

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM
THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Docket No. 2014-346-WS
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., and
Bloody Point Property Owner's Association, Respondents,

INITIAL BRIEF OF RESPONDENT
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COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Whether the Public Service Commission of South Carolina's Order on Rehearing deferring recovery of \$542,978 in Rate Case expenses is properly supported by substantial evidence?¹
2. Whether the Public Service Commission of South Carolina's Order on Rehearing excluding \$699,361 of Utility Plant in Service from rate base is proper and supported by substantial evidence?

STATEMENT OF THE CASE

This is an appeal of Public Service Commission of South Carolina ("Commission") Order Nos. 2018-68 and 2018-346 issued on January 31, 2018 and May 18, 2018, respectively, in Docket No. 2014-346-WS.²

In this case, Daufuskie Island Utility Company, Inc. ("DIUC" or "Appellant"), a water and sewer company regulated by the Commission, filed an Application on June 9, 2015, requesting a 108.9% revenue increase via a new schedule of rates and charges for water and sewer service to be collected by increasing the rates paid by its water and sewer customers. (Application and Application Schedule A-4.) The 108.9% revenue increase equaled \$1,182,301 in additional revenue, consisting of water revenue increases of \$590,454 and sewer revenue increases of \$591,847. (Application Schedule W-C and Schedule S-C.) After the Application was filed, the Commission was required to issue an Order "approving or disapproving the changes in full or in part within six months." S.C. Code Ann. § 58-5-240(C) (2015).

ORS is automatically a party to all matters before the Commission pursuant to S.C. Code Ann. § 58-4-10(B) (2015). Petitions to Intervene were granted to Haig Point Club and Community

¹ In the Order on Rehearing, the Commission did not foreclose DIUC's opportunity to recover these rate case expenses. According to Order No. 2018-68, "[the Commission] will allow the Company to request approval of [\$542,978 in Rate Case expenses] 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."

² This is the second appeal to the Court of a Commission Order in this case. DIUC originally appealed Commission Order Nos. 2015-846 and 2016-50. On Appeal, the Supreme Court Reversed and Remanded the case to the Commission for rehearing.

Association, Inc. (“HPCCA”); Melrose Property Owner’s Association, Inc. (“MPOA”); Bloody Point Property Owner’s Association (“BPPOA”) and Beach Field Properties, LLC (“Beach Field”)³. HPCCA, MPOA, BPPOA are collectively referred to as the Property Owners Associations (“POAs”).

The Commission held a night hearing on September 15, 2015, at 6:00 pm on Daufuskie Island to provide residents an opportunity to testify regarding DIUC’s application without having to travel to Columbia, South Carolina for the hearing scheduled for October 28, 2015.

Written testimony must be filed with the Commission and served on all parties on or before dates established by the Commission. S.C. Code Ann. § 58-3-140(D) (2015); 10 S.C. Code Ann. Regs. 103-845.C (2012). Pursuant to Commission Order No. 2015-57-H, DIUC filed its original direct testimony on September 18, 2015, and all other parties filed their original direct testimonies on October 2, 2015, with the exception of Beach Field, which did not file testimony. DIUC filed its original rebuttal testimony on October 9, 2015, and ORS and the POAs filed their original surrebuttal testimony on October 16, 2015.

On October 27, 2015, the ORS and POAs filed what was titled a “Settlement Agreement” with the Commission and served it on the parties.⁴ At the hearing on October 28, 2015, the Commission received the Settlement Agreement into evidence over DIUC’s objection and proceeded to hear testimony from the witnesses and to receive exhibits into the record. (Tr. p. 42 – p. 44, ll. 16; p. 48, ll. 2-14; Hearing Exhibit 3.) (R. p. 33.)

In Commission Order No. 2015-846, the Commission approved the Settlement Agreement. (Order No. 2015-846 p. 29) (R. p. 61.) Commission Order No. 2015-846 included evidence and

³ By letter dated July 12, 2016 to this Court, Beach Field stated that it does not have a position regarding the issues on appeal and does not intend to participate as a party Respondent.

⁴ In its Opinion No. 27729, this Court stated that the agreement between the POAs and ORS was not a true Settlement Agreement “because all parties did not embrace it.”

findings that concurred with the recommendations contained in parties' pre-filed testimony and DIUC's Application.

DIUC filed a Petition for Reconsideration and/or Rehearing on December 21, 2015. (R.pp. 192-216) By Order No. 2016-50, dated February 26, 2016, the Commission denied that Petition. (R.pp. 6-27) On March 22, 2016, DIUC served its Notice of Appeal on Order Nos. 2015-846 and 2016-50. (R.pp. 87-146) The Office of Clerk of the Supreme Court assigned the matter Appellate Case No. 2016-000652. The Appeal was briefed, and the parties presented oral arguments on December 14, 2016. (R. p. __, lines __.) On July 26, 2017, the Court issued its Opinion reversing the Commission's Orders and remanding the matter for a *de novo* hearing. Daufuskie Island Util. Co., Inc. v. S.C. Office of Reg. Staff, 420 S.C. Off. Of Reg. Staff, 420 S.C. 305, 803 S.E.2d 280 (2017). In its Opinion, the Supreme Court held that the Commission erred in approving and adopting the Settlement Agreement and reversed and remanded the matter to the Commission for a new hearing as to all issues. (Opinion at 316, 286) (R. p. __, lines __.)

In its Opinion, this Court gave specific guidance on three issues: DIUC's Plant in Service as it relates to the elevated tank site, DIUC's entitlement to recovery of certain property tax expenses, and DIUC's recovery of certain bad debt expenses.⁵ (Opinion at 316-320, 286-288) (R. p. __, lines __.) In the Opinion, this Court specifically stated that rate cases are heavily dependent upon factors that are subject to change during the pendency of an appeal and that a parties' economic realities may change, as a result, on remand the Commission may consider additional evidence. (Opinion at 316, 286) (R. p. __, lines __.)

After remand to the Commission, ORS conducted discovery on all additional evidence that DIUC introduced at the rehearing, and the parties pre-filed rehearing testimony of their witnesses.

⁵ While DIUC also appealed Commission Order Nos. 2015-846 and 2016-50, as they pertained to management fees, rate case expenses, and other plant in service, the Court declined to provide specific guidance on these matters.

(R. p. __, lines __.) The rehearing was convened on December 6, 2017. (Rehearing Tr. p. 1) (R. p. __, lines __.) On December 20, 2017, the Commission issued a one-page Directive detailing its vote affording DIUC the opportunity to earn approximately \$950,166 in additional revenues, while specifically stating that a full written Order would be issued by the Commission at a subsequent time in which all adjustments and rate matters would be explained, and that the Company was to design and file rates that produce the revenue increase granted in that Order. (12-20-17 Directive) (R. p. __, lines __.)

On January 31, 2018, the Commission issued Order No. 2018-68, which detailed all adjustments and rate matters to be adopted by DIUC (“Order on Rehearing”). (Order 2018-68) (R. p. __, lines __.) DIUC subsequently filed a Petition for Reconsideration and/or Rehearing on February 20, 2018, asserting that the Commission Order on Rehearing’s analysis of Rate Base/Utility Plant in Service, accumulated depreciation/depreciation expense, and Rate Case expense required “additional refinement.” (Pet. Recon.) (R. p. __, lines __.) By Order No. 2018-346, dated May 16, 2018, the Commission denied DIUC’s Petition for Reconsideration and/or Rehearing. (Order 2018-346) (R. p. __, lines __.)

On June 13, 2018, DIUC served its Notice of Appeal of Order No. 2018-68 and Order No. 2018-346 (Order Nos. 2018-68 and 2018-346 collectively referred to herein as “Orders on Rehearing”). (Notice Appeal) (R. p. __, lines __.) 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 Appellant in the Instant Appeal from the Commission Orders on Rehearing relate to whether the Commission properly ordered that recovery of \$542,978 in rate case expenses be deferred until DIUC’s next rate case proceeding where DIUC would have the opportunity to recover those expenses by providing appropriate

documentation, and whether the Commission properly ordered an adjustment of \$699,361 to Rate Base/Utility Plant in Service.

STATEMENT OF FACTS

On June 9, 2015, DIUC filed an Application with the Commission pursuant to S.C. Code Ann. Section 58-5-240 and 10 S.C. Code Ann. Regs. 103-512.4.A and 103.712.4.A seeking approval of a new schedule of rates and charges for water and sewer service that DIUC provides to its customers within its authorized service area, Daufuskie Island, Beaufort County, South Carolina. (R. pp. 1416-1483.) At the time, DIUC provided water supply/distribution services to 680 active residential and commercial service units and wastewater collection/treatment services to 493 active residential and commercial service units. (Tr. p. 507, ll. 9-12) (R. p. 779, ll. 9-11.) In the Application, DIUC requested an increase in revenues of 108.9% for combined operations equaling the amount of \$1,182,301, consisting of water revenue increases of \$590,454 and sewer revenue increases of \$591,847. (Application Schedules A-4, W-C and S-C.) DIUC's requested revenue increase utilized an Return on Equity ("ROE") of 10.5% based on the rate of return on rate base methodology and a 2014 historical test year ("test year"). (Application "Overview and Justification" and Schedule A-3.) In the Application, DIUC also requested to establish uniform rates between the Haig Point and Melrose communities. (Application "Overview and Justification.")

