

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Aqua Illinois, Inc.	:	Docket No. 13-0246
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	:	
Petition For a Certificate Of Public	:	
Convenience and Necessity To Construct,	:	
Operate and Maintain a Water Distribution	:	
System and a Wastewater Collection System	:	
in Areas of Kankakee and Will Counties, Illinois	:	

**INITIAL BRIEF OF THE STAFF  
OF THE ILLINOIS COMMERCE COMMISSION**

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March 6, 2014

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Pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Adm. Code 200.800), Staff witnesses of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, respectfully submits its Initial Brief in the above-captioned proceeding.

**I. INTRODUCTION**

**A. Procedural History**

On March 27, 2013, Aqua Illinois, Inc. (the “Company” or “Aqua”) filed with the Commission a Verified Petition (“Petition”) for a Certificate of Public Convenience and Necessity (“Certificate” or “CPCN”) to construct, operate, and maintain a water distribution system and a wastewater collection system in the areas of Kankakee and Will Counties, Illinois. Aqua states that it wishes to supply its existing and future customers in its University Park, Illinois service area with softened and filtered water.

(Petition, 1.) First, Aqua seeks authorization to construct water transmission facilities to transport Kankakee River supply from Aqua's facilities in Manteno, Illinois to its facilities in University Park. The Certificate would also allow Aqua to meet, as necessary, the water and service demands likely to result from anticipated population growth in the University Park service area and areas adjacent to the new water transmission facilities.

(Petition, 2.)

Second, Aqua is seeking a Certificate to provide water distribution and wastewater collection services in two limited areas ("Limited Areas") of Will County surrounded by previously certificated areas. (Petition, 2.) Aqua seeks that certification to clarify the boundaries of the area for which Aqua sought certification in Docket No. 87-0402. Aqua argues that a clarifying certification is necessary for Aqua to serve a planned mixed-use development in that area. Id.

Third, Aqua seeks approval of the accounting entries proposed to record the appropriate original cost of water and sewer facilities in the University Park Expanded Area. (Petition, 11.)

Fourth, Aqua seeks approval of its proposed depreciation rates. Id., 12.

Fifth, Aqua seeks approval of the rates proposed for water and sewer service in the University Park Expanded Area. Id.

Finally, Aqua seeks other relief as is necessary and consistent with its other requests. Id.

On April 2, 2013, the Administrative Law Judge ("ALJ") assigned to this proceeding issued notice of a prehearing conference. The ALJ held a prehearing

conference on April 30, 2013, setting May 10, 2013, as the date for the Company's Direct Testimony to be filed. The Company filed Direct Testimony on May 9, 2013.

Petitions to intervene were filed by the Village of Peotone ("Peotone"), the Village of Monee ("Monee"), and the City of Wilmington ("Wilmington").

On September 16, 2013, Staff and interveners filed separate Direct Testimony. On October 10, 2013, the Village of Peotone filed additional Direct Testimony. On October 16, Aqua filed Rebuttal Testimony. On January 3, 2014, Staff, the Village of Peotone and the Village of Monee all filed separate Rebuttal Testimony. On January 21, 2014, Aqua filed Surrebuttal Testimony.

The parties agreed to waive cross examination and participate in a paper hearing. In accordance with the ALJ's allowance of that approach, the parties filed affidavit testimony. Aqua filed affidavit testimony on February 4, 2014. Staff filed affidavit testimony on February 5, 2014. The City of Wilmington filed a motion to admit testimony on February 5, 2014. The Villages of Peotone and Monee filed affidavit testimony on February 6, 2014.

The ALJ conducted an evidentiary hearing on February 6, 2014, at which testimony was moved and admitted into the record and a briefing schedule was set. Pursuant to the ALJ ruling on the briefing schedule, Staff hereby submits this Initial Brief.

## **B. Legal Standard**

Requests for Certificates of Public Convenience and Necessity are governed by Section 8-406 of the PUA, which provides in pertinent part:

(b) No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

(220 ILCS 5/8-406(b).)

