

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois-American Water Company, :  
American Water Works Company, Inc. :  
Thames Water Aqua US Holdings, Inc. :  
and Thames Water Aqua Holdings GmbH. : 06-0336  
:  
Joint Application for Approval of Proposed :  
Reorganization and Change in Control of :  
Illinois-American Water Company :  
pursuant to Section 7-204 of the Illinois :  
Public Utilities Act. :

**REPLY BRIEF OF STAFF  
OF THE ILLINOIS COMMERCE COMMISSION**

Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission”) Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the instant reorganization proceeding pursuant to Section 7-204 of the Illinois Public Utilities Act (“Act”), 220 ILCS 5/7-204.

**I. INTRODUCTION**

On April 10, 2007, Initial Briefs (“IB”) were filed in this proceeding by Thames Water Aqua Holdings GmbH, Thames Water Aqua U.S. Holdings, Inc., American Water Works Company, Inc., and Illinois-American Water Company (“IAWC” or the “Company”) (collectively, “Joint Applicants”), the Cities of Champaign and Urbana and the Village of Homer Glen (the “Cities”), and Staff. The Village of Bolingbrook filed its

Initial Brief on April 6, 2007.

Staff herein replies to the misunderstanding and misapplication of Section 7-204(b)(7) of the Act evidenced in the Cities' Initial Brief.

## **II. THE CITIES MISUNDERSTAND AND MISAPPLY SECTION 7-204(b)(7) OF THE ACT**

### **A. The Cities' Assertions**

The Cities assert that IAWC has failed to prove that the reorganization is not likely to result in adverse rate impacts on retail customers. (Cities IB, p. 15) The reasons for this assertion are:

1. Quantifiable savings are not expected to result from the transaction and Staff did not recommend the establishment of any accounts to track and capture any savings that may result from the transaction; therefore, there is no way to track any savings to ratepayers. (Id., p. 16)
2. Staff did not perform any analysis to determine if or whether there are any benefits to ratepayers as a result of the transaction. (Id.)
3. Staff did not feel it was necessary to determine when IAWC would file for a rate increase, even though Staff specifically found that the Company would continue to operate under its existing tariffs and rate structures. The Company indicated it plans to seek a rate increase in 2007. (Id.)

Each of these assertions demonstrates the Cities' misunderstanding and misapplication of the requirements of Section 7-204 of the Act. Accordingly, Staff will refute each assertion, as discussed below.

**B. Section 7-204 of the Act**

Section 7-204(b)(7) of the Act states:

(b) No reorganization shall take place without prior Commission approval. The Commission shall not approve any proposed reorganization if the Commission finds, after notice and hearing, that the reorganization will adversely affect the utility's ability to perform its duties under this Act. In reviewing any proposed reorganization, the Commission must find that:

\* \* \*

- (7) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers.

Section 7-204(b)(7) of the Act simply states that **adverse rate impacts on retail customers are not likely to result**. It does not address the matter of savings that may result from a proposed reorganization.

The savings issue is, however, addressed in Section 7-204(c) of the Act, which provides that:

- (c) The Commission shall not approve a reorganization without ruling on: (i) the allocation of any savings resulting from the proposed reorganization; and (ii) whether the companies should be allowed to recover any costs incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated.

While Section 7-204(c) of the Act addresses savings that may occur, it clearly does not require savings to result from a proposed reorganization.

**C. The absence of savings does not constitute an adverse rate impact**

No language can be found in Section 7-204 of the Act that requires savings to result from a proposed reorganization. Accordingly, the absence of savings does not constitute adverse rate impact, as asserted by the Cities. (Cities IB, p. 16) Moreover, Joint Applicants stated in the Revised Direct Testimony of Terry L. Gloriod that they do

not expect savings to result in Illinois from the proposed reorganization and recommended the Commission determine that such savings, if any, be allocated in full to customers. (IAWC Exhibit 1.0, p. 10, lines 206-211) Staff witness Bonita A. Pearce cited this testimony and noted Joint Applicants' agreement. (ICC Staff Exhibit 2.0, p. 6, lines 120-128) Furthermore, Staff did not recommend the establishment of accounts in which to "track and record" any savings that may result from the proposed transaction because it is not necessary for two reasons.

