No. _____

In The Supreme Court of the United States

MONICA J. SADLER,

Petitioner,

v.

ILLINOIS COMMERCE COMMISSION,

Respondent.

On Petition for Writ of Certiorari to the Illinois Appellate Court, Second District

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APPENDIX

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Nos. 2--06--0050 & 2--06--0065 cons.

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE WOODHAVEN ASSOCIATION, Petitioner-Appellant, v. ILLINOIS COMMERCE COMMISSION and AQUA ILLINOIS, INC., Respondents-Appellees.	) Petition for review) of order of Illinois) Commerce Commission.))) ICC No. 05--0071))))))
MONICA J. SADLER, Petitioner-Appellant, v. ILLINOIS COMMERCE COMMISSION and AQUA ILLINOIS, INC., Respondents-Appellees.	) Petition for review of) order of Illinois) Commerce Commission.)) ICC No. 05--0072))))))

RULE 23 ORDER

In these consolidated cases, petitioners, Woodhaven Association (Association) (case No. 2-- 06--0050) and Monica

J. Sadler (Sadler) (case No. 2--06--0065) appeal the order of respondent Illinois Commerce Commission (Commission) granting in part respondent Aqua Illinois, Inc.'s (Aqua's) requests for rate increases for the provision of sewer and water services to the Woodhaven Lakes Community and for the provision of water services to the Oak Run development. Petitioners challenge the rate increases authorized by the Commission on the grounds that they are not supported by the evidence taken during the hearings. Additionally, the Association specifically objects to the change in the methodology of allocating Aqua's management expenses and setting sewer rates. Sadler also contends that the administrative law judge abused his discretion by refusing to reopen the record to allow Sadler to present evidence even though she was allowed to intervene. We affirm.

We first present an overview of the facts in common in these consolidated cases. Further factual detail will be presented as necessary in our analysis of the issues on appeal.

In December 2004, Aqua filed tariff sheets with the Commission, seeking rate increases for its Woodhaven sewer and water divisions, and its Oak Run water division. The Commission entered several suspension orders, ultimately suspending the revised tariff sheets and the effect of the rate increases proposed by Aqua until November 2005. Additionally, the Commission consolidated the proceedings on Woodhaven and Oak Run.

Aqua's Woodhaven division exclusively provides water and sewer service to the Woodhaven Lakes Community (Woodhaven Lakes), a private, gated community in Lee County. Woodhaven Lakes consists of 6,152 individually-owned recreational campsites, 38 commercial lots, and seven residential lots. The Association is a not-for-profit corporation that was established in 1971 and is comprised of the property owners in Woodhaven Lakes. All

members of the Association are property owners. Covenants of ownership restrict the usage of the campsites to recreational use only and limit overnight stays to less than 184 a year.

About three-quarters of the Woodhaven owners spend less than 30 nights per year on the property, while over 90% of the owners spend less than 60 nights a year. Water service is available to all campsites and lots; sewer service is available to about 5,400 campsites and the 38 commercial lots. The campsites are not metered; instead, all are charged a flat rate for water and sewer, regardless of use. Where both water and sewer service are provided to the same campsite, it is combined with the water bill. Aqua represents that this is done as a convenience for the customer; Aqua maintains that the Woodhaven water, and sewer divisions are separate operating entities. All residential and commercial customers are metered. Woodhaven Lakes has about 61 permanent residents.

Aqua's Oak Run division exclusively provides water service to the Oak Run development. Oak Run is residential and recreational community consisting of 2,600 single-family residential lots in eight subdivisions. Each of the eight subdivisions operates under its own declaration of restrictive covenants. The Oak Run Property Owners Association (ORPOA) is a not-for-profit corporation whose members own property in the Oak Run development. ORPOA administers the whole of the Oak Run development and each subdivision's declaration of restrictive covenants. ORPOA's corporate purpose is to maintain and preserve the property for the benefit of its members. A member must own a lot in order to use the lake and related amenities in the Oak Run development. About 80% of the lots in the Oak Run development are undeveloped. Aqua considers the owners of the undeveloped lots to be "availability" customers because water service is available to the owner whenever the owner wants to use the service. About half of the approximately 20%

of the lots that have been developed are used as a second home or weekend retreat home. The Oak Run development has 14 commercial customers; all of the commercial customers are metered. None of the declarations of restrictive covenants as amended were submitted into evidence.

