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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION

Appellate Case No. 2018-001107

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.

INITIAL BRIEF OF APPELLANT

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II. Whether this Court should reverse or modify the Public Service Commission Order on Rehearing because the Order's findings and conclusions excluding from rate base $699,631 of used and useful Utility Plant in Service were legally erroneous, arbitrary, unsupported by substantial evidence, and prejudiced substantial rights of DIUC.

STATEMENT OF THE CASE

On June 9, 2015, Daufuskie Island Utility Company, Inc., the sole provider of water and sewer service to a service area that encompasses Daufuskie Island, Beaufort County, South Carolina ("DIUC"), applied to the Public Service Commission (the "Commission" or "PSC"), for approval of a new schedule of rates and charges for water and sewer service ("the Application"). (R.p. 1416). The Application was filed pursuant to S.C. Code Ann. Section 58-5-240 and 10 S.C. Code Ann. Regs. 103-712.4.A and 103.512.4.A.

On July 23, 2015, the Haig Point Club and Community Association, Inc., Melrose Property Owner's Association, Inc., and Bloody Point Property Owner's Association, (collectively "Intervenors") filed a Petition to Intervene. (R.p.1410) On July 27, 2015, a Petition to Intervene was filed by Beach Field Properties, LLC ("Beach Field"), an owner of property within the DIUC service area. (R.p.1408) Both petitions were granted. (R.pp.66-67) The South Carolina Office of Regulatory Staff ("ORS") also appeared via counsel.

On October 28, 2015, the Commission conducted its hearing on DIUC's Application. On December 8, 2015, the Commissions entered an Order on the Application, but did not grant the relief requested by DIUC. Instead, the Commission adopted a "Settlement Agreement" proposed

by the Office of Regulatory Staff and Intervenors. DIUC filed a timely Petition for Reconsideration and/or Rehearing on December 21, 2015. (R.pp.192-216) By Order No. 2016-50 dated February 25, 2016, the Commission denied the Petition for Reconsideration and/or Rehearing. (R.pp.6-27) On March 22, 2016, DIUC served its Notice of Appeal of Order No. 2015-846 and Order No. 2016-50. (R.pp.87-146) The Office of the Clerk of the Supreme Court assigned the matter Appellate Case No. 2016-000652.

The Appeal was briefed and the parties presented oral argument on December 14, 2016. On July 26, 2017, the Court issued its Opinion reversing the Commission decision and remanding the matter for a new hearing. Daufuskie Island Util. Co., Inc. v. S.C. Off. of Reg. Staff, 420 S.C. 305, 803 S.E.2d 280 (2017). In its Opinion, the Supreme Court ruled Order 2015-846 "contained multiple adjustments which were entirely unsupported by the evidence presented to the Commission." Opinion at 316, 286. Accordingly, the Court reversed and remanded the matter "for a new hearing as to all issues." *Id.* The issues referred to by the Court are Commission Order 2015-846's adjustments to Property Taxes, Plant In Service, Bad Debts, Management Fees, and Rate Case Expenses. *Id.*

After remand to the Commission, the parties engaged in additional discovery then submitted prefiled rehearing testimony of their witnesses. The rehearing was convened on December 6, 2017. On December 20, 2017, the Commission issued a one-page order approving a $950,166 rate increase, indicating that a full order would be issued at a subsequent time. (12-20-17 Directive) On January 31, 2018, the Commission entered its decision, docketed as Order No. 2018-68 ("Order on Rehearing"). (Order 2018-68) DIUC filed a timely Petition for Reconsideration and/or Rehearing on February 20, 2018, asserting that while the Order on Rehearing addressed many of the complex issues presented in this case and significantly reduced

the outstanding questions, the Commission erred in its downward adjustment to DIUC's proposed Rate Case Expenses, Rate Base/Utility Plant In Service, and Accumulated Depreciation/Depreciation Expense. (Pet. Recon.) By Order No. 2018-346 dated May 16, 2018, the Commission denied DIUC's Petition for Reconsideration and/or Rehearing. (Order 2018-346)

On June 13, 2018, DIUC served its Notice of Appeal of Order No. 2018-68 and Order No. 2018-346 (collectively referred to herein as "Order 2018-68" and "Order on Rehearing"). (Notice Appeal) The Office of the Clerk of the Supreme Court assigned this second appeal (the instant Appeal) Appellate Case No. 2018-001107.

As set forth herein, the issues raised by this Appeal are the Commission's decisions on rehearing related to whether the reliable, probative evidence in the record justifies the Commission's rejection of the evidence DIUC presented regarding its Rate Case Expenses and Rate Base/Utility Plant In Service. This Appeal seeks reversal of the Commission's Order on Rehearing because the Commission erred in excluding $542,978 from DIUC's Rate Case Expenses and the Commission erred in removing $699,631 from DIUC's Rate Base/Utility Plant In Service.[1]

STATEMENT OF FACTS

Classified as a Class B water and wastewater utility under the Uniform System of Accounts published by the National Association of Regulatory Utility Commissioners ("NARUC"), DIUC provides water and sewer service to Daufuskie Island in Beaufort County, South Carolina. (R.p.31).

On June 11, 2015, DIUC filed an application to the PSC for approval of a new schedule of

[1] Although the Commission erred in calculating DIUC's depreciation and depreciation expenses, DIUC believes that correction of the depreciation issue can be addressed in a future rate application and, therefore, it is not included for the Court's consideration in the instant Appeal. *See* (Pet. Recon at 9)

rates and charges for water and sewer service ("the Application"). (Appl.) DIUC's Application included the following reasons for the requested increase in rates:

- DIUC's "current rates do not enable the Company to cover its cost of providing service and earn a fair return on its investment."
- The Company has not previously applied for rate relief since 2010.
- The proposed rates developed in the Application "are essential for the Daufuskie Island Utility Company to continue to provide its customers with adequate water and wastewater service."

(Appl. p.2) The Application also reported that DIUC had not applied for rate relief since 2010 and that the proposed rates are essential for the company to continue to provide its customers adequate water and sewer service. (Appl p.2)

Upon receipt of the Application, the Commission's Clerk's Office instructed DIUC to publish a prepared Notice of Filing, one time, in newspapers of general circulation in the area affected by DIUC's Application. The Notice of Filing described the nature of the Application and advised all interested persons desiring to participate in the scheduled proceedings of the manner and time in which to file appropriate pleadings for inclusion in the proceedings as a party of record. (Notice of Filing) The Commission also instructed DIUC to notify each affected customer. DIUC filed Affidavits of Publication and Mailing demonstrating that the Notice of Filing had been duly published and provided to all customers. (Affidavit of Mailing and Notice)

On July 23, 2015, the Haig Point Club and Community Association, Inc., Melrose Property Owner's Association, Inc., and Bloody Point Property Owner's Association, (collectively "Intervenors") filed a Petition to Intervene. (Pet. Intervene) On July 27, 2015, a Petition to Intervene was filed by Beach Field Properties, LLC ("Beach Field"), an owner of property within the DIUC service area. (Beach Pet. Intervene) Both petitions were granted. (Order 2015-585)

Pursuant to Order No. 2015-586, a public hearing was set and noticed by the Commission,

and the Company provided an affidavit certifying that it had provided notice of the date, time and location of the local public hearing via publication in The Beaufort Gazette and The Island Packet. (Order 2015-846 at 2-3) On September 15, 2015, the Commission held a night hearing beginning at 6:00 pm at the Haig Point Club Clubhouse, 130 Clubhouse Lane, Daufuskie Island, South Carolina. (Id. at 2, FN#1)

A Commission hearing on the Application was scheduled for October 28, 2015. Prior to the hearing DIUC, ORS, and the Intervenors filed pre-filed testimony. Beach Field did not file any testimony. On the afternoon of October 27, 2015, the day before the scheduled Commission hearing, the Intervenors filed a document captioned "Settlement Agreement." (Corr. Pringle) The only parties to the document submitted as a "Settlement Agreement" are ORS and the Intervenors. DIUC did not know about, did not consent to, and was not a party to the purported "Settlement Agreement." (Order, R.p.1351 and Pringle p.314, lines 15-18).

On October 28, 2015, the Commission, with Chairman Nikiya Hall presiding, convened a hearing on DIUC's Application. After the hearing was called to order by Chairman Hall, counsel for the Intervenors asked to present a "preliminary matter" at which time he informed the Commission that the Intervenors and ORS had filed with the Commission a "settlement agreement." (Tr. at 40)

The Settlement Agreement included the agreement between ORS and Intervenors on multiple adjustments to DIUC's Application and specified what rate of return and operating margin ORS and the Intervenors had predetermined DIUC should be permitted. DIUC was not a party to the Settlement Agreement and the Agreement recommended that the Commission permit only thirty-nine percent of the revenue increase sought by DIUC's Application. See Daufuskie, 420 S.C. at 313, 803 S.E.2d at 284. In fact, the Settlement Agreement endorsed an even lower revenue

number than ORS originally proposed in response to the Application.

Prior to any testimony, DIUC objected to the admission of the Settlement Agreement, but the Commission overruled the objection and the hearing proceeded with testimony presented by DIUC, ORS, and the Intervenors.

On December 8, 2015, the Commission entered its decision, docketed as Order No. 2015-846, accepting the Settlement Agreement and making findings and conclusions that implemented the Settlement Agreement's 61% reduction to the increase sought by the Application. (App. 1) DIUC filed a timely Petition for Reconsideration and/or Rehearing on December 21, 2015. (Pet Recon) By Order No. 2016-50 dated February 25, 2016, the Commission denied the Petition for Reconsideration and/or Rehearing. (R.pp.6-27) On March 22, 2016, DIUC served its Notice of Appeal of Order No. 2015-846 and Order No. 2016-50 (collectively referred to herein as "Order 2015-846"). (Notice App.)

