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 on Rehearing
Proposed General Increase in Water Rates	:	(Cons.)

BRIEF ON EXCEPTIONS ON REHEARING OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

JESSICA L. CARDONI
MICHAEL J. LANNON
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle, Ste. C-800
Chicago, IL 60601
Phone: (312) 793-3305
(312) 814-4368
Fax: (312) 793-1556
E-mail: jcardoni@icc.illinois.gov
mlannon@icc.illinois.gov

Counsel for the Staff of the

Illinois Commerce Commission

April 23, 2012

Table of Contents

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.)

BRIEF ON EXCEPTIONS ON REHEARING OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission" or "ICC") Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Brief on Exceptions on Rehearing in the instant proceeding.

I. BACKGROUND

On December 22, 2010,[1] Great Northern Utilities, Inc. ("Great Northern" or "GNUI"), Camelot Utilities, Inc. ("Camelot" or "CUI"), and Lake Holiday Utilities Corporation ("Lake Holiday" or "LH") (collectively, "UI," "Utilities, Inc." or "the

[1] Camelot and Lake Holiday filed on December 30, 2010.

Companies") filed tariffs seeking a general increase in water and sewer rates.[2] On January 20, 2011 and February 9, 2011, the Commission entered Suspension Orders commencing the investigation concerning the propriety of the Companies' request for rate increases and on May 18, 2011 entered a Resuspension Order extending the suspension through November 29, 2011. At a status hearing on March 10, 2011, the Administrative Law Judge ("ALJ") assigned to this proceeding granted Staff's request to consolidate the three dockets.

Camelot Homeowner's Association intervened on March 16, 2011, and various customers residing in the Camelot service territory filed Direct and Rebuttal Testimony. The People of the State of Illinois ("AG") intervened on June 9, 2011 and filed Rebuttal Testimony.

The Commission issued a Final Order in the Docket on November 8, 2011, and Camelot and the AG Petitioned for Rehearing on the issue of rate shock. The Commission granted the Intervenors' Petitions for Rehearing on the Mitigation of Rate Shock Issue on December 21, 2011. The parties filed direct testimony on February 10, 2012, and rebuttal testimony on February 23, 2012. An evidentiary hearing was held on February 29, 2012. Mr. Philip Rukosuev testified for Staff, Mr. Michael Brosch testified for the AG, and Mr. Dimitry Neyzelman testified on behalf of the Companies. On March 16, 2012, the Companies, Staff, the Association, and the AG filed Initial Briefs ("IB"), and on March 30, 2012, the parties filed Reply Briefs ("RB").

[2] Great Northern and Lake Holiday sought only increases in water rates, not sewer.

On April 13, 2012, the ALJ issued a proposed order ("ALJPO"). Staff commends the ALJ on a concise, well-written ALJPO. Nevertheless, Staff takes exception to three sections of the ALJPO and offers replacement language for the ALJ's consideration.

II. ARGUMENT

Exception 1: Phase-In Plans

II. Phase-In Plans

E. Commission Analysis and Conclusion

Staff takes exception to the ALJPO's recommendation that a phase-in plan be adopted in this case. While Staff is mindful of the size of the increases approved in this docket, there are too many problems with the phase-in rate mitigation approach. Staff's primary concern is that the ALJPO did not appropriately consider the impact of a potential revenue shortfall on the Companies' ability to provide utility services in a safe, adequate and reliable manner. Staff acknowledges that the increases are not small and economic conditions are difficult, but nevertheless maintains that the Commission should not deny or postpone a rate increase because the resulting rates are deemed "too high" by one or more parties. In fact, in Docket Nos. 11-0561/66 (Cons.), the ALJPO rejected a similar phase-in plan proposed by the AG stating that "[t]here is no legal basis for the Commission to delay this rate increase that reflects the cost of providing utility services." (ALJPO, Docket Nos. 11-0561/66 (Cons.), April 6, 2012, p. 32) Therefore, Staff respectfully recommends that the ALJPO be modified to reject a phase-in plan approach in this proceeding. Instead, the ALJPO should support the rates proposed by Staff and agreed to by the Companies, which have been found to be necessary for the Companies to recover the costs incurred in meeting its immediate public utility service obligations.

Therefore, Staff recommends the following change to pages 9-10 of the ALJPO:

> ~~The Commission finds that a rate phase-in plan is necessary to address the potential rate shock that Great Northern and Camelot customers may be experiencing due to the increases approved in the Final Order. Unlike the initial proceeding, on rehearing both the AG and Staff provided rate phase-in plans designed to address rate shock. The evidence in the record demonstrates that a rate phase-in plan is the only appropriate rate mitigation tool that can be utilized in this proceeding to address potential rate shock.~~
>
> ~~Accordingly, the Commission also finds that the phase-in plan proposed by Staff, Rider BSA, is reasonable, supported by the evidence, and should be adopted. Staff's proposed plan properly balances the interests of the ratepayers and the Companies. That plan will gradually increase rates over a relatively short time period to give customers time to adjust their budgets and usage, and it will also compensate the Companies with a reasonable carrying charge for the time value of money during the deferral period. The Commission believes this plan will not violate the Commission's policy of implementing cost based rates since it will fully account for the entire revenue requirement approved in the Final Order and assure that the deferred revenue is recovered with interest. Moreover, the Commission finds that this plan will not deny the Companies an opportunity to recover their costs of providing service but rather will defer recovery of a portion of their costs for a relatively brief period and ultimately allow the Companies to recover the deferred costs in a timely manner. This plan will provide immediate mitigation of potential rate shock utilizing higher rate caps and a shorter phase-in period than the AG's proposed plan, which will result in lower deferrals over the phase-in period, thereby causing less financial stress on customers when the plan ends and allowing the Companies to recover the deferred costs in a more timely manner. In summary, the Commission finds that Staff's proposed phase-in plan is the best option in the record and it is hereby adopted.~~
>
> While the Commission is mindful of the size of the increases approved in this docket, there are significant problems to a phase-in plan. First, the Companies depend on the approved rates to meet all its financial obligations to provide safe, adequate and reliable service. If the new rates

cannot be fully collected, the Companies would be faced with immediate decisions about matters such as where to cut back on system repairs, maintenance, replacements and upgrades needed to maintain service quality and minimize interruptions. Such measures will cause service degradation and likely increase the costs of bringing the system back to an adequate level at a later time. Second, phased-in rates by its nature are below the cost of service and below-cost rates encourage inefficient consumption of water and sewer service. The Commission acknowledges that the increases are not small and economic conditions are difficult. However, the Commission cannot deny or postpone a rate increase because the resulting rates are deemed "too high" by one or more parties.

A utility is entitled under the Act to recover its cost of providing utility service and earn a fair rate of return on assets used to provide such service. The record evidence supports the Companies' and Staff's position that the Companies' cannot recover its costs of service under its current rates. The rates proposed by Staff and agreed to by the Companies are necessary for the Companies to recover the costs incurred in meeting its public utility service obligations. Based on the Commission's review of the record, both the Companies and Staff considered the financial impact of the rates and made significant efforts to establish as low as possible rates. The Commission, therefore, will not delay this rate increase that reflects the cost of providing utility services.

Exception 2: Voluntary or Mandatory Participation

V. Voluntary or Mandatory Participation in Phase-in Plan

E. Commission Analysis and Conclusion

Staff disagrees with the ALJPO's decision to oppose the recommendation by Staff, the Companies and even the Association that any phase-in plan adopted should be voluntary. While Staff and the Companies support an opt-in approach in contrast to the opt-out recommendation by the Association, the program must be voluntary to permit those who have the funds to decline participation in a phase-in plan in order to pay the current rate increases upfront and avoid paying deferral costs to the Companies.

It appears that the ALJPO's decision to adopt a mandatory plan was affected by the erroneous conclusion that the Companies':

> [The] new billing system is capable of handling a phase-in plan that applies universally to all of the Companies' customers, and it is very likely that a phase-in plan will have high participation given the magnitude of the approved rate increases. (ALJPO, p. 18, emphasis added)

During evidentiary hearings on rehearing, however, UI witness Dmitry Neyzelman stated that Project Phoenix (the "new billing system" or "system") is *not* capable of handling apparently *any* (universal or voluntary) type of a phase-in plan.

> **Q**: And that new billing software gives Utilities, Inc., and these companies in particular enhanced billing capabilities; is that correct?
> **A**: That is correct.
> **Q**: Enhanced tracking capabilities?
> **A**: That is correct.
> **Q**: And so those enhanced capabilities can be utilized in connection with the phase-in; is that right?
> **A**: The billing system the way that it was built, my understanding is that it's not able to perform the functions related to a phase-in program, one that was discussed in this rehearing.
>
> (*Tr.*, February 29, 2012, p. 22)

Due to the fact that the new billing system will have to be modified to handle either type of a phase-in plan, there is simply no advantage to force customers to participate when it is equally possible to alter the system to handle voluntary participation. In sum, mandatory participation curtails the rights of those customers who do not want to be forced to pay interest in future years on a phase-in plan. Therefore, if the Commission adopts the PO's position to adopt a phase-in plan, Staff recommends the following change to pages 18-19 of the ALJPO:

> The Commission finds that ~~The Commission declines to adopt~~ the recommendation by Staff and the Companies that any phase-in plan adopted should be voluntary is accepted. The Commission finds that a phase-in plan that applies ~~universally to all customers in the affected areas~~ only to customers who opt into the program is the best option based on the evidence in the record. ~~A non-elective phase-in plan is most appropriate in this proceeding because the rate increases approved in the Final Order include the Companies' recovery of costs associated with an initiative to enhance their billing system capabilities, this new billing system is capable of handling a phase-in plan that applies universally to all of the Companies' customers, and it is very likely that a phase-in plan will have high participation given the magnitude of the approved rate increases.~~ The opt-in feature gives customers a choice, allowing them to decide for themselves how best to manage their utility costs. Furthermore, customers will be able to terminate their participation in the plan voluntarily, with the balance of deferral amounts due immediately. For these reasons, the Commission believes that under these circumstances, the approved phase-in plan should apply ~~universally~~ on a voluntary, opt-in basis. ~~to all of the Companies' customers and the voluntary feature should not be adopted.~~

Exception 3: Future Proceedings

VI. Addressing Mitigation in Future Proceedings

E. Commission Analysis and Conclusion

While Staff does not object to the ALJPO's proposal to initiate informal workshops to address potential consolidation of various UI operating companies to be followed by a formal investigation to be initiated by the Commission if Staff deems there is no progress made in the informal workshop process within 12 months, it notes three concerns.

