

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois American Water Company)	
)	
Proposed General Increase in Water and Sewer Rates)	Docket No. 02-0690
)	

LARGE WATER CONSUMERS APPLICATION FOR REHEARING

The Large Water Consumers (“LWC”) consisted of the Jersey County Rural Water Company, Inc.; Mitchell Public Water District; Fosterburg Water District; Bond-Madison Water Company; City of Waterloo; Scott Air Force Base (“AFB”); Cerro Copper Products Company; Caterpillar, Inc.; Air Products & Chemicals; and Granite City Steel. The LWC members are located within the Southern and Pontiac service areas of the Illinois American Water Company (“IAWC” or “Company”). LWC files this Application for Rehearing pursuant to 83 Ill. Administrative Code Section 200.880 and Section 10-113 of the Illinois Public Utilities Act (“Act”) (220 ILCS 5/10-113). LWC hereby makes application to the Illinois Commerce Commission (“Commission”) for a rehearing with respect to the Commission’s Order of August 12, 2003 (the “Order”) in this docket.¹ In support of said Application the LWC states as follows:

I. Introduction

The City of Waterloo is located southeast of the City of St. Louis, Missouri. It serves an estimated population of 9,000 residential customers. Prior to this case it purchased 387,846 cubic feet (“cf”) of water from IAWC at a cost of about \$459,000.00. It resold 337,695 cf to its customers. (LWC Ex. MPG-1 at 2-3).

¹Citations to the Order are based on the PDF version on the E-Docket.

The Bond - Madison Water Company serves 1,561 rural residential customers. It also has nine wholesale purchasers, including small rural towns such as Pochantas, Hamel, Marine, St. Jacob, Alhambra, Livingston, Worden, Three County and the Village of Grant Fork. Prior to this case it purchased 270,322,775 gallons of water from IAWC. It paid IAWC approximately \$434,000.00 for water service. (LWC Ex. MPG-1 at 2-4).

Fosterburg Water District serves 2,400 rural residential customers and one wholesale purchaser, the town of Bunker Hill, Illinois. Fosterburg Water District purchased approximately 241,527,000 gallons from IAWC. It paid IAWC approximately \$405,000.00 for water service. (LWC Ex. MPG-1 at 4).

The Jersey County Rural Water District serves approximately 4,262 active customers that are primarily residential customers. In addition it serves three major wholesale purchasers including the towns of Shipman, Madora, and Royal Lakes, Illinois. Jersey Rural Water District purchased 334,139,408 gallons of water from IAWC prior to this case. It paid IAWC approximately \$523,000.00 for its water service. (LWC Ex. MPG-1 at 4-5).

The Mitchell Public Water District serves 1,800 mostly residential customers. It purchased 23,438,900 cf of water from IAWC at a cost of \$291,895.00.

The compliance tariff's filed under the Commissions's Order in this case will result, on average, in an increase of 26% for these water districts and for the over 19,000 residential customers they serve directly and the thousands of residential they serve indirectly through their wholesale purchasers. (LWC Ex. MPG-1 at 5).

Scott AFB is located in St. Clair County, which is in southwestern Illinois. Water purchased from IAWC serves a number of functions at the military base, including support for the military hospital, the

mission of the Military Airlift Command, and airstrip and other purposes. (LWC Ex. MPG-1 at 2).

Air Products and Chemicals, Caterpillar, Cerro Copper Products and Granite City Steel are manufacturing and industrial firms that use large volumes of water in their operations. They purchase water from IAWC. They have some alternative water supply resources to meet their operating water demand requirements. (LWC Ex. MPG-1 at 2).

The Compliance Rates filed by IAWC produce increases of over 25% for the water districts, military base, city and industrial and manufacturing companies that are a part of LWC. Thus, thousands of residential customers, and manufacturing and industrial customers which form the economic back bone for southwestern Illinois, will see increases that are approximately two times the system average increase of 13.51% for the Southern, Peoria and Streator (S/P/ST) Districts. For the reasons stated below, the Commission should grant rehearing in this cause and modify its Final Order of August 12, 2003 to moderate the unfounded, inequitable and erroneous increases imposed upon these customers.

II. The Compliance Rates filed by the Company are not consistent with the Commissions Final Order in this Proceeding.

The Compliance Rates filed in this proceeding are not consistent with the Commissions Final Order. These rates are not supported by evidence in the record.

