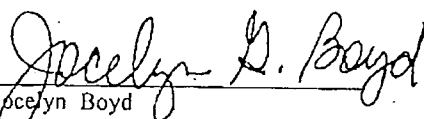


BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-153-S

IN RE: Arch Enterprises, LLC d/b/a McDonalds,)
Complainant/Petitioner)
v.) NOTICE
Palmetto Wastewater Reclamation, LLC)
d/b/a Alpine Utilities)
Defendant/Respondent)

TO: THE ABOVE NAMED DEFENDANT/RESPONDENT

PLEASE TAKE NOTICE that you are hereby required, pursuant to 10 S. C. Code Ann. Regs. 103-826 and 103-830 of the Commission's Rules of Practice and Procedure, to answer the allegations contained in the Petition filed herein, a copy of which is herewith served upon you, and further to serve a copy of your Answer to said Petition upon the *Public Service Commission of South Carolina, Attn: Clerk's Office, Post Office Drawer 11649, Columbia, South Carolina 29211; the Petitioner; and the Office of Regulatory Staff* and to file your Answer with certification of service with the Public Service Commission at the address below; with the Petitioner; and with the Office of Regulatory Staff within thirty (30) days of receipt of the Petition, exclusive of the day of such service, and if you fail to answer the Petition within the time aforesaid, the Petitioner may apply to the Commission for the relief demanded in the Petition.


Jocelyn Boyd
Chief Clerk & Administrator
Public Service Commission of SC
Post Office Drawer 11649
Columbia, SC 29211

4/15/14

ATTACHMENT

Complainant: Kathleen McDaniel, Esquire, attorney for Arch Enterprises, LLC
d/b/a/ McDonalds
Against: Palmetto Wastewater Reclamation/Alpine
Date: April 8, 2014

Statement of Facts

This Complaint concerns the provision of sewer service to a McDonalds store located at 600 St. Andrews Road, Columbia, South Carolina. Sewer service at this location is provided by Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities ("Alpine"). The former operator of this McDonalds store was RBF Enterprises, LLC d/b/a McDonalds. The customer name was McDonald's, and the account number for this service location was ABUS13H. In or about July 2013, the rights to operate this McDonalds store were purchased from RBF by Arch Enterprises, LLC d/b/a McDonalds. The customer name and account number remain the same. Alpine has provided sewer service without interruption to this location before the change in operator and until the present.

On April 2, 2013, RBF Enterprises, LLC d/b/a McDonalds filed a Complaint with the Public Service Commission regarding a thousand-fold increase in its sewer rates. The Public Service Commission ordered that the Complaint be held in abeyance on April 10, 2013, and the matter has been pending ever since. The crux of RBF's Complaint was Alpine's use of unit contributory loading guidelines rather than actual usage in determining sewer rates.

Alpine's sister company, Palmetto Utilities, Inc. filed a rate case in March 2013. J-Ray, Inc. and Sensor Enterprises, Inc., also McDonalds operators, intervened in that rate case. Here again, the crux of the interveners' concern was the use of unit contributory loading guidelines rather than actual usage in determining sewer rates. Despite J-Ray, Inc. and Sensor Enterprises, Inc.'s opposition, the Public Service Commission approved a settlement between Palmetto Utilities and ORS, which in pertinent part reduced the unit contributory loading guideline for cars at drive-thru restaurants from 40 gallons per car to 10 gallons per car. J-Ray and Sensor have appealed this decision to the South Carolina Supreme Court. Chris Valdes is an owner of both J-Ray and Arch Enterprises, LLC d/b/a McDonalds.

Alpine has recently filed a new rate case. In that case, Alpine proposes to utilize the 10 gallon per car figure rather than 40 gallons per car in calculating single family equivalents for drive-thru restaurants.

In February 2014, Arch Enterprises, LLC d/b/a McDonalds received the attached Notice of Intent to Disconnect Sewer Services from Palmetto Utilities, Inc. The Notice shows a past due balance of \$50,770.03. In March 2014, Arch Enterprises, LLC d/b/a McDonalds received a second Notice of Intent to Disconnect Sewer Services from Palmetto Utilities showing a past due balance of \$59,450.40. Notably, the notices are from Palmetto Utilities and not the correct service provider, Alpine.

Arch Enterprises, LLC d/b/a McDonalds disputes the past due balance. As a result of some communications between the parties' counsel and ORS, Alpine now contends that the past due amount is \$32,480.00. However, that amount is based upon a calculation using 40 gallons per car. Arch Enterprises, LLC d/b/a McDonalds contends that the correct formula should be based upon 10 gallons per car as was approved in the Palmetto Utilities 2013 rate

case and as proposed in the Alpine 2014 rate case. That amount is \$9,560.00. Arch Enterprises, LLC d/b/a McDonalds stands ready and willing to pay this amount immediately.

Arch Enterprises, LLC d/b/a McDonalds has been in regular contact with ORS to seek assistance with resolving this matter. In complete disregard of those efforts and the offer to pay \$9,560.00 immediately, Alpine is threatening to disconnect the sewer service to the St. Andrews Road store on Wednesday, April 9, 2014.

Relief Requested

Arch Enterprises, LLC d/b/a McDonalds seeks an order from the Public Service Commission or a single commissioner halting the disconnection of sewer service to the St. Andrews Road McDonalds store. An emergency order may be necessary to prevent such disconnection. Thereafter, Arch Enterprises, LLC d/b/a McDonalds requests that the Public Service Commission hold a hearing on this matter and determine that the past due amount should properly be \$9,560.00.

Feb 25 2014 12:24 McDonald's 8037727657

page 1



PALMETTO UTILITIES, INC.
1713 WOODCREEK FARMS RD
ELGIN, SOUTH CAROLINA 29045-8755
PHONE NO. (803) 699-2422

ACCOUNT NO.
SERVICE 600 ST. ANDREWS ROAD
ADDRESS COLUMBIA, SC 29210

via: FedEx, US Certified Mail, Hand Delivery

NOTICE OF INTENT TO DISCONNECT SEWER SERVICES

Your account is currently past due. You have 30 days from the date listed at the bottom of this notice to bring the account current. Failure to do this could result in an interruption of service. A reconnection fee of up to \$250.00 may be charged to reconnect services. The reconnection fee and past due balance will be due before services will be restored. The balance below includes a \$25.00 delinquent account notification fee. It does not include any charges that have been incurred since the notice date. Please call our office if you would like to discuss your account. All rates are regulated by the South Carolina Public Service Commission and are available for viewing at our office

PAST DUE BALANCE: \$50,770.03 AS OF: 2/21/2014

not sure if I sent this. Please advise.

MJ

Mar 25 2014 12:43 McDonald's 8037727657

page 1



PALMETTO UTILITIES
1713 WOODCREEK FARMS RD
ELGIN, SOUTH CAROLINA 29046-8766
PHONE NO: (803) 699-2422

ACCOUNT NO.
SERVICE 600 ST. ANDREWS ROAD
ADDRESS COLUMBIA, SC 29210

Via: FedEx, US Certified Mail, Hand Delivery

NOTICE OF INTENT TO DISCONNECT SEWER SERVICES

Your account is currently past due. You have 10 days from the date listed at the bottom of this notice to bring the account current. Failure to do this could result in an interruption of service. A reconnection fee of up to \$250.00 may be charged to reconnect services. The reconnection fee and past due balance will be due before services will be restored. The balance below includes a \$25.00 delinquent account notification fee. It does not include any charges that have been incurred since the notice date. Please call our office if you would like to discuss your account. All rates are regulated by the South Carolina Public Service Commission and are available for viewing at our office.

PAST DUE BALANCE: \$59,450.40 AS OF: 3/24/2014

The Public Service Co.
P.O.
COLUMBIA, S

CERTIFIED MAIL™



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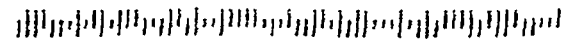
ZIP 29210
011D11632854

Corporation Service Company
1703 Laurel Street
Columbia, South Carolina 29201

2014-133-5
30 Day Notice
Petition

**RETURN RECEIPT
REQUESTED**

29201266074



WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW
930 RICHLAND STREET
P.O. BOX 8416
COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
BENJAMIN P. MUSTIAN**
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
CHAD N. JOHNSTON
JOHN W. ROBERTS
ANDREW J. D'ANTONI

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

April 11, 2014

*ALSO ADMITTED IN TX
**ALSO ADMITTED IN THE DISTRICT OF COLUMBIA

VIA HAND-DELIVERY

The Honorable Jocelyn D. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

RE: Arch Enterprises, LLC d/b/a McDonalds v. Palmetto Wastewater Reclamation
LLC d/b/a Alpine Utilities; Docket No. 2014-153-S

Dear Mrs. Boyd:

Enclosed for filing please find the original and one (1) copy of the **Motion to Dismiss on an Expedited Basis** of Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities ("PWR") in the above-referenced matter. By copy of this letter, we are serving the Complainant and the Office or Regulatory Staff with this document and enclose our certificate of service to that effect.

As noted in the attached motion and docket cover sheet, PWR requests that this matter be addressed on an expedited basis due to the fact that the Complainant has been and is receiving service from PWR without having established an account with PWR or having paid for such service, but PWR is prevented from exercising its right to disconnect as a result of the complaint.

I would appreciate your acknowledging receipt of this Motion and Certificate by date-stamping the extra copy that is enclosed and returning it to me via my courier.

If you have any questions or if you need any additional information, please do not hesitate to contact me. With best regards, I am

Sincerely,

WILLOUGHBY & HOEFER, P.A.


