STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois-American Water Company	:	
	:	09-0319
	:	
Proposed general increase in water and sewer rates.	:	

REPLY BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

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Pursuant to 83 Ill. Adm. Code 200.800, Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned attorneys, hereby submits its Reply Brief in the instant proceeding.

I. INTRODUCTION

In this proceeding, the Illinois Commerce Commission ("Commission") is investigating the May 29, 2009 request for a general increase in water and wastewater rates pursuant to Article IX of the Illinois Public Utilities Act (the "Act"), 220 ILCS 5/101, et seq. filed by Illinois-American Water Company ("Illinois-American," "IAWC" or the "Company"). Initial Briefs ("IB") were filed on January 7, 2010, by the Village of Homer Glen and the Cities of Champaign and Urbana and the Villages of St. Joseph, Sidney, and Savoy ("Homer Glen"); the Illinois Industrial Water Consumers ("IIWC"); the People of the State of Illinois (the "AG"); the Citizens Utility Board ("CUB"); the Village of Bolingbrook ("Bolingbrook"); Staff; and Illinois-American.

Staff's Initial Brief identified and responded to many if not most of the arguments raised in the Initial Briefs of the various parties. In this Reply Brief, Staff has incorporated many of those responses by reference or citation to Staff's Initial Brief. However, in the interest of brevity, Staff has not raised and repeated every argument and response previously addressed in Staff's Initial Brief. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff's Initial Brief because further or additional comment is neither needed nor warranted. As explained in detail below and in Staff's Initial Brief, certain arguments raised by the various parties lack merit and must be rejected.

II. RATE BASE

A. Cash Working Capital

1. Revenue Collection Lag

The AG and IIWC both propose to limit to 21 days the collection lag used in calculating Cash Working Capital ("CWC"). (AG IB, pp. 13-15; IIWC IB, pp. 27-28.) Staff does not support their proposal. Staff withdrew its support for an adjustment after reviewing the surrebuttal testimony of Company witness Kerckhove. (Tr., December 10, 2009, p. 574.) Staff agrees with the Company that 83 Ill. Adm. Code 280.90 requires that the bill due date be "at least" 21 or 14 days after the bill postmark but does not set a limit or due date (IAWC Ex. 6.00SR, pp. 10-11). Staff also agrees that the Company explained how collection lag can exceed 21 days even if the majority of customers pay within 21 days (*Id*., pp. 14-16).

2. Service Company Fees Expense Lead

The AG, IIWC and Homer Glen each propose to reduce the Company's service company fees expense lead used in calculating CWC. (AG IB, pp. 15-16.) (IIWC IB, pp. 31-32.) (Homer Glen IB, p. 15.) Staff does not support their proposal. Staff withdrew its support for an adjustment after reviewing the surrebuttal testimony of Company witness Kerckhove. (Tr., December 10, 2009, p. 574.) Staff agrees that the expense lead for service company fees was calculated in accordance with the Company's Service Company Agreement which was approved by the Commission; most recently in Docket No. 04-0595 (IAWC Ex. 6.00SR, pp. 5-7).

3. IIWC's Initial Brief Does not Accurately Reflect Staff's Position Regarding Revenue Collection Lag or Service Company Fees Expense Lead

IIWC's IB does not accurately portray Staff's position on Revenue Collection Lag (IIWC IB, p. 27) or Service Company Fees Expense Lead (*Id*., p. 31), as Staff withdrew its support for those adjustments (Tr., December 10, 2009, p. 574). Staff filed revised revenue requirements, including CWC calculations, as Appendix A to its Initial Brief, that do not include these adjustments.

4. IIWC's CWC Calculation is not Similar to Staff's

IIWC made a comparison of its CWC calculation to Staffs' rebuttal position CWC calculation. (IIWC IB, p. 26.) Staff filed revised revenue requirements, including CWC calculations, as Appendix A to its Initial Brief. As such, Staff's CWC calculation in its Initial Brief is not similar to IIWC's CWC calculation.

5. Improper Calculation of Revenue Lag for Champaign and Lincoln

IIWC contends that the revenue lag for the Champaign and Lincoln Districts is not based on a monthly billing cycle making the Company's estimate of its revenue lag unreasonable. (IIWC IB, pp. 28-29.) Staff does not agree with IIWC's contention. The

Company calculated revenue lag for Champaign and Lincoln using a weighted-average of revenue lags for the other districts. (IAWC IB, p. 17.) The Company could not use historic data to calculate revenue lag for Champaign and Lincoln because Champaign and Lincoln had been billing bimonthly (*Id*., p. 12), and the Company is proposing to move Champaign and Lincoln from bimonthly billing to monthly billing in this proceeding (*Id*., p. 17).

6. Flawed Calculation of Revenue Collection Lag for Champaign and Lincoln

IIWC contends that the Company's calculation of revenue collection lag for the Champaign and Lincoln Districts is flawed by overstating the collection lag for these two districts. (IIWC IB, pp. 29-30.) Staff does not agree with IIWC's contention. The Company calculated revenue lag for Champaign and Lincoln using a weighted-average of revenue lags for the other districts (IAWC IB, p. 17); thus, the collection lags referenced by IIWC (IIWC IB, p. 29; IIWC Ex. 3.0, p. 34; and IIWC Ex. 3.2) were not used in the Company's calculation of revenue lag for the Champaign and Lincoln Districts.

7. Improper Inclusion of Uncollectible Expense in Collection Lag

IIWC contends that the Company made no allowance for uncollectible expenses in its collection lag analysis. (IIWC IB, pp. 30-31.) Staff does not agree with IIWC's contention. The Company's CWC calculation reduces revenue lag by reducing revenues used in the CWC calculation by the amount of uncollectible expense. (IAWC IB, p. 12.)

B. Recommended Rate Base

Staff's recommended rate bases for Illinois-American's respective rate areas/Districts are reflected in Appendix A attached to Staff's Initial Brief.

III. OPERATING REVENUES AND EXPENSES

A. Advertising Expense

For the first time in this proceeding, Homer Glen proposes in its Initial Brief that the Commission open a docket to investigate the advertising and communications policies of the Company. Homer Glen contends that Illinois-American's brochure claiming water and wastewater service for around a penny a gallon is deceptive and misleading. Homer Glen asks the Commission to open a docketed proceeding to determine if the Company has committed any violations of Commission or other State laws. (Homer Glen IB, pp. 26-27.)