Staff filed revised cost of service studies and revised proposed rates for the Southern, Peoria, and Streator (S/P/St) Districts on May 2, 2003. This was the date upon which its cost of service witness, Mr. Luth, appeared for cross-examination. No party had the opportunity to reply to Staff's revised study and rates. In the Order, the Commission accepts Staff's cost of service study and rates for the S/P/St District. (Order at 120).

During the hearing on cross-examination conducted on May 2, 2003, the City of O'Fallon and IAWC announced their agreement on a special contract rate for the City. (Tr 711-712 and Order at 123).

This rate constituted a discount from the tariff rates applicable to the City and as a result produced a revenue shortfall. IAWC recommended that this revenue shortfall be recovered from remaining customers in the S/P/St Districts. No party, including the Staff, had the opportunity to present evidence suggesting a procedure for allocation of the revenue shortfall to remaining customers. In fact the record is devoid of evidence on a specific method for allocation of the revenue shortfall associated with the O'Fallon contract.

Thus, the rates and cost of service study presented on May 2, 2003 by the Staff just prior to the cross-examination of its cost of service witness, did not and could not reflect the allocation of the revenue shortfall associated with the City of O'Fallon contract. However, the Commission Order directs the revenue shortfall be allocated on the basis of "the methodology set forth by Staff." (Order at 124). The Order fails to describe, and the record fails to contain any description of, a methodology proposed by Staff for the allocation of the City of O'Fallon revenue shortfall among customer classes. As noted above, the Record could not contain such evidence since the Contract was not announced until the May 2, 2003 hearing, during cross-examination of the City and Company witnesses.

After the evidentiary record was marked heard and taken, in this proceeding, the Staff presented further revisions and changes to the rates it filed on May 2, 2003. Staff did so by attaching its revised rates to its brief. These rates reflected an allocation of the City of O'Fallon revenue shortfall among the remaining customers in the Southern District. The Staff unilaterally, without presenting any evidence in support of its proposal, elected to predominantly recover the revenue shortfall in the second, third, and fourth blocks of the volumetric rates for the S/P/St Districts. The record lacks any evidence suggesting that it is appropriate

to recover the revenue shortfall predominantly in the second, third, and fourth volumetric blocks of the IAWC rates.

The rates proposed by the Staff in its brief formed the basis for the Compliance Rates filed in this proceeding. Because these Compliance Rates are based upon information and rate proposals which were not supported by record evidence in these proceedings, they in turn are not supported by the record evidence in this proceeding. The Compliance Rates produce increases for the industrial class, which are equal to 155% of the system average increase, increases for public water utilities which are 167% of the system average increase and increases for public authorities which are 134% of the system average increase.² (See the Affidavit of Michael Gorman attached as Exhibit A).

The Commission should grant rehearing, giving all parties an opportunity to present evidence in response to the Staff's approach to allocating the City of O'Fallon revenue short fall.

III. The Compliance Rates, at a minimum should have been based upon an equal percentage increase/decrease in the volumetric charges.

The only methodology recommended by Staff, for reflecting modifications to the Company revenue requirement, was a methodology which allocated any changes in that revenue requirement on essentially an equal percentage basis to the volumetric charges in the IAWC rates. (Tr. 682-690).

The lost revenue adjustment associated with the City of O'Fallon contract impacts the share of the revenue requirement that is paid by customers in the Southern District. The LWC, if given the opportunity, would have proposed a method of allocating the revenue short fall, which would have resulted in an

²Staff proposed in its direct testimony increases equal to 126% of the system average for industrial customers, 120% for public authorities and 124% for other water utilities. (See Affidavit of Michael Gorman attached as Ex. A.)

increase in both customer charges and volumetric charges. However, at a minimum, the shortfall should have been recovered from customers on the basis of an equal increase in the volumetric charges for all rate blocks. Such an allocation is consistent with the Staff recommendation for the adjustment of proposed rates to reflect increases or decreases in its recommended revenue requirement. (TR. 682-685).

In addition the compliance rates reflect a methodology, which is inconsistent with the Staff's proposal that any revenue shortfall associated with "competitive customers" be spread to all classes by adding a uniform amount per usage billing unit. (Staff Ex. 8.0 at 14). The compliance rates do not reflect such a methodology. They reflect a methodology which is not consistent with the methodology proposed by Staff for adjustment of rates to reflect increases or decreases in its revenue requirement. They are not consistent with the methodology Staff recommended for allocation of revenue shortfalls associated with competitive contracts. They are not consistent with methodologies that LWC would have proposed had the LWC been given the opportunity to recommend an allocation methodology for the revenue shortfall associated with the City contract, which was not presented to the Commission or the Parties in this proceeding until the very last day of hearing, during the cross-examination of the City of O'Fallon and IAWC witnesses.