## **C. Description of Proposed Certificated Areas**

Aqua is seeking a Certificate of Public Convenience and Necessity (“Certificate”) to construct a water transmission main and to provide water and sewer service in an Expanded Area of Kankakee and Will Counties, Illinois. The Company’s proposed Expanded area included three separate areas for certificated service. Two of the proposed areas are for both water and sewer service and are referred to as the “Limited Areas.” They are located within Monee Township, Will County, Illinois. These areas are contiguous with the Company’s current University Park Division certificated service area as depicted in pink on Aqua Ex. 1.1. The total area is approximately 1 square mile

("sq. mi."). The third proposed area is for water service only ("Water Area"). It is requested in order to construct a long water transmission main that would connect Aqua's existing University Park Certificated Area to its Kankakee Certificated Area. The transmission main would enable Aqua to provide University Park with softened, higher quality water from its Kankakee Water Division. The amount of the proposed certificated service area as initially proposed by the Company was quite large, approximately 75 sq. mi. It was depicted in blue on Aqua Ex. 1.1. It was largely unincorporated; however, it did include the entirety of the existing incorporated area of Peotone and the majority of the existing incorporated area of Monee. (Aqua Ex. 1.0, 6:123-32.)

Aqua subsequently revised the proposed Water Area as depicted in Aqua Ex. 2.1, and described in Aqua Ex. 2.2 ("revised Water Area"). It is primarily a corridor that extends roughly one mile on each side of County Highway 10/Will Center Road in Will County as it runs between Aqua's current Kankakee and University Park certificated service areas. It occupies unincorporated areas within Kankakee and Will Counties; the incorporated areas of Monee and Peotone with current municipal water service are excluded. The revised Water Area is 18,827 acres, (or 29.4 square miles) in size. (Aqua Ex. 2.0, 5-7:110-41.)

## II. DISCUSSION

### A. Section 8-406 Requirements

#### 1. Necessity and Least Cost - Limited Areas

Section 8-406 (b) states that the Commission will find that the proposed construction will promote the public convenience and necessity only if the utility demonstrates, among other things, that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers. 220 ILCS 5/8-406(b)(1). Aqua states that it is seeking the proposed Certificate for the Limited Areas in order to serve a planned mixed residential and commercial development of 324 units on the north side of University Parkway, immediately east of Illinois State Route 50 (Governors Highway). (Aqua Ex. 1.3.) Aqua also is seeking to reconcile discrepancies between the map and legal description for the certificated service area boundary of the area certificated in Docket No. 87-0402. (Aqua Ex. 1.0, 7:148-52.)

Staff testified that there are no other ICC-regulated water and sewer utilities that are able to provide cost-effective water and sewer service to the Limited areas. Nor had any municipalities expressed any interest in providing such service. Therefore, Staff agreed with Aqua that there was a need to provide adequate, reliable water and sewer service to the Limited Areas, and that the Company can provide the least-cost means of providing such service. (ICC Staff Ex. 1.0, 8-10:184-237.)

Given the above, Staff testified that the Company has met the necessity and least-cost requirements (1) of Section 8-406(b) of the Act in regard to the proposed certification of the Limited Areas. (ICC Staff Ex. 1.0, 13:288-291,21-22:497-514.)

## 2. Necessity - Water Area

Aqua stated that it needs the proposed certificated service area to construct a water pipeline from its facilities in Manteno to University Park in order to provide University Park Division customers with high quality, softened, filtered drinking water from Aqua's Kankakee Division. The University Park Division water is hard and is high in iron. The Company states that its University Park Division customers are dissatisfied with the quality of their current water and desire a softened water supply with improved aesthetics. (Aqua Ex. 1.0, 6-7:134-38, 8:171-82, 10:210-22, 11:240-50, 12:263-64, 14-15:317-22; Aqua Ex. 1.3; Aqua Ex. 1.4, iii.)