John M.S. Hoefer

JMSH/sw
enclosures

The Honorable Jocelyn D. Boyd
April 11, 2014
Page 2

cc: Kathleen M. McDaniel, Esquire
Honorable C. Dukes Scott
Nanette S. Edwards, Esquire
Jeffrey M. Nelson, Esquire
Florence P. Belser, Esquire

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-153-S

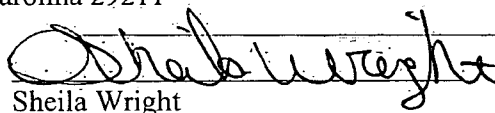
IN RE:)
)
Arch Enterprises, LLC, d/b/a McDonalds)
)
Complainant)
)
v.)
)
Palmetto Wastewater Reclamation LLC,)
d/b/a Alpine Utilities.)
)
Defendant.)
_____)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of a **Motion to Dismiss on an Expedited Basis** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Kathleen M. McDaniel, Esquire
Callison, Tighe & Robinson, LLC
P.O. Box 1390
Columbia, SC 29202-1390

Honorable C. Dukes Scott
Nanette S. Edwards, Esquire
Jeffrey M. Nelson, Esquire
Florence P. Belser, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29211


Sheila Wright

Columbia, South Carolina
This 11th day of April 2014.

STATE OF SOUTH CAROLINA)
)
 (Caption of Case))
 Arch Enterprises, LLC, d/b/a)
 McDonalds,)
 Complainant)
 v.)
 Palmetto Wastewater Reclamation LLC, d/b/a Alpine)
 Utilities,)
 Defendant.)
)
)

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET NUMBER: 2014 - 153 - S

(Please type or print)
 Submitted by: John M.S. Hoefer SC Bar Number: 2549
 Address: P.O. Box 8416 Telephone: 803-252-3300
Columbia, South Carolina 29201-8416 Fax: 803-771-240
 Other: _____
 Email: jhoefer@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

- Emergency Relief demanded in petition Request for item to be placed on Commission's Agenda expeditiously
- Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	_____
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	_____
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

Print Form

Reset Form

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-153-S

IN RE:)
)
Arch Enterprises, LLC, d/b/a McDonalds)
)
Complainant)
)
v.)
)
Palmetto Wastewater Reclamation LLC,)
d/b/a Alpine Utilities.)
)
Defendant.)
_____)

**MOTION TO DISMISS ON AN
EXPEDITED BASIS**

Palmetto Wastewater Reclamation LLC, d/b/a Alpine Utilities (“PWR” or “Company”), pursuant to 10 S.C. Code Regs. R. 103-829 (2012), hereby moves the Public Service Commission of South Carolina (“Commission”) to dismiss the April 8, 2014, complaint (“Complaint”) of Arch Enterprises, LLC (“Arch”) in the above-captioned matter on the grounds that (1) the Complaint has not been filed by a customer of a public utility and is therefore not reviewable ; (2) alternatively, if the Complaint is reviewable by the Commission, it establishes on its face that PWR is entitled to discontinue service under Commission regulations; and (3) also alternatively, if the Complaint is reviewable by the Commission, it fails to state facts sufficient to constitute a claim upon which relief may be granted because the relief sought constitutes retroactive ratemaking which is prohibited by law. PWR respectfully requests that the Commission give the within motion expedited review.

In essence, Arch's Complaint is an effort to use the Commission's complaint process to (1) avoid disconnection in circumstances where it is undisputed that Arch has used PWR's service for ten months without having established an account with PWR and without having paid PWR for that service; and (2) avoid paying the previously approved rates set by this Commission for Arch's prior and proposed future use of PWR's service. By this motion, PWR requests that the Commission relieve it of the burden of incurring the expense of addressing these contentions on the merits by summarily dismissing the Complaint. In order to prevent further loss to PWR, which is occasioned by its current inability to disconnect service in circumstances where it has not and is not being paid for such service at previously approved rates, PWR requests that the Commission rule on this motion on an expedited basis and without hearing or oral argument. In support hereof PWR would respectfully show as follows:

I. BACKGROUND

A. THE RBF COMPLAINT¹

On or about April 1, 2013, RBF Enterprises LLC ("RBF") filed with this Commission a complaint that was assigned Docket Number 2013-119-S in which it challenged PWR's right to charge for sewer service in accordance with the rate schedule approved by this Commission in its Order No. 2013-3(A) issued January 11, 2013, in Docket No. 2012-94-S. On April 10, 2013, a Commission Hearing Examiner issued a directive holding the RBF complaint in abeyance pending (1) the retention of counsel by RBF to represent it in accordance with 10 S.C. Code Regs. 103-

¹ In view of Arch's reference to and reliance upon another complaint pending before the Commission, which involves the entity which is the PWR customer of record at the service premises in question, it is necessary that PWR address that matter first in order to give context to the pertinent background for the instant motion.

805(B); and (2) completion of an investigation by the Office of Regulatory Staff (“ORS”) regarding PWR’s commercial rates which had been ordered by the Commission in Docket No. 2012-94-S.² An appearance of counsel was entered for RBF on or about April 11, 2013,³ and on June 17, 2013, ORS filed with the Commission the results of its investigation of rates being charged by PWR to commercial customers as a result of Order No. 2013-3(A). *Inter alia*, ORS reported to the Commission (1) that PWR was earning less total annual revenue from commercial customers than had been expected as a result of the rate increase approved in Order No. 2013-2(A); (2) that utilization of the contributory unit wastewater loading design guidelines set out in Appendix A to 25 S.C. Code Regs. 61-67 as approved in Order No. 2013-3(A) is a reasonable method of designing commercial customer rates; (3) and that PWR has the flexibility to adjust the loading factors under Appendix A to R. 61-67 as it designs commercial rates. Notably, the ORS report did not conclude that PWR was charging any commercial customer at a rate not approved by the Commission.

B. THE ARCH COMPLAINT

According to the Complaint, in July of 2013, Arch purchased from RBF “the rights to operate this McDonalds store.”⁴ The Complaint further asserts that “the crux of RBF’s Complaint was [PWR’s] use of [the] unit contributory loading guidelines.” Nonetheless, Arch notes that the Commission has approved for Palmetto Utilities, Inc. (“PUI”) in Order No. 2013-660, Docket No.

² See Commission Directive March 27, 2013, Order No. 2013-193, May 3, 2013.

³ Albeit different attorneys of record are involved, the same law firm that entered an appearance on behalf of RBF in accordance with the Hearing Examiner Directive also represents Arch in the instant complaint matter.

⁴ Thus, on the face of the Complaint, PWR’s service is no longer being utilized by RBF, but by Arch.

2013-42-S, a rate design using the unit contributory guidelines with a single modification (i.e., an adjustment to the per car loading factors for fast-food restaurants with drive-thru facilities) and that PWR proposes the same rate design and modification in its application pending before the Commission in Docket No. 2014-69-S. By its Complaint, Arch seeks an order of the Commission adopting the PUI rate design for both the service Arch has been receiving (without PWR's permission) since July of 2013 and for future service to Arch.⁵ Although Arch asserts that it "disputes the past due balance" of \$59,450.40 reflected in the last of the disconnection notices attached to the Complaint, it fails to assert any basis for disputing the balance other than its contention that it should be charged PWR's for service under a rate design approved by the Commission for another utility (i.e., PUI). In describing the amount of the past due balance sought to be collected by PWR, Arch inexplicably fails to apprise the Commission that the amount claimed to be due from Arch by PWR, \$32,480.00, is based upon the time period that Arch has admitted using PWR's service without having established an account with PWR or remitting payment for such service under the rates previously approved by the Commission.⁶ Arch seeks to have the Commission issue an order "halting the disconnection of sewer service" to the premises it is

⁵ As acknowledged in the Complaint, the intervenors in Docket No. 2013-42-S opposed this rate design and have appealed the Commission's order in this regard to the Supreme Court. As also reflected in the Complaint, one of the principals of Arch is a principal of J-Ray, Inc., an intervenor in Docket No. 2013-42-S. PWR further notes that those intervenors are also represented by the same law firm representing RBF in its complaint matter described hereinabove and Arch in the instant complaint.

⁶ Attached hereto and incorporated herein by reference as Motion Exhibit "A" is a copy of a series of electronic mail messages between counsel for Arch and counsel for PWR which make abundantly clear that PWR contends that Arch is indebted to PWR in the amount of \$32,480.00 for Arch's use of PWR's service since July of 2013, based upon PWR's previously approved rates. These emails also make clear that PWR contends that the remaining unpaid balance is an obligation of RBF based upon its use of PWR's services from March of 2013 through June of 2013 for which PWR has also not been paid.

occupying and allowing it to pay for previously used services based upon PUI's – and not PWR's – previously approved rates.

II. ARGUMENT

A. The Complaint Should Be Summarily Dismissed Because It Demonstrates On Its Face That Arch Is Not A Customer Of PWR And It Is Therefore Not Entitled To File A Complaint Regarding PWR

Under 10 S.C. Code Regs. 103-516, only “complaints by customers” are required to be investigated by a sewer utility. Further, 10 S.C. Code Regs. R. 103-538 (2012) provides for ORS review of “customer complaints”.⁷ A “customer” is defined by 10 S.C. Code Regs. 103-502.2 (2012), as “[a]ny person, firm, partnership or corporation ... being **supplied** with service by a utility under the jurisdiction of this Commission.” The RBF complaint pending in Docket No. 2013-119-S establishes that RBF has been the customer of record to which PWR has agreed to supply sewer service at 600 St. Andrews Road. The Complaint does not allege that Arch – a different legal entity than RBF -- has applied to establish an account for PWR to supply it with sewer service at this location (although Motion Exhibit “A” demonstrates that Arch has made such an application).⁸ To

⁷ Arch states that it has “been in regular contact with ORS to seek assistance with resolving this matter.” PWR submits that Arch is not entitled to any “assistance” from ORS as ORS is only required to investigate **customer** complaints. See R. 103-538.B. Since Arch is not a customer of PWR – which is established on the face of the Complaint – ORS has no obligation to even make an investigation. Notwithstanding this, the ORS has in fact investigated the Complaint and has also “been in regular contact” with PWR. The fact that ORS has not directed that PWR desist from its effort to discontinue services at the premises now occupied by Arch suggests to PWR that ORS may have concluded that Arch is not a customer entitled to complain and/or does not believe it to be in the public interest to assist an entity that has used a jurisdictional sewer utility’s service without permission and without payment for some ten months and seeks to use the complaint procedures of this Commission to relieve that entity from the requirement that it pay the previously approved rates of the utility before it may establish an account. Cf. R. 103-535.L.

