

STATE OF SOUTH CAROLINA  
In the Supreme Court

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AUG 24 2017

APPEAL FROM THE PUBLIC SERVICE COMMISSION

S.C. SUPREME COURT

Appellate Case No. 2016-000652

Daufuskie Island Utility Company, Inc.,

Appellant,

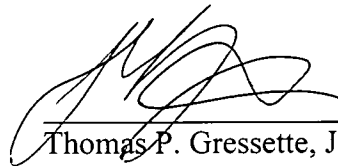
v.

South Carolina Office of Regulatory Staff,  
Haig Point Club and Community Association, Inc.,  
Melrose Property Owner's Association, Inc.,  
Bloody Point Property Owner's Association, and  
Beach Field Properties, LLC,

Respondents.

MOTION FOR COSTS

Pursuant to Rule 222 of the South Carolina Appellate Court Rules, the Appellant, Daufuskie Island Utility Company, Inc., hereby moves this honorable Court for an order granting attorney's fees and costs against Respondents as set forth in the attached Form 17, Itemized Statement of Costs.



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Attorneys for Appellant

Daufuskie Island Utility Company, Inc.  
Charleston, South Carolina

August 24, 2017

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Appellant,

v.

South Carolina Office of Regulatory Staff,  
Haig Point Club and Community Association, Inc.,  
Melrose Property Owner's Association, Inc.,  
Bloody Point Property Owner's Association, and  
Beach Field Properties, LLC,


Respondents.

ITEMIZED STATEMENT OF COSTS

The Supreme Court is requested to tax the following costs against the Respondents:

| TAXABLE COSTS   | PAGES  | RATE                       | REQUESTED    | ALLOWED |
|---|--------|----------------------------|--------------|---------|
| Filing Fee Paid Under Rule 203(d), SCACR                              |        |                            | \$ 100.00    |         |
| Cost of Court Reporter's Transcript                                   |        |                            | \$ 1,318.50  |         |
| Cost for printing and binding for the Record on Appeal under Rule 209 | 31,563 | .12 per page (with covers) | \$ 3,905.65  |         |
| Cost for printing and binding Final Brief and Final Reply Brief       | 82     | 4.05                       | \$ 332.22    |         |
| Attorney's Fee Provided by Rule 222(b), SCACR                         |        |                            | \$ 1,000.00  |         |
| Bond Premiums per S.C. Code Ann. § 58-5-240(D) *                      |        |                            | \$ 53,726.00 |         |
| TOTAL   |        |                            | \$ 60,382.37 |         |

I, Thomas P. Gressette, Jr., do swear that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was mailed to opposing counsel.

  
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Attorneys for Appellant  
Daufuskie Island Utility Company, Inc.

Subscribed and sworn to before me this

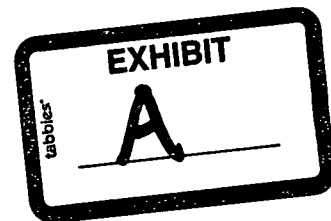
24 day of August, 2017.



Notary Public for South Carolina

My Commission Expires: 12/3/20

\* Copies of the Commission Orders related to the Bonds are attached as Exhibit A (Order 2016-156, Order 2017-402, and 2017-402(A)).



BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2014-346-WS - ORDER NO. 2016-156

MARCH 1, 2016

IN RE: Application of Daufuskie Island Utility            ) ORDER APPROVING  
Company, Incorporated for Approval of an            ) APPEALS BOND  
Increase for Water and Sewer Rates, Terms        )  
and Conditions    )

**INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Petition for Approval of Bond Pursuant to S.C. Code Ann. Section 58-5-240 (“the Petition”) filed by Daufuskie Island Utility Company, Inc. (“Daufuskie Island”, “the Company” or “the utility”). Having examined the utility’s Petition and supporting materials, as well as the filings submitted by the other parties, and having determined that the surety selected by the utility and that a proposed amount of the bond to be discussed *infra* are in accordance with the requirements of the applicable statute, the Commission is required to approve the bond.. Under South Carolina law, the utility may, notwithstanding this Commission’s order partially rejecting its petition for rate relief, implement the proposed rate increases during the pendency of its appeal if it posts sufficient bond in accordance with S.C. Code Ann. § 58-5-240(D). Pursuant to this subsection, if our order denying in part the proposed rate relief is upheld on appeal, the utility will be required to refund the additional funds collected during the pendency of appeal with interest accrued at the rate of twelve percent per annum.

