

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

Aqua Illinois, Inc. :  
 : Docket No. 14-0419  
Proposed General Increase In Water Rates :  
For the Kankakee Service Area :

**REPLY BRIEF ON EXCEPTIONS OF**  
**AQUA ILLINOIS, INC.**

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Aqua Illinois, Inc. (“Aqua Illinois” or the “Company”), by its counsel, in accordance with the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”) and the Administrative Law Judge’s (“ALJ”) schedule, submits this Reply Brief on Exceptions.

**I. INTRODUCTION**

In its Brief on Exceptions (“BOE”), Staff of the Commission (“Staff”) has proposed a number of substantive and non-substantive Exceptions to the ALJ’s Proposed Order. Aqua Illinois does not oppose certain of these non-substantive and technical exceptions, as discussed below. However, neither the evidence nor the law supports Staff’s substantive Exception concerning the Proposed Order’s rejection of Staff’s proposed adjustment to rate case expense. On this issue, the Commission should adopt the Proposed Order’s conclusion. *See* Aqua BOE at 8.

Aqua Illinois addresses each of Staff’s non-substantive and substantive Exceptions below in the order reflected in the Company’s briefing and the Proposed Order. Further, Aqua Illinois adopts herein its positions and arguments as expressed in the Company’s Initial Brief (“Init. Br.”), Reply Brief (“Rep. Br.”), and BOE. The Commission should modify the Proposed Order

consistent with the changes and corrections set forth in Aqua Illinois' BOE and Exceptions, as discussed below.

## II. **OPERATING EXPENSES**

### A. **Contested Issues**

#### 1. **Rate Case Expense**

##### a. **Expert Witness Fees**

Staff presents a non-substantive Exception to the Proposed Order's findings regarding Expert Witness Fees. Staff BOE at 3-4. Aqua Illinois does not contest this Exception.

##### b. **Rate Case Expense for Services Performed by Aqua Illinois and Aqua America**

Staff objects to the Proposed Order's disallowance of costs for projected rate case support services of \$67,300 and inclusion of projected in-house legal services of \$24,800 in operating expenses. Staff BOE at 4-8. Aqua Illinois does not contest this Exception. Further, the Company agrees with Staff's analysis of the accounting treatment of such costs, and with Staff's argument that "it would be unreasonable to interpret Section 9-229 in a manner contrary to Commission practice." *Id.* at 5. The evidence reflects the services (and related costs) attributable to internal rate case expense. For this, and all of the reasons expressed in Aqua Illinois' BOE (at 8-10), the Commission should amend the Proposed Order's conclusion on this issue consistent with the Company's Exception No. 1.

##### c. **Staff's Adjustment to Rate Case Expense**

The Proposed Order correctly finds that Staff's proposed adjustment to Aqua Illinois' projected rate case expense is unsupported and that the Company's projection of further attorney's fees to be incurred are just and reasonable. PO at 14. Staff takes Exception and urges

the Commission to reject the Proposed Order's dismissal of Staff's adjustment. Staff BOE at 8. Staff's Exception lacks merit and should be rejected.

Staff's proposal would reduce the Company's projected rate case expense by \$67,728, which would be amortized over three years. Staff argues that its "adjusted rate case expense is a more reasonable estimate than the Company's estimate" based, in part, on the Company's actual rate case expenses incurred in Docket No. 10-0194. *Id.* at 8-9. Further, Staff argues that its proposed adjustment to Aqua Illinois' rate case expense takes into account: 1) the legal expense already incurred by the Company, 2) the absence of intervening parties, and 3) the limited number of remaining contested issues. *Id.* at 10. However, as the Proposed Order recognizes, the evidence does not support Staff's argument and fails to reflect an analysis of the facts reflected in the record. PO at 14.

