

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2016 IL App (3d) 150816-U

Order filed October 14, 2016

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

LAKE HOLIDAY PROPERTY OWNERS	)	
ASSOCIATION, INC.	)	
	)	
Petitioner-Appellant,	)	
	)	
v.	)	Petition for Review of Orders of the
	)	Illinois Commerce Commission
ILLINOIS COMMERCE COMMISSION,	)	Docket No.: 14-0741
UTILITY SERVICES OF ILLINOIS, INC.,	)	
THE GALENA TERRITORY ASSOCIATION,	)	
INC., WESTLAKE VILLAGE MASTER	)	
HOMEOWNERS ASSOCIATION, INC.,	)	
WESTLAKE VILLAGE LIMITED	)	
PARTNERSHIP, and THE PEOPLE OF THE	)	Appeal No.: 3-15-0816
STATE OF ILLINOIS, ex rel., THE	)	
ATTORNEY GENERAL,	)	
	)	
Respondents,	)	
	)	
(Illinois Commerce Commission, Utility	)	
Services of Illinois, Inc. and The People of the	)	
State of Illinois, ex rel., the Attorney General,	)	
	)	
Respondents-Appellees).	)	

---

JUSTICE LYTTON delivered the judgment of the court.  
Justices Carter and Wright concurred in the judgment.

---

## ORDER

¶ 1 *Held:* Illinois Commerce Commission’s decision to approve consolidated rate structure for all customers of public water utility was supported by evidence that benefits outweighed disadvantages.

¶ 2 Utility Services of Illinois (USI), a corporation created from 23 previously independent water systems, filed tariff sheets with the Illinois Commerce Commission (Commission) seeking to raise water rates and establish a consolidated rate structure for all of its customers. Four groups, including petitioner Lake Holiday Property Owners Association, Inc. (Lake Holiday), intervened. The Commission entered an order approving the consolidated rate structure. Lake Holiday filed a petition for review with this court. We confirm the Commission’s decision.

¶ 3 In 2013, Utilities, Inc. (UI) created USI to consolidate 23 operating water systems, which UI owned in Illinois that were operated as independent public utilities. Those utilities included Galena Territory Utility, Lake Holiday Utilities and Westlake Utilities. USI and each of the 23 water systems filed an application with the Commission, requesting approval of the proposed merger of the 23 separate entities into USI. *Utility Services of Illinois Inc., and Each of the 23 Illinois Operating Subsidiaries of Utilities, Inc.*, ICC Docket No. 13-0618 (Oct. 7, 2014). In October 2014, the Commission entered an order approving the merger. *Id.*

¶ 4 Following the merger, the 23 Illinois operating subsidiaries “cease[d] to exist as public utilities in Illinois.” *Id.* The customers of the standalone utilities became USI customers, and USI became the owner of 22 water divisions.<sup>1</sup> The Commission ordered that the rates applicable to the service areas of the former utilities were to remain the same until changes were approved by it. More than half of the former utilities had not filed for a general rate increase since 2010, with some not seeking a rate increase in more than 20 years.

---

<sup>1</sup> While USI merged 23 former public utilities, two of those utilities did not provide water service, and USI divided one of the former utilities, Galena Territory Utility, into two water divisions, leaving USI with 22 water divisions.

¶ 5 In November 2014, USI filed amended tariff sheets with the Commission. In the tariff sheets, USI sought a general increase in water rates and also sought to establish a single rate structure for all of its customers. The Commission suspended the amended tariffs and initiated a rate case. Four groups filed petitions to intervene: The Galena Territory Association, Inc., consisting of customers of Galena Territory Utility, Westlake Village Master Homeowners Association, Inc. and Westlake Village Limited Partnership, made up of customers of Westlake Utilities, and Lake Holiday, a homeowners association consisting of customers of Lake Holiday Utilities. The Commission granted all of the petitions to intervene.

