

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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S.C. SUPREME COURT

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APPEAL FROM  
THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

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Docket No. 2014-346-WS  
Appellate Case No. 2018-001107

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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,

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**PETITION FOR REHEARING OF THE  
SOUTH CAROLINA OFFICE OF REGULATORY STAFF**

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ATTORNEYS FOR RESPONDENT  
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August 5, 2019

Pursuant to Rule 221, SCACR, the South Carolina Office of Regulatory Staff (“ORS” or “Respondent”) respectfully petitions this Court to rehear or reconsider Opinion No. 27905 filed July 24, 2019. The Public Service Commission of South Carolina’s (“Commission”) decision to disallow recovery of rate case expenses of \$542,978, out of a total of \$794,210 in claimed rate expenses, was not arbitrary. ORS respectfully petitions this Court to reconsider its characterization of the Commission’s Order and ORS’s conduct as improper and retaliatory.

The actions taken by ORS, and the subsequent Commission Order, were not retaliatory, arbitrary, lacking in substantial evidence, characterized by an error of law, or otherwise improper as evidenced by the following facts in the record:

- (1) Daufuskie Island Utility Company, Inc. (“DIUC”) is a small utility serving approximately 1,173 combined water and sewer customers that sought \$794,210 in rate case expenses while requesting \$1,182,301 in additional revenue. (R. p. 1782, lines 9-12; pp. 0128, 0005). Many of the invoices of these rate case expenses had not been paid, contained errors, and/or lacked sufficient detail to properly document work performed. (R. p. 1044, lines 11-18);
- (2) On remand, the Commission allowed DIUC to recover not only the original rate case expense of \$75,000 but also increased the recoverable rate case expenses to \$272,382, which includes additional verified rate case expenses incurred for the hearing on remand;
- (3) On remand, the Commission granted DIUC the ability to seek recovery of all of the remaining \$542,978 of its unrecovered rate case expenses in a subsequent rate proceeding should it be able to prove those expenses with sufficient verification.<sup>1</sup>

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<sup>1</sup>By allowing DIUC the ability to seek recovery of the unrecovered rate case expenses in a future proceeding, the Commission fairly protected customers and the financial interest of DIUC.

The Court's assertion that \$75,000 in rate case expenses awarded in the first hearing were disallowed in the hearing on remand is incorrect. It is apparent that there was a misunderstanding at oral argument. The Record on Appeal confirms that the rate case expenses of \$272,382 awarded by the Commission on remand included the original award of \$75,000 in rate case expenses. (Respondent's Brief, p. 25, n. 27; R. p. 0128; p. 1018, lines 8-14).

Critically, the \$75,000 awarded in the initial hearing was the result of a Settlement Agreement between ORS and the Property Owner's Associations. When it evaluated an amount for rate case expense to be recovered under that Settlement Agreement, ORS utilized its experience and judgement to determine a reasonable amount as a basis for a settlement figure. (R. p. 1816, lines 12-23). Further, the amount for rate case expenses was based on an amount that had been previously agreed to by counsel for DIUC in its most recent rate case, which occurred in 2011. (*Id.*)

There was no Settlement Agreement upon remand. Therefore, the ORS was required to evaluate the new rate case expenses submitted for approval by DIUC using the same methodology consistently applied in contested rate cases. (Respondent's Brief, p. 26, 27; p. 1044, lines 11-18; and p. 1067, lines 12-13). The application of this regularly applied methodology was not retaliatory. DIUC was allowed to recover \$75,000 of rate case expenses in its rates and, subsequent to the hearing on remand, the Commission adjusted rate case expenses upward to a total of \$272,382.

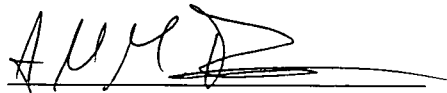
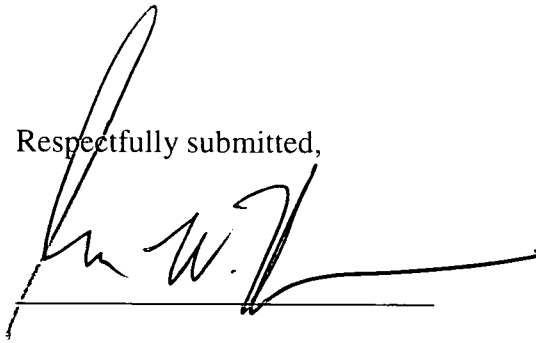
Further, the Commission's Order was not retaliatory because it allows DIUC to seek recovery of all \$542,978 in unrecovered rate case expenses. The Commission did not 'disallow' DIUC Rate expenses totaling \$542,978, but rather deferred DIUC's ability to recover these expenses until DIUC's next rate case proceeding...." (Respondent's Brief, p. 24, n. 26; R. p. 131.)

DIUC has the ability to recover all such rate expenses if properly supported in its next rate proceeding and it has the ability to file for a rate proceeding currently. Commission Order No. 2018-68, page 39 states, “[the Commission] will allow the Company to request approval of these expenses in its next rate case, if it can provide supporting information for its invoices ....” (R. p. 0131; *See also*, R. pp. 0156, 0157).

Finally, the record indicates that certain rate case expense invoices contained mathematical errors, lacked sufficient detail, and/or did not appear to be paid. (R. p. 1044, lines 11-18). It was not retaliatory or otherwise improper to deny recovery of expenses where, among other reasons, the expenses had not been paid. (*Id.*; Respondent’s Brief, pp. 27-29; R. pp. 2792-2796). The National Association of Regulatory Utility Commissioners (“NARUC”), the standard-setting body for utilities commissions, produces a Chart of Accounts outlining criteria and requirements for record-keeping. These rate case expenses “do not...conform to the guidance that NARUC lays out when it sets out its auditing protocol for different regulators to follow.” (R. p. 1070, lines 14-19). The record contains a chart that details certain invoices that total \$542,978.09, and which indicates deficiencies including, among others, “no payment [is] listed.” (R. pp. 2792-2796). Without appropriate justification, it would have been arbitrary, and a violation of this Court’s ratemaking rulings, for the Commission to award these unpaid expenses to DIUC. The Commission’s Order is reasonable and is not retaliatory when it ensures fair cost recovery for expenses paid and appropriately verified.

For these reasons, ORS respectfully submits this court misapprehended or overlooked certain facts that demonstrate that neither ORS’s conduct, nor the Commission’s Order, were retaliatory or improper.

Respectfully submitted,



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Beach Field Properties, LLC, Respondents.

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**CERTIFICATE OF SERVICE**

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This is to certify that I have caused to be served this day one (1) copy of the **PETITION FOR REHEARING SOUTH CAROLINA OFFICE OF REGULATORY STAFF** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

[LIST OF PARTIES SERVED ON THE FOLLOWING PAGE]

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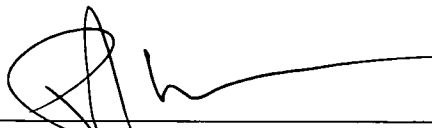
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August 5, 2019  
Columbia, South Carolina

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