NOTICE
Decision filed 10/06/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250084-U

NOS. 5-25-0084, 5-25-0230 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

AQUA ILLINOIS, INC., Petitioner, v. ILLINOIS COMMERCE COMMISSION; THE PEOPLE OF THE STATE OF ILLINOIS; CITIZENS UTILITY BOARD; VISCOFAN USA, INC.; VILLAGE OF UNIVERSITY PARK; and CANDLEWICK LAKE ASSOCIATION, Respondents.	)	Appeal from the Illinois Commerce Commission. ICC Docket No. 24-0044

JUSTICE VAUGHAN delivered the judgment of the court.
Justices Boie and Clarke concurred in the judgment.

ORDER

¶ 1 *Held*: The Illinois Commerce Commission's order imposing new information filing requirements for acquisitions under 220 ILCS 5/9-210.5 (West 2022) is vacated for being entered without jurisdiction. We otherwise affirm where the post-acquisition investment cost disallowance was supported by substantial evidence and the Illinois Commerce Commission's order relied on evidence in the record.

¶ 2 Aqua Illinois, Inc., is a public utility subject to the Public Utilities Act (Act) (220 ILCS 5/1-101 *et seq.* (West 2022)) that provides water to approximately 69,000 customers and sewer service for 24,000 customers across Boone, Champaign, Cook, Dekalb, Du Page, Kane, Kankakee, Knox, Lake, McHenry, Ogle, Vermilion, Will, and Winnebago Counties in Illinois. The Act sets the procedures to which the Illinois Commerce Commission (Commission) may set rates for utility

services. Under the Act, the Commission is required to allow the utility company to recover and include in the utility's rate base the cost of any investment that "is both prudently incurred and used and useful in providing service to public utility customers." *Id.* § 9-211. Section 9-210.5 of the Act (*id.* § 9-210.5) affords a large utility company to seek the Commission's approval of the acquisition of another water or sewer system and receive beneficial rate making procedures. Since its last rate case in 2018, Aqua acquired 12 systems under section 9-210.5, including Village of Peotone water system and Village of Oak Brook water system.

¶ 3 In the rate case before this court, Aqua requested the Commission allow it to include its post-acquisition investments for the systems acquired under section 9-210.5 in its rate base. The Commission denied Aqua's request to include the post-acquisition investment costs to the extent that the costs significantly exceeded Aqua's estimated investments for the Peotone and Oak Brook water systems and Aqua failed to specifically address the increased cost. It further ordered Aqua to file new and additional information in any future section 9-210.5 case.

¶ 4 Aqua now appeals the Commission's post-acquisition investment disallowance and new section 9-210.5 information filing requirements, as well as an evidentiary error. For the following reasons, we vacate the portion of the Commission's order imposing new section 9-210.5 filing requirements on Aqua but otherwise affirm.

¶ 5 I. BACKGROUND

¶ 6 Subsequent to Aqua's prior rate case in 2018, Aqua acquired—under section 9-210.5—the Village of Peotone water and sewer system (ICC Docket No. 17-0314), the Village of Manteno sewer system (ICC Docket No. 17-0913), the Fox River Water Reclamation District's Skyline water and sewer systems (ICC Docket No. 18-0785), the Village of Grant Park sewer system (ICC Docket No. 18-1093), the Rockwell Utilities water and sewer systems (ICC Docket No. 19-0721),

the Village of Bourbonnais sewer system (ICC Docket No. 20-0866), the Village of Oak Brook water system (ICC Docket No. 21-0872), and the Village of Frankfort water and sewer systems (ICC Docket No. 22-0554). In each acquisition, Aqua voluntarily provided an income statement estimating post-acquisition investments, among other things. Aqua projected $43.8 million in total post-acquisition investments over the first five years of ownership of all acquired systems. Specific to the Peotone water system, Aqua projected investment costs of $1.46 million. Regarding the Oak Brook water system, Aqua estimated $8.8 million in investment costs.

¶ 7 The case before this court concerns Aqua's filing proposed tariff sheets, pursuant to section 9-201 of the Act (220 ILCS 5/9-201 (West 2022)), on January 2, 2024. Relevant to this appeal, Aqua sought recovery of the cost of its capital investments in its water and sewer systems, including the cost of post-acquisition capital investments in the water and sewer systems acquired by Aqua. Specifically, for the Peotone water system, it sought recovery of $10,190,685 for post-acquisition investments made from 2019 to 2023 and an additional $1,239,008 for investments in 2024 and 2025. For the Oak Brook water system, it sought recovery of $14,896,024 for post-acquisition investments from 2023-2025.

¶ 8 The Illinois Attorney General (AG), Citizens Utility Board (CUB), Viscofan USA, Inc. (Viscofan), and the Village of University Park (VUP) intervened and participated in the proceedings below. Illinois Commerce Commission Staff (Commission Staff), CUB, Viscofan, and VUP did not address the post-acquisition investments costs or new section 9-210.5 information filing requirements.

¶ 9 An evidentiary hearing was held on July 23, 2024. The following testimony and evidence were presented through the admission of exhibits.

¶ 10 David C. Carter, Aqua president, stated that the acquisition of systems carried an unusual amount of risk but the projects for the systems were critical in improving water quality and system reliability for thousands of Illinois customers. Risks include documented and undocumented flaws of the utility, as well as any unresolved environmental compliance deficiencies. Carter stated that "prudent" infrastructure investments were made in each system to ensure safe and reliable service. He noted that the systems Aqua acquired since 2018 included the Peotone and Oak Brook water systems.

¶ 11 In his rebuttal testimony, Carter testified that Aqua had long been active in acquiring and rehabilitating systems across the state. While the acquisitions were critical in improving water quality and system reliability for thousands of Illinois customers, risk was present in acquiring the documented and undocumented flaws of a utility, as well as any unresolved environmental compliance deficiencies. Carter stated Aqua had worked diligently with the Illinois Environmental Protection Agency to identify system deficiencies and plan for necessary improvements in advance of an acquisition; however, significant financial risk remained in mitigating any unforeseen deficiencies.

¶ 12 Carter further stated, as discussed in the direct and rebuttal testimonies of Aqua's engineering manager Tracy Fullen, Aqua acquired systems that required additional investments that were not identified or known prior to the closing of acquisition, and in many cases, the previous owners did not focus on water or wastewater infrastructure that could not be directly seen by constituents. Aqua's acquisition of these systems was typically followed by much needed investment, as well as reliance on Aqua's engineering and managerial experience to ensure safe and reliable service. Carter asserted AG witness Brendan Larkin-Connolly's requested disallowance was wholly inconsistent with public policy of Illinois as embodied in section 9-210.5.

He further said, as with all capital investments, the Act allowed Aqua to recover the reasonable and prudent cost of investments in acquired systems. He opined that the mere fact that Aqua's investments were higher than anticipated in some circumstances did not, on its face, demonstrate imprudence.

¶ 13 Carter further testified since Larkin-Connolly failed to examine any specific investments, choosing instead to rely only on cost variances, Larkin-Connolly could not offer an informed opinion on the prudency of Aqua's investments. Carter stated that Larkin-Connolly implied that if customers of an acquired system could not bear the cost of the investment needed to bring the system into regulatory compliance and Aqua's standards of service, Aqua should either absorb the cost, or customers would be left with underinvested and deteriorating systems. Carter contended such approach was short-sighted and contrary to the policy of Illinois as embodied in section 9-210.5 and the Act.

¶ 14 In his surrebuttal, Carter stated, "Because Mr. Larkin-Connolly declines to examine any specific investments, choosing instead to rely only on cost variances, the Commission should disregard his opinion on the prudency of the Company's investments as uninformed and arbitrary." In response to Larkin-Connolly's proposal of new reporting requirements for future acquisitions, Carter testified that he was not aware that Larkin-Connolly had any experience that would qualify him to form an opinion on what may or may not be sufficient reporting.

¶ 15 Bryce M. Baker, Controller of Aqua, was responsible for the financial operations of Aqua. He stated that Aqua filed the standard requirements pursuant to part 285 (83 Ill. Adm. Code 285), Standard Information Requirements for Public Utilities and Telecommunications Carriers in Filing for an Increase in Rates. The filings were also admitted into evidence.

¶ 16 In Baker's surrebuttal, regarding the expenses for the systems acquired by Aqua, he stated Aqua's original projections and filings were reasonable, appropriate, and developed after a rigorous review of its budget and forecast. He noted apart from Aqua's recovery of an incentive compensation cost, Commission Staff and Aqua agreed to all the rate base issues. He testified that the adjustments to the Oak Brook water system ignored the Commission's directive in ICC Docket No. 21-0872, which stated, "any additional costs incurred by the company to consummate the acquisition may be reviewed for reasonableness in the Company's next rate case."

¶ 17 Tracy Fullen, Aqua's engineering manager, stated that she was responsible for the planning, management, design, and construction of the company's water, wastewater, and general facilities. Her work included managing the capital program for the company and coordinating design and construction services, as well as acquisition due diligence for new water and wastewater rate zones.

¶ 18 Fullen stated that the need for the increased post-acquisition investment costs was primarily driven by continued aging and deteriorating infrastructure, as well as the cost and resources necessary to comply with new and revised regulations. Fullen cited a drinking water infrastructure needs survey and assessment by the US Environmental Protection Agency in 2015, which concluded that $472.6 billion was needed to maintain and improve the nation's drinking water infrastructure from 2015 through 2034. Illinois drinking water systems graded a D+ in its wastewater systems and a C- on the Illinois section of American Society of Civil Engineers 2022 report card. Further in August 2021, the Lead Service Line Replacement and Notification Act required the replacement of lead drinking water pipes. Fullen stated that Aqua would also have to budget for lead or galvanized materials found in unknown mains.

¶ 19 Fullen stated Aqua currently owned and operated approximately 1,195 miles of water main throughout Illinois. A water main was expected to provide service for 80 to 100 years. Fullen testified that Aqua's records showed 1% of its water mains had a known age of over 80 years old, 3% of mains had unknown age between 50 and 80 years old, 14% of mains had an age that was less than 50 years old, and 82% of mains had an unknown age due to a lack of historical record information provided at the time the water mains were acquired. Fullen opined that a conservative estimate was that 20% of mains statewide needed replacement today due to age alone, and it would take 20 years to replace those mains under the industry standard of 1% annual main replacement. Fullen explained that the industry standard was insufficient to maintain serviceability for Aqua over the next 100 years; under the industry standard, the cost for replacement would be approximately $25 to $30 million per year to replace 12 miles, or 1% of water main, based on average cost of replacements today.

