

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

KEVIN GRENS)	
)	
-vs.-)	
)	
ILLINOIS-AMERICAN WATER COMPANY)	
Complaint as to billing/charges in Lemont, Illinois.)	
)	Docket No. 05-0681
)	
PEOPLE OF THE STATE OF ILLINOIS)	Docket No. 06-0094
)	
-vs.-)	Docket No. 06-0095
)	
ILLINOIS-AMERICAN WATER COMPANY)	(Cons.)
Investigation of failure to provide service on just and reasonable terms, and violation of the Public Utilities Act and Commission rules.)	
)	
VILLAGE OF HOMER GLEN)	
)	
-vs.-)	
)	
ILLINOIS-AMERICAN WATER COMPANY)	
Complaint as to billing/charges in Homer Glen, Illinois.)	

BRIEF ON EXCEPTIONS OF ILLINOIS-AMERICAN WATER COMPANY

I. INTRODUCTION

This is the Brief on Exceptions of Illinois-American Water Company ("IAWC" or the "Company") with regard to the Revised Administrative Law Judges' Proposed Order ("ALJPO") issued in this proceeding on March 14, 2007. The Company agrees with and supports the ALJPO's findings and conclusions that the Office of the Illinois Attorney General ("AG") and Village of Homer Glen ("Homer Glen") failed in their burden of proving that an audit of certain operations of IAWC and civil penalties should be ordered by the Commission. (ALJPO, Section

II, "Issues in Dispute," pp. 7-8, 26-27, 29-30.) Nonetheless, the Company takes exception with certain of the conclusions and findings set forth in the ALJPO. In particular, the Company takes exception to the ALJPO's finding that the Commission should initiate a proceeding for the purpose of investigating the reasonableness of rates charged by IAWC for water and sewer service in the Chicago Metro Service Area. (ALJPO Section II.J.5, p. 44; Findings & Ordering Paragraphs (4), (5), (6) (p. 47).) As discussed below, the Commission should reject the ALJPO's findings that such an investigation be initiated because those findings lacks sufficient basis and contravene Illinois law. Replacement language is set forth for Section II.J.5 on pages 3-4 of Appendix A, which is attached hereto. The Company also requests certain other changes as set forth below. For the reasons stated in detail below, the Company asks that the ALJPO be modified with the replacement language shown herein and in Appendix A.

II. DISCUSSION

A. The Company requests clarification regarding the filing of late-filed exhibits in ALJPO Section "C. Valves and Hydrants. 4. Commission Analysis and Conclusion".

In the "Commission Analysis and Conclusion" section on valves and hydrants (ALJPO Section II.C.4, pp. 19-20), the ALJPO states that (p. 19): "We order IAWC to complete hydrant testing, valve testing and fire flow tests or the substitute ISO test described above and maintenance inspection for all of the Chicago Metro and Champaign areas within one year of the final order in this case. The Company will file a report on e-Docket within sixty (60) days of completing the inspection, as a late filed exhibit," The ALJPO also states that (p. 20): "We order IAWC to complete a valve testing and maintenance inspection for all of the Chicago Metro and Champaign service areas within one year. We order the Company to file a report on e-Docket within sixty (60) days after completing the inspection, as a late filed exhibit. . . ." This language appears to be taken directly from the text of Late-filed Stipulation Exhibit 1, admitted

to the record on March 14, 2007. However, in the last paragraph of Section II.C.4, the ALJPO concludes that reports required under this section should not be made late-filed exhibits to a closed record. IAWC therefore requests clarification regarding the procedure for filing of reports pursuant to the ALJPO's directives in Section II.C.4, pages 19 and 20.

