

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>APPLE CANYON UTILITY COMPANY</b>	§	
	§	<b>Docket No. 09-0548</b>
<b>Proposed general increase in water rates.</b>	§	
	§	

<b>LAKE WILDWOOD UTILITIES CORPORATION</b>	§	
	§	<b>Docket No. 09-0549</b>
<b>Proposed general increase in water rates.</b>	§	
	§	

**LAKE WILDWOOD ASSOCIATION'S AND  
APPLE CANYON LAKE PROPERTY OWNERS' ASSOCIATION'S  
BRIEF ON EXCEPTIONS WITH PROPOSED SUBSTITUTE LANGUAGE  
AND REQUEST FOR ORAL ARGUMENT**

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**6 August 2010**

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BRIEF ON EXCEPTIONS WITH PROPOSED SUBSTITUTE LANGUAGE  
AND REQUEST FOR ORAL ARGUMENT**

Lake Wildwood Association (LWA) and Apple Canyon Lake Property Owners’ Association (ACLPOA) file this Joint Brief on Exceptions (BOE) to the Proposed Order (Order) along with substitute language and a request for oral argument.

In these consolidated dockets, Lake Wildwood Utility Corp. (LWUC) and Apple Canyon Utility Co. (ACUC) sought increases of 275 percent for a “typical” user. LWA and ACLPOA are the homeowners associations whose members are served by the utilities and intervened in the individual dockets that were consolidated for hearing. The Order makes some appropriate reductions to the revenue requirements for both utilities. However, the reductions still would allow the utilities to collect the full costs associated with new billing and accounting systems installed by Utilities, Inc., the parent of LWUC an ACUC, even though there was no evidence that the billing and accounting systems were designed for the individual operating utilities or of benefit to LWUC and ACUC customers. The record also shows that the cost to each customer

(\$4.76 per month for ACUC and \$4.87 per month for LWUC) for the systems is far in excess of the nationwide average cost per customer (\$1.50 per month). The Order also proposes an essentially meaningless adjustment for unaccounted for water and includes costs for a consultant in rate case expenses even though the record is void of any testimony as to what the consultant did in the case. Finally, the Order uses the mid-range for the rate of return identified by the Illinois Commerce Commission Staff (ICC Staff) rather than the lower end of the range, as recommended by LWA/ACLPOA, which would be more appropriate in light of the utilities' inadequate management practices.

As a result, the Order would allow LWUC and ACUC to increase rates far beyond what is reasonable and necessary for their operations and causes needless harm to ratepayers. One LWA customer, Randy Hart, who has three children, testified at the hearing that the increase would cause hardships to him.

As a family that has a monthly budget to stay in, it affects our ability to buy groceries; budget for extracurricular activities at school; and spend time as a family to do the things that need to be done (i.e. as shopping for school clothes; eating out as a family; vacations; etc.). It puts a strain on our family. As a union carpenter, I am not against a rate increase, as my contract each year has an increase, but not like the increase that the utility is asking for.

Hart Direct, LWA Ex. 2.0 at 2/31-36.

The Order not only fails to properly consider the impact of the rates on consumers but also misapprehends the applicable law, erroneously shifts the burden of proof, and fails to follow statutory mandates. Specifically, the Order:

- Erroneously fails to discuss and consider comments by ratepayers at public forums and on the Illinois Commerce Commission's (ICC or Commission) own website.

- Erroneously allows the inclusion of the costs of new nationwide billing and accounting systems for the parent company of the utilities.
- Erroneously fails to recognize the significant level of lost and unaccounted for water for both systems.
- Erroneously includes in rate case expenses undocumented and unexplained services.
- Erroneously fails to adjust the rate of return to reflect the mismanagement of the two utilities.

The errors in the Order violate the Public Utilities Act (PUA) in several respects. First, PUA, 220 ILCS 5/9-201 (Lexis 2010), places the burden of proof in a rate case on the utility. The Order, however, erroneously places the burden of proof on LWA/ACLPOA. Second, the Order erroneously excludes any discussion of comments made by the public at public forums and on the Commission's own website. Under PUA, 220 ILCS 5/8-306(n), reports and comments made at public forums must be made available and reviewed when drafting a recommended or tentative decision or order. In addition, by excluding public comments, the Order erroneously makes a nullity of 220 ILCS 5/2-107 of the PUA. Third, the Order erroneously disregards the requirements for specific findings as to the justness and reasonableness of the amounts expended by LWUC and ACUC for attorneys and experts as required by PUA, 220 ILCS 5/9-229.

As a result of these errors, the Commission should modify the Order as outlined in this BOE and include the attached substitute language.

## **EXCEPTION NO. 1.**

### **THE ORDER SHOULD BE MODIFIED TO INCLUDE PUBLIC COMMENTS TAKEN AT THE ICC FORUMS AND ON THE ICC'S WEBSITE.**

The Order at 2 under “Procedural History” states that the “Commission conducted public hearings on February 24, 2010 for Lake Wildwood and on March 2, 2010 for Apple Canyon.” This statement fails to mention that all references to what occurred at those hearings were erroneously stricken from the Initial Hearings Brief of LWA/ACLPOA, that the granting of the ICC Staff’s motion to strike was the subject of an interlocutory appeal to the full Commission, and that the Commission denied the appeal. This procedural history should be included. Furthermore, the Commission should reconsider and reverse its earlier ruling on the Petition for Interlocutory Review, which is contrary to the plain language of the PUA, and allow LWA/ACLPOA’s entire initial brief into the record.

Under PUA Section 8-306(n), the Commission is required to conduct public forums for ratepayers in water rate cases—forums at which both the utility and the public have an opportunity to make comments, all of which are reflected in the forum’s transcript. PUA states that “reports and comments made during or as a result of each public forum must be made available to the hearings officials and reviewed when drafting a recommended or tentative decision, finding or order pursuant to Section 10-111 of this Act.” 220 ILCS 5/8-306(n), P.A. 94-950, effective June 27, 2006. The PUA further requires the Commission to “provide a web site and a toll-free number to accept comments from Illinois residents regarding any matter under the auspices of the Commission or before the Commission.” 220 ILCS 5/2-107. P.A. 95-0127, effective August 13, 2007.

The Commission conducted public forums for both LWUC and ACUC attended by the utilities, who participated in the forums. The Commission's website also received 54 comments from ratepayers of LWUC and 27 comments from ACUC ratepayers. Considering that there are only 435 LWUC active customers and 890 active customers for ACUC, the comment numbers are significant. In the Joint LWA/ACLPOA Initial Hearings Brief, the number of comments was noted along with quotes from several of the comments. In addition, the LWA/ACLPOA brief included quotes contained in the official transcripts of the public forums from ratepayers who attended the public forums. The brief noted that the comments were submitted pursuant to 220 ILCS 5/8-306(n). LWA/ACLPOA Brief at 7-10. On June 22, 2010, the ICC Staff filed a motion to strike LWA/ACLPOA Brief from pages 7 to 10, which was granted by the ALJ. On July 1, 2010, LWA/ACLPOA timely filed a Petition for Interlocutory Review of the ALJ's decision. Finding that the ALJ's ruling greatly affected the public interest, the Illinois Attorney General intervened in this case for the sole purpose of addressing LWA/ACLPOA's interlocutory review petition. On July 8, 2010, the Illinois Attorney General filed its brief in support of LWA/ACLPOA's petition for interlocutory review. On July 28, 2010, the Commission denied the appeal. Following the vote, the Commission released a July 8, 2010, memorandum to the Commission from the ALJ defending his decision to strike and recommending that the request for interlocutory review be denied. The four-page memorandum devoted a half page to LWA/ACLPOA's and the AG's purposed position. The memorandum failed to include any discussion or acknowledgement of the cases cited or the legal arguments raised in the intervenors' and AG's briefs. Instead, the memorandum discussed only cases that were decided before the PUA was amended by the legislature to mandate public forums in water rate cases.

