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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Appellate Case No. 2020-000266

Commission Docket No. 2017-292-WS

In Re: Application of Carolina Water Service, Inc.
for Approval of an Increase in its Rates for
Water and Sewer Services

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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October 9, 2020

Pursuant to Rule 213 of the South Carolina Rules of Appellate Practice, and to assist this Court in resolving the issues presented in the Petition appealing the Commission's denial of Carolina Water Services' ("CWS") request for reconsideration, Congaree Riverkeeper ("Congaree Riverkeeper") respectfully moves this Court for permission to participate as amicus curiae. If leave to file an amicus brief is granted, Riverkeeper would address two reasons CWS's Petition should be denied: (1) CWS's request would diminish the value of the critical victory secured for the public by Riverkeeper in *Congaree Riverkeeper, Inc. v. Carolina Water Serv., Inc.*, 248 F. Supp. 3d 733 (D.S.C. 2017); (2) CWS's request would shift the consequences of violating the Clean Water Act to ratepayers and contravene the Act's citizen suit and attorneys' fees provisions.

I. Interests of Amicus Curiae

Congaree Riverkeeper, Inc. is a non-profit organization founded in 2008 and headquartered in Columbia, South Carolina. Congaree Riverkeeper's mission is to protect and improve water quality, wildlife habitat, and recreation on the Broad, Lower Saluda and Congaree Rivers through advocacy, education, and enforcement of environmental laws.

Congaree Riverkeeper works to protect the Broad, Lower Saluda and Congaree Rivers through several means. Congaree Riverkeeper conducts water quality monitoring, organizes river and stream cleanups, responds to pollution reports, reviews and comments on permits, and engages in various regulatory processes. If warranted, as was the case with CWS's ongoing violations of the Clean Water Act at its I-20 wastewater treatment plant, Congaree Riverkeeper engages in litigation to protect our rivers from misuses. Congaree Riverkeeper also works to educate local and state leaders and the public about river conservation issues.

II. Importance of an Amicus Curiae Brief and Its Relevance to the Issues

In 2015, Congaree Riverkeeper brought the underlying litigation which has spurred CWS's attempt to gain this rate increase. For many years, Congaree Riverkeeper monitored pollution from the CWS I-20 facility, a wastewater treatment plant near the Saluda River in Lexington County, South Carolina. After years of noncompliance with their Clean Water Act permit, including numerous effluent violations, and with no resolution of the problems in sight, Congaree Riverkeeper sent a notice of intent to sue CWS in November of 2013. Congaree Riverkeeper eventually filed its litigation in January of 2015 in the United States District Court for the District of South Carolina ("District Court"). After protracted litigation, the District Court found CWS to be liable for violations of the Clean Water Act in (1) failing to connect to the regional sewer system and eliminate its discharge from the Saluda River as its permit required; and (2) violating certain effluent limitations contained in its permit.

Congaree Riverkeeper has a strong interest in the instant matter given that a ruling by this Court could diminish the import of this significant victory that CWS litigated for over four years, and would contravene the clear purpose of the Clean Water Act's citizen suit provision by allowing CWS to pass on costs of this litigation to the utility's customers. Given Congaree Riverkeeper's intricate knowledge of the underlying litigation, Congaree Riverkeeper's participation here will help this Court put CWS's Petition in its proper context. Congaree Riverkeeper has detailed knowledge of the facts and arguments raised below, and the District Court's response to them. Congaree Riverkeeper will thus assist the Court in weighing CWS's argument that its expenses in defending the underlying litigation were reasonably and prudently incurred in providing adequate service to its customers. For example, several of CWS's arguments—including that CWS made a "good faith" effort to secure the interconnection

required by its permit and reasonably believed that it did not have a burden to secure the connection itself—have been raised repeatedly in the underlying litigation, and repeatedly rejected. As the plaintiff in the underlying litigation, Congaree Riverkeeper will help the Court understand how the public interest is implicated by this Court sanctioning arguments that would diminish the value of the District Court’s ruling.

Moreover, Congaree Riverkeeper is the only party with expertise in Clean Water Act citizen suits and the purposes of these, including the deterrent value of citizen suits and attorneys’ fees. It is important that this Court hear from Congaree Riverkeeper to ensure that the Court understands the intricacies of the underlying litigation, Congaree Riverkeeper’s victory, and the Clean Water Act’s purposes of deterrence, including the Act’s explicit encouragement for citizens to bring enforcement actions and recover attorneys’ fees as part of this scheme. In sum, Congaree Riverkeeper’s brief will help the Court weigh all relevant factors in this important matter of public concern.

CONCLUSION

For the reasons stated above, Congaree Riverkeeper respectfully requests that this Court grant this Motion and accept the attached conditional Brief of Amicus Curiae for filing.

Respectfully submitted this 9th day of October, 2020,

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