

BEFORE THE
ILLINOIS COMMERCE COMMISSION

Illinois-American Water Company	:	
	:	
Application for Approval of its Annual	:	Docket No. 08-0218
Reconciliation of Purchased Water and	:	
Purchased Sewage Treatment Surcharges	:	
Pursuant to 83 Ill. Adm. Code 655	:	

Direct Testimony of
Scott J. Rubin

on behalf of

The People of the State of Illinois

November 5, 2008

Introduction

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Q. Please state your name and business address.

A. My name is Scott J. Rubin. My business address is 333 Oak Lane, Bloomsburg, Pennsylvania 17815.

Q. By whom are you employed and in what capacity?

A. I am an independent consultant and an attorney. My practice is limited to matters affecting the public utility industry.

Q. What is the purpose of your testimony in this case?

A. I have been asked by the Office of Attorney General (AG) to review the annual reconciliations filed by Illinois-American Water Company (IAWC or Company) for its Purchased Water (PW) and Purchased Sewage Treatment (PS) surcharges.

Q. What are your qualifications to provide this testimony in this case?

A. I have testified as an expert witness before utility commissions or courts in the District of Columbia and in the states of Arizona, Delaware, Kentucky, Illinois, Maine, Maryland, New Jersey, New York, Ohio, Pennsylvania, and West Virginia. I also have testified as an expert witness before two committees of the U.S. House of Representatives and one committee of the Pennsylvania House of Representatives. I also have served as a consultant to the staffs of two state utility commissions, several national utility trade associations, and state and local governments throughout the country. Prior to establishing my own consulting and law practice, I was employed by the Pennsylvania Office of Consumer Advocate from 1983 through January 1994 in increasingly responsible positions. From 1990 until I left that Office, I was one of two senior attorneys

23 in that Office. Among my other responsibilities in that position, I had a major role in
24 setting their policy positions on water and electric matters. In addition, I was responsible
25 for supervising the technical staff of that Office. I also testified as an expert witness for
26 that Office on rate design and cost of service issues.

27 In addition, from 1990 until 1994, I chaired the Water Committee of the National
28 Association of State Utility Consumer Advocates (NASUCA). In that position, I served
29 as the liaison between NASUCA members and various industry and government
30 associations, including the National Association of Water Companies, the American
31 Water Works Association, and the U.S. Environmental Protection Agency. I was
32 frequently called upon by those organizations to provide the consumer perspective on
33 various water-industry issues, including customer service.

34 Throughout my career, I developed substantial expertise in matters relating to the
35 economic regulation of public utilities. I have published articles, contributed to books,
36 written speeches, and delivered numerous presentations, on both the national and state
37 level, relating to regulatory issues. I have attended numerous continuing education
38 courses involving the utility industry. I also have participated as a faculty member in
39 utility-related educational programs for the Institute for Public Utilities at Michigan State
40 University, the American Water Works Association (AWWA), and the Pennsylvania Bar
41 Institute.

42 **Q. Do you have any experience that is particularly relevant to the issues in this case?**

43 A. Yes, I do. I have reviewed IAWC's annual PW and PS reconciliation filings in 2006 and
44 2007, so I am very familiar with the Company's surcharge filings. I am also familiar

45 with IAWC through my participation in its last two base rate cases, as well as other
46 matters. In addition, during the past ten years or more, I have reviewed numerous PW
47 and PS adjustment filings for the New Jersey Division of Ratepayer Advocate. Those
48 cases usually have been resolved prior to the filing of testimony. Consequently, I am
49 very familiar with the use of automatic adjustment mechanisms for PW and PS costs and
50 the manner in which those costs are reconciled.

51 Summary

52 **Q. Please summarize your major findings and conclusions.**

53 A. I have identified three issues that require revisions to the Company's filings. The first
54 involves the variable water rate for the DuPage service area. As I explain below, the
55 Company has not properly calculated the variable PW rate in this service area. The rate
56 should be \$1.15 per 1000 gallons rather than the revised rate of \$1.20 shown in the
57 Company's testimony, before considering the unaccounted for water issue I discuss
58 below.

