

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>Aqua Illinois, Inc.</b>	:	
	:	<b>07-0620</b>
<b>Proposed general increase in water and sewer rates for its Hawthorn Woods Service area. (Tariffs filed November 16, 2007)</b>	:	
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<b>Aqua Illinois, Inc.</b>	:	
	:	<b>07-0621</b>
<b>Proposed general increase in water and sewer rates for its Willowbrook Service area. (Tariffs filed November 16, 2007)</b>	:	
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<b>Aqua Illinois, Inc.</b>	:	<b>08-0067</b>
	:	
<b>Proposed general increase in water rates for its Vermillion service area. (Tariffs filed January 2, 2008)</b>	:	
	:	

**ORDER**

By the Commission:

**Procedural History**

On November 16, 2007, Aqua Illinois, Inc., Hawthorn Woods Water and Sewer Divisions and Willowbrook Water and Sewer Divisions (“Aqua” or “Company”) filed revised tariff sheets in which it proposed a general increase in water and sewer rates to become effective February 16, 2008. For the Hawthorn Woods Water and Sewer Divisions, these tariff sheets were identified as: Ill.C.C. No. 47, Section No. 10, 3rd Revised Sheet No. 2 and Original Sheet No. 6; and Ill.C.C. No. 48, Section No. 7, 1st Revised Sheet No. 2. For the Willowbrook Water and Sewer Divisions, these tariff sheets were identified as: Ill.C.C. No. 47, Section No. 3, 1st Revised Sheet Nos. 1, 2, 3, 4, 5 and 6; and Ill.C.C. No. 48, Section No. 2, 1st Revised Sheet Nos. 1, 2, 3, and 4. For the Hawthorn Woods Water and Sewer Divisions, the Company simultaneously provided written Direct Testimony supporting the proposed general increase by Mr. Tod McCleary, Mr. Paul Hanley, Mr. Harold Walker, Mr. David R. Monie, and Mr. John Guastella. For the Willowbrook Water and Sewer Divisions, the Company simultaneously provided written Direct Testimony supporting the proposed general increase by Mr. Gerald P. Connolly, Mr. Paul Hanley, Mr. Harold Walker, Mr. David R. Monie, and Mr. John Guastella.

On December 19, 2007, the Illinois Commerce Commission (“Commission”) suspended the filing up to and including May 30, 2008, for a hearing on the proposed rate increase. On May 21, 2008, the Commission re-suspended the tariffs up to and including November 30, 2008.

On January 2, 2008, Aqua, Vermilion Water Division filed revised tariff sheets in which it proposed a general increase in water rates to become effective February 16, 2008. For the Vermilion Water Division, these tariff sheets were identified as: Ill.C.C. No. 47, Section No. 8, 5<sup>th</sup> Revised Sheet Nos. 2, 3, 4, 5, and 8 and 1<sup>st</sup> Revised Sheet Nos. 9, 10, 11, 12, and 13. The Company simultaneously provided written Direct Testimony supporting the proposed general increase by Mr. Thomas Bruns, Mr. Paul Hanley, Mr. Harold Walker, Mr. David R. Monie, and Mr. John Guastella.

On January 30, 2008, the Commission suspended the filing to and including May 30, 2008, for a hearing on the proposed rate increase. On May 21, 2008, the Commission re-suspended the tariffs to and including November 30, 2008.

On February 6, 2008, the Company’s oral motion to consolidate Docket Nos. 07-0620 and 07-0621 was granted without objection. On February 28, 2008, the Company’s oral motion to consolidate Docket 08-0067 with Consolidated Dockets 07-0620 and 07-0621 was granted without objection.

On February 20, 2008, in Docket 08-0067, a Petition for Leave to Intervene was filed by the Attorney General’s Office. No other parties filed petitions to intervene.

On May 8, 2008, Commission Staff (“Staff”) filed the Direct Testimony of Bonita A. Pearce, Dianna Hathorn, Michael McNally, William R. Johnson, Cheri L. Harden, Jonathan M. Sperry and William H. Atwood, Jr. On June 27, 2008, Staff filed the Supplemental Direct Testimony of William R. Johnson. Rebuttal Testimony of Company witnesses Mr. Terry J. Rakocy and David R. Monie was filed on July 2, 2008. In addition to responding to issues raised by Staff, Mr. Rakocy adopted the Direct Testimony of Company witnesses McCleary and Connolly. Rebuttal Testimony of Staff witnesses Harden and Johnson was filed on July 14, 2008. Company Surrebuttal Testimony from Mr. Monie was filed on July 17, 2008. Various revisions to the aforementioned testimonies were subsequently filed. No other party filed testimony.

