

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

**Aqua Illinois, Inc.** :  
 :  
**Petition for Issuance of a Certificate** :  
**of Public Convenience and** :  
**Necessity to Operate a Water Supply** : **06-0203**  
**and Distribution System in** :  
**Kankakee County, Illinois and for** :  
**the Issuance of an Order Approving** :  
**Rates, Accounting Entries and Tariff** :  
**Language.** :

**PROPOSED ORDER**

By the Commission:

**I. PROCEDURAL HISTORY**

On March 17, 2006, Aqua Illinois, Inc. (“Aqua,” “the Company” or “Petitioner”) filed a Petition with the Illinois Commerce Commission (“Commission”) seeking a Certificate of Public Convenience and Necessity to construct, own, operate and maintain a water supply and distribution system and, in connection therewith, to transact a public utility business in the area of Kankakee County, Illinois, described herein. Aqua also requested approval to apply the rates applicable in its Kankakee Division as the rates for water service in the area as well as approval of accounting entries related to the acquisition of water facilities in the area. Aqua is a public utility within the meaning of Section 3-105 of the Public Utilities Act (the “Act”), 220 ILCS 5/3-105.

Pursuant to notice given as required by law and by the rules and regulations of the Commission, a pre-hearing conference was initially held in this matter May 23, 2006 before a duly authorized Administrative Law Judge at the Commission’s office in Springfield, Illinois. A Petition to Intervene was filed by Sandra L. Hartman (“Intervenor”) on October 13, 2006. Ms. Hartman was granted leave to intervene in this proceeding, without objection, by the Administrative Law Judge at a status hearing on November 14, 2006. An evidentiary hearing was held on February 22, 2007. Appearances were entered by counsel on behalf of Petitioner and the Commission’s Staff (“Staff”), as well as by Ms. Hartman, pro se. At the conclusion of the evidentiary hearing, the record was marked “Heard and Taken”. Post-Hearing Briefs were filed by Aqua, Staff, and the Intervenor. Reply Briefs were filed by Aqua and the Intervenor. Staff did not file a Reply Brief. A Proposed Order was served on the parties by the Administrative Law Judge.

## **II. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

### **A. Aqua's Position**

The Company has been requested to, and has entered into an Assets Purchase Agreement ("Agreement") with the Village of Manteo ("Village" or "Manteno") to provide water service to members of the public in the proposed area for certification. As part of the Agreement, Aqua will acquire the water distribution system that the Village currently utilizes to provide service to the area. Aqua will acquire the system for a purchase price of \$4,500,000 plus payment for the portion of closing costs allocated to Aqua by the Agreement.

The area that will be served corresponds to the residential community known as the Village of Manteno that is located in Kankakee County, Illinois, and specifically defined in the map and legal description attached to Aqua's Petition as Attachments B and C, respectively. It is located along Interstate I-57 between Bradley/Bourbonnais and the proposed new airport that will serve the metropolitan Chicago area. It is adjacent to the retail service area for Aqua's existing Kankakee Division. Aqua states in its petition states that no water public utility company, other than Aqua, will own a water supply and distribution system within, or within a reasonable proximity to, the proposed certificated area, or is authorized or is able to render public water utility service to the area. Aqua further alleges in its petition that no municipal water system is able to provide adequate and efficient service to the area.

The Village's system derives its supply from a system of six wells. At the time of Aqua's Petition, the system served approximately 3,500 customers. The system has, for several years now, been faced with the challenge of addressing and remediating fecal coliform contamination in its supply source. The Illinois Environmental Protection Agency ("IEPA") cited the Village for a violation of water quality standards on October 27, 2004. In response to this citation, the Village installed, and the IEPA approved, an ultra-violet ("UV") treatment system on the affected well(s) as an interim measure. Aqua submits that the UV treatment was not a long term solution, and that the Village faced two options: construct a treatment plant on its own to address the water quality issues or interconnect to Aqua's existing Kankakee system.

