

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

**Illinois-American Water Company** :  
:  
**Proposed Implementation of a** :  
**Qualifying Infrastructure Plant** : **09-0251**  
**(QIP) surcharge rider.** :

**PROPOSED ORDER**

By the Commission:

**I. PROCEDURAL HISTORY**

On April 23, 2009, Illinois-American Water Company (“IAWC” or the “Company”) filed tariffs to implement Qualifying Infrastructure Plant (“QIP”) Surcharge Riders in its Champaign, Sterling, Pekin, Lincoln, South Beloit, and Chicago Metro Water and Waste Water Districts, pursuant to Section 9-220.2 of the Illinois Public Utilities Act (the “Act”). 220 ILCS 5/9-220.2 and 83 Ill. Adm. Code 656.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, hearings were held by a duly authorized Administrative Law Judge (“ALJ”) at the Commission offices in Springfield, Illinois on June 16, July 9, and July 22, 2009. On July 7, 2009, the City of Champaign filed a Petition to Consolidate this proceeding with the pending IAWC rate proceeding, Docket No. 09-0319. This motion was denied by the Administrative Law Judge.

An evidentiary hearing was held in this matter on October 19, 2009 in the Commission’s Springfield offices. Appearances were entered by counsel on behalf of the Company, The People of the State of Illinois (the “AG”), by Lisa Madigan, Attorney General of the State of Illinois, the City of Champaign, the Village of Bolingbrook, the Citizens Utility Board, and Staff. Rich Kerckhove and Jeffrey T. Kaiser testified on behalf of the Company. Scott J. Rubin testified on behalf of the AG. Thomas Q. Smith, an Economic Analyst in the Water Department of the Financial Analysis Division, testified on behalf of Staff. The record was marked "Heard and Taken" on October 19, 2009. An Administrative Law Judge's ruling was served on the parties on January 6, 2010 directing IAWC to file the required notices of publication and notices to customers pursuant to Part 656.30(c)(2). A response providing the required notices was filed by IAWC on January 11, 2010.

On November 16, 2009, the Company and the Staff of the Illinois Commerce Commission (“Staff”) both filed Initial Briefs in this matter. On the same date, the City of Champaign and the Office of the Illinois Attorney General (“City/AG”) filed a joint Initial

Brief. Reply Briefs were filed by Staff, IAWC and City/AG. A Proposed Order was served on the parties.

## **II. STATUTORY AUTHORITY**

The Company's request is governed by Section 9-220.2 of the Act, which states:

a. The Commission may authorize a water or sewer utility to file a surcharge which adjusts rates and charges to provide for recovery of (i) the cost of purchased water, (ii) the cost of purchased sewage treatment service, (iii) other costs which fluctuate for reasons beyond the utility's control or are difficult to predict, or (iv) costs associated with an investment in qualifying infrastructure plant, independent of any other matters related to the utility's revenue requirement. A surcharge approved under this Section can operate on an historical or a prospective basis.

b. For purposes of this Section, "costs associated with an investment in qualifying infrastructure plant" include a return on the investment in and depreciation expense related to plant items or facilities (including, but not limited to, replacement mains, meters, services, and hydrants) which (i) are not reflected in the rate base used to establish the utility's base rates and (ii) are non-revenue producing. For purposes of this Section, a "non-revenue producing facility" is one that is not constructed or installed for the purpose of serving a new customer.

c. On a periodic basis, the Commission shall initiate hearings to reconcile amounts collected under each surcharge authorized pursuant to this Section with the actual prudently incurred costs recoverable for each annual period during which the surcharge was in effect.

220 ILCS 5/9-220.2

The Commission adopted 83 Ill. Adm. Code 656, "Qualifying Infrastructure Plant Surcharge" ("Part 656") to implement Section 9-220.2 of the Act.

## **III. PARTY POSITIONS**

### **A. IAWC's Position**

IAWC submits that it has met its burden in complying with the requirements of Part 656, and, other than technical corrections proposed by Staff, notes that no witness in this proceeding asserts that IAWC's filing is not in accordance with Part 656.