⁸ PWR submits that the reason Arch has not asserted that it has applied to PWR to establish service is that it recognizes that its failure to pay the amount claimed due by PWR entitles PWR to refuse such an application. See 10 S.C. Code Regs. 103-535.L. Thus, it is necessary that Arch implicitly assert that the RBF

the contrary, in a carefully worded "Statement of Facts" Arch alleges only that RBF was "the former operator of the McDonalds store" at 600 St. Andrews Road" and that Arch "acquired the rights to operate this McDonalds store" in July of 2013. Thus, the Complaint establishes on its face that the only legal entity that is PWR's customer of record at the service location is not the same legal entity that seeks relief from this Commission in the instant matter.⁹

PWR submits that the definition of a "customer" under R. 103-502.2 as being a person or entity that is being **supplied** with service by a utility necessarily contemplates that the utility has agreed to provide service, not merely that service is being received by a person or entity. This is borne out in the Commission's regulations providing that to establish an account for the supply of sewer utility service, the person or entity seeking that service must apply to the utility do so and the utility must accept the application. *See* 10 S.C. Code Regs. 103-534.A (2012).¹⁰ Other Commission regulations also bear out that a customer is a person or entity which has communicated with a sewer utility a desire for service and provided necessary information in order to allow the sewer utility to discharge the customer service duties imposed on it by the Commission. *See, e.g.* 10 S.C. Code Regs. RR.103-530.B (notification to customers of proposed rate increases), 103-531 (providing for

account with PWR is Arch's account.

⁹ Arch also appears to assert that because RBF did and Arch does business as "McDonalds," this in some manner places Arch in the position of claiming the customer status formerly held by RBF. Such an assertion would be patently without merit given the fact that two legal entities exist, only one of which has established an account with PWR under 10 S.C. Code Regs.103-534 (2012). However, if Arch can be accorded such status, it would be responsible for the entire amount of unpaid charges at the service location based on PWR's previously approved rate.

¹⁰ As reflected in the email correspondence to Arch's counsel attached as Exhibit "A," PWR is unwilling to establish an account with or to continue providing service to Arch in view of the fact that there is an outstanding balance for service provided to Arch at the premises it admits to having occupied since July of 2013. This indebtedness is based upon PWR's previously approved rates which cannot now be disputed as a

customer deposits intended to guarantee payment of bills for service in certain circumstances), 103-532 (requirements for customer bill forms), and 103-535.L (providing that an applicant for service may be denied service until an undisputed bill for service previously supplied the applicant is paid).

The Complaint does not – indeed cannot -- assert that Arch has made an application for service that PWR has accepted. To the contrary, Arch implicitly asserts that the RBF account is Arch's account. In fact, RBF and Arch are two different legal entities, no agreement exists for PWR to supply sewer service to Arch, and it is therefore not a customer entitled to complain about PWR's notice of intent to disconnect service to premises where there is no active customer of record.

B. The Complaint Establishes On Its Face That PWR Is Entitled To Disconnect Service Even If Arch Is Deemed To Be An Applicant For Service

PWR submits that, at best, Arch can be considered an applicant for service at this service location which is indebted to PWR for the value of the services it has been using since July 2013 under previously approved rates. Rather than conferring on Arch the ability to complain about PWR, such applicant status would only allow Arch to become a customer entitled to receive service after having paid the indebtedness arising under previously approved rates. *See* 10 S.C. Code Regs. R. 103-535.L (2012). This Arch has refused to do. *See* Motion Exhibit "A."

In that light, the gravamen of the relief sought by Arch is simply this: the Commission should treat Arch as a customer of record which has a legitimate dispute over the rates charged by a jurisdictional utility. As demonstrated on the face of the Complaint, however, the real crux of this matter is that Arch has been impermissibly receiving sewer service from PWR since July of 2013 without having paid for that service and now seeks to have this Commission endorse that conduct by

matter of law. See discussion in Part II.B and Part II.C, *infra*.

7
JWS/18

recognizing Arch as a customer entitled to litigate its contention that it was entitled to receive (and in the future receive) service at a rate less than that previously approved by the Commission. As a matter of law, Arch would not be entitled to that relief even if it is considered an applicant for service (or a customer).

A sewer utility is not permitted to charge a rate different than that approved by the Commission. *See* 10 S.C. Code Ann Regs. 103-533 (2012). Moreover, this Commission does not have the authority to retroactively reduce charges imposed under a previously approved rate. *See SCE&G Co. v. PSC*, 275 S.C. 487, 491, 272 S.E2d 793, 795 (1980) (holding that “[t]he Commission has no more authority to require a refund of monies collected under a lawful rate than it would have to determine that the rate previously fixed and approved was unreasonably low, and that the customers would thus pay the difference to the utility”). Only upon a determination by the Commission that a previously approved rate is improper may the Commission “**thereafter**” direct that a different rate be charged. *See* S.C. Code Ann. §58-5-290 (1976).

In light of the foregoing, consideration of this complaint by the Commission on the merits will in effect sanction an unauthorized use of utility service, limit a jurisdictional utility’s ability to refuse or discontinue service under the circumstances expressly permitted by R. 103-535.L, permit a non-customer to retroactively challenge the lawfulness of rates for service that it has used without having a legal right to do so, and permit a non-customer to challenge the lawfulness of rates going forward. PWR respectfully submits that the Commission should refuse to do so by granting the instant motion and forthwith dismissing the Complaint.

C. The Complaint Fails To State Facts Sufficient To Constitute A Claim Upon Which Relief May Be Granted

Even assuming that Arch is entitled to bring this Complaint as a customer (or even as an applicant), the Complaint should nonetheless be dismissed because it fails to state facts sufficient to constitute a complaint cognizable under S.C. Code Ann. § 58-5-270 (Supp. 2013). Arch has not alleged any fact demonstrating that PWR has done anything prohibited by Commission regulations, or omitted to do anything required by Commission regulations, that would entitle Arch to relief. *Cf.* Rule 12(b)(6), SCRCR. To the contrary, the sole allegations of the Complaint are that PWR has given notice of its intent to disconnect service to the premises now occupied by Arch. PWR is entitled to disconnect service inasmuch as Arch is not a customer of PWR and has refused to satisfy an indebtedness for service it has received at the premises under previously approved rates. Rather than being proscribed by Commission regulations, PWR is expressly authorized to discontinue service in these circumstances. *See* RR. 103-534 and 103-535.L, *supra*. Further, the relief sought by Arch (the ability to pay for service received and to be received at a rate other than the previously approved rate) cannot, as a matter of law, be granted by the Commission. *See SCE&G Co. v. PSC, supra* and §58-5-290, *supra*. Accordingly, the Complaint is deficient on its face and should be dismissed.

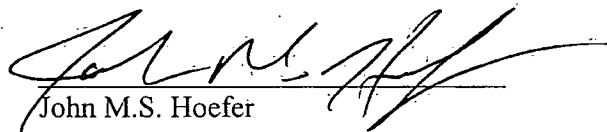
III. REQUEST FOR EXPEDITED REVIEW

PWR requests that the within Motion be considered on an expedited basis without oral argument so that PWR may have the opportunity to be promptly relieved from the requirement of 10 S.C. Code Regs. 104-538.A that it continue to provide service to an entity that (1) is not a customer; (2) has not satisfied the requirements to become a customer (including payment of indebtedness

arising out of Arch's unauthorized use of PWR's service for ten months); and (3) seeks to have the Commission unlawfully reduce PWR's previously approved rate on a retroactive and prospective basis. PWR submits that these circumstances warrant expedited consideration so as to limit the continuing harm to PWR of providing service for no compensation and the expense being incurred by PWR to enforce its rights as a jurisdictional sewer utility.

IV. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that Arch's Complaint be dismissed without more.



John M.S. Hoefer

Benjamin P. Mustian

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Defendant/Respondent

Columbia, South Carolina
This 17th day of April, 2014

Exhibit A
Page 1 of 9

From: John Hoefer
To: "Reece Williams"
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities
Date: Thursday, April 03, 2014 5:33:00 PM

Dear Reecè:

I am advised that the amount due for the arrearage is \$32,480, calculated as follows:

Period: July 1, 2013 – April 1, 2014
Rate: \$29 per single family equivalent per month
Single Family Equivalents: 112.1

Equivalency Factors: Cars – 1,055. This car count is based upon the figure provided by Arches, LLC of 26,365 cars per month plus a 20% peaking factor. 1,055 cars X 40 gallons = 42,200 gallons

Seats – 66 seats X 40 gallons = 2640 gallons.

42,200 gallons + 2,640 gallons = 44,840 gallons

Equivalency Calculation: 44,840 divided by 400 gallons per SFE = 112.1 SFEs

Monthly Bill: 112.1 SFEs X \$29 = \$3,248.00

Arrearage: \$3,248.00 X 10 = \$32,480

Please let me know if you have any questions, believe that there is an error in the calculation, or have any questions.

John

From: Reece Williams [mailto:ReeceWilliams@callisontighe.com]
Sent: Thursday, April 03, 2014 5:15 PM
To: John Hoefer
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear John,

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Page 2 of 9

Thank you. Since your client does not know the amount it claims to be due, it is impossible at this time to respond. As stated, my client is willing to pay the correct arrearage determined to be due and is happy to submit this to Jeff Nelson through mediation.

Best wishes, Reece

From: John Hoefer [<mailto:JHoefer@Willoughbyhoefer.com>]
Sent: Thursday, April 03, 2014 4:56 PM
To: Reece Williams
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Reece – Thank you for your courteous voicemail. I appreciate your candor.