Aqua notes that the Village hired the engineering firm of Baxter & Woodman to conduct a study of its options. Aqua submits that the evidence shows that Baxter & Woodman concluded that the best and most cost effective solution would be for the Village to interconnect to Aqua's Kankakee facilities. Manteno, in its "Compliance Commitment Agreement" with the IEPA dated December 19, 2005, requested that Aqua acquire the system and commence the provision of retail water service to Manteno no later than January 1, 2008. Aqua notes that at that point, water from the six wells that had formed the base of supply for the Manteno system would be discontinued, and the system would secure supply through the interconnection with Aqua's Kankakee facilities. Aqua currently secures its supply for the Kankakee system from the

Kankakee River and will continue to do so upon interconnection with the Manteno system.

Aqua states that, overall, the system is in good condition, so no major replacements or upgrades will be required. However, the shift from the six supply wells currently used by the system to one interconnection point with Kankakee will require some reengineering. Aqua asserts that it has committed to extending its water mains and making such other system revisions as are necessary to provide quality water service to the entire Village water system.

Aqua attested that it has the technical and managerial ability to operate and maintain the public water supply and distribution system for Manteno. Aqua notes that it is a regional provider of water, with operations in five municipalities and townships in the unincorporated areas of Kankakee County, and submits that it has a solid service quality track record, expertise, and the resources of its parent company, Aqua America, Inc., available to it, to manage and supervise the system as well as construction of any facilities needed to maintain and expand the system to meet customer needs now and in the future. Aqua is of the opinion that the residents of the Village will benefit from the provision of quality water service by Aqua, and the customer service and support that Aqua's corporate structure and expertise can offer. In addition, because the draw on the six supply wells for the Manteno system will be discontinued, Aqua believes that the draw on the supporting aquifer will be reduced and aquifer water will be available in greater quantity for the agricultural community and other residences that have private wells in the area.

Aqua is also of the opinion that its existing customer population will also benefit from the acquisition of the Manteno system. Aqua notes that if the acquisition of the Manteno system is approved by the Commission, two elevated storage tanks will be acquired, and that these two tanks have a storage capacity of 1,000,000 gallons, which is currently greater than the average daily use for the Village. Upon interconnection with the Kankakee system, these elevated tanks will become available for additional water storage for peak usage times or drought periods.

Aqua also attested that it has the financial ability to operate and maintain the public water supply and distribution system for Manteno. Aqua submits that the provision of public water service in Manteno will impose no financial burden on either Aqua or its existing customers, and that existing customers will benefit from the growth of the Aqua system as common costs are spread over a larger customer base.

## **B. Staff's Position**

Staff witness William D. Marr recommended that the Commission approve Aqua's proposed certificated area. He testified that the Company has a need for certification to provide water service to the Village and surrounding area. He also concluded that Aqua has met the requirements set forth in Section 8-406(b)(1) and (2) of the Act.

In particular, he testified that the Company's proposed acquisition of the Manteno system is necessary to provide adequate, reliable, and efficient water service to the customers within the proposed area. He stated that it appears the Village no longer wishes to provide water service and has accepted the Company's bid to purchase the water system. Mr. Marr stated that the Company currently provides adequate, reliable and efficient water service to customers within its Kankakee Division.

Mr. Marr also testified that the Company's proposed construction of the water main extension to interconnect the Village's system with the Kankakee Division constitutes the least cost means of satisfying the water service needs of customers in the area. In addition, according to information provided by the Company in response to Staff data requests, current water supply capacity for the Company's water system of the Kankakee Division is rated at 22 million gallons per day ("mgd"). The peak demand for the Company's Kankakee Division is approximately 16 mgd. The estimated demand for the customers in the proposed area is 3.3 mgd. Adding the estimated demand from the customers within the proposed area to the existing peak demand for the Kankakee Division is 19.3 mgd on a peak day, which is within the existing capacity of the Kankakee Division's system. Therefore, Mr. Marr concluded that Aqua's water system has sufficient capacity to meet the estimated demand from the customers within the proposed area without the need to construct additional water facilities.