Since 1990, Sadler has owned at least one lot in one of the Oak Run subdivisions. Currently, Sadler owns one lot individually and two other lots as co-owner with her mother and her husband, respectively. Additionally, Sadler owned another lot from 1990 to 1997.

Aqua proposed a rate increase for its Woodhaven sewer division totaling $459,314, or about 61% greater than the then-current rate. For the Woodhaven water division, Aqua proposed a rate increase totaling $500,284, or about 63% greater than the then-current rate. For the Oak Run water division, Aqua proposed a rate increase totaling $213,209, or about 65% greater than the then-current rate. Aqua justified its proposed increases on the grounds that its return on common equity had fallen considerably under the then-current rates. For Aqua's Woodhaven sewer division, the return on common equity had fallen to -0.24%, for Aqua's Woodhaven water division, it had fallen to 6.95%, and for Aqua's Oak Run water division, it had fallen to -2.76%.

In addition to higher rates, Aqua proposed a change in methodology to calculate management fees and other common costs. Under the then-current rate structure, management fees and common costs were calculated on a rate base (the percentage of investor-owned physical plant used to deliver services to a particular division). Aqua proposed to use a customer-count method to calculate the management fees and common costs (the percentage of customers versus the entire customer base used to allocate the fees and costs).

During the course of the proceedings, three parties intervened: respondents Association and Sadler, along with ORPOA.[1] Late in July 2005, hearings were held before the Commission. The parties, ORPOA, and Commission staff testified about various aspects of Aqua's rate proposals. At the conclusion of the hearings, the Commission determined that the then-current rates for Aqua's Woodhaven water division, Aqua's Woodhaven sewer division, and Aqua's Oak Run water division were insufficient to generate the operating income needed to permit Aqua to earn a fair and reasonable return on its investment. The Commission therefore canceled the rates. The Commission also determined that Aqua's proposed rates did not reflect the Commission's determinations at the end of the hearing and so it canceled the proposed rates as well. Instead, the Commission ordered that Aqua's Woodhaven water division should be authorized to place into effect tariff sheets designed to produce annual base rate revenues of $1,164,169, an increase of about $430,500, or nearly 54%, over the previous rate. The Commission also ordered that Aqua's Woodhaven sewer division should be authorized to place into effect tariff sheets designed to produce annual base rate revenues of $1,048,545, an increase of about $344,500, or nearly 46% over the previous rate. Last, the Commission ordered that Aqua's Oak Run water division should be authorized to place into effect tariff sheets designed to produce annual base rate revenues of about $489,900, an increase of $165,600, or about 50% over the previous rate. Additionally, the Commission accepted Aqua's change in methodology in the calculation of management fees and common costs, over the objections of the Association and against the recommendation of Commission staff Respondents timely appeal. We address each appeal in turn.

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[1]ORPOA is not a party to these appeals.

On appeal, the Association raises two issues. First, the Association contends that the Commission's order regarding the calculation of management fees and common costs was not supported by the evidence in the record, was arbitrary, does not benefit the customer-members of the Association, and was unjustified by the Commission. The Association also contends that the Commission erred in retaining Aqua's methodology in setting sewer rates for commercial customers where the Association, Aqua, and the Commission staff had agreed upon a flat fee. Before addressing these issues, we first consider our standard of review.

The Commission's decision is reviewed in accord with the Public Utilities Act (220 ILCS 5/1-101 *et seq.* (West 2004)). The factual findings and conclusions of the Commission are considered to be *prima facie* true; the Commission's order is considered to be *prima facie* reasonable. 220 ILCS 5/10-201(d) (West 2004). The appellant bears the burden of proof as to all issues it raises on appeal of the Commission's order. 220 ILCS 5/10-201(d) (West 2004). Review of the Commission's order is closely circumscribed; the questions that may be considered are: whether the Commission acted within its authority, whether it made findings in support of its decisions, whether the factual findings and decision are substantially supported by the evidence, and whether a party's constitutional rights have been infringed by the decision. *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 55 Ill. 2d 461, 469 (1973).