¶ 20 Fullen further stated that in some circumstances, the acquired systems required additional investments that were not identified or known prior to the closing of the acquisition. For example, in the Peotone water and wastewater systems, Aqua found that many valves in the system were inoperable and broken in either the open or closed position when it undertook its annual exercising on the system. Hydrants were also found to be inoperable and in need of replacement. Fullen testified that in order to repair those defects and maintain adequate levels of service, Aqua invested $4.8 million into necessary and prudent repairs and replacements in the Peotone water system from 2018 through 2022. Fullen stated Peotone was not unique, and often, Aqua acquired a system where the municipality had not set rates high enough to maintain the level of investment necessary to address infrastructure repair and replacement.

¶ 21 Fullen testified that Aqua's top 12 investment projects in the water system included distribution system improvements, services, new and replacement meters, main breaks, and water treatment plant improvements. Fullen stated that in light of the importance of rehabilitating the aging infrastructure, Aqua invested in a number of major projects in its systems. She specifically noted improvements in the Kankakee, Manteno, Crystal Clear, Willowbrook, Indianola, Sun River Terrace, Highland, Skyline, and Hawthorne Woods systems.

¶ 22 A document listing the top 12 capital investment projects across 2023-2025 was admitted as Aqua exhibit No. 3.02. None of the projects listed specifically mentioned Peotone or Oak Brook. The document, however, listed a statewide project for meter replacements, water main replacements, and service line replacements. It stated over the next two years Aqua anticipated spending $6.2 million on meter replacements across the state, which would decrease non-revenue water and improve customer satisfaction. Aqua planned to spend $5 million on main replacement projects statewide in central, east central, and the northern divisions over the next two years. The water main replacements would address aging water mains that have had main breaks or water quality complaints. Aqua further planned statewide service line replacements in central, east central, and northern divisions over 2022 and 2023, and an additional $500,000 for service line investigations in 2024 and 2025.

¶ 23 Aqua admitted a projected capital budget for 2024 and 2025 as Aqua exhibit No. 3.01, which listed several items associated with the acquisitions under section 9-210.5 of the Act. The general descriptions varied and included, *inter alia*, "mark lift station upgrades and equip (SVA),"[1] "lab equipment (SVA)," "sanitary sewer main (SVA)," and "MP developer main EXT (SVA)."

[1]The parties, evidence, and Commission often refer to section 9-210.5 of the Act as "SVA" or "System Viability Act."

The projected capital budget also listed a work order group, which sometimes provided more detail. Examples of work order groups included "112R-gravity main and manhole repl-NS" and "615N-Lab Equipment New-NS," and "526R-Rep/Repl Pumping Equipment-NS." It stated the projected investment costs for the sewer systems totaled $16,481,660 for 2024 and $12,437,059 for 2025. The document stated the projected investment costs for the water systems totaled $47,665,497 for 2024 and $21,675,265 for 2025.

¶ 24 In rebuttal, Tracy Fullen testified that "despite having had ample opportunity to investigate the cost at issue, Mr. Larkin-Connolly [did] not propose any specific adjustments nor [did] he object to any of the work performed as somehow unnecessary, imprudent, or unreasonable." Instead, he simply compared the initial *pro formas* provided in each acquisition docket and compared those values to the actual projects undertaken in subsequent years after Aqua assumed ownership and operations of the systems. Fullen opined that as such, his proposal was not based on any known standard or legal requirement, ignored the reality of water and wastewater operations, and assumed Aqua had the ability to operate systems and access underground assets prior to ownership of a system. Fullen further indicated that such proposal would assume Aqua artificially inflated its projected cost because its access to a system was limited and the condition of infrastructure was not entirely known, or that Aqua could predict future regulatory compliance requirements that would require unforeseen capital investments. Fullen stated that Aqua could not predict a pandemic that caused an unexpected shift in the economy, including supply chain limitations and inflation. Fullen thus disputed that the variance between projected and actual amounts necessarily meant Aqua somehow failed to perform due diligence before closing on those acquisitions or that its investments in the acquired systems were imprudent or unreasonable.

¶ 25 Fullen stated that she was unaware of any requirement, under section 9-210.5, to engage in a cost-benefit analysis prior to acquisition. Fullen explained, under section 9-210.5, water and sewer system owners decide to sell their systems for many reasons, one of them being the inability to make necessary capital investments in the infrastructure required to maintain service through their rate base. Due diligence inspections were completed to prepare a capital plan and assist in evaluation. During those inspections, the buying utility would review several factors, including the number of customers, potential growth opportunities in the system, age of the system, prior violations, asset management plans, security issues, and geographic locations. The buying utility would not own the system at the time of due diligence and access to the system and amount of time given for due diligence would vary by owner and system. Information provided by the system owner was usually limited. Therefore, the purchasing utility companies were limited to relying on visual inspections of the systems and accessible assets and records. Estimates for the capital needs of the rest of the systems assets (such as mains that were buried under the ground, operation of wastewater plants, etc.) were completed based on the knowledge at that time, including existing permits and other compliance requirements. Fullen compared the process to a home inspector performing an inspection on a home for a potential buyer, where an inspector achieves due diligence by reviewing accessible assets and records but not tearing open walls or floors to access hidden pipes or wiring.

¶ 26 Fullen testified that the increase in water customers resulting from the acquisitions under section 9-210.5 resulted in an additional $7.4 million in revenue from 2018 to 2023. The increase in sewer customers resulted in an additional $36.5 million in revenue from 2018 to 2023. She also noted that the post-acquisition investment costs for Skyline, Grant Park, Rockwell Utilities, Bourbonnais, and Timber Ridge acquisitions were lower than the projected capital investments.

¶ 27 Fullen opined that while the amount of the actual investment in the system from 2019 to 2023, along with additional projects from 2024 through 2025, was higher than the initial projections made at the time of acquisition, all investments were prudent. She stated common unforeseen factors often impacted planned capital estimates for an acquired system, including cost of materials, equipment, and labor going up significantly over the past five years. Fullen also stated that Aqua encountered tighter state and federal regulations related to corrosion control treatment plans for water systems, tighter limits on phosphorus and nutrients in effluent, and lead service line replacements. In the last four years Aqua also navigated extreme cost increases and significant supply chain delays associated with the COVID-19 pandemic.

¶ 28 Fullen reminded that in her direct testimony, she provided Aqua's projected capital budget for 2024 and 2025, which included the top 11 projects planned for 2024 and 2025. She also provided more detail regarding all capital additions made to the acquired systems from 2018 to 2023, identified by plant description and system. Fullen also attached a report detailing all additions made from 2018 to 2023 in all 12 of the acquired systems to demonstrate the necessity and prudence of those investments. The report included a work order group and description for every dollar added to the systems. She noted she would provide examples, "but in the interest of efficiency not all additions will be discussed. Should the prudence or reasonableness of a specific project be questioned, I would expect the party raising questions would seek additional detail regarding that specific project." Fullen then specifically addressed the projects undertaken in the Manteno sewer system.

¶ 29 Fullen also addressed the project described as the Corning Avenue project for the Peotone water system. Fullen stated the project included replacement of aged water main along Corning Avenue. Over 5,800 linear feet of water main, sized 4- to 12-inch in diameter were replaced, along

with valves, hydrants, service lines, and meters. Fullen testified that this project was not included in the capital plan at the time of the acquisition. She explained the replacement would have been planned eventually but raised in priority after the Village of Peotone communicated its need to perform a roadway project along Corning Avenue. The partnership helped reduce restoration costs for Aqua. It also reduced future capital expenditures associated with added main breaks, as it was common for an increase in main breaks to occur on aged mains under the stress of heavy construction equipment needed for roadway projects. She further stated that the project was bid out to five contractors, and the lowest bidder was awarded the contract. The overall project cost was $3 million, which included design, materials, labor, and overhead. Fullen also stated project costs were higher than average due to a portion of the replacement being under the railroad tracks.

¶ 30 Fullen further stated that Aqua performed a proper evaluation and developed a *pro forma* estimate premised on performing a source water switch from Peotone groundwater to Kankakee treated surface water. While the amount of actual investment in the system, along with additional projections from 2024-2025, was higher than the initial projections made at the time Aqua acquired the systems, all of the investments were prudent.

¶ 31 Fullen then addressed a project for the Rockwell Utilities sewer system, Timber Ridge water system, and Bourbonnais sewer system. Thereafter, she did not wish to provide further details on any other project, but she stated that she would happily provide details on any specific project if asked.

¶ 32 Attached to Fullen's testimony, as Aqua exhibit No. 12.02, was some of Aqua's data request responses (DRRs), in which Aqua complied with the AG's request to provide the cost of each acquired system as well as the cost of investments post-acquisition. The responses provided Oak Brook water was acquired November 29, 2022, for $16,986,709. It listed additions costing

$576,018 in 2023. Peotone water system was acquired October 1, 2018, for $5,230,209. The document listed further additions cost as $88,701 in 2019, $7,741,933 in 2020, $1,053,967 in 2021, $675,846 in 2022, and $2,090,239 in 2023, for a total of $11,650,685 in total additions cost.

¶ 33 The responses also provided an accounting of the capital expenditures for the acquired systems from 2019 through 2023. The document organized the expenses by year. Each line item identified the year in which the cost incurred, the amount of the cost, which system the cost benefitted, and plant "descriptions." Examples of plant descriptions included "T&D Mains," "Services," and "Meters & Meter Installations."

¶ 34 Another accounting of the capital investments for the acquired systems was also admitted as Aqua exhibit No. 12.03. This document organized the investments by system. As with Aqua exhibit No. 12.02, each line item in Aqua exhibit No. 12.03 identified the year in which the cost incurred, the amount of the cost, and which system the cost benefitted. Instead of plant "descriptions," Aqua exhibit No. 12.03 included a "work_order_group" column, which listed similar items as the plant descriptions in Aqua exhibit No. 12.02 (*i.e.*, "T&D Mains," "Services," "Meters & Meter Installations," etc.). Aqua exhibit No. 12.03 further provided a column labeled "cpr_activity_wo_desc." That provided additional details of the expenses in some circumstances. For example, the work group "Meters & Meter Installations" included descriptions such as "New Meter" or "Meter Repl." Descriptions for lines under "T&D Mains" included "Blanket Valve Replacement (SVA)" and "BLKT-Dist Main Repl." Descriptions for lines under "Services" included "Curb Stop Replacement (SVA)" and "PT Engineering Service Line Rpl." The document providing the descriptions identified 87-line items as part of the Corning Avenue project for the Peotone water system, totaling $3,067,229.27. Numerous other item lines also referred to section 9-210.5, but some item lines do not.