### **SUMMARY OF THE UNDERLYING RATE CASE**

On June 11, 2015, Daufuskie Island filed an Application seeking approval of a new schedule of rates and charges for water and sewer services. The Application sought an increase in annual service revenues of \$1,182,301 for combined operations. The Commission held an evening public hearing on September 15, 2015, and an evidentiary hearing on October 28, 2015. A joint proposed order was filed by the Haig Point Club and Community Association, Inc., Melrose Property Owner's Association, Inc., Bloody Point Property Owner's Association (collectively, the POAs) and the Office of Regulatory Staff ("ORS"). The utility also filed a proposed order. On December 8, 2015, in Order No. 2015-846, the Commission approved additional operating revenues of \$462,798. Daufuskie Island filed a Petition for Reconsideration and/or Rehearing with this Commission. Various parties filed responses to this Petition. On January 13, 2016, this Commission entered a Directive denying the utility's Petition. On February 25, 2016, this Commission issued Order No. 2016-50, which implemented the terms of the January 13, 2016 Directive.

### **TERMS AND CONDITIONS OF THE PROPOSED BOND**

Daufuskie Island requests that the Commission approve a bond pursuant to S.C. Code Ann. Section 58-5-240(D) in the amount of \$700,000, pending any subsequent appeal. According to the utility, the \$700,000 figure represents the additional annual revenue which Daufuskie Island would be entitled to earn if the Commission had approved the Application in full. Daufuskie Island submits that, based upon the additional amount of revenues which would be generated had the Commission approved the requested

increase, a surety bond in the amount proposed is sufficient.

Subsequent to the filing of the utility's Petition, other parties in the case filed responses, proposing varying amounts for the bond. The Property Owners Associations of Haig Point, Melrose, and Bloody Point jointly assert that a bond in the amount of two years collections, plus 12% interest amounting to \$1,568,000 constitutes a more reasonable amount for the bond. The ORS proposes one and one-half years' worth of collections and interest, for a total bond amount of \$1,218,141.27. The utility filed replies to both parties' submissions, noting, *inter alia*, that the increase under bond to proposed utility rates would not begin until the second quarter of 2016, i.e. April 1, 2016, with bills mailed after July 1, 2016. Daufuskie Island noted that it would take until May 2017 for customers to have paid a full year of the Company-requested increased revenue.

Daufuskie Island later modified its Petition somewhat to propose that the ORS calculation for one year of collections plus interest should be used for the bond figure. Although the utility states that ORS calculated this amount to be \$731,346, the actual ORS calculation for a year's collection plus interest was \$787,867. In addition, the Company noted that if the Commission wanted to place additional conditions on the bond, that it would consent to either increase the bond prior to the July 1, 2017 billing, or otherwise reduce rates to the level approved by the Commission's original rate order of December 8, 2015, also to be done prior to the July 1, 2017 billings.

#### **THE APPLICABLE STATUTE**

In Section 1 of Act No. 138 of 1983, the South Carolina General Assembly substantially rewrote Section 58-5-240 of the South Carolina Code. The amendment to

Section 58-5-240 provided in part that if the Commission rejects a utility's application for rate relief, the utility may nevertheless choose to impose a rate increase while the utility seeks reconsideration by the Commission of the matter and/or appeal of the Commission's denial of rate relief before the Supreme Court of South Carolina, so long as the utility provides an appropriate surety bond in an amount sufficient to ensure repayment of any overcollection, with interest to be assessed at twelve percent per annum. The Commission is without discretion to prohibit the utility from imposing its proposed rates under an appropriate bond. The statute, as amended by the General Assembly in 1983, allows the utility to impose its proposed rates under bond as a matter of right where the utility demonstrates that the surety and the bond are sufficient to ensure that the ratepayers will be reimbursed with interest for overcharges in the event the utility's appeal is ultimately unsuccessful.

#### **ORDER**

Based on the information presented to us, the proposed surety and the bond in the amount of \$787,867, effective July 1, 2016, for a period of one year are appropriate and are approved. With the additional condition approved by us, *infra*, we believe that the public is being properly protected while this matter is on appeal.


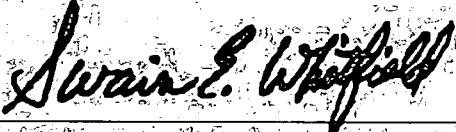
As an additional condition of the bond, the Company shall file a status report on or before May 1, 2017, to advise this Commission as to the status of the Company's appeal of this Commission's Orders. If the utility expects the appeals process to extend beyond July 1, 2017 at the time of the status report, the utility shall also file a proposal as to how it believes the bonding period should be extended. Daufuskie Island shall serve the status

report, and, if necessary, the proposal for bond continuation on the parties, who will have until May 15, 2017, to file comments with this Commission on the status report and/or proposal for bond continuation.

