

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

AQUA ILLINOIS, INC	:	
	:	
Petition For Issuance Of A Certificate Of	:	
Public Convenience And Necessity To	:	Docket No. 06-0203
Operate A Water Supply And Distribution	:	
System In Kankakee County, Illinois And For	:	
The Issuance Of An Order Approving Rates,	:	
Accounting Entries and Tariff Language	:	

**INITIAL BRIEF OF AQUA ILLINOIS, INC.**

Aqua Illinois, Inc. (“Aqua” or the “Company”), hereby respectfully submits its Initial Brief in accordance with the schedule established by the Administrative Law Judge and, in support thereof, states as follows:

**I.**  
**Introduction**

Aqua has presented compelling evidence demonstrating that it is reasonable for the Illinois Commerce Commission (“Commission”) to grant Aqua’s Petition for a Certificate of Public Convenience and Necessity (“Certificate”) to serve the Village of Manteno, Illinois (the “Village”) and surrounding areas (collectively “the Territory”). The Territory consists of approximately 3,500 customers and currently receives water service from the Village. As a result of Aqua’s resolving certain, limited issues with the Commission Staff (“Staff”) during the course of this proceeding, Staff has no objection to granting Aqua a Certificate, subject to the agreements set forth in the evidentiary record. The evidentiary record clearly establishes that Aqua’s proposal will promote the public convenience and is in accord with Section 8-406 of the Public Utilities Act (“Act”). 220 ILCS 5/8-406.

Aqua's proposal is opposed by a single individual, Sandra L. Hartman. As explained in detail below, Ms. Hartman raises several issues, none of which have merit. Indeed, her claims seem to relate to the decision of the Village to sell its water system to Aqua rather than address the statutory requirements subject to Commission review.

The evidence demonstrates that Aqua has the managerial, technical and financial capability to serve the Territory, and that it is in the public interest to grant the Certificate to Aqua. Accordingly, the Commission should grant the Petition and issue Aqua the Certificate to serve the Territory.

## **II. Evidence Supporting Granting The Certificate**

On March 17, 2006, Aqua filed a Verified Petition requesting a Certificate to construct, operate and maintain a water supply and distribution system, and to transact a public utility business in the Territory shown on a map and legally described on Attachments B and C to the Verified Petition. The Territory is adjacent to the retail service area of Aqua's existing Kankakee Division. Aqua Ex. 1.0 at 12. The Territory presently has approximately 3,500 customers and is served by a water and distribution system owned by the Village (the "System"). *Id.*

The System, at present, derives its water supply from six wells and has, for several years, faced the challenge of addressing and remediating fecal coliform contamination from this water source. *Id.* On October 27, 2004, the Illinois Environmental Protection Agency ("IEPA") issued a Violation Notice that cited the Village for a violation of water quality standards. *Id.* In response, as a short-term solution to the problem, the Village installed and the IEPA approved an

ultra-violate (“UV”) treatment system. *Id.* at 12-13. A long-term solution, however, was necessary.

Long-term solutions included the Village constructing a new treatment plant to bring water from its existing well source into compliance with quality standards. *Id.* at 13. Another included interconnecting with Aqua’s Kankakee system and obtaining quality water from Aqua’s source. *Id.* On December 19, 2005, the Village reached a Compliance Commitment Agreement with the IEPA in which it elected interconnection with Aqua’s Kankakee system as its long-term solution. *Id.* at 13, Exhibit TJB-1.5. In accordance therewith, the Village requested that Aqua acquire the System and provide retail service in the Village no later than January 1, 2008. *Id.* at 13. Aqua will extend its water mains and make such other system revisions as are necessary to serve the Village. *Id.* Aqua estimates its capital improvements will total \$3,373,020. Staff Ex. 3.0R at 3 (*citing* Aqua response to Staff data request FD 1.10).

