

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AQUA ILLINOIS, INC.)
)
Petition for Approval of Certificate of Public)
Convenience and Necessity to Operate a Water Supply)
and Distribution System; and for a Variance From) Docket No. 06-0655
Main Extension Deposit Rules to Expand System)
Development Charges.)

INITIAL BRIEF OF AQUA ILLINOIS, INC.

Albert D. Sturtevant
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, IL 60601-1692
Phone: (312) 782-3939
Fax: (312) 782-8585
adsturtevant@jonesday.com

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I. SUMMARY OF AQUA'S POSITION

In this proceeding, Aqua Illinois, Inc. (“Aqua” or the “Company”) seeks a Certificate of Public Convenience and Necessity (“Certificate”) from the Illinois Commerce Commission (“Commission”) which authorizes Aqua to construct, operate and maintain a water distribution system and a wastewater collection system, and in connection therewith, transact a public utility business in an area of Will County, Illinois described in the Petition as the “Expanded Area.” Aqua has demonstrated that it has met the requirements of Section 8-406 of the Public Utilities Act (“Act”), 220 ILCS 5/8-406, for both water and sewer Certificates for the Expanded Area. Aqua has shown that granting a Certificate for the Expanded Area and construction of the proposed Extension Mains (defined below) is necessary to provide adequate, reliable and efficient sewer service for customers within the Expanded Area. And, Aqua has shown that it has the technical, financial and managerial ability to construct, operate and maintain a public water distribution system and sewer collection system, without adverse financial consequences for existing customers. In addition, existing customers would experience benefits from growth of the Aqua system as common costs are spread over a larger customer base.

The main contested issue in this proceeding is whether a sewer certificate should be granted for the Expanded Area. Commission Staff and intervener V3 Monee LLC (“V3”) argue that Aqua does not have sufficient sewer capacity remaining in its University Park Waste Water Treatment Plant (“WWTP”) to serve the Expanded Area. Staff therefore recommends that the Commission not grant Aqua a sewer certificate (or in the alternative grant a sewer certificate for

only a portion of the Expanded Area). V3 asserts that its development in the Village of Monee (“Monee”) has priority with respect to capacity remaining at the University Park WWTP.¹

Neither Staff nor V3, however, have established any basis for their conclusion that sewer capacity at Aqua’s University Park WWTP is insufficient. Aqua has shown that there is both sufficient sewer capacity at present for the Expanded Area and that Aqua has a plan to address long-term sewer capacity. Aqua’s calculations of hydraulic load at the University Park WWTP show that: (1) there is adequate capacity remaining at the University Park WWTP to serve the Expanded Area while Aqua obtains a rerating from the Illinois Environmental Protection Agency (“IEPA”) and then completes an expansion of the University Park WWTP (under current hydraulic loads, the University Park WWTP has capacity for at least nine years), (2) hydraulic load is at present declining at the University Park WWTP, and (3) the present hydraulic load is 80.3%. Thus, Staff’s concern that hydraulic load might exceed 100% is not supported by the evidence. Further, the calculation of hydraulic load at the University Park WWTP on which V3 relies – showing a hydraulic load of 104%, is incorrect, and no witness has testified otherwise. Thus, there is no basis to conclude that sewer capacity is not sufficient to serve the Expanded Area. Therefore, Aqua’s request for a Certificate for the Expanded Area should be granted.

II. BACKGROUND; NEED FOR SERVICE

Aqua seeks a Certificate which authorizes Aqua to construct, operate and maintain a water distribution system and a wastewater collection system in the Expanded Area, which is contiguous to the area (the “Original Certificated Area”) for which the Company, then Consumers Illinois Water Company (“CIWC”), was granted Certificates of Public Convenience

¹As explained below, V3 does not have a right to service from Aqua. V3 is not located in Aqua’s present or proposed certificated area, Aqua has no contractual relationship with V3 or Monee, and Aqua has no obligation to serve V3 or reserve capacity for it.

and Necessity in Docket Nos. 84-0116, 88-0060, 94-0461 and 98-0340. (Aqua Ex. 1.0, pp. 2-3.) Aqua also requests a variance from the main extension deposit provisions of Aqua's Rules, Regulations and Conditions of Service ("Rules and Regulations") to expand system development charges ("SDCs") approved by the Commission in its Order dated October 8, 2003 in Docket 03-0379 ("Docket 03-0379 Order").

Aqua provides water and sewer public utility service in certain areas of Will, Kankakee, Vermillion, Boone, Knox, Lake, and Champaign Counties in the State of Illinois. (Aqua Ex. 1.0, pp. 3-4.) Aqua is a public utility within the meaning of the Act. 220 ILCS 5/3-105. The Original Certificated Area is located in Green Garden Township in Will County, Illinois, adjacent to the Village of University Park. The Expanded Area is located in Will County, Illinois in portions of Green Garden Township and Monee Township. The Expanded Area consists of approximately 6,400 acres of land, portions of which are planned for development as the following subdivisions: (i) MCZ; (ii) Westbury Phase I; (iii) Westbury Phase II; (iv) Ted Development; (v) Veridian; (vi) Shafer Parcel; (vii) Mill Creek Development; (viii) Belle Meade; (ix) Hidden Lake; and (x) George Street (collectively, the "Developments"). (Id.)

The developers in the Expanded Area have requested that Aqua extend service to the Expanded Area. (Aqua Ex. 1.0, p. 7.) At present, there is no public water or sewer service provided in the Expanded Area. There is no municipal corporation or other entity willing or able to provide water or sewer service to the Expanded Area. (Id., p. 8.) The developers in the Expanded Area intend to construct a total of approximately 1060 residential units in the Expanded Area. The occupants of these residential units will require public water and sewer service.

To receive water and sewer service from Aqua, developers will install appropriately-sized water and sewer mains from Aqua's Manhattan-Monee Road Mains to their respective developments (the "Extension Mains"). (Aqua Ex. 1.0, pp. 10-11.) The cost to construct the Extension Mains will be born by the developers. (Id.) The Extension Mains will be constructed pursuant to Aqua's Rules, Regulations and Conditions of Service (Water), Section 29 (ILL. C.C. No. 47, Sec. 1, Original Sheet Nos. 32-33), and Aqua's Rules, Regulations and Conditions of Service (Sewer), Section XI (ILL. C. C. No. 48, Sec. 1, Original Sheet Nos. 28-30), regarding main extensions ("Standard Main Extension Rules"). In accordance with the Standard Main Extension Rules (unless an alternate arrangement is approved by the Commission), the cost of the Extension Mains is paid by applicants for the extensions, and Aqua will pay the applicants 1 ½ times estimated annual revenue from the Original Prospective Customers (as defined in the Standard Main Extension Rules) at the time title to the Extension Mains is transferred.

III. UNCONTESTED ISSUES

A. System Development Charges.

Aqua's President, Mr. Rakocy explained that SDCs are charges paid by developers in lieu of deposits required by Aqua's Standard Main Extension Rules. (Aqua Ex. 1.0, pp. 4-6.) In Docket No. 03-0379, the Commission approved separate SDCs for water service and sewer service in the Original SDC Area, which is comprised of an approximately six square mile portion of the Original Certificated Area. The current SDC applicable in the Original SDC Area is \$6,127.17 per lot (combined water and sewer), which is payable by applicants over time as new mains cross the applicant's lots. (Id.) Under the SDCs, Aqua recovers as contributions the actual cost of construction of the Manhattan-Monee Road Mains constructed to serve the Original SDC Area, less 1 ½ times the Original Prospective Customer Revenue from water and sewer customers, respectively. Under the SDC approach as approved in Docket 03-0379, the

amount ultimately included in rate base in connection with the Manhattan-Monee Road Mains is consistent with the main extension cost recovery provisions of Aqua's Standard Main Extension Rules.