In its appeal DIUC asserted that by adopting the adjustments in the Settlement Agreement Order 2015-846 violated Commission Settlement Policies and Procedures because DIUC was not involved in the Settlement Agreement. DIUC also appealed the Commission's findings as to Property Taxes, Management Fees, Rate Case Expenses, Bad Debt, and Rate Base arguing the findings were not based upon the reliable, probative, and substantial evidence in the record. (App's Brief pp.27 to 53)

The Supreme Court heard oral argument on the appeal on December 14, 2016, and on July 26, 2017, issued its Opinion. Daufuskie, 420 S.C. at 313, 803 S.E.2d at 284. The Court ruled for DIUC, reversed Commission Order 2015-846, and found:

> [T]he Settlement Agreement did not resolve *any* issues between the parties, but rather was merely an agreement between the POAs and ORS not to object to one another's pre-filed testimony, and to accept ORS's recommendations and adjustments should the Commission adopt them. Furthermore, the Settlement

> Agreement contained multiple adjustments which were entirely unsupported by the evidence presented to the Commission. Therefore, we hold the Commission erred in approving and adopting the Settlement Agreement and DIUC is entitled to a new hearing in which the parties may present any additional evidence.

Daufuskie, 420 S.C. at 315, 803 S.E.2d at 286.

The Court also explained, "While we are reversing and remanding for a new hearing as to all issues, in order to provide guidance to the Commission on remand, we address three allegations of error raised by DIUC in this appeal." Id. The three adjustments addressed by the Court and its guidance concluded that:

1. The substantial evidence in the record supported inclusion of the Elevated Tank Site in Rate Base/Utility Plant In Service;

2. DIUC is entitled to rates sufficient to cover the tax obligations DIUC presented in its Application; and

3. The Commission's decision to allow a bad debt expense of only $30,852 was unsupported by the evidence in the record.

Although the Opinion did not individually analyze DIUC's other appellate issues regarding the Commission's decision disallowing $699,631 additional items from DIUC's rate base, reduction of the amount of management fees, and rejection of certain rate case expenses incurred by DIUC, the Court did state that in addition the three adjustments discussed specifically, Order 2015-846 "contained multiple adjustments which were entirely unsupported by the evidence presented to the Commission." Daufuskie, 420 S.C. at 315, 803 S.E.2d at 286. Based on these findings, the Court reversed and remanded the matter "for a new hearing as to all issues."[2] (Id.

Following remand from this Court but prior to rehearing by the Commission, DIUC filed

[2] The Court also ruled that "remand to the Commission for a new hearing necessarily grants the parties the opportunity to present additional evidence" to be certain that upon rehearing the evidence is "indicative of the current economic realities on remand." Daufuskie, 420 S.C. at FN#8.

Applicant's Proposal for Procedure Following Remand and Expedited Hearing. (Proposal, 10/4/17) DIUC specifically requested an expedited hearing schedule be entered so that the matter could be concluded prior to December 31, 2017. (Id.) DIUC cited the high costs of the original proceeding and appeal as well as the mounting costs of the rate case following the appeal. (DIUC Mtn. Recon 59-H & 60-H) DIUC asserted the parties had already participated in expensive and broad discovery before the initial hearing wherein DIUC was required to respond to in excess of 150 discovery requests (exclusive of multiple subparts), review the direct testimonies of nine witnesses, prepare rebuttal testimony and surrebuttal testimony, and prepare for the hearing on the Application. (Id.)

After hearing from the parties Standing Hearing Officer Butler issued Order 2017-61-H establishing a schedule for hearing and allowing a decision by the Commission prior to December 31, 2017. (Order No. 2017-61-H)

After participating in additional discovery, the parties submitted prefiled testimony of their witnesses. A rehearing was convened on December 6, 2017, in the Commission Hearing Room located at 101 Executive Center Drive in Columbia, South Carolina. DIUC was represented by G. Trenholm Walker, Esquire, and Thomas P. Gressette, Jr., Esquire. The POAs were represented by John J. Pringle, Jr., Esquire and John F. Beach, Esquire. ORS was represented by Andrew M. Bateman, Esquire, and Jeff Nelson, Esquire.

DIUC presented the prefiled and summary testimony of John F. Guastella, President of Guastella Associates, LLC and Gary C. White, Vice President of Guastella Associates, LLC. The Intervenors presented prefiled and summary testimony of Charles Loy and Lynn M. Lanier. ORS presented prefiled and summary testimony of Dawn M. Hipp, a Director in the ORS Utility Rates and Services Department; Daniel F. Sullivan, Deputy Director of the ORS Audit Department; and

Dr. Douglas H. Carlisle, Economist at ORS. The testimony of ORS witnesses Hipp and Sullivan was limited to certain matters and expressly relied upon the previous testimony of ORS witnesses Ivana C. Gearheart and Willie J. Morgan, as provided in the original hearing.

Pursuant to motions by each party, all prefiled testimony was read into the record as if given orally. Prior to the December 6, 2017, rehearing, a Certified True Copy of the Transcript of Testimony and Proceedings with 6 Hearing Exhibits of the prior hearing in this matter (Hearing #15-11494, held on October 28, 2015) was filed in the docket. During the December 6, 2017, rehearing, the Transcript of Hearing #15-11494 (the first rate case hearing) was entered as Hearing Exhibit 2 and the parties referenced and relied upon evidence included therein.

The rehearing was recessed in the afternoon on December 6, 2017, reconvened on the morning of December 7, 2017, and then concluded in the afternoon on December 7, 2017. The parties were instructed to provide proposed orders to the Commission on or before December 15, 2017. DIUC submitted its proposed order on December 15, 2017. (Proposed Order)

On January 31, 2018, the Commission entered its decision, docketed as Order No. 2018-68 ("Order on Rehearing"). (Order 2018-68) DIUC filed a timely Petition for Reconsideration and/or Rehearing on February 20, 2018. (Pet. Rec.) The Petition asserted that the Commission's Order on Rehearing entered January 31, 2018, addressed many of the complex issues presented in this case and significantly reduced the outstanding questions. (Pet. Rec. 1) However, DIUC asked the Commission to reconsider the Order on Rehearing's limitations on DIUC's Rate Case Expenses and Rate Base/Utility Plant In Service. (Pet Rec.) DIUC asserted the Commission's disallowance of significant Rate Case Expense and its disallowance of unidentified used and useful assets in Rate Base/Utility Plant In Service are not based upon the reliable, probative, and substantial evidence in the record. Additionally, DIUC sought reconsideration asserting these

rulings are contrary to the evidence and result in a punitive impact upon DIUC. DIUC requested the Commission reconsider its Order on Rehearing so that DIUC would be permitted the original 108.9% rate increase sought by the Application. (Pet. Rec. 22-23)

By Order No. 2018-346 dated May 16, 2018, the Commission denied DIUC's Petition for Reconsideration and/or Rehearing. (Order 2018-346)

On June 13, 2018, DIUC served its Notice of Appeal of Order No. 2018-68 and Order No. 2018-346 (collectively referred to herein as "Order 2018-68" and "Order on Rehearing"). (Notice Appeal)

DIUC now seeks this Court's review of the Commission's errors following remand from this Court. Those errors include rejecting DIUC's evidence of Rate Case Expenses and Rate Base/Utility Plant In Service. The Commission's decision on these two adjustments is not supported by the reliable, probative, and substantial evidence on the whole record and constitute legal error. The Commission also relied upon errors of law impacting the procedure applied and it fails to provide sufficient findings to support its conclusions.

STANDARD OF REVIEW

South Carolina appellate courts employ a deferential standard of review when reviewing a decision of the Public Service Commission, but affirm a Commission decision only when substantial evidence supports it. Porter v. S.C. Pub. Serv. Comm'n, 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998). After completing review this Court "may affirm the decision of the agency or remand the case for further proceedings." S.C. Code Ann. § 1-23-380. The Court may also reverse or modify the decision of the Commission "if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions" are:

(a) in violation of constitutional or statutory provisions;
(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;
(d) affected by other error of law;
(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380.

The party challenging a Commission order "bears the burden of convincingly proving the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record." Duke Power Co. v. PSC of S.C., 343 S.C. 554, 558, 541 S.E.2d 250, 252 (2001) citing Porter v. S.C. Pub. Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998) and S.C. Code Ann. § 1-23-380(A)(6) (Supp. 1999).

"Substantial evidence is not a mere scintilla; rather, it is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency." Chisolm v. S.C.Dept. of DMV, 402 S.C. 593, 609, 741 S.E.2d 42, 51 (Ct. App. 2013) citing Friends of Earth v. Pub. Serv. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 184-5, 332 S.E.2d 539, 541 (Ct. App. 1985). "An abuse of discretion occurs where the trial court is controlled by an error of law or where the Court's order is based on factual conclusions without evidentiary support." Smith v. S.C. Ret. System, 336 S.C. 505, 523, 520 S.E.2d 339, 349 (Ct. App.1999).

Additionally, in order for an appellate court "to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings," the Commission "must make findings which are sufficiently detailed." Porter v. S.C. Pub. Serv.

Comm'n, 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998). Those findings of fact "must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings. [...] Implicit findings of fact are not sufficient." Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986).

ARGUMENT

In its Order on Rehearing, the Commission again refused DIUC's analysis of its own books, records, and expenditures then adopted the position asserted by ORS, despite the lack of foundation in the record for ORS's requested reductions. The Order on Rehearing and its reduced values for Rate Case Expenses and Rate Base/Utility Plant in Service have again (as with the previous orders) resulted in a rate structure that is unconstitutionally insufficient to allow DIUC to collect rates that meet the minimum standards required by law. See Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff, 392 S.C. 96, 107 n.8, 708 S.E.2d 755, 761 (2011) (citing Bluefield Waterworks & Improvement Co. v. Public Service Comm'n of W. Va., 262 U.S. 679, 690, 43 S. Ct. 675 (1923) (explaining that where the rates charged by a public utility company "are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service . . . their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment")).

The Order's findings, inferences, conclusions, and decisions on these adjustments warrants reversal or modification by this Court pursuant to S.C. Code § 1-23-380. For the reasons explained herein, the Commission's ruling is premised upon errors of law impacting the procedure applied and it is contrary to the reliable, probative, and substantial evidence on the whole record. Additionally, the Order's rulings as to Rate Case expenses and Rate Base/Utility Plaint In Service

constitute clear errors of law that impermissibly deprive DIUC of its constitutionally protected right to earn a reasonable return for providing water and sewer services.

