.01.)

IAWC notes that one of the four communities referenced by Mr. Grens, Lemont, does not utilize Lake Michigan water and relies on less expensive, but lower quality, well water supplies. (Tr. 178.) He noted that in communities such as Lemont, customers often are required to incur costs for water softeners and/or other costs related to use of well water. In making his comparison, Mr. Grens does not take costs incurred by customers who use well water supplies into account. IAWC argues Mr. Grens also does not address the fact that the rates applicable in other areas served by investor-owned utilities are higher than those applied by IAWC in its Southwest Suburban service area. (IAWC has the third highest rates in the entire state.)

IAWC argues that in similar situations, the Commission has appropriately dismissed complaints alleging that rates are too high. *Mandel Bros., Inc. v. Chicago Tunnel Terminal Co*., 2 Ill. 2d 205 (1954); *Independent Voters of Ill. v. Illinois Commerce Comm'n*, 139 Ill. App. 3d 957, *aff'd in part and rev'd in part on other grounds*, 117 Ill. 2d 90 (1985). Public utility rates cannot be found excessive if the rates were ordered by the Commission. *Mandel,* 2 Ill. 2d at 209. Thus, according to IAWC, there is no legal or factual basis for Mr. Grens' request for a rate review.

3. Cross Examination and Rebuttal of IAWC Witness

On cross examination, Mr. Ruckman acknowledged that he had no knowledge of the accounting used by the suburbs in question for their water and sewer services. He

had no information that the water and sewer charges in these communities were subsidized by property taxes or from other sources. He stated that a substantial difference in price may be due to the exemption enjoyed by governmental bodies from property and other taxes that for-profit companies must pay. He did not attempt to quantify the amount or percentage difference in bills resulting from tax paying rather than tax exempt entities.

On rebuttal, Mr. Grens introduced a copy of the Village of Woodridge 2006 Financial Report that indicated that its water and sewer charges were paid for by an "Enterprise Fund." The document defined this type of fund as being established in a manner similar to a private business enterprise where the cost of providing services is recovered through user charges. Mr. Grens argued from this, that most, if not all of, the drastically lower water and sewer fees in Woodridge were recovered from users and not as Mr. Ruckman stated, without supporting evidence, subsidized by the Village.

Neither Staff nor Homer Glen offered evidence or argument on this issue.

4. AG Position

The AG points out that IAWC's response to the complaint brought by consumer Kevin Grens is that its rates were approved by the Commission in Docket 02-0690 and that no further inquiry into the justness and reasonableness of its rates is warranted. The AG asserts that this argument is not dispositive of the Grens' complaint. Although IAWC's current rates are considered valid until they are changed, that does not mean that the Commission, cannot review the bases for those rates to determine whether they are based on expenses that are just and reasonable. Mr. Grens asked for such a review, based on the compelling fact (not considered in the rate case) that neighboring systems provide the same service for a fraction of the cost.

The AG notes that IAWC witness Fredrick Ruckman, who initially testified that some public water system costs could be subsidized by property taxes, sales taxes, and utility taxes, later admitted that he had no personal knowledge of whether public water systems in northeast Illinois, or the systems Mr. Grens cited, receive tax revenues to subsidize their operations. Tr. at 295-296 (Oct 31, 2006). His statements suggesting that there were public funds used for water service in Tinley Park were stricken as hearsay, based solely on a casual conversation at a public meeting. Id. By contrast, Mr. Grens presented Ruckman Cross Exhibit 10 showing that Woodridge, whose rates are used as a point of comparison, does not use tax dollars for its water system, but is operated as an "enterprise."

The AG concludes that IAWC has not refuted the logic or wisdom of examining IAWC's Chicago Metro expenses and rates in comparison to the expenses and rates of neighboring public systems. The AG requests that the Commission open a docket to examine the costs of both IAWC and publicly operated utilities to determine why IAWC's rates, and its underlying costs, are so much higher than neighboring systems that also deliver Lake Michigan water.

