

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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Illinois-American Water Company )  
 ) Docket No. 10-0203  
Application for Approval of its Annual Reconciliation )  
of Purchased Water and Purchased Sewage Treatment )  
Surcharges Pursuant to 83 Ill. Adm. Code 655. )

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**REPLY BRIEF OF ILLINOIS-AMERICAN WATER COMPANY**

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Now Comes Illinois-American Water Company, ("Petitioner", "IAWC", or the "Company"), by and through its attorneys, and hereby submits this Reply Brief.

I. Statement of the Case

As set forth in the company's initial brief, IAWC and the Commission Staff ("Staff") are in agreement on all issues in the case except the sharing of stepped up sewer charges for sewage flows higher than daily or minute flow amounts specified in the Agreement between the Company and Elmhurst. For the reasons articulated in IAWC's initial brief, and further discussed below, the Company requests that the Commission adopt Appendixes A and B of the Company's Initial Brief.

Both the Office of the Attorney General ("AG") and Staff assert that IAWC should be required to "share" the cost of sewage treatment charges between ratepayers and shareholders when the treatment rate is stepped up as a result of sewage flows that are higher than daily or minute limits as provided for in the Agreement. These assertions should be rejected. First, the charges result from terms of the agreement between IAWC and Elmhurst and are driven in large part by factors beyond IAWC's ready control: the weather and illegal storm drain connections. Second, evaluating the prudence of IAWC's actions based on information available in 2009, as the AG argues should be done, shows that IAWC had no basis to take any other actions than the actions it took related to stepped up sewer charges in 2008. Therefore, IAWC's commencement of a Sewer System Evaluation Study ("SSES") beginning in 2008 (I) was a prudent and reasonable action to identify and address the causes of the higher sewage flows. Further, as Staff readily acknowledges, IAWC has taken a number of actions since 2008 to address the issue of excess flows. Thus, there is no basis to conclude that the Company should not recover the cost of the prudently incurred stepped up sewage treatment charges.

The only remaining dispute in this case pertains to an issue not raised by The Office of the Attorney General (“AG”) until the filing of its initial brief. The AG challenges the established Commission practice of including the 1.25% factor for unbilled authorized consumption in its purchase water expense. The AG's position on this issue has been expressly rejected by the Commission on previous occasions should again be rejected in the instant docket.

**The Company correctly included in its purchased water expense 1.25% for unbilled authorized consumption.**

After seeking extensions to filing dates, requesting expedited turn-around of data requests, and failing to file any testimony in this proceeding, on November 13, 2013, the AG filed the longest brief of any party in the case. In its Initial Brief, the AG proposes elimination of the 1.25% factor that IAWC included in its calculations to reflect the recovery of unbilled authorized consumption. The AG argues, for the first time, in its Initial Brief that the Company did not adequately support the use of 1.25% as a reasonable estimate of unbilled authorized consumption. It is curious that now after the record has been marked “Heard and Taken” the AG is so vocal about its position given that never once through the evidentiary process did it challenge any position or evidence offered by the Company or Staff. Throughout this case, the AG participated in multiple status hearings and scheduling conferences. The AG had ample opportunity to question or rebut either the Company’s or Staff’s reconciliations and testimony, but declined to do so at the appropriate time.

The AG's arguments and charts reveal its fundamental misunderstanding of what constitutes Unaccounted-for Water ("UFW") as well as its relationship to Non-Revenue Water ("NRW"). (AG IB, pp.4-5) The AG mistakenly characterizes the 1.25% unbilled authorized consumption factor as an "adder" or increase to the UFW caps set forth in the Company's tariff.

