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**S.C. SUPREME COURT**

**THE STATE OF SOUTH CAROLINA**

**In the Supreme Court**

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**APPEAL FROM THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

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**Appellate Case No. 2020-000266**

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**Commission Docket No. 2017-292-WS**

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

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**RECORD ON APPEAL  
VOLUME I OF II**

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BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2017-292-WS - ORDER NO. 2018-345(A)

MAY 30, 2018

IN RE: Application of Carolina Water Service, Inc.     ) AMENDED ORDER  
      for Approval of an Increase in Its Rates for     ) APPROVING RATES  
      Water and Sewer Services                         ) AND CHARGES

This amended Order is being issued to amend Order No. 2018-345 to correct an error in the pro forma estimated Uncollectible Accounts calculation and to reflect the resultant reduction to direct revenues and rates, and to correct the docket caption to conform to the Docket Management System. The remainder of the Order is identical to Order No. 2018-345.

This matter is before the Public Service Commission of South Carolina ("Commission") on the Application of Carolina Water Service, Inc. ("CWS" or "Company") for approval of a new schedule of rates and charges and modifications to certain terms and conditions for the provision of water and sewer services for its customers in South Carolina. CWS filed its Application on November 10, 2017, pursuant to S.C. Code § 58-5-240 and S.C. Code Regs. §§ 103-503, 103-703, 103-512.4.A and 103-712.4.A.

In the Application, CWS requested an increase in revenues for combined operations of \$4,511,414 consisting of a water revenue increase of \$2,272,914 and a sewer revenue increase of \$2,238,500. The revenue increase utilizes a return on equity

(“ROE”) of 10.5% based on the rate of return on rate base methodology and a historical test year beginning September 1, 2016, and ending August 31, 2017.

CWS requested permission to modify its sewer service tariff to reduce the frequency with which customers must test their backflow devices from every year to every two years, and to authorize the Company to terminate service, after notice, to a customer who fails to demonstrate that his backflow device is working properly. App. p. 6, ¶ 20. CWS requested authorization to increase its Water Meter Installation Charge from \$35 to \$45 per year, to more accurately reflect the utility’s cost of providing this service. App. p. 6, ¶ 21. The Company also requested approval of a provision in its tariff limiting the liability of the Company, its agents, and employees for interruption of service, whether caused by acts or omissions, to those remedies provided in the Commission’s rules and regulations. App. p. 6, ¶ 22.

CWS last rate case before this Commission was in Docket No. 2015-199-WS. In that case, the Commission approved a settlement in which CWS received a combined revenue increase of \$3,068,441 based on a \$50,955,443 rate base; an operating margin of 11.95%, an ROE of 9.34%, and a return on rate base of 7.99%.

CWS’ South Carolina operations are classified by the National Association of Regulatory Utility Commissioners (“NARUC”) as a Class A water and wastewater utility according to water and sewer revenues reported on its Application for the test year ending August 31, 2017. The Commission’s approved service area for CWS is in parts of sixteen counties.

I. PROCEDURAL BACKGROUND

The Commission's Clerk's Office instructed CWS to publish a prepared Notice of Filing, one time, in a newspaper of general circulation in the area affected by CWS' Application and to mail copies of the Notice of Filing to all customers affected by the proposed rates and charges and modifications. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the scheduled proceeding of the manner and time in which to file the appropriate pleadings. CWS filed affidavits demonstrating the Notice of Filing had been duly published and provided to all customers.

Petitions to Intervene were subsequently filed on behalf of the Forty Love Point Homeowners' Association ("Forty Love"), York County, and James S. Knowlton. The South Carolina Office of Regulatory Staff ("ORS"), a party of record pursuant to S.C. Code § 58-4-10(B), made on-site investigations of CWS' facilities, audited CWS' books and records, issued data requests, and gathered other detailed information concerning CWS' operations.

CWS was represented by Charles L.A. Terreni, and Scott Elliott. Laura P. Valtorta represented Forty Love. Michael K. Kendree represented York County, Mr. Knowlton appeared pro se. Jeffrey M. Nelson, and Florence P. Belser represented the ORS. On March 28, 2018 York County moved to withdraw from the proceedings without prejudice after CWS withdrew its request for approval of the Utility System Improvement Rate ("USIR"). York County's request was granted on the same day. Order No. 2018-38-H.

The Commission held public hearings in Lexington, York, and Greenville counties to allow CWS's customers to present their views regarding the Application. An evidentiary hearing was held April 3-4, 2018, at the Commission's offices in Columbia with the Honorable Swain E. Whitfield, presiding.

The Company presented the testimony of Michael R. Cartin, Operations and Regulatory Affairs Manager (direct, rebuttal and supplemental), Robert M. Hunter, Financial Planning and Analysis Manager (direct and rebuttal), and Bob Gilroy, Vice President of Operations (direct, rebuttal, and testimony responsive to customers who testified at public hearings). Mr. Cartin, testified about the Company's operations and various expenses and capital expenditures made by CWS. Mr. Hunter testified about the Company's finances and revenue requirement, and Mr. Gilroy testified about various aspects of the Company's operations and customer service. The Company also presented the testimony of Dylan W. D'Ascendis, CRRA, Director at ScottMadden, Inc., who testified to the Company's capital structure, cost of debt, and recommended ROE.

Forty Love presented the direct testimony of subdivision residents and customers Barbara King and Jay Dixon. They testified to problems experienced with the sewer system serving Forty Love Point. Mr. Knowlton presented his rebuttal testimony opposing the amount and frequency of the Company's rate increases.

ORS presented the testimony of Matthew Schellinger (direct and surrebuttal), Zachary Payne (direct and surrebuttal), and Douglas H. Carlisle, Jr., Ph.D. (direct and surrebuttal) as a panel. Dr. Carlisle testified to the Company's capital structure, cost of debt, and recommended ROE.

Dr. Carlisle's testimony included an analysis and recommendation for an allowed ROE. Mr. Payne testified about ORS's examination of the Application and CWS' books and records and the subsequent accounting and pro forma adjustments recommended by ORS. Mr. Schellinger's direct testimony focused on CWS' compliance with Commission rules and regulations, ORS' business office compliance review, inspections of CWS' water and wastewater systems, test year and proposed revenue, and performance bond requirements.

## II. REVIEW OF THE EVIDENCE AND EVIDENTIARY CONCLUSIONS

### A. Standards and Required Findings

In considering the Application, the Commission must ascertain and fix just and reasonable rates, standards, classifications, regulations, practices, and measurements of service to be furnished. The Commission must give due consideration to the Company's total revenue requirements and review the operating revenues and operating expenses of CWS to establish adequate and reasonable levels of revenues and expenses. The Commission will consider a fair rate of return for CWS based on the record and any increase must be just and reasonable and free of undue discrimination. CWS has also asked this Commission to approve revenues based on an authorized ROE established to allow CWS the opportunity to earn a fair return.

After evaluation of the positions of the parties, the Commission reaches the legal and factual conclusions discussed below, based on its review of the facts and evidence of record. The evidence supporting the Company's business and legal status is contained in

the Application filed by CWS, testimony, and in prior Commission orders in the docket files of the Commission, of which the Commission takes judicial notice.

CWS has approximately 16,000 water customers and 14,000 sewer customers in Lexington, Richland, Sumter, Aiken, Saluda, Orangeburg, Beaufort, Georgetown, Abbeville, Union, Anderson, York, Cherokee, Greenville, Greenwood, and Williamsburg counties. App. Schd. F; R. p. 345 (Gilroy Dir. p. 2, ll. 21-24). As a public utility, its operations are subject to the jurisdiction of the Commission pursuant to S.C. Code §§ 58-5-10 et seq.

B. Test Year

A fundamental principle of the ratemaking process is the establishment of a historical test year as the basis for calculating a utility's return on rate base. To determine the utility's expenses and revenues, we must select a 'test year' for the measurement of the expenses and revenues. *Heater of Seabrook v. PSC*, 324 S.C. 56, 59 n.1 (1996). While the Commission considers a utility's proposed rate increase based upon occurrences within the test year, the Commission will also consider adjustments for any known and measurable out-of-test year changes in expenses, revenues, and investments, and will also consider adjustments for any unusual situations which occurred in the test year. When the test year figures are atypical, the Commission should adjust the test year data. See *S. Bell Tel. & Tel. Co. v. Pub. Serv. Com*, 270 S.C. 590, 603 (1978).

In its Application, CWS utilized a historic test year, the twelve months beginning September 1, 2016, and ending August 31, 2017, with adjustments for 2018 expectations. App. p.2, ¶ 5. ORS used the same historical test year. R. p. 729 (Payne Dir. p. 2, ll. 5-

10). None of the other parties contested CWS' proposed test year. Based on the information available to the Commission, and that none of the parties objected to CWS' proposed test year, the Commission concludes that the test year beginning September 1, 2016, and ending August 31, 2017, is appropriate for this Application.

C. Rate of Return on Rate Base

The Company requested rate base and rate of return treatment for its Application. App. pp. 4-5, ¶ 16. No other party of record proposed an alternative method for determining just and reasonable rates and the testimony of ORS' witnesses Payne and Carlisle assumes that return on rate base will be the methodology employed.

The Commission has wide latitude in selecting a rate setting methodology. Heater of Seabrook, at 64. Even though S.C. Code § 58-5-240(H) requires the Commission to specify an operating margin in all water and sewer rate cases, the Commission is not precluded by that statute from employing the return on rate base approach to ratemaking. Id. Operating margin "is less appropriate for utilities that have large rate bases and need to earn a rate of return sufficient to obtain the necessary debt and equity capital that a large utility needs for sound operation." Id at 65. In the Company's last rate case, the Commission employed the return on rate base methodology. The Commission finds the return on rate base methodology is appropriate. The Company's rate base, according to its Application, is \$54,853,170. App. Ex. B, Sch. C, p. 1.

The determination of return on rate base requires consideration of three components, namely: capital structure, cost of equity (or "ROE") and the cost of debt. R. pp. 397-398 (D' Ascendis Dir. pp. 4-5).

Mr. D'Ascendis and Dr. Carlisle agreed the capital structure and cost of debt of CWS's parent, Utilities, Inc. should be employed: it is 48.11% long-term debt and 51.89% common equity. R. pp. 395 (D'Ascendis Dir. p. 2, ll. 10-17); 649 (Carlisle Dir. p.4, ll. 21-p.5, l. 3). No other party disagreed. The Commission finds this capital structure supported by the uncontroverted testimony of the parties.

Mr. D'Ascendis and Dr. Carlisle disagreed on CWS's cost of debt. Mr. D'Ascendis used an embedded debt rate of 6.60%. Dr. Carlisle lowered CWS's cost of debt rate from 6.60% to 6.58% due to what he described as "unfavorable terms" of the Company's long-term debt. R. p. 649 (Carlisle Dir., p. 4, l. 21 – p. 5, l. 9). Dr. Carlisle argued the Company imprudently refinanced its long-term debt when interest rates were high and agreed to terms which prevent it from refinancing now that interest rates are lower. Id. Mr. D' Ascendis countered that the Company's long-term debt financing, which was agreed to in 2006, was in line with bond yields for similarly situated companies at the time. R. p. 438 (D'Ascendis, Rebut. p. 3, ll. 1-14). However, the Commission has not been provided any evidence to support the ORS position. We find the appropriate long-term debt rate for CWS is 6.60%.

The rate of return on common equity, or ROE, is a key figure used in calculating a utility's overall rate of return. *Porter v. PSC*, 333 S.C. 12 (1998). A utility is entitled to the opportunity to earn a fair rate of return. *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) and *Bluefield Water Works Improvement Co. v. Public Service Comm'n*, 262 U.S. 679 (1922),

Mr. D'Ascendis recommended that CWS' ROE should fall within a range of 10.45% to 10.95%. R. p. 397 (D'Ascendis Dir. p. 4, ll. 4-20 (Table 2)).

To determine the cost of equity, Mr. D'Ascendis used the Discounted Cash Flow ("DCF") Risk Premium Model ("RPM") and the Capital Asset Pricing Model ("CAP-M") and ("ECAP-M") model to similar risk companies, i.e. proxy groups, of regulated and non-regulated companies. R. pp. 396-397 (D'Ascendis Direct pp. 3-4).

The proxy groups were used by Mr. D'Ascendis because the Company's common stock is not publicly traded, and, therefore, CWS's market-based common equity cost rates cannot be determined directly. Id. He used a proxy group of eight water companies whose common stocks were actively traded for insight into a common equity cost rate applicable to CWS. R. p. 402 (D'Ascendis Direct, p.10). The utility proxy group was selected according to these criteria: 1) they are included in the Water Utility Group of Value Line's Standard Edition (October 13, 2017); 2) they have 70% or greater of 2016 total operating income and 70% or greater of 2016 total assets attributable to regulated water operations; 3) at the time of the preparation of this testimony, they had not publicly announced that they were involved in any major merger or acquisition activity (i.e. one publicly traded utility merging with or acquiring another); 4) they have not cut or omitted their common dividends during the five years ending 2016 or through the time of the preparation of this testimony; 5) they have Value Line and Bloomberg adjusted betas; 6) they have a positive Value Line five-year dividends per share ("DPS") growth rate projection; and 7) they have Value Line, Reuters, Zacks, or Yahoo! Finance consensus five-year earnings per share ("EPS") growth rate projections. Id. The companies that met

Mr. D'Ascendis' criteria were: American States Water Co., American Water Works Co., Inc., Aqua America, Inc., California Water Service Group, Connecticut Water Service, Inc., Middlesex Water Co., SJW Corp., and York Water Co. Id.

Mr. D'Ascendis also selected a proxy group of twenty-eight non-price regulated companies comparable in total risk to the proxy group of water companies. R. Ex. 8 (D'Ascendis Direct, Ex. 1, Schd. DWD-6). The criteria for non-price regulated proxy group were: 1) they must be covered by Value Line Investment Survey (Standard Edition); 2) they must be domestic, non-price regulated companies, i.e., non-utilities; 3) their beta coefficients must lie within plus or minus two standard deviations of the average unadjusted beta of the utility proxy group; and 4) the residual standard errors of the Value Line regressions, which gave rise to the unadjusted beta coefficients, must lie within plus or minus two standard deviations of the average residual standard error of the utility proxy group. R, p. 423 (D'Ascendis Direct, p. 30, ll. 15-23).

Mr. D'Ascendis' DCF analysis yields cost rates for the water company proxy group of 8.64%. The RPM analysis produced a common equity cost rate of 10.69% for the water company proxy group. The CAP-M cost rate is 10.51% for the water company proxy group. D'Ascendis averaged the mean, 10.43%, and median, 10.58%, equity costs of the water company proxy group, resulting in 10.51%. R. p. 424 (D'Ascendis Direct, p. 29, ll. 10-15). With the non-price regulated proxy group, the DCF yields 13.57%, the RPM, 11.91%, and the CAP-M/ECAP-M, 11.15%. R. p. 424 (D'Ascendis Direct, pp. 31, l. 12-32, l. 4). The average of the mean and median of the non-price regulated proxy group is 12.06%. R. p. 425 (D'Ascendis Direct, p. 32, ll. 7-14).

The approximate average of the results produced by any of Mr. D’Ascendis’ models is 10.45%. R. p. 426 (D’Ascendis Direct, p. 33, ll. 5-9). He also recommended an upward adjustment of 0.50% ROE, due to CWS’s small size. R. pp. 426 - 429 (D’Ascendis Direct, p. 33, l. 11- 36, l. 20). His average ROE after the size adjustment is 10.95%. R. p. 429 (D’Ascendis Direct, p. 36, ll. 17-20). Mr. D’Ascendis recommended range of ROE was 10.45% to 10.95%. R. p. 397 (D’Ascendis Dir. p. 4, ll. 4-20 (Table 2)).

Dr. Carlisle employed the DCF model, the Comparable Earnings Model (“CEM”), and the CAP-M method to calculate his ROE range of 8.82% to 9.54%. R. p. 647 (Carlisle Direct, p. 2, ll. 12-15).

Dr. Carlisle also used a water company proxy group of ten water companies for his DCF and CAP-M analyses. R. p. 649 (Carlisle Direct, p. 4, ll. 15-20). Dr. Carlisle’s water company proxy group was identical to Mr. D’Ascendis’ water company proxy group except for the addition of Global Water Resources and Artesian Resources. Carlisle Rev. Exhibit DHC-4.

Dr. Carlisle’s DCF analysis yields cost rates for his water company proxy group of 8.82%. R. p. 654 (Carlisle Direct, p. 9, ll. 5-6). Dr. Carlisle did not perform the DCF analysis on non-price regulated proxy group as Mr. D’Ascendis did.

Dr. Carlisle’s CAP-M analysis compared the returns of the companies in his water company proxy group to a “risk free rate of return” (projected 30 yr. Treasury bond yield). R. p. 658 (Carlisle Direct, p. 13, ll. 17-23). Dr. Carlisle’s CAP-M analysis produced a range of 9.38% to 9.70%, which he averaged for a final CAP-M rate of

9.54%. R. p. 659 (Carlisle Direct, p. 14, ll. 12-13). Dr. Carlisle did not perform the CAP-M analysis on comparable non-price regulated stocks, as Mr. D'Ascendis did.

Dr. Carlisle's CEM analysis, was applied to a group of non-price regulated stocks selected from Value Line with a comparable price volatility factor ("beta" or "β") to those in his water company proxy group. R. p. 655 (Carlisle Dir. p. 10, ll. 1-6). The CEM analysis produced a "retrospective" return on equity of 9.15%, and a "prospective" ROE of 8.63%. Dr. Carlisle averaged the two to arrive at a CEM ROE of 8.89%. R. p. 656 (Carlisle Dir. p. 11, ll. 3-7).

Finally, Dr. Carlisle averaged his DCF, CEM, and CAP-M rates to arrive at his recommended ROE of 9.08%.

Mr. D'Ascendis and Dr. Carlisle disagreed often. Mr. D'Ascendis argued that Dr. Carlisle should have relied on analysts' estimates of earnings per share rather than historical and projected measures of book value per share, dividends per share, and sales growth to predict growth in earnings per share when performing his DCF analysis. R. p. 438 (D'Ascendis, Rebut. p. 3, l. 15 – p. 7, l. 5). On the other hand, Dr. Carlisle took issue with Mr. D'Ascendis' reliance on analysts' projections of earnings per share ("EPS") as the sole factor in his DCF analysis. R. pp. 666–667 (Carlisle Surr. p. 5, l. 8 – p. 6, l. 12). Dr. Carlisle, instead, also considers dividends per share ("DPS"), book value per share ("BPS"), and revenue or sales. R. pp. 650-651 (Carlisle Dir., pp. 6-7). Mr. D'Ascendis pointed to common market references, such as Yahoo Finance and Bloomberg, which provide earnings per share projections, but not projections of dividends per share, book value per share or sales growth, as evidence the investment community relies on the

former but not the latter. R. p. 458, l. 24 – p. 459, l. 13. Had he done so, Mr. D’Ascendis testified, Dr. Carlisle’s analysis would have produced a higher ROE. R. p. 442 (D’Ascendis Rebut., p. 7, ll. 1-5). Dr. Carlisle disagreed, citing studies showing that analysts’ estimates have been historically overly optimistic, and should not be the sole basis for the DCF analysis. R. pp. 664–666 (Carlisle, Surr. p. 3, l. 6 – p. 5, l. 4).

Mr. D’Ascendis also disagreed with Dr. Carlisle’ CAP-M calculations. He argued that Dr. Carlisle used the wrong measures of market return, and that he should have used the arithmetic mean of monthly total return rates instead of a geometric mean (or compound growth rate). Mr. D’Ascendis contends using the arithmetic produces the best insight into future returns. R. pp. 443–445 (D’ Ascendis Rebut. pp. 8-10). Dr. Carlisle responded that his market return measure better reflects the variety of companies in the market. Dr. Carlisle also defended his use of the geometric mean arguing that the arithmetic mean ignores the “compounding” effect of investing and can mislead investors by masking over the ups and downs of the market. R. p. 668 (Carlisle Surr. p. 7, l. 5 – p. 10, l. 26).

Mr. D’Ascendis criticized Dr. Carlisle for not performing an ECAP-M analysis, which he testified would have produced an equity cost rate of 10.03%. R. pp. 444–445 (D’Ascendis Rebut. p. 9, l. 8 – p. 10, l. 9). Mr. D’Ascendis also testified that Dr. Carlisle’s selection of non-price regulated companies for his CEM analysis failed to reflect the total risk of his water company proxy group. Mr. D’Ascendis performed Dr. Carlisle’s DCF and CAP-M analyses using a group that better reflected the risk of the water proxy group and found cost rates of 14.66% and 9.85% respectively. R. p. 448

(D’Ascendis Rebut. p. 13, ll. 14-24). Using the amended proxy group, Dr. Carlisle’s range would change to 9.57% (DCF), 10.03% (CAP-M), and 12.26% (CEM) with an average of 10.62%. R. p. 449 (D’Ascendis Rebut. p. 14, ll. 4-10).