I. THE PUBLIC SERVICE COMMISSION'S FINDINGS AND CONCLUSIONS IN ITS ORDER ON REHEARING THAT DIUC IS NOT ENTITLED TO RECOVER ANY OF THE $542,978 IN DOCUMENTED RATE CASE EXPENSES OF GUASTELLA ASSOCIATES WERE LEGALLY ERRONEOUS, ARBITRARY, UNSUPPORTED BY SUBSTANTIAL EVIDENCE, AND PREJUDICED SUBSTANTIAL RIGHTS OF DIUC.

A. In its initial Order subject to the prior appeal, the Commission approved a portion of DIUC's rate case expenses owed to Guastella Associates ("GA"), yet in its Order on Rehearing the Commission disallowed every single invoice of the $542,978 in documented Rate Case Expenses of GA even though it was undisputed that GA had provided necessary rate case services over the four years this rate proceeding has been pending.

The day-to-day operations of DIUC are managed by Guastella Associates, LLC ("GA"). (Rehear Tr.p.153) John Guastella is the president of GA. GA also performs rate case consulting work for utilities throughout the United States. DIUC retained GA to perform a rate study for DIUC's 2014 Application and to assist with the rate case proceeding. (Rehear Tr.p.125)

John Guastella is the president of GA. In his rehearing testimony, Mr. Guastella provided a history of how DIUC has worked to reduce its customers' share of rate case expenses.

> In the [2011] rate case, we filed for a rate case expense of $181,200. By the time we were finished with that case, our costs were about $370,000.
>
> . . . .
>
> In this case, we filed for $191,200, $10,000 more than in the last case. So far we expect our rate-case expenses to be about $380,000.
>
> . . . .
>
> So [in seeking $191,200 for rate case expenses] we're asking for less than half of what our actual costs will be.

(Hear Tr. 181)

At the first hearing ORS and the Intervenors proposed a Settlement Agreement that only allowed DIUC to recover only $75,000 in rate case expenses for GA costs and legal fees associated with the rate case. (Hear Tr. 494-495)(Gearheart testifying, ORS proposes rate case expenses to

"include current rate case expenses of $75,000 and unamortized rate case expenses of $22,500 from the previous rate case.")

Even though Order 2015-846 adopting the Settlement Agreement drastically reduced DIUC's ability to recover its rate case expenses, the Order did specifically include funds approved by ORS and the Intervenors' Settlement to pay for work performed by Guastella Associates. ORS witness Gearheart testified in the original hearing that, "[R]ate case expenses [approved by ORS] included the preparation of the application by GA, developing rate models, calculating test year data, filing other rate case documents and legal expenses." (Hearing Tr.495) In Commission 2015-846 Order approving the Settlement Agreement, the Commission explicitly adopted Gearheart's reasoning to allow recovery for GA's rate case work and found:

> ORS proposed . . . current rate case expenses in the amount of $75,000 for GA's preparation of the Application, developing rate models, calculating test year data, filing other rate case documents and legal expenses.
>
> . . . .
>
> The Commission agrees with ORS's judgment that $75,000 in rate case expenses is a reasonable amount . . . .

(Order 2015-846 p.24-26)

DIUC had voluntarily agreed to absorb 50% of its actual anticipated rate case expenses, but then ORS (and ultimately Commission Order 2015-846) only permitted DIUC to recover about 39% of DIUC's requested rate expenses, which is just 20% of DIUC's total anticipated rate case expenses.[3] DIUC appealed.

On appeal of the original Order, DIUC asked this Court to reverse the Commission's ruling on rate case expenses because there was no evidentiary support for the reduction to $75,000.

[3] Had the Order included DIUC's proposed $191,200, the ratepayers would have still benefitted by saving $258,000. (Rehearing Tr.p.34)(Guastella testifying "[I]t turns out the requested $191,200 was a great deal for the ratepayers, because it is much lower than the actual costs of the highly contested rate case which totaled $450,000.")

(Appellant's Brief pp.41-43) DIUC cited Gearheart's limited testimony and the following exchange:

> Commr Fleming: Why are the current rate-case expenses of $75,000 included in the current case exactly the same amount as in the previous case?
>
> Gearheart: Because ORS felt it appropriate to limit the rate-case expenses to $75,000 for the current rate – current proceeding.

(Hear Tr.p.541(emphasis added))

In deciding the appeal, this Court did not specifically instruct ORS or the Commission regarding rate case expenses. On remand DIUC presented testimony highlighting the tremendous impact this four-year rate proceeding has had upon DIUC. The president of DIUC's management company, Guastella Associates, described how DIUC's expenses continue to mount for preparing and litigating the underlying rate case followed by an appeal and then discovery followed by a full merits hearing again on remand. Mr. Guastella explained in his rehearing testimony:

> Rate case expenses are a necessary cost of operating any utility, but it is essential to note that the cost of a rate case has significant financial impact on a small utility like DIUC. As I testified in the primary case, the rate case procedures and discovery required of DIUC in this matter were equal to those for a large utility. The parties participated in exhaustive discovery prior to the hearing. DIUC was required to respond to in excess of 150 discovery requests (exclusive of multiple subparts), review the direct testimonies of nine witnesses, prepare rebuttal testimony and surrebuttal testimony, and prepare for the hearing on the Application. A larger utility with larger revenue and more staffing would be better equipped to absorb the high costs of extensive discovery and other proceedings, but DIUC cannot.

(Rehear Tr 70-71) (emphasis added)

Mr. Guastella also testified about the increased rate case expenses necessitated by the appeal and subsequent rehearing proceedings.

> DIUC's appeal of Order 2015-846 added another layer of significant rate case expense, which continues to grow as the current rehearing process proceeds. In order to survive, DIUC had to put appropriate rates in effect pending appeal. This required DIUC to obtain bonds, which first had to be presented to and approved by

> the Commission. The bonds later had to be renewed and an additional bond obtained. These efforts cost the Utility significant and unavoidable legal and consulting charges in addition to the cost of bonds. At this point, the cost of actual rate case expenses as of September 30, 2017, including projections to complete the rehearing process for legal and consulting services totals $794,201.17, plus the $60,781.56 DIUC incurred for the bonds and an associated letter of credit.

(Rehear Tr 76)

After remand DIUC updated its rate case expenses then at the rehearing, DIUC requested $794,210 for current and unamortized rate case expenses to be recovered over 3 years. (Rehearing Tr. p. 473, ll. 15-17). In response, ORS totally reversed its previous position to instead claim on remand that every single effort of GA for rate case expense should be disregarded, including the work previously approved. (Order 2018-68 p.37) The Commission then disregarded its own finding from the first Order and ruled DIUC could not recover anything at all for the $542,978 in GA charges DIUC incurred to prepare its rate case, defend against the Settlement Agreement, pursue appeal, and then prepare and retry the proceeding all over again on rehearing. (Order 2018-68)

Like Order 2015-846 previously appealed by DIUC, the Commission's Order on Rehearing improperly adopts the position of ORS without requiring sufficient proof, particularly given that ORS's brand-new remand position asked the Commission to reject GA expenses that ORS, the Intervenors, and the Commission all previously endorsed.

The practical impact on DIUC is unavoidably clear -- DIUC is punished for defending its original rate case then appealing and obtaining an order of reversal. The Order on Rehearing's denial of every single invoice for GA tosses out the previous $75,000, a part of which was attributable to GA, and improperly leaves DIUC without any recovery of $542,978 in documented Rate Case Expenses. The Order should be reversed because it is legally erroneous, arbitrary, it is

contrary to the reliable, probative, and substantial evidence on the whole record, and it substantially prejudices the rights of DIUC.

1. The Commission committed an error of law in refusing to apply the presumption of reasonableness to DIUC's Rate Case Expenses.

A utility in a ratemaking proceeding is "entitled to a presumption that its expenditures were reasonable and incurred in good faith." Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff, 392 S.C. 96, 109, 708 S.E.2d 755, 762 (2011). "This presumption does not shift the burden of *persuasion* but shifts the burden of *production* on to the Commission or other contesting party to demonstrate a tenable basis for raising the specter of imprudence." Id. (emphasis added) DIUC is entitled to this presumption about the rate case expenses it presented.

Instead of first providing DIUC the benefit of the presumption that its rate case expenses are reasonable and were incurred in good faith and then requiring ORS to meet the mandated burden of production, the Commission permitted ORS to reverse its position based on the format of GA invoices which ORS had already approved in the original proceeding. Then, without any showing of even the "specter of imprudence" or the production of any basis for disregarding the presumptive reasonableness of the expenses (which, again, ORS had supported in the initial hearing and the Intervenors joined in the Settlement Agreement), the Commission rewrote the standard set out by this Court in Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff, 392 S.C. 96, 109, 708 S.E.2d 755, 762 (2011).

Contrary to precedent, the Commission ruled:

> It is the responsibility of the regulated utility – not the Commission, ORS, or any other party – to support the operating expenses that contribute to the utility's revenue requirements. We cannot presume that the expenses a utility proposes to recover in its rates and charges are legitimate if they cannot be subjected to the scrutiny of an audit or examination.

(Order 2018-68 p.3). In support of this statement, the Order cites to Porter v. SCPSC, 333 S.C.

12, 507 S.E. 2d 328 (1998). However, Porter does not support the Commission's ruling which in this case functions to unlawfully expand the power of ORS to allow ORS to predetermine what costs are or are not entitled to the presumption of good faith and reasonableness.

The issue in Porter regarding rejection of evidence addressed whether when considering some 1995 expenses as unique beyond the 1994 test year of a utility it was an error to consider only the utility's audited financials, as opposed to even later 1995 unaudited financials. See Porter v. SCPSC, 333 S.C. 12, 26, 507 S.E. 2d 328, 336 (1998) (applying Southern Bell v. Pub. Serv. Comm'n of South Carolina, 270 S.C. 590, 602, 244 S.E.2d 278, 284 (1978).[4]

The Commission's Order improperly empowers ORS to predetermine for the PSC which utility expenses should be afforded the presumption that its expenses were "reasonable and incurred in good faith." As such, the Order is based upon a clear error of law and should be reversed.