Staff agreed with the need for higher quality drinking water in Aqua's University Park Division. (ICC Staff Ex. 1.0, 15-16:339-365) However, Staff did not believe that the Company demonstrated a need for a Certificate for the entire 75 sq. mi. Water Area. (ICC Staff Ex. 1.0, 16-18:367-411.)

Staff explained that in previous Certificate cases for water transmission mains, the final pipeline routes had been chosen and that the Commission had agreed with granting only limited areas from 100 feet wide to 1 mile wide for certification along the pipeline route. (ICC Staff Ex. 1.0, 17:387-390.)

Staff also testified that a Certificate for water service is typically issued for a specific area (and the related construction) in which the utility granted the Certificate must provide customers with such service. Previous Commission policy has been that need for water service in a defined area of a proposed Certificate is based on actual applications for service and/or any identified and known future changes such as planned subdivisions and commercial/industrial developments. The Company has not

provided any documentation related to applications for water service within the requested 75 sq. mi. Water Area, or any evidence of expected requests for water service such as plans for future real estate developments. (ICC Staff Ex. 1.0, 16:367-380) Instead, the Company requested the large 75 sq. mi. Water Area based upon the desire to provide engineering design and easement acquisition flexibility to determine the most viable route among the six it has considered. The six routes were numerically designated 1 through 5 and 5A. As of the filing of its Direct Testimony, Aqua had not yet decided on the exact location of the proposed water pipeline. (ICC Staff Ex. 1.0, 7-8, 166-169, and 17:382-385.)

Staff also explained that both the Village of Monee (“Monee”) and the Village of Peotone (“Peotone”) were entirely within the proposed 75 sq. mi. Water Area. The Villages’ provide water service to their residents within their corporate limits. (Aqua Ex. 1.0, 14:309-10, 319-20.) Issuing the Company a Certificate for areas currently served by these municipalities would allow for the potential duplication of water facilities and any service area granted a Certificate should therefore not include the areas within the corporate boundaries of each municipality where there is an existing water distribution system in place and water service is being provided. (ICC Staff Ex. 1.0, 17:398-411.)

In its rebuttal testimony (Aqua Ex. 2.0), the Company did not agree with Staff’s position regarding proof of need for water service within a proposed Certificated area. (Aqua Ex. 2.0, 21:426-438.) Also, Aqua did not agree with Staff’s objection to granting a Certificate for areas currently served by Monee and Peotone. (Aqua Ex. 2.0, 21:448-462.) Despite Aqua’s differences with Staff, the Company presented a revised Water Area to endeavor to address Staff’s objections. The revised Water Area is previously

described above. It has an approximate area of 29.4 sq. mi. and no longer contains the incorporated areas of Monee and Peotone. (Aqua Ex. 2.0, 6:126-141.)

Staff maintains its position in rebuttal testimony regarding proof of need for service. Staff further explained in response to Company Data Request (“DR”) AQUA-ICC 1.01 that the majority of docketed cases involving requests for Certificates for new or expanded water service areas evaluate need for water service as described in Staff’s direct testimony and that all Certificate orders for these certain cases support this. (ICC Staff Ex. 2.0, 1-2:20-33.)

Staff also maintains its position that having more than one water system in the same service area unnecessarily increases congestion of underground utilities which increases the difficulty of design and construction. Duplicate systems also unnecessarily complicate operation, maintenance and repair of the water systems, due to the increased possibility of utility personnel misidentifying various mains of the systems. In addition, Staff believes that a new water system proposed by a private utility within an area that already has water service almost certainly does not meet the certification requirements of necessity and least-cost found in 220 ILCS 5/8-406(b)(1). (ICC Staff Ex. 2.0, 2-3:42-53.)

Notwithstanding Aqua’s and Staff’s disagreements, the revised Water Area satisfactorily addresses Staff’s concerns. Therefore, Staff does not object to the revised Water Area as depicted in Aqua Ex. 2.1 and described in Aqua Ex. 2.2. (ICC Staff Ex. 2.0 at 2:35-40 and 3:55-62.)

