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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE PUBLIC SERVICE COMMISSION

Case No. 2019-001354

Stephen and Beverly Noller and Michael and Nancy
Halwig, ... Appellants,

v.

Daufuskie Island Utility Company, Incorporated and
South Carolina Office of Regulatory Staff, ... Respondents.

CORRECTED RECORD ON APPEAL

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RECORD ON APPEAL

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**SOUTH CAROLINA PUBLIC SERVICE COMMISSION
HEARING EXAMINER DIRECTIVE**

DOCKET NO. 2018-364-WS Order No. 2019-22-H

FEBRUARY 27, 2019

Hearing Officer: Randall Dong

DOCKET DESCRIPTION:

**Stephen and Beverly Noller and Michael and Nancy Halwig,
Complainants/Petitioners v. Daufuskie Island Utility Company, Incorporated,
Defendant/Respondent**

MATTERS UNDER CONSIDERATION:

**Hearing Date Held in Abeyance; Briefing Schedule and Oral Argument Schedule
Established**

HEARING EXAMINER'S ACTION:

**The hearing scheduled for February 28, 2019 is to be held in abeyance at this time. A new
hearing date will be scheduled, if necessary, at a future date by the Commission.**

**The parties are to brief the Commission on matters of jurisdiction. There will be an
opportunity for a brief, a reply brief, and oral arguments. The schedule and deadline for
each of these items is as follows:**

March 6th: Initial briefs

March 13th: Responsive briefs

March 20th: Oral arguments

**The oral argument will be held in the Commission Hearing Room at 101 Executive Center
Dr, Columbia, SC 29210. It will be scheduled for 10:00 a.m.**

Action Item 3

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	☐	DATE	<u>June 12, 2019</u>
MOTOR CARRIER MATTER	☐	DOCKET NO.	<u>2018-364-WS</u>
UTILITIES MATTER	☒	ORDER NO.	<u>2019-424</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

DOCKET NO. 2018-364-WS - Stephen and Beverly Noller and Michael and Nancy Halwig, Complainants/Petitioners v. Daufuskie Island Utility Company, Incorporated, Defendant/Respondent - Staff Presents for Commission Consideration Stephen and Beverly Noller and Michael and Nancy Halwig, Complainants/Petitioners v. Daufuskie Island Company, Incorporated, Defendant/Respondent.

COMMISSION ACTION:

As you may recall, we had the attorneys argue the jurisdictional threshold issue before the Commission earlier this year, as to whether or not the Commission even had subject-matter jurisdiction to hear this dispute where the parties are seeking a monetary award based on a contract issue.

I'm going to move that we dismiss the case, as the Public Service Commission does not have the statutory authority to grant monetary damages, which is the relief requested in the pleadings. And as a part of the motion, I'd like to add that the Commission, of course, does have the authority to deal with service-connection and termination issues, and, therefore, as a part of the motion, the dismissal should not result in a disconnection of service to either of the Complainants' residences during the pendency of this contractual dispute. So to the extent that it is within our jurisdictional authority, I move that we stay any disconnection of service for the residences in question, while these contractual disputes are pending.

PRESIDING: Randall

SESSION: Regular

TIME: 12:30 p.m.

	MOTION	YES	NO	OTHER
BELSER	☐	☐	☐	<u>Recused</u>
ERVIN	☒	☒	☐	
HAMILTON	☐	☒	☐	
HOWARD	☐	☒	☐	
RANDALL	☐	☒	☐	
WHITFIELD	☐	☒	☐	
WILLIAMS	☐	☒	☐	

(SEAL)

RECORDED BY: J. Schmieding



**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	☐	DATE	<u>July 17, 2019</u>
MOTOR CARRIER MATTER	☐	DOCKET NO.	<u>2018-364-WS</u>
UTILITIES MATTER	☒	ORDER NO.	<u>2019-523</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

DOCKET NO. 2018-364-WS - Stephen and Beverly Noller and Michael and Nancy Halwig, Complainants/Petitioners v. Daufuskie Island Utility Company, Incorporated, Defendant/Respondent - Staff Presents for Commission Consideration the Complainants' Petition for Rehearing or Reconsideration.

COMMISSION ACTION:

On June 12, by Commission Order No. 2019-424, we dismissed the Complaint of the Nollers and the Halwigs against Daufuskie Island Utility Company. On June 21, the Complainants timely filed a Petition for Reconsideration and/or Rehearing. The Company did not file a response to the Petition.

The Complainants seek reconsideration or rehearing on three grounds or matters:

1) The Complainants state that the Commission does have jurisdiction over the matter, because DIUC has failed to provide adequate and proper water and sewer services to the Complainants. However, DIUC began providing water and sewer service to the homeowners in December of 2018. This issue has long-since been rendered moot.

2) The Complainants state that the Commission has jurisdiction to hear this matter in order to remedy the failure of DIUC to submit the Customer Service Agreement for approval (pursuant to S.C. Code Reg. 103-541 and 103-743) before it was entered into with Homeowners. While it is true that this Commission has broad authority over approval of contracts entered into by regulated entities, even if the Commission were to find such actions were violative of properly promulgated regulations, that would still not grant the Commission an ability it does not possess, i.e., we cannot grant monetary damages under an allegedly invalid contract, and in this Petition the Complainants are seeking monetary damages, and that would be for a court of competent jurisdiction, not a proper matter for the South Carolina Public Service Commission.

3) The Complainants believe the Commission has the ability to provide monetary damages to the Complainants. In fact, the Complainants cite S.C. Code Ann. Section 58-5-270 and Section 58-5-710.

Under -270, the Commission certainly does have the jurisdictional authority to hear complaints properly brought before it. However, in this case, monetary damages are being sought – and the Commission simply does not have the authority to grant such an award.

The Commission does have authority under -710 to levy a fine or penalty against a regulated utility if the utility is failing to show cause as to why it is not taking steps to provide adequate water and sewer service. As I mentioned earlier, service has been and is continuing to be rendered to the Complainants. Even if that weren't that case, any fines or penalties levied by this Commission go into the General Fund of the State, not to the Complainants.

For these reasons, I move that the Complainants' Petition for Rehearing and/or Reconsideration should be denied in its entirety.

PRESIDING: Randall

SESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
BELSER	☐	☐	☐	<u>Recused</u>
ERVIN	☒	☒	☐	
HAMILTON	☐	☒	☐	
HOWARD	☐	☒	☐	
RANDALL	☐	☒	☐	
WHITFIELD	☐	☒	☐	
WILLIAMS	☐	☐	☐	<u>Absent</u>

Military Leave

(SEAL)



RECORDED BY: J. Schmieding

Complete Form, Print, Sign and Mail to:
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210



Phone: 803-896-51

Fax: 803-896-51

www.psc.sc.g

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Individual Complaint Form

Date*: 11/16/2018

Complainant or Legal Representative Information: * Required Fields

Name * Newman J. Smith

Firm (if applicable) Nelson Mullins Riley & Scarborough LLP

Mailing Address * 151 Meeting Street/PO Box 1806

City, State Zip * Charleston SC 29401 Phone * 843-534-4309

E-mail Jack.smith@nelsonmullins.com

Name of Utility Involved in Complaint: * Daufuskie Island Utility Company

Type of Complaint (check appropriate box below.) *

- | | | | |
|--|--|--|--|
| ☐ Billing Error/Adjustments | ☐ Deposits and Credit Establishment | ☐ Wrong Rate | ☒ Refusal to Connect Service |
| ☐ Disconnection of Service | ☐ Payment Arrangements | ☐ Water Quality | ☒ Line Extension Issue |
| ☐ Service Issue | ☐ Meter Issue | | |
| ☐ Other (be specific) _____ | | | |

Have you contacted the Office of Regulatory Staff (ORS)? * ☒ Yes ☐ No Name of ORS Contact: Mr. Chad Campbell

Concise Statement of Facts/Complaint: * (This section must be completed. Attach additional information to this page if necessary.)

Daufuskie Island Utility Company (DIUC) required customers Halwig and Noller (46 and 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, SC) to install replacement water and sewer mains that serve part of Driftwood Cottage Lane for the mains destroyed by Hurricane Matthew. All costs of engineering, permitting and installation were paid by these customers to the engineers and contractors and agencies for the replacement mains because DIUC refused to provide temporary or permanent replacement mains and maintained that replacement of its mains was these customers' responsibility. (See continuation, attached.)

Relief Requested: * (This section must be completed. Attach additional information to this page if necessary.)

The customers Halwig and Noller request the Commission require DIUC to immediately restore service through the replacement lines and to compel DIUC to refund the full costs paid by the customers for the replacement lines. (See continuation, attached.)

****I GIVE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA PERMISSION TO PUBLISH THIS COMPLAINT AND ITS CONTENTS ON THE COMMISSION'S WEBSITE (dms.psc.sc.gov), AND I UNDERSTAND SUCH INFORMATION MAY BE SUBJECT TO PUBLIC SCRUTINY OR FURTHER RELEASE.** ☒ Yes ☐ No

Complainant's Signature * (MUST BE SIGNED, DO NOT PRINT)

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

VERIFICATION

I, Mr./Mrs. Halwig and Mrs. Noller
Complainant's Name *

verify that I have read my complaint filed on 11/16/18
Date *

and know the contents thereof, and that said contents are true.

Complainant's Signature * (MUST BE SIGNED, DO NOT PRINT)

J. M. Halwig
11/16/18

Internal Use Only

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Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210



Phone: 803-896-5100

Fax: 803-896-5199

www.psc.sc.gov

Text PSCAGENDAS to 39492

To receive an alert when Meeting Agendas are released

Individual Complaint Form

Date*: 11/16/2018

Complainant or Legal Representative Information: * Required Fields

Name * Newman J. Smith
Firm (if applicable) Nelson Mullins Riley & Scarborough LLP
Mailing Address * 151 Meeting Street/PO Box 1806
City, State Zip * Charleston SC 29401 Phone * 843-534-4309
E-mail jack.smith@nelsonmullins.com

Name of Utility Involved in Complaint: * Daufuskie Island Utility Company

Type of Complaint (check appropriate box below) *

- | | | | |
|--|--|--|--|
| ☐ Billing Error/Adjustments | ☐ Deposits and Credit Establishment | ☐ Wrong Rate | ☒ Refusal to Connect Service |
| ☐ Disconnection of Service | ☐ Payment Arrangements | ☐ Water Quality | ☒ Line Extension Issue |
| ☐ Service Issue | ☐ Meter Issue | | |
| ☐ Other (be specific) _____ | | | |

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Counsel Statement of Facts/Complaint: * (This section must be completed. Attach additional information to this page if necessary.)

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Complainant's Signature * (MUST BE SIGNED, DO NOT PRINT)

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

VERIFICATION

I, Mr./Mrs. Halwig and Mrs. Noller verify that I have read my complaint filed on 11/16/18
Complainant's Name * Date *

and know the contents thereof, and that said contents are true.

Complainant's Signature * (MUST BE SIGNED, DO NOT PRINT)

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H.E.	

Complete Form, Print, Sign and Mail to:
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210



Phone: 803-896-5100
Fax: 803-896-5199
www.psc.sc.gov
Text PSCAGENDAS to 39492

To receive an alert when Meeting Agendas are released

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Date*: 11/16/2018

Complainant or Legal Representative Information: * Required Fields

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Firm (if applicable) Nelson Mullins Riley & Scarborough LLP
Mailing Address * 151 Meeting Street/PO Box 1806
City, State Zip * Charleston, SC 29401 Phone * 843-534-4309
E-mail jack.smtih@nelsonmullins.com

Name of Utility Involved in Complaint: * Daufuskie Island Utility Company

Type of Complaint (check appropriate box below.) *

- | | | | |
|--|--|--|--|
| ☐ Billing Error/Adjustments | ☐ Deposits and Credit Establishment | ☐ Wrong Rate | ☒ Refusal to Connect Service |
| ☐ Disconnection of Service | ☐ Payment Arrangements | ☐ Water Quality | ☒ Line Extension Issue |
| ☐ Service Issue | ☐ Meter Issue | | |
| ☐ Other (be specific) _____ | | | |

Have you contacted the Office of Regulatory Staff (ORS)? * ☒ Yes ☐ No Name of ORS Contact: Mr. Chad Campbell

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Relief Requested: * (This section must be completed. Attach additional information to this page if necessary.)

The customers Halwig and Noller request the Commission require DIUC to immediately restore service through the replacement lines and to compel DIUC to refund the full costs paid by the customers for the replacement lines. (See continuation, attached.)

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STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

VERIFICATION

Complainant's Signature (MUST BE SIGNED, DO NOT PRINT)

I, Mr./Mrs. Halwig and Mrs. Noller
Complainant's Name *

verify that I have read my complaint filed on 11/16/18
Date *

and know the contents thereof, and that said contents are true.

Beverly P. Noller
Complainant's Signature (MUST BE SIGNED, DO NOT PRINT)
Beverly P. Noller

Page 1

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Processed By	Date
H.E.	

ROA_008

Continuation of Statement of Facts/Complaint

Daufuskie Island Utility Company (DIUC) has failed to provide adequate and proper service to its customers Halwig and Noller (46 and 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, SC) since October of 2016. DIUC refused to replace water and sewer mains that serve part of Driftwood Cottage Lane since they were destroyed by Hurricane Matthew. DIUC also refused to replace the mains destroyed by the storm with alternative mains to serve the customers' homes. Instead, DIUC forced the Halwigs and Nollers to install replacement water and sewer mains for all lots on Driftwood Cottage Lane since they were destroyed by Hurricane Matthew with the promise that DIUC would restore water and sewer service once the mains were replaced. All costs of engineering, permitting and installation were paid by these customers to the engineers and contractors and agencies for the replacement mains because DIUC refused to provide temporary or permanent replacement mains and maintained that replacement of its mains was these customers' responsibility. Even though DIUC promised to restore service once the customers replaced the mains, DIUC has failed to do so and continues to refuse to provide adequate and proper service.

Plaintiffs are John and Nancy Halwig, the owners of 46 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, South Carolina, and Beverly and Stephen Noller, the owners of 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, South Carolina.

Plaintiffs' properties are within Melrose Plantation on Daufuskie Island. The Driftwood Cottage Lane area within Melrose has suffered from Hurricane Matthew which struck on October 8, 2016. As a result of the erosion from Hurricane Matthew, a portion of Driftwood Cottage Lane was washed out, and with it water and sewer mains owned by Daufuskie Island Utility Company. While the homes to the south of the washout on Driftwood Cottage Lane continued to have service from DIUC, the homes and lots north of the washout, particularly the homes of John and Nancy Halwig and Beverly and Stephen Noller, did not. When the utility company was asked when it would restore the utility service to these homes, the utility stated in a letter that it would not be able to restore service and that the two families on that street would have to provide an alternative extension of mains and utilities at their own, personal cost. When the Halwigs filed a Complaint with the South Carolina Office of Regulatory Staff ("ORS") regarding the refusal of DIUC to restore service, the ORS replied that the statutes do not provide a definitive time frame within which service has to be restored.¹ Based on this response, DIUC opted not to replace the mains or restore service at all.

Because DIUC refused to replace the mains and utilities, the Halwigs and Nollers were required to find an alternate route for mains to replace the one disconnected at the washout of Driftwood Cottage Lane to the remainder of the mains under Driftwood Cottage Lane. Several other lots in addition to these two developed lots exist and could utilize the mains. Because the Driftwood Cottage Lane neighborhood is adjacent to two holes of the Melrose Golf Course and a road across the golf course called Martinangel Lane, which did have utility mains under it, the logical

¹ See letter from ORS to Dr. Halwig dated December 2, 2016, ORS file # 2016-W-1682.

place to seek alternative routing for replacement mains to Driftwood Cottage Lane would be through the golf course property. The golf course property, owned by the Melrose Resort owner, was in the process of going through bankruptcy. In spite of this, the Halwigs and Nollers persevered and eventually were able to get the former lender and now owner of the Melrose Golf Course to agree to the easement to allow the lines to be installed near the 17th hole of the golf course. The process of obtaining the easement took more than a year, and throughout that time, the Halwigs and Nollers remained without water and sewer services at their properties. DIUC did not assist in finding the alternate route for the mains or in securing the necessary easement for installation.

Once the Halwigs and Nollers obtained the easement, the water and sewer mains could be installed through the golf course property. On January 30, 2018, DIUC provided the Halwigs and the Nollers with a Customer Service Agreement, which detailed the terms under which DIUC would provide service to the Halwigs and the Nollers. The Customer Service Agreement provides that the Halwigs and Nollers were to install the mains at their own expense. The Customer Service Agreement required the Halwigs and the Nollers to provide DIUC with the easement, invoices related to the costs that they were incurring at their own expense, and "as built" drawings prepared by a licensed surveyor. The Customer Service Agreement also provides that the Halwigs and Nollers will provide DIUC with a bill of sale transferring ownership of the mains to DIUC upon completion. The Customer Service Agreement provides that:

Under the circumstances of the need for this agreement, there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

The installation of the replacement mains was finally completed and accepted by the engineer at the end of September 2018. All of the engineering costs, agency permitting, installation and other costs involved in replacing the water and sewer mains was paid for by the Halwigs and Nollers. Every item of paperwork required by DIUC has been delivered to DIUC. DIUC has accepted the installation and the Bill of Sale transferring ownership of the replacement mains to DIUC. The DHEC permit is now DIUC's responsibility. The project engineer has accepted the completion of the work as of September 28, 2018. At no time did DIUC offer any assistance and only provided the name of their preferred engineering firm.

Despite the fact that the Halwigs and the Nollers executed the Customer Service Agreement and complied with its terms, DIUC still refuses to provide service to the Halwigs' and Nollers' properties as it agreed to do so under the Customer Service Agreement. DIUC would not allow service to be restored even temporarily at that time for testing to make sure that it was properly connected to the homes. As of the date of this filing, service has not yet been restored to the Halwigs' and Nollers' homes.

Instead of complying with the Customer Service Agreement, DIUC has provided the Halwigs and the Nollers with an Addendum to the Customer Service Agreement, in which DIUC has

demanded (1) payment of additional expenses never mentioned in the Customer Service Agreement, including its attorney's fees and taxes expected to be imposed on DIUC for the costs paid for by the Halwigs and Nollers for the replacement mains; and (2) a withdrawal and release of any and all claims and complaints the Halwigs and Nollers have asserted or may assert against DIUC before PSC or otherwise in regard to the installation of the Project Mains. DIUC has demanded execution of this Addendum prior to providing water and sewer service to the Halwigs' and Nollers' homes. Copies of the Customer Service Agreement and proposed Addendum to the Customer Service Agreement are attached with the correspondence referred to in this Complaint. Copies of the documentation for the engineering services provided by Thomas and Hutton, the contractor services provided by PINCO Construction, permitting by DHEC, and cost of equipment are available if requested.

The terms of the Customer Service Agreement between the Halwigs and Nollers and DIUC does not require that the Halwigs and Nollers pay any attorney fees or taxes that might be due and payable in the future by DIUC based upon the cost of installation of the replacement lines necessary for DIUC to provide service to the Halwigs and Nollers. The Agreement is clear that "[u]nder the circumstances of the need for this agreement, there will be no charge for administrative fees." (Agreement, Page 2). Taxes and attorney fees would be administrative fees. Legal fees are typical operating expenses and not included in the cost of Contributions in Aid of Construction or Customer Main Extension Fees.

While the Agreement does state that "in order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to **have the Project Mains installed** in accordance with the plans they solicited from Thomas & Hutton, **at their cost**" (emphasis added), the cost of installation does not include any ancillary costs incurred by DIUC, and certainly no speculative costs. Moreover, the setting of rates is not a DIUC decision and can only be set by the SC Public Service Commission, or potentially a court decision. The sharing by customers of all costs of DIUC for the facilities, services and related costs (such as taxes) is a decision of the PSC. The Halwigs and Nollers did not agree to pay a potential liability of DIUC, especially without notice, discussion or mention in the Agreement.

The Halwigs and the Nollers should never have had to pay for the replacement of the Mains, much less for the potential taxes and attorney fees of DIUC related to such replacement. Lines destroyed by a sinkhole, flood or other natural causes should not be the responsibility of the customers affected by the loss. DIUC has the following responsibility under the PSC regulations:

. . . unless specifically relieved in any case by the commission from such obligation, shall operate and maintain in safe, efficient and proper conditions all of its facilities and equipment used in connection with the services it provides to any customer up to and including the point of delivery into systems or facilities owned by the customer.

See R.103-540 and 740. When it is not possible to replace the infrastructure lost in the same place, the utility should not simply be relieved from replacing the infrastructure in another place.

The PSC cannot allow a utility to shift the burden of water and sewer infrastructure replacement to those whose service was lost through damage to the infrastructure of the utility. Repairing damage and replacing systems as necessary is part of running a utility business. Good business practice, especially when profit is built in by the rate structure approved by a government authority, must include funds for replacement of the critical infrastructure necessary to maintain homes in a habitable condition. The costs demanded here are not for any installation at these individual customers houses, that cost was excluded by DIUC in calculating the cost to then tax and in determining what it would accept responsibility for maintaining. These customers have been forced to pay for replacement mains that are DIUC's responsibility.

Despite the language of the Agreement stating that there will be "no charge for administrative fees," DIUC continues to demand, prior to restoration of service, payment of an estimated tax it may bear on the amount paid by the customers for the replacement system DIUC refused to replace. The future imposition of a federal tax on the cost paid for installation is not a cost under a Customer Main Extension Fee (R.103-502.3). The Public Service Commission has not yet held a hearing or made a final decision regarding the amount of a tax or how any tax that may be due under such a situation would be handled in setting future rates.² The imposition of the full tax amount expected based solely on the cost of installation also does not account for the potential deductible loss of the system being replaced, depreciation or other factors in determining tax liability.

DIUC has argued that the requirement to Preserve Tax Benefits in the referenced Docket should be in a future rate relief proceeding.³ However, the mains installed by the Halwigs and the Nollers are replacements for the mains that were destroyed by the storm. They are not new lines and should not be treated like a contribution to the utility like new lines. The treatment of the "income" from the payments made by these customers cannot be compared to voluntary contributions in aid of construction or a customer main extension fee. The refusal of DIUC to replace the lines or make any effort to provide even temporary service made the payment by these customers involuntary; without replacing the system themselves the homes they built could not be used and could be condemned. These customers being forced to pay for the replacement mains should not be allowed, the replacement is DIUC's responsibility. Most importantly as set for the above, the Agreement does not include DIUC costs of any kind be paid by these customers, only the cost of installation.

Further, it would be inappropriate to charge the Halwigs and the Nollers a tax or attorney fees for the replacement of lines that serve all of the lots along Driftwood Cottage Lane above the area where erosion destroyed the road. The replacement mains connect from Martinangel Lane to the lines under Driftwood and not directly to these customers' homes. The replacement Mains only connect one street to the next. The only equipment installed onto the Halwigs' or Nollers' property were the grinder pumps. These pumps had to be replaced in order to manage the change

² PSC Docket #2017-381-A.

³ PSC Docket #2017-381-A; October 10, 2018 Supplemental Filing. "DIUC requests the Commission find that all effects of the Tax Act on DIUC's allowable expenses and revenues may be determined only in the context of a rate relief proceeding during which all revenues and expenses are to be considered in setting a just and reasonable rate." (at page 4).

in water flow to the replacement lines. DIUC has identified the grinder pumps as the exclusive responsibility of the owners and has excluded grinder pumps from the equipment transferred to DIUC. DIUC has accepted responsibility for the operation and maintenance of the replacement mains, which provide service to all of the lots along Driftwood Cottage Lane above the wash out.

The refusal to turn on the water and sewer service at the Halwigs' and Nollers' homes after completion of the permitting and installation of the replacement lines is not reasonable and shows a lack of good faith on the part of DIUC. All requirements under the Agreement have been met and satisfied. No further amounts are due and payable to DIUC under the Agreement. The only items allegedly in dispute from DIUC's perspective are its attorney's fees and as yet not due potential tax liability.⁴ In addition, DIUC has demanded in the Addendum to the Customer Service Agreement that the Halwigs and Nollers provide a withdrawal and release of any and all claims and complaints the Halwigs and Nollers have asserted or may assert against DIUC before PSC or otherwise in regard to the installation of the Project Mains. These new demands are not reasonable and would require the customers to relinquish significant rights in exchange for service that DIUC already has an obligation to provide. There is no regulatory requirement for the notion behind DIUC's position throughout the two (2) year plus lack of service that "it is not appropriate for the Company to incur such costs which would then be passed on to its other customers through the rate setting process."⁵ The decision to 'pass on' any costs is a decision for the PSC and not DIUC, is not certain, and, under the circumstances, fails to support the demands made on DIUC's own customers, especially when all costs of installation have been paid by the Halwigs and the Nollers, who have no recourse to other water providers. Significantly as well, these customers had no choice but to pay for replacement lines because DIUC forced them to choose to do that or lose their beachfront homes. These customers are still without service.

These customers' homes have been without water and sewer service for over two years, and the lack of service has caused a great deal of loss to both families. DIUC's refusal to provide service continues in the face of installation of replacement mains by the customers at the customers' own cost and every item of paperwork required by DIUC having been delivered to DIUC, which has accepted the installation, including the Bill of Sale for the replaced system from the Halwigs and Nollers. DIUC has still refused to return service to these homes, based on the demand for payment of the attorney's fees and potential tax liability and release of any claims against DIUC. Such refusal to restore service after the fulfillment of the Agreement by the Halwigs and Nollers violates the DIUC commitment made to them in December of 2015: "Daufuskie Island Utility Company (Company) will continue to preserve, maintain and provide service to all customers within its service area, including service to the Halwig property. we will continue to provide utility service as originally designed and in compliance with all regulatory requirements." The water and sewer service has not been restored in order for these families to be able to use their properties, and DIUC has failed to live up to its responsibilities.

⁴ It is possible the Tax Act triggering the potential new tax will be amended before any such tax is due.

⁵ December 10, 2015 DIUC correspondence to Halwig counsel.

Public Service Commission of South Carolina, Halwig and Noller Complaint
RE: Daufuskie Island Utility Commission filed November 16, 2018
Page 6

Continuation of Relief Requested

The PSC should require that DIUC restore water and sewer service to its customers Halwig and Noller immediately and that DIUC reimburse the Halwigs and the Nollers for all costs paid to replace the mains serving the portion of Driftwood Cottage Lane above the road wash out for and such other and further relief as the PSC may deem just and proper.

Daufuskie Island Utility Company, Inc.

725 N. Hwy A1A, Suite B103, Jupiter, FL 33477
888-635-7878

BY EMAIL

January 30, 2018

Ms. Bev Noller
36 Driftwood Cottage Ln
Daufuskie Island, SC 29915

Dr. Michael Halwig
46 Driftwood Cottage Ln
Daufuskie Island, SC 29915

RE: Customer Service Agreement for Customers located at
36 & 46 Driftwood Cottage Lane

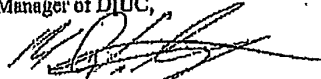
This Customer Agreement is necessary because of severe and continuous storm and tidal ocean erosion that destroyed the section of road located between 22 and 33 Driftwood Cottage Ln, containing Daufuskie Island Utility Company's ("DIUC") water and sewer facilities. Because these facilities could not be replaced as originally designed, DIUC is unable to provide service to customers located at 36 & 46 Driftwood Cottage Ln ("Customers"). As an alternative, DIUC provided Customers with a "Letter of Intent" to serve the customers by connecting to existing mains along Martinangel Ln. and install new mains and facilities ("Project Mains") through the Melrose Golf course to the Customers premises.

DIUC will serve Customers under the following terms of this agreement:

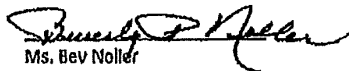
1. In order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to have the Project Mains installed in accordance with the plans they solicited from Thomas & Hutton, at their cost.
2. The installation of the Project Mains must comply with all applicable laws, ordinances, rules, regulations and lawful orders of governmental authorities, and approved by DIUC.
3. Customers will provide DIUC with the following documents: written approval by the owners of the Melrose golf course for the Project Mains installation; easements of sufficient width for the perpetual access to repair, replace and maintain the Project Mains, invoices pertaining to all costs incurred including but not limited to, engineering, permitting and construction.
4. Upon completion of the Project Mains installation, Customers must submit detailed "as built" drawings prepared by a licensed surveyor.
5. Upon completion of the Project Main, Customers will provide DIUC with an acknowledged bill of sale transferring them to DIUC, and they shall be and remain the property of DIUC and its heirs and successors, and will be treated as contributed for rate setting purposes.
6. The Customers shall not for any reason be entitled to any refunds with respect to the Project Mains or any future extension or use of those facilities.

Under the circumstances of the need for this agreement, there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

GUASTELLA ASSOCIATES, LLC
Manager of DJUC,



Mike J. Guastella
Vice President- Operations



Ms. Bev Noller

Dr. Michael Halwig

Cc: Willie Morgan
Chad Campbell

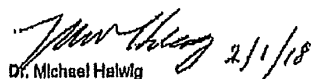
Under the circumstances of the need for this agreement there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

GUASTELLA ASSOCIATES, LLC
Manager of DIUC,



Mike J. Guastella
Vice President- Operations

G---:p--~
Ms. Bev Noller


Dr. Michael Halwig 2/1/18

Co: Willie Morgan
Chad Campbell

ADDENDUM TO CUSTOMER SERVICE AGREEMENT

WHEREAS, Michael Halwig, Nancy Halwig, Beverly Noller and Stephen Noller (together the "Customers") and Daufuskie Island Utility Company, Inc. ("DIUC") entered into a Customer Service Agreement ("CSA") (copy attached hereto as **Exhibit A**);

WHEREAS, pursuant to the CSA, the Customers caused to be installed certain water mains and facilities ("Project Mains" as referenced in the CSA);

WHEREAS, the Project Mains includes the Curb Stops and Meters installed by DIUC but does not include any items located on the premises owned by the Customers (the Premises");

WHEREAS, the Customers represent to the best of their knowledge that the Project Mains comply with all applicable laws, ordinances, rules, regulations and lawful orders of governmental authorities;

WHEREAS, the Customers have provided DIUC with an acknowledged bill of sale transferring the Project Mains to DIUC (copy attached hereto as **Exhibit B**);

WHEREAS, the Customers and DIUC wish to enter into this Addendum to the CSA in order to clarify the obligations between them pursuant to the CSA and to resolve all issues between them so as to avoid the costs of and delays associated with having disputed issues resolved by litigation, mediation, arbitration, or other complaint procedures or processes;

WHEREAS, the Drawings of Record/As-Built Drawings (copy attached hereto as **Exhibit C**), depict the newly installed Project Mains to be owned, operated, and maintained by DIUC and also depict certain items located on the Customers' property which will remain the property of and responsibility of the Customers;

WHEREAS, pursuant to NARUC prescribed Uniform System of Accounts, when DIUC incorporates the Project Mains into its system it will book the cost of the Project Mains as

Contributions In Aid Of Construction;

WHEREAS, pursuant to the recent Tax Cuts and Jobs Act, DIUC will incur a tax liability at a rate of \$33.24 for every \$100.00 of the amount booked as Contributions In Aid Of Construction;

WHEREAS, pursuant to Paragraph 3 of the CSA, the Customers have provided invoices (copies attached hereto as Exhibit D) for costs associated with the Project Mains as follows:

PINCO	\$ 69,337.72 ¹
Thomas and Hutton	\$ 39,346.35
Joe Davis	\$ 2,650.00
Sea Island Land Survey	\$ 1,300.00
SC DHEC	\$ 250.00
Transportation Costs	\$ 70.00
TOTAL	\$ 112,954.07

WHEREAS, DIUC has provided the Owners with a statement from its legal counsel (copy attached hereto as Exhibit E)² indicating that DIUC has incurred legal costs of \$3,900.00 related to the matters contained in the CSA;

WHEREAS, DIUC has provided the Owners with a statement (copy attached hereto as Exhibit F) indicating that DIUC incurred ferry transportation costs of \$70.00 for the Customers' engineer Fred Sororian; and

WHEREAS, as a result of incorporating the Project Mains into its utility plant in service, DIUC will incur a tax obligation of \$37,545.93, which is equal to 33.24% of \$112,954.07.

THEREFORE, in order to resolve all questions as to the obligations of the Owners and DIUC pursuant to the CSA, the Owners and DIUC agree:

¹ Supplemental Schedule from Pinco totaling \$76,487.72 less \$7,150.00 for Items 6 and 7 which will remain the property and responsibility of the Customers.

² The Customers and DIUC agree that production of the invoice does not constitute a waiver of any work product protections or the attorney-client privilege.

1. The Customers shall pay to DIUC \$3,900.00 for legal costs and \$37,545.93 for taxes incurred. Said payment shall be made by cashiers check payable to Daufuskie Island Utility Company, Inc. and delivered to: Thomas P. Gressette, Jr., Esq., Walker Gressette Freeman & Linton, LLC, 66 Hasell Street, Charleston, SC 29401.

2. The Customers will withdraw and release any and all claims and complaints they have asserted or may assert against DIUC in regard to the installation of the Project Mains, including but not limited to, those issues raised by letter from Newman Jackson Smith, Esq. to Chad Campbell dated September 11, 2018 (copy attached hereto as Exhibit G).

