

# MIKE SEIDEL

## Supplying Credibility in the Niche Market of Public Utilities

by Mike Bailey

What do real estate developers do about water and sewer service when they build a subdivision in an unincorporated area?

They often contact Utilities, Inc. and, ultimately, W. Michael Seidel in the Chicago office of **Howard and Howard**.

Seidel, longtime attorney with the firm of DeFrees and Fiske, which later merged with Howard and Howard, is the expert in northern Illinois for a niche business with national aspirations.

Seidel is outside counsel for Utilities, Inc., which provides water and sewer service primarily to unincorporated areas in 15 states. It is a subsidiary of the Canadian company Corix. Utilities, Inc. owns 23 operating subsidiaries that provide water and wastewater services in 12 Illinois counties.

“When real estate developers build a subdivision outside of a municipality, they often install their own water and sewer systems,” he says. “But they do not want to be in the business of operating them long term so they sell them to Utilities, Inc. to operate.”

Seidel represents the 23 Illinois operating subsidiaries, providing those services to developments with as many as 2,300 users in a golf course community near Galena called Galena Territory Utilities, Inc. to less than 100 customers in residential communities.

Utilities, Inc. has the expertise to operate these various smaller utilities and gains economies of scale through consolidation of back room operations in Northbrook where Utilities, Inc. is headquartered. Also in the Northbrook office are billing operations and accountants.

Certified operators are on the ground and in the communities that Utilities, Inc. serves, and regional management builds relationships with local developers. “I don’t know how else these could be administered, I really don’t,” Seidel says, citing the efficiencies Utilities, Inc. realizes.

“Very few people have his experience in the utility practice area,” says Howard and Howard partner Scott Levin. “Michael is a leader in the field. He has appeared regularly before the Illinois Commerce Commission for decades and is very well respected by the staff and administration. He has a lot of credibility built up over the years.”

Seidel says the Illinois Attorney General’s office has strongly encouraged Utilities, Inc. to consolidate its statewide operations in order to spread the costs more evenly and eliminate the wide disparity between what residents in each area are charged.

“Certainly the people in small residential communities where there are less than 100



customers will pay more than those in Galena where there are 2,300," he says. By consolidating all of the smaller companies into one large statewide operation, the disparity in rates could be moderated.

## Small Municipality Needs

The need to provide professional water and sewer utility services is not confined to just unincorporated areas, Seidel says.

Because of the increasing scrutiny by the United States Environmental Protection Agency, as well as the state EPA, Utilities, Inc. has been contacted by smaller municipalities seeking to reduce costs or avoid a major, costly remediation.

The EPA cited the small community of Oakwood, located near Danville, for a water supply issue. The village collaborated with Utilities, Inc. and determined that selling the water and wastewater system to Utilities, Inc. was the best alternative for community. "The village couldn't afford to make that substantial an investment to bring their water system into compliance," Seidel says.

That move made sense, Seidel says, because the village would realize a one time cash gain from the sale, avoid the very costly overhaul of the plant and eliminate operating costs.

Utilities, Inc. was the successful bidder at nearly \$2 million and will now make the necessary improvements to the system to bring it into EPA compliance. While Seidel assisted with the process, his real work lies just ahead.

"The Illinois Commerce Commission must approve the transaction, which we are confident it will," he says. While municipalities are not regulated by the ICC and can charge whatever they wish for municipal services, private companies like Utilities, Inc. and major, publicly held corporations like Exelon and Nicor must apply for permission to raise rates to recover costs.

And that is Seidel's sweet spot.

His attraction to economics led him to the field of law. After undergraduate studies at the University of Notre Dame, he applied at the University of Illinois, where he pursued his law degree.

Seidel grew up in the south suburbs and graduated from Homewood-Flossmoor High School. "My dad was a dentist, and he hoped I would be one, too. It was wonderful for our family. All five of us kids had a great childhood and all we ever needed. But he would stand all day looking in people's mouths, and I didn't want to do that.

"I found my high school economics course so interesting that I chose it as my major at Notre Dame and thought I would be an economics professor or an economic analyst for a bank or financial firm. I really enjoyed the theory and the philosophy of it." That fascination lasted until he encountered the statistical and econometric components of economics study.

"That was like my dad standing all day looking into people's mouths," he says. "So, I entered law instead."

His economics background and law school courses in antitrust and economic regulation of

business convinced him that Defrees & Fiske's utility regulatory practice was the right fit for him. One of his first clients was Central Illinois Light Company (CILCO), which provided gas and electricity to the Peoria and Springfield area. As part of that work, he argued rate increase cases before the ICC.