Staff reviewed the Company's advertisements for 2008 and proposed adjustments. These adjustments were not contested. (Staff IB, p. 12.) Homer Glen's proposal is unclear as to the expected benefit or goal of such an investigation, and, therefore, not clearly enough defined to support opening such a proceeding based on the exhibits cited (*i.e.*, AG Cross Ex. 3 and Ex. 5). Moreover, Staff questions whether the civil action contemplated by Section 3 of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/3, including an individual being damaged by a deceptive trade practice of another being granted injunctive relief, is appropriate for Commission review. Furthermore, despite quoting Section 2 of the statute, 815 ILCS 510/2, Homer Glen fails to specify under which subsection Illinois-American's alleged deceptive trade practice falls – an oversight which may be deliberate based on a statute which focuses on various “marks” and “trade names.” Accordingly, Staff suggests that Homer Glen’s recommendation that the Commission initiate an investigation regarding Illinois-American’s advertising and communications policies is misguided and should be rejected by the Commission.

B. Prior Rate Case Expense

Illinois-American proposes to include as a component of Rate Case cost the expenses incurred in generating the Commission-ordered Municipal Rate Study performed by IAWC in its prior rate case, Docket No. 07-0507. The Company is seeking recovery of $187,047, which represents the unamortized balance of the actual cost of the Municipal Rate Study. (IAWC IB, pp. 35-36.) Staff, on the other hand, proposes to disallow the recovery because the amount in question was never approved by the Commission. (Staff IB, pp. 13-15.) Staff’s adjustment is supported by the AG. (AG IB, pp. 32-34.)

Staff continues to recommend that the Commission approve Staff’s adjustment to Prior Rate Case Expense. While the Company is entitled to include in the current rate case the unamortized rate case expense from its prior rate case, the Company should not include more than the Commission approved in Docket No. 07-0507. (Staff IB, p. 13.) In Docket No. 07-0507, the Commission approved IAWC’s recovery of $1,482,020 for rate case expense for that case. Included in this $1,482,020 total was $37,000 for a municipal rate study. The Company now proposes to retroactively adjust the amount the Commission approved for the Municipal Rate Study and increase it to $224,047. (*Id*., p. 14.) The Company makes a passing reference to the “unique nature” of the study as justification for recovering an amount in excess of what the Commission approved. (IAWC IB, p. 35.) This argument fails to distinguish this study from any other study that is Company-specific. The Company also argues that this study continues to be useful even in the current case. (*Id*., p. 36.) Again, this does not set this particular study apart. For example, the lead/lag study from the Company's prior rate case also continues to be useful in the current case as it was used in the determination of the cash working capital allowance in the current case. (IAWC Ex. 6.00, pp. 14-15.)

Staff's adjustment limits the recovery of the unamortized rate case expense from Docket No. 07-0507 to the amount the Commission approved in that case. The Commission should accept Staff's adjustment. (Staff IB, pp. 14-15.)

C. Current Rate Case Expense

The AG argues that the Company's Rate Case Expense in the instant proceeding is excessive (when compared to budgeted Rate Case Expense from the Company's last rate proceeding, Docket No. 07-0507) and, therefore, should be dramatically reduced. (AG IB, pp. 39-45.) On the other hand, Illinois-American argues that the AG's position is unjustified, and the Company's requested level of Rate Case Expense for the current case is a reasonable and accurate projection of necessary costs required to prosecute the current case and should, therefore, be recovered in rates. (IAWC IB, pp. 36-48.)

Based upon its own analysis, Staff does not believe that an adjustment to Current Rate Case Expense is warranted. (Staff IB, p. 15.) The AG criticized Staff for evaluating the Company's proposed Rate Case Expense in this case against the actual rate case expenses from the prior case rather than the estimate used in the prior case. (AG IB, p. 40.) However, as Staff witness Wilcox pointed out, actual results are more accurate than estimates. (Tr., December 10, 2009, p. 538.) The evidence in this case bears that out. As evidenced by several data request responses provided by Illinois-American, the amount expended by the Company to compensate attorneys and technical experts to prepare and litigate the instant rate proceeding was just and reasonable. (Staff Ex. 2.0, pp. 3-4, Att. A and B.)

Accordingly, Staff continues to recommend that the Commission find the Company's proposed expenditures to compensate attorneys or technical experts to prepare and litigate the instant proceeding were just and reasonable pursuant to Section 9-229 of the Act, 220 ILCS 5/9-229.

D. Recommended Operating Income and Revenue Requirement

Staff's recommended operating income and revenue requirement for Illinois-American's respective rate areas/Districts are reflected in Appendix A attached to Staff's Initial Brief.

IV. COST OF CAPITAL

A. Cost of Common Equity

Staff's Initial Brief addressed most of the arguments raised in the Company's Initial Brief. (Staff IB, pp. 19-41.) Therefore, in this Reply Brief, Staff responds only to the extent that the Company raised arguments that Staff did not adequately address in its Initial Brief. Staff has not altered its positions and arguments set forth in its Initial Brief and those arguments are incorporated and adopted as if fully set forth herein.

1. GDP Growth Rate and Risk-free Rate

The Company continues to argue that rather than using the then-current U.S.

Treasury bond ("T-bond") spot yields to estimate the risk-free rate in his CAPM analysis and the third stage growth rate in his NCDCF analysis, Mr. McNally should have utilized forecasts. (IAWC IB, pp. 91-93.) Although Staff's Initial Brief explained why the Company's argument is fundamentally untenable, Staff will further address one specific argument the Company made in its Initial Brief regarding the use of spot yields.

The Company's Initial Brief refers to Staff's use of the then-current T-bond spot yield as a "historical" yield. (IAWC IB, p. 93.) Instead, the Company proposes the use of forecasts, implying, by contrast, that the forecasted data it used is not historical. As Mr. McNally explained, it is critical to synchronize the data inputs used in a cost of equity analysis so that all inputs reflect expectations as of the same time.[1] Thus, Mr. McNally used the then-current T-bond yields, which reflected investors' current expectations for the future at the time of his analysis, consistent with his other data inputs. In contrast, Mr. McNally argued that forecasts are inconsistent with his other data inputs, as they do not represent current investor expectations, but are expectations of expectations.[2] (Staff Ex. 11.0, p. 3.) However, Ms. Ahern disputed that forecasted T-bond yields are expectations of expectations, comparing them to the Zacks growth rate estimates both she and Mr. McNally used. (IAWC Ex. 8.00SR (Rev.), p. 3.) But, by the Company's argument, the Zacks growth rates, and thus the forecasted T-bond yields, are "improper" because they are "historical," just as the then-current T-bond yields Mr.