Prior to DIUC filing its application for a rate increase in Commission Docket No. 2014-346-WS (the "Original Proceeding"), DIUC's most recent rate case was in Commission Docket No. 2011-229-WS. (Tr. p. 494, ll. 8-10) (R. p.766, ll. 8-10.) In that case, Commission Order No. 2012-515 approved a settlement entered into by the POAs and DIUC, which was not objected to by ORS, whereby DIUC received a revenue increase of \$291,485 based on a \$5,000,000 rate base;

an operating margin of 16.64%; and an ROE of 8.81%. (Order No. 2015-846 p. 2) (Tr. p. 433, l. 19- p. 434, l. 17; p. 525, ll. 2-6) (R. p. __, l. __; p. 705, l. 19-706, l. 17; p. 797, ll. 2-6.)

In the Original Proceeding, Petitions to Intervene were granted for the POAs and Beach Field. (R. p. 67; p. 66.) ORS is automatically a party in all matters before the Commission and its mandate is to “represent the public interest of South Carolina before the commission.” S.C. Code Ann. § 58-4-10(B) (2015).

After ORS completed its examination, but before it filed testimony in the Original Proceeding, ORS shared the results of its audit with DIUC. (Tr. p. 202, ll. 21-23) (R. p. 474, ll. 21-23.) Additionally, ORS held an exit audit conference call with DIUC for DIUC to ask questions about ORS’s adjustments. Id. DIUC was also provided ORS’s work papers detailing the plant items disallowed in the adjustments. Id.

Pursuant to its statutory duties, prior to the hearing, ORS initiated settlement discussions with the parties⁶ and shared revenue, operating margin, and ROE amounts resulting from its recommended adjustments. S.C. Code Ann. § 58-4-50(A)(9). The POAs and ORS entered into a Settlement Agreement, and while Beach Field declined to sign as a party the Settlement Agreement, Beach Field did not object to it. (R p. __, l. __.) The Settlement Agreement reflects all of ORS’s adjustments set forth in ORS’s pre-filed testimony, except for the bad debt expense adjustment. (Order Nos. 2015-846 p. 28-30 and 2016-50 p. 22) (R. p. __, ll. __.) The Settlement Agreement did not set forth any adjustments that were not already recommended in ORS’s pre-filed testimony or DIUC’s Application. Id. (Order Nos. 2015-846 The Settlement Agreement revenue, ROE, and operating margin were calculated using ORS’s adjustments and DIUC’s

⁶ See S.C. Code Ann. § 58-4-40, “(A) It is the duty and responsibility of the regulatory staff to...9) to serve as a facilitator or otherwise act directly or indirectly to resolve disputes and issues involving matters within the jurisdiction of the commission...”

methodology for bad debt expense. Id. Based on those calculations, the Settlement Agreement set forth a \$462,798 revenue increase, an ROE of 9.28%, and an operating margin of 16.18% for DIUC's combined operations. (Tr. p. 503, ll. 3-5) (R. p. 775, ll. 3-5.) DIUC declined to join the Settlement Agreement; therefore, the final settlement document was not shared with DIUC prior to its filing with the Commission. The Settlement Agreement was filed with the Commission and served on the parties on October 27, 2015.⁷

At the outset of the Original Proceeding's hearing on October 28, 2015, the Settlement Agreement was entered into the record. DIUC's objection to it being introduced into the record was overruled.

At that hearing, and in support of its Application, DIUC presented the testimony of: John F. Guastella (direct and rebuttal testimony), a member of the DIUC Board of Directors and President of Guastella Associates, LLC ("GA"), a utility management, valuation and rate consulting firm headquartered in Boston, Massachusetts, also hired by DIUC to manage its assets and conduct its rate case; Gary C. White (direct testimony), Vice President and Director of Accounting at GA; Eric Johanson (direct testimony), DIUC Chief Operator; and Maria Walls (rebuttal testimony), Beaufort County Treasurer. (Tr. p. 187, ll. 11-12; p. 188, ll. 1-2; p. 227, ll. 13-17; p. 123, ll. 11-14;) (R. p. 459, ll. 11-12; p. 460, ll. 1-2; p. 499, ll. 13-17; p. 395, ll. 11-14.) Mr. Guastella and Mr. White testified as a panel about GA's management of DIUC and the finances of DIUC. (Tr. pp. 119-196) (R. pp. 391-468.) Mr. Johanson's testimony addressed the operations of DIUC. Mr. Johanson was excused from the hearing without appearing before the

⁷ While the Settlement Agreement was filed with the Commission only two days before the hearing the relatively late filing resulted from a great deal of negotiation between parties and was filed at the first possible opportunity following its negotiation and execution.

Commission after his testimony was accepted into the record without objection from the other parties. Ms. Walls provided testimony on property taxes.

The POAs presented two panels of witnesses. The first panel consisted of Paul Vogel (direct testimony), HPPCA resident; Doug Egly (direct testimony), Chief Executive Officer of the Haig Point Association; and Tony Simonelli (direct testimony), real estate broker on Daufuskie Island. POA witnesses Vogel, Egly, and Simonelli presented testimony illustrating the points of view of their respective organizations, and each providing testimony opposing DIUC's request. The second panel consisted of Lynn M. Lanier (direct testimony) and Charles Loy (direct and surrebuttal testimony), principals of GDS Associates, Inc., a utility consulting and engineering firm with its principal offices in Marietta, Georgia; and Harry Jue (direct testimony), water and sewer consultant with Hussey Gay Bell Engineering. Mr. Lanier and/or GDS Associates, Inc. represents and performs utility rate services for most of the twenty electric cooperatives in South Carolina. (Tr. p. 420, ll. 5-6) (R. p. 692, ll. 5-6.) POA witness Loy provided testimony regarding accounting and rate base issues. POA witness Lanier provided testimony on the overall Application and incorporated Mr. Loy's recommended adjustments. Beach Field did not pre-file or present testimony at the Commission hearing.

ORS presented testimony via one panel consisting of Dr. Douglas H. Carlisle (direct testimony), ORS Economist; Ivana C. Gearheart⁸ (direct testimony), ORS Audit Manager; and Willie J. Morgan⁹ (direct and surrebuttal testimony), ORS Deputy Director for the Water and Wastewater Department. (p. 488, ll. 12-14; p. 505, ll. 10-13) (R. p. 760, ll. 12-14; p. 777, ll. 10-13.)

⁸ Hearing Exhibit 18 is Gearheart Direct Exhibits 1 through 8.

⁹ Hearing Exhibit 19 is Morgan Direct Exhibits 1 through 8. Hearing Exhibit 20 is Morgan Surrebuttal Exhibits 1 and 2.

On December 8, 2015, the Commission issued Order No. 2015-846 with evidentiary findings that matched the terms of the Settlement Agreement and concluded by approving the Settlement Agreement. On December 21, 2015, DIUC filed a Petition for Reconsideration and/or Rehearing which was denied by the Commission in Order No. 2016-50. On March 22, 2016, DIUC served its Notice of appeal of Order No. 2015-846 and Order No. 2016-50 (“2016 Appeal”). (Original Notice of Appeal)

In its 2016 Appeal, DIUC asserted that the Commission erred when it admitted into evidence a proposed Settlement Agreement that did not include DIUC, and that the Commission’s findings as to DIUC’s property taxes, management fees, rate case expenses, bad debt, and rate base were erroneous and not based on the substantial evidence on the record. (2016 Appeal Brief, pp. 27-53)

The Supreme Court heard oral arguments on the 2016 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 reversed and remanded the Commission’s Order 2015-846, and found the Commission erred in admitting into evidence and adopting the Settlement Agreement between ORS and the POAs. *See Daufuskie*.

The Court also explained that, “[w]hile 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.” Daufuskie, 420 S.C. at 316, 803 S.E.2d at 286. As stated by the Court:

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 evidence in the record.

Based on these findings, the Court reversed and remanded the matter "for a new hearing as to all issues." *Id.* The Court also stated that rate cases are heavily dependent upon factors that are subject to change during the pendency of an appeal and that a parties' economic realities may change. *Id.* As a result, on remand the Commission may consider additional evidence. *Id.* The Court declined to provide specific guidance to the Commission on the other issues that DIUC appealed, including the Commission's decision to disallow recovery of \$699,361 from DIUC's rate base.

Following remand from this Court, the Commission Hearing Officer, David Butler, issued Order No. 2017-52-H, on August 24, 2017, asking the parties for proposed dates for the pre-filing of testimony and/or hearing dates. (Order 2017-52-H) (R. p. __, ll. __.)

On October 4, 2017, DIUC filed Applicant's Proposal for Procedure Following Remand and Expedited Hearing. (Proposal, 10/4/17) (R. p. __, ll. __.) According to DIUC's proposal, there were limited issues for the Commission to consider on Rehearing. (R. p. __, ll. __.) Specifically, the Proposal outlines the three issues on which the Supreme Court gave guidance: property taxes, Plant in Service as it relates to the elevated tank site, and bad debt expenses. (R. p. __, ll. __.)

On October 10, 2017, subsequent to a telephone status conference with all participating parties, Commission Hearing Officer David Butler issued Commission Order No. 2017-59-H, in which he summarized the position of DIUC by stating, "[c]ounsel for [DIUC] opined that the

Commission should consider the record presented in the original hearing, and accept new testimony solely on issues referred to by the Supreme Court, namely property taxes, plant in service, bad debts, management fees, and rate case expenses. Said counsel also stated the belief that the Supreme Court opinion did not allow for any discovery in this case.”¹⁰ (Order No. 2017-59-H) (R. p. __, ll. __.) Additionally, that Order stated, “DIUC’s counsel stated a preference for the pre-filing of testimony, hearing, and issuance of an Order in this case before the end of 2017....” (R. p. __, ll. __.) However, because DIUC failed to justify why it needed an expedited proceeding on the October 10th telephone status conference, Commission Hearing Officer Butler declined to set an expedited procedural schedule and ordered that the rehearing begin on January 30, 2018. (R. p. __, ll. __.)

