THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Case No. 16-ALJ-07-0082-CC

A.O. Smith Corporation..... Appellant,

v.

South Carolina Department of Health and Environmental Control and Town of McBee..... Respondents.

TOWN OF MCBEE'S RESPONSE TO PETITION FOR WRIT OF SUPERSEDEAS

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INTRODUCTION

This appeal involves DHEC Construction Permits 28475-WS and 29779-WS. *See* Ex. A, Water Supply Construction Permits. Those permits authorized the Town of McBee to modify an existing well and to install granulated activated carbon (GAC) filters for its water supply. *Id.* They were issued on November 13, 2012 and June 30, 2014, respectively. One or both of them were pending before DHEC from January of 2012 to June of 2014. *Id.*

A.O. Smith Corporation, who is the appellant here, filed no comments and took no action whatsoever related to these permits during that time. When the two permits were issued, no party sought review before the DHEC board. Such review would have been the necessary first step in challenging these permits in court. *See* S.C. Code Ann. § 44-1-60.

In reliance on the final and un-appealed orders issued in 2012 and 2014, the Town funded and constructed the well modifications and the GAC filtering system that they authorized. When the construction was complete, DHEC inspected the work and determined that it had been completed in conformity with the construction permits it had previously issued. *See* S.C. Code Ann. Reg. 61-58.1.K (such certifications are based on an engineer's "letter certifying that construction is complete and in accordance with the approved plans and specifications," and a DHEC inspection to confirm the accuracy of that letter.)

On January 12, 2016, DHEC issued its Final Approvals to place the newly-constructed facilities into operation. Ex. B, Final Approvals to Place into Operation. At that juncture, A.O. Smith took action for the first time, challenging the Final Approvals based on the allegation that the Town's water system lacked adequate capacity to serve its needs. *See* Ex. C, A.O. Smith Corporation's Request for Final Review (Jan. 27, 2016). This Request for Final Review contained only conclusory statements without factual support.

DHEC found that A.O. Smith's "challenge of the Department decision to issue Final Approval for the Construction Permits is futile since the only issue decided by the Department in issuance of the Approvals is whether the work performed by the Town was done in accordance with the requirements of the previously issued Construction Permits." Ex. D, Statement of DHEC Staff Position (Feb. 12, 2016) at 3. DHEC clearly explained the appropriate process A.O. Smith should have taken in its Statement of Staff Position:

> The Construction Permits constituted Department decisions, pursuant to the appellate requirements contained in the S.C. Code Ann. § 44-1-60 (Supp. 2015), and the only way that Requestor could appeal them was to file its RFR within 15 days of the service of these documents to the Town by certified mail. S.C. Code Ann. § 44-1-60(E)(2). Since Requestor failed to file a RFR within 15 days of the mailing of the Construction Permits, Requestor is now barred from challenging the decision contained in the Permits by challenging the Department's ministerial issuance of the Final Approvals to Place into Operation.

Ex. D, Statement of DHEC Staff Position (Feb. 12, 2016) at 3.

STANDARD OF REVIEW

As a matter of law, "[a]ppeals from administrative tribunals" are not automatically stayed by service of a notice of appeal. Rule 241(b)(11), SCACR. "A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals." S.C. Code Ann. § 1-23-600(H)(5). Rule 241(c)(2), SCACR, provides only two grounds for issuing a stay or order of supersedeas: "to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. Neither of these two grounds is present here.

ARGUMENT

I. There Is No Basis to Issue a Stay Because There Is No Legal Connection between the Capacity Issues of which A.O. Smith Complains and the Regulatory Structure under which DHEC Issued the Challenged Permits.

A.O. Smith's argument is that if the Town turns on its water pumps, its existing supplier, Alligator Rural Water and Sewer Company ("Alligator") will discontinue its service to the Town, and the Town's pumps and water tanks will not be sufficient to meet A.O. Smith's needs in case of fire.

What A.O. Smith asserts here is factually not true, and the evidence showing that to be the case is discussed in greater detail below. But more to the point, the capacity of an existing public water system is not regulated through the issuance or denial of construction permits except where it is expanding to serve new customers. The capacity of existing systems is regulated under S.C. Code Ann. Regs. 61-58.7.C(12) and 61-58.7.D(12), which impose capacity requirements on all existing public water systems and do so entirely independent of construction permitting.

