

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM THE PUBLIC SERVICE COMMISSION SEP 13 2017
OF SOUTH CAROLINA

Appellate Case No. 2016-000652

S.C. SUPREME COURT

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., and
Bloody Point Property Owner's Association,

Respondents.

**SOUTH CAROLINA OFFICE OF REGULATORY STAFF'S
RETURN TO THE MOTION FOR COSTS OF DAUFUSKIE ISLAND UTILITY
COMPANY, INC.**

Pursuant to Rules 222 and 240, SCACR, Respondent, South Carolina Office of Regulatory Staff ("ORS"), to the above captioned appeal hereby responds to Daufuskie Island Utility Company, Inc.'s ("Appellant") Motion for Costs dated August 24, 2017, and received by ORS on August 28, 2017. By its Motion, Appellant seeks an order from the Court granting attorney's fees and costs against Respondents as set forth in Appellant's Itemized Statement of Costs. Respondent ORS contests only the costs sought by Appellant labeled on its Itemized Statement of Costs, Bond Premiums per S.C. Code Ann. § 58-5-240(D) ("Bond Premiums"). Respondent ORS asserts that bond premiums are not yet appropriately recoverable in this case and are more appropriately recovered pursuant to Public Service Commission of South Carolina ("Commission") Order. In

the alternative, Respondent contests the Bond Premium amount for which Appellant seeks recovery.

Bond premiums that correspond to Appellant's bond filed with the Commission¹ are not yet recoverable. Pursuant to S.C. Code Ann. § 58-5-240(D), "[i]f the Commission rules and issues its order ... and the utility shall appeal from the order ... the utility may put the rates requested in its schedule into effect under bond only during the appeal and until final disposition of the case." Additionally, that statute requires the bond obtained by Appellant to be conditioned upon a refund to entitled parties in the event the rates put into effect under bond are greater than rates dictated in the Commission's final order. It is clear that the statute contemplates the final disposition of a case as the point in time when bonds and associated costs are distributed to the parties owed such costs. This case has not yet been finally and fully disposed because the Court remanded it to the Commission and granted the parties the opportunity to present additional evidence in a new hearing. Therefore, the bond obtained by Appellant continues to remain in effect. Pursuant to the statute under which Appellant filed its bond, it is only when bonds are no longer in force and the case has reached final disposition that a party may appropriately recover bond premiums.

Respondent ORS asserts bond premiums are more appropriately recoverable pursuant to an Order of the Commission on remand because the bond was obtained and maintained pursuant to S.C. Code Ann. § 58-5-240(D). According to S.C. Code Ann. § 58-5-240(D),

"... the utility may put the rates requested in its schedule into effect under bond Such bond must be in a reasonable amount approved by the Commission, with sureties approved by the Commission, conditioned upon the refund, in a manner to be prescribed by order of the Commission, ... or there may be substituted for the bond other arrangements satisfactory to the Commission In all cases in which a refund is due, the Commission shall order a total refund of the

¹See Commission Order Nos. 2016-156 and 2017-402, cited by Appellant in its Motion for Costs.

difference between the amount collected under bond and the amount finally approved.”

For comparison purposes, one other bonding statute located in Title 58, Chapter 5, requires that the bond be filed with the clerk of court. *See* S.C. Code Ann. § 58-5-340 (2015). That statute vests with the court certain responsibilities that are otherwise vested with the Commission when a party files a bond under S.C. Code Ann. § 58-5-240(D). Appellant chose to file its bond under S.C. Code Ann. § 58-5-240(D), which places much of the responsibilities regarding the bond and any associated refunds with the Commission. Because S.C. Code § 58-5-240 vests with the Commission the power to condition the manner in which any refund due on the bond would occur, it follows that conversely the Commission would also have the authority to issue the order regarding recovery of bond premiums. Appellant’s bond was filed and maintained with the Commission pursuant to S.C. Code Ann. § 58-5-240(D); therefore, Appellant’s bond, and the associated bond premiums, are more appropriately recovered by Appellant pursuant to Commission Order.

In the alternative, Respondent ORS disputes the amount of Bond Premiums, \$53,726.00, for which Appellant seeks recovery because awarding the Bond Premium amount requested by Appellant presumes that on remand Appellant will receive 100% of the revenue requested in its original application filed with the Commission.² South Carolina Appellate Court Rule 222 vests with the Court the discretion to determine costs properly taxed against a party that appeared before it. *See* Rule 222(a) SCACR. South Carolina Code § 58-5-240(D) states that the Commission prescribes the manner in which a refund is issued by a utility that has put rates into effect under bond if the utility’s final Commission ordered rates fall short of the bonded rate. Due to the parties’

² Bond Premiums requested by Appellant correspond to the bond that allows Appellant to earn rates requested in its Application for adjustment of rates for Appellant’s water and sewer services filed with the Commission on June 9, 2015, which increase Appellant’s revenue by 108.9% over the rates then in effect.

ability to present additional evidence to the Commission on remand, the rates ultimately ordered by the Commission, to which recoverable bond premiums should correspond, will likely vary from those initially requested in the Application. To allow Appellant recovery of the Bond Premiums currently being sought creates the potential for Appellant to recover excess bond premium expenses because a final Commission order may set rates that vary from those placed under bond. For this reason, ORS disputes the Bond Premium amount Appellant asserts should be taxed against Respondents.

Bond premiums sought by Appellant are not yet appropriately recoverable and are more appropriately recovered pursuant to Commission Order. In the alternative, Respondent ORS disputes the Bond Premium amount for which Appellant seeks recovery. For these reasons, Respondent ORS respectfully urges the Court to deny the Bond Premiums, or in the alternative, the amount of Bond Premiums, sought by Appellant in its Motion for Costs.



Shannon Bowyer Hudson, Esquire
Andrew M. Bateman, Esquire
South Carolina Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
(803) 737-0889 (telephone)
(803) 737-8440 (telephone)
(803) 737-0895 (facsimile)
shudson@regstaff.sc.gov
abateman@regstaff.sc.gov

September 13, 2017
Columbia, South Carolina

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Beach Field Properties, LLC,

Respondents

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of **the Return to Motion for Costs of Daufuskie Island Utility Company, Inc.** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Daufuskie Island Utility Company, Inc.:

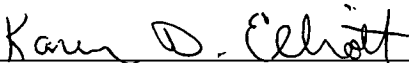
Thomas P. Gressette, Jr., Esquire
G. Trenholm Walker, Esquire
Pratt - Thomas Walker, P.A.
Post Office Drawer 22247
Charleston, SC 29413

Beach Field Properties, LLC:

Margaret M. Fox, Esquire
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, SC 29211

Haig Point Club and Community Association, Inc.:

John J. Pringle, Jr., Esquire
Adams and Reese, LLP
1501 Main St., 5th Fl.
Columbia, SC 29201



Karen D. Elliott

September 13, 2017
Columbia, South Carolina