STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS-AMERICAN WATER COMPANY	)	
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Petition for approval of a change in method of accounting for Pension and Other-Post Employment Benefit Costs.	)))	Docket No. 09-0400

REPLY BRIEF OF ILLINOIS-AMERICAN WATER COMPANY

Christopher W. Flynn
Albert D. Sturtevant
Niloy Ray
JONES DAY
77 West Wacker Drive
Chicago, IL 60601-1692
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
cwflynn@jonesday.com
adsturtevant@jonesday.com
nray@jonesday.com

John J. Reichart
Illinois-American Water Company
727 Craig Road
St. Louis, MO 63141
314-996-2287
John.reichart@amwater.com

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<u>REPLY BRIEF OF ILLINOIS-AMERICAN WATER COMPANY</u>

I. INTRODUCTION

As discussed in IAWC's Initial Brief, based on the changed levels and fluctuating patterns of pension and other post-retirement benefits ("OPEB") costs, IAWC seeks approval to amortize and defer portions of pension and OPEB costs in the Uniform System of Accounts for Class A Water Utilities (1996) of the National Association of Regulatory Utility Commissioners ("USOA") Account 186. As IAWC explained in its Initial Brief (p. 2), IAWC has demonstrated that pension and OPEB expense exhibit a pattern of significant fluctuation. This significant level of fluctuation in pension and OPEB expenses is what "sets them apart" from other operating expenses. The fluctuating patterns of pension and OPEB costs are similar to those of other costs, such as tank painting costs and well and pump maintenance expense, that are amortized and deferred in Account 186, with the deferred amount included in rate base for rate making purposes. Thus, IAWC proposes to change its method of accounting for pension and OPEB costs to be consistent with the treatment of these other recurring, but fluctuating, expenses.

Neither the Initial Brief of the Office of the Illinois Attorney General ("AG") nor that of the Staff of the Illinois Commerce Commission ("Commission") dispute that tank painting and well and pump maintenance are properly deferred and amortized in accordance with Illinois law and Commission practice, nor does any witness who testified in this proceeding (the AG did not sponsor a witness in this proceeding). Nevertheless, both the AG and Staff argue that IAWC's proposal with respect to pension and OPEB accounting should be denied. In this respect, Staff and the AG argue that expenses like tank painting expense can be distinguished from pension and OPEB expense. Their assertions, however, overlook the key characteristic shared by pension and OPEB costs on the one hand and tank painting or well and pump maintenance on the other: each of these costs recurs but fluctuates significantly. IAWC has demonstrated that pension and OPEB costs exhibit a pattern of significant fluctuation similar to that of tank painting and well and pump maintenance expense, and that the Commission has approved the deferral and amortization of these expenses for many years. IAWC's proposal to normalize pension of OPEB costs through deferral and amortization is appropriate for the reasons discussed in IAWC's Initial Brief and is consistent with the long-standing practice of the Commission in allowing amortization and deferral of costs that exhibit a similar pattern of fluctuation.

II. ARGUMENT IN RESPONSE TO STAFF AND AG

A. The AG and Staff Initial Briefs Each Mischaracterize the Effect of IAWC's Proposals on Ratepayers

As IAWC explained in its Initial Brief (pp. 2-5), IAWC proposes in this proceeding that, commencing with the year 2009, the respective annual amount of pension and OPEB costs currently reflected in rates as approved by the Commission in Docket 07-0507 (the "Docket 07-0507 Amount") would continue to be recorded in Account 604 (and be recovered in rates) as before. (IAWC Ex. 1.0, p. 4.) For each respective cost, however, the annual amount determined under FAS 87 in the case of pension cost or FAS 106 in the case of OPEB cost standard that is above the Docket 07-0507 Amount (the "Amortization Amount") would be amortized over a five year period. (*Id*., p. 5.) Under the proposed approach, the respective Amortization Amounts of pension and OPEB cost each year would be based on the actual level of expense for the year as determined under FAS 87 or FAS 106, as applicable. (*Id*., p. 7.)