Aqua’s acquisition of the System will be beneficial to the Village and Aqua’s existing service territory. The Village will benefit from Aqua’s existing resources and proven record in the management, supervision and financing of water supply systems in Illinois. *Id.* at 14. The Village’s water will be secured from a quality source, the Kankakee River, and the use of the Village’s wells will be discontinued. *Id.* This change in water supply, in turn, will reduce the draw on the aquifer supporting the wells, resulting in greater availability of the aquifer water for the agricultural community and other residents that have private wells in the area. *Id.* Finally, the Village has two elevated storage tanks with a capacity of 1,000,000 gallons, an amount greater than the Village’s average daily use, that will become available for additional storage for peak and drought periods throughout Aqua’s Kankakee service territory. *Id.*

Aqua proposes that customers in the Village pay the same rates as customers in Aqua's Kankakee Division with the exception of the Public Fire Protection Charge. *Id.* at 16. In the short-term, this will result in a rate increase for Village customers. *Id.* But, in the long-term, it will result in rate stabilization. *Id.* Fixed costs would be spread over a larger customer base. *Id.* In addition, Village customers no longer would need to use home treatment devices or bottle water to eliminate high levels of iron and hardness in water from the Village's existing well supply because water from the Kankakee plant neither requires nor needs additional softening or iron removal. *Id.* Aqua's business model also would aid rate stabilization because expert services are provided by a service company to all Aqua system, thereby eliminating the need for individual water company to perform all functions related to accounting, financial services, administration, communications, engineering, human resources, information systems, rates, risk management, water quality, purchasing and legal services. *Id.* Aqua's centralized business model creates efficiencies, thereby lowering these not insubstantial costs while providing direct access to significant subject matter expertise. *Id.* at 16-17. The proposed rates would not result in an excessive rate of return on Aqua's investment in useful plant. *Id.* at 17, Exhibit TJB-1.6.

Aqua witness Mr. Paul Hanley set forth Aqua's proposed accounting entries for the acquisition. Aqua Ex. 2.0 at PJH-2.1. The difference between the cost of the System, net of depreciation and applicable contributions, and the purchase price would be recorded in Account 114 - Acquisition Adjustments. *Id.* at 2. Aqua proposed to dispose of the acquisition adjustment as a credit to Account 421 - Non-Operating Income, amortized over a twenty year period and brought into rate base over the same period of time. *Id.*

Mr. John F. Guastella, who is President of Guastella Associates, Inc., a utility management, valuation and rate consulting company, performed an original cost study of the

System. Aqua Ex. 3.0 at 1, 3, 6. He estimated the depreciated original cost of the System as of March 2006 to be \$10,749,600. *Id.* at 6. Aqua would acquire the System for \$4,500,000, Verified Petition, Attachment A at 2; and incur transaction-related expenses totaling \$100,000. Staff Ex. 3.0R at 3 (*citing* Aqua response to Staff data request FD 1.02).

As such, Aqua presented substantial evidence that its request will promote the public convenience and is necessary thereto in accordance with Section 8-406 of the Act, 220 ILCS 5/8-406. The Commission's Staff concurred that Aqua's acquisition of the Village's System is necessary to provide adequate, reliability and efficient water service to customers in the Territory, and that it is the least-cost means for doing so. Staff Ex. 1.0 at 4-6. Staff also found that Aqua is capable of efficiently managing and supervising the construction necessary to provide water service to the Territory. *Id.* at 6-7. In addition, Staff conducted an examination into Aqua's financial capabilities and found that Aqua is capable of financing the purchase and proposed construction without significant adverse financial consequences for the utility or its customers. Staff Ex. 3.0R at 2-8. Accordingly, the requirements of Section 8-406 of the Act are satisfied.

Staff, nonetheless, raised limited issues on rates and accounting treatment to which Aqua and Staff reached concessions, for purposes of this case alone, to resolve the issues without litigation.

#### **A. Rates**

Staff agrees that it is reasonable for Aqua to charge Village customers the rates applicable in Aqua's Kankakee Division. Staff Ex. 4.0R at 6. But, Staff witness Mr. Luth recommended (1) that Aqua account for the capital investment and O&M expenses for the Village separately so that the Commission can decide in a future docket whether the Village's customers should pay

rates different from Kankakee customers; and (2) that Kankakee's Public Fire Protection charge of \$2.76 per month be implemented for the Village's customers. *Id.* at 5-6. Aqua and Staff agreed to resolve these issues as follows:

- (1) Aqua will not track or account for O&M expenses for the Village separately;
- (2) Aqua will track its initial capital investment in the Village of an estimated \$2.3 million, its replacement of purchased assets in the Village and its improvements to purchased assets in the Village, with potential Commission review and possible elimination of the requirement of separate accounting for the Village plant additions in the next Kankakee general rate increase proceeding; and
- (3) Aqua will eliminate the Public Fire Protection charge for the Village customers in this case and include it in the next Kankakee rate case when a cost of service study could be prepared.