The Commission finds Mr. D’Ascendis’ arguments persuasive. He provided more indicia of market returns, by using more analytical methods and proxy group calculations. Mr. D’Ascendis’ use of analysts’ estimates for his DCF analysis is supported by consensus, as is his use of the arithmetic mean. The Commission also finds that Mr. D’Ascendis’ non-price regulated proxy group more accurately reflects the total risk faced price regulated utilities and CWS. Furthermore, there is no dispute that CWS is significantly smaller than its proxy group counterparts, and, therefore, it may present a higher risk. . An appropriate ROE for CWS is 10.45% to 10.95%. The Company used an ROE of 10.5% in computing its Application, a return on the low end of Mr. D’Ascendis’ range, and the Commission finds that ROE is supported by the evidence.

Table 1 below indicates the capital structure of the Company, the cost of debt, the cost of equity as approved in this Order, and the resulting rate of return on rate base:

Table 1: Summary of Overall Rate of Return

<u>Type of Capital</u>	<u>Ratios</u>	<u>Cost Rate</u>	<u>Weighted Cost Rate</u>
Long-Term Debt	48.11%	6.60%	3.17%
Common Equity	<u>51.89%</u>	10.50%	<u>5.45%</u>
Total	100.00%		8.62%

D. Contested Rate Base Adjustments

The rate base proposed by CWS for combined operations was \$54,853,170. App. Ex B., Sch. C. CWS disputed two of ORS's rate base adjustments: Adj. 32(c) in which ORS proposes to disallow \$1,081,375 spent in connection with a liner of the equalization basin ("EQ Liner") at the Friarsgate wastewater treatment plant, and Adj. 32(d) in which ORS proposes to disallow \$306,552 in engineering costs incurred at the Friarsgate Plant. R. p. 744 (Payne Direct, p. 17).

1. Friarsgate EQ Basin Removal and Site Remediation

The Company proposes to include \$1,081,375 for engineering costs and remediation costs associated with the replacement of the Equalization Basin's ("EQ") liner at the Friarsgate WWTF. An EQ Liner is a heavy-mill plastic liner placed in an in-ground basin that holds water. R. p. 478, ll. 20-24. CWS hired an engineering firm, W.K. Dickson, after an upset occurred at its Friarsgate Wastewater Treatment Facility ("Friarsgate Plant"). W.K. Dickson assisted CWS in formulating and presenting a Corrective Action Plan required by a Consent Order with DHEC. R. p. 555, l. 16 – p. 557, l. 1. W.K. Dickson submitted engineering plans on an expedited basis for various changes and improvements made to the plant. R. p. 555, ll. 19-25. DHEC also required CWS to have a professional engineer who was a wastewater expert on site to supervise the plant's operations. R. p. 556, ll. 14-22. W.K. Dickson also provided required monthly reports to DHEC. R. p. 556, l. 22 – p. 557, l. 1.

The Company was required by a DHEC Consent Order to: 1) remove the existing liner, 2) complete any environmental mitigation efforts concerning the soils under the

existing liner, and 3) replace the EQ Liner. This effort included removing and properly disposing of any affected soils. Once the site was sufficiently mitigated, new soil was brought in, graded, and compacted to prepare the site for the installation of the new liner. Although the EQ plastic liner has yet to be installed, the Company removed the existing EQ Liner and completed the environmental mitigation required by DHEC before the audit cutoff date of February 12, 2018. CWS acted expeditiously to comply with the DHEC mandate. CWS is not asking to recover the cost of the new liner. R. p. 505, ll. 8-14.

CWS witness Cartin testified that the DHEC Consent Order required CWS to remove the EQ Liner at the Friarsgate Plant, remediate the soil underneath the liner, and replace the liner. R. pp. 318-319 (Cartin Rebut. p. 3, l. 3 – p. 4, l. 2). CWS spent \$1,081,375 to remove the EQ Liner and remediate the soil under the liner. Id. The Company had not installed the new liner yet but is in the process of doing so. Id. CWS contends that its compliance with DHEC's Consent Order was required for its continued operations and the public has benefitted from the removal of the old EQ Liner and the soil remediation, and therefore the costs should be included in rate base. Id.

The ORS proposes to disallow these costs because the EQ Liner has not yet been replaced. The ORS reasons that the project included both the engineering and remediation and the replacement of the EQ Liner. ORS's witness, Zachary Payne, testified that, since the new EQ Liner is still under construction, the whole project is not used and useful and should not be included in rate base. R. p. 754 (Payne Surr. p. 4, ll. 7-17).

The Commission finds the measures required by the DHEC Consent Order were in the public interest. Disallowing recovery of remediation costs acts to impair a utility's ability to address environmental concerns and conflicts with the policy of allowing recovery of necessary and prudently incurred costs. These known and measurable expenditures provided prompt regulatory and environmental compliance and immediate environmental and customer benefits. CWS has not requested recovery of the cost of the new EQ Liner, the part of the project that ORS challenges as not used and useful. The Commission finds the \$1,081,375 cost of the removal of the existing EQ Liner and environmental remediation served the Company's customers and the public interest, and the Company is entitled to its recovery.

2. Friarsgate Engineering Costs

ORS proposed to disallow \$306,552 in engineering costs paid to the W.K. Dickson firm for services at the Friarsgate Plant. R. p. 744 (Payne Direct, p. 17, l. 11 (Adj. 32(d))). CWS contends the costs are recoverable because W.K. Dickson was hired to comply with the terms of the Consent Order with DHEC. R. pp. 319-320 (Cartin Rebut. p. 4, l. 3 – p. 5, l. 4). Mr. Cartin testified that W.K. Dickson was hired to design an O&M Manual and take other measures to ensure compliance at the plant. Id. Mr. Gilroy testified that W.K. Dickson was continuously present at the plant following an upset that occurred in June 2016 which led to a DHEC enforcement action. R. p. 353 (Gilroy Direct p. 10 ll. 1-7); R. p. 487, l. 12 – p. 488, l. 9. During that period, W.K. Dickson served as the principal point of contact with DHEC personnel and obtained permission for changes and improvements made to the facility. Id.

ORS took the position the W.K. Dickson costs should not be recoverable because they were incurred to comply with DHEC's Consent Order, which was caused by the Company's failure to adequately operate and maintain the Friarsgate Plant. R. p. 683, ll. 5-22. ORS's witness, Mr. Schellinger also testified the invoices for the work lacked sufficient detail to allow it to determine the work performed, and the work was required by Consent Orders which arose from the Company's violation of its NPDES permit. R. pp.712-715 (Schellinger Surr. p. 5, l. 13 – p. 8, l. 20). If the costs were allowable, Mr. Schellinger testified that they should be booked as operations and maintenance expenses, not capital assets. CWS responded that costs incurred to ensure the Company's compliance with environmental regulations should be recoverable, and that treating them as capital expenditures is consistent with the practice adopted by the Company and the ORS in the settlement of the last rate case. R. pp. 319 - 320 (Cartin Rebut. p. 4, l. 3 – p. 5, l. 4). The Commission finds the engineering fees are recoverable as a capital expense prudently incurred to ensure necessary compliance with environmental regulations.

E. Expenses

CWS contested adjustments proposed by the ORS to the Company's O&M expenses: a reduction of \$96,892 in sludge hauling expenses (Adj. 9(d)), and the disallowance of \$998,606 in legal expenses incurred during litigation involving the I-20 wastewater treatment plant (Adj. 16).

1. Adjustment for Litigation Expenses

The Company proposes to amortize \$998,606 in financial costs and litigation expenses associated with its I-20 sewer system over 66.67 years. R, pp. 316-317 (Cartin

Rebut., p. 1, l. 12 – p. 2, l. 18). These costs were primarily incurred with five actions: 1) a lawsuit brought by the Congaree Riverkeeper in the U.S. District Court, 2) a condemnation action brought by the Town of Lexington, 3) a challenge to DHEC's denial of a permit for the I-20 Plant in the Administrative Law Court, 4) the Town of Lexington's challenge of DHEC's order that it interconnect with CWS brought in the Administrative Law Court, and 5) CWS's lawsuit against the EPA in the United States District Court. Schellinger Sur. p. 3, ll. 1-11. The Company proposed to amortize these costs over 66.7 years, resulting in an expense of \$14,979 per year. R. p. 300 (Cartin, Dir., p. 2, ll. 15-18).

ORS argued the legal expenses should not be allowed for two reasons. Mr. Schellinger testified that legal expenses incurred to defend the Congaree Riverkeeper's lawsuit should not be allowed because the District Court had ruled against CWS finding various violations of its NPDES permit and of effluent limitations since 2009. R. p. 692 (Schellinger Surr. p. 3, l. 11 – p. 4, l. 5). Mr. Schellinger viewed the company's lawsuit against the EPA and its litigation in the Administrative Law Court as related to the Riverkeeper proceeding, a position not disputed by CWS. Schellinger asserts that CWS should not be allowed to recover its legal costs because the actions arose from the Company's violations of environmental regulations. *Id.*

Schellinger testified the legal costs incurred in the condemnation action should not be recovered because CWS may be allowed to recover some costs if it prevailed. R. p. 730 (Schellinger Surr. p. 4, ll. 6-22). Schellinger also posited the actions before the Administrative Law Court could turn on the outcome of the condemnation action. R. p.

731 (Schellinger Surr. p. 5, ll. 1-12). He testified that since the outcome of the condemnation action was unknown and since if successful CWS may recover its litigation costs, the Commission should establish a regulatory asset in which to defer the litigation costs for future rate making treatment.

Mr. Cartin testified that CWS had no choice but to defend the Congaree Riverkeeper's lawsuit, and to prosecute its related actions. R. p. 490, l. 22 – p. 491, l. 7. He pointed out the Congaree Riverkeeper brought his suit to force an interconnection of the I-20 Plant to the Town of Lexington's sewer system, an action CWS was ready to take but the Town of Lexington would not allow. R. p. 489, ll. 8-20. It was not until 2016, after DHEC ordered the Town of Lexington to seek an interconnection with CWS, that Lexington brought its condemnation proceeding. R. p. 567, ll. 1-12. When the condemnation suit was brought, CWS readily allowed the town to take possession of the I-20 system and interconnect the plant, reserving its right to contest Lexington's valuation of the plant. Id.

The Commission finds that regulated utilities, like any business, will experience litigation costs associated with its business operations. CWS acted to limit exposure to liability and benefit the utility and its rate payers. The financial and litigation costs were prudently incurred. Recovery of these costs equates to \$14,979 in annual amortization expense. As Mr. Cartin testified, CWS had no alternative but to defend the Congaree Riverkeeper's lawsuit and engage in the related litigation. Therefore, CWS will be allowed to recover \$998,606 amortized over 66.7 years, at the rate of \$14,979 per year.

2. Sludge Hauling Expenses

CWS incurred \$284,233 in sludge hauling expenses at its Friarsgate Plant and at its Watergate wastewater treatment facility (“Watergate Plant”) during the test year. R. p. 753 (Payne Surr. p. 3). ORS proposed to remove \$96,892 in sludge hauling costs. ORS proposes an adjustment to allow recovery of a three-year average of annual sludge hauling costs at the two facilities.

ORS witness Payne testified that the ORS reviewed the sludge costs in the test year and the costs in the previous two years, concluding that the sludge hauling costs in the test year were atypical. R. pp. 751-752 (Payne Surr. p. 2, l. 19 – p. 3, l. 12). The ORS proposes to average the annual sludge expense for the three years reviewed and proposed an adjustment of \$96,892, normalizing this operating expense. Id.

CWS witness Gilroy testified the increase of sludge hauling expense during the test year was caused by additional sludge removal requirements at the Friarsgate WWTF which produces large amounts of sludge that must be disposed of in a timely manner. R. pp. 358-360. The amount of sludge produced depends on many factors within the process of the waste water treatment. Id. The active sludge inventory within the process must be kept at a certain concentration for the biological process to be effective and result in a clear compliant effluent. Id. Excess sludge inventory must be removed frequently to keep sludge from building up to unacceptable levels which could cause problems with effluent quality. Id.

Mr. Gilroy testified that because the Friarsgate WWTF has been on a Consent Order, these sludge inventories are also monitored by DHEC, which recommends that the

inventory to be kept at a constant rate. R. p. 365 (Gilroy Rebut. p. 3, ll. 3-12)). Ordinarily, the liquid sludge is poured into filtrate boxes that drain off the water leaving a very dry cake behind, which is then hauled and disposed of at the Northeast Sanitary Landfill. Id. When the sludge production exceeds the capacity of the filtrate boxes, CWS utilizes contractor liquid tanker trucks to haul the sludge to the City of Cayce's disposal site. Id. Disposing of the sludge in the cake form is more cost-effective than hauling truckloads of liquid sludge. Id. Although more expensive, sometimes the filtrate boxes are full, and tankers must be utilized. Id.

The Commission finds that the sludge hauling costs in the test year are recoverable as known and measurable, prudently incurred costs. The ORS does not dispute the sludge costs in the test year. It simply speculates that the costs will not recur in a similar amount. Speculation is not sufficient. Moreover, the testimony indicates that the sludge costs have increased because of the DHEC Consent Order, and were prudently incurred. The Commission denies the ORS adjustment to reduce the sludge hauling expenses.

3. Effects of the Income Tax and Jobs Act

a) Excess Accumulated Deferred Income Taxes

The Company filed its Application before Congress enacted the Tax Cuts and Jobs Act of 2017 ("TCJA"), which took effect on January 1, 2018. P.L. No: 115-97. The TCJA changed the tax laws affecting the Company. Mr. Hunter testified the TCJA reduced the corporate income tax rate from 35% to 21%, causing the Company to reduce its requested revenue requirement by approximately \$877,000. R. p. 255, ll. 16-22. This

Commission held in Order No. 2018-308 that, beginning January 1, 2018, regulatory accounting treatment is required for all regulated utilities for any impacts of the new law, including current and deferred tax impacts. We also held that the utilities should track and defer the effects resulting from the Tax Act in a regulatory liability account, and further, for water/wastewater utilities with operating revenues that are equal or greater than \$250,000, the issue will be addressed at the next rate case or other proceeding. The provisions of Order No. 2018-308 apply to the present case, as well as to other utilities indicated in Order No. 2018-308.

F. Rate Case Expenses

CWS proposed to include rate case expenses incurred in this rate case through the date of the hearing, and ORS agreed to this proposal, subject to its review of the requested additional amount and examination of supporting documentation. R p. 754 (Payne Surreb., p. 4, ll. 5-7). ORS received and reviewed documentation supporting rate case expenses of \$88,500 and informed the Commission at the hearing that the ORS agrees with them. After the hearing, CWS presented documentation supporting additional rate case expenses of \$64,560. Because the additional rate case expenses are known and measurable, the Commission will allow them to be included in the total rate case expense and amortized over three years. We find the Company is entitled to \$153,060 in total rate case expenses, including those expenses submitted to ORS post-hearing. This amount amortized over three years less the Company's per book amount yields a post-hearing adjustment of \$21,520.

G. Other Adjustments

The remaining ORS adjustments are accepted by this Commission without discussion. They either were not disputed by the parties or were caused by carrying out the effects of the adjustments adopted above.

H. Deferred Accounts

By Order No. 2015-876 in Docket No. 2015-199-WS, the Commission approved two regulatory deferred accounts authorizing CWS 1) to record and monitor all rate increases from third-party providers for water supply and sewer treatment; and 2) to recover non-revenue water expenses. The Commission authorized CWS to seek recovery of the balance of these deferred accounts, subject to audit by ORS and approval by the Commission in a subsequent rate case. In this Application CWS is seeking recovery of the balance in the regulatory deferral account associated with increases in purchased water from bulk water providers. (Application, para. 17) Mr. Hunter testified that the purchase water deferred account had a balance of \$669,808 as of March 8, 2018 and explained CWS sought recovery of this balance in this docket R. p. 278 (Hunter Rebut. p. 3 ll. 7–17). At the hearing, Mr. Payne testified that the ORS had reviewed the supporting documentation of the purchase water deferred account and that the ORS agreed with CWS' request to recover the balance of \$669,808. R. p. 752 (Payne Surreb., p. 2, ll.8-18). The Commission finds it reasonable for CWS to recover the purchased water deferred account balance of \$669,808.

Because the non-revenue water deferral account has a balance of zero, the ORS recommended this account be closed. R. p. 701 (Schellinger Dir., p. 11, l. 18 – p. 12, l.

8). The Company did not dispute this recommendation. The Commission finds it reasonable that the non-revenue water account be closed.

I. Performance Bond

CWS currently provides the maximum amount required for its performance bond in the amount of \$350,000 for water and \$350,000 for sewer operations. Using the criteria set forth in S.C. Code Regs. §§ 103-512.3.1 and 103-712.3.1, ORS recommended that CWS be required to continue the current performance bond amounts. R. p. 701 (Schellinger Dir. p. 12, ll. 9-15). CWS agreed to the performance bond amounts. The Commission requires that CWS maintain its performance bond in \$350,000 for water and \$350,000 for sewer operations.

J. Changes to Rates, Charges and Term of Service

1. Irrigation Only Meters

Mr. Cartin testified that after hearing concerns expressed by customers with irrigation only meters, the Company had determined to eliminate the base facilities charge for irrigation only meters for residential customers who are no longer receiving an economic benefit from having an irrigation meter. The impact on revenues will be \$37,946 annually. The Company is not seeking recovery of this lost revenue here. R. p. 320 (Cartin Reb., p. 5, ll. 5-20).

The ORS has no objection to eliminating the base facilities charge on customers with irrigation only meters.

The Commission finds that eliminating the base facilities charge for customers with irrigation only meters is just and reasonable and in the public interest.

2. Backflow Testing.

CWS proposed to change the terms and conditions of its tariff to permit its customers to test their backflow devices every two years. The ORS proposed to limit the testing requirement to every two years for those residential customers with irrigation cross connections. R. pp. 699 - 700 (Schellinger Dir., p. 10, l. 18 – p. 11, l. 6). CWS concurred with the ORS recommendation with the additional provision that if the sewer system utilizes chemical injection, annual testing will be required. R. p. 363 (Gilroy Rebut., p. 1, ll. 1-7).

The Commission finds that permitting CWS' residential irrigation customers to test backflow preventers every two years is reasonable, provided that if the sewer system utilizes chemical injection, annual testing will be required

3. Water Meter Installation Charge

CWS requests authority to increase its Water Meter Installation Charge from \$35.00 to \$45.00 to more closely reflect the utility's costs. (Application at ¶ 20) The ORS has reviewed the cost justification for this increase and agrees the increase is reasonable. R. p. 699 (Schellinger Dir., p. 10, ll.14 – 17). The \$45.00 charge is reasonable and CWS is authorized to increase its Water Meter Installation Charge to \$45.00.

4. Limitation of Liability

CWS seeks authority to limit the liability of the Company, its agents and employees for damages arising out of interruption of service or the failure to furnish service, whether caused by acts or omission, to those remedies provided in the

Commission's rules and regulations governing water and wastewater utilities. (Application at ¶ 22). Mr. Cartin points out that the Commission has promulgated regulations for quality of service and interruption of service. Limiting customer remedies to those provided in the regulations will eliminate the prospect of unnecessary litigation and result in cost savings which will benefit customers. R. pp. 310-311 (Cartin Dir., p. 12, l. 14 – p. 13 1, l. 2). The ORS does not oppose the Company's proposed changes to tariff language regarding liability for interruption of service. Interruption of service is regulated by the Commission in S.C, Code Ann. Regs. 103-771 and 103-551. R. p. 670 (Schellinger Dir., p. 11, ll. 7–12) The proposed limitation of liability to those protections found in S.C. Code Reg. 103-771 and 103-551 is reasonable and is approved.

K. Authorized Revenues

CWS requested in its Application to increase revenues for combined operations by \$4,511,414, comprising a water revenue increase of \$2,272,914 and a sewer revenue increase of \$2,238,500, based on the rate of return on rate base methodology utilizing an ROE of 10.5% and an historical test year ending August 31, 2017. The revenue and expense adjustments to the requested increase in revenue set out herein at the approved ROE of 10.50% produce additional operating revenue of \$2,936,395 consisting of a water revenue increase of \$1,286,013 and a sewer revenue increase of \$1,650,382.

L. Rate Design

Exhibit "A" to the Application contains the Company's Schedule of Proposed Water Charges. The proposed water rate structure for Territory 1 and Territory 2 will remain the same as approved in Order No. 2015-876. In Territory 1 and Territory 2 there

will remain separate charges for Water Supply Customers (where water is supplied by wells owned and operated by CWS) and Water Distribution Customers (where water is purchased from a governmental body or agency or other entity for distribution and resale by CWS). R. p. 264 (Hunter Dir. p. 5, ll. 18–25).

Exhibit “A” to the Application contains the Company’s Schedule of Proposed Sewer Charges. Under the existing tariff, the flat rate charge for Sewer Collection & Treatment Only Customers and the flat rate charge for Sewer Collection Only Customers are two different rates. CWS proposes to combine Sewer Collection & Treatment Only Customers and Sewer Collection Only Customers into one single rate per unit. Separate rates will remain on the tariff for Mobile Homes, and The Village Sewer Collection Customers. R. p. 265 (Hunter Dir., p.6, ll. 16–23).

