



argues that the Commission’s authority to grant declaratory judgments under Section 200.220(a)(1) is limited to determining “the applicability of any statutory provision enforced by the Commission or of any Commission rule to the person(s) requesting a declaratory ruling.”

The Sandra Oaks Condominium Association (“Sandra Oaks”) also filed a Response Brief, in which it adopts Staff’s argument that the Commission lacks the authority to issue the requested declaratory relief under Section 200.220(a)(1), and in addition, argues that the applicable regulations and tariffs should not, as a matter of public policy, allow a service disconnection to utility customers who have not themselves violated Aqua’s Rules, Regulation and Conditions and who are current on their bills with Aqua.

The arguments of both Staff and Sandra Oaks fail. As argued below, the Commission is plainly authorized to issue a declaratory judgment under the circumstances in this case, as it has done on numerous occasions. Moreover, the language of 83 Ill. Admin. Code 280.130(a)(1)(E), and ¶¶ 18(A)(5) and 33(C) of its Rules, Regulations and Conditions clearly allow for service disconnection under the facts stated in Aqua’s Petition.

## **II. Discussion**

### **A. The Commission Has Authority Under Section 200.220(a)(1) To Determine Whether ¶ 33(C) of Aqua’s Rules, Regulations and Conditions Are Valid, Enforceable and Applicable to Aqua In Relation To Service Disconnections At The Sandra Oaks Complex.**

Both Staff and Sandra Oaks argue that Section 200.220(a)(1) precludes the Commission from granting the declaratory relief requested by Aqua. Specifically, Staff and Sandra Oaks claim that declaratory judgments under Section 200.220(a)(1) are

limited to determining whether statutory provisions or rules administered by the Commission apply to the party requesting declaratory relief. Staff Reply at 5-7; Sandra Oaks Reply at 6.

Section 200.220(a)(1) provides:

- a) When requested by the affected person, the Commission may in its sole discretion issue a declaratory ruling with respect to:
  - 1) the applicability of any statutory provision enforced by the Commission or of any Commission rule to the person(s) requesting a declaratory ruling.

Staff and Sandra Oaks interpret this language to mean that in this case, the Commission may answer only the narrow question of whether 83 Ill. Admin. Code 280.130(a)(1)(E), and ¶¶ 18(A)(5) and 33(C) of Aqua's Rules, Regulations and Conditions apply to Aqua, and nothing more. In support of this position, Staff cites *Illinois Industrial Energy Consumers Request for Declaratory Ruling*, ICC Docket No. 98-0607, 1999 Ill. PUC LEXIS 202 (March 10, 1999) and *Illinois Power Company v. Town of Normal*, ICC Docket No. 98-0329, 1998 Ill. PUC LEXIS 969 (Nov. 5, 1998).

Both of these cases are distinguishable from Aqua's Petition. In *Illinois Industrial Energy Consumers*, the petitioners requested declaratory relief as to the meaning of a provision of 220 ILCS 5/16-102 of the PUA. The Commission denied relief, ruling that the petitioners had failed to allege facts necessary for declaratory relief, and that the relief sought was "so broad and generic as to bind non-requesting parties to a statutory interpretation without an opportunity to be heard." *Illinois Industrial Energy Consumers* at \*4. The Commission also stated that it "can only decide whether a particular law applies to a particular person or entity under sufficiently described and reasonably certain factual circumstances." *Id.* at \*4.

Unlike the pleadings in *Illinois Industrial Energy Consumers*, Aqua’s Petition provides ample factual detail with respect to the declaratory relief sought (neither Staff nor Sandra Oaks claim otherwise). Aqua does not seek a broad generalized ruling applicable to parties not before the Commission or without an opportunity to be heard. Instead, Aqua has requested a declaratory ruling as to the applicability of 83 Ill. Admin. Code 280.130(a)(1)(E), and ¶¶ 18(A)(5) and 33(C) of its Rules, Regulations and Conditions under the facts set for in its Petition in connection with Aqua’s right to disconnect water service.