On October 16, 2017, DIUC filed with the Commission a Motion to Reconsider Directive 2017-59-H and Directive 2017-60-H. (Second Motion to Reconsider) (R. p. __, ll. __.) The purpose of this Motion to Reconsider was to ensure that the case was “*resolved* prior to December 31, 2017,” and set a path forward to determine the need for additional discovery. (emphasis added) (R. p. __, ll. __.) According to DIUC’s Second Motion to Reconsider, “the Supreme Court’s decision [addressing Commission Order 2015-846] specifically addressed... adjustments to...Plant in Service...Accordingly, the scope of the rehearing is narrow. Expedited scheduling is proper and efficient for the issues to be decided by the Commission,” and “[t]he issues for rehearing are narrow and the delay of discovery is not warranted.”¹¹ (R. p. __, ll. __.) Accordingly,

¹⁰ Shortly after the Commission issued Order No. 2017-59-H, ORS sent an e-mail to the Hearing Officer, which was placed on the Commission’s Docket Management System, clarifying one point in his Order in which he characterized ORS’s position. According to the e-mail, “ORS does not read the Supreme Court Order in the same narrow manner presented by counsel for DIUC. ORS believes that the Supreme Court remanded this case to the Commission ‘for a new hearing as to all issues.’ However, ORS does not intend to argue issues on which the Supreme Court gave guidance. Regarding the utilization of discovery, any discovery required by ORS will depend upon the filings to be made by DIUC.”

¹¹ Certain text is omitted because the only two issues which DIUC has appealed relate to Plant in Service and Rate Case expenses.

DIUC recommended an expedited hearing schedule whereby it would file testimony on October 20, 2017, Rebuttal testimony would be filed by other parties on November 3, 2017, DIUC would file surrebuttal testimony on November 10, 2017, and the Commission would hold a hearing on November 20, 2017. (R. p. __, ll. __.)

DIUC subsequently filed its Direct Rehearing testimony on October 18, 2017, and on October 20, 2017, DIUC filed supplemental rehearing testimony of John Guastella.¹² (R. p. __, ll. __.)

On October 23, 2017, the Commission issued Order No. 2017-61-H. (Order No. 2017-61-H) (R. p. __, ll. __.) According to that Order, based upon DIUC's preference for a hearing before the end of 2017, the affidavit of John F. Guastella, which discussed the difficulties of obtaining an appeal bond beyond 2017,¹³ and "various financial consequences associated with that effort," the Commission modified the remaining pre-filing testimony due dates and the hearing date. (R. p. __, ll. __.) The Order also stated that because the Commission has expedited the proceeding as DIUC requested, it was incumbent upon DIUC to be prompt in responding to any discovery requests and shorten its discovery response times.¹⁴ (R. p. __, ll. __.) As a result of DIUC's request for an expedited proceeding, the Order required ORS to file with the Commission its direct testimony on November 15, 2017, which gave ORS 18 business days from the date of the Order to complete drafting necessary discovery, receive DIUC's response, analyze discovery, and draft and file its direct testimony.¹⁵ Id.

¹² On October 26, 2017, DIUC filed revised supplemental testimony of John Guastella.

¹³ The Order did state that intervenors argued vigorously against the principles espoused in the affidavit.

¹⁴ In the Commission's Order it also stated, "...since an early hearing date has been granted as the Company has requested, it is incumbent upon DIUC to be prompt in responding to any discovery requests received from the other parties in this case. Specifically, it is incumbent upon *DIUC* to shorten its discovery response times as it has offered to do in order to effect the earlier hearing date." (emphasis added)

¹⁵ In contrast, S.C. Code Ann. 58-5-240 requires that the Commission issue a final Order within six-months from the date an applicant utility files its application for rate change. As a result, ORS typically has many months to

On November 16, 2017, ORS and the intervenors filed their rehearing direct testimony.¹⁶ (R. p. __, ll. __.) ORS filed the direct testimony of Dawn M. Hipp, Dr. Douglas H. Carlisle, and Daniel F. Sullivan.¹⁷ (R. p. __, ll. __.) The intervenors filed the direct testimony of Lynn Lanier and Charles Loy.

Subsequent to all parties filing rehearing direct testimony, DIUC served its second set of discovery conducted on ORS.¹⁸ (DIUC's Second Set of Discovery) (R. p. __, ll. __.) In DIUC's Second Set of Interrogatories and Requests for Production to ORS, which was served on Monday, November 20, 2017, DIUC requested responses no later than the day after Thanksgiving, Friday, November 24, 2017. (R. p. __, ll. __.) In response to this abbreviated time frame that DIUC wished to impose upon ORS, counsel for ORS filed with the Commission a letter citing S.C. Reg. 103-833, which states that parties are provided twenty (20) days to respond to written interrogatories and requests for production of documents and pointed out that the expedited schedule in this proceeding was requested by DIUC. (ORS Response to DIUC Discovery) (R. p. __, ll. __.) Furthermore, of the four days between November 20, 2017, and November 24, 2017, both November 23rd and 24th were State Holidays because of Thanksgiving. (R. p. __, ll. __.) In response, counsel for DIUC filed a letter with the Commission in which he stated that ORS had

draft and serve discovery, receive and review discovery responses, work with the applicant utility to clarify any issues, conduct an appropriate and thorough analysis, and draft and file its testimony.

¹⁶ While Commission Order No. 2017-61-H, required ORS to file its rehearing direct testimony on November 15, 2017, this Court issued its Order regarding DIUC's Motion for Costs on November 15, 2017, which resulted in slight alterations to ORS's rehearing direct testimony. As a result, upon ORS's request and all other participating parties' consent, the Commission issued Order No. 2017-73-H, which granted ORS and intervenors one additional day to file their rehearing direct testimony.

¹⁷ On November 29, 2017, ORS filed the revised rehearing direct testimonies of Daniel Sullivan and Dawn M. Hipp. (R. p. __, l. __.)

¹⁸ All parties conducted discovery both in the original hearing and in the rehearing. In order to accomplish its regulatory obligations, ORS served discovery requests upon DIUC pursuant to its regulatory authority and S.C. Code Ann. § 58-4-55. DIUC served discovery requests upon ORS and the intervenors pursuant to S.C. Public Service Commission Rule 103-833 (First Interrogatories and Requests for Production of Documents to ORS and Intervenors served by DIUC on October 7, 2015, Second Set of Interrogatories and Requests for Production of Documents to ORS on November 20, 2017, and Third Set of Interrogatories and Requests for Production of Documents served on intervenors).

served discovery upon DIUC with similarly short response times. (DIUC Discovery Response) (R. p. __, ll. __.) On November 21, 2017, the Commission issued Order No. 2017-76-H, which modified DIUC's requested discovery due dates, giving ORS additional time to respond, as well as the remaining pre-filed testimony due dates and the hearing date. (Order No. 2017-76-H) (R. p. __, ll. __.) On November 28, 2017, ORS filed with the Commission its responses to DIUC's second set of discovery. (ORS Response to Second Set of DIUC Discover) (R. p. __, ll. __.)

On November 30, 2017, DIUC filed its rehearing rebuttal testimony of Gary C. White and John F. Guastella.¹⁹ (R. p. __, ll. __.)

On December 5, 2017, ORS filed the rehearing surrebuttal testimony of Daniel F. Sullivan and Dawn M. Hipp²⁰ and the intervenors filed the rehearing surrebuttal testimony of Charles Loy and Lynn M. Lanier. (R. p. __, lines __.)

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, Esquire, and John F. Beach, Esquire. ORS was represented by Jeffrey M. Nelson, Esquire and Andrew M. Bateman, Esquire.

At the rehearing, DIUC presented the testimony of: John F. Guastella²¹ (rehearing direct and rehearing rebuttal testimony) and Gary C. White²² (rehearing direct and rehearing rebuttal).

¹⁹ Commission Order 2017-76-H, required DIUC's rebuttal testimony to be filed by November 29, 2017; however, upon request by DIUC and consent of all parties, the Commission issued Order No. 2017-79-H, which granted DIUC an extension to pre-file and serve its testimony.

²⁰ ORS witnesses Sullivan and Hipp made non-substantive corrections to witness Sullivan's exhibit DFS-9 and witness Hipp's rehearing surrebuttal testimony. As a result, revised testimony of ORS witness Hipp was filed on December 11, 2017.

²¹ Rehearing Exhibit 1 consists of Guastella Direct and Rebuttal Exhibits.

²² Rehearing Exhibit 3 consists of White Direct and Rebuttal Exhibits.

Mr. Guastella and Mr. White testified as a panel about the management and finances of DIUC. (Rehearing Tr. p. 65, ll. 3-17; p. 123, ll. 9-17) (R. p. __, ll. __.)

The POAs also presented its two witnesses as a panel. The panel consisted of Lynn M. Lanier (rehearing direct and rehearing surrebuttal) and Charles Loy (rehearing direct and rehearing surrebuttal), Principals of GDS Associates, Inc., a utility consulting and engineering firm with its principal offices in Marietta, Georgia. POA witness Loy provided expert testimony regarding accounting and rate base issues. POA witness Lanier provided expert testimony on the overall Application and incorporated Mr. Loy's recommended adjustments.