In making its decision, the Commissioners publicly commented that there was an ambiguity as to how the forums should be treated and that the Commissioners want a clarification before allowing the comments to be considered. No such clarification is necessary because the Illinois legislature has clearly stated that the comments “must be made available to the hearings officials and reviewed when drafting a recommended or tentative decision, finding or order pursuant to Section 10-111 of this Act.” 220 ILCS 5/8-306(n). The Commission is a state agency created under the PUA. Its power and authority come from the legislature as defined in the PUA, and it cannot ignore sections of the PUA that mandate specific actions. In 2006 and 2007, the legislature specifically expressed its concerns to the ICC with Public Acts 94-950 and 95-0127, where it mandated public comments in water rate cases. Prior to 2006, there was no statutory requirement for the Commission to conduct public forums for water rate cases.

“When a statute is amended, it may be presumed that the amendment was made for some purpose and the statute should be construed as to give effect to the intended purpose.” *Department of Transportation v. East Side Development, LLC*, 384 Ill. App. 3d 295, 299 (3rd Dist. 2008). The Commission “must not add exceptions or change the law so as to depart from the statute’s plain meaning.” The plain meaning of the 2006 amendment to the PUA is that comments made during a public forum for a water case are to be “reviewed” when drafting a proposed order and therefore parties must have the ability to call the Commission’s attention to the comments. The 2006 and 2007 amendments changed the prior law that public comments could not be considered by the Commission. The Illinois Supreme Court has found that “[e]very amendment to a statute is presumed to have a purpose, and a court must consider the language of

the amended statute in light of the need for amendment and the purpose it serves.” *People v. Woodard*, 175 Ill. 2d 435, 444 (1997). The PUA amendment requiring public forums in water rate cases is in the PUA for a purpose and the Commission cannot ignore this specific language. It is contrary to the statute for the ICC to ban all references to public comments in any filing made by a party to a water rate case when the comment is made pursuant to the PUA.

It is well-settled that a “court is not free to rewrite legislation, or to ignore an express requirement contained in a statute.” *People v. Palmer*, 148 Ill. 2d 70, 88 (1992). Neither may a court “read a limitation into a statute which the legislature has not seen fit to enact nor may it, by subtle construction, alter the plain meaning of the words employed.” *Id.* at 85. This Commission “must construe [a] statute so that each word, clause, and sentence is given a reasonable meaning and not rendered superfluous, avoiding an interpretation that would render any portion of the statute meaningless or void.” *Cassens Transp. Co. v. Indus. Comm’n*, 218 Ill. 2d 519, 524 (2006). “There is no rule of statutory construction that authorizes a court to declare that the legislature did not mean what the plain language of the statute says. . . . Where the language of a statute is plain and unambiguous, a court need not consider other interpretive aids.” *Ultsch v. Ill. Mun. Ret. Fund*, 226 Ill. 2d 169, 184 (2007). If this Commission does not reverse the ALJ’s ruling that strikes portions of LWA/ACLPOA’s Initial Hearings Brief and excludes all references to public comments made pursuant to 220 ILCS 5/8-306(n) and 220 ILCS 5/2-107, the Commission will improperly declare that the legislature did not mean what the plain language of the statute states.

The cases cited by the ALJ in his memorandum defending his actions are inappropriate. “Where statutes are enacted after judicial opinions are published, it must be presumed that the

legislature acted with knowledge of the prevailing case law.” *Illinois Campaign for Political Reform v. Illinois State Board of Elections*, 382 Ill. App. 3d 51, 59 (1st Dist. 2008), citing *Burrell v. Southern Truss*, 176 Ill. 2d 171, 176 (1997). When amendments are made to the law after court opinions, it is presumed that the legislature intends a different construction. *Id.* As a result, the pre-2006 cases interpreting the PUA simply are not relevant to interpreting the amended statutory language regarding public comments.

The Commission should reverse its finding that comments made at public forums and on the Commission’s website by the public cannot be included and commented upon by parties in their briefs and, instead, find that the comments are to be part of the record as provided by the PUA.

Proposed Substitute Language:

I. INTRODUCTION.

A. Procedural History

\* \* \*

Pursuant to Section 8-306(n), 220 ILCS 5/8-306(n), the Commission conducted public hearings forums on February 24, 2010 for Lake Wildwood and on March 2, 2010 for Apple Canyon. Transcripts of the public forums were filed on edocket on March 2 and March 10, 2010, respectively. Pursuant to PUA Section 2-107, 220 ILCS 5/2-107, the Commission provided a website and toll free number to accept comments from Illinois residents regarding the two rate cases. The Commission website received 27 comments from ACUC ratepayers and 54 comments from LWUC ratepayers.

\* \* \*

*On May 14, 2010, the parties and Commission Staff filed pre-hearing memoranda, in which, they set forth the legal and factual issues that they would present at trial, thus satisfying the Constitutional requisite that notice of the legal and factual issues be presented before trial on those issues commences. Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter was heard by a duly authorized Administrative Law Judge (“ALJ”) at the offices of the Commission in Chicago, Illinois. An evidentiary hearing (hereinafter referred to as “trial”) was held on May 18, 2010. At the evidentiary hearing, Apple Canyon Utility Company, Lake Wildwood Utilities Corporation, Staff of the Commission, Apple Canyon Lake Property Owners’ Association Inc. and Lake Wildwood Association appeared and presented testimony. The record was subsequently marked Heard and Taken.*

*Apple Canyon Utility Company and Lake Wildwood Utilities Corporation presented the following joint witnesses: Carl Daniel, Regional Vice-President of Utilities, Inc. and several of its subsidiaries including the Companies; and Steven M. Lubertozzi, Executive Director of Regulatory Accounting and Affairs for Utilities, Inc. and its subsidiaries. Paul D. Burris, who had been Regional Vice President for the Midwestern and Western Regions of Utilities, Inc. at the time that this case was filed, also submitted testimony.*

*The following witnesses testified on behalf of Staff: Philip ~~Rukosub~~ Rukosuev, a Rates Analyst in the Rates Department of the Financial Analysis Division; Mike Ostrander, an Accountant in the Accounting Department of the Financial Analysis Division; and Burma Jones, an Accountant in the Accounting Department of the Financial Analysis Division. The following Staff witnesses have also submitted testimony in this case: Janis Freetly, Senior Financial Analyst in the Finance Department of the Financial Analysis Division; Christopher Boggs, a Rate Analyst in the Rates Department of the Financial Analysis Division; and Thomas Q. Smith, Economic Analyst in the Water Department of the Financial Analysis Division.*

*The following Intervenor witnesses submitted testimony in this case: John Bayler, General Manager of Lake Wildwood Association; Randy Hart, a Resident in the Lake Wildwood community; Paula Lang, General Manager of Apple Canyon Lake Property Owners' Association, Inc.; and Scott J. Rubin, an Independent Consultant and Attorney.*

*Following the evidentiary hearing, the Intervenors filed a joint hearings brief that included quotations from the statutory public forums and the Commission's website. On June 22, 2010, the Staff filed a motion to strike all portions of the Intervenors' brief that referenced or quoted comments from the public forums and the Commission's website. On June 25, 2010, the ALJ granted Staff's motion. On July 1, 2010, Intervenors timely filed a Verified Petition for Interlocutory Review of the ALJ's decision. On July 8, 2010, the People of the State of Illinois through Lisa Madigan, Attorney General, intervened in these dockets for the limited purpose of addressing the Verified Petition for Interlocutory Review and filed a brief in support of the Intervenors' petition. Staff also filed a response to the Verified Petition. On July 28, 2010, the Commission denied Intervenors' Petition for Interlocutory Review. On the same day, the Commission released a Memorandum from the ALJ that recommended denial of the Petition. On August 6, 2010, Intervenors filed their Brief on Exceptions, which excepted to the ALJ's ruling and the Commission's denial of the Petition. As will be explained later in this Order, the Commission has reconsidered the ALJ's ruling on Staff's Motion to Strike and reverses the ALJ's decision and denies the ICC Staff's Motion to Strike portions of the Intervenors' Initial Hearings Brief. The Intervenors' Initial Hearings Brief was considered by the Commission without any matters stricken.*

\* \* \*

### **C. Test year**

Both Apple Canyon and Lake Wildwood's filings are based on a historical test year ending December 31, 2008, with pro forma adjustments for known and measurable changes. Staff did not challenge the reasonableness of using the year 2008 as a historical test year.