Should the original rates proposed by the Company be deemed excessive by the Court, then refunds plus interest must be made to the Company's customers in a manner consistent with the provisions of S.C. Code Ann. Section 58-5-240, and in a manner approved by this Commission. If the Company's appeal is unsuccessful, it shall submit a plan for refunds to the Commission, with copies to the parties within ten (10) days of receipt of the Court Order notifying them of loss of the appeal. The other parties shall then have ten (10) days from receipt of the Company's proposed methodology to comment.

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

BY ORDER OF THE COMMISSION:

|  |   |
|--|---|
|  | <br>Nikiya Hall, Chairman |
| ATTEST:  |   |
| <br>Swain E. Whitfield, Vice Chairman |   |
| (SEAL)   |   |

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2014-346-WS - ORDER NO. 2017-402

JUNE 28, 2017

|  |   |                    |
|--|---|--------------------|
| IN RE: Application of Daufuskie Island Utility | ) | ORDER APPROVING    |
| Company, Inc. for Approval of an Increase      | ) | JOINT REQUEST FOR  |
| for Water and Sewer Rates, Terms and           | ) | BOND DURING APPEAL |
| Conditions                                     | ) |                    |

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the “Joint Request As To Appeals Bond” (“Joint Request”) of Daufuskie Island Utility Company, Inc. and a majority of the Docket’s intervenors for a renewed performance bond while an appeal of its last rate case is pending before the South Carolina Supreme Court.<sup>1</sup> The current bond covering the appeal period was approved by Commission Order No. 2016-156 (March 1, 2016). As the Joint Request states, the utility secured this appeal bond, permitted by S.C. Code Ann. § 58-5-240(D), to charge the rates it would otherwise be entitled to collect if the Commission had not partially denied its last application for a rate increase.

Under Order No. 2016-156, the appeal bond expires on June 30, 2017, and to meet the terms of that Order, the utility and intervenors have agreed to the following proposal:

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<sup>1</sup> The Docket’s intervenors consenting to the Joint Request are Beach Field Properties, LLC, Bloody Point Property Owner's Association, Haig Point Club and Community Association, Inc., and Melrose Property Owner's Association, Inc. According to the Joint Request, these entities and Daufuskie Island Utility Company shared the proposal with the Office of Regulatory Staff, an automatic party of record pursuant to S.C. Code Ann. § 58-4-10(B).

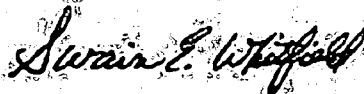
1. If the Supreme Court does not issue a decision in the pending appeal on or before June 28, 2017, the utility shall:
  - a. Renew the existing bond to continue in effect for an additional period of six months to expire on January 1, 2018, in order to continue coverage for the period July 1, 2016 to June 30, 2017;
  - b. Obtain an additional surety bond in the amount of \$415,728.00 to be in effect for a period of six months beginning on July 1, 2017 and expiring on January 1, 2018. The Additional Bond amount includes:
    - (1) \$21,794.00, representing 6 months' additional interest at 12% annually on the additional revenue the utility collected between July 1, 2016 and June 30, 2017 by virtue of implementing the Requested Rates; plus
    - (2) \$393,934.00, representing the difference between six months of billings (to be collected during the period beginning July 1, 2017 and ending on January 1, 2018) at the utility's requested rates and the Commission approved rates currently on appeal, plus 12% annual interest pursuant to S.C. Code Ann. § 58-5-240(D).
2. On or before June 30, 2017, the utility shall file with the Commission and serve on the parties copies of the renewed/extended existing bond and the additional bond.
3. If the Supreme Court does not issue a decision in the pending appeal on or before November 1, 2017, the utility shall then file a status report on or before November 15, 2017, to advise this Commission as to the status of the Company's appeal of the Commission's Orders. Consistent with Order 2016-156, the utility shall include its proposal for extending the existing bond and the additional bond (or otherwise providing appropriate coverage on January 1, 2018 and beyond).

IT IS THEREFORE ORDERED:

After reviewing this matter, we find that the Joint Request for the appeal bond is in the public interest and therefore approved.

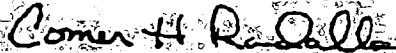
This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Swain E. Whitfield, Chairman

ATTEST:



Comer H. Randall, Vice Chairman

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2014-346-WS - ORDER NO. 2017-402(A)

JUNE 30, 2017

|  |   |                  |
|--|---|------------------|
| IN RE: Application of Daufuskie Island Utility Company, Inc. for Approval of an Increase for Water and Sewer Rates, Terms and Conditions | ) | AMENDED ORDER    |
|  | ) | APPROVING JOINT  |
|  | ) | REQUEST FOR BOND |
|  | ) | DURING APPEAL    |

This Order is amended to correct footnote 1 which lists the intervenors in the above captioned docket that are signatories consenting to Daufuskie Island Utility Company, Inc.'s request for an appeals bond as explained below. Footnote 1 of the original order mistakenly listed intervenor Beach Field Properties, LLC as one of the consenting signatories. According to counsel for Beach Field Properties, it is not a party to the appeal currently pending before the South Carolina Supreme Court and did not participate or consent in the matter of the appeals bond. Beach Field Properties' counsel further states that it takes no position regarding the appeals bond. Accordingly, Beach Field Properties, LLC has been removed from the list in footnote 1. The following Order is otherwise the same in content as Order No. 2017-402, issued on June 28, 2017.