Specially, under DHEC's drinking water regulations, all applicants for construction permits must demonstrate that their plans meet applicable design and engineering standards and when built will produce or deliver water that meets DHEC drinking water standards. S.C. Ann. Reg. 61-58.1. No one disputes that the Town's system meets these standards.

A capacity analysis, however, is only required when an entirely new public water system is proposed, or when the owner of an existing system seeks to expand its system to serve new customers. *See* S.C. Code Ann. Reg. 61-58.2.B. In such cases, it makes sense to measure the demands of the new customers against the capacity of the assets serving them. But where new customer service is not proposed, a capacity analysis under S.C. Ann. Reg. 61-58.2.B. is not required.

As DHEC properly found a, "although the Town sought a modification of its system, the modification was for adding additions sources and not an expansion of the system. Therefore,

the modification requested by the Town did not trigger the capacity requirements set forth in R.61-58.2(B)." Ex. D, Statement of DHEC Staff Position (Feb. 12, 2016) at 4.

An agency's interpretation of its own regulations is entitled to great deference. *See, e.g., S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control,* 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005) ("Courts defer to the relevant administrative agency's decisions with respect to its own regulations unless there is a compelling reason to differ.").

But this does not mean that DHEC does not enforce capacity standards on existing systems. To the contrary, the regulations impose capacity requirements on existing public water systems which apply at all times, regardless of whether a given public water system is seeking a construction permit or not.

Specifically, the Town operates a groundwater system, and so the capacity standard that applies to it is found in S.C. Ann. Reg. 61-58.7.D(12). That regulation reads as follows:

> The capacity of a public water system which uses groundwater as its only drinking water source, shall be based on all operable wells pumping 16 hours a day or all operable wells minus the largest well pumping 24 hours a day, whichever is less. . . . . If the capacity of the system is exceeded on a consistent basis during the peak water use months, the system shall submit a preliminary engineering report to the Department within ninety (90) days addressing in detail any upgrade necessary to keep up with any growth in demand on the system. . . . . In addition, the Department may elect not to issue any construction permits for new water line construction until the capacity of the system is increased.

S.C. Ann. Reg. 61-58.7.D(12). Later in this reply, the Town will demonstrate that it fully complies with this standard. However, for purposes of the present motion, three points are relevant.

A. First, DHEC's capacity regulation exists independent of the appealed permits.

The capacity requirements under which the Town operates are those of S.C. Ann. Reg. 61-58.7.D(12). These requirements apply completely independently of construction permits such as those under appeal here, as DHEC properly found. Indeed, DHEC went as far as

regulatory policy and practice allows by referencing the requirements of S.C. Ann. Reg. 61-58.7.D(12) in the Final Approvals that it granted in this proceeding. In so doing, DHEC properly noted the concerns about this issue, and signaled that it would enforce the applicable capacity requirements of S.C. Ann. Reg. 61-58.7.D(12) in its ongoing review and regulation of the Town's system. Nothing more was required or possible.

B. Second, multiple avenues remain open to DHEC and A.O. Smith to enforce the Reg. 61-58.7.D(12) capacity requirements.

Multiple avenues exist outside of the appeals of these construction permits to ensure that the capacity requirements of S.C. Ann. Reg. 61-58.7.D(12) are met. Like the other standards that apply to public water systems, the capacity standards under S.C. Ann. Reg. 61-58.7.D(12) are enforced by DHEC as part of its regular Sanitary Surveys of such public water systems. *See* S.C. Code Ann. Reg. 61-58.16(D). Such surveys are regularly scheduled, comprehensive audits and inspections of public water systems to ascertain compliance with all applicable regulatory standards. Therefore, the requirements of S.C. Ann. Reg. 61-58.7.D(12) are subject to active regulatory monitoring and enforcement on an ongoing basis.

In addition, if entities like A.O. Smith have valid capacity concerns, they may ask DHEC staff to inquire into them at any time, or may petition the DHEC Board to order such a review, but not by objecting to a permitting decision that does not involve new customers. In this regard, A.O. Smith has the same rights and standing as any customer to see that that the public water system serving it complies with all applicable DHEC regulations, including S.C. Ann. Reg. 61-58.7.D(12).