The Commission concludes that the test year ending December 31, 2008, with adjustments for known and measurable changes, is appropriate for the purposes of this proceeding.

### **D. Public Participation**

In this Docket, the Intervenors have raised the issue of public participation in dockets before this Commission. Intervenors cite to the PUA, which requires the Commission to conduct public forums, 220 ILCS 5/8-306(n) and to take public comments on a Commission website and toll-free telephone number. 220 ILCS 5/2-107. Pursuant to those statutory provisions, the Commission conducted public forums in Varna, Illinois, and Apple River, Illinois. At each forum, each utility was given an opportunity to make a presentation as to why it should receive the requested increase. At each forum, the Commission asked for ratepayer participation. The utility's presentation and the ratepayer comments were transcribed and the transcript was filed on edocket for the public to view. Ratepayer comments on the Commission's website also are available for anyone to view by merely logging onto the Commission's website.

Intervenors note that the provisions regarding public forums and website comments were added to the PUA in 2006 and 2007 when P.A. 94-950 and P.A. 95-0127 were enacted by the General Assembly. Intervenors cite the Department of Transportation v. East Side Development, LLC, 384 Ill. App. 3d 295, 299 (3rd Dist. 2008), for the proposition that when a statute is amended by the Legislature, "it may be presumed that the amendment was made for some purpose and the statute should be construed as to give effect to the intended purpose." Intervenors also note that the Illinois Supreme Court has found that "a court must consider the language of the amended statute in light of the need for amendment and the purpose it serves." People v. Woodard, 175 Ill. 2d 435, 444 (1997). Since a court "is not free to rewrite legislation, or to ignore an express requirement contained in a statute," People v. Palmer, 148 Ill. 2d 70, 88 (1992), neither can this Commission ignore any express requirement in the PUA. Nor can the Commission "read a limitation into a statute which the legislature has not seen fit to enact nor may it, by subtle construction, alter the plain meaning of the words employed." Id. The Commission is required to "construe [a] statute so that each word, clause, and sentence is given a reasonable meaning and not rendered superfluous, avoiding an interpretation that would render any portion of the statute meaningless or void." Cassens Transp. Co. v. Indus. Comm'n, 218 Ill. 2d 519, 524 (2006). Furthermore, Intervenors point out that where statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law" and it is presumed that the legislature intends a different construction. Illinois Campaign for Political Reform v. Illinois State Board of Elections, 382 Ill. App. 3d 51, 59 (1st Dist. 2008), citing Burrell v. Southern Truss, 176 Ill. 2d 171, 176 (1977). Upon review of the relevant case law, the Commission concludes that its previous ruling denying

Intervenors Petition for Interlocutory Review is contrary to the law and is reversed. A party to a proceeding before this Commission can cite and quote from the public transcripts from the public forums and this Commission's website. Such citations shall be considered as required by the PUA in the Commission's preparation of orders in water rate cases.

Pursuant to 220 ILCS 5/8-306(n), we have reviewed the comments from the public forums and the comments on the website as part of preparing this Order. At the public forums, the ratepayers stated that a request for such a large increase would evoke laughter at a union bargaining session, that the amount of the increase suggests gross mismanagement, that the increase is greater than inflation, that they are on a fixed income and have to limit spending, that 80 percent of the residents at ACUC are retired and on fixed income making this increase clearly excessive, and that they are still reeling from all kinds of economic woe and any company is lucky to get a 10 to 30 percent increase. In the comments posted on the Commission's website, ratepayers include comments that as ACUC and LWUC customers were strongly opposed to the triple digit rate increases sought in this case, that many people are on social security and fixed incomes making such a high increase difficult for them to pay for water, that in this economy it is unthinkable to have such an increase, and that no business has the right to increase a service 350 percent.

## **EXCEPTION NO. 2.**

### **THE ORDER ERRONEOUSLY INCLUDES IN RATES THE COST FOR NEW NATIONWIDE BILLING AND ACCOUNTING SYSTEMS FOR THE PARENT COMPANY OF LWUC AND ACUC.**

Both utilities asked to include the entire allocated cost for a new billing and accounting system that was developed for Utilities, Inc., their parent company, to be included in rates. The Order found that “Apple Canyon and Lake Wildwood are not stand-alone companies, but are in fact part of a larger organization in which costs are spread over a larger customer base.” Order at 9. For this reason, the Order found the full costs of the nationwide billing and accounting systems appropriate.

This logic fails for several reasons. First, LWUC and ACUC are separate entities and separate utilities subject to this Commission's jurisdiction. Each filed a separate rate case before the Commission and requested that rates be set on an individual basis. The proposed rates are different for each utility. As an individual utility under the PUA, each utility's costs must stand

on their own. In order to recover the costs of the systems, the expenses must be “shown to be to the benefit of the ratepayers” and the utility must present “proof to show the reasonableness of the charges.” *Candlewick Lake Utilities Co. v. Illinois Commerce Comm’n*, 122 Ill. App. 3d 219, 227 (2d Dist. 1983). Just because a utility incurs a cost, it is not automatically included in rates. A rate may be reasonable “although it fails to produce an adequate return to the public service company, owing to the fact that the business has not developed sufficiently to be remunerative or to the fact that the plant is on a larger scale than is justified by the present demand.” *Produce Terminal Corp. v. Illinois Commerce Comm’n*, 414 Ill. 582, 590-91 (1953). “[T]he burden of proof to establish the justness and reasonableness of the proposed rates or other charges, classifications, contracts, practices, rules or regulations, in whole and in part, shall be upon the utility.” 220 ILCS 5/9-201. The resulting rates or other charges also must be “just and reasonable.” *Id.* “A public utility is entitled to just and reasonable compensation for the service given to the public; but on the other hand, the public is entitled to demand that no more be exacted from it than the services rendered are reasonably worth.” *United Cities Gas Co. v. Illinois Commerce Comm’n*, 163 Ill. 2d 1, 23-24 (1994). Utility customers should not be required to pay for more than the service provided is reasonably worth to them or for costs not legitimately incurred for their benefit. *Id.* at 24. “The utility has the burden of proving that any operating expense for which it seeks reimbursement directly benefits the ratepayers or the services which the utility renders.” *Candlewick Lake Utilities Co.*, 122 Ill. App. 3d at 227. “Requiring intervenors to establish unreasonableness is therefore no substitute for requiring proof of reasonableness. The difference is significant.” *Hartigan v. Illinois Commerce Comm’n.*, 117 Ill. 2d 120, 135-136 (1987).

A nationwide billing system with all of its development and operating costs may not be appropriate for a utility with only 435 active customers. Both LWUC and ACUC admitted that they did not undertake any studies to determine what an appropriate billing system would be for a utility with 435 or 890 active customers. LWUC and ACUC's own witness testified that a billing program for a system of 480 customers would not be the same system for a holding company the size of Utilities, Inc., and the costs would be different. Tr. at 97/15-98/1. LWA/ACLPOA witness Scott Rubin's un rebutted testimony was that the utilities were able to send out bills before the billing program change. ACLPOA/LWA Ex. 1.0 at 13/272-273. LWUC and ACUC's witness testified that the new system handles mail-in payments in the same fashion as before. Tr. at 108/22-109/2. There are no real benefits for ratepayers from the billing system. Furthermore, there is no evidence that ratepayers benefit from a new accounting system for Utilities, Inc.

Because neither LWUC nor ACUC presented evidence showing that the nationwide billing and accounting systems were appropriate for utilities with such a small number of customers, this Commission should follow the reasoning of the Kentucky Public Service Commission which rejected the inclusion of any costs associated with Utilities, Inc. billing system because the utility failed to conduct any studies or analysis as to the benefits to the ratepayers of a system the size of the Kentucky system. *Application of Water Service Corporation of Kentucky for an Adjustment of Rates*, Case No. 2008-00563 at 6, entered Nov. 9, 2009.