The Proposed Order correctly found the Company's projected rate case expenses to be reasonable. Aqua Illinois' projected rate case expenses are based upon actual expenses incurred through the filing of the Company's surrebuttal testimony, in addition to the anticipated expenses that will be incurred through the filing of this Reply Brief on Exceptions ("RBOE") and the resolution of this proceeding. *See* Aqua Init. Br. at 11. The Company has demonstrated that its actual rate case expense, based on invoices received at the time of the filing of Company surrebuttal testimony on November 12, 2014, was [REDACTED]. Hanley Sur., Aqua Ex. 11.0, 6:114-117. Further, as the Proposed Order recognized, there are several "significant legal matters" that were not included in this figure, including "the filing of a pretrial memorandum...preparation for trial, trial, preparation of posttrial briefs, reply briefs, briefs on exception and reply briefs on exception, and other matters." PO at 15. Notably, the Company's actual expenses as of

November 12, 2014 nearly meet the level of expenses incurred throughout the entire 2010 rate case proceeding for Kankakee. Aqua Init. Br. at 12.

Staff's argument that its adjustment is justified based on the fact that there are no intervening parties in this proceeding is similarly unfounded, as this contention fails to consider the significant increase in discovery propounded on the Company in the instant proceeding, as well as the litigation of new and complicated issues, as well as the historical review necessitated by such issues, that has persisted through this RBOE. *See* Aqua Init. Br. at 13. As of the time of the filing of the Company's rebuttal testimony on October 2, 2014, Aqua Illinois had received and responded to 703 Staff data requests. Hanley Reb., Aqua Ex. 7.0, 10:211. In addition, Aqua Illinois received and responded to additional Staff data requests up until the date of the evidentiary hearing on November 20, 2014. Aqua Init. Br. at 13. This volume of data requests, which does not take into account the additional discovery served and responded to following the date of rebuttal testimony, is significantly larger than the volume of data requests received and responded to in any prior Aqua Illinois rate case proceeding, especially the last Kankakee rate case, Docket No. 10-0194. Hanley Sur., Aqua Ex. 11.0, 5:95-96. Moreover, Staff has issued multiple data requests focusing on historical information and has raised new issues that Aqua Illinois has not previously litigated in rate case proceedings. *Id.* at 5:96-98.

In addition, the evidence clearly demonstrates that Staff's proposed adjustment is unreasonable in light of the actual expenses incurred by the Company in its historical rate case proceedings. In support of its adjustment, Staff points to the actual rate case costs from the last Kankakee rate case, wherein the Company incurred \$252,172 of rate case expense and responded to 355 data requests. Staff BOE at 8; Hanley Sur., Aqua Ex. 11.0, 5:98-100. Aqua Illinois has provided multiple examples demonstrating that a comparison of these costs to those incurred in

Aqua Illinois' historical rate case proceedings filed since 2006 demonstrate that the level of rate case expenses incurred in Docket No. 10-0194 are anomalous, and the Company's estimate in this docket are reasonable. Aqua Init. Br. at 13-14. The Proposed Order properly recognizes that Staff's recommended adjustment is unsupported by the evidence and is unreasonable in light of the facts in this record. Staff's Exception should be rejected.

Further, Staff argues that the Proposed Order incorrectly interpreted the positions expressed in Staff's Reply Brief to imply that Staff asserts that Aqua Illinois has contractually capped the amount it will pay for legal services in this proceeding. Staff BOE at 11-12. The Proposed Order states that:

Staff contended that the amount of reduction that it proposes is just and reasonable because, according to Staff, the law firm that Aqua Illinois has employed here only has \$43,000 remaining on its contract with Aqua, which is less than Staff's proposed adjustment.

PO at 10. Staff claims that this interpretation incorrectly dismisses a line item from Staff's schedule, proffered by Staff as supporting evidence for its adjustment, and "misses Staff's point entirely." Staff BOE at 12. Notably, Staff argues that "Staff by no means implied the contract amount was a cap...Staff always understood the contract permitted the outside law firm to bill Aqua Illinois for legal services in excess of the \$125,000 estimated by the Company." *Id.* Instead, Staff claims that this point was meant to "demonstrate the reasonableness of Staff's position." *Id.* This claim is at odds with Staff's briefing, wherein Staff argued that "the contract between Aqua and its outside law firm limited the total legal fees for this proceeding to \$125,000." Staff Rep. Br. at 21. Regardless, as Staff points out, the issue here is whether the Commission should find the Company's \$351,500 rate case expense estimate just and reasonable. *See* Staff BOE at 13. The evidence demonstrates, and the Proposed Order agrees,

that it is. Staff's Exception has no merit and does not prove otherwise. Thus, Staff's Exception should be rejected.