IAWC witness Kerckhove testifies that the Company's proposed QIP Surcharge Riders will operate in exactly the same manner as the current QIP riders that were previously approved by this Commission in Docket No. 04-0336. He further testifies that the information filed in support of the Rider by IAWC mirrors the information proffered to the Commission as part of Docket No. 04-0336.

IAWC argues that Staff conducted a thorough review of the Company's request, and that as a result of that review, Staff witness Smith suggested several minor technical corrections to the Company's proposed tariffs, which changes the Company agreed to adopt. IAWC further notes that Mr. Smith also discusses the purpose of the QIP as well as the criteria for approval of the same, and ultimately finds that the Company has justified the need for the requested Surcharge Riders and recommends that the Commission grant the Company's request.

IAWC notes that AG witness Scott Rubin expressed his general opinion that it is poor public policy "to allow a utility to selectively revise its rates to reflect the costs of new capital investments." IAWC avers that Mr. Rubin appears to miss the point of this proceeding, as the bulk of his testimony presents general policy arguments against the Surcharge Rider concept. IAWC submits that the policy question of whether or not to allow for a QIP Surcharge Rider was decided by the Illinois Legislature when it enacted Section 9-220.2 of the Act, followed by Commission adoption of Part 656. In light of the unambiguous legislative and regulatory action to implement the QIP Surcharge Rider, IAWC argues that Mr. Rubin's arguments simply have no place in the instant proceeding and should be disregarded.

IAWC argues that throughout this proceeding, the City/AG have ignored the specific, established, criteria against which the Company's request should be judged in favor of broad policy arguments against riders, noting that the City/AG brief continues this pattern - attacking IAWC's proposal by painting riders generally, and the QIP rider specifically, as dangerous tools of utility abuse.

IAWC submits that the proper focus of the instant proceeding is whether IAWC's request meets the requirements to implement a QIP surcharge pursuant to the provisions of 9-220.2 and Part 656. IAWC does not disagree with the City/AG statement that "Section 9-220.2 is permissive, not mandatory in that it provides the Commission "may" allow the QIP surcharge. IAWC submits that the Commission, however, exercised its authority when it determined, in its judgment, that a QIP surcharge rider concept was something that should be pursued, and then established the comprehensive rules of Part 656.

IAWC disputes the City/AG's claim that the QIP rider will result in double recovery of IAWC's expenses. IAWC notes that pursuant to Part 656 rules, the proposed QIP Rider can not recover costs related to QIP-eligible projects that are already reflected in current rates. Rather, the proposed QIP Rider is intended to recover costs for QIP projects that are properly recoverable in a manner consistent with the Part 656 rules, but are not recognized in current rates. IAWC notes further, the

proposed QIP Rider, if approved before the end of the current rate case (Docket No. 09-0319), will be set to zero when new base rates are approved in that case. IAWC insists that, under the Part 656 rules, there is no risk of double recovery. Moreover, IAWC claims the ability to confirm the appropriateness of the revenue recovery (or to verify the absence of “double recovery”) is provided in both the QIP Rider approval proceeding and subsequent QIP Rider reconciliation proceedings.

IAWC submits that no witness has challenged the Company’s compliance with the requirements of Part 656, and that the appropriateness of the recovery of costs through a QIP Surcharge Rider was considered by the Illinois Legislature when it enacted 9-220.2 of the Act. IAWC notes that by such enactment, the Illinois Legislature specifically authorized the QIP Surcharge Rider, as well as defined what constitutes appropriate QIP costs.

## **B. Staff's Position**

Staff does not oppose adoption of the Company’s QIP Surcharge Rider. Staff witness Smith testified that a QIP Surcharge Rider provides timely rate relief and funding for the replacement of old and deteriorating distribution and collections systems and reduces regulatory lag. Mr. Smith further testified that IAWC currently possesses QIP Surcharge Riders applicable to the Alton, Cairo, Interurban, Peoria, Streator, and Pontiac Districts, which were approved by the Commission in Docket No. 04-0336 on December 15, 2004. Mr. Smith also noted that IAWC’s proposed tariffs in the instant proceeding are substantially identical to the tariffs which were approved by the Commission in Docket No. 04-0336, with the only differences in the tariffs being items of identification.