Moreover, if the Commission were to allow any recovery for the systems, the recovery of costs allowed in the Order are far in excess of what the companies themselves have said are the

real costs. The Order’s conclusion that because LWUC and ACUC are part of a larger organization “costs are spread over a larger customer base” is illusory. LWUC and ACUC’s own witness testified on redirect examination by his own counsel that the nationwide average cost for the billing and accounting systems combined is \$1.50 per customer “when you take that and spread that over an average customer in any of our companies.” Tr. at 120/15-19. However, the Illinois ratepayers receiving services from LWUC and ACUC are being asked to pay over \$4.75 per customer, not the \$1.50 per customer that LWUC and ACUC’s witness claimed is the average cost for its customer base. This is demonstrated as follows:

<b>Apple Canyon</b>		
JDE rate base	\$ 129,168	Lubertozzi direct, p. 4
CC&B rate base	<u>64,228</u>	Lubertozzi direct, p. 7
Total rate base	\$193,396	line 1 + line 2
Depreciation rate	14.29%	ACUC-LWUCC Exh. 4.0, Sch. F-ACUC w/p [f]
Weighted cost of debt	3.37%	ACUC-LWUCC Exh. 4.0, Sch. F-ACUC w/p [h]
After-tax cost of equity	5.06%	ACUC-LWUCC Exh. 4.0, Sch. F-ACUC w/p [h]
Gross revenue conversion factor	1.703238	Staff Exh. 1.0, Sch. 1.6 AC
Revenue requirement for JDE and CC&B investment:		
Depreciation expense	\$ 27,636	line 3 x line 4
Debt component of return	6,517	line 3 x line 5
Equity component of return	<u>\$ 16,668</u>	line 3 x line 6 x line 7
Total	\$ 50,821	line 8 + line 9 + line 10
Number of customers	890	Lubertozzi direct, p. 1
Cost per customer per year	\$ 57.10	line 11 / line 12
Cost per customer per month	\$ 4.76	line 13 / 12

<b>Lake Wildwood</b>		
JDE rate base	\$ 68,540	Lubertozzi direct, p. 4
CC&B rate base	<u>34,081</u>	Lubertozzi direct, p. 7
Total rate base	\$ 102,621	line 1 + line 2
Depreciation rate	14.29%	ACUC-LWUCC Ex. 4.0, Sch. F-LWUCC w/p
Weighted cost of debt	3.37%	ACUC-LWUCC Ex. 4.0, Sch. F-LWUCC w/p
After-tax cost of equity	5.06%	ACUC-LWUCC Ex. 4.0, Sch. F-LWUCC w/p
Gross revenue conversion factor	1.687023	Staff Exh. 1.0, Sch. 1.6 LW
Revenue requirement for JDE and CC&B investment:		
Depreciation expense	\$ 14,665	line 3 x line 4
Debt component of return	3,458	line 3 x line 5
Equity component of return	<u>8,760</u>	line 3 x line 6 x line 7
Total	\$ 26,883	line 8 + line 9 + line 10
Number of customers	460	Lubertozzi direct, p. 1
Cost per customer per year	\$58.44	line 11 / line 12
Cost per customer per month	\$ 4.87	line 13 / 12

The Order disregards the record evidence, arguing instead that Intervenors should have presented this information in testimony so “the parties would have had the opportunity to conduct analysis and possibly produce a more representative allocated cost of the billing and accounting systems on the bills paid by the Companies’ customers.” Order at 9. In other words, the Order does not believe LWUC/ACUC’s witness Mr. Lubertozzi’s testimony from the witness stand that the nationwide billing and accounting systems cost customers only \$1.50 per month. This number was solicited by LWUC/ACUC’s own counsel on redirect. The ICC Staff could have clarified the number at hearing but chose not to do so. The utilities are bound by their own witness’s testimony that the cost for both systems per customer per month nationwide is only

\$1.50. The record evidence also shows the allocated cost to customers of LWUC and ACUC is in the \$4.75 per customer/per month range. Thus, the cost to Illinois customers is far out of line with the national average. Since the “public is entitled to demand that no more be extracted than the service is reasonably worth,” *United Cities Gas Co*, 163 Ill. 2d at 24, ACUC and LWUC ratepayers should not be required to pay \$4.76 and \$4.87 per month respectively for a service the Companies themselves admit costs ratepayers nationally only \$1.50 per month.

In response to this un rebutted record evidence, the ICC Staff argues that LWA/ACLPOA’s calculation based on the record evidence must be wrong. To support their contention, the Order states that the ICC Staff notes that the cost of debt should be 3.47 percent, not 3.37 percent. If the higher cost of debt is used, then the cost per customer/per month would increase the cost by about 2 cents per month, not decrease the cost. The Order also states that the ICC Staff finds fault with LWA/ACLPOA’s calculation because it does not correctly reflect deferred depreciation. Order at 7. However, the billing and accounting systems were not installed until 2008, the test year, so the amount of deferred depreciation would not materially affect the calculation. On the other hand, there is a material difference between Mr. Lubertozi’s sworn testimony that the nationwide cost of both systems is \$1.50 per customer and the \$4.76 allocated cost calculated based upon data in the record. Minor differences cannot change the fact that Illinois ratepayers for these two small systems would pay under the Order a highly disproportionate amount for these systems—systems that the companies admit were not sized for the utilities being served.

The Order also observes that the LWA/ACLPOA calculation is only for active customers and that “no valid reason has been given why availability customers would not share the fixed

costs of these systems, just as they share the fixed costs of mains and other facilities.” Order at 8. This ignores the fact that for LWUC the utility proposed no change in rates for availability customers in this docket. If the billing and accounting systems caused an increase for availability customers, then why did LWUC not propose changing the availability customer charge? If the company’s statement is to be believed, it did not accurately allocate costs between active customers and availability customers in the LWUC case. The utility should not be able to complain that availability customers should have been included in LWA’s calculation for billing and accounting costs since LWUC did not charge any of the new billing and accounting system costs to the availability customers. ACUC proposed increasing its availability customers’ rate by \$1.05 per month from \$5.51 to \$6.56. If Mr. Lubertozzi’s testimony is credible, the costs for billing and accounting should have increased this rate by \$1.50 per customer per month even before other cost increases were considered. Thus, the Order’s concern that a “more representative allocated cost” for the billing system is lacking is the direct result of the utilities’ failure to sustain their burden of proof in these dockets.

Since the “public is entitled to demand that no more be extracted from it than the services rendered are reasonably worth,” *United Cities Gas Company*, 163 Ill. 2d at 24, the Order should be amended to allow both utilities to recover—if anything at all—no more than \$1.50 per customer/per month for the billing and accounting systems, i.e., the amount the companies claim is the national average. This Commission does not have a duty to seek out evidence to support a utility’s application. If there are relevant factors justifying a rate increase, the utility has the burden of putting them into evidence. *Central Illinois Public Service Company v. Illinois Commerce Comm’n*, 5 Ill. 2d 195, 209 (1955). Even where the Commission finds a rate is

unreasonable, it is not incumbent on the Commission to establish an alternative rate. The Order suggests that the Commission must approve a rate “in every case but those in which there was evidence that the proposed rate was unreasonable and that some other rate was reasonable. If this were so, a utility desiring to change its rates would be encouraged to adduce as little evidence as possible before the Commission. We do not think the act contemplates such an anomaly.” *Id.* at 211.

Because the Intervenors propose two alternatives regarding treatment of the billing and accounting system; namely, excluding all the costs from rates or allowing only an amount equal to the \$1.50 per customer national average, the proposed substitute language contains both alternatives.

Proposed Substitute Language (Alternative A):

(Excluding all costs associated with the billing and accounting systems.)