¶ 6 An evidentiary hearing was held in May 2015. At the hearing, Steven Lubertozi, President of USI, testified that consolidated rate structures, like the one USI was proposing, are common in other regulated utilities, like gas and electric. He explained that consolidated rates would “allow USI to spread capital costs over a larger base of customers, which ultimately benefits all customers and can protect customers from rate shock.” He stated: “If a standalone utility requires a significant capital improvement these costs can be spread \* \* \* over a larger base of customers. In the long-term consolidated rates will strengthen USI and allow the customers to enjoy lower rates via fewer rate cases and lower rate case expense.”

¶ 7 Christopher Boggs, a rate analyst, testified on behalf of the Commission. His job responsibilities include rate design and cost of service analyses for electric, gas, water and sewer utilities. He agreed with Lubertozi’s opinion “that the benefits from a single rate structure would ultimately benefit all customers.” He explained: “Large capital improvements could be spread among a larger base of customers when it becomes necessary to update infrastructure to provide safe and reliable water service. Consolidation would also mitigate the rate case expenses

if the Company has to file for only a single division rather than twenty-two different water \*\*\* divisions.”

¶ 8 Boggs reviewed USI’s proposed consolidated rate structure to determine what impacts it would have on customers of each water division. He calculated the rates that would apply under the proposed consolidation rate structure compared to rates that would apply if they were based on the costs to serve customers of each specific water division. He determined that only seven divisions, including Galena Territory, Lake Holiday and Westlake Utilities, would receive a higher increase under the consolidated rate structure than on a stand-alone basis. He testified that customers of those seven divisions would see a significant increase in their water rates even if there was not a consolidated rate. He determined that under the consolidated rate structure, the rate increase for customers of Lake Holiday Utilities would be 110% compared to a 40.9% rate increase if rates were based on the cost to serve only those customers. On cross-examination, Boggs agreed that a rate increase of over 30% could be considered “rate shock.”

¶ 9 Boggs considered rate structure combinations other than a fully consolidated rate but found that none of them were as beneficial as a fully consolidated rate. He pointed out that rate increases to fund case expenses and infrastructure improvements could be quite burdensome for the small number of customers of individual, smaller water divisions. He concluded that “the benefits of consolidation outweigh the disadvantages in the long run.” As a result, he recommended that the Commission approve USI’s proposed consolidated rate structure.

¶ 10 The intervenors filed a reply brief. They objected to USI’s consolidation proposal, arguing that the consolidated rates are not reasonable, cost-based or fair to customers. They argued that individual rates for each system based on its usage are fair and equitable. They

further suggested that if consolidated rates were allowed, the rates should be increased gradually over time instead of all at once.

¶ 11 By September 2015, 599 public comments had been posted on the Commission’s e-Docket system regarding the consolidated rate proposed by USI. Many of the comments were from customers expressing opposition to the proposed rate increases and rate consolidation.

¶ 12 The Commission issued a final order in September 2015, finding that USI’s “consolidated rate structure is reasonable, supported by the evidence and should be adopted.” The Commission stated that it “carefully considered” the public comments opposing the rate consolidation but concluded that they did “not overcome the evidence supporting the proposed consolidation rates.”

¶ 13 The Commission noted that most, if not all, of the seven water divisions that would experience a higher increase under the proposed consolidated rate structure would still experience a significant increase in rates if they were based on each stand-alone water division’s usage and needs. The Commission explained that many of the intervenors have been undercharged for services, while customers in other water divisions have been overcharged for services. The Commission concluded that “a consolidated rate structure will address this disparity and ensure that all customers make an equal and appropriate contribution to the recovery of the system-wide cost of service.”

¶ 14 The Commission opined that “the benefits of the rate consolidation outweigh the disadvantages.” The Commission stated that the consolidated rate structure will allow USI “to spread capital costs over a larger base of customers, thus mitigating rate shock to a smaller stand-alone division’s customer base when infrastructure improvements are necessary.” It will also

“alleviate the rate impacts associated with multiple rate proceedings that would otherwise be needed for smaller, stand-alone divisions.”