I do not know what amount is due and assume that my client will be talking with yours about it. I do understand that there are questions about the number of cars served and the number of seats in the location. Again, I assume that my client will be talking with your client about that.

Regarding your other points, it seems reasonable to me that if your client wants to establish an account to receive service going forward, it will be necessary that my client be made whole for the service it has previously received but for which my client has not been paid. As my earlier email indicates, I believe my client is calculating the arrearage using its approved rates based on occupancy of the premises by your client since July 1, 2013. Again, I believe my client will be discussing with your client the car and seat counts. That information should shortly be available.

If your client is not going to be willing to pay for the service already provided to it from July 1, 2013, in accordance with my client's authorized rate schedule, I can see no reason why my client should, or would want to, provide service to your client. I respectfully disagree that this is a complicated situation. It is clear that your client has, for some ten months, been receiving services for which it failed to establish an account and failed to pay. Any consequences arising from my client's refusal to provide service under these circumstances would not, in my opinion, be attributable to my client.

My client stands ready and willing to resolve the matter in accordance with the foregoing. It will honor its agreement to extend the time period for your client to establish an account in accordance with the foregoing until Wednesday at 5:00 p.m. I hope that it will avail itself of that opportunity.

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John Hoefler

From: Reece Williams [<mailto:ReeceWilliams@callisontighe.com>]
Sent: Thursday, April 03, 2014 4:33 PM
To: John Hoefler
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear John,

We have no idea what your client claims to be due as arrearage. The undated termination notice from Palmetto Utilities states that as of March 24, 2014 the amount was \$59,450.40. I suggest that this is incorrect. Jeff Nelson of ORS has offered to mediate this issue which I am happy to do. However, it is unacceptable to proceed with negotiations under a refusal to establish an account and continued threat of termination of service. Once again, allow me to observe that, in my view, mistakes have been made by both parties, this is a very complicated situation and terminating the service of this business would have serious consequences. My client stands willing and ready to resolve the matter.

Sincerely, Reece

From: John Hoefler [<mailto:JHoefler@Willoughbyhoefler.com>]
Sent: Thursday, April 03, 2014 4:11 PM
To: Reece Williams
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Reece – Thank you for confirming the identity of your client.

Just to clarify one point, please advise your client that in order to establish an account, the

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arrearage will have to be satisfied at that time. If the arrearage cannot be satisfied at that time PWR would not be willing to establish an account with your client. The amount of arrearage will relate only to the period of time that your client has been utilizing PWR's service.

Thanks.

John Hoefler

From: Reece Williams [mailto:ReeceWilliams@callisontighe.com]
Sent: Thursday, April 03, 2014 3:56 PM
To: John Hoefler
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear John,

Your courtesy is much appreciated. Yes, I am informed that it is Arches Enterprises, LLC. Assuming that your client allows establishment of an account we will cooperate with your client in determining the amount of arrearage due making arrangements to pay the amount. Thank you for your continuing assistance in resolving this matter.

Sincerely, Reece

From: John Hoefler [mailto:JHoefler@Willoughbyhoefler.com]
Sent: Thursday, April 03, 2014 3:40 PM
To: Reece Williams
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear Reece: My apologies for the delay in getting back to you.

I am informed that an entity named "Arches, LLC" has requested establishment of an account for sewer service at the address listed above? Is that your client?

If so, PWR is amenable to a further extension until 5:00 p.m. on Wednesday, April 9, 2014, for that entity to establish an account with PWR-Alpine in accordance with the terms of its approved rate schedule and to satisfy the arrearage on the account for the time period it has been using the

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wastewater service of my client. My client informs me that that it has been advised by Arches LLC that this time period began to run on July 1, 2013.

If the foregoing is not accomplished by that new extended deadline, PWR will disconnect the service. Please let me know if you have any questions.

Thank you for your assistance.

John

From: Reece Williams [<mailto:ReeceWilliams@callisontighe.com>]
Sent: Thursday, April 03, 2014 10:30 AM
To: John Hoefer
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear John,

Thank you again for your courtesy in extending time for the resolution of this account until April 6. I am now informed that my client has applied to Palmetto/Alpine for transfer of service to a new entity. This appears to be in progress. We now need to determine the amount of past charges and a manner of payment. I will be grateful if your client will agree to extend the date for termination of service beyond Sunday, April 6.

Sincerely, Reece

Best wishes, Reece

From: John Hoefer [<mailto:JHoefer@Willoughbyhoefer.com>]
Sent: Tuesday, April 01, 2014 5:10 PM
To: Reece Williams
Cc: jnelson@regstaff.sc.gov
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Reece – I am following up with you on the emails below concerning the above-referenced matter.

If you have been able to identify the entity that is receiving wastewater service from PWR at the above-referenced location, please let me know that information.

If the entity currently receiving service is still RBF Enterprises, LLC, PWR will send a 30 day disconnection notice to it based upon non-payment for service and proceed thereafter in accordance with the PSC rules.

On the other hand, if the entity receiving service is not RBF Enterprises, LLC, PWR intends to disconnect service at this location on April 6th unless an account is established by that entity with PWR and all account arrearages attributable to its use of the service are satisfied. It is PWR's position that where it has no customer of record, it has no obligation to serve. PWR certainly hopes that disconnection will not become necessary. However, as I am certain you can understand, PWR cannot continue providing service to a location where there is no customer of record – particularly in light of the fact that no payment has been made or received for service to the address since January of 2013.

Please let me hear from you before April 6th.

Best regards,

John Hoefler

From: Reece Williams [<mailto:ReeceWilliams@callisontighe.com>]
Sent: Wednesday, March 26, 2014 3:41 PM
To: John Hoefler
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear John,

Thank you for granting an extension. I do not know the name of the entity operating at this location but will get that for you.

Best to you, Reece

From: John Hoefler [<mailto:Hoefler@Willoughbyhoefler.com>]
Sent: Wednesday, March 26, 2014 3:29 PM
To: Reece Williams
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

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Reece – I have spoken with PWR. Based on its understanding that the recipient of the services at the above location is now J-Ray, Inc., and not RBF Enterprises, LLC (**please advise me immediately if you do not believe this to be the case**), PWR has directed that I inform you as follows:

1. PWR is willing to permit J-Ray, Inc. ten (10) days from today, or until April 6, 2014, within which to contact PWR at the previously provided telephone number, establish a service account in its name for the above-referenced location, and **satisfy that portion of the arrearage stated in the disconnection notice attributable to J-Ray's use of PWR's service**. If this is not done, PWR will disconnect service at this location.
2. You are correct that the disconnection notice erroneously referenced Palmetto Utilities, Inc. However, this is irrelevant now that PWR understands that it is J-Ray that is receiving PWR's service (again, advise me if that is not the case). Because J-Ray has no account with PWR entitling it to receive service at this location, it is not a customer under PSC regulations and no notice is required for PWR to disconnect.
3. The pendency of the complaint of your other client (RBF Enterprises, LLC) does not in any way preclude PWR from disconnecting service at the above-referenced location for at least two reasons. First, if RBF Enterprises, LLC, is no longer a customer of PWR at this location but J-Ray is, there is no basis for RBF Enterprises, LLC to assert that its prior complaint involves the current circumstances under which J-Ray is receiving service without an established account or payment. Second, even if RBF Enterprises, LLC were still the PWR customer at this location, the fact of its complaint did not authorize it to withhold all payment from PWR. My understanding is that no payment has been received for PWR's service to this location since January of 2013, which is 4 months before the complaint was filed. Further, if RBF Enterprises, LLC, is no longer a customer of PWR, its complaint at the PSC would be moot since the amount in dispute will never have been paid and there would be no effective action that the PSC could take to require that RBF Enterprises, LLC, to do so. In that event, PWR will pursue a judicial remedy against RBF Enterprises, LLC to the extent necessary.

If you have any questions regarding the foregoing, please do not hesitate to contact me.

John Hoefler

From: Reece Williams [<mailto:ReeceWilliams@callisontighe.com>]

Sent: Wednesday, March 26, 2014 1:48 PM

To: John Hoefler

Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear John,

Thank you for your reply on behalf of Palmetto Wastewater

Reclamation LLC d/b/a Alpine Utilities. This is at best confusing since the bill I forwarded to you was rendered by Palmetto Utilities, a different company. I will do my best to reconcile the issues as soon as possible. Meanwhile, I respectfully request that your client continue service beyond today. Your client should understand that termination of service will have drastic consequences for this business.

Sincerely, Reece

From: John Hoefler [<mailto:JHoefler@Willoughbyhoefler.com>]

Sent: Wednesday, March 26, 2014 12:46 PM

To: Reece Williams

Subject: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Reece:

I am following up on the voicemail message I just left for you regarding the above-referenced matter.

In our conversation earlier today, you indicated that the March 24, 2014, Notice of Intent to Disconnect Sewer Services (Notice) at the above-referenced location was received by your client J-Ray, Inc. Based upon that information, Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities (PWR) would understand that J-Ray, Inc. is operating the McDonald's restaurant at this location.

PWR has no record of J-Ray, Inc. being its customer, at this, or any other location. If J-Ray, Inc. desires to be PWR's customer at this location, J-Ray, Inc. must contact PWR at 803-699-2422 to establish a customer account and arrange to satisfy the arrearage on the account referenced in the Notice -- at least for the period of time that J-Ray, Inc. has received the services.

If J-Ray, Inc. does not establish an account and address the arrearages, PWR will take the position that J-Ray, Inc. is not its customer, that PWR has no obligation to provide service at the location, and that PWR is entitled to immediately disconnect service.

If it is the position of J-Ray, Inc. that some other entity is responsible for the account in whole or in part, it should make that fact known to PWR immediately and inform PWR of the identity of the responsible person or entity.