Rate design is a matter of discretion for the Commission. In establishing rates, it is incumbent upon us to fix rates which “distribute fairly the revenue requirements [of the utility].” See *Seabrook Island Property Owners Association v. S.C. Public Service Comm’n*, 303 S.C. 493, 499 (1991). Our determination of “fairness” with respect to the distribution of the Company’s revenue requirement is subject to the requirement that it be based upon some objective and measurable framework. See *Utilities Services of South Carolina, Inc., v. South Carolina Office of Regulatory Staff*, 392 S.C. 96, 113-114 (2011).

CWS has combined certain of its sewer rates in this docket moving closer to uniform rates. The water rate design was approved by Order No. 2015-876. No party contests the proposed rate design and it is approved by the Commission.

M. Forty Love Point

The Forty Love Point Homeowners Association intervened questioning sewer service in the neighborhood. Barbara King and Jay Dixon, residents of the Forty Love subdivision, testified that they experienced sewer backups in their homes and chronicled the efforts of CWS to address their concerns. Representatives of CWS and its engineers, DHEC and ORS have met with the witnesses. CWS provides collection only services to Forty Love and Richland County treats the sewage. The witnesses testified that Richland County and CWS should coordinate any remedy for the customer concerns. The witnesses believe their sewer system is outdated and inadequate. The witnesses also contest the proposed rate increase. R. pp. 608–610 (Dixon Dir. p. 1, l. 1 – p. 4, l. 76); R. pp. 603 – 605 (King Dir., p. 1, l. 1 – p. 3, l. 59).

CWS witness Gilroy testified that the Forty Love sewer system is a LETTS design installed by the developer. LETTS systems are modified septic tanks in which solid waste accumulates in a holding tank with the gray water draining to a common sewer main for transport to the Richland County Utilities treatment plant. CWS has been working with the Kings and Dixons to determine why their LETTS tanks fail to drain during prolonged rain events. CWS believes the elevation and distance between their finished basements and the sewer main outside provides for no leeway when the sewer main backs up slightly. CWS has a contractor working to install a pump tank that will both pump their water into the main and provide the separation needed to eliminate backups of their homes. R. pp. 363–364 (Gilroy Rebut., p. 1, l. 8 – p. 2, l. 10).

CWS is also retaining a professional engineering firm to inspect the system and help solve the sewerage backup problems experienced by these customers. While it is working towards a permanent solution, CWS will continue to alleviate the problem by dispatching pump trucks to the neighborhood when heavy rains are anticipated. CWS is also inspecting each LETTS tank and will reseal them as necessary. Reduced water from the tanks should ease the stress placed on the system. Id.

CWS will continue to communicate the engineering assessment with the outside contractor with Forty Love. CWS and Forty Love have agreed to report their findings to the Commission and ORS in six months – by September 30, 2018. Id. The Commission finds that the agreement between CWS and Forty Love is reasonable.

CWS and the HOA have agreed to the following plan of action which, at their request, the Commission incorporates in its Order:

CWS acknowledges that some of its customers in the Forty Love Point neighborhood have experienced problems with sewerage backups. CWS has taken, and will continue to take, measures to address these customers' concerns. CWS and the HOA agree to cooperatively investigate the source and extent of sewerage problems experienced by customers in the Forty Love Point neighborhood and formulate a plan to address them. The company is retaining an engineering firm to perform an assessment of the Forty Love Point system, and CWS will continue to work with DHEC and Richland County to determine whether issues with the latter's system may be affecting Forty Love Point. CWS and the HOA will report their findings to the PSC and the ORS in six months.

N. Dancing Dolphin, LLC

The Commission requested that the ORS investigate the allegations made by CWS' customer the Dancing Dolphin, LLC. The ORS recommends that CWS complete an inflow and infiltration study and a cost benefits analysis for the sewer system serving the properties owned by the Dancing Dolphin. R. pp. 705– 706 (Schellinger Dir., p. 16, l. 20 - -p. 17, l. 3) CWS will conduct an inflow and infiltration study and provide a report to the Commission within one year of the date of the Order. R. pp. 317–318 (Cartin Rebut., p. 2, 19 - p. 3, l. 2). In addition, CWS has credited the Dancing Dolphin, LLC with one month's bill to address the customer's concerns. R. p. 310 (Cartin Dir. p. 12, ll. 12–13). The Commission finds CWS conduct to be prudent and reasonable.

O. Customer Communications

The record reflects that CWS is working to give its customers a better understanding of the pressures and costs of operating its water and sewer systems. The Company has hired a communications coordinator to direct its customer outreach activities. R. pp. 251-253. Since December of 2017, CWS scheduled meetings with its customers in York County on December 4, 2017, and February 27, 2018; Lexington County on December 5, 2017; Anderson County on December 6, 2017; Richland County on February 21, 2018, and Greenville County on March 1, 2018. At those meetings, CWS gave customers the opportunity to meet with its management and field personnel to learn more about its operations and cost of service. R. p. 371 (Gilroy Resp., p.1, ll. 6–16).

This Commission would observe that, in prior years, the Company's customer service was perceived by some as being below standard. However, the Company's testimony in this case shows that it is committed to improvement in a proactive fashion. Relatively few customers appeared to complain about quality of service, as compared to the last several rate cases. We hold that the Company should routinely be responsive on quality of service issues, and that CWS should set the standard for quality and customer service.

However, in order to ensure that the Company is being responsive to quality of service issues, and to its customers, CWS shall prepare a report and submit it to the Commission and to ORS no less than semiannually, and the document should have headings for "Customer Complaint," "Company Response," "Customer Reaction to Company," and explain the Company reaction to Customer Complaints during the period addressed, along with any explanations regarding quality of service. The Company shall also submit a separate report no less than semiannually reporting on all capital improvements made during the period to enhance customer service and to explain the cost of such capital improvements.

### III. FINDINGS OF FACT

1) CWS is a water and sewer utility providing water and sewer service in its assigned service area in South Carolina. The Commission is vested with authority to regulate rates of every public utility in this state and to ascertain and fix just and reasonable rates for service. S.C. §58-5-210, et. seq. CWS's operations in South Carolina are subject to the jurisdiction of the Commission.

2) CWS requested in its Application to increase revenues for combined operations by \$4,511,414 comprising a water revenue increase of \$2,272,914 and a sewer revenue increase of \$2,238,500, based on the rate of return on rate base methodology utilizing an ROE of 10.5% and a historical test year ending August 31, 2017.

3) The test year period for this proceeding, selected by the Company, is September 1, 2016 through August 31, 2017.

4) The Commission will use the return on rate base methodology in determining and fixing just and reasonable rates.

5) The return on rate base methodology requires three components: capital structure, cost of debt, and cost of equity (or ROE).

6) CWS's rate base is \$55,524,956 after the adjustments adopted by the Commission.

7) The Commission adopts and approves of a capital structure of 48.11% long-term debt and 51.89% equity; a cost of debt rate of 6.60%; and an ROE of 10.50%.

8) The approved capital structure, cost of debt rate, and ROE produce additional operating revenue of \$2,936,395 consisting of a water revenue increase of \$1,286,013 and a sewer revenue increase of \$1,650,382.

9) The approved revenues and expenses establish a fair and reasonable operating margin of 13.23%, and a return on rate base of 8.62%.

10) The schedule of rates and terms and conditions attached to this Order as Order Exhibit 1(A) are just and reasonable and designed to achieve the Company's new revenue requirement.

IV. CONCLUSIONS OF LAW

Based upon the discussion, findings of fact and the record of the instant proceeding, the Commission makes these Conclusions of Law:

- 1) CWS is a public utility as defined in S.C. Code § 58-5-10(3) and is subject to the jurisdiction of this Commission.
- 2) The appropriate test year on which to set rates for CWS is the twelve-month period beginning September 1, 2016 and ending August 31, 2017.
- 3) Based on the information provided by the parties, the Commission concludes the rate setting methodology to use as a guide in determining the lawfulness of CWS's proposed rates and for fixing just and reasonable rates is return on rate base.
- 4) For CWS to have the opportunity to earn the 10.5% ROE, found fair and reasonable herein, CWS must be allowed additional revenues of \$2,936,395.
- 5) The schedule of rates and terms and conditions in the attached Order Exhibit 1(A) are approved for use by CWS and are just and reasonable without undue discrimination and are also designed to meet the revenue requirements of CWS.
- 6) Pursuant to S.C. Code § 58-5-720 and 10 S.C. Code Regs. §§ 103-512.3 and 103-712.3, CWS will post a performance bond of \$350,000 for water and \$350,000 for sewer operations.

V. ORDERING PROVISIONS

IT IS THEREFORE ORDERED THAT:

I. The rates, fees, and charges in Order Exhibit 1(A) are both fair and reasonable and will allow CWS to continue to provide its customers with adequate water and wastewater services.

II. The Company is to provide thirty (30) days' notice of the increase to customers of its water and wastewater services prior to the rates and schedules being put into effect for service rendered. The schedules will be deemed filed with the Commission under S.C. Code § 58-5-240.

III. An ROE of 10.5%, return on rate base of 8.62% and operating margin of 13.23% based on the new rates, fees, and charges, is approved for CWS.

IV. The Company will continue to maintain current performance bonds in the amounts of \$350,000 for water operations and \$350,000 for wastewater operations pursuant to S.C. Code § 58-5-720.

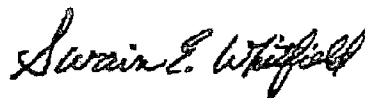
V. The Company shall provide the written reports on quality of service and capital improvements no less than semiannually as described above.

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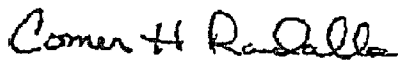
VI. This Order will remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Swain E. Whitfield, Chairman

ATTEST:



Comer H. Randall, Vice Chairman

**Carolina Water Service, Inc.**  
**Docket No. 2017-292-WS**  
**SCHEDULE OF RATES AND CHARGES**

**WATER**

**Service Territory 1**

**Monthly Charges - Water Supply Customers Only**

Where water is supplied by wells owned and operated by the Utility, the following rates apply:

	<u>Current</u>	<u>Ordered</u>
<u>Residential</u>		
Base Facilities Charge per single-family house, condominium, mobile home, or apartment unit	\$14.64 per unit	\$14.38 per unit
Residential Commodity Charge	\$5.69 per 1,000 gal. or 134 cft.	\$5.59 per 1,000 gal. or 134 cft.
<u>Commercial</u>		
Base Facilities Charge by meter size		
5/8" meter *	\$ 14.64 per unit	\$ 14.38 per unit
3/4" meter	\$ 14.64 per unit	\$ 14.38 per unit
1" meter	\$ 38.10 per unit	\$ 37.43 per unit
1.5" meter	\$ 76.21 per unit	\$ 74.86 per unit
2" meter	\$ 121.93 per unit	\$ 119.78 per unit
3" meter	\$ 228.63 per unit	\$ 224.59 per unit
4" meter	\$ 381.16 per unit	\$ 374.42 per unit
8" meter	\$1,171.21 per unit	\$1,150.51 per unit
Commercial Commodity Charge	\$5.69 per 1,000 gal or 134 cft.	\$5.59 per 1,000 gal. or 134 cft.

**Monthly Charges - Water Distribution Customers Only**

Where water is purchased from a governmental body or agency or other entity for distribution and resale by the Utility, the following rates apply:

<u>Residential</u>		
Base Facilities Charge per single-family house, condominium, mobile home, or apartment unit	\$14.64 per unit	\$14.38 per unit
Residential Commodity Charge	\$6.67 per 1,000 gal. or 134 cft.	\$7.55 per 1,000 gal. or 134 cft.

Order Exhibit 1(A)  
 Docket No. 2017-292-  
 WS  
 Order No. 2018-345(A)  
 May 30, 2018

**Carolina Water Service, Inc.**  
**Docket No. 2017-292-WS**  
**SCHEDULE OF RATES AND CHARGES**

	<u>Current</u>	<u>Ordered</u>
<u>Commercial</u>		
Base Facilities Charge		
by meter size		
5/8" meter *	\$ 14.64 per unit	\$ 14.38 per unit
3/4" meter	\$ 14.64 per unit	\$ 14.38 per unit
1" meter	\$ 38.10 per unit	\$ 37.43 per unit
1.5" meter	\$ 76.21 per unit	\$ 74.86 per unit
2" meter	\$ 121.93 per unit	\$ 119.78 per unit
3" meter	\$ 228.63 per unit	\$ 224.59 per unit
4" meter	\$ 381.16 per unit	\$ 374.42 per unit
8" meter	\$1,171.21 per unit	\$1,150.51 per unit
 Commercial Commodity Charge	 \$6.67 per 1,000 gal. or 134 cft.	 \$7.55 per 1,000 gal. or 134 cft/

**\*A "Fire Line" customer will be billed a monthly base facilities charge of a 5/8" meter or at the rate of any other meter size used as a detector.**

**Carolina Water Service, Inc.**  
**Docket No. 2017-292-WS**  
**SCHEDULE OF RATES AND CHARGES**

**Service Territory 2**

**Monthly Charges - Water Supply Customers**

Where water is supplied by wells owned and operated by the Utility, the following rates apply:

	<u>Current</u>	<u>Ordered</u>
<u>Residential</u>		
Base Facilities Charge per single-family house, condominium, mobile home or apartment unit:	\$24.72 per unit	\$28.59 per unit
Residential Commodity Charge	\$ 8.88 per 1,000 gal. or 134 cft.	\$10.27 per 1,000 gal. or 134 cft.
<u>Commercial</u>		
Base Facilities Charge by meter size		
5/8" meter*	\$ 24.72 per unit	\$ 28.59 per unit
1" meter	\$ 68.81 per unit	\$ 79.59 per unit
1.5" meter	\$ 126.45 per unit	\$146.27 per unit
3" meter	\$ 431.52 per unit	\$499.14 per unit
Commercial Commodity Charge	\$ 8.88 per 1,000 gal. or 134 cft.	\$10.27 per 1,000 gal. or 134 cft.

**Monthly Charges - Water Distribution Customers Only**

Where water is purchased from a governmental body or agency or other entity for distribution and resale by the Utility, the following rates apply:

<u>Residential</u>		
Base Facilities Charge per single-family house, condominium, mobile home or apartment unit:	\$ 24.72 per unit	\$ 28.59 per unit
Residential Commodity Charge	\$ 9.41 per 1,000 gal. or 134 cft.	\$ 11.85 per 1,000 gal. or 134 cft.
<u>Commercial</u>		
Base Facilities Charge by meter size:		
5/8" meter*	\$ 24.72 per unit	\$ 28.59 per unit
1" meter	\$ 68.81 per unit	\$ 79.59 per unit
1.5" meter	\$ 126.45 per unit	\$146.27 per unit
3" meter	\$ 431.52 per unit	\$499.14 per unit
Commercial Commodity Charge	\$ 9.41 per 1,000 gal. or 134 cft.	\$ 11.85 per 1,000 gal. or 134 cft.

Order Exhibit 1(A)  
Docket No. 2017-292-  
WS  
Order No. 2018-345(A)  
May 30, 2018

**Carolina Water Service, Inc.**  
**Docket No. 2017-292-WS**  
**SCHEDULE OF RATES AND CHARGES**

**\*A "Fire Line" customer will be billed a monthly base facilities charge of a 5/8" meter or at the rate of any other meter size used as a detector.**

**Carolina Water Service, Inc.**  
**Docket No. 2017-292-WS**  
**SCHEDULE OF RATES AND CHARGES**

WATER SERVICE  
TERMS AND CONDITIONS  
AND  
NON-RECURRING CHARGES

**1. Terms and Conditions**

A. Where the Utility is required by regulatory authority with jurisdiction over the Utility to interconnect to the water supply system of a government body or agency or other entity and tap/connection/impact fees are imposed by that entity, such tap/connection/impact fees will also be charged to the Utility's affected customers on a pro rata basis, without markup.

B. Commercial customers are those not included in the residential category above and include, but are not limited to, hotels, stores, restaurants, offices, industry, etc.

C. The Utility will, for the convenience of the owner, bill a tenant in a multi-unit building, consisting of four or more residential units (or in such other circumstances as the law may allow from time to time), which is served by a master water meter or a single water connection. However, in such cases all arrearages must be satisfied before service will be provided to a new tenant or before interrupted service will be restored. Failure of an owner to pay for services rendered to a tenant in these circumstances may result in service interruptions.

D. When, because of the method of water line installation utilized by the developer or owner, it is impractical to meter each unit separately, service will be provided through a single meter, and consumption of all units will be averaged; a bill will be calculated based on that average and the result multiplied by the number of units served by a single meter.

E. Billing Cycle

Recurring charges will be billed monthly in arrears. Nonrecurring charges will be billed and collected in advance of service being provided.

F. Extension of Utility Service Lines and Mains

The Utility shall have no obligation at its expense to extend its utility service lines or mains in order to permit any customer to connect to its water system. However, anyone or entity which is willing to pay all costs associated with extending an appropriately sized and constructed main or utility service line from his/her/its premises to any appropriate connection point, and pay the appropriate fees and charges as set forth in this rate schedule, and comply with the guidelines and standards hereof, shall not be denied service unless water supply is unavailable or unless the South Carolina Department of Health and Environmental Control or other government entity has for any reason restricted the Utility from adding additional customers to the serving water system. In no event will the Utility be required to construct additional water supply capacity to serve any customer or entity without an agreement acceptable to the Utility first having been reached for the payment of all costs associated with adding water supply capacity to the affected water system.

**Carolina Water Service, Inc.**  
**Docket No. 2017-292-WS**  
**SCHEDULE OF RATES AND CHARGES**

**G. Cross-Connection Inspection**

Any customer installing, permitting to be installed, or maintain any cross connection between the Utilities water system and any other non-public water system, sewer, or a line from any container of liquids or other substances, must install an approved back-flow prevention device in accordance with 24A S.C. Code Ann. Regs. R.61-58.7.F.2, as may be amended for time to time. Such a customer shall have such cross connection inspected by a licensed certified tester and provide to Utility a copy of written inspection report indicating the back-flow device is functioning properly and testing results submitted by the tester in accordance with 24A S.C. Code Ann. Regs. R.61-58.7.F.2, as may be amended from time to time. Said report and results must be provided by the customer to the Utility no later June 30<sup>th</sup> of each year for required commercial customers and no later than June 30<sup>th</sup> of every other year for required residential customers. Should a customer subject to these requirements fail to timely provide such report and results, Utility may arrange for inspection and testing by a licensed certified tester and add the charges incurred by the Utility in that regard to the customer's next bill. If after inspection and testing by the Utility's certified tester, the back-flow device fails to function properly, the customer will be notified and given a 30 day period in which to have the back-flow device repaired or replaced with a subsequent follow-up inspection by a licensed certified tester indicating the back-flow device is functioning properly. Failure to submit a report indicating the back-flow device is functioning properly will result in discontinuation of water service to said customer until such time as a passing inspection report is received by Utility.

H. A Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Health and Environmental Control Guidelines for Unit Contributory Loadings for Domestic Wastewater Treatment Facilities -- 6 S.C. Code Ann. Regs. 61-67 Appendix A, as may be amended from time to time. Where applicable, such guidelines shall be used for determination of the appropriate monthly service and tap fee. The Company shall have the right to request and receive water usage records from the water provider to its customers. In addition, the Company shall have the right to conduct an inspection of the customer's premises. If it is determined that actual flows or loadings are greater than the design flows or loadings, then the Company shall recalculate the customer's equivalency rating based on actual flows or loadings and thereafter bill for its services in accordance with such recalculated loadings.

I. The liability of the Company, its agents and employees for damages arising out of interruption of service or the failure to furnish service, whether caused by acts or omission, shall be limited to those remedies provided in the Public Service Commission's rules and regulations governing water utilities.

**Carolina Water Service, Inc.**  
**Docket No. 2017-292-WS**  
**SCHEDULE OF RATES AND CHARGES**

**2. Non-Recurring Charges**

- A. Water Service Connection (New connections only) - \$300 per SFE\*
- B. Plant Impact Fee (New connections only) - \$400 per SFE\*

The Plant Capacity Fee reflects the portion of plant capacity which will be used to provide service to the new customers as authorized by Commission Rule R. 103-702.13. The plant capacity fee represents the Utility's investment previously made (or planned to be made) in constructing water production, treatment and/or distribution facilities that are essential to provide adequate water service to the new customer's property.

- C. Water Meter Installation - 5/8 inches x 3/4 inches meter \$45.00

All 5/8 inch x 3/4 inch water meters shall meet the Utility's standards and shall be installed by the Utility. A one-time meter fee of \$45 shall be due upon installation for those locations where no 5/8 inch x 3/4 inch meter has been provided by a developer to the Utility.

For the installation of all other meters, the customer shall be billed for the Utility's actual cost of installation. All such meters shall meet the Utility's standards and be installed by the Utility unless the Utility directs otherwise.

- D. Customer Account Charge – (New customers only) \$30.00

A one-time fee to defray the costs of initiating service.