First, a 12-month period for the informal workshop appears to be too long. Staff instead proposes a maximum of 6 months. At the conclusion of the 6 month workshop process, Staff recommends that it be directed to present a recommendation to the Commission as to whether a formal proceeding should be instituted. Staff believes that it will be evident rather quickly whether the Companies will timely assess all relevant developments and are willing to cooperate in any future consolidation decision.

Second, if an informal process successfully determines the appropriate consolidation of UI's operations and rates, it is not clear what reporting requirements are expected. Staff recommends that the Commission direct that the results of such an informal workshop be memorialized into a Final Report to be submitted to the Commission jointly by Staff, Companies and Intervenors.

Finally, while the ALJPO established that Staff's proposal to include consideration of a usage tier structure rate design changes to be reasonable, the ALJPO did not recognize how such a proposal relates directly to consolidation of UI's operations. In the course of the proceeding on rehearing, Staff agreed with AG witness Rubin's recommendation that:

> [T]he Commission initiate an investigation into UI's Illinois operations, including all operating companies, to determine whether other rate mitigation options, including <u>rate or revenue consolidation</u>, would be achievable and in the public interest, and
>
> [T]he Commission direct UI to prepare and file a <u>cost of service study</u> for its entire Illinois operation <u>for review and use in the investigation</u>.
>
> (AG Exhibit 3.0, p. 4)(emphasis added)

Therefore, Staff recommends that the scope of the informal consolidation workshop should include topics such as rate design changes (i.e., usage tier structure changes). Staff further recommends that the Commission encourage the parties to review all aspects of rate design during the workshop process.

Accordingly, Staff recommends the following change to page 21 of the ALJPO:

> The Commission understands that the Companies are willing to consider the possibility of consolidating certain Illinois operations in the future. Rather than order a formal investigation and requiring the parties to incur the associated costs, the Commission believes it would be better to direct the parties to work together informally to consider the potential benefits of consolidation. Only after a decision is made regarding the appropriate extent of consolidation does the Commission believe it would be appropriate to undertake a COSS for the consolidated operations. The Commission remains concerned about the number and magnitude of UI's recent rate increase requests. As a result, in the event that Staff decides that the informal workshop is not making adequate progress toward determining the appropriate consolidation of UI's operations within the next ~~12~~ 6 months from the date of this Order, the Commission directs Staff to prepare an order that would allow the Commission to initiate a formal investigation regarding consolidation. If, on the other hand, the informal workshop process makes adequate progress toward determining the appropriate process towards consolidation of UI's operations and rates, then the information obtained by this informal workshop process shall promptly be memorialized into a Final Report to be submitted to the Commission jointly by Staff and the Companies.
>
> Additionally, ~~while~~ the Commission finds Staff's proposal to include consideration of a usage tier structure rate design to be reasonable~~, it is not clear how, if at all, such a rate structure relates directly to consolidation of UI's operations~~. The Commission is more than willing to consider a tiered usage rate structure in future rate cases.~~; however, given that the~~ Therefore, the Commission believes that ~~has concluded that a formal investigation is not necessary, it declines to adopt~~ this additional recommendation by Staff should be considered during the workshop process.

Staff Exception 4: Findings and Orderings Paragraphs

The ALJPO orders tariff sheets to be filed by the Companies within ten business days of the Final Order and Staff's corrections to be completed within five business days. (ALJPO, p. 22) In light of the fact that the ALJPO approves a modification of Rider BSA, an approved tariff from another Company which Utilities, Inc. did not offer in this docket, Staff requests additional time to review the filing to ensure it comports fully with the Final Order. Therefore, Staff recommends the following changes to the ALJPO:

> (6) the new tariff sheets authorized to be filed by this Order should be filed within <u>30</u> ~~ten~~ business days of service of this Order and should reflect an effective date of not less than <u>15</u> ~~five~~ days after the filing, with tariff sheets to be corrected, if necessary, within that time period.

III. CONCLUSION

For the reasons set forth above, Staff respectfully requests that the ALJ's Proposed Order in the instant proceeding be modified to reflect Staff's recommendations above.

Respectfully submitted,

____

JESSICA L. CARDONI
MICHAEL J. LANNON

Counsel for the Staff of the Illinois
Commerce Commission

April 23, 2012

JESSICA L. CARDONI
MICHAEL J. LANNON
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle, Ste. C-800
Chicago, IL 60601
Phone: (312) 793-3305
(312) 814-4368
Fax: (312) 793-1556
E-mail: jcardoni@icc.illinois.gov
mlannon@icc.illinois.gov