**d. Staff's Request for Guidance**

For the first time in this proceeding, Staff states that it would "welcome any guidance that the Commission may be able to provide" with respect to the evidence required to support a Company's request for attorney's fees cost recovery. Staff BOE at 14-15. This request is misplaced and should be disregarded. Indeed, adopting Staff's proposal would violate the due process rights of parties who have not participated in this proceeding. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner'"); *Central Ill. Pub. Serv. Co. v. Allianz Underwriters Ins. Co.*, 158 Ill. 2d 218, 225-226 (1994) ("The due process clause requires, at a minimum, that a party have a full and fair opportunity to litigate an issue before he is bound by that issue's resolution"). Instead, Staff's request should be addressed in a rulemaking, where all parties who may be impacted by a change in requirements would first have notice of such a proceeding, as well as the right to participate and present comments or testimony. As noted in Aqua Illinois' BOE, there is currently a Rate Case Expense Rulemaking docket proceeding in front of the Commission in Docket No. 11-0711. Aqua BOE at 9-10. Any request for guidance on this, or any similar issue, is suited for that proceeding and is improperly raised here. The Commission should dismiss Staff's request as improper and misplaced.

### III. OTHER REVENUES

#### A. Contested Issues

##### 1. Adjustment to Other Revenues – HomeServe USA (“HomeServe”)

Staff presents a non-substantive Exception to the Proposed Order’s summary of Staff’s Reply Brief. Staff BOE at 27. This Exception correctly removes reference to Aqua Illinois as a party to the Marketing Agreement. *Id.* Aqua Illinois does not contest this Exception.

Staff additionally proposes an Exception to the Proposed Order’s findings with regards to Adjustment to Other Revenues – HomeServe. *Id.* This Exception notes that in Docket No. 13-0618, the Commission did not, in fact, find that the utility in question had violated the Public Utilities Act. *Id.* at 27-28. Aqua Illinois does not contest this Exception, and notes that the Commission’s final Order warned “all utilities, *in the future*, to strictly adhere to the letter and the meaning of the Act when entering into affiliated service agreements.” *Utility Services of Illinois, Inc.*, ICC Docket No. 13-0618 (final Order Oct. 7, 2014) at 16. This reinforces Aqua Illinois’ position, as reflected in its BOE, that this docket is irrelevant to the instant proceeding and should not serve any precedential value or act as guidance in this docket. Aqua BOE at 14. In addition, this assertion is relevant in light of the fact that the provision of customer data to HomeServe ended well before the issuance of this Order – in June, 2012. *See* Kahoun Sur., Aqua Ex. 10.0, 4:84-89; Aqua BOE at 14. The Company cannot be penalized retroactively by a final Order that was issued well after the action had ceased. *See Bus. and Prof. People for the Pub. Interest v. Illinois Commerce Comm’n*, 136 Ill. 2d 192, 226 (1989) (holding that the Commission cannot change policy “without setting an articulable alternative standard which the parties and intervenors could follow and on which the parties and intervenors could present evidence”); *see also Citizens Util. Bd. v. Illinois Commerce Comm’n*, 153 Ill. App. 3d 28, 34 (3<sup>rd</sup>

Dist. 1987) (holding that the Commission must apply changes in its treatment of certain issues prospectively).

#### **IV. RATE OF RETURN**

##### **A. Contested Issues**

##### **1. Return on Equity (“ROE”)**

Staff presents clarifying Exceptions to the Proposed Order with respect to its summary of Staff’s and Aqua Illinois’ positions on ROE. Staff BOE at 28-29. Aqua Illinois does not contest these Exceptions.