On July 15, 2008, the Company and Staff filed a Stipulation Concerning Resolution of Certain Issues in Consolidated Docket Nos. 07-0620, 07-0621 and 08-0067 (“Stipulation”).

Pre-hearing conferences were held in this matter on February 6, 2008, February 28, 2008, and July 8, 2008. An evidentiary hearing was conducted on July 23, 2008. At the conclusion of the hearing on July 23, 2008, the record was marked “Heard and Taken.”

On July 23, 2008, Staff and Aqua agreed that no contested issues remained between them for the Hawthorn Woods, Willowbrook and Vermilion Water Divisions,

thereby alleviating the need to file briefs for those divisions. Rather, Staff and the Company agreed to provide the Commission with a Proposed Joint Interim Order. On August 12, 2008, Staff and Aqua filed a Joint Draft Order. Staff and the Company agreed to file Initial Briefs on August 13, 2008, for the sole remaining issue between them in the Hawthorn Woods and Willowbrook Sewer Divisions. For those two divisions, Staff and the Company agreed to file Reply Briefs by August 20, 2008. Staff and the Company agreed to file Briefs on Exception within 7 days after the issuance of the ALJ's Proposed Order and also agreed to waive the filing of Reply Briefs on Exception.

On August 27, 2008, the Commission approved the Interim Order concerning approval of all of the uncontested issues.

On October 6, 2008, a proposed order was issued by the Administrative Law Judge. Staff and the Company filed Briefs on Exceptions on October 14, 2008. By agreement of the parties, no reply briefs on exceptions were filed.

### **Nature of Operations**

Aqua is a subsidiary of Aqua America, Inc., and is engaged in the business of providing water and sewer service to the public in Illinois. The Company's Hawthorn Woods Water and Sewer Divisions serve residential, commercial, and municipal customers located in the Village of Hawthorn Woods, Illinois. The Company's Willowbrook Water and Sewer Divisions serve residential and commercial customers in unincorporated areas near the Village of Crete, Illinois. The Company's Vermilion Water Division serves residential, commercial, industrial, wholesale, and municipal customers located in Vermilion County, Illinois.

For the Hawthorn Woods Water and Sewer Divisions, the rates in existence during the pendency of this proceeding were established by the Order entered in Dockets 03-0455 and 03-0550 (Consolidated). The Company requested the rate increase to recover its operating and maintenance expenses, including those expenses necessarily incurred to comply with federal and state regulations. The Company explained that current 2008 test year levels of expenses and rate base have increased because (1) the operational costs of the divisions were substantially higher than initially projected; (2) the needs of the area are such that the system capacities had to be increased to maintain a viable and expandable system; and (3) a capital investment in new facilities of approximately \$1.5 million had to be made. The Company asserts that for the 2008 test year, the rate of return on rate base for the Hawthorn Woods Water Division has declined to 0.73% at present rates. The Company further asserts that for the 2008 test year, the rate of return on rate base for the Hawthorn Woods Sewer Division has declined to 0.28% at present rates.

For the Willowbrook Water and Sewer Divisions, the rates in existence during the pendency of this proceeding were established by the Orders entered in Docket Nos. 90-0073 and 91-0317. The Company requested the rate increase to recover its operating and maintenance expenses, including those expenses necessarily incurred to comply

with federal and state regulations. The Company asserts that for the 2008 test year, the rate of return on rate base for the Willowbrook Water Division has declined to 2.21% at present rates. The Company further asserts that for the 2008 test year, the rate of return on rate base for the Willowbrook Sewer Division has declined to 2.26% at present rates.

### **Low Usage Sewer Rate**

The only remaining issue to be addressed in this Order is the rate for the low use sewer customers in the Hawthorn Woods Sewer (“HWS”) and the Willowbrook Sewer (“WS”) Divisions.

In 2006, the Public Utilities Act (“Act”) was amended by adding Section 8-306 concerning “Special Provisions Relating to Water and Sewer Utilities”.

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).

### **Party Positions**

#### **Aqua Illinois**

Aqua Illinois contends that its rate proposal fully complies with 220 ILCS 5/8-306(h). First, the Company presently offers and will continue to offer certain of its sewer customer’s rates that are based on consumption and which effectively provide low usage customers lower rates.

Second, for those customers who do not qualify for the existing consumption based rates, the Company has proposed low usage flat rates and will file sewer tariffs consistent with those proposed rates.

