

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	:	

REPLY BRIEF OF AQUA ILLINOIS, INC.

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

I.
Introduction

Aqua and the Commission’s Staff filed Initial Briefs in support of Aqua’s Verified Petition to provide water serve to the Village of Manteno, Illinois (the “Village”), including the compromises on certain issues that Aqua and Staff reached for purposes of resolving this case. Ms. Sandra L. Hartman is the only party that opposes Aqua’s Verified Petition. Her arguments in opposition, however, are not compelling and should be dismissed. The Commission should grant Aqua’s Verified Petition.

II.
Argument

A. Aqua’s Provision Of Water Service To The Village Is In The Public Interest

Ms. Hartman asserts that the Village should not sell its system because high rates and poor service allegedly would result. Hartman IB at 1-3. Initially, her arguments are misplaced

because they address the Village's decision to sell its water system to Aqua rather than the statutory requirements that the Commission is charged with assessing under Section 8-406 of the Public Utilities Act (the "Act"), 220 ILCS 5/8-406. Irrespective, Ms. Hartman is wrong on all counts. While Aqua set forth the evidence fully that establishes the infirmities underlying Ms. Hartman's allegations in its Initial Brief, *see* Aqua IB at 8-13, the same evidence is summarized herein. As explained herein and in Aqua's Initial Brief, Ms. Hartman's arguments should be rejected.

1. Aqua Will Provide Superior Quality Water Service

Ms. Hartman alleges that service quality will go down under Aqua's ownership. There is no support for her allegation. There is no indication that Aqua provides poor quality service, either in the evidence or through complaints filed with the Commission. Her allegation should be dismissed outright for its entire lack of support.

The evidence demonstrates that 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.* Aqua has a proven track record of quality service in Illinois. No evidence in this case demonstrates otherwise.

Indeed, Ms. Hartman only cites a single basis for alleging that service quality would go down under Aqua's ownership, and that is her allegation that Aqua proposes to flush the system's hydrants during the day rather than at night. Hartman IB at 1. First, her allegation is a misstatement of the evidence. Aqua witness Mr. Rakocy testified that, while Aqua prefers to flush during the day, it will flush the main area of the Village at night. Tr. at 50. Second, there is no evidence that day time flushing would impact service quality. While Mr. Rakocy testified

that there may be some inconvenience with day time flushing, that it is offset by the cost savings, Tr. at 51-52, which are passed on to customers in the form of lower rates. Irrespective, day time flushing in rural areas certainly would not be a material factor in overall service quality assessment. Aqua's service quality ratings are high.

The Village, to the contrary, has faced fecal coliform contamination; and the Illinois Environmental Protection Agency ("IEPA") has cited the Village for a violation of water quality standards. Aqua Ex. 4.0 at 7.

Ms. Hartman, nonetheless, alleges that the Village's system does not have a water quality problem and perhaps never did. Hartman IB at 1-2. Her allegations are groundless. She is not a water quality expert. All she offers is her lay-person opinion on a matter that requires expert qualification.

Further, the IEPA's citations for coliform contamination prove her opinion to be incorrect. Moreover, even though the Village has implemented a temporary fix for its coliform problem in the form of an Ultra Violet ("UV") treatment system, such a temporary fix is not permanent and detections of contamination have continued to occur. Aqua Ex. 6.0 at 6. This is a serious situation that needs to be rectified. Indeed, the IEPA has expressed clearly that it is "uncomfortable" with the testing results even after the UV treatment system has been installed. *Id.* at 6, Ex. TJR-6.1. It has stated: "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.* Ms. Hartman's lay opinion that the system does not have a fecal coliform problem is unsupported and contradicted by the IEPA's expert findings and citations.

Accordingly, the evidence does not show that the Village was able to provide quality water service. The Village's service quality problem caused the IEPA to issue citations and urge immediate action toward a permanent solution even after the Village's installation of the UV treatment system. Service quality will improve under Aqua's ownership to a level consistent with Aqua's proven track record in Illinois. Ms. Hartman's allegations otherwise are unsupported.

2. Aqua's Acquisition Of The System Is The Least Cost Option For Addressing The Village's Service Quality Problems

The Village cannot continue to utilize its source of supply even with the UV treatment system. Tr. at 44. It either has to put in a surface water treatment plant or find another source of supply. The evidence demonstrates that the Village's sale of its system to Aqua is the most cost effective method for the Village's residents to address their water supply problem. *Id.* at 7; Aqua Ex. 4.0 at 6, Ex. TJB-4.1; Staff Ex. 1.0 at 5-6.

Ms. Hartman's allegation that the Village could have maintained ownership and operation of the system through a low interest EPA loan has no impact on the analysis. Hartman IB at 2. Should the Village attempt to maintain operation, it would cost between \$53.1 and \$54.3 million dollars to build a new treatment system. Intervenor Ex. 1.0, Att. A at 1. Further, the Village has not seen the population growth that it expected, such that existing residents would have to cover an additional \$25 million more than originally expected to construct a new treatment plant. Aqua Ex. 6.0 at 8. There is no evidence that the Village could afford a loan of this magnitude. Tr. at 47-48 (Mr. Rakocy testifying that he does not know whether the Village would qualify for the loan). Irrespective, any such loan would have to be paid back. Tr. at 47. As such, the fact that the EPA offers low interest loans would not make it any cheaper for the

Village to maintain ownership and operation of the system. To the contrary, it would be more expensive for the Village because it would have to pay back the entire loan plus interest, even if it is a low interest loan.