¶ 15 The Commission found insufficient support for the intervenors’ proposal to phase-in the consolidated rates over several years, stating that “[t]he phase-in would delay [USI]’s recovery of its costs of service for an unreasonable amount of time.”

¶ 16 The intervenors filed an application for rehearing, which the Commission denied. Lake Holiday filed a petition for review.

¶ 17 ANALYSIS

¶ 18 A rate case is started when a utility “files tariffs providing for a rate increase and the Commission suspends those tariffs to conduct an investigation and hearing.” *Commonwealth Edison Co. v. Illinois Commerce Comm’n*, 405 Ill. App. 3d 389, 394 (2010). The Commission may approve, reject, or modify the proposed tariffs. *Id.* The utility has the burden of proving that the proposed rates are just and reasonable. *Id.*

¶ 19 The setting of utility rates is a legislative, not judicial, function with the Commission acting as the fact-finding body. *People ex rel. Madigan v. Illinois Commerce Comm’n*, 2011 IL App (1st) 101776, ¶ 6. When reviewing an order from the Commission, we give deference to the Commission’s decision, in light of its expertise and experience in this area. *Id.* The Commission’s factual findings are to be “considered *prima facie* true; its orders are considered *prima facie* reasonable; and the burden of proof on all issues raised on appeal is on the appellant.” *Commonwealth Edison Co. v. Illinois Commerce Comm’n*, 398 Ill. App. 3d 510, 514 (2009).

¶ 20 Pursuant to the Public Utilities Act (Act), we will reverse the Commission’s order only if (1) the Commission’s findings are not supported by substantial evidence based on the record; (2)

the Commission acted outside the scope of its statutory authority; (3) the Commission issued findings in violation of the state or federal constitution or law; or (4) the proceedings or the manner in which the Commission reached its findings violates the state or federal constitution or laws, to the prejudice of the appellant. 220 ILCS 5/10-201(e)(iv) (West 2014); *People ex rel. Madigan v. Illinois Commerce Comm'n*, 2015 IL 116005, ¶ 20. A party who challenges a decision of the Commission must do more than show that the evidence supports a different conclusion; it must demonstrate that the opposite conclusion is clearly evident. *Abbott Laboratories, Inc. v. Illinois Commerce Comm'n*, 289 Ill. App. 3d 705, 714 (1997).

¶ 21 Normally, the Commission's decisions are entitled to great deference. *Citizens Utility Board v. Illinois Commerce Comm'n*, 166 Ill. 2d 111, 132 (1995). However, where the Commission departs from its 'usual rules of decision to reach a different, unexplained result in a single case', thereby depriving a party of equal treatment before the Commission, its decision will be entitled to less deference. *Abbott Laboratories, Inc.*, 289 Ill. App. 3d at 715 (quoting *Central Illinois Public Service Co. v. Illinois Commerce Comm'n*, 268 Ill. App. 3d 471, 479 (1994)). The decisions of the Commission are not *res judicata*; the Commission has the power to deal with each situation before it regardless of how it may have dealt previously with a similar or the same situation. *Citizens Utility Board v. Illinois Commerce Comm'n*, 291 Ill. App. 3d 300, 307 (1997).

¶ 22 Deference to the Commission is "especially appropriate in the area of fixing rates." *Iowa-Illinois Gas & Electric Co. v. Illinois Commerce Comm'n*, 19 Ill. 2d 436, 442 (1960). A reviewing court will neither reevaluate the credibility or weight of the evidence nor substitute its judgment for that of the Commission. *Id.* The Commission has broad discretion in deciding a reasonable rate, and it is not the position of a court to interfere with the functions and authority

of the Commission, as long as the Commission’s order demonstrates a sound and lawful analysis of the problems encountered. *Camelot Utilities, Inc. v. Illinois Commerce Comm’n*, 51 Ill. App. 3d 5, 9-10 (1977). The Commission is responsible for balancing the right of the utility’s investors to a fair rate of return against the right of the public to pay no more than the reasonable value of the utility’s services. *Id.* at 10.

