

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Aqua Illinois, Inc. :
 :
Proposed general increase in : **11-0436**
water and sewer rates. :

ORDER ON REHEARING

By the Commission:

In this proceeding, the Illinois Commerce Commission ("Commission") entered an Order on February 16, 2012 ("Order") approving new water and sewer rates for Aqua Illinois, Inc. ("Aqua").

On April 4 2012, the Commission granted the Application for Rehearing of Viscofan USA, Inc. ("Viscofan") filed March 16, 2012, for the purpose of allowing Viscofan to offer its updated analysis into the record, and allowing other Parties to respond to it.

At the hearings on rehearing, appearances were entered and testimony was presented by Viscofan, Aqua, the Commission Staff ("Staff") and the People of the State of Illinois by the Attorney General of the State of Illinois ("People" or "AG"). At the conclusion of the hearings on rehearing, the record was marked "Heard and Taken." Initial briefs ("IBs") and reply briefs ("RBs") on rehearing were filed by Viscofan, Aqua, the Staff and the AG. A Proposed Order was issued by the Administrative Law Judge. Briefs on Exceptions ("BOEs") were filed by Staff, Viscofan and the AG.

Order Entered February 16, 2012

Aqua provides water service to Viscofan's Danville facility. Viscofan is Aqua's largest water customer, and the only customer taking service under its Large Industrial Customer class. As of the time the Order was entered on February 16, 2012, Viscofan was served at a discounted rate, that is, at a rate set at 49.7% of cost of service in Docket No. 04-0442, pursuant to a four-year contract as provided in Aqua's tariffs. The remainder of Aqua's cost of service is covered by other Aqua customers.

During the original proceeding, Aqua proposed an increase in the tariff rate to Viscofan of 13.75%. The AG suggested an increase of approximately 35.1% based on the Company's original revenue requirement proposal, while Viscofan proposed a maximum increase of less than 5%. Viscofan calculated that its rates would increase by 20% under Staff's proposal. (Staff Ex. 14.0 at 2; Order at 48-49)

The Order found, on page 51, "Of the various proposals of record...the Commission finds that the Staff recommendation strikes the best balance of interests and should be adopted. Staff's proposal continues to offer a significant discount to Viscofan -- in order to provide an incentive to remain on the Aqua system rather than pursuing a competitive alternative -- while slightly reducing the 'subsidy' imposed on other customers by recovering revenues from Viscofan that are intended to equal 52.95% of Viscofan's cost of service, up from 49.7% approved in Docket No. 04-0442."

The Order added, "As Viscofan, Aqua and Staff have asserted, retaining Viscofan as a customer provides benefits to other customers, because Viscofan provides a significant contribution toward costs that would otherwise be borne by other customers."

The Commission also reviewed the positions of the parties regarding the length of the water service agreement with Viscofan. The Commission found, "While 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 tariffs."

On April 12, 2012, Viscofan entered into another four-year contract with Aqua to succeed the four-year contract that was expiring.

Updated Analysis on Rehearing

On rehearing, Viscofan presented an updated analysis of the "economics" and timeline for constructing its own water system. The updated analysis was prepared in 2012. (Viscofan Exs. 1.0-RH, and 1.1 through 1.5-RH) Among other things, it contained cost estimates and other information from Industrial Technology Group of Henneman Engineering, dated April 30, 2012.

Mr. Daniel Schenck, Plant Manager of Viscofan's Danville facility, testified that the cost for installation of water pumping and treatment facilities for purposes of serving water from the potential well property to the Viscofan plant is \$3,066,965. (Viscofan Ex. 1.0-RH at 6) He said engineering and construction would take under one year to complete. The operating cost for treatment of the water to be pumped and used is estimated to be \$0.25 per 1,000 gallons of water. (Viscofan Ex. 1.0-RH at 6-7; Viscofan Ex. 1.4-RH)

Viscofan also calculated the payback period for the potential well and associated investment. As indicated above, the capital cost is estimated at \$3,066,965. Under the current Aqua Illinois rate, the avoidable annual utility cost, should Viscofan disconnect from Aqua, is estimated to be \$708,000 per year. As shown on Exhibit 1.4-RH, operating costs are estimated to be \$92,000 per year. Thus, the annual net savings to Viscofan is estimated to be \$616,000 per year (\$708,000 minus \$92,000), and the simple payback is estimated at 4.97 years ($\$3,066,965 \div \$616,000$). (Viscofan Ex. 1.0-RH at 7)

Mr. Schenck also testified that Viscofan has completed a hydrology study showing ample availability of water; has property with a test well already constructed; and controls right-of-way for a main water supply line from the well area to the Plant. (Viscofan Ex. 1.0-RH at 4) It is noted that this information was also provided in the original proceeding.