As the record in this proceeding shows, and as IAWC also explained in its Initial Brief (p. 7), in the event that the Commission approves the modified accounting methodology proposed by IAWC for pension and OPEB costs, IAWC would propose for rate-making purposes in its pending rate case, Docket 09-0319, to recover in the 2010 test year for each respective cost: (i) the Docket 07-0507 Amount; (ii) one fifth of each of the 2009 and 2010 Amortization Amounts (with amortization of each cost commencing when the rates approved in Docket 09-0319 take effect); and (iii) a return on the unamortized portion of the 2009 and 2010 Amortization Amounts. (IAWC Ex. 1.0, p. 5.) This proposal, if adopted by the Commission for ratemaking purposed, would benefit ratepayers. As compared to the presently proposed rate-making approach in Docket 09-0319 (which is recovery of the amount of each expense as determined respectively for 2010 under FAS 87 and FAS 106), use of the alternate rate-making approach proposed by IAWC would reduce the revenue requirement for these costs by $1,061,543 (pension cost) and $313,241 (OPEB cost), respectively. (*Id.*, p. 6.) In addition, under the proposed approach, the respective Amortization Amounts of pension and OPEB cost each year would be based on the actual level of expense for the year as determined under the applicable accounting standard. (*Id.*, p. 7.)

The AG, in its Initial Brief (pp. 1-5), mischaracterizes the effect that that IAWC's proposal, if adopted for ratemaking purposes, would have on ratepayers. The AG, for example, disregards the fact that adoption of IAWC's proposal for ratemaking purposes would lead to an approximately $1.4 million reduction in the revenue requirement in IAWC's current rate case, Docket 09-0319.[1] AG also asserts incorrectly that, under the IAWC's proposal, ratepayers would pay more than a "normalized" level of pension and OPEB expense, because IAWC is proposing to recover the "normalized" cost set in Docket 07-0507 (i.e., the Docket 07-0507 Amount), plus the Amortization Amount. (AG Init. Br., p. 2.) As IAWC's evidence in this proceeding (and in Docket 09-0319) shows, the amount of pension and OPEB expense approved in Docket 07-0507 is no longer a normalized annual amount for pension or OPEB expense (*see*

[1] The AG incorrectly asserts (AG Init. Br., p. 5 n. 4) that, "[i]n the pending rate case, Staff has recommended an adjustment to the pension and OPEB expense…." In fact, however, neither Staff (nor any other party) has recommended an adjustment to IAWC's proposed levels of pension and OPEB expense in Docket 09-0319. (ICC Staff Ex. 1.0, p. 9.)

IAWC Ex. 1.01). IAWC's proposal provides the appropriate normalized amounts of these respective costs for the 2010 test year in Docket 09-0319.

AG further misstates the amounts that ratepayers would be responsible for, under IAWC's proposal, in the 2010 test year in IAWC's current rate case. The AG states that, "IAWC seeks to defer and recover 2009 pension and OPEB costs of $4,184,706 and $2,310,246." (AG Init. Br., p. 2.) This is incorrect. IAWC only seeks to defer the Amortization Amount for 2009, which is $715,827 for OPEB (IAWC Ex. 2.01, p. 1), and $2,523,030 for pension (IAWC Ex. 2.02, p. 1). The AG also asserts (AG Init. Br., p. 2) that, "IAWC asks the Commission to reach back in time and have consumers pay $2,523,030 and $715,827 in additional charges to cover the difference between the pension and OPEB expenses (respectively) in current rates (set in Docket 07-0507) and its actual expenses in 2009." This is also not correct. In Docket 09-0319, IAWC proposes to recover in rates only *one-fifth* of the Amortization Amount from 2009, not the full 2009 Amortization Amount as AG suggests.

Continuing with its mischaracterizations, AG asserts that inclusion of the unamortized portion of pension and OPEB expenses from 2009 in rate would cause carrying charges totaling $647,776 to be added to the revenue requirement in Docket 09-0319. (AG Init. Br., p. 3.) This presents an incomplete picture as it ignores the net effect of IAWC's proposals on the 2010 test year revenue requirement in Docket 09-0319. As explained above, the Company's proposal, if adopted for ratemaking purposes in Docket 09-0319, would decrease the revenue requirement in Docket 09-0319 by approximately $1.4 million. This figure is confirmed by Mr. Grubb's testimony and the calculation shown on IAWC Ex. 1.02. Further, the calculation of this figure that was presented in this proceeding by Mr. Grubb was not contested by any witness in this case. AG's calculation, on the other hand, demonstrates a misunderstanding of IAWC's proposal. AG's assertion should be ignored because it is without record support and is wrong.