IT IS SO AGREED THIS ____ DAY OF OCTOBER, 2018.

Witness

Stephen A. Noller
Date: _____

Witness

Beverly P. Noller
Date: _____

Witness

John M. Halwig
Date: _____

Witness

Nancy D. Halwig
Date: _____

Daufuskie Island Utility Co., Inc.

Witness

Signed: _____
Printed Name: _____
Title: _____
Date: _____

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-364**

Stephen and Beverly Noller and	)	
Michael and Nancy Halwig,	)	
Complainants,	)	
v.	)	ANSWER
	)	
Daufuskie Island Utility Co., Inc.,	)	
Respondent.	)	
	)	

Daufuskie Island Utility Company, Inc. ("DIUC") hereby answers the Complaint of Stephen and Beverly Noller and Michael and Nancy Halwig (together the "Customers").

SUMMARY

The Customers own property located on Driftwood Cottage Lane, Daufuskie Island, South Carolina. DIUC provided the Customers water and sewer services until a hurricane destroyed Driftwood Cottage Lane and the DIUC infrastructure that allowed DIUC to service the Customers' property. After the on-island property owners association, Melrose Property Owners Association ("MPOA"), rebuilt Driftwood Cottage Lane, DIUC re-installed infrastructure and resumed water and sewer service to the Customers.

In 2016 another storm, Hurricane Matthew, again washed out Driftwood Cottage Lane and the DIUC infrastructure in the utility easement adjacent to the roadway. Following Hurricane Matthew MPOA determined it was too risky to rebuild the roadway again. The decision provided to DIUC via email from MPOA stated:

The Melrose POA has made extensive efforts to protect and repair Driftwood Cottage Lane. Unfortunately the Atlantic Ocean has proved to be a force we cannot compete with. At this time, most of the road right of way and easement owned by the MPOA no longer exists – it is under water. The MPOA has utilized every reasonable option available to protect Driftwood Lane, but those options are limited by what the Ocean Coastal Resources Management agency will

allow. The only temporary protective devices allowed by ORCM are sandbags and sand backfill. After finally receiving an Emergency Permit for road protection, in the spring of 2015 we spent over \$60,000. installing heavy duty Geo sandbags and dumping tons of sand backfill to protect the road. The king tides of October 2015 washed most of that away and successive storms have completed the destruction and caused even further erosion. The MPOA cannot reconstruct or protect Driftwood Cottage Lane because it is not allowed to use the materials necessary to ensure any permanence to the effort.

Email, December 19, 2016, from Julie DiIullo, MPOA President, to Mike Guastella of DIUC.

DIUC consulted with ORS and understood that since its easement had washed into the sea, DIUC was not obligated to purchase additional easements to install for a third time infrastructure to serve these two customers. DIUC determined it would not be prudent to expend other ratepayers' funds to acquire a new easement and then reconstruct services to these homes; furthermore, the homes at issue lack any significant protection from erosion and equipment installed would not last very long at all before again being destroyed by erosion. However, the Customers were willing to pay for the cost of securing services, so the Customers and DIUC entered into a Customer Service Agreement ("CSA") whereby the Customers would bear all such costs.

Now that construction is complete, the Customers have decided they would prefer the ratepayers absorb the costs. So, the Customers refused to adhere to the CSA's provision requiring the Customers to pay DIUC its tax obligations and have asked this Commission to force DIUC to repay the Customers for the infrastructure the Customers volunteered to install themselves pursuant to the CSA. The claims in the Complaint are without merit and should be dismissed.

THE PROPERTY AT ISSUE

The following photographs taken December 9, 2018, demonstrate the unique circumstances at issue and the reasons a responsible utility would proceed cautiously with any expenditure for these at-risk properties.



Image 1(above) Halwig Residence, South Side. Image 2(below): Halwig Residence, North Side





Image 3(above): Noller Residence South Side. Image 4(below): Noller Residence North Side.



As shown in the photograph below, the abandoned homes to the immediate South of the Noller residence foretell the inevitable future of the Halwig and Noller properties.



*Image 5: Abandoned Properties Immediate South of Noller Residence
(formerly 29 and 33 Driftwood Cottage Lane)*

A current Google Earth image (below) shows Driftwood Cottage Lane now ends at Lot 22 and demonstrates that any effort by DIUC to obtain new easements and to install new lines, as requested by the Halwigs and Nollers, would only benefit the Halwigs and Nollers. Also shown are the posts that remain of two failed seawalls across the Halwig property (Numbered 42, 44, and 46). These failed attempts to combat erosion are also shown in Images 1 and 2 and further demonstrate the risk of installing lines to these properties.



*Image 4: Driftwood Lane Destroyed
36 – Noller
42, 44, 46, 48 – Halwig*

DISCUSSION

Following Hurricane Matthew, in order to connect service to the Noller and Halwig houses, a new utility easement would need to be acquired and then infrastructure designed and rebuilt; this would be a costly endeavor to benefit only two ratepayers whose service use was likely to be very short term. DIUC sought input from ORS. ORS did not take the position that DIUC was obligated to incur these expenses and ORS did not agree DIUC should pass these costs on to its other ratepayers. It would not have been a prudent decision for DIUC to voluntarily install lines to these two rapidly eroding properties and then attempt in its next rate proceeding to make all the other DIUC ratepayers absorb the cost.

DIUC reported to the Customers its determination regarding the feasibility, cost, and risk

of re-installing lines but the Customers nonetheless wished to obtain service. So, the Customers and DIUC negotiated then entered into a Customer Service Agreement ("CSA") (copy attached to Complaint). DIUC provided ORS a copy of the negotiated CSA and discussed with ORS counsel that the CSA did not require any further ORS or Commission approval.

Pursuant to the CSA, the Customers would construct infrastructure that upon approval by DIUC could become part of the DIUC system allowing DIUC to serve the Customers. Some of the installed items would be on the Customer's property and would remain under the Customers' ownership and care.

The CSA contains the following relevant provisions:

1. In order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to have the Project Mains installed.

The purpose of this provision was to prevent DIUC's other customers from being forced to subsidize a third installation of infrastructure to the Customers' property.

5. Upon Completion of the Project Main, Customers will provide DIUC with an acknowledged bill of sale transferring them to DIUC, and they shall be and remain the property of DIUC and its heirs and successors, and will be treated as contributed for rate setting purposes.

This provision specifically explains that the Customers and DIUC are agreeing the Project Mains will become the property of DIUC and they will be booked by DIUC as contributions in aid of construction. When a utility treats items "as contributed for rate setting purposes," the utility incurs taxes. The Customers, then, are required to pay those taxes in this instance per Paragraph 1 of the CSA; otherwise, DIUC's other customers would not be protected from sharing in the cost responsibility.

Pursuant to the Tax Cuts and Jobs Act ("TCJA"), DIUC will be required to pay taxes for the contributions in aid of construction related to the Customers' contributions to the DIUC system.

Specifically, DIUC will incur a tax liability at a rate of \$33.24 for every \$100.00 of the amount booked as contributions in aid of construction. The amount taxed will include costs for the infrastructure as well as associated engineering and labor costs. The TCJA was in effect when the CSA was executed on January 30, 2018.

After construction was completed and DIUC received all the necessary documentation required by the CSA, counsel provided a document outlining the taxes due. Because counsel for the Customers had recently initiated an informal complaint with ORS, the document was intended to evidence the transaction was complete and that all conflicts between the Customers and DIUC had been amicably resolved. The document was captioned as "Addendum to Customer Service Agreement," which the Customers appear to have perceived to be some sort of renegotiation of the CSA. That was not the purpose of the document, as explained by correspondence from DIUC counsel (copy attached hereto as *Exhibit A*).

DIUC has obtained necessary documentation to complete the transaction described in the CSA and invoices for the following costs associated with the Project Mains:

PINCO	\$ 69,337.72
Thomas and Hutton	\$ 39,346.35
Joe Davis	\$ 2,650.00
Sea Island Land Survey	\$ 1,300.00
SC DHEC	\$ 250.00
Transportation Costs	\$ 70.00
	\$ 112,954.07
Tax Rate	33.24%
Tax Due	\$ 37,545.93

DIUC provided the Customers with a statement from its legal counsel indicating that DIUC has incurred legal costs of \$3,900.00 related to the matters contained in the CSA. The legal fees are a cost to DIUC as part of the CSA and DIUC is not authorized to pass that cost on to its other customers.

Based upon the terms of the CSA and all the information available to date, the Customers are obligated to pay the tax obligation of \$37,545.93, which is equal to 33.24% of \$112,954.07, that DIUC must pay in taxes, plus reimbursement for DIUC legal fees in the amount of \$3,900.

As indicated in DIUC's communications with the Customers' counsel and filings in this matter, DIUC remains willing to cooperate with the Customers and to assist as it is able. However, DIUC is not at this time authorized to pass on to its ratepayers these costs attributable solely to the installation of the Project Mains for the Customers. To ensure its collection of these costs and to prevent DIUC's other customers from bearing the burden of the same, DIUC requires remittance per the CSA prior to activating service for the Customers.

DIUC consulted ORS after Hurricane Matthew and DIUC consulted with ORS regarding the Customer Service Agreement. DIUC has complied with the terms of its agreement with the Customers and DIUC has done its very best to proceed prudently in this situation. The Customers are contractually obligated to bear the costs they assumed under the CSA, which is a valid and enforceable agreement.

WHEREFORE, having answered the Complaint herein, Respondent DIUC asks that the claims against DIUC in this matter be dismissed and the Customers be instructed to comply with the terms of the CSA.

FURTHERMORE, in accordance with the Notice of Hearing and Testimony Submission Letter, both dated December 4, 2018, and filed in the docket of this matter, DIUC intends to present additional arguments and evidence in support of its positions.

Respectfully submitted,

s/ Thomas P. Gressette, Jr.

Thomas P. Gressette, Jr.

Direct: (843)-727-2249

Email: Gressette@WGFLAW.com

G. Trenholm Walker

Direct: (843) 727-2208

Email: Walker@WGFLAW.com

WALKER GRESSETTE FREEMAN & LINTON, LLC

Mail: PO Box 22167, Charleston, SC 29413

Office: 66 Hasell Street, Charleston, SC 29401

Phone: 843-727-2200

December 17, 2018
Charleston, SC

EXHIBIT A

From: [Thomas P. Gressette, Jr.](#)
To: [Jack Smith](#)
Subject: RE: 46 & 36 Driftwood Cottage Lanes (Halwig and Noller Residences)
Date: Wednesday, October 31, 2018 2:35:00 PM

Jack,

Thanks for your letter. I apologize if I created confusion by the Addendum I recently forwarded. DIUC did not intend to change the Customer Service Agreement ("CSA"); my goal was just to assemble and identify all the various documents in one place for the parties. If there is a better way to handle the paperwork, I am certainly open to that.

DIUC does not want to alter the terms of the CSA. As we have discussed, DIUC cannot charge its other customers for the \$3,900.00 for legal costs and \$37,545.93 for taxes DIUC will incur for the Contributions in Aid of Construction. In order to protect other customers from sharing in the cost responsibility, as set forth in the CSA, the Halwigs and Nollers must bear that cost.

Best,

Tom

From: Margaret Marks <margaret.marks@nelsonmullins.com> **On Behalf Of** Jack Smith
Sent: Wednesday, October 31, 2018 1:52 PM
To: Thomas P. Gressette, Jr. <Gressette@WGFLAW.com>
Subject: 46 & 36 Driftwood Cottage Lanes (Halwig and Noller Residences)

Please see the attached letter.

Best,
Jack

 **NELSON MULLINS**
Jack Smith
jack.smith@nelsonmullins.com | 843.534.4309
151 Meeting Street Suite 600 | Charleston SC 29401

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read,

EXHIBIT A

print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

ELECTRONICALLY FILED - 2018 December 17 3:06 PM - SCPSC - Docket # 2018-364-WS - Page 12 of 12

**STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NO. 2018-364-WS**

Stephen and Beverly Noller and	)	
Michael and Nancy Halwig,	)	
	)	
Complainants,	)	
	)	
v.	)	COMPLAINANTS' PETITION FOR
	)	REHEARING OR RECONSIDERATION
Daufuskie Island Utility Co., Inc.,)	)	
	)	
Respondent.	)	
	)	

Pursuant to S.C. Code Ann. § 58-5-330 and S.C. Code Ann. Regs. 103-825 and 103-854, and applicable South Carolina law, Complainants Stephen and Beverly Noller and Michael and Nancy Halwig ("Complainants" or "Homeowners") hereby respectfully petition the Public Service Commission of South Carolina ("Commission") to reconsider its findings and conclusions in Order No. 2019-424 ("Order").

On June 12, 2019, the Commission issued the Order dismissing the Complaint in this matter determining as the sole basis for dismissal that the Commission does not have statutory authority to grant monetary damages in favor of Homeowners in their Complaint against Daufuskie Island Utility Co., Inc. ("DIUC"). The Order also stayed any disconnection of service for the Homeowners while contractual disputes are pending based on its jurisdiction over service-connection and termination issues.

Complainants ask the Commission to reconsider this matter as follows:

1. This Commission has jurisdiction over this matter, because DIUC has failed to provide adequate and proper water and sewer service to Homeowners.

Ensuring that utilities provide adequate and proper water and sewer service to customers is the most basic of reasons that the Commission has jurisdiction over this matter. The Commission's regulations (S.C. Code Reg. 103-540, 103-740 and 103-555) require the provision of service. DIUC refused to provide the infrastructure necessary to serve Homeowners' homes after a storm damaged its water and sewer mains. DIUC then forced the homeowners to provide their own infrastructure and donate that infrastructure to DIUC. Even after the Homeowners installed the infrastructure that DIUC should have provided, DIUC continued to withhold service. DIUC insisted that Homeowners agree to pay taxes and attorney fees to DIUC before DIUC would restore service. DIUC continued to withhold service until after Homeowners filed their Complaint. DIUC failed to provide service for over two (2) years while it required Homeowners to install the means to provide services and demanded that Homeowners pay taxes and attorney fees as a condition of service.

The provision of adequate and proper water and sewer services by a utility is squarely within the Commission's jurisdiction. As noted in the Order the Commission has jurisdiction over service connections and ordered that no disconnection of service result during the contractual dispute. The Commission has the authority to require DIUC to provide the service connection and not allow DIUC to require the Homeowners to provide it.

2. The Commission has jurisdiction to hear this matter in order to remedy the failure of DIUC to submit the Customer Service Agreement for approval before it was forced onto Homeowners.

The Commission has jurisdiction over this matter, because DIUC has attempted to circumvent the Commission's authority over rates by charging the individual homeowner Complainants the costs of installation of replacement facilities and equipment now owned by the utility and other costs outside of its approved rates without Commission approval.

The Commission should have reviewed the Customer Service Agreement for approval or disapproval prior to execution. S.C. Code Reg. 103-541 and 103-743. S.C. Code Reg. 103-541 provides as follows:

No utility shall execute or enter into any agreement or contract with any person, firm, partnership, or corporation or any agency of the Federal, State or local government which would impact, pertain to, or effect said utility's fitness, willingness, or ability to provide sewerage service, including but not limited to the collection or treatment of said wastewater, without first submitting said contract in form to the commission and the **ORS and obtaining approval of the commission.**

(emphasis added). S.C. Code Reg. 103-743 provides as follows:

No utility shall execute or enter into any agreement or contract with any person, firm, partnership, or corporation or any agency of the Federal, state, or local government which would impact, pertain to, or effect said utility's fitness, willingness, or ability to provide water service, including but not limited to the treatment of said water, without first submitting said contract in form to the commission and the **ORS and obtaining approval of the commission.**

(emphasis added).

DIUC never asked for approval of the Commission and only submitted it to ORS after the Agreement was executed and after the Homeowners' installation of infrastructure was complete.¹ DIUC's failure to submit the Customer Service Agreement for approval prior to its execution to ORS and the Commission violates these state regulations for contract approval and shows DIUC's efforts to circumvent the rate setting authority of the Commission. The Customer Service Agreement is in violation of state regulation and public policy. *See, e.g., White v JM Brown Amusement*, 360 SC 366, 601 SE2d 342 (2004).

¹ See Testimony of Michael J. Guastella, Vice President of Operators for Guastella Associates, Inc., which provides utility rate, valuation and management consulting services to DIUC, dated February 6, 2019, at 20:1-22:2; see also Letter from ORS to Dr. John Halwig dated December 2, 2016, Complainants 00053-54, in which ORS confirmed that it informed DIUC of the applicable PSC regulations concerning its responsibilities.

The Commission has jurisdiction in this matter as provided by its own regulations. To avoid jurisdiction here is to say that the Commission does not have authority under S.C. Code Reg. 103-541 and 103-743.

The Commission also has jurisdiction here through its authority to set utility rates. DIUC charged the Homeowners the costs of installation of replacement facilities and equipment and required them to transfer ownership of such facilities and equipment to DIUC in order to provide service. The Commission's jurisdiction includes authority over a utility that circumvents the usual rate making process in a manner such as DIUC has imposed on Homeowners in the same manner that the Commission has authority over rates in the usual rate making process.

3. The Commission has authority to provide monetary remedies to Complainants.

S.C. Code Ann. § 58-5-270 and §58-5-710 both also provide for jurisdiction in this matter. The Commission has not only the explicit authority provided in the statutes and regulations but also the implicit authority needed to carry out those responsibilities. *See Hamm v. Central States Health and Life Co. of Omaha*, 299 S.C. 500, 386 S.E.2d 250 (1989)(holding in favor of the implied power to issue refunds). In the *Hamm* decision, the South Carolina Supreme Court distinguished its prior decision in *South Carolina Electric & Gas Co. v. Public Service Comm'n*, 275 S.C. 487, 272 S.E.2d 793 (1980), in which it held that the Commission did not have the authority to issue refunds **in accordance with past-approved lawful rates**. 386 S.E.2d at 253 (emphasis added). As set forth above, the Commission did not approve the Agreement and the fees and costs required by DIUC of the Homeowners were thus not lawful fees and costs. Further, the Commission stated that based its Order on a lack of jurisdiction to grant monetary damages, while the Petition requested that Homeowners be "reimbursed" by DIUC.

Even if upon reconsideration the Commission determines that it does not have authority to order monetary relief, the Commission should take jurisdiction based on 1) its authority to ensure that a utility provide adequate and proper service to its customers, 2) the requirement that a utility present such a contract to the Commission for approval prior to its execution, and 3) its rate making regulatory authority. Courts and administrative authorities hear and decide matters without granting all relief requested in many instances. The Complaint requested that the Commission require that "DIUC restore water and sewer service to its customers Halwig and Noller immediately and that DIUC reimburse the Halwigs and the Nollers for all costs paid to replace the mains serving the portion of Driftwood Cottage Lane above the road wash out *and for such other and further relief as the PSC may deem just and proper.*" (emphasis added)

Here water and sewer service have now been restored, and that service is temporarily protected by the Commission's Order. As set forth above, Homeowners request monetary reimbursement by DIUC and believe that the Commission has the jurisdiction and authority to require such relief. However, even if upon reconsideration the Commission determines that it does not, the Commission should still assert its clear jurisdiction in this matter for all of the reasons set forth above and find that DIUC did not comply with Commission regulations in failing to submit the agreement to the Commission and requiring Homeowners to sign the unapproved agreement to fund the replacement lines to enable service to be restored.

CONCLUSION

The facts of this matter provide jurisdiction to the Commission for DIUC's failure to provide adequate and proper service to its customers, its charging of customers of cost of installation, its failure to submit the agreement to the Commission for approval prior to its execution, and DIUC's attempt to circumvent the Commission's rate approval authority. To

deny jurisdiction in this matter is to say that the Commission does not have authority over a utility's obligation to provide adequate and proper service to its customers, to enforce its regulation that requires approval of an agreement that restores a utility's ability to provide service prior to its execution, or over the costs and rates charged by a utility to its customers.

For all of the reasons set forth above and in Complainants' prior pleadings and briefs, Complainants request that this Commission acknowledge its jurisdiction in this matter and schedule the hearing on the merits as soon as possible.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Newman Jackson Smith

Newman Jackson Smith

SC Bar No. 005245

E-Mail: jack.smith@nelsonmullins.com

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Attorneys for Complainants

Charleston, South Carolina

June 21, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE PUBLIC SERVICE COMMISSION

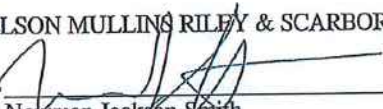
Public Service Commission Docket No. 2018-364-WS

Michael and Nancy Halwig and Stephen and Beverly Noller, ...Appellants,
v.
South Carolina Office of Regulatory Staff, Daufuskie Island Utility Co., Inc. Respondents.

NOTICE OF APPEAL

Michael and Nancy Halwig and Stephen and Beverly Noller appeal Order No. 2019-424 dated June 12, 2019 in Docket No. 2018-364-WS of the Public Service Commission (attached as Exhibit A). On July 17, 2019 Appellants received written notice of entry of Order No. 2019-523 of the Public Service Commission denying the Appellants' motion to reconsider the June 12, 2019 Order (attached as Exhibit B). The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each are presented below.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Newman Jackson Smith

SC Bar No. 005245

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Attorneys for Appellants

August 12, 2019

RECEIVED
AUG 13 2019
SC Court of Appeals

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Attorneys for Respondent Daufuskie Island Utility Commission

Action Item 3

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	☐	DATE	<u>June 12, 2019</u>
MOTOR CARRIER MATTER	☐	DOCKET NO.	<u>2018-364-WS</u>
UTILITIES MATTER	☒	ORDER NO.	<u>2019-424</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

DOCKET NO. 2018-364-WS - Stephen and Beverly Noller and Michael and Nancy Halwig,
Complainants/Petitioners v. Daufuskie Island Utility Company, Incorporated, Defendant/Respondent -
Staff Presents for Commission Consideration Stephen and Beverly Noller and Michael and Nancy Halwig,
Complainants/Petitioners v. Daufuskie Island Company, Incorporated, Defendant/Respondent.

COMMISSION ACTION:

As you may recall, we had the attorneys argue the jurisdictional threshold issue before the Commission earlier this year, as to whether or not the Commission even had subject-matter jurisdiction to hear this dispute where the parties are seeking a monetary award based on a contract issue.

I'm going to move that we dismiss the case, as the Public Service Commission does not have the statutory authority to grant monetary damages, which is the relief requested in the pleadings. And as a part of the motion, I'd like to add that the Commission, of course, does have the authority to deal with service-connection and termination issues, and, therefore, as a part of the motion, the dismissal should not result in a disconnection of service to either of the Complainants' residences during the pendency of this contractual dispute. So to the extent that it is within our jurisdictional authority, I move that we stay any disconnection of service for the residences in question, while these contractual disputes are pending.

PRESIDING: Randall

SESSION: Regular

TIME: 12:30 p.m.

	MOTION	YES	NO	OTHER
BELSER	☐	☐	☐	<u>Recused</u>
ERVIN	☒	☒	☐	
HAMILTON	☐	☒	☐	
HOWARD	☐	☒	☐	
RANDALL	☐	☒	☐	
WHITFIELD	☐	☒	☐	
WILLIAMS	☐	☒	☐	

(SEAL)



RECORDED BY: J. Schmieding

RECEIVED
AUG 13 2019
SC Court of Appeals



**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER ☐
MOTOR CARRIER MATTER ☐
UTILITIES MATTER ☒

DATE July 17, 2019DOCKET NO. 2018-364-WSORDER NO. 2019-523**RECEIVED**AUG 13 2019
SC Court of Appeals

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

DOCKET NO. 2018-364-WS - Stephen and Beverly Noller and Michael and Nancy Halwig, Complainants/Petitioners v. Daufuskie Island Utility Company, Incorporated, Defendant/Respondent - Staff Presents for Commission Consideration the Complainants' Petition for Rehearing or Reconsideration.

COMMISSION ACTION:

On June 12, by Commission Order No. 2019-424, we dismissed the Complaint of the Nollers and the Halwigs against Daufuskie Island Utility Company. On June 21, the Complainants timely filed a Petition for Reconsideration and/or Rehearing. The Company did not file a response to the Petition.

The Complainants seek reconsideration or rehearing on three grounds or matters:

1) The Complainants state that the Commission does have jurisdiction over the matter, because DIUC has failed to provide adequate and proper water and sewer services to the Complainants. However, DIUC began providing water and sewer service to the homeowners in December of 2018. This issue has long-since been rendered moot.

2) The Complainants state that the Commission has jurisdiction to hear this matter in order to remedy the failure of DIUC to submit the Customer Service Agreement for approval (pursuant to S.C. Code Reg. 103-541 and 103-743) before it was entered into with Homeowners. While it is true that this Commission has broad authority over approval of contracts entered into by regulated entities, even if the Commission were to find such actions were violative of properly promulgated regulations, that would still not grant the Commission an ability it does not possess, i.e., we cannot grant monetary damages under an allegedly invalid contract, and in this Petition the Complainants are seeking monetary damages, and that would be for a court of competent jurisdiction, not a proper matter for the South Carolina Public Service Commission.

3) The Complainants believe the Commission has the ability to provide monetary damages to the Complainants. In fact, the Complainants cite S.C. Code Ann. Section 58-5-270 and Section 58-5-710.

Under -270, the Commission certainly does have the jurisdictional authority to hear complaints properly brought before it. However, in this case, monetary damages are being sought -- and the Commission simply does not have the authority to grant such an award.

The Commission does have authority under -710 to levy a fine or penalty against a regulated utility if the utility is failing to show cause as to why it is not taking steps to provide adequate water and sewer service. As I mentioned earlier, service has been and is continuing to be rendered to the Complainants. Even if that weren't that case, any fines or penalties levied by this Commission go into the General Fund of the State, not to the Complainants.

For these reasons, I move that the Complainants' Petition for Rehearing and/or Reconsideration should be denied in its entirety.

PRESIDING: RandallSESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER	
BELSER	☐	☐	☐	<u>Recused</u>	
ERVIN	☒	☒	☐		
HAMILTON	☐	☒	☐		
HOWARD	☐	☒	☐		
RANDALL	☐	☒	☐		
WHITFIELD	☐	☒	☐		
WILLIAMS	☐	☐	☐	<u>Absent</u>	Military Leave

(SEAL)



RECORDED BY: J. Schmieding



South Carolina Office of Regulatory Staff
1401 Main St. Suite 900 Columbia, SC 29201 Phone: 800-922-1531 Fax: 803-737-4750

Consumer Complaint/Inquiry Form

Please complete this form, save it to your computer and then send it to complaints@regstaff.sc.gov. A member of the SC Office of Regulatory Staff will be in contact with you to address your complaint or inquiry.

If your utility service is scheduled for disconnection, please call the ORS at 1-800-922-1531. Please fill out all fields marked with an asterisk *, as they are required.

Failure to complete required fields may cause a delay in responding to you.

Name*	John M. Halwig	Date*	11/8/16
Address*	46 Driftwood Cottage Lane		
City*	Daufuskie Island	ZIP Code*	29915
Phone Number*	(404) 406-0416	Email	JMHalwigMD@aol.com
What utility/company is your complaint regarding?*	Daufuskie Island Utility Company		
What is your account number?			
Are you an authorized contact person for the account?*	☒ Yes ☐ No		

Please outline your complaint below. Be brief as the field is limited to 1000 characters. Further detail, if needed, can be gathered when a member of the ORS staff contacts you.*

I have requested specific information regarding the status of the Driftwood Cottage Lane water/sewer service and when service will be restored on 10/20/16 and again on 11/1/16. I have been advised that an outside contractor was retained to fix the sewer service but that there is not a specific date service will be restored. We have been without water/sewer service since Hurricane Matthew on 10/8/16 and have not been able to stay in the home.

To save or print the form, click on the Save/Print Form button below.

To save the form, choose Adobe PDF as your printer, then click print. This will bring up a menu asking where you want to save the document to your computer. Once you have saved the form, you can submit it through [email](mailto:complaints@regstaff.sc.gov) or print it and fax or mail it to the ORS using the information listed at the top of this page.



Complainants 00051

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLIA
DOCKET NO. 2018-364

Stephen and Beverly Noller and)
Michael and Nancy Halwig,)
Complainants,)
v.)
Daufuskie Island Utility Co., Inc.,)
Respondent.)

DIRECT TESTIMONY OF
MICHAEL HALWIG
ON BEHALF OF COMPLAINANTS

DAUFUSKIE ISLAND UTILITY COMPANY, INC.
c/o GUASTELLA ASSOCIATES, LLC
6 Beacon Street, Suite 200
Boston, MA 02108
617-423-7878

December 10, 2015

Mr. J. Rene Josey, Esq.
Turner | Padgett
319 South Irby St.
P.O. Box 5476
Florence SC 29502

Re: Michael and Nancy Halwig
46 Driftwood Cottage Lane
TPGL File No.: 13926.101

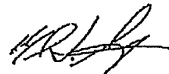
Dear Mr. Josey:

Daufuskie Island Utility Company (Company) will continue to preserve, maintain and provide service to all customers within its service area, including service to the Halwig property. The Driftwood service area has been and continues to be monitored daily regarding the erosion problem. In accordance with conversations with Mr. Crow and members of the Office of Regulatory Staff of South Carolina, we will continue to provide utility service as originally designed and in compliance with all regulatory requirements.

It is, however, the Halwig's responsibility for an alternative extension of mains and facilities to provide water and sewer service to their property, subject to our approval of the design and construction. The cost of any alternative would be the responsibility of the Halwigs, because it is not appropriate for the Company to incur such costs which would then be passed on to its other customers through the rate setting process. An alternative extension will be considered under the provisions of a 'Customer Main Extension Fee' contract, Reg. 103-502.3, "A fee paid by a customer under a contract entered into by and between the utility and its customer providing terms for the extension of the utility's mains to service the customer".

We would, of course, work with the Halwigs' contractor to accomplish an alternative extension from another location of our existing distribution system.

GUASTELLA ASSOCIATES, LLC
Manager of DIUC



Mike J. Guastella
Vice President-Operations

Complainants 00035

1 DAUFUSKIE ISLAND UTILITY COMPANY, INC.
2 DOCKET NO. 2018-364-W/S
3 Testimony of John F. Guastella
4 Before the South Carolina
5 Public Service Commission
6 Testimony Prepared: February 6, 2019
7 Hearing Date: February 28, 2019
8
9 **Q. Please state your name and business address.**
10 A. John F. Guastella, 725 N. Highway A1A, Suite B103, Jupiter, Florida 33477.
11 **Q. What is your occupation?**
12 A. I am president of Guastella Associates, LLC ("GA").
13 **Q. Briefly describe GA?**
14 A. Guastella Associates provides utility rate, valuation and management consulting
15 services.
16 **Q. Have you previously testified before the South Carolina Public Service**
17 **Commission ("PSC")?**
18 A. Yes.
19 **Q. Have you attached to this testimony a summary of your qualifications and**
20 **experience as well as a list of proceedings wherein you have testified as an**
21 **expert?**
22 A. Yes. The document is Exhibit JFG 4.

1 sandbags and dumping tons of sand backfill, successive storms completed the
2 destruction and caused even further erosion. MPOA concluded that it cannot
3 reconstruct or protect Driftwood Cottage Lane because it is not allowed to use the
4 materials necessary to ensure any permanence to the effort.

5 **Q. What was the alternative to providing water and sewer service to the**
6 **Complainants?**

7 A. Without the Driftwood Cottage Lane roadway, it became the responsibility of the
8 Complainants to enter into a main or service extension agreement with DIUC and
9 arrange for the construction of new mains that would connect to DIUC's nearest
10 existing mains. Pursuant to state regulations, a utility can charge a Customer Main
11 Extension Fee, which S.C. Reg. §103-502.3 defines as "A fee paid by a customer
12 under a contract entered into by and between the utility and its customer providing
13 terms for the extension of the utility's mains to service the customer."

14 **Q. What would be the appropriate cost responsibility under a main extension**
15 **agreement?**

16 A. Under universally recognized rate setting principles, regulated utilities must charge
17 its customers just and reasonable rates as approved by their regulatory agency.
18 Tariff rates for service include usage rates for connected customers as well as
19 availability rates, both of which are designed to cover the annual operating and
20 capital costs of providing service or having service available. In addition to
21 covering costs, the tariff rates must be designed to reflect intergeneration equity so
22 that current and future customers pay their fair share of the cost of facilities
23 available to serve today's and tomorrow's customers. The rate setting principle of

1 equitable treatment among customers also applies to new extensions of mains and
 2 facilities necessary to serve reasonably permanent customers, for which charges are
 3 not specific but instead based on a determination of the investment a utility should
 4 incur for the new extension that is comparable to its average investment to serve its
 5 existing customers.