The Commission's findings and decision are entitled to great deference from the reviewing court because of the expertise the Commission possesses in the field of public utilities. *ArcherDaniels-Midland Co. v. Illinois Commerce Comm'n*, 184 Ill. 2d 391, 397 (1998). The reviewing court is not to usurp the Commission's function by conducting an

independent investigation of the issues presented or to substitute its judgment for that of the Commission. *Illinois Bell*, 55 Ill. 2d at 469, quoting *Produce Terminal Co. v. Illinois Commerce Comm'n*, 414 Ill. 582, 589 (1953).

While the Commission's interpretation of a legal issue, such as the interpretation of a statute, is not binding on the reviewing court, the reviewing court will nevertheless defer to the Commission's interpretation in view of its experience and expertise. *Illinois Consolidated Telephone Co. v. Illinois Commerce Comm'n*, 95 Ill. 2d 142, 152-53 (1983). This is especially true where the legal interpretation has been consistently adhered for a long period of time. *Illinois Consolidated Telephone*, 95 Ill. 2d at 153. However, the Commission's interpretation may still be given deference or persuasive weight by the reviewing court where the interpretation is novel or not a long-standing one. *Illinois Consolidated Telephone*, 95 Ill. 2d at 153-54. Moreover, the Commission's interpretation of a legal question should only be reversed if it is erroneous. *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 282 Ill. App. 3d 672, 676 (1996).

The Commission's order is to be based upon "substantial evidence." This standard allows that the evidence in the record may support more than one possible finding and may even support several findings. *Central Illinois Public Service Co. v. Illinois Commerce Comm'n*, 268 Ill. App. 3d 471, 479 (1994). "The evidence need only be such that a reasoning mind would accept the evidence as sufficient to support a particular conclusion." *Central Illinois Public Service*, 268 Ill. App. 3d at 479. Demonstrating the lack of substantial evidence to support a finding is not met only by showing that the evidence may support a different conclusion; it must be shown that the opposite conclusion is clearly evident. *Continental Mobile Telephone Co., Inc. v. Illinois Commerce Comm'n*, 269 Ill. App. 3d 161, 171 (1994).

The Commission only need provide sufficiently specific findings to allow informed and intelligent review of its order. *Lakehead Pipeline Co. v. Illinois Commerce Comm'n*, 296 Ill. App. 3d 942, 957 (1998). The Commission is not required to make particular findings for each evidentiary fact or claim; rather, the Commission need only make findings on the facts essential to its determination. *Citizens Utilities Co. of Illinois v. Illinois Commerce Comm'n*, 49 Ill. 2d 458, 463 (1971).

The Association first contends that the Commission erred by allowing Aqua to change its method by which Aqua allocated management fees and common costs from a rate-based percentage to a customer count. Under the previous method, the rate base for each division was compared with Aqua' state-wide rate base and the common costs and management fees were apportioned according to the resulting percentage. In this case, Aqua proposed to change to a customer count method where the number of water customers and number of sewer customers were counted separately and compared to the total of all of Aqua's customers throughout the state. The management fees and common costs would then be apportioned according to the resulting percentage. The Association notes that this results in a 300% rate increase to customers in Aqua's. Woodhaven division. The Association challenges the Commission's decision as being unsupported by sufficient evidence and failing to demonstrate that the customers were benefitted by Aqua's services. Central to its challenge, the Association emphasizes that Aqua did not present any studies or analyses to support its proposal to move to a customer-count basis of allocating management fees and common costs. The Association concludes that, for those reasons, the Commission's decision on this issue was in error. We disagree.

The Commission's decision to endorse the allocation of management fees and common costs on the basis of customer counts is supported by substantial evidence. The record shows

that all of the other Aqua divisions in Illinois use the customer-count method to allocate management fees and common costs incurred by all customers. Further, the record demonstrates that a specific division of Aqua does not incur these costs (e.g., the salaries of Aqua's president and chief financial officer, or the cost to prepare the overall state budget); rather, the costs are incurred at the Illinois corporate level. On the other hand, where a specific division incurs expenses, they are allocated to that division. Aqua also justified the methodology by noting that, for management fees and common costs, each customer pays the same amount. Under the rate-based methodology, by contrast, a customer in one division will pay a different amount for management fees and common costs than a customer in another division. Additionally, Aqua noted that, because a uniform methodology was not adopted throughout its divisions in the state, Aqua was not able to recover 100% of its legitimately incurred management fees and common costs. However, under the customer count methodology, the per customer-cost of the allocated common costs would be the same regardless of the division in which the customer resided.