In informal complaints filed with the Commission, certain Sandra Oaks residents and the Sandra Oaks Homeowners Association contest whether Aqua has service disconnection authority under the facts pleaded. To the extent 83 Ill. Admin. Code 280.130(a)(1)(E), and ¶¶ 18(A)(5) and 33(C) of its Rules, Regulations and Conditions are valid and enforceable law, Aqua realizes that its conduct and activities with respect to service disconnection are governed thereunder. The challenges from the informal complaints however necessarily raise the question of whether ¶¶ 18(A)(5) and 33(C) of Aqua’s Rules, Regulations and Conditions (“¶¶ 18(A)(5) and 33(C)”) are valid and enforceable, and therefore applicable to Aqua under the circumstances in this case. Indeed, in Sandra Oaks’ Informal Complaint, it explicitly challenges the validity and applicability of ¶ 33(C), stating that “[Aqua’s] tariff, if valid (**which the Association strongly disputes**), appears to authorize a shutoff of multiple residents, in ¶ 33(C), if water is served by a common pipe.” Sandra Oaks Informal Complaint, p. 3. (emphasis added).

Because the informal complaints in this dispute challenge whether ¶ 33(C) is valid, this case is not a tautological exercise in determining whether the PUA or Part 83 of the Illinois Administrative Code apply to Aqua, which they clearly do. If Sandra Oaks is correct that ¶ 33(C) is not valid, it necessarily follows that it not applicable as a basis for Aqua to disconnect service. ¶ 33(C) is applicable to Aqua under the facts of this case only if it is a valid enforceable tariff in the first place.

Staff's citation to *Illinois Power Company* is also inapposite. *Illinois Power Company* involved a petitioner requesting a declaratory judgment that a cease and desist order and related ordinance issued by the Village of Normal violated the PUA and breached a franchise agreement between the parties. *Illinois Power Company* at \*1. The Commission rejected the petitioner's request for declaratory relief, citing the limitations of authority provided under Section 200.220.<sup>1</sup> *Illinois Power Company* is distinguishable because the petitioners sought declarations, not about the statutes and regulations enforced by the Commission, but instead, about orders and ordinances of the Village of Normal, and a franchise agreement between the parties, none of which were enforced by the Commission. Thus, the requested declaratory relief was clearly beyond the Commission's authority under Section 200.220(a)(1).

The Commission also noted that "to the extent that [the petitioner] has argued that its amended complaint requests a ruling on the applicability of the [PUA] to [the petitioner], the Commission finds that, in the absence of an additional ruling upon the rights and responsibilities of the parties, such a ruling would amount to a tautology ([the petitioner] is bound by the [PUA])." *Id.* at \*2. No party in *Illinois Power Company*

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<sup>1</sup> Part of the petitioner's claim for declaratory relief was denied on mootness grounds. *Illinois Power Company* at \* 2.

contested whether the PUA or any of its provisions were valid, enforceable or applicable to the petitioner. Thus, under the facts of *Illinois Power Company*, a declaration that the PUA applies to an Illinois public utility, absent a claim that one or more of the PUA's provisions were in some way invalid or unenforceable, and therefore inapplicable, would be a tautology, as the Commission stated.

Unlike *Illinois Industrial Energy Consumers*, Aqua's Petition does involve a dispute over the validity and applicability of its Rules, Regulation and Conditions, specifically, ¶ 33(C). The declaratory relief requested by Aqua requires a determination that ¶ 33(C) is in fact valid and therefore applicable to Aqua with respect to its right to disconnect service under the facts stated in its Petition. A ruling by the Commission on this issue would not be a tautology, and entirely within the Commission's authority under Section 200.220(a)(1).

In short, neither *Illinois Industrial Energy Consumers* nor *Illinois Power Company* are similar to Aqua's request for declaratory relief. Neither case held that the Commission is barred from determining whether a public utility's tariff governing remedies for violation of rules is valid, enforceable and therefore applicable to the petitioner seeking declaratory relief.

