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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Appellate Case No. 2024-000208

PSC Docket No. 2022-84-WSH

Sarah Zito, Alvaro Sarmiento, Jr., Mark Shinn, and Daniel
Bermudez

Petitioners,

v.

Strata Audubon, LLC, and Strata Veridian, LLC,

Respondents.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTION PRESENTED

1. This Petition concerns a complaint by four tenants alleging that Respondents' inclusion of pass-through charges for water and sewer service in monthly rental payments constitutes the unlawful provision of public utility service. Recognizing that Respondents are landlords, and did not have any characteristics of a utility, the Public Service Commission dismissed Respondents' Complaint for lack of subject matter jurisdiction, and the Court of Appeals affirmed. Did the Court of Appeals err in affirming the Public Service Commission's decision finding that Respondents are not Public Utilities?

COUNTER-STATEMENT OF THE CASE

Petitioners allege that Respondents are acting as unauthorized public utilities under South Carolina law by employing an allocation billing method—agreed to by the parties—because the properties at issue do not have individual utility meters for each apartment (submeters) to charge for water and sewer services. The Public Service Commission of South Carolina (“PSC” or “Commission”) correctly dismissed the Complaint and the motion for reconsideration, concluding that Respondents’ billing method does not transform a landlord into the statutory definition of a public utility. The Court of Appeals affirmed. The dispute turns on a narrow, fact-specific application of the statutory definition of “public utility” to a common landlord billing practice and does not present any issue of broader jurisprudential significance.

Petitioners are a group of former tenants of two properties owned by Respondents: The Grove Apartments and the Audubon Park Apartments (collectively, “the properties”). The properties were constructed in 1998 (Grove Park Apartments) and 1991 (Audubon Park Apartments). Water and sewerage services at the properties are measured by a master meter. There is no individual water or sewer submetering service in either of the buildings, and it is undisputed that “there are no meters on [Respondents’] properties determining the actual water and sewerage usage” of Petitioners and other tenants. (Order No. 2023-736 at p. 11; R. p. 27).

Given the absence of individual submetering infrastructure at the buildings, Petitioners agreed with Respondents, per the lease agreement terms, that Petitioners would be responsible for paying for water and sewer services pursuant to an allocation method. The allocation method, also known as a ratio utility billing system (“RUBS”), requires Respondents to allocate water and sewer costs to their tenants in their two multi-family properties based on either (a) the number of persons living in the unit, or (b) a combination of the number of persons living in each unit and square

footage of the units. The Complaint acknowledges that the applicable formula is stated in a specific addendum to Petitioners' rental agreements.

At no point did Respondents contract directly with any utility providers, nor did Respondents ever bill their tenants directly. Instead, Respondents contracted with Conservice, a third-party billing company, agreed upon by Petitioners in their lease, to provide billing services for water and sewerage. Conservice sought to recover the actual costs of water and sewer services to tenants at the properties through an allocation method on a not-for-profit, pass-through basis. Respondents do not have a monopoly over any service area; do not own any large, capital-intensive utility infrastructure; and did not seek a guaranteed rate of return. Furthermore, Respondents do not take possession of the water or sewerage, and they do not have the ability to disconnect or shut off water to a tenant for failure to pay.

Initially, Petitioners filed a complaint in federal district court, which the court dismissed for failure to exhaust administrative remedies.¹ Petitioners then filed a complaint with the Public Service Commission of South Carolina. The Commission dismissed Petitioners' Complaint for lack of subject matter jurisdiction after determining Respondents were not public utilities per the statutory definition in S.C. Code Ann. § 58-5-10. The Court of Appeals unanimously affirmed the Commission's decision. *Sarah Zito et al. v. Strata Audubon, LLC & Strata Veridian, LLC*, Op. No. 6129 (S.C. Ct. App. filed January 14, 2026, withdrawn, substituted, and refiled February 18, 2026).

¹ This decision was remanded for further consideration, and subsequently Petitioners filed an Amended Complaint alleging breach of contract related to the accuracy of the allocation method. *Zito v. Strata Equity Group, Inc.*, 2023 WL 8712054 (4th Cir. No.: 2:20-cv-3808-BHH (D.S.C.)). The federal court denied Respondents' motion to dismiss the Amended Complaint without prejudice for refiling after the conclusion of this appeal and likewise stayed the matter.