AG also notes that, under the Company's proposal in this proceeding (in conjunction with Docket 09-0319), ratepayers would pay more over time (despite the decrease in revenue requirement in Docket 09-0319). (AG Init. Br., pp. 24.) While it is correct that inclusion of the unamortized portion of a deferred expense in rate base would increase the revenue requirement in future years (to cover the cost of capital associated with the utility's investment in the unrecovered balance of the expense, *see Central Illinois Public Service Co. v. Illinois Commerce Comm'n*, 243 Ill. App. App. 3d 421, 433-34 (4th Dist. 1993)), ratepayers also benefit from the spreading of costs for pension and OPEBs over the amortization period. (IAWC Exs. 2.01; 2.02.) As discussed above, the effect of IAWC's proposal is to reduce the 2010 revenue requirement in Docket 09-0319. Under the proposal, ratepayers would not pay the full amount of pension and OPEB expense as incurred, but only the amortized amount determined in the manner described above. (IAWC Exs. 2.01; 2.02). In fact, the AG acknowledges (AG Init. Br., p. 5) the "increases in pension and OPEB expenses in rates would be smoothed out due to the five year amortization."

Likewise, Staff's Brief mischaracterizes IAWC's proposal and its benefit to ratepayers. Staff asserts that IAWC's projection of pension and OPEB expense pushes ratepayer benefits into the future (2012 and beyond) and that IAWC will, based on its current projection, have filed a rate case before 2012. (Staff Init. Br., p. 4-5.) Staff's assertions, however, ignore the benefit that would accrue to ratepayers, if IAWC's proposal is approved, of a reduced revenue requirement in its current rate case (Docket 09-0319). Moreover, IAWC Exhibit 1.01 shows a projected decline in OPEB expense commencing in 2010 and continuing each year through 2014, and a decline in pension expense commencing in 2011 and continuing each year through 2014. A rate filing in 2011 would allow these declines to be reflected in proposed rates. Finally, as Mr. Grubb explains, the benefit of IAWC's proposal is that it establishes a "normal" level of pension and OPEB expense in a test year, so as better to match the level of the expense with the projected revenues received from ratepayers in the test period. (IAWC Ex. 2.0 (Rev.), p. 6.) Thus, if there are significant fluctuations in pension and OPEB expense, the ratepayer pays only the normalized level, and is protected from higher test year revenue requirements associated with pension or OPEB expense that may result from such fluctuations. (Tr. 73-74.)

B. The AG and Staff Efforts to Distinguish Pension and OPEB Costs from other Fluctuating Costs Is Unpersuasive

AG suggests that pension and OPEB expense should not be deferred because pension and OPEB expenses "are incurred with the service of employees," while deferring cost recovery of expenses such as tank painting "to match the length of time the benefits persists matches costs and benefits." (AG Init. Br., p. 13.) Staff likewise asserts that tank painting expenses extend the life of an asset, but pension and OPEB expenses do not share this characteristic. (Staff Init. Br., p. 4.) Costs deferred and amortized in accord with orders of the Commission, however, commonly differ from each other in certain respects (for example, tank painting costs and rate case expense have certain different characteristics). Such costs, though, have one key characteristic in common: they each recur, but fluctuate significantly from year to year.[2] While it is correct that individual tanks are painted only once every 10-15 years, IAWC incurs an amount of tank painting expense or well/pump maintenance expense on an annual basis. (Tr. 72-73.) As a result, pension and OPEB costs are similar to costs such as tank painting expense and

[2] AG also contends "it is not at all clear that pension and OPEBs can be expected to fluctuate as significantly as the Company suggests." (AG Init. Br., p. 14.) This contention is unsupported by the testimony of any witness. Mr. Grubb explained that IAWC's pension and OPEB costs recur annually but fluctuate significantly from year to year. (IAWC Ex. 2.0 (Rev.) (Grubb Reb.), p. 2.) No witness disputed this conclusion.

well and pump maintenance expense, which also recur but fluctuate significantly in amount annually. For these types of fluctuating expenses, the Commission has approved amortization of the expense over a certain period and with deferral and inclusion in rate base of the unamortized balance. (IAWC Init. Br., pp. 7-9.)