¶ 23 The goals and objectives of utility regulation are efficiency, environmental quality, reliability, and equity. 220 ILCS 5/1-102 (West 2014). In rate cases, the Commission can consider factors other than the cost of service. See 220 ILCS 5/1-102(d)(iv) (West 2014).

¶ 24 Lake Holiday argues that the Commission erred in granting USI’s proposed consolidated rate structure because the consolidated rate structure (1) is a departure from the Commission’s established practice of setting rates for individual water utilities, (2) unfairly imposes costs on systems that did not incur them, and (3) causes adverse impacts, including rate shock, to some customers.

¶ 25 First, we reject Lake Holiday’s argument that the consolidated rate structure constitutes an impermissible departure from the Commission’s established practice of setting water rates for individual water utilities. Lake Holiday fails to acknowledge that USI is now a single utility. Prior to the creation of USI, UI owned 23 separate water utilities with 23 different rates. When the Commission approved the merger of the utilities and the formation of USI, the 23 separate utilities “cease[d] to exist as public utilities in Illinois.” *Utility Services of Illinois Inc., and Each of the 23 Illinois Operating Subsidiaries of Utilities, Inc.*, ICC Docket No. 13-0618 (Oct. 7, 2014). Since the water districts are now part of one utility, the Commission did not depart from its past practice of setting separate rates for each utility by approving the consolidated rate structure.



¶ 26 As USI President Lubertozi pointed out in his testimony, consolidated rates are common in other utilities, including electric and gas. Both Boggs and Lubertozi testified to the advantages of the consolidated rate structure, including reduced costs to consumers because of fewer rate cases and less rate case expenses. The Commission’s decision to approve the consolidated rate structure proposed by USI was supported by the evidence and not a departure from its past practices.

¶ 27 We also reject Lake Holiday’s assertion that the consolidated rate structure violates the Act because it imposes costs on customers that do not incur them. Boggs testified that the consolidated rate structure is beneficial because it allows costs to be spread among a larger base of customers when infrastructure updates are necessary. He explained that it could be overly burdensome for the small number of customers in an individual water division to fund infrastructure improvements. The unrebutted evidence shows that all customers, including Lake Holiday, will benefit from having expenses spread over a larger customer base.

¶ 28 As set forth in the Act, “equity” is “the fair treatment of consumers and investors.” 220 ILCS 5/1-102(d) (West 2014). The consolidated rate structure is equitable because it treats all USI customers the same. Some USI customers had previously been undercharged for services, while others had been overcharged for services. The Commission concluded that “a consolidated rate structure will address this disparity and ensure that all customers make an equal and appropriate contribution to the recovery of the system-wide cost of service.” The consolidated rate structure does not improperly impose costs on customers who did not incur them but ensures that all customers are paying their fair share.

¶ 29 Finally, we reject Lake Holiday’s argument that the Commission ignored adverse consequences, including rate shock, that consolidation would have on some customers. Boggs

testified that customers can experience rate shock when their rates increase by more than 30%. Under the consolidated rate structure, rates for Lake Holiday will increase by far more than 30%, causing rate shock. However, as Boggs explained, Lake Holiday's rates would increase by over 40% even if consolidated rates were not approved because the Lake Holiday had been undercharged for years. Thus, Lake Holiday would experience "rate shock" with or without rate consolidation.

¶ 30 The record reflects that the Commission considered the public comments, as well as the objections from Lake Holiday and the other intervenors and determined that the benefits of the consolidated rate structure outweigh its disadvantages, including increased costs to some customers. Lake Holiday has failed to establish that the Commission's findings are not supported by substantial evidence or that the Commission acted outside the scope of its statutory authority. We confirm the Commission's decision.

¶ 31 The order of the Illinois Commerce Commission is confirmed.

¶ 32 Confirmed.