¶ 35 Fullen, in her surrebuttal, stated that Larkin-Connolly's recommended disallowance was not based on concerns of any specific project, dollar amount, or need for system investment but instead was based entirely on hindsight review of Aqua's acquisitions that had been approved by the Commission and his criticisms that had no basis in reality of water and wastewater operations. She agreed there was room to improve procedures but stated Larkin-Connolly's belief that all existing and future capital investment needs of acquired systems should be known and included in the capital plan prepared at the time of acquisition was unrealistic. Fullen again noted that she provided details on the categories of work or specific projects selected from the report detailing each addition made from 2018 to 2023 in all 12 acquired systems and welcomed any question from any party seeking additional details regarding specific projects.

¶ 36 Fullen further stated that Larkin-Connolly made multiple conclusory statements about Aqua's due diligence in acquiring the systems but failed to acknowledge that each of the acquisitions were subject to the review, investigation, and approval of the Commission. She noted that Larkin-Connolly did not participate in the acquisition proceedings, have access to the discovery in those dockets, or offer anything to show Aqua did not in fact identify and communicate its understanding of investment needs when requesting approval for the acquisitions.

¶ 37 Fullen stated that Larkin-Connolly also ignored the myriad benefits provided to Aqua's existing customers including the increased revenue and customer base. She further stated that Larkin-Connolly did not consider that regulatory requirements change and could not be predicted at the time of preparing a capital plan for an acquisition. She again asserted that instead of considering the information supporting the prudence and reasonableness of Aqua's post-acquisition investments, Larkin-Connolly insisted that a variance between projected and actual

cost of investment could only mean the investment was not prudently incurred. Fullen opined such view is based entirely on assumption.

¶ 38 With respect to Larkin-Connolly's recommendation for new reporting requirements for future acquisitions, Fullen testified that Aqua had not yet been able to vet or consider the proposed section 9-210.5 information reporting requirements and standards and costs associated therewith. Fullen was informed by counsel that the issue of reporting requirements was not appropriately at issue in this case because they would apply only to future acquisition filings by Aqua. She further noted counsel would address the issue in legal briefing at the appropriate time.

¶ 39 On behalf of the AG, Brendan Larkin-Connolly testified that he had a bachelor's degree in economics and master's degree in resource economics. After his master's program, he was first employed as an analyst at DHInfrastructure and subsequently joined the Massachusetts Department of Public Utilities as a rate analyst for the rate and revenue requirement division. After two years, he returned to DHInfrastructure in 2013 as the manager and subsequently was promoted to his current role as principal. He reviewed the post-acquisition investment costs and recommended disallowing $20,968,011 in capital investments related to 6 of the 12 recently acquired water and sewer systems.

¶ 40 Larkin-Connolly testified that investment in the five acquired systems would also continue to be the driver of capital investment in the interim rate period of the 2024 and 2025 test year that Aqua included within its projected rate base and proposed rate base in this proceeding. He stated out of the $67.32 million in water plant additions planned for 2024 and 2025, 20% or $16.78 million of these investments would be spent directly on infrastructure to serve the customers on the acquired systems. Larkin-Connolly feared that Aqua was expecting its existing customers to subsidize the customers served by the newly acquired systems. He stated that when new customers

were acquired but the incoming new revenue from those customers did not cover the cost of serving them, the shortfall would be spread across all customers resulting in higher rates for existing customers. Larkin-Connolly stated it was his understanding that section 9-210.5 permitted utilities to pursue acquisitions but did not allow utilities to acquire systems without thoroughly evaluating the prudence of the investment and the potential impact on existing customers. He opined it was imperative that any proposed acquisition be subject to rigorous cost-benefit analysis to ensure the benefits of the acquisitions, such as ensuring that improved service quality and reliability for the acquired systems customers outweighed the cost that may be borne by existing customers. He clarified his testimony did not disapprove of the Commission's approval of these acquisitions but stated that the fact that the investment needed to acquire the systems fell short of what Aqua projected raised questions of the reasonableness and prudence of Aqua's investments and acquisition strategy.

¶ 41 As an example, Larkin-Connolly stated Aqua estimated it would invest $1.46 million in the Peotone water system over the first five years of ownership, but it had already spent $11.65 million from 2019 through 2023 and planned to spend another $1.23 million in 2024 and 2025. He stated this represented a 698% increase from what Aqua indicated to the Commission was needed at the time of acquisition. Larkin-Connolly stated such variance demonstrated that Aqua did not carry out sufficient due diligence ahead of the acquisition and as a result had incurred unreasonable cost to its existing customers.

¶ 42 Larkin-Connolly stated that based on Aqua's submitted capital plans during acquisition, it planned to spend $1.46 million in the Peotone water system for the first five years. Larkin-Connolly stated that Aqua spent $10,190,685 over its estimate. Aqua also indicated it planned to spend $8.8 million in the Oak Brook water system for the first five years in the acquisition capital

plan but spent $6,096,024 over that estimate. Larkin-Connolly further noted that Aqua exceeded its projected investment cost in four other systems.

¶ 43 Larkin-Connolly stated that when asked in discovery to explain why the condition of the system had not been identified prior to the closing of the acquisitions, Aqua effectively admitted it moved forward with these acquisitions despite there not being a lot of information to accurately make decisions. Larkin-Connolly explained that Aqua acknowledged, albeit indirectly, that acquired public-owned systems were likely to have quasi-physical deficits, which were deficits not explicitly reported in governmental budgets but were instead hidden within the financial operations of the public utility. Quasi-physical deficits could lead to significant underinvestment and utilities infrastructure, as the utility lacked the financial resources needed to properly maintain its assets. It created the problem where current customers benefited from artificially low rates at the expense of future customers, who would inevitably face higher rates to cover the cost of the needed investments or lower quality of service due to the lack of investment. Larkin-Connolly opined that given the fact that quasi-physical deficits were common issue in public-owned utilities and Aqua itself acknowledged the reality, it was absolutely reasonable to expect Aqua to conduct thorough due diligence on the level of underinvestment to ensure its assessment did not bring hardship to Aqua or its customers. Larkin-Connolly opined that properly assessing the investment needs of the systems would ensure that Aqua's costs were allocated fairly between the acquired customers and the existing customer base.

¶ 44 Larkin-Connolly stated that while Aqua provided high level explanation of factors considered, it failed to offer insight into any actual analysis or studies relied upon when making its decision to pursue and acquire the new systems. He stated the lack of specific details made it difficult to assess the thoroughness of Aqua's due diligence process and whether it adequately

accounted for potential impact on existing customers. He acknowledged that section 9-210.5 could afford benefits to the customers of the acquired systems and the existing customers. However, he opined that the level of investments Aqua requested was "staggering," and recommended the Commission disallow the entire amount spent beyond that projected in the capital plan from the test year rate base. He also requested the Commission clarify that those costs would not be recoverable in the future.

¶ 45 Larkin-Connolly stated the purpose of his recommended disallowance was to protect existing customers from unreasonable and imprudent management decisions and send a clear signal to Aqua, and other utility companies, that it was their responsibility to thoroughly investigate and understand the condition of the systems they sought to acquire. He suggested the Commission disallow recovery of costs from existing customers from post-acquisition investments that exceeded the levels initially presented during the acquisition approval process. He contended that disallowance of those costs would incentivize utilities to conduct thorough due diligence and develop accurate investment plans prior to proposing an acquisition.

¶ 46 Larkin-Connolly acknowledged that Fullen discussed Aqua's ongoing and planned water and sewer capital projects at a high level in her testimony, including some examples of specific projects in Aqua exhibit No. 3.02, but argued Aqua's support for its post-acquisition investments appeared to be limited to a short one-page discussion of a list of projects and accounting records of system additions. He stated given the significant level of capital investment being proposed by Aqua, it was reasonable to expect a more comprehensive and detailed presentation of the specific need for each project, the alternatives considered, and the cost benefit analysis supporting the selected investments. Larkin-Connolly also suggested Aqua be expected to provide information beyond cursory details that provide a clear understanding of how Aqua identified, prioritized, and

selected capital projects to ensure that investments were prudent, cost effective, reasonable, and in the best interest of ratepayers. He stated the supplemental information should include detail on planning methodology, the criteria used to prioritize projects, the process for evaluating alternatives, and the mechanisms in place to monitor and control costs. He contended by providing this information, Aqua could demonstrate that it had a robust and transparent capital planning process that ensured investments were necessary, prudent, and efficiently managed.

¶ 47 In his rebuttal testimony, Larkin-Connolly stated he continued to recommend the Commission disallow $20,968,011 in post-acquisition capital investments made across 6 of the 12 recently acquired water and sewer systems. Larkin-Connolly testified that it was his understanding that section 9-210.5 did not guarantee recovery of all investments, especially those significantly exceeding initial projections. Section 9-210.5 and the Act still required the Commission to ensure the rate base reflected prudent and useful investments. He further stated that Aqua's argument presented a false choice between its investments or leaving systems to deteriorate. It ignored potentially other readily viable options for system improvement and funding, including water infrastructure finance and Innovation Act Program or state revolving funds and alternative models that involved private sector effort expertise without full acquisition.

¶ 48 Larkin-Connolly stated that while there were some practical limitations to exercising due diligence with water and sewer systems, Aqua's argument raised significant questions about the prudence of its acquisition decisions, the most glaring being how Aqua could make a prudent acquisition decision if it truly lacked sufficient information about the system acquired. The argument also did not explain why Aqua did not clearly identify or communicate the incomplete or limited nature of its understanding of the investment when requesting approval for the acquisition. Larkin-Connolly clarified that the issue was not about the limitations Aqua faced but

how Aqua accounted for these limitations in its decision-making process. Larkin-Connolly stated Fullen failed to provide any additional detail on its investments in existing systems or an explanation of its management and prioritization processes.

¶ 49 Larkin-Connolly stated that the risk of unknown or unforeseen investment was crucial when setting an acquisition's price and terms. He asserted that a sophisticated buyer like Aqua should have negotiated provisions that allocated the risk appropriately between the seller and the buyer. This could have included mechanisms such as purchase price adjustments, escrow accounts, or indemnification clauses that accounted for the discovery of significant and unforeseen post-acquisition investment needs.

