

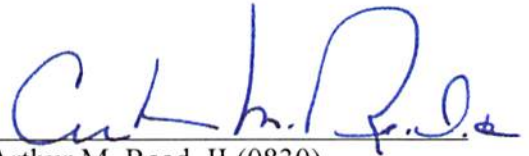
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No.:4611

Petition of the KENT COUNTY WATER AUTHORITY
Rate Application

COVENTRY FIRE DISTRICT'S OBJECTION TO KENT COUNTY WATER AUTHORITY'S
MOTION TO STRIKE

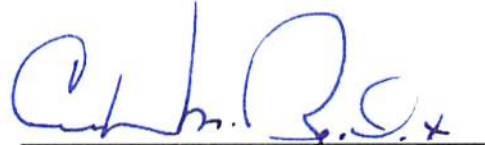
Intervenor Coventry Fire District objects to. Kent County Water Authority's MOTION
TO STRIKE and submits the accompanying Memoranda in support thereof.



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November 28, 2016

Certification

I certify that I forward a copy of the foregoing Motion via e-mail to all on the
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**Docket No. 4611- Kent County Water Authority – Multi-Year Rate Plan
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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No.:4611

Petition of the KENT COUNTY WATER AUTHORITY
Rate Application

COVENTRY FIRE DISTRICT'S MEMORANDUM IN OPPOSITION TO KENT COUNTY
WATER AUTHORITY'S MOTION TO STRIKE

Petitioner Kent County Water Authority ("KCWA") has moved to strike the surrebuttal testimony of David P. Krekorian, C.P.A. M.S.T.

The bases which KCWA gives for trying to keep Mr. Krekorian's comments from the Commission are:

- 1) Krekorian' s testimony was filed "[On] ... the later afternoon on 11/18/2016";
- 2) Krekorian' s testimony was direct testimony and not surrebuttal and CFD had up to August 25th to file it as such;
- 3) Krekorian' s testimony couched as Surrebuttal only a couple of weeks prior to the scheduled hearings... completely violates the Commission's procedural order and prejudices KCWA;
- 4) Krekorian' s testimony does not meet the basic definition of surrebuttal testimony, does not rebut any issues raised in KCWA's rebuttal testimony and offers general facts, opinions and conclusions which CFD should have appropriately filed as direct testimony.
- 5) Krekorian is not an expert witness (i.e. he is not an expert in water rate cases and has neither testified in one nor in a regulatory rate case).

CFD disagrees and endeavors to set forth its reasoning herein.

A Krekorian' s testimony was filed "In the late afternoon on 11/18/2016"

This is true. CFD is unclear exactly what the import of KCWA's observation is. CFD notes that the testimony was timely filed. If the suggestion is that CFD filed Krekorian's surrebuttal late, intentionally, in order to somehow disadvantage KCWA, the truth is far more mundane. Krekorian's surrebuttal testimony had been prepared and was available for filing earlier but that CFD's failure to successfully "save" the WORD document necessitated that it be retyped which accounts for typos in the original. But CFD cannot find any reason to hang its head for having filed the document timely.

B Krekorian' s testimony was direct testimony and not surrebuttal and CFD had up to August 25th to file it as such

This commission has (as many administrative bodies and agencies do) adopted Rules of Practice and Procedure. In those Rules, the commission hews to the general rule of administrative bodies that it is not a court of law and that strict interpretation of the rules of evidence are not strictly applied but act more as a guideline.

Nowhere in the commission's rule are any limitations on surrebuttal testimony described.

In fact, surrebuttal testimony is not defined anywhere in Rhode Island case law. There are only nine Rhode Island cases which even refer to surrebuttal testimony and none of them rely upon West's Legal Dictionary , Collins English Dictionary or, for that matter, any dictionary, as authority.

There was one holding, however, which is on point with the instant issue.

Dodge v. Goodell, 16 R.I. 48, 12 A. 236 (1888) was a case sounding in replevin for two mares, a wagon, a buggy and divers other chattel, which rose before the Supreme Court on exceptions. One of those exceptions was grounded in a complaint concerning testimony and, particularly, whether or not testimony, if admissible at all, should have been presented as "testimony in chief" (i.e. direct testimony") rather than as rebuttal or surrebuttal.

Although arising in a court (as opposed to the present regulatory agency) setting, the Supreme Court, overruling the exceptions, held that “It is discretionary with the presiding judge¹ to admit competent testimony at any stage of a trial, and an exception will not lie because he admits it out of the regular order. *Hampson v. Taylor, Index Z* [sic], 651, 8 A. 331. If any miscarriage of justice results, the remedy is by petition for new trial.”

Dodge v. Goodell remains good law to this day.

CFD respectfully differs with KCWA’s characterization of Kerkorian’s testimony but Dodge certainly seems to lend support for the proposition that the trial judge or, in this case, presiding commissioner, has great discretion as to the order in which relevant probative evidence may be admitted.

Kerkorian’s testimony is clearly not only relevant but is relevant and should be given great weight. It goes to the very heart of KCWA’s case and questions whether KCWA has made out a *prima facie* case.

KCWA directs our attention to the provisions of Rule 1.18(a) of the commission’s Rules of Practice and Procedure, which provides as follows:

1.18 DISCOVERY

(a) General.

(1) The Commission favors prompt and complete disclosure and exchange of information and encourages informal arrangements amongst the parties for this exchange. It is further the Commission's policy to encourage the timely use of discovery as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes.

