

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AQUA ILLINOIS, INC.)	
)	
Proposed increase in general water and sewer rates for its Willowbrook service area)	Docket Nos. 07-0620, 07-0621, & 08-0067, cons.
)	
Proposed increase in general water and sewer rates for its Hawthorn Woods service area)	
)	
Proposed increase in general water rates for its Vermilion service area)	

STAFF BRIEF ON EXCEPTIONS

Pursuant to 83 Ill. Adm. Code 200.830, Staff (“Staff”) of the Illinois Commerce Commission (“Commission”), by and through its undersigned attorneys, hereby files its Brief on Exceptions in the instant proceeding.

Staff Exception No. 1

Staff takes exception to the Administrative Law Judge’s Proposed Order’s conclusion on the Company’s proposed low usage sewer rate the Company alleges complies with Section 8-306(h) of the Public Utilities Act (“Act” or “PUA”). The primary problem Staff has with the Proposed Order (“PO”) is that it ignores the just and reasonable standard that is an inherent requirement in any ratemaking proceeding. As Staff expressly noted in its Initial Brief (at 2-3), all rates set by the Commission must be “just and reasonable” and any “unjust or unreasonable” rate is unlawful.

In this regard, Section 5/9-101, 220 ILCS 5/9-101, of the Act provides, in relevant part, that:

All rates or other charges made, demanded or received by any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. All rules and regulations made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable.

220 ILCS 5/9-101.

This concept, critical to any ratemaking endeavor, is ignored in the Proposed Order. The “just and reasonable” mandate does not appear in the Proposed Order’s Commission Analysis and Conclusion section. Nor is it reflected in the summary of Staff’s position. In order for the Commission to set proper rates under Section 8-306(h), the Commission must be cognizant of the “just and reasonable” standard contained in Section 9-101.

Section 8-306(h) requires that each public utility providing water and sewer service must establish a unit sewer rate for customers using less than 1,000 gallons in a billing period:

Water and sewer utilities; low usage. Each public utility that provides water and sewer service must establish a unit sewer rate, subject to review by the Commission, that applies only to those customers who use less than 1,000 gallons of water in any billing period.

220 ILCS 5/8-306(h).

The Company failed to establish this low usage rate after the enactment of Section 8-306(h) in June 2006, as well as in the Company’s initial rate filing in November 2007, and then throughout the duration of this docketed proceeding.

In response to Staff’s consistent urging and recommendations on this issue (see Staff Ex. 5.0 (Harden Dir.), at 12 and Att. B (Responses to Staff Data Requests CLH-W-

S-4.02 and CLH-HW-S-4.01); Staff Ex. 9.0 (Harden Reb.), at 5-6), the Company's surrebuttal testimony, filed on July 17, 2008, for the first time proposed a low use sewer rate for Hawthorn Woods Sewer residential customers with one water meter. It recommended a flat rate of \$53.00 per month for residential customers using less than 1,000 gallons in a billing period. (Aqua Ex. 8.0, at 6.) The Company also proposed establishing a separate \$59.84 per month low use sewer rate for Willowbrook Sewer residential and commercial customers that also take water service from the Company. (*Id.*, at 6-7.) The proposed low use sewer rates for both the Hawthorn Woods and Willowbrook Sewer Divisions are only \$1.00 less than the agreed upon rates for similar customers in both divisions using at least 1,000 gallons of water in a billing period. This \$1.00 reduction represents a 1.85% discount for low use sewer customers in Hawthorn Woods and a 1.64% discount for low use sewer customers in Willowbrook.

Staff disagrees that a 1.64% to 1.85% discount from regular sewer rates fully complies with the requirements of the PUA, or even the intent of Section 8-306(h). In Staff's view, it strains credulity that the legislature would have envisioned such a diminutive discount to satisfy its concerns that led to the enactment of the law requiring a low use sewer rate.

A flat rate encompasses all customers and all uses in a billing period. Thus, using logic, it is relatively easy to conclude that the design of a rate for a low use customer – less than 1,000 gallons in a month – would result in a fairly significantly lower rate than the rate for all customers on an average basis. Accordingly, the rate for a low use customer would be far lower than Aqua's proposed rate of only \$1.00 less.

Aqua argued in its Reply Brief that "... since November 7, 2008, Staff possessed the very same rate design information the Company relied upon to formulate its proposed low usage rate. Had it been absolutely necessary to formally consider a low usage rate earlier, Staff had an equal opportunity to do so." (Aqua RB, at 3.)