Mr. Marr further testified that the Company is capable of efficiently managing and supervising the construction necessary to provide water service to the proposed area. He stated that Aqua has many years of experience managing and supervising this type of construction and providing water service in Illinois. He also testified that the Company efficiently manages and supervises the public water supply and distribution system within its Kankakee Division.

Staff witness Rochelle Phipps evaluated Aqua's financial ability to construct, operate and maintain a water supply and distribution system for the Village. The total cost of purchasing and making capital improvements to the Manteno system is \$7,973,020. Ms. Phipps notes that Aqua states it will finance the system purchase and related construction using short-term debt and subsequently adjust its capital structure through dividend policy, equity infusions and long-term debt issuances to maintain a capital structure comprising 52% equity and 48% debt.

Ms. Phipps testified that Aqua has access to the capital markets on reasonable terms. Aqua indicates that it has access to bank lines of credit totaling \$20 million as well as the financial resources of its parent company, Aqua America, Inc., whose total assets exceed \$2.6 billion. Moreover, Aqua's affiliate, Aqua Pennsylvania, Inc., is rate A+ by Standard and Poor's ("S&P"). This credit rating reflects the consolidated credit profile of Aqua America, Inc. and denotes Aqua's parent company has a strong capacity to meet its financial obligations. Thus, Ms. Phipps concluded that Aqua has access to the capital markets on reasonable terms.

Ms. Phipps also assessed Aqua's stand-alone financial strength by performing a ratio analysis of Aqua following the purchase of the Manteno system to assess whether Aqua is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. Using Aqua's projected financial statements for years 2006 through 2010, Ms. Phipps calculated financial ratios for Aqua, which she then compared to financial targets that S&P publishes and uses in its analysis of investor-owned utilities. Based on the results of her financial ratio analysis, in Ms. Phipps' judgment, Aqua will have access to the capital markets on reasonable terms following the proposed transaction.

Accordingly, Ms. Phipps concluded that the proposed transaction meets the requirements of Section 8-406(b)(3) of the Act. She recommends the Commission find that Aqua is capable of financing the system's purchase and proposed construction without significant adverse financial consequences for Aqua or its customers.

### **C. Intervenor Hartman's Position**

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, that Baxter & Woodman recommended against the sale and that the Village did not negotiate an adequate sale price for its system due to the involvement of a Mr. Simms. She also claims that there is no need to sell the system, as the water contamination issue allegedly has been resolved, if it ever existed. She states that the Village could have maintained ownership and operation of its system by taking out a low interest EPA loan. In the alternative, Ms. Hartman asserts the Village could have purchased water in bulk from Aqua; but, she alleges, Aqua arbitrarily refused to provide the Village with a bulk water purchase option. Finally, she asserts that high rates and poor service quality will result if the Village's system is sold to Aqua.

### **D. Aqua's Response to Ms. Hartman**

Aqua submits that Ms. Hartman is asking the Commission to second-guess the Village's decision to sell its system, which exceeds the scope of the Commission's authority under Section 8-406 of the Act. Regardless, Aqua clarifies that the Baxter & Woodman report upon which Ms. Hartman relied was superseded. In a later letter, Baxter & Woodman recommended that the Village sell its system to Aqua based on additional factors that had come to light since its original report. Therein, Baxter & Woodman concluded the sale was both the most realistic alternative and the only option if the Village does not want to limit its future growth. Aqua submits that the sale price of the Manteno system was negotiated in an arms length transaction. Mr. Simms is the manager of a wastewater plant that has no relationship to Aqua.