THE PUBLIC SERVICE COMMISSION'S FINDINGS OF FACT

The following is a brief discussion of each of the six Findings of Fact made by the Commission, and the explanation provided by the Commission for each Finding. These Findings of Fact are particularly important to this appeal because of the deference afforded to the Public Service Commission and its findings.

1. “Defendants do not have water or sewer submetering infrastructure in either apartment building at issue in this proceeding.”

(Order No. 2023-736 at p. 9; R. p. 25)

The Commission stated that “[t]his assertion of no submetering infrastructure is undisputed by the Complainants in their Complaint....”

2. “Defendants contracted with a third-party billing provider, Conservice, to provide the billing functions for water and sewer service to resident units, and did not bill tenants directly, nor did the Defendants contract directly with any utility providers for service to resident units.”

(Order No. 2023-736 at pp. 9-10; R. pp. 25-26).

The Commission stated: “[t]he Commission notes that there is no allegation that the Defendants have contracted for service to specific residential units. It is not in dispute that Conservice has been providing billing services on behalf of the Defendants in this case. Since there is no dispute, the Commission may accept the fact as asserted.” Order 736 at 12.

3. “Defendants contracted with Conservice to recover the actual cost of water and sewer services to its tenants to an allocation formula method on a not-for-profit basis.”

(Order No. 2023-736 at p. 10; R. p. 26).

The Commission stated that there are three aspects to this Finding of Fact. First, “it is undisputed that Conservice was contracted to perform billing services.” (*Id.* at p. 12; R. p. 28). Second, “[t]he fact that the rates are based on an allocation formula is not in dispute and may be accepted as fact by the Commission.” (*Id.* at p. 13; R. p. 29). The third aspect with regard to this

finding of fact was Complainant's allegation "that the tenants' actual utility usage and pro rata billed amount are different." (*Id.* at p. 14; R. p. 30). In that regard, the Commission stated that "Defendants were clear in describing the nature of the aggregate billing amount." (*Id.* at p. 15; R. p. 31). The Commission further stated that "[b]y its very nature, a formula method for sub-metered allocation of costs is going to be approximate on a specific-tenant basis. The only way to reflect actual usage, and bill, accordingly, is to have all tenants individually metered. Such a method would require significant infrastructure installation and would have material detrimental financial impact for Defendants and, also, ratepaying tenants." *Id.*

4. "Defendants do not have any monopoly rights over any service area; do not own any large, capital intensive utility infrastructure; and do not seek or obtain any guaranteed rate of return on the pass-through billing of water and sewer services."

(Order No. 2023-736 at p. 10; R. p. 26).

The Commission stated: "The Complainants do not dispute that Defendants do not own significant utility infrastructure and do not seek a rate of return on the investment in the same." (*Id.* at 16; R. p. 32).

5. "The water and sewer services are provided to properties by local utilities and the Defendants never take possession of the water and lack the ability to disconnect the water or sewer service to an individual tenant for nonpayment."

(Order No. 2023-736 at p. 10; R. p. 26).

The Commission first stated that "[i]t is uncontested that the Defendants provided service for local water and wastewater utility." (*Id.* at pp. 16-17; R. pp. 32-33). Furthermore, "[i]t is uncontested that the Defendants do not have the ability to turn off water or sewer service to the individual tenants, and the Commission finds that the Defendants do not have the ability to control water or service individual Defendants." (*Id.* at p. 17; R. p. 33).

And while the Commission acknowledged that “[t]here is a difference in positions between the parties regarding whether the Defendants ‘possess’ the water or not.... Defendants undisputedly did not have the ability to control the flow of water or sewer service in a tenant-specific capacity and therefore cannot exercise control of the commodities. The Commission finds therefore that Defendant did not possess or take possession of the water or sewerage.” *Id.*

6. “Defendants are not operating a public utility that is subject to the jurisdictional authority of the Commission.”²

(Order No. 2023-736 at p. 10; R. p. 26).

The Commission quoted the following from Order No. 2003-214, “[s]ubmeterer’s water and wastewater services do not meet the statutory definition of a ‘public utility’.... [and] that such submeterers do not actually ‘furnish or supply’ the commodity but merely measure the amount of flow of water or wastewater and provide billing functions. Order 2003-214 p. 10, ¶ 2.” (*Id.* at 18; R. p. 34). As such, the Commission stated: “Here the Defendants are engaged in a relatively common practice of submetering water and wastewater services to their tenants. Consistent with prior Commissioner Orders, this activity is not determinative of operation of a public utility.” *Id.*

STANDARD OF REVIEW

Certiorari review is limited to cases presenting “special and important reasons.” Rule 242(b), SCACR. Those reasons may exist where there is a novel question of law, a dissent in the Court of Appeals, a conflict with a prior decision of this Court, or a substantial constitutional issue. Rule 242(b)(1)-(5), SCACR. This case satisfies none of those criteria.