**1. Adjustment for the Billing and Accounting Systems**

**a) Intervenors' Position**

*The Intervenors argue that both utilities are attempting to improperly include in rates allocated costs associated with a new customer billing program and a new accounting program. ~~They state~~ The utilities state that the development of a nationwide billing software system cost \$7,124,532 of which ACUC seeks to include \$64,228 in rates and LWUC seeks to include \$34,081. The new nationwide accounting software system cost \$14,328,103 of which Utilities, Inc. assigned \$129,168 to ACUC and \$68,540 to LWUC. ~~According to the Intervenors,~~ During cross examination, Utilities, Inc. admitted it did not conduct any studies or analysis as to whether either of the systems is appropriate or useful for the Companies. The Companies witness testified that a cost for stand-alone billing and accounting systems for a utility the size of ACUC or LWUC would be different. ~~and~~ It is Intervenors' position that ~~therefore~~ it is inappropriate to include the costs for these systems in either ACUC's or LWUC's rates.*

*~~The Intervenors maintain~~ The record shows that both utilities are very small systems with LWUC having about 460 active customers who receive monthly bills for water consumption and 950 availability customers who receive a flat bill for the standby service. ACUC has about 890*

active customers who receive bills quarterly and about 1,800 availability customers who receive a flat bill for the standby service. Based on these numbers, the Intervenor argue that the sophisticated billing and accounting systems were not designed for the Companies and are not necessary.

They argue that ACUC and LWUC's claimed benefits for the billing system are illusory to the ratepayers because they rarely pay their bills by walking into the bill payment centers located miles away from the service area and mail-in payments are handled no differently with the new system than they were before it was installed. They argue further that there is no reason why ratepayers in Illinois should pay for a purported "benefit" for customers in 15 other states—a benefit primarily for Utilities, Inc., not ACUC nor LWUC ratepayers.

Still further, the Intervenor argue that the new billing system has not properly worked in Illinois either because of the system itself or employees not being properly trained on how to use the systems. There is no indication that the new systems have improved the efficiency or accuracy of billing and customer service information to Illinois consumers according to the Intervenor. They maintain that the costs of the system should be excluded from rates as was done in Kentucky, when Utilities, Inc. attempted to include the same billing system costs in rates for the operating utility in that state.

In *Application of Water Service Corporation of Kentucky for an Adjustment of Rates, Case No. 2008-00563*, the Commission rejected the inclusion of any of the \$178,715 in costs associated with the billing system because the utility failed to conduct any studies or analysis as to the benefits to the ratepayers of a system the size of the Kentucky system (7,305 customers). *Application of Water Service Corporation of Kentucky for an Adjustment of Rates, Case No. 2008-00563 at 6, entered Nov. 9, 2009.* In these dockets, both ACUC and LWUC did not present any studies or analysis as to the benefits to the ratepayers for stems that are one-tenth or less than the system in Kentucky, so the logic of the Kentucky case is applicable here as well.

The Intervenor's final argument is that not only are the billing program and accounting systems not useful to ACUC and LWUC, but they are inordinately expensive for systems the size of ACUC and LWUC and the cost allocated on a per customer basis is far in excess of what other Utilities, Inc. customers have been allocated. ~~They maintain~~ Based on data in the record, Intervenor calculated that the monthly allocated costs per ACUC customer is \$4.76 and \$4.86 per LWUC customer. ~~The Intervenor note that according to Mr. Lubertozzi testified that,~~ the average Utilities, Inc. customer nationwide has been allocated costs for the billing and accounting systems that average \$1.50 per month per customer. ~~And~~ Intervenor state ~~thus~~ that by the utilities own admission, the amount allocated to ACUC and LWUC is imprudent and unreasonable since the ratepayers here are paying nearly \$3.50 per month more, or triple, what other Utilities, Inc. customers pay nationwide. Even if the Commission were to find that some costs for the billing and accounting systems should be included in rates, the amount included should not exceed the nationwide average of \$1.50 per customer per month.

The Intervenor ~~argue~~ calculated that with the elimination of the costs associated with the billing system ACUC's rate base is reduced by \$64,228 and ACUC's depreciation expense by \$9,178. LWUC's rate base would decrease by \$34,081, and LWUC's depreciation expense would decrease by \$4,870. Rejection of the costs associated with the JD Edwards accounting system from ACUC's and LWUC's rates reduces ACUC's rate base by \$129,168, ACUC's

depreciation expense by \$18,458, LWUC's rate base by \$68,540, and LWUC's depreciation expense by \$9,782.

\* \* \*

**d) Commission Analysis and Conclusions**

~~After our review of the record, we agree with Staff and the Companies' position. We find it is proper to include in rates allocated costs associated with the new customer billing and accounting programs. The Companies explained that the systems needed to be replaced and that they were assisted by a renowned consulting firm in developing the business case supporting the selection of the replacement systems. We also find that Apple Canyon and Lake Wildwood are not stand-alone companies, but are in fact part of a larger organization in which costs are spread over a larger customer base. Further, the Intervenor failed to present allocated costs calculation in testimony. Had the Intervenor done this, as Staff mentions above, the parties would have had the opportunity to conduct analysis and possibly produce a more representative allocated cost of the billing and accounting systems on the bills paid by the Companies' customers.~~

The Commission finds that ACUC and LWUC have not sustained their burden of proof that the new billing and accounting systems should be included in rates. Intervenor is correct that the burden to justify the cost of the systems is on the utilities. ACUC and LWUC provided no evidence that the cost of the systems is appropriate for such small utilities as ACUC and LWUC. For customers, the change in the billing system did not result in any efficiencies or changes in how they receive bills or how payments are processed. While Utilities, Inc. may benefit from a sophisticated accounting system, ACUC and LWUC have not met their burden to show that there are any benefits to the ratepayers. In addition, ACUC and LWUC's own witness testified that the billing and accounting systems cost per customer nationwide is \$1.50 per month, but the data in the record in these dockets show that ACUC and LWUC would charge customers over three times that amount. Therefore, the Commission disallows any recovery for the billing and accounting system in rates for ACUC and LWUC.

Proposed Substitute Language (Alternative B):

(Allowing costs associated with the billing and accounting systems up to \$1.50 per month.)

**2. Adjustment for the Billing and Accounting Systems**

**b) Intervenor's Position**

The Intervenor argue that both utilities are attempting to improperly include in rates allocated costs associated with a new customer billing program and a new accounting program. ~~They state~~ The utilities state that the development of a nationwide billing software system cost \$7,124,532 of which ACUC seeks to include \$64,228 in rates and LWUC seeks to include \$34,081. The new nationwide accounting software system cost \$14,328,103 of which Utilities,

*Inc. assigned \$129,168 to ACUC and \$68,540 to LWUC. ~~According to the Intervenor~~, During cross examination, Utilities, Inc. admitted it did not conduct any studies or analysis as to whether either of the systems is appropriate or useful for the Companies. The Companies witness testified that a cost for stand-alone billing and accounting systems for a utility the size of ACUC or LWUC would be different. ~~and~~ It is Intervenor's position that therefore it is inappropriate to include the costs for these systems in either ACUC's or LWUC's rates.*

*~~The Intervenor maintain~~ The record shows that both utilities are very small systems with LWUC having about 460 active customers who receive monthly bills for water consumption and 950 availability customers who receive a flat bill for the standby service. ACUC has about 890 active customers who receive bills quarterly and about 1,800 availability customers who receive a flat bill for the standby service. Based on these numbers, the Intervenor argue that the sophisticated billing and accounting systems were not designed for the Companies and are not necessary.*

*They argue that ACUC and LWUC's claimed benefits for the billing system are illusory to the ratepayers because they rarely pay their bills by walking into the bill payment centers located miles away from the service area and mail-in payments are handled no differently with the new system than they were before it was installed. They argue further that there is no reason why ratepayers in Illinois should pay for a purported "benefit" for customers in 15 other states—a benefit primarily for Utilities, Inc., not ACUC nor LWUC ratepayers.*

*Still further, the Intervenor argue that the new billing system has not properly worked in Illinois either because of the system itself or employees not being properly trained on how to use the systems. There is no indication that the new systems have improved the efficiency or accuracy of billing and customer service information to Illinois consumers according to the Intervenor. They maintain that the costs of the system should be excluded from rates as was done in Kentucky, when Utilities, Inc. attempted to include the same billing system costs in rates for the operating utility in that state.*