The AG argues that Grens presented clear and compelling evidence that the consumers taking service from IAWC pay two to three times more for the same water and sewer service than consumers pay in three neighboring communities. Grens Ex. 1.

These four communities are also in the western suburbs of Chicago, and all but Lemont use Lake Michigan water. As Grens Exhibit 1, page 2, makes clear, the charges for an average consumer using 7,000 gallons per month (Tr. 286, Oct. 31, 2006) in the IAWC system are substantially higher than neighboring communities. His charges are $112.98 per month, more than 200% higher than the charges assessed by Woodridge ($47.41), Darien ($44.81), Downers Grove ($32.42) and Lemont ($45.35). The sewer charges are even more disparate, with IAWC charging $45.52 per month, compared to $13.86, $13.86, $7.88 and $7.50 for the other municipalities.

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

The AG argues that IAWC suggestion that its charges cannot be compared to neighboring public systems because those systems are subsidized by real estate tax dollars is mistaken. Illinois law authorizes counties to operate water and sewer systems, but requires that those systems cover their costs with revenues paid by users.

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

The AG argues that the Commission should open a docket to examine the costs of both IAWC and publicly operated utilities to determine why IAWC's rates, and its underlying costs, are so much higher than neighboring systems that also deliver Lake Michigan water.

5. Commission Analysis and Conclusion

Mr. Grens makes some good points. His monthly water charge is about 250% higher than it would be in four surrounding towns. His monthly residential sewer charge

is a flat fee of almost $46, three to almost six times higher than the charge for the same service in these other communities.

In response, IAWC offers the rationale that its water rate, although high relative to other systems in the state, is cost based. It explains that water charges include its purchase price of Lake Michigan water and the cost of transport. IAWC offered little or no explanation why the individual sewer charge for a customer of an existing sewer system is a flat fee rather than usage based charge. Nor did it adequately explain why the charge for sewer service is at least three times higher than surrounding communities. IAWC counters that: 1) its rates (unlike those of municipally owned water systems) factor in taxes paid by IAWC and a reasonable profit; and 2) the other communities may subsidize the rates for these services with real estate taxes. These arguments are not persuasive. Mr. Grens introduced rebuttal evidence suggesting that in Woodridge, at least, the rates are user based and not subsidized. Furthermore, the AG, in support of Mr. Grens argument cited statutory authority that municipal water and sewer systems cannot be subsidized by real estate taxes because the law requires municipalities to charge rates sufficient to cover costs and depreciation. Moreover, none of the factors suggested by IAWC as explaining the discrepancy would seem to account for the magnitude of the difference in rates.

In August, 2003, IAWC was allowed rate increases in the Chicago Metro Service Area of 44.19% for water and 33.98% for sewer as a result of Docket 02-0690, Order, App. at Sch. CMS at 1 & Sch. CMW at 1 (Aug. 12, 2003). Comparative rate information was not addressed in that case.

Under Section 5/9-250 of the Act, the Commission has the power and authority to investigate any rate to determine whether it is unjust, unreasonable or discriminatory. We find that the Complainant has introduced sufficient evidence to suggest that an investigation or rate analysis of the reasonableness of rates charged by IAWC for water and sewer service in the Chicago Metro Service Area is warranted.

K. Boil Order and Loss of Pressure Notification Procedures

1. CUB Position

CUB argues generally that IAWC is obligated to provide adequate, safe and reliable service. This includes employing methods of operation that minimize risks to public health and safety. Boil orders are issued by water providers when required to prevent the public from consuming contaminated water. A drop in water pressure can also cause contaminated water. A pressure drop affects local fire departments' ability to respond to a fire and may result in loss of life. Both of these circumstances should mandate immediate customer notification.

The record establishes that IAWC notifies customers of Boil Orders by door to door notification or fastening paper notices to customers' doors. CUB contends that these methods alone are inadequate, because of the likelihood of lost or mislaid paper notices. CUB introduced anecdotal evidence that IAWC's customers do not always receive these notices. It argues that this notice procedure increases the risk that customers might consume contaminated water.