ORS presented the testimony of Dr. Douglas H. Carlisle (rehearing direct), ORS Economist; Daniel F. Sullivan²³ (rehearing direct and rehearing surrebuttal), ORS Deputy Director of Auditing; and Dawn M. Hipp²⁴ (rehearing direct and rehearing surrebuttal), ORS Director for the Utility Rates and Services Department. (Rehearing Tr. p. 432, ll. 11-13; p. 442, ll. 12-14; p. 471, ll. 10-13) (R. p. __, ll. __.)

Dr. Carlisle has a Ph.D. in Government and International Relations from the University of Virginia and is a Certified Rate of Return Analyst. (Rehearing Tr. p. 432, ll. 15-19) (R. p. __, ll. __.) His testimony included an analysis and recommendation for an ROE of 9.31% based on the calculated average from the range 8.91% to 9.71%. (Rehearing Tr. p. 433, ll. 1-2(R. p. __, ll. __.) To develop the ROE recommendation for DIUC, Dr. Carlisle evaluated the return requirements of investors on the common stock of two groups: publicly held water and sewerage service companies and a Comparable Earnings Model group. Dr. Carlisle then applied to the first group, two known and generally accepted methods for determining a recommended ROE, the

²³ Rehearing Exhibit 8 is Sullivan rehearing Direct Exhibits 1 through 9.

²⁴ Rehearing Exhibit 9 is Hipp rehearing Direct Exhibits 1 through 5 and consists of both a public redacted DMH-1 and a confidential version of DMH-1 filed under seal. Rehearing Exhibit 10 is Hipp Surrebuttal Exhibit 1.

Discounted Cash Flow Model and Capital Asset Pricing Method. Dr. Carlisle's testimony adopted and re-affirmed the positions taken in his direct testimony and exhibits, which were filed on October 2, 2015, and his oral testimony given to the Commission on October 28, 2015. (Rehearing Tr. p. 432, ll. 22- p. 433, ll. 7) (R. p. __, ll. __.)

Mr. Sullivan's rehearing direct testimony adopted the previously filed testimony of ORS witness Ivana C. Gearheart. (Rehearing Tr. p. 443, ll. 5-8) (R. p. __, ll. __.) ORS witness Gearheart has a Master's Degree in Business Administration with an emphasis in Accounting and her testimony detailed ORS's examination of the Application and DIUC's books and records as well as the subsequent accounting and pro forma adjustments recommended by ORS. (Tr. p. 488, ll. 15-17; p. 489, ll. 1-17) (R. p. 760, ll. 15-17, 761, ll. 1-17.) Ms. Gearheart testified that ORS's examination of DIUC's Application consisted of three steps. (Tr. p. 489, ll. 5-8) (R. p. 761, ll. 5-8.) In step one, ORS verified that the operations and rate base numbers reported by DIUC in its Application were supported by DIUC's accounting books and records for the twelve months ended December 31, 2014, the test year chosen by DIUC. (Tr. p. 489, ll. 8-11) (R. p. 761, ll. 5-8.) Second, ORS tested the underlying transactions in the books and records for the test year to ensure that the transactions were adequately supported, had a stated business purpose, were allowable for ratemaking purposes, and were properly recorded. (Tr. p. 489, ll. 11-14; *see also* p. 527, ll. 5 - p. 528, ll. 8 (regarding verifying transactions)) (R. p. 761, ll. 11-14; *see also* p. 799, ll. 5- p. 800, ll. 8.) Third, ORS adjusted, as necessary, the revenues, expenditures, and capital investments to normalize the Company's operations and rate base numbers, in accordance with generally accepted regulatory principles and prior Commission orders. (Tr. p. 489, ll. 14-17) (R. p. 761, ll. 14-17.)

Additionally, Mr. Sullivan's testimony described ORS's examinations of the rehearing testimony and exhibits filed by DIUC in conjunction with the guidance provided by the Supreme

Court in its Opinion No. 27729 and any accounting and pro forma adjustments recommended by ORS resulting therefrom. (Rehearing Tr. p. 444, ll. 8- p. 445, ll. 2) (R. p. __, lines __.)

Ms. Hipp's rehearing direct testimony adopted the direct testimony and exhibits of ORS witness Willie J. Morgan, and re-affirmed the positions taken by ORS witness Morgan during the Original Proceeding, with the exception of any changes made to comply with the guidance given by the Supreme Court. (Rehearing Tr. p. 472, ll. 9-21) (R. p. __, ll. __.) ORS witness Morgan is a licensed Professional Engineer registered in South Carolina with over twenty-nine years of combined regulatory compliance experience with DHEC and ORS providing assistance and oversight for water and wastewater facilities and services. (Tr. p. 505, ll. 17 - p. 506, ll. 5) (R. p. 777, 117- p. 778, ll. 5.) Mr. Morgan's direct testimony focused on DIUC's compliance with Commission rules and regulations, ORS's business office compliance review, inspections of DIUC's water and wastewater systems, test-year and proposed revenue, and performance bond requirements. (Tr. p. 506, ll. 6-12) (R. p. 778, ll. 6-12.)

Additionally, Ms. Hipp presented ORS's findings and recommendations related to ORS's review of the rehearing testimony and exhibits filed by John Guastella and Gary White on behalf of DIUC and applicable discovery related to DIUC's rate case invoices, management fees, and requested deferral of \$155,328. (Rehearing Tr. pp. 473-478-a) (R. p. __, ll. __.) Ms. Hipp's rehearing surrebuttal testimony responded to DIUC witness John Guastella's rebuttal testimony. (Rehearing Tr. p. 481, ll. 19- p. 482, ll. 10) (R. p. __, ll. __.) Specifically, Ms. Hipp addressed ORS's recommendation to remove certain rate case expenses, a 5-year amortization period for recovery of rate case expenses, ORS's analysis of management fees, and DIUC's assertions regarding Guastella and Associates help to assure the financial stability of DIUC. Id.

Pursuant to motions by each party, all prefiled testimony was read into the record as if given orally from the stand. Prior to the December 6, 2017, rehearing, a Certified True Copy of the Transcript of Testimony and Proceedings with 6 Hearing Exhibits of the Original Proceeding (Hearing 15-11494, held on October 28, 2015) was filed in the docket. During the December 6, 2017, rehearing, the Transcript of Hearing # 15-11949 (the 2015 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. ORS submitted its proposed order on December 15, 2017. (ORS Proposed Order) (R. p. __, ll. __.)

On December 20, 2017, the Commission issued a substantive ruling on the matter in a Directive and stated that an Order was to follow. (Commission Directive, 12/20/2017) (R. p. __, ll. __.) On January 31, 2018, the Commission issued Order No. 2018-68. (Order 2018-68) (R. p. __, ll. __.) DIUC filed a Petition for Reconsideration and/or Rehearing on February 20, 2018. (Petition for Reconsideration) (R. p. __, ll. __.) The Petition for Reconsideration asserted that the Commission's Order on Rehearing entered January 31, 2018, addressed many of the issues presented in this case but required additional refinement. (R. p. __, ll. __.) As a result, 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. (R. p. __, ll. __.)

On May 16, 2018, the Commission issued Order No. 2018-346, denying DIUC's Petition for Reconsideration and/or Rehearing. (Order 2018-346) (R. p. __, ll. __.)

On June 13, 2018, DIUC served its Notice of Appeal of Order No. 2018-68 and Order No. 2018-346. (Notice Appeal) (R. p. __, ll. __.)

DIUC now seeks this Court's review of the Commission's Orders on Rehearing. The Commission's Order regarding deferral of the ability of DIUC to recover certain Rate Case expenses and disallowance of certain Rate Base/Utility Plant in Service is supported by the reliable, probative, and substantial evidence on the whole record. As a result, the ORS supports the Commission's Orders on Rehearing, and the Commission's Orders should be upheld.

STANDARD OF REVIEW

South Carolina Code §§ 1-23-310 *et seq.* (Supp. 2017) govern judicial review of a Commission Order. According to S.C. Code Ann. § 1-23-380,

"[t]he court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions on fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision 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."

"This Court employs a deferential standard of review when reviewing a decision from the Commission and will affirm the Commission's decision if it is supported by substantial evidence." S.C. Energy Users Comm. v. S.C. Elec. & Gas, 410 S.C. 348, 353, 764 S.E.2d 913, 915 (2014) (citing S.C. Energy Users Comm. v. Pub. Serv. Comm'n of S.C., 388 S.C. 486, 490, 697 S.E.2d 587, 589-90 (2010)). "In applying a substantial evidence test, an appellate court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact,

unless its findings or conclusions are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.” Friends of the Earth v. Public Service Com’n of South Carolina, 387 S.C. 360, 366, 692, S.E.2d 910, 913 (2010) (citing Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); S.C.Code Ann. § 1-23-380 (Supp.2009)). “This Court may not substitute its judgment for PSC's on questions about which there is room for a difference of intelligent opinion.” Porter v. South Carolina Pub. Serv. Comm’n, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998).

“The Commission is considered the expert designated by the legislature to make policy determinations regarding utility rates.” S.C. Energy Users Comm. v. S.C. Elec. & Gas, 410 S.C. 348, 353, 764 S.E.2d 913, 915 (2014) (citing S.C. Energy Users Comm. v. Pub. Serv. Comm'n of S.C., 388 S.C. 486, 490, 697 S.E.2d 587, 590 (2010)). “Thus, [b]ecause the Commission's findings are presumptively correct, the party challenging the Commission's 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 of the record as a whole.” Id.