¶ 50 Larkin-Connolly testified that he submitted discovery requests seeking further information on constraints that limited Aqua's ability to assess the condition of the systems prior to acquisition and specifically, the due diligence carried out, but Aqua largely objected to the requests on various grounds or provided minimal or no substantive response to the specific questions. He also requested that Aqua explain how it defined visible and non-visible infrastructure to better understand which category of plant additions completed or planned to be completed on acquired systems fell into anticipated or unanticipated costs. He asserted that it was difficult to see how the Commission could evaluate whether Aqua conducted thorough due diligence or if the additional investments were truly unforeseeable without this information. Larkin-Connolly also noted that Aqua refused to comply with his requests for information regarding the experience and qualifications of the internal and external engineering teams that completed the assessments of the acquisitions. He suggested Aqua's repeated lack of response to this request and other questions raised concerns about the thoroughness of its due diligence process and the reliability of its initial investment projections.

¶ 51 Due to the incomplete or insufficient information, Larkin-Connolly recommended overall requirements for Aqua moving forward. He suggested as part of future acquisition filings, the Commission should require Aqua to provide a comprehensive report on the condition of the systems to be acquired, and the investment needs anticipated for the system over the first five years of ownership, including a detailed report on the due diligence activities undertaken and methods used to assess all system infrastructure both visible and non-visible. The report should include a detailed affordability analysis showing the rate of impact on existing and acquired customers, and a detailed risk assessment identifying potential areas of concern or uncertainty in their system evaluation, including an accompanied mitigation plan outlining how it intended to address these risks and uncertainties post-acquisition. He further suggested Aqua be required to disclose the qualifications and experience of engineering teams and other non-engineering technical experts both internally and externally involved in the system assessments. Larkin-Connolly also suggested the Commission implement a structured post-acquisition reporting requirement, including annual reports for the first five years after acquisition detailing actual investments compared to projections and explaining any significant variances. Larkin-Connolly recommended utilities be required to include contingency mechanisms in their acquisition proposals to account for potential unforeseen investments. He also recommended approval be contingent upon demonstration that existing customers were not being asked to subsidize the investments for new systems. As a related requirement, he suggested ordering Aqua to develop an economic test such as a net present value test that compared the revenues anticipated over the first five years of ownership to the expected cost of the system over the same period. He explained that this test was equivalent to tests often used to determine the contributors in aid of construction required on utility growth or system expansion projects.

¶ 52 Mary E. Selvaggio, CPA, testified that she was employed with the Commission from 1982 through 2015 prior to her current employment at MES Consulting, LLC in 2016. She also had been a staff auditor at a regional accounting firm and was licensed and registered as a certified public accountant in the State of Illinois.

¶ 53 Regarding the issue of post-acquisition investments, Selvaggio identified AG exhibit No. 1.02, Schedule A-9, which presented the calculation of the adjustment for the post-acquisition investments sponsored by AG witness Brendan Larkin-Connolly. However, in her rebuttal, after Aqua raised corrections, Selvaggio identified a revised schedule A-9 for AG exhibit No. 3.02. With the adjustment, the schedule reduced the water rate base by $13,432,553 consisting of reduction to plant and service of $14,750,101 offset by reductions to the depreciation reserve of $1,135,706 and an accumulated deferred income tax of $181,843. The adjustment reduced the sewer rate base by $3,922,446 consisting of a reduction to plant in service of $4,197,684 offset by a reduction to the depreciation reserve of $212,591 and accumulated deferred income taxes of $62,647.

¶ 54 In its brief, the AG requested the Commission disallow $20,968,011 total in post-acquisition investment costs, arguing such costs were unreasonable and imprudent. It noted that the total post-acquisition investment cost in 6 of the 12 systems was more than double that estimated at the time of acquisition. The AG contended it was imprudent for a sophisticated buyer like Aqua to purchase water or sewer systems without conducting sufficient due diligence as to the system's conditions and needed investment. It noted the acquisitions and related improvements account for 41.3% of the increase in Aqua's water rate base, and 73.7% of the increase in Aqua's sewer rate base. However, only 4,614 water customers and 5,300 sewer customers were added due to the acquisitions, for a total of 9,914 new customers. The AG contended that Aqua sought to

spend $57.51 million acquiring new systems, $20.45 million on planned investments, and an additional $20.97 million on unplanned investments after conducting a "walkthrough" inspection and relying on "the memory of past employees." It argued this was not prudent or reasonable.

¶ 55 It further argued that while Aqua characterized the information provided in the acquisition dockets as merely "*pro formas*," it was entirely reasonable that a sophisticated buyer like Aqua would and should conduct sufficient due diligence before it acquired new systems so that it could ensure that its investments—and those associated costs and risks—were themselves reasonable and prudent. The record showed that Aqua admitted that these overages were the result of it lacking information about the systems it acquired. While AG witness, Larkin-Connolly, "acknowledge[d] that there [were] likely some practical limitations to pre-acquisition assessment," it raised a concern as to how Aqua could make prudent decisions regarding its acquisitions if it truly lacked sufficient information about the acquired system prior to purchase. It argued that it could not be reasonable and prudent for Aqua to overshoot its budget by $20.97 million (or 103%) where the evidence showed it failed to take adequate steps to avoid unnecessary costs.

¶ 56 The AG further argued that its analysis did not operate under a new standard, and a determination of reasonableness and imprudence must include consideration of the relative costs of alternatives, which necessarily included consideration of whether a utility's requests constituted the least-cost means of meeting the utility's service obligations. Citing *Northern Illinois Gas Co. d/b/a Nicor Gas Co., Petition pursuant to Rider QIP of Schedule of Rates for Gas Service to Initiate a Proceeding to Determine the Accuracy and Prudence of Qualifying Infrastructure Investment*, ICC Docket No. 20-0330, Order (June 15, 2023) (hereafter, *Nicor 2023 QIP*), it argued the Commission previously determined that a utility's failure to conduct due diligence is a ground to reject cost recovery.

¶ 57 The AG also requested the Commission impose the additional section 9-210.5 information filing requirements as discussed by Larkin-Connolly to help ensure that Aqua's investments were necessary, prudent, and efficiently managed. It asserted, citing section 4-101 of the Act (220 ILCS 5/4-101 (West 2022)), the Act granted the Commission "general supervision of all public utilities" and authorizes the Commission to "inquire into the management of the business thereof and *** keep itself informed as to the manner and method in which the business is conducted." Likewise, every public utility was required to "furnish to the Commission all information required by it to carry into effect the provisions of this Act, and shall make specific answers to all questions submitted by the Commission." *Id.* § 5-101. When requested to do so, a party must

> "deliver to the Commission, any or all maps, profiles, reports, documents, books, accounts, papers and records in its possession, or in any way relating to its property or affecting its business, and inventories of its property, in such form as the Commission may direct, or verified copies of any or all of the same." *Id.*

¶ 58 The AG argued that the Commission had repeatedly and routinely exercised this authority to require utilities to provide additional information as needed to ensure that costs and expenses were reasonable and prudent, and that rates were fair. The AG also contended that aside from implementing a non-recovery period for depreciation expenses, section 9-210.5 did not mandate how the Commission treats the effect of post-acquisition investment costs on ratepayers.

¶ 59 It asserted that Aqua's listed expenditures and deficient descriptions did not constitute "substantial, compelling, and detailed evidence," and fell short of satisfying its statutory burden. The AG argued that utility investments were not *per se* reasonable and prudent simply because the utility asserted as such; rather, Aqua must prove that its costs were reasonable and prudent by a preponderance of the evidence. It further noted that Aqua should not be rewarded for neglecting

to do its due diligence and likewise should not be permitted to saddle the costs and consequences of its unreasonable risks onto its captive ratepayers.

¶ 60 In its brief, Aqua argued, citing *Apple Canyon Lake Property Owners' Ass'n v. Illinois Commerce Comm'n*, 2013 IL App (3d) 100832, ¶ 54, that the burden did not rest solely on its shoulders and once it made a *prima facie* showing of prudency and reasonableness, the burden was shifted to others to show that the costs were unreasonable because of inefficiency or bad faith. It contended it provided substantial, detailed, and compelling evidence in support of each dollar of the investments for which it sought recovery—including Aqua's projected capital budget for 2024 and 2025 and a detailed description of the top 11 projects planned for 2024 and 2025. For every dollar of its capital investment, Aqua provided substantial, compelling, and detailed evidence supporting each of these investments by year, business segment, work order group, system, and category of work. Aqua also provided detailed descriptions of categories of work and specific projects throughout its acquired systems and invited all parties to seek additional detail regarding any specific capital investment project. Aqua witness Tracy Fullen provided more detail in her testimony, explaining with specificity the work performed under various work order groups. It contended it also provided evidence of factors outside of Aqua's control that increased costs, such as inflation, significant supply chain delays associated with COVID-19 pandemic, and tighter state and federal regulations.

¶ 61 Aqua noted that the majority of its mains were 50 years old, and mains were expected to provide service for 80 to 100 years. It further cited the American Society of Civil Engineers grade of D+ for Illinois drinking systems. It also noted that with the August 2021 enactment of the Lead Service Line Replacement and Notification Act, it was also required to replace all lead drinking water pipes. Aqua's largest investments of capital in its water system included distribution system

improvements, services (new and replacement), meters (new and replacement), main breaks, and water treatment plant improvements.

¶ 62 Aqua further argued that whether the costs were included in the estimate during the acquisition proceedings was irrelevant to whether the costs were prudent and reasonable. Moreover, every party had been given the benefit of an evidentiary record to investigate and inquire about the specific projects, and Aqua's witnesses also made themselves available to provide additional detail upon request.

¶ 63 Aqua asserted that Larkin-Connolly's request for a blanket disallowance had no basis in law or fact. No party had ever argued that any capital project was unnecessary or unreasonable, or that Aqua should have exercised a different standard of care based on the facts available at the time judgment was exercised. Aqua claimed that the AG could not and did not dispute those facts but instead argued that Aqua must be held to a new standard of prudency that was based solely on what AG witness Larkin-Connolly characterized as "due diligence" in assessing investment needs of systems prior to their purchase. Aqua contended Larkin-Connolly's view was a new standard not contemplated or authorized by Illinois law. It further asserted that the argument was impermissible hindsight review, as it sought disallowance based on nothing more than the fact that they were not identified when the initial post-acquisition investment estimates were developed. Aqua argued that to adopt the AG's view, no cost beyond that estimated would ever be recoverable regardless of the prudency of the projects.