"That was back in the 1980s when high inflation and thus high interest rates made the cost of capital exceptionally high," he remembers.

"Because utilities are dependent on capital markets to expand, we were in for rate increases every few years. CILCO was better situated than Commonwealth Edison because we didn't have any nuclear powered plants with massive cost outlays like ComEd did. But, as the demand for energy grew and existing facilities were upgraded and replaced, we needed to recover our costs."

In rate cases, Seidel says, the burden of proof is on the utility. "They (the ICC commissioners) review a test year, and we will have to show what our costs were to provide electricity, gas, water and wastewater to the service area.

"We provide information on our costs to purchase natural gas, debt service, transportation costs, capital investment, and storage. We also provide them with information on the cost of coal to operate the electrical facilities since they were coal-powered and the cost of maintenance, like the poles and lines."

The ICC then determines whether those costs were necessary and prudent and whether the utility can recover its costs of operation. Since CILCO had an excellent operating record, those requests were usually granted. During the wave of utility consolidations in the 1990s, CILCO was acquired, and the acquiring company used in-house counsel, eliminating the need for Seidel's firm.

## Attorney Reflects Local Values

Through an acquaintance, Howard and Howard's Scott Levin learned that Utilities, Inc. was shopping to replace its former costly regulatory counsel. Because of its experience and favorable cost structure, the Howard and Howard firm was hired and Seidel seamlessly began his new job.

"We were looking for an attorney whose values line up with ours and the communities we serve," says Steven Lubertozzi, chief regulatory officer of Utilities, Inc.

"We wanted a lawyer who interacted well with the Illinois Commerce Commission and its staff. Many lawyers seem like they are an argument waiting to happen, and in this niche market, that attitude can be very damaging. We wanted someone who could openly communicate with staff, and the staff could rely upon what they were saying."

Levin says Seidel also handles rare rate case appeals. "He knows the public utility statute and commission decisions inside and out. He also assisted with the Utilities, Inc. acquisition (by Corix) and helped gain regulatory approval for the transaction. We had to have it completed before the end of December, and he helped us get it done on time."

Allowing private companies to purchase and

operate public utilities makes sense for smaller communities, Seidel says.

"Villages like Oakwood are not unlike developers in that they don't want to be in the business of operating a utility and trying to comply with all the new regulations," he says.

"As part of our agreement with them, we will not raise rates for some period of time." Assuming approval in early 2014, several months will elapse while improvements and building additions are made and the EPA issue is corrected. Rate cases take 11 months to complete, giving the community time to understand and prepare for the needed rate adjustment.

"We go to the people in the community via a public forum and explain to them why rate increases are necessary," Seidel says. "And we listen to those customers express their concerns. Some people think water should be free. They don't realize all the costs we incur," he says.

The cost of providing water and sewer to residents is expected to climb, as infrastructure needs to be replaced and costs continue to escalate. However, Utilities, Inc. focuses on cost containment. Additionally, rates approved by the Commerce Commission more realistically reflect the true cost of those services but still lag behind the actual full cost of service, he says.

"If it costs \$80 per month for a typical customer's water, the municipality might charge \$60 and make the rest up in the property tax. We can't do that, so the rates are higher." And larger municipalities have a broader customer base over which to spread the costs.

When he's not practicing law, Seidel is an avid athlete, still playing pick-up basketball three times a week or enjoying a round of golf. "I broke 80 three times last summer," he says. "I'm about an 11 handicap now. I used to be about a 6."

Seidel lives in Geneva with his wife of 31 years, Sherry, who is a neonatology respiratory therapist at Loyola Medical Center, and his daughter Natalie, 23, a marketing coordinator for the Geneva Park District.

While he spends much of his current practice on matters related to the everyday business of Utilities Inc., he is also beginning to do more work for a company which specializes in alternative power, like wind energy.

Seidel's niche practice continues to draw admiration from his associates. "I don't think there's anyone in Illinois who does quite what Michael does," says Levin.

Lubertozzi feels that Seidel is exactly the right person for the Illinois market.

"He has a non-confrontational manner that is very effective. We have tried other approaches in other jurisdictions (other states in which Utilities, Inc. operates.) In some jurisdictions, we have to be more aggressive or we have to bring in counsel that is more aggressive.

"We've never had to do that in Illinois. Even if we disagree with an order and have to file an appeal, we maintain a good working relationship with the ICC's staff," he says.

"That's a lot better than coming out with guns blazing." ■