Aqua further is of the opinion that it would cost the Village more to maintain the system because the UV treatment plant is a temporary solution. Per the Baxter & Woodman report, a new treatment system would need to be installed to address the Village's supply problem in the long run, which would cost between \$53.1 and \$54.3

million dollars to build. Aqua also submits that the evidence shows that the Village has not seen the population growth it expected at the time of the Baxter & Woodman report, such that existing residents would have to cover an additional \$25 million more than originally expected to construct a new treatment plant.

In response to Ms. Hartman's claim that the Village could obtain a low interest EPA loan, Aqua submits that there is no evidence the Village could afford a loan of the magnitude that would be required, or that the Village would even qualify for a low interest loan. Aqua also notes that the loan would have to be paid back, and the low interest nature of any loan would not reduce the Village's costs.

As to Ms. Hartman's assertion that Aqua arbitrarily refused to provide a bulk water option, Aqua submits that this allegation has no evidentiary support. Aqua notes that it did offer to provide the Village with bulk water; however, Aqua was unable to offer a sufficient amount of water through a bulk transaction without the incursion of significant capital investments; thus making this option not cost-effective for the Village.

Aqua also is of the opinion that steps are necessary to address the fecal coliform problem in the Village's source of supply, and note that Ms. Hartman is not a water quality expert. Aqua submits that her lay opinion that a problem does not exist, and perhaps never did, is not persuasive in light of the IEPA's contrary findings and citations. Aqua believes the UV treatment plant to be a temporary solution, and notes that detections of contamination have occurred subsequent to its installation. The IEPA has expressed its lack of comfort with these later test results.

In addition, Aqua explains that it has a proven service quality track record in Illinois. Aqua has a large number of experienced employees available to operate, maintain and enhance the water system, and to serve customers and respond to emergencies. It has a call center for responding to customers' issues and maintains an office within 15 miles of the Village. Aqua points out that Ms. Hartman presented no evidence demonstrating that service quality would deteriorate under Aqua's ownership of the system. In contrast, Aqua submits the evidence shows that water quality suffered under the Village's ownership.

As to rates, Aqua submits that the evidence shows that rates would likely be even higher for local residents should the Village retain ownership, a fact that Ms. Hartman admitted. Aqua also notes that the Commission has oversight of Aqua's rates and acts to ensure that its rates remain just and reasonable over time. Aqua submits that there is no cause for concern that shareholders of its parent company are reaping unjust benefits as the Commission oversees the relationship between Aqua and its parent; in addition to continued oversight of Aqua's rates.

## **E. Commission Analysis and Conclusion**

In analyzing a request such as is being made by Aqua in this proceeding, to acquire the municipal water system of the Village of Manteno, the Commission is

required to follow the guidelines of Section 8-406(b) of the Public Utilities Act, which provides as follows:

(b) No public utility shall being the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

The Commission will analyze the three issues to be addressed in order to evaluate the acquisition of the Manteno water system by Aqua in reverse order as presented above. As to whether Aqua is capable of purchasing the existing system without significant adverse financial consequences for Aqua or its customers, it appears to the Commission that this can be answered in the affirmative. Staff has analyzed the negotiated purchase price in relationship to the financial position of Aqua, and has determined that Aqua is in a position to finance the proposed acquisition without any adverse consequences to the utility or its customers, which analysis was not challenged by any of the other parties to this proceeding. The Commission therefore finds that Aqua is capable of financing the proposed acquisition without significant adverse financial consequences for either the utility or its customers.

The Commission must next determine if Aqua is capable of efficiently managing and supervising the construction necessary to fully incorporate the Manteno system into Aqua's system. Aqua has presented evidence showing that some additions will be made to the system, and Staff is of the opinion that Aqua has shown it is capable of supervising any necessary construction, along with being able to adequately manage the plant once it is fully incorporated into Aqua's system. The Intervenor Ms. Hartman presented no evidence disputing Aqua's ability to manage the existing plant in service and any construction necessary to incorporate Manteno into Aqua's water system. The Commission therefore finds that Aqua is capable of efficiently managing and

supervising any construction necessary to incorporate the Manteno water system into the Aqua water distribution and supply system.