*In Application of Water Service Corporation of Kentucky for an Adjustment of Rates, Case No. 2008-00563, the Commission rejected the inclusion of any of the \$178,715 in costs associated with the billing system because the utility failed to conduct any studies or analysis as to the benefits to the ratepayers of a system the size of the Kentucky system (7,305 customers). Application of Water Service Corporation of Kentucky for an Adjustment of Rates, Case No. 2008-00563 at 6, entered Nov. 9, 2009. In these dockets, both ACUC and LWUC did not present any studies or analysis as to the benefits to the ratepayers for stems that are one-tenth or less than the system in Kentucky, so the logic of the Kentucky case is applicable here as well.*

*The Intervenor's final argument is that not only are the billing program and accounting systems not useful to ACUC and LWUC, but they are inordinately expensive for systems the size of ACUC and LWUC and the cost allocated on a per customer basis is far in excess of what other Utilities, Inc. customers have been allocated. ~~They maintain~~ Based on data in the record, Intervenor calculated that the monthly allocated costs per ACUC customer is \$4.76 and \$4.86 per LWUC customer. The Intervenor note that according to Mr. Lubertozi testified that, the average Utilities, Inc. customer nationwide has been allocated costs for the billing and accounting systems that average \$1.50 per month per customer. And Intervenor state thus that by the utilities own admission, the amount allocated to ACUC and LWUC is imprudent and unreasonable since the ratepayers here are paying nearly \$3.50 per month more, or triple, what*

other Utilities, Inc. customers pay nationwide. Even if the Commission were to find that some costs for the billing and accounting systems should be included in rates, the amount included should not exceed the nationwide average of \$1.50 per customer per month.

The Intervenor ~~argue~~ calculated that with the elimination of the costs associated with the billing system ACUC's rate base is reduced by \$64,228 and ACUC's depreciation expense by \$9,178. LWUC's rate base would decrease by \$34,081, and LWUC's depreciation expense would decrease by \$4,870. Rejection of the costs associated with the JD Edwards accounting system from ACUC's and LWUC's rates reduces ACUC's rate base by \$129,168, ACUC's depreciation expense by \$18,458, LWUC's rate base by \$68,540, and LWUC's depreciation expense by \$9,782.

\* \* \*

#### d) **Commission Analysis and Conclusions**

~~After our review of the record, we agree with Staff and the Companies' position. We find it is proper to include in rates allocated costs associated with the new customer billing and accounting programs. The Companies explained that the systems needed to be replaced and that they were assisted by a renowned consulting firm in developing the business case supporting the selection of the replacement systems. We also find that Apple Canyon and Lake Wildwood are not stand alone companies, but are in fact part of a larger organization in which costs are spread over a larger customer base. Further, the Intervenor failed to present allocated costs calculation in testimony. Had the Intervenor done this, as Staff mentions above, the parties would have had the opportunity to conduct analysis and possibly produce a more representative allocated cost of the billing and accounting systems on the bills paid by the Companies' customers.~~

The Commission finds that ACUC and LWUC have not sustained their burden of proof that Illinois ratepayers should pay three times the amount of the monthly cost that the companies testified is the national average for the new billing and accounting systems. Customers are "entitled to demand that no more be extracted than the service is reasonably worth," United Cities Gas Co. v. Illinois Commerce Comm'n, 163 Ill. 2d 1, 24 (1994). Since the utilities have set the worth of the services at \$1.50 per customer per month nationwide, this Commission will not demand that ACUC and LWUC ratepayers pay three times the worth of the systems in rates. Intervenor are correct that the burden to justify the cost of the systems is on the utilities. Therefore, the Commission disallows any recovery for the billing and accounting systems in rates for ACUC and LWU in excess of \$1.50 per month, per customer.

### **EXCEPTION NO. 3**

#### **THE ORDER ERRONEOUSLY EXCLUDES ANY DISCUSSION OF LWUC AND ACUC'S FAILURES TO PROPERLY INSPECT CRITICAL VALVES AND FAILS TO MAKE ANY MEANINGFUL ADJUSTMENT FOR THE HIGH LEVEL OF UNACCOUNTED FOR WATER.**

The levels of unaccounted for water (UFW) for both utilities is extremely high. ACUC's UFW for the second quarter 2009 was 62.7 percent. Tr. at 60/11-14. This is an increase from the first quarter when the UFW was 51.2 percent. Tr. at 59/20-60/1. This is double the 25 percent that ACUC's tariff permits for UFW. ACUC has been experiencing UFW in the 50 percent range or worse since 2008. Put in simple terms, ACUC must pump three gallons to deliver one gallon to customers. Tr. at 60/18022. The Order finds that a minor adjustment to ACUC's operating expenses "appropriately address[es] the excess unaccounted for water." Order at 19.

For LWUC, the UFW is 23.63 percent. The approved UFW level for LWUC is 15 percent, so LWUC still exceeds the level of UFW approved in its tariff.

The Order notes that the company argues that for ACUC these high levels of UFW are caused by the "rocky terrain." Order at 18. However, the terrain presumably was taken into account when the Commission set the acceptable level of UFW for ACUC at a relatively high 25 percent.

A minor adjustment does not motivate the utilities to aggressively seek out and correct deficiencies in its system to eliminate UFW. Instead, the Commission should adjust the utilities rate of return to the low end of the ICC Staff's identified range.

Proposed Substitute Language:

3. Adjustment for Unaccounted-for Water  
e) Commission Analysis and Conclusions

~~The Commission agrees with that the adjustments suggested by Staff and accepted by the Companies offer no real incentive to the utilities to reduce the amount of unaccounted for water. The adjustments limit the costs ratepayers bear for unaccounted for water to what the Commission has set forth as reasonable in each Company's tariffs. These adjustments appropriately address the excess unaccounted for water and the record in this docket contains no support for additional action that might be taken. The Commission believes that the high levels of unaccounted for water should be considered when determining the appropriate rate of return for the utilities.~~

**EXCEPTION NO. 4**

**THE COMPANIES' RATE OF RETURN SHOULD BE ADJUSTED TO THE LOW END OF THE ICC STAFF'S IDENTIFIED RANGE.**

The Order at 26-27 adopts the ICC Staff's recommended rate of return of 9.82 based on the average of its water and utility samples. The high end of the ICC Staff's range was 10.12 percent and the low was 9.41 percent. LWA/ACLPOA recommended that the rate of return be set at 9.41 percent—the low end of the range identified by ICC Staff because of the utilities inefficiencies and lack of proper management controls. The Order erroneously finds, because the intervenors “failed to provide a rate of return witness there is no evidence in the record that would support selection of a lower return.” This conclusion misplaces the burden of proof and does not accurately reflect the record.

If there is a requirement that there must be a rate of return witness before any rate of return can be adopted, then the utilities themselves failed to support any rate of return. It was not until the utilities' rebuttal that they attempted to provide a rate of return witness. However, that

witness's testimony was stricken and not offered. Thus, the utilities themselves have no rate of return witness.

LWA/ACLPOA, on the other hand, did provide evidence regarding the subpar management practices of LWUC and ACUC as manifested in several areas, including the high level of unaccounted for water for both utilities, the failure to properly inspect critical valves, and the unnecessary layers of management at Utilities, Inc. that are allocated to LWUC and ACUC.

The issue of the high level of unaccounted for water is discussed in Exception No. 3 above and will not be repeated here.

Both ACUC and LWUC have not followed the requirements for inspection of critical valves and hydrants under 83 Ill. Admin. Code 600.240, which states that valves and hydrants found to be inoperable shall be replaced and valve covers should not be paved over. In spite of this requirement, ACUC and LWUC's records show that in consecutive years, inspectors found critical valves paved over, valves that they were unable to turn, and valve boxes full of debris that were not cleaned out. ACLPOA/LWA Cross Ex. 2 and 3. Valves that were paved over in 2007 were still paved over when the 2008 inspection was made. ACLPOA/LWA Cross ex. 3 and Tr. at 50/2-51/5; 51/16-52/10; 52/11-17. Thus, not only were the valves paved over, which is a violation of the Commission's rule, but also no repairs were made, also a violation. Tr. at 55/6-8. For ACUC, the utility could not provide adequate documentation for the inspection of hydrants. ACLPOA/LWA Cross Ex. 4, Tr. at 57/8-10; 37/15-38/3, 58/19-21 and 58/22-59/2. These failures to properly inspect could exacerbate the problem of UFW.