59 The second issue involves the way in which PS rates should be set for residential
60 customers in the three residential wastewater service areas: Country Club, Rollins, and
61 Valley View. Based on the advice of counsel as to the legal requirements in Illinois, I
62 recommend consumption-based PS surcharges for each of IAWC's wastewater service
63 areas, rather than the flat residential rates proposed by IAWC.

64 Finally, I note that IAWC has made a significant change in the way it treats
65 unaccounted for water in its purchased water filings in this case. The Company did not

66 previously assess a factor for authorized but unbilled usage in its last two reconciliation
67 dockets, but it has included such a factor in this case.

68 **DuPage Water Rate**

69 **Q. Have you reviewed the Company's filing, testimony, and data request responses**
70 **concerning the DuPage variable purchased water rate?**

71 A. Yes, I have.

72 **Q. Based on your review, can you determine the appropriate PW rate for DuPage?**

73 A. Yes, I can. Unfortunately, there appears to be some confusion regarding the proper rate
74 in DuPage. When IAWC filed this case, it showed a variable rate for DuPage of \$1.44
75 per 1000 gallons, compared to the existing rate of \$0.96.

76 I knew that this rate was not calculated properly because it included the recovery
77 of an alleged under-collection of \$116,794. In fact, though, IAWC did not have a
78 substantial undercollection during the reconciliation period. What appeared to be an
79 under-collection was actually the result of crediting to customers a portion of a refund
80 that IAWC received from DuPage County.

81 The Company partially corrected this error when it filed its testimony on July 14,
82 2008. That testimony included a revised filing for the DuPage service area. The variable
83 rate was shown to be \$1.20 per 1000 gallons. The only change from the original filing
84 was to recognize that most of the alleged under-recovery of \$116,794 was associated with
85 the refund credit from DuPage. Exhibit D that accompanied IAWC's testimony shows
86 the refund amount to be \$103,633, resulting in a net under-collection of only \$13,161
87 (\$116,794 - \$103,633).

88 However, even this figure is not correct. On July 23 2008, in response to data
89 request AG 1.13 (attached hereto as AG Exhibit 1.01), IAWC provided a further
90 correction. In this response, IAWC recognized that it had started to collect the incorrect
91 rate (based on the failure to recognize the refund credit) in April 2008. In fact, AG
92 Exhibit 1.01 IAWC shows that from April 2008 through July 2008, IAWC improperly
93 collected \$52,045 from customers. In this exhibit, IAWC recognizes that it should refund
94 this amount to customers to avoid building up a large over-collection this year. The
95 result is that instead of an under-collection of \$13,161 (as shown in IAWC's testimony),
96 IAWC actually had an over-collection of \$38,883.

97 On September 29, 2008, IAWC provided yet another change to the DuPage
98 variable rate, in response to data request Staff DGK 2.04 (attached as AG Exhibit 1.02).
99 In this response, the Company agreed with Staff that the actual cost of purchased water in
100 DuPage was \$30,351 higher than the Company showed in its filing (\$1,007,966 instead
101 of \$977,615).

102 When the Company acknowledged this change, however, its further revised
103 Exhibit D failed to reflect the \$52,045 that was improperly collected between April and
104 July 2008. Thus, in AG Exhibit 1.02, IAWC shows a net under-collection of \$42,932,
105 rather than the correction calculation, which would be a net over-collection of \$9,113
106 (\$42,932 - \$52,045).

