

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Aqua Illinois, Inc. :
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: :
Proposed General Increase in Water Rates : 10-0194
For the Kankakee Water Division :
: :
(Tariffs filed February 1, 2010). :

STAFF REPLY BRIEF ON EXCEPTIONS

The Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, and pursuant to Section 200.830 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits its Reply Brief on Exceptions to the Briefs on Exceptions ("BOE") filed by the Illinois Attorney General (AG) in the above-captioned matter.

I. STAFF REPLY TO EXCEPTIONS

A. The Proposed Order Need Not Provide A More Detailed Discussion Of The Public Comments

The AG contends that the Proposed Order ("ALJPO") is required by Sections 8-306(n) (220 ILCS 5/8-306(n)) and 2-107 (220 ILCS 5/2-107) of the Act to provide more information regarding the public comments indicating that these comments were reviewed prior to the ALJs' preparation of the ALJPO. (AG BOE, at 1-2.) Although the AG acknowledges that the ALJPO references the public comments (*id.*), it argues that the reference is insufficient. The ALJPO states that:

On May 17, 2010 a local forum was held in Bourbonnais, Illinois. As indicated in the transcript of that forum, persons expressed opinions on the proposed rate increase.

ALJPO, at 1.

The AG's contention that the ALJPO must include a more detailed discussion of the public comments is unfounded and simply wrong. In fact, as the sections of the Act the AG cites for support of its position make clear, the ALJPO is not obligated to provide any discussion of the public comments. The public comments, however, must be "made available," "reviewed," and "reported" to the Commission. (220 ILCS 5/8-306(n); 220 ILCS 5/2-107.) The Act does not require discussion of the public comments.

Staff, nonetheless, commends the ALJs for the reference to the public comments contained in the ALJPO and quoted above. This reference, although not technically required, makes it perfectly clear that the ALJPO fully complies with Section 8-306(n), which is the only section applicable to the preparation of an ALJPO. It clearly indicates that the public comments were made available to, and reviewed by, the ALJs prior to the preparation of the ALJPO. (*See also, ALJ Memo to the Commission, Apple Canyon Utility Co. and Lake Wildwood Utilities Corp., Proposed General Increase in Water Rates, ICC Docket Nos. 09-0548/0549 (Cons.), (July 8, 2010), (which concluded that "There is the record for decision, which must consist solely of evidence. And there is the public commentary record, which must be made available and reviewed."*) Nothing more is needed.

B. The Record Evidence Supports The ALJPO's Conclusion On Miscellaneous Expenses

The AG takes exception to the ALJPO and argues the Commission should further reduce Aqua's miscellaneous expense. Staff recommends against this. A more thorough review of the evidence shows that the picture painted by the AG is incomplete.

First, it must be noted that the AG presented no expert witness of its own to sponsor the adjustment the AG proposed in its brief. To the extent the record has any evidence to support the AG's adjustment; it is cobbled together from a very selective cross-examination of Staff and Company witnesses. Thus, no witness was available that Staff or the Company could rebut or cross-examine regarding the AG's theory and representation of the facts.

Second, the AG criticizes the Company for not responding to an argument the AG did not raise until the hearing. The AG argues that "given the lack of any evidence about why this expense should have increased by such a large amount from 2009 and 2010 levels to the test year, the Commission should reject the expense proffered by the Company as unreasonable and not supported by substantial evidence." (AG BOE, at 7.) The argument that the Company did not respond to an argument not raised is inherently flawed.

Third, the evidence shows that the 2011 amount the Company proposes for Miscellaneous Expense is not the radical departure from the past that the AG paints it to be. The AG notes that the \$729,881 amount proposed by the Company is 18.28% higher than the projected 2010 Miscellaneous Expense and 36.85% higher than the last actual Miscellaneous Expense in 2009.¹ (AG BOE, at 5.) The AG, however, fails to note that the Company's proposed \$729,881 amount for 2011 is lower than the actual \$750,209 amount for 2008. (Aqua Schedule C-4, pages 3-4, line 18.)

¹ The AG states that the 2009 costs are actual; however, 2009 costs reported by Aqua are a blend of actual and forecast costs for the 2009 year. Complete 2009 actual costs are not part of the record. The latest complete actual Miscellaneous Expense amounts in the record are for 2008, in the amount of \$750,209. (AG Cross Ex. 5.)

According to the Company's Schedule C-4, the total amounts of Miscellaneous Expense for each of the years 2006-2011 are the following:

2006 - \$617,237
2007 - \$463,129
2008 - \$750,209
2009 - \$533,333
2010 - \$596,433
2011 - \$729,881

The \$561,228 amount proposed by the AG is lower than the amount for 4 of the 6 years presented. (AG BOE, at 7.) Thus, it is not clear how the AG's amount better represents the test year than does the amount proposed by Staff's expert witness Mr. Bridal.

Had the AG raised this issue in evidence presented by an expert witness in direct testimony, it could have been fully addressed by the parties in this proceeding. However, for whatever reasons, the AG chose not to offer expert witness testimony that could have been responded to and/or crossed at hearing. Consequently, the record does not support the AG's argument or proposed adjustment.

C. The Record Evidence Supports The ALJPO's Conclusion On The Cost Of Common Equity

The AG argues that the return on common equity (ROE) contained in the Stipulation is unsupported by the record evidence. (AG BOE, at 10.) The AG, however, is wrong. The record evidence fully supports the stipulated ROE of 10.03%, which is based on 1/3 weighting of Staff's Water Sample and a 2/3's weighting of Staff's Utility Sample. As Staff explained in its Initial Brief, "[t]he 10.03% ROE is fair because smaller samples are prone to more error and are less reliable." (See *also* Staff Ex. 8.0 (Kight-

Garlisch Reb.), at 5 (“Mr. Walker is correct that smaller samples are prone to more measurement error.”); Staff IB, at 10-11.)

Consequently, since Staff witness Ms. Kight-Garlisch’s Water Sample consisted of only five companies, Staff concluded that it is prone to more measurement error than her Utility Sample. (Staff IB, at 11.) Staff further explained that due to the increased error associated with small samples and to reduce litigated issues in this case, Staff and the Company agreed to a cost of common equity of 10.03%, based on greater weight given to the Utility Sample. (*Id.*) In sum, the AG’s assertions that the stipulated to ROE is not supported by the record are clearly wrong and should be summarily dismissed.

The AG also compares Aqua Illinois’s embedded cost of debt to that of Aqua Illinois’s parent, Aqua America. (AG BOE, at 12.) However, the AG is not contesting Aqua Illinois’s embedded cost of debt in this case. Consequently, the AG’s purpose here is unclear. Nonetheless, the Commission should be wary about comparing the two embedded costs of debt as the AG does, since the embedded costs of debt for each company consists of numerous issuances with different issue dates² and original terms to maturity, information we do not even have for Aqua America. (AG Cross Ex. 1.) In addition, it is unclear from the information in the record if the cost of debt reported for Aqua America includes losses and gains on reacquired debt, which is included in the cost of debt for Aqua Illinois. (AG Cross Ex. 1.) In short, the AG’s argument is intrinsically meaningless due to a lack of the relevant information needed to make a meaningful, apples-to-apples, comparison and should thus be given no consideration.

² For example, in 1988 Aqua issued 30-year debt with an interest rate of 10.4%. In contrast, in 2007 Aqua issued 30-year debt with a 4.95% interest rate. (Staff Ex. 3.0, Schedule 3.03.)

II. CONCLUSION

For all the reasons set forth herein, Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in this proceeding.

Respectfully submitted,

/s/ _____
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