If PWR is not contacted by the close of business today regarding this matter, its intent will be to

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terminate service immediately as it will have no identifiable customer entitled to receive notice of disconnection under the PSC rules. As I mentioned in our conversation, I am advised by PWR that no payment has been made for sewer service provided at the location referenced above since January of 2013.

Please contact me if you have any questions. Thank you.

John M.S. Hoefler, Esquire
Willoughby & Hoefler, P.A.
930 Richland Street
Post Office Box 8416
Columbia, South Carolina 29202-8416
Telephone #: (803) 252-3300
Facsimile #: (803) 771-2410
E-mail address: jhoefler@willoughbyhoefler.com

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IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it was sent) without our express written consent.

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>May 01, 2014</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2014-153-S</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u>2014-400</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

DOCKET NO. 2014-153-S - Arch Enterprises, LLC d/b/a McDonalds, Complainant/Petitioner v. Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities, Defendant/Respondent - Discuss with the Commission the Motion to Dismiss on an Expedited Basis Filed on Behalf of Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities.

COMMISSION ACTION:

We have before us for consideration a Motion to Dismiss the Complaint of Arch Enterprises, LLC d/b/a McDonalds ("Arch") filed by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities ("Alpine"). The Complaint requests two forms of relief. The first request was for an emergency order halting disconnection of sewer service. This request was discussed with the parties shortly after the complaint was filed, and, as was stated to them – and agreed to by Alpine – was actually moot upon the filing of the complaint requesting a hearing before the Commission, pursuant to Commission Regulation 103-538 (B). The second request for relief was that the Commission hold a hearing and determine that the past due amount owed to the utility by the complainant was \$9,560.00. This amount was derived by the Complainant attempting to apply a rate approved for Palmetto Utilities in its 2013 rate case. In addition, Arch points out that this rate is proposed for adoption by the Commission for the respondent utility in this case, Alpine. The Commission has neither held a hearing, nor ruled on the Alpine rate matter.

In its Motion to Dismiss, among other arguments, Alpine cites Commission Regulation 103-533, which states that a utility must charge its customers according to schedules filed in compliance with Title 58 of the South Carolina Code of Laws, which requires approval of such schedules by the Commission. The Regulation clearly states that the utility is prohibited from charging a customer in any manner inconsistent with its filed schedules, and prescribes remedies in the event that charges outside these schedules are billed to the utility's customers. In this case, Arch requests the imposition of rates approved only for another utility company. Alpine has no such approved rates. Further, Alpine notes that the case law in South Carolina prohibits a retroactive reduction of charges imposed under a previously approved rate, which is the remedy sought by Arch in this case. In other words, Alpine states, in so many words, that granting the rate relief requested by the Complainant in this case would be unlawful. I agree with this view of the law, find it sufficient to resolve the issue in the case, and move that the Arch Complaint be dismissed on this ground, while expressly declining to rule on Alpine's other arguments.

However, there is one other matter that must be addressed. The Complaint asserts that 30-day and 10-day disconnection notices under Commission Regulation 103-535.1 were served on Arch under the Palmetto Utilities, Inc. name. Copies of the notices are in fact attached to the Complaint, and Alpine does not dispute the fact that this occurred. We are not aware of any disconnection notices that have been issued under the actual service provider in this case, Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities. I believe that just as it is unlawful to charge a customer under a rate schedule approved only for a utility that does not serve the customer in question, it is also unlawful, and of no force and effect, for one utility to serve disconnection notices on the customer of a different utility. Unless the disconnection notices come from the actual utility serving the particular customer, the customer could appropriately consider the notices to be a mistake, and disregard them. Accordingly, I move that we

hold that the disconnection notices in the present case served by Palmetto Utilities were of no force and effect on Arch, since Arch was receiving service by Alpine.

PRESIDING: Hamilton

SESSION: Regular

TIME: 11:00 a.m.

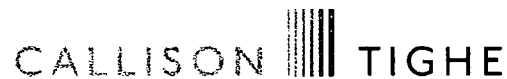
	MOTION	YES	NO	OTHER
FLEMING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
MCGEE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

(SEAL)



RECORDED BY: J. Schmieding

Kathleen McDaniel - Attorney
Ph: 803-404-6900
Fax: 803-404-6901
kathleenmcdaniel@callisontighe.com



May 14, 2014

(Via Hand-Delivery)

Jeffrey M. Nelson, Esq.
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201

(Via Hand-Delivery)

John M. S. Hoefler, Esq.
Willoughby & Hoefler, P.A.
930 Richland Street
Columbia, South Carolina 29201

**Re: Arch Enterprises, LLC d/b/a McDonalds, Complainant/Petitioner v. Palmetto
Wastewater Reclamation, LLC d/b/a Alpine Utilities, Defendant/Respondent
Docket No. 2014-153-S
Our file number: 5999.001**

Dear Mr. Nelson and Mr. Hoefler:

Please find enclosed a copy of the Petition for Rehearing and Reconsideration of Arch Enterprises, LLC that we electronically filed today regarding the disputed past due sewer service payments for the McDonalds located at 600 St. Andrews Road. If you have any questions, feel free to contact me or Reece Williams at your convenience.

With kind regards, I am

Sincerely,

CALLISON TIGHE & ROBINSON, LLC

A handwritten signature in black ink that reads "Kathleen McDaniel". The signature is written in a cursive style.

Kathleen McDaniel

Encl.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-153-S

IN RE:)	
Arch Enterprises, LLC d/b/a)	
McDonalds,)	
)	
Complainant/Petitioner)	PETITION FOR REHEARING
)	AND RECONSIDERATION
)	OF ARCH ENTERPRISES, LLC
v.)	
)	
Palmetto Wastewater Reclamation,)	
LLC d/b/a Alpine Utilities,)	
)	
Defendant/Respondent.)	

The Complainant/Petitioner Arch Enterprises, LLC hereby submits this Petition for Rehearing and Reconsideration ("Petition") for rehearing and reconsideration of the South Carolina Public Service Commission's Directive bearing Order No. 2014-400, issued on May 1, 2014, and the Standing Hearing Officer Directive, issued on May 6, 2014. Copies of both Orders are attached.

This Petition is filed pursuant to S.C. Code Ann. § 58-5-330 and S.C. Code Ann. Regs. 103-825(4)(a) and 103-854 and the following:

1. Pursuant to S.C. Code Ann. § 58-5-210, it is the responsibility of the South Carolina Public Service Commission ("Commission") to

[S]upervise and regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State.

2. On April 8, 2014, Arch Enterprises, LLC filed a Complaint with the Commission. The basis for the Complaint was that Arch Enterprises, LLC had received a Notice of Intent to Disconnect Sewer Services from Palmetto Utilities showing a past balance due of \$59,450.40. In its Complaint, Arch Enterprises, LLC disputed the past due amount.

3. Alpine filed a Motion to Dismiss on an Expedited Basis on April 14, 2014:

4. The following appeared as agenda item number 8 on the agenda for the May 1, 2014 Commission meeting:

DOCKET NO. 2014-153-S - Arch Enterprises, LLC d/b/a McDonalds, Complainant/Petitioner v. Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities, Defendant/Respondent - Discuss with the Commission the Motion to Dismiss on an Expedited Basis Filed on Behalf of Palmetto Wastewater Reclamation, d/b/a Alpine Utilities.

5. This agenda item purports on its face only to provide a basis for a discussion of the matter with the Commission.

6. Arch Enterprises, LLC received no notice that anything related to its Complaint would be heard and decided by the Commission on May 1, 2014. The agenda item description gives no indication that the Commission would take dispositive action on Alpine's Motion or Arch Enterprises, LLC's Complaint.

7. Following the May 1, 2014 meeting, the Commission issued the Directive bearing Order No. 2014-400. This Directive found that to grant Arch Enterprises, LLC's request would amount to prohibited retroactive rate making.

8. The Directive further found that because the Notice of Intent to Disconnect Sewer Services was sent by the wrong utility that the notice was of no force and effect.

9. On May 1, 2014, Alpine sent a Sewer Disconnection Notice to Arch Enterprises, LLC

10. To clarify the effect of the Directive, a Standing Officer issued a subsequent Order on May 6, 2014, stating that the hearing on Arch Enterprises, LLC's Complaint, which had been scheduled for July 9, 2014, was cancelled as a result of the Commission's holding in Directive bearing Order No. 2014-400.

11. Thus, the Commission effectively dismissed Arch Enterprises, LLC's Complaint without notice to the Complainant and without any opportunity for the Complainant to be heard on the matter.

12. The Commission's Rules of Practice and Procedure are found at S.C. Code Regs. Ann. § 103-800 *et seq.* The Rules of Practice and Procedure set forth the manner in which Complaints and Motions are to be considered.

13. Section 103-824 sets forth the procedure for filing a Complaint and provides that a Complainant may request a proceeding.

14. Section 103-829 governs the filing and consideration of Motions. Section 103-829(B) provides:

The Commission, in its discretion and upon due notice to all parties of record, may entertain oral argument and response on prefiled motions in advance of the scheduled hearing in the proceeding to which the motions pertain. Otherwise, such argument and response shall be made at the commencement of the hearing. The presiding officer may make a ruling upon such motion at the completion of oral argument, at the conclusion of the hearing, or in the written order making disposition of the subject matter of the proceeding.

15. Section 103-829(B) specifically provides that the Commission will provide notice to all parties of record when a Motion is to be decided. Section 103-829(B) gives the Commission the discretion to hear oral argument and response on the Motion prior to or at the commencement of the hearing of the underlying proceeding. Section 103-829(B) provides no

authority for the Commission to decide a Motion without notice and without an opportunity for all parties of record to present oral argument and response.

16. Thus, the Commission erred in hearing and granting of Alpine's Motion to Dismiss on an Expedited Basis without providing notice or an opportunity to be heard to Arch Enterprises, LLC

17. The Commission further erred in concluding that granting Arch Enterprises, LLC's request for a reduction in previously charged rates would amount to prohibited, retroactive rate making.