Utilities, Inc., the parent of ACUC and LWUC, has multiple layers of management for construction oversight, yet there was no major construction at either ACUC or LWUC in the test year and none planned for the foreseeable future. For example, ACUC said “it was necessary” during the first two quarters of 2007 for Jon Schoenard “to spend all of his time in Apple Canyon due to the many capital improvement projects that occurred that year.” ICC Staff Ex. 8.0C Attachment A. However, ACUC witness Mr. Burris testified that the only capital improvement project for ACUC in 2007 was a new chemical storage building that was built by outside contractors. Burris Direct for ACUC at 9, Tables 2 and 3. Burris himself “was added in 2006 to accommodate the vast capital improvement expenditures of the company,” ICC Staff Ex. 8.0, Attachment C, even though there were no “vast capital improvement expenditures” for ACUC. Burris Direct for ACUC at 9, Tables 2 and 3. (Burris’ testimony was adopted by Carl Daniel at the hearing.) Another Utilities, Inc. employee was added to the payroll because “there was a need for an in-house person that could visit the many projects and insure that construction was being performed in accordance with company, State and Federal standards.” ICC Staff Ex. 8.0C, Attachment C. However, other than the storage building, no capital improvements programs were performed for either ACUC or LWUC and none are planned in the foreseeable future. Thus, these layers of management at Utilities, Inc., which are charged to ACUC and LWUC ratepayers, are not overseeing projects for the respective utilities. These costs should not be borne by ACUC and LWUC ratepayers.

Because ACUC and LWUC pay for needless overhead through the management provided under contract by Utilities, Inc., because proper inspections of critical valves have not been performed, and because the unaccounted for water has historically been and remains excessive,

an adjustment to the rate of return at the low end of the ICC Staff's range, i.e. 9.41 percent, is appropriate.

Proposed Substitute Language:

C. Cost of Common Equity

D. INTERVENORS' POSITION

Intervenors requested that the Companies' rate of return should be adjusted to the low end of Staff's identified rate of return range. Based upon Staff's recommended range, this would result in a rate of return of 9.41 percent.

The Intervenors' recommendation is based upon both ACUC's and LWUC's management failures in several areas. First, ACUC and LWUC have not complied with the requirements for inspection of crucial valves and hydrants under 83 Ill. Admin. Code 600.240. The record shows that both utilities failed to inspect critical valves and hydrants. The record contains numerous instances in consecutive years where inspectors found critical valves paved over, valves that they were unable to turn, and valve boxes full of debris that were not cleaned out. ACLPOA/LWA Cross Ex. 2 and 3. Valves paved over in 2007 were still paved over in 2008. For ACUC, the company could not provide adequate documentation for the inspection of hydrants. ACLPOA/LWA Cross Ex. 4, Tr. at 57/8-10; 37/15-38/3, 58/19-21 and 58/22-59/2.

The record also demonstrates that the companies' UFW has historically been high and remains high. Intervenors maintain that the adjustment proposed by Staff for UFW is insignificant and provides no incentive for the utilities to reduce UFW.

The record shows that Utilities, Inc. has maintained multiple layers of management with the announced purpose of overseeing major construction projects and have allocated these management layers to ACUC and LWUC. However, the record shows that neither ACUC nor LWUC had any major construction project in the 2008 test year and that no major construction programs are planned in the foreseeable future.

As a result of these deficiencies in management, Intervenors argue that an adjustment to Staff's rate of return to the lower end of the cited range is appropriate.

**E. Commission analysis and conclusions**

Staff witness Janis Freetly presented the overall cost of capital and recommended a fair rate of return on rate base for Apple Canyon and Lake Wildwood. (Staff Ex. 3.0 and 9.0). The Companies accepted Staff's 7.79% overall cost of capital recommendation. (ACUC-LWUC Ex. 6.0, p. 8).

The Intervenors argue demonstrated that the record in these dockets demonstrates shows significant management failures in following the Commission rules and regulations relating to inspection of critical valves, failing to reduce ~~and that when combined with~~ the high levels of

*UFW, and allocating multiple layers of construction management to the utilities when no major construction project has been performed in the test year or is planned for the foreseeable future. ~~this~~ These mismanagement practices and failures requires an adjustment in the return on equity to the low end of the range cited by the ICC Staff. They maintain that the return on equity should be reduced to 9.41%.*

*~~The Companies maintain that they and Staff have agreed on the rate of return recommended by the Staff witness and that because the Intervenors failed to provide a rate of return witness there is no evidence in the record that would support selection of a lower return based on what Intervenors perceive as operational deficiencies.~~*

*Having reviewed the record, the Commission finds that Apple Canyon and Lake Wildwood should be authorized to earn a rate of return of ~~7.79%~~ 7.61% on original cost rate base. The Companies did not contest Ms. Freetly's recommendations and the Intervenors failed to present evidence to support otherwise. The rate of return incorporates a return on common equity of ~~9.829,41%~~ as recommended by Intervenors and was derived as shown below:*

<b>Weighted Average Cost of Capital</b>				
<u>Source of Capital</u>	<u>Amount</u>	<u>Percentage</u>	<u>Cost</u>	<u>Weighted Cost</u>
Short-term Debt	22,380,391	6.24%	2.64%	0.16%
Long Term Debt	178,726,842	49.81%	6.65%	3.31%
Common Equity	157,737,014	43.96%	<u>9.829.41</u>	<u>4.3214%</u>
<b>Total</b>	<b>\$ 358,844,247</b>	<b>100.00%</b>		<b><u>7.797.61%</u></b>

**EXCEPTION NO. 5.**

**THE ORDER ERRONEOUSLY INCLUDES IN RATE CASE EXPENSES COSTS FOR A CONSULTANT WHOSE SPECIFIC SERVICES WERE UNDOCUMENTED AND UNDEFINED.**

The Order at 21 includes in rate case expenses the charges from SFIO Consulting, Inc., even though there is nothing in the record to indicate what SFIO did in the case or the hours spent thereon.

The PUA requires the Commission to “specifically assess the justness and reasonableness of any amount expended by a public utility to compensate attorneys or technical experts to prepare and litigate a general rate case filing. This issue shall be expressly addressed in the Commission’s final order.” 220 ILCS 5/9-229.

In including the costs for SFIO Consulting, the Order finds that the “Intervenors failed to convince this Commission that further adjustments were warranted based upon their arguments and the evidence that they presented in support thereof.” Order at 21. This is the sum and substance of the “specific” findings that the Order makes in response to 220 ILCS 5/9-229. The Order wrongly places the burden of proof on the intervenors to “convince” the Commission that the charges are inappropriate. The PUA requires that the burden of proof be placed on the utilities to show that their costs are just and reasonable. 220 ILCS 5/9-201. “Requiring intervenors to establish unreasonableness is therefore no substitute for requiring proof of reasonableness [by the utility].” *Hartigan*, 117 Ill. 2d at 135-136.

The ICC Staff recommended that the costs of SFIO Consulting be included in rate case expenses. The evidence lacks sufficient detail for this Commission to make a specific finding as to the justness and reasonableness of SFIO’s expenses. For example, in October 2009, SFIO billed \$3,000 for “split projects” for ACUC and LWUC’s rate cases. The only explanation for the \$3,000 was that it was for “services provided during the month of October 2009,” as a monthly retainer for November 2009 [sic]. There is no explanation as to what “services” were performed. The invoice includes additional charges for “Lunch (Burriss, Mayda, Williams and Fiorella) \$52.02” on an unspecified date with no topic listed and an additional charge “Mileage” of 344 miles with no date of travel or where the travel was to or from. ACLPOA/LWA Cross Ex. 6.

When ICC Staff witness Burma Jones, who recommended the inclusion of the SFIO charges, was asked what services SFIO performed, she responded:

A. Whatever it was they hired him for in this rate case.

Q. Did you do any analysis to determine what SFIO Consulting was hired to do?

A. I asked for a contract and did not receive one, so no, I did not.

Tr. at 148/16-149/1.

