

would not serve as a basis to strike otherwise relevant, admissible evidence. The material Bolingbrook and the AG seek to strike serves as support for, and thus is relevant to, the reasonableness of the Company's test year costs. That the AG may believe that other evidence could have or should have been submitted in addition or instead of what we have submitted does not mean that IAWC's evidence is irrelevant or incompetent. The ALJ should not restrict the record, and deprive the Commission of the benefit of relevant evidence, simply because a party – which did not submit any evidence itself on the topic – believes (mistakenly, at that) that there may be better evidence out there.

In further support of this Reply, IAWC states as follows:

1. IAWC set forth its position on Bolingbrook's Motion and explained why that Motion should be dismissed in its Response in Opposition To Village of Bolingbrook's Motion To Strike ("IAWC Response"). IAWC will not repeat those arguments in their entirety here, but incorporates them by reference.

2. Other than a statement (AG Resp., p. 2) that the AG agrees with Bolingbrook that "the study provided by IAWC does not conform to the Commission's Order in Docket 07-0507," the AG Response does not present any assessment of why, as a legal matter, striking the SC Study or related evidence (the "SC Cost Evidence") is appropriate. As the IAWC Response explained (pp. 2-3), nowhere in the Docket 07-0507 Order is there a requirement that, in preparing the requested study, IAWC obtain actual competitive bids for each service it receives from the Service Company. The Docket 07-0507 Order requires that IAWC compare the "cost of each service obtained from the Service Company to the costs of such services *had they been obtained* through competitive bidding on the open market" (emphasis added). Thus, the Docket 07-0507 Order contemplates a comparison study utilizing data that reflects the cost of Service

Company services “had they been obtained” through competitive bidding. The SC Study and SC Cost Evidence comply with this requirement. Because the AG Response fails to establish any legal basis for striking the SC Study or SC Cost Evidence (as Bolingbrook’s Motion also fails to do), it must be rejected.

3. Moreover, as the IAWC Response also explained, mandating a bidding requirement for the preparation of the SC Study would not be appropriate. Requiring the SC Study be prepared using a competitively bid request for proposal (“RFP”) process for each Service Company service would be extremely costly and impractical, lead to highly questionable results, and be potentially damaging to the American Water Works Service Company’s (“Service Company”) procurement process. It would have been very costly and impractical to obtain bids for services to be rendered in 2010 during the 2008-2009 time period during which the SC Study was prepared. It is also questionable what credibility a service provider’s “indicative” bid for services that far in the future would have, even if a supplier was inclined to provide such a “bid”. In addition, IAWC does not believe a service provider would necessarily provide a bid, let alone a legitimate or accurate bid, for services where the service provider knows the bid is only for the Company’s informational purposes for use in a rate case study. Further, if potential suppliers receive the impression that IAWC is engaging in such an “informational” RFP process, it could do substantial damage to the credibility of the Service Company’s process for procuring goods and services. These clear practical concerns with preparing the SC Study using actual competitive bids for all test year services confirm that the SC Study complies with the Commission’s requirements. The Commission’s Order clearly does not require IAWC to engage in the type of speculative “informational” RFP process Bolingbrook and the AG suggest is needed, and the Order should not be interpreted as requiring such a process.