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[1] Similar to the issue of single-issue ratemaking, an analyst cannot selectively update components of a cost of common equity analysis, since the circumstances that cause one input to change would likely influence the other inputs, as well. Thus, if one input is to be updated, the entire analysis must be updated. Otherwise, the result is an uninformative hodgepodge of mismatched data inputs reflecting different sets of investor expectations rather than a true cost of common equity that consistently represents investor expectations at a given time.

[2] This is supported by Ms. Ahern's discussion of her calculation of the implied 20-year forward T-bond yield in which she emphatically notes that the Blue Chip forecasts she utilized "were 1 ¼ years into the future." (IAWC Ex. 8.00SR (Rev.), pp. 3-4.)

McNally employed, since they reflect information and investor expectations from the time of their publication, rather than today. In fact, the Blue Chip and EIA forecasts the Company espouses were published before the September 2, 2009 date of the inputs used in Mr. McNally's analysis, making them even more "historical" than the data Mr. McNally employed.[3] Thus, the Company's advocacy of forecasted T-bond yields rests on contradictory arguments: that forecasted T-bond yields do not represent historical expectations, but do not reflect future expectations, either. The Company's argument seems to imply, against all reason, that forecasted T-bond yields are somehow perpetually current.

The Company cannot have it both ways; either those forecasts reflect the information and expectations at the time of their publication, in which case they are every bit as "historical" as Staff's use of the then-current T-bond yields, which invalidates the rationale for using those forecasts, or they reflect future information and expectations, in which case they reflect a different set of investor expectations than those imbedded in the other data inputs used in Mr. McNally's analysis. Either way, those forecasts should not be used.

Even if one accepted the idea of using forecasts, the Company's selection of the Blue Chip forecasts for the fourth quarter of 2010 is entirely arbitrary. Indeed, there is nothing significant about the forecast for the fourth quarter of 2010 that makes it singularly more suitable than any other forecast. To the contrary, one troubling aspect of using a forecast beginning 1¼ years into the future is the fact that the rates set in this proceeding will go into effect well before that time (specifically, during the second

[3] The Blue Chip forecast was published September 1, 2009, while the EIA update was published in April of 2009. (IAWC Ex. 8.00R1, p. 3.)

quarter of 2010). If Ms. Ahern had elected to use the Blue Chip forecasts for the second quarter of 2010, consistent with the initiation of the rates set in this proceeding, her estimate would be considerably lower. Specifically, the 10-year and 30-year Treasury forecasts would fall from 4.4% and 5.0% to 4.0% to 4.7%, respectively. (IAWC Schedule 8.01R1.)

Moreover, contrary to the Company's suggestion, using the most recent spot yields available at the time of an analysis is not improper. As explained in Staff's Initial Brief, any analysis that employs objective, observable market data will immediately become "historical," in the sense Ms. Ahern describes. Since using inputs from different time periods, which reflect different sets of investor knowledge and expectations, would not produce a true cost of common equity, the only alternative is to project all the inputs, which produces an estimate that amounts to nothing more than wild speculation. As explained in Staff's Initial Brief, there is no valid justification for disregarding the investor expectations directly reflected in objective, observable current market data in favor of a proxy for those expectations imbedded in speculative projections. (Staff IB, pp. 28-30.)

2. Business Risk Adjustment

The Company continues to argue that a business risk adjustment should be added to the results of both Ms. Ahern's and Mr. McNally's analyses. (IAWC IB, pp. 87-89 and 96-97.) The Company's arguments were fully addressed in Staff's Initial Brief. (Staff IB, pp. 32 and 38-41.) Therefore, the Commission should once again reject the Company's business risk adjustment.

3. Financial Risk Adjustment

The Company also continues to argue that a financial risk adjustment should be added to the results of both Ms. Ahern's and Mr. McNally's analyses. (IAWC IB, pp. 89-

90 and 96.) The Company's arguments were fully addressed in Staff's Initial Brief. (Staff IB, pp. 32-35.) In brief, Ms. Ahern's financial risk adjustment requires the blind acceptance of numerous assumptions, including:

- that a bond (i.e., issue) rating can be used to reflect the overall risk of a company as a whole, even though S&P explicitly notes that bond ratings takes into consideration factors specific to a given issue or type of issue, such as guarantees or securitizations enhancing the credit of that particular obligation;[4]
- that the Moody's bond yields from which she derived the spreads underlying her adjustment represent the same type of bonds reflected in the bond ratings selected for the sample companies and IAWC;
- that IAWC's bond rating would be the same as its issuer rating, although that is not the case for many of the sample companies to which she compares IAWC;[5]
- that the ratings for the sample companies' affiliates are suitable substitutes for the ratings for the sample companies, although she does not substitute the rating for IAWC's affiliates (BBB+) for IAWC (which she speculates would be rated BBB-/BB+); (IAWC Schedule 8.03; IAWC 8.06R1; Staff Ex. 4.0, p. 26.)
- that IAWC's S&P business risk profile would be "Strong," despite the fact that S&P has assigned an "Excellent" business risk profile to every single water utility that it rates;
- that IAWC's financial risk profile would be "Aggressive" to "Highly Leveraged" on the basis of three financial ratios, of which two fall squarely in the lower financial

[4] In contrast, the corporate (i.e., issuer) credit rating represents the general risk and overall financial condition of a firm, as a whole. (Staff IB, p. 33.)

[5] When those ratings differ, the issuer rating is *universally lower* than the bond rating, which, if true for IAWC, would indicate a smaller financial risk adjustment, regardless of all the other flaws in her financial risk analysis. (IAWC Schedule 8.03; IAWC Schedule 8.06R1.)

risk "Aggressive" benchmark range, with the third right at the boundary between the "Aggressive" and the "Highly Leveraged" categories;

- that, based on her business and financial risk profile assumptions, IAWC's credit rating would be BBB-/BB+, despite S&P's warnings that the matrix outcomes are not precise indicators and the fact that its parent and sister subsidiaries are all rated BBB+;
- that it is reasonable to compare to *her estimate* of IAWC's credit rating, which she derived from her assessment of the financial risk profile that focuses on three financial ratios, to *actual* credit ratings for the sample companies, which are derived from S&P's assessments of financial risk profiles, which are "not as simplistic as looking at a few ratios;"
- that two-thirds of the average yield spread between A and BBB debt over the last 20 years is a reasonable proxy for the current spread between BBB+ and BBB-/BB+ rated companies.