E. Reconnection Charges: In addition to any other charges that may be due, in those cases where a customer's service has been disconnected for any reason as set forth in Commission Rule R.103-732.5, a reconnection fee shall be due in the amount of \$40.00 and shall be due prior to the Utility reconnecting service.

F. Tampering Charge: In the event the Utility's equipment, water mains, water lines, meters, curb stops, service lines, valves or other facilities have been damaged or tampered with by a customer, the Utility may charge the customer responsible for the damage the actual cost of repairing the Utility's equipment, not to exceed \$250. The tampering charge shall be paid in full prior to the Utility re-establishing service or continuing the provision of service.

**Carolina Water Service, Inc.**  
**Docket No. 2017-292-WS**  
**SCHEDULE OF RATES AND CHARGES**

**SEWER**

**Service Territory 1 and 2**

(Customers of Carolina Water Service, Inc., and former Utilities Services of SC, Inc. and United Utility Companies, Inc.)

**Monthly Charges – Sewer Collection & Treatment Only**

Where sewage collection and treatment are provided through facilities owned and operated by the Utility, the following rates apply:

	<u>Current</u>	<u>Ordered</u>
Residential - charge per single-family house, condominium, villa, or apartment unit:	\$57.58 per unit	\$65.77 per unit
Mobile Homes:	\$42.01 per unit	\$47.94 per unit
Commercial	\$57.58 per SFE*	\$65.77 per SFE*

Commercial customers are those not included in the residential category above and include, but are not limited to, hotels, stores, restaurants, offices, industry, etc.

**Monthly charge – Sewer Collection Only**

When sewage is collected by the Utility and transferred to a government body or agency, or other entity for treatment, the Utility's rates are as follows:

Residential – per single-family house, condominium, or apartment unit	\$52.93 per unit	\$65.77 per unit
Commercial	\$52.93 per SFE*	\$65.77 per SFE*
Wholesale Service (Midlands Utility)	\$26.66 per SFE*	\$N/A per SFE*
The Village Sewer Collection	\$29.95 per SFE*	\$34.18 per SFE*

\* Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Health and Environmental Control Guidelines for Unit Contributory Loadings for Domestic Wastewater Treatment Facilities -- 25 S.C. Code Ann. Regs. 61-67 Appendix A, as may be amended from time to time. Where applicable, such guidelines shall be used for determination of the appropriate monthly service and tap fee.

**Carolina Water Service, Inc.**  
**Docket No. 2017-292-WS**  
**SCHEDULE OF RATES AND CHARGES**

SEWER SERVICE  
TERMS AND CONDITIONS  
AND  
NON-RECURRING CHARGES

**1. Terms and Conditions**

A. Where the Utility is required under the terms of a 201/208 Plan, or by other regulatory authority with jurisdiction over the Utility, to interconnect to the sewage treatment system of a government body or agency or other entity and tap/connection/impact fees are imposed by that entity, such tap/connection/impact fees will be charged to the Utility's affected customers on a pro rata basis, without markup.

B. The Utility will, for the convenience of the owner, bill a tenant in a multi-unit building, consisting of four or more residential units (or in such other circumstances as the law may allow from time to time), which is served by a master sewer meter or a single sewer connection. However, in such cases all arrearages must be satisfied before service will be provided to a new tenant or before interrupted service will be restored. Failure of an owner to pay for services rendered to a tenant in these circumstances may result in service interruptions.

**C. Billing Cycle**

Recurring charges will be billed monthly in arrears. Non-recurring charges will be billed and collected in advance of service being provided.

**D. Toxic and Pretreatment Effluent Guidelines**

The utility will not accept or treat any substance or material that has been defined by the United States Environmental Protection Agency ("EPA") or the South Carolina Department of Health and Environmental Control ("DHEC") as a toxic pollutant, hazardous waste, or hazardous substance, including pollutants falling within the provisions of 40 CFR 129.4 and 401.15. Additionally, pollutants or pollutant properties subject to 40 CFR 403.5 and 403.6 are to be processed according to pretreatment standards applicable to such pollutants or pollutant properties, and such standards constitute the Utility's minimum pretreatment standards. Any person or entity introducing such prohibited or untreated materials into the Company's sewer system may have service interrupted without notice until such discharges cease, and shall be liable to the Utility for all damages and costs, including reasonable attorney's fees, incurred by the Utility as a result thereof.

**E. Extension of Utility Service Lines and Mains**

The Utility shall have no obligation at its expense to extend its utility service lines or mains in order to permit any customer to discharge acceptable wastewater into one of its sewer systems. However, anyone or entity which is willing to pay all costs associated with extending an appropriately sized and constructed main or utility service line from his/her/its premises to any appropriate connection point, and pay the appropriate fees and charges as set forth in this rate schedule, and comply with the guidelines and standards hereof, shall not be denied service unless sewer capacity is unavailable or unless the South Carolina Department of Health and Environmental Control or other government entity has for any reason restricted the Utility from adding additional customers to the serving sewer system.

**Carolina Water Service, Inc.**  
**Docket No. 2017-292-WS**  
**SCHEDULE OF RATES AND CHARGES**

In no event will the Utility be required to construct additional sewer treatment capacity to serve any customer or entity without an agreement acceptable to the Utility first having been reached for the payment of all costs associated with adding wastewater treatment capacity to the affected sewer system.

F. A Single Family Equivalent (“SFE”) shall be determined by 6 S.C. Code Ann. Regs. 61-67 Appendix A, as may be amended from time to time. Where applicable, such guidelines shall be used for determination of the appropriate monthly service, plant impact fee and tap fee. The Company shall have the right to request and receive water usage records from the water provider to its customers. In addition, the Company shall have the right to conduct an inspection of the customer’s premises. If it is determined that actual flows or loadings are greater than the design flows or loadings, then the Company shall recalculate the customer’s equivalency rating based on actual flows or loadings and thereafter bill for its services in accordance with such recalculated loadings.

G. The liability of the Company, its agents and employees for damages arising out of interruption of service or the failure to furnish service, whether caused by acts or omission, shall be limited to those remedies provided in the Public Service Commission’s rules and regulations governing wastewater utilities.

2. **Solids Interceptor Tanks**

For all customers receiving sewage collection service through an approved solids interceptor tank, the following additional charges shall apply:

A. **Pumping Charge**

At such time as the Utility determines through its inspection that excessive solids have accumulated in the interceptor tank, the Utility will arrange for the pumping tank and will include \$150.00 as a separate item in the next regular billing to the customer.

B. **Pump Repair or Replacement Charge**

If a separate pump is required to transport the customer’s sewage from solids interceptor tank to the Utility’s sewage collection system, the Utility will arrange to have this pump repaired or replaced as required and will include the cost of such repair or replacement as a separate item in the next regular billing to the customer and may be paid for over a one-year period.

C. **Visual Inspection Port**

In order for a customer who uses a solids interceptor tank to receive sewage service from the Utility or to continue to receive such service, the customer shall install at the customer’s expense a visual inspection port which will allow for observation of the contents of the solids interceptor tank and extraction of test samples therefrom. Failure to provide such visual inspection port after timely notice of not less than thirty (30) days shall be just cause for interruption of service until a visual inspection port has been installed.

**Carolina Water Service, Inc.**  
**Docket No. 2017-292-WS**  
**SCHEDULE OF RATES AND CHARGES**

**3. Non-recurring Charges**

- A. Sewer Service Connection (New connections only)      \$300 per SFE
- B. Plant Capacity Fee (New connections only)      \$400 per SFE

The Plant Capacity Fee shall be computed by using South Carolina DHEC "Guide Lines for Unit Contributory Loadings to Wastewater Treatment Facilities" (1972) to determine the single family equivalency rating. The plant capacity fee represents the Utility's investment previously made (or planned to be made) in constructing treatment and/or collection system facilities that are essential to provide adequate treatment and disposal of the wastewater generated by the development of the new property.

The nonrecurring charges listed above are minimum charges and apply even if the equivalency rating of non-residential customer is less than one (1). If the equivalency rating of a non-residential customer is greater than one (1), then the proper charge may be obtained by multiplying the equivalency rating by the appropriate fee. These charges apply and are due at the time new service is applied for, or at the time connection to the sewer system is requested.

**C. Notification Fee**

A fee of \$15.00 shall be charged to each customer per notice to whom the Utility mails the notice as required by Commission Rule R. 103-535.1 prior to service being discontinued. This fee assesses a portion of the clerical and mailing costs of such notices to the customers creating the cost.

- D. Customer Account Charge - (New customers only)      \$30.00

A one-time fee to defray the costs of initiating service. This charge will be waived if the customer is also a water customer.

- E. Reconnection Charges: In addition to any other charges that may be due, in those cases where a customer's service has been disconnected for any reason as set forth in Commission Rule R. 103-532.4 a reconnection fee in the amount of \$500.00 shall be due at the time the customer reconnects service. Where an elder valve has been previously installed, a reconnection fee of \$40.00 shall be charged.
- F. Tampering Charge: In the event the Utility's equipment, sewage pipes, meters, curb stops, service lines, elder valves or other facilities have been damaged or tampered with by a customer, the Utility may charge the customer responsible for the damage the actual cost of repairing the Utility's equipment, not to exceed \$250. The tampering charge shall be paid in full prior to the Utility re-establishing service or continuing the provision of service.

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

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>July 11, 2018</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2017-292-WS</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u>2018-494</u>

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

**SUBJECT:**

DOCKET NO. 2017-292-WS - Application of Carolina Water Service, Incorporated for Approval of an Increase in Its Rates for Water and Sewer Services - Staff Presents for Commission Consideration the Office of Regulatory Staff's Petition for Rehearing or Reconsideration of Commission Order No. 2018-345(A).

**COMMISSION ACTION:**

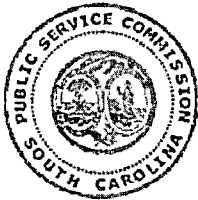
Although Commission Order No. 2018-345(A) is based on and supported by the evidence presented at the hearing, move to grant rehearing on the following issues raised by ORS:

- sludge hauling expenses – The ORS argued that sludge hauling expenses during the test year were abnormally high and, therefore, should be normalized. CWS argued that the sludge hauling expenses during the test year were known and measurable expenses that reflect the sludge hauling expenses that will occur in the future. At rehearing, CWS should update sludge hauling expenses for the most recent period available and provide, on a monthly basis, the amount of sludge hauled and the cost of transporting the sludge.
- litigation costs – The ORS argued that no litigation costs should be borne by the customers, if for no other reason, than that the courts ruled against CWS in the majority of the actions. The Company argued that litigation expenses are a cost of doing business and are known and measurable. During the merits hearing, neither ORS nor CWS provided disaggregated legal expenses. At rehearing, the litigation expenses should be provided for each legal action along with a description of the legal action, and an outcome or status of each case. Further, the parties should be prepared to address the reasonableness of the fees in each particular case based on the factors listed in Commission Order 2006-543, page 27. I must point out something in regard to those factors. ORS' motion asserts that this Commission has found that "unsuccessful defense of a civil action," is the sole factor considered by this Commission when weighing the appropriateness of litigation expense recovery. To the contrary, "the amount involved and the results obtained" are listed as only one of eight factors – not the sole factor – for consideration by the Commission.
- Friarsgate EQ basin liner project – The ORS argued that expenses associated with the replacement of the Equalization (EQ) Liner should not be recoverable because not all of the work has been completed. CWS argued that the expenditures on the work that has been completed are known and measurable and recoverable in this case. At the rehearing, the Commission will consider an update on the status of the EQ Liner replacement including expenditures and the projected final completion date. The parties should be prepared to address whether expenses of the EQ basin remediation would have been required absent the plan to replace the liner.



RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
WHITFIELD	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Absent</u>	Military Leave

(SEAL)



RECORDED BY: J. Schmieding

BEFORE THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2017-292-WS – ORDER NO. 2018-802<sup>1</sup>

JANUARY 25, 2019

IN RE: Application of Carolina Water Service, )  
Inc. for Approval of an Increase in Its )  
Rates for Water and Sewer Services ) ORDER ON REHEARING

**I. INTRODUCTION**

By Commission Order No. 2018-494 (July 11, 2018), the Public Service Commission of South Carolina (“Commission”) granted rehearing in the above-referenced Docket on four issues raised by the South Carolina Office of Regulatory Staff (“ORS”). The four issues are sludge hauling expenses, litigation costs, Friarsgate EQ basin liner project, and rate design. This Order is limited to addressing only these issues.

Originally, this matter came before the Commission on the Application (“Application”) of Carolina Water Service, Inc. (“CWS” or “Company”) filed on November 10, 2017, whereby CWS sought approval of an increase in rates and charges for the provision of water and sewer service and the modification of certain terms and conditions related to the provision of such service. The Application, filed pursuant to S.C. Code Ann. § 58-5-240 (2015) and S.C. Code Ann. Regs. 103-512.4.A. and 103-712.4.A (2012), employed a test year ending August 31, 2017, and sought a water revenue increase of \$2,272,914 and a sewer revenue increase of \$2,238,500 for a combined increase to CWS’s operating revenue of \$4,511,414. The proposed increase utilized a return on

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<sup>1</sup> Although this Order, “Order on Rehearing” is being issued on January 25, 2019, a Directive was issued by the Commission on December 5, 2018, which designated Order No. 2018-802 as the order number to be assigned to this Order upon its issuance. Accordingly, although the order is being issued in 2019, the designated Order No. 2018-802 is being retained.

equity (“ROE”) of 10.5% based on the rate of return methodology and a historical test year beginning September 1, 2016 and ending August 31, 2017.

On May 17, 2018, the Commission issued Order No. 2018-345 approving an ROE of 10.50% and additional operating revenues of \$2,936,437 consisting of an increase in water revenues of \$1,286,127 and an increase in sewer revenues of \$1,650,310. The Commission also approved several changes to the terms and conditions of service, an increase in the Water Meter Installation Charge, and eliminated the base facility charge on customers with residential irrigation meters.

On May 21, 2018, CWS filed a letter with the Commission advising the Commission that CWS and ORS had determined that a correction to the rates ordered by the Commission in Order No. 2018-345 was necessary. The correction was due to the *pro forma* estimated Uncollectible Accounts calculation and resulted in an overall net reduction to revenues of \$8,662. Thereafter, the Commission issued Order No. 2018-345(A) on May 30, 2018, in which the error in the *pro forma* estimated Uncollectible Accounts calculation was corrected.

On June 19, 2018, counsel for ORS filed with the Commission a Petition for Rehearing or Reconsideration (“Petition”). On June 25, 2018, CWS filed a Return to ORS’s Petition. The Commission considered ORS’s Petition in its weekly Commission meeting and issued Directive Order No. 2018-494. By Order No. 2018-494, the Commission granted rehearing on four issues raised by ORS (sludge hauling expenses, litigation costs, Friarsgate EQ basin liner project, and rate design) and denied reconsideration or rehearing on the remaining issues.<sup>2</sup> The Commission

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<sup>2</sup> The Commission denied rehearing or reconsideration on issues raised relating to return on equity and the impact of the Federal Tax Cuts and Jobs Act.

also directed the Commission Staff to set an aggressive schedule for rehearing. By Order No. 2018-89-H dated July 12, 2018, the Hearing Officer set dates for the pre-filing of testimony for the rehearing and set the date of the rehearing for September 6, 2018.

On September 6, 2018, the Commission, with Chairman Comer H. “Randy” Randall presiding, heard the rehearing arising from ORS’s Petition at the Commission’s Hearing Room at 101 Executive Center Drive in Columbia, South Carolina.

At the rehearing, CWS was represented by Charles L.A. Terreni, Esquire, Scott Elliott, Esquire, and John M.S. Hoefer, Esquire. Intervenor Forty Love was represented by Laura P. Valtorta, Esquire, and Intervenor James Knowlton appeared pro se. Jeffrey M. Nelson, Esquire and Florence P. Belser, Esquire represented the ORS.

At the rehearing, CWS presented the testimony of Michael R. Cartin (rehearing direct and rehearing rebuttal testimony), Robert M. Hunter (rehearing direct and rehearing rebuttal testimony), Kevin Laird (rehearing direct and rehearing rebuttal testimony), Robert H. Gilroy (rehearing rebuttal testimony), and Keith M. Babcock, Esquire (rehearing revised direct testimony). Forty Love presented the testimony of Jay Dixon (rehearing direct testimony). ORS presented the testimony of Bill Stangler (rehearing surrebuttal testimony), Daniel F. Sullivan (rehearing direct and rehearing surrebuttal testimony) and Dawn M. Hipp (rehearing direct and rehearing surrebuttal testimony).

## **II. REVIEW OF EVIDENCE AND EVIDENTIARY CONCLUSIONS**

### **A. Sludge Hauling Expense**

By Order No. 2018-494, the Commission granted ORS’s request for rehearing on the proper amount to be included for sludge hauling expense. In Order No. 2018-345(A), the

Commission had approved CWS's requested sludge hauling expense and denied ORS's adjustment to normalize the expense. In its Petition, ORS asserted the sludge hauling expenses during the test year were atypical and should be normalized. ORS proposed an adjustment to remove \$96,892 to normalize the expense. CWS argued the sludge hauling expenses were known and measurable during the test year.

CWS's Position: Mr. Cartin testified that this rate case should be based upon test year expenses. Tr. p. 34, ll. 16-17. Witness Cartin opined that the sludge hauling costs cannot be viewed in isolation and suggested that while the sludge hauling had been lowered after the April 3, 2018 hearing date that other expenses had increased. Tr. p. 34, ll. 9 – 16. He then discussed other expense categories which he stated are expected to increase due to factors occurring after the test year and in the future. Tr. p. 34, ll. 12-16; p. 35, ll. 21 – p. 36, l. 6. Upon questioning by the Commissioners and cross examination, Mr. Cartin stated that sludge hauling expenses for the test year and through the audit cut-off date were known and measurable and would continue for the foreseeable future. Tr. p. 67, ll. 19 – 24; p. 90, ll. 6-14.

At the request of the Commission, CWS witness Cartin provided an update to CWS's sludge hauling expenses from February 1, 2018 through June 30, 2018. Tr. p. 28, l. 4 – p. 29. Witness Cartin also updated the amount of sludge hauled for that same period. Tr. p. 30, line 12 – p. 31. Mr. Cartin acknowledged that the recent update provided in his testimony showed lower sludge hauling cost subsequent to the April 2018 hearing. Tr. p. 34, ll. 12-13. Responding to ORS's testimony, Mr. Cartin offered that the reduction in CWS's recent sludge hauling expenses were due to the Company taking affirmative measures to reduce sludge hauling costs (such as renting a sludge press) and optimizing plant operations. Tr. p. 36, ll. 13 – 21.

ORS's Position: ORS found the test year expenses for sludge hauling expense at the Watergate and Friarsgate Wastewater Treatment Facilities (WWTFs) atypical in comparison to the sludge hauling expenses reported by CWS for 2015 and 2016. Tr. p. 367, ll. 17-22. In reviewing CWS's Application, ORS obtained trial balances for the test year and the previous two years. Tr. p. 345, ll. 9-11; p. 351, ll. 9-10. ORS then compared the test year balances of each account with the balances for the previous two years. Tr. p. 345, ll. 11-13; p. 351, ll. 10-12. ORS set threshold criteria for dollar increases and percentage increases to identify accounts for which ORS would request explanations for the increases. Tr. p. 345, ll. 14-17; p. 351, ll. 12-14. In this case, the threshold criteria to identify accounts for which to request additional information were set at \$20,000 and 10 percent. Tr. p. 345, ll. 17-20; p. 351, l. 14-16. In addition, ORS also selected additional accounts which did not meet the set threshold criteria to request additional information for review. Tr., p. 345, ll. 20-22; p. 351, ll. 16-18.

ORS witness Sullivan testified that sludge hauling expense (Account 6410) increased \$150,555 or 76 percent from 2016 to 2017 and was identified as an account meeting the threshold criteria to request additional information. Tr. p. 345, l. 23 – p. 346, l. 3; p. 351, ll. 18-20. Upon request of ORS, CWS provided an explanation of the increase in sludge hauling expense and responded that the sludge hauling expense had increased partially due to control of the Friarsgate WWTF sludge inventory at the plant and that sludge hauling was also being addressed through CWS's inflow and infiltration ("I&I") capital project on the Friarsgate collection system. Tr. p. 346, ll. 1-9; p. 351, l. 20 – p. p. 352, l. 2. ORS's analysis identified the Friarsgate and Watergate business units as the units primarily responsible for the increase in sludge hauling expense. Tr. p. 346, ll. 9-13; p. 352, ll. 2-5.

ORS proposed the adjustment to normalize the expense to reflect sludge hauling expenses in a typical year and normalize CWS's operating experience. Tr. p. 347, ll. 12-15; p. 352, ll. 9-11. In calculating the adjustment of (\$96,892), ORS averaged the sludge hauling expense amount for the test year and the two previous years. Tr. p. 347, ll. 8-11; p. 354, ll. 5-7. Based on responses received from CWS, ORS concluded that test year sludge hauling expense was atypical and abnormal due to a South Carolina Department of Health and Environmental Control ("SC DHEC") consent order for the Friarsgate WWTF, work being conducted on the equalization basin at the Friarsgate WWTF involving removal of large amounts of sludge, and a capital project to correct I&I issues at the Friarsgate collection system. Tr. p. 346, ll. 14-25; p. 353, l. 11 – p. 354, l. 7. ORS found these conditions to be nonrecurring and contributors to the increase in sludge hauling expense. Tr. p. 347, ll. 1-4.; p. 353, l. 23 – p. 354, l. 2.