Mr. Rakocy explained that, at the time of the filing of the petition in Docket 03-0379, five developers had plans to construct a total of 500 homes in the Original SDC Area. (Aqua Ex. 1.0, p. 5.) In the Docket 03-0379 Order, the Commission recognized that development of the Original SDC Area was being delayed because, under Aqua's Standard Main Extension Rules, a developer must deposit the cost of a main extension in excess of 1 ½ times the Original Prospective Customer Revenue to extend water and sewer mains to a proposed development. Subsequent developers (that do not own property abutting the original main) could benefit from the main extension, but would not have to bear any of the initial cost, thus gaining an unfair advantage over the original developer. (Id.) Because of the magnitude of deposits required under the Standard Main Extension Rules, none of the developers was willing to take action. As Mr. Rakocy further explained, the SDCs spurred development in the Original SDC Area by ensuring that each developer in the Original SDC Area paid only its appropriate share for facilities required to serve them. (Id.)

In order to receive service from Aqua in certain portions of the Expanded Area ("Expanded SDC Area"), the developers in this area will construct the Extension Mains from the existing Manhattan-Monee Road Mains. (Aqua Ex. 1.0, p. 6.) Application of the SDCs to the Expanded SDC Area is intended to ensure that developers in the Expanded SDC Area pay an appropriate share of the cost of the Manhattan-Monee Road Mains, which provide a benefit to these developers.

The Expanded SDC Area consists of that portion of the Expanded Area where the following Developments are located: (i) MCZ Development; (ii) Westbury Phase I; (iii) Westbury Phase II; (iv) Ted Development; (v) Veridian; (vi) Shafer Parcel; (vii) Mill Creek Development; (viii) Belle Meade; and (ix) George Street. (Aqua Ex. 1.0, pp. 6-7) The Hidden Lake Development is included in the Expanded Area but is not part of the Expanded SDC Area. (Id., p. 7.)

Aqua is requesting a waiver of its Rules and Regulations to extend SDCs to developers in the Expanded SDC Area as they will benefit from the Manhattan-Monee Road Mains. (Aqua Ex. 1.0, pp. 12-14.) Extending the SDCs is consistent with the Docket 03-0379 Order, where the Commission recognized that later developers could benefit from the original main extension, but not bear any of the initial cost, and thus would have an unfair advantage over the first developer. (Id., p. 12.) Extension of the SDCs is also consistent with the intent of the Standard Main Extension Rules, which is that applicants for service pay an appropriate share of the costs of mains needed to serve them. (Id.) In addition, expanding SDCs to the Expanded Area will result in SDCs in an amount less than the SDCs approved in the Docket 03-0379 Order. By expanding SDCs to the Expanded SDC Area, the actual construction costs for the Manhattan-Monee Road Mains will be spread over a larger base, resulting in a decreased SDC amount (rather than an increase). Under the SDC approach, Aqua's investment in the Manhattan-Monee Road Mains would equal 1½ times the Original Prospective Customer Revenue from water and sewer customers, as it would under the main extension cost recovery provisions of the Standard Main Extension Rules.

The formula approved in the Docket 03-0379 Order for calculation of SDCs was based on estimated construction costs for the Manhattan-Monee Road Mains. (Aqua Ex. 1.0, p. 13.)

The Docket 03-0379 Order provides for recalculation of the SDCs based on actual construction costs. (Id.) In Direct Testimony, Mr. Rakocy calculated the water and sewer SDCs using the projected final construction costs for the Manhattan-Monee Road Mains. (Aqua Ex. 6.0, p. 8.) After the filing of Mr. Rakocy's Direct, the construction of the Manhattan-Monee Road Mains was completed and the final construction cost known. Thus, Aqua revised its SDC calculation to reflect the final construction of the Manhattan-Monee Mains rather than the projected final construction costs. (Aqua Ex. 6.1.)

Without the Expanded Area, the current SDC rates for a customer equivalent would increase from \$6,127.17 to \$8,092.25. This increase may have an adverse economic impact on development within the Green Garden area. (Aqua Ex. 6.0, p. 8.) However, if the Expanded Area is added to Aqua's certificated area, the current SDC rates for a customer equivalent would decrease from \$6,127.17 to \$5,284.72. Thus, extension of the SDC charge to the Expanded SDC Area will encourage economic development in the Green Garden area. (Id.)

Applicants for water and sewer main extensions would continue to pay any other applicable charges, including but not limited to the Sewage Treatment Plant Fund Charge, which would be in addition to the sewer SDC. (Aqua Ex. 1.0, pp. 14-15.) The SDCs would be paid at such time as the applicant requests that mains connected to the Manhattan-Monee Road Mains cross the right of way adjacent to a lot or premises that the applicant intends to occupy or develop, or at the time that an applicant seeks connection of a lot or premises for which the SDC has not yet been paid.

Aqua will continue to account for SDCs in the same manner approved in the Docket 03-0379 Order. (Aqua Ex. 1.0, p. 16.) The original cost for the Manhattan-Monee Road Mains (water and sewer, separately), will be placed in Account 106 (Completed Construction Not Yet

Classified), the balance of which would be excluded from rate base (water and sewer rate base, respectively). (Id.) Annually, the balance in Account 106 would be reduced by the total SDC revenue collected during the year (water or sewer separately), and adjusted to account for the carrying costs on the balance in the account attributable to the Extension Mains. (Id.) The Utility Plant Account for Mains (Account 331) and the Account for Contributions (Account 271) accounts (water and sewer, separately) also would be adjusted annually to increase the balance in those accounts by the total SDC revenue collected during the year. (Id.) The carrying costs applied each year to the balance in each Account 106 will be updated to Aqua's current approved rate of return, presently 8.78%. (Aqua Ex. 3.0, p. 2.)

Per the Docket 03-0379 Order, the SDCs for water and sewer service, respectively, will be in place until the balances of water and sewer Account 106 are reduced to the level of Aqua's investment in the Manhattan-Monee Road Mains. (Aqua Ex. 1.0, pp. 16-17.) If the Total Water Main Construction Costs less Aqua's Water Main Investment ("Water Recoverable Cost"), and Total Sewer Main Construction Costs less Aqua's Sewer Main Investment ("Sewer Recoverable Cost"), and applicable carrying costs, are not recovered by the end of the twenty year period, the remaining recoverable balances would be left in Account 106 (water and sewer, separately), but no additional carrying costs would be applied to the account. (Id., p. 16.)

If additional customers in the Original SDC Area or Expanded SDC Area take service after the expiration of the twenty year period, they would pay the SDCs until all Water Recoverable Costs, Sewer Recoverable Costs and carrying charges are recovered. (Id., pp. 16-17.) When the balance of Account 106 (water and sewer, separately) reaches the level of the Water Main Investment and/or the Sewer Main Investment, the balance would be transferred to Plant in Service (Account 331) and included in rate base. Aqua also proposes that no later

adjustment to the SDC(s) be made if there is a difference between the actual and assumed build out period or number of structures in the Areas. (Id., pp. 17-18.)

