

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Aqua Illinois, Inc.	:	
	:	Docket No. 11-0436
Proposed general increase in water and sewer rates.	:	

INITIAL BRIEF ON REHEARING
OF AQUA ILLINOIS, INC.

Dated: June 22, 2012

TABLE OF CONTENTS

Section	Page
I. INTRODUCTION	1
II. FACTUAL BACKGROUND.....	1
III. AQUA’S POSITION	2
A. Any Changes to Aqua’s Large General Service Rate Must Ensure Aqua has the Opportunity to Recover its Commission-Approved Revenue Requirement.....	2
B. Any Modifications to the Large General Service Rate Should Recognize the Benefits of Maintaining Viscofan on Aqua’s System.....	3
C. The AG’s Proposal that Aqua Renegotiate its Contract with Viscofan is Outside the Scope of Rehearing	4
D. The AG’s Proposal that Aqua’s Tariff be Modified to Address Standby Charges is Moot.....	5
IV. CONCLUSION.....	5

INITIAL BRIEF ON REHEARING OF AQUA ILLINOIS, INC.

Aqua Illinois, Inc. (“Aqua”) hereby files with the Illinois Commerce Commission (“Commission”) its Initial Brief on Rehearing in accordance with the Administrative Law Judge’s (“ALJ”) established schedule.

I. INTRODUCTION

On April 4, 2012 the Commission granted Viscofan USA’s (“Viscofan”) Petition for Rehearing (“Petition”) requesting the Commission reconsider its “decision to adopt Staff’s proposed increase of 20% to the Large General Service Rate.” Petition at 1. In evaluating this issue, the Commission should consider the following: (1) Any changes to Aqua Illinois’ Large General Service rate must ensure that Aqua maintains the opportunity to earn its Commission-approved revenue requirement, which is not at issue on rehearing; (2) any modifications to Aqua’s Large General Service rate should take into account the benefits of retaining Viscofan on Aqua’s system; (3) the Attorney General’s (“AG”) request that Aqua and Viscofan enter into a longer term agreement is outside the scope of rehearing and otherwise unfounded; and, (4) the AG’s proposal to modify Aqua’s tariff to address standby charges is moot.

II. FACTUAL BACKGROUND

On April 6, 2011, Aqua filed with the Commission revised tariff sheets in which it proposed a general increase in water and sewer rates pursuant to Section 9-201 of the Public Utilities Act (the “Act”), 220 ILCS 5/9-101. Petitions for leave to Intervene were filed by the AG, the Citizens Utility Board (“CUB”), the Village of University Park, Viscofan, and the County of Lake. Hearings were held before a duly authorized ALJ at the Commission’s offices in Springfield, Illinois. Testimony and exhibits were filed by Aqua, Staff, Viscofan and the AG and were admitted into evidence.

The Commission entered its Order in this proceeding on February 16, 2012 (“Order”). Among other things, the Order set forth a return on common equity of 9.49%, an overall rate of return of 8.16%, and established a revenue requirement of \$18,236,021. Order at 39; Appendix A at 1. Among the issues related to rate design, one disputed issue was Aqua’s Large General Service rate, under which Viscofan is the only customer taking service. Pursuant to Aqua’s last rate case, Docket No. 04-0442, Viscofan is currently served at a discounted rate, under which it pays 49.7% of its cost of service. Staff, Aqua, AG, and Viscofan each offered their own proposed increase for the Large General Service rate, ranging from 4.9% (Viscofan) to approximately 35.1% (AG). Order at 48-51. In its Order, the Commission adopted Staff’s proposed rate increase to the Large General Service class, approximately 20%, under which Aqua would recover revenues equal to 52.95% of Viscofan’s cost of service. Order at 51.

On March 16, 2012 Viscofan filed a Petition for Rehearing (the “Petition”), stating that it “seeks rehearing of the Commission’s Final Order on the Commission’s decision to adopt Staff’s proposed increase of 20% to the Large General Service Rate.” Petition for Reh’g at 1. The Commission granted Viscofan’s Petition on April 4, 2012.

III. AQUA’S POSITION

A. Any Changes to Aqua’s Large General Service Rate Must Ensure Aqua has the Opportunity to Recover its Commission-Approved Revenue Requirement.

Aqua Illinois’ current revenue requirement is not at issue on rehearing.¹ Rehearing is strictly limited to evaluate only those issues the Commission grants rehearing on. *See* 220 ILCS 5/10-113(a). Accordingly, any modifications to Aqua Illinois’ Large General Service rate must be matched with corresponding adjustments in other areas of Aqua’s water rate

¹ Aqua’s revised tariffs went into effect on February 27, 2012.

design to provide Aqua an opportunity to recover its Commission-approved revenue requirement. Ervin Dir. on Reh'g, Aqua Ex. 17.0, 2:36-3:49.

B. Any Modifications to the Large General Service Rate Should Recognize the Benefits of Maintaining Viscofan on Aqua's System.

