RECEIVED
Apr 28 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge
Case No. 2018-CP-10-02764

Appellate Case No. 2021-001395

Snee Farm Lakes Homeowner's Association, Inc. individually and on behalf of those similarly situated, ...Appellant,

v.

The Commissioners of Public Works for the Town of Mount Pleasant d/b/a Mount Pleasant Waterworks. .....Respondent.

RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING

Gray T. Culbreath, SC Bar No. 11907
Eleanor L. Jones, SC Bar No. 104678
Gallivan, White & Boyd, P.A.
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
Telephone: 803-779-1833
gculbreath@gwblawfirm.com
ejones@gwblawfirm.com

James A Bruorton, IV, SC Bar No. 71300
David G. Jennings, SC Bar No. 2986
Timothy J. W. Muller, SC Bar No. 74601
Rosen, Rosen & Hagood, LLC
Post Office Box 893
Charleston, SC 29402
Telephone: 843-577-6726
cbruorton@rosenhagood.com
djennings@rosenhagood.com
tmuller@rosenhagood.com

ATTORNEYS FOR RESPONDENT THE
COMMISSIONERS OF PUBLIC WORKS
FOR THE TOWN OF MOUNT PLEASANT
D/B/A MOUNT PLEASANT WATERWORKS

April 28, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

Pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules and this Court's Request for a Return to Appellant's Petition for Rehearing issued on April 18, 2025, Respondent The Commission of Public Works for the Town of Mount Pleasant d/b/a Mount Pleasant Waterworks ("MPW" or "Respondent") respectfully submits this Return to the Petition for Rehearing ("Return") filed by Appellant Snee Farm Lakes Homeowner's Association, Inc., Individually and on Behalf of Those Similarly Situated ("Snee Farm" or "Appellant"). Appellant's Petition for Rehearing asks this Court to vacate the Panel's well-reasoned holdings in its Opinion filed on April 2, 2025, Opinion No. 2025-UP-113 (the "Opinion"), in which it affirmed the dismissal of Appellant's claims and affirmed the Circuit Court's granting of MPW's Motion for Summary Judgment. The well-reasoned Opinion of the Court of Appeals was correctly decided as set forth below. Accordingly, Appellant's Petition for Rehearing should be denied.

LEGAL STANDARD

A petition for rehearing must "state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. It *may not* be used to "present the points [Appellants] overlooked themselves or to have the case tried in the Court of Appeals a second time. *Checker Yellow Cab Co., Inc. v. Checker Cab and Parcel Serv., Inc.*, 287 S.C. 608, 612, 340 S.E.2d 549, 552 (Ct. App. 1986) (emphasis added). Appellant fails to meet this standard as it has not identified a point the Court of Appeals actually overlooked or misapprehended. On the contrary, Appellant's Petition rehashes issues that were previously raised to and ruled upon by the Court that should not be considered now. Accordingly, this Court should deny Appellant's Petition for Rehearing.

ARGUMENT

1. The Decision of the South Carolina Court of Appeals Correctly Decided the Applicable Legal Framework in Evaluating the Lawfulness of Municipal Rates.

Throughout the life of this case, Appellant has consistently argued that BFCs charged by MPW do not comply with the requirements of S.C. Code Ann. § 6-1-300(6). These same arguments are once again made in the Petition for Rehearing, none of which were overlooked or misapprehended by the Court of Appeals. Appellant's Petition for Rehearing should be denied.

a. The Court properly examined and considered the individualized benefit for purposes of S.C. Code Ann. § 6-1-300(6).

Although the Court never held that the requirements of S.C. Code Ann. § 6-1-300(b) applied, the Opinion correctly concluded there was no genuine issue of material fact as to whether MPW's ratemaking structure complied with these requirements. Nevertheless, Appellant argues, once again, that the Court of Appeals incorrectly held that Snee Farm (and the commercial class) obtained a "benefit" under S.C. Code Ann. § 6-1-300(6). (Petition for Rehearing, p. 2). This time, Appellant attempts to allege that capacity reservation is irrelevant to the concept of BFC.