Aqua explained that the ratepayer is exposed to less risk under the SDCs than under the Standard Main Extension Rules because, under the SDCs, the Company's required one and one half times revenue investment is not transferred to rate base until all of the Water Main Recoverable Cost, Sewer Main Recoverable Cost and applicable carrying charges, are recovered through payment of SDCs. (Aqua Ex. 1.0, p. 18.)

Staff reviewed and recommended approval of the extension of SDC charges to the Expanded Area (ICC Staff Ex. 1.0, p. 22), or such portions as are finally certificated. (ICC Staff Ex. 6.0, pp. 15-16.) Staff also approved the revised SDC calculation. (Tr. 249-50.) Ms. Everson recommends that the Commission order Aqua to file with the Manager of Accounting Aqua's workpapers used to support the calculation of SDCs. (ICC Staff Ex. 2.0, p. 6.) Aqua agreed to providing the requested workpapers at the same time it files the revised tariffs recalculating the SDCs based on actual construction costs of the Manhattan-Monee Road Mains. (Aqua Ex. 3.0, p. 3.)

B. Rates.

In the Original Certificated Area, Aqua charges, for water service and wastewater service, the rates set forth in the tariffs of the University Park Division (as now in effect or as such rates may be subsequently modified by order of the Commission). (Aqua Ex. 1.0, pp. 9-10.) Aqua proposes to apply these same rates throughout the Expanded Area. (Id.) In addition, all other applicable water and wastewater charges for the University Park Division would apply to service within the Expanded Area, including, but not limited to, public and private fire protection charges, returned check charges, late-payment fees and State and municipal add-on taxes or fees.

If the proposed water rates and sewer service rates are charged within the Expanded Area, the expected rates of return on the water and sewer rate bases will be comparable to the rate of return on rate base allowed by the Commission in Aqua's last rate proceeding. (Aqua Ex. 1.0, p. 10, Att. D; Staff Ex. 7.00, Att. A.) Staff reviewed Aqua's forecasted operating income statements and found the assumptions used were reasonable. (ICC Staff Ex. 7.0, p. 2.) The proposed rates are, therefore, not in excess of reasonable rates. Staff recommended that Aqua apply its University Park Division water and sewer rates to the Expanded Area. (ICC Staff Ex. 4.00, p. 6.)

Aqua has agreed to file revised tariffs within 10 days of a final order in this proceeding, with an effective date of not less than five working days after the date of the filing. (Aqua Ex. 3.0, p. 3.) The only tariff change required is the addition of the Expanded Area in the "applies to" section of the University Park tariff sheets for water and sewer service and the recalculation of SDC charges.

C. Accounting.

In accordance with Commission policy and the Uniform System of Accounts for Water Utilities (83 Ill. Admin. Code, Part 605, Accounting Instruction 17), Aqua proposes to record the original cost of all water and wastewater facilities for the Expanded Area in the applicable Utility Plant In Service accounts (Account 300 - for water and sewer service, separately). (Aqua Ex. 1.0, pp. 11-12.) The Company proposes to record any contributions or deposits for the Extension Mains as contributions in Account 271 – Contributions in Aid of Construction. At the time title to the Extension Mains is transferred to Aqua, Aqua will debit Account 271 in an amount representing its payment to the developer under the Standard Main Extension Rules.

Staff approved Aqua's proposed accounting for the Extension Mains. (ICC Staff Ex. 2.0, p. 8.) Staff witness Everson also recommended that Aqua file copies of the actual accounting

entries used to record the Extension Mains for the Expanded Area, and that this filing be made within six months of completing construction and recording of the Extension Mains on the Company's books. (Id.) Aqua will make the requested filing with the Chief Clerk and provide a copy to the Manager of Accounting. (Aqua Ex. 3.0, p. 3.)

D. Depreciation Rates.

For the Expanded Area, Aqua proposes to use the depreciation rates for the University Park Division, as now in effect or as subsequently revised. (Aqua Exs. 1.0, p. 12; 3.0, p. 2.) These rates were approved in Docket 97-0351 for water facilities, and in Docket 93-0253 for sewer facilities.

The Company accepted Mr. Johnson's recommendation regarding depreciation rates for personal computers for purposes of resolving this issue in this case. (Aqua Ex. 4.0, p. 1.) The Company also accepted Mr. Johnson's recommendation that Aqua perform a depreciation study prior to its next University Park rate case. (Aqua Ex. 4.0, p. 2.) Subject to these recommendations, Staff agreed with Aqua's proposed depreciation rates. (ICC Staff Ex. 6.0, p. 6.)

IV. ARGUMENT

A. Aqua Has Demonstrated that It Has Met the Requirements of Section 8-406 of the Act for a Water and Wastewater Certificate for the Expanded Area.

Section 8-406(b) of the Act, 220 ILCS 5/8-406(b), requires in pertinent part that:

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.

Aqua has demonstrated that the proposed water and sewer Certificates for the Expanded Area meet these criteria, and therefore the public convenience and necessity require that the Certificates be granted. (See Aqua Exs. 1.0, pp. 7-12, Att. D; 2.0, pp. 2-5; 3.0, pp. 8-9; 4.0, pp. 2-5; 5.0, pp. 1-8; 6.0, pp. 1-8.) Aqua has shown that granting a Certificate for the Expanded Area and construction of the proposed Extension Mains is necessary to provide adequate, reliable and efficient sewer service for customers within the Expanded Area. (Aqua Ex. 1.0, p. 9.) The developers in the Expanded Area have requested that Aqua extend service from the Manhattan Monee Road Mains that serve the Original SDC Area. Such extensions will be at the developers' cost under the Standard Main Extension Rules.

Water and wastewater service is required for the Expanded Area. At present, there is no public water or sewer service provided in the Expanded Area. (Id., p. 7.) There is no municipal corporation or other entity willing or able to provide water or sewer service to the Expanded Area. (Id., p. 8.) The developers in the Expanded Area intend to construct a total of approximately 1060 residential units in the Expanded Area. The occupants of these residential units will require public water and sewer service. (Id.)

Aqua has the technical, financial and managerial ability to construct, operate and maintain a public water distribution system and sewer collection system for the Expanded Area, without adverse financial consequences for existing customers (id.), and no witness in this proceeding has testified otherwise. Further, existing customers would experience benefits from growth of the Aqua system as common costs are spread over a larger customer base. (Id.) As discussed below, Staff and V3's concerns about sewer capacity, and Staff's concerns about a

water certificate, are unwarranted. Thus, issuance of a water and sewer Certificate is necessary and appropriate.