2. The Commission's drastic exclusion of all $542,978 for GA costs that were reasonable and necessary expenses of DIUC's rate case was arbitrary and capricious and not supported by substantial evidence.

At the time of the first hearing, DIUC anticipated total rate case expenses of $380,000. (Rehear Tr. 33-34) However, DIUC did not request that full amount; instead DIUC's owners and its management company (Guastella Associates) decided to mitigate the impact upon ratepayers by requesting only about half of those costs, or $191,200, and the shareholders would absorb the difference. Id. This decision was also based upon the fact that in a recent comparable rate case for another small utility ORS recommended and the Commission permitted recovery of rate case expenses of $190,905. See (R.p.208) (citing Order 2012-98 in PSC Docket No. 2011-317-WS,

[4] In 2004, the General Assembly eliminated the PSC from the roles of investigator and auditor, and it reassigned these roles to a newly-created agency, ORS. See Utilities Services of S.C., Inc. v. S.C. Off. of Reg. Staff, 708 S.E.2d 755, 760 (S.C. 2011) (citing S.C.Code Ann. § 58–3–60(D)).

approving rate case expenses of $190,905 for Kiawah Island Utility Inc; see also Appellant's Brief p. 41)

Although the requested amount was almost identical to the rate case expenses the Commission allowed in the 2012 contested rate decision for Kiawah Island Utility, in its original Order the Commission decided to reduce DIUC's rate case expenses by over 60% to $75,000. To add insult to injury, the Commission did not provide any independent reasons for its decision – the Order just copied the ORS-Intervenors' proposal verbatim. (ORS Proposed Order (R.p.294) and Order 2015-846 R. at 54) (permitting total rate case expenses of $97,500 consisting "of capped current rate case expenses in the amount of $75,000 for GA's preparation of the Application, developing rate models, calculating test year data, filing other rate case documents and legal expenses.") The remaining $22,500 allowed by Order 2015-846 was to recover unamortized rate case expenses from DIUC's previous rate case. As noted, ORS recommended and the Commission permitted these rate case expenses because of and to include payment for rate case work performed by Guastella Associates. (Id.)

At the original hearing ORS did not provide any analysis that established the basis for their Settlement Agreement's proposed $75,000 cap on rate case expenses. (Hear Tr.p.541)(Gearheart testifying the amount was selected "Because ORS felt it appropriate to limit the rate-case expenses to $75,000 for the current rate – current proceeding. (emphasis added)) ORS did not provide any testimony that the work included in the Company's proposed rate expense of $191,200 was not performed or that it was unnecessary. (Hear Tr. p.484-499) The original record was insufficient to support the Commission's unexplained and arbitrary 60% reduction, either generally or in light of the presumed reasonableness of the expense.

Although the issue of $97,500 for rate case expenses was raised in the first appeal, and one

of the multiple adjustments which this Court found were entirely unsupported by the evidence presented to the Commission, it was not one of the three issues on which this Court provided specific guidance. See Daufuskie Island Util. Co., Inc. v. S.C. Off. of Reg. Staff, 420 S.C. 305, 316, 803 S.E.2d 280, 286 (2017).

By the time the parties were before the Commission on rehearing, DIUC had incurred significantly more rate case expenses due to the appeal and the costly proceedings on remand. At rehearing those rate case expenses through September 30, 2017, including projections to complete the rehearing process for legal and consulting services totaled $794,201.17, plus the $60,781.56 DIUC incurred for the bonds and an associated letter of credit to collect sufficient revenues during the first appeal and pending rehearing. (Rehear Tr. 76)

The costs of the appeal and the expensive rehearing necessitated by specific actions of the ORS and Intervenors in attempting to shortchange DIUC with the Settlement Agreement combined with the financial impact upon DIUC for carrying all these costs meant DIUC was no longer able to absorb the costs as it previously proposed. Mr. Guastella explained:

> It is no longer reasonable to expect DIUC to simply absorb costs of a lengthy proceeding that has mushroomed due to no fault of the Utility.
>
> . . . .
>
> First, DIUC's total rate case expenses has reached a magnitude that is far too disproportionate to its revenues.
>
> . . . .
>
> Second, recovery of the expenses will be spread over time by amortization which does not account for the carrying costs or time value of money.
>
> . . . .
>
> [T]he Commission's rate order allowing only a 43% rate increase would have placed DIUC in default on the existing loans . . . .

(Rehear Tr. 77-78)

In response to DIUC's dire need to recover its significantly increased rate case expenses on rehearing, ORS named new witnesses who revised ORS's previous recommendation on

allowable rate case expense. The new ORS position allowed nothing for previously accepted rate case expenses, part of which included charges by GA. For the first time ORS suddenly asserted that DIUC should not recover anything to pay GA for the extensive rate case work it has performed in this case since 2014.

Again accepting the ORS position, the Commission's Order on Rehearing disallowed every single cost for GA's work. While the Order did allow for recovery of the legal and bond costs necessitated by the appeal and remand, the wholesale exclusion of $542,978 of GA billings, based solely upon ORS's last-minute attempts to manufacture a multitude of brand new complaints about the invoices submitted by DIUC to document the costs for services provided by GA to DIUC in furtherance of this rate proceeding, left DIUC with no choice but to pursue this Appeal.[5]

ORS is certainly aware that GA provided DIUC with services including preparation of the rate application, answering a significant number of discovery responses (all of which were verified for DIUC in this case by GA employee John Guastella), preparing prefiled testimony by GA employees Guastella and White, reviewing the testimonies of nine witnesses, preparing rebuttal testimony, assisting attorneys with every aspect of the proceeding, traveling to the original hearing to provide live testimony by GA employees Guastella and White, preparing prefiled rehearing testimony by GA employees Guastella and White, preparation for rehearing live testimony by GA employees Guastella and White, and attendance at the rehearing by both Mr. Guastella and Mr. White.

There can be no doubt that this decision is both arbitrary and an abuse of discretion; it

[5] Order 2018-68 does permit DIUC to request approval of the $542,978 in its next rate case, "if it can provide supporting information for its invoices that satisfy the criteria listed by ORS witness Hipp presented at the rehearing." (Order 2018-68 p.39) However, DIUC should not be required to forego recovery or be subject to the carrying costs for such a significant sum.

denies facts known and documented in the Commission record and facts witnessed by the Commissioners themselves. See Smith v. S.C. Ret. System, 336 S.C. 505, 523, 520 S.E.2d 339, 349 (Ct. App.1999)("An abuse of discretion occurs where the trial court is controlled by an error of law or where the Court's order is based on factual conclusions without evidentiary support.") Further, the Commission's refusal to allow DIUC to recover for any GA rate case expenses is contrary to the testimony, is not supported by the record, and it defies what the Commissioners themselves have witnessed. The ruling is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and it borders on an abuse of discretion.

3. The testimony of ORS witnesses demonstrated the purported "criteria" used by ORS witnesses who reviewed the GA invoices did not result in evidence sufficient to support the Order's exclusion of every single GA invoice.

ORS's previous witness Audit Manager Ivana Gearheart did not return for ORS at the rehearing. Instead, ORS Director Dawn Hipp presented prefiled and live testimony regarding several matters, including her reversal of Ms. Gearheart's previous approval of payment for GA's work on DIUC's rate case. On November 16, 2017, ORS served Ms. Hipp's Prefiled Rehearing Testimony and for the first time presented a new ORS recommendation for the Commission; Ms. Hipp testified that "in general" ORS had noted some of the GA invoices

> ... contain mathematical errors; do not contain sufficient detail to describe the work performed, the specific dates and hours of work, employee name, and business purpose; contain expenses such as air fare, lodging, and meals for which no detail or receipt was provided; and, do not appear to be paid by DIUC.

(Rehear Tr 476) For the first time in this prefiled testimony ORS proposed that the Commission "remove $542,978 of Guastella Associates, LLC ("GA") invoices" from allowable rate case expenses. (Rehear Tr.476) The Commission adopted this new ORS position and the Order on Rehearing finds all GA invoices should be *completely* disregarded. (Order 2018-68 p.37) (quoting Hipp's prefiled testimony included above)

Putting aside its late arrival in the case, the testimony does not support the drastic result it seeks and it does not support the Order's findings and conclusions.

With respect to the mathematically correct invoices, Ms. Hipp referred later to GA invoice #133 (included within Rehearing Exhibit 10) that lists a rate for Principal as $35 instead of the rate of $345 to $375 that appears on other invoices. That invoice, the only one with a mathematical error, is dated 7/10/2014 and is in the amount of $1,612.50. Indeed, the $35 rate should have been $345, but this clerical error resulted in a charge that was actually less than it should have been. (Rehear Ex. 10)

In response to a question by Commissioner Nelson regarding whether GA bills had been paid and whether that was the main issue concerning ORS, Ms. Hipp testified "...that is **one** of the issues. I wouldn't consider it main. They are all weighted the same." (Rehear Tr. 532-533)(emphasis added) That means that ORS considers all five of these criteria equally. Certainly it is beyond any reasonable ratemaking standard to establish the cost of providing service that clerical billing errors, in this case on one bill, would be 20% of ORS's reason to recommend eliminating $542,978 of charges incurred by DIUC. The Commission's reliance on this testimony renders the Order reversible.

With respect to whether the rate case expenses were incurred during the period under review, there is simply no question that the rate case expenses for GA services were incurred during the period under review. Exhibit JFG-R3 (admitted as Rehearing Exhibit 1) specifically itemizes GA's monthly billings for the periods from June 2014 through September 2017, including dates, and the actual dated invoices were also provided.

With respect to recording invoices on DIUC's books and records, long before the rehearing DIUC provided ORS with copies of DIUC's trial balances for 5 years, general ledger, tax returns

and trial balances tied to rate application schedules. There was no testimony that the GA billings were not properly recorded on DIUC's books.