Aqua Ex. 4.0 at 5-6; *see also* Staff Ex. 6.0 at 1-7 (Staff witness Mr. Luth setting forth Staff's rationale for recommending separate tracking of capital investment in the Village but not responding to Aqua's representation of Staff's agreement to forego tracking O&M expenses for the Village separately or to eliminate the Public Fire Protection charge for the Village's customers until the next Kankakee rate case when a cost of service study could be prepared).

#### **B. Accounting Entries**

With regard to accounting entries, Staff witness Ms. Pearce agreed that Aqua's proposed accounting treatment is allowed under the Commission's Uniform System of Accounts for water utilities operating in Illinois. Staff Ex. 2.0 at 5. Nonetheless, she recommended (1) that the Commission limit Aqua's proposed organization costs, to be recorded in Account 301, of

\$100,000 to the lesser of the actual amount Aqua incurs or \$35,000, (2) that Aqua record the acquisition adjustment in Account 406, above the line, instead of Account 421, below the line; and (3) that Aqua amortize the balance of Account 301 over a period of time to be determined in the next rate proceeding. *Id.* at 5-13. Aqua and Staff agreed to resolve these issues as follows:

- (1) to limit Aqua's organization costs to be recorded in Account 301 to the lesser of the actual amount Aqua incurs or \$35,000;
- (2) to record the acquisition adjustment to Account 421, below the line, but to amortize the amount over a thirty-three year period rather than twenty years as Aqua proposed; and
- (3) to amortize the balance of Account 301 - Organization Costs over the period of time determined in Aqua's next rate proceeding that includes the Territory.

Aqua Ex. 5.0 at 3; Staff Ex. 5.0 at 1.

Staff also made the following uncontested recommendations:

- (1) that Aqua file revised Rules, Regulations and Conditions of Service tariffs for water service that include the Territory within ten days of the acquisition's close, with an effective date not less than ten working days after filing, for service rendered on and after their effective date, with individual tariff sheets to be corrected in that time period, if necessary; Staff Ex. 1.0 at 12.
- (2) that Aqua file a report with the Chief Clerk of the Commission and provide a copy to the Manager of the Commission's Water Department within seven days after the acquisition's close indicating the date of the close; *Id.*

- (3) that Aqua file actual accounting entries to record the purchase of the System within six months of the acquisition's close; Staff Ex. 2.0 at 13.
- (4) that the Commission approve the original cost study performed by Mr. Guastella, and; *Id.*
- (5) that, with the exception of the Public Fire Protection rate discussed above, Aqua charge customers in the Village rates Aqua charges in its Kankakee Division. Staff Ex. 4.0R at 6.

Aqua agrees with each of these recommendations. Aqua Ex. 4.0 at 2; Aqua Ex. 5.0 at 4.

As demonstrated above, Aqua possesses the requisite managerial, technical and financial ability to properly operate the subject territory. Moreover, Aqua's acquisition of the Village's System will result in customers receiving better quality water, which will benefit all citizens and businesses in the Territory. Clearly, such a result resolves the concerns of the IEPA, and is in the public interest. Accordingly, the Commission should grant the Petition and issue to Aqua the Certificate for the Territory.

### **III.** **Argument**

#### **A. Ms. Hartman's Objections Are Contrary To The Evidentiary Record And Should Be Rejected**

Ms. Hartman opposes the Village's sale of its System to Aqua. She asserts that private ownership of the Village's System is not in the public interest of the Village's residents and that a report by an engineering firm Baxter and Woodman recommended against the sale, concluding that it was the least desirable option. Intervenor Ex. 1.0 at 1-2. She also alleges that the sale

would subject Village customers to unreasonably high rates. *Id.* at 2. Neither argument is persuasive, and both arguments are contrary to the evidentiary record.