Lastly, the Commission must determine if the proposed acquisition is necessary to provide adequate, reliable, and efficient service to the residents of the Village of Manteno and is the least-cost means of satisfying the service needs of these residents. It appears to the Commission, that of the options available to Manteno, the sale of the village system to Aqua is the most cost-effective method available to address the issues with Manteno's water supply. Additionally, while it appears that the rate the residents of Manteno pay for water will indeed rise after the sale, the evidence supports the conclusion that those rates would rise under whichever decision the Village made in improving its water supply. The rates to be paid by the residents will be the same as under Aqua's current tariffs for the Kankakee system, and any future rates will be within the oversight of the Commission, to ensure that these rates remain just and reasonable.

While the Commission appreciates the time and interest Ms. Hartman has invested in this proceeding, the purpose of this proceeding is to review the proposed purchase and ensure that it is in compliance with any applicable provisions of the Public Utilities Act. The Commission is not in a position to second-guess the decision by the Village Board to sell the system to Aqua, or to make a decision as to what choice the Commission would have made in this situation.

The Commission concludes that Aqua should be granted a Certificate of Public Convenience and Necessity to own, construct, operate and maintain a water supply and distribution system and, in connection therewith, to transact a public utility business in Manteno. The evidence establishes that Aqua's proposed acquisition of the Manteno water system is necessary to provide adequate, reliable and efficient water service to customers within the Village. Aqua has further demonstrated that it has the technical, financial and managerial ability to own, construct, operate and maintain the water system, and that it is capable of financing the water system without significant adverse financial consequences for itself or its customers. The evidence also shows that the capital improvements Aqua proposes to the Village's water system are necessary and appropriate. The Commission, therefore, finds that the public convenience and necessity require and will be promoted by the approval of Aqua's Petition as set forth herein.

The Commission finds that Ms. Hartman's allegations, while given due consideration, are not supported by the evidence. The IEPA's citations are proof of a fecal coliform problem in the Village's source of supply for which a long-term solution is necessary. It would be more costly for the Village to construct a new water treatment plant to correct this problem, and a bulk water purchase option from Aqua would require significant capital investments. The Commission also finds that Mr. Simms' efforts in negotiating the sale price were not affected by a conflict of interest because the wastewater plant that Mr. Simms manages has no relationship to Aqua. Finally, the Commission finds that Ms. Hartman's allegations of poor service quality and soaring rates are unfounded. Aqua has a solid, proven track record of quality service in Illinois

and the resources at its disposal to ensure that such quality service is provided to Manteno. The Commission will oversee Aqua's rates to ensure that they remain just and reasonable.

Accordingly, the Commission will issue a Certificate of Public Convenience and Necessity for the Manteno area as defined in Aqua's Petition. The map and legal description of the area are attached to Aqua's Petition as Exhibits B and C, respectively. The area corresponds to the residential community known as the Village of Manteno and surrounding area that is located in Kankakee County, Illinois.

### **III. ORIGINAL COST**

The Village does not have sufficient records to identify the original cost and accumulated depreciation of its utility plant in service. As such, Aqua hired Mr. John F. Guastella, who is President of Guastella Associates, Inc., a utility management, valuation and rate consulting company, to perform an original cost study of the Manteno system. Mr. Guastella estimated the depreciated original cost of the system as of March 2006 to be \$10,749,600.

Staff did not propose any adjustments to Mr. Guastella's original cost study.

The evidence supports Mr. Guastella's findings that the original cost of the Manteno system as of March 2006 is \$10,749,600. The Commission adopts this amount as the original cost for the Manteno system.