Regarding Aqua's argument, Staff first points out that the Company's use of the phrase "Had it been absolutely necessary to formally consider a low usage rate earlier..." implies that the Company believed that the law in Section 8-306(h) did not apply to Aqua. How the Company arrived at such a conclusion is troublesome at the very least.

Further, Staff points out that it is the Company's responsibility to comply with the law. As stated above, Section 8-306(h) states, in relevant part: "*Each public utility that provides water and sewer service must establish a unit sewer rate, subject to review by the Commission...*" (emphasis added). There is no language in Section 8-306(h) stating that "in the event the utility does not propose a low usage rate, Staff must do so." Such language is nowhere to be found. Finally, it is well-settled law that the "utility . . . has the burden of showing that its proposed rates are reasonable and must produce sufficient evidence to meet that burden." *Citizens Utility Co. of Illinois v. Illinois Commerce Commission*, 121 Ill. App. 3d 533, 541-42 (2nd Dist. 1984).

The Commission, moreover, still must abide by the PUA's directive of ensuring that all rates are "just and reasonable." In this instance, Aqua has merely proffered a rate that is without support and which on its face does not appear to be reasonable and thus, non-compliant with Section 9-101.

In Staff's view, the low use rate developed by Aqua should be significantly lower (*i.e.*, contain a discount greater than \$1.00) and given the amount of time the Company has had to develop a low use sewer rate, since June 2006, Aqua should have been able to develop a reasonable rate with appropriate support, analysis and documentation well before the surrebuttal stage, July 2008, of this case. While the Company's proposed rate may appear to meet the letter of Section 8-306(h), it also appears to fail to meet the just and reasonable requirement of Section 9-101. Furthermore, the Company failed to provide adequate support for its position with data analysis for the implementation of such a rate. Consequently, the Commission has no basis upon which to conclude the Company's proposed rate is just or reasonable.

Staff recommends, as an alternative to accepting the Company's unjust and unreasonable proposed low-usage rate, that a low use sewer rate could be determined during the rehearing process for this docket. In fact, the Commission could, on its own motion, order a rehearing on to address this issue. This alternative could alleviate any concerns regarding the use of the Company's proposed rate, which is \$1.00 per month lower than the standard rate.

Staff Recommended Language Changes

Staff recommends that the ALJ revise the PO consistent with the arguments articulated above as follows. In the summary of Staff's position on page 5 of the PO, Staff recommends that the ALJ add the following language under the heading "Staff" and before the first sentence that begins "Staff disagrees with the Company... ."

Staff

Staff argues that all rates must be “just and reasonable” and “any unjust or unreasonable rate is unlawful.” In this regard, Staff cites to Section 9-101 of the PUA, which provides, in relevant part, as follows:

All rates or other charges made, demanded or received by any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. All rules and regulations made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable.

220 ILCS 5/9-101.

Staff also recommends that the ALJ revise the PO’s “Commission Analysis and Conclusion” section consistent with the arguments articulated above as indicated below.

Commission Analysis and Conclusion

Both the Company and the Staff agreed that the one remaining issue is the low usage sewer rate for the Hawthorn Woods Sewer (“HWS”) and the Willowbrook Sewer (“WS”) Divisions. Section 8-306(h) requires that each public utility providing water and sewer service must establish a unit sewer rate for customers using less than 1,000 gallons in a billing period and is subject to the approval of the Commission. Aqua Illinois contends that its proposed rate is the only rate contained in the record and is just and reasonable. Staff contends that the rate proposed by the Company is not just and reasonable, is not supported by the record, and not consistent with Section 8-306(h) of the PUA. Staff suggests that rehearing on this issue may be necessary to resolve this issue.

After reviewing the record, the Commission agrees with the ~~Company~~ Staff. Section 8-306(h) states that each public utility must establish a unit sewer rate for customers using less than 1000 gallons during a billing period. There is nothing in this section of the statute that requires a discounted rate, although it would appear that the intent of the law is that the rate for customers who use less than 1,000 gallons of water in a month would be substantially less than the rate for customers who use more than 1,000 gallons of water in a month.