The veracity of all the foregoing assumptions is not only uncertain, but in many cases improbable. The Commission cannot accept an adjustment that relies so overwhelmingly on unfounded assumptions. Moreover, the result of her assumptions is contrary to Mr. McNally's findings, which consistently indicate that no such adjustment is necessary.

For all the foregoing reasons, and those set forth in Staff's Initial Brief, the Commission should reject the Company's 10.90% cost of common equity proposal for IAWC and accept Staff's cost of common equity proposal of 10.38%.

V. COST OF SERVICE

A. Demand Study

1. Background

The Company's discussion of cost of service issues focuses on its proposed demand factors for this proceeding and seeks to justify their use in the current proceeding. However, those arguments fall short and cannot hide the fundamental flaws in the way these demand factors were developed. The only reasonable course in this proceeding is to reject the use of those factors to allocate the cost of service among rate classes and instead allocate revenue changes for rate classes on an equal percentage, across-the-board basis.

IAWC begins its discussion with a narrative detailing how the proposed demand factors were developed for this case. (IAWC IB, p. 105.) However, right from the start the narrative veers from the facts of this case. In discussing the workshop convened at the beginning of the process the Company reprises its longstanding, albeit rebutted by Staff, unfounded argument that its specific demand factor methodology in this docket was somehow approved by the parties and the Commission before its initial filing in this case. (*Id*.) According to the Company, "[o]n October 15, 2008, the Commission granted the Joint Motion for Clarification and expressly approved the use of the Company's proposed methodology for the demand study." (*Id*.) By this reasoning, the discussion of the Company's proposed demand factors is essentially over. In the Company's view, a single workshop and joint motion provide sufficient basis for the parties and Commission to accept a lengthy and complex demand factor methodology.

This argument is both illogical and wrong on the facts. Neither the workshop nor the Joint Motion presented the Company's proposed demand factor approach in any detail. Instead, they provided general discussions of the issue, which left the specifics to a later date as Staff has fully documented (Staff Ex. 6.0, pp. 14-15).

The Company's position reveals a fundamental misreading of the Joint Motion for Clarification and the Commission's Notice of Ruling granting that motion. It also reveals a fundamentally flawed understanding of the burden of proof it must carry in a rate case.

On July 30, 2008, the Commission entered an Order in Docket No. 07-0507 approving rates for water and sewer service in the various districts of IAWC. The Commission, however, noted that IAWC's cost of service study was based on the one conducted in Docket No. 02-0690. The Commission, dissatisfied with such an outdated cost of service study, required IAWC to submit a new study in its next rate case and stated it was considering requiring IAWC to submit new cost of service studies in all future rate cases. (Order, Docket No. 07-0507, July 30, 2008, p. 94.) Consequently, the Commission issued an Order initiating Docket No. 08-0463. The sole purpose of the Joint Motion was to seek clarification from the Commission whether IAWC could complete its demand study using an indirect methodology, in this case the IAWC Multi-Year Methodology, rather than directly monitoring meters at the time of peak usage. Further, paragraph 8 of the Joint Motion clearly states that: "By joining in this Motion, Staff and Interveners do not waive their right to challenge the Company's application of the methodologies for the Multi-Year Study or COSS, or to challenge the results or conclusions of such studies." This caveat is also clearly reflected in the ALJs' comprehensive memorandum to the Commission explaining the Joint Motion. (*See* ALJs Memorandum to the Commission, October 3, 2008, p. 3.) The Commission, in granting IAWC's motion, merely permitted it to complete its demand study using the indirect Multi-Year Methodology; it did not, and could not, pre-approve a demand study that had not yet been completed.

Another problem is that this argument fails to reconcile the Joint Motion with the detailed demand study subsequently submitted in IAWC's initial filing for the case. (Staff Ex. 6.0, p. 16.) If the specifics were contained in IAWC's Joint Motion, then it would be entirely unnecessary to present the much lengthier analysis in the filing for this case. By the Company's logic, this lengthy analysis contained in its filings in this proceeding would be unnecessary because the specifics would have been already presented in the Joint Motion. That clearly is not the case.

After presenting this narrative, the Company responds to criticisms of its proposed demand factor methodology. (IAWC IB, p. 106.) IAWC contends that its demand factors should be considered reasonable because the "results are 'typical of the range of capacity factors that [IAWC witness McKinley has] observed in other water utilities, and, when compared to system coincidental demands, produce diversity ratios generally in the range considered reasonable by the American Water Works Association Manual M1 ("AWWA Manual").'" (*Id*.)

The Company's argument boils down to this. The Commission should not be bothered that its proposed factors are based upon a host of unproven assumptions and unsubstantiated claims as Staff has documented. Rather, as long as the diversity ratios fall into a desired range, the Commission can be assured that the results are accurate. This is a theme that the Company returns to often in its Initial Brief. When confronted with shortcomings and contradictions in its analysis, IAWC does not respond directly, but rather reflexively insists that the demand factors must be reasonable because the diversity ratios fall into a desired range.

One issue IAWC addresses in its Initial Brief is Staff's concern about the use of maximum month demand data from four Chicago Metro areas to develop demand factors for all Illinois districts. The Company defends its approach, contending that "the ability to utilize such actual residential data was considered relevant and significant, as a goal of the demand study methodology was to use actual data where reasonably possible." (*Id*., p. 108.)

It is certainly preferable as a general rule to use actual data in a demand study but *only* when that data is found relevant for the demands being calculated. The issue in this case is whether Chicago Metro demands are an accurate barometer of maximum month demands for other Illinois districts. Not only has IAWC failed to demonstrate that they are a reasonably proxy for other districts, but Staff has presented clear evidence to indicate they are not. (Staff Ex. 6.0, pp. 20-23.)

The Company's effort to justify the use of this Chicago Metro data focuses once again on the range of diversity factors produced by the Company's analysis. (IAWC IB, p. 109.) As long as IAWC's demand factors pass this simple arithmetic test, the Company does not consider it necessary to explain why Chicago suburban demand data is relevant for estimating the demands of a diverse set of customers throughout the state.