B. Staff's Recommendation to Deny Aqua's Request for a Sewer Certificate Should Be Rejected.

The main contested issue in this proceeding is whether a sewer certificate should be granted for the Expanded Area. Both Staff and V3 argue that Aqua does not have sufficient sewer capacity remaining in its University Park WWTP to serve the Expanded Area. Specifically, Staff recommends that the Commission not grant Aqua a sewer certificate (or in the alternative grant a sewer certificate for a portion of the Expanded Area). (ICC Staff Ex. 6.0, p. 11.) V3's position on the grant of a sewer certificate is not entirely clear: V3 states that it has no objection to Aqua's proposal to add the Expanded Area to its service territory if service is provided to V3 in the same manner as other customers in the region (V3 Ex. 1.0, p. 7), but also claims that it is "premature" to grant a certificate. (V3 Ex. 2.0, p. 2.) However, V3 does have a "concern" about sewer capacity with respect to the University Park WWTP. (Id., p. 1.)

Neither Staff nor V3 have established any basis for a concern about sewer capacity at the University Park WWTP. As explained below, Aqua has demonstrated that the requirements of Section 8-406 of the Act have been met. Neither Staff nor V3 have shown otherwise.

1. There Is Presently Sufficient Sewer Capacity To Serve the Expanded Area.

The University Park WWTP presently has sufficient capacity to meet demand in the Expanded Area for approximately nine years. (Aqua Ex. 5.0, p. 6.) This can be seen by reviewing the decline in hydraulic load at the University Park WWTP since this proceeding began. On January 26, 2006, IEPA placed Aqua's University Park WWTP on its Critical Status list, meaning the WWTP's hydraulic capacity was above 80% (Aqua Exs. 2.0, p. 2; 2.1.) At that time, IEPA calculated the University Park WWTP's hydraulic load at 89%. (Aqua Ex. 2.1.) In

response to assertions made by V3 that the University Park WWTP's was at 104%, made in rebuttal testimony on May 9, 2007, Aqua calculated the University Park WWTP's hydraulic load at 98.9% as of May 17, 2007. (Aqua Ex. TJR 4.1 (Rev.)) As Mr. Rakocy explained in supplemental surrebuttal testimony, however, changes in the housing market, among other factors, caused the hydraulic load to decline to 86% by May 6, 2008. (Aqua Exs. 5.0, pp. 1-8; 5.1.) By September 17, 2008, the hydraulic load had further declined to 80.3%. (Aqua Redirect Ex. 1.) Thus, it is clear that circumstances have changed with respect to the available capacity at the University Park WWTP since the filing of V3's rebuttal testimony on May 9, 2007. (Aqua Ex. 5.0, pp. 4-7.)

As Mr. Rakocy explained, the primary cause for the reduction in hydraulic load is the decline in the housing market, which has resulted in a significant drop in new homes being permitted and built in the Original Certificated Area, and indicates that the Expanded Area will be built out at a slower pace than originally projected.² (Aqua Ex. 5.0, pp. 4-6.) In addition, sewage flow data for the University Park WWTP, including levels of infiltration and inflow ("I & I"), show that annual flow for 2006, the year on which earlier projections of hydraulic load were based, were atypically high due to wetter weather in those periods. (Id., p. 4.) Aqua has determined that flows for 2007 are lower, and more representative of a long-term average. These changes mean that there will be more available capacity for a longer period at the University Park WWTP, as compared the capacity calculated by V3 in its May, 2007 rebuttal testimony (on which Staff and V3 base many of their capacity concerns). (Id., pp. 5-7.) V3 witness Blaise acknowledged as much at hearing, agreeing that if a development's growth in terms of number of lots proceeds more slowly, the need for capacity would also grow more slowly. (Tr. 281-82.)

² Despite the slower pace of development, developers in the Expanded Area continue to seek public water and sewer service. (Aqua Ex. 5.0, p. 7.)

Under IEPA's methodology for calculating hydraulic load, the level of IEPA-permitted capacity for a given development is reflected in the hydraulic load for two years. After that period, however, the actual flow for that development, rather than the IEPA-permitted flow, is reflected in the three-month low flow average. (Aqua Ex. 5.0, p. 5.) The decline in the housing market means that developments are proceeding much more slowly, as fewer houses are built or sold, with the result that the developments' actual sewer flows may be substantially less than the IEPA-permitted flow level. (Id.; Tr. 281-82 (Blaise).) The hydraulic load calculation of 86% (Aqua Ex. 5.1), which was performed in May 2008, reflects this lower actual flow for developments permitted more than two years ago where there is a slowing of home construction. As a result, Aqua's May, 2008 calculation of hydraulic load of 86% is more consistent with present circumstances. (Aqua Ex. 5.0, p. 5.)

In addition, the 5-year average rainfall in Kankakee and Will Counties from 2002 through 2006 was 39.54 inches. (Aqua Ex. 5.0, p. 4.) The rainfall in 2006 was 48.60 inches, and for 2007 was 40.97 inches. Thus, rainfall in 2006, which Aqua's May, 2007 hydraulic load calculation of 98.9% was based on, exceeded the average by over nine inches. The 2007 rainfall of 40.97 inches is more representative of the average rainfall, and so the 2008 calculations of hydraulic load, based on 2007 data, are also more representative. (Id.)

A hydraulic load for the University Park WWTP of 86% (the level as of May, 2008) means that the University Park WWTP had 303,800 gpd of available capacity to support existing and planned development in the both Original Certificated Area and the requested Expanded Area. (Aqua Ex. 5.1.) The 303,800 gpd available capacity could serve 868 new residential units, at the IEPA standard usage rate of 350 gpd. Using the projected growth per year of 75 new customers in the Original Certificated Area and 20 new customers in the Expanded Area, this

available capacity would be able to provide sewer service to the existing and proposed certificated areas for the next nine years. (Aqua Ex. 5.0, p. 6.) This will allow Aqua ample time to expand the University Park WWTP.

At the current housing construction rate, however, the capacity of the University Park WWTP will last even longer. (Aqua Ex. 5.0, p. 6.) Although Aqua projected that 75 new customers would be added each year to the Original Certificated Area and 20 new customers would be added each year to the Expanded Area (Aqua Ex. 1.0, Ex. D), housing permits have declined sharply in and around the Original Certificated Area. (Aqua Ex. 5.0, p. 6.) In Green Garden Township, in which the Original Certificated Area and a portion of the Expanded Area are located, 24 housing permits were issued in 2007, and, at the current rate, 12 will be issued in 2008. (Id.) In the Original Certificated Area of Green Garden Township, 10 housing permits were issued in 2007; none have been issued to date in 2008. (Id.) V3 witness Blaise confirmed this trend, agreeing that V3's developments have slowed in keeping with the decline of the overall housing market. (Tr. 282.) As explained above, based on the May, 2008 hydraulic load factor of 86%, the current capacity at the University Park WWTP would have been fully utilized in about nine years. At the present lower rates of residential construction, the period of time until capacity is fully utilized will likely be longer. (Aqua Ex. 5.0, p. 6; Tr. 281-82 (Blaise).)

Further, IEPA has given no indication of concern with capacity at the University Park WWTP. On September 26, 2007, the IEPA approved Aqua's request to expand the Deer Creek Facilities Planning Area ("FPA"), which is the area in which Aqua is the designated sewer management authority and which includes the Original Certificated Area and the Expanded Area, by 3,498 acres (see Aqua Ex. 5.2). (Aqua Ex. 5.0, pp. 7-8.) In approving the expansion of

the FPA, IEPA did not indicate that it had any concerns with the sufficiency of the existing treatment capacity of the University Park WWTP. (Id.)