Since the time this law was enacted in June 2006, the Commission notes that the Company had more than ample opportunity to comply with this law but has chosen not to do so. Instead, it proffered a low use sewer rate

very late in the proceeding through its surrebuttal testimony. Consequently, the only rates proposed in the record are by the Company. For the Hawthorn Woods Sewer division, the rate would be \$53.00 a month and for the Willowbrook Sewer division, the rate would be \$59.84 a month, which are only \$1.00 less than the full rates for customers who use more than 1,000 gallons of water in a month. Because the Company's proposed rate is only \$1.00 per month less, the Commission does not feel that this is the best way to determine this rate, and because there really was no other alternative contained in the record, the Commission believes that this issue requires an in-depth analysis. Since it a relatively small issue affecting very few customers, the Company's proposal will be adopted. Rehearing is left for the discretion f the parties and there is really no guarantee that rehearing on this issue would lead to any clearer rate for this customer class. Accordingly, the Commission orders a rehearing on this issue. Additionally, the Commission will hold the Company to its commitment to include this rate in any future rate case filings.

Staff Exception No. 2

Staff notes that the ALJPO does not address this issue which was discussed in Staff's Initial Brief. (Staff IB, at 7-8.) Therefore, Staff recommends that this issue be addressed in the Order, prior to the section on Findings and Ordering Paragraphs, and that the language to use should be as follows.

Section 8-306(i) of the Act states:

Water and sewer utilities; separate meters. Each public utility that provides water and sewer service must offer separate rates for water and sewer service to any commercial or residential customer who uses separate meters to measure each of those services. In order for the separate rate to apply, a combination of meters must be used to measure the amount of water that reaches the sewer system and the amount of water that does not reach the sewer system. 220 ILCS 5/8-306(i).

When Aqua filed a request for rate relief for its Hawthorn Woods and Willowbrook Water and Sewer Divisions on December 19, 2007, it did not address Section 8-306(i) in its initial rate case filing.

Staff sent Data Requests to the Company, for both Hawthorn Woods and Willowbrook, to request a response on how the Company planned to comply with Section 8-306(i). Responses received from the Company stated Aqua had not proposed a rate that would apply to the lone

commercial sewer account because it alleged there were currently no customers utilizing separate meters for water and sewer service. Therefore, the Company claimed that the type of customers to which the rates mandated in this law would apply does not exist in the Hawthorn Woods and Willowbrook Sewer Divisions. Aqua also stated that the residential customers are on a flat rate and thus, are unaffected by the installation of a separate meter to differentiate water usage from sewer usage. The Data Request Responses were provided as Attachment C to ICC Staff Exhibit No. 5.0.

The PUA requires that a utility offer separate rates for water and sewer service to any commercial or residential customer “who uses separate meters to measure each of those services.” The Company stated that it does not have residential or commercial customers who use separate meters at this time. Consequently, if there are no existing customers with separate meters, and, thus, no harm to any existing customer, in Staff’s view, Aqua should revisit the Section 8-306(i) issue again in its next rate relief request. Without a rate that complies with this section of the PUA, any customers who may install a separate meter will be deprived of the opportunity to have a lower sewer bill for the amount of water that does not flow through the sewer system. Therefore, Staff recommends that the Company be required to submit rates to comply with Section 8-306(i) in its next rate relief request even if there are no customers utilizing separate meters for water and sewer service, because it may deprive customers of lower sewer bills. Additionally, even if the Commission orders the Company to provide this tariff in its next rate case filing, there is nothing that precludes Aqua from developing and offering this tariff before its next rate case filing.

Based on the analysis above, Staff recommends that the Findings and Ordering

Paragraphs be made consistent with Staff’s recommended exceptions as follows:

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Aqua Illinois, Inc. provides water and sewer service to the public within the State of Illinois and, as such, is a public utility as defined in Section 3-105 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the Company and the subject matter herein;

(3) the low usage sewer rate for the Hawthorn Woods Sewer division would be \$53.00 a month;

(4) the low usage sewer rate for the Willowbrook Sewer division would be \$59.84 a month;

(5) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence in the record, and are hereby adopted as findings of fact and conclusions of law;

(6) new tariff sheets authorized to be filed by this Order should reflect an effective date not less than five (5) working days after the date of filing, with the tariff sheets to be corrected, if necessary, within that time period;

IT IS FURTHER ORDERED that Aqua should request rehearing on the issue of a low usage sewer rate as required in Section 8-306(h) of the PUA.

IT IS FURTHER ORDERED that Aqua is required to submit rates to comply with Section 8-306(i) in its next rate relief request even if it has no customers utilizing separate meters for water and sewer service.

IT IS FURTHER ORDERED in Aqua's future general rate increase filings, the Company shall provide all work papers, including data, an explanation of how pro forma number of customers and billing units were derived, and an explanation of the assumptions used to adjust customers and billing units.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are to be disposed of in a manner consistent with the conclusions herein.

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

Conclusion

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

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