

**PUBLIC  
DIRECT TESTIMONY**

of

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**Policy Group**

**Energy Division  
Illinois Commerce Commission**

**Docket No. 13-0618: Utility Services of Illinois, Inc. and Each of the 23 Operating  
Subsidiaries of Utilities, Inc.**

**Application for Approval of Proposed Reorganization and Other Relief**

**Docket No. 13-0618**

**March 12, 2014**

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1 **I. Witness Qualifications**

2 **Q. State your name and business address.**

3 A. My name is David Sackett and my business address is 527 East Capitol Avenue,  
4 Springfield, Illinois 62701.

5

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed as an Economic Analyst in the Policy Program of the Policy  
8 Division of the Illinois Commerce Commission (“Commission” or “ICC”).

9

10 **Q. What are your responsibilities within the Policy Division – Policy Program?**

11 A. I provide economic analysis and advise the Commission and other Staff  
12 members on issues involving the natural gas and electric utility industries. I  
13 review tariff filings and make recommendations to the Commission concerning  
14 those filings. I provide testimony in Commission proceedings. In selected cases,  
15 I may be called upon to act as an assistant to Commissioners or to administrative  
16 law judges.

17

18 **Q. State your educational background.**

19 A. I graduated from Kankakee Community College with an Associate of Science  
20 degree in Arts and Sciences in 1998. I graduated with highest honors from  
21 Illinois State University with a Bachelor of Science degree in Economics and  
22 History in 2000. I obtained a Master of Science degree in Applied Economics  
23 from Illinois State University in the Electric, Natural Gas and Telecommunications

24 Economics sequence<sup>1</sup> in 2002. I also completed an internship at the  
25 Commission in the Energy Division in 2001.

26

27 **Q. Describe your professional experience.**

28 A. Since July 2007, I have been an Economic Analyst in the Policy Program of the  
29 Commission's Policy Division. During that time I have participated in numerous  
30 docketed proceedings before the Commission. Of particular note has been my  
31 testimony dealing with affiliate issues. Most recently, I filed testimony in Nicor  
32 Gas Company's Operating Agreement docket (Docket No. 09-0301 consolidated  
33 with Docket No. 11-0046, in which Nicor Gas Company seeks approval of its  
34 reorganization), Docket Nos. 11-0280 and 11-0281 (Cons.) (North Shore Gas  
35 Company and The Peoples Gas Light and Coke Company rate proceedings),  
36 Docket Nos. 11-0561 through 0566 (Cons.) (the rate proceeding for certain  
37 Utilities Inc. water companies), Docket No. 11-0767 (the Illinois-American Water  
38 Company rate proceeding) and Docket Nos. 12-0511 and 12-0512 (Cons.) (North  
39 Shore Gas Company and The Peoples Gas Light and Coke Company rate  
40 proceedings). In all of these cases listed, I provided testimony before the  
41 Commission about affiliate interactions and abuses of the public interest.  
42 Prior to joining the Commission, I was an instructor at Illinois State University  
43 from 2003 to 2006, where I taught various courses in economics and statistics to

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<sup>1</sup> "The Electricity, Natural Gas, and Telecommunications Sequence is a structured program that combines training in basic economic theory and statistical methods with specialized training in the theory, history and institutions of the economics of regulation." ISU website: <http://www.econ.ilstu.edu/grad/program.htm>.

44 undergraduate students. I am a Major in the Marine Corps Reserve having  
45 served since 1993; I have completed two deployments to Iraq.

46

47 **II. Purpose of Testimony and Background Information**

48 **Q. What is the subject matter of your direct testimony?**

49 A. The purpose of my direct testimony is to respond to Utility Services of Illinois, Inc.  
50 (“USI”) and each of the 23 Illinois Operating Subsidiaries of Utility Inc. (“Illinois  
51 Utilities”)and their joint petition and testimony relating to its proposed  
52 consolidation of the 23 subsidiaries (collectively, “Joint Applicants”). USI and the  
53 Illinois Utilities are all wholly-owned subsidiaries of Utility Inc. (“UI”). Specifically,  
54 I will respond to Mr. Lubertoizzi’s direct testimony regarding proposed changes to  
55 its agreement(s) with its service company.

