

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois-American Water Company	:	
	:	
Application for Certificate of Public	:	
Convenience and Necessity to Provide	:	Docket No. 07-0519
Water Service to Parcels in Peoria	:	
County, Illinois, pursuant to Section 8-406	:	
of the Public Utilities Act.	:	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S RESPONSE
TO RURAL ROUTE 150 WATER DISTRICT'S APPLICATION FOR REHEARING

Now comes the Staff of the Illinois Commerce Commission ("Staff"), by its attorneys, and pursuant to Section 200.880 of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.880, and, in response to the Application for Rehearing of the Rural Route 150 Water District (hereafter "RR 150"), states as follows:

On June 25, 2008, the Commission entered its final Order in the above-referenced proceeding. *See, generally, Order*. The Order granted, over RR 150's opposition, the Illinois American Water Company (hereafter "IAWC") a Certificate of Public Convenience and Necessity to build certain water facilities in Peoria County. *Order* at 9-11.

On July 25, 2008, RR 150 filed its Application for Rehearing. *See, generally, Application*. RR 150's Application appends a document purporting to be a Construction Report prepared by Donald Hemphill at RR 150's direction. *See Exhibit A, Application*. Mr. Hemphill's affidavit is also attached. *Id.*

Mr. Hemphill asserts that, in February 2008, he was directed by RR 150 to prepare a feasibility study for RR 150 that would update the 2003 feasibility

study. Id., Exhibit A, ¶¶4-5. He further asserts that he completed the study and Construction Report on July 23, 2008. Id., ¶¶6-7.

RR 150 suggests that the Construction Plans “should address the Commission’s concern regarding RR 150’s plans for ‘for providing clean and safe water to those within its territory.’” Application at 2. RR 150 further posits that the Construction Plan is “a concrete example of RR 150’s plan to those with its territory”. Id.

The Staff urges the Commission to dismiss these arguments and deny rehearing.

RR 150 does not cite either the statute or rule pursuant to which it seeks rehearing. See Application. Moreover, it does not comply with the rule. Section 200.880, governing rehearing before the Commission, provides in relevant part as follows:

- a) After issuance of an order on the merits by the Commission, a party may file an application for rehearing. The application shall state the reasons therefore and shall contain a brief statement of proposed additional evidence, if any, **and an explanation why such evidence was not previously adduced**. The application shall be filed within 30 days after service of the order on the party.

...

- b) Applications for rehearing must state with specificity the issues for which rehearing is sought. Incorporation of arguments made in prior pleadings and briefs must be specific as to document and page.

...

- d) ... The Commission shall grant or deny the application in whole or in part within 20 days from the date of receipt by the Commission.

83 Ill. Adm. Code 200.880 (emphasis added)

In its Application, RR 150 does not - because it cannot - explain why the Construction Plans were not previously adduced, as Rule 200.880(a) requires. The fact that the Construction Plans were not prepared in a timely manner is insufficient.

This proceeding was initiated on October 18, 2007 on IAWC's Application. See IAWC Application. RR 150 filed a Petition to Intervene eleven days later, on October 29, 2007. See Petition to Intervene. Hearings were convened and evidence adduced on February 27, 2008, Tr. at 26-89, after which the record was marked "Heard and Taken". Tr. at 89.

Accordingly, RR 150's decision to commission the preparation of construction plans – after five years of inaction in all other aspects of its existence — seems to have been a function of its needs in this litigation, rather than the needs of RR 150 residents for clean and safe water. Moreover, RR 150's decision to wait until February 2008 to commission the plans was at best dilatory even as regards this proceeding, in light of RR 150's early intervention and of the hearing schedule, which called for hearings in February 2008, the same month RR 150 first requested that the plans be prepared. Accordingly, RR 150 has alleged no colorable basis for its failure to adduce this evidence in a timely manner, as required by rule.

Further, the Construction Plans, even if admitted into evidence, will not assuage the Commission's legitimate concern that "there is no indication that RR150 has any plan for providing clean and safe water to those within its territory." Order at 9. By this, the Commission did not merely point to RR 150's failure to produce engineering studies; it clearly was concerned by RR 150's failure over five years to accomplish anything towards purported institutional goals. The Commission specifically noted in its Order that RR 150 had not demonstrated that it would deploy facilities over any reasonable planning horizon to serve residents. See Order at 9 ("Securing a safe, clean, and adequate supply of water for a substantial number of affected people in the short term is preferable to proceeding on the assumption that RR150 will be able to serve all of such customers at some indeterminate time in the future"); ("The absence of any actual service by RR150 is what makes this situation easily distinguishable from Illinois Power and CURED").

Neither RR 150's Application, Mr. Hemphill's Affidavit, nor the Construction Plans themselves, discloses when RR 150 intends to implement the Construction Plans; how it proposes to finance them; or what technical and managerial resources and abilities it has to operate the facilities described in its Plans. Furthermore, the Construction Plans fail to identify a source of potable water for the proposed distribution system. In other words, RR 150 has, in its Application, demonstrated that it employed the five years since 2003 to advance from a feasibility study, to a feasibility study accompanied by some blueprints.

Neither provides RR 150 residents with a single drop of water, as the Commission recognized in its Order.

In contrast, as the Commission found, IAWC has amply demonstrated that it is prepared to build facilities, capable of building such facilities, and able to efficiently operate them.

Accordingly, the Staff requests that the Commission deny RR 150's Application for Rehearing.

Respectfully submitted,

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