ORS recognized that, even without the SC DHEC consent order and the work on the Friarsgate system to correct I&I issues, sludge hauling expense would continue, but not at the level of the test year expense. Tr. p. 347, ll. 4-11; p. 354, ll. 2-7. Because sludge hauling expense would continue without these factors attributing to the increase in sludge hauling during the test year (the SC DHEC consent order, removal of sludge due to the EQ basin project, and the work to correct I&I issues), ORS proposed the adjustment to "normalize" test year sludge hauling expense to reflect ongoing operations. *Id.* In calculating the adjustment, ORS averaged sludge hauling expenses for 2015, 2016, and 2017. Tr. p. 368, ll. 3-10; p. 352, ll. 6-9. In calculating the adjustment in this manner, ORS's "normalizing" adjustment incorporates the test year expenses which were higher than the previous years. *Id.*

In support of this adjustment ORS witness Hipp offered that the test year sludge hauling expenses are abnormally high and do not represent normal operating conditions going forward. Tr. p. 382, ll. 7-9. Ms. Hipp also offered that, if the interconnection with the City of Columbia is completed, then the Company's sludge hauling expense will be further reduced. Tr. p. 382, ll. 10 – 16; p. 410, l. 17 – p. 411, l. 3.

Discussion: In establishing the test year for this case, this Commission stated in Order 2018-345(A) as follows:

A fundamental principle of the ratemaking process is the establishment of a historical test year as the basis for calculating a utility's return on rate base. To determine the utility's expenses and revenues, we must select a 'test year' for the measurement of the expenses and revenues. *Heater of Seabrook v. PSC*, 324 S.C. 56, 59 n. 1 (1996). While the Commission considers a utility's proposed rate increase based upon occurrences within the test year, the Commission will also consider adjustments for any known and measurable out-of-test year changes in expenses, revenues, and investments, and will also consider adjustments for any unusual situations which occurred in the test year. When the test year figures are atypical, the Commission should adjust the test year data. See *S. Bell Tel. & Tel. Co. v. Pub. Serv. Com*, 270 S.C. 590, 603 (1978).  
(Italics added to case names.)

Order 2018-345(A), p. 6.

ORS has challenged CWS's test year sludge hauling expense as atypical for the test year and not reflective of ongoing sludge hauling expense for the future period. As noted above, this Commission recognizes that a test year should be adjusted when the test year figures are shown to be atypical. "The object of test year figures is to reflect typical conditions. — Where an unusual situation exists which shows that the test year figures are atypical the [C]ommission should adjust the test year data." *Parker v. S.C. Pub. Serv. Comm'n*, 280 S.C. 310, 312, 313 S.E.2d 290, 292 (1984). "The test year is established to provide a basis for making the most accurate forecast of

the utility's rate base, reserves, and expenses in the near future when the prescribed rates are in effect. ... Where an unusual situation exists resulting in test year figures that are atypical and thus do not indicate future trends, the Commission should adjust the test year data.” *Porter v. S.C. Pub. Serv. Comm’n*, 328 S.C. 222, 228–29, 493 S.E.2d 92, 96 (1997) (internal citations omitted).

ORS reviewed the test year sludge hauling expense because the test year amount increased 76 percent or \$150,555 from 2016 to 2017. From information supplied by CWS, ORS concluded the increase was attributed to control of sludge inventory at the Friarsgate WWTF pursuant to a SC DHEC consent order, work being performed on the equalization basin at Friarsgate WWTF, and work on I&I issues at Friarsgate. ORS further concluded that the work pursuant to the consent order, the work on the equalization basin, and the I&I project were non-recurring events.

In response to ORS’s adjustment to sludge hauling and at this Commission’s request, CWS provided an update to CWS’s sludge hauling expenses from February 1, 2018, through June 30, 2018. Tr. p. 28, l. 4 – p. 31. CWS’s witness Cartin admitted that the expenses after the April 2018 hearing in this case were lower. Tr. p. 22, 8-10. Mr. Cartin stated that a major factor contributing to the decrease in sludge hauling for the updated period provided in this rehearing is the use of sludge press that began after CWS hired an outside contractor to operate the Friarsgate WWTF in late February 2018. Tr. p. 22, ll. 12-23.

We find that ORS’s adjustment of (\$96,892) to normalize sludge hauling expense for the test year to be appropriate. On its face, the increase in the expense account of 76 percent or \$150,555 required additional scrutiny from ORS. That review identified several factors which ORS concluded were nonrecurring and which this Commission agrees are nonrecurring. Accordingly, we find an adjustment to normalize test year sludge hauling expense proper and the

amount of the adjustment to be reasonable. ORS used an average of the test year and the two preceding years. This calculation of the adjustment provides some effect of the higher expense amount of the test year tempered by the expense amounts from the prior two years to provide a reasonable forecast of future expense.

CWS's position that the sludge hauling expense was known and measurable for the test year and would continue for the foreseeable future provides no assistance with determining whether the expense should be normalized. There is no dispute the test year expense was known and measurable. Likewise, there is no dispute that CWS will continue to experience sludge hauling expense. ORS has raised a tenable issue of the amount of the expense due to the dollar amount increase and percentage increase over the previous year. While ORS identified several non-recurring factors which increased the amount of test year expense, CWS provided no evidence or explanation to refute that the higher sludge hauling expenses in the test year were non-recurring. We find ORS's proposal to normalize sludge hauling expense appropriate to reflect normal operations.

We are not persuaded by CWS's argument that the normalization expense is not appropriate because other expenses would increase in the future. Similarly, we are not convinced by CWS's contention that ORS's normalization adjustment is an issue viewed in isolation and not in the context of the overall operating perspective as a routine cost of doing business. The adjustment recommended by ORS and adopted in this Order was based on the test year expense and ORS's further inquiry into the amount of the test year expense which was much larger from the two previous years.

This adjustment is being considered in the context of a full rate case where CWS has proposed *pro forma* adjustments and other adjustments based on known and measurable occurrences. CWS's income and expenses have been examined in the context of this comprehensive rate case. If during the rate case, CWS was aware of verifiable increases in other expense categories, CWS had the opportunity to present those matters in this case. The adjustment does not take into account any expenses or occurrences after the test year. The adjustment is based on an average of the test year expense and annual expense of the two prior years, and, as noted above, the adjustment moderates the higher than normal test year amount with annual expenses of the two previous years. The sludge hauling expense is not eliminated or reduced to zero but is adjusted to reduce the amount of the expense from the abnormal test year expense amount to an amount more reflective of normal operations. CWS receives coverage for sludge hauling expense but at an amount adjusted to reflect normal operations.

#### B. Litigation Costs

At the original hearing in April 2018, CWS had sought, and been awarded by Order No. 2018-345(A), recovery of \$998,606 in litigation expenses to be amortized over 66.67 years. In its Petition, ORS challenged the allowance of litigation expenses related to several actions in federal court, state court, and the Administrative Law Court ("ALC"). In granting rehearing, the Commission requested that disaggregated litigation expenses be provided and specified that expenses for each legal action be provided along with a description of each legal action and an outcome or status of each case. Order No. 2018-494. CWS provided disaggregated expenses by case. ORS asserted that inclusion of the litigation costs as an allowable expense forces ratepayers to pay for CWS's failure to comply with environmental laws and also requires ratepayers to pay

for an unsuccessful defense of a civil action. CWS argued in response that the Company had to defend itself against lawsuits, that the litigation expenses are a cost of doing business, and that the expenses are known and measurable.

CWS's Position: On rehearing, CWS is seeking to recover \$991,509<sup>3</sup> which when amortized over the requested 66 2/3 years results in an annual expense of \$14,894. Tr. p. 23, ll. 13 – 16; p. 32, 1-11. Rehearing Exhibit 8, Appendix B. Upon request of the Commission in its Order granting rehearing, CWS provided a breakdown of litigation expenses by case. Tr. p. 33. Rehearing Exhibit 8, Appendix B. CWS seeks recovery of litigation expenses for the case of *Congaree Riverkeeper, Inc. v. Carolina Water Service, Inc.* (Civil Action Number 3:15-cv-00194-MBS) (“*Riverkeeper*”) in the amount of \$395,196; for the case CWS filed against the United States Environmental Protection Agency (“US EPA”) and the Town of Lexington in the amount of \$146,420; for the ALC case of the SC DHEC Permit denial of \$233,223; for the ALC case related to the I-20 Connection of \$51,039; and for the condemnation case of \$78,482. Tr. p. 33. In addition, CWS seeks recovery of expenses of \$12,320 and Advances of \$74,828. *Id.*

CWS witness Cartin asserted that ORS’s recommendations on the treatment of litigation expenses was inconsistent because ORS recommended that litigation expenses related to the condemnation case and the ALC cases be assigned to a regulatory asset while recommending denial of the litigation expenses associated with the two federal court cases. Tr. p. 42, ll. 17-23.

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<sup>3</sup> The amount of litigation expenses sought on rehearing is lower than the amount originally sought and awarded by the Commission. Upon inquiry by ORS of certain invoices, CWS admitted that three invoices totaling \$5,617 were improperly included in the calculation of litigation expense and that an additional \$1,480 was also removed as not being associated with the I-20 litigation. Tr. p. 23, ll. 13-22; p. 32, ll. 1-11; p. 43, ll. 1-12. Also, the amounts listed below total \$991,508 (the difference with this amount and what CWS is seeking to recover on rehearing, \$991,509, is due to rounding).

CWS presented Keith M. Babcock, Esquire to address the reasonableness of the attorneys' fees for which CWS seeks recovery in this Docket. Tr. p. 196, ll. 18-23. Mr. Babcock explained that he met with CWS's counsel and received an overview of the five different cases that form the basis for the litigation expenses. He reviewed the pleadings, motions, court filings, and the legal bills from the cases. He noted that there were two federal cases – one being the *Riverkeeper* lawsuit and the other being the lawsuit filed by CWS against the US EPA, two ALC cases, and the condemnation case.

Witness Babcock stated that, once the *Riverkeeper* lawsuit was brought, CWS had no choice but to fight the suit “as hard as they could.” Tr. p. 205, ll. 1-6. He stated that the idea of bringing the lawsuit against the US EPA to change the 208 plan or force the interconnection was “an excellent one” and “good legal” strategy but he acknowledged that the lawsuit against the US EPA was a long shot. Tr. p. 205, l. 7-18. The two ALC cases involved the SC DHEC permit – one was the case involving the permit denial and the second was a challenge to a SC DHEC order requiring CWS to present plans to construct a connection to the Town of Lexington's line. Tr. p. 205, l. 19 – p. 206, l. 1. This second ALC case was “a protection appeal” to protect CWS in the event the permit denial was upheld. *Id.* The condemnation case was filed by the Town of Lexington to condemn CWS's I-20 wastewater system. Tr. p. 223, ll. 6-9. Mr. Babcock characterized the condemnation as a unique situation because the Town of Lexington started the condemnation after being forced by SC DHEC to do so. *Id.*

Mr. Babcock opined that the attorneys' fees charged as a result of the litigation concerning these five cases were reasonable. Tr. p. 222, ll. 1-3. Mr. Babcock described his review of the invoices and his analysis under the factors listed in Rule 407, SCACR, Rule 1.5. He also

referenced the standard used by South Carolina courts in some cases. From his analysis, Mr. Babcock stated his opinion that the fees and costs at issue are “incredibly reasonable.” Tr. p. 219, ll. 5-10; p. 229, ll. 18-20.

ORS’s Position: In this rehearing, ORS requests that the Commission amend its ruling in Order No. 2018-345(A) to deny recovery of the litigation expenses attributed to the two federal court cases and to establish a regulatory asset for litigation expenses related to the Town of Lexington’s condemnation case and the two ALC cases. Tr. p. 366, l. 18 – p. 367, l. 13.

ORS requests the Commission disallow \$155,974 in legal expenses where the description of professional services was redacted. Tr. p. 394, l. 20 – p. 395 l. 6; Rehearing Exhibit 16, Rehearing Exhibit DMH-4; Rehearing Exhibit 18, Surrebuttal Rehearing Exhibit DMH-2. ORS identified adjustments necessary to properly disaggregate litigation expenses between the five court cases utilizing CWS’s starting balances. Tr. p. 395, ll. 7–18. Rehearing Exhibit 16, Rehearing Exhibit DMH-5. ORS further identified adjustments necessary to properly allocate advances between the court cases. Tr. p. 417, l. 14 – p. 418, l. 7. Rehearing Exhibit 18, Surrebuttal Rehearing Exhibit DMH-2.

ORS requests the Commission deny recovery of the litigation expenses associated with the *Riverkeeper* lawsuit, deny recovery of the litigation expenses associated with the suit brought by CWS against the US EPA, and deny recovery of undocumented and unsupported expenses and advances CWS did not assign to legal actions and did not provide documentation to support. Tr. p. 366, l. 18 – p. 367, l. 13; p. 418, l. 8 – 9.

ORS requests the Commission establish regulatory assets in the amount of \$124,603, \$173,283, and \$36,521 for the Town of Lexington’s condemnation case and the two ALC cases

respectively. Rehearing Exhibit 18, Surrebuttal Rehearing Exhibit DMH-2. The remainder of the \$991,509 in litigation expenses results in a balance of \$657,102 associated with the federal court cases and undocumented and unsupported advances which ORS believes CWS did not assign to legal actions and did not provide documentation to support.

ORS objects to the recovery of the litigation expenses related to the federal court cases because these cases stem from CWS failing to provide service in compliance with its DHEC permits and State and federal law. Tr. p. 369, ll. 5 - p. 370, l.15. p. 412, ll. 12-18. CWS was found by the federal court to have violated the Clean Water Act and was fined by that court. *Id.* ORS witness Hipp stated that ORS's position related to these litigation expenses rests on the policy that ratepayers should not bear the burden of legal costs related to CWS's failure to operate its I-20 sewer system in accordance with its NPDES permit. Tr. p. 382, l. 19 – p. 383, l. 2. ORS does not challenge the reasonableness of the fees, the hourly rates, or the hours spent. Tr. p. 473, ll. 10-13. However, ORS does challenge requiring the ratepayer to pay these expenses for litigating the *Riverkeeper* and *US EPA* lawsuits because the expenses are not expenses related to providing adequate sewer service to the customers but result from a failure to manage the I-20 system to comply with the NPDES permit requirements. Tr. p. 387, ll. 13 – 15. The federal court order made several findings regarding CWS's violations of its NPDES permit. Tr. p. 413, l. 15 – p. 414, l. 16.

Alternatively, should the Commission not agree with ORS's position to deny the litigation expenses related to the *Riverkeeper* federal court case, ORS requests that the following adjustments be made to the litigation balance associated with the *Riverkeeper* lawsuit. ORS requests the Commission remove \$79,178 in litigation expenses due to redactions on the invoices which limited ORS's ability to review the description of work performed. Tr. p. 418, l. 14 – p. 419,

1. 20; Rehearing Exhibit 18, Surrebuttal Rehearing Exhibit DMH-2 and Rehearing Exhibit 16, Rehearing Exhibit DMH-4. The legal invoices contain numerous entries with work descriptions which detail the work performed for different legal cases. *Id.* Billed time was not separated by legal action. *Id.* Where redactions occurred in the work description, ORS states that it could not verify the legal action to which the redaction should be attributed and how the time should be allocated. *Id.*

ORS presented Bill Stangler, the Congaree Riverkeeper, as a witness. Mr. Stangler stated that the citizen lawsuit his agency brought in federal court *Congaree Riverkeeper, Inc. v. Carolina Water Service, Inc.* (Civil Action Number 3:15-cv-00194-MBS) was brought in an effort to bring CWS's I-20 facility into compliance with their Clean Water Act permit. Tr. p. 265, ll. 7 – 20. The permit required the I-20 plant to connect to a regional wastewater treatment system and cease discharging into the Lower Saluda River. *Id.* Yet, years later, discharges from the I-20 plant continued, and there were numerous effluent limitation violations from the I-20 facility. *Id.* Mr. Stangler stated that *Riverkeeper* case sought to address both the connection to a regional treatment system and the numerous effluent limitation violations. *Id.* Mr. Stangler testified that the Congaree Riverkeeper monitors all sorts of sites and polluters in the watershed and takes enforcement action when necessary, Tr. p. 265, l. 21 – p. 266, l. 21. He also testified that CWS's pattern of ongoing effluent violations was one of the issues which brought the CWS I-20 facility to the Congaree Riverkeeper's attention and was a key factor in deciding to file the lawsuit. *Id.*

Mr. Stangler also discussed the federal court's ruling in the *Riverkeeper* lawsuit. In March 2017, the federal court issued its order holding that CWS violated the Clean Water Act permit by failing to connect to the regional system for over 15 years and by repeatedly violating multiple

effluent limits in its permit. Tr. p. 278, ll. 1-5. The court imposed a \$1.5 million-dollar penalty against CWS for violation of the connection requirement and a \$23,000 fine against CWS for violation of the effluent limits. *Id.* Following motions of the court's order, the federal court granted reconsideration on the \$1.5 million penalty because the parties had agreed that they would present evidence on an appropriate penalty if CWS was found liable and the parties had not had a chance to present such evidence at the time of the Court's ruling. Tr. p. 278, ll.6 – p. 279, l. 2. The case is still ongoing with respect to an appropriate penalty of the violation of the requirement to connect. *Id.* The federal court did not grant reconsideration on its ruling that CWS had violated its NPDES permit for failing to connect to the regional facility and for exceeding the effluent limitations. *Id.*

Discussion: CWS seeks recovery of expenses related to cases in litigation in federal court, state court, and the ALC. All of these cases arise from the issues with CWS's I-20 system. ORS opposes recovery of the litigation expenses related to the federal cases and requests that the expenses related to the ALC cases and the condemnation case be booked to a regulatory asset for review in a future rate proceeding after those cases are concluded.

This Commission recognizes that these cases must be reviewed carefully because an underlying contention related to all the cases involves numerous violations of CWS's NPDES permit. When litigation involves claims asserting failure of the utility to adhere to state or federal law, we must look carefully at the matter to determine whether expenses associated with defending the action should be included in rates paid by customers.

(a) Federal Court Cases – The federal court cases arose when the Congaree Riverkeeper filed a citizen lawsuit in 2015. Following the filing of the *Riverkeeper* lawsuit, CWS

filed an action for a declaratory judgment and injunction against the US EPA and the Town of Lexington.

CWS through witnesses Cartin and Babcock have asserted that CWS must defend itself when litigation is filed. Mr. Gilroy testifying for CWS stated that CWS has sought interconnection with the Town of Lexington on several occasions. Tr. p. 168, l. 3 – p. 171, l. 10. Mr. Gilroy recounted several instances where CWS approached the Town of Lexington about interconnection, but these attempts were not successful. *Id.*

ORS witness Hipp stated ORS's position that ratepayers should not bear the burden of legal costs related to CWS's failure to operate its I-20 sewer system in accordance with its NPDES permit. Tr. p. 412, ll. 12-18. Witness Hipp also stated that these costs should be the responsibility of CWS's shareholders, otherwise no incentive exists for regulated utilities to operate in compliance with federal, state, and local laws. *Id.*

In response to the Order Granting Rehearing, CWS provided expert testimony from Mr. Babcock on the reasonableness of the attorney's fees incurred. Mr. Babcock described his analysis and concluded that the attorney's fees incurred in the litigation were reasonable. ORS witness Hipp stated that ORS was not contesting the reasonableness of the attorney's fees, but rather the propriety of requiring the ratepayers to pay these costs incurred by CWS. Tr. p. 473, ll. 10-13.

In considering this issue, the Commission is mindful that it must balance the interests of the utility with those of the ratepayer. In reviewing the record before us, we find that recovery of the litigation expenses related to the *Riverkeeper* case should be denied, but the recovery of litigation expenses related to the action brought by CWS against the US EPA and the Town of Lexington should be allowed to be amortized.

With regard to the *Riverkeeper* litigation, CWS seeks recovery of expenses defending its noncompliance or failure to comply with the obligations contained in its NPDES permit. CWS was not successful in defending this action in federal court. We find that ratepayers should not be responsible for the payment of litigation expenses incurred in defending this action in which the ratepayers derived no benefit from the expenditures. This Commission agrees with the statement of Witness Hipp that allowing recovery of expenses related to defending this action brought about by CWS's own noncompliance with its NPDES permit provides no incentive for regulated utilities to operate in compliance with federal, state, or local laws.

S.C. Code Ann. Regs 103-570(A) requires CWS to “comply with all laws and regulations of State and local agencies pertaining to sewerage service.” S.C. Code Ann. Regs. 103-540 (2012) requires CWS to “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.”