After yet another reference to the range of diversity ratios, IAWC does address Staff's assertion "that Chicago Metro is more weather sensitive than in other districts" based on the relative ratios of average usage for the peak month to average annual usage. (*Id*., p. 110.) The Company argues that those higher ratios do not necessarily equate to more weather sensitive usage by Chicago Metro customers. (*Id*.) The Company presents a number of examples to identify “factors other than weather” that determine usage, including, “general economic conditions in the service area, relative efficiency on fixtures and toilets, availability of automatic irrigation systems, yard size, type of grass, relative mixture of single family versus multifamily units, or customer preferences and priorities for yard maintenance.” (*Id*., p. 111.)

IAWC’s argument fails to acknowledge, or even address, the fact that many of these referenced water uses, such as of automatic irrigation systems, yard size, type of grass and customer preferences and priorities for yard maintenance, could be inherently considered weather sensitive usage. (Staff Ex. 13.0, p. 12.) Furthermore, even if the Company’s argument is to be accepted, the factors IAWC cites provide evidence why Chicago Metro uses water differently than other areas. The first factor mentioned, general economic conditions in the service area, is a reason why Chicago suburban water demands should not be used to develop ratios for an economically depressed area such as Cairo, or other less affluent downstate areas. Moreover, there is nothing in the Company’s argument on this weather sensitive usage issue to suggest that Chicago Metro demand is relevant to use on a statewide basis.

The Company also seeks to counter Staff’s argument, noted above, that the approval of the Joint Memo does not mean the Company’s demand factor methodology has already been approved by insisting that “the methodology of the Capacity Factors Report was expressly approved by the Commission.” (IAWC IB, p. 111.) By the Company’s logic, all it takes is a single workshop and a generic Joint Motion to satisfy all questions by the parties and the Commission about IAWC's proposed demand factors for this case. This would suggest that further analysis or discovery is no longer needed because all possible questions about the methodology were satisfactorily answered in the course of that single workshop.

The general nature of the Joint Motion shows that it clearly left to a later date the development of a specific plan for deriving these demand factors. Thus, the Commission was only accepting a general plan to calculate these demand factors on an indirect basis. Since the Company's specific demand factor methodology was presented not in that motion, but rather in the demand study contained in the Company's initial filing for Docket No. 08-0463 and subsequently re-filed in this proceeding, there is no basis to conclude that the Commission has given prior approval in any form IAWC's proposals in this case. (Staff Ex. 6.0, p. 15.) In fact, if one finds any value in this Company argument, it reveals the transparent attempt to game the Commission's processes by misrepresenting Commission Orders. It also reveals the standards, if any, that IAWC sets for itself in the ratemaking process.

The Company also presents an interesting spin on the faulty data problem which plagued its filing in this case and impeded Staff's effort to develop an alternative set of demand factors. IAWC seeks to turn this negative into a positive by stating that the significant revisions to the data in rebuttal meant "[t]he anomalous results found by Staff witness Lazare regarding residential usage variations over the maximum month for Pekin have been fully resolved." (IAWC IB, p. 113.) In this vein, the Company states that, "[f]ollowing Mr. Lazare's observations, the Company determined that the average day in the maximum month usage value for the Pekin system was overstated." (*Id.*)

While implying that this problem is limited to the Pekin system the Company acknowledges that "adjustments were made to revise the maximum month system data for each district, except those in the Chicago Metro rate area, the Interurban District and the Pontiac District, for which different data sources (not affected by billing periods length of more than 30 days) were used." (*Id.*) The extent of these adjustments, however, is a clear indication that data problems existed throughout the state.

The Company is also incorrect in suggesting that the revisions presented in rebuttal resolve any lingering issues about its proposed demand factors. What they did do is obviate the argument for Staff's alternative demand factors which were based on the original, incorrect data. (*Id.*) Staff performed its analysis in direct based on the operating data provided in the Company's Initial Filing. When that data was fundamentally revised for all districts save Chicago Metro, it undermined the basis for Staff's analysis and provided a too short time frame of approximately a month for rebuttal in which to perform a revised analysis.

Furthermore, the fact that these faulty numbers were revised should not be construed as evidence that the proposed demand factors are now reasonable. The changes in rebuttal only mean there was insufficient time to craft a viable alternative, not that the Company's demand factors are now correct. The problems with those factors remain and they are of sufficient magnitude to undermine the accuracy of the Company's cost study results. (Staff Ex. 13.0, pp. 5-6.)

The Company also seeks to respond to Staff's argument concerning IAWC's assumptions about class demand diversities within the maximum month compared with their measured ratios of maximum to average month use. (IAWC IB, p. 114.) IAWC focuses in particular on Staff's criticism of the assumption that residential customers exhibited greater demand diversity with the maximum month even when they had a lower ratio of maximum to average month use. (*Id*.) In response to Staff's citation to the AWWA Manual, which states that "[f]or residential customers, there is also likely to be some daily variation in usage throughout the maximum-month, although it is typically likely to be less than the commercial and industrial class variations," IAWC once again dredges up the reasonableness of the diversity ratios produced by its proposed demand factors. (*Id*.) The Company also makes some vague reference to "the class capacity factors previously utilized by IAWC in its rate filings which have been accepted by the Illinois Commerce Commission in previous rate case dockets." (*Id*.) IAWC follows this up by stating that "the variation[s] in daily demands within the maximum month are expected to be lower for commercial and industrial customers than for residential customers because their water usage is less influenced by weather conditions than residential customers." (*Id*., pp. 114-115.)

The Company's diffuse arguments fail to address the point of Staff's reference to the AWWA Manual which is that residential customers cannot simply be assumed to exhibit more demand diversity within the maximum month than other classes. (Staff Ex. 6.0, p. 29.) IAWC's failure to respond serves to underscore the utter lack of support for this key tenet of IAWC's proposed demand factors in this case.

In addition, the Company fails to address the conflicting evidence on residential and nonresidential demand factors from the most recent demand study using time-sensitive meters conducted by an IAWC affiliate. That study which measured 2008 demands for customers in West Virginia and found the maximum day and maximum hour demand factors for Residential, Commercial and Public and Industrial classes to be virtually the same. (*Id*., pp. 29-30.) This example further demonstrates it may not always be reasonable to assume that the residential class will have a higher ratio of peak day demands to average day demands than other classes.

The intrinsic flaws in IAWC's arguments lend further support for the Commission to adopt Staff's recommendation to reject the use of these demand factors to develop cost of service results.

2. Direct Measurement

The Company's discussion of this issue is significantly flawed as well. IAWC objects to Staff's recommendation that the Company conduct a direct measurement study, arguing that it "would be expensive, create possible operational concerns, and potentially produce unreliable data." (IAWC IB, p. 115.)

