



BOND, DICKSON & CONWAY

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November 29, 2018

VIA E-MAIL TRANSMISSION

Mr. Michael Guttman
City Administrator
City of West Chicago
475 Main Street
West Chicago, IL 60185

Re: City of West Chicago Water Billing
Our File No.: 01-542

Dear Michael:

The City has undergone a comprehensive Water Meter upgrade. This City-wide Water Meter Project has resulted in the delay in the billing for the water provided to certain Residential and Non-Residential Customers within the City's Service area.

A question has arisen as to whether the City can continue to bill those remaining areas for water service that was provided to the Residential Customers twelve (12) months after the provision of said water service and twenty four (24) months after the provision of said water service to the Non-Residential Customers.

As you are aware, a previous question was raised as to the City's water billing, which challenge referenced the Illinois Administrative Regulations. The Illinois Administrative Regulations, to which the previous inquiry refers, do not apply to the City of West Chicago. The City's provision of water to its Residents does not make the City a "public utility," as defined Illinois Public Utilities Act (220 ILCS 5/3-105) (hereafter "IPUA") and is not, therefore, subject to said regulations.

Statutes and Regulations:

Ill. Admin. Code Title. 83, Chapter. 1, Subchapter b

Section 280.100 Previously Unbilled Service

b) Time Limits:

1) Bills for any utility service, including previously unbilled service, supplied to a Residential customer shall be issued to the customer within 12 months after the provision of that service to the customer.

Sec. 3-105. Public utility.

(b) "Public utility" does not include, however:

(1) public utilities that are owned and operated by any political subdivision, public institution of higher education or municipal corporation of this State, or public utilities that are owned by such political subdivision, public institution of higher education, or municipal corporation and operated by any of its lessees or operating agents;

(220 ILCS 5/3-105) (from Chapter. 111 2/3, par. 3-105)

The Administrative Code provisions referenced above are intended for “unbilled service caused by errors by measuring or calculating a Customer’s bills”, Section 280.100 a of the Ill. Admin. Code Title. 83, Chapter 1, Subchapter b.

The Administrative Regulations are issued by the Illinois Commerce Commission, pursuant to its rulemaking authority under the IPUA. Therefore, the scope of that regulatory power is defined and limited by statute. The IPUA’s purpose is not to regulate municipalities and other political subdivisions providing utilities, but rather to regulate the independent public utilities that serve them. The IPUA makes that clear in the definition section of the Code. Any reference to a “public utility” in the Administrative Code does not include a political subdivision or municipal corporation, such as the City of West Chicago. As such, the City billing for water services provided to its Residential Customers and its Non-Residential Customers beyond the twelve (12) month and twenty four (24) month respectively is not prohibited by the Illinois Administrative Code.

The State Legislature amended the Illinois Municipal Code to apply the above-referenced limitations to Illinois Municipalities providing utility services. The amendment set forth in the Illinois Municipal Code, 65 ILCS 5/11-150-2, was designed to ensure that municipalities providing utility services do not intentionally delay the billing for those services. This amendment made the twelve (12) month Residential and the twenty four (24) month Non-Residential utility billing limitations applicable to municipalities, similar to other public utility providers.

The House amended the Bill, before it was passed, to provide that municipal Customers may be billed for unpaid utility services beyond the above-referenced limitations, if the Customer was notified of the unpaid amount prior to the effective date of the Act, which was August 18, 2017, and was for services supplied by the municipality prior to January 1, 2016. 65 ILCS 5/11-150-2(a)(1).

The City provided Notice to the affected water Customers regarding the Water Meter Project, along with billing information. This Notice was mailed to the Customers through U.S. Mail. Said Notice satisfies the legal requirements of the Act. The law presumes that a correspondence through the U.S. Mail with proper postage paid was received by the intended recipient unless the correspondence is returned to the sender. Accordingly, to the extent any Water Billing Customer contends that they did not receive such Notice, that contention is rebutted by the above-referenced legal presumption.

As long as the two (2) conditions referenced herein are satisfied, the City is not precluded from billing its Customers for the water services previously provided, but unbilled. The Act imposing said restriction was not designed or intended to be applied retroactively to the situation which was in place in West Chicago prior to the effective date of this statute.

Similarly, the repayment provision set forth in the recent amendment to the Municipal Code is not applicable to the West Chicago situation, which predated the amendment. The City has the right to establish any reasonable payment plan to allow its Customers to satisfy their outstanding Water Bills. The Customer is not entitled to the repayment provisions set forth in the above-referenced statute, as the City had in place, at the time of the enactment of this statute, a payment plan option for its Customers.

Further, the City has, since the implementation of the new Water Meter System, utilized this same billing process with the Resident and Non-Resident Customers in all of the other Billing Districts in the City in connection with the water billing. To alter course at this juncture for some Customers and utilize a different Billing System would be violative of the law, as the City would be treating similarly situated Customers differently, which is not permitted under the Equal Protection Clause of the United States Constitution.

It must also be noted that the Customer has, in fact, received the water services provided by the City, for which that Customer was not billed, due to the Water Meter Project update. To relieve the Residential and Non-Residential Customers of the obligation to pay for their own water services, would force the other Residents of the City to pay for the water services to a private individual or entity, which is inconsistent with State law. This would result in public funds being used for a purely private purpose, which is violative of Illinois law.

I hope this addresses your inquiry, should you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BOND, DICKSON & CONWAY

Patrick K. Bond

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