Ms. Hartman also alleges, however, that the Village did not negotiate an adequate sale price for the system because Mr. Richard Simms advised the Village on the value of the sale. Hartman IB at 2. The evidence does not demonstrate that Mr. Simms had a conflict of interest. Mr. Simms is the manager of a wastewater plant that has no relationship to Aqua. Tr. at 37. While Aqua interacts with the plant that Mr. Simms manages and, thus, with Mr. Simms in certain aspects of its business operations, Mr. Simms has no interest in or loyalty to Aqua. Aqua Ex. 6.0 at 4; Tr. at 37-40.

Irrespective, the adequacy of the Village's negotiated sale price is beyond the scope of the Commission's authority over the proposed transaction under Section 8-406 of the Act. The sale price was the result of an arms length negotiation. Nothing in Section 8-406 of the Act grants the Commission authority to second guess the Village's decision to sell at the given sale price.

Finally, Ms. Hartman asserts that bulk supply from Aqua would be more cost efficient, and that Aqua arbitrarily refused to provide the Village bulk water supply. Hartman IB at 2. Her allegation has no evidentiary support. Aqua did offer to provide the Village with bulk water. But, Aqua was unable to offer the Village a sufficient amount of water through a bulk transaction without the incursion of significant additional capital investments which would make the transaction too costly and undesirable. Tr. at 34.

In sum, the Commission should not second-guess the Village's decision to sell its system. But, the evidence demonstrates that the Village made the most cost-effective choice. While Ms. Hartman advocates other solutions, her analysis is flawed and unsupported.

3. The Village's Rates Would Be Higher Under Its Own Operation

Ms. Hartman alleges that rates will increase under Aqua's ownership. While this is true, rate increases are inevitable under any scenario because the Village's problem with its source of supply needs to be addressed. Aqua Ex. 4.0 at 8; Aqua Ex. 6.0 at 5, 8. The evidence shows that the Village would face higher rate increases should it attempt to maintain and operate the system itself. *See* Intervenor Ex. 1.0, Att. A at 1; Aqua Ex. 6.0 at 8 (identifying the additional costs the Village's rates would have to recoup under its ownership). Even Ms. Hartman admits that this is so. Hartman IB at 1.

Ms. Hartman's assertion that Baxter & Woodman did not take Aqua's future rate increases into account is a non-starter. Hartman IB at 1. Baxter & Woodman did not take into account the rate increases that the Village would have to implement should it continue to own and operate the system either. As noted, the rate increases under the Village's continued ownership and operation would be higher, as Ms. Hartman admits.

Ms. Hartman's allegation that the rate increase under Aqua's ownership improperly would be directed to the shareholders of Aqua's parent company also is unsupported. Aqua's parent company is a separate entity that is not subsidized by Aqua's customers. Aqua Ex. 6.0 at 8-9. The Commission oversees Aqua and reviews its requested rate increases. *Id.* at 8. It ensures that Aqua's rates are set only to recover Aqua's prudently incurred costs of providing service and a reasonable return on Aqua's investment. *Id.* The regulatory oversight that the Commission provides ensures that Ms. Hartman's allegations would not come to pass.

Further, Ms. Hartman's allegation that rates would "soar" under Aqua's ownership, Hartman IB at 1, is nothing but a misleading characterization. The rates that Village customers would pay under Aqua's ownership, namely the same rates that the rest of the Kankakee system customers pay, would be just and reasonable. Village customers would 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. Aqua Ex. 6.0 at 8. As Aqua's system is upgraded in the future, the Village's customers will benefit to the same extent as Aqua's other customers. *Id.*

Further, as noted, the Commission has oversight of Aqua's rates and ensures that the rates remain just and reasonable over time. While Aqua has had past rate increases, it has not had customer complaints following its last increase and the Commission has deemed each of Aqua's rate increases to be just and reasonable. The fact that the Commission will have continued oversight of Aqua's rates renders Ms. Hartman's claim that rates will "soar" to the benefit of shareholders of Aqua's parent company a complete non-starter.

Accordingly, the evidence demonstrates that, while rates would increase under any scenario, they would increase more should the Village maintain ownership and operation of the system. Further, Village customers would pay fair rates under Aqua's ownership, which would be overseen by the Commission, in return for which they would receive high quality service. Ms. Hartman's claims to the contrary should be rejected.

III.
Conclusion

WHEREFORE, for the reasons set forth herein, the Commission should reject Ms. Hartman's arguments, approve Aqua's Verified Petition as set forth in the Initial Briefs of Aqua and Staff, and grant any and all other appropriate relief.

Dated: April 16, 2007

Respectfully submitted,

By: _____
An Attorney for Aqua Illinois, Inc.

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CERTIFICATE OF SERVICE

I, Sarah N. Galioto, an attorney, hereby certify that I caused a copy of the Reply Brief of Aqua Illinois, Inc. to be served upon the service list in Docket No. 06-0203 by email on April 16, 2007.

Sarah N. Galioto

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