There is no record evidence of what services SFIO Consulting performed. The only evidence is that ACUC and LWUC were asked to provide their contracts with SFIO and the contracts were not produced. Under the PUA, the burden of proof is on the utility. Yet neither ACUC nor LWUC produced evidence of the services performed by SFIO. The statutory provision regarding rate case expenses is similar to the awarding of attorneys' fees in civil litigation where the party seeking the fees always bears the burden of presenting sufficient evidence from which the trial court can render a decision as to their reasonableness. *LaHood v. Couri*, 236 Ill. App. 3d 641, 648-49 (3rd Dist. 1992). As the court in *LaHood* noted:

An appropriate fee consists of reasonable charges for reasonable services [citation omitted] however, to justify a fee, more must be presented than a mere compilation of hours multiplied by a fixed hourly rate or bills issued to the client [citation omitted], since this type of data, without more, does not provide the court with sufficient information as to their reasonableness – a matter which cannot be determined on the basis of conjecture or on the opinion or conclusions of the attorney seeking the fees. [citation omitted] Rather, the petition for fees must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefore. [citation omitted]

*Id.* Where “entries are too vague and lacking in sufficient details concerning the nature of the work performed, the actual time spent on each task, . . . the relationship of the [] tasks to the

litigation, the necessity of the talks, and the complexity of the matters, such bills do not “sustain the burden of showing the reasonableness of the fees.” *Mercado v. Calumet Federal Savings and Loan Assn.*, 196 Ill. App. 3d 483, 494 (1st Dist. 1990).

Here, the utilities did not submit detailed bills showing SFIO’s hourly rate, the time spent, or the services performed or the relationship of the tasks performed to this rate case. Instead, the utilities merely submitted the bills issued to the client, which give no details and leave the Commission only conjecture as to what SFIO did. This fails to meet the burden of proof both under PUA Section 9-201 and the specific rate case provisions of PUA Section 5/9-229. The costs associated with SFIO should be excluded from rate case expenses.

Proposed Substitute Language:

4. Rate Case Expenses

d) Commission Analysis and Conclusions

~~We agree with Staff and the Companies position. Staff’s adjustments, which the Companies accepted, were proper and reasonable based upon the evidence in the record. The Intervenor’s failed to convince this Commission that further adjustments were warranted based upon their arguments and the evidence that they presented in support thereof.~~

PUA Section 9-229, 220 ILCS 5/9-229, requires the Commission to “specifically assess the justness and reasonableness” of rate case expenses. Billing statements from attorneys or consultants that merely state they are for “services provided” do not meet the burden of specificity imposed by the statute. When the ICC Staff requested a copy of SFIO Consulting’s contract with the utilities, neither LWUC or ACUC provided the contract, thus preventing the Staff from performing a proper analysis of what was done, the time expended, and how the work applied to these cases. Under the PUA, the burden of proof is upon the utility. LWUC and ACUC have not met their burden in this instance. Moreover, the expense reports of SFIO failed to provide the dates of the expenses or what was discussed at the lunches. For mileage reimbursement, the reports did not include such basic information as the location from and to for the travel. This does not give the Commission the ability to “specifically assess the justness and reasonableness” of the charges or the fees. Moreover, the Commission believes this inquiry is similar to the inquiry undertaken by courts when considering the level of attorneys’ fees. In those instances, the party seeking the fees has the burden of presenting sufficient evidence as to their reasonableness. *LaHood v. Couri*, 236 Ill. App. 3d 641, 648 (3rd Dist. 1992). Mere compilation of hours is not enough. The specified services performed, the time expended, and the rate are necessary. *Id.* The Commission disallows any recovery for the charges by SFIO

Consulting as part of rate case expenses. The Commission further finds that a five-year amortization for rate case expenses is appropriate.

## **EXCEPTION NO. 6**

### **CORRECTIONS TO UTILITY PLANT DISCUSSION**

The Order in its discussion on Adjustment to Utility Plant erroneously states that Intervenors requested adjustments to utility plant. This is not correct. Intervenors took no specific position regarding adjusting utility plant.

Proposed Substitute Language:

#### **2. Adjustment to Utility Plant – Pro Forma Plant Additions**

##### **b) Intervenors' Position**

*The Intervenors argue that capital additions have had almost no impact on overall utility expenses. In support thereof, they maintain that: (1) the capital additions were offset by the depreciation expenses that were in rates during the period when the new plant additions were installed; and (2) neither utility had any major capital projects in the test year nor does either utility plan any capital projects in the foreseeable future; and (3) there is no need for several layers of management to oversee major capital construction projects for these utilities, since none occurred in the test year and none are forecast. Intervenors made no specific recommendations as to adjustments to utility plant.*

\*\*\*

##### **C. Commission Analysis and Conclusions**

*Staff disallowed duplicative costs as not being known and measurable and made corresponding adjustments to accumulated depreciation, accumulated deferred income taxes and depreciation expense. The Companies accepted these adjustments. The Intervenors argue that ~~further adjustments are warranted as capital additions have had almost no impact on overall utility expenses. In our view, Intervenors adjustments are not supported by the evidence.~~ We find that Staff's adjustments which were accepted by the Companies are reasonable.*

## **EXCEPTION NO. 7**

### **CORRECTIONS FOR TYPOGRAPHICAL ERRORS AND OMISSIONS**

The Order contains several typographical errors that should be corrected. They are:

At Page 2, Staff witness Philip Rukosuev's name is misspelled.

At Page 3-4, the Order does not contain the percentage increases. In addition, the amounts for the typical monthly bills are wrong.

#### **Proposed Substitute Language:**

*Page 2:*

*The following witnesses testified on behalf of Staff: Philip ~~Rukosuev~~ Rukosuev, a Rates Analyst in the Rates Department of the Financial Analysis Division;*

*Page 3-4:*

*In this docket, Apple Canyon seeks an increase in its base rate revenue requirement by the amount of \$367,663 to recover the test year deficiency. The current monthly average consumption for 5/8" residential customers in Apple Canyon is approximately 1,767 gallons. This equates to a monthly bill of \$13.75. Based on an average consumption of 1,767 gallons per month, the customers' monthly bill will be \$45.93 or an increase of \$32.19 per month, or nearly 234 percent.*

*In this docket, Lake Wildwood seeks an increase in its base rate revenue requirement by the amount of \$273,589 to recover the test year deficiency. The current monthly average consumption for 5/8" residential customers in Lake Wildwood is approximately 2,200 gallons. This equates to a monthly bill of ~~\$11.57~~ \$18.30. Based on an average consumption of 2,200 gallons per month, the customers' monthly bill will be ~~\$65.47~~ \$65.07 or an increase of ~~\$53.90~~ \$46.76 per month, or nearly 256 percent.*

## **REQUEST FOR ORAL ARGUMENT**

Pursuant to 83 Ill. Admin. Code 200.850, LWA and ACLPOA request oral argument on each of the issues raised in this Brief on Exceptions as set out more fully in the preceding sections, including, but not limited to:

- The misapprehension of the law regarding public comments taken at the public forums.
- The erroneous inclusion of the costs of nationwide billing and accounting systems that do not benefit LWA and ACLPOA ratepayers.
- The erroneous inclusion in rate case expenses for consulting services that were not detailed nor explained.
- The erroneous awarding of a mid-range rate of return when the utilities have been unable to properly inspect their systems, have extraordinarily high unaccounted for water, and have maintained excessive staffing levels for construction programs that did not occur at LWUC or ACUC.

## **CONCLUSION**

LWU/ACLPOA request that the exceptions set forth herein be granted, that the language in the Order be modified as set forth in the proposed substitute language and that oral argument be granted as provided by statute.

Respectfully submitted,

\_\_\_/s/ *Richard C. Balough*\_\_\_

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**CERTIFICATE OF SERVICE**

I, Richard C. Balough, do hereby certify that a true and correct copy of the Brief on Exceptions on behalf of Lake Wildwood Association and Apple Canyon Lake Property Owners' Association has been served via electronic means on the eDocket service list on this 6th day of August 2010.

\_\_\_/s/ *Richard C. Balough*\_\_\_