In addition, Mr. Rakocy explained that Aqua is making continuing efforts to reduce I & I, including: repairs to various manholes which are allowing I & I; evaluating various sewer mains to determine if there are breaks in the sewer mains that allow I & I to occur; and repairing sewer mains determined to be allowing I & I. (Aqua Ex. 5.0, p. 8.) Because I & I results in more water entering a sewer treatment plant for treatment, reducing I & I enhances the capacity of a treatment plant. In the case of the University Park WWTP, an ongoing reduction in I & I will extend the length of time the WWTP can operate at its existing capacity. (Id.)

Aqua does not dispute that new wastewater treatment capacity will be needed for Aqua's University Park Division, and Aqua has stated that it needs to develop capacity throughout this proceeding. (See, e.g., Aqua Ex. 2.0, pp. 3-4.) As will be discussed below, however, Aqua has a plan to obtain that capacity. Moreover, despite the slowdown in residential construction, there is still a need for Aqua to provide service to the Expanded Area. The developers in the Expanded Area are still proceeding with the Developments, and are still requesting that Aqua provide service. (Aqua Ex. 5.0, p. 7.) Customers in the Developments will still require water and sewer service from Aqua.

The evidence of record thus demonstrates that there is sufficient capacity at the University Park WWTP currently, and, when combined with the IEPA rerating discussed below, the WWTP's capacity can accommodate growth of residential units in both the Original Certificated Area and the Expanded Area for the next 17 years. By that time, Aqua will have completed its longer term plan – expansion of the WWTP – to meet necessary capacity

requirements in the affected service areas. Claims to the contrary, that there is not sufficient capacity, are unsupported.

2. Aqua Has a Plan To Develop the Necessary Future Sewer Capacity for the University Park WWTP.

Staff and V3's concerns about the sewer capacity at Aqua's University Park WWTP are based on their conclusion that calculations of hydraulic load for the University Park WWTP show that it is near its design capacity. While it is correct that Aqua's University Park WWTP was placed on the IEPA Critical Review list (Aqua Exs. 2.0, pp. 2-4; 2.1), the WWTP reached critical review status because of the circumstances surrounding the Monee's failure to secure alternative service following its cancellation of the wholesale agreement dated October 16, 1986 between Aqua's predecessor, CIWC and Monee (the "Wastewater Agreement"). (Aqua Ex. 2.2.)

In accordance with the Wastewater Agreement, Aqua was required to provide 300,000 gpd of wastewater treatment capacity to Monee. (Aqua Ex. 2.0, p. 2.) In 2003, Aqua had taken steps to do preliminary engineering work to expand the WWTP. This capacity would have been sufficient for Aqua to serve an additional 850 residential homes. (Id.) Later in 2003, however, Monee terminated the Wastewater Agreement, effective October 16, 2006. (Id., p. 2.) This meant that the capacity for serving Monee would become available. The excess capacity from Monee, combined with the then-existing capacity of the WWTP, would have provided more capacity than needed to serve the residential units proposed by developers in Aqua's certificated area. (Id., pp. 2-3.) Therefore, Aqua believed there was no need to increase capacity at the WWTP, and the Company did not start construction of an expansion of the WWTP.

At the request of the IEPA, Aqua is continuing to provide wholesale wastewater service to Monee. (Aqua Ex. 2.0, p. 3.) Because of this, the capacity that Aqua thought it would have at the University Park WWTP after October 16, 2006 is not available. Therefore, as Mr. Rakocy

explained, Aqua developed short-term and long-term solutions to have the WWTP removed from Critical Review status. (Aqua Exs. 2.0, pp. 3-4; 5.0, pp. 2-3.) In the short term, Aqua has filed with IEPA for a re-rating of the WWTP to provide for an additional 260,000 gpd of treatment capacity, which will provide wastewater service to 650 additional residential units. (Aqua Ex. 2.0, p. 3.) As Mr. Rakocy explained, Aqua also identified five additional options as possible long-term capacity solutions. One option (which Aqua will now pursue (Tr. 216-217)) is to expand the existing WWTP. A second option is to construct another treatment facility, thus having two plants in the area capable of treating sewage. A third option is for Aqua to off-load a part of its sewage demand to another treatment service provider, such as the Village of Richton Park or Thorn Creek Basin Sanitary District (“Thorn Creek”). A fourth option was for Aqua to sell the part of its sewer system east of I-57 to Thorn Creek, while continuing to provide sewer service west of I-57 (this option is no longer viable, as discussed below). A fifth option would be to remove the Monee treatment demand from the capacity served by the existing WWTP, which would occur if Monee arranged for wholesale treatment service through another provider or built its own treatment facility. (Aqua Ex. 2.0, pp. 3-4.) The Company understands the need to address capacity issues at the WWTP and has acted responsibly in identifying and implementing a solution. In fact, Staff Witness Johnson has recognized the Company’s efforts by indicating that “Aqua seems to be taking a proactive approach in its planning process for the sewer capacity shortage.” (ICC Staff Ex. 1.0, p. 10.)

Initially, Aqua sought to sell its WWTP to Thorn Creek. However, on May 14, 2008, Aqua was informed by the Thorn Creek District Manager that the Thorn Creek’s Board passed a motion on May 13, 2008 to terminate the condemnation action to acquire the Aqua sewage facilities east of I-57. (Aqua Ex. 5.0, p. 3.) Because the Thorn Creek option is no longer

available, Aqua is pursuing a two-step plan to secure sufficient sewer capacity for the original Certificated Area and Expanded Area over the long term. The first step is the rerating the University Park WWTP in 2009-2010 to 2.43 mgd to meet capacity demands in the short term. (Tr. 216, 221.) This request is still pending with IEPA, but Mr. Rakocy testified that he expected the request to be acted on by IEPA soon. (Tr. 220.) The second step is expanding the WWTP to 3.5 mgd in the future. (Tr. 216-17; Aqua Ex. 4.0, p. 4.)

The rerating to 2.43 mgd would increase the capacity by 260,000 gpd, which would provide for an additional 743 residential units based on 350 gpd usage per residential unit. (Aqua Ex. 5.0, p. 2.) Combining the current available capacity of 303,800 gpd with the rerating capacity of 260,000 gpd provides a total available capacity of 563,800 gpd. (Id., p. 7.) At the IEPA standard usage rate of 350 gpd per residential unit, this capacity will provide for 1,611 residential units. (Id.) At the original projected growth of 75 residential units in the Original Certificated Area and 20 residential units in the Expanded Area, this re-rated capacity would provide for 17 years of new customer growth. (Id.) (Taking into account the current housing construction slowdown, this period will likely be substantially longer.) The 17 years of capacity available will provide Aqua ample time to pursue the second step, expansion of the University Park WWTP, to address the long term capacity concerns for the regional area. The plant expansion would increase the WWTP's capacity to 3.64 million gpd, which would be enough capacity to serve an additional 3,500 residential units. (Tr. 216-17.)