(AG IB, p.4) In fact, the 1.25% factor represents a category of water that is separate and distinct from UFW. As explained in the Company testimony IAWC's Tariff Sheet No. 53.1 established maximum percentages of UFW costs recoverable under the Purchased Water Surcharge Rider. UFW is defined by this Commission-approved tariff as "the amount of water that enters the Company's distribution system and is not used for sales to customers or for other known purposes as determined by meter measurement or, where no meter reading is available, by reasonable estimation procedures." (Final Order for Docket No. 09-0151at 23) The water included in the 1.25% factor is by definition **not** UFW, but rather is unbilled authorized consumption (i.e., water that is used ". . . for other known purposes - the volume of which is determined by reasonable estimation procedures.") (Id.) This category of water is recognized throughout the industry and is commonly utilized in such activities as firefighting, fire training, street cleaning, hydrant testing, sewer main flushing, and water main flushing. The Commission has previously spoken on this issue and agrees with the Company and Staff that unbilled authorized consumption should not be considered a component of UFW. (Final Order, ICC Docket 08-0218, August 19, 2009). The Company has always maintained, and the Commission Staff agrees, that the 1.25% unbilled authorized consumption factor was not a part of UFW. (IAWC Exhibit 3.0, p. 5) Further, the Commission agrees that the 1.25% factor was not a part of UFW. The Commission specifically found that the 1.25% factor "falls under the heading NRW, not UFW. NRW is the basis for the 1.25% adjustment. UFW percentages have already been established by tariff." In the Final Order, the Commission stated that it "Concurs with IAWC that the AG and Homer Glen are in error. The Commission also agrees with Staff that adoption of the 1.25% adjustment from the AWWA M36 manual is reasonable and that since unbilled authorized consumption in this case was determined to have resulted from firefighting, main flushing and street cleaning, and can be determined by

reasonable estimation procedures, it is **not a component of UFW.**" (emphasis added) (Id, pp. 10-11) Given this clear Commission determination, it is puzzling that the AG continues to misrepresent the 1.25% factor as UFW.

**IAWC's use of the 1.25% unbilled authorized consumption factor is justified and supported by evidence in this Docket and well-settled precedent in previous Commission dockets.**

In its Initial Brief, the AG continues to erroneously argue that the 1.25% unbilled authorized consumption factor is not supported by appropriate documentation. (AG IB, p. 6) As described and supported in IAWC's testimony (IAWC Exhibit No. 3.0 pp.4-5)) the 1.25% factor is supported by and consistent with the AWWA" M36 Manual. The American Water Works Association ("AWWA") was established in 1881, and is the largest nonprofit, scientific and educational association dedicated to managing and treating water. The AWWA is supported by approximately 50,000 members, and promotes public health, safety, and welfare through the improvement of the quality and quantity of water delivered to the public. The AWWA advances the knowledge of the design, construction, operation, water treatment and management of water utilities and developing standards for procedures, equipment and materials used by public water supply systems. The AWWA M36 Manual, "Water Audits and Loss Control Programs," is an authoritative resource regarding non-revenue water. Through the M36 Manual, the AWWA summarized the audits of numerous water utilities around the world to arrive at the 1.25% reasonable estimate of unbilled authorized consumption. The AG's argument that the 1.25% unbilled authorized consumption factor is not supported by appropriate documentation is the same claim it made in Dockets 09-0151 and 08-0218, and was rejected by the Commission in both instances. Specifically the Commission "agree[d] with Staff and IAWC that use the 1.25% value in the AWWA M36 manual provides a reasonable and more accurate estimate of the amount of

unbilled-authorized consumption for such uses as hydrant and main flushing, firefighting and street cleaning, for the reconciliation year. (Final Order, Docket 09-0151, pp.26.)

Further, in light of recent Commission action, it is likely that further validation of the M36 Manual factor will become available. The Commission, in its Final Order for the 2008 Reconciliation Case (Docket No 09-0151, at 26), directed the Company to attempt to track UAC for the 2013 purchased water reconciliation year, as stated :

. . . IAWC is directed to work with the Staff of the Commission's Water Department to develop appropriate methods of tracking unbilled-authorized water consumption for a one-year period.... In light of the alleged difficulty in tracking usage outside of IAWC's control, the Commission authorizes IAWC to develop, in conjunction with Staff, estimation procedures for unbilled authorized consumption that is outside IAWC's control or is otherwise difficult to verify. Further, in order to properly match the one-year tracking period with the next applicable corresponding reconciliation year, the Commission orders the tracking period to begin on January 1, 2013. The results of this tracking shall be presented as part of the reconciliation case for that year.