² Respondents acknowledge that finding of Fact Number 6 may more appropriately be characterized as a Conclusion of Law. Nevertheless, Respondents will proceed with setting out the Commission’s rationale for this Finding of Fact.

Petitioners attempt to recast a routine administrative law dispute as a question of statewide importance. It is not. There is *no conflict* with any decision of this Court; the Court of Appeals correctly distinguished *Anchor Point*. There is *no novel question of law*; the case involves straightforward application of § 58-5-10(4). There is *no constitutional issue*. There is *no dissent* below. Further, the Commission’s decision, as stated above, is also in line with its prior Order No. 2003-214. Accordingly, the Petition should be denied.

ARGUMENTS AND AUTHORITIES

I. Respondents Are Not Public Utilities Because They Did Not Furnish or Supply Water and Sewerage to Appellants.

As an initial matter, Petitioners’ brief contains a long wish list of things Petitioners wished to see in the Court of Appeals’ decision. Many of these wishes are conclusory, unsupported by authority, and as a result are abandoned. *See In the Matter of the Care & Treatment of McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) (holding an issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory).

The Commission has previously ruled that that landlords who use submetering of water and sewer services are not public utilities as defined in S.C. Code Ann. Section 58-5-10 (2015). *See* Order No. 2003-214, p.10 ¶¶ 2-4. As the Commission in the instant case stated: “The Commission has previously addressed whether submetering of water and sewer services by a landlord subjects a landlord to the Commission’s jurisdiction as a ‘public utility.’ Submeters of water and sewer services do not meet the statutory definition of a ‘public utility’ as defined in S.C. Cod. Ann. Section 58-5-10 (2015).” (Order No. 2023-736, pp. 7-8; R. pp. 23-24). The Commission in this case also stated: “Through submetering, the landlord is capturing its monthly costs for water and sewer service. It is well-established by the Commission that submetering does not constitute furnishing or supplying the commodity to the tenant.... The landlord is not a public

utility because it does not take possession of the water [or sewerage] but only passes through the utility costs to the tenant.” (Order No. 2023-736, p. 8; R. p. 24).

Nevertheless, on appeal, Petitioners contend the Court of Appeals erred in affirming the Commission because, as Petitioners allege, Respondents furnished and supplied water and sewer for compensation. (Pet. at 9-17.). However, as explained below, this argument is nonsensical.

Under South Carolina law, the Commission is “vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State.” S.C. Code Ann. § 58-5-210. As it applies to this case, South Carolina law defines a public utility as “every corporation and person furnishing or supplying in any manner...water...to the public, or any portion thereof, for compensation.” S.C. Code Ann. § 58-5-10.

A. S.C. Code Ann. § 58-5-10 Is Not Ambiguous.

In affirming the decision of the Commission, the Court of Appeals correctly applied the plain language of Section 58-5-10(4) and determined that there is “nothing in this record to establish that Respondents furnished or supplied water or sewer to Appellants for compensation.” *Sarah Zito et al. v. Strata Audubon, LLC & Strata Veridian, LLC*, Op. No. 6129, 2026 WL 457278, at 3 (S.C. Ct. App. filed January 14, 2026, withdrawn, substituted, and refiled February 18, 2026). Specifically, the Court of Appeals held “ownership of the pipes that water and sewerage pass through, without the ability to control the flow of service” does not constitute ownership of the water and sewerage. *Zito*, 2026 WL 457278, at 4.

“Where the statute’s language is plain and unambiguous, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning.” *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). “The construction given to a statute by those charged with the duty of executing it”—such as the Public Service Commission executing laws regarding public utilities—“is always entitled to the most respectful consideration, and ought

not to be overruled without cogent reasons.” *Read Phosphate Co. v. S.C. Tax Commn*, 169 S.C. 314, 168 S.E. 722, 728 (1933).

The Commission held that “[m]erely providing metering services and a billing function is not sufficient activity to be considered a “public utility” as defined in S.C. Code Ann. section 58-5-10(4).” (Order No. 2023-736, p. 19; R. p. 35). The Commission is correct.

