

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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Utility Services of Illinois, Inc. and )  
Each of the 23 Illinois Operating )  
Subsidiaries of Utilities Inc. )  
Application for Approval of )  
Proposed Reorganization )  
and Other Relief )

Docket No. 13-0618

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

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The Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned attorneys and pursuant to Section 200.800 of the Commission’s Rules of Practice, 83 Ill. Adm. Code 200.800, respectfully submit their Reply Brief in the above-noted proceeding.

**I. Introduction**

On June 10, 2014, Utilities Inc., or each of the 23 Illinois Utilities (“Joint Applicants”), filed its Initial Brief. The Joint Applicants, in their Initial Brief, oppose two Staff recommendations concerning the Illinois Utilities interactions with its affiliate Water Service Corporation (“WSC”). The Joint Applicants oppose Staff’s recommendation that the Commission find the Illinois Utilities violated the Public Utilities Act (“PUA”) through their interactions with their affiliate WSC. The Joint Applicants also oppose Staff’s recommendation to prohibit the Illinois Utilities from including HomeServe advertisements in their utility bills. As explained herein, the Joint Applicants positions are not supported by either the facts or the law and, therefore, should be rejected.

## **II. Staff Reply to the Joint Applicants**

The Joint Applicants contend that the Commission should not find that Illinois Utilities violated the PUA. The Joint Applicants offer three arguments in support of their position: (1) that the Commission has already decided this issue in another docket, that it is unnecessary to decide it in this docket and/or that it is not within the scope of this docket; (2) that the Commission cannot address actions taken by the unregulated entities WSC and HomeServe; and (3) that the actions Staff objects to were not precluded by the AIA. None of these assertions are correct.

### **A. Violation of the PUA**

First, the Commission did not, as the Joint Applicants assert, decide this issue in Docket Nos. 11-0561 – 11-0566(cons.). (Joint Applicants IB, 4). The Commission instead found that the rate case was not the appropriate forum to address whether the Illinois Utilities violated the PUA, stating:

[T]he Commission agrees with the Companies that this rate case is not the preferred forum to address those issues. Therefore, the Commission declines to approve Staff's proposal to make a finding in this proceeding that the Companies have violated the Public Utilities Act. (Order, p.29)

*Charmar Water Co., et. al.*, ICC Final Order Docket Nos. 11-0561/11-0562/11-0563/11-0564/11-0565/11-0566 (Cons.), 29 (May 22, 2012) ("*Charmar Order*").

The Joint Applicants, ironically, also acknowledge that in Docket Nos. 11-0561 – 11-0566 (cons.) the Commission further ordered the Illinois Utilities to participate in a proceeding to address modifications to the AIA and that they consider this proceeding to be the one identified by the Commission. (Joint Applicants IB, 4.) Staff agrees.. Staff, however, does not agree with the Joint Applicant's contention that the Commission

need not identify that the Illinois Utilities violated the PUA in order to make corrective changes to the AIA. (Joint Applicants IB, 5.) In order to identify necessary modifications to the AIA, the Commission must fully evaluate and recognize the conduct that the modifications will correct. Directly identifying actions taken by the Illinois Utilities in violation of the PUA will make clear that the unlawful conduct that Staff identified in the Rider to the AIA to prevent such conduct in the future.

Further, in making its findings in the proceeding, the Commission should consider the record here, not, as the Joint Applicants suggest, the limited record from the prior case. Significantly, the record in this proceeding reveals that WSC provided utility ratepayer *addresses* and *names* to HomeServe USA (“HomeServe”), that costs incurred by WSC for services to HomeServe were charged to the Illinois Utilities, and that revenues received by WSC from the lease of Illinois Utility customer information was *diverted* to UI. The Commission did not foreclose consideration of these facts when it determined that Illinois Utilities interactions with its affiliates should be considered in a separate proceeding. *Charmar Order* at 28-29. In fact, although the Commission approved the adjustments proposed by Staff related to affiliated transactions, it specifically ordered that the issue of findings of violations, fines and changes to the AIA be handled in a different proceeding. (See Staff IB, at 6.)

Finally, the Joint Applicants argue that the PUA must not preclude the interactions between it and WSC that resulted in the Illinois Utilities’ customer information being used for non-utility business, because, if it did, Staff would not propose such modifications to the AIA. To be clear, Staff included proposed remedy provisions in the Rider so that all affiliates (and their current and future employees)

would have a written record of the restrictions. Further, Staff's proposed language to the Rider is not inconsistent with a Commission finding of a violation of the PUA; in fact, the two work hand in glove together. Identifying the Illinois Utilities violation of the PUA provides a similar record that memorializes the behavior necessitating the remedy provisions in the proposed riders.<sup>1</sup>

For these reasons, the Commission should reject the Joint Applicants argument that whether or not the Illinois Utilities interactions with its affiliate WSC violated the PUA has been decided, is unnecessary, and/or is outside the scope of this proceeding.

#### **B. All Affiliate Transactions Must Be Approved**

The Joint Applicants also argue that the Commission cannot regulate what WSC and HomeServe do, and that such interactions are outside the jurisdiction of this Commission. (Joint Applicants IB, 6.) The Joint Applicants are incorrect. The Commission can and should ensure that interactions between WSC and HomeServe, when the activity of these entities is the direct result of affiliate interactions between the Illinois Utilities and WSC, are consistent with the public interest. The Joint Applicants position is simply wrong under the Act. The Act and the AIA are both restrictive in that anything not permitted is precluded. Any further use of utility property by a non-utility affiliate requires express *permission*, not express *restriction* to prohibit, as the Joint Applicants argue. The AIA does not give them the right to use utility property for any non-utility purposes.