B. The ALJPO's conclusion regarding customer service should be clarified.

With regard to the "Commission Analysis and Conclusion" in the ALJPO on customer service (ALJPO, Section II.H.5, pp. 37-38), the Company agrees that the procedures required by the ALJPO are reasonable. However, the Company requests clarification of the ALJPO's conclusions in two respects. First, with regard to the statement in the ALJPO (p. 37) that call handlers lack the authority to make bill adjustments or to investigate problems, while it is correct that call handlers lack authority to make bill adjustments (Tr. 439-40), it is not correct that they lack authority to investigate problems. To the contrary, one of the roles of a call handler is to respond to and investigate a customer's concerns. (Tr. 439-40; IAWC Ex. 2.0, pp. 4-5.) Second, with regard to the ALJPO's conclusion (p. 38) regarding informing customers of their right to contact the Commission, Section 280.160(b) requires that the utility direct supervisory personnel to inform a customer who expresses non-acceptance of a utility's decision regarding a dispute of their right to have their complaint heard by the Commission. 83 Ill. Adm. Code § 280.160(b). The testimony of IAWC's witness, Ms. Cooper, confirms that IAWC's ART personnel do inform customers of their right to have their complaint heard by the Commission. (Tr. 480-81.) Because of these clarifications, IAWC does not believe that its present customer service procedures are inadequate. Rather, the Commission should conclude that, while the Company's procedures are adequate, certain reasonable improvements should be made.

Appropriate replacement language for Section II.H.5 is set forth in Appendix A, page 1.

- C. The ALJPO's finding that the Commission should initiate an investigation of the reasonableness of rates charged by IAWC for water and sewer service in the Chicago Metro Area lacks sufficient basis and contravenes Illinois law.

The ALJPO's finding that Mr. Grens "submitted sufficient evidence to *suggest* an investigation into rates in the Chicago Metro Service Area" is contrary to the record in this case. ("Commission Analysis and Conclusion," ALJPO Section II.J.5, p. 44 (emphasis added).) 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. *Illinois Cent. R.R. Co. v. Illinois Commerce Comm'n*, 387 Ill. 256, 281 (1944); *Illinois Bell Tel. Co. v. Illinois Commerce Comm'n*, 414 Ill. 275, 286 (1953); *Business & Prof. People for the Pub. Interest v. Illinois Commerce Comm'n*, 146 Ill. 2d 175, 195-96 (1991). As the Company explained in its Initial and Reply Briefs, Mr. Grens offered no evidence regarding IAWC's cost of service or revenue requirement, or the cost of service of the municipalities he referenced. (*See* IAWC Init. Br., pp. 67-68; Reply Br., pp. 36-38.) In fact, as the AG acknowledged (and Mr. Grens did not dispute), no party offered evidence of IAWC's cost of service. (AG Init. Br., p. 35.) Thus, neither the AG nor Mr. Grens submitted sufficient evidence showing that IAWC's approved rates are unjust or unreasonable.

Nor was the bare reliance on and comparison of rates among four municipalities a proper method to assess the appropriateness of the Company's rates in the Chicago Metro Service Area and conclude that a rate investigation was needed. (*See* ALJPO Section II.J.5, p. 44 (noting that Mr. Grens' "monthly charge is 250% higher than it would be in four surrounding towns")). Under Illinois law, the comparative rates paid by customers of other systems are not relevant to the Commission's determination of IAWC's rates. The Commission is required, by statute, to approve rates that provide a reasonable rate of return on rate base, not set rates based on a comparison to rates in other areas. The Illinois Supreme Court has said as much. *See Union*

Elec. Co. v. Illinois Commerce Comm'n, 77 Ill. 2d 364, 383-84 (1979) (holding that, for a utility serving customers in both Missouri and Illinois, the Commission could not order Missouri rates applied in Illinois, but must set rates that produce a reasonable return on the value of the utility's property as required by Illinois law, even if Missouri rates were lower); *Alton & S.R. Co. v. Illinois Commerce Comm'n*, 316 Ill. 625, 628-29 (1925) (finding rate comparisons that were not based on evidence showing "similarity of conditions" have "no probative value and were therefore incompetent"); *see also Complaint by Home Depot, USA, Inc., and LNT, Inc.*, New York Pub. Serv. Comm'n Case Nos. 05-W-0707, 06-W-1080, 2006 N.Y. PUC LEXIS 276, *10-13 (dismissing retailers' complaint that alleged that, *inter alia*, water rates were excessive compared to other locations, and stating, "Comparing [water utility]'s rates to those paid by Complainants' stores in other locations is inappropriate. Rates are set on a case-by-case basis, and are based on reasonable costs of the company."). Thus, the ALJPO contravenes Illinois law by concluding that rates of other municipalities served as a basis to commence a rate investigation of the Company.

