

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

ORIGINAL

STATE OF ILLINOIS

ILLINOIS
COMMERCE COMMISSION

FEB 20 10 38 AM '02

ILLINOIS COMMERCE COMMISSION

CHIEF CLERK'S OFFICE

CONSUMERS ILLINOIS WATER COMPANY)
)
Petition to put into effect new tariff sheets)
implementing the recovery of, inter alia, court costs)
and attorney's fees incurred in sustaining and)
enforcing a lien against property owners with)
delinquent accounts)
)

Docket No. 02-0155

VERIFIED PETITION

Pursuant to Section 9-201 of the Illinois Public Utilities Act (the "Act"), 220 ILCS 5/9-201, Consumers Illinois Water Company ("CIWC" or the "Company") hereby requests that it be permitted to file revised tariff sheets in the form of those attached hereto as Attachment "A" ("Tariff Sheets") which relate to the provision of water and sewer service in CIWC's Woodhaven and Candlewick Divisions. As will be more fully described herein, the Tariff Sheets would provide CIWC with an opportunity to recover certain costs ("Enforcement Costs") incurred or expended in sustaining and enforcing liens against the property of customers whose water and sewer bills have gone unpaid for one year or more to recover the delinquent amounts, in protecting the Company's rights in the lien, and in recovering the amounts secured by the lien. In addition, the Tariff Sheets provide for a housekeeping change to tariffs of the Woodhaven Water Division.

1. The Company is engaged in the business of supplying water and sewer service to the public within certain areas of Kankakee, Vermilion, Will, Lee, Boone, Knox, and Lake Counties in the State of Illinois, and is a public utility within the meaning of the Act.

Recovery of Enforcement Costs

2. CIWC currently provides water and sewer service, *inter alia*, to 6,157 lots located in Woodhaven and 2,332 lots located in Candlewick. In Woodhaven, these lots consist of campsites with no permanent structures constructed thereon. In Candlewick, the lots may either be undeveloped or improved with residences.

3. The pipes and mains to all lots in each Division were constructed by the original developers so that water and sewer services are available to customers when they connect to and use the system. This availability is convenient for the owners of the lots and also increases the value of the property. The customers who own these lots are served under tariffs that impose charges for the availability of water and sewer service. See Woodhaven tariffs ILL. C.C. No. 47, Section No. 5, First Revised Sheet No. 2 (water); ILL. C.C. No. 48, Section No. 4, Original Sheet No. 2 (sewer), and Candlewick tariffs ILL. C.C. No. 47, Section No. 6, Original Sheet No. 2 (water); ILL. C.C. No. 48, Section No. 5, Original Sheet No. 2 (sewer). Availability charges allow the Company to recover the reasonable costs incurred in maintaining the availability of water in the mains and furnishing domestic sanitary sewer service.

4. Under the Declarations of Covenants, Conditions and Restrictions (“Declarations”) applicable to each lot in Woodhaven and Candlewick, the lot owner agrees to pay the availability charges for water and sewer service. The relevant provisions of the Declarations are referenced in the tariff sheets approved by the Commission that impose these charges. See Woodhaven tariffs ILL. C.C. No. 47, Section No. 5, First Revised Sheet No. 2 (water); ILL. C.C. No. 48, Section No. 4, Original Sheet No. 2 (sewer), and Candlewick tariffs

ILL. C.C. No. 47, Section No. 6, Original Sheet No. 2 (water); ILL. C.C. No. 48, Section No. 5, Original Sheet No. 2 (sewer).

5. During past years, certain of the lot owners at both Woodhaven and Candlewick have failed to pay the availability charges for the water and sewer services provided by CIWC (the "Defaulting Owners"). The number of such owners has increased each year. In Woodhaven in 2001, of the approximately 6200 lots billed, over 1200 have accounts that are more than ninety (90) days in arrears. The total amounts of these past due accounts, approximately \$448,000, represents almost 30% of the total annual revenues billed for Woodhaven. In Candlewick, 250 accounts are delinquent for a total of \$142,000 owed for 2001.

6. CIWC cannot simply write these amounts off without suffering adverse financial consequences. The past due accounts are recorded as Accounts Receivable (Account Number 141), and the Company has not written off the amounts for book, tax, or rate-making purposes. Unless action is taken, the Defaulting Owners will still be in possession of the properties and will presumably continue to default on bill payments. Forgiveness of the debt would only aggravate the problem (as it would create an incentive for non-payment). The Company's paying customers are required, in effect, to subsidize non-paying customers and bear the consequences of the Company's decreased financial strength. Moreover, given the amounts owed on the delinquent accounts, paying customers would face a significant increase in rates if the delinquent balances are expensed and the increased level of uncollectible expense is reflected in rates at the time of the next rate case of the Woodhaven and Candlewick Divisions.