As the Court of Appeals correctly held, there is simply no evidence to support any notion that Respondents furnished or supplied water and sewer to Petitioners. Though their brief is somewhat unclear, Petitioners appear to base their argument on the fact that Respondents own the pipes through which the water and sewerage traveled. (Pet. at 11.). In Petitioners’ view, this ownership of the pipes transforms landlords into public utilities.

However, Petitioners cite no South Carolina law or case to support their argument. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 515 (1994) (stating an issue is abandoned where the appellant fails to provide argument or supporting authority). Rather, Petitioners cite dictionary definitions of furnish and supply in an attempt to show that Respondents met the statutory definition of a public utility.

First, Petitioners rely on the definition of: “supply” as “v. (supplies, supplying, supplied) [with obj.] make (something needed or wanted) available to someone; provide.” (Pet. at 11). Second, Petitioners rely on the definition of: “furnish” as “v. . . . (furnish someone with) supply someone with (something); give (something) to someone.” (Pet. at 11).

While it is undisputed that Respondents provided service from a local water and wastewater utility, Respondents did not actually provide the water and sewerage—that was provided by the local utility. Notwithstanding, Petitioners rely on these definitions to assert that Respondents

furnished and supplied water and sewerage services by doing nothing more than making the water and sewage services available.

Here, it is undisputed that Respondents do not have the ability to turn off water or sewer nor do they have the ability to control water or sewer service to individual tenants. (Order No. 2023-736, p. 17; R. p. 33). While it is true that “Respondents provided pipes between the area-wide utility connection and fixtures in the apartment” (Pet. at 11), ownership of the pipes that water and sewerage pass through, without the ability to control the flow of service, is no more possession of the water and sewerage than SCDOT possesses the vehicles that travel across its roads.

Accordingly, the unambiguous meaning of the statute supports the Court of Appeals’ affirmation of the Commission’s conclusion that Respondents neither furnished nor supplied water and sewerage service to Appellants. (Order No. 2023-736 pp. 19-20; R. pp. 35-36). As a result, the Court should deny the Petition.

B. Even If S.C. Code Ann. § 58-5-10 Is Ambiguous, the Commission’s Interpretation Is Proper.

As an initial matter, several arguments Petitioners advance under this heading are not preserved or are abandoned, providing an independent basis to reject them. The Rules require that an issue be raised in the initial arguments to the Court of Appeals and again in the petition for rehearing. Rule 242(d)(2), SCACR. Petitioners argued throughout their brief to the Court of Appeals that the statute was “plain and unambiguous”, yet the Petition now contends that the Court of Appeals erred by failing to analyze whether the statute was ambiguous. (Pet. at 17.). This is a new and inconsistent theory that was never raised below. Indeed, the Court of Appeals expressly declined to address any ambiguity question in footnote three of its opinion, noting that “neither Appellants nor Respondents actually argued the statute is ambiguous.” *Zito*, 2026 WL 457278, at

4 n.3. An argument the Court of Appeals expressly refused to consider because neither party raised it cannot form the basis for certiorari review.

Assuming the issue is preserved and not abandoned, the Commission's interpretation of "furnish or supply" is entitled to deference, is clearly not arbitrary or capricious and the Court of Appeals' correctly affirmed. *See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 32-33, 766 S.E.2d 707, 717 (2014) (court should "give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference").

As a threshold matter, an unbroken line of South Carolina caselaw upholds the deference doctrine, which provides that courts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations, "unless there is a compelling reason to differ." *S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005); *see also, e.g., Barton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 404 S.C. 395, 415, 745 S.E.2d 110, 121 (2013) (stating that an agency's interpretation "will not be overruled absent compelling reasons"); *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011) (same); *Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (same); *Brown v. S.C. Dep't of Health & Env't Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (same); *Glover by Cauthen v. Suitt Constr. Co.*, 318 S.C. 465, 469, 458 S.E.2d 535, 537 (1995) (same); *Faile v. S.C. Employment Sec. Comm'n*, 267 S.C. 536, 540, 230 S.E.2d 219, 222 (1976) (stating that an agency's interpretation will not be overruled "without cogent reasons"); *Hadden v. S.C. Tax Comm'n*, 183 S.C. 38, 48, 190 S.E. 249, 253 (1937) (stating that an agency's interpretation "will not be overruled without cogent reasons").