¶ 64 Aqua requested the rejection of any new information filing obligation for acquisitions. It contended that imposing specific information filing obligations in future section 9-210.5 cases had no relevance to the instant rate case proceeding and was clearly contrary to the plain language of the Act. It further asserted such requirements would be beyond the Commission's authority to act

by imposing a condition on acquisitions that the legislature did not enact. Moreover, the late stage at which the AG offered these recommendations prohibited Aqua from fully assessing the ramifications of these recommendations, including the costs that would inevitably result from the proposals and the impact of those costs on Aqua's customers. It further noted that it utilized the same procedures and methodologies to estimate capital needs for the six systems whose post-acquisition investment costs were lower than the estimated costs as it used for those systems targeted by the AG's proposed disallowance, but the AG ignored those examples.

¶ 65 Aqua proposed that to the extent the AG sought additional information about its capital investments, it could and should have availed itself of the existing procedural avenues available—through discovery, testimony, and cross-examination. The imposition of additional informational requirements was unnecessary, conflicted with the Illinois Administrative Code and the Act, and would result in unnecessary additional costs that were ultimately borne by Aqua's ratepayers.

¶ 66 After a proposed order was filed and the parties filed their exceptions, the Commission filed an order on November 21, 2024. In its order, the Commission found—*inter alia*—that post-acquisition investment costs for 6 of the 12 systems were reasonably anticipated and Aqua provided sufficient documentation and explanation to support those expenditures. It expressed concern with the amount of acquisition investments in the Peotone and Oak Brook water systems, noting that the actual post-acquisition investment costs for the Peotone water system exceeded Aqua's original estimates by almost 700% and the Oak Brook water system by almost 170%. The Commission stated that Aqua attributed the increase to third-party requests, heightened EPA requirements, $4.8 million in necessary repairs and maintenance from 2017 to 2022, and $3 million for the advancement of the Corning Project at the Village of Peotone's request.

¶ 67 The Commission disagreed that any post-acquisition investment exceeding Aqua's original estimates should be disallowed, explaining that it was well-established that capital project investments were not inherently imprudent due to cost variances and estimates did not need to be exact. It agreed with Aqua that cost variances could be attributed to various factors, including the scope of work, costs of materials and labor, and the magnitude and frequency of such variances. It clarified, citing section 9-211 of the Act (220 ILCS 5/9-211 (West 2022)), that the issue was not whether Aqua exceeded its original estimates but whether the post-acquisition investments were prudently incurred and used and useful. It held, "The Company bears the burden to prove its post-acquisition investments are prudent despite previous approval of the asset acquisition, especially in the event of significant costs variances between estimated and actual expenditures." The Commission noted it relied on Aqua's estimates in approving the acquisition, so it reasonably expected a full account of the factors responsible for the deviations, especially for a cost difference of the magnitude presented in this record.

¶ 68 The Commission found the $3 million for the advancement of the MR-Corning Avenue project in the Peotone water system sufficiently justified and prudently incurred. It stated that Aqua adequately explained its necessity, impact on the system, and reasoning for prioritization. The Commission agreed that the MR-Corning Avenue project likely reduced the restoration costs that Aqua would have incurred had it waited to undertake the project. The Commission stated, "Moving forward, the Commission encourages the Company to submit more detailed evidence to support its decisions (*e.g.* discussions with village officials and analyses demonstrating the impacts of delaying the project and the associated costs that were considered)."

¶ 69 Regarding the other post-acquisition investments for Peotone and Oak Brook water systems, the Commission stated,

> "The record lacks sufficient detailed support to determine whether these investments for Peotone and Oak Brook were reasonable and prudently incurred. The Company provided various schedules of investments, with costs ranging from one dollar to over $3 million, but offered little to no narrative or description of the investments. The information provided does not adequately account for specific costs and circumstances driving these additional, unexpected investments and cost variances."

¶ 70 The Commission used as an example, three 2024-2025 statewide projects planned for meter replacements, service line replacements, and water main replacements. It noted that Aqua explained those programs addressed Aqua's aging system, promoted safety and reliability, and complied with new regulations. However, Aqua did not provide explanation or cost delineation of those projects specific to each system. Instead, it provided a blanket territory-wide cost estimate. It stated,

> "Because this information was not readily accessible and required extensive review of the Company's schedules, the Commission was unable to accurately identify costs associated with these projects specific to Peotone and Oak Brook. To ensure efficiency and ease of review, the Commission directs the Company to provide cost breakdowns for each system with narrative explanation in future cases to demonstrate the prudency of the investment."

¶ 71 Accordingly, the Commission found Aqua failed to justify the remaining post-acquisition investments for the Peotone and Oak Brook water systems, and disallowed the costs related thereto. It thus allowed $4.6 million in post-acquisition investments for Peotone and $8.8 million for Oak Brook. It explained that the adjustment reflected the recovery costs already approved by

the Commission during the acquisition proceedings in addition to the cost of infrastructure maintenance and repairs, compliance with environmental protection requirements, and other projects, sufficiently supported and explained by Aqua. It also noted that it would continue to evaluate future post-acquisition investments on a case-by-case basis, pursuant to section 9-211 of the Act (220 ILCS 5/9-211 (West 2022)).

¶ 72 The Commission further stated that while it did not challenge the previously approved acquisitions, it agreed with the AG that had appropriate due diligence been exercised, certain system issues could have been identified prior to acquisition. Providing the example of the hydrants in the Peotone water system, the Commission explained that Aqua claimed it was unable to ascertain issues with the hydrants but, according to the due diligence processes detailed by Aqua witness Fullen, the hydrant and value issues were visible assets and thus those issues were discoverable.

¶ 73 It further found that its consideration of Aqua's planning and due diligence was not a new standard of review. See, *e.g.*, *Nicor 2023 QIP*, Docket No. 20-0330. It stated, "An understanding of the Company's planning process from acquisition through post-acquisition investments is imperative to the Commission's prudence review." It also stated,

> "A prudent decision requires assessment of system conditions and realistic investment forecasts, particularly when those costs will ultimately be borne by ratepayers. The Company did not demonstrate that the hydrant and valve issues within the system were unknowable or unforeseeable. While the Commission acknowledges there may be limitations to identifying all issues within a system prior to acquisition, failure to identify foreseeable issues can contribute to unrealistic cost estimates for post-acquisition investments. Failure to conduct

> appropriate due diligence to identify foreseeable issues, and either mitigate those issues prior to acquisition or provide the Commission with a realistic cost-estimate, can result in uncertainty and instability in rates for both the Company and ratepayers. The Commission notes that Aqua does not have an inherent obligation to acquire smaller water systems simply because they are at risk. The SVA expressly provides that a utility is not required to acquire a system under the act. See 220 ILCS 5/9-210.5(k)."

¶ 74 The Commission stated that despite Aqua's contentions, it was authorized to establish reporting requirements to assist in review of system acquisitions and subsequent investments in those systems. 220 ILCS 5/4-101, 9-210, 8-501 (West 2022). It agreed with the AG that, moving forward, Aqua should strive to conduct thorough investigations and provide the Commission with more detailed, realistic information prior to acquisition of a system. The Commission found the AG's reporting requirements proposal was reasonable. Accordingly, for all acquisitions under section 9-210.5 following the date of the Commission's final order, the utility was required to provide: (1) a comprehensive report on the system to be acquired, including an investment needs assessment and a capital investment plan; and (2) a risk assessment and mitigation plan identifying potential areas of concern.

¶ 75 Appendix A to the order included several schedules created by the Commission. Schedule 9 W, stated—*inter alia*—that the Commission relied on "AG EX. 3.02, Sch. A-9, Line 1" as the source for the number used to calculate the adjustments for the post-acquisition investment recovery costs for the Peotone and Oak Brook water systems. It further stated that "DRRs AG 2.04 & ST 1.07" were the source for the numbers used to calculate the adjustment for the Peotone and Manteno wastewater systems. DRR ST 1.07 was Fullen's response to the Staff's request for the

amount of additional investment needed to bring the acquired system to a level of safe, reliable, and efficient service. The response listed the amount invested in each system through 2023 and projected investment costs for 2024 and 2025.

¶ 76 On December 20, 2024, Aqua filed a verified application for rehearing. It challenged the Commission's disallowance of the post-acquisition investment costs for the Peotone and Oak Brook water systems, arguing the Commission held it to a new standard, and it proved the costs were prudently and reasonably incurred. Aqua also argued the Commission acted without authority and in violation of the Administrative Procedure Act by imposing a rule that required new information filings for section 9-210.5 cases. Aqua further requested that the Commission admit DRR ST 1.07—a response to Staff's data request—to be included in the evidence as it was cited in the Commission's order as a source regarding the Peotone and Manteno sewer systems. It also stated that the Commission relied on AG exhibit No. 3.02 as well, but that exhibit also relied on DRR ST 1.07. It thus argued failure to admit DRR ST 1.07 would amount to reversible error as the Commission relied on it to determine the disallowance and the document was not in the record.

¶ 77 The Commission denied the petition for rehearing on January 8, 2025. On January 23, 2025, the Commission entered an amendatory order, noting there was "a scrivener's error in Appendix A regarding the source for the Village of Peotone and Village of Manteno Wastewater plant amounts." It thus modified appendix A, stating "Appendix A, Schedule 9 W, page 2 of 4, lines 15 and 16 are revised to correctly cite AG Ex. 3.02 Sch. A-9, lines 15 and 16, respectively." The attached amended appendix A showed the change. The amended appendix A—like the initial appendix A—listed "AG Ex. 3.02, Sch., A-9, Line 1" as the source of the Peotone and Oak Brook water systems.

¶ 78 On February 7, 2025, Aqua filed a notice of appeal with the Commission and a petition for direct administrative review with this court regarding the final order and order denying rehearing. On February 20, 2025, Aqua filed a verified application for rehearing of the amended order. It contended that amending the order to cite AG Ex. 3.02 Sch. A-9 did not remedy the problem because DRR ST 1.07 was the source for that exhibit and Larkin-Connolly's testimony related thereto. The Commission denied this application on March 6, 2025. On March 21, 2025, Aqua filed a notice of appeal with the Commission and a petition for direct administrative review with this court regarding the denial of Aqua's second application for rehearing. On April 14, 2025, we consolidated Aqua's two appeals.