In his testimony, Staff witness Smith identified some technical problems with IAWC’s proposed tariffs, in that in various places the tariffs contain the phrase “file district”, when the intended phrase is “fire protection district.” Mr. Smith recommended the compliance tariffs be revised to reflect the intended phrase and the Company agreed.

Mr. Smith further testified that IAWC Exhibit 1.1 and IAWC Exhibit 1.2 both contain language indicating that it is intended that each set is applicable to customers in “All Districts,” however IAWC indicates that IAWC Exhibit 1.1 be applicable to the entire Chicago Metro Division except the South Beloit District, and that IAWC Exhibit 1.2 should be applicable to only the South Beloit District of the Chicago Metro Division. Mr. Smith recommended the compliance tariffs be revised so that it is clear which set of tariffs is applicable to the Chicago Metro Division except for the South Beloit District, and which set of tariffs is applicable only to the South Beloit District. IAWC agreed to make the recommended revisions in its compliance tariffs.

Lastly, the proposed tariffs in IAWC Exhibit 1.4 pages 4, 5, and 7 contain mislabeled paragraphs. Mr. Smith recommended that the correct labeling of paragraphs be included in the compliance tariffs and the Company agreed. Staff

witness Smith recommended that the Commission direct the Company to correct the above mentioned technical errors.

Staff notes that the requirements for approval of a QIP Surcharge Rider are outlined in 83 Ill. Adm. Code 656.90. Subsection a) states: "A utility's filing seeking initial approval of a QIP surcharge rider for a rate zone shall be accompanied with the necessary testimony and exhibits justifying the rider." Mr. Smith further testified that, in his opinion, IAWC has met the requirements to implement QIP Surcharge Riders which are authorized by Section 9-220.2 of the Act and implemented by rules in Part 656.

Mr. Smith testified that in his opinion there is no risk of double recovery of costs by the Company under Part 656, and further noted that when new base rates go into effect after the Company's pending rate case in Docket No. 09-0319, the proposed QIP surcharge percentage will be reset to zero. Mr. Smith further noted that to be classified as QIP, replacements must be installed after the conclusion of the test year in the utility's last rate case, and cannot be included in the calculation of the rate base in the utility's last rate case. Mr. Smith further testified that the QIP Surcharge Rider annual reconciliation proceedings will provide an opportunity to verify the appropriateness of the recovery of costs.

Staff notes that while in theory the City/AG argument that the Commission is not required to approve a QIP surcharge rider may be correct, the Commission has adopted Part 656 to implement Section 9-220.2 of the Act, which includes the general requirements for approval of a QIP surcharge rider. Staff argues that outside of Section 9-220.2 of the Act and Part 656, there are no other criteria which IAWC needs to meet in order for the Commission to approve a QIP surcharge rider.

While City/AG argue that the Commission should examine the necessity of a QIP surcharge rider and whether the rider would be good public policy in each case, Staff submits that the existence of Section 9-220.2 of the Act and Part 656 indicates that the General Assembly has already decided that if the requirements of Section 9-220.2 of the Act and Part 656 are met then approval of a QIP surcharge rider is necessary and good public policy.

Staff further notes that City/AG argues that proposed rate increases pursuant to Section 9-201 of the Act must be "just and reasonable and do so within the regulatory parameters which require use of a consistent test year and prohibit retroactive and single-issue ratemaking." While Staff does not disagree that Section 9-201 of the Act requires rates that are just and reasonable, Staff notes that this proceeding was not brought under Section 9-201 of the Act. Rather, this proceeding was brought pursuant to Section 9-220.2 of the Act. Further, Staff does not disagree with the standards for review of traditional riders set forth in the case law cited by City/AG; however, this proceeding does not involve a request for a traditional rider. This proceeding involves a request for approval of a QIP surcharge rider which is specifically authorized by Section 9-220.2 of the Act and implemented by requirements set forth in Part 656.