C. AG's Speculation that IAWC's Proposal Will Somehow Remove the Incentive To Control Pension and OPEB Costs Is Not Supported by the Record

AG's Initial Brief (p. 4) asserts that, "[i]f the deferral and amortization requested in this docket is allowed, Company management would lose the incentive to control these costs between rate cases…" This statement is wholly unsupported by the record and should be disregarded as baseless speculation by AG. 220 ILCS 5/10-103 ("any finding, decision or order made by the Commission shall be based exclusively on the record for decision in the case"); *Business & Prof. People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 227 (1989) ("*BPI I*"). No witness in this proceeding testified that IAWC's management would lose the incentive to control costs if IAWC's proposal was granted, and any suggestion that IAWC's management would not or does not control pension and OPEB costs is without basis. Moreover, the AG did not explain how or why IAWC's incentive to reduce costs would be any different if the proposed approach were adopted. The AG states, "[r]ather than take steps to minimize the pension and OPEB expenses through changes to the plans or other cost mitigation measures, the Company's proposal will accommodate the cost increases slowly." (AG Init. Br., p. 5.) AG, does not explain what cost increases it is referring to (as IAWC Ex. 1.01 shows a projected decline in pension and OPEB costs), what such "other cost mitigation measures" would be, or how "changes to the plans" would affect the level of pension and OPEB cost differently under IAWC's proposed approach. In the absence of record support for the AG's vague assertion, it should be disregarded.

D. IAWC's Proposal Is Consistent with Test Year Rules and Does Not Violate the Rules Against Single Issue or Retroactive Ratemaking.

Both AG (AG Init. Br., pp. 6-8) and Staff (Staff Init. Br., p. 1-2) argue that IAWC's proposal violates test year rules and the rule against single issue ratemaking. AG also argues that IAWC's proposal is retroactive ratemaking. (AG Init. Br., pp. 8-9.) As IAWC explained in its Initial Brief (pp. 5-10), the recording of deferred costs by Illinois utilities for accounting purposes and recovery in rates are governed by Illinois law, and the rules and practices of the Commission, which include the principles established in *Business & Prof. People for the Public Interest v. Illinois Commerce Comm'n*, 146 Ill. 2d 175, 239 – 241 (1991) ("*BPI II*"). As explained in IAWC's Initial Brief, *BPI II* does not prohibit all deferral and amortization of expenses. *BPI II* only prohibits deferral and amortization of expenses in a manner inconsistent with test year and single issue ratemaking rules. 146 Ill. 2d at 240-44.

Here, IAWC is seeking to commence amortization of pension and OPEB expense, which, as the record shows, began to fluctuate significantly commencing in 2009. In this regard, pension and OPEB costs do not differ from other fluctuating costs (such as tank painting) that IAWC will defer and amortize in 2009, except that the Commission had previously approved a rate recovery approach for pension and OPEB costs that, in IAWC's view, did not permit deferral and amortization without specific authorization. Accordingly, as Mr. Grubb explained, IAWC elected to file the Petition that initiated this proceeding and, thereby, seek authorization to defer and amortize pension and OPEB costs in accordance with the proposal described in IAWC's Initial Brief (pp. 1-9). (IAWC Ex. 1.0 (Grubb Dir.), pp. 2-5.) IAWC's proposal in this proceeding (and in Docket 09-0319) to defer and amortize pension and OPEB costs does not raise an issue regarding test year rules, single issue ratemaking, or retroactive rate making any more than do the uncontested deferrals and amortizations of 2009 costs for such items as rate case expense, tank painting and well and pump maintenance expense. Staff and AG do not maintain that the deferral and amortization of other costs that recur but fluctuate raise issues regarding test year rules, single issue ratemaking and retroactive ratemaking, and there is no basis for these parties to adopt a different position applicable to pension and OPEB expense.