### 3. Least Cost - Water Area

Aqua presented three options for addressing the need the higher quality water within its University Park service area. (Aqua Ex. 1.0 at 11-12:249-52.) They were:

1. Acquiring a supply of Lake Michigan water from the City of Chicago.
2. Constructing additional ground water supply and iron removal and softening treatment in University Park.
3. Construction of a pipeline to supply water from Aqua's Kankakee Division to the University Park Division.

Option No. 1 was dismissed for several reasons including: the anticipated high costs of constructing the water transmission pipeline a long distance through congested areas, the complex political and technical nature of acquiring water from the City of Chicago and transporting it through several communities, and being a passive party to rate increases from upstream municipalities. Staff concurred with the Company regarding this option. (ICC Staff Ex. 1.0, 20:465-471.)

In addressing the other two options, Aqua considered various design populations, design flow rates, pipeline sizes, and six pipeline routes. However, Aqua's recommended solution was vaguely defined only as a pipeline from the Kankakee Division facilities at the Manteno Diversatech Campus to the University Park Division facilities at Central Avenue. The design flow rate was not specified and the pipeline size and proposed route was not selected. (ICC Staff Ex. 1.0, 20:473-478.)

Staff concluded that Aqua had not defined the proposed solution to solving University Park's water quality need to the extent necessary to determine if it was least cost. Without a cost comparison with more complete and defined parameters, least-

cost could not be determined for the Water Area. (ICC Staff Ex. 1.0, 19:439-443 and 21:494-495.)

In rebuttal testimony, Aqua presented three alternatives for addressing the water service needs of its University Park Division customers. These alternatives were based on Options No. 2 and No. 3 provided in the Company’s Direct. They include a 24-inch pipeline using Route 5A, a 24-inch pipeline using Route 5, and expansion and treatment of University Park’s current groundwater supply. (Aqua Ex. 2.0, 12-13:240-260.)

The total project costs associated with the three alternatives are given in the table below. (Aqua Ex. 2.0 at 13:260.)

24-inch Pipeline <u>Route 5A</u>	24-inch Pipeline <u>Route 5</u>	Ion Exchange Softening of <u>Well</u> <u>Supply</u>
\$13,015,211	\$16,345,791	\$ 21,400,000

As shown above, the 24-inch pipeline along Route 5A has the lowest estimated total project cost and is Aqua's selected alternative as the least-cost means of providing softened, filtered water to University Park.

Staff had concerns with the Company’s evaluation of these alternatives. These concerns were related to inconsistent design flows for the three alternatives and the uncertainty of how the pipeline would be operated and connected to the Kankakee Water Division’s facilities at Manteno. The Route 5A pipeline alternative appeared to provide less capacity than the expanded groundwater supply and treatment alternative. However, the cost to replace any existing pumps to increase the Route 5A capacity would be significantly less than the \$8.4 million greater cost of the expanded groundwater supply and treatment alternative. Therefore, Staff agreed with Aqua that

the Route 5A pipeline option is the least-cost alternative. (ICC Staff Ex. 2.0, 6-11:113-256.) Aqua provided further details addressing Staff's concerns regarding the capacity of the Route 5A pipeline alternative in their surrebuttal testimony. (Aqua Ex. 4.0, 5-12:113-256.)

#### **4. Management and Supervision**

Section 8-406(b)(2) of the PUA requires that the utility demonstrate that it is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof. 220 ILCS 5/8-406(b)(2). Staff testified that Aqua and its predecessor companies have been operating in Illinois since 1910. It is currently the second largest investor-owned water and wastewater utility in Illinois and serves approximately 56,000 water customers and 6,000 sewer customers within the state. In addition, Aqua is a subsidiary of Aqua America, Inc., a publicly traded water utility holding company, with subsidiaries serving approximately 3 million customers in 13 states. It has consistently demonstrated that its water and sewer systems in Illinois are well-operated, efficiently managed and supervised, and that its equipment is well maintained. Aqua has many years of experience managing and supervising this type of construction. Staff also testified in direct testimony that the Company is capable of efficiently managing and supervising the construction necessary to serve the Limited Areas. Therefore, Staff believes that Aqua has the technical and managerial ability to construct, operate, and maintain a public water distribution system and sewage collection system in the Limited Areas. (ICC Staff Ex. 1.0, 12-13:270-286.)