6 **Q. Have you applied that analysis to the current facts?**

7 A. Yes. On the basis of the position of the MPOA that there is no permanency to
 8 support its replacement of the Driftwood Cottage Lane roadway, along with the
 9 evidence of high tide intrusion around the Complainants' properties, continuing
 10 erosion, and recognition that other customers along Driftwood Cottage Lane have
 11 abandoned their properties, the Complainants cannot be considered reasonably
 12 permanent customers. Accordingly, no investment should be made by DIUC
 13 because it is unlikely that the Complainants would generate ongoing revenues to
 14 support an investment comparable to the average investment reflected in the rates
 15 being paid by existing customers, thereby shifting the risk of the cost recovery of
 16 the investment from the Complainants to existing customers through future rate
 17 setting. To proceed otherwise by volunteering to construct and/or absorb costs for
 18 the construction and equipment (as sought by the Complainants) would result in
 19 unjust and unreasonable rates as to its other customers. Additionally, that result
 20 would violate the rate setting principle of equitable treatment among customers.

21 **Q. Using the cost of the extension that has been installed pursuant to the**
 22 **Customer Service Agreement between DIUC and the Complainants, and in**
 23 **order to provide a complete record for the Commission's deliberations, have**

1 DAUFUSKIE ISLAND UTILITY COMPANY, INC.

2 DOCKET NO. 2018-364-W/S

3 Testimony of Michael J. Guastella

4 Before the South Carolina

5 Public Service Commission

6 Testimony Prepared: February 6, 2019

7 Hearing Date: February 28, 2019

8

9 Q. Please state your name, business address, employer and title.

10 A. Michael J. Guastella, 725 North Highway A1A, Suite B103, Jupiter, Florida 33477.

11 I am employed by Guastella Associates, Inc. ("GA") and my job title is Vice
12 President of Operations.

13 Q. Will you briefly describe GA?

14 A. Yes. Guastella Associates provides utility rate, valuation and management
15 consulting services.

16 Q. What are your job duties?

17 A. I am responsible for overseeing operations and management of Daufuskie Island
18 Utility Co., Inc. ("DIUC").

19 Q. How long have you been working with DIUC?

20 A. I began working with DIUC in 2010, and have continued to do so since that time.

21 Q. How have you organized your testimony?

22 A. My testimony is in the customary question and answer format. I have also
23 assembled and hereby provide the Commission with exhibits as follows:

- 1 • Exhibit MJG-1 Oblique Aerial Photo
- 2 • Exhibit MJG-2 Letter from Josey to Guastella, November 10, 2015
- 3 • Exhibit MJG-3 Labelled Map of Driftwood Cottage Lane

4 Also, it is my intent that these exhibits be incorporated into my testimony so that I
5 may rely upon them, where appropriate, as if fully set forth herein. My testimony
6 also cites to documents on file with the Commission in this docket. Pursuant to
7 S.C. Reg. § 103-847, I have not produced additional copies of those documents as
8 exhibits to my testimony.

9 **Q. Have you reviewed the Complaint and testimony of the Complainants**
10 **submitted in this matter?**

11 A. Yes. I have reviewed the Complaint as well as the prefiled direct testimonies of
12 Michael Halwig, Nancy Halwig, and Beverly Noller. Each of the three
13 Complainants (Halwig, Halwig, and Noller) provided the identical testimony
14 consisting of three (3) pages each.

15 **Q. The Complaint states: “DIUC forced the Halwigs and Nollers to install**
16 **replacement water and sewer mains for all lots on Driftwood Cottage Lane**
17 **since they were destroyed by Hurricane Matthew.” How do you respond to**
18 **that?**

19 A. First, it is important to understand the geography of the area at issue. The
20 Complaint implies by stating “all lots on Driftwood Cottage Lane” that there are
21 other affected residents on Driftwood Cottage Lane. That is not true. Of the four
22 homes impacted, two have already been abandoned and they appear to be falling
23 into the sea. Only the Complainants’ homes remain. The photos attached to our

1 Answer show the area at issue. Second, the water and sewer infrastructure was not
2 the only thing destroyed by Hurricane Matthew. After the hurricane there was no
3 Driftwood Cottage Lane to access the Complainants' homes. The road washed into
4 the sea. And this was, in fact, the second time Driftwood Cottage Lane was
5 destroyed by erosion.

6 **Q. What is the area like now?**

7 A. As shown in the photos submitted with DIUC's Answer, there are four houses on
8 Driftwood Cottage Lane (DCL, for short). Two houses have been abandoned.

9 **Q. Have you attempted to obtain a photograph of what the area of DCL looked**
10 **like in the past?**

11 A. Yes. Attached hereto as Exhibit MJG 1 is an image received from SCDHEC in
12 response to a FOIA request. It is entitled "Oblique Aerial, Beaufort County" and
13 indicates a flight date of Spring 2007. It shows generally the original locations of
14 Driftwood Cottage Lane and is consistent with my understanding of the facts. That
15 area has significantly changed since then.

16 **Q. Perhaps that is a good place to start your testimony. Would you please provide**
17 **the Commission with the background facts you believe might be helpful to the**
18 **determination of this matter?**

19 A. Sure. One of the original developers of Daufuskie Island constructed Driftwood
20 Cottage Lane (DCL) and sold residential real estate lots on the ocean side as well
21 as the island side of DCL. Water and sewer infrastructure were installed in the
22 easements and right-of ways adjacent to the roadways. Over the following decades,
23 purchasers of property on DCL along with the on-island property owners'

1 association (Melrose Property Owners Association) fought to protect DCL from
2 erosion. The battle has been costly endeavor.

3 DIUC's current Chief Operator, Eric Johanson, began employment with the Haig
4 Point Utility in January 1999 and has worked on the island continually since that
5 time. During his earliest years of employment, he would often assist Melrose
6 Utility Co. with various operations and became familiar with the erosion of DCL.
7 The costly and ultimately losing battling against the eroding effects of the Atlantic
8 Ocean continued, and providing DCL's seaward lots with water and sewer service
9 remained a constant challenge. Preserving the infrastructure was difficult give the
10 erosion and safety was a concern, particularly with regard to sewer structures in the
11 area.

12 In 2011 DCL was relocated to the area behind the residences at 29 and 33 DCL.
13 Utility infrastructure was reinstalled (at the Utility's expense). As the entity
14 responsible for maintain the roadway, MPOA paid for the relocation of DCL.

15 Between 2011 and 2015, 29 DCL and the land beneath and around both 29 DCL
16 and 33 DCL eroded to the point that the homes were abandoned. At the time of
17 abandonment both these locations had lost significant ground to the erosion and
18 had lost both the utility mains and customer service lines that provided water and
19 sewer services to the homes. Current photos of the area are included in DIUC's
20 Answer. *See* DIUC Answer, 12-17-2018, at pp.3 to 6. At no time during those
21 years did the customers at 29 DCL and 33 DCL ask or expect DIUC to provide
22 erosion control and/or protection from erosion to prevent the abandonment of these
23 properties. Even after relocating DCL, the MPOA continued to attempt to preserve

1 the road. In the spring of 2015, the MPOA obtained a Department of Health and
2 Environmental Control (DHEC) Ocean and Coastal Resource Management
3 (OCRM) permit to construct approved protective devices, which consisted of
4 sandbags and backfill to protect the road. The MPOA spent over \$60,000.00 to do
5 so. Despite these costly protective devices, the erosion destroyed the road causing
6 the abandonment of 29 and 33 DCL. See Email, December 19, 2016, from Julie
7 DiIullo, MPOA President, to Mike Guastella, Produced with DIUC's Response to
8 Complainants' First Set of Discovery at DIUC 0140.

9 In the months leading up to October of 2015, the DCL roadway and its residential
10 lots continued eroding, especially during high tides. Significant portions of the land
11 were destroyed in October 2015 when historic rain storms and Hurricane Joaquin
12 battered the Island. South Carolina's Governor and President Obama declared a
13 National Emergency for South Carolina.

14 DIUC had been monitoring the water and sewer facilities serving the remaining two
15 residences on DCL (Halwig and Noller). During this time DIUC was especially
16 concerned about safety. Among other things, DIUC was obligated to prevent any
17 extraordinary inflow of ocean water into its sewer system because that could affect
18 the treatment process of collected wastewater. The lots on DCL presented a real
19 danger for the inflow of ocean water due to the constant assault of the tides, wind,
20 and erosion. Also, DIUC remained concerned about any possible loss of pressure
21 due to damage of its water distribution system because of erosion by ocean. Losing
22 water pressure was a risk to DIUC's ability to provide safe and adequate service to
23 all its customers.

1 In the last days of October 2015, Eric Johanson attended a rate case hearing before
2 the SC Public Service Commission (PSC). However, immediately after providing
3 his testimony Mr. Johnson had to be excused from the rate case hearing “to return
4 to the island to address some emergency issues.” *See* Docket 2014-346-WS,
5 Hearing Transcript page 112, lines 10-14. DIUC’s facilities had suffered extensive
6 damage from the severe rain event, high tides, wave action, and erosion. The
7 facilities and service at DCL had been rendered unsafe. Continuing to provide
8 service presented hazardous and dangerous conditions. In accordance with
9 applicable laws, including S.C. Reg. § 103-535, service was discontinued to 36 and
10 46 DCL, the residences owned by the Complainants Halwig and Noller. DIUC
11 notified the customers, and regulatory agencies then proceeded to attempt to
12 arrange for repairs. Ultimately, Terry Lee Contracting installed bell restraints
13 around the seams of the exposed portion of the 8” water main. Photographs of these
14 repairs are included with DIUC’s Response to Complainants’ First Set of Discovery
15 at DIUC 0137. These repairs enabled DIUC to continue providing water and
16 sewer services to the customers, without jeopardizing the rest of the water and
17 sewer system.

18 During October 2015, DIUC received its first communications from the
19 Complainant Halwig regarding 46 DCL. On October 14, 2015, Mr. Halwig
20 contacted DIUC through its website stating:

21 The water and sewer pipes continue to erode behind the houses on
22 Driftwood Cottage. There needs to be an immediate plan to protect
23 those pipes. From my understanding there is an emergency order
24 that the Melrose POA obtained to create a temporary road for
25 emergency access which has now washed away. That allowed for
26 large sandbags to be placed. I am suggesting in addition to whatever

1 plans you already have is to contact Tim Whitaker [...] who did the
2 work. He should be able to bring in those bags ASAP. He would
3 need to put down some sand to cross over to place them. I have
4 instructed my lawyer Rene Jose of Turner Padgett to begin
5 proceedings to compel the water company to run water and sewer to
6 our property across the golf course from the homes on Martinagel
7 that have service if the service across Driftwood is lost.
8

9 *See* DIUC's Responses to Office of Regulatory Staff's First and Continuing Audit
10 Information Request at DIUC 0009 to 0010.

11 Mr. Halwig essentially demanded that DIUC install erosion control devices (like
12 those that cost the MPOA \$60,000) and then to relocate the water and sewer lines
13 to DLC. DIUC responded that "Though South Carolina is currently under a state
14 of emergency we are doing everything in our means to continue service to your
15 water and sewer laterals." *See* DIUC's Responses to Office of Regulatory
16 Staff's First and Continuing Audit Information Request at DIUC 0009 to 0010.

17 DIUC further explained, "We are continuing to provide uninterrupted service to all
18 customers in the Driftwood area. Our operators are monitoring the service main
19 daily and are working with outside contractors to protect the system." *See* DIUC's
20 Responses to Office of Regulatory Staff's First and Continuing Audit Information
21 Request at DIUC 0009 to 0010.

22 In sum, in 2015 while service was being provided, Mr. Halwig was asserting DIUC
23 should install new lines for a second time to DCL and that DIUC should be
24 providing the erosion control devices for the road that the MPOA was no longer
25 providing.

26 At this same time Mrs. Halwig was also concerned about the fact that there was no
27 reliable access to DCL. She explained in an October 10, 2015, email to Ken Crow:

1 As we discussed this situation has been a multi year problem
2 exacerbated by the each spring and fall high tides. We have
3 repeatedly asked Pelorus and the Arnolds to maintain and to repair
4 their portions of the seawall. Unfortunately neither party has for
5 whatever reason been able to fulfill their obligations to maintain
6 their properties which has resulted in numerous blowouts and
7 ultimately major erosion of their properties. Their neglect has
8 impacted us with significant ongoing water damage and a need for
9 us to battle erosion of our property.

10 [...]

11 [T]he area south of the seawall has been completely degraded
12 extinguishing the paved access road, the lots, the temporary access
13 road and now the sewer and water pipes are exposed and are
14 imperiled.

15
16 As a result we are now landlocked by the golf course and logs which
17 were placed in front of our properties and the roadway along the
18 Noller properties.

19
20 We request a temporary easement for delivery of essential services
21 and for access to our home across the golf course between the 16th
22 green and the 17th tee box. We need a road that is solid enough to
23 hold the weight of routine service vehicles such as propane delivery,
24 garbage pick up and yard maintenance. It also must be wide enough
25 for a fire truck, an ambulance, and equipment to repair the seawall
26 and replace sand. We realize the need for a roadway that is attractive
27 and suggest crushed oyster shells over a roadbed of packed sand or
28 however such roads are constructed. Haig Point has several of these
29 type of roadways along their waterfront.

30
31 We would be willing to agree to cross the golf course at our own
32 peril and when crossing with a motorized vehicles to use only the
33 easement road. Our rental guests would be told and required to sign
34 a waiver of liability to both the course and to us for the peril of
35 crossing the course. We would tell them they will face fines and
36 actions against them by course management for failure to stay on the
37 easement road. We will require rental guests to sign and
38 acknowledge the rules, waive liability and to be made aware of fines.

39
40 *See* DIUC's Responses to Office of Regulatory Staff's First and Continuing Audit
41 Information Request at DIUC 0001 to 0002,
42 In November 2015, DIUC received a letter from Rene Josey of Turner Padgett Law
43 Firm, dated November 10, 2015, who wrote on behalf of the Complainants. *See*

1 Exhibit MJG-2. After receipt of this letter, DIUC had communications with
2 members of the Office of Regulatory Staff (ORS), our (DIUC) wastewater
3 compliance inspector with DHEC, Penny Cornett, and phone conversations with
4 Ken Crow. In these communications various aspects of the erosion situation and
5 its impact on water and sewer mains were discussed. DIUC was attempting to find
6 a resolution that it could complete within the limitations imposed upon it by law,
7 cost, and feasibility. Following these communications DIUC provided a letter to
8 Rene Josey, dated December 10, 2015, explaining DIUC's position, based on all
9 the input provided. *See* DIUC's Responses to Office of Regulatory Staff's First and
10 Continuing Audit Information Request at DIUC 0019.

11 Neither the Complainants nor Rene Josey responded to the letter. Throughout
12 2016, DIUC continued to provide service to the Complainants at 36 and 46 DCL.
13 Then, on October 7, 2016, the initial outer bands of Hurricane Matthew began
14 making landfall in South Carolina, the heaviest and most hard-hitting effects of the
15 storm occurred through October 8 and had passed further north by October 9, 2016.
16 In the days leading up to Hurricane Matthew, DIUC prepared its utility system
17 according to its emergency guidelines. On October 9, 2016, Eric Johanson gained
18 access to Daufuskie Island with an emergency pass and met with another DIUC
19 operator, Kevin Fitzpatrick. Mr. Fitzpatrick is a permanent resident of Daufuskie
20 Island and he had remained on the island during Hurricane Matthew. Both Eric and
21 Kevin began a full system inspection and site evaluation for damage due to the
22 storm. While in communication with emergency services and completing their
23 initial systematic evaluations, it was determined that there was a water main break

1 in the distribution system. Suspecting the break to be at DCL, both operators
2 immediately made their way to DCL on foot. There were downed trees and
3 powerlines and other various debris prevented use of vehicle. At DCL they
4 discovered that a large portion of the beach and an even larger portion of DCL was
5 gone. As a result, even more of the previously reinforced 8" water main was
6 exposed.

7 Inspection revealed that the portion of the main reinforced in 2015 had withstood
8 the storm, but the water main formerly protected under the road (but now exposed)
9 had failed. The operators isolated a small section of water main by closing a valve
10 near the residence at 20 DCL. This remedial measure shut off services to three
11 properties on DCL -- 22, 36 and 46. This action was conducted pursuant to
12 applicable laws and regulations, including S.C. Reg. § 103-535.

13 Following my arrival on Daufuskie Island, I worked with DIUC operators,
14 emergency crews and volunteers. The amount of overall damage to the island was
15 extensive. During our evaluation and emergency response efforts, which ended up
16 lasting weeks, the immediate and primary concern was keeping any and all
17 wastewater below ground so as to prevent hazardous and dangerous conditions.

18 **Q. Did DIUC at this point in time determine that providing sewer service to the**
19 **Complainants' properties would be hazardous or dangerous?**

20 **A. Yes.**

21 **Q. And is that why service was not provided again after late 2016?**

22 **A. Yes.**

1 **Q. What regulation does DIUC rely upon for denying service based upon its**
2 **conclusion that to do so would be hazardous or dangerous?**

3 A. S.C. Reg. § 103-535 states that “Service may be refused or discontinued ...
4 [w]ithout notice in the event of a condition determined by the utility, the
5 commission by order, or the South Carolina Department of Health and
6 Environmental Control to be hazardous or dangerous.”

7 **Q. What happened after Hurricane Matthew?**

8 A. In the weeks following Hurricane Matthew, DIUC spoke with Terry Lee
9 Contracting about the feasibility of conducting another repair to the damaged 8”
10 water main. Simultaneously, our operators were looking into repairs necessary to
11 the force main. It quickly became apparent, as I noted in a November 14, 2016,
12 email communication with Chad Campbell of ORS, “Unless the road and
13 surrounding area is restored and adequately protected from any future erosion, it
14 would not be possible to reinstall the main at that location.” *See* DIUC’s Responses
15 to Office of Regulatory Staff’s First and Continuing Audit Information Request at
16 DIUC 0020.

17 **Q. Did MPOA again rebuild the road and surrounding area after Hurricane**
18 **Matthew in late 2016?**

19 A. No. The then-president of MPOA explained the decision in an email stating:

20 The Melrose POA has made extensive efforts to protect and repair
21 Driftwood Cottage Lane. Unfortunately the Atlantic Ocean has
22 proved to be a force we cannot compete with. At this time, most of
23 the road right of way and easement owned by the MPOA no longer
24 exists – it is under water. The MPOA has utilized every reasonable
25 option available to protect Driftwood Lane, but those options are
26 limited by what the Ocean Coastal Resources Management agency
27 will allow. The only temporary protective devices allowed by

1 ORCM are sandbags and sand backfill. After finally receiving an
 2 Emergency Permit for road protection, in the spring of 2015 we
 3 spent over \$60,000. installing heavy duty Geo sandbags and
 4 dumping tons of sand backfill to protect the road. The king tides of
 5 October 2015 washed most of that away and successive storms have
 6 completed the destruction and caused even further erosion. The
 7 MPOA cannot reconstruct or protect Driftwood Cottage Lane
 8 because it is not allowed to use the materials necessary to ensure any
 9 permanence to the effort.

10
 11 See Email, December 19, 2016, from Julie DiIullo, MPOA President, to Michael
 12 Guastella, Produced with DIUC's Response to Complainants' First Set of
 13 Discovery at DIUC 0140.

14 Q. Without a roadway and erosion protection on DCL, could DIUC install new
 15 infrastructure to service 36 and 46 DCL?

16 A. No. There was no easement, it had been washed away. The only way to connect
 17 service to the Noller and Halwig houses would be to obtain a new utility easement
 18 in an area that could be adequately protected from erosion or other threats. After
 19 that, infrastructure would need to be designed and rebuilt; this would be a costly
 20 endeavor to benefit only two ratepayers whose service use was likely to be very
 21 short term. As noted in the prefled testimony of John Guastella, it was not
 22 appropriate for DIUC to incur those costs for the benefit of two ratepayers. The
 23 homes at issue lack any significant protection from erosion and equipment installed
 24 would likely not last very long at all before again being destroyed by erosion.

25 Q. Did you discuss this situation with anyone from ORS?

26 A. Yes.

27 Q. Why did you do that?

1 A. Two reasons. First, Mr. Halwig filed a complaint with ORS in December of 2016
2 and ORS contacted me about DIUC's response. Second, as a regulated utility, we
3 seek ORS for guidance in unique circumstances such as these. The properties at
4 issue are not at all like other properties and the situation is one that requires DIUC
5 to balance many different obligations. I wanted to proceed in the best way possible
6 and I wanted to proceed with the in accordance with ORS's understanding so that
7 DIUC would be in compliance with all regulatory requirements.

8 Q. Can you discuss the history of your communications with ORS regarding this
9 matter?

10 A. Yes. Following Hurricane Matthew in October 2016, DIUC consulted with staff at
11 ORS regarding DIUC's provision of water and sewer services to the Complainants'
12 properties. I participated in multiple telephone calls and exchanged emails with
13 members of ORS staff. Of course, not all calls were specifically documented by
14 DIUC and not all conversations between DIUC and ORS on this matter were
15 followed my emails referencing the same. Select communications are discussed
16 below and copies of relevant emails were produced *with* DIUC's Responses
17 to Office of Regulatory Staff's First and Continuing Audit Information Request
18 bearing Bates Numbers DIUC 0001 to DIUC 0091.

19 Q. How would you characterize your interactions with ORS regarding this
20 situation?

21 A. I have always found the members of ORS to be helpful and I believe we have a
22 mutual respect for each other and a cordial working relationship. DIUC and ORS
23 approached the situation cooperatively and freely exchanged information in an

1 effort to address the unique circumstances involved. For example, in a November
2 14, 2016, email from myself to ORS's Chad Campbell with copy to ORS staff
3 members Dawn Hipp, Sarah Johnson, April Sharpe, and Willie Morgan, I explained
4 the circumstances and DIUC's position:

5 Due to the hurricane, the main break was caused by a wash out of the
6 road and surrounding immediate area under which the main was
7 located. Unless the road and surrounding area is restored and
8 adequately protected from any future erosion, it would not be possible
9 to reinstall the main at that location. Clearly, the utility is not
10 responsible for road and land recovery under the circumstances. We
11 have been looking into other means of access to the Halwig property,
12 but do not yet know the options in term of ownership of other property
13 or availability of rights of way, and of equal significance who would
14 pay for the cost. It seems that it is Mr. Halwig's responsibility to
15 provide reasonable access, which may require a restoration effort by
16 appropriate municipal authorities. In the meantime, we are also trying
17 to find answers to these questions. Attached for your information are
18 notices of restrictions regarding occupying the properties posted on
19 Mr. Halwig's and his neighbor's properties. This is a more complex
20 problem than simply repairing or replacing a small section of main.
21 We have had communications with Mr. Halwig explaining the
22 circumstances and an inability to provide an estimate of restoration. It
23 is still impossible to provide specific dates when the road and ground
24 restoration that may be necessary, and which would not be the utility's
25 responsibility, must be completed before we can reinstall a main - or
26 find other means of access to Mr. Halwig's property.

27
28 See DIUC's Responses to Office of Regulatory Staff's First and Continuing Audit
29 Information Request at DIUC 0020. DIUC's position was based upon the
30 conclusion that it would not have been a prudent decision for DIUC to voluntarily
31 install lines to these two rapidly eroding properties and then attempt in its next rate
32 proceeding to make all the other DIUC ratepayers absorb the cost. This is in
33 addition to the fact that providing service under these circumstances would not be
34 safe.

35 Q. What safety concerns were there?

1 A. Many of the same risks I outlined for the situation as it existed in 2015 were again
2 present after Hurricane Matthew. DIUC was obligated to prevent any extraordinary
3 inflow of ocean water into its sewer system because that could affect the treatment
4 process of collected wastewater. The lots on DCL presented a real danger for the
5 inflow of ocean water due to the constant assault of the tides, wind, and erosion.
6 Also, DIUC was concerned about any possible loss of pressure due to damage of
7 its water distribution system because of erosion by ocean. Losing water pressure
8 was a risk to DIUC's ability to provide safe and adequate service to all its
9 customers. The lift station located just outside the 46 DCL property, as shown on
10 the attached Exhibit MJG-3, posed a risk of electrocution during high tides. The
11 risk of a high tides damaging the lift station's control panels with water and/or
12 debris threatened a spill event involving the discharge of sewage into the ocean.
13 These dangers had to be avoided. In order to protect the environment, DIUC
14 personnel, as well as DIUC's other customers.

15 Q. Can you explain briefly the document you have submitted as Exhibit MJG-3?

16 A. Yes. It is a map I downloaded from the Beaufort County GIS system. I have also
17 added information about the location of mains, including former mains and other
18 equipment.

19 Q. Did anyone from ORS ever tell you that DIUC was handling the situation with
20 the Complainants improperly?

21 A. No. As noted by the additional November 2016 emails attached to *See* DIUC's
22 Responses to Office of Regulatory Staff's First and Continuing Audit Information
23 Request, I communicated further with Chad Campbell and Willie Morgan

1 Q. Did you also discuss the CSA with Mr. Campbell?

2 A. Yes. Mr. Campbell and I discussed the CSA via telephone on October 3, 2018.
3 Mr. Campbell then requested by email that same day that I provide my previous
4 "response to the ORS on Company letterhead." I provided that response on October
5 4, 2018. See DIUC's Responses to Office of Regulatory Staff's First and
6 Continuing Audit Information Request at DIUC 0072 to 0076.

7 Q. Did you at any other time provide ORS with a copy of the CSA?

8 A. Yes, as indicated in the January 31, 2018, email from me to Thomas & Hutton
9 engineer Fred Sororian, on behalf of DIUC I provided ORS staff members Chad
10 Campbell and Willie Morgan with a copy of the Customer Service Agreement
11 ("CSA"). See DIUC's Responses to Office of Regulatory Staff's First and
12 Continuing Audit Information Request at DIUC 0058.

13 Q. Did you receive any response to this email from Mr. Campbell or Mr. Morgan?

14 A. No.

15 Q. Did you ever discuss with ORS whether the CSA required any formal
16 Commission approval?

17 A. Yes. In early September of 2018, I spoke by telephone with Mr. Morgan regarding
18 the CSA and whether or not any further ORS or Commission approval of the CSA
19 was required. I was concerned that the Complainants' new threats not to pay the
20 CIAC taxes per the CSA could arguably create a potential impact on DIUC
21 triggering the approval requirements of SC Regs. § 103-743 and § 103-541.

22 Q. Did you ask Mr. Morgan for his guidance on behalf of ORS?

23 A. Yes, I did.

1 Q. What did Mr. Morgan advise you?

2 A. He advised me that Commission approval of the CSA was not necessary.

3 Q. What was the purpose of the CSA?

4 A. Pursuant to the CSA, the Customers would construct infrastructure that upon
5 approval by DIUC could become part of the DIUC system allowing DIUC to serve
6 the Customers. Some of the installed items would be on the Customer's property
7 and would remain under the Customers' ownership and care.

8 Q. What costs was DIUC to contribute?

9 A. None.

10 Q. Does DIUC rely on any particular provisions for that position?

11 A. Yes. The CSA contains the following relevant provisions:

12
13 1. In order to protect other customers from sharing in the cost
14 responsibility, it would be the responsibility of the affected
15 Customers to have the Project Mains installed.

16 [...]

17 5. Upon Completion of the Project Main, Customers will provide
18 DIUC with an acknowledged bill of sale transferring them to DIUC,
19 and they shall be and remain the property of DIUC and its heirs and
20 successors, and will be treated as contributed for rate setting
21 purposes.

22
23 Q. What happens when equipment is treated as contributed to a utility?

24 A. When a utility treats items "as contributed for rate setting purposes," the utility
25 incurs taxes.

26 Q. Can you elaborate on the tax issue?

27 A. Yes. Pursuant to the Tax Cuts and Jobs Act ("Tax Act"), DIUC will be required
28 to pay taxes for the contributions in aid of construction related to the Customers'
29 contributions to the DIUC system. The Tax Act was in effect when the CSA was

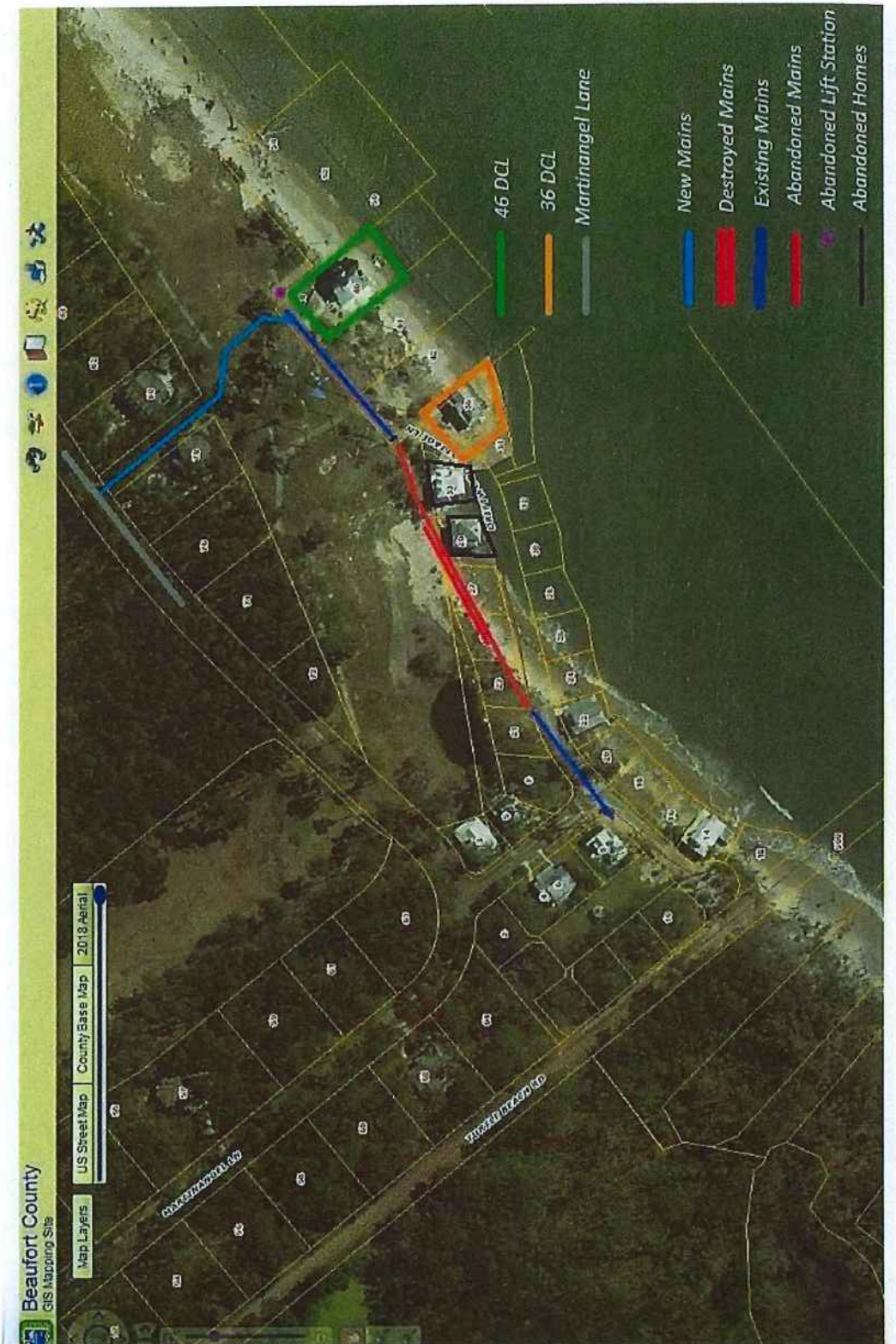


Exhibit MJG-3

THE OFFICE OF REGULATORY STAFF

DIRECT TESTIMONY

& EXHIBITS

OF

DAWN M. HIPPIE

FEBRUARY 6, 2019



DOCKET NO. 2018-364-WS

**Stephen and Beverly Noller and Michael and Nancy Halwig,
Complainants/Petitioners v. Daufuskie Island Utility Company,
Incorporated, Defendant/Respondent**

1 **A.** ORS requested DIUC provide details on the work required to restore water and
2 sewer service to the premises and an estimated date the customer could expect service to
3 be restored.

4 **Q. DID ORS RECEIVE A RESPONSE FROM DIUC REGARDING MR. HALWIG'S**
5 **COMPLAINT?**

6 **A.** Yes. On November 14, 2016, DIUC informed ORS that Hurricane Matthew
7 damaged the water and sewer main infrastructure that provided service to Driftwood
8 Cottage Lane and that the surrounding area where the mains were located had been eroded
9 and required repair. DIUC's response indicated that it was not possible to re-install the
10 mains in the same location unless and until the roadway and surrounding area were restored
11 and protected from future erosion. DIUC's response indicated the Company was
12 investigating other options to provide service to Driftwood Cottage Lane.

13 **Q. DID DIUC PROVIDE AN ESTIMATED TIMEFRAME FOR WATER AND**
14 **SEWER RESTORATION TO THE HOMES ON DRIFTWOOD COTTAGE LANE?**

15 **A.** No. In its response to ORS, DIUC indicated it was impossible to provide specific
16 dates for restoration of services using the current rights-of-way as the reinstallation was
17 dependent upon road and ground restoration to be completed by the appropriate municipal
18 authorities.