¶ 79 II. ANALYSIS

¶ 80 On appeal, Aqua challenges the Commission's disallowance for capital investments and new filing requirements for future cases and asserts evidentiary error. Our review is limited by statute, and we are required to reverse, in whole or in part, an order (A) not supported by substantial evidence based on the entire record of evidence before the Commission; (B) rendered without the jurisdiction of the Commission; (C) which violates the state or federal constitution or laws; or (D) rendered as a result of proceedings or in a manner that violates the state or federal constitution or laws, to the prejudice of the appellant. 220 ILCS 5/10-201(e)(iv) (West 2022). We presume the Commission's decision is *prima facie* reasonable, and the appellant bears the burden of proof on all issues presented on appeal. *Id.* § 10-201(d). As judgment of a tribunal informed by experience, we give great weight to the Commission's decision. *Ameren Illinois Co. v. Illinois Commerce Comm'n*, 2025 IL App (5th) 240014, ¶ 62.

¶ 81 A. Disallowance for Capital Investments

¶ 82 Aqua argues that it sufficiently proved all its post-acquisition costs were prudently and reasonably incurred, and the Commission created a new standard of review by requiring Aqua to provide further detail regarding the post-acquisition projects that significantly differed from the expected investment costs that Aqua presented during the acquisition proceedings. For the same reasons, it further contends the Commission violated its past practice of granting investment costs based solely on receipt of cost and description of the cost. We disagree.

¶ 83 Under the Act, Aqua is entitled to all prudent and reasonably incurred costs. 220 ILCS 5/1-102(a)(iv) (West 2022). " 'Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made.' " *Illinois Power Co. v. Illinois Commerce Comm'n*, 339 Ill. App. 3d 425, 428 (2003) (quoting *Illinois Power Co. v. Illinois Commerce Comm'n*, 245 Ill. App. 3d 367, 371 (1993)). Under this standard, hindsight review is impermissible and reasonable people can have honest differences of opinion without one necessarily being imprudent. *Ameren Illinois Co.*, 2025 IL App (5th) 240014, ¶ 65.

¶ 84 We must reverse if the Commission's order was not supported by substantial evidence. 220 ILCS 5/10-201(e)(iv)(A) (West 2022). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion and is more than a scintilla of evidence but *** less than a preponderance of the evidence." (Internal quotation marks omitted.) *Northern Illinois Gas Co. v. Illinois Commerce Comm'n*, 2025 IL App (3d) 240093, ¶ 83. "Substantial evidence can support multiple possible findings." *Citizens Utility Board v. Illinois Commerce Comm'n*, 2018 IL App (1st) 170527, ¶ 36. If reasonable minds could differ, we defer to the Commission's findings of fact. *Northern Illinois Gas Co.*, 2025 IL App (3d) 240093, ¶ 83. This standard is the same as

the manifest weight standard, which requires reversal " 'if all reasonable persons would agree that the finding is erroneous and that the opposite conclusion is evident.' " *Id.* ¶ 84 (quoting *People ex. rel. Raoul v. Illinois Commerce Comm'n*, 2025 IL App (4th) 230491, ¶ 54). Questions of law we review *de novo* but give substantial weight to agency interpretation of an ambiguous statute to which the agency is charged to enforce and administer. *Id.* ¶ 85.

¶ 85 Aqua argues that the Commission's blanket disallowance based entirely on *pro forma* estimates voluntarily provided in the acquisition proceedings created a new and improper legal standard of a hindsight analysis where prudency depends on an "assessment of system conditions and realistic investment forecasts" rather than on the standard of care exercised by utility management at the time the system investments were made. Aqua emphasizes that no party or the Commission took issue with any specific individual project or category of projects. It argues the prudence standard requires the Commission to evaluate the prudence and reasonableness of capital investment projects based on the facts available at the time those projects were undertaken—not based on whether these projects and associated costs were voluntarily forecasted to a certain level of accuracy prior to Aqua ownership of the water system. It further contends that it should not be denied cost recovery for failing to provide information that the Commission mandated for the first time in its final order, well after the acquisition cases were decided and Aqua had filed its rate case. We find Aqua misconstrues the Commission's decision.

¶ 86 The Commission did not create a blanket disallowance for any variance between expected and actual post-acquisition investment costs or disallow certain post-acquisition investments based solely on the variances. Indeed, the Commission explicitly stated that whether actual cost exceeded the cost estimated during the acquisition approval process was not the proper standard to determine prudence. It further acknowledged that unexpected repairs and maintenance may occasionally be

required and projects might need expediting due to unforeseen circumstances. Rather, the Commission's basis for the disallowance was Aqua's failure to explain—in detail—the need, circumstances, and/or its decision-making process that led to the drastic departure from the originally-expected post-acquisition investment costs. When Aqua presented further details surrounding the necessity of specific projects—such as the Corning Avenue project for the Peotone water system—the Commission was able to determine the prudency of the investment and allowed Aqua to include those costs in the rate base.

¶ 87 Such reasoning does not indicate hindsight review, as it is not expecting Aqua to magically predict the exact costs it will endure post-acquisition. Nor does the Commission's order punish Aqua for failing to meet an unknown requirement. While the Commission imposed a directive to file further investment information during acquisition proceedings—which we address below—its disallowance of the amounts requested here was not based on Aqua's failure to know or file information in the acquisition proceedings. The Commission's disallowance was focused on the change in circumstances that necessitated the increased costs, which are facts that Aqua knew at the time of the cost incurred. Thus, the Commission did not engage in hindsight review or a new standard of review.

¶ 88 Aqua further argues it established the prudence and reasonableness of the investments by submitting the required information under part 285; documentation regarding an account of the post-acquisition costs with descriptions, group work orders, dates, and systems; documentation providing narrative to several specific projects and Aqua witness Fullen's offer to answer any further questions; and Fullen's testimony regarding said documentation and projects. It further contends that the previous estimates were not relevant and should not have been relied upon by the Commission. We disagree.

¶ 89 Despite Aqua's attempt, the fact that the Commission could not determine prudence or reasonableness due to the lack of information does not render its decision incorrect. Aqua was not entitled to recoup all post-acquisition investment costs absent a finding of imprudence or unreasonableness. In order to recoup costs, the utility must prove such costs are prudent and reasonable. *Ameren Illinois Co.*, 2025 IL App (5th) 240014, ¶ 65. As such, the correct standard is that the Commission must allow costs upon a finding of prudence and reasonableness.

¶ 90 Our recent opinion, *Ameren Illinois Co.*, 2025 IL App (5th) 240014, is persuasive. In *Ameren*, the utility company filed proposed tariff sheets that sought a budget of $186 million in future gas distribution pipeline investment costs. *Id.* ¶¶ 1, 3. The company explained that the costs were due to an infrastructure investment to comply with regulations and replace between 600 and 800 miles of mechanically coupled steel mains and services, which were two of the company's top leak risks. *Id.* ¶ 6. For similar reasons of regulatory compliance and increased material costs, the utility also requested gas transmission plant costs. *Id.* ¶ 15.

¶ 91 Regarding the gas distribution pipeline investments, the AG recommended the Commission disallow $45.5 million of the company's planned gas distribution plant investment costs. *Id.* ¶ 7. It reasoned that the company already completed a large part of the remediations, was well ahead of regulatory compliance deadlines, and the company failed to identify "with specificity" which of its projects underlay the proposed increase in costs related to mains and services, as well as to quantify the alleged risk that the company would mitigate by those projects. *Id.* The AG also argued that the company's infrastructure did not include leak-prone pipe materials, which were more likely to leak than mechanically coupled steel. *Id.* Commission Staff recommended approval of the utility's costs, arguing the party seeking the disallowance was required to explain why the investments were imprudent or unreasonable. *Id.* ¶ 8. The Commission

ultimately disallowed the investment costs, stating the proper focus was not whether the pipeline projects improved safety and reliability but rather whether the pipes had to be replaced based on the pipe material, the degree to which safety and reliability were affected, as well as the pace and cost of the replacement. *Id.* ¶ 13.

¶ 92 Regarding the gas transmission costs, the AG requested the utility slow the pace of unnecessary replacements, noting the utility was replacing assets much faster than that required by regulations. *Id.* ¶ 16. It further contended pipe replacement costs requested were unreasonably expensive due to replacing pipe instead of less costly alternatives and recommended less costly alternative approaches. *Id.* Commission Staff recommended approval of the utility's gas transmission investments. *Id.* ¶ 17. The Commission disagreed and disallowed 75% of the 2024 budget for such costs. *Id.* ¶¶ 21-22. It found the AG established the utility's "lack of detail on a per-project basis and other reasonable potential (and less costly) alternatives." *Id.* ¶ 21. It noted that the utility was on track to be seven years ahead of the regulatory compliance deadline and the utility must consider the costs and timing of its investments. *Id.* ¶ 22.

¶ 93 *Ameren* determined that the utility failed to present any evidence regarding its decision-making process and consideration of alternatives despite the AG requesting such information. *Id.* ¶ 68. It further found the questions related to further information regarding the capital investments were responded with a claim that the projects were based on "safety and reliability." *Id.* As such, the court found it could not find the Commission's conclusion that the utility failed to support its investments was contrary to the manifest weight of the evidence. *Id.*

¶ 94 The *Ameren* court noted that it was the utility's "obligation to support its proposal 'in whole or in part' and its choice in presenting 'bundled or individual projects does not alter the requirements of section 9-201.' " *Id.* ¶ 70. It held it could not find the Commission's disallowance

was against the manifest weight of the record where "nothing more than general statements were provided, despite [the utility] claiming that it had more specific information." *Id.* ¶ 71. The *Ameren* court, however, disagreed with the Commission's disallowance of the gas transmission investment costs, in part, because it ignored the evidence the utility provided that discussed—at length—its reasoning and decision-making process for its replacement decision to address regulatory compliance. *Id.* ¶¶ 85-87.

¶ 95 Here, the Commission had a valid concern of reasonableness and prudence given the 700% discrepancy in the post-acquisition investment costs for the Peotone water system and the 170% discrepancy for the Oak Brook system. Prior orders are relevant to the extent that they have bearing on an existing issue. See *Village of Apple River v. Illinois Commerce Comm'n*, 18 Ill. 2d 518, 525 (1960) ("[C]ompliance with [a] prior order is material to this inquiry only if there is any matter in connection with that prior order that relates to the existing valuation of the company's property ***."). When acquiring the facilities, Aqua presented to the Commission the costs it believed were necessary over the next five years to invest in the smaller facilities that it intended to acquire. We see no reason—and Aqua fails to cite any authority—to conclude that the Commission erred in relying on this information as a representation of the cost Aqua initially believed reasonably necessary. We further find such fact was certainly relevant to whether the actual investment costs were prudent and reasonable, particularly where there was a significant difference from what Aqua initially believed was necessary. See *Northern Illinois Gas Co. v. Illinois Commerce Comm'n*, 2024 IL App (3d) 230388-U, ¶ 60 (in determining whether costs were prudent in reconciliation proceedings, the court considered the difference between the projected costs during the 2019 QIP and the actual costs incurred and any justifications for the variance).