“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.” Friends of the Earth v. PSC of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). “The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission’s finding from being supported by substantial evidence.” Sharpe v. Case Produce, Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999).

“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).

The Commission “must make findings which are sufficiently detailed.” Porter v. S.C. Public Serv. Comm’n., 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998). The findings “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.” Able Commc’ns, Inc. v. S.C. Pub. Serv. Comm’n., 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986).

Lastly, according to S.C. Code Ann. § 58-3-350(A),

All final orders and decisions of the commission must be sufficient in detail to enable the court on appeal to determine the controverted questions presented in the proceedings and must include: (1) findings and conclusions, and the reasons or bases therefor, upon all the material issues of fact or law presented in the record; and (2) the appropriate rule, order, sanction, relief, or statement of denial thereof.

ARGUMENT

In its Order on Rehearing, the Commission properly analyzed the facts presented and issued a well-reasoned Order supported by the substantial evidence on the whole record. The Order on Rehearing results in a rate structure that is equivalent to approximately \$950,166 in additional revenues over what DIUC was charging customers prior to the Original Proceeding, and is sufficient to allow DIUC to meet the standards required by law, including the preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high-quality utility services.²⁵

²⁵ See S.C. Code Ann. § 58-4-10 (as amended by Act No. 258, 2018 S.C. Acts ____, Section 8, effective date June 28, 2018.)

The Order's findings, inferences, conclusions, and decisions are based upon the reliable, probative, and substantial evidence on the whole record, and allow DIUC the opportunity to earn a reasonable return. As a result, the Commission's Order on Rehearing should be affirmed.

I. THE COMMISSION'S DECISION TO DEFER²⁶ DIUC'S ABILITY TO RECOVER ITS REQUESTED RATE CASE EXPENSES BY \$542,978 IS SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD AND NOT ARBITRARY OR CAPRICIOUS.

This Court has recognized, "the PSC may determine that some portion of an expense actually incurred by a utility should not be passed on to consumers." Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff, 392 S.C. at 105, 708 S.E.2d at 760 (2011). Additionally, as the trier of fact, the Commission is empowered with the authority to disallow certain expenditures a utility seeks. Id at 112, 763.

DIUC argues the Commission's Order on Rehearing erred by prohibiting DIUC's ability to recover a portion (\$542,978) of its Rate Case expenses in the current proceeding and compares the Commission's decisions on Rate Case expenses in the Original Proceeding with that of the Rehearing.²⁷ (DIUC Second Initial Brief, p. 13) (R. p. __, ll. __.)

²⁶ The Commission did not "disallow" DIUC Rate expenses totaling \$542,978, but rather deferred DIUC's ability to recover these expenses until DIUC's next rate case proceeding, provided DIUC could provide verifiable documentation corresponding to the Rate Case expenses. See Commission Order No. 2018-68, "[the Commission] will allow [DIUC] to request approval of [\$542,978 in Rate Case expenses] 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."

²⁷ 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). The Commission Ordered that DIUC be able to recover rate case expenses totaling \$272,382 and that recovery be amortized over three years, which is the amortization period DIUC requested. (Order 2018-68, pp. 38-39). The \$272,382 in Rate Case expenses consists of three components: capped rate case expenses in the amount of \$75,000 for GA's preparation of the Application, developing rate models, calculating test year data, and filing other rate case documents, \$22,500 in unamortized rate case expenses from a previous rate case, and legal expenses. (Rehearing Tr. p. 450, ll. 8-14). The Commission's Order deferred recovery of the additional requested Rate Case expenses until a subsequent rate case, thereby allowing DIUC the opportunity to recover any validly incurred and properly documented rate case expenses for which it lacked the proper documentation in this abbreviated proceeding. ORS would also note that granting excessive or unlimited rate case expenses eliminates any motivation for a utility to be conscientious of such costs.

Rate case expenses are expenses incurred to prepare the rate case and generally include administrative fees in the case preparation, attorney fees, and expert witness fees. “It is the duty and responsibility of the regulatory staff to when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, review, investigate, and *make appropriate recommendations* to the commission with respect to the rates charged or proposed to be charged by any public utility.” (Emphasis added.) S.C. Code Ann. § 58-4-50(A)(1)(Supp. 2017).

In the Original Proceeding, ORS recommended that DIUC’s current rate case expenses be limited to \$75,000 and amortized over five years. (Tr. p. 494, ll. 22 - p. 495, ll. 5 and Order Nos. 2015-846 p. 25-27 and 2016-50, p. 14-15) (R. p. 766, ll. 22- p. 767, ll. 5; pp. 54-56; pp. 19-20.) This amount was arrived upon as a result of ORS’s pursuit of a Settlement Agreement and because DIUC previously agreed to seek \$75,000 in Rate Case expenses in its most recently approved previous rate case; therefore, in ORS’s judgment, \$75,000 appropriately represented DIUC’s Rate Case expenses in the proceeding. (Tr. p. 541, ll. 12-23) (R. p. 813, ll. 12-23.) ORS also recommended that the unamortized rate case expense from DIUC’s previous rate case, \$22,500, be included with the same amortization period totaling \$97,500 in overall rate case expenses to be amortized over five years. (Tr. p. 494, ll. 22 - p. 495, ll. 5 and Order Nos. 2015-846 p. 25-27 and 2016-50, p. 14-15) (R. p. 766, ll. 22 – p. 767, ll. 5; pp. 54-56; pp. 19-20.) ORS utilized its significant experience to formulate a recommendation of allowable rate case expenses that it deemed reasonable and in the public interest. S.C. Code Ann. §§ 58-4-10(B) and 58-4-50(A)(1) (2015). Inherent in ORS’s recommendation was its judgment stemming from expertise and experience as the state of South Carolina’s sole utility regulation investigatory agency.

In the Original Proceeding, the Commission adopted ORS's recommendation that DIUC be entitled to recover \$97,500 in rate case expenses. (Order Nos. 2015-846, p. 25-27 and 2016-50, p. 14-15) (R. pp. 54-56; pp. 19-20.)

Due to DIUC's requested expedited schedule, ORS did not re-evaluate all recommendations made in the Original Proceeding and instead focused on adopting and incorporating the Supreme Court Guidance and reviewing any new evidence presented by the Appellant. As witness Sullivan testified,

Due to the expedited schedule in this remand case, as requested by the company, ORS did not re-audit the books and records of the company for the rehearing nor did it investigate further the audit performed as part of Docket No. 2011-229-WS or revisit the audit performed by Ivana C. Gerhart as part of this docket.

(Rehearing, Tr. P. 440, ll. 9-15) (R. p. __, ll. __.)

Additionally, witness Hipp stated,

The purpose of my rehearing testimony is to adopt the direct testimony and exhibits of Willie J. Morgan filed on October 2, 2015, and re-affirm the positions taken by ORS witness Morgan during the October 28, 2015, hearing with the exception of any changes made to comply with the South Carolina Supreme Court Opinion No. 27729, Supreme Court Order issued on November 15, 2017, or resulting from new evidence presented by Daufuskie Island Utility Company, Inc....

(Rehearing, Tr. P. 472, ll. 9-14) (R. p. __, ll. __.)

POA witness Lanier testified that, "while the Commission may have some obligation to provide the Company the "opportunity" to earn specified return, it is not obligated to assure that the Company earn such returns, by granting any and all claimed expenses." (Tr. p. 434, ll. 10-13; *see also* p. 454, ll. 22 – p. 455, ll. 7 for additional testimony from the POAs regarding expenses.) (R. p. 706, ll. 10-13; *see also* p. 726, ll. 22 – p. 727, ll. 7.)

At the rehearing ORS testified regarding a number of adjustments to rate case expenses that were not contested by DIUC. (Rehearing Tr. p. 86, ll. 4-7) (R. p. __, ll. __.) The one rate case expense adjustment DIUC did contest at the rehearing was ORS's adjustment of \$542,978, which

corresponded to GA invoices. (Rehearing Tr. p. 476, l. 11) (R. p. __, ll. __.) According to ORS witness Hipp, GA invoices contained mathematical errors, lacked sufficient detail, and/or did not appear to be paid. (Rehearing Tr. p. 476, ll. 11-18) (R. p. __, ll. __.) ORS witness Hipp testified that when reviewing invoices, ORS checks for mathematical accuracy, whether the invoice is for a valid business purpose, whether the expense was incurred during the period under review, whether the invoice was properly recorded on the books and records of the Company, and whether the invoice was paid. Id. According to witness Hipp, ORS consistently has looked at those five principles. (Rehearing Tr. p. 499, ll. 12-13) (R. p. __, ll. __.) ORS testified that generally the GA invoices failed these criteria, and also offered specific examples. (Rehearing Tr. p. 476, ll. 11-18, ORS DMH Surrebuttal Exhibit 1, Rehearing Exhibit 10) (R. p. __, ll. __.) During her testimony ORS witness Hipp specifically cited a number of invoices that were insufficient for reasons varying from lack of detailed description of work performed to mathematical errors. (ORS DMH Surrebuttal Exhibit 1, Rehearing Exhibit 10) (R. p. __, ll. __.) Additionally, ORS witness Hipp attached an exhibit detailing the problems with each invoice for which ORS recommended an adjustment. Id. Furthermore, ORS witness Hipp testified that on August 24, 2015, ORS discussed certain GA invoice deficiencies with Appellant. (Rehearing Tr. p. 486, l. 22, p. 487, ll. 1-3) (R. p. __, ll. __.) Finally, ORS witness Hipp testified that it is not the role of ORS to support the rate case of a company seeking a rate increase, and it was DIUC that failed to provide additional support for the work performed by GA. (Rehearing Tr. p. 487, ll. 4-10) (R. p. __, ll. __.)

