

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM THE PUBLIC SERVICE COMMISSION SEP 16 2019

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Appellate Case No.: 2018-001107

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S.C. SUPREME COURT

Daufuskie Island Utility Company, Inc., .....Appellant,

v.

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

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RESPONDENTS HAIG POINT CLUB AND COMMUNITY ASSOCIATION, INC.,  
MELROSE PROPERTY OWNER'S ASSOCIATION, INC., AND BLOODY POINT  
PROPERTY OWNER'S ASSOCIATION'S REPLY TO RETURN TO PETITION FOR  
REHEARING

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Attorneys for Respondents Haig Point Club  
and Community Association, Inc., Melrose  
Property Owner's Association, Inc. and  
Bloody Point Property Owner's Association

The Haig Point Club and Community Association, Inc., Melrose Property Owner's Association, Inc., and Bloody Point Property Owner's Association (POAs) hereby Reply to Daufuski Island Utility Company, Inc.'s (DIUC's) Return to Petition for Rehearing regarding the Court's Opinion (Return). Because the Return fails in at least the following two major ways to address the POA's arguments, the Court should grant the POAs Petition for Rehearing (Petition).

The Return fails to refute the fact that the Commission's Order on Rehearing specifically granted DIUC "the previously awarded rate case expenses" of \$75,000 as part of the \$272,382 in rate case expenses recommended by the ORS, and *separately* excluded \$542,978 in rate case expenses. (Order on Rehearing, pp. 36-37, R. pp. 0128-29). Accordingly the Opinion misapprehended the Order on Rehearing by concluding that the Commission denied DIUC rate case expenses it "previously awarded."

As a result, the Return does not cite a single fact in the Record to support the proposition that the Commission or the ORS "employed a retaliatory standard of scrutiny" on remand. Nor does the Return address the POAs' citations to the record evidence (overlooked by the Opinion) demonstrating just the opposite: that the invoices were properly excluded on an "objective and measurable" basis because they "contained mathematical errors, lacked sufficient detail, and/or did not appear to be paid." (Order on Rehearing p. 37, ROA 0129, citing Rehearing Tr. p. 476, ll. 11-18). Nor does the Return address other POA arguments (also overlooked by the Opinion) further disproving the application of a "retaliatory standard of scrutiny": DIUC had a meaningful opportunity to rebut the ORS recommendation to exclude expenses in testimony and at the Hearing on Remand. (R. pp. 128-130).

Instead, the Return resorts to pure argument untethered to record evidence. In the following passage from page 9 of the Return, *DIUC actually misrepresents its own advocacy as the ruling of the Commission*:

It is also significant that the Order on Rehearing [sic] *the Commission* recognized the impact on DIUC from skyrocketing costs of this five-year long rate proceeding:

...the delays and costs incurred as a result of the appeal have impacted how DIUC is able to operate. Finally, we note that the rate case expenses presented totaling \$794,210, plus the \$60,782 paid by DIUC for appeal bonds, demonstrate, as Mr. Guastella testified, that “DIUC’s total rate case expenses has reached a magnitude that is far too disproportionate to its revenues” such that the Utility cannot offer to absorb a portion of the costs as it did in the initial proceeding.

R. pp. 440-441)(quoting Rehearing Transcript at 78)

See, Return, at p. 9. (emphasis added).

As it turns out, this “citation” is not from the Commission’s Order on Rehearing at all (or *any* Commission order), but, instead, the PROPOSED Order DIUC submitted to the Commission *but the Commission did not adopt*. The Return is laden with numerous additional mischaracterizations not supported by the record, as well as disputed facts.

### CONCLUSION

Requiring DIUC to verify its proposed rate case expenses cannot be “retaliatory,” or considered to be a “heightened standard of scrutiny,” and there are no facts in the record to support that conclusion. Significantly, the Return’s characterization of the requirement that the Commission verify all proposed rate case expenses as “new heightened review standards” (Return at p. 9) demonstrates DIUC’s view that on remand

the Commission must apply *no scrutiny at all* to the invoices in question, notwithstanding the Opinion's statement that "we do not address the merits at all." DIUC fails to rebut the POA's explanation why this potentially confusing aspect of the Court's Opinion must be clarified on reconsideration. DIUC's Return does not address those arguments made by the POAs, but merely adds confusion and an inappropriate consideration of intent to the analysis at hand. Accordingly, the POAs request that the Court grant rehearing, reconsider its Opinion, and grant such other relief as is just and proper.

Respectfully submitted,



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*Attorneys for Respondents Haig Point Club  
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Bloody Point Property Owner's Association*

September 16, 2019.

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION

Appellate Case No.: 2018-00110

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S.C. SUPREME COURT

Daufuskie Island Utility Company, Inc., .....Appellant,

v.

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

PROOF OF SERVICE

I certify that I have served Respondents Haig Point Club and Community Association, Inc., Melrose Property Owner's Association, Inc. and Bloody Point Property Owner's Association, Inc.'s Reply to Return to Petition for Rehearing by depositing a copy in the United States Mail, postage prepaid, on September 16, 2019, addressed to the following:

Andrew M. Bateman, Esquire  
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*Attorneys for Respondent Office of Regulatory Staff*

Thomas P. Gressette, Jr., Esquire  
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Victoria M. Cordoni – Paralegal

September 16, 2019

Attorneys at Law

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Mississippi  
South Carolina  
Tennessee  
Texas  
Washington, DC

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S.C. SUPREME COURT

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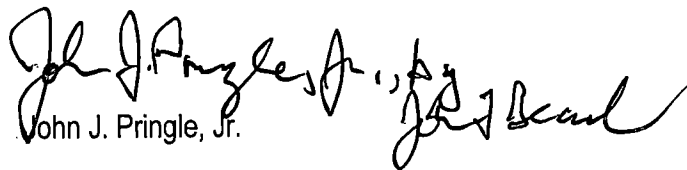
Re: *Daufuskie Island Utility Company, Inc. v. South Carolina Office of Regulatory Staff, Haig Point Club and Community Association, Inc., Melrose Property Owner's Association, Inc., Bloody Point Property Owner's Association, and Beach Field Properties, LLC*  
Appellate Case No. 2018-001107  
A&R File No. 051030-000001

Dear Mr. Shearouse:

Enclosed for filing in the above-referenced matter are the original and seven (7) copies of Respondents Haig Point Club and Community Association, Inc., Melrose Property Owner's Association, Inc., Bloody Point Property Owner's Association's Reply to Return to Petition for Rehearing. Please file the original and six (6) copies pursuant to Rule 240, SCACR, and return the extra copy to my courier.

By copy of this letter, I am serving all counsel of record with the Petition as set forth in the enclosed Proof of Service. Thank you for your attention to this matter.

Sincerely,

  
John J. Pringle, Jr.

JJP:vmc

cc: Thomas P. Gressette, Jr., Esquire  
Andrew Bateman, Esquire