### **C. City/AG's Position**

City/AG take the position that the Commission is not required to approve a QIP surcharge rider, and that Section 9-220.2 of the Act did not direct the Commission to approve a QIP surcharge simply upon request. Rather, while allowing such a rider, City/AG argues that the law authorizes the Commission to examine the necessity of such a rider and whether it represents good public policy in any particular instance. City/AG opines that IAWC has the burden to prove that the surcharge is reasonable and necessary independent of any other matters related to its revenue requirement.

City/AG argue that IAWC should be strictly held to its burden as an automatic adjustment mechanism such as the QIP surcharge violates the matching principle of rate making and helps to destroy the underlying relationships between utility rates and levels of costs and investment. City/AG further opines that the use of a QIP Surcharge skews the repair/replace decision and result in the replacement of mains before the end of their economic life.

City/AG notes that the QIP Surcharge gives IAWC immediate recovery of the carrying costs of new capital investments; however expenditures on repair and maintenance are absorbed by IAWC until its next rate case. City/AG submits this gives IAWC an incentive to replace rather than repair.

Considered in light of these regulatory effects, to insure that inappropriate incentives are not created, and to insure that consumers are not harmed by allowing a pass-through for otherwise ordinary expenses and investments, City/AG argue the Commission should reject IAWC's request for a QIP surcharge.

City/AG avers that the Act and state and federal case law regarding the rate making process are based on the concept that riders should not be used unless there is a valid reason to remove certain costs from the ratemaking formula. City/AG argue that the evidence shows that five of the seven categories of cost for which IAWC seeks rider treatment have not fluctuated significantly comparing the five years between 2004 and 2008 and the five years between 2009 and 2013. Further the remaining two categories of cost (water and sewer collecting mains) have not fluctuated significantly beginning in 2009. City/AG argues that flat rate of investment shown for five of the seven categories of plant investment indicate no need for a rider.

City/AG cite the case of *A. Finkl & Sons Company v. Illinois Commerce Commission*, 250 Ill.App.3d 317, 620 N.E.2d 1141 (1st Dist. 1993), wherein the Illinois Appellate Court held that while riders are useful in alleviating the burden imposed upon a utility in meeting unexpected, volatile or fluctuating expenses, the Court noted that the amount of costs to be recovered through the rider at issue in the case was not significant, making rider recovery inappropriate.

City/AG argue that riders shift all of the risk and cost responsibility to customers who are least able to influence cost levels, and remove both the discipline of budgeting

between rate cases and the review attendant to rate cases and test year analysis, while also increasing administrative complexity by adding an annual reconciliation and add complexity and volatility to customer bills.

City/AG also argues that IAWC should demonstrate that its financial integrity would be impaired absent the approval of the QIP surcharge, which it has failed to do. City/AG are also concerned about the possibility of double-recovery from ratepayers as IAWC proposes the use of the same test year for its rate case as the basis for its QIP surcharge. City/AG witness Mr. Rubin explained that double-counting will result because the QIP surcharge is based on annual projections, so starting at the beginning of a given year, IAWC will recover costs for projects that have not been started or completed.

City/AG note that both the Company and the Staff cite the Commission rules governing QIP surcharges that require a utility seeking initial approval of a QIP surcharge rider to file testimony and exhibits “justifying the rider.” However, City/AG opines that neither party described the justification for the riders, which failure to provide evidence that the rider results in just and reasonable charges is fatal for IAWC since the rule regarding a QIP rider is subject to both Section 9-220.2 of the Act and Section 9-201 of the Act. City/AG argues that merely following the mechanics outlined in the Commission’s rule on how to file a request falls far short of providing justification for the QIP rider.

City/AG notes that IAWC asserts that the requested riders will operate in exactly the same manner as the current QIP riders and that the information it provided in this case “mirrors” what it provided in a prior case. The Company also argues that the Staff “conducted a thorough review of the Company’s request,” although other than some technical corrections, the Company was unable to cite or discuss what Staff considered as part of its “thorough review.” City/AG opines that the Commission should reject IAWC’s attempt to clothe its request with Staff approval, while ignoring the substance of its request. City/AG further aver that Staff witness Smith’s testimony does not address the substance of IAWC’s request, but simply relates that the rule requires that testimony and exhibits be filed to justify a QIP surcharge rider request, and this lack of analysis or discussion provides no support for the Company’s rider request.