CUB argues that IAWC witness Ruckman testified that IAWC does not always notify municipalities and fire departments when it issues boil orders. It argues IAWC should notify local fire departments of boil orders by fax or telephone. Ruckman admitted that a faxed notice to municipalities would not be expensive or difficult. CUB contends that this notification system should be uniform throughout its service territory.

CUB discusses notification complaints by two residential customers and a complaint by the City of Champaign which is the subject of another docket.

CUB acknowledges that IAWC's parent company is in the process of establishing an automated boil order notification system for IAWC and other subsidiaries. CUB recommends that the Commission direct IAWC to implement a consistent automated system to inform customers, municipalities, and fire departments when boil orders are issued to supplement the door to door notification process.

2. IAWC Position

The Company maintains that there is no basis for the Commission to grant the relief CUB seeks. IAWC argues that CUB offers no direct evidence to support its position, relying instead on unsubstantiated assertions. IAWC notes that CUB's request for relief would require the installation of an automated dialer system to alert customers of boil orders. IAWC has explained that such a system is already being acquired by IAWC's parent for use by IAWC and other subsidiaries. (IAWC Reply Br.,p.39; Tr. 359, 519.)

IAWC maintains that it issues boil orders in accordance with rules promulgated by the Illinois Environmental Protection Agency. CUB has not alleged that the Company violated those rules. According to IAWC, CUB's claim that the Company's practice of going door-to-door to alert customers is inadequate is unsupported by the record. IAWC points out that CUB has offered no evidence suggesting why IAWC should be treated differently than any other public water supply subject to Section 607.103, or why the Company should be subject to different or more stringent rules than other municipal water suppliers or investor-owned utilities.

The Company notes that CUB has identified no requirement that a municipality receive boil order notices. According to IAWC, CUB also offers no evidence in support of the notion that all municipalities should receive the "same universal boil order notification." CUB has not identified any municipality that wishes to receive a boil order notification that is not now receiving one, and CUB does not define or support its request for a "universally consistent notification process." (IAWC Reply Br., p. 40.)

IAWC also argues that 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 in the first instance. The Company maintains that CUB's assertions on this issue, such as "IAWC's failure to notify the local fire department when a boil order is issued is not appropriate in light of the risk of injury, loss of life and damage to property," (CUB Init. Br., p. 7), are unsupported by record evidence.

The Company observes that CUB's argument that current boil order notice procedures are inadequate relies on the complaints of two customers, which IAWC

investigated and resolved, and the unproven allegations of the City of Champaign in a complaint under review in another docket. (IAWC Reply Br., p. 41.) According to IAWC, this is not a sufficient basis to conclude that IAWC's boil order notification is inadequate, and CUB offers no other evidence suggesting that the Company's notice of boil orders presents a concern.

3. Staff's Position

Staff contends that CUB seeks 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. Staff acknowledges that most of CUB's contentions are directed to the paper notice rather than an "in person" contact.

Staff notes that neither the Illinois Environmental Protection Agency, nor this Commission delineate 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. Staff states that IAWC is not in violation of any existing rule of the Commission.

Staff is 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 method for contacting their customers of their boil orders. A finding that this is inadequate notice could have far-reaching, industry-wide consequences.

In the opinion of Staff, if the Commission were to decide to regulate the method or methods of notice for boil orders, additional proceedings involving all interested parties, including all the affected public utilities, would be necessary.

4. Commission Analysis and Conclusion

CUB's argument has two parts. First it argues that the current residential door to door notification of boil orders should be supplemented with an automated telephone notification system. Secondly, it argues that there should be a uniform, presumably automated, notice to municipalities and fire departments of boil orders or a loss in water pressure below 20 psi.

IAWC acknowledged that its parent is in the process of implementing an automated messaging system. IAWC discounts the need for a finding mandating additional notice based upon the evidence in this record. IAWC argues that no rules compel uniform notification of municipalities and fire departments and that the record does not support a finding that the current system presents a threat to public safety.