### **IV. ACCOUNTING ENTRIES**

Aqua witness Mr. Paul Hanley testified to the journal entries the Company proposes for the acquisition. He stated that 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 adjustment. Aqua proposed to dispose of the acquisition adjustment as a credit to account 421, non-operating income, amortized over a 20-year period and brought into rate base over the same period of time.

Staff witness Ms. Bonita A. Pearce recommended some adjustments to the journal entries. She proposed that the balance of account 301, Organization Costs, be limited to the lesser of \$35,000 or actual costs incurred in connection with this proceeding. Ms. Pearce also recommended that Aqua amortize the balance of account 301 over a period of time to be determined in conjunction with the next rate proceeding for the certificated area. Ms. Pearce further proposed that the acquisition adjustment be recorded in account 406, amortization of utility plant acquisition adjustments, an above-the-line account, instead of account 421. Finally, Ms. Pearce recommended that Aqua file with the Chief Clerk and with a copy to the Manager of Accounting, copies of Aqua's actual journal entries to record the water system acquisition within six months of closing the acquisition.

With regard to Staff's recommendation on organization costs that Aqua be limited to the lesser of \$35,000 or actual costs, Aqua states that its costs to acquire the system (organization costs) are necessary, prudent and do not place any rate burden on existing customers. Therefore, Aqua believes that it should be permitted to record the full amount of its actual costs in account 301. Aqua also disagrees with Staff's recommendation that the acquisition adjustment be recorded in account 406 above-the-line instead of account 421 below-the-line because above-the-line treatment is not in accordance with Commission practice.

Aqua agreed to file with the Chief Clerk, with a copy to the Manager of Accounting, copies of Aqua's actual journal entries to record the water system acquisition within six months of closing the acquisition. Aqua and Staff ultimately reached agreement on the other accounting issues for purposes of resolving this case. Per the agreement, Aqua will limit the organization costs to be recorded in account 301, organization costs, to the lesser of the actual amount incurred or \$35,000, and will amortize the balance of account 301 over the period of time determined in Aqua's next rate proceeding that includes the certificated area. Regarding the acquisition adjustment, Aqua will record the amortization of the acquisition adjustment below-the-line as a credit to account 421, non-operating income, over a thirty-three year period instead of Aqua's proposed twenty year period. Journal entries that reflect this agreement are set forth in Staff Exhibit 5.0, Schedule 5.1.

The Commission finds that the resolution agreed-to between Aqua and Staff is just and reasonable, and supported by substantial evidence. Testimonial support for the resolution is provided by Aqua witness Mr. Hanley and Staff witness Ms. Pearce. The Commission hereby approves Aqua's proposed journal entries as modified by the parties' stated resolution.

## **V. RATES**

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. It explains that, in the short-term, this will result in a rate increase for Village customers; but, in the long-term, it will result in rate stabilization. Aqua states that fixed costs would be spread over a larger customer base. In addition, Village customers no longer would need to use home treatment devices or bottled 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. Aqua explains that its business model also would aid rate stabilization because expert services are provided by a service company to all Aqua systems, thereby eliminating the need for an individual division 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. Aqua's centralized business model creates efficiencies, thereby lowering these not insubstantial costs while providing direct access to significant subject matter expertise. Aqua states

that its proposed rates would not result in an excessive rate of return on Aqua's investment in useful plant.

Staff witness Mr. Mike Luth testified that it is reasonable for Aqua to charge Manteno customers the effective Kankakee rates from the time of acquisition until the next Kankakee rates docket, including a public fire protection charge of \$2.76 for 5/8 inch meters with proportionate increases for larger meter customers. While this will represent an increase for Manteno customers from current rates, Mr. Luth assumed that the Village is aware of the proposed rates and took them into consideration when it decided to sell the system.