An agency interpretation is afforded deference "unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" *Kiawah Dev. Partners, II*. at 35, 766 S.E.2d at 718 (internal

quotation marks omitted) (citation omitted). An agency interpretation “is arbitrary if it is without a rational basis, is not based upon any course of reasoning or exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.” *Daufuskie Island Utility Co., Inc. v. S.C. Off. of Regul. Staff*, 427 S.C. 458, 464, 832 S.E.2d 572, 575 (2019).

Here, Petitioners have failed to provide any reason, much less a compelling one, for this Court to overrule the Court of Appeals’ decision.

To be sure, the Commission has consistently interpreted the term “public utility” not to include landlords utilizing submeters. *In re Rule to Show Cause on Submeterers*, Docket No. 2001-485-WS, Order No. 2003-214 (2003); *In re Seahorse*, Docket No. 2008-192-WS, Order No. 2008-725; *In re Quail Pointe Apartments*, Docket No. 2007-228-G, Order No. 2008-853. Specifically, the activities of “measuring the commodity and providing billing functions” do not make submeterers “public utilities.” *Id.* Because Respondents do not utilize submetering infrastructure, they are similarly measuring the commodity and providing billing functions through an allocation formula implemented by a third-party billing company, which the Tenants call “the allocation version of submetering.” (Complaint, ¶ 46; R. p. 1558).

The plain language of “furnish or supply” leads to two possible outcomes: (1) the language unambiguously leads to a conclusion that Respondents did not “furnish or supply” water to Appellants, or (2) the language is ambiguous, and the Commission’s interpretation of the language should be afforded deference. *See Kiawah*, at 16, 766 S.E.2d at 718 (court should “give deference to the agency’s interpretation of the statute or regulation, assuming the interpretation is worthy of deference”). In either event, when viewed through the stringent standard of review applicable here, the Court of Appeals’ decision should stand.

However, despite the Commission's interpretation of the statute, Appellants argue that the Court of Appeals erred because *Anchor Point, Inc. v. Shoals Sewer Co.*, "held that an entity was a public utility despite providing sewerage on a not-for-profit basis." 308 S.C. 422, 426, 418 S.E.2d 546, 548 (1992). In truth, *Anchor Point* is readily distinguishable.

In *Anchor Point*, the Court determined that Shoals Sewer was a public utility because it was a homeowners' association that had not filed an application to exempt it from utility status pursuant to the regulations. 26 S.C. Code Ann. Reg. 103-502.2 (1991). Critically, in relying on *Anchor Point*, Petitioners left out the most important fact applicable to this case, that Shoals Sewer **owned** and **operated** the sewer plant system. *Anchor Point*, 308 S.C. at 424, 428 (emphasis added). Unlike Shoals Sewer, Respondents do not own or operate the water or sewer system at issue. Likewise, the Court of Appeals quickly dismissed this argument stating, "*Anchor Point* did not involve a mere submetering or allocation arrangement." *Zito*, 2026 WL 457278, at 3 (emphasis in original).

Alternatively, if the Court views the Commission's decision that Respondents did not furnish or supply water to Appellants as a question of fact, the Commission's decision is supported by substantial evidence. See *Bursey v. S.C. Dep't of Health & Env't Control*, 369 S.C. 176, 184-85, 631 S.E.2d 899, 904 (2006), *overruled on other grounds*, *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 714 S.E.2d 547 (2011) (holding that interpreting the meaning of a term in a statute was a question of law, but whether a company's activities fit the definition of the term was a question of fact).

In much the same way as the record reflects that the Commission's decision was not arbitrary or capricious, it also reflects that the decision was supported by substantial evidence. The Commission carefully reviewed the evidence and affidavits from both parties and, upon doing so,

decided that Respondents are not a public utility. Specifically, the Commission’s Order analyzes the billing arrangement between Petitioners and Respondents; the infrastructure at the properties; whether Respondents recover actual costs on an allocation, not-for-profit basis; and whether Respondents seek a guaranteed rate of return on the pass-through billing of water and sewer services. (Order No. 2023-736, pp. 9-10; R. p. 25-26). Because the Commission’s Order is supported by substantial evidence, there is no clear error or abuse of discretion on its behalf, and the Court should deny the Petition. Even if Petitioners could identify arguable tension in how “furnish” or “supply” is applied in other contexts, this case would still not warrant review because the Court of Appeals’ decision rests on the specific factual record—particularly Respondents’ lack of control over the flow of utilities and inability to terminate service. This Court routinely denies certiorari in such fact-bound cases. *See Hollman v. Woolfson*, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009) (stating the Supreme Court “will review only errors of law and will not review factual findings unless wholly unsupported by the evidence.”).