Staff did not specifically address this issue regarding the Water Area due to outstanding matters regarding necessity and least-cost. Those issues were subsequently resolved and Staff has no objection to Aqua's assertion that it had met the management and supervision requirements of Section 8-406(b)(2) of the PUA. (Aqua Ex. 2.0, 5:98-99, 16:327-335, and 52:190-199.)

## 5. Financing

Section 8-406(b)(3) of the Act requires that, before issuing a requested certificate of public convenience and necessity, the Commission find, among other things, that the utility has demonstrated "that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility and its customers." (220 ILCS 5/8-406(b)(3).) Staff witness Janis Freetly presented her evaluation of Aqua's financial ability to construct the proposed project. (Staff Ex. 2.0.)

Aqua requests authority to construct, operate and maintain a water transmission main approximately 20 miles in length connecting Aqua's storage tank on the Illinois Diversatech campus in Manteno to its storage tank in University Park. (Aqua Petition, 7.) Aqua estimates total construction costs for the Main of \$11.8 million to \$20.1 million. (Id., 8.)

Aqua anticipates that the construction will be initially funded using short-term debt line of credit and equity generated from operations. Aqua will subsequently adjust its capital structure through dividend policy and long-term debt issuances to achieve its capital structure objectives, which support a capital structure of 53% equity and 47% debt. (Staff Ex. 2.0, 2-3.)

Ms. Freetly compared the estimated cost of the main to Aqua's existing utility

assets and revenues. Aqua's water utility plant had a net value of \$258,588,169 as of December 31, 2012; its utility operating revenues for the twelve months ended December 31, 2012, was \$48,482,723. The total cost represents 4.56% - 7.77% of the Company's net utility plant and 24.34% - 41.46% of the Company's total utility operating revenue. In addition, the projected capital expenditures for this Project represent 12.58% - 21.43% of Aqua's total capital expenditures budgeted for the years 2013 through 2017. (Id., 3)

While Standard & Poor's ("S&P") does not report on Aqua Illinois or Aqua America directly, S&P ratings on water utility Aqua Pennsylvania Inc. reflect the consolidated credit quality of its parent company, Aqua America, Inc. S&P assigned Aqua Pennsylvania Inc. a corporate credit rating of A+ with a Stable outlook. An A corporate credit rating from S&P indicates that the company's capacity to meet its financial commitments is strong. Moody's Investor Services does not report on Aqua or any of its affiliates. (Id., 4.)

Aqua has access to a variety of funds to finance this project. Aqua has an \$8 million line of credit. Aqua will also have access to the credit facilities of Aqua America. As of June 30, 2013, Aqua America had over \$125 million available for borrowing under its \$150 million unsecured revolving credit facility, which expires in March 2017. Additionally, Aqua America had short-term lines of credit of \$160.5 million, of which over \$48 million was available for borrowing as of June 30, 2013. Further, Aqua America had over \$4 million of cash and cash equivalents as of June 30, 2013. (Id., 3-4) Hence, Ms. Freetly concluded that Aqua is capable of financing the Project without significant adverse consequences for the utility or its customers.

**B. Request for Approval of Accounting Entries**

Staff recommends that the Commission accept the accounting treatment proposed by Aqua to record the appropriate original cost of water and sewer facilities constructed in the Expanded Area. Aqua proposes to record the original cost of all water facilities for the Expanded Area in the applicable Utility Plant in Service Accounts (Account 101). Aqua also proposes to record any contributions or deposits for the facilities as contributions in Account 271 – Contributions in Aid of Construction. Aqua states that this treatment is in accordance with Commission policy and Accounting Instruction 17 of the Uniform System of Accounts for Water Utilities (“USOA”), codified as 83 Ill. Admin. Code Part 605. (Aqua Ex. 1.0, 18-19.) Staff witness Mr. Richard W. Bridal II testified that Aqua’s proposed accounting treatment is in accordance with Commission policy and the USOA, and recommended the Commission accept the accounting treatment proposed by Aqua to record the appropriate original cost of water and sewer facilities constructed in the Expanded Area. (Staff Ex. 3.0, 2-3.) Intervenor testimony did not address the accounting treatment proposed by Aqua.