Viscofan is Aqua's largest customer, providing nearly \$700,000 in revenues to the system, and purchasing approximately 19% of the water Aqua sells in the Vermilion Division. Monie Dir., Aqua Ex. 12.0, 8:160-61; Niedenthal Dir, Viscofan Ex. 1.0 at 3. As the only user that guarantees such a large capacity of usage, Viscofan provides a benefit to all customers by helping stabilize their rates. Monie Reb., Aqua Ex. 12.0, 8:170-9:176. Recognizing the importance of large, fixed-cost users, the Large General Service rate was created in order to encourage users like Viscofan to become and remain customers of Aqua. Indeed, for many years, the Commission has supported this concept by approving only moderate and below-cost rate increases for Viscofan. Monie Reb., Aqua Ex. 12.0 at 8:161-64. Throughout this case, Viscofan has presented evidence that it has the capability to construct its own alternative water facilities at a competitive cost, and that too dramatic an increase in rates will force it to leave Aqua's system. *Id* at 8:165-167; Stephens Sur. on Reh'g, Viscofan Ex. 3.0-RH, 6:117-20 ("anything above the increase that Viscofan can tolerate economically will result in Viscofan leaving the system... [t]herefore, even a 10% increase over the past rates... could prove to be too much.") Aqua takes very seriously the possibility that if a large rate increase to Viscofan is approved by the ICC, Viscofan will leave the system and Aqua's customers will be forced to shoulder the burden. Monie Reb., Aqua Ex. 12.0, 8:167-70. Accordingly, it is in the best interests of Aqua's customers that whatever rate the Commission approves for the Large General Service class does not push Viscofan off the system.

C. The Facts Demonstrate that the AG's Proposal that Aqua Renegotiate its Contract with Viscofan is Outside the Scope of Rehearing and Unnecessary.

The AG proposes on rehearing that Aqua negotiate a long-term contract with Viscofan. Rubin Dir. on Reh'g, AG Ex. 3.0, 4:74-76. This recommendation must be rejected because: (1) it is outside the scope of rehearing; and (2) on April 12, 2012, Aqua and Viscofan entered into a four-year service agreement ("Agreement") consistent with Aqua's existing, Commission-approved tariff.

Rehearing is strictly limited to evaluate only those issues the Commission grants rehearing on. *See* 220 ILCS 5/10-113(a). Here, Viscofan's Petition solely requested reconsideration of "the Commission's decision to adopt Staff's proposed increase of 20% to the Large General Service Rate." Meanwhile, in its Order, the Commission expressly rejected the AG's proposal concerning a lengthy contract term in favor of a four-year service agreement,

"[w]hile agreeing with AG witness Mr. Rubin that some multi-year commitment is appropriate, the Commission believes that the record supports a continuation of the four-year term contained in the provisions of Aqua's current tariff."

Final Order at 51. Importantly, the AG did not seek rehearing on any issue resolved in the Commission's Order. Consequently, the AG's attempt to re-litigate a proposed contract term is inappropriate. 220 ILCS 5/10-113(a).

Even if the issue were properly before the Commission on rehearing, Aqua and Viscofan have already entered into a binding four-year agreement under which Viscofan commits to purchasing its water supply from Aqua for the next four years. In doing so, the Agreement was negotiated consistent with Mr. Rubin's rhetoric,

I do not believe that such a contract should be negotiated in a public proceeding or that the Commission, Attorney General, or anyone else should be a party to those negotiations. It is Aqua's responsibility to negotiate with its large

customers, just as it is Aqua's responsibility to negotiate its costs with its vendors and employees.

Rubin Dir. on Reh'g, AG Ex. 3.0, 4:77-81. Aqua and Viscofan did precisely what he suggests. The Agreement was independently negotiated and comports with Aqua's Commission-approved tariffs, and for a term the Commission has explicitly endorsed.

Accordingly, the Commission should reject the AG's attempt to relitigate an issue that is outside the purview of this proceeding.

D. The AG's Proposal that Aqua's Tariff be Modified to Address Standby Charges is Moot.

The AG proposes that, if Viscofan goes forward with constructing its own water facilities, it should negotiate a cost-based standby charge to be determined in Aqua's next rate case. Rubin Dir. on Reh'g, AG Ex. 3.0, 3:56-58, 7:136-38. Even if Viscofan opted to take standby service, which it has indicated it will not do, Aqua's existing Commission-approved tariffs already address standby charges. Shenck Reb. on Reh'g, Viscofan Ex. 1.0-RH, 3:11-23; ILL. C. C. No. 49, First Rev'd Sheet Nos. 15-18. Therefore, the AG's proposal is moot. As Aqua witness Mr. Ervin testified on rehearing, Aqua's current tariffs set forth the Commission-approved provisions that would apply to Viscofan if it were to be placed on standby service. Ervin Sur. on Reh'g, Aqua Ex. 17.0, 3:54-56; Aqua Ex. 17.2. Accordingly, if Viscofan ever elects to take standby service, it would simply need to make a request and pay the monthly fee, in accordance with the provisions of Aqua's tariff. Ervin Sur. on Reh'g, Aqua Ex. 17.0, 3:56-57.

IV. CONCLUSION

In conclusion, Aqua Illinois, Inc. respectfully requests that if the Commission makes any modifications that deviate from its February 16 Final Order, it do so consistent with the recommendations described herein.

Dated: June 22, 2012

Respectfully submitted,

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