In many post-*BPI II* Orders, the Commission has recognized that "test year rules" allow the amortization of cost items that recur, but fluctuate significantly in amount from year to year, and that such amortization does not violate the prohibitions or single-issue or retroactive ratemaking. *See*, *e.g. Illinois-American Water Co.*, Docket 95-0076 (approving deferral of well and pump maintenance expense). For fluctuating expenses, the Commission has routinely approved amortization of the expense over a certain period and deferral of the unamortized amount, with the unamortized balance included in rate base. *See Illinois-American Water Co*., Docket 07-0507 (tank painting expense); *Illinois-American Water Co*., Docket 02-0690 (tank painting expense); *Illinois-American Water Co*., Docket 95-0076 (well and pump maintenance expense); *Illinois-American Water Co.*, Docket No. 90-0100 (deferred maintenance and tank painting expenses). The Commission has explained that where there are wide annual fluctuations in an expense, "the amount projected to be expended in any given test year may not be representative of a normal year. Therefore, deferred amounts may be used to help arrive at a more normal or representative test year allowance as an alternative to unrepresentative test year projections.…" *Illinois-American Water Co*., Docket 02-0690, Final Order, pp. 16-17 (finding that tank-painting expense should be deferred and amortized).

The rule against single issue ratemaking requires that the Commission examine all elements of the revenue requirement formula to determine the interaction and overall impact any change will have on the utility's revenue requirement. *BPI II*, 146 Ill. 2d at 244. As IAWC explained in its Initial Brief (pp. 10-12), however, IAWC's proposal in this proceeding relates only to the methodology used to record pension and OPEB costs for accounting purposes. To the extent that the proposal may affect the level of rates, that matter will be determined in IAWC's pending rate case, Docket 09-0319, where all components of the revenue requirement are under review. Moreover, as discussed above, single-issue ratemaking principles do not preclude the recovery of fluctuating costs, such as tank painting expense, which are deferred and amortized. (IAWC Ex. 2.0 (Rev.), p. 11.) The Commission has not determined that amortization and deferral of such expenses violates single issue ratemaking principles.

AG further asserts that IAWC's proposal constitutes retroactive ratemaking because, "IAWC is proposing that the Commission effectively add a surcharge to rates to compensate the Company for the difference between the expense level included in current rates (based on the Docket 07-0507 test year that ended June 30, 2009), and the actual expense incurred by the Company in 2009." (AG Init. Br., pp. 8-9.) AG, citing *BPI II*, describes retroactive ratemaking as requiring that, "[o]nce the Commission establishes rates, the Act does not permit refunds if the established rates are too high, or surcharges if the rates are too low." (AG Init. Br., p. 8.)

IAWC, however, is not proposing refunds of rates approved in the past or any surcharge. As described in IAWC's Initial Brief (pp. 12-14), IAWC is proposing a deferral and amortization of pension and OPEB cost based on significant fluctuation that commenced in 2009. IAWC also will defer and amortize other costs that fluctuate from year to year, such as the cost for tanks painted or wells and pumps maintained in 2009. As discussed above, however, neither Staff nor AG suggests that the deferral and amortization of such costs violates test year rules or constitutes single-issue or retroactive ratemaking. Neither of these parties suggest that these deferrals and amortizations somehow involve a refund of rates approved or a surcharge, and there is no basis to suggest that such factors are introduced by a proposal to defer fluctuating pension or OPEB expense. The Commission has routinely approved the deferral and amortization of tank painting expense, well and pump maintenance expense, and rate case expense without a finding that such deferrals are improper retroactive ratemaking. *See Illinois-American Water Co.*, Docket 07-0507 (tank painting); *Illinois-American Water Co.*, Docket 02-0690 (tank painting); *Illinois-American Water Co.*, Docket 95-0076 (well and pump maintenance). Moreover, *BPI II* itself held that deferral of costs does not necessarily constitute retroactive ratemaking. 146 Ill. 2d at 243-44.

E. AG and Staff Are Incorrect in Asserting that IAWC's Accounting Proposal Is Inconsistent with GAAP

As IAWC explained in its Initial Brief (p. 3), the Company submitted its proposal to utilize an alternative accounting approach for the recording of pension and OPEB costs in accordance with Accounting Instruction 5 of the USOA (adopted by the Commission pursuant to 83 Ill. Adm. Code Section 605.10). Thus, the issue for the Commission's consideration is whether IAWC may properly defer pension and OPEB expense under the USOA. As explained in the testimony of IAWC witness Mr. Grubb and IAWC's Initial Brief, IAWC submits that the this accounting proposal should be approved, primarily due to benefits that result from associated ratemaking proposals submitted in Docket 09-0319 (normalization of an expense that has been shown to recur, but fluctuate significantly from year to year; and reduction of the rate case revenue requirement). The Commission has found expressly that fluctuating costs, such as tank painting costs, are "unusual or extraordinary expenses" in the context of USOA Account 186, and are properly deferred thereunder. *Illinois-American Water Company*, Docket 95-0076, Order, pp. 11-12. No witness in this proceeding disputes that Account 186 is the appropriate account in which to defer pension and OPEB expenses under IAWC's proposal, if it is approved.