He stated that unless the Aqua rate is made “more viable and conducive to Viscofan remaining on the system,” Viscofan “will have approximately four years to design, construct, test and begin using its own water system and will most assuredly be forced to disconnect from the Aqua system, either before or at the end of the new contract term.” (Viscofan Ex. 1.0-RH at 3; Viscofan BOE at 1-2)

He further stated, “Should the Large General Service rate remain as approved in the Final Order, Viscofan finds this payback period to be sufficient to warrant construction of the water treatment facility.” (Viscofan Ex. 1.0-RH at 7)

Viscofan further argues that “lowering the increase to 4.9% will produce rates that will give Viscofan the economic incentive needed to remain on the Aqua system.” (Viscofan BOE at 3)

Regarding Viscofan’s analysis, AG witness Mr. Rubin correctly observed that Viscofan’s estimates did not include a cost of standby water service from Aqua. He stated that inclusion of the cost of this service in the analysis could make the project uneconomical. (AG Ex. 3.0 at 3)

In response, Mr. Schenck testified that Viscofan would not require standby service from Aqua. He said Viscofan’s system design includes the installation of two water wells, minimizing the concern for loss of water service. He further stated that Viscofan owns two 240,000-gallon tanks at the plant, allowing for a buffer in the event of interruption in supply. (Viscofan Ex. 2.0-RH at 2)

Impact on Aqua Customers

As noted on page 50 of the Order, Viscofan asserted that if it were to leave the system, Aqua and its customers would be losing \$576,768 per year of Viscofan’s contribution to fixed costs, thus exposing consumers to even higher rates. (Viscofan Ex. 2.0 at 5-6)

On rehearing, the Staff witness testified that reducing revenue requirement by that amount, \$576,768, would increase the water bill for typical residential customers by 3.72% per month, resulting in an approximate average increase of \$1.77/month. (Staff Ex. 14.0 at 5)

In response, Viscofan witness Mr. Stephens testified that it is the variable costs that can be avoided by Viscofan leaving the system -- not the non-variable costs -- and

that the \$576,768 estimate to which Staff refers is actually the amount of revenue requirement that will continue to exist, but will be spread to other customers, if Viscofan leaves the system. (Viscofan Ex. 3.0-RH at 5)

According to Mr. Stephens, “Reducing the increase to Viscofan from 20% to 4.9% would require some revenue responsibility to be spread to other customers. However, the amount is estimated to be approximately \$91,000 per year, which is much less than the \$576,768 in annual non-variable cost contribution that will be forced on other customers if Viscofan leaves.” (*Id.* at 6)

Staff Recommendation

In Staff’s view, the Commission should not change the 20% increase in Large Industrial Class rates granted in the Commission’s Order on February 16, 2012 because it results in a moderate increase in Viscofan’s contribution to cover its cost of service, to 52.95%, while slightly reducing the subsidy that other rate classes have been providing to Viscofan. (Staff IB on reh. at 3; Staff Ex. 14.0 at 8; Order, Docket No. 11-0436, Feb. 16, 2012 at 51) As such, Staff argues, the 20% increase granted in the Commission’s Order on February 16, 2012 is consistent with its Order in Docket No. 04-0442, where the Commission indicated that Viscofan should begin to pay a greater portion of its cost of service to address its declining contribution toward its cost of service, while not being so large as to induce rate shock. (Staff IB on reh. at 3; Order, Docket No. 04-0442, April 20, 2005 at 54; Staff BOE at 3-6)

According to Staff, if the Commission does reduce the 20% increase to Aqua’s Large General Service rate, it should be reduced to no less than 14.11% in order to maintain the 49.70% cost of service percentage that Aqua recovered from Viscofan as approved by the Commission in Docket No. 04-0442. (Staff Ex. 14.0 at 3; Staff BOE at 6-7)