For all the reasons stated in Parts II and III above, the Compliance Rates in this proceeding are not supported by evidence in the record and they are not consistent with the Order. Therefore rehearing should be granted to allow Parties a fair opportunity to recommend an appropriate methodology for allocating the revenue shortfall associated with the City of O'Fallon Contract. Parties did not have the opportunity to do so in this proceeding, because the contract was presented at a point in the proceeding when parties had no opportunity to present evidence on an appropriate allocation methodology. Rehearing

should be granted for the purpose of allowing the presentation of evidence in response to Staff's extra record rates and the inappropriate revenue allocation therein.

IV. The Commission improperly adopted Staff's Cost of Service Study.

The Commission adopted the cost allocations, class revenue recovery ratios and the rate design in Staff's cost of service study. It finds that the record supports the use of the Staff's cost of service studies as the basis of setting rates in this proceeding. (Order at 120). The Commission's conclusion is in error and rehearing should be granted.

The LWC recommended the IAWC proposal for an across-the-board increase should be adopted in this proceeding. IAWC witnesses suggested the across-the-board approach would “. . . improve communications with customers, enhance customer understanding, reduce rate case expenses, minimize customer impacts, and simplify administration.” (IAWC Ex. 4.0 at 8). The LWC agree. The Company's across-the-board approach was also based on the knowledge that its then current rates were based upon cost studies performed in the last case. (IAWC Ex. 4.0 at 8). Those current rates recognized, the difference in the cost of service of the various customer classes and the relative relationship of each customer group, with regard to cost of service, would be maintained by an equal percentage across-the-board approach.

Further, the LWC pointed out that the results of the cost of service study presented for S/P/S/P Districts are a function of demand ratios which were developed more than five years ago in Docket 97-0102 and were applied to Districts for which they were not originally designed (Tr. 669-670). The Commission recognizes the deficiency of these demand ratios in directing that they be updated in the next case. (Order at 120). The Order finds that the demand ratios used by Staff are “sufficiently reliable” to use in Staff's cost study. The accuracy of the demand ratios in a cost study is key to properly developing and

allocating costs between customer groups and designing based on costs as accurately as possible. Failure to update demand ratios can lead over assignment of extra capacity costs to current customer classes, which could then lead to over statement of charges in the lower volumetric block rates and understatement of charges in the first and second blocks. (Tr 375).

The demand ratios developed in the Staff's cost study were developed more than five years ago in Docket 97-0102 (Tr 669). In spite of the fact that demand ratios can differ by District (Tr 671), the cost study adopted by the Commission applies those demand ratios to Districts for which they were not intended. The record shows that these demand factors can change as load characteristics change and that load characteristics on a water system change over time. (Tr. 688 and Tr. 673). The record shows that the accuracy of a cost of service study and the rates developed from that study are dependent upon the accuracy of demand factors used in the cost of service study (Tr. 668-669, Tr. 673). The record shows that the Staff could not identify the change in the number of customers or the amount of load in the Southern and Peoria Districts since 1997. (Tr. 670).

In addition, the cost study for the S/P/St Districts was modified, when these Districts were combined to adjust demand factors to reflect the combination of these Districts. The evidence shows that the demand factor for Streator is not comparable to those for the Peoria and Southern Districts. Because of this flaw, the cost study does not accurately assign the costs between base and extra capacity and, therefore, the rates which result from that study are, themselves, flawed. However, The Order states:

One criticism of Staff's analysis is that the demand ratios used are based on outdated data. On this point, while the Commission appreciates the concerns of other parties such as the AG and LWC, the Commission observes that no other party presented a COS analysis based on more current data. The alternative to utilizing Staff's cost of service study as the basis for setting rates in this proceeding appear to involve the use of cost of service studies

prepared several years ago. This alternative does nothing to mitigate any purported problems associated with the demand factors and may, in fact exacerbate them by relying upon additional old data. For the reasons given by the Staff, the Commission agrees with Staff that the demand data it utilized is sufficiently reliable for use in allocating costs in this proceeding.”
(Order at 119).

Staff made no argument that the demand data it used was sufficiently reliable for use in allocating costs in this proceeding, contrary to the Commission’s conclusion. Staff did make four arguments in response to the LWC recommendation that the Company’s original across-the-board approach be adopted in this proceeding.