Moreover, there is an insufficient evidentiary basis for the conclusion in the ALJPO (p. 44) that the rates Mr. Grens referenced can be appropriately compared to IAWC's rates. Mr. Grens presented no evidence regarding the operating characteristics of the "comparison" systems or the level of cost incurred in connection with their operation. In addition, there is an extensive body of precedent in Commission orders, statutory and regulatory requirements, and caselaw that establishes what can be included in a regulated utility's cost of service, how costs are accounted for, and what costs are recoverable by a regulated utility. Mr. Grens, however, did not offer evidence showing that the municipal entities he refers to account for, allocate, or recover costs associated with water or wastewater service in a manner comparable to that required by the

Commission for regulated utilities, including IAWC. As explained by Mr. Ruckman, municipal utility operations can be subsidized both by tax funding and by support from other municipal departments. (Tr. 195, 206.) As stated in the ALJPO, the only evidence offered by Mr. Grens on this issue was rebuttal evidence "*suggesting* that in Woodridge, at least, the rates are user based and not subsidized." (ALJPO, p. 44 (emphasis added).) However, Mr. Grens' rebuttal evidence addressed only the question of whether tax funding supported the provision of water service in Woodridge, and not the question of whether support from other municipal departments subsidizes water utility operations in Woodridge. (Tr. 206, 327.) In addition, Mr. Grens offered no evidence regarding the actual costs paid for water service by customers in any of the other three municipalities he references. Given the lack of evidence showing a basis for comparing IAWC's rates with rates of the referenced municipalities, the "suggestion" that Woodridge rates are not subsidized is not sufficient evidence to support a finding that the rates referenced by Mr. Grens can be properly compared to IAWC's rates, or to justify a investigation into IAWC's rates. *Alton & S.R. Co.*, 316 Ill. at 628-29.

The ALJPO also incorrectly applies Illinois law by relying on the AG's assertion that certain statutory provisions require that municipalities cover all of their utility costs through rates. (ALJPO Section II.J.5, p. 44.) This assertion is incorrect. Section 5-15020 of the Counties Code, cited by the AG, 55 ILCS 5/5-15020, applies to waterworks or sewage facilities acquired by a *county*. While certain of the rates relied on by Mr. Grens are from DuPage County Public Works, neither the AG nor Mr. Grens has offered evidence showing that DuPage County Public Works is governed by Section 5-15020. Further, neither the AG nor Mr. Grens offered evidence that Section 5-15020's provisions would apply to the other municipalities to which Mr. Grens refers. In any event, Section 5-15020—the section the AG cites for the assertion that "Illinois law

makes it clear that the rates for a county . . . system must be sufficient to cover the system's costs," (AG Init. Br., p. 36)—applies only to county systems financed by "revenue" bonds. *See* 55 ILCS 5/5-15017 ("Revenue bonds"); 5/5-15018 ("Ordinances relative to issuance of revenue bonds"); 5/5-15019 ("Use of revenues"); 5/5-15020 ("Rates and charges; rights of bondholders"). The AG fails to note that revenue bonds are just one method of financing county waterworks: Division 5-15 of the Counties Code provides two additional means of funding waterworks or sewage facilities. *See* 55 ILCS 5/5-15005 (providing for the annual levy of a property tax to, among other things, fund waterworks); 5/5-15022 (providing that counties may issue general obligation bonds for the purposes of funding waterworks). Thus, the provisions of Section 5-15020 are not the sole authority on the financing of municipal water systems or the applicable rates and charges for municipal water service.