(2) Techniques of pre-hearing discovery permitted in state civil actions may be employed by any party. Upon experiencing any difficulties in obtaining discovery, the parties may seek relief from the Commission by filing a proper motion.

CFD fails to see how this general principal is applicable to KCWA’s argument or prohibits Kerkorian’s surrebuttal testimony or is germane to KCWA’s argument and, so, does not comment on it other than to note that KCWA referenced Rule 1.18(a).

¹ In the nomenclature of the times, this refers to the judge of the Court of Common Pleas who heard the trial as opposed to our modern use of the term to mean the administrative executive judge of the Superior Court.

All of foregoing notwithstanding, CFD believes that the surrebuttal testimony it submitted is was intended to be just that. A response to the direct and rebuttal testimony and, particularly, the financial schedules submitted in support thereof

C Krekorian' s testimony couched as Surrebuttal only a couple of weeks prior to the scheduled hearings... completely violates the Commission's procedural order and prejudices KCWA

This is conclusory and, other than its opinion, KCWA does not cite any authority to support its position.

It seems to CFD that KCWA protests too much and overstates its case when it writes that Krekorian's testimony "completely violates" this commission's procedural "order".

KCWA fails to explain how Krekorian's surrebuttal testimony prejudices it.

D Krekorian' s testimony does not meet the basic definition of surrebuttal testimony, does not rebut any issues raised in KCWA's rebuttal testimony and offers general facts, opinions and conclusions which CFD should have appropriately filed as direct testimony.

This is also conclusory and KCWA does not cite any authority to support its position, other than its opinion.

E Krekorian is not an expert witness (i.e. he is not an expert in water rate cases and has never testified in one nor in a regulatory rate case).

KCWA is correct in one sense.

Krekorian is not a water rate expert nor has he ever testified before this commission.

That does not mean that Krekorian is not an expert witness because he clearly is.

As with any witness who is presented (whether as an expert or not), Krekorian's experience, education, opportunity to observe and analyze are all fair game for comment and such comment typically goes to the weight which the commission gives to the testimony.

The issue is his area of expertise.

It would appear that all or almost all of the witnesses advanced by the various parties in this matter are professional experts in rate cases. That is what they do for a living and, as a result, they certainly have their expertise. They all have a great deal of experience appearing before bodies such as this commission. No one questions that.

CFD notes, that KCWA has not, at this stage, put any of its witnesses forward as an expert witness nor has it indicated each witness' area of expertise.

Krekorian, also, has expertise.

KCWA seems to argue that Krekorian, like Notre Dame's Rudy Ruettiger, is forbidden from suiting up, from taking the field and from opining as to budgetary matters which are clearly within his area of expertise.

Rate setting is certainly complicated but it is not quantum physics. The basic principles are learnable. They are capable of being learned from treatises and other educational sources.

KCWA's expert, himself, relied upon the same treatise as Krekorian did.

Krekorian is not some unworthy walk-on; he is an experienced C.P.A. who has both the expertise and ability to unravel complicated budgets and is particularly able to deduce the policy reasons behind some of the budgetary assumptions. He can follow the numbers and that is precisely what he did in this case.

Krekorian is every man's nightmare of an accountant. He is an indefatigable numbers man who is relentless in peeling back the layers on the budgetary onion which KCWA has presented.

Restricting himself to one component part of that budget (i.e. fire hydrant rental fees), Krekorian unpeeled and unpeeled until he got to what should have been the kernel of the matter (i.e. some sort of understandable and reasonable allocation of IFR costs to fire hydrant rental fees).

It is only Krekorian's opinion, but (CFD suggests) that it is a very informed opinion, that when one does the sort of budgetary analysis that he did and traces KCWA's rationale for dramatically increasing fire hydrant rental fees back through KCWA's dense schedules and then

compares how KCWA had treated the same issue in earlier dockets that one comes to the conclusion that there is no “there” there.

Krekorian’s opinion, basically, is that KCWA and its expert, while skillful, failed to bear the burden of addressing the threshold issues of whether or not the proposed increase was reasonable and whether it was necessary. Until KCWA is able to cross that threshold, Krekorian is unable to understand how this commission can even proceed to the main issue to be decided.

Krekorian’s opinion is that KCWA, through its experts, fails to address the judgment which went into the allocation of costs between “accounts” (i.e. water service versus fire service). The assignment of a percentage of allocation seems to be purely whimsical or, arguably, to have been chosen because of the end result which it caused.

It is Krekorian’s opinion that KCWA failed to carry its burden.

That is the gist of his opinion. CFD does not advance Krekorian as an expert on water rate cases. He is advanced as an expert in budgets and in accounting i.e. in being able to dissect a budget and to analyze the underlying assumptions and to opine as to whether or not the individual parts add up to the whole.

Krekorian could be analyzing the budget for RIPTA and he would make the same sort of analysis. He doesn’t need to be a bus driver; he needs to be an accountant. He is one and CFD thinks he is a very good one to have done the analysis he did (and not the only expert in this proceeding to have come to the conclusion that he did).

CONCLUSION

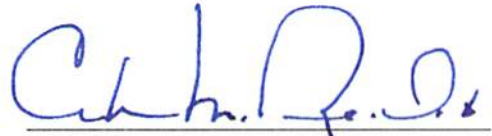
For the foregoing reasons, CFD respectfully prays that Petitioner's Motion To Strike be denied.



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November 28, 2016

Certification

I certify that I forward a copy of the foregoing Motion via e-mail to all on the following service list on November 28, 2016.



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**Docket No. 4611- Kent County Water Authority – Multi-Year Rate Plan
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