II. Respondents Are Not Public Utilities Because They Did Not Receive Compensation in Exchange for Furnishing or Supplying Water and Sewerage to Appellants.

On appeal, Petitioners contend the Court of Appeals erred because Respondents profited and benefited from providing water and sewer because Petitioners were charged a service fee. (Pet. at 11-14). No matter how Petitioners couch this argument, it is contrary to the plain language of the statute and not based on the actions of Respondents.

As an initial matter, Petitioners’ argument that Respondents received “compensation” is abandoned because it is conclusory and unsupported by any authority. Petitioners rely principally on expert testimony and factual assertions but cite no authority construing the term “compensation” in a manner consistent with their position. As a result, this argument is deemed

abandoned. *See McCracken*, 346 S.C. 87 at 92, 551 S.E.2d at 238 (holding an issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory).

On the merits, to be considered a public utility, S.C. Code Ann. § 58-5-10 also requires Respondents to “furnish or supply” water and sewerage services “for compensation.” Since the Court of Appeals was correct in finding Respondents did not provide any services “for compensation,” the Court of Appeals’ decision should be upheld.

Recognizing the futility of this argument, the Court of Appeals held that because Respondents do not furnish or supply water or sewage there was no need to address the compensation argument. *Zito*, 2026 WL 457278, at 4; *see also State v. Rivera*, 402 S.C. 225, 250, 741 S.E.2d 694, 707 (2013) (stating that once an issue is dispositive, an appellate court does not need to address any remaining arguments).

Nonetheless, the definition of compensation that Petitioners cite suffers from fatal, circular reasoning. Specifically, the definition states that compensation is “[r]emuneration and other benefits received in return for *services rendered*.” (Pet. at 11-12) (emphasis added). Therefore, for something to be compensation, it must first be provided in return for services rendered. And as stated above, Petitioners have been unsuccessful in showing that Respondents ever rendered any utility services in the first place. More fundamentally, Petitioners’ argument improperly assumes the existence of a regulated “service” and then attempts to bootstrap “compensation” onto that assumption. Because Respondents did not furnish or supply utility service in the first instance, the compensation inquiry is irrelevant.

As the Utility Management & Conservation Association (“UMCA”) explained in their Letter of Protest:

A utility allocation method, also known as Ratio Utility Billing Systems (“RUBS”), is an alternative method of tenant billing of utilities, in contrast to sub-metering (a

method used to measure actual utility usage), as a means of recovering the utility expense billed by a utility provider to a landlord for usage consumed by the tenants. RUBS is a common practice used by property owners nationwide that divides the utility expense proportionally between the tenants based on a mutually agreed-upon formula... Due to the nature of utilities and outdated building infrastructure, ***RUBS is the most cost-efficient utility allocation mechanism for many buildings that lack a preexisting sub-meter infrastructure.*** In such buildings, the addition of sub-meters is often cost-prohibitive, or simply infeasible. ***The use of RUBS does not provide a means for a landlord to profit from its utility billing to tenants,*** but simply a means of reimbursement of utility costs borne by tenants, yet assessed against landlords.

(UMCA Letter of Protest filed in this docket on May 4, 2022 pp. 2-4 (emphasis added); R. pp. 1670-1672). Since the properties at issue do not have water or sewer submeter infrastructure, the best alternative available to Respondents is to pass-through the costs of providing the essential services of water and sewer to its tenants via the allocation formula used and described in the lease agreements. (Compl. ¶¶ 15-17, 33-34; R. pp. 1554, 1556). Similar to submetering, Respondents, through a third-party billing company, “merely measure the amount of flow of water or wastewater and provide billing functions.” Order No. 2003-214.

In their Petition, Petitioners acknowledge, as they must, that Respondents did not control the billing, but instead hired a third-party billing company to handle the water and sewer billing function. (Pet. at 13.) (acknowledging the service fee reflected on the “billing documents produced by the entity that performed the billing for Respondents.”). Likewise, it is undisputed that “[t]he Strata entities contracted with the third-party billing company, Conservice, to recover the actual costs of water and sewer services to its tenants through an allocation formula method on a not-for-profit basis.” (Aff. of Andrew Gordon, p. 1, ¶ 6; R. p. 1530). Accordingly, the Commission did not err in determining Respondents were only passing through to the tenants the costs of providing water and sewer service on a not for profit basis. (Order No. 2023-736, p. 15; R. p. 31). This finding of fact is entitled to substantial deference.