56

57 **Q. Do you have any attachments to your testimony?**

58 A. Yes. I have attached the following documents to my direct testimony.

- 59 • Attachment A is the existing Affiliated Interest Agreement (“AIA”) between  
60 Water Services Corporation (“WSC”) and Charmar, which is identical to all 23  
61 AIAs between the Illinois Utilities and WSC.
- 62 • Confidential Attachment B is the Marketing Agreement (“MA”) between WSC  
63 and HomeServeUSA (“HomeServe”) which was provided in response to Staff  
64 Data Request (“DR”) DLH 12.01in Docket Nos. 11-0561 through 11-0566  
65 (Cons.).

- 66 • Confidential Attachment C is the response to Staff DR DAS-1.01 from Docket  
67 Nos. 11-0561 through 11-0566 (Cons.).
- 68 • Attachment D is the response to Staff DR DLH-14.01 from Docket Nos. 11-  
69 0561 through 11-0566 (Cons.).
- 70 • Attachment E is Staff's proposed Rider to the AIA to reflect the  
71 recommendations listed below.

72

73 **III. Summary of Conclusions and Recommendations**

74 **Q. Please summarize your conclusions and recommendations.**

75 A. Although I am not an attorney, it appears to me that the Illinois Utilities violated  
76 the Public Utilities Act ("Act") by allowing its agent WSC to sell the use of Illinois  
77 Utilities ratepayer information without receiving the required Commission  
78 approval. WSC entered into the MA which requires the provision of Illinois  
79 Utilities ratepayer information to HomeServe. \*\*\*BEGIN CONF.\*\*\*

80 \*\*\*\*\*END CONF.\*\*\*

81 Therefore, I have concluded that the following six specific recommendations  
82 should be adopted by the Commission.

- 83 1. Find that the Illinois Utilities violated section 7-101(c) Act by allowing its affiliate  
84 WSC to sell the use of Illinois Utilities ratepayer information without  
85 Commission approval,
- 86 2. Require a Rider to the AIA that provides that at no time shall the Service  
87 Company be allowed to use the Operating Company's customers' information  
88 for any non-utility purpose. Additionally, the Service Company is prohibited from

89 using this information to provide information or marketing of any product or  
90 service that is a non-utility product or service to any customer of the Operating  
91 Company.

- 92 3. Require that USI be excluded from the current Home Serve contract,  
93 4. Require USI to recover all of their ratepayer information that has been provided  
94 to HomeServe,  
95 5. Require USI to reflect any payments received by WSC from HomeServe as a  
96 result of Illinois Utilities' customers currently enrolled in HomeServe's service  
97 repair plans as revenues as a benefit to ratepayers in future USI rate  
98 proceedings and that WSC not allocate any MA operating costs to USI in future  
99 rate proceedings, and  
100 6. Preclude USI from providing any endorsement or marketing of HomeServe's  
101 product to its ratepayers (including, but not limited to, bill inserts).

102

103 **IV. Background**

104 **Q. What does the Act require regarding Affiliate Interaction Agreements**  
105 **("AIAs") for utilities that proposed to merge or reorganize?**

106 A. The Act requires, among other things, that the Commission review and consider  
107 all affiliated agreements which will be in force after the reorganization to be  
108 brought by the parties in the case. 220 ILCS 5/7-101(3); 220 ILCS 5/7-  
109 204A(a)(5). Any such such affiliate agreement not consented to by the  
110 Commission is void *ab initio*. 220 ILCS 5/7-101(3).