The Commission accepted Aqua's evidence and argument. The Commission held:

> "Both the customer count and rate base allocation methodologies have been used by the Commission in the past. The decision to be made here is which methodology is more appropriate under the circumstances. The starting point for such a determination is what are the costs to be allocated. As previously noted Accounts 634 and 734 [the ledger accounts where management expenses and common costs are booked] contain contractual costs paid for the performance of management functions. Aqua asserts that the cost to prepare an overall state budget and the salaries and wages of Aqua's President and Chief

Financial Officer are among the costs included in these accounts. No one disputes this assertion. Such costs are typically considered common costs and as such are not allocated to specific divisions.

Allocating such common costs on a customer count basis is not inherently wrong. Moreover, the Commission can discern no reason why these particular types of costs should not be allocated using a customer count methodology in light of the arguments of record. Although Aqua's [management fees and, common costs] in current rates for Woodhaven Water and Sewer are allocated using a rate base methodology, this does not prohibit Aqua from ever using a different allocation methodology. Nor does the fact that Woodhaven Water and Sewer customers do not take service all year require a finding in [the Association's] favor. Aqua must still maintain the water and sewer system all year and be ready to provide service. The common costs in question would not, from the record, appear to diminish any in light of the customer usage. Furthermore, [the Association] must realize as well that Aqua is operating both a water and sewer system, which at the corporate level are separate entities despite appearances to the customer. This is not to say that certain savings would never be realized at the corporate level, but this record does not reflect any such diminished costs. Therefore, counting each water customer and sewer customer, even if they are in fact the same person, is not inappropriate. *** Aqua's proposal *** to allocate [management fees and common costs] using a customer count methodology is reasonable and adopted."

Based on our review of the record and the Commission's determination on this issue, we conclude that there was substantial evidence in the record to support the

Commission's decision on the allocation of management fees and common costs. The Commission reviewed the evidence of record and explained its rationale sufficiently to allow this court to conduct an informed and intelligent review. The Association's contention that the Commission's decision was not supported by substantial evidence is without merit.

The Association also contends that the Commission's decision on the allocation of common costs issue was arbitrary and capricious due to the lack of evidentiary support. In support of this contention, the Association cites to *United Cities Gas Co. v. Illinois Commerce Comm'n*, 225 Ill. App. 3d 771, 782 (1992), for the proposition that the Commission cannot change its policies regarding substantive issues in an arbitrary and capricious manner and without evidentiary support. We note first that *United Cities* is inapposite. There, the Commission changed its policy regarding rate-making with no explanation and no findings. *United Cities*, 225 Ill. App. 3d at 782. Here, by contrast, the record shows that Aqua has implemented the customer-count allocation method in all of its other Illinois divisions and that the Commission has endorsed this methodology in other instances. Further, the Commission explained its rationale and the record supports the idea that the implementation of the customer count methodology will mean that every Aqua customer throughout the state will bear the same per-customer charge for management fees and common expenses. The Commission determined that this was a fair and reasonable result and nothing in the record or in the Association's arguments serves to dispute the Commission's conclusion. Additionally, we note that, unlike United Cities, here, there is sufficient, evidence in the record to support the Commission's decision on Aqua's proposed change in methodology. For these reasons, the Associations argument that the Commission's decision was arbitrary and capricious is without merit.

The Association also appears to criticize the Commission's decision on the basis that it contained inadequate findings. The Association asserts that the Commission found only that "using 'a customer count basis is not inherently wrong'." We disagree. The Commission's order set forth the positions of the parties at length. As quoted above (*supra* at 9-10), the Commission then carefully explained its reasoning and its conclusions. The face of the Commission's order belies the Association's contention.