III. The Commission’s Determination That Respondents Are Not a Public Utility Is Supported by Agency Precedent.

The Commission’s decision followed a long line of its prior cases. As a result, the Court of Appeals correctly determined that the Commission’s decision was neither arbitrary nor capricious. *Zito*, 2026 WL 457278, at 5. The decision below reflects alignment—not conflict—between the Commission and the Court of Appeals, further underscoring the absence of any basis for certiorari review.

On appeal, Petitioners continue to insist—incorrectly—that the Commission’s precedent is that a submeterer *is* a regulated utility based on Order No. 1999-307. (Pet. at 16-17). However, the Order relied on by Petitioners was later vacated by Order No. 2003-214, with detailed reasoning and explanation. In Order No. 2003-214, the Commission looked to the Landlord-Tenant Act and found contrasting authority to disconnect water service between landlords and public utilities. Landlords, on the one hand, are not permitted to disconnect water service for non-payment, while public utilities, on the other hand, are permitted to disconnect water service for non-payment. If the Commission were to decide to regulate a landlord as a public utility, the Landlord would be permitted to disconnect a tenant’s service for non-payment, contravening the Landlord-Tenant Act.

In any event, the Commission has consistently interpreted the term “public utility” *not* to include submeterers. *See In re Rule to Show Cause on Submeterers*, Docket No. 2001-485-WS, Order No. 2003-214 (2003); *In re Seahorse*, Docket No. 2008-192-WS, Order No. 2008-725; *In re Quail Pointe Apartments*, Docket No. 2007-228-G, Order No. 2008-853. Specifically, the Commission’s precedent is that the activities of “measuring the commodity and providing billing functions” do not make submeterers “public utilities.” *See id.*

The Commission has also found the following factors persuasive in determining the public utility status of a submeterer:

- Billing on a not-for-profit, pass-through basis (Order Nos. 2003-214; 2008-853)
- Lacking the characteristics of a public utility (monopoly service area; owning large, capital-intensive utility infrastructure; guaranteed rate of return) (Order No. 2008-853)
- Ability to turn off water supply to individuals for failure to pay charges (Order No. 2008-725)
- The provision of “essential services” and available remedies under the South Carolina Landlord and Tenant Act (Order No. 2008-853)

Similar to the above submetering cases, Respondents here bill tenants on a not-for-profit, pass-through basis, using a third-party billing company. Because Respondents’ apartment buildings do not have submetering infrastructure installed, they are merely measuring the commodity and providing billing functions through an allocation formula implemented by a third-party billing company, which Petitioners call “the allocation version of submetering.” (Complaint, ¶ 46; R. p. 1558). Further, Respondents do not have any other characteristic of a public utility: they have no monopoly over any service area; they do not own any large, capital-intensive utility infrastructure; they do not seek a guaranteed rate of return from the allocation formula used to recover the cost of water and sewer services; and Respondents do not have the ability to turn off water supply to individuals for failure to pay.

Petitioners rely on Order No. 2008-725, to argue that Respondents are utilities because the allocation method does not measure the *actual* usage of each tenant. (Pet. at 4); however, the circumstances in Order 725 are materially different than the circumstances here. Notably,

the defendants in Order 725 possessed the submetering infrastructure to provide service to residents on an individually metered basis. (Order No. 2008-725). Here, it is undisputed that Respondents do not have the infrastructure to do so. Petitioners cherry pick one line from Order 725 to support their argument, when in fact, the order only supports the general premise that submeterers who pass through costs, and do not have the ability to turn off water, are not public utilities. *Id.*

Importantly, Order 725 established that whether an entity has the ability to turn off water supply to customers for non-payment is indicative of whether that entity takes “possession” of the water or wastewater for the purpose of determining public utility status. *Id.* As reflected in the record, Respondents do not have this ability. *Id.*

Without submeters installed in each unit, there is no way to measure the actual usage of each tenant. This is precisely the reason why the RUBS method was invented—to be used where there is no existing or functioning submeterers and the cost to install, repair or replace, are prohibitive. However, RUBS is still a method to “measure” the usage of each tenant, albeit imprecise, to recover the cost of providing water or sewer services. Petitioners’ attempts to distinguish RUBS from submetering simply fails; they can cite no prior Commission orders to support their position. Instead, the Commission’s prior orders clearly show that RUBS is a version of submetering used where actual submetering infrastructure does not exist or does not function properly.