19 **Q. WHAT INFORMATION WAS PROVIDED TO MR. HALWIG BY ORS IN**
20 **RESPONSE TO MR. HALWIG'S COMPLAINT?**

21 **A.** On December 2, 2016, ORS shared with Mr. Halwig the response received by ORS
22 from DIUC. In addition, ORS informed Mr. Halwig that Commission regulations, which

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Columbia, SC 29201

1 address service interruptions and restoration of service, do not indicate a specific timeframe
2 for restoration of water and sewer service after a hurricane. ORS informed Mr. Halwig of
3 his right to file his complaint at the Commission if he was not satisfied with the results of
4 the ORS investigation. See Direct Exhibit DMH-3 for ORS's correspondence with Mr.
5 Halwig.

6 **Q. DID DIUC PROVIDE ORS WITH ADDITIONAL INFORMATION AND**
7 **UPDATES ON THE PROGRESS TO RESTORE SERVICE TO DRIFTWOOD**
8 **COTTAGE LANE?**

9 **A.** Yes. From December 2016 through March 2017, DIUC provided updates regarding
10 DIUC's efforts to restore water and sewer service to Driftwood Cottage Lane. DIUC
11 provided Mr. Halwig an update via letter on January 27, 2017. In March 2017, and based
12 on the updates received from DIUC, it appeared to ORS that Mr. Halwig and DIUC were
13 working cooperatively to facilitate access to 46 Driftwood Cottage Lane through new
14 rights-of-way.

15 **Q. WHEN DID ORS RECEIVE A COPY OF THE CUSTOMER SERVICE**
16 **AGREEMENT BETWEEN THE CUSTOMERS AND DIUC?**

17 **A.** DIUC provided ORS an unexecuted copy of the Customer Service Agreement on
18 January 31, 2018. ORS received an executed copy of the Customer Service Agreement on
19 August 5, 2018.

20 **Q. DOES THE CUSTOMER SERVICE AGREEMENT PROVIDE FOR THE**
21 **INSTALLATION OF WATER AND SEWER INFRASTRUCTURE TO SERVICE**
22 **36 AND 46 DRIFTWOOD COTTAGE LANE?**

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1 **A.** Yes. The Customer Service Agreement between the Customers and DIUC details
2 the arrangement between the Customers and DIUC to restore service to Driftwood Cottage
3 Lane. Specifically, DIUC agreed to provide service after the Customers had the mains
4 installed at their cost.

5 **Q. IN 2018, DID THE CUSTOMERS CONTACT ORS REGARDING THE**
6 **RESTORATION OF SERVICE TO DRIFTWOOD COTTAGE LANE?**

7 **A.** Yes. Mr. Jack Smith, an attorney from Nelson Mullins Riley & Scarborough LLP,
8 contacted ORS on August 3, 2018, on behalf of the Customers. Mr. Smith asked ORS
9 Consumer Services questions about DIUC's ability to deny water and sewer service to the
10 Customers due to a dispute between the Customers and DIUC related to payment of CIAC
11 tax obligations and attorney's fees. Mr. Smith followed his telephone call to ORS
12 Consumer Services with an e-mail to ORS on August 5, 2018, which contained detail of
13 his questions and inquired if ORS had to approve restoration of water and sewer service.

14 On August 6, 2018, ORS Consumer Services responded via telephone call to Mr.
15 Smith by informing him the tax question related to CIAC was pending in Commission
16 Docket No. 2017-381-A. ORS informed Mr. Smith that ORS did not have to approve
17 restoration of service. In addition, ORS Consumer Services referred Mr. Smith to
18 Commission regulations 103-535.F and 103-735.F which state water and sewer service
19 may be refused "for failure of the customer to fulfill his contractual obligations for service
20 and/or facilities subject to regulation by the commission."

21 **Q. PLEASE PROVIDE THE DETAILS OF ANY SUBSEQUENT INTERACTIONS**
22 **BETWEEN THE CUSTOMERS AND ORS AFTER AUGUST 6, 2018.**

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1401 Main Street, Suite 900
Columbia, SC 29201

1 **A.** On behalf of the Customers, Mr. Smith contacted ORS via letter on August 10,
2 2018, with questions regarding whether the proposed 33.24% tax on the CIAC must be
3 paid by the Customers to DIUC and whether DIUC can deny the Customers water and
4 sewer service until the tax obligation on CIAC is paid. *See* Direct Exhibit DMH-4. ORS
5 responded to Mr. Smith in writing on August 15, 2018. *See* Direct Exhibit DMH-5.

6 On September 11, 2018, Mr. Smith contacted ORS via letter with additional
7 questions as to which party (the Customers or DIUC) is financially responsible for
8 replacement of mains and associated legal fees and the applicability of Commission
9 regulations 103-540 and 103-740. *See* Direct Exhibit DMH-6. ORS forwarded Mr. Smith's
10 inquiry to DIUC for a response on September 25, 2018. DIUC provided a written response
11 to ORS on October 4, 2018. *See* Direct Exhibit DMH-7. In addition, ORS received a copy
12 of the South Carolina Department of Health and Environmental Control permit to operate
13 on October 10, 2018. ORS provided Mr. Smith with the DIUC response and an update on
14 the restoration of service and the permit to operate on October 22 and 23, 2018 (via e-mail).
15 On November 16, 2018, the Customers filed a formal Complaint with the Commission.

16 **Q. DID ORS OFFER TO PROVIDE INFORMAL MEDIATION SERVICES TO THE**
17 **CUSTOMERS AND DIUC?**

18 **A.** Yes. On December 18, 2018, counsel for ORS offered to the attorneys for the
19 Customers and DIUC an opportunity for informal mediation. The ORS offer for mediation
20 was not accepted by either the Customers or DIUC.

21 **2. Commission Regulations Related to Restoration of Water and Sewer Service**

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Office of Regulatory Staff
Daufuskie Island Utility Company, Inc.
Docket No. 2018-364-WS

Direct Exhibit DMH-1

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South Carolina Office of Regulatory Staff
1401 Main St. Suite 900 Columbia, SC 29201 Phone: 800-922-1531 Fax: 803-737-4750

Consumer Complaint/Inquiry Form

Please complete this form, save it to your computer and then send it to complaints@regstaff.sc.gov. A member of the SC Office of Regulatory Staff will be in contact with you to address your complaint or inquiry.

If your utility service is scheduled for disconnection, please call the ORS at 1-800-922-1531.

Please fill out all fields marked with an asterisk*, as they are required.

Failure to complete required fields may cause a delay in responding to you.

Name*	John M. Halwig	Date*	11/8/16
Address*	46 Driftwood Cottage Lane		
City*	Daufuskie Island	ZIP Code*	29915
Phone Number*	(404) 406-0416	Email	JMHalwigMD@aol.com
What utility/company is your complaint regarding?*	Daufuskie Island Utility Company		
What is your account number?			

Are you an authorized contact person for the account? ☒ Yes ☐ No

Please outline your complaint below. Be brief as the field is limited to 1000 characters. Further detail, if needed, can be gathered when a member of the ORS staff contacts you.*

I have requested specific information regarding the status of the Driftwood Cottage Lane water/sewer service and when service will be restored on 10/20/16 and again on 11/1/16. I have been advised that an outside contractor was retained to fix the sewer service but that there is not a specific date service will be restored. We have been without water/sewer service since Hurricane Matthew on 10/8/16 and have not been able to stay in the home.

To save or print the form, click on the Save/Print Form button below.

To save the form, choose Adobe PDF as your printer, then click print. This will bring up a menu asking where you want to save the document to your computer. Once you have saved the form, you can submit it through email or print it and fax or mail it to the ORS using the information listed at the top of this page.

[Save/Print Form](#)

Office of Regulatory Staff
Daufuskie Island Utility Company, Inc.
Docket No. 2018-364-WS

Direct Exhibit DMH-2

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Campbell, Chad

Subject: FW: Complaint received at ORS (John Halwig)

From: Campbell, Chad [mailto:ccampbe@regstaff.sc.gov]
Sent: Tuesday, November 08, 2016 4:23 PM
To: Guastella Admin <admin@guastella.com>
Cc: Hlpp, Dawn <dhlpp@regstaff.sc.gov>; Johnson, Sarah <sjohnson@regstaff.sc.gov>; Sharpe, April <asharpe@regstaff.sc.gov>; Morgan, Willie <wmorgan@regstaff.sc.gov>; mlg@guastella.com
Subject: Complaint received at ORS (John Halwig)

Carolyn,

The attached correspondence is sent pursuant to the duties and responsibilities of the Office of Regulatory Staff ("ORS") to investigate complaints and inquiries affecting the public interest as set forth in S.C. Code Ann. § 58-4-50 (2004 S.C. Act 175). The ORS has received a complaint from John Halwig at 46 Driftwood Cottage Lane, Daufuskie Island, S.C.

The ORS requests Daufuskie Island Utility Company's ("DIUC" or "Company") assistance to investigate and respond to the consumer's concerns regarding interruption of water and sewer services to his property. Mr. Halwig is requesting specific information regarding the restoral time of water and sewer services.

I understand from your e-mail to me on Monday, November 7, 2016 that there are two DIUC customers with no water or sewer service at this time. (Mr. Halwig at 46 Driftwood Cottage Lane and Mr. Noller at 36 Driftwood Cottage Lane). According to DIUC, the water and sewer lines broke due to Hurricane Matthew. According to your e-mail, the Company indicates they are working on a plan on how to run the lines due to the excessive erosion.

To investigate the consumer's complaint, ORS requests DIUC provide the following:

1. Specific details on the work that is required to restore water and sewer service to 46 Driftwood Cottage Lane and 36 Driftwood Cottage Lane.
2. Estimated date for restoral of water and sewer service.

Be advised, the ORS is reviewing the requirements in the following PSC Regulations regarding their applicability to the water and sewer interruptions at 46 Driftwood Cottage Lane and 36 Driftwood Cottage Lane.

103-714 Interruption of Service.

B. Each utility shall make all reasonable efforts to prevent interruptions of service and, when such interruptions occur, shall endeavor to re-establish service with the shortest possible delay consistent with the safety of its consumers and the general public. Scheduled interruptions shall always be preceded by adequate notice to all affected customers, and will be made at a time that will not cause unreasonable inconvenience to customers.

Interruptions of Service.

A. Each utility shall make reasonable efforts to avoid interruptions of service, but when interruptions occur, service shall be re-established within the shortest time practicable, consistent with considerations of safety.

Office of Regulatory Staff
Daufuskie Island Utility Company, Inc.
Docket No. 2018-364-WS

Direct Exhibit DMH-2

Please provide response on or before Monday, November 14, 2016.

Should you have any questions, contact me via e-mail at ccampbe@regstaff.sc.gov or at 803-737-5194.

Thank You
Chad Campbell
Consumer Services
Office of Regulatory Staff

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Office of Regulatory Staff
Daufuskie Island Utility Company, Inc.
Docket No. 2018-364-WS

Direct Exhibit DMH-3



April B. Sharpe
Manager of Consumer Services

December 2, 2016

Dr. John Halwig

Atlanta, Georgia 30309

RE: ORS File 2016-W-1682

Dear Dr. Halwig:

This letter is in response to your complaint filed at the Office of Regulatory Staff ("ORS") regarding Daufuskie Island Utility Company ("DIUC" or "Company"). In your complaint you state your property at 46 Driftwood Cottage Lane, Daufuskie Island, S.C. has been without water and sewer service since October 8, 2016 due to Hurricane Matthew. You are requesting DIUC provide a specific date that water and sewer service will be restored to the property.

The ORS contacted DIUC for assistance to investigate and respond to your complaint. According to DIUC, due to Hurricane Matthew, severe erosion occurred causing a wash out of the road and surrounding areas where the water and sewer mains were located. The water and sewer mains were destroyed and rendered unusable. DIUC states that the road and surrounding area will need to be restored and adequately protected from future erosion before the water and sewer mains can be reconstructed to provide service to this area.

DIUC states they are currently exploring other means of access to serve your property but have not obtained rights of way necessary to construct water and sewer infrastructure to serve your property. The Company states a specific date for restoration of water and sewer service to your property cannot be provided at this time.

ORS conducted a conference call with a representative from DIUC on December 1, 2016 and advised the Company of the following Public Service Commission ("PSC") Rules and Regulations:

PSC Wastewater and Water Regulations 103-540 and 103-740 state "Each utility, unless specifically relieved in any case by the commission from such obligation, shall operate

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Office of Regulatory Staff
Daufuskie Island Utility Company, Inc.
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and maintain in safe, efficient and proper conditions of all of its facilities and equipment used in connection with the services it provides to any customer up to and including the point of delivery from systems or facilities owned by the customer."

PSC Wastewater Regulation 103-555 (e), states "The utility shall be responsible for providing the location for the connection of the customer's service pipe to the utility's service pipe or the utility's main, whichever is applicable, at the utility's expense, and at no expense to the customer."

PSC Wastewater Regulation 103-570 (B) states "It shall be the obligation of each utility dependent upon its ability to procure and retain suitable facilities and rights for the construction and maintenance of the necessary system to furnish adequate sewerage service to customers in the area or territory in which it operates."

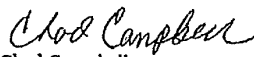
PSC Water Regulation 103-755, "When the utility renders temporary service to a customer, it may require that the customer bear all the cost of installing and removing the service in excess of any salvage realized."

Based on ORS's review, the Public Service Commission of South Carolina's rules and regulations do not identify a specific time period for water and sewer service restoration. ORS will maintain contact with DIUC in regard to their efforts to restore water and sewer service to your property.

If you are not satisfied with the response from the ORS's investigation, you have the right to file your complaint with the PSC. To file a complaint with the PSC, you must complete the PSC's complaint form available online at www.psc.sc.gov. The completed form must then be mailed to the PSC at 101 Executive Center Drive, Suite 100, Columbia, S.C. 29210

If you have any questions, please contact me at 1-800-922-1531, extension 75194, or via e-mail at ccamphe@regstaff.sc.gov.

Sincerely,



Chad Campbell
Consumer Services
Office of Regulatory Staff

cc: Mike Guastella, Guastella and Associates (VIA E-MAIL)
Dawn Hipp, ORS Director, Utility Rates and Services
Sarah Johnson, ORS, Director, Utility Services
Willie Morgan, ORS, Director, Utility Rates
April Sharpe, ORS, Manager, Consumer Services

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLIA
DOCKET NO. 2018-364

Stephen and Beverly Noller and)
Michael and Nancy Halwig,)
Complainants,)
v.)
Daufuskie Island Utility Co., Inc.,)
Respondent.)

REBUTTAL TESTIMONY OF
MICHAEL HALWIG
ON BEHALF OF COMPLAINANTS

- A. No, the word, on the page previous to the one you referenced, is clearly "suggested". The word "demand" is clearly not used looking at Page 6, line 26. More importantly, the idea of the relocation of the mains across the golf course was ignored by DIUC. Obviously having relocated a portion of the Driftwood Cottage Lane mains previously, and having them exposed by the hurricane, protecting what was there while an alternative site for relocation was pursued seemed a prudent thing to do to protect DIUC's equipment. Even its customers thought of that and suggested it too.
- Q. REGARDING PAGE 9, LINES 7-11, WHEN DID YOU SEE THE DECEMBER 10, 2015 LETTER REFERENCED IN THIS PART OF MR. QUASTELLA'S TESTIMONY?
- A. We did not see this until over a year later. Mr. Josey said he never received the December 10, 2015 letter in 2015², and by the time we did see it, the DIUC's refusal to do anything to help replace its equipment was well known.
- Q. IN REGARD TO TESTIMONY OF MR. GUASTELLA ON PAGE 11, LINES 11-14, REFERENCING THE REINSTALLATION OF MAINS "AT THAT LOCATION" DID YOU EVER HEAR OR READ DIUC TO SAY THAT IT WAS EXPLORING OR CONSIDERING ANOTHER LOCATION TO REPLACE THE MAINS?
- A. No. The Complainants suggested it but DIUC never showed any interest in replacing its mains before or after the damage from the hurricane. DIUC only stated that the mains would only be replaced by its customers. As it never took any action to relocate them, we were forced to undertake the utility's work to get our water back so we could use our homes.
- Q. IN REGARD TO THE TESTIMONY ON PAGE 12, LINES 16-24, THERE IS A REFERENCE TO THE INSTALLATION OF NEW UTILITY EASEMENTS THAT COULD BE ADEQUATELY PROTECTED FROM EROSION OR OTHER THREATS BUT THAT SUCH WAS LIKELY TO BE "VERY SHORT TERM". HAD YOU EVER HEARD DIUC USE THE REFERENCE TO SHORT TERM OR REASONABLY PERMANENT CUSTOMERS BEFORE YOU FILED YOUR COMPLAINT IN THIS MATTER?
- A. No. It appears that these ideas came to DIUC only after we challenged them for having forced us to install their replacement equipment or to abandon our homes as an alternative. We waited to file this Complaint until after the installation was complete and water and sewer service could actually be turned back on because we were concerned, as proved to be true, that DIUC would not do anything to help us or restore service until we paid for everything and paid its tax. The proposed Addendum by DIUC made that clear. Only after the ORS agreed that

² See Exhibit Complainants 00190, attached.

Q. REGARDING THE STATEMENT OF ORS DIRECT TESTIMONY PAGE 13, LINES 11-13, HAVE YOU EVER HEARD OF A SITUATION WHERE A UTILITY REFUSED TO DO WHAT WAS NECESSARY TO RESTORE SERVICE TO A CUSTOMER?

A. No, just like ORS Staff, which could not find any precedent in PSC's prior decisions concerning such a situation, we have never heard of any utility, of any sort, refusing to repair or replace its own equipment in order to provide service to existing customers. It seems clear from the continuing statement from DIUC that it would not be fair to other customers for it to pay for the replacement equipment is a clever way of saying that it would not be profitable. However, as a regulated utility for which any future rate making decision would have to be made by the Commission, it's unclear why DIUC would assume that the Commission would require the capital investment to be passed on to its other consumers in any particular way. It seems much more obvious that the concern is that the Commission could determine that such expenditures should be absorbed by the company as a form of self-insured retention or reserve for such equipment loss. DIUC knew the area of Driftwood Cottage Lane was a potential threat to its equipment, just look at the testimony of Mr. Michael Guastella at Page 4, Lines 3 through 16; Page 5, lines 3 through 17. DIUC ignored the fact that the water main was exposed and made no plans to relocate it to prevent an interruption of service to its customers.

Q. REGARDING THE TESTIMONY OF JOHN F. GUASTELLA, ON PAGE 2, LINES 14-19, THERE IS A STATEMENT THAT "THE DESTRUCTION OF THE ROADWAY IN WHICH MAINS WERE LOCATED ELIMINATED ANY POSSIBILITY OF REPLACING THE MAINS AND SAFELY PROVIDING CONTINUOUS UTILITY SERVICE TO THE REMAINING CUSTOMERS ALONG DRIFTWOOD COTTAGE LANE. IS THAT A TRUE STATEMENT?

A. No. Replacement mains exist now connecting Driftwood Cottage Lane mains to those at Martinangel Road, installed by DIUC's customers without any experience whatever in such utility matters. We were able to obtain the easement, hire the engineers and surveyors, and hire and pay the contractors to do the work to replace the mains even without an agreement with DIUC in place. Obviously, there was a very real possibility of needing to replace the mains to provide continuous utility service along Driftwood Cottage Lane. DIUC just chose not to.

Q. ON PAGE 3, LINE 7-10, MR. GUASTELLA STATES THAT "IT BECAME THE RESPONSIBILITY OF THE COMPLAINANTS TO ENTER INTO A MAIN OR SERVICE EXTENSION AGREEMENT". DID DIUC EVER EXPLAIN WHY THE REPLACEMENT MAIN WAS YOUR RESPONSIBILITY?

A. No. DIUC refused to lift a finger to assist us, only gave us its demands that we would have to meet for any replacement mains before it would accept them and provide water and sewer service to our homes. Its only statement offered in

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLIA
DOCKET NO. 2018-364

Stephen and Beverly Noller and)
Michael and Nancy Halwig,)
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Daufuskie Island Utility Co., Inc.,)
Respondent.)

REBUTTAL TESTIMONY OF
NANCY HALWIG
ON BEHALF OF COMPLAINANTS

help us or restore service until we paid for everything and paid its tax. The proposed Addendum by DIUC made that clear. Only after the ORS agreed that service could be restored without affecting this proceeding would DIUC restore it. The idea of our property being lost and service being short term was not mentioned then or ever, until DIUC filed responses to this Complaint. As stated previously, the notion that this utility can decide the fate of our property is appalling and not justified in any way. We have a right to protect our property and we have a right to pursue all means available under the law to maintain it, and we are doing so. For over two years we had no use of our properties because DIUC would never provide even temporary service. The Complaint was the only means available to try to correct the very wrong treatment we have endured to get our water back, and thus the use of our property back.

Q. IN REGARD TO THE TESTIMONY ON PAGE 23, LINES 6 THROUGH 21, WHAT IS YOUR RESPONSE TO MR. MICHAEL GUASTELLA'S ALLEGATION THAT YOU BREACHED THE CSA?

A. We did not breach the agreement, which were forced into. It was not voluntary, it was extortion. Even if we had signed voluntarily, there is no mention in the agreement of all of the proposed Addendum terms. That is not just 'assembling all the paperwork'. No mention of taxes, attorney's fees or any other costs are in the CSA except the "cost of installation". The Addendum even required that we give up our right to complain to this Commission or challenge DIUC in any way. Clearly, that was not in the agreement that we had no choice but to sign. To try to shoe horn the tax and fees into it after the fact, while claiming it is being generous for not charging 'administrative costs' for the time spent by DIUC doing nothing but demanding we do everything, is galling, but beside the point that only the costs of installation were agreed to be paid by its customers in that agreement, under duress with no other alternative but to abandon our home.

Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?

A. Yes, it does.

Q. THANK YOU.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLIA
DOCKET NO. 2018-364

Stephen and Beverly Noller and)
Michael and Nancy Halwig,)
Complainants,)
v.)
Daufuskie Island Utility Co., Inc.,)
Respondent.)

REBUTTAL TESTIMONY OF
BEVERLY NOLLER
ON BEHALF OF COMPLAINANTS

service could be restored without affecting this proceeding would DIUC restore it. The idea of our property being lost and service being short term was not mentioned then or ever, until DIUC filed responses to this Complaint. As stated previously, the notion that this utility can decide the fate of our property is appalling and not justified in any way. We have a right to protect our property and we have a right to pursue all means available under the law to maintain it, and we are doing so. For over two years we had no use of our properties because DIUC would never provide even temporary service. The Complaint was the only means available to try to correct the very wrong treatment we have endured to get our water back, and thus the use of our property back.

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Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?

A. Yes, it does.

Q. THANK YOU.

1 DAUFUSKIE ISLAND UTILITY COMPANY, INC

2 DOCKET NO. 2018-364-W/S

3 Surrebuttal Testimony of John F. Guastella

4 Before the South Carolina

5 Public Service Commission

6 Testimony Prepared: February 20, 2019

7 Hearing Date: February 28, 2019

8

9 **Q. Please state your name and business address.**

10 A. John F. Guastella, 725 N. Highway A1A, Suite B103, Jupiter, Florida 33477.

11 **Q. Have you previously submitted direct testimony in this proceeding?**

12 A. Yes.

13 **Q. Have you reviewed the Complainants' rebuttal testimony?**

14 A. Yes.

15 **Q. Do you have any comments regarding those testimonies?**

16 A. The testimonies of Michael and Nancy Halwig and Beverly Noller are identical so
17 my comments are applicable to each Complainant. First, the evidence DIUC has
18 already submitted in this proceeding rebuts various unsubstantiated comments by
19 the Complainants regarding DIUC's efforts to address the erosion at Driftwood
20 Cottage Lane, installation of new mains (not a replacement of the original mains),
21 the uncertainty as to the risk of the permanency of service and the Customer Service
22 agreement. Accordingly, there is no need for me to provide more rebuttal of those
23 issues.

1 **Q. What is the primary purpose of your surrebuttal testimony?**

2 **A.** The purpose of my testimony is to respond to the Complainants' rebuttal testimony.
3 The Complainants' position is that they should be reimbursed for the constructions
4 costs they already paid and that they should not pay for the costs related to the new
5 main, but instead that DIUC should absorb those costs. This position ignores the
6 multiple rate setting requirements at issue, which I will generally outline.

7 1. In compliance with rate setting caselaw and practice, DIUC's rates
8 must be sufficient to cover the cost of providing utility service. The cost of
9 providing utility service includes reasonable operating expenses and capital costs.
10 Rate setting principles do not permit DIUC to be forced to "absorb" the cost of
11 providing service.

12 2. As I explained in my previous prefiled testimony, when determining
13 whether to engage in expending a particular capital cost a utility must consider
14 many factors, including the permanency of the customers to be served by the new
15 equipment and whether an investment in infrastructure is prudent.

16 3. In addition, DIUC's rates must be set so that they recover the cost
17 of providing service equitably among all of DIUC's customers. So, when forces of
18 nature required the installation of a new connection for the Complainants by
19 accessing DIUC's closest existing water distribution and sewer collection system,
20 it would be unequitable to force DIUC's other customers to subsidize the associated
21 capital costs, which would be far greater than the average costs of providing service
22 to DIUC's other customers. If forced to pay for the installation for the
23 Complainants, those other customers would be paying more but receiving no

1 benefit from that new connection. So, even if the Commission were to grant the
 2 Complainants' request and have DIUC incur the costs but then later include them
 3 in future rates, it would not address the problem of inequitable rates because the
 4 other customers would be subsidizing costs only attributable to the Complainants.

5 **Q. Before they entered into the Customer Service Agreement, did the**
 6 **Complainants have opportunities to present their objections to the ORS?**

7 A. Yes, the ORS was made aware of this matter more than two years ago. The
 8 Complainants knew that DIUC could not replace the destroyed mains because the
 9 Melrose Property Owners would not restore the road. DIUC informed them that it
 10 was their responsibility to install a new main to connect to DIUC's exiting mains,
 11 and that DIUC would not pay for the mains in order to protect its other customers
 12 from subsidizing the cost through utility rates. DIUC has never received any
 13 indication from ORS that its position regarding this matter was in any way
 14 improper, and as far as I know, the Complainants were never told that DIUC's
 15 position was inconsistent with its application of rate setting principles. After
 16 entering into the Customer Service Agreement, the Complainants initiated this
 17 proceeding which asks the Commission to relieve them of the obligations they
 18 undertook in construction and their commitment to cover the costs associated with
 19 bringing the new equipment into the DIUC system.

20 **Q. Has DIUC incurred any costs or expenses as a result to the Complainants'**
 21 **initiation of this proceeding?**

22 A. Yes. DIUC has had to incur significant legal and consulting costs within this
 23 proceeding in order to again address a basic rate setting question of whether DIUC

1 correctly protected its other customers from subsidizing costs solely attributable to
2 the Complainants. As of January 31, 2019, the legal fees amount to \$16,471 and
3 consulting fees, excluding any time prior to the initiation of this proceeding, amount
4 to \$22,750, for a total of \$39,221. The fees for the month of February will include
5 costs to prepare testimony submitted earlier in the month, review of the
6 Complainants' rebuttal testimony, prepare surrebuttal testimony, counsel's and
7 DIUC witnesses' attendance at the hearing, travel costs, counsel's and DIUC
8 witnesses' preparation for the hearing, and then drafting a proposed order, will add
9 another estimated \$40,000, or more. At hearing DIUC will submit invoices of the
10 costs of this proceeding and will seek recovery of them from the Complainants in
11 order to again protect the other customers from subsidizing costs solely attributable
12 to the Complainants.

13 **Q. Do you have an update regarding the permanency issue you addressed in your**
14 **earlier prefiled testimony?**

15 **A.** Yes. I am providing as **Exhibit JFG-5** to this surrebuttal testimony photographs I
16 directed DIUC personnel to take on February 20, 2019. The photographs fairly and
17 accurately depict certain areas along Driftwood Cottage Lane ("DCL"), including
18 29, 33, 36, 42, and 46 Driftwood Cottage Lane. Each photograph is labelled in the
19 bottom right corner to provide additional information about the photographs. I
20 recognize the area depicted in the photographs. The images in the photographs are
21 consistent with my personal knowledge of the area. I am familiar with the area
22 depicted in the photographs, as they are located on Daufuskie Island, South

1 Carolina where DIUC operates. Additionally, DIUC has been closely monitoring
2 this area for several years, as discussed in the various witnesses' testimony.

3 **Q. What is depicted in the photographs in Exhibit JFG-5?**

4 A. The photographs show houses that are essentially in the ocean water at high tide. I
5 would particularly note that a section of the service lateral pipe at the Halwig
6 property is exposed and unsupported, as seen in the photograph labelled "46
7 Driftwood Cottage Lane north side."

8 **Q. Have you also reviewed the six (6) photographs included within the Answer of**
9 **DIUC filed in this case electronically on December 17, 2018?**

10 A. Yes. I have reviewed those photographs and the textual descriptions of the
11 photographs included in the Answer. The photographs fairly and accurately depict
12 certain areas along Driftwood Cottage Lane ("DCL"), including 29, 33, 36, 42, and
13 46 Driftwood Cottage Lane. The Answer accurately captions each of these
14 photographs. One of the photographs is an overhead photograph and map overlay
15 of the same area showing address numbers for the properties and generally showing
16 the lot lines for the depicted parcels. The image is captioned "Driftwood Lane
17 Destroyed." I recognize the area depicted in all six photographs. The images in
18 the photographs are consistent with my personal knowledge of the area. I am
19 familiar with the area depicted in the photographs, as they are located on Daufuskie
20 Island, South Carolina where DIUC operates. Additionally, DIUC has been closely
21 monitoring this area for several years, as discussed in the various witnesses'
22 testimony.

1 Q. The Complainants' prefiled rebuttal testimony includes the following
2 statement:

3 "There are lots on Driftwood Cottage Lane that could have
4 future houses on them. The state law allows houses to be built
5 between the baseline and setback lines in this area. Section 48-
6 39-290 of The Beachfront Management Act provides for new
7 homes to be built in this area. So the Driftwood Cottage Lane
8 mains can serve future customers. My reference to "all lots"
9 corrects DIUC's interpretation that we Complainants will be the
10 only customers using the mains in the future."

11 Q. Does DIUC have any information regarding the potential for houses to be
12 constructed on Driftwood Cottage Lane?

13 A. Yes. I am providing as Exhibit JFG-6 to this surrebuttal testimony pertain
14 documents that address the baseline and setback lines in the area at issue. I have
15 included in Exhibit JFG-6 a report by the South Carolina Department of Health
16 and Environmental Control ("DHEC") entitled "Line Report: Proposed Baseline
17 and Setback Line, Daufuskie Island, October 6, 2017, Revised May 3, 2018" along
18 with a screenshot photograph that was copied from the South Carolina Beachfront
19 Jurisdiction viewer (<https://gis.dhec.sc.gov/shoreline>), as included in the Memo.
20 The photograph depicts the current and proposed base lines and setback lines. I
21 recognize the area depicted in the screenshot photograph. The image in the
22 photograph is consistent with my personal knowledge of the area. I am familiar
23 with the area depicted in the photograph, as it is located on Daufuskie Island, South

1 Carolina where DIUC operates. Additionally, DIUC has been closely monitoring
2 this area for several years, as discussed in the various witnesses' testimony.

3 **Q. Can you summarize for the Commission what the Memo and photograph**
4 **comprising Exhibit JFG-6 show?**

5 **A.** Yes. The following is taken from DHEC's Line Report:

6 "The baseline is the more seaward of the two jurisdictional lines.
7 Seaward of the baseline, permitted activities are limited to wooden
8 walkways, small wooden decks, fishing piers, golf courses, normal
9 landscaping, groins, activities authorized by emergency orders,
10 beach renourishment projects, and structures authorized by a special
11 permit. The setback line is the landward line of beachfront
12 jurisdiction. Between the baseline and setback line, the Department
13 exercises regulatory permitting authority for such activities as
14 habitable structures and associated infrastructure, decks, gazebos,
15 other public access structures, and sand dune management. Seaward
16 of the setback line, construction of new shore-parallel erosion
17 control structures (i.e. seawalls, revetments or bulkheads) is
18 prohibited. However, existing erosion control structures may be
19 maintained or repaired with prior authorization by the Department.

20 The Current Base Line in the photograph is the solid red line and the Current
21 Setback Line is the solid blue line. DHEC's Proposed Base Line is the broken
22 green line and the Proposed Setback Line is the broken purple line. The
23 Complainants residences are shown between the Current Base Line and the Current

1 Set Back Line. The Complainants' residences are also shown seaward of the
2 Proposed Base Line. I would also note on page 3 of DHEC's Line Report that last
3 line in the table "Transition north for 308 feet, then north for 3,032 feet to Captain
4 Monroe Lane" which includes the DCL section, shows the second highest
5 "Shoreline Change Rate, (ft/yr)" or erosion rate of -7.405 feet.