**1. Baxter And Woodman Recommended The Village Sell Its System To Aqua**

The Baxter and Woodman report upon which Ms. Hartman relied was superseded with a letter dated November 8, 2006. Aqua Ex. 4.0 at 6. Baxter and Woodman's November 8, 2006, letter recommended that the Village sell its System to Aqua based on additional factors that had come to light since publication of its original report - the one upon which Ms. Hartmann relied. *Id.* In particular, Baxter and Woodman concluded in its November 8, 2006 letter that the Village's sale of its System to Aqua "may be the most realistic alternative" and is the only option if the Village does not want to be limited in its future growth potential. *Id.* at Exhibit TJB-4.1.

One of the reasons that Baxter and Woodman originally offered for opposing the sale of the Village's System to Aqua was an alleged decrease in customer service levels; but, the evidence supports the exact opposite - that service levels would increase under Aqua's ownership. Aqua has a proven track record of quality service in Illinois. Aqua has a large number of experienced employees available to operate, maintain and enhance the water system, to serve customers and to respond to emergencies. Aqua Ex. 4.0 at 7. In addition, Aqua has a call center for responding to customers' issues and maintains an office within 15 miles of the Village. *Id.* In contrast, under the Village's ownership, the System has faced fecal coliform contamination and the IEPA has cited the Village for a violation of water quality standards. *Id.* As such, service levels should increase under Aqua's ownership, not decrease as Baxter and Woodman incorrectly assumed in the first instance.

Ms. Hartman also alleges that the Village's water quality problems have been resolved, and that the 2005 violations were only paperwork violations. *Id.* at 2. This allegation also is contrary to the weight of the evidence.

The evidence clearly demonstrates that the Village has not solved its water quality problems, but rather has implemented a temporary fix in the form of an Ultra Violet ("UV") treatment system. The Village's water quality problem lies with the source of supply, not the infrastructure. *Aqua Ex. 6.0* at 5. While Ms. Hartman alleges that the Village only had paperwork violations in 2005, she is incorrect that the problem with the Village's source of supply has been corrected. The IEPA did cite the Village for paperwork violations in 2005 due to the Village's failure to adequately sample its water. *Id.* at 5-6. But, detections of contamination have occurred subsequent to the Village's installation of the UV treatment system, even though the UV reactors have performed positively overall. *Id.* at 6. The continued positive detections of contamination post-UV reactor installation caused the IEPA to inform the Village as follows:

The Illinois Environmental Protection Agency is uncomfortable with the microbiological testing results being obtained from Manteo's public water supply system. Several water samples taken from 'finished' sites and locations within the distribution system have tested positive for coliform (including fecal) bacteria, which is considered an indicator for more serious forms of contamination. In most cases, the bacteria are not being detected in follow-up samples. This Agency is concerned that the relatively frequent detection of coliform bacteria ***in samples taken after treatment*** cannot be ignored, even if the individual detections are not confirmed by follow-up testing.

*Id.* at 6, Exhibit TJR-6.1 (emphasis added).

In reality, the Village cannot continue to utilize its wells as its source of supply, even with the UV treatment system, under its Compliance Commitment Agreement with the IEPA. *Tr.* at 44. The Village either has to put in a surface water treatment or find another source of

supply. *Id.* It would cost the Village a significant amount of money to construct a plant with the capabilities to treat its water source. Aqua Ex. 6.0 at 5. Baxter and Woodman's original report found that treatment systems would cost the Village between 53.1 and 54.3 million dollars. Intervenor Ex. 1.0, Att. A at 1. Obtaining supply from Aqua's Kankakee Division would be less at between \$44.6 million for bulk supply from Aqua to \$50.6 million for supply through an Aqua acquisition. *Id.*, Att. A at 2.

Moreover, while the original Baxter and Woodman report found that bulk supply from Aqua would be feasible, it updated that aspect of its report in its November 8, 2005, letter. At that time, Baxter and Woodman concluded that a sufficient amount of supply or pressure could not be maintained through a bulk purchase agreement with Aqua. Aqua Ex. 4.0, Exhibit TJB-4.1. Contrary to Ms. Hartman's allegations, Aqua did not arbitrarily limit the amount of water it would supply under a bulk agreement. Aqua witness Mr. Rakocy explained that the limit on the amount of supply Aqua could offer the Village under a bulk agreement was driven by the need to incur significant additional capital investments to provide any greater amounts. Tr. at 34.