Recommending no recovery of \$542,978 in Rate Case expenses was the only possible avenue ORS could take in order to avoid an arbitrary recommendation. According to witness Hipp's testimony:

Q: Ms. Hipp, both, I believe, Mr. Gressette and Commissioner Fleming had asked you some questions regarding adjustments to the rate-case expenses of

Guastella Associates. In particular, I think there was a discussion by Mr. Gressette of — is it \$540,000? Is that correct?

A: [HIPP] Five hundred forty-two, nine hundred seventy eight [\$542,978].

Q: That's very specific. And ORS allowed zero of that; is that correct?

A: [HIPP] That's correct.

Q: Is there a number in between zero and \$548,000 that ORS could just randomly pick?

A: [HIPP] No.

Q: Something that would be approved? And why is that?

A: [HIPP] It would be an *arbitrary* number. We're unable to verify that the invoices, you know, have a specific purpose or are used to provide ser- — that services are used to provide service to the customer, and the other items that I mentioned in my testimony.

-(Emphasis added) (Rehearing Tr. p. 531, ll. 16-25, p. 532, ll. 1-10) (R. p. __, ll. __.)

Accordingly, it would have been random and arbitrary for ORS to recommend that the Commission allow recovery of *any* of the \$542,978, because DIUC failed to provide corresponding verifiable documentation for that amount in total.

The evidence shows that DIUC's \$542,978 in Rate Case expenses lacks verifiable documentation. It cannot be the responsibility of the regulating agency, nor the Commission, to arbitrarily determine a value for services where one cannot be independently verified. It would have been improper for the Commission to allow DIUC recovery of the \$542,978 in unverified expenses, and the Commission's decision to defer DIUC's ability to recover \$542,978 of Rate Case Expenses is supported by a rational basis and the substantial evidence on the whole record and is not arbitrary or capricious. Therefore, ORS respectfully submits that the Commission's decision to defer DIUC's ability to recover \$542,978 in Rate Case expenses is supported by substantial evidence and asks the Court to affirm the Commission's Orders.

- A. The Commission properly applied a presumption of reasonableness to DIUC's request for recovery of Rate Case expenses.

In Utils. Servs. of S.C., the Court stated the following with respect to the presumption and burden to be applied to a utility's expenditures:

Utility is correct that it was entitled to a presumption that its expenditures were reasonable and incurred in good faith, and therefore, a showing that its expenses had increased since its last rate case could satisfy its burden of proof. Nevertheless, the presumption in a utility's favor clearly does not foreclose scrutiny and a challenge. In those circumstances, the burden remains on the utility to demonstrate the reasonableness of its costs. It seems to us that Utility wants the presumption of reasonableness to be dispositive. In Hamm, 309 S.C. at 286-87, 422 S.E.2d at 112-13, we stated: Although the burden of proof of the reasonableness of all costs incurred which enter into a rate increase request rests with the utility, the utility's expenses are presumed to be reasonable and incurred in good faith. 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. This evidence may be provided . . . through the Commission's broad investigatory powers. The ultimate burden of showing every reasonable effort to minimize . . . costs remains on the utility.

Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff, 392 S.C. 96, 109-10, 708 S.E.2d 755, 762-63 (2011) (citing Hamm v. S.C. Pub. Serv. Comm'n, 309 S.C. 282, 286-287, 422 S.E.2d 110, 112-113 (1992)).

"If an investigation initiated by ORS or by the PSC yields evidence that overcomes the presumption of reasonableness, a utility must further substantiate its claimed expenditures." Utils. Servs. of S.C., 392 S.C. at 110, 708 S.E.2d at 763.

A presumption of reasonableness, therefore, applies to expenses for which a utility seeks recovery from ratepayers until another party demonstrates a "tenable basis for raising the specter of imprudence." Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff, 109-110, 762-63. Once

this occurs, the burden is on the utility to show that it made every reasonable effort to minimize costs and substantiate its claimed expenses. Id.

DIUC seemingly asserts that because GA provided DIUC with services, it is entitled to recover \$542,978 in additional Rate Case expenses. (Appellant's Second Initial Brief, pp. 21-22) (R. p. __, l. __.) The position that DIUC would have the Court take would essentially foreclose Commission scrutiny of the expenses for which DIUC seeks recovery. While DIUC may be entitled to the presumption that its expenditures were reasonable and incurred in good faith, that presumption does not foreclose a challenge by ORS or other parties or the scrutiny of the Commission. See Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff, 392 S.C. 96, 109, 708 S.E.2d 755, 762 (2011).

Through its direct testimony, ORS demonstrated a tenable basis for "raising the specter of imprudence."²⁸ Utils. Servs. of S.C., 392 S.C. at 110, 708 S.E.2d at 763. Once ORS raised the specter of imprudence and challenged the ability of DIUC to recover the \$542,978 in Rate Case expenses at the rehearing, DIUC was obligated to substantiate its claimed expenses, which it failed to do by not furnishing sufficient verifying documentation for the \$542,978 in Rate Case expenses.

²⁸ ORS was aware that GA's relationship with DIUC appeared to be less than arm's length and that GA's Management Contract allowed GA to be paid separately for its work related to the Application. (Original Tr. p. 242, ll. 1-12; Original Hearing Exhibit 9; Order Nos. 2015-846 p. 24 and 2016-50 p. 11-13) (R. p. __, lines __.) Additionally, GA is responsible for preparing and filing the rate case and manages day-to-day operations. (Rehearing Tr. P. 486, ll. 5-8). DIUC witness Guastella is the president of GA and sits on the board of DIUC. (Rehearing Tr. pp. 173, ll. 16-18, p. 192, l. 21). Terry Lee is president of DIUC, which utilizes GA. (Rehearing Tr. pp. 173, ll. 16-18) DIUC witness Guastella testified both that he "tell[s] [Terry Lee] what to do" and that "[DIUC witness Guastella] report[s] to Mr. Lee." (Rehearing Tr. P. 205, l. 23, and Tr. P. 206, l. 10). DIUC witness Guastella's testimony raises the specter that he may be on both sides of the negotiating table, thus further necessitating a scrutinizing review of GA expenses. See Hilton Head Plantation Utils. v. Pub. Serv. Comm'n, 312 S.C. 448, 451, 441 S.E.2d 321, 323 (1994). Once expenses are challenged, the burden remains on the utility to demonstrate the reasonableness of its costs. Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff at 109, 762. DIUC had opportunities to demonstrate the reasonableness of these costs but did not, and unsubstantiated expenses incurred by a regulated utility should not be borne by its ratepayers.

As the state regulator charged with representing the public interest and making appropriate recommendations to the Commission with respect to the rates charged any public utility, ORS must be able to verify what the utility paid, which are allowed recovery through rates, before it recommends recovery to the Commission. Likewise, the Commission must be able to account for every dollar of expenses paid by the utility, which are then allowed recovery in rates, with verifiable documentation. As set forth in Rehearing Exhibit 10, ORS witness Hipp outlined the invoice deficiencies that demonstrate why certain invoices were found not to be known and measurable.²⁹ (Rehearing Exhibit 10, Rehearing Surrebuttal Exhibit DMH-1) (R. p. __, ll. __.)

In considering the evidence, the Commission did not find that DIUC overcame the challenges to the reasonableness of its expenses. According to the Commission,

“[t]he evidence shows that a large sum of what DIUC seeks was based on invoices that could not be verified. 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 No. 2018-68 pp. 38-39) (R. p. __, ll. __.)

As a result of DIUC’s lack of verifiable documentation, ORS acted properly and in accordance with its statutory obligations in recommending against recovery for \$542,978 in Rate Case expenses. Therefore, despite the fact that the Commission properly applied a presumption of reasonableness to DIUC’s request for recovery of all Rate Case expenses, the Commission exercised appropriate judgment in deciding to defer recovery of these expenses until DIUC’s next rate proceeding, provided it could produce documentation sufficient to verify the expenses were properly incurred.

B. The Commission’s Order is Not Punitive.

²⁹ Additionally, the actual invoices are included in Rehearing Exhibit 9, DMH-1.

Appellant also characterizes the Commission's Order as punishment. (Appellant's Second Initial Brief, p. 16.) However, the Commission's denial of unsupported expenses is a justifiable measure and not punitive. ORS witness Hipp testified that the rate case expenses for which DIUC seeks recovery "do not meet the criteria that the NARUC Chart of Accounts requires for record-keeping, and nor do they conform to the guidance that NARUC lays out when it sets out its auditing protocol for different regulators to follow." (Rehearing Tr. P. 502, ll. 14-19) (R. p. __, ll. __.) If DIUC's request for recovery of these rate case expenses were granted, the Commission would have permitted DIUC to charge ratepayers for expenses that are not verified, and therefore, not known and measurable. The Order ensures fair recovery where due because the Commission has allowed DIUC the opportunity to recover their rate case expenses in a future rate case proceeding provided DIUC can show supporting information that satisfy the criteria listed by ORS witness Hipp.