6 **Q. What do you conclude from DHEC Line Report and the photograph from**
7 **from the South Carolina Beachfront Jurisdiction viewer**
8 **(<https://gis.dhec.sc.gov/shoreline>), as included in the Memo?**

9 A. The erosion along DCL has been significant and, according to the DHEC
10 calculations, it is getting worse. The photograph also shows that all of the lots along
11 this area of Driftwood Cottage Lane are seaward of the Current Set Back Line and
12 seaward of the Proposed Base Line which means the restrictions on any residence
13 in that area so significant that it is not likely any future permanent homes could
14 be built there. This information from the Memo and the photograph, further support
15 DIUC's conclusion that its should not place its other customers at financial risk by
16 paying for the construction, CIAC taxes, and related costs solely attributable to the
17 new mains for the Complainants' homes.

18 **Q. Does this conclude your testimony at this time?**

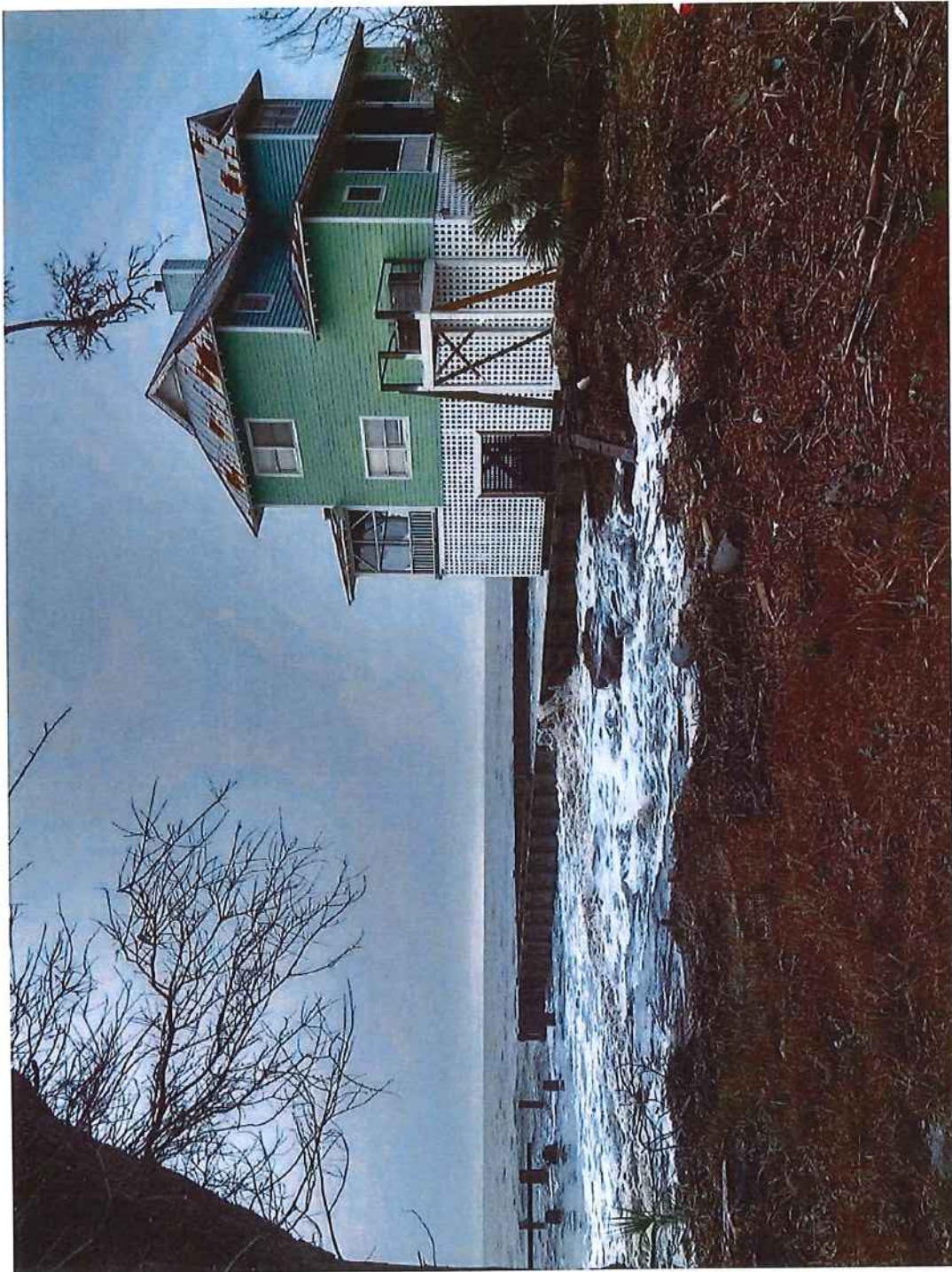
19 A. Yes.



Looking North at 29, 33 and 36 Driftwood Cottage Lane
Exhibit JFG 5 (1 of 6)



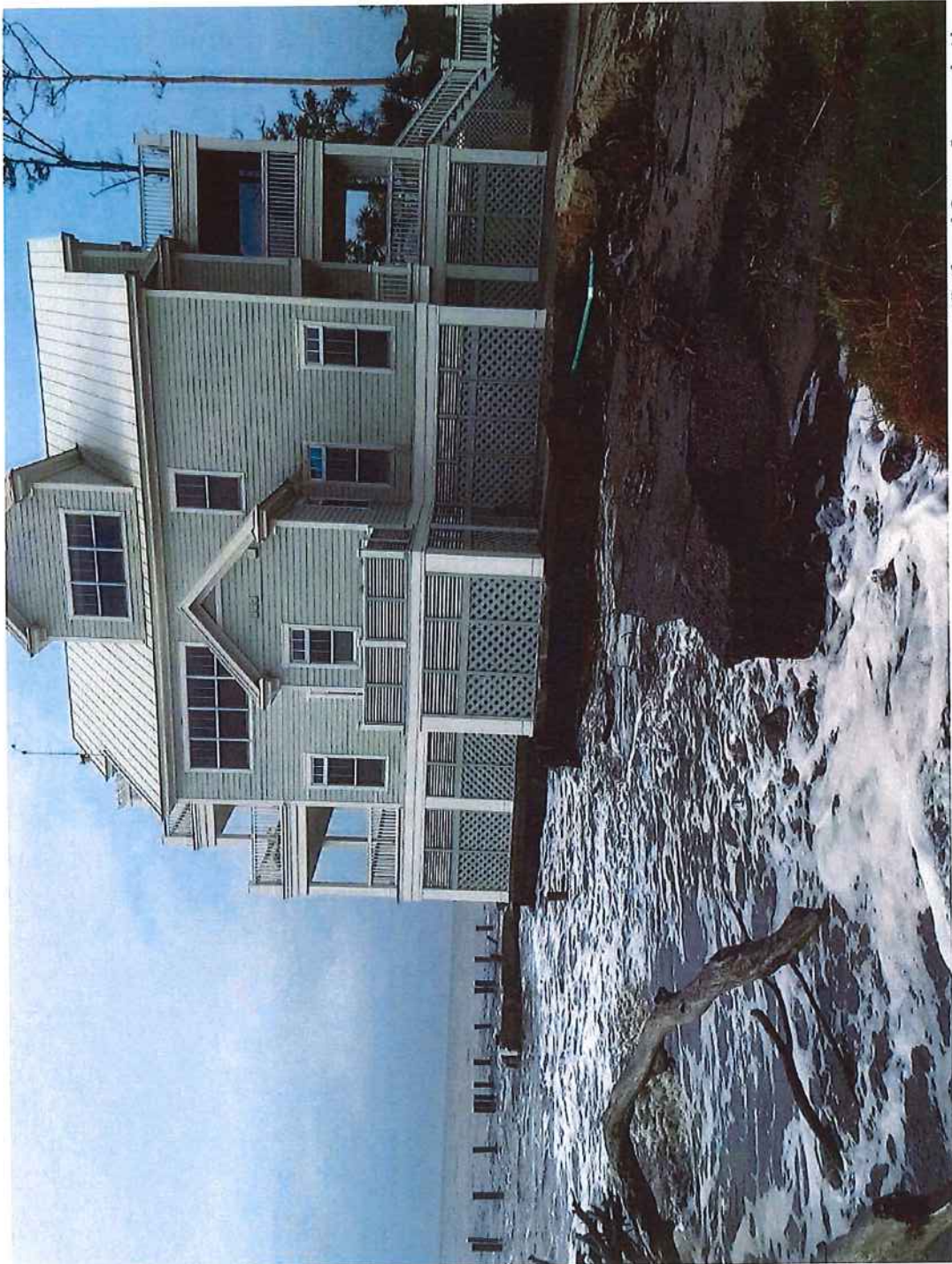
Looking South across 42 and 36 Driftwood Cottage Lane
Exhibit JFG 5 (2 of 6)



36 Driftwood Cottage Lane south side
Exhibit JFG 5 (3 of 6)



36 Driftwood Cottage Lane west side
Exhibit JFG 5 (4 of 6)



46 Driftwood Cottage Lane north side

Exhibit JFG 5 (5 of 5)



46 Driftwood Cottage Lane south side
Exhibit JFG (6 of 6)



**Line Report: Proposed Baseline and Setback Line
Daufuskie Island
October 6, 2017
Revised May 3, 2018**

Background

South Carolina Code of Laws §48-39-280, as amended, requires the Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (OCRM or Department) to establish and periodically review the position of the two lines of beachfront jurisdiction (the baseline and the setback line) once every seven to ten years. For all oceanfront land that is developed or potentially could be developed, the average annual shoreline change rate, also known as the average long-term erosion rate, is also reviewed during this timeframe. The purpose of these jurisdictional lines is to implement §48-39-280(A), which states:

"A forty-year policy of retreat from the shoreline is established. The department must implement this policy and utilize the best available scientific and historical data in the implementation. The department must establish a baseline which parallels the shoreline for each standard erosion zone and each inlet erosion zone. Subject to Section 48-39-290(D), the baseline established pursuant to this section must not move seaward from its position on December 31, 2017."

The baseline is the more seaward of the two jurisdictional lines. Seaward of the baseline, permitted activities are limited to wooden walkways, small wooden decks, fishing piers, golf courses, normal landscaping, groins, activities authorized by emergency orders, beach renourishment projects, and structures authorized by a special permit. The setback line is the landward line of beachfront jurisdiction. Between the baseline and setback line, the Department exercises regulatory permitting authority for such activities as habitable structures and associated infrastructure, decks, gazebos, other public access structures, and sand dune management. Seaward of the setback line, construction of new shore-parallel erosion control structures (i.e. seawalls, revetments or bulkheads) is prohibited. However, existing erosion control structures may be maintained or repaired with prior authorization by the Department.¹

As part of the process of delineating these jurisdictional lines, the Department has collected beach survey data statewide since 1988 at monitoring stations that are typically spaced 2,000 feet apart. Sections of the coast that are not likely to be developed, such as Cape Romain National Wildlife Refuge, are not surveyed. Surveys begin landward of the primary oceanfront sand dune, if one exists, and extend down the beach and offshore. In addition to this beach erosion monitoring data, the Department utilizes recent dune field topographic data such as Light Detection and Ranging (LIDAR), elevation measurements collected with a survey-grade GPS unit, vegetation measurements collected with a mapping-grade GPS unit, current and historical aerial photographs dating back at least 40 years that show the shoreline location, and

¹ S.C. Code Ann. §48-39-290(A).

previous shoreline change analysis data or reports. These data were viewed and analyzed using ESRI's Geographic Information System (GIS) software.

Process for Establishing the Baseline Position

To establish the baseline position, the shoreline must first be classified as an inlet zone or a standard zone. Areas that are close to inlets with non-parallel offshore bathymetric contours and non-parallel historical shoreline positions are classified as inlet zones, while all other areas are classified as standard zones. Inlet zone classifications are further refined as either unstabilized, or stabilized by jetties, terminal groins, or other structures.

In stabilized inlet zones and standard zones, the baseline is located at the crest of the primary oceanfront sand dune using beach survey data or dune field topographic data such as LIDAR. The primary oceanfront sand dune is defined as a dune with a minimum height of 3 feet, as measured vertically from the crest to the toe of the dune. This dune must also form a continuous line for 500 shore parallel feet.² If the shoreline has been altered naturally or artificially by the construction of erosion control devices, groins, or other man-made alterations, the baseline must be established where the crest of the primary oceanfront sand dune would be located if the shoreline had not been altered.³

To calculate a dune crest position at an armored⁴ location, the volume of sand on the beach seaward of the erosion control structure is determined from survey data and then compared to the volume of sand from a nearby unarmored reference profile that displays a representative sand dune. The reference profile is overlaid on the armored profile in such a way that the measured sand volumes match, and then the dune crest position can be transferred from the reference profile to the armored profile. This calculated dune crest position then becomes the baseline.

In unstabilized inlet zones, the baseline is established at the most landward shoreline position at any time during the past 40 years, unless the best available scientific and historical data of the inlet and adjacent beaches indicate that the shoreline is unlikely to return to its former position. This baseline position is established by analyzing shorelines created from historical aerial photographs or shoreline data collected in the field, and identifying the most landward shoreline position.⁵

Process for Establishing the Setback Line Position

The setback line position is dependent on the baseline position and the average annual shoreline change rate, also known as the average long-term erosion rate. The shoreline change rate is calculated using available historical shoreline data and GIS software. The setback line is established landward of the baseline a distance which is 40 times the average annual shoreline change rate or not less than 20 feet.⁶

During this line review, the shoreline change rate calculation was performed using AMBUR (Analyzing Moving Boundaries using R), a tool available through the R-forge statistical

² S.C. Code Regs. 30-1(D)(43).

³ S.C. Code Ann. §48-39-280(A)(1).

⁴ S.C. Code Ann. §48-39-250(5).

⁵ S.C. Code Ann. §48-39-280(A)(2).

⁶ S.C. Code Ann. §48-39-280(B).

environment. Shoreline change analysis was performed every 200 feet. Once the shoreline change rates were calculated, they were analyzed and grouped using the ESRI ArcGIS spatial statistics tool called 'Grouping'. The values within each group were averaged to obtain an annual shoreline change rate. This rate was multiplied by 40 to generate the setback distance from the baseline.

Daufuskie Island Baseline

Daufuskie Island is located in Beaufort County to the south of Hilton Head Island, between Mungen Creek to the southwest and Calibogue Sound to the northeast. The island is only accessible by ferry or boat, and the entire island is classified as an unstabilized inlet zone.

Unstabilized Inlet Zone

There is a 4,000-ft long wooden bulkhead along the shoreline of the Melrose Tract that is no longer intact and functional. For the entire island, the baseline is set at the most landward point of erosion in the last 40 years. At the southern end of the island, from the Bloody Point terminal groin to a point approximately 1,100 feet to the north along the shoreline, the baseline is set at the vegetation line collected by OCRM staff in the field in December 2016. Then, for a shoreline distance of approximately 600 feet, the baseline is set at the 1977 vegetation line position. Then, for a shoreline distance of approximately 500 feet, the baseline is set at the 1998 vegetation line position. For the remainder of Daufuskie Island, the baseline is set at the vegetation line collected by OCRM staff in the field in December 2016. At the northeastern end of the island, the baseline wraps and terminates near a marsh and tidal creek area. Any land or water areas to the northeast of the wrapped baseline are considered to be located seaward of the baseline.

Daufuskie Island Setback Line

The following table identifies average annual shoreline change rates, from south to north.

Location Description	Shoreline Change Rate (ft/year) *	Multiplier	Setback Distance (ft)
Wrapping the south end of Daufuskie for 228 feet along Fuskie Lane	^	N/A	20
Transition north for 33 feet, then north for 30 feet along Fuskie Lane	-1.4193	40	57
North for 65 feet along Fuskie Lane	-3.0586	40	122
North for 55 feet along Fuskie Lane	-6.0834	40	243
Transition north for 76 feet, then north for 619 feet along Fuskie Lane	-7.9045	40	316
Transition north for 34 feet, then north for 89 feet along Fuskie Lane	-5.9195	40	237
Transition north for 79 feet, then north for 2,183 feet along Fuskie Lane	-3.4022	40	136
Transition north for 204 feet, then for 3,107 feet to the north end of Cresting Wave Lane	-4.1843	40	167
Transition north for 240 feet, then north for 2,103 feet	-5.0711	40	203
Transition north for 263 feet, then north for 588 feet to the north end of Beauford Boulevard	-6.4794	40	259
Transition north for 308 feet, then north for 3,032 feet to Captain Monroe Lane	-7.4058	40	296

Location Description	Shoreline Change Rate (ft/year) *	Multiplier	Setback Distance (ft)
Transition north for 148 feet, then north for 603 feet	-6.2253	40	249
Transition north for 167 feet, then north for 352 feet along Avenue of Oaks	-5.2374	40	210
Transition north for 176 feet, then north for 802 feet along Avenue of Oaks	-4.196	40	168
Transition north for 214 feet, then north for 1,642 feet along Avenue of Oaks	-2.4752	40	99
Transition north for 213 feet, then north for 601 feet to the north end of Avenue of Oaks	-1.1659	40	47
Transition north for 188 feet, then north for 1,042 feet wrapping around the north end of Daufuskie	^	N/A	20

* A negative number indicates erosion.

^ When this symbol is present, it indicates that the minimum setback is required. The shoreline change rate in these areas is between -0.5 and +31.0 ft/year.

Final Product

Once the location of these proposed new beachfront jurisdictional lines is determined, this "line report" is prepared documenting how the new line positions were established. The proposed lines are then released for a 30-day public comment period, and a public hearing is held for public review and comment on the proposed line positions. The proposed lines are also made available for public review on the South Carolina Beachfront Jurisdiction viewer (<https://gis.dhec.sc.gov/shoreline>). Once the lines are adopted as final, the final versions can also be seen on the South Carolina Beachfront Jurisdiction viewer. The line coordinates are also made available on the DHEC web site in a format that allows them to be downloaded and imported into computer-generated plats by surveyors.

Addendum

Act # 173 of 2018 known as the "Beachfront Management Reform Act" was signed into law on May 3, 2018 by Governor Henry McMaster. In accordance with the Act, the state's beachfront jurisdictional lines, administered by DHEC's Office of Ocean and Coastal Resource Management, have been established for all beachfront areas of the state as follows.

The baseline is established at the most seaward position of either the current baseline set during the 2008 through 2012 cycle; or the baseline proposed by the department on October 6, 2017.

The setback line is established at the most seaward position of either the current setback line set during the 2008 through 2012 cycle; or the setback line proposed by the department on October 6, 2017.

These jurisdictional lines will be in effect until the completion of the establishment cycle initiating on or after January 1, 2024.

Additional information including survey packets with coordinates is available through the DHEC State Beach Jurisdictional Lines web page at: www.scdhec.gov/beachfrontlines



Exhibit JFG 6 (6 of 6)

1 DAUFUSKIE ISLAND UTILITY COMPANY, INC.

2 DOCKET NO. 2018-364-W/S

3 Surrebuttal Testimony of Michael J. Guastella

4 Before the South Carolina

5 Public Service Commission

6 Testimony Prepared: February 20, 2019

7 Hearing Date: February 28, 2019

8

9 **Q. Please state your name, business address, employer and title.**

10 A. Michael J. Guastella, 725 North Highway A1A, Suite B103, Jupiter, Florida 33477.

11 I am employed by Guastella Associates, Inc. ("GA") and my job title is Vice
12 President of Operations.

13 **Q. Have you reviewed the photographs included within DIUC's Answer, Exhibit**
14 **JFG-5, and Exhibit JFG-6?**

15 Yes. The photographs fairly and accurately depict certain areas along Driftwood
16 Cottage Lane, including 29, 33, 36, 42, and 46 Driftwood Cottage Lane. One of
17 the photographs in the Answer is an overhead photograph and map overlay of the
18 same area showing address numbers for the properties and generally showing the
19 lot lines for the depicted parcels. The image is captioned "Driftwood Lane
20 Destroyed." Exhibit JFG-6 also includes a screenshot photograph depicting the
21 current and proposed base lines and setback lines. I recognize the area depicted in
22 all the photographs. The images in the photographs are consistent with my personal
23 knowledge of the area. I am familiar with the area depicted in the photographs, as

- 1 they are located on Daufuskie Island, South Carolina where DIUC operates.
2 Additionally, DIUC has been closely monitoring this area for several years, as
3 discussed in the various witnesses' testimony.
4 **Q. Does this conclude your testimony at this time?**
5 **A. Yes.**

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA

HEARING #19-11763

MARCH 20, 2019

10:02 A.M.

Docket No. 2018-364-E

Stephen and Beverly Noller -and-
Michael and Nancy Halwig,
Complainants/Petitioners

v.

Daufuskie Island Utility Company, Inc.
Defendant/Respondent

TRANSCRIPT OF
ORAL ARGUMENT

VOLUME 1 OF 1

COMMISSION MEMBERS PRESENT: Comer H. 'Randy' RANDALL,
Chairman; Justin T. WILLIAMS, VICE CHAIRMAN; and
COMMISSIONERS John E. 'Butch' HOWARD, Thomas J. 'Tom'
ERVIN, Swain E. WHITFIELD, and G. O'Neal HAMILTON

ADVISOR TO COMMISSION: David W. Stark, III, Esq.
Legal Advisory Staff

STAFF: Jocelyn Boyd, Chief Clerk/Executive Director; Joseph
Melchers, General Counsel; Jerisha Dukes, Esq., Legal Advisory
Staff; Randy Erskine, Information Technology Staff; Melissa
Purvis, Livestream Technician; and Jo Elizabeth M. Wheat, CVR-
CM/M-GNSC, Court Reporter

APPEARANCES:

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STEPHEN and BEVERLY NOLLER -and- MICHAEL and NANCY HALWIG,
COMPLAINANTS/PETITIONERS

THOMAS P. GRESSETTE, JR., ESQUIRE, representing
DAUFUSKIE ISLAND UTILITY COMPANY, RESPONDENT/DEFENDANT

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P R O C E E D I N G S

CHAIRMAN RANDALL: Please be seated, everybody. Welcome, everyone, to this hearing this morning. I want to ask Mr. Stark, first, to read the docket.

MR. STARK: Mr. Chairman and other Commissioners, we are here for a proceeding in Docket No. 2018-364-WS, to hear oral arguments in the case of Stephen and Beverly Noller versus – I'm sorry – and Michael and Nancy Halwig, Complainants, versus Daufuskie Island Utility Company, Incorporated, Respondent.

Mr. Chairman, this proceeding has been scheduled for 10 o'clock a.m. in the Commission offices at 101 Executive Center Drive, Columbia, South Carolina 29210, and it's to happen on March 20th.

Mr. Chairman, the docket is in order.

CHAIRMAN RANDALL: Thank you, Mr. Stark.

We'll take appearances from the parties now.

MR. SMITH: Thank you, Mr. Chairman.

CHAIRMAN RANDALL: Let's get you on a microphone, too, and make sure – punch that microphone, and you can go either – you can have the one right in front of you.

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1 MR. SMITH: Let's make sure this one is
2 working? Very good.

3 CHAIRMAN RANDALL: Sounds good.

4 MR. SMITH: My name is Jack Smith, on behalf
5 of Complainants. I'm with the Nelson Mullins firm.

6 CHAIRMAN RANDALL: Welcome, Mr. Smith.

7 MR. GRESSETTE: Good morning Commissioners.
8 My name is Tom Gressette, and I'm here on behalf of
9 Daufuskie Island Utility Company, Incorporated, and
10 my firm is Walker, Gressette, Freeman & Linton,
11 down in Charleston.

12 CHAIRMAN RANDALL: Welcome, Mr. Gressette.

13 MR. GRESSETTE: Thank you, sir.

14 CHAIRMAN RANDALL: Before we get going, I want
15 to just make sure -- I think Commissioner Belser has
16 spoken with you, but Commissioner Belser has
17 recused herself because she was involved in this
18 during her stint at ORS. So, that's why we have an
19 empty chair.

20 Okay. I think we start these proceedings with
21 Mr. Smith.

22 MR. SMITH: Thank you, Mr. Chairman and
23 Commissioners. Thank you for the opportunity to
24 speak with you this morning to respond to any
25 questions you may have.

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1 This proceeding is about the jurisdiction of
2 the Commission. It's been fully briefed. We
3 believe we have shown that the Commission certainly
4 has jurisdiction in this matter over the Daufuskie
5 Island Utility Company. It is a public utility,
6 under the definition in the statutes and the
7 regulations. You have jurisdiction over its
8 behavior, its contracts, its provision of service
9 to its customers. And what we have here are
10 existing customers on Daufuskie Island who had a
11 portion of the mains owned by the utility company
12 that were damaged and no longer usable along part
13 of the street that the homes of the Complainants
14 have on Daufuskie Island in Melrose Plantation.

15 The jurisdiction of the Commission stems from
16 both its ability to approve or disapprove contracts
17 of the utility and for the provision of service.
18 The authority it has – the authority of the
19 Commission is very broad in the statute. It has
20 promulgated regulations; they are very clear. And
21 we believe that the fact that the utility company
22 knew of a danger, a threat, to its system, failed
23 to take any action regarding it, has basically
24 forced these customers to either give up their
25 homes or to pay for the utility company's

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1 reconnection of its mains in order to provide them
2 water and sewer service is clearly within your
3 jurisdiction.

4 It's important to note the, kind of, factual
5 sequence here. In October of 2016, when Hurricane
6 Matthew caused the damage, immediately, the Halwigs
7 did approach ORS. And in their response, on
8 December 2, 2016, the ORS was clear: "Here are the
9 responsibilities of the utility company. They're
10 supposed to provide service, maintain service,
11 but," the ORS said, "we can't find a regulation
12 that requires a timeframe for that." Well, in
13 order to use their homes, with the utility company
14 saying, "We're not going to do anything," they
15 engaged an engineer, hired a contractor. They paid
16 money into an escrow account to pay the contractor,
17 so the money was paid upfront, and they proceeded
18 to have the work begun. In the meantime, the
19 utility company had done nothing. Had not provided
20 an easement document form, had no assistance in
21 providing that. Provided no contractor or other
22 written guidance on what would be required, except
23 that, "You have to do everything. When you finish
24 installing it, if it's done correctly, we'll accept
25 that and we'll begin giving you service again."

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1 Unfortunately, the Melrose Resort golf course,
2 which is the path across which the Complainants
3 were able to get permission to put the utility, was
4 in the process of going bankrupt at the end of
5 2017. So when work began in November of 2017,
6 expected to be finished before the holidays that
7 year, the resort said, "Stop. We don't have any
8 paperwork in place." And so, unfortunately, that
9 delayed the completion until all that was sorted
10 out after the transfer of the property in
11 bankruptcy in March of the next year and then the
12 completion by September. Even when it was
13 completed, the utility company said, "Well, but you
14 also have to pay this tax, and you have to pay our
15 attorneys' fees," and, of course, whether that's in
16 the contract or not, you never had a chance to
17 determine that. The contract was provided to the
18 ORS in January, the end of January, in 2018, well
19 after the work had started, money was paid into
20 escrow, but service had been withheld and no action
21 to put even temporary service into these homes
22 since the October 2016 storm.

23 So your jurisdiction to review and decide
24 whether the question of the cost of that capital
25 replacement infrastructure is a cost to the

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1 utility, or of these customers, is clearly related
2 also to rates. You know, can the utility decide
3 that, "We're going to make them pay for it, so we
4 never have to ask you," whether they should be
5 paying for it; "Can we include it in our rate
6 structure, or not?" Is the contract and the
7 premium they've extracted from these customers
8 something that should or should not be included in
9 what this Commission reviews in terms of this
10 utility?

11 It's important to note it's also a for-profit
12 utility. It gets a guaranteed rate of return
13 through the rate structure that you provide it when
14 they present you with that and you approve it.
15 They may disagree with you. However, you have that
16 authority. You can find that they have failed to
17 follow your regulations, and you can fine them.
18 You could determine that the contract should not
19 have been in place, they didn't have the authority
20 to do that, that that was infringing on your
21 ability to set rates, and that they should not get
22 the benefit, they should have to pay for it,
23 whether that comes in the form of a direct payment
24 of not paying future utility bills until it's
25 repaid, but those are options clearly in front of

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1 this Commission.

2 The Commission has full legal authority to
3 regulate utilities over the broad spectrum of their
4 activities. If the jurisdiction of the Commission
5 is preempted by the unilateral action of a utility,
6 it has the effect of basically taking these
7 people's homes from use. Then, you know, why would
8 the Commission not have that type of jurisdiction?
9 Certainly, the whole idea of a public service
10 commission and regulating utilities is so that
11 service is provided at a reasonable cost to all
12 customers.

13 I'm sure that you will hear countervailing
14 arguments, you know, from the utility, of course.
15 That's our job, to represent our clients'
16 interests. But we believe here that it's clearly
17 in the Commission's interest and the public
18 interest for this contract not to be approved after
19 the fact, that it was not presented to the
20 Commission until after the utility was — the
21 installation was begun.

22 Now, when the Commission's — ORS Staff said,
23 "We cannot tell you when they have to put it in,
24 but here's what they have to do," the Halwigs and
25 the Nollers were faced with a choice. They were

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1 over a barrel. They needed to get their homes back
2 in service. The Halwigs, in fact, rent that
3 property as part of their way to help pay for it,
4 so that when they are ready to retire it would be
5 less of a financial burden for them. Dr. Noller,
6 unfortunately, has Alzheimer's, and he and his wife
7 enjoy being at that location. It's one of the
8 spots they like to go to for his comfort.
9 Unfortunately, for two years, neither family had
10 access to their homes more than temporary stays,
11 because there's no water or sewer service.

12 And so that type of behavior of the utility
13 company not to provide temporary service or to
14 assist in any way in trying to provide replacement
15 mains for their equipment is really something this
16 Commission needs to look into. We believe that
17 it's -- the Commission has full authority under
18 58-5-210, -140, and other provisions, and certainly
19 under your regulations, the 103-541 and -743 are
20 very clear that information needs to be provided to
21 the ORS and approved by the Commission.

22 The fact is, time was of the essence. If the
23 Commission_[sic] wasn't going to assist in any way in
24 trying to replace its mains, then they had to take
25 that action and do it quickly. So before a

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1 contract was ever presented or terms were ever
2 given to them, the Halwigs and the Nollers engaged
3 an engineer, put the money in escrow, hired the
4 contractor, and work began. And that was in
5 November of 2017.

6 So we believe that the after-the-fact actions
7 of the utility can't really wrest jurisdiction from
8 this Commission. The fact that someone has
9 neglected a clear danger that they recognize –
10 their prefiled testimony clearly shows they were
11 well aware of this area and monitored it for years.
12 But when the utility line in the street at
13 Driftwood Cottage Lane was damaged, no plans have
14 been made with the resort owner or the golf course
15 to get access across the course to replace that.

16 The pipes in front of these customers' homes
17 are still there; it's the same pipe that was there
18 before the damage in 2016. The only difference was
19 it was no longer connected at the other end of
20 Driftwood Cottage to go back to Martinangel Lane.
21 And so they had to get a new connection. They were
22 able to get the easement from the golf course
23 owner – the new owner after the bankruptcy was
24 resolved – and then complete the installation.

25 COMMISSIONER ERVIN: Counsel, excuse me for

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1 interrupting you, but would you mind if I ask a
2 question?

3 MR. SMITH: Please. That's what we're here
4 for.

5 COMMISSIONER ERVIN: Just in looking at the
6 pleadings in the case, isn't it true that your
7 clients are asking this Commission to award a money
8 judgment for breach of contract and damages, in a
9 sum of, what, \$100,000? Is that what they're
10 seeking?

11 MR. SMITH: They believe that they should not
12 be responsible for the money they paid to install;
13 they don't believe they should be responsible for
14 the tax or attorneys' fees. And we're not asking
15 for a money judgment like we were in court. We
16 understand that the Commission has broad authority
17 to determine what type of remedy may be available.

18 COMMISSIONER ERVIN: Let me call your
19 attention to South Carolina Code Section 58-5-290,
20 and you may not have a copy so I'm going to give
21 you both copies, if you'd like, to see it. But my
22 reading of this statute says that -- and I'll wait
23 till you get a copy.

24 MR. GRESSETTE: [Indicating.] Thank you, sir.

25 MR. SMITH: [Indicating.] Thank you.

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1 **COMMISSIONER ERVIN:** My reading of the statute
2 says that the Commission shall, subject to review
3 by the courts as herein provided, determine just
4 and reasonable charges, classifications, rules, and
5 regulations, or practices to be thereafter observed
6 and enforced, and it shall fix them by order herein
7 provided.

8 That clearly means that we can't go back in
9 time and undo an alleged wrong. It means,
10 thereafter, we might have some potential to look at
11 the matter in the future as it relates to rates or
12 charges or practices. But doesn't this close the
13 door on your claims?

14 **MR. SMITH:** No, sir, not at all. You have
15 regulations in place that require the approval of
16 the Commission before a contract is entered into.
17 That's a violation of your rules. And you can
18 enforce a violation of your rules. We're not –
19 we're saying the contract should not have been
20 required. And the fact that it wrests from this
21 Commission the ability to determine whether the
22 utility should've had – this is part of its rate
23 structure. When the utility bought or the new
24 owners bought this utility, obviously the utility
25 had been there for decades and it was in somewhat

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1 shape that needed some capital improvements and
2 repairs. And those types of things were in it, but
3 in spite of the known danger, there was nothing in
4 that application for rates and in that purchase,
5 here, to replace or make arrangements for potential
6 damage they knew could occur. That –

7 COMMISSIONER ERVIN: Back to your claims,
8 though, you are seeking monetary damages, and it
9 relates to contract, well, issues. Wouldn't that
10 properly be a matter for the court? I believe your
11 clients also have alleged that they were coerced
12 into entering into this contract. That clearly is
13 a defense – I mean, an allegation that would
14 perhaps be best resolved by a jury.