111

112 **Q. What documents currently govern the transactions between WSC and the**  
113 **Illinois Utilities?**

114 A. Each of the Illinois Utilities has an identical agreement with WSC that sets forth  
115 the services that WSC performs for each utility. This Affiliated Interest  
116 Agreement (“AIA”) states that WSC provides billing and customer services.  
117 (Attachment A, 2.) It also sets forth the cost that the Illinois Utilities pay to WSC  
118 for the services rendered. *Id.* at 3-4. Significantly, the AIA is a one-way  
119 agreement that allows WSC to provide certain services to Illinois utilities but does  
120 not allow Illinois Utilities’ to provide any services or transfers of assets from the  
121 Illinois Utilities to WSC.

122

123 **Q. Why is the fact that the AIA does not provide for the Illinois Utilities to**  
124 **provide services or transfer ownership of assets to WSC significant?**

125 A. WSC contracted to provide the Illinois Utilities ratepayer information to  
126 HomeServe to enable HomeServe to market its services to those ratepayers.  
127 The right to make this transfer was not provided in the AIA, nor otherwise  
128 authorized by the Commission. The ratepayer information was available to WSC  
129 to allow it to provide customer service and billing services which were provided  
130 for in the AIA. Nowhere in the AIA was WSC authorized to use this information  
131 for its own benefit.

132

133 **Q. Has the issue of WSC transfer of ratepayer information been before the**  
134 **Commission previously?**

135 A Yes. This issue was raised by Staff in Docket Nos. 11-0561 through 11-0566  
136 (Cons.) involving rates for six of the Illinois Utilities. In those dockets, Staff  
137 objected to the revenue impacts and privacy concerns. Staff recommended the  
138 Commission find the Companies in violation of the Act and order changes to the  
139 AIA to protect ratepayer information. Charmar Water Company, et. al., ICC  
140 Order Docket Nos. 11-0561, 11-0562, 11-0563, 11-0564, 11-0565, 11-0566  
141 (Cons.), 28 (May 22, 2012).

142

143 **Q. What was the Illinois Utilities response?**

144 A The Illinois Utilities agreed to the proposed adjustments but requested that the  
145 delay Commission defer decisions regarding modification to the AIA until all 23  
146 Illinois Utilities AIAs could be addressed together. *Id.*

147

148 **Q. What did the Commission do?**

149 A The Commission approved the adjustments proposed by Staff and ordered that  
150 the issue of findings of violations, fines and changes to the AIA be handled in a  
151 different proceeding.

152 For the purposes of these rate proceedings, the Commission finds  
153 that the issues raised by Staff related to the HomeServe transaction  
154 have been satisfactorily addressed by the Companies' concessions  
155 to reduce its revenue requirements by the amount of HomeServe  
156 payments and to participate in a proceeding to address modification  
157 of the Affiliated Interest Agreement applicable to all Utility, Inc.  
158 affiliates operating in Illinois. However, the Commission agrees with  
159 the Companies that this rate case is not the preferred forum to  
160 address those issues. Therefore, the Commission declines to  
161 approve Staff's proposal to make a finding in this proceeding that the  
162 Companies have violated the Public Utilities Act.  
163 *Id.* at 29.

164

165 **V. The Proposed Water Service Corporation Agreement**

166 **Q. How does USI describe its current AIAs?**

167 A. USI states,

168 With the Commission's approval, each of the Illinois Utilities entered  
169 into Affiliated Interest Agreements ("AIA") with Water Service  
170 Corporation, a wholly-owned subsidiary of UI, which furnishes certain  
171 administrative, engineering, operating, accounting, customer,  
172 construction, billing and legal services for each of the Illinois Utilities.  
173 (Joint Applicants Ex. 1.0, 7-8.)  
174

175 **Q. Did USI initially propose to modify its AIAs with regard to customer –**  
176 **specific information in this case?**