With regard to cost, IAWC estimates a direct demand study at $1.86 million. (*Id*., p. 116.) Among the factors driving this expense, according to Company witness Kaiser, is that it would cost approximately $20,000 to install and maintain each requisite meter. (*Id*.) IAWC also argues that such a study could produce unreliable data if the study were conducted during a "wet year," the equipment proved unreliable or if data was collected improperly. (*Id*., p. 117.) The Company further suggests that a direct demand study could reduce the ability to deliver water to customers and thereby diminish fire fighting capabilities. (*Id*.)

IAWC addresses the applicability of the most recent direct demand study performed by an affiliate company. (*Id*., p. 118.) The Company argues that this study conducted in West Virginia is not relevant to the issue of performing a direct demand study in Illinois. (*Id*.) For support, IAWC contends the West Virginia study cost $54,000 in consultant fees alone. (*Id*.) The Company also argues that an Illinois study would require far more meters and meter readings. (*Id*.) Then, the Company seeks to turn the issue back on Staff which "offered no specifics on how a direct study should be conducted in Illinois." (*Id*.)

The Company's discussion of this issue is disingenuous. After Staff raised the issue of direct demand studies and the West Virginia study in particular in direct testimony, Company witness McKinley responded in rebuttal that he found it "difficult to comment on the applicability of the West Virginia data" because he is "not familiar with the customers that compose the various customer classes nor the study related to determining the indicated demand factors." (IAWC Ex. 13.00R1, p. 16.) The Company's professed lack of familiarity with the West Virginia study is hard to believe as the author of the study, Mr. Paul Herbert, testified for the Company in this case. (Staff Ex. 13.0, p. 16.) It was not until surrebuttal that IAWC presented a substantive discussion of the West Virginia study.

The Company's discussion of the costs for the West Virginia study has been problematic throughout the case and continues in its Initial Brief. First, the Company indicated the West Virginia study cost a total of $27,293. (*Id*., p. 23.) However, IAWC stated in surrebuttal that the figure it had previously provided Staff was wrong, and that in fact the costs were much higher, with consulting fees alone amounting to $54,000. (IAWC Ex. 3.00SR (Rev.), p. 18.) Although the Company continues to stick with the $54,000 consulting expense in its Initial Brief, it fails to provide further cost information for the study, such as the entire cost.

Even so, the revised figure of $54,000 is a far cry from the $1.86 million estimate

IAWC provided for a demand study in Illinois. (Staff Ex. 6.0, p. 38.) The Company has failed to provide any record evidence to reconcile these divergent figures. Furthermore, the Company has failed to present any evidence to indicate the West Virginia study encountered any of the problems or difficulties that it contends could befall a direct measurement study. In fact, there is certain irony when the Company quotes statements by Mr. McKinley about the potential for a direct demand study to be unreliable. When Staff raised the issue of the West Virginia demand study, the most recent such study conducted by an IAWC affiliate, Mr. McKinley claimed a lack of familiarity. If he had taken the time to look into the West Virginia study, perhaps Mr. McKinley would be better versed on the parent company's current capabilities in conducting direct demand studies.

It is certainly true as the Company argues that a direct measurement study would take longer and cost more than the indirect study IAWC presents in this case. However, the Company's indirect method is fundamentally flawed with a set of results of dubious use for the regulatory process. If the goal is to save money, the Company could for far less money merely pick a set of random demand factors out of a hat and use those to develop cost of service study results.

Clearly, the goal should be to spend the least amount of money necessary to produce a reasonable set of results. The Company clearly spent less than a direct demand study cost but it received little in return for what it did spend.

The Company's argument that Staff failed to provide specifics on how a direct demand study should be performed should be rejected. IAWC certainly has the expertise to perform such a study itself. In fact, an IAWC witness in this case, Mr.

Herbert, performed the last direct demand study undertaken by a Company affiliate. Since the Company already is capable in this regard it is not clear why it would consider Staff's input essential or even necessary to perform a direct demand study in Illinois.

B. Cost of Service Study

The Company's failure to address the significant deficiencies in its demand factors means that the results of its cost of service studies remain fundamentally flawed and unsuitable for allocating the revenue requirement among rate classes. Therefore, the Commission should adopt the Staff recommendation to allocate revenue changes among rate classes on an equal percentage, across-the-board basis.

VI. RATE DESIGN AND TARIFF TERMS AND CONDITIONS

A. Proposed Customer Charge

1. Basic Customer Charge

Staff proposes that 80% of the Company's statewide customer costs of $18.14 per month, or $14.50, be the maximum customer charge for 5/8" meter customers in each rate area of IAWC. (Staff IB, pp. 85-87.) On the other hand, IAWC witness Herbert proposed the following 5/8" meter customer charges: $16.00 for Zone 1 (Alton, Cairo, Interurban, Peoria, Streator and Pontiac), Pekin and Sterling; $14.00 for Champaign; $13.50 for Chicago Metro Water; $10.50 for Lincoln and $10.40 for South Beloit. (IAWC Ex. 9.0, p. 13; IAWC IB, p. 138.)

Moreover, the Company is proposing to include more fixed costs in the customer charge. (IAWC IB, p. 137.) To determine the amount of additional fixed costs to include in customer charges, Company witness Herbert conducted a minimum system analysis. (IAWC Ex. 9.00, pp. 18-19.) He then added the results to the above listed charges for each rate area. Mr. Herbert's minimum system analysis intends to determine what the cost of the distribution system would be if all that was needed was to connect every customer so that they could receive a basic unit of service (one cubic foot of water). (IAWC Ex. 9.00R2, p. 8.)[6]

Moreover, recent Commission Orders support the recovery of fixed costs in the customer charge and approval of the recovery of 80% of fixed costs in the customer charge for certain gas utilities in Illinois. (*See e.g*., Docket No. 08-0363 and Docket Nos. 07-0585 – 07-0590 (Cons.).) Staff, accordingly, recommends that the Commission adopt its proposal that 80% of the Company's statewide customer costs of $18.14 per month, or $14.50, be the maximum customer charge for 5/8" meter customers in each rate area of IAWC.