As discussed by Company witness Hillen, Company representatives have met with Staff to review a proposed tracking methodology and a data template for each service area. The template includes the various UFW categories for each purchased water service area, which will roll up to a composite UFW for the purchased water areas in the district. Beginning January 1, 2013, the Company implemented the tracking methodology. The Company will present the results of this undertaking in the reconciliation for 2013.

The AG inappropriately attempts to impose the use of an Illinois Department of Natural Resources ("IDNR") Annual Water Use Audit Form (LMO-2) for the fiscal year ended September 30, 2009, as support for its position that the AWWA M36 Manual should not be used as a reasonable estimate for unbilled authorized consumption. Interestingly, the AG argues that nowhere in the AWWA M36 Manual does it explicitly state that it should be used in Illinois

Commerce Commission purchased water reconciliation cases, yet the AG offers in support of its arguments an IDNR-specific report that estimates, at a very high level, unaccounted-for flow. Nowhere on the AG Group Exhibit, Company response to data request AG 2.8, does the IDNR report indicate that it should, or could, be used in ICC purchased water reconciliations. The report does not match the reconciliation year, nor does it even measure the same metrics that are used in the purchased water reconciliation. The AG's offer of LMO-2 evidence should be given no weight.

In sum, the AG's mischaracterization of the 1.25% as a company attempt to wrongly increase UFW is flawed. Further its claim that the factor is not supported by appropriate documentation is inconsistent with previous Commission findings, and in conflict with recognized industry standards. For these reasons, the AG arguments must be rejected.

**The Company incurred stepped-up sewage treatment rates as a result of significant rainfall events and the provisions of an inherited Agreement with the City of Elmhurst**

Staff and the AG both argue that IAWC should not be allowed to recover the cost of 2009 charges from Elmhurst for sewer flows that are higher than the daily or hourly flow limits expressed in the Agreement between the Company and Elmhurst for the treatment of sewage from Company customers. In support of the AG's and Staff's adjustments, both parties raise the issue of IAWC's prudence as the basis for the proposal to disallow one-third of the sewage flow charges. (AG IB, pp.13-15, Staff IB, p. 10-11) There are several reasons why this position should be rejected and the Commission should allow full recovery of these charges as prudently- incurred costs.

First, the charges in question pertain only to the company's Country Club system, resulting from terms of the agreement between IAWC and Elmhurst and are driven in large part by factors

beyond IAWC's ready control: the weather and illegal storm drain connections. (ICC Staff Exhibit 2.0, pp.4-6) These topics are discussed at length in the Company's initial brief.

Secondly, Staff's claim that "The Company has been aware that the Country Club sanitary sewer system suffered from significant levels of I/I for several years prior to 2009, and nonetheless did not act to address it until 2009" as a justification for Mr. Atwood's proposed imprudence disallowance, is somewhat misleading. (ICC Staff IB, p. 10) When considering the issue of utility prudence in the context of a reconciliation proceeding, the Commission must consider the actions and decision of the Company in light of the facts available to the Company at the time the decisions were made, as the AG acknowledges. (Illinois Power Co. v. Illinois Commerce Commission, 245 ILL. App. 3d 367, 371 (3d Dist. 1993) In 2009, the IAWC would have been aware of only four instances when the Agreement with Elmhurst had imposed increased charges and would have never been subjected to any disallowance (or even proposed disallowance) of these costs. In 2006, the amount was \$20,252 resulting from only six significant rainfall events. In 2007, the amount decreased to \$329.35. (Final Order 09-0151pp.37-38) In both the 2006 and 2007 reconciliations, the respective amounts were found by Staff (and ultimately the Commission) to be part of the Company's prudently-incurred costs. Given the few days in 2006 when the Agreement flows were exceeded, and that only one incident occurred in 2007 (costing an additional \$329.35 in treatment costs), the Company would have had no reason to think that 2008 and 2009 would experience weather events that so significantly impacted the locals around the Country Club service area. (see IAWC Exhibit 2.02R)

Third, the AG erroneously attributes all of I/I to "non-sewage water [that] enters the sanitary sewer system through breaks in the collection plant," (AG IB, p. 13) misrepresenting Staff witness Atwood's direct testimony. Mr. Atwood stated:

Inflow is surface water that directly enters the sanitary sewer 70 collection system. Typical inflow sources are: low lying manhole lids with 71 defective covers; storm water inlets improperly connected to the sanitary sewer 72 collection system; illegally connected area drains on private property, such as 73 basement sump pumps, and building foundation or footing drains, although this is 74 not an exclusive list. Infiltration is ground water that enters the sanitary sewer 75 collection system through cracks, holes and defective joints in manholes, sanitary 76 sewer mains and customer sewer service lines.