Mr. Luth also stated that if Aqua's estimates of rate base and operations and maintenance ("O&M") expense for Manteno are accurate, then the acquisition of Manteno will not adversely affect rates paid by current Kankakee customers. He noted, however, that estimates are not actual results. He also noted that Aqua's forecast for a different area had been different from the actual costs later reported. Mr. Luth recommended that the Commission require Aqua to separately account for Manteno additions to plant in service and O&M expenses, and that the Commission decide at the next rate case that includes the certificated area whether Manteno customers should subsequently pay rates different from Kankakee customers.

Staff witness Mr. Marr recommended that the Company's current Rules, Regulations and Conditions of Service tariffs for water service be revised to include the Village, and that Aqua file such revised tariffs within ten days of the closing of the acquisition, with an effective date of not less than ten working days after the date of filing, for service rendered on and after their effective date, with individual tariff sheets to be corrected within that time period, if necessary. Mr. Marr also recommended that Aqua file a report with the Chief Clerk within seven days after the closing of the acquisition indicating the date on which the closing occurred, and provide a copy of the filing to the Manager of the Commission's Water Department.

Aqua agreed to Mr. Marr's recommendations. Regarding Mr. Luth's proposals, Aqua explained that it would be administratively burdensome to track O&M expenses for Manteno separately. There are services that will be provided to Manteno besides the direct expenses to operate, maintain, and improve the operations of the Manteno system. Namely, there are indirect expenses that would be extremely difficult to track if not impossible. Aqua also explained that, like O&M expenses, there are indirect capital investments that will be made in various facilities that will support the Manteno system such as investments in the water treatment plant, transmission mains, storage tanks, pumping stations. While such improvements will be made in these facilities that are outside the Manteno system, the investments will still support and, therefore, benefit the Manteno system. It would be extremely difficult, once again, to track these indirect capital investments that will be associated with the Manteno system.

In addition, Aqua does not believe it is necessary to track O&M expenses and capital investments separately for Manteno. The purpose of such tracking would be to

assess during the next Kankakee rate case whether Manteno customers should have separate rates. Aqua believes that Manteno customers should have the same rates as Kankakee customers for several reasons. Facilities within the Kankakee system will be used to serve Manteno. Manteno's current supply source will be discontinued, and Manteno customers will be supplied through Aqua's Kankakee facilities. Plus, Manteno is an extremely small system. It would not be efficient to establish separate rates for such a small system, especially when the customers will be served in part through the use of facilities in the existing Kankakee system. As such, Aqua does not believe that separate tracking would be a necessary or efficient use of resources.

Aqua and Staff reached agreement on the rate issues for purposes of resolving this case. Per the agreement, Aqua will not track or account for O&M expenses for the Village separately. Aqua will, however, 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 rate case. Aqua also 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.

The Commission adopts Mr. Marr's recommendations. It also finds that the resolution agreed-to between Aqua and Staff is just and reasonable, and supported by substantial evidence. Testimonial support for the resolution is provided by Aqua witness Mr. Rakocy and Staff witness Mr. Luth. The Commission hereby approves Aqua's effective Kankakee rates, with the exception of the fire protection charge, for Manteno customers and directs Aqua to track its initial capital investment in the Village, its replacement of purchased assets in the Village and its improvements to purchased assets in the Village. The Commission will review the requirement for separate accounting for the Village plant additions in the next Kankakee rate case.

## **VI. MISCELLANEOUS**

As noted, Aqua and Staff reached amicable resolutions for purposes of this case alone with regard to certain accounting and rate issues. Aqua asks that the Commission recognize that Aqua and Staff's rights are reserved to litigate those issues should they arise in future cases. In the interest of encouraging parties to reach amicable resolutions of issues and, thereby, limit the scope of litigation and associated expenses in Commission proceedings, the Commission recognizes that Aqua and Staff have reserved their rights to litigate the issues upon which they reach resolution in future cases should the issue arise. The Commission's adoption of such resolutions herein, while supported by substantial evidence, should not be deemed to resolve the issues on their merits.