The Association attaches paramount importance to the fact that "Aqua presented no study or analysis on why the current rate-based methodology was inappropriate." The Association argues that the Commission unthinkingly accepted Aqua's methodology by finding that "a customer count basis is not inherently wrong." We disagree. First, there is no requirement that a utility must conduct any particular type of analysis or study to support its proposal. *Illinois Power Co. v. Illinois Commerce Comm'n*, 339 Ill. App. 3d 425, 439 (2003). Second, we note that the Association offers no authority in support of its inferred position regarding the necessity of a "study or analysis." Moreover, the Commission's decision, quoted in part above, addressed the concerns of both the Association and the Commission's staff in reaching its final decision. Further, in determining that the customer count methodology was most appropriate under the circumstances of this case, the Commission relied on Aqua's arguments that the customer count methodology apportioned the management fees and common costs equally among all of Aqua's customer, and that Aqua would be able to recoup 100% of its common costs. Additionally, the Commission had accepted the customer count allocation in Aqua's most recent rate cases for its Kankakee and Vermilion divisions. As noted above, the Commission is free to choose among alternatives and the evidence need only support the Commission's choice; it need not exclude other, reasonable alternatives as well. *Central Illinois Public Service*, 268 Ill. App. 3d at 479. Aqua's failure to provide a study or

analysis is not fatal to its position before the Commission or the Commission's decision on this issue.

The Association appears to contend that the change in methodology results in an unduly large and unfair increase in the allocation of management fees and common costs to its members. The Association notes that, under the new method, the Woodhaven water division receives a 305% increase in management fees and common costs and the Woodhaven sewer division receives a 249% increase. Again, we find no merit in this contention. The evidence of record supports the conclusion that, under the previous methodology, the Woodhaven division and the Association members were allocated too little of the management fees and common costs. Further, the Woodhaven division is among the smaller divisions comprising Aqua. The dollar amounts involved are relatively small. When an increase occurs, the percentage of the increase may appear disproportionately large even while the absolute amount remains reasonable. Further, management fees and common costs are one component of a customer's water and sewer rates among many. While we recognize that the Association's argument that its members will see such a large-seeming percentage increase in management fees and common costs component of their water and sewer bills is proper for the Commission to consider, nevertheless there is sufficient evidence in the record to support the Commission's decision to allow it to occur.

The Association also contends that the Commission cannot find that a rate is reasonable without evidence, citing to *Central Illinois Public Service Co. v. Illinois Commerce Comm'n*, 5 Ill. 2d 195 (1955). We find the case to be inapposite, however, as it involved the utility's attempt to set rates based on two contracts it had negotiated with other entities and without providing any cost support for the Commission to evaluate. *Central Illinois Public Service*, 5 Ill.

2d at 204. Further, as we have already noted, there is sufficient evidence in the record to support the Commission's decision.

The Association also cites to *Illinois Bell*, 55 Ill. 2d 461, for the proposition that expenses to be recouped in the utility's rates must directly benefit the customers through the services provided. Aqua properly notes that an argument not advanced before the Commission may not be raised on appeal. 220 ILCS 5/10-113(a) (West 2004). The Association did not raise this contention before the Commission and has therefore forfeited consideration of it on appeal. In any event, *Illinois Bell* is inapposite as it involves costs that were not directly related to the provision of services to the customers. *Illinois Bell*, 55 Ill. 2d at 481-82. Here, by contrast, the management fees and common costs involved the management, operation, and accounting functions of Aqua, along with the assembly of financial records and billing activities performed by Aqua on behalf of its various divisions throughout the state. These costs would have been recoverable if they were independently incurred by the Woodhaven water and sewer divisions and, therefore, they are appropriately considered to benefit all the customers, including those in the Woodhaven divisions.

To sum up, the Association attacks the evidentiary basis for the Commission's order regarding the narrow issue of the allocation of management expenses and common costs. Our review of the record demonstrates that the Commission's order was supported by substantial evidence, contained sufficient factual findings and reasoning to support its decision, and was not otherwise arbitrary or capricious. We therefore affirm the Commission's order on the issue of the allocation of management fees and common costs.

Next, the Association contends that the Commission erred by allowing commercial sewer rates to remain unchanged where the parties and Commission staff had agreed to impose a flat fee that was the same for all customers, regardless of

whether they were campsites or commercial customers. The Association argues that, because there was an agreement between the parties and the Commission staff, no one bothered even to brief the issue. Under the previous rate structure, commercial sewer customers would be charged 130% of their water bill for sewer service. Once again, the Association argues that there is no evidence in the record to support the Commission's decision to retain the rate structure.