177 A. Yes. USI states,

178 Joint Applicant's propose to address this issue in this docket by  
179 adding a provision to the AIAs that would preclude WSC from sharing  
180 customer-specific information that it obtains from customers of USI if  
181 the customer has requested such information not be provided to third  
182 parties. Except for that limited modification, those contracts will not be  
183 affected by the Merger and will remain in place with USI with respect  
184 to each of the Illinois Utilities, which will be operated as divisions of  
185 USI.  
186 (Joint Applicants Ex. 1.0, 7-8.)  
187

188 **Q. Does USI's initial proposal satisfy Staff's concerns?**

189 A. No. USI's proposal does not alleviate Staff's concerns regarding the protection  
190 of ratepayers. For example, neither current ratepayers nor new ratepayers are  
191 going to be given notice of their option to opt out of having their information  
192 released. Importantly, the USI proposal does nothing to address the ratepayer  
193 information that has already been provided to HomeServe.

194

195 **Q. Has USI changed its proposal regarding the AIA in discovery?**

196 A. Yes. USI states,

197  
198 The Company does not anticipate changing the AIA due to the  
199 proposed merger. Upon further consideration, as an alternative to the  
200 modification proposed in [Mr. Lubertozi's] direct testimony, the  
201 Commission should consider including a provision in the final order in  
202 this docket that would require the Company to exclude Illinois  
203 customers from the HomeServe contract and preclude the Company  
204 from sharing customer information with third parties for non-utility  
205 purposes. The Company is evaluating two options as it pertains to  
206 customer information: (1) excluding Illinois from the current Home  
207 Serve contract, and (2) providing HomeServe's marketing material  
208 directly in its bills to customers, so that it would no longer be  
209 necessary to provide customer addresses to HomeServe.  
210 (Joint Applicants to Staff DR JMO 3.01)  
211  
212

213 **Q. Does the modified proposal address your policy concerns?**

214 A. No. The proposal attempts to address the improper release of the information by  
215 having USI send the marketing information directly to the customer. Under this  
216 proposal there is no need for HomeServe to have the information. Thus, the  
217 modified proposal goes part way to correcting the improprieties. However,  
218 WSC's interactions with HomeServe as outlined below reveal that there are  
219 concerns which are not remedied the modified proposal. Specifically, the  
220 modified proposal does not return the information that was provided improperly to  
221 HomeServe by WSC nor does it specify the appropriate treatment of UI's  
222 program costs and revenues related to HomeServe. Finally, this proposal results  
223 in further endorsement of and marketing of HomeServe products to USI  
224 ratepayers.  
225

226 V. **Water Service Corporation and HomeServeUSA**

227 A. **Introduction and overview of HomeServeUSA warranty products**

228 Q. **How was an issue regarding WSC’s interactions with HomeServeUSA**  
229 **raised?**

230 A. In Docket Nos. 11-0561 through 11-0566 (Cons.), Staff identified a confidential  
231 contract called the Marketing Agreement (“MA”) between the Joint Applicants’  
232 affiliated services company, WSC and HomeServe. (Docket Nos. 11-0561 through  
233 11-0566 (Cons.) Staff Ex. 1.0, 25.) The MA is attached to my direct testimony as  
234 Attachment B.

235  
236 Q. **Please describe the MA.**

237 A. \*\*\*BEGIN CONF.\*\*\*\*\*  
238 \*\*\*\*\*END CONF.\*\*\* (Attachment B, 15), \*\*\*BEGIN CONF.\*\*\*\*\*  
239 \*\*\*\*\*  
240 \*\*\*\*\*END CONF.\*\*\* *Id.* at 3-4.

241  
242 Q. **What services are provided for under the MA?**

243 A. \*\*\*BEGIN CONF.\*\*\*\*\*  
244 \*\*\*\*\*  
245 \*\*\*\*\*

246 \*\*\*\*\*

247 \*\*\*\*\*

248 \*\*\*\*\*END CONF.\*\*\* *Id.* at 2-4.