Third, the Company commits to propose rates, based in part on water consumption (customer charge plus consumption charge), for all Hawthorn and Willowbrook sewer customers in its next rate relief request.

For the HWS division, there is a consumption charge for commercial sewer customers. As such, no change in the rates proposed by the Company and agreed to by Staff witness Ms. Harden in her Direct Testimony (Staff Ex. 5.0) is required because low use commercial sewer customers already receive a discounted rate based on volume used. Similarly, those HWS residential customers that have elected to have a separate meter for their irrigation use are billed for sewer based on the commercial

sewer rate tariff and would not be subject to a separate low use sewer rate. For those HWS low usage customers who are not otherwise eligible for the commercial sewer rate, do not have a separate sewer meter, and take water service from HWW, the Company proposes a \$53.00 per month flat low use sewer rate. Monie Sur., Aqua Ex. 8.0, In. 125.

For the WS division, its Rest Haven commercial customer is billed based on water consumption, therefore no separate low use sewer charge is applicable. Likewise, for residential or other commercial sewer customers who do not obtain water service from the Company, no low use sewer charge is applicable. Ms Harden again approved the Company's proposed rates for sewer customers in her Direct Testimony (Staff Ex. 5.0). For those WS low usage customers who are not otherwise eligible for the commercial sewer rate and also take water service from Willowbrook Water, the Company is proposing to establish a separate \$59.84 per month flat low use sewer rate. Monie Sur., Aqua Ex.8.0, In. 134.

The proposed flat low use rates for the HWS and WS divisions are exactly \$1.00 less than the agreed-upon rates for similar customers using at least 1,000 gallons of water in a billing period. Monie Sur., Aqua Ex. 8.0, Ins. 135-37. It should be noted that for purposes of these proceedings only, the Company is willing to absorb the \$1.00 per low use sewer bill loss of revenues. However, the Company must be permitted to recover from non-low usage customers any additional discounted amounts ordered by the Commission.

Lastly, on a going forward basis, the Company will commit to propose rates based in part on water consumption for all HWS and WS customers for which the Company also provides water service in its next rate relief request. Monie Sur., Aqua Ex. 8.0, Ins. 138-42. This will provide a final and permanent statutory compliance solution for low usage customers.

In its Reply Brief, Aqua argues that the Company's low usage sewer rate complies with Section 8-306(h) of the Act, it is just and reasonable, and it is supported in the evidentiary record. Staff's suggested mandatory rehearing is at odds with Commission precedent and is totally an inefficient use of resources, given the revenues at issue and the Company's comprehensive proposal. Lastly, Staff's additional request to order the Company to make a future separate meter filing should be stricken, as it is beyond the agreed upon scope of this proceeding.

Aqua considered the concerns of Staff and proposed low usage rates that fully comply with 220 ILCS 5/8-306(h). The Company's proposed low usage rates for approximately 130 customers are based on and discounted from the flat rate sewer rates Staff already acknowledged and agreed were just and reasonable. Harden Dir., Staff Ex. 5.0. In the future, the Company commits to propose sewer rates, based in part on water consumption (customer charge plus consumption charge), for all Hawthorn and Willowbrook sewer customers. A shift from fixed rates to consumption based rates further addresses Staff's concerns. The low usage rates proposed by the Company are based upon rates that are just and reasonable and comply fully with the Act.

In response to Staff's assertion that Aqua was not in compliance with 8-306(i) of the Act, Aqua states that the type of customers to which this statute applies do not exist

in HWS and WS. Aqua also states 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. Finally, Aqua states its commitment to address the issue in its next rate case. Aqua points out that based on the Stipulation it entered into with Staff in this proceeding there remained one unresolved issue – the low usage sewer rate required by 8-306(h) of the Act. For these reasons, the Company argues that Staff’s argument on this point is untimely, beyond the scope and should be stricken. Aqua Reply Brief at 7.

### **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 Act, 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 disagrees with the Company that the \$1.00 discount complies with Section 8-306(h). A flat rate encompasses all customers and all uses in a billing period, from a customer who has zero water/sewer usage in a month, such as customers who may spend the winter in Florida or Arizona, to customers who are average or large users. This averaging approach to setting a flat rate means that large users are likely paying less per month and low users are likely paying more per month. Conceptually, it is relatively easy to realize 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 other customers on an average basis. Staff argues that the rate for a low use customer would be far lower than Aqua’s proposed rate of only \$1.00 less. Regarding whether the Company would need to set a rate if no such low use customers existed, it testified that Staff “simply states that a rate must be established.” Aqua Ex. 8.0, p. 7. The Commission, however, still must abide by the Act’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. Staff does not believe the Company has met its burden to provide rate relief for these customers as the law intends.