In sum, the Commission’s holding that Respondents are not public utilities fits squarely within Commission precedent on the same question; therefore, the Court of Appeals correctly affirmed.

IV. The Commission’s Order Is Supported by Substantial Evidence in the Record.

On appeal, Petitioners ignore the facts in the record that support the Commission’s conclusions of law in attempting to claim the Commission erred. (Pet. at 19). Petitioners’ substantial-evidence arguments do not present a cert-worthy issue.

Specifically, Petitioners argue that the Court of Appeals and Commission erred in holding that Respondents passed through the costs of providing water and sewer on a not-for-profit basis. (Pet. at 21). Petitioners contend “there is no evidence in the record that the water and sewerage were provided at cost and on a not-for-profit bases *other than* the conclusory assertion of Andrew Gordon in his affidavit.” (*Id.*) (emphasis added). In making this argument, Petitioners acknowledge the existence of factual evidence in support of the Commission’s findings. Once again, this fact is supported by the Affidavit of Andrew Gordon. (Affidavit of Andrew Gordon, ¶ 6; R. p. 1530). And Petitioners have submitted no evidence that Respondents profited or attempted to profit from the water and sewerage provided by the local utility. Petitioners also ignore the vast amount of discovery that was produced, which Petitioners relied on to unpersuasively support their arguments in their Motion for an Order. Further, there are no claims in the Complaint that Respondents sought a profit through the billing of water and sewer services. Consistent with the Commission’s prior precedent on submetering, Respondents, through a third-party billing company, “merely measure the amount of flow of water or wastewater and provide billing functions.” (Order No. 2003-214). The Court of Appeals

correctly held that the Commission’s findings and conclusions are supported by substantial evidence.³

Finally, Petitioners curiously argue that the Court of Appeals and Commission erred in finding that Respondents possess the water and sewerage. (Pet. at 19). However, Petitioners cite no South Carolina law or case to support their argument. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 515 (1994) (stating an issue is abandoned where the appellant fails to provide argument or supporting authority). Rather, the Commission’s precedent has established that whether an entity has the ability to turn off water supply to customers for non-payment is indicative of whether that entity takes “possession” of the water or wastewater for the purpose of determining public utility status. (Order 2008-725). By ignoring the Commission’s prior orders on this and other issues, Petitioners unsuccessfully asked the Commission to overturn their prior precedent interpreting the statutory definition of a public utility. Here, as stated previously, the record shows that Respondents did not have the ability to turn off the water supply and did not take possession of the water or wastewater. (Order No. 2023-736, p. 17; R. p. 33); (Affidavit of Andrew Gordon, ¶ 8; R. p. 1531). As such, the

³ Recognizing their arguments’ fate, Petitioners attempt to revive their claims by incorrectly stating that “[t]he Commission declined Petitioners’ request to conduct discovery. (Pet. at 21). First vast discovery has been produced. Second, in Petitioners’ Motion for Order of Relief on the Written Record, Petitioners’ expert “was able to use the water and sewer bills from the supplier utilities to Defendants and Defendants’ records of the allocation formula charges to tenants each month” to support Petitioners’ opposition to the use of the allocation method. (Tenants Mot. for Order at 7; R. p. 71). Petitioners’ own pleadings show that the Parties have conducted discovery and Petitioners have used this discovery to support their position. Finally, Petitioners have failed to identify any material facts that have not yet been discovered that could somehow resuscitate their defective claims. Accordingly, Petitioners’ argument for additional discovery fails as a matter of law, and this Court should reject it. *See, e.g., Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (stating that the party requesting additional discovery must demonstrate the likelihood that further discovery will uncover additional relevant evidence).

Commission’s finding is supported by substantial evidence and the Court of Appeals correctly determined that Appellants’ argument fails as result.

CONCLUSION

Petitioners identify no “special and important reason” warranting review under Rule 242, SCACR. This case presents no conflict, no novel legal question, and no issue of statewide significance—only a routine, fact-bound application of settled law. Nor do Petitioners offer evidence supporting their assertion that the RUBS method—an allocation approach used to pass through water and sewer costs—is subject to Commission regulation. The Petition should be denied.

For these reasons, the Court of Appeals’ decision affirming the Commission’s dismissal of Petitioners’ complaint and denial of reconsideration should stand. The Commission’s interpretation accords with the plain language of South Carolina law, and its findings are supported by substantial evidence and consistent with longstanding precedent.

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