Ms. Hipp does not deny that ORS reviewed and approved GA's bills to another South Carolina utility, Kiawah Island Utility, Inc., in its rate cases. Instead, she claims that such a comparison is not warranted because, as she asserts for the first time, her belief that the GA-DIUC relationship "appears" not an "arms-length transaction" thereby requiring "a careful review by ORS." (Rehear Tr. 487) Not only are these criticisms brand new at the final hour of rehearing in this matter, the claims are conjecture and innuendo. GA is not an affiliate of DIUC or its stockholder and owners. GA's services are provided to DIUC in accordance with a management agreement that includes the provision of rate case consulting services separate from the management scope of work. In fact, in response to ORS Audit Request 1-14, DIUC provided over 150 emails to the president of DIUC and its owners, addressing all aspects of DIUC's operations, including the filing of the rate application, as well as financial statements, tax returns, Commission filings and court decisions, and other major matters.[6] It is illogical to think that the president and owners of DIUC are somehow unaware of the rate case expenses or that these communications can simply be disregarded. DIUC and its owners are in constant communication with GA personnel; the suggestion that somehow GA is or might be inappropriately approving or making payments to itself is wholly unsubstantiated.

DIUC Interrogatory to ORS and Rehearing Exhibit 10

When ORS initially announced its rejection of all GA invoices, there was no explanation provided as to which invoices were questioned and why. (Hipp Rehearing) DIUC served an

[6] GA's extensive work is also highlighted in the legal bills that document this rate proceeding that DIUC's attorneys communicated with GA on 423 occasions for some 139 hours attributable to those occasions.(Rehearing Exhibit 10)

Interrogatory asking ORS to "Please identify which the GA invoices ORS contends should be rejected for which reason(s)" and ORS responded by providing the chart that was also submitted as Rehearing Surrebbuttal Exhibit DMH-1 then admitted as Rehearing Exhibit 10. (Rehear Ex.10) The Exhibit was designated CONFIDENTIAL because it contains attorney invoices as well as GA invoices. Based upon this chart Ms. Hipp testified further about her issues with the GA invoices.

Following are responses to the other complaints raised by ORS in Rehearing Exhibit 10 with regard to GA invoices. At the outset, though, it should again be noted that Rehearing Exhibit 10 is not a published form or criteria; in fact, it is a response from ORS to justify its position once challenged by DIUC in this proceeding. (Rehearing Tr.p.485) So, the exhibit is a list of reasons for excluding the GA invoices that ORS created after its decision to reject every single GA invoice. (Id.)(Hipp offering "It might be helpful to provide several examples of why ORS recommends removal of $542,978 in rate case expenses attributable to GA" and also testifying "this response was provided to DIUC on November 28, 2017")

The ORS critiques do not advance any real analysis of what is actually included in the billed rate work and whether it was performed. However, when viewed individually, as below, it is clear the ORS complaints are an exaggerated attempt to justify the extreme result of disallowing every single invoice included within the $542,978 of GA billings for three years of rate case expenses. ORS's five generalized critiques from Rehearing Exhibit 10 are addressed below.[7]

No contractor name: All bills are on Guastella Associates, LLC letterhead. Surely that is sufficient to identify GA as the contractor.

No start date: This repeated complaint is misleading. GA bills are rendered monthly,

[7] It is important to remember that Rehearing Exhibit 10 was not created until after DIUC pushed ORS to document its position; this is not a tool ORS uses routinely or something that has ever been provided to DIUC until a few days before the rehearing.

showing the period ending on the last day of the month thereby also showing in conjunction with the preceding bill that the start date is the first of the month.

The name of the employee working is not listed for each entry: Every one of the invoices from GA includes time entries identified by the job title of the personnel billing the time. These titles are sufficient to identify Mr. Guastella and Mr. White, both of whom have testified before this Commission and provided their job descriptions and titles to this Commission. *See* Hearing Transcript at 134 (John Guastella testifying he is President of Guastella Associates) and Hearing Transcript at 119, 123 (Mr. White testifying "I am Vice President and the Director of Accounting with Guastella Associates, LLC a firm that provides utility consulting services primarily for municipal and investor-owned water and wastewater utilities."). Both gentlemen have appeared before this Commission twice in this case to provide expert testimony on behalf of DIUC. The name and title of each GA staff person was also provided in response to ORS discovery request ORS 1.2. While it is true that a few of the earliest invoices refer to: "Principal" and to "Director-Financial/Accounting" while the later invoices identify the billers as "President" and "Vice President– Financial/Accounting," GA is not a large company. Finally, even if the titles of employees changed from "Principal" to "President" and from "Director-Accounting" to "Vice President-Accounting" there is no indication that multiple time entries were included at any time so as to indicate improper billing. (Ex. DMH-1)

No specific dates and times listed for each employee: While it may be that GA invoices do not identify every specific date worked by each employee in a format that ORS might prefer, the monthly total hours are set out for every GA team member (President, Vice President-Operations, Vice President-Accounting). GA's monthly bills do, in fact, clearly list the number of hours worked and hourly rates by each employee. So, the title of person and their rate is

included. Also, it should be kept in mind that DIUC is the regulated utility, not GA. If DIUC's officer and owners accept GA's billing because they know the work product and effort made by GA, just as all of GA's other clients have over the years, then ORS's disallowance of all $542,978 of GA charges fails to recognize the actual cost of the rate setting process.

ORS cannot verify if rates charged by GA to DIUC for rate case expenses are accurate: This is simply not true. ORS could have verified the rates charged by GA by simply referring to DIUC's books for the entries of the GA charges. Another way would be to ask for GA's typical schedule of hourly rates that it charges all its clients. Given the extensive discovery exchanged long before ORS raised this issue, it is unfair for ORS to suddenly claim it was without opportunity or information regarding verification when ORS's late assertion of these defects leaves DIUC unable to respond. This is compounded by the fact that ORS approved GA's rate case expenses in the initial hearing.

Travel could have included outrageous overspending: ORS also attempted to discredit GA's documentation for travel costs via what is surely ORS's most creative effort to exclude all of GA's charges.

Ms. Hipp's testimony begins this line of analysis by citing to some unidentified rate case(s) where "ORS's review of travel expenses has found situations where regulated utilities incurred lavish expenditures related to employee travel (i.e. private jets, $50 alcoholic drinks) and included those lavish expenditures in a rate application." (Rehearing Transcript at 488) There are only a few GA bills for travel expenses and they total $5,634 for the entire rate case proceeding from filing to the on-island public night hearing to the two-day hearing. That two-day hearing travel costs was $4,532, which means each of the three GA employees who appeared in Columbia to testify in the rate hearing spent on average only $1,450.66 each to fly to Columbia, obtain

transportation from the airport to Columbia, spend at least two nights required by the two-day hearing and then obtain return airport transportation and meals over the 3-day travel period. Knowing the date(s) of the hearing(s) and the GA personnel in attendance, it seems logical that ORS professionals could evaluate the reasonableness of those travel expenses as reflected on the invoices billed to DIUC. There is no cause to believe that $5,634 in total travel costs over a three-year rate case in any way involve the kind of extravagances ORS witness Hipp purports to prevent. The insinuation that somehow GA should be suspected of taking private jets and partying at the ratepayers' expense is not reasonable and it is certainly not supported by the evidence.

Also, as previously noted, ORS has required DIUC to supply many discovery responses and has had more than ample time to request additional information. It is not fair to delay DIUC's ability to recoup its costs because ORS waited to surprise DIUC with this "gotcha" position at rehearing. Additionally, ORS admits it did not allow DIUC to provide additional information about the rejected $542,978 but that ORS usually engages an applicant to allow additional information to be provided in response to ORS questions about verification of charges or invoices. Ms. Hipp explained how DIUC was treated differently, which resulted in the exclusion of every single rate case expense invoice from GA:

> In the case of this rehearing, the invoices that we received came to us, and we had such a short time period in order to examine them and make decisions, to meet the deadlines that the Applicant had asked for, that there wasn't that give-and-take. But in a normal rate case, we do have the luxury of having several months to go back and forth with the company, to make sure we thoroughly understand the expenditures for which they're seeking recovery.

Rehearing Transcript at 520.

All of Ms. Hipp's testimony explaining the new ORS position on GA invoices should be considered in light of when it was raised in the case and the fact that although these "criteria" have

to be addressed independently in briefing, these are not published by ORS in any formal way and these are not published guidelines of any sort.

> Q: And I wanted to ask about your standards for verifying . . . for verifying expenses that are given to you. Do you treat every company the same —
> A: [HIPP] We do.
> Q: — as to standards?
> A: [HIPP] We do. For the sample of invoices that we test to verify whether or not the company is incurring costs and requesting recovery, we do apply those standards
> Q: And are those standards available for companies to know what they are?
> A: [HIPP] Certainly, a company can ask. It's not posted on our website, but in all of our interactions with a company, if they have a question, as we are testing invoices, as to what we're looking for – usually, when we test invoices — and, Mr. Sullivan, feel free to weigh in — we will ask the company questions about specific invoices.

(Rehearing Tr.pp.519-20) Mr. Sullivan never weighed in and the Commission was left with only this testimony, testimony that ORS does not publish is purported "criteria" but it will explain them to utility – if there is time. However, if ORS does not have "the luxury" of time because it made multiple errors creating a reversible Commission order, then on remand ORS will simply reject invoices.

ORS wanted the Commission to rely on its review as reliable "findings" that justify wholesale rejection of all GA invoices, but when challenged by DIUC ORS admitted three essential flaws in the ORS position and the Order on Rehearing that adopted it:

> 1. This ORS recommendation to reject $542,978 of GA invoices is not the result of the usual process whereby ORS engages with the applicant to resolve questions and formulate a thoroughly vetted recommendation;
>
> 2. When challenged by DIUC for the raising this issue last minute, ORS retreated to claim that it was rushed by the emergent timetable facing DIUC after the delays ORS created by entering into the Settlement Agreement which denied DIUC even basic income; and

3. The "guidelines" applied by ORS to reject all the GA invoices is not published online. Utilities cannot identify these "guidelines" unless they ask during the "give and take" exchange that ORS testified it did not provide to DIUC in this case.