Contrary to the Association's argument, we find that there is no evidence in the record to support a change from the previous rate structure. Instead, the record showed that, if the flat rate were adopted, residential customers would be required to make up a $15,000 revenue shortfall caused by the flat commercial rate. In the absence of evidence, the Commission decided it was improper to impose that additional burden on residential customers. Further, Aqua noted that commercial customers were not responsible for the high level of uncollectible bills and to increase the responsibility of the residential customers would only exacerbate the problem of uncollectible bills. As noted above, a rate change must be supported by substantial evidence. See *Central Illinois Public Service*, 268 Ill. App. 3d at 479. Had the Commission accepted the agreement as to rate in the absence of evidence or argument, as well as in the presence of the contrary factors identified above, then its decision would have been rightfully subject to a challenge that it had acted arbitrarily and capriciously. Accordingly, we affirm the Commission's decision on this issue.

In summary, then, we find no error in the Commission's decision regarding the allocation of management fees and common costs. Likewise, we find no error in the Commission's decision regarding the commercial sewer rate in Aqua's Woodhaven sewer division. For the foregoing reasons, therefore, we affirm the Commission's decision in appeal No. 2--06--0050.

On appeal, Sadler contends that the Commission's decision regarding the water availability charges as well as the rate increase granted by the Commission were not supported by substantial evidence. Sadler argues that this was because the Commission refused to allow her to present evidence resulting in an incomplete and misleading record on which the Commission based its decision. The Commission responds that, as an intervenor, Sadler was required to take the record in the state in which she found it when she intervened. As the record was marked "heard and taken" at the time Sadler intervened, the Commission contends that it was under no obligation to reopen the proofs to allow Sadler to present any new, substantive evidence. Sadler replies that the Commission's refusal to reopen the record constituted an abuse of discretion, noting that the Commission reopened the proofs to allow Aqua to submit proof that it complied with the notice provisions of the Public Utilities Act. The Commission disputes the factual basis and presumptions of Sadler's argument on this point. As we will explain below, we agree with the Commission's positions.

The threshold issue we must consider first is whether the Commission erred by refusing to reopen the proofs to allow Sadler to present new, substantive evidence. If we find error on this issue, then we may proceed to consider its effect on the Commission's decision regarding the rates charged to Aqua's Oak Run division customers and the propriety of the water availability charge. Again, as noted above, we include any facts necessary to our analysis that have not been previously discussed.

As an initial matter, we recall the applicable standard of review. We review the Commission's decision to make sure that it is supported by substantial evidence of record, that it did not act outside the scope of its authority, that its findings did

not violate the state or federal constitution or law, that its factual findings were not against the manifest weight of the evidence, and that the proceedings in which the Commission reached its decision did not violate the state or federal constitution or laws to the prejudice of the party appealing the Commission's decision. *Citizens Utilities Co. v. Illinois Commerce Comm'n*, 124 Ill. 2d 195, 206 (1988); *Business & Professional People for the Public Interest v. Illinois Commerce Comm'n*, 279 Ill. App. 3d 824, 829 (1996). We also note that the Commission's factual findings are considered to be prima facie true, its orders are considered to be *prima facie* reasonable, and the burden of proof on all issues raised on appeal is on the party appealing the Commission's decision. *Business & Professional People*, 279 IL App. 3d at 829.

Sadler argues that her rights were infringed by the Commission's refusal to allow her to present evidence by not reopening the proofs when she intervened. It is well established, however, that an intervenor must take the record as it exists at the time of intervention and that the intervenor does not have the right to change the issues or raise new issues between the parties, or to delay the proceedings. *Chicago, Milwaukee, St. Paul & Pacific R.R. Co. v. Harris Trust & Savings Bank*, 63 Ill. App. 3d 1012, 1022 (1978). Here, the record belies Sadler's contentions.

The Commission proceedings began when Aqua filed its tariff sheets in December 2004. Written testimony was submitted to the Commission and, in July 2005, live testimony was taken. Immediately thereafter, the record was marked "heard and taken" and the administrative law judge in charge of the proceedings established the procedure and timeline for the parties to brief the issues. This included time for the parties to submit briefs on the contested issues and responses to the briefs. Then the administrative law judge would issue a proposed order. Thereafter the parties would have time to submit exceptions to the proposed order and replies. The

administrative law judge would then prepare the final, post-exception order and submit it, along with the entire record to the Commission for its deliberation and decision.

