

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Great Northern Utilities, Inc.	:	
	:	11-0059
Proposed General Increase in Water Rates	:	
	:	
Camelot Utilities, Inc.	:	
	:	11-0141
Proposed General Increase in Water and Sewer rates	:	
	:	
Lake Holiday Utilities Corporation	:	
	:	11-0142
Proposed General Increase in Water Rates	:	(Cons.)

**REPLY BRIEF ON EXCEPTIONS OF THE STAFF  
OF THE ILLINOIS COMMERCE COMMISSION**

Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.830 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits its Reply Brief on Exceptions in the instant proceeding.

**I. Introduction**

On September 28, 2011, Staff, the Great Northern Utilities, Inc. (“Great Northern”), Camelot Utilities, Inc. (“Camelot”), and Lake Holiday Utilities Corporation (“Lake Holiday”) (collectively, “Utilities, Inc.” or “the Companies”); Camelot Homeowner’s Association (the “Association”); and the People of the State of Illinois (“AG”) filed Briefs on Exceptions (“BOEs”). Staff has previously addressed in testimony and/or briefs most issues raised in the parties’ respective BOEs. Staff will not rehash responses that it has already made. Staff, however, does not concede an issue it does

not respond to in this RBOE but is instead relying upon positions that Staff has already made in prior filings. There are two new issues raised in the parties' BOEs. Staff addresses these issues below.

## **II. Requests For Oral Argument**

Both the Association and the AG request that oral argument be heard by the Commission. (Association BOE, p. 1; AG BOE, p. 2.) Both the Association and the AG provide reasons for the *need* for an oral argument but neither party identifies *any* issues for oral argument. The Association's BOE almost identifies issues it wants to address in an oral argument in front of the Commission. Association BOE, at 1 ("The [Association] respectfully requests oral argument in the above matter in the above matter to present important issues to the Commission *pertaining to*: rate shock and gradualism, the detrimental effect of the exorbitant proposed rate increases on Camelot's residents, water quality, the party bearing the burden of proof, laches and the Commission's equitable powers, and *other* contested issues relating to rate base and expenses")(emphasis added). Beyond being inappropriately vague, some of what the Association almost identifies as issues are actually non-issues that would be a waste of everyone's time.

For instance, there is no question that the utility bears the burden of proof when it requests a rate increase. Also, the controlling case law is clear that the Commission, as a creature of statute, only has those equitable powers provided them by the Illinois General Assembly. Further, both the Association's (laches) and the AG's (promissory estoppel) equitable arguments assume that there is some kind of protectable interest in the continuation of a favorable rate. Obviously, such is not the case for, among other

reasons, a utility may seek a rate increase at a time of its choice. See Staff RB, 5-8. Finally, the fact that the word “Equity” is used in a prefatory provision of the Public Utilities Act (“PUA”) (see Association BOE, at 5-6) and in an entirely different context has absolutely no bearing on the issue of whether the Commission has the authority to grant equitable relief not provided for in the PUA. These almost alleged issues are non-issues from the get go.

Like the Association, the AG’s request for oral argument fails to properly identify which issues it is requesting argument on in front of the Commission. In support of its request for oral argument, the AG states that it wants “oral argument to present the issues associated with this increase to the Commission. The size of the increase, the burden on consumers, and the numerous contested issues all demonstrate the need for the Commission to hear directly from the parties.” AG BOE, at 2. Again, although the AG provides reasons for the *need* for an oral argument, the AG fails to identify *any* issues for oral argument. An undefined, even unidentified, argument on all issues or even issues not previously addressed in the record is untenable, unwieldy and should be rejected. In light of the failure to identify “any” issues, Staff recommends that the issues to be addressed on oral argument be limited and identified by the Commission.

### **III. Allocation Factors**

The AG takes issue with the Proposed Order’s acceptance of Staff’s adjustment to update the operating expenses allocated to Camelot and Lake Holiday (which resulted from corrections to the Companies’ ERC allocation factors). The AG claims that the bases for the initial allocation and for the change are not adequately explained. AG BOE, p. 4. The AG, moreover, mischaracterizes the Staff witness’s testimony

regarding rate case expense, twisting that testimony in furtherance of its unsupported argument about allocation factors. AG BOE, pp. 4-5. The AG argument should be dismissed, and the conclusions reached on this issue in the Proposed Order should be affirmed.

It is undisputed that the allocation method utilized by the Companies in their initial filings in the immediate dockets was approved by the Commission in a previous docket [ICC Docket No. 08-0335]. Tr., pp. 245-246, July 14, 2011. It is also undisputed that the allocation factors used by the Companies to allocate operating expenses in their original filings represented amounts for 2008, while all other data in the filings related to the 2009 test year. Tr., p. 223, July 14, 2011. The bases for the initial allocation and for the change are thus supported in the record. Staff's adjustment (set forth in ICC Staff Ex. 2.0, Sched. 2.01) updated 2009 test year operating expenses for the effects of applying 2009 allocation factors in lieu of the outdated 2008 allocation factors utilized in the Companies' original filings. It is clearly inappropriate to use outdated 2008 allocation factors to allocate 2009 test year operating expenses when the 2009 allocation factors are readily available. Using such outdated 2008 allocation factors would have the effect of incorrectly allocating 2009 operating expenses. Oddly, that is exactly what the AG suggests the Commission do here – use outdated allocation factors that are not representative of the test year.

Further, and contrary to the AG inference, the Staff testimony cited by the AG in its BOE (Staff Ex. 11.0 at 4 and 6) does *not* address the general allocation of test year operating expenses. The referenced Staff testimony pertains to the process used to develop rate case expense and other “cap time” cost categories, and how the

Companies received direct assignment of salary costs for those “cap time” categories – not the general allocation of operating expense via allocation factors. While Staff expressed concerns regarding the process by which the Companies developed amounts for Rate Case Expense and other “cap time” categories, specifically regarding how salary amounts were directly assigned, there were no concerns regarding the Companies’ application of allocation factors in determination of general operating expenses.

The Commission should dismiss the AG argument. The Proposed Order’s conclusion to accept Staff’s adjustment to update operating expenses for the impact of the allocation factor correction should be affirmed.

#### **IV. Conclusion**

For the reasons set forth above, Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations in its BOE, that the Company's proposed tariff changes be modified in accordance with Staff's recommendations, and that the Commission limit and identify the issues to be addressed on oral argument.

Respectfully submitted,

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