Accordingly, the capacity concerns that A.O. Smith asserts the Court should protect by staying the instant permits are adequately protected –indeed are only appropriately protected— by enforcing the provisions of S.C. Ann. Reg. 61-58.7.D(12) as they are meant to be enforced,

which is outside of the context of the appeal of a construction permit. If these capacity standards are in real danger of being violated in the future –and the Town does not believe they will be— then DHEC can be expected to act or pressured to act entirely independently of the permits on appeal here to correct those violations. DHEC can be expected to do so when evidence and analysis shows that capacity violations are clearly threatened, and not as A.O. Smith would have the Court do here, based on speculation and hearsay related to possible future actions by Alligator.

Because there is no legal connection between the capacity issues A.O. Smith complains of and the regulatory structure under which DHEC Construction Permits 28475-WS and 29779-WS were issued, there is no basis for A.O. Smith to claim that justice requires issuance of a stay or supersedeas to protect its interests pending appeal in this matter.

C. Third, S.C. Ann. Reg. 61-58.7.D(12) sets forth a clear process for responding to capacity shortfalls.

Where a capacity shortfall in an existing system is identified, "the system shall submit a preliminary engineering report to the Department within ninety (90) days addressing in detail any upgrade necessary to keep up with any growth in demand on the system." S.C. Ann. Reg. 61-58.7.D(12). This is the appropriate means to address and correct any deficiencies that A.O, Smith might be able to demonstrate to DHEC. The affidavit of Mayor Campolong makes it clear that the Town can correct any deficiency in water supply –and the Town reiterates that the facts show that there is none—by drilling an additional well at a cost on the order of $250,000 to $500,000. *See* Ex. E, Aff. John Campolong, Mayor of Town of McBee (Sept. 8, 2016) at 7. The Town is ready to undertake such a project if it is in fact required. However, as the Mayor's affidavit indicates, A.O. Smith has never approached the Town to discuss capacity concerns or asked to the Town to take any action to correct them. *Id.* at 4. A.O. Smith's refusal to take

reasonable steps to work with the Town to raise and resolve its capacity concerns casts doubt on the sincerity of its capacity concerns.

For these reasons, A. O. Smith cannot establish either that this is an appropriate venue for asserting its capacity concerns, or that it lacks other, more suitable means to protect those concerns. A.O. Smith certainly cannot show that mootness or the possible loss of jurisdiction over the issues in this case require the Court to issue a stay or writ of supersedeas.

II. Existing Litigation between the Town and Alligator, to which A.O. Smith Is a Party, Creates a Risk of Inconsistent Court Orders.

Litigation concerning service rights and obligations is ongoing between the Town and Alligator. A.O. Smith is a party to that litigation. *Town of McBee v. Alligator Water & Sewer Company, Inc., Alligator Rural Water Company, Inc., and A.O. Smith Corporation*, Circuit Court Case No. 2015-CP-13-00379. In that litigation, Alligator asserts that it serves the Town under a contract that will not expire until 2039, and that pursuant to 12 U.S.C § 1926(b), the Town is legally prohibited from turning on its wells. Alligator was successful in convincing the circuit court in Chesterfield County to issue an injunction prohibiting the Town from turning on its wells –which is exactly what A.O. Smith is trying to accomplish here. The appeal of the Chesterfield injunction is before the Court in Appellate Case No. 2016-001604.

Issuing a stay or supersedeas order here would risk inconsistent orders being issued in these parallel but distinct cases if the Town is successful in its appeal. Furthermore, A.O. Smith's entire argument is based on the premise that Alligator can and will disconnect its service from the Town if the Town turns on its wells. This is speculation and hearsay from a nonparty to this case that, if it proved true, would be a breach of contract that would expose Alligator to significant liability. And while the Town does hope that it will ultimately be able to be self-sufficient on its own water system, it does not intend to terminate its contract with Alligator in a

way that would endanger any of its water customers. If A.O. Smith is truly fearful of Alligator's threats, it has every opportunity to request an injunction prohibiting Alligator from disconnecting its system from the Town's system.