On September 23, 2005, when Sadler moved to intervene, the parties and the Commission staffhad already filed their initial and response briefs. Further, according to the schedule, on October 5, 2005 (12 days after Sadler moved to intervene), the administrative law judge would issue his proposed order for the parties to file exceptions upon. Thus, Sadler's motion to intervene in the proceedings was raised after the evidence had been taken and the parties had submitted briefing on the contested issues, and just before the initial proposed order was to be issued.

Further, Sadler wished to introduce evidence of the declarations of restrictive covenants of the various Oak Run subdivisions and to raise arguments that they represented a contractual bar to the rate increase in the water charges proposed by Aqua, as well as challenging the basis of the water availability charge itself The introductir of such issues possibly would have required the presentation of evidence by Sadler, as well as necessarily requiring the opportunity for Aqua and the Commission staff to present evidence on the issue. Then the parties along with Sadler would have also required the opportunity to brief the issues she raised. Sadler does not acknowledge these requirements, let alone suggest how they could have been accomplished in a timely manner, given the November deadline for the Commission's final decision. See 220 ILCS 5/9--201(a),(b) (West 2004) (limiting Commission's power to suspend newly-proposed rates to an 11-month period; here Aqua was utilizing a 2005 test year and Commission action was required by November 2005).

We also note, and Sadler concedes, that she possessed the alternate avenue of relief of raising the issue via the Commission's formal complaint procedures. Sadler complains

that making a complaint places the burden upon her as the complainant, instead of on Aqua in its rate case. Sadler seems to suggest that this constitutes undue prejudice accruing from the Commission's initial abuse of discretion in refusing to reopen the record. Nothing in the record or Sadler's arguments, however, show why she was unable to convey her concerns to ORPOA and to make sure that ORPOA raised them before the Commission. Even if Sadler's differences with ORPOA were raised as good cause to reopened the record by Sadler, the Commission's rejection ofthose differences as constituting good caus was not an abuse of discretion because if ORPOA, the representative of all the Oak Run residents, rejected Sadler's proprietary issues, then it was incumbent upon Sadler to timely act so as to place her concerns before the Commission. As a result of this failure, Sadler became involved in the proceedings in the final stages, after evidence and arguments had been finalized. Based on the record before us, then, we hold that the Commission did not abuse its discretion in refusing to reopen the record.

Sadler contends that the Commission's order granting her leave to intervene was effectively illusory because she was not allowed to present evidence in support of the issues she sought to raise by intervening. In support, Sadler cites to *Business & Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 226-27 (1989), and *People of Cook County ex rel. O'Malley v. Illinois Commerce Comm'n*, 237 Ill. App. 3d 1022, 1029 (1992), for the proposition that an intervenor in a case before the Commission has the right to present evidence. We agree with Sadler's proposition, but find the cases to be distinguishable. Neither case cited by Sadler concerns an intervenor attempting to present evidence after the evidentiary portion of the process before the Commission is closed. Thus, the cases stand for little more than the truism that a party may present evidence in support of its position, if some other exception to the rule does not apply. Here, however, the exception to the proposition

Sadler advances is that she attempted to intervene after the evidence had been closed. At such a point-in the proceedings, the Commission is not obligated to reopen the evidence, because the late intervenor must accept the record as it exists at the time of intervention. *Chicago, Milwaukee, St. Paul & Pacific*, 63 Ill. App. 3d at 1022.

Sadler argues that it was fundamentally unfair for the administrative law judge to close the record while her motion for leave to intervene was pending. Sadler's argument is misleading. The administrative law judge closed the record in July 2005, well before Sadler filed her motion. Thus, the administrative law judge had no inkling that Sadler would seek to intervene when the record was initially closed. Later, the record was reopened for the limited purpose of allowing Aqua to submit procedural documentation that raised nothing new substantively—evidence that Aqua had complied with public notice requirements. This occurred while briefing had been completed and the administrative law judge was preparing theinitial proposed order. During the time the record had been reopened for the limited supplementation by Aqua, Sadler filed her motion for leave to intervene. Thus, while it is technically correct, Sadler's argument is misleading because, truly, the record had been closed nearly two months before Sadler sought leave to intervene. Therefore, Sadler's argument is without merit.