As Mr. Atwood discussed, I/I is just that – both inflow and infiltration. Illegal connections to the Company’s sewer collection system have a significant impact on the amount Elmhurst charges the Company for sewer flows during high rainfall events. Company witness Smyth testified, “In general, 50% of I/I comes from private sources, and 50% comes from public sources. The Company has made significant investment in the public side of the system, essentially performing activities to eliminate or reduce I/I well above the industry standard.”

Staff acknowledges that the Company initiated efforts during the 2008 reconciliation year to conduct a SSES in order to make the appropriate system improvements to minimize I/I. (ICC Staff Exhibit 2.0, pp. 7-9)

The timeline below puts the Country Club charges in perspective and shows the prudent actions taken by the Company:

November 17, 1975 – Agreement between City of Elmhurst and Citizens Utilities Company of Illinois signed

December 1999 – Stanley Consultants completes Country Club Sanitary Sewer Study for Citizens Water Resources

May 15, 2001 – ICC approves sale of Chicago Metro(329.35) from Citizens Utilities Company of Illinois to Illinois-American Water Company (Docket No. 00-0476). Company inherits the 1975 agreement with Elmhurst.

December 3, 2003 – ICC approves Illinois-American Water’s first purchased sewage treatment reconciliation for the period Mid-August through December 2002 (Docket No. 03-0179)

November 27, 2006 – Illinois-American Water receives the first invoice reflecting an overage charge from Elmhurst (September bill), total overage charges for 2006 - \$20,252.92

May 10, 2007 – Illinois American receives the only 2007 Elmhurst bill reflecting an overage charge (\$329.35) for the month of April

February 19, 2008 – Illinois-American Water receives the January invoice from Elmhurst with \$141.50 in overage charges

October 10, 2008 – Illinois-American Water and RJN Group begin contacting customers regarding commencement of smoke testing as part of the 2009 Country Club Sanitary Sewer Study

October 27, 2008 – Illinois-American Water receives the September invoice from Elmhurst with \$26,999.26 in overage charges

February 5, 2009 – RJN Group delivers final Country Club Sanitary Sewer Evaluation Study to Illinois-American Water

December 2009 – Illinois-American Water completes sewer rehabilitation work that commenced in September 2009

July 31, 2012 – ICC issues final order in the 2008 purchased sewage treatment reconciliation (Docket No. 09-0151

IAWC notes that it was not until the May of 2010 (the Staff and intervenor supplemental testimony date, which occurred after initial hearings we all but concluded in the prior reconciliation Docket (See 09-0151, Tr. Pp.227-228) )) that the Company had any knowledge that any party was challenging the prudence of these cost. (ICC Staff Exhibit 2.00)

Based on the case law referenced above and the "facts available to the Company at the time decisions were made", it is clear that IAWC's actions regarding the Country Club system were prudent. Staff acknowledges that the recommendations made by the SSES on the public side of the collection system have been completed. (ICC Staff Ex. 520, pp. 8-9 and ICC Staff IB, pp. 8-10) This work demonstrates that IAWC has acted and continues to act prudently before, during, and after the 2009 reconciliation year. In light of this the Company respectfully requests that the Commission find the costs to be fully recoverable.

**The Commission should adopt the Purchased Water and Purchased Sewage Treatment Reconciliations as presented in Appendix A and Appendix 8, respectively, to IAWC's Initial Brief**

The Company recommends the adoption of Appendixes A and B attached to the Company's Initial Brief for all of the reasons discussed above.

III. Conclusion

For the reasons set forth above, IAWC respectfully requests that the Commission issue an order approving the reconciliation as set forth the in the testimony and schedules of the Company, and grant such further relief as may be just, reasonable and appropriate.

Respectfully submitted,

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