

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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| Charmar Water Company) | 11-0561 |
| Proposed General Increase in Water Rates) | |
|) | |
| Cherry Hill Water Company) | 11-0562 |
| Proposed General Increase in Water Rates) | |
|) | |
| Clarendon Water Company) | 11-0563 |
| Proposed General Increase in Water Rates) | |
|) | |
| Killarney Water Company) | 11-0564 |
| Proposed General Increase in Water Rates) | |
|) | |
| Ferson Creek Utilities Company) | 11-0565 |
| Proposed General Increase in Water And) | |
| Sewer Rates) | |
|) | |
| Harbor Ridge Utilities, Inc.) | 11-0566 |
| Proposed General Increase in Water And) | |
| Sewer Rates) | (Cons.) |

**STAFF REPLY TO THE AG’S OPPOSITION TO THE STAFF MOTION TO STRIKE
PORTIONS OF THE AG’S BRIEF ON EXCEPTIONS**

NOW COME the Staff witnesses of the Illinois Commerce Commission (“Staff”), through its undersigned counsel, and pursuant to 83 Ill. Adm. Code 200.190, files this Reply to the Opposition (“Opposition”) of the People of the State of Illinois (“AG”) to the Staff Motion To Strike Portions of the AG’s Brief on Exceptions (“Motion”).

In its Motion, Staff noted that the AG took exception to the Administrative Law Judges Proposed Order’s (“PO”) lack of discussion of public comments. AG BOE, at 33. Staff has no objection to the exception itself because it does not quote the public comments. However, in its replacement language found in both the AG’s BOE and in

Attachment 1, the AG inappropriately quotes the public comments extensively just as it did in the AG's IB.

As Staff has stated repeatedly, and the ALJ has previously ruled, the specifics of these public comments are neither competent evidence nor a cognizable part of the record for decision. The AG, by quoting these public comments in its BOE, attempts to inappropriately bring such comments into the record for decision.

In its Opposition to Staff's Motion, the AG contemptuously concludes that: "It is for the Commission – not the ALJ – to rule on this issue now." AG Opposition, at 1. The AG, of course, is simply wrong. Ironically, on the one hand, the AG argues that the public comments are evidence. On the other hand, the AG apparently argues that the ALJ's prior Ruling Of March 20, 2012, granting Staff's Motion to Strike was not a ruling on evidence but, rather, a substantive finding and conclusion of law that the ALJ should have made in the PO. This assertion, albeit creative, interprets the Commission's Rules of Practice in an entirely topsy-turvy manner. The PO simply did not address public comments. Yet the AG insists that it properly raised the public comments issue and re-inserted the verbatim quotes of the public comments in its BOE.

The AG acknowledges that it did not seek an interlocutory review of the ALJ's Ruling Of March 20, 2012, because it "reasonably waited" to see if the PO would quote the public comments, even though the ALJ had stricken them from the AG's IB because they were not a part of the record for decision. If this assertion is accurate, there was nothing "reasonable" about the AG's wait; it would have foolishly waited in a fog of delusion. The ALJ never rescinded its Ruling of March 20, which of course remains the

law of the case. The AG's quixotic quest pursuing its public comments issue becomes ever more futile as time passes.

Conclusion

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully request that the quoted public comments be struck from the AG's BOE and that any such other further relief as is found to be equitable be granted.

Respectfully submitted,

MICHAEL J. LANNON
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