107 **Q. Have you been able to determine the proper variable PW charge for the DuPage**
108 **service area?**

109 A. Yes. Based on the most recent information provided by IAWC, I have determined that
110 the proper variable purchased water charge for DuPage should be \$1.15, based on the
111 following calculation:

$$\frac{\text{Purchased Water Cost} + \text{Commission ordered adjustment} + \text{Utility adjustment}}{\text{Metered usage}}$$

112

$$\frac{716,470 - 606 + (-207,265 - 9,113)}{432,997} = 1.15$$

113

114 **Q. What do you conclude about the variable purchased water rate in DuPage?**

115 A. I conclude that the variable purchased water rate in DuPage should be \$1.15, before
116 considering any change in the amount of unaccounted for water, as I discuss below.

117 **Purchased Sewage Treatment Rates**

118 **Q. Are you generally familiar with the various legal requirements for purchased**
119 **sewage treatment surcharges in Illinois?**

120 A. Yes, I have been advised by counsel that, at least for my purposes, there are two relevant
121 legal provisions. The first is 220 ILCS 5/8-306(h). This statutory provision requires
122 sewer utilities to set a unit rate for residential customers who use less than 1,000 gallons
123 per month. The second requirement is section 655.40(b) of the Commission’s regulations
124 (83 Ill. Adm. Code § 655.40(b)). This regulation requires that purchased sewage
125 treatment surcharges for residential customers be a flat rate; that is, a rate that does not
126 vary with the level of water usage.

149 **Q. To the best of your knowledge, has IAWC (or its predecessor, Citizens Utilities)**
150 **always had a limit on the amount of unaccounted for water it could recover through**
151 **a purchased water surcharge?**

152 A. Yes, it has. I have reviewed the orders that initially authorized IAWC’s predecessor,
153 Citizens Utilities, to have purchased water surcharges for Lake Michigan water. In those
154 orders, the Commission placed a limit on the amount of unaccounted for water that could
155 be recovered through a PW surcharge. For example, in 1993 when the PW surcharge was
156 first authorized for the former DuPage Water Co. (a subsidiary of Citizens Utilities) and
157 Citizens Utilities, the Commission held:

158 In accordance with Staff’s recommendation, factor "U" in Petitioners'
159 Purchased Water Price Adjustment Clause formula for Company use and
160 unaccounted for water shall not exceed 12.28% for DuPage and 12.43%
161 for Citizens, unless specific Commission approval is obtained.¹

162 In reaching this decision, the Commission relied on a Staff recommendation that these
163 limits were necessary “in order to provide an economic incentive for Petitioners to keep
164 unaccounted for losses of expensive Lake water to an absolute minimum.”

165 **Q. In IAWC’s previous PW cases, how did the Company calculate unaccounted for**
166 **water?**

167 A. In the prior cases I have reviewed, the Company determined unaccounted for water to be
168 the difference between the amount of water the Company purchased and the amount that
169 was recorded on customers’ meters.

¹ Citizens Utilities Company of Illinois, Docket Nos. 92-0454 and 92-0455, 1993 Ill. PUC LEXIS 464 (Nov. 23, 1993).

170 **Q. Does the Company calculate unaccounted for water in the same way in this case?**

171 A. No. In this case, for the first time, the Company also has included an adjustment of
172 1.25% for what it terms “authorized unbilled consumption.” IAWC claims that this is
173 “authorized” consumption that simply has not been recorded on customers’ meters. The
174 Company is asking, therefore, to effectively increase its unaccounted for water limit by
175 1.25 percentage points in each PW service area.

176 **Q. Did IAWC include a factor for authorized unbilled consumption in the prior**
177 **purchased water reconciliation dockets in 2006 and 2007?**

178 A. No.

179 **Q. Which service areas’ PW surcharge rates are affected by the Company’s proposed**
180 **change in this case?**

181 A. The rates in Chicago Suburban, DuPage County, Southwest Suburban, and Waycinden
182 are affected by the Company’s proposed change in this case.

183 **Q. Have you calculated what the rates would be in each of these service areas if the**
184 **additional 1.25% were not included?**

185 A. Yes. I show those rates on AG Exhibit 1.05.

186 **Q. Does this conclude your direct testimony?**

187 A. Yes.