These admissions render the ORS criticisms unreliable and unsupported. They are not sufficient to justify the Order on Remand and they cannot excuse the substantial prejudice to DIUC. Also, none of the testimony in the record negates or contradicts the work performed by GA. There is no testimony in the record that the extensive rate case work was not performed by GA or that it was unnecessary. Changing invoices to include names of employees instead of titles or correcting a single clerical error on a bill from $35 to $345 or recording a cost as a payable instead of a current payment, does not change the validity of or the quantity of work demonstrated by the GA billings submitted as rate case expenses. The reliable, probative, and substantial evidence demonstrates the significant amount of work performed by GA for DIUC and that the Commission ruling should be reversed.

4. The Commission erred by relying on ORS's last-minute, entirely new reason for rejecting DIUC's rate case expenses that was not based on any regulatory standard, ignored that the expenses were actually incurred, and prevented DIUC from having an adequate opportunity to respond.

In adopting the ORS position that DIUC's costs for all work performed by GA should be completely disregarded because of the invoices from GA, the Order on Rehearing relies solely on testimony from ORS witness Dawn Hipp and her testimony exhibits. However, prior to the filing of Ms. Hipp's rehearing testimony, there was never any testimony in this case about ORS concerns or complaints as to the format of GA invoices or testimony that it was discussed with DIUC. ORS had already litigated this case for three years before it submitted brand new testimony raising criticism of the documentation provided by DIUC for its rate case expense.

When challenged at the rehearing about whether ORS's positions at the first hearing to award rate case expenses for GA work and the new total rejection of GA invoices are consistent,

ORS witness Dawn Hipp could not confirm that the analysis by ORS staff was consistent because it was never a part of testimony in this proceeding:

Q: And did you apply the same criteria that were applied by the previous witness, for these two adjustments?
A: For the most part.
Q: Did the previous witness, in examining some of these costs, apply the five criteria you have listed on page four of your testimony?
A: Yes.
Q: And is that explicitly stated in the previous witness's testimony?
A: It is not.

(Rehear Tr. 498-499, 23-25; 1-6) ORS cannot confirm that its previous review was conducted according to the criteria applied by Ms. Hipp. On rehearing ORS and the Commission applied a brand new, higher standard that has resulted in an unfair result.

When DIUC complained that this new ORS position was improper and punitive in result, ORS for the first time asserted that ORS's concern over DIUC's rate case expense documentation had been raised during a post-audit conference with DIUC personnel. (Rehear Tr. 500) (ORS witness Dawn Hipp testifying that the ORS criticisms of the GA invoices for rate case expenses were not raised in testimony in this case until after the hearing and the appeal and that the first mention of an alleged conversation about the same in an exit conference was never raised until she did so to refute DIUC's assertion that ORS has unfairly raised this issue so late in the case at rehearing).

Q: And when was the first time any reference to that audit review, that you just identified, was presented to this Commission in testimony?
A: I don't know.
Q: Is it included in Mr. Morgan's testimony?
A: He did not explicitly discuss rate-case expense, no.
Q: So, in fact, isn't the first time that anyone ever used that audit conference as evidence in this case, for any

position, is when you raised it in your surrebuttal testimony?

A: I did raise it in my surrebuttal testimony.

Q: And isn't that the first time it was raised in this case?

A: It was – it would be the first time that it's raised in testimony, yes.

Q: And when it was raised in testimony, for what purpose did you assert that the audit conference was important to the analysis of rate-case or management fees?

A: The reason that information was provided during my surrebuttal testimony was to refute the claim that Daufuskie made that they had not heard that the invoices had any sort of discrepancy or problem, or what ORS's concerns were.

(Rehear Tr. 500)

The late timing of this new reason to exclude $542,978 of rate case expense was improper and unfair. DIUC did not have ample time to respond to or address the complaints raised by ORS or the allegations regarding what ORS allegedly discussed with DIUC during a meeting years prior to the rehearing. As the Supreme Court has explained, "Consistent with its obligation to provide Utility an opportunity to achieve a reasonable return, the PSC was obligated to accord Utility a meaningful opportunity to rebut the evidence presented in opposition to its proposed rates." Utilities Services of S.C., Inc. v. S.C. Off. of Reg. Staff, 392 S.C. 96, 107, 708 S.E.2d 755, 761 (2011) (citing 26 S.C.Code Ann. Regs. 103–845(C)).

The Commission's adoption of the complete disallowance of GA's $542,978 of rate case expenses further improperly rewards ORS for not previously raising the issue or providing DIUC a fair opportunity to respond in the usual manner allowed by ORS in other case. Specifically, ORS admits it did not allow DIUC to provide additional information about the rejected $542,978 but that ORS usually engages an applicant to allow additional information to be provided in response to ORS Q:uestions about verification of charges or invoices.

By adopting the ORS position in its Order on Rehearing, the Commission denied DIUC

ample opportunity to respond as well as an opportunity to respond in the manner that ORS usually allows; as such, DIUC was not allowed proper opportunity to rebut the alleged evidence presented by ORS in opposition to its proposed rates. ORS's attempts to justify its unexplainable reversal of position and the Commission's reliance on this testimony at rehearing should not be permitted.

II. THE PUBLIC SERVICE COMMISSION'S FINDINGS AND CONCLUSIONS IN ITS ORDER ON REHEARING THAT EXCLUDED FROM RATE BASE $699,631 OF USED AND USEFUL UTILITY PLANT IN SERVICE WERE LEGALLY ERRONEOUS, UNSUPPORTED BY SUBSTANTIAL EVIDENCE, AND PREJUDICED SUBSTANTIAL RIGHTS OF DIUC.

A. ORS never identified the specific items of plant it sought to exclude from Rate Base/Utility Plant In Service. Therefore, the Commission's Adoption of the ORS Adjustment in the Order on Rehearing was legally erroneous and unsupported by substantial evidence.

South Carolina has long allowed utilities to earn "a fair return on the value of its property used and useful in the service of its customers." De Pass v. Broad River Power Co., 173 S.C. 387, 389, 176 S.E. 325, 326 (1934). The reasoning is sound – when a utility invests in equipment and real property for use in providing service, the utility is allowed to charge rates sufficient to allow it to operate and maintain that plant in service. The more equipment and facilities that are part of plant in service, the higher the allowable rate.

The equipment and facilities that may be included in Rate Base/Plant In Service are set forth in South Carolina Code of Laws, Regulation 103-702.16. Entitled "Water Plant," Regulation 103-702.16. defines the plant in service for a water utility like DIUC to include "all facilities owned by the utility for the collection, production, purification, storage, transmission, metering, and distribution of potable water." Despite this definition, the Commission's Order on Rehearing does not allow DIUC to include all of the items that comprise DIUC's water plant facilities that are used and useful to the Utility.

Repeating the same error that resulted in appeal of Order 2015-846, the Order on Rehearing

adopts the ORS recommendation to exclude $699,361 worth of DIUC's gross plant from rate base.[8] The Order on Rehearing describes the excluded $699,361 as "gross plant in service representing non-allowable plant, adjustments from the previous case not carried forward by DIUC in its Application, and asset retirements." (Order 2018-68 p.26) However, the Order on Rehearing cites no testimony to justify this adjustment and purported finding; instead, the Order on Rehearing merely references ORS Audit Exhibit DFS-5 (Rehearing Exhibit 8) then repeats ORS's inaccurate assertion that Rehearing Exhibit 8 "shows the specific items composing the $699,361." (Order 2018-68 p.26)

The reason the Order on Rehearing cites to no testimony from ORS in support of the $699,361 exclusion is because there was no testimony from ORS in the first hearing or the second hearing to support of the $699,361 exclusion. Regarding the DIUC plant, ORS witness Daniel Sullivan only stated that after he corrected ORS's previous exclusion of the Elevated Tank Site and related facilities, "ORS now computes an adjustment to gross plant in service of ($699,361) which is shown on Rehearing Audit Exhibit DFS-5." (Rehear Tr. 451) At rehearing ORS did not provide any additional support for this adjustment of $699,361; instead, ORS relies solely on the previous testimony of Ivana C. Gearheart at the initial hearing and the updated Exhibit DFS-5 which merely copied over Gearheart's conclusions. (Rehear Tr. 451 and Rehear Ex 8 at DFS-5)

A review of the exhibits cited in the Order demonstrates that neither Ms. Gearheart's Exhibit ICG-5 (Hearing Exhibit 18) nor Mr. Sullivan's Revised Rehearing Audit Exhibit DFS-5 (Rehearing Exhibit 8) identifies the specific items that are tallied to reach the $699,631 adjustment. Those exhibits only list primary plant *accounts*; they do not identify *items of plant*. The ORS

[8] DIUC's appeal to the Supreme Court included this issue which is among the "multiple" adjustments in the ORS/POA Settlement Agreement that the Court found were unsupported by any evidence presented to the Commission.

adjustments by plant account cannot be identified by or matched with specific items of plant, the specific cost of the items being adjusted is not provided, and there is no information about ORS's reasons for the adjustments. The excluded amount of $699,631 is likewise mysterious; it was simply repeated by reference to previous ORS witness Ivana Gearheart's exhibits who carried the number forward form a previous case. A review of Ms. Gearheart's testimony clearly reveals that Ms. Gearheart failed to itemize the specific assets or costs that are the basis of ORS's proposed adjustment of $699,361 to utility plant in service. (Gearheart Testimony) The Commission could not have determined from Audit Exhibit ICG-5 (admitted as Hearing Ex. 18 and Rehearing Ex. 8) or the entire record as a whole what items of plant were adjusted for "non-allowable plant" or what costs were adjusted for "non-allowable plant." As such, the exclusion of $699,631 in plant assets should be reversed.

1. The Order on Rehearing erroneously states Rehearing Exhibit 8 identifies the specific items of plant that the Order excluded from Rate Base/Utility Plant In Service.

