



## ILLINOIS COMMERCE COMMISSION

June 8, 2012

Illinois-American Water Company	:	
	:	11-0767
Proposed general increase in water	:	
and sewer rates.	:	<b>SERVED ELECTRONICALLY</b>

NOTICE OF ADMINISTRATIVE LAW JUDGE'S RULING

TO ALL PARTIES OF INTEREST:

Notice is hereby given by the Administrative Law Judge that Illinois-American Water Company ("IAWC") filed a "Motion to Strike Portions of the Testimony of Ralph C. Smith" ("Motion to Strike" or "Motion"). Mr. Smith is an expert witness called by the People of the State of Illinois ("Attorney General" or "AG").

A ruling on the Motion was issued on May 25, 2012. With respect to some of the passages of testimony that were the subject of the Motion – including lines 2155 through 2179 of AG Exhibit 2.0 and lines 1051 through 1059 of AG Exhibit 4.0 – IAWC and the AG were given leave to file, and did file, supplemental responses updating their arguments based on evidence adduced at the hearings.

In its supplemental response, filed June 5, 2012, IAWC continues to object to lines 2155 through 2179 of Mr. Smith's direct testimony, AG Exhibit 2.0. In its Motion, IAWC took issue, among other things, with Mr. Smith's failure to provide a citation for the Georgia Public Service Commission order to which he referred. As noted by the AG, that order was identified at the hearing during IAWC's cross-examination of Mr. Smith.

In its Motion, IAWC also argued -- and continues to argue, citing portions of Mr. Smith's cross-examination testimony -- that the testimony on lines 2155 through 2179 is irrelevant and therefore inadmissible because there was no showing of comparability.

Disagreements over comparability are relatively common in Commission proceedings, sometimes arising when orders or decisions from other jurisdictions, or other Commission orders, are cited in expert testimony. Other times such orders or decisions are cited in briefs. Usually, such issues do not involve the striking of testimony or argument. At this point in the instant proceeding, the better course is to allow Mr. Smith's testimony into the record, where it can be assessed by the Commission along with the cross-examination testimony, and any other evidence, or arguments in the briefs, pertaining to it. The objections go to the weight, which may be further argued in the briefs.

Regarding lines 1051 through 1059 of AG Exhibit 4.0, the motion is denied. Generally speaking, it is appropriate to allow the expert witness to compare a determination on the issue in decisions by other public utility commissions, in cases involving affiliates of IAWC, to that proposed by IAWC. Although IAWC's criticism about Mr. Smith's failure to provide citations in his rebuttal testimony is not without merit, it is observed that at the hearing, IAWC's witness also provided testimony, without citations, about what other states have decided on the issue. The objections go to the weight, which may be further argued in the briefs.

Sincerely,

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Chief Clerk

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Administrative Law Judge Jones

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