¶ 96 Aqua asserts that increased costs were due to inflation of labor and materials costs, unforeseen issues with the acquired systems, and stricter regulations, but such generalizations do little to inform the Commission about a specific project's prudence and reasonableness. Aqua failed to delineate how much cost was due to inflation and stricter regulations. Moreover, it provided no documentary evidence to support its witnesses' claims that inflation of labor and material costs and stricter regulations contributed to the significant departure from its original estimates. Its exhibits provided the amount spent, which system was attributed to the expense, the general category of the expense with a slightly more specific work group description, and dates. The work group and activity descriptions, however, provided nothing more than what was replaced or bought for each system.

¶ 97 Importantly, no evidence provided by Aqua provided insight as to which costs were included in its estimates during the acquisition proceedings, and which were due to unforeseeable issues. The evidence also did not reveal any insight into Aqua's decision-making process for most post-acquisition projects and prioritization. Notably, when Aqua provided more information—such as the Corning Avenue project in the Peotone water system—the Commission allowed the investment costs in the rate base. Aqua referenced a few future statewide projects, but such narrative again lacked any specification to the systems that would benefit, if the costs were foreseeable prior to acquisitions, etc.

¶ 98 Without the specific information that was requested from Aqua, it is hard to see how the Commission could determine the prudence or reasonableness of Aqua's post-acquisition investment projects. It was not required to simply accept Aqua's claim of prudence of reasonableness simply because Aqua showed that it incurred the cost. Given the fact that Aqua gave nothing more than general statements regarding the challenged investment costs or the

purpose of the work for the majority of the requested reimbursements, under *Ameren*, we cannot find the Commission's disallowance against the manifest weight of the evidence. See *Northern Illinois Gas Co.*, 2024 IL App (3d) 230388-U, ¶¶ 60-61.

¶ 99 In making our holding, we reject Aqua's contention that the Commission improperly shifted the burden by requiring Aqua to explain the prudency and reasonableness of the post-acquisition investments costs exceeding its estimates. It is the *utility's burden* to establish the prudency and reasonableness of the costs. *Citizens Utility Board v. Illinois Commerce Comm'n*, 166 Ill. 2d 111, 121 (1995). Once the utility establishes a *prima facie* case of prudency and reasonableness, " '[t]he burden then shifts to others to show that the costs incurred by the utility are unreasonable because of inefficiency or bad faith.' " *Apple Canyon Lake Property Owners' Ass'n*, 2013 IL App (3d) 100832, ¶ 54 (quoting *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 327 Ill. App. 3d 768, 776 (2002)). Here, the Commission's holding did not require Aqua to affirmatively disprove an assertion of imprudence or unreasonableness regarding unidentified projects. Indeed, the Commission did not find that the post-acquisition projects underlying the disallowed post-acquisition costs were imprudent or unreasonable. In light of the significant difference in what was originally believed necessary for post-acquisition investments, it found it could not determine the prudence or reasonableness of the projects due to the lack of information and circumstances surrounding the projects. Requiring others to show unreasonableness is not a substitute for requiring proof of reasonableness. *People ex rel. Hartigan v. Illinois Commerce Comm'n*, 117 Ill. 2d 120, 135 (1987). As such, the Commission did not engage in improper burden shifting.

¶ 100 We also reject the notion that submitting part 285 documents automatically establish prudence and reasonableness of costs. Part 285 notes that information provided pursuant to part

285 does "not bind the Commission to a decision based solely on data provided pursuant to this Part, and parties and Commission Staff may seek additional information through discovery." 83 Ill. Adm. Code 285.110(b) (2014). It further notes, "The standard information requirements provide minimum information normally required to support a utility's filing. If the utility believes that further information, in addition to pre-filed testimony and exhibits, is necessary to support its case or is proposing a position that requires a departure from the basic schedules ***, it is the utility's responsibility to supplement the standard information requirements as necessary to support its position." *Id.* § 285.130(a). If the Commission intended for the filings to be determinative of prudent and reasonable costs, there would be no necessity for it to make a prudence and reasonableness determination when the utility complies with part 285 information requirements. The Commission also would not have emphasized that such filings were the minimum requirements, did not bind the Commission, and the utility should file additional information when necessary. As such, proper filings under part 285 are not determinative of any issue under all circumstances. See *Central Illinois Public Service Co. v. Illinois Commerce Comm'n*, 243 Ill. App. 3d 421, 428 (1993) (sets forth minimum filing requirements and not a substantive rule of law).

¶ 101 Also, contrary to Aqua's arguments, we do not find the Commission's order departed from a past practice of allowing all costs without a lengthy accounting for every project. "[I]t is well established that the Commission is not bound by its prior orders under the doctrine of *res judicata*." *Ameren Illinois Co.*, 2025 IL App (5th) 240014, ¶ 66. "Rather, the Commission has the power to deal with each situation before it, regardless of how it might have dealt with a similar or the same situation in the past." *Northern Illinois Gas Co.*, 2025 IL App (3d) 240093, ¶ 100. The Commission may also change its policies, "so long as the changes are not implemented in an arbitrary and

capricious manner." *Id.* Its decision will be entitled to less deference only if it "departs from its usual rules of decision to reach a different, unexplained result in a single case." (Internal quotation marks omitted.) *Id.* While Aqua cites numerous cases in which the Commission approved rate increases seemingly based on similar information provided in this case, it fails to explain if the previous cases are factually comparable to this case. For example, it does not address whether the prior cases involved acquisitions under section 9-210.5 or a nearly 700% increase in expected investment cost for one utility. We remind Aqua that a court of review is not a depository into which it may dump the burden of argument. *In re Austin C.*, 353 Ill. App. 3d 942, 948 (2004). Nevertheless, our review of the cases cited by Aqua shows they are distinguishable from this case. As such, we do not find the Commission actions were a departure from past practice without justification. Accordingly, we affirm the Commission's disallowances.

¶ 102 B. New Filing Requirements

¶ 103 Aqua further argues that the Commission acted without authority and in violation of the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (West 2022)) in ordering Aqua to file a comprehensive report on the condition of the system to be acquired and the investment needs anticipated for the system over the first five years of ownership. Specifically, it contends the plain language of section 9-210.5 provides the legislature's requirements for acquisitions—none of which address investment projects (see 220 ILCS 5/9-210.5 (West 2022))—and despite this plain language, the Commission impermissibly read in the condition of the new section 9-210.5 filing requirements. Aqua further contends that part 285 does not impose such requirements on water utility companies, despite imposing similar filing requirements on gas and electric utility companies. See 83 Ill. Adm. Code 285.6100. Citing *Harrisonville Telephone Co. v. Illinois Commerce Comm'n*, 176 Ill. App. 3d 389, 393 (1988), and *Ameren Illinois Co.*, 2025 IL App (5th)

240014, ¶¶ 97, 103, it also argues mandates for future projects "not as yet undertaken" exceeded the Commission's authority.

¶ 104 The Commission and AG dispute Aqua's arguments, noting that the authority to act need not be explicit and a statute provides the authority reasonably necessary to accomplish the legislature's objective. They cite section 9-210.5 and several other sections of the Act that provide the Commission authority to determine just and reasonable rates and all facts necessary to value property. See 220 ILCS 5/9-210.5(d) (West 2022) (allowing recovery of only just and reasonable rates determined by the Commission); 220 ILCS 5/4-101 (West 2022) (granting general supervision of all utilities); 220 ILCS 5/9-201(c) (West 2022) (necessity of just and reasonable rates and charges); 220 ILCS 5/9-210 (West 2022) (granting authority for valuation of property); 220 ILCS 5/5-101 (West 2022) ("Every public utility shall furnish to the Commission all information required by it to carry into effect the provisions of this Act, and shall make specific answers to all questions submitted by the Commission."). The Commission further argues that the issues are not ripe for appeal. We address the ripeness of the issues first.

¶ 105 Appellate review is subject to the doctrine of ripeness. *In re Tekela*, 202 Ill. 2d 282, 294 (2002). "We cannot decide any case in which our judgment would be wholly advisory and ineffectual for want of a concrete dispute." *People v. Hill*, 2011 IL 110928, ¶ 6.

¶ 106 In reviewing administrative actions, the ripeness doctrine prevents the courts from prematurely adjudicating administrative policy disagreements and protects "agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency*, 215 Ill. 2d 219, 231 (2004). Our ripeness inquiry in this context is two-fold. We first consider whether the issue is fit for judicial decision. *Morr-Fitz, Inc. v. Blagojevich*, 231

Ill. 2d 474, 490 (2008). Then, we evaluate the hardship on the parties that would result from withholding judicial review. *Id.*

¶ 107 The Commission takes issue only with the second consideration, contending there is no hardship where the new section 9-210.5 filing requirements are only applicable if Aqua chooses to acquire another small utility before the repeal of section 9-210.5 becomes effective in 2028. It therefore argues that any review of the issues would be based on speculative future events that are insufficient to establish an actual controversary. We find the Commission's arguments wholly ignore the incongruity of its statements and the procedural posture underlying the new section 9-210.5 information filing requirements.

¶ 108 The complained-of requirements were imposed by the Commission's order. Aqua would have procedurally waived any challenge to the new section 9-210.5 filing requirements had it not appealed the Commission's ruling to this court. See 220 ILCS 5/10-201(f) (West 2022). The appeal was perfected pursuant to Act requirements (*id.* § 10-201), and the Commission's order is properly before this court. In reviewing the Commission's order, the Act requires reversal, in part or in whole, if we find the order is (1) not supported by substantial evidence in the record, (2) made without jurisdiction, (3) in violation of state or federal constitution or laws, or (4) the proceedings or manner in deciding the order was in violation of state or federal laws and to the prejudice of the appellant. *Id.* § 10-201(e)(iv).

¶ 109 Moreover, Aqua's contention that the Commission lacked authority to order the new section 9-210.5 filing requirements implicates the Commission's jurisdiction. *Business & Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 243 (1989). Thus, if Aqua is successful on this matter, that portion of the order imposing the new requirement would be void, which "may be attacked at any time or in any court, either directly or

collaterally." (Internal quotation marks omitted.) *Id.* at 243-44; see also *Goral v. Dart*, 2020 IL 125085, ¶ 51.