2. Minimum System Charge

The Company's continued effort to use the minimum system approach as a basis for justifying its proposed customer charges in this case should be rejected by the Commission. This concept is fundamentally flawed and has been consistently rejected by the Commission as a ratemaking tool. The Company claims its proposed minimum system approach is consistent with the Commission's directive in Docket No. 07-0507 "to consider recovery of more fixed costs in the customer charge." (IAWC IB, pp. 138-139.) IAWC decided on its own volition to use the minimum system as a means "to identify additional fixed costs that might properly be included in the customer charge." (*Id.*, p. 139.)

The Company claims that the minimum system is a common practice in the

[6] Staff addresses Mr. Herbert's proposal to include minimum system costs as a component of customer charges below.

energy industry that examines “the effect of including in the metered service customer charges a fixed cost component related to the minimum system, or the system required to connect customers so that they can receive a basic unit of service.” (*Id*.) The Company goes on describe a basic unit of service as “one cubic foot of water per day.” (*Id*.) IAWC then proceeds to calculate the minimum system costs associated with this level of service. (*Id*., pp. 139-140.)

There are a number of flaws in the Company’s argument. (Staff IB, p. 72.) The first and foremost is its assumption that the Commission’s interest in recovering more fixed costs through the customer charge signals a willingness to consider adoption of the minimum system approach. (*Id*.) The evidence clearly shows that the Commission has consistently rejected all proposals to adopt a minimum distribution for ratemaking for any utility in Illinois. (*Id*.) In its Final Order in the Ameren rate proceeding, Docket Nos. 06-0070 – 06-0072 (Cons.), the Commission stated that “[t]he MDS method fails to properly emphasize the purpose of the distribution system—that being to satisfy a customer’s daily demand for electricity. The Commission went on to say it “also continues to believe that distinguishing the cost of connecting customers to the distribution system and the cost of serving its demand.” (Order*,* Docket Nos. 06-0070 – 06-0072 (Cons.), November 21, 2006, pp. 160-161.)

As the Commission pointed out above in the Ameren rate proceeding, there are sound reasons to reject the minimum system approach. It is based on a flawed assumption that investments in distribution mains can somehow be divided in one component that serves solely to connect customers to the system and a second component that reflects the size of the mains necessary to serve their demands for utility service. (Staff IB, p. 72.) In fact, there is no reasonable way to divide distribution mains along these lines. (*Id*.) There is no identifiable portion of the system that serves solely to connect customers. (*Id*.) The costs expended to connect customers are also spent to meet their demands and, from a cost allocation standpoint, meeting those demands is the most important consideration. (*Id*.) Thus, the minimum system is unreasonable from a cost perspective.

Thus, the specific customer charge proposed by IAWC should be examined on the evidence presented. However, the argument for approving its proposal regarding the minimum system approach should be rejected.

3. Champaign Customer Charge

Staff recommended that Champaign be included in the Zone 1 STP group. (Staff IB, p. 86.) Staff witness Boggs further recommended that Champaign customer charges mirror those of all other Zone 1 customers. (*Id*.) Mr. Boggs explained that similar costs to provide water service throughout the rate areas should require similar charges to all customers of those rate areas so the Company could recover no more and no less than those costs. (*Id.*) IAWC, concerned that mirroring the customer charge in Champaign would result in a 58% increase, proposed a customer charge for Champaign that was $2.00 less than Zone 1. (IAWC IB, p. 143.)

Mr. Boggs explained that although Champaign's 5/8" meter customers will experience a higher percentage increase in customer charges than other Zone 1 5/8" meter customers if this rate proposal is approved, they will benefit from having the costs of capital improvements spread amongst a much larger customer base. (Staff IB, p. 86.) Thus, Staff continues to recommend that the customer charge for Champaign 5/8" meter customers should be $14.50. (*Id*.)

B. Public Fire Service Revenue Recovery – Zone 1

Staff's proposed rates began with and were developed to conform to Staff's recommended revenue requirement. (Staff Ex. 14.0RC, p. 2.) Prior to receiving Staff's initial recommended revenue requirement, Mr. Boggs proposed that the Company increase public fire service charges by 19.88% in Zone 1, including Champaign, to allow it to recover 100% of its cost of service. (*Id*., pp. 9-10.) Because Mr. Boggs recommended that all customer, usage and Private Fire Service charges should be uniform throughout Zone 1 (except South Beloit) in his proposed rate design model for Zone 1, Mr. Boggs recommended changing only the revenues for Public Fire Services. (*Id*., pp. 12-13.) After Staff's initial recommended revenue requirement was presented, Mr. Boggs modified his proposal to allow the Company to recover only 89% of its cost to provide Public Fire Protection Services. (*Id*., p. 9.) When applying his proposed customer charges, usage rates and Private Fire Service charges to all customers in Zone 1, Mr. Boggs determined that, in order to achieve the Staff recommended revenue requirement, a 23.2% reduction to Company proposed Public Fire Service revenue for all applicable customers would be required. (*Id.*, pp. 9-10.)

The Company argues an inconsistency in Mr. Boggs' position (IAWC IB, p. 151), when in fact there is no inconsistency. Although the specific percentages of recovery have changed, these percentages remain entirely consistent with Staff's evolving revenue requirement for Zone 1. Subsequent to Mr. Boggs' recommendation for Zone 1 Public Fire Service charges in his rebuttal testimony, Staff again modified its revenue requirement for Zone 1. Due to Staff's most recent recommended revenue requirement, Mr. Boggs logically has again modified his recommendation for Public Fire Service charges in Zone 1. Mr. Boggs is now recommending the Company increase *current* Public Fire Service revenues by 43.82%, which would allow it to recover in excess of 100 % of the cost to provide Public Fire Service. Mr. Boggs determined that, in order to achieve the Staff's most recently proposed revenue requirement for Zone 1, a 13.80% increase to Company proposed public fire service revenue for all applicable customers would be required.

As discussed above, Mr. Boggs recommends that the customer charges, usage charges and Private Fire Charges be uniform for all rate areas in Zone 1, except for South Beloit. This rate design proposal will thus only affect Public Fire Service charges if a new revenue requirement is adopted by the Commission in its Final Order.

If a new revenue requirement is adopted by the Commission in its Final Order, Staff Ex. 14.0RC, Schedule 14.1RC can be modified to show the Public Fire Service rates that result from the revenue requirement. The revenue requirement determined in the Final Order of this case should be input in cell K46 of the "Zone 1" tab in Schedule 14.1RC. The spreadsheet will automatically calculate the resulting final charges for Public Fire Services. Changing only the revenues for Public Fire Services will keep all customer, usage and Private Fire Service charges uniform throughout Zone 1 (except South Beloit).