Finally, Staff notes that in the recent Illinois American Water Company's (IAWC) rate proceeding (ICC Docket No. 07-0507), IAWC proposed that low usage customers move from a flat rate of \$45.52 for sewer collection and treatment service to a customer charge of \$26.07 which includes 1,000 gallons of water usage. This is a \$19.45 difference per month for low usage sewer customers.

Similar to IAWC's customers, Aqua's sewer customers are all provided collection and treatment services. Thus, Staff proposes that the low use rate developed by Aqua should be significantly lower than a \$1.00 discount and that, given the amount of time the Company has had to develop a low use sewer rate; Aqua should have developed a reasonable rate with appropriate support, analysis and documentation.

Staff posits that while the Company's proposed rate may meet the minimal requirement of the law, the Company failed to provide adequate support for its position with data analysis for the implementation of such a rate. Staff suggests, as an alternative, that a low use sewer rate could be determined during a rehearing process for this docket. In fact, the Commission could conclude in the Final Order that this issue should be reheard and direct the Company to file for rehearing on the issue. Staff avers that this alternative could alleviate any concerns regarding the use of the Company's proposed rate that is \$1.00 per month lower than the standard rate.

In its Initial Brief, Staff asserted for the first time that it contends that Aqua is not in compliance with Section 8-306(i) of the Act.

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).

Staff points out that Aqua's initial rate case filing did not address Section 8-306(i) or the rate it requires. Staff sent Data Requests to the Company, for both Hawthorn Woods and Willowbrook, inquiring about how the Company planned to comply with Section 8-306(i). ICC Staff Exhibit No. 5.0, Attach. C. Aqua's responses stated that it had not proposed a rate that would apply to the lone commercial sewer account because there were currently no customers utilizing separate meters for water and sewer service. 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 Act, 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.

### **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 and is not supported by the record. Staff suggests that rehearing on this issue maybe necessary to resolve this issue.

After reviewing the record, the Commission agrees with the Company, though we direct Aqua to support its low usage sewer rate, in its next rate case, with a more extensive cost-based analysis. 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. 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. While the Commission prefers a more thorough analysis of the rate to be offered low usage customers, there is no other alternative contained in the record. Aqua agreed to cap the increases for the over 1,000 gallon per billing period customers to a 35% increase when evidence shows that it could have increased rates between 53.68% and 170.76% in the HWS division (Staff Ex. 1.0, Page 8) and between 55.01% and 65.79% in the WS division (Staff Ex. 1.0, table 1.01 WS). Since the over 1,000 gallon rates were used as a base for the low usage customers, the Commission finds Aqua’s agreement to set the over 1,000 gallon rates at such a low value to be persuasive in finding that the low usage sewer rates proposed for HWS and WS division are just and reasonable in this case. However, the \$1 reduction is not to be viewed as precedential for future cases, and HWS and WS should not propose a similar adjustment in the next rate case unless supported by a cost-based analysis. The Commission hesitates to open a new proceeding, as requested by Staff, when the rate affects so few customers. Therefore, the Commission finds that the low usage rates proposed for HWS and WS are just and reasonable and are in compliance with Section 8-306(h). Rehearing is left for the discretion of the parties and there is really no guarantee that rehearing on this issue would lead to any clearer rate for this customer class. The Commission will hold the Company to its commitment to include this rate in any future rate case filing.

We note that in its Initial Brief Staff raises, for the first time, the allegation that Aqua has failed to offer a rate pursuant to 8-306(i) of the Act., Staff recommends that Aqua be directed to revisit this issue in its next rate relief request even if there are no customers utilizing separate meters for water and sewer service. The Act 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 Commission observes that in its Reply Brief the Company states that it plans to make such a submission in any future applicable rate proceedings. For these reasons we find that the Company is in agreement with Staff’s recommendation and Aqua should revisit the Section 8-306(i) issue again in its next rate relief request.

## **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 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 Aqua is required to submit rates to comply with Section 8-306(h) and Section 8-306(i) in its next rate relief request even if there are no customers utilizing separate meters for water and sewer service.

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.

By Order of the Commission this 13<sup>th</sup> day of November, 2008.

(SIGNED) CHARLES E. BOX

CHAIRMAN