Relying solely on ORS's inaccurate assertion that Rehearing Exhibit 8 "shows the specific items composing the $699,361," the Order on Rehearing excluded from rate base $699,361 for what the Order calls "gross plant in service representing non-allowable plant, adjustments from the previous case not carried forward by DIUC in its Application, and asset retirements." Order on Rehearing at 26. The Order states:

> Of the amount deducted, $699,361 is gross plant in service representing non-allowable plant, adjustments from the previous case not carried forward by DIUC in this Application, and asset retirements. (Id.) **ORS Audit Exhibit DFS-5 (Rehearing Exhibit 8) shows the specific items composing the $699,361.** (Rehearing Tr. p. 453, ORS Audit Exhibit DFS-5, Rehearing Exhibit 8).

Order on Rehearing at 26 (emphasis added). *However, that is not what the Exhibit shows.*

Nowhere does the one-page Audit Exhibit DFS-5 (admitted as Hearing Exhibit 18 and

Rehearing Exhibit 8) identify a single specific item of plant – it only shows the NARUC plant "accounts" identified by a general "description." In fact, the first column heading of the Exhibit is "Description." The Exhibit is not a listing of *specific* plant items, it is a listing of *accounts* of plant items. See (Highlighted Copy of Ex. Attached to DIUC Reply to ORS Answer re Pet for Recon) Accounts in this use is a descriptive term for a *category* comprised of hundreds of items; it is not an identification of *specific* items.

The following "Descriptions" from the Exhibit do not identify items of plant – these are *account* descriptions:

- General Plant
- Wells
- Water and Sewer Mains
- Reservoirs and Standpipes
- Meters
- Treatment
- Pumping
- Well Sites

(Rehearing Exhibit 8) Hundreds of DIUC's individual plant *items* are included within these "account descriptions." However, ORS did not identify anywhere in the record which *specific* items were excluded and ORS did not provide that information in any testimony; therefore, the Commission's Order on Rehearing cannot possibly answer the necessary questions based on Rehearing Exhibit 8, just a few of which are, for example:

Which adjustments were made because of documentation issues?

Which adjustments were made because of other alleged deficiencies?

What was the specific "Well Site" excluded by ORS for $1,986 and why?
How can a "well site" be something that is only worth $1,986?
What was the reason for this exclusion?

How did ORS calculate that the "Wells" account should be reduced by $61,956?
What pipe(s), equipment, or machinery does that refer to?
Why did ORS exclude each one? Or, did it?

What specific items under the "Pumping" account description were excluded and why?
Did it include motor or engines?
Or, was it for piping?
If it included auxiliary equipment, what equipment?

None of these questions can be answered by the record because the record does not include any evidence that identifies the specific items of plant that ORS included in the $699,361 and the asserted reason for excluding that specific item of plant. ORS only identified *accounts*, which is not the same thing as identifying *specific* items of plant, and it did not provide testimony to connect its alleged reasons with its exclusions.

DIUC is not asking ORS or the Commission to provide anything more than what is required by law and what is prescribed by the Uniform System of Accounts published by the National Association of Regulatory Utility Commissioners ("NARUC").

For example, NARUC's account description for Pumping Equipment is as follows:

> 311. Pumping Equipment
>
> This account shall include the cost of pumping equipment driven by electric power, diesel engines, steam engines and hydraulic water wheels and turbines.
>
> A sample of items to be included in this account are listed below:
>
> 1. Engines, motors, water wheels and turbines for driving pumps.
> 2. Pumps, including setting, gearing, shafting and belting.
> 3. Water piping within station, including valves.
> 4. Auxiliary equipment for engines and pumps such as oiling systems, cooling systems, condensers, etc.
> 5. Oil supply lines and accessories.
> 6. Regulating, recording and measuring devices.
> 7. Foundations, frames and bed plates.
> 8. Ladders, stairs and platforms if a part of pumping unit.

(NARUC Uniform System of Accounts for Class A Utilities at 103 (excerpted pp. 102-104) (copy included as Attachment to DIUC Reply to ORS Answer re Pet for Recon)

Pursuant to the NARUC system, "Pumping Equipment" is an *account*; it is not an item of plant. So, when the record only establishes by Rehearing Exhibit 8 that a reduction was made for "pumping" then there is no identification of the specific item of plant – just the broader category

of *account* which is for bookkeeping purposes not inventorying assets.

The items numbered 1 through 8, are the kinds of *specific* items that ORS should have identified, not just the broad account descriptions shown in Rehearing Exhibit 8 and endorsed by the Order. The broad, general descriptions provided by are not sufficient to respond to the testimony of Mr. Guastella and they are not consistent with NARUC. Certainly, they are not "specific" as the Order on Rehearing asserts.

ORS failed to give the Commission a sufficient record. Rehearing Exhibit 8 does not identify specific items of plant, the specific cost of the items being adjusted is not provided, and there is no information about ORS's reasons for the adjustments. The Order on Rehearing's reliance on Rehearing Exhibit 8 is misplaced and the Order should be amended to include the $699,631 within rate base.

B. DIUC's unrebutted proof of the cost of the known plant items in accordance with NARUC standards is substantial evidence of their cost and was sufficient, if not conclusive, documentation of their value in the absence of contrary proof of their value. The Commission erred in rejecting this substantial evidence comporting with industry standards and instead adopting the vague ORS adjustment for alleged "lack of contemporaneous invoices."

ORS asserted some portion of its adjustment to utility plant was based on the alleged absence of specific contemporaneous documentation of the precise cost of construction of facilities. Mr. Guastella testified, however, that the absence of those invoices does not constitute a lack of documentation of cost for ratemaking when there is no Q:uestion the facilities are in service, used and usable, as is the case here. (Hear Tr. p. 150-152) ORS never countered Mr. Guastella's testimony.

As DIUC pointed out in the primary case, ORS witness Gearheart's proposed adjustments for land, capital costs and other unspecified assets in various Plant Accounts also failed to include reasons tied to each specific excluded item. Instead, she merely attached descriptive words like

"non-allowable," "adjustments from the previous case," or "undocumented." (Hear Tr. 526) Ms. Gearheart did not provide any other testimony or analyses to support her adjustments and she did not know the basis for them when questioned by DIUC's counsel:

> Q The adjustment that you made said "undocumented costs," I think, or something like that, did it not?
> A Yes, it did.
> Q And what research did you do to determine documentation of those costs of that plant-in-service?
> A Those adjustments were simply carried over from the last rate case, and we do not retest or retry anything that was approved in the last rate case.

(Hear Tr. 526)

On the other hand, DIUC provided ORS with specific itemized assets, by primary plant account, with description of original costs as booked, year of installation and in-service dates. (Hear Tr. 150-153)(Guastella testifying, "The issue is that there were invoices that we could not produce to ORS in their examination. A large part of those invoices have to do with Melrose Utility Company. Melrose went bankrupt. It abandoned its systems. It had no records. It stopped operating. We stepped in and began operating Melrose....") Further, it is undisputed these assets are real and in service and DIUC is paying utility property taxes on them. Finally, Mr. Guastella also testified at the hearing it was the now defunct Melrose Utility Company that failed to retain many of the invoices now sought by ORS to review past transactions. Id. DIUC cannot now recreate transactions that occurred decades ago.

With respect to Ms. Gearheart's claim that some costs were "undocumented" and should be excluded, Mr. Guastella testified:

> In fact, itemized costs at specific amounts, by primary plant account and the year in service, are recorded on the DIUC's books, which certainly constitute "documentation". The ORS does not claim that the assets in question do not exist and are not used and useful, nor does it question the reasonableness of the amounts that it clearly observed from DIUC's records. Some missing invoices for a relative

small portion of plant, particularly for the Melrose Utility Company that essentially abandoned its system, does not constitute an absence of evidence of the reasonableness of the utility plant costs for assets that are providing service. Even the Intervenors' expert, Mr. Loy, understands such circumstances.

(Hear Tr. p.203-204)

Mr. Guastella also explained the proper and NARUC-endorsed role of estimating costs and using estimation studies.

> These studies are typically performed when there are no supporting cost records of plant. The NARUC USoA requires an 'estimate' of plant values when there is no supporting documentation available. Original cost studies have been an accepted methodology to establish these values.
>
> Although Mr. Loy applies that statement to his opinion with respect to an issue he raised with which I disagree and will discuss later, he is correct that the cost of plant is not properly disallowed because of a lack of documentation, but instead it is proper and consistent with the NARUC USoA to use estimates. In this case, however, it is not necessary to estimate the costs because the costs are known and recorded, and the assets are used and useful in providing service to our customers.

(Hear Tr. p.204)

The POAs' expert Mr. Loy agreed with DIUC's approach to estimate the plant values, testifying:

> These studies are typically performed when there are no supporting cost records of plant. The NARUC USoA requires an 'estimate' of plant values when there is no supporting documentation available. Original cost studies have been an accepted methodology to establish these values.

(Hear Tr. p.202-203)

When asked on cross-examination at the original hearing about this estimating procedure, Ms. Gearheart testified that she was not aware of that provision in the NARUC USoA. The relevant testimony follows with DIUC's cross examination of ORS witness Gearheart:

Q: You were —
A: — were —
Q: — here today for Mr. White's testimony, were you not?
A: Yes.

Q: And were you here for his testimony where he said that, when the utility was purchased, when Haig Point Utility was purchased by CK Materials in either 2007 or 2008, that the values that were on Haig Point Utility's books were carried over? Were you here for that testimony?

A: I was here for that, but I have no knowledge of that, so I just would have to take his word for it.

Q: And if his testimony was correct that there were values on the books of Haig Point Utility, then that would be documentation, some documentation, of those costs, correct?

A: What utilities, or any company, puts on their books and records has to be verified. If we cannot verify the original cost or ownership of the asset, then we have to take the company's word for it, what it was.

Q: Well —

A: The purpose of the review or of the audit is to test the underlying transactions on the books. So I don't agree that general ledger is documentation of what the value of the asset was, because we cannot prove, we cannot verify what the company paid for the asset if we don't have an invoice.