For the rate investigation required by the ALJPO, detailed evidence would be required regarding the manner in which municipal water systems not regulated by the Commission are operated and funded. To obtain such information from municipal entities (whether or not they are parties to the proceeding), IAWC and other parties could be required to use compulsory discovery procedures by subpoena (such as depositions, document requests or written interrogatories) available under the terms of the of the Illinois Public Utilities Act ("Act") and the Commission's rules. *See* 220 ILCS 5/10-106; 83 Ill. Adm. Code §§ 200.360, 200.380. Such a process would be both time consuming and expensive. Furthermore, as explained above, the information obtained through this process would be irrelevant in evaluating IAWC's rates, in light of the requirement of Illinois law that IAWC's rates be based on its cost of service, and not set by comparison to the rates charged by other entities. Accordingly, IAWC submits that the ALJPO' s requirement for a rate investigation should be eliminated.

Alternatively, if this Commission decides against removing the ALJPO's requirement of a rate investigation, the Company notes that such an investigation would be unnecessary, duplicative and inefficient in the event that the Company files proposed rates under 220 ILCS 5/9-201 of the Act. In the event of a rate filing for the Chicago Metro Service Area, the review conducted in the related rate proceeding would duplicate the review in the rate investigation. Accordingly, if the rate investigation requirement is not eliminated, the Company requests that that portion of the ALJPO (Finding & Ordering Paragraph (5); ALJPO Section II.J.5, p. 44) be modified to indicate that a rate investigation should not be commenced in the event that proposed rates for the Chicago Metro Service Area are filed under 220 ILCS 5/9-201 within six months of the final Order in this proceeding.

Appropriate replacement language for ALJPO Section "J. Gens Complaint. 5. Commission Analysis and Conclusion" and for the Finding and Ordering Paragraphs is set forth in Appendix A, pages 3-6.

- D. Finding and Ordering Paragraph (10) is not consistent with ALJPO Section "C. Valves and Hydrants. 4. Commission Analysis and Conclusion".

The ALJPO's conclusions (Section II.K.4, p. 47) regarding boil orders state that the Commission "will not mandate the implementation of an automated notification system for residential customers at this time." The Company believes that the language of Finding and Ordering Paragraph (10) is inappropriate in light of this conclusion, and, therefore, requests that Paragraph (10) be removed as shown in Appendix A, page 6.

- E. Technical corrections.

Section II.K.4 of the ALJPO (pp. 46-47), refers to the Company's "parent" as being in the process of implementing a automatic notification system. However, the system is actually being acquired by American Water Works Service Company, Inc., the Service Company for IAWC's

parent, American Water Works Company, Inc. Thus, the following changes are suggested. For ALJPO Section II.K.4, page 46, paragraph 2:

IAWC acknowledged that its parent's service company, American Water Works Service Company, Inc. ("Service Company") is in the process of implementing an automated messaging system.

For ALJPO Section II.K.4, page 47, paragraph 1:

Moreover, based upon the due process concerns expressed by Staff, and IAWC's representation in the Stipulation filed in this proceeding that ~~its parent~~ the Service Company is in the process of implementing automated notification system and that it will work with municipalities and governmental entities to develop notification protocols in accordance with the preferences of those bodies, we will not mandate the implementation of an automated notification system for residential customers at this time.

III. CONCLUSION

For all the reasons stated, the Commission should reject the ALJPO's findings that an investigation should be initiated into the reasonableness of rates charged by IAWC for water and sewer service in the Chicago Metro Area. Those findings lacks sufficient basis and contravene Illinois law. The Commission also should also adopt the changes regarding the ALJPO's sections on customer service and boil orders as shown in Appendix A.

Dated: March 21, 2007

Respectfully submitted,

ILLINOIS-AMERICAN WATER
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