City/AG submits that only Mr. Rubin addressed the justification for a QIP rider, which is what the testimony and exhibits are supposed to address. His testimony properly emphasized the uneven incentives created by the Company’s request and the danger of inefficient allocation of resources when a Company can increase its rates for infrastructure investment but not for infrastructure maintenance. City/AG avers that IAWC has not justified the imposition of a QIP surcharge on customers in the Champaign, Lincoln, Pekin, Sterling, South Beloit, and Chicago Metro Water and Waste Water Districts by the mere filing of testimony and exhibits with its request. City/AG argues that IAWC must affirmatively justify a QIP surcharge, and the Commission cannot be expected to approve a rider in light of the Company’s failure to present that justification in its briefs.

City/AG notes that that IAWC currently has a rate case pending before the Commission in Docket No. 09-0319, and that rate case uses a future test year ending December 31, 2010, the same as the QIP rider, which City/AG believes is contrary to the statutory prohibition that investments in qualifying infrastructure plant cannot be “in the rate base used to establish the utility’s base rates.” City/AG argues that the better policy to avoid confusion on this matter would be to mandate that no QIP surcharge can take effect until January 1, 2011.

City/AG submits that the evidence submitted by IAWC shows that the QIP surcharge rider should be rejected because the costs IAWC seeks to recover do not justify rider treatment. Because IAWC has control over both the timing and the size of these costs, these costs should be subject to the same incentives applicable to other costs inherent in the regulatory bargain.

#### **D. Commission Analysis and Conclusion**

IAWC seeks approval of proposed QIP Surcharge Riders for its Champaign, Sterling, Pekin, Lincoln, South Beloit, and Chicago Metro Water and Waste Water Districts. The Riders would allow for the recovery of certain costs related to qualifying infrastructure plant, and are proposed pursuant to Section 9-220.2 of the Act and Part 656.

Section 9-220.2 of the Act provides in part that the Commission “may authorize a water or sewer utility to file a surcharge which adjusts rates and charges to provide for recovery of . . . (iv) costs associated with an investment in qualifying infrastructure plant, independent of any other matters related to the utility’s revenue requirement.” Section 9-220.2 of the Act also requires proceedings to reconcile the amounts collected with the actual costs prudently incurred for each year the surcharge is in effect.

The Commission notes that both IAWC and Staff are in agreement that, following some revisions suggested by Staff, the proposed QIP Surcharge Riders should be approved and placed into effect. City/AG takes the position that, among other things, the use of a rider in this case is improper; IAWC has failed to show the proposed riders are appropriate, and the proposed riders will allow double recovery of expenses and unnecessarily confuse customers.

The Commission is of the opinion that the majority of the arguments set forth by City/AG are more appropriate to a proceeding where a utility is attempting to institute a rider not created by statute, unlike the proposed QIP Rider. The Commission notes that the concept of a QIP Rider was codified by the Illinois General Assembly and made a part of the Public Utilities Act as Section 9-220.2. In furtherance of the adoption of this statute, the Commission adopted Part 656, setting forth the Commission's rules for the administration of the QIP Surcharge riders. The Commission believes that the City/AG arguments regarding *Finkl* go directly to this issue, as *Finkl* did not involve a statutorily authorized rider, such as we are presented with here.

City/AG also make various arguments about the fact that IAWC has not shown there is a need for these riders, or that IAWC's financial situation will be impaired if these riders are not approved. The Commission finds that in the matter of QIP riders, as presented here, there is no requirement on the part of the utility to show a financial need or impairment for the rider to be authorized. As to City/AG concerns regarding potential double-recovery of costs, the Commission is satisfied that the terms of the proposed QIP riders as well as the reconciliation process that has been in place since Part 656 was adopted are adequate to prevent such an occurrence. A review of the evidence shows that the concerns expressed by the City/AG are misplaced in this instance.