CONCLUSION

Based upon the foregoing, the Commission's decision to dismiss the Complaint of Arch Enterprises, LLC is affected by an error of law; is clearly erroneous; and is arbitrary or capricious. Accordingly, the Complainant/Petitioner requests that the Commission rehear and reconsider this matter to correct these errors.

CALLISON TIGHE & ROBINSON,

s/ Kathleen McDaniel
D. Reece Williams, III (SCBAR#6120)
Kathleen M. McDaniel, Esq. (SCBAR#74826)
1812 Lincoln St., Ste. 100
PO Box 1390
Columbia SC 29202
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kathleenmcdaniel@callisontighe.com

**ATTORNEYS FOR COMPLAINANT/
PETITIONER ARCH ENTERPRISES, LLC**

May 14, 2014
Columbia, South Carolina

Action Item 8

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>May 01, 2014</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2014-153-S</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u>2014-400</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

DOCKET NO. 2014-153-S - Arch Enterprises, LLC d/b/a McDonalds, Complainant/Petitioner v. Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities, Defendant/Respondent - Discuss with the Commission the Motion to Dismiss on an Expedited Basis Filed on Behalf of Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities.

COMMISSION ACTION:

We have before us for consideration a Motion to Dismiss the Complaint of Arch Enterprises, LLC d/b/a McDonalds ("Arch") filed by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities ("Alpine"). The Complaint requests two forms of relief. The first request was for an emergency order halting disconnection of sewer service. This request was discussed with the parties shortly after the complaint was filed, and, as was stated to them – and agreed to by Alpine – was actually moot upon the filing of the complaint requesting a hearing before the Commission, pursuant to Commission Regulation 103-538 (B). The second request for relief was that the Commission hold a hearing and determine that the past due amount owed to the utility by the complainant was \$9,560.00. This amount was derived by the Complainant attempting to apply a rate approved for Palmetto Utilities in its 2013 rate case. In addition, Arch points out that this rate is proposed for adoption by the Commission for the respondent utility in this case, Alpine. The Commission has neither held a hearing, nor ruled on the Alpine rate matter.

In its Motion to Dismiss, among other arguments, Alpine cites Commission Regulation 103-533, which states that a utility must charge its customers according to schedules filed in compliance with Title 58 of the South Carolina Code of Laws, which requires approval of such schedules by the Commission. The Regulation clearly states that the utility is prohibited from charging a customer in any manner inconsistent with its filed schedules, and prescribes remedies in the event that charges outside these schedules are billed to the utility's customers. In this case, Arch requests the imposition of rates approved only for another utility company. Alpine has no such approved rates. Further, Alpine notes that the case law in South Carolina prohibits a retroactive reduction of charges imposed under a previously approved rate, which is the remedy sought by Arch in this case. In other words, Alpine states, in so many words, that granting the rate relief requested by the Complainant in this case would be unlawful. I agree with this view of the law, find it sufficient to resolve the issue in the case, and move that the Arch Complaint be dismissed on this ground, while expressly declining to rule on Alpine's other arguments.

However, there is one other matter that must be addressed. The Complaint asserts that 30-day and 10-day disconnection notices under Commission Regulation 103-535.1 were served on Arch under the Palmetto Utilities, Inc. name. Copies of the notices are in fact attached to the Complaint, and Alpine does not dispute the fact that this occurred. We are not aware of any disconnection notices that have been issued under the actual service provider in this case, Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities. I believe that just as it is unlawful to charge a customer under a rate schedule approved only for a utility that does not serve the customer in question, it is also unlawful, and of no force and effect, for one utility to serve disconnection notices on the customer of a different utility. Unless the disconnection notices come from the actual utility serving the particular customer, the customer could appropriately consider the notices to be a mistake, and disregard them. Accordingly, I move that we

hold that the disconnection notices in the present case served by Palmetto Utilities were of no force and effect on Arch, since Arch was receiving service by Alpine.

PRESIDING: Hamilton

SESSION: Regular

TIME: 11:00 a.m.

	MOTION	YES	NO	OTHER
FLEMING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
MCGEE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

(SEAL)

RECORDED BY: J. Schmieding



SOUTH CAROLINA PUBLIC SERVICE COMMISSION

STANDING HEARING OFFICER DIRECTIVE

DOCKET NO. 2014-153-S

MAY 6, 2014

Standing Hearing Officer: David Butler

DOCKET DESCRIPTION:

Arch Enterprises, LLC d/b/a McDonalds, Complainant/Petitioner v. Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities, Defendant/Respondent

MATTER UNDER CONSIDERATION:

Cancellation of Hearing

STANDING HEARING OFFICER'S ACTION:

Since the Motion to Dismiss the Complaint in this matter was granted by Commission Order No. 2014-400 on May 1, 2014, the hearing scheduled for July 9, 2014 is hereby cancelled.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-153-S

IN RE:)
Arch Enterprises, LLC d/b/a)
McDonalds,)
Complainant/Petitioner)
v.)
Palmetto Wastewater Reclamation,)
LLC d/b/a Alpine Utilities,)
Defendant/Respondent.)

CERTIFICATE OF SERVICE

I, Kathleen McDaniel, of Callison Tighe & Robinson, LLC, Attorneys for the Complainant/Petitioner, do hereby certify that I have served a copy of the **PETITION FOR REHEARING AND/OR RECONSIDERATION OF ARCH ENTERPRISES, LLC** in this matter on the following parties by having a copy hand-delivered, on May 14, 2014 to the following:

Jeff Nelson, Esquire
S. C. Office of Regulatory Staff
1401 Main Street
Suite 900
Columbia, SC 29201

John M. S. Hoefler, Esquire
Willoughby & Hoefler, P.A.
30 Richland Street
Columbia, SC 29201

s/Kathleen McDaniel

May 14, 2014
Columbia, South Carolina

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW
930 RICHLAND STREET
P.O. BOX 8416
COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
BENJAMIN P. MUSTIAN**
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
CHAD N. JOHNSTON
JOHN W. ROBERTS
ANDREW J. D'ANTONI

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

*ALSO ADMITTED IN TX
**ALSO ADMITTED IN THE DISTRICT OF COLUMBIA

May 16, 2014

VIA E-FILE

The Honorable Jocelyn D. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

RE: Arch Enterprises, LLC d/b/a McDonalds v. Palmetto Wastewater Reclamation
LLC d/b/a Alpine Utilities; Docket No. 2014-153-S

Dear Mrs. Boyd:

Enclosed for filing please find an Answer in Opposition to Petition for Rehearing or Reconsideration in the above-referenced matter. I am serving all parties of record with a copy of the same and enclose a certification of service to that effect.

If you have any questions or if you need any additional information, please do not hesitate to contact me. With best regards, I am

Sincerely,

WILLOUGHBY & HOEFER, P.A.

/s/ John M.S. Hoefer

John M.S. Hoefer

JMSH/sw
enclosures

cc: Kathleen M. McDaniel, Esquire
Jeffrey M. Nelson, Esquire

STATE OF SOUTH CAROLINA)
)
 (Caption of Case))
 Arch Enterprises, LLC, d/b/a McDonalds,)
 Complainant)
)
 v.)
)
 Palmetto Wastewater Reclamation, LLC)
 d/b/a Alpine Utilities)
 Defendant.)
)
)

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2014 - 153 - S

(Please type or print)
 Submitted by: John M.S. Hoefer SC Bar Number: 2549
 Address: Willoughby & Hoefer, P.A. Telephone: 803-252-3300
Post Office Box 8416 Fax: 803-771-2410
Columbia, South Carolina 29202-8416 Other: _____
 Email: jhoefer@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

- Emergency Relief demanded in petition Request for item to be placed on Commission's Agenda expeditiously
- Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input checked="" type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

Print Form

Reset Form

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-153-S

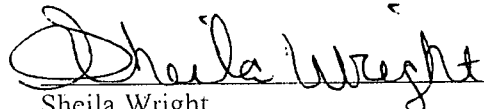
IN RE:)
)
Arch Enterprises, LLC, d/b/a McDonalds)
)
Complainant)
)
v.)
)
Palmetto Wastewater Reclamation LLC,)
d/b/a Alpine Utilities.)
)
Defendant.)
_____)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of an **Answer in Opposition to Petition for Rehearing or Reconsideration** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Kathleen M. McDaniel, Esquire
Callison, Tighe & Robinson, LLC
P.O. Box 1390
Columbia, SC 29202-1390

Jeffrey M. Nelson, Esquire
South Carolina Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29211


Sheila Wright

Columbia, South Carolina
This 16th day of May, 2014.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-153-S

IN RE:)
)
Arch Enterprises, LLC, d/b/a McDonalds)
)
Complainant)
)
v.)
)
Palmetto Wastewater Reclamation LLC,)
d/b/a Alpine Utilities)
)
Defendant.)
_____)

ANSWER IN OPPOSITION TO
PETITION FOR REHEARING OR
RECONSIDERATION

Defendant Palmetto Wastewater Reclamation LLC (“PWR” or “Company”), pursuant to 10 S.C. Code Regs. 103-826 (2012), by and through its undersigned counsel, submits the within Answer in Opposition to the Petition for Rehearing or Reconsideration (“Petition”) of Arch Enterprises, LLC, d/b/a McDonalds (“Petitioner”) dated May 14, 2014, in the above-captioned matter. In that regard, PWR would respectfully show unto this Honorable Commission as follows:

1. Paragraph 1 of the Petition asserts no matter of fact or issue of law requiring a response. PWR craves reference to the provisions of S.C. Code Ann. § 58-5-210 (1976) for its content.

2. PWR admits the allegations of Paragraph 2 of the Petition as far as they go. Further responding, to this paragraph, PWR submits that the complaint of Petitioner also acknowledged that Petitioner had been advised by the Company that the amount then sought was

\$32,480.00, which advice was recounted in PWR's Motion to Dismiss on an Expedited Basis dated April 11, 2014 ("Motion").