The Court has extensively reviewed MPW's ratemaking structure in accordance with all applicable statutes, including S.C. Code Ann. § 6-1-300(6). The Court was presented with evidence and argument previously set forth in both Appellant's and Respondent's Initial Briefs regarding BFCs.[1] As explained in the Opinion of this Court, "[t]he BFC is a charge for the reservation of capacity based on the total active REUs assigned to a property." *Snee Farm Lakes Homeowner's Ass'n, Inc. v. Comm'n of Pub. Works for Town of Mount Pleasant*, No. 2021-001395, 2025 WL 986297, at *2 (S.C. Ct. App. Apr. 2, 2025). For the sake of background, MPW's commercial rate

[1] For context, BFCs (or similarly named charges) are customary and recommended in the industry to allow utilities to have a stable source of revenue for fixed costs of providing services when volumetric charges vary based on the customer's changes in water usage. (R. p. 679, line 18–p. 680, line 22).

structure uses both REUs and BFCs, and this is accepted by both Appellant's own expert and applicable state law. (R. p. 1018, lines 7-17). At the inception of a commercial account, customers select the number of REUs and also pay impact fees, based on the number of REUs. (R. p. 94, lines 3-15; pp. 509-514). REUs are a benefit that is unique to the customer, as they are based upon the needs of the customer, and each account number has a different number of REUs. *Id*.

Assuming that the BFC charge is a service fee or user fee, and that S.C. Code Ann. § 6-1-300(6) and 6-1-330(B) apply,[2] then the BFC fee must be paid "in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee." S.C. Code Ann. § 6-1-330(6). Appellant previously argued that MPW should not condition reduction of BFCs on forfeiting capacity assets. In its Opinion, the Court concluded that Appellant "received a benefit from maintaining its reserved capacity through its assigned REUs." *Snee Farm*, 2025 WL 986297, at *6. This issue was not overlooked or misapprehended. In fact, the Court agreed with Respondent and held that "a rate tied to the measurement of reserved capacity provides a specific benefit to those paying it (by reserving their right to capacity) and correlates to the amount necessary to pay the costs associated with the service the payer receives." *Id*.

Appellant further attempts to re-argue that MPW's consultant, experts, and counsel "rejected the notion that BFC and capacity reservation are linked." (Petition for Rehearing, p. 2). All of these arguments were presented both below and to this Court, and they were properly decided here.

[2] Respondent does not agree that the BFC is in fact a user fee, but for purposes of the motion for summary judgment, Respondent presented arguments assuming that the BFC is a user fee as Appellant claims.

Clearly, the Court previously considered that water and sewer utilities employ many different ways to set a BFC charge for their customers. Stated differently, there *is no perfect way to calculate a BFC*. (R. p. 692). In some instances, water and sewer utilities charge a flat fee BFC that is not related in any way to the customer's size, water demands, or predicted usage. (R. p. 681, line 24–p. 682, line 5; p. 663, line 5–p. 664, line 20). A utility's BFC charge must adhere to the applicable local statutes and regulations, with the ultimate goal of using base charges to promote regular and predictable cash flow as a part of the rate base. (R. p. 827, p. 22, lines 10-22). Appellant's own expert even testified that he recommends a fixed charge component to water and sewer rates in order to maintain revenue stability for salaries and benefits as well as debt service. (R. p. 677, line 7–p. 678, line 9). Appellant's expert reasoned those fixed costs must be paid regardless of the volume of water a customer uses. (R. p. 681, line 24–p. 682, line 5).

The Court of Appeals correctly decided, based on the same evidence Appellant claims was overlooked, that the rate structure benefits commercial customers differently from the general public. *Snee Farm* 2025 WL 986297, at *5.

These facts and opinions were presented to the Circuit Court and the Court of Appeals, and the Court ultimately held, "[a]ssuming, without deciding, that the requirements set forth in *Burns*[3] and subsection 6-1-300(6) apply, and viewing the facts in the light most favorable to Snee Farm, we hold no genuine issue of material fact exists as to whether the fees at issue comply with these requirements." *Id*. Thus, the Court of Appeals did not misconstrue or misapprehended any issues, particularly those surrounding the context of individualized benefit included in the statutory framework for municipal rates, and the Petition for Rehearing on this issue should be denied.

[3] *Burns v. Greenville Cnty. Council*, 433 S.C. 583, 861 S.E.2d 31 (2021).

b. The Court correctly denied Appellant's argument that commercial BFCs confer a generalized benefit on other rate payers.