Commission Staff argues that a finding that automated telephone notification should be substituted for door to door service would have adverse consequences for small water companies that are not parties to this proceeding. Unlike Staff, we read CUB's request for automated notification as a supplement to and not a replacement for door to door notice. Staff also argues that IAWC present policy is not in violation of any Commission or IEPA rules.

We believe that CUB's proposals are reasonable and in the public interest. However, based upon the due process concerns expressed by Staff, and IAWC's representation that its parent is in the process of implementing the requested automated system, we will not mandate the implementation of an automated notification system for residential customers at this time.

On the other hand, requiring notice by fax and/or voice communication of boil orders or loss of pressure situations to municipalities and affected fire departments would serve the public interest and is neither impractical nor (according to IAWC's Mr. Rucker) prohibitively expensive. We therefore find that IAWC shall implement a system to provide this type of notification to affected municipalities and fire departments within 60 days after the effective date of this Order.

L. Unaccounted for Water

Issues concerning unaccounted for water are addressed in IAWC's purchased water reconciliation Docket 06-0196. Witnesses for all of the concerned parties in this proceeding agree that issues concerning unaccounted for water should be decided in that docket. Therefore, those matters will not be addressed in this Order.

III. Findings and Ordering Paragraphs

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

(1) Illinois-American Water Company is in the business of furnishing water and wastewater service to the public in portions of the State of Illinois, and is a public utility as defined in Section 3-105 of the Illinois Public Utilities Act (220 ILCS 5/3 105);

(2) the Commission has jurisdiction over the parties and the subject matter herein;

(3) the findings of fact and the conclusions of law set forth in the prefatory portion of this Order conform to the evidence of record and the law and are hereby adopted as findings of fact and law herein;

(4) Kevin Grens filed a Complaint seeking a review of IAWC's rates for water and wastewater service, which is hereby granted;

(5) the Commission should initiate a proceeding for the purposes of investigating the reasonableness of rates charged by IAWC for water and sewer service in the Chicago Metro Service Area, in accordance with the discussion above;

(6) Commission Staff is directed to prepare and submit to the Commission, a proposed initiating order to commence the investigation proceeding described in Finding (5);

(7) the Office of the Illinois Attorney General and the Village of Homer Glen filed Complaints seeking an audit of certain operations of IAWC, civil penalties, and other relief, which are hereby granted in part and denied in part;

(8) IAWC is ordered to comply with the directives and corresponding timeframes herein as stated on pages 14, 19, 25, 26, 30, 31, 36, 37, and 39;

(9) Citizens Utility Board was granted leave to intervene and presented evidence regarding boil order and loss pressure notification procedures as a result of which the Commission hereby orders the municipal notification procedure contained herein on pages 45-46;

(10) in the event that the Company fails to comply with the directives and timeframes contained herein, this Order provides the notice required under Section 5-202 of the Public Utilities Act for the initiation of a proceeding seeking to impose civil penalties.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that an investigation proceeding shall be initiated by the Commission in accordance with Finding (5) of this Order.

IT IS FURTHER ORDERED that the Commission Staff draft and submit to the Commission for consideration a proposed initiating order consistent with Finding (5).

IT IS FURTHER ORDERED that Illinois American Water Company shall comply with directives and corresponding timeframes herein.

IT IS FURTHER ORDERED in the event that the Company fails to comply with the directives and timeframes contained herein, this Order provides the notice required under Section 5-202 of the Public Utilities Act for the initiation of a proceeding seeking to impose civil penalties.

IT IS FURTHER ORDERED that all motions, petitions and objections made in this proceeding which are not disposed of, be and are hereby disposed of consistent with the ultimate conclusion 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.

DATED:	February 23, 2007
BRIEFS ON EXCEPTIONS DUE:	March 9, 2007
REPLY BRIEFS ON EXCEPTIONS DUE:	March 16, 2007

Terrance Hilliard,
Leslie Haynes,
Administrative Law Judges