3. PWR denies the allegation of paragraph 3 that the Company filed the Motion on April 14, 2014. To the contrary, the Commission's docket file reflects that the Motion was filed with this Commission and served on Petitioner on April 11, 2014. PWR requests that the Commission take notice of its own files and records in regard to the aforementioned filing and service dates which are reflected on the Motion, associated certificate of service, docket cover sheet, and filing correspondence.¹

4. PWR admits that paragraph 4 of the Petition reflects the language of item number 8 of the Commission's meeting agenda for May 1, 2014.

5. PWR denies the allegation of paragraph 5 of the Petition to the extent that it suggests that the Commission did not give notice of its intent to act on the Motion. PWR craves reference to the heading which precedes the enumerated items, including item number 8, of the agenda which states as follows: "COMMISSION ACTION ON THE FOLLOWING ITEMS:" and to the language of each enumerated item under such heading – all of which provide that the Commission will "discuss" each such item upon which action was to be taken as noticed by the Commission. The Company submits that it is not possible for the Commission to act on a motion without some discussion.

6. PWR denies the allegations of paragraph 6 of the Petition to the extent that it alleges that Petitioner had no notice that the Motion could be decided by the Commission on May 1, 2014, and that the Commission's meeting agenda for May 1, 2014 gave Petitioner "no indication that the Commission would take dispositive action on [the] Motion." As to the latter,

¹ A courtesy copy of the Motion was also provided to counsel for Petitioner by electronic mail message on April 12, 2014, a copy of which is attached hereto and incorporated herein by reference as Exhibit I. Cf. R. 103-830.1 of the Commission's Rules of Practice and Procedure.

and as noted in paragraph 5 of this Answer, the Commission's Meeting Agenda for May 1, 2014, which was publicly posted on April 25, 2014, specifically states that the Commission will take action on the Motion. As to the former, the Motion, the accompanying docket cover sheet, and the filing correspondence all plainly state PWR's request that the Commission expedite its review of the Motion. Moreover, the Motion specifically requests "that the Commission rule on this motion...without hearing or oral argument" and that the "Motion be considered on an expedited basis without oral argument so that PWR may have the opportunity to be promptly relieved from the requirement" that it refrain from disconnection of Petitioner's premises. See Motion at 2, 9-10.

7. Answering paragraph 7 of the Petition, PWR submits that although the term "retroactive ratemaking" does not appear in Order No. 2014-400, the Commission determined that the substantive basis for dismissal of the Complaint advanced in the Motion was correct. Further responding to this paragraph of the Petition, the Company submits that the Commission order finds that the relief sought by Petitioner in its complaint "would be unlawful" on more than one ground, one of which was an improper retroactive reduction in a previously approved rate. PWR craves reference to the language of the Commission's order for its content and the Motion for its content.

8. PWR admits the allegation of paragraph 8 of the Petition and, further responding, notes that Order No. 2014-400 was issued by the Commission on May 1, 2014.

9. PWR admits the allegation of paragraph 9 of the Petition.

10. PWR admits so much of paragraph 10 of the Petition as alleges that a Standing Hearing Officer Directive was issued by F. David Butler, Esquire, on May 6, 2014, cancelling the hearing on Petitioner's Complaint that had been scheduled for July 9, 2014. The Company is

without sufficient information to form a belief as to any purpose of said Standing Hearing Officer Directive beyond that reflected in same, and therefore denies the remaining allegation of this paragraph of the Petition.

11. PWR denies the allegations of paragraph 11 of the Petition. PWR also submits that Petitioner was not entitled to an evidentiary hearing or oral argument on the Motion under any provision of law. Further responding, PWR submits that Petitioner had an opportunity to be heard on the Motion pursuant to 10 S.C. Code Regs. R. 103-829.A (2012), but failed to respond to the Motion as required by that rule. PWR further submits that Petitioner's failure to make the required response to the Motion justified a conclusion that Petitioner did not have a basis in law to oppose the substance of the Motion.

12. Paragraph 12 of the Petition asserts no matter of fact or issue of law requiring a response. PWR craves reference to the provisions of 10 S.C. Code Regs. 103-800 (2012) for its content.

13. PWR admits so much of Paragraph 13 of the Petition as alleges that 10 S.C. Code Regs. 103-824 sets forth the requirements for filing a written complaint and provides that a person "may file a written complaint with the Commission requesting a proceeding."

14. PWR admits so much of Paragraph 14 of the Petition as alleges that 10 S.C. Code Regs. 103-829 (2012) sets forth the requirements for and pertaining to written motions, responses thereto, and replies to responses thereto. Further responding to this paragraph of the Petition, PWR submits that R. 103-829.A required that Petitioner file and serve a response to the Motion – which Petitioner failed to do. PWR craves reference to the provisions of R.103-824.B for its content.

15. PWR denies the allegations of paragraph 15 of the Petition. Further responding, PWR submits that the allowance of oral arguments on motions is entirely within the discretion of the Commission and that there is no provision of law requiring that the Commission conduct an oral argument on a motion. The plain language of R. 103-829.B simply contemplates that the Commission may schedule an oral argument on a motion prior to or at a hearing. It does not require an oral argument. Even assuming that R. 103-829 can be read in the manner asserted by Petitioner, which is disputed, the regulation cannot be read to require an oral argument on a motion where, as here, the non-moving party has failed to meet its requirement to file and serve a response to the motion under Rule 103-829.A. Furthermore, the Motion specifically requested that the Commission expedite its review and decide the Motion without oral argument. Petitioner failed to oppose this request. Even assuming R. 103-829.B can be read consonant with Petitioner's interpretation, the Commission effectively granted PWR's request that any requirement for an oral argument be waived, which the Commission may do. *See* 10 S.C. Code Ann. R. 103-803 (2012).²

16. PWR denies the allegations of paragraph 16 of the Petition. Further responding, PWR submits that no hearing was conducted in this matter at the Commission agenda meeting on May 1, 2014, that the Petitioner had notice that the Commission may decide the matter without oral argument and that it would do so on May 1, 2014, at its agenda meeting, that Petitioner was not entitled to oral argument on the Motion as a matter of law, and that Petitioner

² Implicit in Order No. 2014-400 is a finding that it is not contrary to the public interest that an oral argument on a motion to dismiss a complaint be withheld where there is an unrefuted assertion by the movant that the relief requested by the complainant is not available as a matter of law. Even if Petitioner's argument in this regard was valid, at most it could justify a determination by the Commission in an order addressing the Petition that, *nunc pro tunc*, the Commission waived any requirement for an oral argument on the ground that the circumstances warrant such a waiver and that same is not contrary to the public interest.

waived any right it could have had to be heard by its failure to comply with the provisions of R. 103-829.A and submit a written response to the Motion.

17. PWR denies the allegations of paragraph 17 of the Petition. Further responding to the allegations of this paragraph of the Petition, PWR submits that Petitioner has failed to specify any factual or legal errors in the determination made by the Commission in Order No. 2014-400 that the relief sought by Petitioner's complaint is unavailable as a matter of law. *See* 10 S.C. Code Regs. 103-825.A (4) (2012). Similarly, Petitioner has failed to set forth specifically the ground on which it considers the Commission's decision on the Motion to be unlawful. *See* S.C. Code Ann. § 58-5-330 (Supp. 2013). Petitioner has yet to submit (and cannot now submit) to this Commission any authority for the proposition that the relief sought in its Complaint could be lawfully granted by the Commission. *See* 10 S.C. Code Regs. 103-533 (2012). *See also, SCE&G Co. v. PSC*, 275 S.C. 487, 491, 272 S.E.2d 793, 795 (1980). Having failed to allege any error on the part of the Commission with respect to the substantive law found by the Commission to govern the Motion, Petitioner cannot have been prejudiced by the result reflected in Order No. 2014-400.

18. To the extent the Petition alleges any other or further matter, same is denied and strict proof thereof is demanded.

WHEREFORE, having fully set forth its Answer, the Company requests that the Petition be denied and that such other and further relief be granted by the Commission to the Company as is just and proper.

/s/ John M. S. Hoefer

John M. S. Hoefer

Benjamin P. Mustian

Willoughby & Hoefer, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

jhoefer@willoughbyhoefer.com

bmustian@willoughbyhoefer.com

*Attorneys for Palmetto Wastewater
Reclamation LLC*

Columbia, South Carolina
This 16th day of May, 2014

EXHIBIT 1
Page 1 of 1

From: John Hoefler
To: ReeceWilliams@callisontighe.com; kathleenmcdaniel@callisontighe.com
Cc: jnelson@regstaff.sc.gov
Subject: Arch Enterprises, LLC v. Palmetto Wastewater Reclamation LLC
Date: Saturday, April 12, 2014 10:49:00 AM
Attachments: [2014-04-11 File Stamped ltr. cover. COS & Motion to Dismiss.pdf](#)

Reece/Kathleen: I was in a rush to get out of the office early yesterday for an out of town meeting I had on family business and simply forgot to send you a courtesy copy of the attached. The hard copy is in the mail to you as well. Thanks.

John M.S. Hoefler, Esquire
Willoughby & Hoefler, P.A.
930 Richland Street
Post Office Box 8416
Columbia, South Carolina 29202-8416
Telephone #: (803) 252-3300
Facsimile #: (803) 771-2410
E-mail address: jhoefler@willoughbyhoefler.com

Confidentiality Notice: The information contained in this transmittal, including any attachment, is privileged and confidential information and is intended only for the person or entity to which it is addressed. If you are neither the intended recipient nor the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any disclosure, copying or distribution or the taking of any action in reliance on the contents of this transmittal is strictly prohibited. If you have received this transmittal in error, please contact the sender immediately by telephoning the sender at (803) 252-3300 and, also, please delete this transmittal from any computer or other data bank. Upon request, we will reimburse your reasonable costs of notifying us of a transmission error. Thank you.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it was sent) without our express written consent.