15 MR. SMITH: Certainly, these are legal
16 claims – a contract claim could be brought in
17 court. But it's not the place for the Commission
18 to regulate its utilities if, in fact, the utility
19 has said, "You do this and we'll provide you
20 service," but then they don't –

21 COMMISSIONER ERVIN: But they have provided
22 service, so that's a moot point now, right?

23 MR. SMITH: It's not a moot point, sir.

24 COMMISSIONER ERVIN: Why?

25 MR. SMITH: Because as soon as we do not pay

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1 that federal tax that's alleged to be due, which
2 this Commission also has before it, or the
3 attorneys' fees, they'll turn it off again.

4 **COMMISSIONER ERVIN:** Well, they're not allowed
5 to turn it off again, because they – by raising, in
6 their pleadings, the fact that – I mean, they've
7 raised as a defense, and you've also alleged that
8 there's this threat of disconnection, and they've
9 raised in their defense – they've asserted that
10 that's a moot issue since service is being
11 provided. So doesn't that defense, in and of
12 itself, effectuate a waiver of any right to
13 disconnect by the company?

14 **MR. SMITH:** Not unless this Commission were to
15 so order. I'm certain that, should we not pay,
16 they will disconnect.

17 **COMMISSIONER ERVIN:** Well, if they disconnect,
18 then you could come back and address it at that
19 time. It would be ripe for determination.

20 **MR. SMITH:** It's ripe for determination now,
21 sir.

22 **COMMISSIONER ERVIN:** You're getting service
23 now.

24 **MR. SMITH:** We are getting service now, but we
25 also have had to pay for that service, which is

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1 only on because the parties all agreed that it
2 would not affect anything in this case going
3 forward. To use it now as a moot point and try to
4 close the door with it would be prejudicing us for
5 agreeing that it would have no prejudicial effect.

6 **COMMISSIONER ERVIN:** Let's hear from opposing
7 counsel, and then we may come back to you, if you
8 don't mind.

9 **COMMISSIONER WHITFIELD:** Mr. Chairman, I would
10 like to ask Mr. Smith a question before we —

11 **CHAIRMAN RANDALL:** Certainly.

12 **COMMISSIONER WHITFIELD:** I don't know if —
13 sir, I don't know if you're done or not, but could
14 I ask you, Mr. Smith, just for the record — I think
15 I know this, but I want to be clear on it — your
16 client has no ongoing interruption in service or no
17 ongoing wrongful charges, if you will, or anything
18 violating current Commission rules or regs that
19 you're aware of right now?

20 **MR. SMITH:** I don't know if some of the
21 charges that were actually given to them for
22 service, when they had none, have been resolved or
23 not. There may be pending charges that have not
24 been resolved. We were told they would be, but I
25 frankly don't know that. In terms of the charge

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1 for the installation of the utility, you know, that
2 is still there.

3 COMMISSIONER WHITFIELD: But at the current
4 time, as far as you know, your client is being
5 charged properly and being served, as such, is – I
6 guess is my question.

7 MR. SMITH: Except for the threat of
8 disconnect under terms that were not agreed to, and
9 being forced into the agreement. The question is
10 whether – do they have the authority to require
11 that of existing customers. That's before this
12 Commission.

13 COMMISSIONER WHITFIELD: Right.

14 Well, I don't have anything further, Mr.
15 Chairman.

16 If you have more – I know you were still kind
17 of going. If you have more you want to say, or
18 maybe some other Commissioners might want to –

19 CHAIRMAN RANDALL: Commissioner Howard has
20 some questions.

21 COMMISSIONER WHITFIELD: Thank you, Mr.
22 Chairman.

23 COMMISSIONER HOWARD: That was my statement.
24 Mr. Chairman, if you will let him finish his
25 presentation before we ask questions, I think it'd

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1 be better off, and also the other counsel for
2 Daufuskie, too. I just think we ought to finish
3 the presentation before we start asking questions.

4 CHAIRMAN RANDALL: All right. Continue.

5 MR. SMITH: A little late for that, but thank
6 you, sir.

7 I believe that the relief that this Commission
8 can give is varied. You could require that service
9 not be cut off. You could require that service be
10 for free until the cost of the installation was
11 basically repaid. I believe you could fine them,
12 but that would certainly not be something that we
13 are seeking. But we think that it is incumbent
14 upon the Commission to regulate utilities in this
15 State in how they treat their existing customers.
16 This is not a developer. This is not "Let's go
17 into a new area." The pipes that were there before
18 the storm took out part of the road are still
19 there; that was what was connected back across the
20 golf course in order to provide service. The fact
21 that these customers had to do that or lose the use
22 of their homes indefinitely, if not forever, is a
23 clear dereliction of the requirement that this
24 Commission has put on them to maintain service.

25 The ORS is very clear in its response as to

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1 what the maintenance and provision of service
2 required. They just couldn't find a timeframe
3 within which to force the utility to do that. This
4 Commission has the authority to force the utility
5 to do that. I think you have broad latitude not to
6 treat it as a contract damages' claim, but whether
7 or not did the utility obey the rules. Did it
8 present a contract of this magnitude, concerning
9 the ability and willingness to provide service, to
10 the Commission for its approval and get that
11 approval before it implemented it. Or is it going
12 outside of the rate schedule, going outside of your
13 authority, and trying to regulate itself by making
14 those decisions without your input or approval, and
15 without the exercise of your authority?

16 I'll be glad to stop at this point and answer
17 questions, or proceed to closing. Thank you.

18 **CHAIRMAN RANDALL:** Any other questions for Mr.
19 Smith?

20 **COMMISSIONER ERVIN:** Mr. Chairman, I have one
21 follow-up question, please.

22 **CHAIRMAN RANDALL:** Commissioner Ervin.

23 **COMMISSIONER ERVIN:** Thank you, sir.

24 Counsel, if the contract in question was never
25 approved by the Commission, you can allege in

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1 Circuit Court that it's void as a matter of law,
2 can't you?

3 MR. SMITH: We could, Your Honor. We can also
4 allege, as we do here, that it's something that the
5 Commission could find should not have been foisted
6 upon these customers and take some action that
7 would prevent that in the future and try to remedy,
8 through the rate structure or other tools that the
9 Commission has.

10 COMMISSIONER ERVIN: Yes, sir. Thank you.

11 CHAIRMAN RANDALL: Any other questions?

12 [No response]

13 Thank you, Mr. Smith.

14 MR. SMITH: Thank you.

15 CHAIRMAN RANDALL: Mr. Gressette.

16 MR. GRESSETTE: Good morning, Mr. Chairman,
17 Commissioners. Thank you for allowing us to spend
18 a few moments with you today, talking about this,
19 actually, pretty interesting issue.

20 Daufuskie Island Utility Corporation is
21 regulated by the Public Service Commission. The
22 Public Service Commission receives its grant of
23 authority pursuant to statute. Those statutes
24 prescribe when and under what circumstances the
25 Commission considers issues and then what remedies

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1 are available or what power the Commission has to
2 grant relief.

3 These kinds of questions related to contracts
4 that involve a rate issue, but also other private
5 contractual matters, have been dealt with by the
6 courts. The two primary cases are cited in our
7 briefing. Ultimately, what I believe the cases
8 come down to are a conclusion that, semantics
9 aside, this Commission is instructed to look at the
10 real issue – and that's what the cases say, the
11 "real issue" involved. And I believe the way we
12 determine the real issue, particularly in this
13 analysis, is to look at the relief sought.

14 The Complainants seek an award of damages that
15 the Commission is not empowered to provide. There
16 are statutes and circumstances – a few – where the
17 Commission can order a utility to pay money or to
18 pay a fine. One of the statutes that Commissioner
19 Ervin just spoke about is a statute that addresses
20 the analysis of rates and other questions for
21 future activity, the idea being we don't engage in
22 retroactive ratemaking. That's something that we
23 all hear. And so we're comfortable with that limit
24 because we talk about it all the time. Where it
25 gets sort of sticky is when we're talking about

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1 these cases and you have a Complainant who is
2 seeking relief, comes before the Commission: "My
3 problem is with a regulated utility." And then the
4 Commission has wisely said, "Well, we've got to get
5 down to brass tacks. Do we have the power to do
6 that?"

7 Well, if this were a 58-5-710 question, that
8 statute says the Commission can impose a fine, if a
9 utility fails to do something, after the Commission
10 has considered the question, issued an order, and
11 then the utility fails to comply with it. So the
12 Commission is not without some power to require the
13 payment of money by a utility, but what retroactive
14 ratemaking and this statute read together tell us
15 is that the Commission considers a question first
16 and issues an order. Your order should be complied
17 with. And if it's not, you have the power to fine
18 the utility. The important thing being, the
19 Commission considers the question first.

20 So if the Commission didn't consider the
21 question first, in this instance, what happened?
22 And I think what you heard described is Daufuskie
23 Island was developed; there's a roadway that snakes
24 along, literally, the ocean, right? It washed away
25 in a storm. The local POA rebuilt it. The utility

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1 put its pipes back up underneath it. Another
2 hurricane came, and the POA said, "We can't afford
3 to fight the ocean down there anymore. It's gotten
4 too bad."

5 The Complainants came to the utility and said,
6 "We would like service." The utility said, "We
7 think, for a variety of reasons, and based on our
8 analysis, that we cannot justify reinstalling, or
9 installing new equipment to service these two homes
10 that are built out here."

11 As they should have in that situation, the
12 Complainants contacted ORS. ORS considered the
13 matter and issued the letter that we spoke about
14 earlier from Mr. Campbell, dated December 2, 2016.
15 And it says: There are a variety of regulations
16 that might be involved in the question that you
17 have raised. Not providing an answer on them, but
18 these are the regulations you should look at. It
19 does say there is a regulation regarding
20 restoration of service, but we cannot tell you if
21 there's a timeframe on it.

22 It then goes on to say, "If you're not
23 satisfied with this response from ORS, you have the
24 right to file your Complaint with the PSC." Under
25 proper procedure, that Complaint would have been

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1 filed, the Commission would have been presented
2 with the question, and it could have ruled. What
3 the Complainants did instead was they went out on
4 their own and, through private contracts and
5 through their own expense, spent over \$100,000 to
6 get new easements, set up their own system, and
7 then they came back to Daufuskie and they said, "We
8 want you to incorporate this in your system and
9 give us service." Daufuskie said, "Look, we told
10 you back in the beginning, we can't justify any
11 expense for this because it's just two houses and
12 we think it's going to wash away again. But, if
13 you will pay for it and you'll pay the
14 contribution-in-aid-of-construction tax that it's
15 going to cost us when we absorb this into our
16 system, and you pay the other costs – and that's
17 some debate about the legal fees and the admin
18 fees. But, basically, they presented a contract
19 that said, "You pay for it and we'll bring it in."

20 The Complainants signed that contract. The
21 equipment came into the Daufuskie system. And then
22 the Complainants came back to the Commission and
23 said, "That contract we signed and those expenses
24 we went and involuntary got, after you told us we
25 had the right to come to the Commission and ask a

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1 question, yeah, we really wish we hadn't done that
2 and we want you to make them pay that \$100,000"

3 And so, semantics aside, they have said, "We
4 were under duress. We don't want you to count that
5 contract. We don't want you to consider this a
6 claim for damages." But if, as the Supreme Court
7 has instructed, you look at the real issue, that's
8 what it is: They want the Commission to award
9 damages.

10 Now, whether the contract was or was not
11 approved is a total red herring. That regulation
12 does not provide relief to a contracting party to a
13 [indicating] "unapproved contract." It may provide
14 a defense in a circuit court case. Circuit courts
15 routinely look at administrative regulations to
16 determine whether an agency acted properly with
17 regard to a pending civil claim, which is what this
18 is.

19 The other problem with proceeding before the
20 Commission in this circumstance is: Not only is
21 the Commission, I believe, or I think the law is
22 clear, not empowered by statute to provide the
23 relief requested, it's also not empowered to
24 provide complete relief among the parties.
25 Daufuskie has been required to spend tens of

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1 thousands of dollars for me and other folks to put
2 together responses to this complicated Complaint.
3 If successful, in our defense, this Commission is
4 not going to order them to pay me any costs. The
5 Commission's not even going to consider the various
6 ways and whether I'm entitled to them. But, if
7 this case is proceeding in State court where it
8 belongs, the utility would be permitted to plead
9 fraud, negligent misrepresentation – in other
10 words, they'd be able to defend and say, "Look, you
11 people knew what you were doing. You set all this
12 up, and now you want us to pay for it. That's not
13 right." And we'd be entitled to have someone
14 determine whether we should get that relief or not.
15 As it stands now, again, the Complainants utilized
16 the Commission's, ORS's jurisdiction, didn't like
17 what they found out, went and got a new result, now
18 they've come back and they're trying to call a
19 claim for damages something that it is not.

20 The case cited by the Complainants' briefings
21 are all ratemaking cases. The Commission does have
22 general jurisdictional powers over utilities, but
23 it is not unlimited. And so we look to the
24 procedures built into statutes to know and
25 understand what the Commission's jurisdiction is.

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1 And while it is important that we consider how
2 individual circumstances impact individuals, it is
3 more important, for the system to work, that we
4 follow the rules. And the rules are: This is a
5 quasi-judicial body empowered by the legislature to
6 act and to provide certain remedies. If the
7 actions and the remedies requested are not within
8 that grant, then the Commission is to avoid any
9 conflict and to err on the side of not exercising
10 jurisdiction.

11 And so that, based on the information that we
12 provided today, would be our request, that the
13 Commission enter an order finding it has no
14 jurisdiction over this Complaint and to dismiss the
15 Complaint.

16 And I'm happy to answer questions.

17 CHAIRMAN RANDALL: Any questions for Mr.
18 Gressette?

19 COMMISSIONER WHITFIELD: Yes, Mr. Chairman.

20 CHAIRMAN RANDALL: Commissioner Whitfield.

21 COMMISSIONER WHITFIELD: Mr. Gressette, in
22 fairness, I probably should've asked this same
23 question of Mr. Smith – and if he wants to, he can
24 reply to it, as well. But – and for the record, we
25 somewhat, as a judicial body, live in a little bit

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1 of a cocoon. So what you referenced, the letter
2 from ORS, the response, outlining the regulations
3 of the Commission from Mr. Campbell back in 2016,
4 are you aware of any other contact or response from
5 ORS, or contact from the Complainants to ORS, or
6 any other communication beyond that point, or –
7 until they filed this Complaint, excuse me. From
8 that point until they filed this complaint?

9 MR. GRESSETTE: I am not certain that the
10 Complainants had additional correspondence or
11 communication. They may have. Ultimately –
12 actually, I'm sure that they must have, because at
13 some point, when the agreement was reached that the
14 Complainants would pay for the equipment, DIUC
15 would bring it in the system as long as it complied
16 with the requirements, et cetera – the contract
17 that we're talking about – when that agreement was
18 reached, my understanding is that both parties
19 separately talked to ORS and ORS said, "Look, if
20 you folks have worked it out, that's fine with us."
21 And the utility was fine with that, and is fine
22 with the contract as it's drawn.

23 The real difficulty that faces a utility in
24 this circumstance is, if it makes the determination
25 not to provide service, the only way it can not get

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1 into a big financial mess is if the procedures are
2 followed and the Commission is provided an
3 opportunity to rule. You know, what the papers
4 submitted essentially say is my folks at DIUC went
5 back and forth with the folks at ORS, understood
6 that ORS was comfortable with the decision – that's
7 a question of fact; that will have to be sorted out
8 at some point – but my point is that, in order for
9 the utility to do anything other than what it did
10 in this circumstance, it needs a decision. And it
11 was not in a position to go and get the decision;
12 that burden was on the Complainants.

13 **COMMISSIONER WHITFIELD:** So what you're saying
14 is there was obviously, in your mind, some
15 dialogue, some discussion, but you don't know of
16 any other written documentation other than what you
17 cited in 2016.

18 **MR. GRESSETTE:** No, sir.

19 **COMMISSIONER WHITFIELD:** All right. And,
20 again, in fairness, it's his client; I should
21 probably go there, too. But thank you.

22 **MR. GRESSETTE:** Yes, sir. Thank you,
23 Commissioner.

24 **CHAIRMAN RANDALL:** Other questions?
25 Commissioner Ervin.

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1 **COMMISSIONER ERVIN:** It seems to me that this
2 would be a case that would be perfect for mediation
3 because, you know, you look at the equities, and so
4 forth, and the arguments on both sides. Have you
5 tried to resolve it in that way?

6 **MR. GRESSETTE:** The difficulty with mediating
7 this case – first of all, to answer your question,
8 the parties have not engaged in a formal mediation
9 where we have engaged a mediator and assembled in a
10 physical place. Counsel and I have an excellent
11 relationship, have had frank conversations, have
12 been back and forth, and tried several times with
13 our various clients to approach the situation from
14 new and different angles.

15 I can candidly tell you that the utility is in
16 a position that it was in when the Complainants
17 approached it. If the utility agrees to foot this
18 \$100,000-plus, \$150,000 bill, to install service to
19 these two homes – when we come back from a rate
20 case, you know how active the POAs are out on this
21 island – they are going to come after DIUC for
22 spending \$150,000 to serve two houses that are
23 falling into the ocean. If we don't do it, we risk
24 this circumstance [indicating]. And so the only
25 thing that really helps Daufuskie is some sort of

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1 agreement, mediated result, that would involve the
2 Commission essentially pre-ruling on whether this
3 could be included in the rates or it shouldn't be,
4 and that has been the difficulty in getting there.

5 We want to do whatever is best for the
6 ratepayers. And so that the Commission is clear
7 and so that the Complainants are clear, Daufuskie
8 will do with this circumstance whatever the
9 Commission tells it to do. If the Commission says,
10 "Under the circumstances of this case, you should
11 have installed these services. Take them into your
12 system. They can be part of what's used-and-useful
13 in the future and you can include them in your
14 rates in the future," that's what they'll do. If
15 the Commission says, "Look, we understand under
16 this unique circumstance, because of the geography
17 and the facts, as they played out, we don't think
18 that the entire ratepayer base should be paying for
19 \$150,000 that essentially only serves two homes,"
20 then that's what we'll do, as well.

21 So although we come in conflict, because
22 that's the nature of a proceeding, part of the
23 problem is that, when we didn't follow a particular
24 procedure at the front end, it has put us in a very
25 unique position at the end, which is simply going

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1 to require adjudication by, I believe, a court of
2 competent jurisdiction or this Commission, should
3 it choose to exercise it.

4 COMMISSIONER ERVIN: So if we, hypothetically,
5 were to agree to such an order, would both – would
6 all parties – do you have the authority to bind
7 your clients that that would be a final resolution
8 of the matter, there would be no further appeals,
9 no further litigation?

10 MR. GRESSETTE: If the Commission were to –

11 COMMISSIONER ERVIN: Make a determination like
12 you suggested.

13 MR. GRESSETTE: Yes, sir. We would abide by
14 it. Yes, sir.

15 COMMISSIONER ERVIN: You'd abide by it.

16 MR. GRESSETTE: Yes, sir.

17 COMMISSIONER ERVIN: You wouldn't try to go to
18 the Supreme Court, run up more expenses –

19 MR. GRESSETTE: No, sir, not at all. The goal
20 is –

21 COMMISSIONER ERVIN: Right.

22 MR. GRESSETTE: – to –

23 COMMISSIONER ERVIN: Have a universal
24 resolution of all claims.

25 MR. GRESSETTE: Yes, sir. And, again,

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1 candidly, my clients don't plan to pursue a rate
2 case for several years from now. We know how
3 involved the most recent one has been. We're still
4 on an appeal. And so they're not in a position
5 where they can get a ruling on this within this
6 year. These unusual expenses would not be in a
7 test year. You know, there would be complicated
8 issues. But, if there is a way that the Commission
9 could work with us to give us a ruling, one way or
10 the other, we would certainly abide by it, no
11 appeals.

12 COMMISSIONER ERVIN: Mr. Smith, what do you
13 think about that?

14 MR. SMITH: My clients' interests are
15 certainly in trying to resolve this without further
16 cost and worry. That's what we've been trying to
17 do since the storm in 2016. And I believe that, if
18 we could reach a resolution, they're reasonable and
19 they'd be very happy.

20 COMMISSIONER ERVIN: And they would also agree
21 not to appeal or file separate lawsuits? In other
22 words, they would be willing to be bound by this
23 judgment or ruling?

24 MR. SMITH: Without knowing what that ruling
25 is, I can't answer --

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1 COMMISSIONER ERVIN: Yes, sir. Well, let me –
2 MR. SMITH: – what the decision is going to
3 be.

4 COMMISSIONER ERVIN: – just follow up and –
5 MR. SMITH: But I believe that they would.

6 COMMISSIONER ERVIN: Yeah. But you could make
7 a phone call and – or consult with them, and sign
8 off on it at some point?

9 MR. SMITH: Correct.

10 COMMISSIONER ERVIN: Yeah. Well, again, just
11 hypothetically speaking, what do you think would be
12 a fair amount to contribute to used-and-useful rate
13 base, what percentage? Have y'all talked about
14 that?

15 MR. GRESSETTE: No, sir.

16 MR. SMITH: We have not.

17 COMMISSIONER ERVIN: Would you be willing to
18 talk about it, if we took a 10-minute recess?

19 MR. SMITH: Yes, sir.

20 COMMISSIONER ERVIN: We need to confer with
21 our counsel, to – just to make sure that we're on
22 the right path.

23 MR. GRESSETTE: Yes, sir. I think the goal
24 would be, if we can reach some resolution today, by
25 agreement or decision of the Commission, about who

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1 should bear the costs and the –

2 **COMMISSIONER ERVIN:** Both sides would be
3 responsible for their own costs and attorneys'
4 fees.

5 **MR. GRESSETTE:** Yes, sir. If we could
6 determine the ultimate issue, whether DIUC should
7 have or shouldn't have put this in, then the next
8 question becomes can it be included in rate base in
9 the next proceeding.

10 **COMMISSIONER ERVIN:** All right.

11 Mr. Chairman, I suggest we give the attorneys
12 a chance to talk for 10 or 15 minutes, while we –

13 **CHAIRMAN RANDALL:** Okay. Let's get any other
14 questions that anybody –

15 **COMMISSIONER ERVIN:** Great.

16 **CHAIRMAN RANDALL:** – else wants to ask before
17 we do that. Anybody else got a question?

18 **COMMISSIONER WHITFIELD:** Mr. Chairman?

19 **CHAIRMAN RANDALL:** Yeah. Commissioner
20 Whitfield.

21 **COMMISSIONER WHITFIELD:** Did you have anything
22 you wanted to add, Mr. Smith, about the question I
23 asked to opposing counsel, Mr. Gressette, about the
24 interaction with ORS?

25 **MR. SMITH:** I will clarify for your

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1 information, yes, sir. We corresponded – I
2 corresponded, on behalf of my clients, with ORS,
3 spoke with them on the telephone, trying to
4 understand the regulations and the situation as it
5 might be viewed by the Regulatory Staff and this
6 Commission. Those communications did not result in
7 any firm decision. Unfortunately, we did not get
8 any true guidance, but we did make the effort and
9 ask the questions.

10 In response to some of those communications,
11 the ORS Staff did contact the utility directly. I
12 don't know that it went through Mr. Gressette –

13 MR. GRESSETTE: [Shaking head.]

14 MR. SMITH: – but they did talk with the
15 Guastellas directly.

16 COMMISSIONER WHITFIELD: Thank you, sir.

17 COMMISSIONER ERVIN: Just so that we're clear,
18 I think the cleanest way to do this would be a
19 consent order where both attorneys, or all
20 attorneys and parties, sign that they agree to be
21 bound by the order, and it would be a final
22 resolution of any of all claims. Would you agree
23 with that?

24 MR. SMITH: That's what I understood you to be
25 saying.

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COMMISSIONER ERVIN: Yes, sir, correct.

Mr. Chairman, I suggest we take a 15-minute recess and come back and see where we are.

CHAIRMAN RANDALL: Okay. Any other questions?

[No response]

Okay. We'll take a break.

MR. GRESSETTE: Thank you, Commissioners.

MR. SMITH: Thank you, very much.

[WHEREUPON, a recess was taken from 10:50 to 11:40 a.m.]

CHAIRMAN RANDALL: We'll call this hearing back to order.

I take it that counsel have been talking and discussing, and so I'll let you guys tell us what you've been talking about and we'll decide where to go from there. If y'all would get a microphone on, too.

MR. SMITH: Can you hear us if we don't pick it up?

CHAIRMAN RANDALL: Tell you what, go ahead and sit down. Sit down while you're doing it. That way, you can speak right into it.

MR. SMITH: [Indicating.] Thank you, very much.

CHAIRMAN RANDALL: Yeah. Just get it -- yeah --

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1 a little closer, and you're okay.

2 MR. SMITH: Mr. Gressette and I have been able
3 to discuss it; we've been able to confer with our
4 clients. Just got the final okay on what we had
5 discussed from both of my clients, so I think we're
6 ready to put the basic terms on the record.
7 Obviously, a paper document would need to follow.
8 And we notice, of course, with Mr. Stark's advice
9 here, as well, that the ORS is not present, and
10 wondering if that -- particularly as the rate issue
11 involved arises, some advice and counsel from them
12 might be appropriate, as well. Nevertheless, we
13 are, I believe, ready to speak to the Commission
14 with a proposed consent order.

15 CHAIRMAN RANDALL: Correct. What we'll do is
16 get your proposed consent order, and then it will
17 have to go to ORS, and then we'll proceed from
18 there.

19 MR. GRESSETTE: Yes, sir, Mr. Chairman.

20 Pursuant to the parties' conversations today
21 and the respective consulting with clients, I
22 believe that the three primary terms of the consent
23 order would be as follows: With regard to the
24 money expended for construction of the facilities,
25 the number in the filings is \$112,000, so the

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1 parties would propose that DIUC provide to the
2 Complainants a credit in the amount of half of
3 that, \$56,000, to be used against future billings
4 for the properties owned by the Complainants on
5 Driftwood Cottage Lane. That would include
6 availability fees, as well as usage fees. The
7 \$56,000 would be assigned between the two owners,
8 one-half to each set of owners. And the credit
9 would not be transferable or available to any later
10 owner of the properties.

11 The second provision would be that the
12 Commission approve that all costs incurred by the
13 utility related to this matter be deferred to and
14 recoverable in future rates, and I believe that
15 would include attorneys' fees, consulting fees, and
16 the taxes.

17 And, finally, that the new plant value
18 assigned \$56,000 be included in rate base and
19 recoverable in future rates.

20 CHAIRMAN RANDALL: Any —

21 VICE CHAIRMAN WILLIAMS: Mr. Chairman?

22 CHAIRMAN RANDALL: — questions?

23 VICE CHAIRMAN WILLIAMS: Quick, quick
24 question.

25 CHAIRMAN RANDALL: Yes, sir, Commissioner

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1 Williams.

2 VICE CHAIRMAN WILLIAMS: What is that – do you
3 have a total amount for the consulting fees and
4 legal fees?

5 MR. GRESSETTE: I do not have one right now,
6 Mr. Commissioner. I do know that – I anticipate
7 ORS will want to verify those, so my thought would
8 be that we gather up all those receipts and provide
9 them to ORS to verify that they were, in fact,
10 incurred and are properly documented. I think that
11 would be a little bit different than an audit,
12 right? We wouldn't expect them to come back and
13 say, "You should have 34, not 38," but I suppose
14 that's probably up to ORS and would impact us if
15 that happened.

16 CHAIRMAN RANDALL: Any other questions?

17 COMMISSIONER ERVIN: Mr. Chairman?

18 CHAIRMAN RANDALL: Commissioner Ervin.

19 COMMISSIONER ERVIN: Is it fair to say that,
20 if ORS signs off on your proposed agreement and the
21 Commission considers it and approves it, could you
22 also agree to a provision in the order that this
23 ends the pending litigation, any other claims that
24 the parties might have? Essentially, have mutual
25 releases of any and all claims?

3/20/19

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

1 MR. GRESSETTE: Yes, sir, Mr. Commissioner.

2 MR. SMITH: Yes.

3 COMMISSIONER ERVIN: Okay. That's good.

4 MR. SMITH: Yes.

5 COMMISSIONER ERVIN: Does the homeowners'
6 association – they don't really have any standing
7 at this point to raise issues, do they? So they
8 don't need to be a party to the action?

9 MR. SMITH: That's correct, sir.

10 COMMISSIONER ERVIN: Right. Thank you,
11 gentlemen. Appreciate your willingness to work it
12 out.

13 MR. GRESSETTE: Thank you, Commissioner.

14 COMMISSIONER ERVIN: We look forward to
15 hearing back from the ORS. They'll – we'd like for
16 them to sign on, as well, to the consent agreement.
17 Once all that's done, you can just package it up
18 and send it over to our Clerk, and we'll see it's
19 properly filed.

20 MR. GRESSETTE: Thank you, sir.

21 COMMISSIONER ERVIN: Thank you.

22 MR. SMITH: We haven't agreed –

23 CHAIRMAN RANDALL: Commissioner Whitfield.

24 MR. SMITH: – on a timeframe that the –

25 CHAIRMAN RANDALL: Hang on one second, and let

3/20/19

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

1 Commissioner Whitfield –

2 MR. SMITH: If you'd like to instruct us.

3 CHAIRMAN RANDALL: – get a question in.

4 COMMISSIONER WHITFIELD: These are just basic
5 assumptions, Mr. Smith, really for you, since Mr.
6 Gressette had read what you've agreed. I just want
7 to hear from you, for the record, if you agree – if
8 your clients agree to what Mr. Gressette just said.

9 MR. SMITH: They do. I was able to get in
10 touch with both of them during the break and
11 confirm.

12 COMMISSIONER WHITFIELD: And, lastly, another
13 assumption, I guess for you, Mr. Gressette. The
14 company agrees to continuation of service until all
15 of this is resolved?

16 MR. GRESSETTE: Yes, sir.

17 COMMISSIONER WHITFIELD: No – okay.

18 MR. GRESSETTE: Oh, you mean until,
19 presumably, we sign an agreement that says all our
20 disputes are resolved?

21 COMMISSIONER WHITFIELD: Right.

22 MR. GRESSETTE: Yes, sir. Certainly.

23 COMMISSIONER WHITFIELD: Because he had
24 mentioned earlier about a threatening of
25 interruption of service in his initial argument.

3/20/19

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

1 MR. GRESSETTE: Yes, sir, subject to any
2 safety, emergency, or unforeseen action, the
3 utility will keep the services on until we can
4 either resolve this by entry of an order or some
5 other event happens that leads us to conclude the
6 parties can't resolve it.

7 COMMISSIONER WHITFIELD: All right. Thank
8 you.

9 That's all I have Mr. Chairman.

10 CHAIRMAN RANDALL: Thank you. Any other
11 questions?

12 [No response]

13 Does counsel – do you have a suggestion for a
14 timeframe?

15 MR. GRESSETTE: I can prepare a very short
16 consent order and have it to ORS and to Mr. Smith,
17 along with – I can do that by Friday afternoon, and
18 I can get the invoices and things together by
19 Monday afternoon or Tuesday. So, by Tuesday
20 afternoon, I can have everything to everybody.

21 CHAIRMAN RANDALL: Okay.

22 MR. GRESSETTE: And then when should we have
23 it to the Commission?

24 COMMISSIONER ERVIN: Just as soon as the ORS
25 folks sign off on it, we'd be ready for filing.

3/20/19

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

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MR. GRESSETTE: Yes, sir. Thank you.

CHAIRMAN RANDALL: Yeah, be done by then.

MR. GRESSETTE: Thank you, Commissioners.

CHAIRMAN RANDALL: All right. Anything else
that needs to come before us?

[No response]

Thank you. Thank y'all for working on this.
Thank everybody. And we're adjourned.

[WHEREUPON, at 11:47 a.m., the
proceedings in the above-entitled matter
were adjourned.]

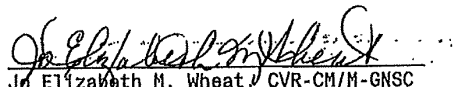
3/20/19

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

C E R T I F I C A T E

I, Jo Elizabeth M. Wheat, CVR-CM-GNSC, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing is, to the best of my skill and ability, a true and correct transcript of the proceedings had in oral argument held in the above-captioned matter before the PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA;

IN WITNESS WHEREOF, I have hereunto set my hand, on this the 7th day of October, 2019.


Jo Elizabeth M. Wheat, CVR-CM/M-GNSC
Hearings Reporter, PSC/SC
My Commission Expires: January 27, 2021.