Sadler notes, and the Commission concedes, that the proofs may be reopened on good cause shown. Sadler contends that she made that showing. We disagree. Sadler proposed to adduce portions of the restrictive covenants and later amendments, not the entire document. Sadler argues that such a small amount of evidence would not have been a burden. This overlooks, however, the other parties' rights to submit evidence to oppose or complete Sadler's, as well as the fact that the parties would have been required to brief the issue or issues Sadler sought to raise. Sadler also contends that ORPOA did

not represent her interests and that she did not make this determination at any time before she filed her motion for leave to intervene. Sadler offers this as additional good cause to allow the reopening of the record. Again, we find nothing in the record or her arguments that suggest why she could not have made her concerns known to ORPOA, the body charged with representing the interests of the Oak Run property owners. Sadler does not go so far as to claim that ORPOA affirmatively misled her regarding whether it would introduce the restrictive covenants and raise her concerns. Rather, Sadler seems to indicate that ORPOA put her off. Such conduct by ORPOA should have reasonably alerted her that she would need to intervene in order to present the issues that were of concern to her because ORPOA was reluctant to. We do not consider this to be good cause shown to reopen the record and, accordingly, we do not find the administrative law judge's determination on this issue to have been an abuse of discretion.

Last, Sadler argues that the Commission's decision violates the Commerce Clause of the United States and the Illinois Constitutions. The Commission contends that these arguments were not raised before the Commission at any time and are raised for the first time on appeal. The Public Utilities Act "expressly limits the scope of a party's appeal to the reviewing court to those issues raised in the petition for rehearing before the Commission." *Citizens Utility Board v. Illinois Commerce Comm'n*, 166 Ill. 2d 111, 134 (1995), citing 220 ILCS 5/10--113 (West 1992) (now codified at 220 ILCS 5/10-113 (West 2004)). The Commission urges that we find Sadler to have forfeited this contention. Sadler strenuously contends that she raised the gist of this argument in her application for rehearing. We have carefully reviewed Sadler's application for rehearing as well as her other post-order motions and agree with the Commission that this issue was not adequately raised. In her reply brief, Sadler argues that she exhaustively set forth the reasons she believes the Commission to have erred. Even accepting this argument wholly, we cannot

discern the argument that the Commission's action violated the state or federal constitutions or, specifically, the Commerce Clause of the United States or Illinois Constitutions in Sadler's postjudgment motions and application for rehearing. Thus, while, as Sadler argues in her reply brief, her application for rehearing complies with the statutory requirements by setting forth the reasons she believes the Commission erred, it does not contain the constitutional argument she now wishes to raise. Moreover, and tellingly, Sadler herself does not specifically indicate in her reply brief where in the record she believes she raised this issue before the Commission. Accordingly, we find the our consideration of this argument to have been forfeited.

As we have found no error in the Commission's determination regarding the closing of the record, we need not address Sadler's issues on appeal further. In summary, then, for appeal No. 2--06--0065, for the above-stated reasons, we affirm the Commission's decision.

For the foregoing reasons, the order of the Commission is affirmed.

Order affirmed.

O'MALLEY, J., with BOWMAN and KAPALA, JJ., concurring.

STATE OF ILLINOIS
SUPREME COURT

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the fourteenth day of May, 2007.

Present: Robert R. Justice Charles E. Freeman

Justice Charles E. Freeman	Justice Thomas R. Fitzgerald
Justice Thomas L. Kilbride	Justice Rita. B. Garman
Justice Lloyd A. Karmeier	Justice Anne M. Burke

On the thirty-first day of May, 2007, the Supreme Court entered the following judgment:

No. 104429

The Woodhaven Association, Respondent	Petition for Leave to Appeal from Appellate Court Second District
v.	2-06-0050 2-06-0065
Illinois Commerce Commission and Aqua Illinois, Inc., Respondents	050071 050072
Monica J. Sadler, Petitioner	
v.	
Illinois Commerce Commission and Aqua Illinois, Inc.,	

Respondents

The Court having considered the Petition for leave to appeal and being fully advised of the premises, the Petition for leave to appeal is DENIED.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

[SEAL]

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court, this sixth day of July, 2007.

s/Juliann Hornyak, Clerk
Supreme Court of the State of Illinois