C. Chicago Metro Sewer Rate Increase

The Company continues to oppose Staff witness Rukosuev's rate design for the Chicago Metro Sewer district. (IAWC IB, p. 150.) Mr. Rukosuev amended the 2nd block non-residential usage rates in order to alleviate a potential rate shock. (Staff IB, p. 92.)

The Company argues, however, that Mr. Rukosuev is wrong in suggesting that rate shock will result from the Company's proposal. (IAWC IB, p. 150.) Nonetheless, as illustrated in Mr. Rukosuev's rebuttal testimony, his rate shock mitigation measures lowered Chicago Collection &Treatment bill impacts for residential, commercial and multi unit residential from 56.97%, 128.92%, and 56.26%, to 42.41%, 82.93%, and 42.26% respectively. (Staff Ex. 12.0R, pp. 15-16.)

Indeed, the proposed rate increases to the Chicago Metro Sewer rate area are intended to further cost of service goals. The Company is currently recovering 39.0% of cost of service, or $4,257,096. Accordingly, if the Company's proposed increase is approved by the Commission, the Company will recover approximately 63.5% of cost of service for Collection and Treatment customers, or $6,960,087. (IAWC Ex. 9.01, Schedule A-CMWW.) In Mr. Rukosuev's rebuttal testimony, he presented rates based on Staff's revenue requirement, which were approximately 6% lower than rates originally proposed by the Company. However, consistent with his rate design objectives such as bill impacts, gradualism and rate shock mitigation, Mr. Rukosuev managed to alleviate significant rate increases to the non-residential (commercial) customer class without an adverse impact to other classes. (Staff IB, pp. 92-93.) As such, Staff continues to disagree with both the Company's argument that no rate shock will result from its proposed increase in rates and the Company's statement that "there is no reason to adjust the Company's proposed rate increases" (IAWC IB, p. 150).

Furthermore, the Company argues that Mr. Rukosuev's rate design moves away from the Company's goal of linking the residential consumption rate with the first block rate for the commercial class and the customer charges for commercial and residential customers. (*Id*.) According to the Company, such a structure would result in the same bill for residential and commercial customers consuming less than 20,000 gallons per month. (*Id.*, pp. 150-51.)

However, the Company failed to explain its underlying principle for linking residential and commercial customers under 20,000 gallons. Creating merely an aesthetic association between classes is not a practical, nor a compelling, reason to decline a straightforward mitigation measure as proposed by Staff. Moreover, Mr. Rukosuev's rate design is linked to Staff's revenue requirement; therefore, his rate design does not radically deviate from the cost of service objectives as the Company claims it does.

Additionally, according to Mr. Rukosuev's calculations, his 42.41%, 82.93%, and 42.26% average bill impacts for residential, commercial and multi unit residential customers translate into approximately $20.78, $632.95, and $18.57 average monthly increases. (Staff Ex. 12.0R, Schedule 12.3R-CMS.) On the other hand, in the Company's Initial Filing, in Schedule E-7 (Chicago Collection & Treatment), the average monthly increases are calculated to be approximately $27.46, $1.000.11, and $24.24.

For all of the reasons Staff has provided, Staff recommends that the Commission adopt its rate design proposal for the Chicago Metro Sewer district.

D. Private Fire Protection Charge (Homer Glen)

Homer Glen argues that IAWC's proposed Private Fire Protection Charge be reduced to recover only the cost of service. (Homer Glen IB, p. 22.) Homer Glen appears to take issue with Staff's proposed private fire protection charges, particularly that the Company would collect more than the cost of providing such services. (Tr., December 10, 2009, p. 592.)

Staff witness Rukosuev proposed to leave the private fire protection charge for the Chicago Metro area unchanged. (Staff IB, p. 84.) Although the Company is currently recovering revenues above the cost of service, there should not be a decrease in rates. Staff remains sympathetic with the municipalities' concerns. However, there are other considerations besides cost of service, such as Mr. Rukosuev's rate design objectives of bill impacts, rate shock and gradualism. Homer Glen ignores these other rate design considerations. Mr. Rukosuev's proposed rates were designed, in part, to avoid creating a greater increase in other charges, thereby actually producing possible adverse bill impacts by shifting revenues across classes.

Therefore, Staff continues to recommend that the Company's proposal to leave Chicago Metro Private Fire Protection rates unchanged be adopted by the Commission.

E. Recovery of Overall Revenue Requirement

Staff provided the Commission its position regarding recovery of the overall revenue requirement in its Initial Brief. (Staff IB, pp. 94-95.) Illinois-American disagrees with various aspects of Staff's rate design. Accordingly, the Company recommends that if the Commission should choose Staff's revenue requirement, "the Commission should nonetheless use the Company's original rate design and scale it back to match the final accepted revenue requirement." (IAWC IB, p. 154.) Staff, on the other hand, recommends that if there is any difference between the revenue requirement adopted by the Commission and Staff's revenue requirement, then each block of Staff's usage charges should be adjusted by a uniform percentage to recover the revenue requirement adopted by the Commission. (Staff IB, pp. 94-95.)

For all the reasons it has previously provided, Staff recommends that the Commission adopt Staff's recommendation regarding recovery of the overall revenue requirement in the instant proceeding.

VII. OTHER ISSUES

A. Pension OPEB

Illinois-American has proposed that, commencing January 1, 2009, the annual amount of pension and other post employment benefits ("OPEB") costs above the amount currently reflected in rates in Docket No. 07-0507 be deferred and amortized over a five year period rather than follow the ratemaking treatment of pension OPEB costs approved by the Commission in past proceedings. The Company has filed a petition to this effect in Docket No. 09-0400. The affect of the Company's proposal in Docket No. 09-0400 is not reflected in the test year in this rate case. (IAWC IB, pp. 169-171.)

Staff does not take issue with the level of pension and OPEB costs the Company included in the test year, which does not reflect the proposal in Docket No. 09-0400. Staff continues to oppose Company's request in Docket No. 09-0400 for the reasons discussed in Docket No. 09-0400. Staff agrees, however, that if the Commission grants the Company's request in Docket No. 09-0400, the test year pension and OPEB costs would need to be adjusted accordingly.

VIII. CONCLUSION

For the reasons set forth in its Initial Brief and this Reply Brief, Staff respectfully requests that the Commission's Order in the instant proceeding reflect Staff's modifications to Illinois-American's proposed general increase in water and wastewater rates.

Respectfully submitted,

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