First, Staff argued the Company was no longer actively pursuing its across-the-board approach. (Staff R. Br. at 49-50). Second, Staff argued that the LWC suggestion to implement the Company’s across-the-board approach was contradictory. Staff claims the demand factors, that LWC objects to, were also used in the last cost of service study used to develop rates in IAWC Docket 00-0340. Therefore the Staff reasoned the across-the-board increase is based on those same demand factors. (Staff R. Br. at 50). Third, Staff admitted its cost of service was not changed to include the effects of the addition of Streator to the Southern Division and Peoria District, but argued the effect of including Streator in the demand factors was immaterial. (Staff R. Br. at 51-52). Fourth, Staff argued the LWC attempts to exaggerate a “trivial observation” to advance its own self interest. Therefore, the LWC recommended across-the-board increase should be disregarded. (Staff R. Br. at 52).

Staff’s first argument that the Company’s proposed across-the-board increase should be rejected, because the Company is no longer pursuing such an approach, is without merit. Such an argument is irrelevant to the fundamental issue, which is: should the Commission rely on the results of a cost of service

study which produces extremely large increases for all large consumers of water (including thousands of residential customers), which is based on demand ratios that are more than five years old, and which applies demand factors, developed for two particular districts, to three districts combined.

Staff's second argument that the LWC proposal to implement an across-the-board increase, originally recommended by the Company is "contradictory," is also without merit for at least three reasons. One, the Commission has adopted across-the-board approaches in past cases, when it found the cost of service approach presented in particular cases to be lacking or an appropriate study needed to be presented in the next case. (See Contel of Illinois, Inc., 1991 Ill. PUC Lexis 18 at 196; Peoria Water Company 1981 Ill. PUC Lexis 9 at 9-10). The Commission has also adopted the across-the-board approach in other cases. (See Commonwealth Edison Company, 1993 Ill. PUC Lexis 84 at 153-154; Commonwealth Edison Company, 1991 Ill. PUC Lexis 99 at 168; Interstate Water Company, 1989 Ill. PUC Lexis 454 at 49 and 52).

Two, Staff proposed changes to rates in this proceeding that significantly altered the relationship between customer charges and volumetric charges approved in IAWC's last rate case. Staff's proposed rate design changes are based on its flawed cost of service model. Current rates are based on the cost of service model from IAWC's last rate case that did not reflect Staff's erroneous use of demand ratios that are now six years old (instead of only 2 or 3 years old). Therefore, it was not contradictory for the LWC to argue for an across-the-board increase because this allocation is based on the Commission's latest approved cost model that is not flawed by the use of six year old demand ratios. While the Staff used the same demand factors, in the last case as it did in the did in this case, those factors were only 2 or 3 years old in the last case and were not as stale then as they are now. Further, in the last case Staff did not apply

demand factors developed specifically for one district to another district.

Three, an across-the-board increase is the most accurate and best method of setting rates based on IAWC's costs and the record in this case. An across-the-board increase minimizes the severe and harmful impact of the rate increases, implicit in the Compliance Rates filed in this case, on the thousands of residential customers served by the Water Districts and the City who are members of the LWC. It also minimizes the impact on the manufacturing companies and military installations that are members of the LWC and which are important to the economy of central and southwestern Illinois. An across-the-board increase is consistent with the IAWC's original proposal for an across-the-board increase, which it suggested would "minimize customer impacts." (IAWC Ex. 4.0 at 8).

The Staff's third argument, admits LWC was correct in suggesting the Staff had applied demand factors, developed for the Southern and Peoria Districts alone, to the Southern, Peoria and Streator Districts combined. (Staff Br. at 51-52). Staff argued that demand ratio concerns identified by LWC were "hypercritical" because adding Streator to the Southern and Peoria District would increase billing units by only 4.6%. (Staff Br. at 83). However, there were several flaws in Staff's argument. First, the LWC primary argument was that Staff had done nothing to show the demand ratios it used, in its revised study, reasonably represent the current load characteristics of the Districts served IAWC. Second, the burden of proof was on the Staff to demonstrate the reliability and reasonableness of its study. It did not meet that burden.

More important, however, was the impact on Staff's allocated cost of service of using revised demand ratios. While the actual demand ratio change may be less than 5%, per the Staff estimate contained in its brief, the impact on the allocation of cost of service may be much more significant. There is simply no

way to know how significant an impact Staff's use of flawed demand ratios would have, on its cost of service study and rate design, until its cost of service study is corrected by using reasonable demand ratios.