The Court correctly considered (and denied) Appellant's argument that the alleged excessive BFC paid by Appellant and the class confers a generalized benefit to other ratepayers in violation of S.C. Code Ann. § 6-1-300(6). (Petition for Rehearing, p. 6). In reaching this holding, the Court of Appeals analyzed not only § 6-1-300(6), but also § 5-31-250 and § 5-31-670, as well as *Burns v. Greenville Cnty. Council*, 433 S.C. 583, 861 S.E.2d 31 (2021). *Snee Farm*, 2025 WL 986297, at *5-6.

As an initial matter, Appellant continues to incorrectly rely on *Burns* to support its contention that alleged excessive BFCs paid by Snee Farm subsidize other ratepayers by artificially keeping their rates lower. The Court correctly found that *Burns* interprets the service and user fee statutes to require that a service or user fee provide some special benefit to the members of the public paying that fee that is different from the members of the general public. *See Burns*, 433 S.C. at 589, 861 S.E.2d at 34; *see also Snee Farm*, 2025 WL 986297, at *5. And, the Court also found that the Circuit Court correctly determined that the fees at issue here benefit the payers in a manner different from the members of the general public. *Snee Farm*, 2025 WL 986297, at *5.

The Court also correctly rejected Appellant's reliance on *Burns* and agreed that the *Burns* facts are distinguishable from the facts in this case. *Id.* at *6. In *Burns*, the ability to charge the rate at all was called into question, rather than the particular rate structure which is at issue here. *Id.* For this reason, the *Burns* ruling does not impact the trial court's grant of summary judgment or the holding of the Court of Appeals.

Further, and perhaps most importantly, while Appellant claims that the "inflated" BFCs confer a generalized benefit, it never explains *how* this generalized benefit is conferred. Further, Appellant also does not point to *any* evidence in the record that supports its contention that these

"inflated" BFCs are subsidizing other ratepayers. And, while Appellant can point to opinions from its expert, Bryan Mantz, about hypothetical subsidization issues with hypothetical rate making structures for utilities, Appellant cannot site to one iota of evidence in the record which creates a genuine issue of material fact that any type of subsidization situation is occurring within MPW's rate structure. Therefore, this issue should also be denied rehearing.

2. The South Carolina Court of Appeals Correctly Applied the Standard of Review in Ruling on a Motion for Summary Judgment.

The Court of Appeals expressly and correctly rejected Appellant's argument that MPW's utility rate structure is unreasonable.[4]

The Court's holding that "[Snee Farm] failed to supply evidence to demonstrate a genuine issue of material fact as to whether MPW charged unreasonable rates" is a correct statement of South Carolina law and a correct application of the law to the facts of this case. *Snee Farm* 2025 WL 986297, at *7; *see* S.C. Code Ann. § 5-31-670 ("Any city or town … may, after acquiring a waterworks or sewer system, furnish water to persons for reasonable compensation and charge a minimum and reasonable sewerage charge for maintenance or construction of such sewerage system within such a city or town…."); *see also H.A. Sack Co*., 272 S.C. at 238, 250 S.E.2d at 341 ("The test of the reasonableness of rates established by a public service district is the service received. Moreover, the burden of proof of the unreasonableness or arbitrariness of rates is upon the person attacking the rate schedule."(citation omitted)). Appellant hinges this same contention, that MPW's rates are unreasonable, on a citation to a secondary source. (*See* Petition for Rehearing, p. 9 ("The correct test for evaluating 'reasonableness' in the context of local government

[4] Importantly, under the holding in *H.A. Sack Co., Inc. v. Forest Beach Pub. Serv. Dist.*, 272 S.C. 235, 250 S.E2d 340 (1978), the burden to prove the unreasonableness of the rate structure was on Appellant. The Court of Appeals correctly found that Appellant did not meet this burden.

ratemaking is well articulated in 94 C.J.S. Waters Sec. 730")). As this Court knows, secondary sources are not binding, applicable state law.

The Court has already evaluated MPW's "[expert] testimony and the statement in MPW's attorney's email" mentioned, again, by Appellant in its Petition for Rehearing. *Snee Farm* 2025 WL 986297, at *7. The Court did not overlook or misapprehend any of this evidence and correctly found that "this evidence does not create a genuine issue as to any material fact". *Id*. As previously discussed, alleged evidence that a rate structure has imperfections does not amount to a determination that a rate structure is unreasonable under South Carolina law.[5] Accordingly, rehearing should be denied on this issue.