¶ 110 We further note the incongruency of the Commission's argument in that it considered and determined the issue below by ordering the new requirements but argues its determination of the same issue in the same rate case is not ripe for appellate review. Ripeness does not impact our subject matter jurisdiction (*Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 253 (2010)) and is a defense subject to forfeiture. *People v. Kotlinski*, 2024 IL App (4th) 230526, ¶ 42. As a general rule, issues or defenses not raised before an administrative agency will not be considered for the first time on administrative review. *Carpetland U.S.A., Inc. v. Illinois Department of Employee Security*, 201 Ill. 2d 351, 396-97 (2002). While we acknowledge the Commission was the decision maker below, Aqua consistently argued the new section 9-210.5 requirements had no relevance to the instant rate case, and the Commission nevertheless found the issue suitable for its determination. We therefore find, under the circumstances of this case, the ripeness doctrine does not preclude our determination of whether the Commission had statutory authority to order the new section 9-210.5 filing requirements.

¶ 111 While ripeness of the new section 9-210.5 filing requirements does not impact our jurisdiction or otherwise preclude this court from addressing the Commission's jurisdiction to impose such requirement under the facts of this case, the irrelevance and prematurity of the new section 9-210.5 filing requirements to the issues in this case support Aqua's position that the Commission lacked authority and therefore jurisdiction to impose the requirements. As an administrative agency, the Illinois Commerce Commission " 'derives its power and authority solely from the statute creating it, and its acts or orders which are beyond the purview of the statute are void.' " *Ameren Illinois Co.*, 2025 IL App (5th) 240014, ¶ 94 (quoting *Harrisonville*, 176 Ill.

App. 3d at 392). While the legislature provided broad authority, such authority remains "limited to that granted by statute." *Id.* "Consequently, to the extent an agency acts outside its statutory authority, it acts without jurisdiction." *Business & Professional People for the Public Interest*, 136 Ill. 2d at 243.

¶ 112 "The agency's authority must either arise from the express language of the statute or 'devolve by fair implication and intendment from the express provisions of the [statute] as an incident to achieving the objectives for which the [agency] was created.' " *Crittenden v. Cook County Comm'n of Human Rights*, 2013 IL 114876, ¶ 14. An express grant of power to an administrative body or officer includes the authority to do all that is reasonably necessary to execute that power or to perform the duty specifically conferred. *Glass v. Department of Corrections*, 2022 IL App (4th) 220270, ¶ 29.

¶ 113 In *Harrisonville*, 176 Ill. App. 3d at 391, the utility company petitioned the Commission for authorization to operate telecommunications equipment on a private roadway and to acquire the necessary easement rights. It subsequently filed a report of compliance, attempting to comply with Commission Rules 300.20 and 300.3, and alternatively, requesting a variance pursuant to Commission Rule 300.70. *Id.* The Commission granted the utility company's requests but directed the company to comply with the Commission rules in all future projects requiring certification pursuant to section 8-406 or an order under section 8-503 of the Act. *Id.* at 391-92. The appellate court stated that while the legislature allowed agencies to provide a rule to address declaratory rulings, and such rulings should not be appealable, the Commission had not promulgated a rule providing for declaratory relief. *Id.* at 392-93. Thus, in the absence of such rule, the Commission had no authority and therefore no jurisdiction to direct the utility company in future cases. *Id.* at 392.

¶ 114 Since *Harrisonville*, the Commission can now make declaratory rulings with the enactment of Commission Rule of Practice 200.220 (83 Ill. Adm. Code 200.220(a) (1996)). However, the Commission's statutory authority to address declaratory matters under section 5-150 of the Administrative Procedure Act (5 ILCS 100/5-150 (West 2022)) and Rule 200.220 (83 Ill. Adm. Code 200.220(a) (1996)) remains limited to issues presented in the underlying proceedings that are not moot or premature. *Securus Technologies, Inc. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 131716, ¶ 34.

¶ 115 For example, in *Securus Technologies, Inc. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 131716, ¶¶ 5-6, the utility company filed a petition to verify whether it was considered an "operator services provider" under the Commission's regulation and thus was subject to the rate limits within certain Commission rules. When the utility filed the petition, it submitted a bid to provide telephone services for state correctional facilities in accordance with the limitations on operator services providers imposed by the Commission regulations. *Id.* ¶ 5. The utility company later lost the bid prior to a ruling on its petition. *Id.* The Commission found the petition still presented an actual controversy based on the rejection of the bid, subsequent proceedings regarding the protest of the bid denial, and future guidance regarding the rule's applicability. *Id.* ¶ 24. The appellate court disagreed, finding that there was no actual controversary where the utility company did not identify any immediate or concrete facts regarding any future contracts to which the utility would need guidance. *Id.* ¶¶ 40, 44. It determined any controversary regarding the bid was moot and the Commission provided "an abstract opinion on the applicability of the existing regulations under some set of unknown future circumstances." *Id.* Therefore, the Commission acted outside of its authority and lacked jurisdiction to address the issue. *Id.* ¶ 47.

¶ 116 In light of the above caselaw, we find the Commission acted without authority in imposing the new section 9-210.5 filing requirements. The evidence presented in this rate case exposed the concerns that motivated the Commission's directive, but as the Commission admits in its argument regarding the ripeness of the case, the new section 9-210.5 filing requirements have no impact on the rate case before us. The Commission previously ruled on the section 9-210.5 petitions for the Peotone and Oak Brook water systems. Consequently, any controversary regarding the requirements imposed in that case is moot. The new section 9-210.5 filing requirements apply only if Aqua petitions to acquire another utility system under section 9-210.5. There was no evidence that Aqua intended to do so or has pending petitions under section 9-210.5. Addressing whether Aqua should be subjected to new requirements during section 9-210.5 proceedings therefore required consideration of unknown future circumstances.

¶ 117 Despite the Act providing the Commission broad investigatory powers concerning property value and ratemaking decisions (see 220 ILCS 5/9-210.5(d) (rate base afforded under section 9-210.5 is subject "to any adjustments that the Commission deems necessary to ensure such rate base reflects prudent and useful investments in the provision of public utility service"); 220 ILCS 5/4-101 (general supervision of all utilities); 220 ILCS 5/9-201(c) (necessity of just and reasonable rates and charges); 220 ILCS 5/9-210 (valuation of property); 220 ILCS 5/5-101), it does not allow the Commission to make such gratuitous declarations as in this case. As such, the Commission did not have authority, and therefore had no jurisdiction, to make such ruling. See *Securus Technologies, Inc.*, 2014 IL App (1st) 131716, ¶¶ 40, 44; *Ameren Illinois Co.*, 2025 IL App (5th) 240014, ¶ 92 (finding the Commission acted outside its authority—during a rate case—by imposing a new filing directive—in part—because the new requirements only applied to future cases and did not impact the rate case before the Commission).

¶ 118 We therefore vacate the portion of the Commission's order imposing the new filing requirements for petitions under section 9-210.5. Because we find the Commission lacked authority to make such ruling, we need not address the other issues on appeal concerning the new filing requirements. See *Securus Technologies, Inc.*, 2014 IL App (1st) 131716, ¶ 47.

¶ 119 C. Evidentiary Errors

¶ 120 Aqua further argues the Commission's order incorporated and relied on information not in the evidence as the basis for its disallowance. It explains that the Commission's disallowances of investment costs in the Peotone and Oak Brook systems relied in part on the forecasted costs in 2024 and 2025 provided in DRR ST 1.07, but that document was not admitted as evidence. It further contends that the Commission's corrected reference in the amendatory order to AG exhibit No. 3.02, Schedule A-9, does not remedy that deficiency, because the AG's exhibit itself and Selvaggio's testimony related thereto relied in part on DRR ST 1.07 as the source for its calculation. Aqua asserts this was reversible error or, at a minimum, this portion of the order should be remanded to the Commission with instructions to receive that evidence. We disagree.

¶ 121 We first note that the citation to DRR ST 1.07 in the original order concerned the Peotone and Manteno sewer systems, and not the Peotone or Oak Brook water systems. Moreover, once the Commission filed an amended order and appendix, those documents were the controlling order. As the amended order states, the Commission relied on AG exhibit No. 3.02, which was evidence admitted in the case below. As such, we reject Aqua's contention that the Commission's order relies on evidence outside the record.

¶ 122 We further decline to reverse based on Aqua's argument that citation to AG exhibit No. 3.02 failed to remedy any error because AG exhibit No. 3.02 also relied on DRR ST 1.07 and DRR ST 1.07 was not admitted into evidence. The Commission could decide any findings of fact based

on "the evidence and on matters officially noticed" (5 ILCS 100/10-35 (West 2022)). Aqua does not appear to challenge—on appeal or below—that AG exhibit No. 3.02 or Selvaggio's testimony related thereto was inadmissible for any basis. It thus forfeited any challenge to admissibility of Selvaggio's report or testimony. See *Marathon Petroleum Co. v. Cook County Department of Revenue*, 2024 IL 129562, ¶ 44 ("Issues not raised before the administrative agency are forfeited."). It also fails to cite any legal authority to claim that the Commission could not rely upon admitted and unchallenged witness testimony or reports when the basis for such testimony or reports was not admitted into evidence. We therefore find no error in relying on unchallenged evidence admitted at the hearing.

¶ 123 Most importantly, Aqua does not contend the information in AG exhibit No. 3.02 is inaccurate. Aqua's counsel further admitted at oral argument that admission of DRR ST 1.07 may not have changed the result below. Absent prejudice, Aqua is not entitled to reversal. See *LifeEnergy, LLC v. Illinois Commerce Comm'n*, 2021 IL App (2d) 200411, ¶ 83 (evidentiary violation under the Administrative Procedure Act does not require reversal unless the party suffered prejudice). As such, we deny Aqua's claim of reversable evidentiary error.

¶ 124 III. CONCLUSION

¶ 125 The Commission had no authority to impose requirements applicable to future unfiled cases in the present case. The evidence, however, supported the Commission's disallowance of post-acquisition investment costs, and there was no error or prejudice from the Commission's order citing AG exhibit No. 3.02 as a source. Accordingly, we vacate the portion of the Commission order imposing the new section 9-210.5 filing requirements but otherwise affirm.

¶ 126 Vacated in part and affirmed in part.