Lastly, the Staff's argument that the LWC concern for the competitive situation in the Southern District was nothing more than a self interested attempt to lower the rates applicable to the LWC, at the expense of other classes, was without merit. This argument only illustrated Staff's inability to defend its flawed cost model and rate design proposal on its merits. Staff attempted instead to attack the integrity of the LWC. However, the fact of the matter is that there are competitive alternatives available to customers such as the LWC in the Southern District. This fact requires rates to be established using a credible and accurate cost basis. The record clearly establishes these alternatives. (LWC Ex. MPG-2 at 7-8; Tr. at 664, 667-668). In fact, the Company has proposed and the Order accepts, a contract between the City of O'Fallon and the Company, which was necessitated by the existence of a competitive alternative for the City of O'Fallon. Staff witness Luth agreed with the fact that all customers would be worse off if the larger customers on the Company's system in the Southern District were to leave the system. (Tr. 665-666). The Company also suggested other customers would benefit from retaining large customers on the system. (Tr. 239-240). The Staff does not dispute these fundamental facts. Its argument about the motivation of the LWC does not change these facts. Considering the existence of these alternatives, the Commission should, in the light of the concerns about the Staff's study, adopt the across-the-board approach originally recommended by the Company in this proceeding.

The LWC respectfully points out, it was the Company that originally proposed the across-the-board increase, for very good public policy reasons. These reasons included enhancement of customer understanding, minimization of customer impacts, and simplification of administration. Therefore, Staff's

defense of its flawed cost of service study, on grounds the LWC recommendation that the Company's across-the-board approach be adopted, is nothing more than "self-interest," is not a basis for rejection of that approach.

The Commission should also recognize that the LWC includes public entities providing water service to thousands of residential customers. To the extent the LWC are acting in their "self-interest" they are acting in the interest of these residential customers, as well as the largest individual customers in the Southern and Pontiac Districts. Staff's suggestions to the contrary, the LWC proposals in this case should not have been rejected merely because LWC members acted in their common interest. The motivation of the LWC does not change the fact that the Staff's study relied on stale demand ratios and has applied demand ratios designed for particular districts to other districts. These circumstances impact the results of the Staff study. Pending the development of appropriate demand ratios, etc., the Commission would be correct to adopt the Company's original proposal for an across-the-board increase in this case. This would preserve the status quo.

Finally, the LWC would respectfully point out the Commission's conclusion that the demand data used by Staff is sufficiently reliable for use in allocating costs in this proceeding, is not supported by record evidence and is contrary to the evidence. No Staff witness testified as to the "reliability" of the demand data. Cross-examination of Staff witnesses established the data was not reliable. (Tr. 668-671). LWC witness Gorman clearly explained why the stale demand data could not be relied on. (Tr. 374-375).

Therefore, the Order's conclusion that the Commission should agree with Staff that the demand data is "sufficiently" reliable is not supported by the record. This is further reason for the Commission to grant rehearing and adopt the across-the-board approach originally recommended by the Company in this

proceeding.

V. Conclusion

The Commission's decision to adopt Staff's cost of service studies and rate design in this proceeding is not supported by substantial evidence, is contra to the evidence and inconsistent with past practice. Therefore the Commission should grant rehearing for the purpose of reconsidering its decision to adopt such studies and rate design.

The Compliance Rates filed in this case are not based upon substantial evidence in the record. They are based on information and material found outside the record in this proceeding. The Commission's decision must be based on evidence in the record. The Compliance Rates are not so based, they are therefore unlawful not just and reasonable.

Therefore, the Commission should grant rehearing in this case, to reconsider its decision to adopt the Staff's cost of service model and rate design. The Commission should also grant rehearing, to allow parties to present evidence on the appropriate allocation of the revenue shortfall associated with the City of O'Fallon's contract, since parties had no fair opportunity to respond to the allocation method adopted by the Staff, apparently adopted in the Order, and reflected in the Compliance Rates approved in this proceeding.

Dated this 11th day of September, 2003.

Respectfully submitted,

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PROOF OF SERVICE

STATE OF ILLINOIS :
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I, Eric Robertson, being an attorney admitted to practice in the State of Illinois and one of the attorneys for the Illinois Industrial Water Consumers herewith certify that I did on the 11th day of September, 2003, electronically file with the Illinois Commerce Commission the Application for Rehearing on behalf of the Large Water Consumers along with Proof of Service, and serve upon the persons identified on the attached service list, by serving same electronically and/or by depositing same in the United States Mail, in Granite City, Illinois with postage fully prepaid thereon.

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SUBSCRIBED AND SWORN to me, a Notary Public, on this 11th day of September, 2003.

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