CONCLUSION

MPW respectfully requests that the Court deny Snee Farm's Petition for Rehearing and affirm the Circuit Court's granting of summary judgment in favor of MPW.

[*Signature page follows*]

[5] Moreover, notably, water rates are entitled to a presumption of reasonableness. 12 McMillian Mun. Corp. Sec. 35:57 (3d ed.).

Respectfully submitted,

s/Gray T. Culbreath
Gray T. Culbreath, SC Bar No. 11907
Eleanor L. Jones, SC Bar No. 104678
Gallivan, White & Boyd, P.A.
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
Telephone: 803-779-1833
gculbreath@gwblawfirm.com
ejones@gwblawfirm.com

-and-

James A Bruorton, IV, SC Bar No. 71300
David G. Jennings, SC Bar No. 2986
Timothy J. W. Muller, SC Bar No. 74601
Rosen, Rosen & Hagood, LLC
Post Office Box 893
Charleston, SC 29402
Telephone: 843-577-6726
cbruorton@rosenhagood.com
djennings@rosenhagood.com
tmuller@rosenhagood.com

ATTORNEYS FOR RESPONDENT THE COMMISSIONERS OF PUBLIC WORKS FOR THE TOWN OF MOUNT PLEASANT D/B/A MOUNT PLEASANT WATERWORKS

RECEIVED
Apr 28 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2018-CP-10-02764
Appellate Case No. 2021-001395

Snee Farm Lakes Homeowner's Association, Inc., individually and on behalf of those similarly situated, ……Appellant,

v.

The Commission of Public Works for the Town of Mount Pleasant d/b/a Mount Pleasant Waterworks, ……Respondent.

PROOF OF SERVICE

This is to certify that the undersigned counsel has caused to be served this day (1) copy of the **Respondent's Return to Appellant's Petition for Rehearing** via electronic mail to the address stated in the Supreme Court Order 2022-05-06-03 and in accordance with Rule 262 of the South Carolina Appellate Court Rules, and additionally to the following counsel of record in this matter as set forth below:

James A. Bruorton, IV, Esq.
David G. Jennings, Esq.
Timothy J.W. Muller, Esq.
Rosen Hagood
cbruorton@rosenhagood.com
djennings@rosenhagood.com
tmuller@rosenhagood.com
Co-Counsel for Respondent

Ross A. Appel, Esq.
Clayton B. McCullough, Esq.
McCullough Khan Appel
ross@mklawsc.com
clay@mklawsc.com
Counsel for Appellant

A copy of the email serving the aforementioned to all counsel of record is attached hereto.

Respectfully submitted,

s/Gray T. Culbreath
Gray T. Culbreath, SC Bar No. 11907
Eleanor L. Jones, SC Bar No. 104678
Gallivan, White & Boyd, P.A.
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
Telephone: 803-779-1833
gculbreath@gwblawfirm.com
ejones@gwblawfirm.com

ATTORNEYS FOR RESPONDENT THE COMMISSION OF PUBLIC WORKS FOR THE TOWN OF MOUNT PLEASANT D/B/A MOUNT PLEASANT WATERWORKS

April 28, 2025

Jillian Hansen

From: Jillian Hansen
Sent: Monday, April 28, 2025 3:06 PM
To: cbruorton@rosenhagood.com; djennings@rosenhagood.com; tmuller@rosenhagood.com; ross@mklawsc.com; clay@mklawsc.com
Cc: Gray Culbreath; Eleanor Jones
Subject: 2021-001395 - Proof of Service
Attachments: [FINAL] Respondent's Return to Appellant's Petition for Rehearing.pdf; [FINAL] Proof of Service - Return to Petition for Rehearing.pdf

Categories: GTC

Good afternoon,

Attached hereto and served upon you, please find the Respondent's Return to Appellant's Petition for Rehearing which is being filed with the SC Court of Appeals today.

A copy of this message will be affixed to the attached Proof of Service, which is also being filed today.

Kind regards,
Jillian

Jillian Hansen
Paralegal
jhansen@gwblawfirm.com

Gallivan, White & Boyd P.A.
1201 Main Street | Suite 1200 | Columbia SC 29201
803 724 1702 Direct | 803 779 1833 Main | 803 779 1767 Fax
Mailing Post Office Box 7368 | Columbia SC 29202

vCard | BioURL | Website