III. The Equities Strongly Disfavor A.O. Smith's Motion Due to the Untimeliness of Its Challenge to the Town's Permits.

Equitable concerns are an important consideration in evaluating a request for a stay, and they provide independent grounds, sufficient in themselves, to deny the stay or supersedeas requested here. The Court "must weigh competing interests and maintain an even balance" when evaluating whether to issue an equitable stay. *Merritt Bros. v. Marine Midland Realty Credit Corp.*, 307 S.C. 213, 216, 414 S.E.2d 167, 169 (1992) (quoting *U.S. ex rel. Cent. Bldg. Supply, Inc. v. William F. Wilke, Inc.*, 685 F. Supp. 936, 938 (D. Md. 1988)). Apart from coming to the court with clean hands, there is no higher duty imposed on a party making an appeal to equity than that the party asserts its claims in a forthright and timely way so that others are not prejudiced by its delay and neglect. "It would be contrary to equity and good conscience to enforce . . . rights when a defendant has been led to suppose by the word, silence or conduct of the plaintiff that there was no objection to his operations." *See, e.g.*, *Archambault v. Sprouse*, 215 S.C. 336, 340, 55 S.E.2d 70, 71–72 (1949); *cf. Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 352, 103 S. Ct. 2392, 2397, 76 L. Ed. 2d 628 (1983) ("[l]imitations periods are intended to put defendants on notice of adverse claims and to prevent plaintiffs from sleeping on their rights.").

The permits at issue here were filed and issued in 2012 and 2014. A.O. Smith did not intervene to assert its rights or raise any complaint for approximately two years while those permits were being reviewed by DHEC. A.O. Smith did not intervene or raise any complaint while the Town spent approximately $450,000 in public money to construct the improvements authorized under those permits. By its delay, A.O Smith led the Town to believe, as any prudent

party would, that is could act with confidence on the basis of final and unappealed permits from DHEC. A clearer case of sleeping on rights to the detriment of others can hardly be imagined.

The Administrative Law Court dismissed A.O. Smith Corporation's Request for Contested Case Hearing and rightly found that A.O. Smith failed to timely pursue administrative remedies related to DHEC's issuance of operating permits to the Town of McBee for its wells. *See* Ex. F, *Order Granting Respondent's Motion to Dismiss* (Sept. 9, 2016). It subsequently denied A.O. Smith's Motion for Stay/Supersedeas for this same reason. This Court should once again deny A.O. Smith's efforts to obstruct the Town's efforts to place its wells into operation on purely equitable grounds.

IV. A.O. Smith's Capacity Concerns are Specious.

A.O. Smith first raised the capacity issues it brings before this Court approximately 38 months after the initial construction permit for the well improvements had become final and unappealable, and approximately 18 months after the second permit for the GAC system became final. In challenging these permits, A.O. Smith did not provide DHEC with evidence supporting its contentions that adequate capacity did not exist. A.O, Smith's only contribution to the record before DHEC was a three page letter signed by its attorneys raising issues on which it sought review by the DHEC Board. *See* Ex. C, A.O. Smith Corporation's Request for Final Review (Jan. 27, 2016). Accordingly, the evidence related to the capacity issues is found not in the agency record but in affidavits submitted in the subsequent court proceedings.

In that regard, the Town submitted the affidavits of the system engineer, Joseph McGougan, P.E.; the licensed system operator for the Town's system, Joey Oliver; and the Town's Mayor, John Campolong. *See* Ex. E, Aff. John Campolong, Mayor of Town of McBee

(Sept. 8, 2016); Ex. G, Aff. Joey Oliver (Sept. 9, 2016); Ex. H, Aff. Joseph W. McGougan (Sept. 9, 2016).

Mr. McGougan is a licensed professional engineer specializing in water and wastewater systems with over 33 years of experience. Ex. H, Aff. Joseph W. McGougan (Sept. 9, 2016) at 1. He has served as the Town's engineer since 2008. *Id.* With the Town's permission he participated in A.O. Smith's review of fire protection needs and capabilities that took place in approximately 2012. Ex. E, Aff. John Campolong, Mayor of Town of McBee (Sept. 8, 2016) at 5.

Mr. McGougan testified that he first learned of A.O. Smith's "concerns about the Town's system related to fire protection and future raw water supply" when they were raised "in a meeting A.O. Smith's lawyers held with the Town's lawyers on September 3, 2015." Ex. H, Aff. Joseph W. McGougan (Sept. 9, 2016) at 1. This was several months after Alligator was discovered building a line to A.O. Smith to by-pass the Town and after suit to stop that line had been filed. Mr. McGougan stated:

> A.O. Smith's failure to raise these issues before now is a matter of concern. If there are operational problems that jeopardized the safety of the A.O. Smith plant and the future reliability of our system, we would have expected A.O. Smith's engineers and plant management to have raised them before now.