While we have located no South Carolina case addressing this issue, we are aware of the North Carolina case of *State ex. rel. Utilities Comm'n v. Pub. Staff, N. Carolina Utilities Comm'n*, 317 N.C. 26, 343 S.E.2d 898 (1986), and this case provides guidance on this issue of recovery of litigation expenses. In this case, the North Carolina Supreme Court reversed a decision by the North Carolina Utilities Commission allowing inclusion of utility legal fees in approved operating expenses resulting from the utility contesting a penalty that had been assessed for failure to provide adequate service. The North Carolina Supreme Court noted that the legal fees in question were not associated with the utility's provision of water service but were a result of the utility's failure to provide adequate water services in the first place. The North Carolina Supreme Court concluded it would be improper to require ratepayers to pay for the utility's penalty-related legal fees through

inclusion in the utility's regulated expenses. The North Carolina Supreme Court also concluded that the expense could not be considered reasonable or necessary because the utility could have avoided the expense if the utility had carried out its responsibility of providing adequate service. 317 N.C. 26, 41, 343 S.E.2d 898, 907-8.

As a public utility operating under the laws of South Carolina and pursuant to its federally granted NPDES permit, CWS was required to operate its facilities in compliance with federal, state, and local laws. In its orders, the federal court found significant violations by CWS. While the *Riverkeeper* case is still ongoing as to the penalty to be imposed, the order of the federal court found CWS to be in violation of its permit. We believe it would be improper to impose these expenses upon the ratepayers when the ratepayers were already paying for the Company to provide its services in compliance with its permits and with applicable federal and state laws, and, accordingly, were not deriving any benefit from the expenditure.

In contrast, we hold that litigation expenses in the federal case brought by CWS against the US EPA and the Town of Lexington should be allowed to be amortized. CWS's witness Babcock indicated that, although the case was dismissed and would have been difficult to win, the filing of that litigation was a smart strategic effort to try to unlock the logjam created by the 1997 208 Plan and the inability of CWS to gain an interconnection of the I-20 system to the Town of Lexington. (Tr. p. 224, ll. 20-24). For this reason, we believe that the Company was serving ratepayer interests when it filed this action, and, therefore, should be compensated for its effort by being allowed litigation expenses.

(b) ALC Cases – CWS seeks recovery of litigation expenses related to two cases pending in the ALC. These two cases are held in abeyance pending the court case involving the

condemnation of the I-20 sewer system by the Town of Lexington. Tr. p. 385, l. 18 – p. 386, l. 2. CWS shows the litigation expenses related to both cases as totaling \$284,262, with expenses of \$233,223 attributed to the ALC SC DHEC Permit Denial case and expenses of \$51,039 attributed to the ALC I-20 Connection case. Tr. p. 33. However, ORS witness Hipp addressed the reallocation of \$19,759 in attorneys' fees, classified by CWS as expenses related to the ALC SC DHEC Permit Denial case, as attorneys' fees related to the *Riverkeeper* case. Tr.p. 395. ll. 7-12; Rehearing Exhibit 18, Surrebuttal Rehearing Exhibit DMH-2. Witness Hipp also addressed reallocation of \$2,985 in attorneys' fees, booked by CWS to the ALC I-20 Connection case, as attorneys' fees were expenses related to the condemnation case. Tr. p. 395, ll. 13–18; Rehearing Exhibit 18, Surrebuttal Rehearing Exhibit DMH-2. ORS Witness Hipp proposed adjustments to the claimed litigation expenses to remove \$40,181 from the ALC DHEC Permit Denial case and to remove \$11,534 from the ALC I-20 Connection case. Rehearing Exhibit 18, Surrebuttal Rehearing Exhibit DMH-2. These two adjustments proposed by ORS related to removal of legal fees where redactions of the descriptions limited ORS's review of the work performed. Tr. p. 394, l. 20 – p. 395, l. 6; Rehearing Exhibit 18, Surrebuttal Rehearing Exhibit DMH-2. Company witness Cartin's rehearing rebuttal testimony stated that, even with the redactions, the invoices provide ample basis to allow recovery of these expense. (p 6 of 7, Cartin rehearing rebuttal testimony). Considering the invoices submitted in confidential Exhibit DMH-4, the Commission agrees with witness Cartin that these expenses are proper. With these adjustments, the litigation expenses proposed by ORS for the ALC SC DHEC Permit Denial case are \$173,283 and for the ALC I-20 Connection case are \$36,521 totaling \$209,804. Rehearing Exhibit 18, Surrebuttal Rehearing Exhibit DMH-2. The Commission finds that the litigation expenses to be allowed for deferral, as

discussed below are \$213,463 for the ALC – DHEC Permit Denial case and \$48,054 for the ALC I-20 Connection case after adding back the redacted invoices removed by ORS.

Because these cases have not yet concluded, and no final order has been issued, ORS asserts it would be premature to allow recovery of litigation expenses related to these two cases. Tr. p. 391, l. 1- p. 392, l. 2. ORS recommends establishment of a regulatory asset in which to defer the litigation expenses associated with these two ALC cases and for ratemaking treatment to be deferred until a future rate proceeding. *Id.* ORS also recommends that the regulatory asset be limited to litigation expenses for the ALC cases, that the regulatory asset not be allowed to accrue carrying costs, and that the amortization period for the regulatory asset deferral be established during the next rate proceeding after all facts related to the cases are known. *Id.*

The Commission finds ORS’s recommendation to establish a regulatory asset in which to defer the litigation expenses associated with these two ALC cases reasonable and appropriate. Given that the cases are not concluded and all facts surrounding the cases are not yet known, it is appropriate to establish a regulatory asset to defer ratemaking treatment of these litigation expenses. The regulatory asset for these litigation expenses shall be limited to litigation expenses for these ALC cases, the regulatory asset shall not accrue carrying costs, and the amortization period for the regulatory asset deferral shall be established during the next rate proceeding after all facts related to the cases are known

(c) Condemnation Case – At the hearing CWS stipulated that it agreed to place the litigation expenses related to the condemnation case in a regulatory deferral account to be carried without carrying costs until the next rate case when the results of that case are known. Tr. p. 245, l. 23 – p. 246, l. 14. This was the position of ORS with regard to the litigation expenses associated

with the condemnation case. Tr. p. 383, l. 11 – 16. Therefore, upon the agreement of CWS and ORS, the expenses associated with the condemnation proceeding of \$124,603<sup>4</sup> are to be placed in a regulatory deferral account without carrying costs. This amount includes an update from ORS's surrebuttal testimony to include \$52,442 in advances paid for consulting services which originally had not been assigned to a specific litigation case. Tr. p. 417, l. 10 – 16. The deferral should be further adjusted to include \$9,306 in invoices that ORS removed due to redactions. The total amount to be deferred for the Condemnation case is \$133,909.

(d) Expenses and Advances – ORS made an adjustment of \$20,377 to remove expenses related to the Winston and Strawn invoices. Tr. p. 415, l. 9 – p. 416, l. 6; Rehearing Exhibit 18, Surrebuttal Rehearing Exhibit DMH-2 and Rehearing Exhibit 16, Rehearing Exhibit DMH-2. CWS had categorized \$19,912 of the Winston & Strawn invoices as work and expenses related to the *Riverkeeper* case, but the invoices indicated the work was for a matter that was not the *Riverkeeper* case. *Id.* The remaining \$465 was categorized under the Expenses category on surrebuttal rehearing Exhibit DMH-2, Hearing Exhibit No. 18. We agree that the Company's Winston & Strawn invoices should be disallowed in this case, based on the description of work performed relating to employee benefits and executive compensation, and that expenses and allowances be included net of reallocations and disallowances. ORS also reallocated \$73,491 in mailing, court reporting, and advances paid to Berkeley Economic Consulting, Inc. Tr. p. 418, ll. 3-7; Rehearing Exhibit 18, Surrebuttal Rehearing Exhibit DMH-2. Of the reallocation, \$21,049 should be reassigned to the *Riverkeeper* case and \$52,442 should be reassigned to the Town of Lexington condemnation case. ORS also proposed to re-allocate \$19,760 to the *Riverkeeper*

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<sup>4</sup>Tr., p. 33; Tr. p. 44, ll. 7-10; Rehearing Exhibit 18, Surrebuttal Rehearing Exhibit DMH-2.

lawsuit for legal hours incorrectly attributed to the legal action ALC-DHEC Permit Denial. CWS originally included these costs and attorneys' fees in the ALC Permit denial case when these costs were in fact incurred in the *Riverkeeper* case. Tr. p. 395, ll. 7-12. We agree with ORS with regard to the \$19,760. In addition, we accept ORS's correction of allocations from the I-20 Connection case with a reassignment of \$2,985 to the Town of Lexington condemnation case.

Further, with regard to the \$155,975 removed by ORS due to redactions reflected on legal invoices, we disagree. ORS recommended the Commission exclude \$155,974 in fees resulting from any item on any invoices that included a redaction. Citing one example of an invoice entry where the nature of the legal matter was unclear, the ORS objected to 152 such invoices. (Tr. p. 418, l. 14 - p. 419, l. 11; Exhibit 16 and Conf. Exhibit 17). ORS claimed the Company's need to protect the confidentiality of attorney-client communications or attorney work product was irrelevant. (Tr. p. 419, l. 21 - p. 420, l. 3). Mr. Cartin, a former ORS employee, testified that he had never encountered a circumstance where the ORS stood behind redactions to deny recovery of legal fees. (Tr. p. 44, l. 12 - p. 45, l. 2). The ORS position raises concerns over a utility's ability to recover legitimate litigation costs while protecting confidential information and litigation strategy. ORS disallowed expenses even when otherwise detailed time entries had one or two words redacted. (See Exhibit 16 and Conf. Exhibit 17). The mere presence of a redaction in a time entry is not sufficient to justify its rejection. This issue must be examined on a case-by-case basis. Examination of the invoices in this case indicates to this Commission that the redacted material would not prevent a reader from determining what work was performed. Accordingly, in this case, we reject this exclusion, and hold that these costs should be allowed and included in

amortization amounts. Below is a table showing litigation expenses allowed, litigation expenses disallowed, and litigation expenses deferred:

<u>Litigation Expenses</u>								
Town of Lex v.								
Summary of Adjustments	CRK v. CWS	CWS (condemnation)	ALC - DHEC Permit Denial	ALC - I-20 Connection	CWS v. EPA	Expenses and Advances	TOTAL	
Starting Balance	\$ 395,196	\$ 78,482	\$ 233,223	\$ 51,039	\$ 146,420	\$ 87,148	\$ 991,508	
ORS Adj - Exh DMH-4	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
ORS Adj - Exh DMH-2	\$ (19,912)	\$ -	\$ -	\$ -	\$ -	\$ (465)	\$ (20,377)	
ORS Adj - Exh DMH-3*	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (73,491)	\$ (73,491)	
ORS Adj - Exh DMH-5	\$ 19,760	\$ 2,985	\$ (19,760)	\$ (2,985)	\$ -	\$ -	\$ -	
Advance Reallocation - Surrebuttal	\$ 21,049	\$ 52,442	\$ -	\$ -	\$ -	\$ -	\$ 73,491	
Ending Balance	\$ 416,093	\$ 133,909	\$ 213,463	\$ 48,054	\$ 146,420	\$ 13,192	\$ 971,131	
Deny all legal expenses for CRK v. CWS	\$ (416,093)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (416,093)	
Defer legal expenses for condemnation and ALC**	\$ -	\$ 133,909	\$ 213,463	\$ 48,054	\$ -	\$ -	\$ 395,426	
Grant legal expenses for CWS v. EPA and other expenses***	\$ -	\$ -	\$ -	\$ -	\$ 146,420	\$ 13,192	\$ 159,612	

\*Of the \$73,491, the amount reallocated to the CRK v. CWS case was \$21,049 and \$52,442 was reallocated to the Town of Lexington v. CWS condemnation case

\*\* Defer legal expenses for condemnation and ALC for consideration in a future rate proceeding

\*\*\* These expenses are to be amortized over 66.67 years

We also hold that all legal expenses approved for recovery in this Order shall be amortized over the previously approved period of 66.67 years, with no carrying costs. In addition, the Company is authorized to make any further adjustments that may fall out of the decision described in this Order.

### C. Friarsgate EQ Basin Liner Project

In its Petition, ORS requested reconsideration with CWS recovering expenses associated with the replacement of the Equalization Liner (“EQ Project”). ORS asserted that the work on the EQ Project was not completed and that recovery of expenses in this case was not appropriate because the liner was not yet “in service” and did not meet the “used and useful” standard of

providing service to customers. In Order No. 2018-494, this Commission granted rehearing of this issue and stated that it would consider an update on the status of the EQ Liner replacement including expenditures and the projected final completion date. Order No. 2018-494.

CWS's Position: CWS witness Cartin addressed the expenses associated with the EQ Project. He explained the remediation work on the EQ Project was required by SC DHEC Consent Order 16-039-W, which required CWS “to remove and properly dispose of the solids and grit from the EQ basin and complete repairs to the basin liner” at the Friarsgate WWTF. Tr. p. 25, ll. 5 – 12; see also, Tr. p. 140, ll. 12 – 16. The remediation work began in September 2017, but was not completed until February 2018, because it was more involved than originally anticipated. Tr. p. 25, ll. 13 – 16. CWS witness Laird offered that the expenses of the remediation would have been required even if CWS had not planned to replace the EQ Liner. Tr. p. 141, ll. 1 – 7.

In November 2017, SC DHEC notified CWS that both Richland County and the City of Columbia had treatment capacity for the flow from the Friarsgate WWTF. Tr. p. 26, ll. 1 – 12. This notice triggered a condition in CWS's NPDES permit for the facility to affect an interconnection with an available regional wastewater provider. *Id.* CWS entered into discussions with both Richland County and the City of Columbia and, in February 2018, CWS chose to proceed with the City of Columbia for an interconnection agreement. *Id.* Thereafter, based on the recommendation from its engineering consultant, CWS decided to incorporate the EQ basin work scope into the interconnection project. Tr. p. 26, l. 13 – p. 27, l. 3. Mr. Cartin then explained that CWS is not seeking recovery of any costs associated with the EQ liner repair project phase in this case but that CWS will seek to recover the costs of the interconnection project, which now encompasses the EQ basin liner repair, in its next general rate proceeding. Tr. p. 27, ll. 14 – 19.

Presently, the EQ basin project was approved in Order No. 2018-682, dated October 30, 2018 , but awaits Midlands Region Council of Governments' approval of an amendment to the 208 Water Quality Management Plan that would permit the equalization basin to remain in operation after decommissioning of the Friarsgate WWTF. Tr. p. 139, l. 20 – p. 140, l. 5

ORS's Position: The EQ Project began on May 16, 2017 and was identified by CWS as Project #2017093. Tr. p. 396, l. 13 – p. 397, l. 16. CWS requested \$1,081,375 be included in plant-in-service for this Project which was to replace the equalization basin liner at the Friarsgate plant. *Id.* This project was not completed by April 3, 2018, (which was the first day of the hearing on CWS's Application) and was not providing service to CWS's customers. *Id.* ORS therefore adjusted CWS's pro-forma plant-in-service by \$1,081,375 to exclude the EQ Project from this rate case. *Id.* ORS's reasoning for excluding this project was the fact that the plant covered by the EQ Project was not yet "in service" and was not "used and useful." Tr. p. 397, ll. 17 – p. 398, l. 15.

Subsequent to the April hearing, CWS provided ORS with updates on the EQ Project and responded to discovery requests from ORS related to this rehearing. Responses to ORS's discovery requests initially revealed that the EQ Project (originally designated as Project #2017093) had been separated into two phases. Tr. p. 398, l. 19 – p. 399, l. 5. CWS's testimony filed for the rehearing further revealed that the project has been separated into three phases. Tr. p. 373, ll. 4- 13. Phase 1 is for the project expenses related to soil remediation, Phase 2 is for the project expenses related to the line installation and the interconnection with the City of Columbia, and Phase 3 is for the project expenses related to the Friarsgate collection system infrastructure repairs and replacement. *Id.*

After CWS divided the Project into the different phases, witness Hipp recommended \$1,079,132.84 remain as plant-in-service for Phase 1 site remediation work and Phase 3 collection system infrastructure repairs. Tr. p. 373, ll. 4 – 17'; p. 420, l. 21 – p. 421, l. 13. As a result of the changes and reclassifying the project into different phases, ORS recommends an adjustment to remove \$2,242.51. Tr. p. 373, ll. 18 – 23. This adjustment to plant-in-service removes \$2,130.00 for the portion of the vendor invoices related to costs to reinstall grass matting in the proper location after the matting where the grass matting was installed at the wrong location and also removes \$112.51 for late fees paid to vendors that should not be charged to CWS's customers by the Company. Tr. p. 373, ll. 18 – 23; p. 400, l. 14 – 22; p.421, ll. 7 – 8.

Discussion: CWS and ORS are in agreement that \$1,079,133 should remain in plant-in-service. Following the April 2018 hearing, CWS modified the project from one large project to two separate phases (one being the remediation work and the other being the repair of the liner). Following the negotiations with the City of Columbia for interconnection of the Friarsgate plant, the repair phase was modified into two distinct phases with one phase being the project expenses related to the line installation and the interconnection with the City of Columbia and the second phase being the project expenses related to the Friarsgate collection system infrastructure repairs and replacement. This Commission finds it appropriate to keep this agreed upon amount of \$1,079,133 in plant-in-service as costs of the remediation work (Phase 1 site remediation work) and the collection system infrastructure repairs (Phase 3) have been completed and are in service. CWS has now included the EQ liner repair in the phase which includes the cost of the interconnection project and has expressed its intention to seek recovery of those costs in the next general rate proceeding. ORS's adjustment totaling (\$2,242.51) for extra costs related to re-

installing grass matting which was installed at the wrong location (\$2,130.00) and for late fees (\$112.51) is approved. We conclude that ratepayers should not pay for the mistake of the vendor installing the matting in the wrong location or pay for late fees incurred by CWS. Further, we note that CWS did not contest ORS's adjustment.

#### D. Rate Design

By its Petition, ORS questioned the adoption of the rate schedule set forth in Order No. 2018-345(A). ORS maintained the rates approved in Order No. 2018-345(A) were only presented by CWS in its proposed Order, which was filed after the record in the case was closed and no discussion in the Order explained the manner of the approved rate design. Petition, page 4. In granting rehearing on this issue, the Commission directed the parties to describe the method used to determine rates. Order No. 2018-494.

CWS's Position: CWS's witness Hunter addressed the issue of rate design. Mr. Hunter explained the two Water Service Territories and difference in the Water Supply Customers and the Water Distribution Customers. Tr. p. 107, ll. 11-14. He also described the rate structure for sewer service customers. Tr. p. 108, ll. 21 – p. 109, l. 2. For the water service customers, Mr. Hunter explained the Base Facilities Charge (“BFC”) is set according to the size of a customer's meter and stated the BFC is the same for Water Supply Customers and Water Distribution Customers with the same meter size. Tr. p. 107, ll. 14 -16. In addition to the BFC, water service customers pay a Commodity Charge for the water consumed, but the Commodity Charge for Water Supply Customers is different from the Commodity Charge for Water Distribution Customers Tr. p. 107, l. 16 – p. 108, l. 2. Sewer service customers pay the same rates regardless of whether the customer received sewer treatment and collection service or Collection-Only service. *Id.*

For CWS's water service, the rates in the two service territories are different. Tr. p. 108, ll. 3-4. The rates for water service in each service territory were calculated using the financial statements created to establish the cost of service for each service territory with revenue required to earn the approved 10.50% ROE. Tr. 108, ll. 3 – 13. Mr. Hunter stated that he created financial statements for the test year and applied known and measurable adjustments to establish a unique cost of service for the different service territories. Tr. p. 109, ll. 3 – 13. This process allowed him to calculate the current ROE (before the increase) that each service territory was earning. *Id.* He then calculated the incremental revenue required in each service territory to reach the 10.50% ROE approved by the Commission. *Id.* He then used the rate structure approved in the previous rate case and adjusted the current BFC and Commodity Charge by applying a percentage increase to all rates within each respective service territory to arrive at the revenue required to earn the 10.50% ROE. *Id.* Each set of rates was calculated using the financial statements created for each service territory to establish the cost of service along with the revenue requirement to achieve the allowed 10.50% ROE. Tr. p. 109, ll. 14 – 20.

In Rebuttal testimony, Mr. Hunter addressed ORS's concern that the revenue requirement in CWS's proposed order was different from the revenue allocation contained in the Application. Tr. p. 115, ll. 10 – 15. Witness Hunter reiterated that CWS allocated the revenue requirement to each service territory based on the cost of service for that service territory. Tr. p. 116, ll. 1 – 9. To address why the rates requested in the Application differed from those offered by CWS in the proposed order, Mr. Hunter stated that the rates in the proposed order were based on the revenue requirement calculated on the cost of service for each service territory after adjustments during the audit performed by ORS and using any other known and measurable adjustments which arose

between the Application being filed and the proposed order. Tr. p. 116, ll. 15 – 21. One specific example related to an adjustment made by ORS to adjust pro-forma property taxes. ORS identified that CWS had allocated property taxes to Water Service Territory 1, which should have been allocated between Water Service Territory 1 and the unified Sewer Service Territory. Tr. p. 116, l. 21 – p. 117, l. 5. Mr. Hunter also noted that the rates offered by ORS in its proposed order did not account for changes in cost of service to the service territories but were calculated by applying the percentage of total revenue requirement allocated to each service territory from CWS's Application to the adjusted revenue requirement determined by ORS. Tr. p. 117, l. 21 – p. 118, l. 6.