249

250 **Q. What services has WSC provided to HomeServe under the MA?**

251 A. WSC has clearly marketed for and endorsed HomeServe and its warranty products  
252 (Attachment D),and \*\*\*BEGIN CONF.\*\*\*\*\*

253 \*\*\*\*\*

254 \*\*\*\*\*END CONF.\*\*\* (Attachment B)

255

256 **Q. What services may WSC have provided to HomeServe under the MA?**

257 A. While it is not entirely clear at this time, it appears that WSC may have \*\*\*BEGIN  
258 CONF.\*\*\*\*\*

259 \*\*\*\*\*

260 \*\*\*\*\*END

261 CONF.\*\*\* *Id.*

262

263 **Q. Does the MA set forth the compensation from HomeServe to WSC for  
264 providing customer information to HomeServe?**

265 A. Yes. \*\*\*BEGIN CONF.\*\*\*\*\*

266 \*\*\*\*\*

267 \*\*\*\*\*END CONF.\*\*\* (Attachment

268 B, 5.) \*\*\*BEGIN CONF.\*\*\*\*\*

269 \*\*\*\*\*

270 \*\*\*\*\*END CONF.\*\*\* *Id.* at 2. \*\*\*BEGIN

271 CONF.\*\*\*\*\*

272 \*\*\*\*\*

273 \*\*\*\*\*END CONF.\*\*\* *Id.* at 3-4.

274

275 **Q. Are there any costs that are not included in the Net Commission under the**  
276 **MA?**

277 A. Yes. The MA discusses \*\*\*BEGIN CONF.\*\*\*\*\*

278 \*\*\*\*\*

279 \*\*\*\*\*

280 \*\*\*\*\*END CONF.\*\*\* (*Id.* at 2-4.), despite the fact that there

281 will surely be some cost to WSC. Additionally, WSC certainly has incurred

282 program costs associated with the development of its relationship with HomeServe

283 and the continued provision of services. None of these costs are recovered from

284 HomeServe under the MA.

285

286 **Q. Does WSC receive compensation from HomeServe?**

287 A. \*\*\*BEGIN CONF.\*\*\*\*\*

288 \*\*\*\*\*

289 \*\*\*\*\*

290 \*\*\*\*\*END CONF.\*\*\* (Attachment C.)

291

292 **Q. Why is the fact that the payment is to UI rather than WSC important?**

293 A. WSC is set up to provide services to all of UI's operating utilities including Illinois  
294 Utilities at cost. (Joint Applicants Response to Staff DR DAS-1.05.) \*\*\*BEGIN  
295 CONF.\*\*\*\*\*

296 \*\*\*\*\*END CONF.\*\*\*

297 (Attachment C.) \*\*\*BEGIN CONF.\*\*\*\*\*

298 \*\*\*\*\*

299 \*\*\*\*\*END CONF.\*\*\* In two recent cases, some of the Illinois Utilities have

300 attempted to include these higher costs in rate cases. Staff objected, and the

301 utilities conceded adjustments to account for these missing revenues. See, e.g.,

302 Charmar Water Company, et. al., ICC Docket Nos. 11-0561, 11-0562, 11-0563, 11-

303 0564, 11-0565, 11-0566 (Cons.); Apple Canyon Utility Company, et. al., ICC

304 Docket Nos. 12-0603, 12-0604 (Cons.).

305

306 **B. Water Services Corporation is not authorized to provide customer**  
307 **data to HomeServeUSA**

308 **Q. Did Staff object to any other aspects about how WSC interacted with**  
309 **HomeServe?**

310 A. Yes. In Docket Nos. 11-0561 through 11-0566 (Cons.), I filed rebuttal testimony  
311 that outlined privacy concerns in addition to the revenue improprieties.