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

3/20/19

C. DUKES SCOTT
EXECUTIVE DIRECTOR

1401 Main Street, Suite 900
Columbia, SC 29201



NANETTE S. EDWARDS
DEPUTY EXECUTIVE DIRECTOR

Toll Free: 1-800-922-1531
www.regulatorystaff.sc.gov

April B. Sharpe
Manager of Consumer Services

December 2, 2016

Dr. John Halwig
305 10th Street NE
Atlanta, Georgia 30309

RE: ORS File 2016-W-1682

Dear Dr. Halwig:

This letter is in response to your complaint filed at the Office of Regulatory Staff ("ORS") regarding Daufuskie Island Utility Company ("DIUC" or "Company"). In your complaint you state your property at 46 Driftwood Cottage Lane, Daufuskie Island, S.C. has been without water and sewer service since October 8, 2016 due to Hurricane Matthew. You are requesting DIUC provide a specific date that water and sewer service will be restored to the property.

The ORS contacted DIUC for assistance to investigate and respond to your complaint. According to DIUC, due to Hurricane Matthew, severe erosion occurred causing a wash out of the road and surrounding areas where the water and sewer mains were located. The water and sewer mains were destroyed and rendered unusable. DIUC states that the road and surrounding area will need to be restored and adequately protected from future erosion before the water and sewer mains can be reconstructed to provide service to this area.

DIUC states they are currently exploring other means of access to serve your property but have not obtained rights of way necessary to construct water and sewer infrastructure to serve your property. The Company states a specific date for restoration of water and sewer service to your property cannot be provided at this time.

ORS conducted a conference call with a representative from DIUC on December 1, 2016 and advised the Company of the following Public Service Commission ("PSC") Rules and Regulations:

PSC Wastewater and Water Regulations 103-540 and 103-740 state "Each utility, unless specifically relieved in any case by the commission from such obligation, shall operate

and maintain in safe, efficient and proper conditions of all of its facilities and equipment used in connection with the services it provides to any customer up to and including the point of delivery from systems or facilities owned by the customer."

PSC Wastewater Regulation 103-555 (e), states "The utility shall be responsible for providing the location for the connection of the customer's service pipe to the utility's service pipe or the utility's main, whichever is applicable, at the utility's expense, and at no expense to the customer."

PSC Wastewater Regulation 103-570 (B) states "It shall be the obligation of each utility dependent upon its ability to procure and retain suitable facilities and rights for the construction and maintenance of the necessary system to furnish adequate sewerage service to customers in the area or territory in which it operates."

PSC Water Regulation 103-755, "When the utility renders temporary service to a customer, it may require that the customer bear all the cost of installing and removing the service in excess of any salvage realized."

Based on ORS's review, the Public Service Commission of South Carolina's rules and regulations do not identify a specific time period for water and sewer service restoration. ORS will maintain contact with DIUC in regard to their efforts to restore water and sewer service to your property.

If you are not satisfied with the response from the ORS's investigation, you have the right to file your complaint with the PSC. To file a complaint with the PSC, you must complete the PSC's complaint form available online at www.psc.sc.gov. The completed form must then be mailed to the PSC at 101 Executive Center Drive, Suite 100, Columbia, S.C. 29210

If you have any questions, please contact me at 1-800-922-1531, extension 75194, or via e-mail at ccampbe@regstaff.sc.gov.

Sincerely,



Chad Campbell
Consumer Services
Office of Regulatory Staff

cc: Mike Guastella, Guastella and Associates (VIA E-MAIL)
Dawn Hipp, ORS Director, Utility Rates and Services
Sarah Johnson, ORS, Director, Utility Services
Willie Morgan, ORS, Director, Utility Rates
April Sharpe, ORS, Manager, Consumer Services

1401 Main Street, Suite 900



Phone: (803) 737-0800

abateman@regstaff.sc.gov

Andrew M. Bateman
Deputy Chief Counsel for ORS

December 21, 2018

VIA ELECTRONIC FILING

Jocelyn G. Boyd, Esquire
Chief Clerk & Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

RE: Stephen and Beverly Noller and Michael and Nancy Halwig, Complainants/Petitioners
v. Daufuskie Island Utility Company, Incorporated, Defendant/Respondent
Docket No. 2018-364-WS

Dear Ms. Boyd:

While the South Carolina Office of Regulatory Staff ("ORS") understands that there are complex issues that must be resolved in this case, it also believes that it is in the best interest of ratepayers for adequate utility service to be provided in a safe and reasonable manner. ORS has communicated extensively with counsel for both Daufuskie Island Utility Company ("DIUC") and the Complainants and believes that DIUC has the capability to safely restore service to the Complainants immediately. As a result, ORS would respectfully request, absent a showing from DIUC indicating why it cannot safely restore service, expedited review from the Public Service Commission of South Carolina and a requirement that DIUC immediately restore service to the Complainants with the understanding that restoration of service does not waive any position that any party may take in this matter.

Sincerely,

Andrew M. Bateman

cc: Joseph Melchers, Esquire (via E-mail)
All Parties of Record (via E-mail)



G. Trenholm Walker
Thomas P. Gressette, Jr.
Ian W. Freeman
John P. Linton, Jr.
Charles P. Summerall, IV

THOMAS P. GRESSETTE, JR.
Direct: 843.727.2249
Email: Gressette@WGFLAW.com

November 19, 2018

Via Email and US Mail

Mr. Chad Campbell
Office of Regulatory Staff
Supervisor, Consumer Services
1401 Main Street, Suite 900
Columbia, South Carolina 29201
Email: ccampbe@regstaff.sc.gov

Via Email and US Mail

Office of the Clerk
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210
Email: contact@psc.sc.gov

Via Email and US Mail

Newman Jackson Smith
Nelson Mullins Riley & Scarborough LLP
151 Meeting Street I Sixth Floor
Charleston, SC 29401-2239
Email: jack.smith@nelsonmullins.com

RE: Daufuskie Island Utility Company, Inc. ("DIUC")
Complaint of Michael and Nancy Halwig and Beverly Noller
Initial Informal Response
Docket Number TBD

Dear Mr. Campbell:

My office received a courtesy copy of correspondence related to the above-referenced matter. I am going to be out of the office beginning tomorrow and will not be available until December 2, 2018, so I wanted to provide you with at least an initial indication of DIUC's position. This is meant to be an initial, informal response and DIUC reserves the right to file testimony, exhibits, and additional responsive information should the same be necessary.

Walker Gressette Freeman & Linton, LLC
66 Hasell Street, Charleston, SC 29401 | PO Box 22167, Charleston, SC 29413 | 843.727.2200
www.WGFLAW.com

ACCEPTED FOR PROCESSING - 2018 November 26 7:36 AM - SCPSC - 2018-364-WS - Page 2 of 8

November 19, 2018
Page 2 of 3

Michael Halwig, Nancy Halwig, Beverly Noller and Stephen Noller (together the "Customers") own property on Daufuskie Island, South Carolina within the service area for Daufuskie Island Utility Company, Inc. ("DIUC"). The Customers were served by DIUC until a hurricane destroyed the roadway and DIUC infrastructure that allowed DIUC to service the Customers' property. After the on-island Homeowners' Association rebuilt the roadway, DIUC re-installed infrastructure and resumed water and sewer service to the Customers. After Hurricane Matthew again washed out the roadway and the DIUC infrastructure, the HOA refused to rebuild the roadway. DIUC consulted with ORS and understood that it was not obligated to purchase additional easements to install for a third time infrastructure to serve the Customers.

The Customers nonetheless wished to obtain service. So, the Customers and DIUC entered into a Customer Service Agreement ("CSA") (copy attached hereto as Exhibit A). Pursuant to the CSA, the Customers would construct infrastructure that upon approval by DIUC could become part of the DIUC system allowing DIUC to resume serving the Customers. Some of the installed items would be on the Customer's property and would remain under the Customers' ownership and care. Under existing law DIUC would not be taxed for the new items which would be recorded as contributions in aid of construction. DIUC agreed to waive any administrative costs that it might incur from Guastella Associates, DIUC's manager.

The CSA contains the following relevant provisions:

1. In order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to have the Project Mains installed. The purpose of this provision was to prevent DIUC's other customers from being forced to subsidize a third installation of infrastructure to the Customers' property.

5. Upon Completion of the Project Main, Customers will provide DIUC with an acknowledged bill of sale transferring them to DIUC, and they shall be and remain the property of DIUC and its heirs and successors, and will be treated as contributed for rate setting purposes. This provision specifically explains that the Customers and DIUC are agreeing the Project Mains will become the property of DIUC and they will be booked by DIUC as contributions in aid of construction.

Pursuant to the Tax Cuts and Jobs Act (TCJA), DIUC will be required to pay taxes for the contributions in aid of construction related to the Customers' contributions to the DIUC system. Under the TJCA, DIUC will incur a tax liability at a rate of \$33.24 for every \$100.00 of the amount booked as contributions in aid of construction. The amount taxed will include costs for the infrastructure as well as associated engineering and labor costs. The TCJA was in effect when the CSA was executed.

After construction was completed and DIUC received all the necessary documentation required by the CSA, counsel provided a document outlining the taxes due. Because counsel for the Customers had recently initiated an informal complaint with ORS, the document was intended to evidence the transaction was complete and that all conflicts between the Customers and DIUC had been amicably resolved. The document was captioned as "Addendum to Customer Service Agreement," which the Customers appear to have perceived to be some sort of renegotiation of the CSA. That was not the purpose of the document, as explained by correspondence from DIUC counsel (copy attached hereto as Exhibit B).

November 19, 2018
Page 3 of 3

DIUC has obtained necessary documentation to complete the transaction described in the CSA and invoices for the following costs associated with the Project Mains:

PINCO	\$ 69,337.72 ¹
Thomas and Hutton	\$ 39,346.35
Joe Davis	\$ 2,650.00
Sea Island Land Survey	\$ 1,300.00
SC DHEC	\$ 250.00
Transportation Costs	\$ 70.00
	<u>\$ 112,954.07</u>
Tax Rate	<u>33.24%</u>
Tax Due	\$ 37,545.93

DIUC provided the Customers with a statement from its legal counsel indicating that DIUC has incurred legal costs of \$3,900.00 related to the matters contained in the CSA. The legal fees are a cost to DIUC as part of the CSA and DIUC is not authorized to pass that cost on to its other customers.

Based upon the terms of the CSA and all the information available to date, the Customers are obligated to pay the tax obligation of \$37,545.93, which is equal to 33.24% of \$112,954.07, that DIUC will incur, plus reimbursement for DIUC legal fees in the amount of \$3,900.

DIUC remains willing to cooperate with the Customers and to assist as it is able. However, DIUC is not at this time authorized to pass on to its ratepayers these costs attributable solely to the reinstallation of the Project Mains for the Customers. To ensure its collection of these costs and to prevent DIUC's other customers from bearing the burden of the same, DIUC requires remittance per the CSA prior to activating service for the Customers.

I hope this letter will be sufficient to explain the circumstances and to resolve this matter. However, if additional information is required please allow DIUC ample time to respond taking into account my return to the office on December 2, 2018.

Sincerely,

/s/
Thomas P. Gressette, Jr.

Enclosures (as stated)

cc: DIUC, Attention Guastella Associates, Inc.

¹ Supplemental Schedule from Pinco totaling \$76,487.72 less \$7,150.00 for Items 6 and 7 which will remain the property and responsibility of the Customers.

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Daufuskie Island Utility Company, Inc.

725 N. Hwy A1A, Suite B103, Jupiter, FL 33477
888-635-7878

**BY
EMAIL**

January 30, 2018

Ms. Bev Noller
36 Driftwood Cottage Ln
Daufuskie Island, SC 29915

RECEIVED

FEB 07 2018

Dr. Michael Halwig
46 Driftwood Cottage Ln
Daufuskie Island, SC 29915

NELSON, MULLINS

RE: Customer Service Agreement for Customers located at
36 & 46 Driftwood Cottage Lane

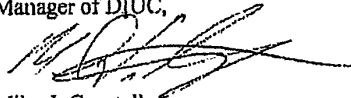
This Customer Agreement is necessary because of severe and continuous storm and tidal ocean erosion that destroyed the section of road located between 22 and 33 Driftwood Cottage Ln, containing Daufuskie Island Utility Company's ("DIUC") water and sewer facilities. Because these facilities could not be replaced as originally designed, DIUC is unable to provide service to customers located at 36 & 46 Driftwood Cottage Ln ("Customers"). As an alternative, DIUC provided Customers with a "Letter of Intent" to serve the customers by connecting to existing mains along Martinangel Ln. and install new mains and facilities ("Project Mains") through the Melrose Golf course to the Customers premises.

DIUC will serve Customers under the following terms of this agreement:

1. In order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to have the Project Mains installed in accordance with the plans they solicited from Thomas & Hutton, at their cost.
2. The installation of the Project Mains must comply with all applicable laws, ordinances, rules, regulations and lawful orders of governmental authorities, and approved by DIUC.
3. Customers will provide DIUC with the following documents: written approval by the owners of the Melrose golf course for the Project Mains installation; easements of sufficient width for the perpetual access to repair, replace and maintain the Project Mains, invoices pertaining to all costs incurred including but not limited to, engineering, permitting and construction.
4. Upon completion of the Project Mains installation, Customers must submit detailed "as built" drawings prepared by a licensed surveyor.
5. Upon Completion of the Project Main, Customers will provide DIUC with an acknowledged bill of sale transferring them to DIUC, and they shall be and remain the property of DIUC and its heirs and successors, and will be treated as contributed for rate setting purposes.
6. The Customers shall not for any reason be entitled to any refunds with respect to the Project Mains or any future extension or use of those facilities.

Under the circumstances of the need for this agreement there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

GUASTELLA ASSOCIATES, LLC
Manager of DIUC,


Mike J. Guastella
Vice President- Operations

G---:p--~
Ms. Bev ~~Noller~~

 2/1/18
Dr. Michael Halwig

Cc: Willie Morgan
Chad Campbell

From: Thomas P. Gressette, Jr.
To: Jack Smith
Subject: RE: 46 & 36 Driftwood Cottage Lanes (Halwig and Noller Residences)
Date: Wednesday, October 31, 2018 2:35:00 PM

Jack,

Thanks for your letter. I apologize if I created confusion by the Addendum I recently forwarded. DIUC did not intend to change the Customer Service Agreement ("CSA"); my goal was just to assemble and identify all the various documents in one place for the parties. If there is a better way to handle the paperwork, I am certainly open to that.

DIUC does not want to alter the terms of the CSA. As we have discussed, DIUC cannot charge its other customers for the \$3,900.00 for legal costs and \$37,545.93 for taxes DIUC will incur for the Contributions in Aid of Construction. In order to protect other customers from sharing in the cost responsibility, as set forth in the CSA, the Halwigs and Nollers must bear that cost.

Best,

Tom

From: Margaret Marks <margaret.marks@nelsonmullins.com> **On Behalf Of** Jack Smith
Sent: Wednesday, October 31, 2018 1:52 PM
To: Thomas P. Gressette, Jr. <Gressette@WGFLAW.com>
Subject: 46 & 36 Driftwood Cottage Lanes (Halwig and Noller Residences)

Please see the attached letter.

Best,
Jack

 **NELSON MULLINS**
Jack Smith
jack.smith@nelsonmullins.com | 843.534.4309
151 Meeting Street Suite 600 | Charleston SC 29401

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read,

EXHIBIT B

print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

ACCEPTED FOR PROCESSING - 2018 November 26 7:36 AM - SCPSC - 2018-364-WS - Page 8 of 8



G. Trenholm Walker
Thomas P. Gressette, Jr.
Ian W. Freeman
John P. Linton, Jr.
Charles P. Summerall, IV

THOMAS P. GRESSETTE, JR.
Direct: 843.727.2249
Email: Gressette@WGFLAW.com

December 26, 2018

Via Email Only

Newman Jackson Smith, Esquire
Nelson Mullins

Andrew Bateman, Esquire
Jeffrey M. Nelson, Esquire
Office of Regulatory Staff

RE: Daufuskie Island Utility Company, Inc.
Docket No. 2018-364-WS
46 & 36 Driftwood Cottage Lane (Halwig and Noller Residences)

Dear Counselors:

In response to the correspondence from ORS dated December 21, 2018, and pursuant to requests by the Customers (Halwig and Noller), service has been activated at the 46 & 36 Driftwood Cottage Lane.

However, it is my understanding that certain equipment on one or both of the Customers' properties (customer side of the meters) has been damaged by tides and/or erosion and that repairs are necessary and/or underway. The damaged items were installed only a few months ago, which highlights the reasons providing service to these homes is ill advised and risky. DIUC will cooperate as it is able, but I would note that it is the Customers' responsibility to comply with all permitting and inspection requirements for repairs conducted on their properties.

I have not visited the sites this week, so I am not certain of the issues. I do hope for the Customers' that these matters can be easily remedied.

Sincerely yours,

/s/

Thomas P. Gressette, Jr.

Walker Gressette Freeman & Linton, LLC
66 Hasell Street, Charleston, SC 29401 | PO Box 22167, Charleston, SC 29413 | 843.727.2200
www.WGFLAW.com

ELECTRONICALLY FILED - 2018 December 26 11:09 AM - SCPSC - Docket # 2018-364-WS - Page 1 of 1

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-364-WS

IN RE: Stephen and Beverly Noller and Michael) and Nancy Halwig, Complainants/) Petitioners v. Daufuskie Island Utility) Company, Incorporated, Defendant/) Respondent) _____)	DIUC RESPONSES TO SC OFFICE OF REG. STAFF'S FIRST AND CONTINUING AUDIT REQUEST FOR RECORDS AND INFORMATION
---	---

TO: ANDREW BATEMAN, ESQ.
SC. OFFICE OF REGULATORY STAFF

Daufuskie Island Utility Company ("DIUC") hereby responds to the South Carolina Office of Regulatory Staff's First and Continuing Audit Information Request for Records and Information, dated January 22, 2019, as follows.

1. Produce an electronic copy of all responses provided by DIUC in this proceeding to all discovery issued by other parties.

RESPONSE:

DIUC will produce to ORS an electronic copy of all responses provided by DIUC in this proceeding to discovery requests issued by other parties.

2. On page two (2) of the DIUC Answer, filed with the Commission on 12/17/18, DIUC represented that, "DIUC consulted with ORS and understood that since its easement had washed into the sea, DIUC was not obligated to purchase additional easements to install for a third time infrastructure to serve these two customers."
 - a. Provide the date, time, attendees of the call and/or meeting in which DIUC received the guidance from ORS that formed DIUC's position that DIUC was not obligated to "purchase additional easements to install for a third time infrastructure to serve" the Halwig and Noller premises.
 - b. Provide all supporting documents to detail the meeting/call with ORS including but not limited to meeting/call notes and correspondence.

RESPONSE:

DIUC objects to this Request because:

1. The Request is overly broad in time in scope, unduly burdensome, and not proportional to the needs of the case.
2. The resources of the parties with respect to the requested information are similar and to force the expense associated with the proposed discovery on DIUC improperly imposes an undue burden on DIUC.
3. The Request refers to DIUC's Answer and seeks information about "guidance from ORS," although that is not the statement included in DIUC's Answer. Therefore, the Request is premised upon a mischaracterization and misstatement of information provided by DIUC in its Answer. To respond DIUC must accept this mischaracterization, which it does not.

Subject to these objections, DIUC states:

Following Hurricane Matthew in October 2016, DIUC consulted with staff at ORS regarding DIUC's provision of water and sewer services to the Complainants' properties. Michael Guastella of Guastella Associates, DIUC's manager, participated in multiple telephone calls and exchanged emails with members of ORS staff. Of course, not all calls were specifically documented by DIUC and not all conversations between DIUC and ORS on this matter were followed by emails referencing the same. Select communications are discussed below and copies of relevant emails are herewith produced bearing Bates Numbers DIUC 0001 to DIUC 0091.

DIUC and ORS approached the situation cooperatively and freely exchanged information in an effort to address the unique circumstances involved.

For example, in a November 14, 2016, email from Mike Guastella to ORS's Chad Campbell with copy to ORS staff members Dawn Hipp, Sarah Johnson, April Sharpe, and Willie Morgan, DIUC explained the circumstances and its position:

Due to the hurricane, the main break was caused by a wash out of the road and surrounding immediate area under which the main was located. Unless the road and surrounding area is restored and adequately protected from any future erosion, it would not be possible to reinstall the main at that location. Clearly, the utility is not responsible for road and land recovery under the circumstances. We have been looking into other means of access to the Halwig property, but do not yet know the options in term of ownership of other property or availability of rights of way, and of equal significance who would pay for the cost. It seems that it is Mr. Halwig's responsibility to provide reasonable access, which may require a restoration effort by appropriate municipal authorities. In the meantime, we are also trying to find answers to these questions. Attached for your information are notices of restrictions regarding occupying the properties posted on Mr. Halwig's and his neighbor's properties. This is a more

complex problem than simply repairing or replacing a small section of main. We have had communications with Mr. Halwig explaining the circumstances and an inability to provide an estimate of restoration. It is still impossible to provide specific dates when the road and ground restoration that may be necessary, and which would not be the utility's responsibility, must be completed before we can reinstall a main - or find other means of access to Mr. Halwig's property.

DIUC's position was based upon the conclusion that it would not have been a prudent decision for DIUC to voluntarily install lines to these two rapidly eroding properties and then attempt in its next rate proceeding to make all the other DIUC ratepayers absorb the cost.

As noted by the additional November 2016 emails attached, Michael Guastella communicated further with Chad Campbell and Willie Morgan regarding the matter. At no time in any of the telephone conversations or email exchanges did any ORS staff member state or suggest that DIUC was obligated to purchase additional easements to install for a third time infrastructure to serve the Complainants.

On December 1, 2016, ORS staff members Dawn Hipp, Willie Morgan, and Chad Campbell joined Mr. Guastella on a conference call to discuss the situation impacting the Halwigs and Nollers. Ms. Hipp encouraged those on the call to "think outside the box" in an effort to be creative in finding a solution that would work for the property owners without subjecting DIUC or its ratepayers to excessive costs. During that call ORS staff encouraged DIUC to perhaps suggest a contractor and/or engineering firm to potentially assist the Halwigs and Nollers. In Mr. Campbell's December 1, 2016, email summarizing the call earlier that day, Mr. Campbell did not in any way indicate DIUC was obligated to purchase additional easements to install for a third time infrastructure to serve these two customers.

In its December 2, 2016, letter responding to Dr. Halwig's 2016 complaint, ORS did not indicate in any way that DIUC was obligated to purchase additional easements to install for a third time infrastructure to serve the Complainants. That letter was signed by Mr. Campbell and indicates copies were provided to Dawn Hipp, Sarah Johnson, Willie Morgan, and April Sharpe.

On December 14, 2016, the South Carolina Supreme Court heard oral arguments in DIUC's appeal of its most recent rate case order. Michael Guastella and Dawn Hipp were both present. After the oral argument Guastella and Hipp discussed the Halwig-Noller situation. Mr. Guastella updated Ms. Hipp regarding DIUC's efforts and Mr. Guastella's scheduled meeting the following day with OCRM regarding the Halwig and Noller properties. Ms. Hipp indicated DIUC was more than meeting all its obligations in the situation.

DIUC also copied Mr. Campbell on correspondence dated January 27, 2017, in which DIUC provided information to Dr. Halwig. Mr. Guastella provided that information

to Dr. Halwig in writing because ORS requested he do so during telephone call(s) regarding the matter.

At least one of these telephone calls occurred on January 23, 2017, with Mr. Guastella, Mr. Campbell, and Mr. Morgan. During that call the gentlemen discussed the document provided by Mr. Halwig and labelled "B-1". Mr. Guastella explained that DIUC did not prepare that document and that DIUC could not agree with it because it stated that DIUC would be "responsible for obtaining the necessary permits, the necessary surveys and the necessary paperwork to create the new utility easement. They will also be responsible for all construction costs and will return the construction area across the course to its prior state." Guastella again made clear DIUC's position that it could not agree to subject its other ratepayers to covering the costs of a third installation to serve the Complainants, especially given the ongoing and rapid erosion at the properties. The January 23, 2017, call is also referenced in an email from Mr. Campbell to Mr. Guastella dated January 24, 2017. During this call Mr. Campbell nor Mr. Morgan ever suggested to DIUC that DIUC was obligated to purchase additional easements to install for a third time infrastructure to serve these two customers. Likewise, the follow-up email does not suggest in any way that DIUC was obligated to purchase additional easements to install for a third time infrastructure to serve these two customers.

Via email dated March 21, 2017, Mr. Guastella reported to Mr. Campbell that the Halwigs and Nollers were proceeding with installation of additional equipment in a new easement, at the landowners' cost, as previously discussed between Messrs. Guastella, Campbell, and Morgan:

A quick update on the Driftwood/Halwig situation. I heard from Thomas & Hutton again and it sounds as though they will be working with both residents (Halwig & Noller) to provide the engineering reports for new customer service lines. They will be inspecting the area possibly as soon as this week. Our Operators will be with the engineer to answer any questions and show them our facilities. I will update you again when I have new information.

Mr. Campbell responded, "Thanks for the update Mike." Like the previous correspondence from ORS to Mr. Guastella, this email from Mr. Campbell does not indicate in any way that ORS disagreed with the construction as it was proceeding, at the landowners' expense.

This summary has been provided in an effort to be cooperative while preserving objections.

Generally, and based upon its objections, DIUC reserves the right to present additional facts and documents in support of its position.

3. On page six (6) of the DIUC Answer, filed with the Commission on 12/17/18, DIUC represented that, "DIUC sought input from ORS. ORS did not take the position that DIUC was obligated to incur these expenses and ORS did not agree DIUC should pass these costs on to its other ratepayers."
 - a. Provide the date, time, attendees of the call and/or meeting in which DIUC represented that ORS did not agree that DIUC should pass these costs on to its ratepayers.
 - b. Provide all supporting documents to detail the meeting/call with ORS including but not limited to meeting/call notes and correspondence.

RESPONSE:

See Response to Request #2.

4. On page seven (7) of the DIUC Answer, filed with the Commission on 12/17/18, DIUC represented that, "DIUC provided ORS a copy of the negotiated [Customer Service Agreement] and discussed with ORS counsel that the CSA did not require any further ORS or Commission approval."
 - a. Provide the date, time, attendees of the call and/or meeting in which DIUC discussed with ORS counsel that the CSA did not require any further ORS or Commission approval."
 - b. Provide all supporting documents to detail the meeting/call with ORS including but not limited to meeting/call notes and correspondence.

RESPONSE:

As indicated in the January 31, 2018, email from Michael Guastella to Thomas & Hutton engineer Fred Sororian, DIUC provided ORS staff members Chad Campbell and Willie Morgan with a copy of the Customer Service Agreement ("CSA"). Mr. Guastella received no response to this email from Mr. Campbell or Mr. Morgan.

In early September of 2018, Mr. Guastella spoke by telephone with Mr. Morgan regarding the CSA and whether or not any further ORS or Commission approval of the CSA was required. Mr. Guastella was concerned that the Complainants' new threats not to pay the CIAC taxes per the CSA could arguably create a potential impact on DIUC triggering the approval requirements of SC Regs. § 103-743 and § 103-541. Mr. Guastella asked for guidance and Mr. Morgan advised that Commission approval of the CSA was not necessary.

5. On page nine (9) of the DIUC Answer, filed with the Commission on 12/17/18, DIUC represented that, "DIUC consulted with ORS after Hurricane Matthew and DIUC consulted with ORS regarding the Customer Service Agreement."
 - a. Provide the date, time, attendees of the call and/or meeting in which DIUC consulted with ORS after Hurricane Matthew and DIUC consulted with ORS regarding the Customer Service Agreement.

- b. Provide all supporting documents to detail the meeting/call with ORS including but not limited to meeting/call notes and correspondence.

RESPONSE:

See Response Requests #2 and #4.

On September 25, 2018, Chad Campbell of ORS emailed Mr. Guastella seeking a response to an inquiry received by ORS from Attorney Jack Smith on behalf of the Halwigs and Nollers. Mr. Campbell described the inquiry as "regarding costs associated with restoral of water and sewer services to their properties on Driftwood Cottage Lane, Daufuskie Island, S.C."

Mr. Campbell requested that DIUC "provide a response to the ORS on or before October 2, 2018. In your response, please advise what responsibilities have been conveyed to the Halwig's and Noller's with regard to the restoral of water and sewer services to their properties."

Via email dated October 1, 2018, Mr. Guastella responded by email with attachments:

I've attached a copy of the executed 'Customer Service Agreement', that was sent on 1.31.18, in which you and Willie were both copied. Also included is the email correspondence between myself and Jack Smith leading up to the customers' agreeing to the terms of the 'Customer Service Agreement'.

Mr. Campbell and Mr. Guastella discussed the CSA via telephone on October 3, 2018. Mr. Campbell then requested by email that same day that Mr. Guastella provide his previous "response to the ORS on Company letterhead." Mr. Gusatella provided that response on October 4, 2018.

Respectfully submitted,

/s/ Thomas P. Gressette, Jr., Esq.

Thomas P. Gressette, Jr., Esq.

Walker Gressette Freeman & Linton, LLC

66 Hasell Street

Charleston, South Carolina 29401

843-727-2249

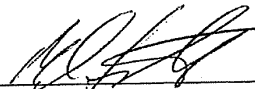
Gressette@WGFLAW.com

Counsel for Daufuskie Island Utility Co., Inc.

January 29, 2019
Charleston, SC

VERIFICATION

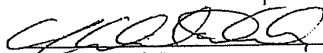
I, Michael J. Guastella, Vice President of Operations for Guastella Associates, the manager of Daufuskie Island Utility Company, Inc., hereby affirm that the foregoing Responses to the South Carolina Office of Regulatory Staff's First and Continuing Audit Information Request for Records and Information are true and accurate to the best of my knowledge based on my understanding of the questions.



Michael J. Guastella

SWORN to before me this

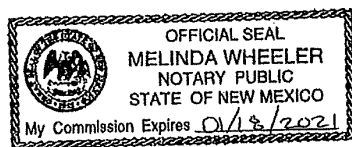
29 day of January, 2019.



Signature of Notary

Notary Public for State of New Mexico

My Commission Expires: 01/18/2021



1401 Main Street, Suite 900



Phone: (803) 737-0800

abateman@regstaff.sc.gov

*Andrew M. Bateman
Deputy Chief Counsel for ORS*

March 6, 2019

VIA ELECTRONIC FILING

Jocelyn G. Boyd, Esquire
Chief Clerk & Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

RE: Stephen and Beverly Noller and Michael and Nancy Halwig, Complainants/Petitioners
v. Daufuskie Island Utility Company, Incorporated, Defendant/Respondent
Docket No. 2018-364-WS

Dear Ms. Boyd:

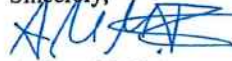
On February 27, 2019, the Public Service Commission of South Carolina ("Commission") issued Order No. 2019-22-H, in which it gave the parties the opportunity to brief the Commission on the scope of the Commission's jurisdiction as it relates to the issues in the case. The deadline for the initial brief is March 6, 2019.

On February 6, 2019, the South Carolina Office of Regulatory Staff ("ORS") filed the Direct Testimony of Ms. Dawn M. Hipp, the purpose of which was to provide the Commission with the facts surrounding the complaint received by ORS from Mr. Halwig and the subsequent interactions between ORS and Mr. and Mrs. Halwig and Mr. and Mrs. Noller. The ORS does not take a position on whether the Commission has jurisdiction sufficient to adjudicate the matters at issue in this proceeding.

Letter – Jocelyn G. Boyd, Esquire
Page 2 of 2
March 6, 2019

Therefore, please allow this letter to serve as notification that ORS will not file an initial brief pursuant to Commission Order No. 2019-22-H.

Sincerely,



Andrew M. Bateman

cc: Joseph Melchers, Esquire (via E-mail)
All Parties of Record (via E-mail)

ELECTRONICALLY FILED - 2019 March 6 4:41 PM - SCPSC - Docket # 2018-364-WS - Page 2 of 2

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-364-WS**

Stephen and Beverly Noller and	)	
Michael and Nancy Halwig,	)	
Complainants,	)	
	v.	COMPLAINANTS' BRIEF
	)	CONFIRMING JURISDICTION
Daufuskie Island Utility Co., Inc.,	)	
Respondent.	)	
	)	

Complainants Michael and Nancy Halwig and Beverly and Stephen Noller hereby provide this brief to address the jurisdiction of the Public Service Commission of South Carolina (the "Commission") as requested by the Commission. The parties were scheduled for the hearing in this case on February 28, 2019. Prior to the scheduled hearing, on February 26, 2019, counsel for the Commission contacted counsel for both parties and asked for a brief regarding jurisdiction and postponed the hearing pending the Commission's decision on its jurisdiction. For the reasons set forth below, the Commission has jurisdiction to hear this matter and to provide relief to Complainants.