ORS's Position: In explaining ORS's position on this issue of rate design, witness Hipp acknowledged the Commission has the discretion to establish rates to distribute the revenue requirements in an equitable manner among the Company's customers but explained ORS's concern that the revenue allocation in Order No. 2018-345(A) resulting in an unexpected decrease to a portion of water customers in Service Territory 1 was not transparent or may not be fair to the remaining customers in Service Territory 1 and Service Territory 2. Tr. p. 404, ll. 12-22. At the hearing, Ms. Hipp explained the reason for the reduction was not apparent and ORS raised the objection to have the issue examined in the event the revenue allocation was misallocated or a classification of customer was disadvantaged. Tr. p. 437, ll. 3 – 14.

In her direct pre-filed testimony, Ms. Hipp discussed that CWS in its Application had represented that a rate increase would result for all commercial and residential water customers in Service Territory 1 and Service Territory 2 and the notice of the hearing had reflected these increases. Tr. p. 401, ll. 8 -17. Further witness Hipp explained CWS had presented testimony

indicating a rate increase was necessary for all water customers in both service territories. Tr. p. 401, l. 18 – p. 402, l. 7. Ms. Hipp then explained the proposed order submitted by CWS presented an allocation of the revenue requirement for the water customer in Service Territory 1 which differed from the rates requested in the application and noticed to the Customers. Tr. p. 402, l. 12 – p. 403, l. 2. Specifically, the rate schedule contained in CWS’s proposed order deviated from the revenue allocation contained in the Application and CWS’s testimony from the hearing by decreasing the base facilities charge (“BFC”) and commodity charge from the currently approved rates for all water supply customers in Service Territory 1 and by decreasing the BFC from the currently approved rate for all water distribution customers in Service Territory 1. *Id.* CWS did not provide an explanation of the revenue allocation resulting in a reduction of the BFC for all water supply and distribution customers in Service Territory 1, and a reduction in the commodity rates for all water supply customers in Service Territory 1. Tr. p. 403, l. 12 – p. 404, l. 3.

During its review of the rate case, ORS calculated the percentage of the total revenue requirement attributed to sewer, purchased water and water supply customers within Service Territory 1 and Service Territory 2 to verify the accuracy and fairness of the rates contained in CWS’s Application. Tr. p. 405, ll. 1-18. In its proposed order, ORS replicated the revenue allocation based on the rates proposed in the Application and applied as close as practicable the allocation percentage to the proposed revenue requirement to determine the revenue requirement for each customer class. *Id.* ORS then designed rates which kept as close as practicable the revenue allocation proposed in the Application and verified by ORS. *Id.* Witness Hipp offered that ORS was not recommending rates be increased for customers in Service Territory 1, but requested that should the Commission re-evaluate the approved revenues requirement in the context of the

rehearing that the revenue requirement allocation be reviewed to ensure no customer class is disadvantaged. Tr. p. 405, l. 19 – p. 406, l. 3

After reviewing CWS's explanation of the allocation of the revenue requirement contained in the surrebuttal testimony of CWS's witness Hunter, Ms. Hipp acknowledged that ORS more fully understands how the rate schedule was developed. Tr. p. 421, ll. 15 – 20. Further, Ms. Hipp stated that the details and explanation provided through CWS's rebuttal testimony of witness Hunter satisfy ORS's concern with the revenue allocation contained in Commission Order No. 2018-345(A) and that ORS considers the issue resolved. Tr. 441, ll. 11 - 25.

Discussion: Based upon the evidence presented including ORS's acknowledgement that the explanation and details provided by CWS in the rebuttal testimony of CWS witness Hunter alleviate ORS's concern, the Commission finds that the revenue allocation contained in CWS's proposed order and adopted by the Commission in Order No. 2018-345(A) is appropriate and correct. CWS explained the methodology utilized in its revenue allocation, and the Commission finds that the revenue allocation is based upon the cost of service for each service territory taking into account the adjustments adopted by the Commission in the Order which includes the reallocation of property taxes from Water Service Territory 1 to Water Service Territory 1 and the unified Sewer Service Territory. While CWS and ORS approached the calculation of the revenue requirement in different ways, we find the method proposed by CWS and adopted in Order No. 2018-345(A) to be reasonable and appropriate. This method captures the known and measurable adjustments which arose between the Application being filed and the issuance of the proposed order and which were adopted in the Order. Further, ORS agrees that the revenue allocation employed by CWS and adopted in Order No. 2018-345(A) is appropriate.

We would note that ORS has included language in its proposed order which would require CWS to provide a calculation of the amount of refund due to customers to account for the difference in rates being charged pursuant to Order No. 2018-345(A) and this Order. Further, ORS has also stated in its proposed order that CWS should provide a proposed method of refunding or crediting the customers affected by the difference in the rates. Neither ORS, nor any other party, presented any evidence in the record regarding the appropriateness, nor the amount of any refunds resulting from the issuance of this Order on Rehearing. Further, no evidence was presented in the record regarding any proposed method of refunding or crediting the customers. For these reasons, neither refunds nor credits are ordered in this Order. However, this Commission does believe and so holds that, going forward, rate reductions will result as addressed *infra*, because of the revenue decrease resulting from our Order herein.

### III. FINDINGS OF FACT

1) CWS is a water and sewer utility providing water and sewer service in its assigned service area in South Carolina. The Commission is vested with authority to regulate rates of every public utility in this state and to ascertain and fix just and reasonable rates for service. S.C. §58-5-210, et. seq. CWS's operations in South Carolina are subject to the jurisdiction of the Commission.

2) The Commission granted rehearing of its Order No. 2018-345(A) on four specific issues: sludge hauling expenses, litigation costs, Friarsgate EQ basin liner project, and rate design.

3) Aside from the four specified issues on which rehearing was granted, all other issues decided in Order No. 2018-345(A) are not subject to review in this rehearing. The Commission accepts the ORS adjustment of (\$96,892) to normalize test year sludge hauling expense.

4) Litigation expenses associated with the *Riverkeeper* federal court case are denied. Such expenses associated with the CWS federal court case against the EPA and the Town of Lexington are granted, and are to be amortized over 66.67 years.

5) Litigation expenses associated with the two ALC cases are to be placed in a regulatory asset, and this regulatory deferral account shall be limited to litigation expenses related to the two ALC proceedings and shall not accrue carrying costs.

6) Litigation expenses associated with the condemnation case are to be placed in a regulatory asset, and this regulatory deferral account shall be limited to litigation expenses related to the condemnation proceeding and shall not accrue carrying costs.

7) For work related to the EQ Basin Liner Project and associated projects, \$1,079,133 shall remain in plant-in-service, and \$2,242 shall be removed from plant-in-service.

8) The Commission approves all fallout adjustments to interest expense, miscellaneous revenue, uncollectible accounts, cash working capital, customer growth, revenue taxes, and state and federal income taxes as a result of the adjustments approved herein.

9) The approved rate base following the adjustments adopted herein is \$55,509,028.

10) The revenue requirement herein is \$111,734 less than the revenue requirement contained in Order No. 2018-345(A).

11) The rate design as contained in Order No. 2018-345(A) is appropriate and shall be continued.

12) Based on the rehearing adjustments adopted in this case, the Company shall lower its Sewer Service Revenue by \$111,990, which will cause the average sewer customer's bill to decrease by about \$0.68 (68 cents ) a month. The Company shall calculate a new schedule of rates

and charges to achieve the Company's new revenue requirement, and shall file it with the Commission and serve it on the Office of Regulatory Staff within ten (10) days of receipt of this Order.

13) The resultant Operating Margin will be 13.28%. The return on equity will remain at 10.50% and the Return on Rate Base will remain at 8.62% as previously set by the Commission in Order No. 2018-345(A).

#### **IV. CONCLUSIONS OF LAW**

Based upon the discussion, findings of fact, and the record of the instant proceeding, the Commission makes the following Conclusions of Law:

1) CWS is a public utility as defined in S.C. Code § 58-5-10(3) and is subject to the jurisdiction of this Commission.

2) The appropriate test year on which to set rates for CWS is the twelve-month period beginning September 1, 2016, and ending August 31, 2017.

3) Based on the information provided by the parties, the Commission concludes the rate setting methodology to use as a guide in determining the lawfulness of CWS's proposed rates and for fixing just and reasonable rates is return on rate base.

4) For CWS to have the opportunity to earn the 10.5% ROE, found fair and reasonable herein, CWS must be allowed additional revenues of \$2,824,661.

#### **V. ORDERING PROVISIONS**

IT IS THEREFORE ORDERED THAT:

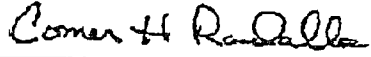
1) CWS shall furnish new tariffs reflecting the adjustments described in this Order within ten (10) days of receipt of this Order.

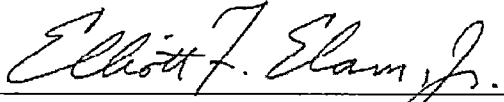
DOCKET NO. 2017-292-WS – ORDER NO. 2018-802  
JANUARY 25, 2019  
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- 2) All other requirements of Order No, 2018-345(A) remain in full force and effect.
- 3) This Order will remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

  
Comer H. "Randy" Randall, Chairman

  
Elliott F. Elam, Jr., Vice Chairman

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

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>March 07, 2019</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2017-292-WS</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u>2019-178</u>

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

**SUBJECT:**

DOCKET NO. 2017-292-WS - Application of Carolina Water Service, Incorporated for Approval of an Increase in Its Rates for Water and Sewer Services - Staff Presents for Commission Consideration the Office of Regulatory Staff's Motion to Dismiss Carolina Water Service, Incorporated's Petition for Rehearing and Reconsideration of Commission Order No. 2018-802.

**COMMISSION ACTION:**

As you recall from a reading of the record, Carolina Water Service filed a Notice of Appeal of this Commission's Order No. 2018-802 with the Supreme Court of South Carolina on February 25, 2019.

We have looked at the South Carolina Appellate Court Rules, and Rule 205 reads, in pertinent part, "Upon the service of the Notice of Appeal, the Appellate Court shall have exclusive jurisdiction over the appeal."

Since Carolina Water Service filed a Notice of Appeal with the Supreme Court of South Carolina, jurisdiction over this case now rests with the Supreme Court. Therefore, this Commission lacks jurisdiction to entertain the company's Petition for Rehearing or the company's Petition for Reconsideration.

For these reasons, I move that the Motion for Rehearing and Reconsideration filed by CWS on February 14, 2019, be dismissed for lack of jurisdiction. I also move that the directive recording this Commission's vote today shall constitute the Commission's Order in this matter.

So moved.

PRESIDING: Randall

SESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
BELSER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Recused</u>
ERVIN	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WILLIAMS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

(SEAL)



RECORDED BY: J. Schmieding

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2017-292-WS - ORDER NO. 2019-623

SEPTEMBER 4, 2019

IN RE: Application of Carolina Water Service, ) ORDER GRANTING  
Incorporated (n/k/a Blue Granite Water ) REHEARING AND  
Company) for Approval of an Increase in Its ) RECONSIDERATION  
Rates for Water and Sewer Services )

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Petition for Rehearing and Reconsideration of Commission Order No. 2018-802 filed by Blue Granite Water Company, f/k/a Carolina Water Service, Inc. (“Blue Granite” or “Company”). Blue Granite asserts that the Commission erred as follows:

1. Blue Granite represents that the basis for the Commission’s ruling on recovery of litigation expenses for the *Riverkeeper* case was different from the basis upon which the Commission granted rehearing on that issue in Order No. 2018-494, in violation of the Administrative Procedures Act and the South Carolina and United States Constitutions.

2. Blue Granite asserts that this Commission earlier granted rehearing in order to determine the reasonableness of the utility’s attorneys’ fees in the case, but not the separate question of whether the expenses were reasonable and necessary to the provision by CWS of utility services to its customers. The Company argues that the Commission

erred as a matter of law in denying the *Riverkeeper* litigation expenses, which it characterizes as prudent, reasonable, unavoidable, and beneficial to ratepayers.

3. Blue Granite maintains that the Commission erred by not ordering the Company to account for the *Riverkeeper* litigation expenses in a regulatory asset to be considered in a future rate case after the resolution of the litigation. Subsequent to the issuance of Order No. 2018-802, the *Riverkeeper* case was settled, and Blue Granite has filed copies of the Settlement Agreement and Consent Order and Final Judgment as exhibits appended to its Supplemental Memorandum in Support of Petition for Rehearing or Reconsideration.

The Company has filed a Supplemental Memorandum in Support of its Petition for Rehearing and Reconsideration, and with it has submitted two Exhibits which deal directly with the *Riverkeeper* litigation that is the subject of its Petition. The Company asserts that it may provide such additional evidence pursuant to 58-5-330, which allows the Commission upon an application for rehearing to consider all the facts, including those arising since the making of the order.

In correspondence dated June 24, 2019, counsel for Blue Granite informed the Commission that the parties had agreed that an additional evidentiary hearing would not be necessary and suggested that oral arguments addressing the Company's request for recovery of the litigation expenses in dispute, followed by the submission of proposed orders to the Commission, would suffice.

Accordingly, the Commission grants rehearing on the issues raised in the petition to consider all the facts and evidence, including the materials relating to the settlement

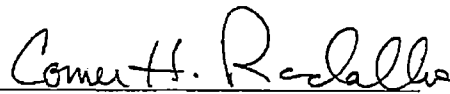
DOCKET NO. 2017-292-WS – ORDER NO. 2019-623  
SEPTEMBER 4, 2019  
PAGE 3

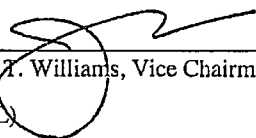
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entered subsequent to the entry of Order No. 2018-802. Commission Staff is instructed to set a date on which oral arguments are to be held, and the parties shall submit proposed orders following the oral arguments.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

  
Comer H. Randall, Chairman

  
Justin T. Williams, Vice Chairman  
(SEAL)

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2017-292-WS - ORDER NO. 2020-57

JANUARY 21, 2020

IN RE: Application of Carolina Water Service, Inc.	)	ORDER ON REHEARING
(n/k/a Blue Granite Water Company) for	)	AND
Approval of an Increase in Its Rates for	)	RECONSIDERATION
Water and Sewer Services	)	REGARDING
	)	RIVERKEEPER
	)	LITIGATION EXPENSES

This matter is before the Public Service Commission of South Carolina on the Petition for Rehearing and Reconsideration ("Petition") filed by Carolina Water Service, Inc. ("CWS")<sup>1</sup> on February 14, 2019, in which CWS requested the Commission rehear and reconsider a portion of its rulings in Order No. 2018-802. The South Carolina Office of Regulatory Staff ("ORS") moved to dismiss the Petition because CWS filed a Notice of Appeal which divested the Commission of jurisdiction over the Petition. CWS responded in opposition to the motion to dismiss and ORS replied. The Commission granted ORS' motion to dismiss on March 7, 2019. Subsequently, the South Carolina Supreme Court dismissed CWS' notice of appeal as untimely, vacated the Commission order granting the motion to dismiss, and remanded the matter to the Commission to rule on the merits of the Petition. On remand, ORS responded in opposition to the Petition and CWS replied. On September 4, 2019, the Commission granted the request for rehearing. The parties agreed

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<sup>1</sup> CWS recently changed its name to Blue Granite Water Company but has been referred to as CWS throughout this proceeding. To avoid confusion, the Commission will use CWS for purposes of this Order.

that an additional evidentiary hearing was not necessary and suggested oral arguments be scheduled. The Commission heard oral arguments from the parties on October 7, 2019.

## I. SUMMARY OF FACTS

Order No. 2018-802 granted in part an ORS petition for rehearing and reconsideration. At the evidentiary rehearing prior to the issuance of Order No. 2018-802, the Commission heard testimony from several witnesses presented by ORS and CWS. The Commission discussed that witness testimony extensively in its Order No. 2018-802.

The portion of Order No. 2018-802 about which CWS seeks reconsideration concludes that CWS cannot recover from ratepayers \$416,093 of litigation expenses associated with its unsuccessful defense of a lawsuit in the United States District Court for the District of South Carolina captioned *Congaree Riverkeeper, Inc. v. Carolina Water Service, Inc.*, Civil Action Number 3:15-cv-00194-MBS ("Riverkeeper Action"): In the Riverkeeper Action, Congaree Riverkeeper sued CWS for violations of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., alleging that CWS violated its National Pollutant Discharge Elimination System ("NPDES") permit by failing to connect its I-20 wastewater treatment plant to the regional system and exceeding the NPDES discharges limit for discharges into the Saluda River set in the permit. The NPDES permit included a January 1, 1995 effective date. The Clean Water Act is a strict liability statute.

By Order entered March 30, 2017, United States District Judge Margaret B. Seymour granted summary judgment to Congaree Riverkeeper, concluding that CWS violated its NPDES permit for over seventeen years by not connecting to the regional system and by violating the discharge limitations in its permit twenty-three times.

*Congaree Riverkeeper, Inc. v. Carolina Water Serv., Inc.*, 248 F. Supp. 3d 733, 755-56 (D.S.C. 2017). The Court ordered a \$ 1,500,000 fine for the failure to connect and a \$23,000 fine for the effluent limit violations. *Id.* The Court directed both fines be paid to the United States Treasury. *Id.* at 756. The Court also permanently enjoined CWS from discharging any treated or untreated waste water into the Saluda River and ordered CWS to connect to the regional wastewater treatment plant, in any manner, in accordance with the 208 Water Quality Management Plan for the Central Midlands Region ("208 Plan"). *Id.* at 757.

In her March 30, 2017 Order, Judge Seymour discussed extensively the history of negotiations among CWS, the Town of Lexington, and the South Carolina Department of Health and Environmental Control ("DHEC") regarding interconnection of the I-20 facility with the regional system. She also discussed the interconnection agreement between CWS and the Town of Lexington for which the Commission denied approval in 2000 because CWS had agreed to pay too high a rate for the service received which would have resulted in its customers effectively subsidizing the regional system. *See In re Application to Carolina Water Service Inc.*, Docket No. 2002-147-S, Order No. 2003-10, 2003 WL 26623818 (S.C.P.S.C. 2003). Judge Seymour considered the evidence presented and found that CWS violated its NPDES permit for over seventeen years and failed to undertake any meaningful attempt to comply with the NPDES permit between 2002 and 2014.<sup>2</sup> *Congaree*

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<sup>2</sup> CWS argued there were a few communications with the Town of Lexington between 2002 and 2014 related to interconnection. The Commission has reviewed and considered the communications which were made part of the record in this proceeding in reaching its decision. It is not clear whether the communications were part of the record before Judge Seymour, but it is unlikely they would have altered her decision, as the Clean Water Act is a strict liability statute. Accordingly, "the reasonableness or bona fides of an alleged violator's

*Riverkeeper*, 248 F. Supp. at 755. She reasoned the NPDES permit placed the onus on CWS to engage in negotiations that would allow CWS to submit a satisfactory agreement for the Commission's approval. *Id.* at 747. CWS had the obligation to contract with the Town of Lexington or take other measures and steps to fulfill the permit requirements. *Id.* She stated that "[w]hile regional connection does require other actors' assistance and approval, [CWS] cannot be rewarded for its lack of a good faith effort to engage in negotiations and receive the required approvals." *Id.* at 747.

In a subsequent Order dated March 26, 2018, Judge Seymour denied in part and granted in part CWS' motion for reconsideration, granted Congaree Riverkeeper's motion for attorney fees, and denied CWS' motions to substitute the Town of Lexington as a party or join the Town of Lexington as a necessary party. The Town of Lexington, by the time of the March 26, 2018 Order, had exercised eminent domain to acquire the CWS I-20 wastewater treatment facility. Judge Seymour declined to reconsider her ruling that CWS violated the Clean Water Act by failing to connect to the regional system and by exceeding effluent limitations.

The Court also declined to vacate the \$23,000 fine ordered for the twenty-three effluent limit violations. The Court vacated the \$1,500,000 fine to allow discovery and argument by the parties on the appropriate fine amount for CWS' failure to connect. The Court authorized an award of attorney fees and litigation costs to Congaree Riverkeeper under 33 U.S.C. 5 1365 and Federal Rule of Civil Procedure 54(d) but did not assess the

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efforts to comply with its permit is not relevant in determining whether a violator is liable under the Act." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 890 F. Supp. 470, 496 (D.S.C. 1995).

specific amount of attorney fees. Section 1365 is part of the Clean Water Act and provides that a court "may award costs of litigation (including reasonable attorney and expert witness fees) to any *prevailing or substantially prevailing party*, whenever the court determines such award is appropriate." 33 U.S.C. 5 1365(d) (emphasis added).