As IAWC also explained in its Initial Brief (pp. 16-19), IAWC's practice in recent years has been to record in Account 604 the levels of pension and OPEB costs accrued each year under FAS 87 and 106, respectively. Other means of measuring pension and OPEB costs for ratemaking purposes, however, have been approved by the Commission in the past. (*See* IAWC Init. Br., pp. 1-3.) As further discussed in IAWC's Initial Brief (pp. 16-19), IAWC's proposal is consistent with GAAP, and appropriate for accounting (and in Docket 09-0319 for rate-making) purposes.

Staff contends that IAWC's proposal would result in "distortion" of its financial statements and would impair the comparison of IAWC's financial statements with those of other utilities. (Staff Init. Br., pp. 2-3.) Staff acknowledges that "the Commission has the authority to grant the USOA waiver Illinois-American requests." (*Id.*, p. 3.) Staff's position, however, is based on the conclusion that "there is insufficient evidence in the record in the instant proceeding upon which the Commission could approve such a change." As IAWC explained in its Initial Brief, the Company's proposal is consistent with the Commission's treatment of expenses that recur but fluctuate significantly.

There is also no basis for Staff to suggest that approval of IAWC's proposals would "distort" IAWC's financial statements. Staff does not explain how, if properly presented, the deferral of fluctuating pension or OPEB costs would distort financial statements while deferral of other fluctuating costs would not. In this regard, if the deferral of pension and OPEB costs is approved in this proceeding, the ability to defer such costs for book purposes would be subject to Financial Accounting Standards Board Statement 71 ("FAS 71") (see IAWC Exhibit 3.03). Under paragraph 9 of FAS 71, a regulated entity may defer a cost if it is "probable" that cost recovery of the deferred cost will be allowed in the future by the regulator. (See IAWC Ex. 3.00, p. 5 for additional language of FAS 71.)

AG suggests that it is the Commission's role to determine whether recovery is "probable" for the purposes of FAS 71. (AG Init. Br., pp. 11-12.) This, however, is not the case. The ultimate responsibility for the accuracy of a utility's financial statements rests with its management, and not with the Commission. As noted above, the Commission's responsibility is to determine whether IAWC's proposal should be approved under the USOA and (in Docket 09-0319) for ratemaking purposes. If the Commission approves the proposal, it is the responsibility of IAWC's management in the first instance (and IAWC's auditors) to determine the appropriate treatment of pension and OPEB costs for book purposes. (IAWC Exs. 3.00, p. 5; 3.03.) In making this determination, IAWC management will review all the information available at the time of the accounting determination under FAS 71, such as any applicable Commission Orders (and/or other applicable authority) to determine the probability of recovery. (*Id*.) Until the time for the decision, management's conclusion regarding the appropriate treatment of these costs for book purposes under FAS 71 will not be known. (Tr. 63.) As Mr. Grubb indicated, however, management's decision in this regard will be in accord with GAAP. (IAWC Ex. 3.00, pp. 4-5.) Further, whatever decision is reached by IAWC's management and auditors with regard to the treatment of this cost for book purposes, the Commission should approve IAWC's proposal for the reasons set forth above and in IAWC's Initial Brief.

III. CONCLUSION

For all of the reasons set forth above and IAWC's Initial Brief, IAWC the Commission should approve IAWC's request to modify its method of accounting for pension and OPEB costs in the manner described above.

Respectfully submitted,

ILLINOIS-AMERICAN WATER COMPANY

By: */s/ Albert D. Sturtevant*

One of their attorneys

Christopher W. Flynn
Albert D. Sturtevant
Niloy Ray
JONES DAY
77 West Wacker Drive
Chicago, IL 60601-1692
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
cwflynn@jonesday.com
adsturtevant@jonesday.com
nray@jonesday.com

John J. Reichart
Illinois-American Water Company
727 Craig Road
St. Louis, MO 63141
314-996-2287
John.reichart@amwater.com