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<sup>1</sup> The Joint Applicants also claim that there was a thorough review of the AIA before it was recently approved in 2008. However, Staff was not aware of the Marketing Agreement when it reviewed the AIA in 2008. It did not learn of the issue until 2011.

Contrary to the allegations of the Joint Applicants, Staff does not recommend that the Commission has the authority or should regulate the interactions between a utility affiliate and a non-affiliated third party for provision of services which do not involve the utility. Rather, Staff seeks to have the Commission regulate the manner in which that unregulated affiliate can use information improperly obtained through its affiliate interaction with the Illinois Utilities and to ensure that the Illinois Utilities do not pay for work their affiliate performs for an unaffiliated third party. The Commission's oversight of these matters clearly and unmistakably within the Commission's authority under Section 7-101 *et seq* of the PUA.

The Joint Applicants claim that the AIA represents the only "arrangement" between the Illinois Utilities and WSC and that the AIA does not restrict WSC's ability to lease the Illinois Utilities' customers' information to third parties for non-utility business. (Joint Applicants IB, 6.) The Joint Applicants' arguments in this regard are inconsistent. The AIA between the Illinois Utilities and WSC makes arrangements for WSC to use the Illinois Utilities' customer information to provide support for the Illinois Utilities regulated business. The AIA does not provide for use of the Illinois Utilities' customer information for non-utility purposes. As Joint Applicants admit, the arrangement whereby the Illinois Utilities' allow WSC to make use of the Illinois Utilities' customer information for non-utility business was not restricted by the AIA (Joint Applicants' IB at 5.) and, therefore, is an arrangement outside the AIA. Making an arrangement with its affiliate outside the AIA that permits the affiliate to use Illinois Utility customer information for non-utility business is inconsistent with the Illinois Utilities' requirements under Section 7-101(3) of the PUA, which requires the Illinois Utilities' contracts or arrangements with their

affiliates to either be consented to or excepted by the Commission. 220 ILCS 5/7-101(3).

The Commission should consider the manner in which the Joint Applicants have treated ratepayers' identities. UI and its subsidiaries do not have written privacy policies. They did not ask their ratepayers before they permitted their identities to be used for non-utility purposes. The Commission should not sanction such behavior. The Joint Applicants should be held accountable for the unapproved actions that occurred as a direct result of their affiliate interactions with WSC.

### **C. Bill Inserts**

The Joint Applicants make three assertions about Staff's proposal to exclude HomeServe for any use of bill inserts. The Joint Applicants claim that Staff's proposal would (1) restrict competition, (2) reduce ratepayer information and (3) deny ratepayers rate-reducing revenues. (Joint Applicants' IB at 7-8.) However, all of these assertions are inaccurate.

First, Staff's position and recommendations respond to an already skewed competitive environment. As Staff witness Sackett testified, HomeServe's advertisements have been included Illinois Utilities' customer bills and HomeServe has enjoyed the Illinois Utilities' endorsements for more than 5 years. (Staff Ex. 7.0 at 17) Thus, HomeServe is, and has been, at a competitive advantage as result of the Illinois Utilities affiliate interactions with WSC. Staff's proposal to require equal access to competing firms is designed to remedy the market advantage that HomeServe received when the Illinois Utilities, through their affiliate, interacted with HomeServe in a manner inconsistent with the Act and the public interest.

Additionally, Staff's proposal would not hurt ratepayers by denying them revenues from HomeServe bill inserts relative to what was provided ratepayers in the past. As Staff has indicated, the bill insert services that the Joint Applicants propose are billed only at incremental cost. (Staff Ex. 7.0 at 15) That is, they only pay for the increase in postage needed. This does not benefit the ratepayers because, as their costs go up for the additional postage, this is completely off set by the payment from HomeServe. However, the total amount paid by ratepayers for billing remains the same.

### **III. Staff's Recommendations**

Staff continues (see Staff IB at 11) to recommend that the Commission adopt Staff's proposed Rider and also find that the Illinois Utilities violated the Illinois Public Utilities Act (the "Act" or "PUA") because they: (1) allowed WSC to lease Illinois Utilities' ratepayer information to HomeServe outside the AIA and without Commission approval; (2) allowed WSC to violate the AIA by providing services to the Illinois Utilities above cost and effectively at a profit in violation of the AIA; and (3) engaged in interactions and arrangements with WSC that were not in the public interest.

However, if the Commission is disinclined to make a finding that the Illinois Utilities violated the PUA by entering into transactions that allowed its affiliate WSC to use its customer lists for corporate profit, at the expense of ratepayers, without the required approval, it could make a finding that these very same actions, or inactions, violated the AIA because the Illinois Utilities allowed WSC to exceed its authority under the AIA. Alternatively, the Commission could find these actions to not be in the public interest. Although Staff's primary recommendations remain the same as noted in its IB,

these “lesser” alternative findings still send the message that such behavior is unacceptable in Illinois and will not be tolerated by the Commission in the future.

#### **IV. Conclusion**

WHEREFORE, for all of the above-articulated reasons and also those reasons argued in its Initial Brief, Staff respectfully requests that the Commission’s order in this proceeding adopt Staff’s proposed Rider and also reflect Staff’s recommendations.

Respectfully submitted,

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