AG Position

AG witness Mr. Rubin testified that Aqua and Viscofan should consider a “long-term (10 years or more)” contract that provides both parties with substantial certainty about the rates that would be charged over an extended period of time. (AG Ex. 3.0 at 4)

He described a seven-year contract entered into by an Aqua affiliate in Pennsylvania and a customer with a competitive water supply option. (*Id.* at 5-6)

In its brief, the AG “request[s] that no changes be made to the tariffed rates approved in the Final Order in this docket, and that the Commission require Aqua to attempt to negotiate a long-term contract with Viscofan to address the costs and risks associated with serving Viscofan.” (AG IB on reh. at 5) The AG believes a longer contract would provide benefits, including stability.

In its BOE, the AG asserts, among other things, that the Ivanhoe and Ravenna divisions, which are now part of the Consolidated Division, have already seen large increases, and should not see further increases at this time.

The AG recommends:

[T]he Commission should reject the decrease in Viscofan's rate recommended in the Proposed Order. In the alternative, if the Commission modifies the rate for Viscofan, it should also require...that Viscofan and Aqua enter into a contract under Section 9-102.1 of the Public Utilities Act of more than four years to address Viscofan's concerns so that limiting Viscofan's rate increase does not benefit just one customer (i.e. Viscofan), but all of Aqua's customers by providing them with a reduction in the risk that Viscofan will leave when the next rate increase is requested.

(AG BOE at 4)

Commission Analysis and Conclusions

Upon due consideration of the record and arguments of the parties, the Commission finds that the increase applicable to Viscofan should remain at 20% as set forth in our February 16, 2012 Order. This approach is consistent with the Commission's vision articulated in its Order in Docket No. 04-0442, which recognized the need for increasing the cost of service recovery percentage from Viscofan and reducing the subsidy from Aqua's other customers. The Commission recognizes that while other Consolidated Water Division customers benefit from Viscofan's contribution toward costs that would otherwise be borne by these customers, these customers have subsidized Viscofan's cost of service for many years and continue to subsidize Viscofan under current rates. The Commission declines to further increase that subsidy through its Order on Rehearing.

The Commission makes this determination mindful that, should Viscofan depart the system in favor of its own competitive supply option, Aqua's other customers could face adverse rate impacts as Aqua seeks to recover its costs from a narrowed customer base. Specifically, Staff has calculated the impact on an average residential customer's bill in the Consolidated Division as an increase equivalent to 3.72% (or approximately \$1.77 per month) should Viscofan leave Aqua. However, the Commission is not persuaded that an instant increase in those customers' rates serves as a useful tool to protect their interests against a potential future rate increase should Viscofan leave Aqua's system. The Commission finds this logic – that raising Aqua's other customers' rates today actually serves their interests by decreasing the likelihood of a future rate increase – to be flawed and unconvincing, especially given that these customers would have no assurance that Viscofan would remain on Aqua's system even after an increased contribution.

While a longer contract term, such as 10 years, could have benefits to all parties, the AG's initial proposal did not explain how the rates themselves would be set in such a contract between Aqua and Viscofan. The Commission does not adopt the AG's proposal. In its BOE, the AG cites Section 9-102.1 of the Act. The Commission takes note of Section 9-102.1, and recognizes that Aqua and Viscofan could seek approval of a contract term longer than four years; however, the Commission notes that currently, the rates applicable to Viscofan are not set by the parties to the four-year contract. Rather, they are set in Commission rate orders, where all parties have the opportunity to address the issue.

Based on the foregoing, the Commission finds that the increase applicable to Viscofan should be maintained at 20% consistent with the Commission's Order initially entered in this matter. We conclude that this determination is based upon appropriate cost causation principles. Moreover, we find that this result is reasonable and is supported by the record.

Findings and Ordering Paragraphs

The Commission, having considered the entire record, is of the opinion and finds that:

- (1) Aqua is a corporation engaged in the business of furnishing water and sanitary sewer service to the public in portions of the State of Illinois and is a public utility within the meaning of Section 3-105 of the Act;
- (2) the Commission has jurisdiction over Aqua and the subject matter of this proceeding;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings herein.

IT IS ORDERED that the Order entered February 16, 2012 remains in full effect and applicability as written.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 21st day of August, 2012.

(SIGNED) DOUGLAS P. SCOTT

Chairman