312

313 **Q. Does the MA require WSC to provide ratepayer information to HomeServe?**

314 A. \*\*\*BEGIN CONF.\*\*\* \*\*\*\*\*  
315 \*\*\*\*\*END CONF.\*\*\* (Attachment B, 7.) Its

316 importance to HomeServe is emphasized by the fact that WSC explicitly warranted  
317 that “it is legally permitted to provide Home Service with the Customer Data.” *Id.*

318  
319 **Q. Does the AIA authorize WSC to provide “customer information” to**  
320 **HomeServe?**

321 A. No. WSC maintains ratepayer information as part of its duties as the customer  
322 service provider for and agent of the Illinois Utilities. (Attachment A, 2-3.) The AIA  
323 does not authorize any passage of ratepayer information to any third party.

324  
325 **C. Ratepayers should be the beneficiaries, not the affiliate.**

326 **Q. Is the information provided to HomeServe by WSC utility information?**

327 A. Yes. The confidential customer information provided by WSC to HomeServe is  
328 utility information, not affiliate information. Ratepayers provide this information to  
329 each Company when they sign up for utility service, and WSC maintains this  
330 information as part of its duties in providing customer service on behalf of each  
331 Company. (Attachment A, 2-3.)

332  
333 **Q. Were the USI utilities aware that WSC was transferring customer**  
334 **information that Staff contends has not been authorized by the**  
335 **Commission?**

336 A. Yes. As I stated earlier, \*\*\*BEGIN CONF.\*\*\*\*\*

337 \*\*\*\*\*

338 \*\*\*\*\*END CONF.\*\*\* See Attachment B.

339

340 **VI. Conclusions and recommendations**

341 **Q. What are your conclusions regarding the interactions between the Illinois**  
342 **Utilities, WSC and HomeServe?**

343 A. Although I am not an attorney, it appears that the Illinois Utilities violated the Public  
344 Utilities Act (“Act”) by allowing its agent WSC to sell the use of Illinois Utilities  
345 ratepayer information without receiving the required Commission approval. WSC  
346 entered into the MA which requires the provision of Illinois Utilities ratepayer  
347 information to HomeServe. \*\*\*BEGIN CONF.\*\*\*\*\*

348 \*\*\*\*\*END CONF.\*\*\*

349

350 **Q. What are your recommendations for the Joint Applicants to address upon**  
351 **rebuttal?**

352 A. I request that the Joint Applicants to present in its rebuttal testimony a new AIA  
353 between USI and WSC that mirrors the current Commission-approved AIA.

354

355 **Q. What are your recommendations for the Commission regarding the**  
356 **interactions between the Illinois Utilities, WSC and HomeServe?**

357 A. I have six specific recommendations for the Commission regarding the interactions  
358 between the Illinois Utilities, WSC and HomeServe:

- 359 1. Find that the Illinois Utilities violated section 7-101(c) Act by allowing its affiliate  
360 WSC to sell the use of Illinois Utilities ratepayer information without  
361 Commission approval;
- 362 2. Require a Rider to the AIA that provides that at no time shall the Service  
363 Company be allowed to use the Operating Company's customers' information  
364 for any non-utility purpose. Additionally, the Service Company is prohibited from  
365 using this information to provide information or marketing of any product or  
366 service that is a non-utility product or service to any customer of the Operating  
367 Company;
- 368 3. Require that USI be excluded from the current Home Serve contract, and
- 369 4. Require USI to recover all of their ratepayer information that has been provided  
370 to HomeServe;
- 371 5. Require USI to reflect any payments received by WSC from HomeServe as a  
372 result of Illinois Utilities' customers currently enrolled in HomeServe's service  
373 repair plans as revenues as a benefit to ratepayers in future USI rate  
374 proceedings and that WSC not allocate any MA operating costs to USI in future  
375 rate proceedings; and
- 376 6. Preclude USI from providing any endorsement or marketing of HomeServe's  
377 product to its ratepayers (including, but not limited to, bill inserts) going forward.

378

379 **Q. Does this conclude your prepared direct testimony?**

380 A. Yes.