The Commission notes that the testimony of Mr. Kerckhove indicates that the existing QIP rider for the Streator and Pontiac water districts is being amended to include the Champaign and Sterling water districts. Similarly, the existing QIP rider for the Alton, Cairo, Interurban and Peoria water districts is being amended to include the Pekin and Lincoln water districts. It is the Commission's view that it is clear that the QIP surcharge riders for these districts have been previously examined and found to be appropriate. While the proposed QIP riders for the Chicago Metro Water District, the South Beloit District, and the Chicago Metro Waste Water District appear to be new QIP riders according to Mr. Kerckhove, the testimony further shows that these riders are substantively similar to the riders existing for other districts. As such, the Commission is satisfied that the proposed riders are in conformance with Section 9-220.2 and Part 656 and as such, should be approved.

The Commission therefore finds that the proposal of the Company to implement QIP Surcharge Riders for its Champaign, Sterling, Pekin, Lincoln, South Beloit, and Chicago Metro Water and Waste Water Districts, as revised, meets the requirements of Section 9-220.2 of the Act and Part 656 of the Commission's rules applicable to the implementation of QIP surcharge tariffs. The tariffs to be filed in accordance with this Order shall incorporate the proposed changes suggested by Staff, and agreed to by IAWC.

#### **IV. APPROPRIATE STATE DATE OF TARIFF**

The City/AG has suggested that should the Commission choose to approve the requested QIP Surcharge Rider, the start date for the rider should not be until January 1, 2011. In light of that request, the Administrative Law Judge at the evidentiary hearing specifically requested the parties address the particular issue of what the Commission's options are for the start date of the riders.

##### **A. IAWC**

It is IAWC's position that, in accordance with the requirements of Section 9-201 of the Act, the Commission ordered effective date of the QIP Surcharge Rider must fall within the resuspension period (i.e., be before March 20, 2010). IAWC argues that the

Commission has no power to suspend the effective date of a schedule filed by a utility under the Act, beyond the suspension period, and when the suspension period expires without a finding that the rates of the proposed schedule were unjust and unreasonable, then the schedule, by operation of law, becomes effective; (citing Streator Aqueduct Co. v. Smith, 295 F. 385, 387-88, S.D. Ill. (1923) and Illinois Bell Tel. Co. v. Commerce Commission, 304 Ill. 357 (1922).)

**B. Staff**

The ALJ requested that the effective date of IAWC's proposed QIP Surcharge be addressed. Staff notes that the Order in Docket No. 04-0336 contains the following Ordering Paragraphs:

Within 30 business days from the date of this Order and no later than the 20th day of the month preceding the effective date, the Company should file, as a compliance filing, tariffs substantially in the form of the QIP Surcharge Riders marked as IAWC Exhibits 1.1 and 1.2, as modified by Findings 4 and 5 above; such tariffs to be marked with an effective date of January 1, 2005, or the first day of any subsequent month.

The Company should file the QIP Surcharge Percentage on an Information Sheet with supporting data no later than the 20th day of the month preceding the effective date of the QIP Surcharge Percentage.

Staff witness Smith recommended the Commission order IAWC to file the QIP Surcharge Rider tariff sheets, within five (5) days of the final order in this proceeding, with an effective date of not less than five (5) working days after the date of filing, with individual tariff sheets to be revised within that period. Staff argues that no substantial deficiencies in the proposed tariffs have been identified. Staff knows of no reason to delay the effective date of the tariffs. Staff also recommends that after the QIP Surcharge Rider is in effect, the Commission order the Company to file the QIP surcharge percentage on an information sheet with supporting data not later than the 20th day of the month preceding the effective date of the QIP surcharge percentage, with an effective date of the first day of the following month.

**C. City/AG**

City/AG opines that the QIP surcharge, if it is approved, should not be implemented until January 1, 2011, in order to avoid undue consumer confusion, noting that the QIP surcharge might be in effect for only four months until the QIP surcharge is reduced to zero as a result of the pending rate order in Docket No. 09-0319. On January 1, 2011, the City/AG says, the QIP surcharge would reappear on customers' bills. City/AG believes the Commission should not allow a rate to take effect for four months in light of the customer confusion that will result. If, contrary to the arguments contained herein, the Commission approves a QIP surcharge, customer confusion can

be avoided by simply providing that the surcharge will not go into effect until the end of the future test year for its general rate case; namely, January 1, 2011.