7. The Company has used all reasonable means to collect these past due charges. CIWC has sent notices to Defaulting Owners, stating that those Defaulting Owners have failed to pay these charges and has obtained judgments against certain of the Defaulting Owners.

However, traditional means to encourage compliance are not effective in these areas. As noted above, many of these lots are not improved with permanent residences or other structures. As a result, a termination of water service often does not encourage payment.

8. CIWC is authorized by the Declarations and the existing Rules, Regulations and Conditions for Service (“Rules and Regulations”), ILL. C.C. No. 47, Section No. 1, Original Sheet No. 26 (water); ILL. C.C. no. 48, Section No. 1, Original Sheet No. 12 (sewer), to file a lien against the property of Defaulting Owners and foreclose on those parcels in order to collect the amounts due.

9. The Declaration for Woodhaven Lakes (Amended), provides that the charges for service set forth in the tariffs and the Rules and Regulations and Conditions of Service shall become a lien on each property as of the date the charges become due and payable. In addition, the tariffs for Woodhaven authorize CIWC to file a lien against the property of anyone who is delinquent in the payment of water or sewer bills. ILL. C.C. No. 47, Section No. 5, First Revised Sheet No. 5 (water); ILL. C.C. No. 48, Section No. 4, Original Sheet No. 4 (sewer). The tariffs for Candlewick also authorize CIWC to file a lien against property in the development that is owned by any party who is delinquent in the payment of water or sewer bills. ILL. C.C. No. 47, Section No. 6, Original sheet No. 5 (water); ILL. C.C. No. 48, Section No. 5, Original Sheet No. 4 (sewer). The Declaration for Candlewick refers to CIWC’s right to collect availability charges for services and/or file a lien against property for non-payment as well.

10. CIWC, therefore, intends to implement a program that will standardize the process of filing a lien and pursuing foreclosure actions on lots that have past due accounts (“Foreclosure Program”). The Foreclosure Program will allow the Company to more efficiently pursue Defaulting Owners and recover the funds owed.

11. The Company must go through numerous steps as provided under the Illinois Mortgage Foreclosure Act ("IMFA"), 735 ILCS 5/15-1101 *et. seq.*, in order to perfect its lien and foreclose on a property. Among other things, lien notices must be filed against each of the lots owned by a Defaulting Owner against which foreclosure proceedings will be commenced. CIWC would have to obtain ownership and lien searches from a title company for each lot prior to initiating the foreclosure process. Notice of default must be sent to the owners of the properties. The Company must then go through the foreclosure process, civil action that includes the filing of complaints, affidavits of unknown owners, affidavit and notice as to non-record claimants, notice of publication, and notice of foreclosure before a final judgment is reached. CIWC must then petition for a judicial sale of the applicable lots, a procedure that is statutorily controlled.

12. The foreclosure process is a detailed and time-intensive procedure. To properly perform the activities detailed above, it is necessary for CIWC to retain the services of an attorney. Therefore, CIWC essentially must expend a significant amount of funds in order to enforce its legal rights. CIWC estimates that (under the standardized procedures) the Enforcement Costs will be approximately \$500 to \$550 on average per lot. A breakdown of these Enforcement Costs is attached hereto as Attachment "B."

13. With no mechanism currently in place providing CIWC with an opportunity to recover its necessary Enforcement Costs, foreclosures are, of necessity, limited. Given the cost to pursue a Defaulting Owner, without the ability to recover Enforcement Costs, an account must be in arrears for several hundred dollars before it is feasible to pursue a foreclosure action. At lower delinquency amounts, Enforcement Costs could be greater than the amount due for water

and sewer service. Thus, many lot owners continue to default on their accounts without facing any real consequences.

14. The IMFA allows a plaintiff to recover attorneys' fees and other costs incurred in connection with the preparation, filing, or prosecution of foreclosure suits when the right to seek such recovery is specifically set forth in a written agreement between the parties. 735 ILCS 5/15-1510. Tariff sheets set forth the terms and conditions under which the utility will provide services and, in this respect, constitute a binding contract between the utility and its customers. 64 Am. Jur. 2d Pub. Util. § 61 (2001). A tariff that has been approved by a public utility service commission becomes law and has the same force and effect as a statute. See Illinois Cen. Gulf R.R. Co. v. Sankey Bros. Inc., 67 Ill. App. 3d 435 (1978). As the tariffs set forth the terms and conditions of the utility service provided by CIWC, it is necessary to amend the tariff language if CIWC is to have the opportunity to recover Enforcement Costs.¹

15. Specifically, CIWC, proposes to change portions of the Rules and Regulations for water and sewer service and the rate schedules applicable to Woodhaven and Candlewick to provide CIWC with the opportunity to recover from Defaulting Owners the Enforcement Costs incurred or expended in sustaining and enforcing a lien against property to recover delinquent water and/or sewer bills, in protecting the Company's rights in the lien, and in recovering any of the amounts secured by the lien. This amount will be secured by and become a part of the lien on the property and will be prior to any subsequent claim. The Company proposes to limit its recovery of Enforcement Costs to a maximum of \$1,200.00, in addition to the balance of the delinquent water or sewer bill or any other past due amounts for water or sewer service provided to the customer.