C. DIUC had an appropriate opportunity to respond.

DIUC asserts that it was not afforded a fair opportunity to respond to ORS witness Hipp's testimony. (Appellant's Second Initial Brief, p. 30.) Additionally, Appellant claims it was unfairly treated by ORS because there was not "a fair opportunity to respond in the usual manner allowed by ORS in other [cases]." (Appellant's Second Initial Brief, p. 32.) Finally, according to Appellant, the Commission denied it a "proper opportunity to rebut the alleged evidence presented by ORS...." (Appellant's Second Initial Brief, p. 33.)

DIUC never provided or offered additional information nor rebutted evidence put forth by ORS, despite opportunities. ORS's review was limited as a result of DIUC's requested expedited proceeding in which it requested abbreviated proceeding left ORS little

time in which to review nearly \$800,000 in additional Rate Case expenses. (Rehearing Tr. p. 473, ll.15-17) (R. p. __, ll. __.)

By way of comparison, there is typically 6 months from the date an application is accepted to the date the Commission issues an Order.³⁰ Due to DIUC's request for, and receipt of, a condensed schedule, ORS was required to review new information, the acceptance of which would incur expense to ratepayers, in a much shorter time than provided in a typical rate case. The new Rate Case expenses, for which ORS recommended an adjustment, were not provided by DIUC to ORS until the end of October, thereby only allowing ORS a little over two weeks to conduct a review and verification of DIUC's responses and draft testimony regarding these expenses.³¹ As a result of Appellant's requested expedited schedule, there was insufficient time to conduct as much dialogue as might occur in a typical rate case period of 6 months.³² Therefore, while ORS asserts DIUC received no unfair treatment, if DIUC believes it incurred any hardship resulting from this condensed schedule, it results from its request.

Furthermore, in ORS witness Hipp's rehearing direct testimony, filed on November 16, 2017, she outlined ORS's bases for objections to Appellant's recovery of \$542,978 in Rate Case expenses.³³ (Rehearing Tr. P. 474, ll. 7-15) (R. p. __, ll. __.) Also, in response to a DIUC discovery request ORS specifically informed DIUC of each and every GA invoice and its corresponding deficiency, which totaled \$542,978, before DIUC's rebuttal testimony became due. (R. p. __, ll. __.)

³⁰ See S.C. Code Ann. 58-5-240(C).

³¹ ORS further asserts that the burden rests with the applicant utility to provide supporting documentation for expenses.

³² According to witness Sullivan, due to the expedited schedule that DIUC requested, ORS could only conduct a limited review on rehearing. (Rehearing Tr. P. 496, ll. 14-18.) (R. p. __, lines __.)

³³ ORS witness Hipp's direct testimony was filed on November 16, 2017; however, it was revised on November 29, 2017, to correct an error regarding Supreme Court ordered bond premium costs.

Therefore, DIUC had a fair opportunity to respond to ORS's testimony and exhibits through its rebuttal testimony and exhibits.³⁴ Contrary to DIUC's assertions, ORS witness Hipp's testimony is both timely and afforded the Company an opportunity to respond in its rebuttal testimony.

Without verifiable documentation indicating that costs sought to be passed on to ratepayers are known and measurable, ratepayers should not bear those costs. ORS respectfully submits that the Commission's decision is based upon adequate and established determining principles. Its Order properly relies upon substantial evidence from the record and accepted regulatory standards in deferring DIUC's ability to recover \$542,978 in Rate Case expenses to a future rate case, provided the Appellant can verify these expenses, and that DIUC had a fair and appropriate opportunity to respond to the evidence ORS placed into the record.

II. THE COMMISSION'S DECISIONS TO EXCLUDE FROM RATE BASE/UTILITY PLANT IN SERVICE \$699,361 IS NOT LEGALLY ERRONEOUS AND IS SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.

A utility's rate base is "the amount of investment on which a regulated public utility is entitled to an opportunity to earn a fair and reasonable return. A public utility's 'rate base' represents the total investment in, or the fair value of, the used and useful property which it necessarily devotes to rendering the regulated services." Southern Bell Tel. & Tel Co. v. Public Service Comm'n, 270 S.C. 590, 600, 244 S.E.2d 278, 283 (1978).³⁵

³⁴ It is also not unusual for an applicant utility to request and receive permission to update rate case expenses at the hearing, which began on December 6, 2017. (Rehearing Tr. p. 532, l. 19-24.)

³⁵ This case was modified by Parker v. South Carolina Public Service Com'n, 280 S.C. 310, 313 S.E.2d 290 (1984), but the Court's definition of rate base was not modified.

“[A] previous rate increase may provide a baseline for the PSC to use in determining whether a utility has incurred additional expenses requiring additional revenue.” Utilities Services of South Carolina v. South Carolina Office of Regulatory Staff, 392 S.C. 96, 113, 708 S.E.2d 755, 765 (2011). In other words, a previous rate increase may provide a “starting point” in a new rate case.

The Commission used the information from DIUC’s most recent rate proceeding³⁶ as a baseline in reviewing DIUC’s proposal but used the evidence in Docket No. 2014-346-WS to justify its decisions in Order Nos. 2015-846 and 2018-68. ORS’s process for determining Plant in Service is to roll forward Plant in Service from the last case. (Tr. p. 524 - p. 526, ll. 14) (R. p. 796 – p. 798, ll. 14.) This process is recognized by Utils. Servs. of S.C. Utils. Servs. of S.C., 392 S.C. at 114, 708 S.E.2d at 765. ORS witness Gearheart testified that in order to calculate plant-in-service, ORS’s “standard procedures are to roll forward the plant ORS calculated in the last rate case.” (Tr. p. 524, ll. 15 - p. 525, ll. 1) (R. p. 796, ll. 15 – p. 797, ll. 1.) Using the previous case as a baseline or starting point is intuitive, practical and allows consistency and continuity for ORS in carrying out its statutory duty to provide recommendations to the Commission with respect to proposed rates. S.C. Code Ann. § 58-4-50(A)(1) (Supp. 2017). It additionally provides certainty and an understandable baseline for the Commission-regulated utilities.

In the initial proceeding, ORS witness Gearheart testified 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.” (Tr. p. 526, ll. 9-14) (R. p. 798, ll. 9-14.) Specifically, she testified that the biggest part of the adjustment in this case was adding back adjustments the Commission ordered in DIUC’s

³⁶ DIUC’s most recent rate case occurred in Commission Docket No. 2011-229-WS (Tr. p. 495, ll. 10-11) (R. p. ___, ll. __.)

last rate case that DIUC failed to reflect in its books. (Tr. p. 524 - p. 526, ll. 14) (R. p. 796 - p. 798, ll. 14.)

ORS recommended adjustments to booked values on which DIUC could not provide adequately supporting verification, and the Commission appropriately accepted these adjustments. ORS witness Gearhart testified that ORS's review of the Company's rate base consisted of three steps: 1) verifying the Company's rate base, reported by DIUC in its Application, was supported by DIUC's accounting books and records for the twelve months ending December 31, 2014 ("test year"); 2) testing the underlying transactions in the books and records for the test year to ensure the underlying transactions in the books in the records were adequately supported, had a stated business purpose, were allowable for ratemaking purposes, and were properly recorded; and 3) making necessary adjustments to revenues, expenditures, and capital investments to normalize the Company's operating experience and rate base, in accordance with generally accepted regulatory principles and prior Commission orders. (Tr. P. 489, ll. 7-17) (R. p. 761, ll. 7-17.)

When a booked item cannot be verified based on the information provided by an applicant utility, it is the job of the ORS auditor to recommend an adjustment corresponding to the undocumented expense. DIUC witnesses Guastella and White infer that because an item exists and is booked, ORS should allow the item into rate base at an amount proposed by the utility. (Tr. pp. 203-204; Rehearing Tr. p. 183, ll. 13-15) (R. p. 475-476; p. __, ll. __.) However, booked items that cannot be verified should not be passed on to ratepayers. The Commission Order properly excluded rate base items for which the Company failed to provide supporting evidence to either ORS or the Commission.

Additionally, ORS witness Sullivan adopted the pre-filed testimony as filed by ORS witness Gearhart. (Rehearing Tr. p. 438, ll. 15-22) (R. p. __, ll. __.) ORS witness Sullivan testified

that upon ORS review of South Carolina Supreme Court Opinion No. 27729, ORS determined it should recommend adjustments to plant-in-service.³⁷ (Rehearing Tr. p. 444, ll. 11-13) (R. p. ___, ll. __.) According to ORS witness Sullivan,

[b]ased on guidance from [Opinion No. 27729], ORS proposes to adjust gross plant in service to include the water tank and well located on the elevated tank site. In Docket No. 2011-229-WS, ORS removed \$863,379 from plant in service for the elevated water storage tank and \$61,956 for a well located on the elevated tank site due to ownership disputes The ORS adjustment to plant in service on Audit Exhibit ICG-4 was (\$1,624,696). Based on the Supreme Court guidance, ORS now computes an adjustment to gross plant in service of (\$699,361) which is shown on Revised Rehearing Audit Exhibit DFS-5. Audit Exhibit ICG-5 showed the adjusted water total for reservoirs and standpipes as \$34,700. Revised Rehearing Audit Exhibit DFS-5 includes the elevated water storage tank amount of \$863,379, and shows the adjusted water total for reservoirs and standpipes as \$898,079. Audit Exhibit ICG-5 showed the adjusted water total for wells as \$732,908. Revised Rehearing Audit Exhibit DFS-5 includes the \$61,956 for the well removed in Docket No. 2011-229-WS and shows the adjusted water total for wells as \$794,864. Revised Rehearing Audit Exhibit DFS-5 reflects all other adjustments to plant-in-service included on Audit Exhibit ICG-5.