BACKGROUND

Complainants are property owners on Daufuskie Island, specifically on Driftwood Cottage Lane in the Melrose Plantation Subdivision of Daufuskie Island. Daufuskie Island Utility Company ("DIUC") is the sole utility provider for the Melrose community. Complainants have no choice but to obtain water and sewer service from DIUC. The Complaint in this matter concerns the refusal of DIUC to provide water or sewer to the Halwigs and Nollers following damage to its mains under a portion of Driftwood Cottage Lane. DIUC insisted that these customers plan, obtain the permits for, and pay for the construction and installation of mains connecting the water and sewer mains on Martinangel Road to those on Driftwood Cottage Lane adjacent to their properties before it would restore service. Complainants engaged an engineer, hired a contractor and began installation in November 2017 so they could get water and sewer service restored and stop the suffering of the loss of use of their homes since October 2016. In January 2018 DIUC offered a written agreement (the Customer Service Agreement) requiring Complainants pay for the installation that they had already begun. Rather than walk away from and abandon their homes, and since they were already installing the replacement mains, Complainants signed the agreement. Following the installation of the replacement water and sewer mains, DIUC refused again to provide service until Complainants signed a new agreement.

Additional background information is presented in the documents filed in this matter, and Complainants refer to and incorporate herein all allegations of the Complaint and all pre-filed testimony with exhibits of Complainants and Respondent in this matter.

ARGUMENT

The Commission has jurisdiction in this matter pursuant to S.C. Code Ann. Section 58-5-210, *et seq.*, which provides that the Commission is “vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this state.” This statute provides broad authority to this Commission concerning the operations and service furnished by public utilities. The Commission has jurisdiction over this matter because DIUC’s actions denied service to its existing customers, failed to comply with the Commission’s regulations, and was based on an unauthorized agreement. Moreover, DIUC’s decisions usurp this Commission’s authority by unilaterally deciding what costs would be allowed or not allowed under its approved Rate Tariff or future rate decisions of the Commission. Complainants have requested relief from the Commission, both in the form of a reimbursement of expenses forced upon Complainants and any further or other relief the Commission may grant. It is acknowledged that water service was restored upon agreement of the ORS, Respondent and Complainants that such restoration of service during the pendency of this matter would not prejudice any of the parties.

At the start it is important to note that the Commission is a creature of statute, and its authority is limited to that granted by the statutes. *Nucor Steel, a Div. of Nucor Corp. v. Public Service Comm.*, 310 S.C. 539, 426 S.E.2d 319 (S.C. 1992)(citations omitted). Such statutes must be interpreted according to their clear meaning. *Id.* The regulations promulgated by the Commission likewise are derived from the statute, and, in interpreting the statute and regulations, they must be given their plain meaning. *See Doe v. South Carolina Dept. of Health and Human Services*, 727 S.E.2d 605, 398 S.C. 62 (S.C. 2011).

DIUC has violated the Commission’s regulations by failing or refusing to provide replacement mains or even temporary water and sewer services to the Complainants’ homes, and by not making plans for the known threat and expected damage¹ to its system that would impair its ability to provide water and sewer service to its existing customers. DIUC has violated Commission regulations by requiring that the Complainants pay for the “cost of installation” of equipment to restore services to its existing customers when the customers were not at fault for the damage to the utility’s equipment. DIUC has usurped Commission authority and regulations by requiring that the Complainants pay the tax under review by this Commission² and its attorney’s fees. In addition, DIUC attempted to extract an agreement from Complainants that they would not file a Complaint or take any other action against DIUC for its refusal to provide the water and sewer service that deprived Complainants of use of their homes for over two years. Even after DIUC forced the Complainants to install and pay for facilities and equipment that are DIUC’s obligation under Commission regulations, DIUC attempted to force Complainants to accept these additional conditions before DIUC would provide service. The Addendum offered by Respondent clearly included these additional terms and would breach the agreement Complainants signed even if the agreement was valid.

¹ See Respondent’s pre-filed testimony of Michael Guastella, Page 4, ll 3-11.

² The Jobs Credit and Tax Act (*See* PSC Docket #2017-381-A)

Complainants had no choice but to deal with DIUC, which has sole rights to provide water and service in this territory, and had no choice but to try to re-establish water and sewer service for their homes or suffer the complete loss of their homes upon the refusal of DIUC to prepare for the well-known threats to its system and to replace its equipment when damaged.

1. The Commission has jurisdiction over this matter, because DIUC has failed to provide adequate and proper water and sewer service to Complainants.

The Commission has jurisdiction to address a utility's failure to provide adequate and proper service. See S.C. Code Ann. § 58-5-210, -710; *Patton v. Public Service Comm.*, 280 S.C. 288, 312 S.E.2d 257 (SC 1984); In RE: Petition of the Office of Regulatory Staff, 2016 WL 3054859 (SCPSC May 24, 2016); In re Utilities Services of South Carolina, Inc., 2009 WL 2987189 (2009). DIUC has failed to meet its statutory and regulatory obligations to Complainants. DIUC has failed to install and maintain the facilities and equipment as required by regulations. DIUC has also forced the individual homeowner Complainants to meet the utility's obligations and to pay for those obligations. DIUC took these actions without the required approval of the Commission.

The regulations of the Public Service Commission allow customers of a public utility to file a complaint against the utility regarding "the charges, practices, facilities, or service" of the facility. S.C. Code Regs. 103-538 and -738. The regulations also allow customers to request a hearing before the Commission with respect to such complaints. *Id.* This is exactly what Complainants have done in this matter, and the statute and regulations provide the Commission with jurisdiction to hear this Complaint and regulate this utility to address the complaints.

The regulations further provide that the utility should not discontinue service to the customers until the Commission makes a decision in the hearing. *Id.* However, in this instance, the customers were without service from DIUC for over two years and only regained service from DIUC after they filed the Complaint in this matter and the ORS, Complainants and DIUC agreed turning the water back on would not prejudice any party in this matter.

The regulations of the Public Service Commission for water and sewer service provide that a public utility shall install and maintain its facilities and equipment. S.C. Code Reg. 103-500 and -700. For example, Regulation 103-740 and Regulation 103-540 provide that:

Each utility, unless specially relieved in any case by the Commission from such obligation, shall operate and maintain in safe, efficient and proper conditions all of its facilities and equipment used in connection with the services it provides to any customer up to and including the point of delivery into systems or facilities owned by the customer.

The sewer service regulations include additional requirements for a utility to install and maintain service pipes. Regulation 103-555 states:

Complainants' Brief Confirming Jurisdiction
Halwig v. DIUC
Docket No. 2018-364
Page 3

service to their property. DIUC has placed its responsibility under these regulations on the individual homeowner Complainants without Commission approval.

DIUC forced the Complainants to agree to repair, replace and pay for the utility's facilities and equipment. In forcing Complainants to do so, DIUC claimed that it would be impossible for it to procure and retain suitable facilities and rights for the construction of the necessary system to furnish adequate sewer service to its customers. Complainants have shown that it was possible even for lay people not in the utility business to acquire the easement, hire the contractors and engineers, perform the permitting, and to replace the necessary system to furnish adequate water and sewer service. DIUC then forced Complainants to transfer ownership of the new facilities and equipment installed and paid for by Complainants to DIUC. DIUC abandoned its statutory and regulatory obligations, failed to provide adequate and proper water and sewer service, and reverted to protecting its own profit by requiring its own individual customers to bear all costs.

2. The Commission has jurisdiction over this matter, because DIUC has attempted to circumvent the Commission's authority over rates by forcing the individual homeowner Complainants to fund the installation of replacement facilities and equipment now owned by the utility without Commission approval.

The Commission has jurisdiction over this matter to approve or not approve DIUC's shifting the cost burden of maintaining its system to the Complainants by forcing them to replace DIUC's facilities and equipment purportedly in an effort to avoid a request for a rate increase. DIUC claimed that the responsibility to maintain DIUC's facilities and equipment was the responsibility of the Halwigs and the Nollers, because such maintenance would affect the utility's future rates. This Commission has the sole authority to set rates for public utilities, such as DIUC. The Commission has the jurisdiction and the duty to review this matter, because it addresses both DIUC's rates and service. DIUC has not followed the state Commission's regulations in forcing the Complainants to pay for the utility's facilities and equipment.

The Commission has the authority to review the business practices and expenses of a public utility. See *Utilities Services of SC v. Office of Regulatory Staff*, 392 S.C. 96, 708 S.E.2d 755 (SC 2011); *Kiawah Property Owners Group v. Public Service Comm.*, 392 S.C. 232, 593 S.E.2d 148 (SC 2004); and *Patton*. In exercising its power to supervise and regulate rates and service, "the Commission must be allowed the discretion of imposing reasonable requirements on its jurisdictional utilities to insure that adequate and proper service will be rendered to the customers of the utility companies." *Patton*, 312 S.E.2d at 260. The Commission "is entitled to create incentives for utilities to improve their business practices." 708 S.E.2d at 760. The Commission "may determine that some portion of an expense actually incurred by a utility should not be passed on to consumers." *Id.* The Commission "may determine - independent of any party - that an expenditure is suspect and requires further scrutiny." *Id.* at 761. Just as the Commission has the authority to review a public utility's expenses and business practices at the time of a request for a rate increase, the Commission also has the authority and the obligation to evaluate a utility's

expenses and business practices upon complaint of its customers, particularly when such business practices are employed in order to circumvent the Commission's authority to establish rates.

The Commission also has authority over a utility's agreements regarding its willingness and ability to provide service. Commission regulations require a utility to submit a contract regarding utility service to the ORS *and* to obtain approval from the Commission:

No utility shall execute or enter into any agreement or contract with any person, firm, partnership, or corporation or any agency of the Federal, state, or local government which would impact, pertain to, or effect said utility's fitness, willingness, or ability to provide water service, including but not limited to the treatment of said water, without first submitting said contract in form to the commission and the ORS and obtaining approval of the commission.

SC Code Reg. 103-541 and -743. This language requires that the Customer Service Agreement be submitted to the Commission and the ORS, and also that it be *approved* by the Commission. The Agreement addresses and affects the utility's willingness or ability to provide water and sewer services. Regulation 103-703.C³ supports the fact that the agreement is not deemed approved or consented to by the mere filing of it. The Commission has the authority to approve, or not approve, such an agreement. Approval of this agreement, forced upon Complainants under threat of losing their homes, would be inconsistent with Commission regulations and the statutory authority to regulate the services of every utility in this state.

The pre-filed testimony of Mr. Michael Guastella includes a reference to bringing the agreement to the ORS with a question of whether it needed approval⁴. While the ORS responded that it did not, the regulation clearly requires that the Commission make this decision. This is clear jurisdictional authority for the Commission to find the agreement was not authorized, is void and for the parties to be put back in their financial positions prior to entering into the agreement. This would require Respondent to reimburse Complainants for the expense of replacing DIUC's mains or otherwise make them whole.

Under Regulation 103-755, a utility can charge a customer all of the costs of installing and removing the service equipment when there is a provision of temporary service to a customer. The permanent replacement of the utility's own mains in this matter is not a temporary service but a permanent service which allows these Complainants to again enjoy the use of their private property.

³ SC Code Reg. 103-703.C: No rate, *contract*, or rules and regulations of any utility under the jurisdiction of this commission shall be deemed approved or consented to by the mere filing of a schedule, or other evidence thereof, in the offices of the commission. (*emphasis added*)

⁴ See Respondent's pre-filed testimony of Michael Guastella, Pages 21, 11 15-23, page 22, 11 1-2.

DIUC claims that it can force Complainants to pay for the replacement mains under Regulations 103-702.4 and 103-502.3, which provide as follows:

A fee paid by a customer under a contract entered into by and between the utility and its customer providing terms for the extension of the utility's mains to service the customer.

(This water regulation refers to a customer contribution in aid of construction, while the sewer regulation refers to a customer main extension fee.) DIUC has claimed that the Customer Service Agreement is such a contract. However, Complainants were not requesting an extension of the utility's mains but repair and replacement of mains that were already in place. Before the mains were damaged by the storm in 2016, the water and sewer mains under Driftwood Cottage Lane were connected to the water mains under Martinangel Road below where part of these mains were damaged on Driftwood Cottage Lane. The replacement mains installed by Complainants under the golf course connect the same mains. This work did not extend service to a new customer, and there was no increase or expansion of the service area of DIUC through replacement of the mains that were damaged. Complainants had no choice but to abandon their homes or begin the process to replace the mains to obtain service from DIUC. Only after Complainants had already hired the engineer and contractor and started the work did DIUC require a written agreement. The regulation referenced by DIUC is not a basis for forcing any agreement on an existing customer.

The Commission has jurisdiction over if and to what extent a utility like DIUC can charge an individual homeowner, like Complainants, with any tax imposed under the Jobs Credit and Tax Act. *See* PSC Docket #2017-381-A. DIUC's demand that the Complainants pay this tax to DIUC before DIUC was willing to restore service to the homes is within the Commission's jurisdiction. The Commission's broad authority to regulate utilities can address the agreement forced upon Complainants and not authorized by the Commission, the imposition of any fees or tax on the costs Complainants were forced to incur, and address DIUC's failure to plan and prepare for known and acknowledged threats to its equipment serving Complainants.

CONCLUSION

The Commission has jurisdiction over this matter pursuant to S.C. Code Ann. Section 58-5-210, *et seq.*, which provides that the Commission is "vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this state." The Commission has jurisdiction over the enforcement of its regulations in the provision of services by the utilities regulated by it. The Commission has jurisdiction over this matter because DIUC is subject to all water and sewer regulations of this Commission, and has failed to provide its services to Complainants consistent with the Commission's regulations, including but not limited to S.C. Code Regs. 103-540, 541, 740, and 743; and has attempted to circumvent the Commission's authority over rates by forcing the individual homeowner Complainants to fund the installation of replacement facilities now owned by the utility, requiring the payment of a federal tax expected to

be imposed on the Respondent and payment of attorney's fees of Respondent before service would be restored under an agreement not authorized by the Commission.

Complainants also request that the hearing before the Commission now held in abeyance be scheduled as soon as possible.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Newman Jackson Smith
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ATTORNEYS FOR COMPLAINANTS

March 6, 2019
Charleston, SC

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-364**

Stephen and Beverly Noller and Michael and Nancy Halwig, Complainants,	)	REPLY BRIEF
	)	ON JURISDICTIONAL MATTERS
	)	BY RESPONDENT
	)	DAUFUSKIE ISLAND UTILITY CO., INC.
v.	)	WITH CONSENT
	)	FOR DECISION ON THE ISSUE
Daufuskie Island Utility Co., Inc., Respondent.	)	WITHOUT ORAL ARGUMENT
	)	

The Complainants' Brief Confirming Jurisdiction ("Complainants' Brief") asserts that "The Commission has jurisdiction over this matter because DIUC's actions denied service to its existing customers, failed to comply with the Commission's regulations, and was based on an unauthorized agreement." Complainants' Brief at 2. Not one of these three broad categories is sufficient to bring this matter within the Commission powers enumerated in its statutory grant of jurisdiction; therefore, the Complainants demand for payment of over \$100,000 cannot be granted and this matter should be dismissed.

First, as the Complainants admit, the water and sewer service lines to their homes were twice destroyed by storm events, with the most recent occurring in 2016 when "the mains were destroyed by Hurricane Matthew." M.Halwig Complaint Form at 1, N.Halwig Complaint Form at 1; B.Noller Complaint Form at 1; *see also* Complaint at 1 ("As a result of the erosion from Hurricane Matthew, a portion of Driftwood Cottage Lane was washed out, and with it water and sewer mains...."). Therefore, DIUC did not deny service to any customers; a hurricane washed away the infrastructure twice and in the second storm the entire right-of-way was destroyed leaving DIUC without a safe and proper way to service the Complainants.

Several weeks after Hurricane Matthew, in late 2016, the Halwigs filed a Complaint with the South Carolina Office of Regulatory Staff (“ORS”) regarding what the Complaint in this matter refers to as “the refusal of DIUC to restore service” after the hurricane washed away Driftwood Cottage Lane and the service equipment serving their two homes. Complaint at 1. The Complaint in this matter goes on to state that ORS responded via letter dated December 2, 2016, stating “that the statutes do not provide a definitive time frame within which service has to be restored.” *Id.*

Instead of at that time continuing to pursue their complaint through the Commission’s proper channels, the Complainants abandoned the statutory procedure and undertook to build their own infrastructure. By initiating their complaint in 2016, the Complainants availed themselves of the jurisdiction of the Commission but then disregarded the Commission’s jurisdiction and pursued a remedy via contract with DIUC. The Complainants removed this matter from Commission jurisdiction by choice. They took their dispute with DIUC into the private sector, negotiated a contractual remedy, obtained assistance from DIUC with locating contractors, and signed a Customer Service Agreement (“CSA”) whereby DIUC would take ownership of the new facilities. Then, after using the CSA to their benefit to obtain service, the Complainants initiated this claim to void the CSA and to ask the Commission to order DIUC to pay them over \$100,000 for what they voluntarily spent in conjunction with the CSA. Additionally, after taking their dispute with DIUC into the private sector and negotiating a contractual remedy, Complainants now attempt to assert this Commission has jurisdiction to void that private contract because it represents DIUC’s attempt to “circumvent the Commission's authority over rates.” Complainants’ Brief at 7. That is simply not consistent with the facts as alleged and cannot sustain the Complainants burden for establishing jurisdiction to hear their claim. *See In Re: Bellsouth Telecommunications, Inc.-Transit Traffic Tariff 2005-50*, No. 2005-63-C, 2006 WL 7358110, at *1 (Mar. 28, 2006) (The

party seeking relief in a complaint proceeding bears the burden of establishing this Commission has jurisdiction to hear their claims and to grant the relief they seek.).

Even if the Complainants' own actions did not demonstrate that they intended to and did, in fact, remove this matter from Commission jurisdiction, the South Carolina Supreme Court has provided the Commission with clear instruction on how to address its jurisdiction over a particular complaint. When analyzing its jurisdiction, the Commission must look to determine "the real issue" at stake. See *Martin v. Carolina Water Servs., Inc.*, 273 S.C. 43, 46, 254 S.E.2d 52, 53 (1979). Clearly, in this matter, as it also was in *Lindler v. Baker*, 280 S.C. 130, 131–32, 311 S.E.2d 99, 100 (Ct. App. 1984), the question is not the reasonableness of service but is, instead, a common pleas question of contract interpretation and availability of remedies. Cases like this one do not raise the narrow question of "the reasonableness of a rate charged by a public utility, which, under Section 58–5–210 of the South Carolina Code of Laws (1976)" is properly within the Commission's jurisdiction. *Id.* The Complainants' seek a ruling contrary to the caselaw and one that inappropriately disregards the distinction our courts have recognized between regulatory matters and business contracts.

With or without the Complainants' decision to remove their dispute from Commission jurisdiction, an examination of the "real issue" in this matter demonstrates the Complainants raise questions the Commission is not empowered to address and seek remedies the Commission cannot grant.¹

¹ If the Commission has any reasonable doubt regarding its jurisdiction, the South Carolina Supreme Court has explicitly instructed that the Commission should decline to hear the matter. See *S.C. Elec. & Gas Co. v. Pub. Serv. Comm'n*, 275 S.C. 487, 489–90, 272 S.E.2d 793, 794–95 (1980) (Any reasonable doubt of the existence in the Commission of any particular power should ordinarily be resolved against its exercise of the power.); see also *State v. Manning*, 305 S.C. 413, 416, 409 S.E.2d 372, 374 (1991) (citing *Holland v. United States*, 348 U.S. 121, 75 S.Ct. 127 (1954) ("A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.")). Certainly, the Commission request for briefing indicates the presence of doubt sufficient to require the Commission to decline to hear this matter.

Contrary to the assertions in the Complainants' Brief, DIUC has complied with all Commission regulations, including S.C. Code Regs. §§ 103-540 and 103-740 as cited in the Complainants' Brief. These Regulations require utilities to "operate and maintain in safe, efficient and proper conditions all of its facilities and equipment used in connection with the services it provides." S.C. Code Regs. §§ 103-540 and 103-740. Isolating the first words of the regulations, as opposed to reading all the words collectively and in context, the Complainants assert Sections 103-540 and 103-740 "provide that a public utility shall install and maintain its facilities and equipment." Complainants' Brief at 3. That is technically correct; however, these regulations read as a whole demonstrate the intent is to direct utilities to ensure their facilities and equipment are operated under "safe, efficient and conditions." S.C. Code Regs. §§ 103-540 and 103-740.

As the Supreme Court has instructed many times:

A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Id.* (citation omitted).

Sparks v. Palmetto Hardwood, Inc., 406 S.C. 124, 128, 750 S.E.2d 61, 63 (2013) (quoting *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011)). Reading the regulations practically and reasonably does not lead to the Complainants' conclusion that the *purpose* of the cited regulations is to require service be provided. Instead, reading the regulations "in a sense that harmonizes with its subject matter and accords with its general purpose" demonstrates the purpose of the regulations is to address the provision of service in a safe and efficient manner.

The Complainants cannot isolate words and rewrite regulations to suit their purposes. The rules of statutory interpretation are clear:

"[W]ords in a statute must be construed in context." *Southern Mut. Church Ins. Co. v. South Carolina Windstorm and Hail Underwriting Ass'n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991). Thus, "the Court may not, in order to give effect to

particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent.” *Id.*

Sparks v. Palmetto Hardwood, Inc., 406 S.C. 124, 128–29, 750 S.E.2d 61, 63 (2013).

By failing to properly analyze the regulations, the Complainants’ Brief refuses to address the fact that the operative language in the cited Regulations when read in context and as a whole, demonstrate the intent is to address provision of safe service.²

Third, the Complainant’s Brief alleges that the Customer Service Agreement (“CSA”) was not authorized by the Commission, it was therefore invalid, and that invalidity conveys jurisdiction upon this commission to hear complainants’ claims. *See* Complainant’s Brief at 6. This wholly illogical position is based upon a theory that SC Code Reg. §§ 103-541 and 103-743 required DIUC obtain Commission approval for the CSA. Complainants Brief focuses on the Regulations’ requirement that a utility agreement or contract should be submitted to the Commission and ORS for approval if the agreement “would impact, pertain to, or effect said utility’s fitness, willingness or ability to provide water service.” Again, the Complainants ignore the primary focus of the Regulations, which is whether or not the agreement in question could potentially affect the utility’s ability to provide service. The reference in the Regulations is the overall fitness of the utility to

² Safe service has been DIUC’s focus in responding to the second washout of Driftwood Cottage Lane. As set forth in the DIUC Answer, there was no way to safely provide service after the hurricane and there was no way to provide service in an economically appropriate or efficient manner; the roadways could not be rebuilt and without them any infrastructure re-installed by DIUC would have been unprotected from the elements. *See* Answer at 2 (stating DIUC determined “the homes at issue lack any significant protection from erosion and equipment installed would not last very long at all before again being destroyed by erosion.”). The Melrose POA concurred. *See* Answer at 1 (citing Email, December 19, 2016, from MPOA President (stating “Unfortunately the Atlantic Ocean has proved to be a force we cannot compete with” and therefore the MPOA “cannot reconstruct or protect Driftwood Cottage Lane because it is not allowed [by OCRM] to use the materials necessary to ensure any permanence to the effort.”)). As also explained in the DIUC Answer, DIUC considered and addressed the efficiency requirement of the regulations. *See* Answer at 2 (“DIUC determined it would not be prudent to expend other ratepayers’ funds to acquire a new easement and then reconstruct services to these homes”).

safely and securely provide service to its customers; the regulation is not intended to apply to an agreement such as the one present that does not implicate or have the ability to implicate the utility's financial and physical ability to provide service. To read the regulations as Complainants suggest would be to unlawfully give effect to particular words thereby destroying the meaning of the entire context. *See Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 128–29, 750 S.E.2d 61, 63 (2013) (warning of the dangers of a statutory interpretation that would “give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent”).

The “real issue” at stake here is the Complainants’ request that this Commission void a contract that the Complainants sought in lieu of presenting their 2016 complaint to the Commission. Now, after using that contract to their benefit, the Complainants ask this Commission to enter an order of money damages in their favor based on a claim that they were forced to enter the contract. None of these issues is properly within Commission jurisdiction and the Complainants’ Brief fails to establish otherwise. The Commission does not have jurisdiction to hear the Complainants’ claims or to grant the relief they seek.

Resolving any reasonable doubt as to jurisdiction by declining to hear this matter, in accordance with *S.C. Elec. & Gas Co. v. Pub. Serv. Comm’n*, 275 S.C. 487, 489–90, 272 S.E.2d 793, 794–95 (1980), the Commission should dismiss the matter.

Further, should the Commission determine based upon the filings that oral argument is not necessary on this issue, DIUC certainly consents to the Commission deciding this jurisdictional question without oral argument.

Respectfully submitted,

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March 13, 2019
Charleston, SC

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2019, I caused to be served a copy of the foregoing Reply Brief upon:

Public Service Commission of South Carolina
Attn: Clerk's Office
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

I further certify that the above-referenced Reply Brief is a true and correct copy of the Reply Brief that I e-filed in the above-referenced matter and via email served:

Andrew Bateman, Esq.
Jeffrey M. Nelson, Esq.
Office of Regulatory Staff

Newman Jackson Smith, Esq.
Nelson Mullins
Counsel for Stephen and Beverly Noller and Michael and Nancy Halwig

March 13, 2019
s/ Thomas P. Gressette, Jr.
Thomas P. Gressette, Jr.
WALKER GRESSETTE FREEMAN & LINTON, LLC

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-364-WS**

Stephen and Beverly Noller and	)	
Michael and Nancy Halwig,	)	
Complainants,	)	
v.	)	COMPLAINANTS' RESPONSE to the BRIEF
	)	on JURISDICTIONAL MATTERS BY
Daufuskie Island Utility Co., Inc.,	)	RESPONDENT
Respondent.	)	
_____	)	

Complainants hereby file this Response to the Brief on Jurisdictional Matters by Respondent Daufuskie Island Utility Company, Inc. ("DIUC"). For the reasons set forth below and in Complainants' Brief Confirming Jurisdiction, this Commission has jurisdiction over this matter, because (1) DIUC has failed to provide adequate and proper water and sewer service to Complainants; and (2) DIUC has attempted to circumvent the Commission's authority over rates by charging the individual homeowner Complainants the costs of installation of replacement facilities and equipment now owned by the utility and other costs outside of its approved rates without Commission approval.

1. DIUC's agreement to provide water and sewer service to Complainants after the filing of the Complaint in this matter does not affect the jurisdiction of the Commission.

Respondent argues that the Commission does not have jurisdiction because Complainants' request to restore service is moot. However, DIUC only agreed to provide service after Complainants filed the Complaint in this matter. DIUC has failed to provide service to its customers for over two (2) years. DIUC has denied service during this time by failing to replace the mains necessary and based on its position that Complainants must pay DIUC tax and attorney fees as a condition of DIUC's provision of water and sewer services. If this Complaint is

dismissed, DIUC will likely withdraw service again. Prior to restoring service, all parties in this matter agreed that restoration would not prejudice any party's position before the Commission.

The Complaint requests appropriate relief, including adequate and proper service, a refund of the charges *or such other just and proper relieve as the Commission may provide*.

2. The Customer Service Agreement does not divest this Commission of jurisdiction.

Respondent argues that the Commission does not have jurisdiction, because it alleges that Complainants are asking the Commission to undo the Customer Service Agreement, which was signed under duress. In its Brief, DIUC portrays the Complaint in this matter as a purely private contractual dispute and not a rate setting matter. DIUC seems to believe that the Commission only has jurisdiction over rates and ignores this Commission's broad authority over services, practices and standards. The Commission should have reviewed the Customer Service Agreement for approval or disapproval. DIUC's failure to submit the Customer Service Agreement for approval prior to its execution violates state regulation for contract approval and shows DIUC's efforts to circumvent the rate setting authority of the Commission. The Commission has jurisdiction over this matter for both DIUC's failure to provide service and its circumvention of the rate process.

While there is a history of communication between the utility and the ORS staff, DIUC never asked for approval of ORS until September 2018 after the installation was complete and the issue of the potential tax liability was raised.¹ The Commission should exercise its jurisdiction

¹ See Testimony of Michael J. Guastella, Vice President of Operators for Guastella Associates, Inc., which provides utility rate, valuation and management consulting services to DIUC, dated February 6, 2019, at 20:1-22:2; see also Letter from ORS to Dr. John Halwig dated December 2, 2016, Complainants 00053-54, in which ORS confirmed that it informed DIUC of the applicable PSC regulations concerning its responsibilities.

and require public utilities to provide the Commission and Staff the opportunity to review and approve such contracts affecting what a utility can charge customers prior to their being executed and prior to unilateral decisions concerning what will and what will not be included in rate making before the Commission.

DIUC's failure to provide for the capital costs in its documentation for setting rates of the replacement mains to its customers' homes, when it admits those mains were at risk from experience with them, is an attempt to avoid regulation by this Commission. The capital costs for the replacement mains is a factor for determining the rates that DIUC can charge to its customers, if approved by this Commission. Having avoided bringing the question to this Commission, DIUC decided that it would not bear that cost but charge it directly to only certain of its customers. This Commission has jurisdiction to remedy that unilateral assumption of its authority.

The mains that DIUC forced the Complainants to install were replacement mains and not new mains. Damage causing the need for replacement of mains can be caused by hurricanes and erosion, and also by sinkholes and other calamities. The mains were owned and operated by DIUC and the responsibility of DIUC. DIUC does not have the regulatory or legal authority to make decisions concerning Complainants' homes or the management of the beachfront and coastal resources involved at their location. Nevertheless, DIUC usurps not only this Commission's authority but also that of federal and state agencies governing the South Carolina coastline and made a unilateral determination that there is no 'permanency' of the Complainant's homes to support the cost of installing the replacement mains. DIUC admits that it made a decision that Complainants would not be permanent customers:

...the Complainants cannot be considered reasonably permanent customers. Accordingly, no investment should be made by DIUC because it is unlikely that the Complainants would generate ongoing revenues to support an investment comparable to the average investment reflected in the rates being paid by existing customers, thereby shifting the risk of the cost recovery of the investment from the Complainants to existing customers through future rate setting.

Testimony of John F. Guastella, President of Guastella Associates, LLC, which provides utility rate, valuation and management consulting services to DIUC, dated February 6, 2019, at 4:11-19. The replacement of DIUC's mains to service existing customers is the responsibility of DIUC, and its failure to do so is an issue squarely within the jurisdiction of this Commission. To allow the charging of such costs of replacing its own facilities, especially when it knew the chance of damage was present and did not prepare for it so as to continue to comply with regulations requiring maintenance of service, allows a utility to condemn property and put extreme financial pressure on certain of its customers.

The facts of this matter provide jurisdiction to the Commission for DIUC's failure to provide adequate and proper service to its customers, its charging of customers of cost of installation, its failure to submit the contract for services to the Commission for approval prior to its execution, and DIUC's attempt to circumvent the Commission's rate approval authority.

3. The cases cited by Respondent are too distinguishable to be relevant to the issue of the Commission's jurisdiction in this matter.

First, Respondent argues that the Commission does not have jurisdiction based on its denial of standing to a shareholder of SCE&G, citing See Order No. 2018-339, *Joint Application & Petition of S.C. Elec. & Gas Co. & Dominion Energy, Inc. for Review & Approval of A Proposed Bus. Combination*, No. 2017-370-E, 2018 WL 2264265, at *1 (May 9, 2018). This decision is factually distinguishable from the current Complaint. The Commission's denial of standing to a

shareholder is too distinguishable from the claims of the Complainant customers in this matter to have any bearing.

Next, Respondent argues that the Commission does not have jurisdiction based on the *Lindler v. Baker*, 280 S.C. 130, 311 S.E.2d 99 (Ct. App. 1984) and *Martin v. Carolina Water Servs., Inc.*, 273 S.C. 43, 254 S.E.2d 52 (1979). Respondent attempts to characterize the Complaint as a solely an enforcement of contract matter.

The *Lindler* and *Martin* cases are factually distinguishable from this matter. In *Lindler*, the Court of Common Pleas determined that it had jurisdiction to enforce a lease agreement and a purchase contract, which identified which party must pay sewer service fees. *Lindler*, 311 S.E.2d at 101. In *Martin*, the South Carolina Supreme Court determined that the Court of Common Pleas had jurisdiction “to enforce the payment of the compensation defendant agreed to pay for the property it bought.” *Martin*, 254 S.E.2d at 52. In both cases, the contracts at issue pre-dated the regulation that required such contracts to be approved by the Commission. *Lindler*, 311 S.E.2d at 133. At the time of the facts involved in the *Martin* case, the Commission did not yet regulate water and sewer service. *Martin*, 254 S.E.2d at 52.

In its Brief, Respondent references “undisputed facts.” Complainants do not agree that all facts cited by Respondent are undisputed. Complainants do not address each and every disagreement with those facts here but, instead, address only the legal arguments necessary to confirm the Commission’s jurisdiction in this matter.

In its Brief, Respondent cites S.C. Code Ann. § 58-5-270 and §58-5-710, both of which provide for jurisdiction in this matter. The Commission has not only the explicit authority provided in the statutes and regulations cited above and in Complainants’ Brief but also the implicit

authority needed to carry out those responsibilities. *See Hamm v. Central States Health and Life Co. of Omaha*, 299 S.C. 500, 386 S.E.2d 250 (1989)(holding in favor of the implied power to issue refunds).

For all of the reasons set forth above and in Complainant's Brief, Complainants request that this Commission acknowledge its jurisdiction of this matter and reschedule the hearing as soon as possible.

Respectfully submitted,

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