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER
MOTOR CARRIER MATTER
UTILITIES MATTER

DATE May 21, 2014
DOCKET NO. 2014-153-S
ORDER NO. _____

SUBJECT:

DOCKET NO. 2014-153-S - Arch Enterprises, LLC d/b/a McDonalds, Complainant/Petitioner v. Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities, Defendant/Respondent - Discuss with the Commission the Petition for Rehearing and Reconsideration Filed on Behalf of Arch Enterprises, LLC.

COMMISSION ACTION:

I know that the rest of the Commissioners join me in thanking Arch Enterprises for providing the opportunity for further clarification of our ruling dismissing its complaint against Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities. Arch has filed a Petition for Rehearing and Reconsideration in this matter. I move that we deny the Petition.

First, Arch complains that it received no notice that anything related to its complaint would be heard and decided by the Commission on May 1, 2014, nor was it indicated that dispositive action could result at the Commission's agenda session. Arch quotes the specific language of the Agenda Item, which said: "Discuss with the Commission the Motion to Dismiss on an expedited basis filed on behalf of Palmetto Wastewater Reclamation, d/b/a Alpine Utilities." I would point out that at the beginning of the full agenda, the following language appeared: "Commission Action on the Following Items." I believe that the language in the agenda item itself was sufficient notice. However, the item language and the "Commission Action" language taken together provided clear notice that the Motion to Dismiss would be discussed by the Commission, and that the Commission could act on the motion at the time of the meeting. The lack of notice allegation is clearly without merit.

Arch further states that the Commission's ruling dismissing the Complaint was issued without any opportunity for the Complainant to be heard on the matter. This allegation is also without merit. The Motion to Dismiss specifically requested that the "Motion be considered on an expedited basis without oral argument" Commission Regulation 103-829 (A) specifically states that responses to written motions are due within 10 days after service of such motions. Arch did not meet this deadline, and failed to file a response to the Motion to Dismiss. Accordingly, it did not avail itself of its right to respond to the Motion, so it cannot now legitimately complain that it did not have an opportunity to be heard on the matter. Further, since Arch failed to file a response to the Motion, the Motion to Dismiss the Complaint in this matter was unopposed, based on the Commission's record.

In addition, as Arch states in its present Petition, Regulation 103-829 (B) gives the Commission the discretion to hear oral argument and response on prefiled motions in advance of the hearing on the merits of the case, or at the merits hearing. Because the Company's Motion to Dismiss was unopposed, based upon a review of the record, the question of holding oral arguments was moot, either in advance of the hearing or at the time of a scheduled hearing on the merits. Further, under Commission Regulation 103-803, waiver of the provisions allowing oral arguments was appropriate due to the non-contested nature of the

Motion to Dismiss, and, under the circumstances of this case, was not contrary to the public interest. This Commission may dismiss complaints without hearing when the complainant fails to state facts sufficient to constitute a claim upon which relief could be granted by this Commission. However, for sake of clarity, I move that we also specifically find that we have waived the provisions allowing oral arguments in granting the Company's request for dismissal. It is not contrary to the public interest to forego oral argument or hearing when relief cannot be granted in any event based on the face of the Petitioner's pleadings. This procedure is consistent with that used by other State tribunals.

Arch also alleges that the Commission erred in concluding that its request for a reduction in previously charged rates would amount to prohibited retroactive rate making. I continue to believe that there was no error in this conclusion, based on the same reasoning discussed in our original Order in this matter. I also believe that we should affirm our holding that Arch's desire to adopt the rates of another wastewater company is unlawful. Essentially, we dismissed the complaint because it failed to state facts sufficient to constitute a claim upon which relief could be granted by this Commission. This was because the complaint requested either rates that, if granted, would constitute retroactive ratemaking, or rates that had only been approved for another wastewater utility.

In conclusion, our dismissal of the Arch Complaint was proper and consistent with the law, and was based on settled regulatory principles. Further, since the complaint was properly dismissed, the scheduled hearing was properly cancelled by the Standing Hearing Officer's Directive of May 6, 2014.

Accordingly, I move that Arch's Petition for Rehearing and Reconsideration be denied.

PRESIDING: Hamilton

SESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER	
FLEMING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
HALL	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
MCGEE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Absent</u>	Annual Leave
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
WHITFIELD	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Absent</u>	Commission Business

(SEAL)

RECORDED BY: J. Schmieding



BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2014-153-S - ORDER NO. 2014-452.

JUNE 26, 2014

IN RE: Arch Enterprises, LLC d/b/a McDonalds,) ORDER DENYING
Complainant/Petitioner v. Palmetto) PETITION FOR
Wastewater Reclamation, LLC d/b/a Alpine) REHEARING AND
Utilities, Defendant/Respondent) RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition for Rehearing and Reconsideration filed by Arch Enterprises, LLC d/b/a McDonalds ("Arch") in this complaint matter against Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities ("Alpine"). The Petition is denied.

First, Arch complains that it received no notice that anything related to its complaint would be heard and decided by the Commission on May 1, 2014, or that dispositive action could result at the Commission's scheduled public business meeting on that date. Significantly, Arch does not claim that it failed to receive notice of the meeting; nor does it claim that the Commission failed to list Arch's docket on the meeting's agenda. Instead, Arch finds fault with the sufficiency of the notice. Arch's Petition quotes the specific language of the Agenda Item, which stated: "Discuss with the Commission the Motion to Dismiss on an expedited basis filed on behalf of Palmetto Wastewater Reclamation, d/b/a Alpine Utilities." However, it does not quote the statement at the beginning of the full agenda, where the following introductory language appears: "Commission Action on the Following Items:". In our view, the language of the

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agenda item itself was sufficient notice to Arch that a dispositive motion was up for consideration. Moreover, the agenda item language and the introductory “Commission Action” language taken together provided clear notice that the Motion to Dismiss would be discussed by the Commission, and that the Commission could act on the motion at the time of the meeting.

Further, the written Motion and accompanying materials all plainly state Alpine’s request that the Commission expedite review of the Motion. Moreover, the Motion specifically requests “that the Commission rule on this motion...without hearing or oral argument” and that the “Motion be considered on an expedited basis without oral argument so that PWR (Alpine) may have the opportunity to be promptly relieved from the requirement” that it refrain from disconnection of Petitioner’s premises. See Motion at 2, 9-10. The lack of notice allegation is clearly without merit.

Arch also states that the Commission’s ruling dismissing the Complaint was issued without any opportunity for the Complainant to be heard on the matter in advance of the ruling. This allegation is also without merit. Again, the Motion to Dismiss filed by Alpine specifically requested that the “Motion be considered on an expedited basis without oral argument” Commission Regulation 103-829 (A) specifically states that responses to written motions are due within 10 days after service of such motions. Arch did not meet this deadline, and failed to file a response to the Motion to Dismiss. Accordingly, it did not avail itself of its right to respond to the Motion, so it cannot now legitimately complain that it did not have an opportunity to be heard on the matter.

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Further, since Arch failed to file a response to the Motion, the Motion to Dismiss the Complaint in this matter was unopposed, based on the Commission's record.

In addition, as Arch states in its present Petition, Regulation 103-829 (B) gives the Commission the discretion to hear oral argument and response on prefiled motions in advance of the hearing on the merits of the case, or at the merits hearing. Because the Company's Motion to Dismiss was unopposed, based upon a review of the record, the question of holding oral arguments was moot, either in advance of the hearing or at the time of a scheduled hearing on the merits. Further, under Commission Regulation 103-803, waiver of the provisions allowing oral arguments was appropriate due to the non-contested nature of the Motion to Dismiss, and, under the circumstances of this case, was not contrary to the public interest. This Commission may dismiss complaints without hearing when the complainant fails to state facts sufficient to constitute a claim upon which relief could be granted by this Commission. This Commission may waive the provisions allowing oral arguments in granting the Company's request for dismissal, which it did in this instance. It is not contrary to the public interest to forego oral argument or hearing when relief cannot be granted in any event based on the face of the Petitioner's pleadings. This procedure is consistent with that used by other State tribunals.

Arch also alleges that the Commission erred in concluding that its request for a reduction in previously charged rates would amount to prohibited retroactive rate making. Alpine cites Commission Regulation 103-533, which states that a utility must charge its customers according to schedules filed in compliance with Title 58 of the South Carolina

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Code of Laws, which requires approval of such schedules by the Commission. The Regulation clearly states that the utility is prohibited from charging a customer in any manner inconsistent with its filed schedules, and prescribes remedies in the event that charges outside these schedules are billed to the utility's customers. In this case, Arch requests the imposition of rates approved only for another utility company, and in a retroactive manner. Alpine's approved rates are its own; it does not offer the rates sought by Arch. Further, the case law in South Carolina prohibits a retroactive reduction of charges imposed under a previously approved rate. See South Carolina Elec. and Gas Co. v. Public Service Commission, 275 S.C. 487, 272 S.E.2d 793 (1980).

Essentially, we dismissed the complaint because it failed to state facts sufficient to constitute a claim upon which relief could be granted by this Commission. This was because the complaint requested rates that either had only been approved for another wastewater utility or rates that, if put into effect, would constitute retroactive ratemaking. The relief sought by the Complainant was unavailable as a matter of law. Dismissal was therefore reasonable. Oral argument could not have affected this outcome.

In conclusion, our dismissal of the Arch Complaint was proper and consistent with the law, and was based on settled regulatory principles. Further, since the complaint was properly dismissed, the scheduled hearing was properly cancelled by the Standing Hearing Officer's Directive of May 6, 2014.

Accordingly, Arch's Petition for Rehearing and Reconsideration is denied.

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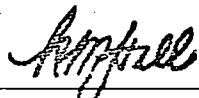
This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:



Nikiya Hall, Vice Chairman

(SEAL)