

DW 99-057

**HAMPTON WATER WORKS COMPANY**

**Petition for General Rate Increase**

**Order Denying Motions to Strike**

**O R D E R   N O.   23,373**

**December 21, 1999**

This order takes up two pending motions relating to discovery in this docket. On December 1, 1999, Hampton Water Works Company (Company) moved to strike portions of the pre-filed testimony submitted by Dr. Richard Silkman, an expert witness employed by the Town of Hampton (Town). The Town filed a written objection to the motion on December 9, 1999, and on the same date moved to strike certain data requests posed to Dr. Silkman. The Company filed a written objection to the Town's motion on December 13, 1999. On December 14, 1999, the Town of North Hampton indicated that it joins the Town of Hampton's request to strike the data requests. We deny both motions.

In his pre-filed direct testimony, Dr. Silkman recommends a return on equity of 8.55 percent for the Company, substantially less than the 11.70 percent requested by the Company in its filing. The basis of Dr. Silkman's recommendation is a study of investor-owned water utilities conducted by the staff of the Maine Public Utilities Commission in connection with a rate case involving Central Maine Power. Dr. Silkman forthrightly states that he did not perform his own cost-of-

capital study, but concluded that the Maine PUC study "was of recent enough vintage and was focused on the correct peer group so that a replication of this work is unnecessary."

The Company moves to strike Dr. Silkman's cost-of-capital testimony on the ground that his recommendations are "not based on his opinion but on the opinion of others." According to the Company, it would be unfairly prejudiced by the admission of this testimony because it is unable to cross-examine the Maine PUC staff members who conducted the underlying study.

We disagree. By statute, we are not bound in our proceedings by "the technical rules of evidence." RSA 365:9. Our rules require us to exclude only "irrelevant, immaterial or unduly repetitious evidence" and to give effect to any legally recognized evidentiary privileges. NH Admin. Rules, Puc 203.10(c) and (d). None of those principles are implicated here. Indeed, even if the New Hampshire Rules of Evidence applied, the Company's objection to Dr. Silkman's testimony would be overruled. Under Rule 703,

[t]he facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to an expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

There is no suggestion here that the report from the Maine PUC is not the sort of data that an economic expert would reasonably

rely upon in developing an opinion about an appropriate return on equity for the Company. In short, the Company's contention regarding Dr. Silkman's testimony speaks, if anything to its probative value and not its admissibility. The asserted objection to his testimony is devoid of merit.

The Town's motion is also groundless. In essence, the Town refuses to cause Dr. Silkman to respond to the Company's data requests unless the Company agrees to compensate him in advance at his customary hourly rate. There is a statutory provision authorizing intervenors to recover rate case expenses from ratepayers in some circumstances, but municipalities are explicitly ineligible for such recovery. See RSA 365:38-a. The only other asserted basis for the Town's motion is that some of the documents requested by Hampton are matters of public record that can be obtained at the Maine Public Utilities Commission and elsewhere.

The fact that an intervenor incurs expenses when another party poses data requests of its expert witness is not a ground for permitting an intervenor to avoid responding to such requests. Our rules permit such discovery "as necessary to evaluate . . . testimony," NH Code Admin. Rules, Puc 204.04(a), and Dr. Silkman has submitted prefiled testimony. In these circumstances,, the Town must make Dr. Silkman available to respond to data requests. Further, and in particular, Hampton is

entitled to ask Dr. Silkman to supply the documents he used to develop the testimony, even assuming Hampton could also obtain this information elsewhere. Our rules do not require a party to submit to discovery requests that are overly burdensome, vexatious or posed with the purpose of harassing or causing delay. But the Town's wholesale objections to every one of the queries posed to Dr. Silkman provides us with no basis for concluding that anything of that sort has occurred here.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the motion of Hampton Water Works Company to strike part of the pre-filed testimony of Dr. Richard Silkman be denied; and it is

**FURTHER ORDERED**, that the motion of the Town of Hampton to strike certain data requests posed by Hampton Water Works Company to Dr. Silkman also be denied; and it is

**FURTHER ORDERED**, that the Town of Hampton shall cause Dr. Silkman to submit responses to the data requests at issue within seven days of this order.

By order of the Public Utilities Commission of New  
Hampshire this twenty-first day of December, 1999.

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Thomas B. Getz  
Executive Director and Secretary