More recent Commission opinions confirm that its authority for granting declaratory relief is broader than that claimed by Staff and Sandra Oaks. *See Re: Central Illinois Public Service Company dba AmerenCIPS*, 2007 WL 3245067 (Commission granted declaratory ruling confirming the petitioner's interpretation of a section of the Illinois Administrative Code); *St. Louis Pipeline Corporation*, 2006 WL 1675916 (Commission granted declaratory ruling as to whether St. Louis Pipeline Corporation was

authorized to exercise eminent domain to obtain land owned by the Metro East Sanitary District).

Staff and Sandra Oaks urge the Commission to adopt an exceedingly narrow construction of Section 200.220(a)(1) that is unsupported by the cases they cite and contradicted by the Commission's more recent opinions. For these reasons, Staff's and Sandra Oaks' argument on this issue must be rejected.

**B. The Commission Must Not Nullify ¶ 33(C) of Aqua's Rules, Regulations And Conditions Simply Because Its Application May Affect Customers Who Are Current In Their Service Accounts With Aqua.**

Sandra Oaks argues next that because application of ¶ 33(C) could produce the harsh result of service disconnection affecting residents who have honored their payment obligations, such an application cannot be tolerated, and in effect, that ¶ 33(C) should be nullified. Sandra Oaks does not offer any legal analysis or authority to explain why, despite being approved by the Commission, ¶ 33(C) should simply be set aside as a nullity.

Sandra Oaks attempts to support this position by further claiming that Aqua has failed to exhaust less burdensome alternatives for resolving the delinquent accounts at the Sandra Oaks Complexes. Sandra Oaks raises the possibility of resolving delinquent accounts by forcible entry and detainer actions or altering the plumbing of the Sandra Oaks buildings to facilitate the installation of individual meters with common area access.

First, Sandra Oaks cites no legal authority as to the basis for a forcible entry and detainer action by Aqua as an unsecured creditor. Indeed, the Illinois Forcible Entry and Detainer Law (735 ILCS 5/9-101 *et seq.*) provides remedies for recovering possession of

real estate, not settling utility service billing disputes. In short, Sandra Oaks cites an alternative remedy that does not exist. Second, with respect to altering the plumbing in the building, Sandra Oaks can elect this remedy at its own cost, but has apparently chosen not to do so. Under Aqua's tariffs, Sandra Oaks would bear the obligation for paying for alteration of the plumbing in this manner. Third, Sandra Oaks has the ability to resolve this matter on its own by master metering its Aqua service accounts, which to date, it has refused to do.

Finally, Sandra Oaks invokes public policy as a basis for nullifying application of ¶ 33(C) of Aqua's Rules, Regulations and Conditions. Again however, Sandra Oaks fails to offer any legal authority for setting aside tariffs approved by the Commission on the grounds of public policy, and overlooks its own ability to avoid the harsh consequences it fears from application of ¶ 33(C) by master metering it accounts with Aqua. Moreover, Sandra Oaks disregards the public policy implications of its persistent and irresolvable account delinquencies, the costs of which will be passed on to other utility customers.

#### **IV. CONCLUSION**

As stated in previous filings, Aqua's right to disconnect service at the Sandra Oaks Complex is clear from the plain and clear language of 83 Ill. Admin. Code 280.130(a)(1)(E), and ¶¶ 18(A)(5) and 33(C) of its Rules, Regulations and Conditions. Further, 83 Ill. Admin. Code 200.220(a)(1) clearly authorize the Commission to grant the declaratory relief sought by Aqua. For these reasons, Aqua is entitled to a declaration of its right to disconnect service under 83 Ill. Admin. Code 280.130(a)(1)(E), and ¶¶ 18(A)(5) and 33(C) of its Rules, Regulations and Conditions.

Respectfully submitted,

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