City/AG avers that the Commission's authority in reviewing a tariff filing includes the authority to set an effective date different from that requested by a company. City/AG do not disagree with IAWC that the Commission must act on its review of a tariff filing within the statutory period of eleven months under Section 9-201 of the Act. However, City/AG believes the obligation to act does not mean that the Commission must accept as the "effective date" of a tariff the date requested by the utility or the last day of the suspension period if that date would render the tariff unjust and unreasonable.

City/AG opines that if a tariff will result in a violation of the statute or double-counting, or is unreasonable because it would charge customers for plant that is already part of a pending rate case, that tariff as written is clearly unjust and unreasonable and can be rejected, while if the only problem with the tariff is that its effective date would allow double-counting, the Commission can rewrite the tariff to impose an effective date that is not unjust and unreasonable.

City/AG notes that IAWC cites two cases from 1922 and 1923 for the proposition that the Commission has no power to suspend the effective date of a schedule filed by a utility beyond the suspension period. City/AG argues that these cases stand for the limited principle that the Commission cannot simply ignore the statutory suspension period but must act within the time period established by statute. City/AG cite a later case, *Central Illinois Public Service v. Illinois Commerce Comm'n.*, 5 Ill.2d 195 (1955) ("CIPS"), wherein the Court found that the Commission could simply reject a tariff that was not supported by evidence, rejecting the argument that the Illinois Bell case cited by IAWC required the Commission to put a rate in place by the end of the suspension period. City/AG argues that "CIPS" finds that if the suspension period has expired before a final decision has been made, this merely allows the utility to begin collecting charges under the new rate, but does not terminate the Commission's inquiry, and the new rates remain subject to permanent cancellation by the Commission's final order.

In the CIPS case, the utility had declined to provide cost information to support its tariff, and the Commission cancelled the tariff. The Court affirmed the Commission's action, holding that the Commission could simply reject a tariff if the evidence did not show it to be just and reasonable.

City/AG notes that while no case specifically addresses whether the Commission can change the effective date of a tariff, City/AG argues that the Commission's power to rewrite tariffs is broad, and there is no reason that changing the effective date to assure a tariff's operation is just and reasonable is any different from changing a tariff to set a different charge to consumers. City/AG opines that Staff's argument that the reconciliation process would address any double-counting issues misses the point, as it does not address whether the effective date of the tariff can be changed to eliminate double-counting.

City/AG therefore suggests that should the Commission approve the QIP surcharge, the surcharge should not take effect until January 1, 2011. Under Section 9-201, the Commission is authorized to “alter or modify” rate filings by utilities and to establish rates or other charges that “it shall find to be just and reasonable.” Under Section 9-201(c) the Commission’s authority to revise tariff terms is broad, and mandating an effective date starting January 1, 2011 to avoid double counting is within the Commission’s power to “establish the rates or other charges, classifications, contracts, practices, rules or regulations.”

#### **D. Commission Analysis and Conclusion**

The Commission notes that from the arguments presented to the question raised, this may be an issue of first impression for the Commission. City/AG argues that should the proposed QIP riders be approved, their implementation should be delayed until January 1, 2011 to avoid certain perceived problems. IAWC is only able to point the Commission to two court cases from the 1920's for the proposition that if the Commission does not find the rates of the proposed schedule unjust and unreasonable, then the Commission has no authority beyond the statutory deadline. Staff merely states that it is aware of no reason to delay the implementation of the proposed riders, and suggests standard implementation language. City/AG argues that the Commission has wide discretion on implementation where the Commission finds that otherwise the rate would be unjust and unreasonable, and therefore suggests an implementation on January 1, 2011. The Commission notes that City/AG appears to be correct in noting that should the Commission be unable to reach a decision before a statutory deadline, the proposed rates will go into effect, subject to a final Commission decision after the deadline.