Accordingly, the evidence does not support Ms. Hartman's contention that the Village's continued ownership of the System is the best alternative. The Village made a decision, after careful evaluation of its options, to sell its System to Aqua. The IEPA has approved the sale of the System to Aqua as an appropriate long-term solution to the Village's water quality problems through the Village's Compliance Commitment Agreement. The evidence demonstrates that it is in the public interest for Aqua to acquire the Village's System, in accordance with Section 8-406 of the Act.

## 2. Aqua's Proposed Rates For The Village Are Just And Reasonable

Ms. Hartman alleges that the Village's customers unfairly will pay to update the Kankakee system. Intervenor Ex. 1.0 at 2; Intervenor Ex. 2.0 at 3. Her allegation, however, ignores the significant costs the Village would incur to adequately treat the Village's current source of supply. Aqua Ex. 4.0 at 8. Such costs would be passed on to its customers. While future rate increases associated with operations and maintenance expenses are applicable to scenarios to address the Village's supply problem, Ms. Hartman "does not take into consideration the capital costs associated with construction of a treatment plant or the necessary infrastructure to buy bulk water." Aqua Ex. 6.0 at 8. In other words, rates that the Village's customers pay would need to increase under any scenario that would enable the customers to receive quality water. Aqua Ex. 4.0 at 8.

Further, Baxter and Woodman's initial recommendation relied heavily on the Village to grow at a fairly rapid rate. Aqua Ex. 6.0 at 8. To date, their population projections have fallen short. *Id.* As a result, Village residents would be left with an additional burden of \$16 million under a bulk purchase arrangement to \$25 million under a treatment plant construction scenario that Baxter and Woodman did not recognize in its initial report. *Id.* Existing customers' rates under those scenarios would have to increase by amounts sufficient to recover those costs.

Moreover, it is reasonable for the Village's customers to pay the same rates that the rest of the Kankakee system customers pay. Village customers will receive the same high quality water, high customer service levels, and the same enhanced financial and managerial support that the rest of Aqua's Kankakee customers receive. *Id.* As Aqua's Kankakee system is upgraded in the future, the Village's customers will benefit to the same extent as Aqua's other customers. *Id.*

In conclusion, the evidence clearly demonstrates the Village's customers will see a rate increase under any scenario. The Village has taken this into consideration when it determined to sell its System to Aqua. Consequently, Ms. Hartman's claims regarding a rate increase are not fully informed and fail to reflect to operational reality of the Village's existing System. As such, the Commission should reject her claim.

#### **IV. Miscellaneous**

As noted, with the exception of limited rate and accounting issues with regard to which Aqua and Staff reached agreeable resolutions, there are no contested issues between Aqua and Staff in this case. With regard to the issues upon which Aqua and Staff reached agreeable resolutions, the Commission should approve those resolutions for purposes of this case alone and recognize that Aqua's and Staff's rights are reserved to litigate the issues should they arise in future cases. Because Aqua and Staff reached concessions on those issues, they did not need to litigate the issues and did not develop the record on the issues fully. While sufficient evidence exists to support the Commission's adoption of Aqua's and Staff's agreements on the issues as just and reasonable resolutions of the issues for purposes of this case, the Commission is not presented with a complete record from which it could reach a fully informed conclusion on the issues' merits in the absence of Aqua's and Staff's agreed-upon resolutions. As such, the Commission should adopt Aqua's and Staff's agreed-upon resolutions as just and reasonable based on sufficient evidence of record but recognize Aqua's and Staff's reservation of rights to litigate the issues in future proceedings. Doing so encourages parties to work to resolve their differences amicably and, thereby, to limit the scope of litigation and associated expenses in Commission proceedings.

**V.**  
**Conclusion**

WHEREFORE, Aqua respectfully requests that the Commission approve its Petition for a Certificate pursuant to Section 8-406 of the Act, approve the rates and accounting entries set forth herein in accordance with Aqua's and Staff's agreed-upon resolutions, recognize Aqua's and Staff's reservation of rights to litigate issues resolved by agreement in future cases, and grant any and all other appropriate relief.

Dated: April 2, 2007

Respectfully submitted,

By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I, Sarah N. Galioto, an attorney, hereby certify that I caused a copy of the Initial Brief of Aqua Illinois, Inc. to be served upon the service list in Docket No. 06-0203 by email on April 2, 2007.

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Sarah N. Galioto

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