3. Staff's Concern About Sewer Capacity Must Be Rejected.

Staff witness Johnson's "primary recommendation is for the Commission to deny the request for a wastewater certificate for Aqua's University Park Division." (ICC Staff Ex. 6.00, p. 11). (Aqua Ex. 6.0, pp. 1-4.) Mr. Johnson's recommendation appears to be based on his conclusion that hydraulic load at the University Park WWTP could theoretically swing from its

current level of 86% to a level above 100%. (Id.) Mr. Johnson offers no explanation of why this might happen, and he admits that he did not personally perform an independent analysis of Aqua's University Park WWTP hydraulic load. (Tr. 244.) Moreover, as discussed above, the hydraulic load has been declining since 2006, and is now 80.3%. Given the circumstances leading to the hydraulic load rating of 86%, however, Aqua would not expect a significant shift in hydraulic load in the near future that would lead to a hydraulic load rating of 100%. (Aqua Ex. 6.0, p. 2.) As also explained above, Aqua's proposed provision of sewer service to the Expanded Area meets the requirements of Section 8-406 of the Public Utilities Act.

Mr. Johnson also suggests that he does not have "a high level of confidence that [Aqua] can address any short-term wastewater treatment capacity issues should it reach its permitted design capacity." (ICC Staff Ex. 6.00, p. 10.) If the hydraulic load approaches 100% (which Mr. Rakocy explained is unlikely), the re-rating of the sewer treatment plant will adequately ensure that individuals and developers within the certificated service area will be served. (Aqua Ex. 6.0, p. 2.) The re-rating of the plant is estimated to take one to two years from beginning design to construction completion. (Id., pp. 2-3.) Considering the current state of the economy and the downturn in the local housing market, Aqua will be able to complete construction on the re-rating of the treatment plant well before WWTP reaches 100% of capacity. (Id.)

In addition, as discussed above, Aqua continues to pursue the removal of I & I in the system, which should further reduce the hydraulic load on the treatment plant and increases the available capacity to be used by customers. Thus, Aqua will have sufficient time to develop whatever long term solution is needed, including expansion of the University Park WWTP, to address future capacity concerns for the area.

Mr. Johnson also asserts that “Aqua has put a lot of weight on the IEPA re-rating and there is no guarantee the IEPA will even approve the re-rating.” (ICC Staff Ex. 6.00, p. 9.) While Aqua is obviously not in a position to guarantee that the requested re-rating will be approved, there is no reason to believe that it will not, and every reason to believe that it will. The alternative to re-rating is the potential construction of separate, small wastewater treatment plants operated by homeowners’ associations. (Aqua Ex. 6.0, p. 3.) IEPA would likely find such a situation unacceptable, because, as discussed below, IEPA prefers to have regional wastewater treatment providers using state of the art treatment plants. (Id.) IEPA has not approved the re-rating plan to date because it believed the Aqua treatment facilities would be sold to Thorn Creek. (Id.) Now that Thorn Creek has withdrawn its condemnation action, Aqua has requested IEPA to finalize its review of the re-rating plan. Aqua expects to hear from IEPA in the near future concerning the re-rating plan. (Tr. 220.)

4. V3 Has Not Established a Right to Service from Aqua.

V3 claims that “Aqua does not have the ability and capacity to provide wastewater treatment services both under its contractual obligations to Monee, and to the new proposed customers in the proposed certificated area.” (V3 Ex. 2.0, p. 4.) V3 believes that the remaining WWTP capacity should be used to serve V3’s developments instead of the Expanded Area. (Aqua Ex. 3.0, pp. 4-5.) Aqua, however, has no contractual obligation to Monee at present, and V3 is not in Aqua’s certificated area. Aqua, therefore, has no obligation to serve V3, or reserve capacity for V3. Will County Water Co. v. Village of Shorewood, 117 Ill. App. 3d 187, 190 (3d Dist. 1983).

The situation in this case is similar to that in Will County Water. In that case, a public utility entered into a contract with the Village of Shorewood to provide wholesale sewage treatment services. 117 Ill. App. 3d at 187. The utility did not provide retail service directly to

customers pursuant to a certificate of public convenience and necessity issued by the Commission. Id. After the utility said it would not provide waste water treatment service to additional customers, the Village added four additional residences to the sewer system. Id. The public utility brought suit seeking, *inter alia*, an injunction prohibiting all further connections to the sewer mains in the Village. Although the utility had available capacity at its sewer plant, the utility wanted to reserve this capacity to provide retail sewer service to customers in areas for which the company held a certificate of public convenience and necessity. Id. at 190.

The court in Will County Water found that, because the utility did not provide direct, retail service to the residents of the Village as a public utility pursuant to a certificate, but rather provided services pursuant to a wholesale contract with the Village, “[t]he rights and corresponding duties which characterize the status of a public utility are not applicable under the instant facts. *A utility company has no obligation to provide service as a public utility outside the areas in which it is mandated, by a certificate of public convenience and necessity, to offer service.*” 117 Ill. App. 3d at 191 (emphasis added). Accordingly, the court concluded that the Village had no right to demand that additional homes be connected to the Village sewer system. Id.

Here, as in Will County Water, V3 seeks to assert that it somehow has a superior right to capacity from the University Park WWTP. Because V3 is not in Aqua’s certificated area (Tr. 285 (Blaise)), however, it has no such right. In fact, Will County Water makes clear that Aqua can reserve sewer capacity for customers in areas for which Aqua has a certificate, even where there are competing claims from wholesale customers. Thus, V3 has no claim to capacity from the University Park WWTP.

V3 also claims that the Wastewater Agreement establishes Aqua's "prior and superior obligation" to serve V3 rather than the Expanded Area. (V3 Ex. 1.0, p. 6.) However, the only parties to the Wastewater Agreement were Aqua and Monee. (Aqua Ex. 3.0, p. 5; Tr. 283.) The Wastewater Agreement was a wholesale agreement for wastewater service, pursuant to which Aqua treated wastewater collected by Monee. Aqua does not have and has never had a contractual relationship with V3 under the Wastewater Agreement, as V3 admits. (Tr. 283-84 (Blaise).) Moreover, the Wastewater Agreement had an initial term of 20 years, which would automatically renew for an additional 20 year term unless Monee notified Aqua that it did not want the contract to continue. (Aqua Ex. 3.0, p. 5.) Monee elected to not renew the Wastewater Agreement. (Id.) The Wastewater Agreement therefore expired on October 16, 2006, pursuant to notice by Monee on August 28, 2003. (Id.)

V3's testimony conveys a misleading impression that V3 has requested retail service from Aqua and that Aqua is refusing to provide service. (Aqua Ex. 3.0, p. 6.) That is not correct. V3 is not located in Aqua's presently certificated area or the area for which a Certificate is requested in this proceeding. (Tr. 285.) V3 does not seek direct retail service from Aqua, as would require a certificate of public convenience and necessity. (Aqua Ex. 3.0, p. 6.) The "requests for service" that Mr. Blaise discusses were requests to Aqua to sign construction permits for a sewer system to be constructed by V3 and connected to Monee's collection mains. (Id.) V3 first requested Aqua to sign construction permits on or about June 25, 2004, long after Monee had notified Aqua, in August 2003, that it was canceling the Wastewater Agreement. (Id.) Without a wholesale agreement in place between Aqua and Monee, there would be no way to treat wastewater from the V3 developments. (Id.) In addition, when Monee notified Aqua that it was not going to renew the Wastewater Agreement, Aqua planned to remove Monee from

its system and to use the 300,000 gallons of capacity from the WWTP, previously provided to Monee on a wholesale basis, to serve existing and future retail customers in Aqua's certificated territory. (Id.) Therefore, based on the impending termination of the Wastewater Agreement and Aqua's plans to use the WWTP capacity for other purposes, Aqua declined to sign V3's permits. Moreover, as noted above, Aqua has no obligation to serve V3 in the absence of a contract with Monee and a certificate for V3's parcel. Will County Water, 117 Ill. App. 3d at 190.