**C. Request for Proposed Depreciation Rates**

In its Petition, Aqua states that it proposes to use for the University Park Expanded Area the depreciation rates for the University Park Division, as now in effect or as subsequently revised. (Petition, 10.) Because Aqua proposes to charge water and sewer rates that are applicable to the University Park Division, Staff witness Atwood believes that is reasonable to also use water and sewer depreciation rates that are used for the University Park Division in the Limited Areas. Although not specifically addressed in Staff testimony, the same reasoning applies to the revised Water Area,

therefore, the water depreciation rates that are used for the University Park Division should also apply to the revised Water Area. The Commission approved the depreciation rates for the University Park Division in Aqua's last rate case, Docket No. 11-0436. (Staff Ex. 1.0, 15.)

**D. Request for Rates and Rules to Apply in Expanded Area**

Aqua states that in the University Park Certificated Area, it currently charges for water service the rates set forth in the tariffs of the University Park Water Division (ILL. C.C. No. 49, Section No. 3, Sheet Nos. 1-20 (water service)). (Petition at 11.) Aqua proposes to apply these same rates (as is now in effect or as such rates as may be subsequently modified by Order of the Commission) throughout the University Park Expanded Area. In addition, Aqua requests that all other applicable water charges for the University Park Water Division would apply to service within the University Park Expanded Area, including, but not limited to, public and private fire protection charges, returned check charges, late-payment fees and State and municipal add-on taxes or fees.

Staff agrees that Aqua's request is reasonable. Staff finds that the two Limited Areas shown on Aqua Exhibit 2.1 for which Aqua is requesting a Certificate for both water and wastewater service, and for which Aqua seeks certification to clarify the boundaries of the area for which Aqua sought certification in Docket No. 87-0402, will be directly connected to the Company's University Park Division water and sewer systems and will be using its facilities to obtain service. Existing customers of the University Park Division will experience benefits from growth of the Aqua water and sewer systems as common costs are spread over a larger customer base. (Staff Ex.

1.0, 13-14.) Although not specifically addressed in Staff testimony, the same reasoning applies to the revised Water Area, therefore, Staff believes that the water rates that are used for the University Park Division should also apply to the revised Water Area.

The Company proposes that its current Rules, Regulations, and Conditions of Service tariffs for water and sewer service on file with the Commission and currently in effect in its University Park Division to apply to the customers in the entire Expanded Area. (Aqua Ex. 1.0, 18:392-95.) Staff testified that it would be appropriate for the Company to apply its current rules, regulations, and conditions of service tariffs for water and sewer service to the customers within the Limited Areas. (Staff Ex. 1.0, 14:323.)

Staff's direct testimony did not specifically address Aqua's request to apply its current University Park Division Rates, Rules, Regulations and Conditions of Service tariffs for water service to the Water Area due to outstanding matters regarding necessity and least-cost. Those issues were subsequently resolved and Staff had no objection to Aqua's request to applying these tariffs. Therefore, Staff believes that the request to apply the University Park Division's Rates, Rules, Regulations, and Conditions of Service tariffs for water service on file with the Commission and currently in effect to the customers in the revised Water Area should be approved.

The Company agreed to the Commission ordering Aqua to file revised tariff sheets incorporating the Revised Water Area, within five (5) business days after the date of service of the Final Order, with an effective date of five (5) business days after the date of filing, for service rendered on and after their effective date, with individual tariff sheets to be corrected within that time period, if necessary. (Aqua Ex. 3.1, 5-8.)

### III. CONCLUSION

For the reasons set forth *supra*, Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations consistent with this Initial Brief.

Respectfully submitted,

/s/

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March 6, 2014

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