Q: Well, according to the system of accounting that you use, if there's not an invoice for a particular piece of equipment, then a reasonable estimate is to be used, correct?

A: I'm not aware of that.

Q: Well, did you read Mr. Loy's testimony where he cited to the accounting rules — and I'm less familiar with the acronym than everybody in this room — that if there is not a documented invoice and it is in service, then a reasonable estimate should be used of that plant?

A: I am not aware that ORS adopted that, and our proceeding is that, if we cannot verify the asset with an invoice, we just don't feel comfortable putting that asset into plant-in-service, because it would be – you can ask three people to make estimate what the cost should be, and you might come up with three different answers.

. . . .

Q: [...] Would you agree that NARUC Uniform System of Accounts requires an estimate of plant values when there is no supporting documentation available?

A: I don't know.

Q: You're not familiar with that?
A: I'm not familiar with that part.

(Hearing Tr. 526, line 4 -528, line 6) and (Hearing Tr. 530, lines 13-19)

ORS never presented another witness at rehearing to address the fact that the estimating procedure employed by DIUC for missing invoices is NARUC-endorsed and endorsed by Intervenors' expert Loy. The only ORS witness on the topic did not even know the NARUC standard. At rehearing none of ORS's or Intervenors' witnesses added to Ms. Gearheart's testimony regarding her proposed exclusion of $699,361 of utility plant in service. ORS witness Sullivan merely adopted Gearheart's unsupported conclusions; he did not provide any additional evidence. At rehearing no one for ORS or Intervenors addressed Mr. Guastella's rebuttal testimony in the primary case regarding these adjustments.

The alleged lack of invoices does not constitute reliable, probative, and substantial evidence to disallow in their entirety the value of a utility's assets that are in place providing service. The Commission's finding that the absence of invoices is equivalent to a total absence of documentation of the cost of these particular assets that are unquestionably in service is unsupported by substantial evidence.

C. The Order's Adjustment to Exclude Capital Costs and Legal Costs Associated with Plant in Service is Not Supported by any evidence.

The record does not include any ORS testimony in support of excluding capital costs and legal costs associated with plant in service (i.e., the "Land and Land Rights" as shown in Rehearing Exhibit 8). The Commission's only mention of "Land and Land Rights" adjustment is in the Order Denying DIUC's Petition for rehearing and that is limited to the following:

> The evidence presented by ORS supports this Commission's conclusion with regard to the unreasonableness and exclusion of the plant in service items, because of lack of documentation by the Company. Further, for similar reasons, the evidence presented by ORS supports the adjustment made for capital costs and legal

costs associated with plant in service, which we adopted in Order No. 2018-68, and, Company allegations to the contrary, must also be rejected. These are the "Land and Land Rights" shown in Exhibit DFS-5, Hearing Exhibit 8.

(Order 2018-346 at 7)

In contrast, DIUC provided the Commission with ample evidence that remains unrefuted. With respect to legal and capital costs associated with plant in service, Mr. Guastella testified about specific costs in the following exchanges:

Q: What adjustments did the ORS propose with respect to legal and consulting fees that are reflected in DIUC's utility plant in service?

A: Ms. Gearheart's testimony and exhibits do not specifically identify the amounts of those adjustments. They are lumped in with her adjustment to utility plant in service. It is our understanding that she proposes to eliminate the legal fees incurred in connection with the condemnation of the Sabry parcel and to eliminate GA consulting fees that were capitalized. I would note that Ms. Gearheart's statement that the legal costs of $29,511 were for condemnation of the water tower is incorrect. DIUC is condemning the land, not the water tank that DIUC already owns.

Q: Why was the condemnation action required?

A: When we learned of the tax sale of the storage tank parcel, our first reaction was to reason with Mr. Sabry. When that was unsuccessful, we filed a legal action to reverse the tax sale. Subsequently, however, our attempt to finance with CoBank and then Wells Fargo fell through, and our need to obtain financing for capital improvements had to be our primary objective. It became evident that the proceeding to reverse the tax sale would be drawn out and result in an unacceptable delay in obtaining a loan. The best course of action was to withdraw the law suit and initiate a condemnation, an action that SunTrust would accept -- and made it a requirement of the loan.

Q: Why should the legal fees be included in the cost of providing service?

A: The tax sale was beyond our control. Upon managing DIUC, we notified Beaufort County of the new address, and we received regular property tax bill from Beaufort County at that address. For an unknown reason, Beaufort County sent a tax bill for the storage tank parcel of land to the wrong address without our knowledge, as well as notices of a delinquency and a tax sale. It even posted a notice of the tax sale at the wrong property, and our operators never observed any notice at the storage tank site which they visit daily. The legal fees were, therefore, unavoidable and included in the cost of land.

Q: Why should GA's fees related to capital improvements be included in the cost of providing service?

A: GA's management agreement contain a provision under which work performed in connection with capital improvements is not part of the routine

day-to-day management of DIUC and, therefore, would be billed at 10% of the first $50,000 of improvements and 8% of capital costs over $50,000. The work involves establishing the improvements that are needed or desirable, establish priorities in terms of their impact on service and available funding cost, solicit and obtain contractors' proposals, select contractors, schedule and coordinate work with DIUC's routine operations, and supervise the construction work.

Q: Did ORS provide any reason for eliminating GA's fees related to capital improvements?

A: Not that I could find.

Q: Why should GA's fees related to capital improvement be included in rate base as part of the cost of the improvements to utility plant is service?

A. GA's capital fees are not only part of an arms-length management agreement, they are necessary and the cost is reasonable. It is obvious that capital improvements cannot be made without the work I describe above. The 10% and mostly 8% of the construction costs are significantly less that the 15% to 20% typically allowed for administration and supervision of construction work."

(Hear Tr. p.204-206)

With respect to land values, Mr. Guastella testified:

Q: Has the ORS included anything for the cost of land in utility plant in service?

A: No.

Q: Did the ORS give a reason for eliminating any value for land?

A: Not that I could find.

Q: What have you included as the cost of land for the parcels owned by DIUC?

A: We estimated the cost of land at about $0.25 per square foot on the basis of the appraised value of the storage tank parcel that was performed by an independent appraiser we engaged in connection with the condemnation proceeding. The total estimated cost of land, excluding capitalized legal fees, is $109,560.

(Hear Tr. p.206-207)

Mr. Guastella's testimony was the only testimony on the matter of land rights for inclusion in Rate Base and it remains unchallenged. The Order's refusal to acknowledge this evidence and its ruling that Rehearing Exhibit 8 justifies permitting no recovery for costs incurred for Land and Land Rights within the Rate Base is contrary to the reliable, probative, and substantial evidence on the whole record. Further, because there was no evidence the Commission did not "make

findings which are sufficiently detailed" as required by Porter v. S.C. Pub. Serv. Comm'n, 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998), and the Order certainly does not include findings of fact "sufficiently detailed to enable [this Court] to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings, as is required by Able Commc'ns. Inc. v. S.C. Pub. Serv. Comm'n, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986).

CONCLUSION

This Court should reverse or modify the Public Service Commission Order on Rehearing because the Order's findings and conclusions that DIUC is not entitled to recover any of the $542,978 in documented Rate Case Expenses of Guastella Associates and excluding $699,631 of used and useful Utility Plant In Service should be excluded from rate base were legally erroneous, arbitrary, unsupported by substantial evidence, and prejudiced substantial rights of DIUC.

REQUEST FOR INSTRUCTIONS FOR REMAND

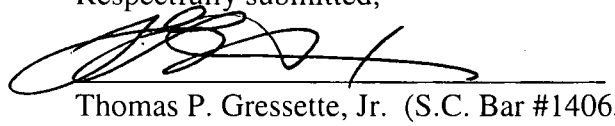
The Rate Application that initiated this proceeding requested a 108.9% increase over the rates authorized pursuant to the last petition for rate adjustment. (Rehear Tr.p.80) After the first appeal and remand to the Commission, DIUC provided rehearing testimony that the "current economic realities" require DIUC obtain "a 125.7% increase over the rates authorized pursuant to the last petition for rate adjustment." (Id.p.79) However, to keep the final rates within the Application's original 108.9% increase noticed to the ratepayers, DIUC proposed to leave outstanding that portion of its rate case expenses beyond those that could be included within a 108.9% increase. (Proposed Order and Pet. For Recon.) DIUC therefore asked the Commission on reconsideration to correct the $699,631 excluded from Utility Plant In Service and to increase the allowed rate case expense so that DIUC can recover $269,356 for GA fees incurred through

September 30, 2017. That would leave outstanding about one-half of the $541,738 of GA fees invoiced through September 30, 2017, or $273,662.

DIUC further requested the Commission defer any decision on the $273,662 outstanding pre-September 30, 2017, GA costs or their documentation at this time then allow DIUC to present the same in its next rate proceeding during which ORS should engage in its usual and customary "back and forth with the company, to make sure [ORS] thoroughly understand[s] the expenditures for which [DIUC is] seeking recovery." (Rehear Tr.p. 520). At that time DIUC would also present its additional post-September 30, 2017, actual rate case expense for the conclusion of this docket to enable an accurate accounting of what additional costs should be considered in the rate case.

Accordingly, for efficiency and clarity, the Appellant respectfully requests this Court instruct the Commission to correct the erroneous exclusion of $699,631 in Rate Base/Plant In Service and to permit recovery of Rate Case Expenses for GA fees incurred through September 30, 2017, up to a total revenue increase not to exceed the noticed 108.9% increase. Remaining GA fees invoiced could be presented for consideration as part of DIUC's next rate proceeding.

Respectfully submitted,



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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION

Appellate Case No. 2018-001107

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.

PROOF OF SERVICE

I, Vicki Volponi, an employee of Walker Gressette Freeman & Linton, LLC., hereby certify that I have served this 13th day of August 2018, Appellant's Initial Brief and Designation of Matter on counsel of record, by placing same in the United States Mail, first class postage prepaid to the following:

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