Id. at 1-2. His testimony is consistent with that of Mayor Campolong:

> The first time that the Town learned that A.O. Smith was dissatisfied with its service from the Town was when we saw that construction crews were in the field installing a line to by-pass the Town's system and connect A. O. Smith's system directly to Alligator's system. We only learned the substance of A.O. Smith's concerns was when A.O. Smith agreed to have a discussion with us, albeit lawyer to lawyer.
>
> A.O. Smith has never communicated with me as mayor, or with any of our utility operations and engineering personnel, about these matters.

Ex. E, Aff. John Campolong, Mayor of Town of McBee (Sept. 8, 2016) at 4. The failure to bring fire suppression or capacity concerns to the Town's attention and give the Town an opportunity to find a resolution to them is cogent evidence indicating that these concerns are not being advanced in candor and sincerity.

In his affidavit, Mr. McGougan provides a full and detailed analysis of the Town's water delivery capacity as it currently stands. He considers both approaches that S.C. Code Ann. Reg. 61-58.7.D(12) provides for measuring capacity requirements and resources.

One such approach is based on "all operable wells pumping 16 hours a day." S.C. Code Ann. Reg. 61-58.7.D(12). The Town's average daily demand is 230,088 gallons per day (gpd). The capacity of its two wells "is 576,288 gpd when pumped for 16 hours a day or 250% of average daily demand." Ex. H, Aff. Joseph W. McGougan (Sept. 9, 2016) at 3. Clearly this is a sufficient capacity.

The other standard is "all operable wells minus the largest well pumping 24 hours a day." S.C. Code Ann. Reg. 61-58.7.D(12). The smaller of the Town's wells, Well No. 2, if pumped 24 hours a day "can supply in excess of 288,000 gpd, or 125% of average daily demand." Ex. H, Aff. Joseph W. McGougan (Sept. 9, 2016) at 3. This too represents sufficient capacity.

In addition, the Town has two water tanks with a combined storage capacity of 325,000 gallons, or more than 140% of the average daily demand. *Id.* Accordingly, if it were to lose its larger well, then with Well No. 2 and storage at 100%, the Town would begin with resources equal to as much as 265% of its average daily demand. This analysis does not take into account the effect of water usage restrictions that could be expected to be imposed if a crisis were to occur on the system and could be expected to reduce demands on the system once they were communicated to customers.

As to fire suppression, the Town maintains two elevated storage tanks. "The larger of these two tanks, Tank No. 2, was specifically engineered and constructed to provide fire flow reserves for A.O. Smith. It is located adjacent to the plant. Well No. 2 was placed adjacent to Tank No. 2 to allow it to efficiently serve A.O. Smith's fire protection reserves." Ex. H, Aff. Joseph W. McGougan (Sept. 9, 2016) at 3. The Town's total storage capacity of 325,000 gallons is divided between 75,000 gallons in Tank No. 1 and 250,000 gallons in Tank No. 2. Ex. I, Aff. Charles K. Parnell (Apr. 5, 2016) at 2.

As Mr. McGougan stated:

> In my engineering opinion, and based on my knowledge of the Town's system, with the two wells in operation, the Town will be fully capable of meeting 100% of all customers' requirements, including fire protection service for A.O. Smith. This is true both under normal operating conditions and in emergency conditions when Well No. 1 is out of service.

Ex. H, Aff. Joseph W. McGougan (Sept. 9, 2016) at 3.

A.O. Smith presented the affidavit of an engineer, Mr. Parnell, who stated that the required fire flow for A.O. Smith is 1,500 gallons per minute, and the plant manager, Mr. Barron, who stated that this required fire flow is necessary for two hours. Ex. I, Aff. Charles K. Parnell (Apr. 5, 2016) at 3; Ex. J, Aff. Jeff Barron (Apr. 5, 2016) at 2. A quick calculation shows that the Town is entirely able to meet these requirements. A flow of 1,500 gallons per minute over two hours requires 180,000 gallons in total supply. Tank No. 2, located immediately adjacent to the plant, represents a capacity of 250,000 gallons. Tank No. 2 alone, if 72% full, is sufficient to meet A.O. Smith's requirements.

In addition to Tank No. 2, Tank No. 1 represents an additional 75,000 gallons of storage capacity that is available on the system. In addition, over a two hour period the Town's two wells represent pumping capacity of approximately 72,000 gallons –approximately 24,000

gallons for Well No. 2 and approximately 48,000 for Well No. 1.[1] So between its tanks and wells, the Town can supply a total of 400,000 gallons of water in two hours, compared to A.O. Smith's fire suppression requirement of 180,000.