4. Rather than providing a legal argument directed at the admissibility of the SC Study, the AG offers an extensive commentary challenging the methodology and results of the SC Study. This unsworn commentary sets forth substantive, extra-record factual allegations and conclusions¹ regarding the SC Cost Study. The AG Response claims that, for example, with respect to the SC Study's market surveys, "None of these surveys are particular to the water industry, nor do they reflect Illinois specific costs or practices" and that "[t]he study should be rejected because it does not provide real benchmarks against which to assess whether IAWC could reduce its costs if it opened its contract services to competition." Such assertions do not address the admissibility of the SC Study, but, if anything, only addresses its evidentiary weight. However, such assertions are not properly included in pleadings addressing the narrow legal question raised by Bolingbrook – whether the SC Study complies with the Commission's order in Docket 07-0507 (which, as IAWC's Response explains, it does). Nor are such assertions timely: the SC Study was filed with IAWC's direct case on May 29, 2009. The scheduled time for Staff and intervener direct testimony regarding the SC Study was September 28 or October 2, 2009, respectively. As the IAWC Response pointed out, in the direct evidence filed in this proceeding, no party has challenged the SC Study's methodology or conclusions, and no witness has testified that the SC Study of SC Cost Evidence does not comply with the requirements of the Docket 07-0507 Order. The AG should not be permitted to do an end run around the established schedule in this proceeding by setting forth substantive factual allegations for the first time in response to another party's pleadings. The AG Response should therefore be disregarded.

5. In addition, the AG Response fails to acknowledge that, irrespective of the

¹ Pursuant to 83 Ill. Adm. Code § 200.190(c), "Motions based on matter which does not appear of record shall be supported by affidavit."

question of whether the SC Study is consistent with the Docket 07-0507 Order's requirements (which it is), the SC Cost Evidence is fully relevant to this proceeding for at least two reasons. As IAWC explained in the IAWC Response, the SC Cost Evidence is relevant to the reasonableness of IAWC's proposed test year level of Service Company fees and to the assertions of the AG and Bolingbrook's own witness, Mr. Ralph Smith, regarding the level of those fees.

6. The AG also incorrectly asserts (AG Resp., p. 4), as Bolingbrook did, that "no competitive bids are included in the [SC S]tudy at all." As the IAWC Response explained, this statement ignores a significant component of the SC Study, namely the Supplemental Data (*see, e.g.,* IAWC Exhibit 11.01, Schedules 1.2, 2.2, 3.3, 4.4 and 5.2). The Supplemental Data represents actual hourly rates for services, many of which were the product of competitive bidding or RFP processes. Thus, the information in the Supplemental Data represents the product of a legitimate competitive bid process, not the type of speculative process the AG claims is required. The AG is simply incorrect that the SC Study does not include competitively bid services.

WHEREFORE, for all of the reasons set forth above, and in the IAWC Response, IAWC respectfully requests that Bolingbrook's Motion be dismissed.

October 30, 2009

Respectfully submitted,

ILLINOIS-AMERICAN WATER
COMPANY

By: /s/ Albert D. Sturtevant

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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on October 30, 2009, I served a copy of the foregoing REPLY IN OPPOSITION TO THE ATTORNEY GENERAL'S RESPONSE IN SUPPORT OF MOTION TO STRIKE by electronic mail to the individuals on the Commission's Service List for Docket 09-0319, with the exception of the parties listed below, who were served via U.S. Mail, first class postage prepaid, from 77 W. Wacker, Chicago, Illinois 60601.

/s/ Albert D. Sturtevant

Albert D. Sturtevant

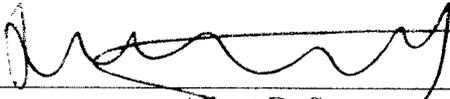
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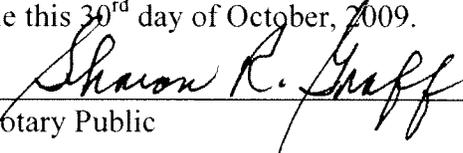
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VERIFICATION

I, Albert D. Sturtevant, certify that: (i) I am counsel for Illinois-American Water Company; (ii) I have read the foregoing REPLY IN OPPOSITION TO THE ATTORNEY GENERAL'S RESPONSE IN SUPPORT OF MOTION TO STRIKE; (iii) I am familiar with the facts stated therein; and (iv) the facts stated therein are true and correct to the best of my knowledge.


Albert D. Sturtevant

SUBSCRIBED and SWORN to before
me this 30th day of October, 2009.


Notary Public



My commission expires: 11-28-12