As the Commission is entering a final Order prior to the March 20, 2010 deadline, it does not appear that this is the situation presented. It is an interesting question as to whether the Commission could find that; absent an extended implementation date that the proposed rates were unjust and unreasonable, if the Commission could enter a later start date; however that is not the situation here. The Commission finds that the proposed rates are just and reasonable, and therefore there is no reason to extend the implementation date. The Commission also considers that should the Commission have the power to set an effective date for tariffs far beyond the end of the suspension period, the question would become what are the limits of the Commission's powers in this regard, beyond just what the Commission finds "just and reasonable". In this instance, the Commission does not find it necessary or reasonable to delay the effective date of the QIP riders beyond what is usual and customary.

Within 5 business days from the date of this Order, and no later than the 20th day of the month preceding the effective date, the Company should file the Rider tariffs as a compliance filing, with an effective date of the first day of the following month. The Company should file the QIP Surcharge percentage on an Information Sheet no later

than the 20th day of the month preceding the effective date of the QIP Surcharge Percentage.

## **VI. HISTORICAL VS. TEST YEAR OPERATION**

At the evidentiary hearing, the Administrative Law Judge requested the parties to address whether there is an issue in the instant proceeding similar to that presented in Docket No. 04-0336 regarding an agreement in that docket between IAWC and Staff to clarify the operation of the surcharge will only be used if the Company's immediately proceeding rate case used a future test year and an historical operation only be used if an historical test year was used in the immediately preceding rate case.

Both IAWC and Staff agree that the proposal in the instant proceeding utilizes prospective surcharge operation assumptions, is consistent with the prior clarification, and thus is not an issue. The Commission is satisfied that this is not an issue in this proceeding.

## **VII. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having reviewed the entire record, is of the opinion and finds that:

- (1) Illinois-American Water Company provides water service and waste water service to the public in certain areas in the State of Illinois, and is a public utility within the meaning of the Act;
- (2) the Commission has jurisdiction over the Company and the subject matter of this proceeding;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) the proposal of the Company to implement QIP Surcharge Riders for its Champaign, Sterling, Pekin, Lincoln, South Beloit, and Chicago Metro Water and Waste Water Districts as revised in accordance with the conditions and determinations set forth herein, should be approved;
- (5) the Commission finds the suggestions by Staff for modification of the proposed riders to be reasonable and, as agreed to by Illinois-American Water Company, they are adopted and to be incorporated into the compliance tariffs;
- (6) within 5 business days from the date of this Order, and no later than the 20th day of the month preceding the effective date, the Company should file, as a compliance filing, tariffs substantially in the form of the QIP Surcharge Riders marked as IAWC Exhibits 1.1 to 1.5, incorporating

Finding (5); such tariffs should be marked with an effective date of March 1, 2010, or the first day of any subsequent month;

- (7) the Company should file the QIP Surcharge Percentage on an Information Sheet with supporting data no later than the 20th day of the month preceding the effective date of the QIP Surcharge Percentage; and
- (8) the relief granted in this Order creates no presumptions with respect to whether the specific projects or types of projects described in the Company's filing in this proceeding meet the criteria for qualifying infrastructure plant set forth in Section 9-202.2 of the Act and Part 656 of the Commission's rules.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Illinois-American Water Company, Inc. is hereby granted permission to implement a qualifying infrastructure plant surcharge rider ("QIP") in its Champaign, Sterling, Pekin, Lincoln, South Beloit and Chicago Water and Waste Water Districts.

IT IS FURTHER ORDERED that within 5 business days from the date of this Order and no later than the 20th day of the month preceding the effective date, the Company should file, as a compliance filing, tariffs substantially in the form of the QIP Surcharge Riders marked as IAWC Exhibits 1.1 to 1.5, incorporating Finding (5) above; such tariffs to be marked with an effective date of January 1, 2005, or the first day of any subsequent month.

IT IS FURTHER ORDERED that after the QIP Surcharge Rider is in effect, the Commission order the Company to file the QIP surcharge percentage on an information sheet with supporting data not later than the 20th day of the month preceding the effective date of the QIP surcharge percentage, with an effective date of the first day of the following month.

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.

DATED: January 12, 2010

Briefs on Exceptions due January 21, 2010  
Reply Briefs on Exceptions due January 28, 2010

J. Stephen Yoder  
Administrative Law Judge