First, all water companies operating in the State of Illinois that are subject to the Act are also subject to the Uniform System of Accounts ("USOA"). Within the USOA for Water Utilities Operating in the State of Illinois, there are no accounts designated for the purpose of recording and tracking "savings". As such, Staff is not at liberty to modify the USOA within the scope of this proceeding by proposing new accounts. The addition of new accounts would need to be considered by the Commission in a rulemaking proceeding. Illinois regulated water utilities must adhere to the USOA. Consequently, Staff cannot recommend that the Commission require a regulated utility to deviate from the USOA.

Second, and more importantly, it is not necessary to separately track and record any savings in separate accounts in order to ensure they flow back to ratepayers. The concept of "savings" in this proceeding would result from costs that are reduced or are no longer incurred in the future. In the normal course of accounting for its costs, the regulated utility would then experience and record these lower costs, resulting in the hypothetical "savings". These "savings" would naturally flow back to the ratepayers in the course of a future rate proceeding, since the rate model is based on recovery of

costs and return on investment. Accordingly, the existing rate model, which is the basis for determining the amount that an Illinois public utility can charge its customers, would provide for the return of any savings to the ratepayers.

**D. “Benefits” are not required by Section 7-204 of the Act**

The Cities’ second assertion is that Staff did not perform any analysis to determine if or whether there are any benefits to ratepayers as a result of the proposed reorganization. (Cities IB, p. 16) Again, the Cities misinterpret and misapply the requirements of Section 7-204 of the Act. Specifically, the Act contains no requirement that the proposed transaction must result in “benefits” to the ratepayers—merely that the proposed transaction **is not likely to result in adverse rate impacts on retail customers.**

Additionally, the Cities fail to define what they mean by “benefits” so it would require speculation on the part of Staff to respond to this alleged deficiency of Staff’s analysis of the proposed reorganization. Accordingly, Staff can only emphasize that it performed the analyses and made recommendations based on the requirements of Section 7-204 of the Act. Any deficiency implied by the Cities is groundless and inappropriate.

**E. The requirement that the proposed transaction is not likely to result in adverse rate impacts does not mean that the utility may not request a rate increase**

The Cities’ third and final assertion is that Staff did not feel it was necessary to determine when IAWC would file for a rate increase, even though Staff specifically found that the Company would continue to operate under its existing tariffs and rate structures. The Cities further assert that the Company indicated it plans to seek a rate

increase in 2007. (Cities IB, p. 16)

Again, the Cities misinterpret and misapply the requirements of Section 7-204(b)(7) of the Act. As indicated in the Direct Testimony of Staff witness Pearce, Mr. Gloriod asserted that IAWC would continue to operate under its existing tariffs and rate structures. (ICC Staff Exhibit 2.0, p. 5, lines 102-111) Additionally, Joint Applicants did not request recovery of any of the costs of the proposed transaction. Finally, there was no request to modify IAWC's existing affiliate agreements. (Id., p. 5, lines 98-100) Given these factors, Staff witness Pearce concluded it did not appear that the **proposed reorganization itself** would result in adverse rate impacts. (Id., p. 5, lines 110-111) Staff notes that Section 7-204(b)(7) of the Act does not preclude a utility from requesting a rate increase after a proposed reorganization is approved.

The requirement that the proposed transaction is not likely to result in adverse rate impacts on retail customers does not mean that the utility, after reorganization, may never request a rate increase, or even that a utility may not request a rate increase for a certain amount of time following a reorganization, unless the Commission decides to impose such a condition. In the instant proceeding, no party requested such a condition be imposed by the Commission. Therefore, IAWC may choose to request a rate increase in 2007 or any other subsequent time, as it deems necessary, just as it would be allowed to do absent the proposed reorganization. In other words, IAWC's prospective filing of a rate case in 2007, or later, is simply not relevant to the instant proceeding.

**III. CONCLUSION**

Staff respectfully requests that the Commission reject the arguments regarding Section 7-204(b)(7) of the Act advanced by the Cities and approve Joint Applicants' proposed reorganization pursuant to Section 7-204 of the Act with the two conditions set forth in Staff's Initial Brief.

Respectfully submitted,

A handwritten signature in black ink that reads "Linda M. Buell". The signature is written in a cursive, flowing style.

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LINDA M. BUELL

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Commerce Commission

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