#### **V. OTHER**

##### **A. Contested Issues**

##### **1. Request to Initiate Investigation**

Staff proposes certain technical and clarifying Exceptions to the Proposed Order’s discussion of the Request to Initiate an Investigation. Staff BOE at 30-33. Aqua Illinois does not contest Staff’s Exception that would clarify that Aqua Illinois was formerly known as Kankakee Water Company. *Id.* at 30-31. Further, Aqua Illinois does not contest Staff’s Exceptions intended to clarify Staff’s position. *Id.* at 31-32. However, Staff’s Exception that would revise the Proposed Order to state that Aqua America profited under the Marketing Agreement is incorrect and should be rejected.

Staff recommends that the Commission revise the Proposed Order’s findings to state that Aqua America profited from the sale of customer information to HomeServe. Staff BOE at 32. This Exception has no merit and no basis in the evidence. Aqua Illinois has repeatedly acknowledged, and offered evidence reflecting, that: 1) Aqua Illinois received limited compensation in 2010-2012 related to HomeServe’s contractual relationship with Aqua Resources and 2) Aqua Resources received Net Commissions for ongoing contracts with Aqua

Illinois ratepayers. Aqua BOE at 11. Notably, Staff has also admitted this fact. *Id.*; Staff Init. Br. at 33. There have been no allegations that Aqua America has received any profits. Indeed, Staff did not, and cannot, cite to any evidence to support this claim. Further, it is improper to raise such an allegation at this time, and there is no evidence to support this claim. This Exception has no merit, and should be rejected.

Staff also proposes an Exception to correct the Proposed Order's reference to Mr. Hanley's testimony in Docket No. 06-0285. Staff BOE at 32-33. Aqua Illinois agrees that the Proposed Order's conclusion is incorrect. However, Staff's Exception is similarly flawed. The Proposed Order states:

Although, here, [Mr. Hanley] essentially asserts that Aqua Services, or its predecessor Company, Consumers Water Company, has been providing billing and customer services to Aqua Illinois since 1999, [Mr. Hanley] has, in fact, testified in Commission proceedings that Aqua America provided those services. *See* Docket 06-0285, Company Ex. 1.0 at 29.

PO at 62. Staff agrees with this contention, and further argues that "Mr. Hanley's testimony here cannot be reconciled with his earlier testimony." Staff BOE at 33.

As an initial matter, Mr. Hanley was not a witness and did not testify in Docket No. 06-0285. The Proposed Order references Company Ex. 1.0 from that proceeding as the basis for its criticism. PO at 62. However, Company Ex. 1.0 in Docket No. 06-0285 was filed by Mr. Thomas J. Bunosky. Clearly, Mr. Bunosky is not a witness in this docket. Consequently, it is impossible for Mr. Hanley's testimony here to conflict with testimony that he never gave in Docket No. 06-0285.

In fact, Mr. Hanley testified in this proceeding that under Aqua Illinois' prior owners – Consumers Water Company ("CWC") – certain customer service related activities were provided through a service company model, including "support of the billing system including software and coordinated software updates and maintenance." Hanley Sur., Aqua Ex. 11.0, 13:278-279.

Aqua Illinois has never contested the fact that certain customer service functions were provided at the local level at the time of CWC's ownership. However, Aqua Illinois similarly has never argued that customer service functions were provided exclusively by a single party. Aqua Illinois has been clear that other elements of customer service functions – including billing – were provided through the service company model. *See* Hanley Sur., Aqua Ex. 11.0, 13:278-279. Thus, the Proposed Order's criticisms are unfounded and Staff's Exception has no merit. The Commission should reject the Proposed Order's reliance on Docket No. 06-0285, should refute the Proposed Order's criticisms of Mr. Hanley, and should adopt Aqua Illinois' Exception No. 4.

**VI. STAFF'S TECHNICAL CORRECTIONS**

Staff presents certain technical corrections to the Proposed Order. Staff BOE at 33-35. Aqua Illinois does not contest these technical corrections.

**VII. CONCLUSION**

Aqua Illinois respectfully requests that the Commission enter findings and make conclusions on all uncontested and contested issues consistent with Aqua Illinois' positions taken in testimony and/or stated herein, or in its prior pleadings, regarding the evidence in the record and the applicable law.

Dated: February 23, 2015

Respectfully submitted,  
AQUA ILLINOIS, INC.

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