If V3 were to develop its property, the developments would connect to wastewater collection mains owned by Monee. (Aqua Ex. 3.0, pp. 7-9.) Therefore, Aqua's ability to treat wastewater from V3 is dependent on a suitable arrangement between Aqua and Monee for wholesale treatment service. Presently, there is no such arrangement, as Aqua is providing wholesale service to Monee at the direction of IEPA and not pursuant to any agreement. Aqua is capable of serving the Expanded Area, however, regardless of the whether Aqua must also continue to provide wholesale service to Monee. (Aqua Ex. 3.0, pp. 7-9.) On a long-term basis, the capacity needs of the Expanded Area and Monee – whatever those capacity needs end up being – can be met through expansion of the WWTP. (Id., p. 8.)

V3 does not dispute that V3 is located outside of Aqua's certificated area. (Tr. 285 (Blaise).) V3 has admitted that V3 is not seeking retail service from Aqua. (Aqua Ex. 4.0, p. 5.) V3 also admits that it was never a party to the now-expired wholesale Wastewater Agreement between Aqua and the Village of Monee. (Tr. 283 (Blaise); Aqua Ex. 4.0, p. 5) Thus, V3 has not established a right to service from Aqua.

5. The 104% Hydraulic Load Calculation Does Not Represent an Official Determination of Hydraulic Load by IEPA.

In support of its claim that the University Park WWTP lacks sufficient capacity, V3 points to a calculation purportedly performed by IEPA showing a hydraulic load of 104% (V3 Ex. 4.) As V3's witness Blaise admits, however, the document showing the calculation contains no indication that it was prepared by IEPA, authorized by IEPA, or represents any official, final determination of IEPA. (Tr. 287-88.)

In fact, the 104% calculation is based on faulty data. The calculation does not accurately reflect the permits issued by the IEPA in the two years ended March 20, 2007. (Aqua Ex. 4.0, p. 4.) The chart titled "Permits Issued in Last 2 Years," lists 10 permits allegedly issued by the IEPA for the University Park WWTP, but includes references to permits IEPA did not issue. (Id., pp. 2-3; Att. TJR 4.1 (Rev.)) As the owner and operator of wastewater facilities, Aqua receives a copy of all IEPA construction permits for facilities connecting to Aqua's system and would normally receive these permits. The first time Aqua became aware of the 104% calculation, however, was when Mr. Rakocy reviewed V3's rebuttal testimony, and the Company has no other record of it. (Id., p. 2.) Because the 104% calculation is based on faulty data, the calculation of hydraulic load is incorrect. (Aqua Ex. 4.0, p. 4.) The calculation of hydraulic load, using the same formula shown in V3's Exhibit 4 but using correct data, is 98.9%. (Aqua Ex. TJR 4.1 (Rev.)) Accordingly, Mr. Blaise's statement that "Aqua is already operating beyond its allowed capacity" (V3 Ex. 2.0, p. 1) is contrary to fact.

Moreover, the 104% hydraulic load calculation, which V3 asserts was prepared by IEPA (V3 Ex. 4; Tr. 273), does not represent an official determination by IEPA. With respect to hydraulic load at the University Park WWTP, the only documentation that Aqua has received from the IEPA is the January 25, 2006 letter notifying Aqua that the WWTP had reached 89% of

its permitted capacity and was therefore being placed on critical review status. (Aqua Ex. 4.0, pp. 2-3.) There have been no subsequent communications from the IEPA concerning capacity at the WWTP. When a wastewater treatment facility's hydraulic load percentage has reached its permitted design capacity, it is placed on the Restricted Status List. (ICC Staff Ex. 6.00, p. 4; *citing* 35 Ill. Adm. Code 392.202.) The fact that Aqua's University Park WWTP is not on the restricted status list indicates that IEPA has not made a determination that the University Park WWTP's hydraulic load is above 100%. The fact that Aqua's University Park WWTP is not on the restricted status list also means that IEPA has not concluded that the University Park WWTP has reached design capacity, such that additional sewer connection permits may no longer be issued without causing a violation of the Act or regulations. 35 Ill. Adm. Code 306.402. Thus, V3's reliance on the 104% calculation must be disregarded.

6. Denial of the Sewer Certificate Would Render Part of the Expanded Area Undevelopable.

As discussed below, Mr. Johnson is recommending that a water Certificate be granted for certain portions of the Expanded Area. If the Commission were to deny Aqua a wastewater Certificate, but grant a water Certificate as Mr. Johnson recommends, customers in the water certificated area would not be able to obtain sewer service from Aqua. As Aqua is the designated management agency (per IEPA) for provision of sewer service in this area, customers in the water certificated area could then only receive sewer service through the construction of septic systems or small stand alone developer-constructed sewer systems – there are no feasible alternative municipal or other utility providers. (Aqua Ex. 6.0, pp. 4-6; Tr. 237-38.)

In addition, as discussed above, the IEPA approved Aqua's request to expand the Deer Creek FPA, which is the area in which Aqua is the designated sewer management authority and which includes the Original Certificated Area and the Expanded Area. (Aqua Ex. 5.2.)

Although Aqua is the designated management agency in the Deer Creek FPA, it cannot provide retail service without a Certificate from the Commission. Thus, the effect of Mr. Johnson's recommendation denying a wastewater Certificate is to make the areas of the Deer Creek FPA outside the Original Certificated Area undevelopable, as customers in that area would not be able to receive sewer service (unless, as discussed above, developers constructed small stand alone sewage treatment facilities). (Aqua Ex. 5.0, p. 4.)

IEPA prefers to centralize sewer treatment in regional facilities, such as Aqua's University Park WWTP, as do Will County developers and government officials. (Aqua Ex. 5.0, p. 5; Tr. 238-39.) IEPA would not view the construction small stand alone developer-constructed sewer systems favorably, due to concerns that homeowners' associations may not operate such small wastewater treatment plants efficiently. (Aqua Ex. 5.0, p. 5.) There is a long history of homeowner associations failing to properly maintain treatment facilities, eventually leading to failures and environmental issues. (Id.) These concerns are avoided through the construction of centralized, state of the art treatment plants. IEPA recognizes Aqua as a professional company with the expertise to manage and maintain state of the art treatment plants in proper operating condition. (Id.) Thus, it is reasonable to conclude that IEPA would prefer that Aqua be the wastewater treatment provider rather than deal with multiple, small systems. As a matter of policy, Staff's proposal to deny the sewer Certificate presents concerns about the development of effective sewer treatment facilities in areas where there is a water Certificate but not a sewer Certificate.