(Rehearing Tr. P 451, ll. 12-23, p. 452, ll. 1-4) (R. p. ___, ll. __.)

Revised Rehearing Exhibit 5, prepared by ORS witness Sullivan, specifically itemizes the amounts and corresponding plant.

Witness Sullivan also testified that,

...ORS reviewed the South Carolina Supreme court Opinion No. 27729 and updated the exhibits filed by Ivana C. Gearhart in this case on October 2, 2015 in order to comply with the Court's guidance. ORS also updated its rate case expense amortization adjustment for additional rate case expenses that had been incurred by the Company and updated all "fall-out" adjustments. ORS prepared Revised Rehearing Audit Exhibits DFS-1 through DFS-8 based on these changes and using the Company's proposed increase in its rehearing testimony and exhibits. ORS also prepared Revised Rehearing Audit Exhibit DFS-9, which shows the revenue increase necessary, based on ORS' rehearing accounting and pro forma adjustments, to derive the PSC approved 9.28% return on equity.

ORS's review for the rehearing was specific and limited to the procedures [mentioned above]. Due to the expedited schedule in this remand case, as requested by the

³⁷ The Opinion gave ORS guidance regarding adjustments to the existing plant-in-service, property tax, and bad debt adjustments. Additionally, the Opinion specifically allowed for new evidence to be presented regarding rate case expenses.

Company, ORS did not re-audit the books and records of the Company for the rehearing nor did it investigate further the audit performed as part of the Docket No. 2011-229-WS or revisit the audit performed by Ivana C. Gearhart as part of this docket.

(Rehearing Tr. p. 459, ll. 5-19.) (R. p. __, ll. __.)

After ORS accounted for the guidance set forth in this Court's Opinion, ORS recommended that Plant in Service be reduced by \$699,361. (Rehearing Tr. p. 451, ll. 17-19; Revised Rehearing Audit Exhibit DFS-5, Rehearing Exhibit 8) (R. p. __, ll. __.) This adjustment was net of additions and reductions to DIUC's rate base consisting of capital improvements, non-allowable plant, adjustments from the previous case not made by DIUC and retirements through July 31, 2015, as well as the guidance given by the Supreme Court. (Tr. p. 496, ll. 16-18; Rehearing Tr. p. 451, l.12-p. 452, l. 4) (R. p. __, lines __; p. __, lines __.)

ORS's process utilized the prior case's rate base as a starting point and then after examining the books and records, made appropriate adjustments to the list of plant assets from DIUC's Application. As a result of the testimony and exhibits presented by ORS witnesses Gearhart and Sullivan, ORS asserts that the Commission relied upon, and its Order cites, sufficient evidence to support an adjustment of \$699,361 to Rate Base. Therefore, the Commission's adoption of ORS's recommendation for rate base in the rehearing is based on the Commission's sound exercise of judgment and substantial evidence in the whole record, and there was no error.

A. The Commission's Order sufficiently identifies the items of plant excluded from DIUC's Rate Base.

Appellant asserts it was error for the Commission to adopt ORS's recommended rate base ("Plant in Service" or "Rate Base"), because ORS's recommendation does not identify the specific plant items or their costs represented by the adjustments. (DIUC Initial Brief p. 49, and DIUC Second Initial Brief p. 33) (R. p. __, ll. __.)

Commission regulations list the required contents for water and sewer applications. S.C. Code Ann. Regs. 103-512.4.A and 103-712.4.A (2012). For a sewer application, a “statement of total plant investment” is required and for a water application, “a statement of total plant investment by categories” is required. S.C. Code Ann. Regs. 103-512.4.A.12 and 103-712.4.A.12 (2012). The regulations also require water and sewer applications to include a “depreciation schedule by categories of plant or average services lives.” S.C. Code Ann. Regs. 103-512.4.A.7 and 103-712.4.A.7 (2012). Based on the Commission’s application requirements, it follows that any recommended plant adjustments would be made using the categorical nomenclature used by DIUC in its Application for its plant investment and depreciation schedule. This is what ORS did. (Hearing Exhibit 18, Audit Exhibit ICG-5; Application Schedules W-B.2, W-B.3, W-C.3, S-B.2, S-B.3, and S-C.3.)

The DIUC Application statement of plant investment listed general categories for both water and sewer. (Application Schedules W-B.2 and S-B.2.) Those categories are in its depreciation schedule. (Application Schedules W-B.3, W-C.3, S-B.3, and S-C.3.) ORS’s adjustments for Plant in Service correspond to those plant categories listed in DIUC’s Application, and ORS used the list of Plant in Service categories in DIUC’s Application to show adjustments. (Hearing Exhibit 18, ORS Audit Exhibit ICG-5; Application Schedules W-B.2, W-B.3, W-C.3, S-B.2, S-B.3 and S-C.3) (R. p. __, l. __.)

Therefore, ORS disagrees with Appellant’s assertion that the Commission committed error in utilizing the list of plant service categories, that DIUC itself utilizes, in recommending adjustments to Rate Base.

i. The ORS took steps to make DIUC aware of the specifics of ORS’s recommendations.

In efforts to be cooperative and collaborative, ORS took steps to give Appellant DIUC reasonable opportunities to gain a better understanding of ORS's adjustments, should it wish it, outside of an adversarial setting. For instance, ORS conducts "exit conferences" with applicant utilities where it reviews all adjustments in an open and transparent manner. (Rehearing Tr. P. 487, ll. 1-3; *See also* Rehearing Tr. p. 521, ll. 11-14.) (R. p. __, ll. __.) DIUC was also provided ORS's work papers detailing ORS's adjustments and the plant items represented by the adjustments. (Tr. p. 202, ll. 21 – p. 203, ll. 3; p. 151, ll. 1-3; p. 158, ll. 11-13, p. 203, ll. 1-5) (R. p. 474, ll. 21 – p. 475, ll. 3; p. 423, ll. 1-3; p. 430, ll. 11-13; p. 475, ll. 1-5.) DIUC witness Guastella admitted that during and after these exit conferences ORS worked with the Company to identify the specifics of ORS's adjustments: "ORS provided DIUC with work papers as a follow up to our audit exit conference call that enable us to identify what we think are the specifics of its adjustments." (Tr. P. 202, ll. 21-23) (R. p. 474, ll. 21-23.) ORS made itself available to DIUC on multiple occasions prior to filing ORS direct testimony in good faith efforts to share its audit status, provide details to DIUC, receive any information DIUC wished to provide, and answer questions. Finally, DIUC had the opportunity to ask questions at the exit conference, serve discovery upon ORS and cross examine ORS witness Gearhart and ORS witness Sullivan regarding the specific nature of any adjustment recommended by the ORS.

If DIUC believed that ORS Rate Base adjustments lacked detail, despite the fact that ORS utilized the same categories of plant utilized by DIUC, it had multiple opportunities to remedy any lack of understanding.

DIUC was provided ample opportunities to review Rate Base adjustments with all levels of granularity and no error exists.

- ii. The Order's adjustment to exclude Capital Costs and Legal Costs Associated with Plant in Service is supported by substantial evidence in the record.

Appellant asserts that the record fails to include any ORS testimony supporting the exclusion of capital costs and legal costs associated with Plant in Service.

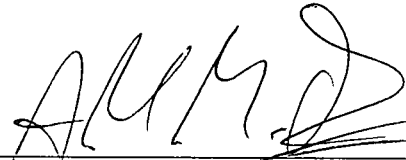
However, the evidence in the record presented by ORS supports the adjustment made for capital costs and legal costs associated with plant in service (i.e. the "Land and Land Rights" as shown in Hearing Exhibit 8, which contains ORS witness Sullivan's Exhibit DFS-5). (R. p. __, ll. __.) According to both ORS witness Sullivan and ORS witness Gearhart, ORS reviewed the general ledger provided by the Company. (Rehearing Tr. p. 461.) (R. p. __, ll. __.) Additionally, witness Gearhart testified that if ORS cannot verify an asset with an invoice, it does not put that asset into rate base. (Tr. P. 528, ll. 3-5) (R. p. 800, ll. 3-5.) Finally, witness Gearhart testified that she adjusted revenues, expenditures, and capital investments to normalize the Company's operating experience and rate base, in accordance with generally accepted regulatory principles and prior Commission orders. (Tr. P. 489, ll. 15-17) (R. p. __, ll. __.)

As discussed previously, it would be improper for the ORS to recommend and the Commission allow recovery of expenses that do not conform to generally accepted regulatory principles. ORS recommended that the Commission order an adjustment on these expenses because it determined them to be non-allowable or unsupported. Therefore, the Commission did not err in adopting this adjustment and its conclusion is supported by substantial evidence in the record.

CONCLUSION

The Commissions' Orders were based on reliable, probative, and substantial evidence on the whole record. ORS respectfully requests that the Court affirm Commission Order Nos. 2018-68 and 2018-346.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Nelson', written over a horizontal line.

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM
THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Docket No. 2014-346-WS
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.

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of **the Office of Regulatory Staff's Initial Brief and Designation of Matter** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

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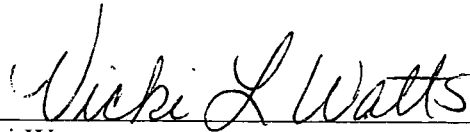
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