¹ As will be discussed, the ability to actually recover those costs would rest with the discretion of the court, which would consider the equities of each foreclosure case.

16. Under CIWC's proposal, the Enforcement Costs are paid by those who are delinquent in their bill payment and are thus responsible for the increased costs incurred by the Company. Another possibility would be to propose recovery of Enforcement Costs in rates. The result of this approach, however, would spread the costs to all customers and force those who pay their bills to subsidize those who do not. CIWC's proposal seeks to place the costs on the responsible parties while benefiting those customers who do pay their bills through the improved financial strength of the Company.

17. The ability to collect Enforcement Costs will benefit the public through the positive rate effect and improved company financial position that will result from the efficient collection of delinquent accounts. The Company will benefit because the Foreclosure Program will be more efficient and effective. CIWC will be able to pursue the accounts with lower overdue balances (although CIWC will not pursue a foreclosure action until bills for a given property are at least one year in arrears). In 2001, accounts with unpaid balances below \$600 comprised over 29% of the total Accounts Receivable in Woodhaven, and over 28% of the total Accounts Receivable in Candlewick. Additionally, CIWC will be able to recover more of the delinquent amounts from all of the accounts because portions of the proceeds from the foreclosure sale would not have to be expended on Enforcement Costs.

18. The collection of Enforcement Costs will not impose an unfair burden on the non-paying lot owners. It is these customers who, by their non-payment, cause the costs to be incurred. Moreover, an action to foreclose a real estate mortgage is a proceeding in equity. First Fed. Sav. & Loan Ass'n of Chicago v. Royal Faubion, 475 N.E.2d 989, 991 (Ill. App. 1 Dist. 1985). As such, it is the court that ultimately decides, based upon equitable principles, whether

the Defaulting Owner has a valid defense and whether litigation fees and costs should be awarded.

Housekeeping Modification

19. In the Rules and Regulations for both water and sewer service, there is a provision for charging a water or sewer disconnection/reconnection fee and a provision for charging a late payment fee for delinquent water or sewer service bills. The language of these provisions is duplicated in the Miscellaneous Charges section of the sewer rate schedules for Candlewick and Woodhaven and in the water rate schedule for Candlewick.

20. In Woodhaven's water rate schedule, however, while mention is made of the Rules and Regulations, which contain the provisions that impose these charges, that language is not duplicated in the Miscellaneous Charges section of Woodhaven's water rate schedule.

21. In order to make the language of the Woodhaven rate schedule for water consistent with the other rate schedules, the terms of the late payment and disconnection/reconnection fees are also being added to the Woodhaven rate schedule for water service, ILL. C.C. No. 47, Section No. 5, First Revised Sheet No. 5. This added language is found on ILL. C.C. No. 47, Section No. 5, Second Revised Sheet No. 5, which is included with the Tariff Sheets in Attachment "A."

22. Moreover, because of the language that is being added, some of the original tariff sheet language will run onto other sheets, thereby requiring the filing of new tariff pages. These pages are identified as: ILL. C. C. No. 47, Section No. 1, First Revised Sheet No. 28, canceling ILL. C.C. No. 47, Section No. 1, Original Sheet No. 28 and ILL. C.C. No. 48, Section No. 1, First Revised Sheet Nos. 13-14, canceling ILL. C.C. No. 48, Section No. 1, Original Sheet Nos. 13-14. These pages are attached hereto as Attachment "C."

WHEREFORE, Consumers Illinois Water Company respectfully requests that the Commission approve and permit the Company to file the Tariff Sheets.

Respectfully submitted,

By: 
Terry J. Rakocy
President
Consumers Illinois Water Company
1000 S. Schuyler Avenue
P.O. Box 152
Kankakee, IL 60901
(815) 935-8800

Of Counsel:

Boyd Springer
Eacata D. Gregory
Jones, Day, Reavis & Pogue
77 W. Wacker
Suite 3500
Chicago, IL 60601
(312) 782-3939
(312) 782-8585 (facsimile)

STATE OF ILLINOIS)
) SS.
COUNTY OF KANKAKEE)

VERIFICATION

Terry J. Rakocy, President of Consumers Illinois Water Company, being first duly sworn does state as follows: (1) that he has read the foregoing Verified Petition; (2) that he is familiar with the facts stated therein; and (3) that the facts stated therein are true and correct to the best of his knowledge.



Terry J. Rakocy

SUBSCRIBED and SWORN to before
me this 15th day of February,
2002.



Notary Public