These facts may make it easier to understand why issues related to fire suppression were not raised by A.O. Smith until after its attempt to switch suppliers and by-pass the Town's system was discovered and stopped by a lawsuit. There is simply no substance to these concerns.

As a last resort, Mr. Parnell premises his concerns about fire suppression capability based on the failure of Tank No. 2 to be filled at various times during 2015. Ex. I, Aff. Charles K. Parnell (Apr. 5, 2016) at 2. A.O. Smith appears to have forgotten that the pumps and values that supply water and water pressure to the Town were all operated by Alligator during this time.

Mr. McGougan and Mr. Oliver explain what the failure to fill Tank No. 2 means in detail in their affidavits. As Mr. Oliver stated:

> Alligator supplies bulk water service to the Town, and pressurizes the Town's system through its pumping schedule. . . . .
>
> There is more than enough capacity in the Town's lines and the lines to Alligator to allow the tanks to be kept full. Alligator has a 24" line that connects immediately adjacent to the tank and more than enough pumping and line capacity to ensure that the tank is kept full and regularly cycled.
>
> If the tanks were not full, it was because Alligator decided not to fill them. I am not aware of any other possible explanation. Specifically, there has been no operational problem in the Town's system that would explain the failure of the tank to be kept full. This is a matter which the Town will investigate at once.
>
> If in fact there are problems, it is disturbing that those problems have never been reported to the Town. As I said earlier, this is the first report we have had of them.

Ex. G Aff. Joey Oliver (Sept. 9, 2016) at 7. Mr. McGougan stated:

[1] This is calculated by taking the 16 hour pumping capacity for the wells as listed in Mr. McGougan's Affidavit at 3 and convert it to a two hour capacity by dividing by eight..

> Keeping Tank No. 2 filled is the key operating requirement for meeting A.O. Smith's needs for fire suppression capacity. Alligator presently monitors the water level in the . . . tank downtown and is responsible for keeping this tank filled. Due to the proximity of the two tanks and the connection to the Alligator system, if the tank downtown has water, the tank at A.O. Smith has water (the level at the A.O. Smith tank would hydraulically be slightly higher than the level downtown).
>
> I have reviewed Mr. Oliver's affidavit concerning the fire suppression service. What he says is completely accurate. Alligator directly meters and controls the water tanks, their levels, and the level in Tank No. 2. There is no engineering or operating constraint on the Town's system that would prevent Alligator from ensuring that Tank No. 2 is properly filled at all times. It is Alligator's operating responsibility to ensure that there is sufficient water in both tanks. If Tank No. 2 has not been filled properly, Alligator failed in its operating responsibilities.
>
> As I mentioned above, this is the first I have heard of this issue. This is a serious issue and accountability needs to be determined.

Ex. H Aff. Joseph W. McGougan (Sept. 9, 2016) at 1.

Accordingly, the failure to fill Tank No. 2 and to ensure fire suppression capacity for A.O. Smith could only be the result of malfeasance or neglect by Alligator. There is no other explanation. This is yet another reason supporting a decision by the Court to deny the requested stay and allow the Town to operate its own system.

In light of these facts, the Court should look very skeptically at A.O. Smith's claims that its operational requirements and fire suppression requirements will be placed in jeopardy if the Town is allowed to start is pumps and supply its own water. Whatever interests or issues may lie behind these claims, there is no basis to assume that they represent any reason to grant the relief that A.O. Smith requests.

CONCLUSION

For reasons of law and equity, the Court should deny the petition for writ of supersedeas. Alternatively, if it finds that supersedeas is appropriate, it should issue an order requiring A.O. Smith to post a bond of at least $125,000 to cover the Town's costs to be incurred during the pendency of this appeal if it is prohibited from using its own system. *See* Ex. K, Aff. John

Campolong, Mayor of Town of McBee (Oct. 17, 2016) (explaining increased costs to the Town while its water system is suspended); Rule 241(c)(3), SCACR ("The granting of supersedeas or the lifting of the automatic stay under this Rule may be conditioned upon . . . the filing of a bond or undertaking . . . .").

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned Legal Assistant of the law offices of Womble Carlyle Sandridge & Rice, LLP, attorneys for Appellant, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same to the following address(es):

PLEADING: TOWN OF MCBEE'S RESPONSE TO PETITION FOR WRIT OF SUPERSEDEAS

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