7. Denial of the Sewer Certificate Would Create Inconsistencies Between the Water and Sewer Certificated Areas.

Mr. Johnson recommends that the wastewater Certificate be denied. (ICC Staff Ex. 6.00, p. 13.) Mr. Johnson also recommends that the water certificated area be limited to certain

portions of the Expanded Area. (Id.) The basis for this limited water Certificate is “to limit the inconsistencies between the water and wastewater certificates.” (Id.) Staff’s own proposal, however – no wastewater Certificate and a water Certificate for only portions of the Expanded Area – results in inconsistencies between the water and wastewater Certificates. Thus, Mr. Johnson’s own recommendations are contrary to his rationale of limiting “inconsistencies.” If Staff wants to limit inconsistencies between water and wastewater certificated areas, the appropriate approach would be to grant water and wastewater Certificates for the entire Expanded Area. (An alternate approach would be to grant water and wastewater Certificates for the limited portions of the Expanded Area, adopting Mr. Johnson’s alternate recommendation for the sewer Certificate and primary recommendation for the water Certificate. As explained above, however, there is no basis for limiting the sewer certificated area, and as explained below, there is no basis for limiting the water certificated area. Thus, the only proper option for avoiding “inconsistencies” is to grant water and wastewater Certificates for the entire Expanded Area.)

C. Staff’s Alternate Recommendation To Approve a Sewer Certificate for Part of the Expanded Area Should Also Be Rejected.

Alternatively, Staff suggests that the Commission could grant a sewer certificate for parts of the Expanded Area where there is planned development. (ICC Staff Ex. 6.0, p. 13.) This alternative should also be rejected. Staff’s primary recommendation (denial of the sewer certificate) and alternative recommendation (a sewer certificate for certain portions of the Expanded Area) are both based on Staff’s determinations regarding capacity at the University Park WWTP. (Aqua Ex. 6.0, p. 6.) As explained above, Staff witness Johnson’s concerns about capacity at the University Park WWTP are not warranted. Mr. Johnson has not identified any other concerns with the proposed wastewater certificated area, and in fact, as Mr. Johnson

acknowledges (ICC Staff Ex. 6.00, p. 12), his original recommendation was to grant the wastewater certificate for the entire Expanded Area. Moreover, customers are requesting Aqua provide service in the Expanded Area. (Aqua Ex. 5.0, p. 7.) Because Staff has not provided a basis for reducing the wastewater certificated area to a subset of the Expanded Area, Staff's alternative recommendation on the wastewater certificate should be rejected.

Staff's alternative proposal for the wastewater Certificate also presents concerns for Aqua with respect to its planning process. (Aqua Ex. 6.0, pp. 6-7.) Both the alternative proposal for the wastewater Certificate and the proposal (discussed below) to limit the water Certificate to certain portions of the Expanded Area create difficulties for Aqua with respect to its ability to plan the development of its water and wastewater facilities. (Id., p. 6.) Aqua requested a wastewater (and water) Certificate for the Expanded Area because service has been requested in that area or Aqua expects that it will be required to provide service in that area in the near future. By obtaining a certificate for the entire Expanded Area, instead of for piecemeal portions of it, Aqua can plan the design and construction of facilities to serve that area in the most efficient and cost-effective manner. (Id., p. 7.) A piecemeal certification process of the type Staff proposes, however, would restrict Aqua's abilities to plan the development of its facilities throughout the Expanded Area in the most efficient manner.

Aqua, as the regional sewer provider, needs to be able to plan to serve the sewer (and water) needs of the entire Expanded Area. (Aqua Ex. 6.0, p. 7.) If Aqua cannot plan to provide service to customers outside of the Original Certificated Area, then appropriately sized water and sewer mains may not be installed and reliability concerns could arise. (Id.) In order to plan appropriately to serve the requirements of the Expanded Area, Aqua should not be limited in its

planning to only known developments, but should be able to plan for water and sewer service on a regional basis based on expected patterns of development.

D. Staff's New Proposal for a Limited Water Certificate Should Be Rejected.

As discussed in Section IV.A above, Aqua has shown that the requirements for a water Certificate under Section 8-406 of the Act have been met. In Direct Testimony, Staff agreed that a water certificate should be issued for the entire Expanded Area. (ICC Staff Ex. 1.0, p. 19.) In his Responsive Testimony, however, Staff witness Johnson changed his recommendation. Staff's new recommendation is that the "water certificated service area be scaled back to match the wastewater certificated service area proposed as my alternative recommendation," that is, to areas where there are development proposals. (ICC Staff Ex. 6.0, p. 13.) Mr. Johnson offers, as his primary reason for scaling back the water certificated area, his belief that "it makes more sense to have identical water and wastewater certificated areas because of mapping and legal description reasons, as well as to minimize confusion for customers, the Company, and the Commission." (Id.) Mr. Johnson also asserts that his limited water Certificate proposal would "limit the inconsistencies between the water and wastewater certificates." (Id.)

Staff's recommendation for a limited water Certificate should be rejected. There are three reasons why. First, as Mr. Johnson acknowledges, in direct and rebuttal testimony he recommended that the Commission grant a certificate for both water and wastewater service for the entire Expanded Area. (ICC Staff Ex. 6.00, p. 12.) In making such a recommendation, Mr. Johnson concluded that the requirements of Section 8-406 of the Act were met. (See ICC Staff Ex. 1.00, pp. 13-19.) Mr. Johnson has not explained why Aqua's original proposal for a water Certificate for the entire Expanded Area (which has not changed) is no longer consistent with Section 8-406 of the Act, but Staff's new recommendation for a limited water Certificate area is consistent with Section 8-406. Aqua has shown that the Section 8-406 requirements have been

met for a water Certificate for the entire Expanded Area. Thus, Staff's recommendation for a limited water Certificate should be rejected.

Second, Mr. Johnson appears to believe that the water and sewer Certificate areas should match. His primary recommendation, however is for no sewer Certificate and a limited water Certificate area. As Mr. Johnson admits, however, under his primary proposal "there would be an area where water would have a certificate and waste water would not" (Tr. 235), and the sewer and water service areas would not match. Thus, Mr. Johnson's own recommendations undermine his primary rationale for recommending a limited water Certificate. Clearly, his primary proposal – no wastewater Certificate but a water Certificate for portions of the Expanded Area – creates inconsistencies between the water and wastewater Certificates. (Aqua Ex. 6.0, pp. 7-8.)

Finally, as discussed above, there are significant adverse planning implications arising from Staff's recommendation to limit the water or wastewater certificated areas. (Aqua Ex. 6.0, pp. 7-8.) Mr. Johnson is recommending that a water Certificate be granted for certain portions of the Expanded Area. Such a recommendation could hamper Aqua's ability to plan to serve the water needs of the Expanded Area at present and in the future. (Aqua Ex. 6.0, pp. 6-7.) If Aqua cannot plan to provide service to customers outside of the Original Certificated Area, then appropriately sized water mains may not be installed and reliability concerns could arise. (Id.) In order to plan appropriately to serve the requirements of the Expanded Area, Aqua should not be limited in its planning to only known developments, but should be able to plan for water and sewer service on a regional basis based on expected patterns of development.

V. CONCLUSION

For the reasons set forth above, the Company requests the Commission grant water and wastewater Certificates for the entire Expanded Area as proposed by the Company.

November 6, 2008

Respectfully submitted,

AQUA ILLINOIS, INC.

By: /s/ Albert D. Sturtevant

One of its attorneys

Albert D. Sturtevant
JONES DAY
77 West Wacker Drive
Suite 3500
Chicago, IL 60601-1692
Phone: (312) 782-3939
Fax: (312) 782-8585
adsturtevant@jonesday.com

CHI-1672787