## VII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) Aqua Illinois, Inc. provides water and sewer public utility services to the public in certain areas in the State of Illinois and is a public utility within the meaning of Section 3-105 of the Act;
- (2) the Commission has jurisdiction over Aqua and of the subject-matter of this proceeding;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the evidence and record and are hereby adopted as findings of fact and conclusions of law;
- (4) for the reasons indicated herein, Aqua should be awarded a Certificate of Public Convenience and Necessity authorizing it to own, construct, operate and maintain a water supply and distribution system and, in connection therewith, transact a public utility business in the area of Kankakee County, Illinois that is set forth on Attachments B and C to the Petition;
- (5) Aqua should file revised Rates, Rules, Regulations and Conditions of Service tariff sheets for water service that include the Village of Manteno, which sheets shall be filed within ten days of closing the acquisition with an effective date of not less than ten business days after the date of filing, for service rendered on and after the effective date and with individual tariff sheets to be corrected within that time period if necessary;
- (6) Aqua is authorized to charge Manteno customers its effective rates for the Kankakee Division with the exception of the fire protection charge that will be reviewed at the time of the next general rate case for the Kankakee Division;
- (7) Aqua is directed to track its initial capital investment in Manteno, its replacement of purchased assets in Manteno and its improvements to purchased assets in Manteno, with potential Commission review and possible elimination of the requirement of separate accounting for Manteno plant additions in the next Kankakee general rate case;
- (8) the journal entries shown on Staff's Schedule 5.1 are adopted to record Aqua's acquisition of the Manteno water supply and distribution system in accordance with the Commission's Uniform System of Accounts for Water Utilities;

- (9) within six months of finalizing the purchase, Aqua should file with the Chief Clerk of the Commission, with a copy to the Manager of Accounting, a copy of the actual accounting entries it uses to record the transaction; and
- (10) Aqua shall file within seven days of closing the Agreement, a notification stating the date of closing with the Chief Clerk of the Commission, with a copy to the Manager of the Water Department.

IT IS THEREFORE ORDERED that Aqua Illinois, Inc. is granted a Certificate of Public Convenience and Necessity to own, construct, operate and maintain a public utility water system in the Manteno area, and to transact a public utility business in connection therewith, which Certificate shall read as follows:

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

IT IS HEREBY CERTIFIED that the public convenience and necessity requires the ownership, construction, operation and maintenance of a water supply and distribution system and, in connection therewith, the transaction of a public utility business by Aqua Illinois, Inc. in the area that corresponds to the residential community known as the Village of Manteno that is located in Kankakee County, Illinois, and which is depicted and legally described in Exhibits B and C, respectively, to the Petition in Docket No. 06-0203.

IT IS FURTHER ORDERED that, within ten days of closing the acquisition, Aqua shall file revised Rates, Rules, Regulations and Conditions of Service tariff sheets for water service that include the Manteno area, which revised sheets shall bear an effective date of not less than ten business days after the date of filing, for service rendered on and after the effective date and with individual tariff sheets to be corrected within that time period if necessary.

IT IS FURTHER ORDERED that, Aqua's revised tariff sheets shall set forth rates for the certificated area that are equal to the effective rates approved for Aqua's Kankakee Division with the exception of a public fire protection charge.

IT IS FURTHER ORDERED that, the journal entries shown on Staff's Schedule 5.1 are approved.

IT IS FURTHER ORDERED that, within six months of closing the acquisition, Aqua shall file with the Chief Clerk of the Commission, with a copy to the Manager of Accounting, a copy of the actual accounting entries it uses to record the transaction.

IT IS FURTHER ORDERED that, Aqua shall file within seven days of closing the Agreement a notification stating the date of closing with the Chief Clerk of the Commission, with a copy to the Manager of the Water Department.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Act and 83 Illinois Administrative Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED: April 30, 2007

J. Stephen Yoder  
Administrative Law Judge

Briefs on Exceptions must be received by May 14, 2007  
Reply Briefs on Exceptions must be received by May 21, 2007