This matter comes before the Public Service Commission of South Carolina ("Commission") on the "Joint Request As To Appeals Bond" ("Joint Request") of Daufuskie Island Utility Company, Inc. and a majority of the Docket's intervenors for a renewed performance bond while an appeal of its last rate case is pending before the South

Carolina Supreme Court.<sup>1</sup> The current bond covering the appeal period was approved by Commission Order No. 2016-156 (March 1, 2016). As the Joint Request states, the utility secured this appeal bond, permitted by S.C. Code Ann. § 58-5-240(D), to charge the rates it would otherwise be entitled to collect if the Commission had not partially denied its last application for a rate increase.

Under Order No. 2016-156, the appeal bond expires on June 30, 2017, and to meet the terms of that Order, the utility and intervenors have agreed to the following proposal:

1. If the Supreme Court does not issue a decision in the pending appeal on or before June 28, 2017, the utility shall:
  - a. Renew the existing bond to continue in effect for an additional period of six months to expire on January 1, 2018, in order to continue coverage for the period July 1, 2016 to June 30, 2017;
  - b. Obtain an additional surety bond in the amount of \$415,728.00 to be in effect for a period of six months beginning on July 1, 2017 and expiring on January 1, 2018. The Additional Bond amount includes:
    - (1) \$21,794.00, representing 6 months' additional interest at 12% annually on the additional revenue the utility collected between July 1, 2016 and June 30, 2017 by virtue of implementing the Requested Rates; plus
    - (2) \$393,934.00, representing the difference between six months of billings (to be collected during the period beginning July 1, 2017 and ending on January 1, 2018) at the utility's requested rates and the

---

<sup>1</sup> The Docket's intervenors consenting to the Joint Request are Bloody Point Property Owner's Association, Haig Point Club and Community Association, Inc., and Melrose Property Owner's Association, Inc. According to the Joint Request, these entities and Daufuskie Island Utility Company shared the proposal with the Office of Regulatory Staff, an automatic party of record pursuant to S.C. Code Ann. § 58-4-10(B).

Commission approved rates currently on appeal, plus 12% annual interest pursuant to S.C. Code Ann. § 58-5-240(D).


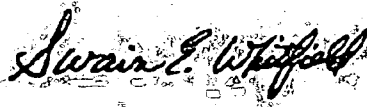
2. On or before June 30, 2017, the utility shall file with the Commission and serve on the parties copies of the renewed/extended existing bond and the additional bond.
3. If the Supreme Court does not issue a decision in the pending appeal on or before November 1, 2017, the utility shall then file a status report on or before November 15, 2017, to advise this Commission as to the status of the Company's appeal of the Commission's Orders. Consistent with Order 2016-156, the utility shall include its proposal for extending the existing bond and the additional bond (or otherwise providing appropriate coverage on January 1, 2018 and beyond).

IT IS THEREFORE ORDERED:

After reviewing this matter, we find that the Joint Request for the appeal bond is in the public interest and therefore approved.

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

BY ORDER OF THE COMMISSION:

|   |  |
|---|--|
| <p>ATTEST:</p> <p><br/>Comer H. Randall, Vice Chairman</p> | <p><br/>Swain E. Whitfield, Chairman</p> |
|---|--|

STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION

Appellate Case No. 2016-000652

Daufuskie Island Utility Company, Inc.,

Appellant,

v.

South Carolina Office of Regulatory Staff,  
Haig Point Club and Community Association, Inc.,  
Melrose Property Owners' Association, Inc.,  
Bloody Point Property Owners' Association, and  
Beach Field Properties, LLC,

Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on this 24<sup>th</sup> day of August, 2017, a copy of Appellant's Motions For Costs was served on counsel of record, by placing same in the United States Mail, first class postage prepaid as follows:

Shannon Bowyer Hudon  
Andrew M. Bateman  
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1401 Main Street, Ste 900  
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T: (803) 737-8440  
Attorneys for ORS

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AUG 24 2017

S.C. SUPREME COURT

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T: (803) 254-4190  
Attorneys for Respondents.

  
Nancy Jane Dennis