After the March 26, 2018 Order, CWS, with Congaree Riverkeeper's consent, moved for the appointment of a United States Magistrate Judge to mediate the case. The Court granted the motion. The parties mediated the case, reached a settlement, and requested the Court enter a consent order approving the settlement and entering final judgment. The Court issued the requested order on March 11, 2019. The order incorporated the terms of the parties' settlement agreement. Under the monetary terms of the settlement agreement, CWS agreed to pay \$385,000 of attorney fees to Congaree Riverkeeper's legal counsel; donate \$350,000 to the Central Midlands Council of Governments to support implementation of its 208 Plan and water quality initiatives of the Midlands Rivers Coalition; and pay \$23,000 to the United States Treasury in full satisfaction of any obligation owed by CWS resulting from the operation of the I-20 facility.

CWS is not seeking to recover from its customers the \$758,000 it agreed to pay to settle the case. The Settlement Agreement terms included that CWS admitted to no violation of the Clean Water Act and the Settlement Agreement was not intended to be an admission of any liability or wrongdoing. The Settlement Agreement also provided that CWS shall have the right to use the Agreement in any proceeding to establish that the Riverkeeper Action ended "after the Court's finding of liability but before the resolution of penalties and attorneys' fees, except that CWS or its agents and/or owners may not use th[e]

Agreement to seek vacatur of the Court's March 30, 2017 summary judgment order or of any other final order issued by th[e] Court."

## II. ANALYSIS AND DECISION

CWS seeks reconsideration, pursuant to S.C. Code Ann. § 58-5-330 and S.C. Code Ann. Regs. 103- 825, of Order No. 2018-802. Section 58-5-330 provides:

Within twenty days after an order or decision is made by the commission, any party to the action or proceeding may apply for a rehearing as to any matter determined in the action or proceeding and specified in the application for rehearing and a rehearing must be granted if in the judgment of the commission sufficient reason exists. No right of appeal arising out of an order or decision of the commission accrues in any court to any corporation or person unless the corporation or person makes application to the commission for a rehearing within the time specified. The application must set forth specifically the ground on which the applicant considers the decision or order to be unlawful. The determination must be made by the commission within thirty days after it is finally submitted. If, after the hearing and a consideration of all the facts, including those arising since the making of the order or decision, the commission is of the opinion that the original order or decision, or any part of it, is in any respect unjust or unwarranted or should be changed, the commission may abrogate, change or modify it and, if changed or modified, the modified order must be substituted in the place of the order originally entered and with like force and effect.

In the Petition to Reconsider, CWS argued the Commission violated provisions of S.C. Code Ann. § 1-23-320 and the due process clauses of the South Carolina and United States Constitutions because the basis for the Commission's ruling denying recovery of litigation expenses for the Riverkeeper Action was different from the basis upon which the Commission granted rehearing. CWS also asserted it was an error of law to deny CWS recovery of litigation expenses and that its uncontradicted evidence presented to the

Commission showed its defense of the Riverkeeper Action was prudent, reasonable, unavoidable, and beneficial to ratepayers . Third, CWS argued that because the Riverkeeper Action was still pending at the time Order No. 2018- 802 was issued, the Commission should have treated the litigation expenses the same way it treated litigation expenses for other cases, by ordering CWS to establish a regulatory asset to be considered in a future rate case when the final outcome of the Riverkeeper Action was known.

This third ground is now moot because the Riverkeeper Action has concluded. CWS informed the Commission of the settlement via a supplemental memorandum filed on May 21, 2019. In its supplemental memorandum, CWS argued the settlement provided substantial benefits to customers, including that Congaree Riverkeeper agreed, for a period of five years, it would bring no legal action against CWS asserting that it failed to connect two other wastewater treatment facilities known as Watergate and Friarsgate to the regional wastewater system. CWS stated Watergate and Friarsgate were in similar situations to the I-20 facility.

The Commission has considered carefully the arguments CWS set forth orally and in writing in support of its Motion to Reconsider. These arguments, however, do not support a decision to alter the Commission's Order No. 2018-802. In Order No. 2018-802, the Commission relied, in part, on the North Carolina Supreme Court's decision in *State ex. rel. Utilities Commission v. Public Staff North Carolina Utilities Commission*, 343 S.E.2d 898 (N.C. 1986) and reasoned as follows in determining that CWS should not recover litigation expenses associated with the Riverkeeper Action from ratepayers:

As a public utility operating under the laws of South Carolina and pursuant to its federally granted NPDES permit, CWS was required to operate its

facilities in compliance with federal, state, and local laws. In its orders, the federal court found significant violations by CWS. While the Riverkeeper case is still ongoing as to the penalty to be imposed, the order of the federal court found CWS to be in violation of its permit. We believe it would be improper to impose these expenses upon the ratepayers when the ratepayers were already paying for the Company to provide its services in compliance with its permits and with applicable federal and state laws, and, accordingly, were not deriving any benefit from the expenditure.

Order No. 2018-802, p. 19.

With respect to the first ground for reconsideration, which CWS asserted in its Petition, CWS did not pursue this argument at the oral argument held on the Petition. Regardless, the July 11, 2018 Order granting ORS' request for the initial rehearing encompassed the grounds upon which the Commission ultimately ruled that CWS should not recover the litigation expenses at issue from ratepayers.<sup>3</sup> Further, to the extent CWS asserts it was not on notice of the grounds upon which ORS sought reconsideration, it is now on notice and the Commission provided another opportunity to be heard.

As for the second ground for reconsideration and CWS' supplemental memorandum, which are the primary issues now in contention, a United States District Judge granted summary judgment to the plaintiff in the Riverkeeper Action on the issue of CWS' liability for violating the Federal Clean Water Act and entered substantial fines of \$1,500,000 and \$23,000. Except for the \$1,500,000 fine imposed for the failure to connect, Judge Seymour denied CWS' motion to reconsider her rulings. With respect to the \$1,500,000 fine, Judge Seymour gave the parties an opportunity to conduct further discovery and argument on the appropriate fine amount for the failure to connect. Notably,

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<sup>3</sup> Order No. 2018-494, issued July 11, 2018, granting a rehearing on ORS' Petition for Reconsideration stated "ORS argued that no litigation costs should be borne by the customers, if for no other reason, than that the courts ruled against CWS in the majority of the actions."

Judge Seymour did not vacate her ruling that CWS was liable for failing to connect and for exceeding effluent limitations in CWS' NPDES permit. She also did not vacate the \$23,000 fine for exceeding effluent limitations on twenty-three separate occasions. Moreover, she authorized an award of attorney fees and litigation costs to Congaree Riverkeeper under a statute only allowing for such recovery to a prevailing or substantially prevailing party. The Court's orders on these issues have not been vacated (except as described above), remain operative, and provide important guidance to the Commission.

Further, CWS agreed as part of the Settlement Agreement it would not seek vacatur of these orders. No arguments or evidence has been presented which would rise to the level of leading the Commission to reach a conclusion contrary to the one reached by the United States District Court that CWS did not violate the Clean Water Act. The Court considered the arguments and evidence CWS presented to it regarding the difficulties CWS encountered in negotiating with the Town of Lexington and DHEC regarding connection of the I-20 treatment facility to the regional system. The Commission declines to reconsider its ruling that "it would be improper to impose [Riverkeeper Action litigation] expenses upon the ratepayers when the ratepayers were already paying for the Company to provide its services in compliance with its permits and with applicable federal and state laws, and, accordingly, were not deriving any benefit from the expenditure." Order No. 2018- 802, p. 19.

In its Petition for Reconsideration, CWS relied upon the South Carolina Supreme Court's decision in *City of Columbia v. Board of Health and Environmental Control*, 292 S.C. 199, 355 S.E.2d 536 (1987) and the South Carolina Court of Appeals' decision in

*Midlands Utility, Inc. v. S.C. Department of Health and Environmental Control*, 313 S.C. 210, 437 S.E.2d 120 (Ct. App.) Neither case is discussed in Judge Seymour's orders, and it is unclear whether they were presented to her. Regardless, both cases are clearly distinguishable from the present situation. The Supreme Court in *City of Columbia* simply held that the City was subject to regulation by DHEC, which, therefore, could order the City to acquire, by condemnation or negotiation, two private sewer systems owned by Midlands Utility ("Midlands"). *City of Columbia* did not involve violations of the Federal Clean Water Act. In *Midlands Utility*, the Court of Appeals reversed fines, issued under a state statute, associated with effluent discharge violations at the Washington Heights and Lincolnshire wastewater treatment systems, which occurred while the City of Columbia was unsuccessfully appealing an order to connect or purchase the two systems. *Midlands Utility*, 313 S.C. at 212-13, 437 S.E.2d at 121. DHEC conceded it was impossible for the Washington Heights and Lincolnshire systems to have met the pollution standards regardless of how well Midlands Utility managed them, unless they were connected to the City of Columbia or extensively upgraded. *Id.* at 213, 437 S.E.2d at 121. The Court of Appeals concluded fines should not have been issued for the discharge violations at the two systems because the City of Columbia was the primary cause of the continued discharges. *Id.*

Again, the record before the United States District Court in the Riverkeeper Action included the negotiations among CWS, Town of Lexington, and DHEC regarding the I-20 system. Nothing presented to the Commission causes it to determine the District Court's conclusion that CWS violated the Clean Water Act was incorrect. Neither *City of Columbia*

nor *Midlands Utility* dictates that the operator of a regional wastewater system is solely responsible when an NPDES permit holder, such as CWS, fails to connect with the regional system in compliance with its permit and that the NPDES permit holder cannot be liable for violating the Federal Clean Water Act. It also notable that, in *Midlands Utility*, Midlands argued fines associated with another system, the Vanarsdale system, were unwarranted where DHEC had denied its request to connect to the City of Cayce's system because granting a permit conflicted with the regional sewerage plan. *Id.* at 213, 437 S.E.2d at 121. The Court of Appeals held there was no abuse of discretion in imposing a penalty for the Vanarsdale system violations, which Midlands Utility did not contest occurred. *Id.*

CWS has not demonstrated the defense and resolution of the Riverkeeper Action conferred a substantial benefit on customers, as argued in its supplemental memorandum. The Commission would not have authorized CWS to collect from ratepayers the fines the United States District Court ordered or any altered fine later entered if the case had not settled. As for the Watergate and Friarsgate treatment facilities, CWS has stated these facilities were in a similar situation to the I-20 facility. It follows that CWS was obligated and already being paid by customers to comply with the Clean Water Act in its operation of these facilities, regardless of any agreement with Congaree Riverkeeper to delay suing CWS for five years for any alleged failure to do so. CWS secured nothing for its customers it did not already owe them.

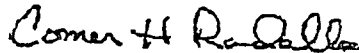
The Commission also does not find that CWS conferred a substantial benefit on its customers by preventing the I-20 system from being shut down by the Court in the Riverkeeper Action without a plan in place for customers served by the system. CWS was

being paid by its customers to comply with its NPDES permit and find a way to connect with the regional system as required under its NPDES permit, not create an emergency where the I-20 facility was forced to stop operating without alternative arrangements for its customers having been made. In addition, a representative of Congaree Riverkeeper, Bill Stangler, testified at the evidentiary hearing on ORS' Petition for Reconsideration that Congaree Riverkeeper was not seeking to have CWS terminate sewer service to customers served by the I-20 system and that the Court allowed CWS a year to obtain a resolution to avoid that type of termination. Rehearing Transcript, pp. 267, 277, 337-38.

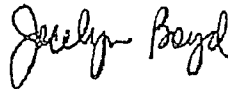
The Commission's determination is that CWS should not recover from its customers the legal expenses associated with the Riverkeeper Action, regardless of the reasonableness of the charges relative to the work performed, because they were incurred in defending a lawsuit in which CWS was not the prevailing party and was found liable by the United States District Court for the District of South Carolina for violating the Clean Water Act. Therefore, it is not necessary for the Commission to decide whether CWS' attorneys acted reasonably and charged reasonable fees in their defense of the Riverkeeper Action. Ratepayers already were paying CWS to provide its services in compliance with its permits and with applicable federal and state laws. For the reasons set forth herein, the Petition for Reconsideration filed by CWS on February 14, 2019, is denied.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

  
Comer H. "Randy" Randall, Chairman

ATTEST:

  
Jocelyn Boyd, Chief Clerk/Executive Director

# The Supreme Court of South Carolina

Carolina Water Service, Inc., Appellant,

v.

South Carolina Office of Regulatory Staff, Forty Love Point Homeowner's Association, and James Knowlton, Intervenor, Respondents.

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


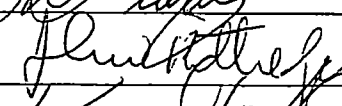
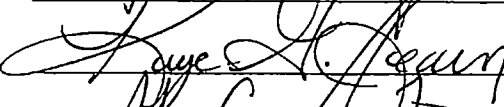
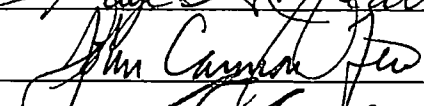
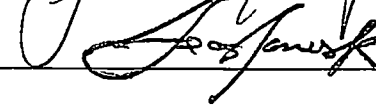
Appellate Case No. 2019-000300

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## ORDER

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Carolina Water Service, Inc. filed a timely petition for rehearing following the issuance of the Public Service Commission's Order No. 2018-802 and thereafter filed a notice of appeal with this Court. Because the Commission retained jurisdiction based on the timely filing of a petition for rehearing, we vacate the Commission's order summarily dismissing the petition for rehearing, grant Carolina Water Service's motion for a remand to the Commission, and direct the Commission to rule on the merits of the petition for rehearing. We dismiss the notice of appeal as premature without prejudice to Carolina Water Service's right to appeal once a ruling is issued by the Commission.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina

May 13, 2019

cc:

Scott A. Elliott, Esquire  
Charles L.A. Terreni, Esquire  
Frank Rogers Ellerbe, III, Esquire  
Samuel J Wellborn, Esquire  
Jeffrey M. Nelson, Esquire  
Andrew McClendon Bateman, Esquire  
Steven W. Hamm, Esquire  
Laura Puccia Valtorta, Esquire  
James Knowlton  
Jocelyn Boyd, Esquire



that levied penalties against CWS for violations of its National Pollutant Discharge Elimination System (“NDPES”) permit, 4) the Commission erred in approval of a 10.5% Return On Equity (“ROE”) unsupported by the greater weight of the evidence and failed to consider the substantial evidence presented in support of a 9.08% ROE, 5) the Commission erred in its approval of costs incurred by the Company for a project which is still incomplete, not used and useful, and not providing service to customers, and 6) the Commission failed to address the impacts of the Federal Tax Cut and Jobs Act.

As detailed below, ORS believes the substantial evidence on the whole record supports the reconsideration of these six issues. ORS therefore urges the Commission to reconsider its previous findings and conclusions contained in Order No. 2018-345(A) on the specific issues raised in this Motion.

#### **Standard of Review and Applicable Law**

Pursuant to S.C. Code Ann. § 58-27-2150, a party may apply to the Commission for a rehearing in respect to any matter determined in the proceeding. “The purpose of a petition for rehearing and/or reconsideration is to allow the Commission the discretion to rehear and/or reexamine the merits of issued orders pursuant to legal or factual questions raised about those orders by parties in interest, prior to a possible appeal.” In re: South Carolina Electric & Gas Company, Order No. 2013-05 (Feb. 14, 2013). S.C. Code Ann. Regs. § 103-825(A)(4) prescribes the content of a petition for rehearing, which must include: “(a) The factual and legal issues forming the basis for the petition; (b) The alleged error or errors in the Commission order; [and] (c) The statutory provision or other authority upon which the petition is based.”

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Company failed to allocate its financial and litigation costs between the various legal actions. ORS was therefore unable to directly assign specific financial and litigation costs to each legal action. Tr. P. 710, l. 12 to P. 711, l. 10.

The South Carolina Supreme Court employs a deferential standard of review when reviewing a Commission decision and will affirm that decision when substantial evidence supports it. See, Kiawah Property Owners Group v. Public Service Comm'n of S.C., 357 S.C. 232, 593 S.E.2d 148, 151 (2004). Because Commission findings are presumptively correct, the party challenging a Commission order bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record. *Id.* Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action. This deferential standard of review does not mean, however, that the Court will accept an administrative agency's decision at face value without requiring the agency to explain its reasoning. The Commission must fully document its findings of fact and base its decision on reliable, probative, and substantial evidence on the whole record. *Id.* It must make findings which are sufficiently detailed to enable the Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings. *Id.* Regarding factual findings, the Supreme Court recognizes that the Commission is designated an expert to regulate the rates and services of public utilities in South Carolina, and as a result, the Commission has a heightened duty to make "explicit findings of fact which allow meaningful appellate review of these complex issues." Seabrook Island Property Owners Assn v. South Carolina Public Service Comm'n, 401 S.E.2d 672, at 674; 303 S.C. 493, at 497 (1991).

Pursuant to the Utility Services. of S.C. v. S.C. Office of Regulatory Staff 392 S.C. 96 at 109-110, 708 S.E.2d 755, at 762-763, a Utility is:

...entitled to a presumption that its expenditures were reasonable and incurred in good faith, and therefore, a showing that its expenses had increased since its last rate case *could* satisfy its burden of proof. Nevertheless, the presumption in a utility's favor clearly does not foreclose scrutiny and a challenge. In those circumstances, the burden remains on the utility to demonstrate the reasonableness of its costs. ... if an

investigation initiated by ORS...yields evidence that overcomes the presumption of reasonableness, a utility must further substantiate its claimed expenditures.

Additionally, Commission Order No. 2018-68 states, “[the Commission] cannot presume that the expenses a utility proposes to recover in its rates and charges are legitimate if they cannot be subjected to the scrutiny of an audit or examination.” Commission Order No. 2018-68, *citing Porter v. S.C. Public Serv. Comm’n.*, 333 S.C. 12, 507 S.E.2d 328 (1998).

### Arguments

#### **1. The Commission Erred in Adopting a Schedule of Rates Which was Not Proposed by the Applicant Until After the Conclusion of the Hearing**

The Commission erred in adopting a rate schedule which was not supported by the evidence in the record of this case and which the parties and customers of the system had no opportunity to review or comment on prior to the Commission’s Orders 2018-345 and 2018-345(A). The rates approved by the Commission were only presented by CWS in its proposed Order, which was filed after the record in this case was closed. There is no discussion, finding or conclusion contained in Commission Order No. 2018-345(A) which justifies or explains in any manner the approved rate design.

In its discussion of the rate design, the Commission Order only references the rate design contained in the Application, which is not what was approved in the Final Order. Order 2018-345(A) refers to the rate design contained in the application. In its Application CWS proposed that: 1) the water rate structure for Territories 1 and 2 remain the same as approved in Order No. 2015-876<sup>2</sup>, 2) the Company maintain separate charges for Water Supply customers and Water

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<sup>2</sup> Order No. 2015-876 established a new rate structure for the recently consolidated CWS adopting the Company’s proposal to merge the four previously approved rate schedules into two-Water Service Territory #1, which

Distribution customers, 3) there is a demonstrated need for an increase in rates in both Service Territories 1 and 2, and 4) the Commission approve the “rates contained in Exhibit A”. Nowhere in the Application did the Company propose the rates set under the Order which unfairly place the majority of the approved water rate increase on water distribution and supply customers in Service Territory 2, while also giving a reduction to water basic facility charges for water supply and distribution customers in Service Territory 1. The Commission’s Order levies a 16% increase in basic facility charges for water distribution and supply customers in Service Territory 2 while providing for a 1.5% decrease in basic facility charges for water distribution and supply customers in Service Territory 1.

There was no evidence presented in the record of this case by any party which demonstrated it would be fair to distribute the majority of the proposed increase in water revenue requirement to Service Territory 2 customers. While ORS does not dispute that the Commission has wide latitude in determining a methodology in rate setting, it is required to fix rates which “distribute fairly the revenue requirements [of the utility].” Order 2018-345(A), pg. 28, citing Seabrook Island Property Owners Assoc. v S.C. Public Service Comm’n, 303 S.C. 493, 499 (1991). The Commission Order also states that “Our determination of ‘fairness’ with respect to the distribution of the Company’s revenue requirement is subject to the requirement that it be based upon some objective and measurable framework. See, Utilities Services of South Carolina, Inc. v. South Carolina Office of Regulatory Staff, 392 S.C. 96, 113-114 (2011)”. There is no objective or measurable framework, cost of service study or a scintilla of evidence provided in the record of this case or in the Commission’s discussion, findings or conclusions to support the skewed rate structure which places an unjust burden on CWS’s water customers in Service Territory 2. The Commission erred

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encompasses the former CWS and Southland territories, and Water Service Territory #2, encompassing the former USSC and United territories.

in stating on page 28 of the Order that “No party contests the rate design and it is approved by the Commission” as neither any of the parties nor the customers of Service Territory 2 ever had any opportunity to contest the rate design, as it was not proposed by the Company until after the conclusion of the hearing. This is a clear violation of the due process rights of CWS customers in Service Territory 2.

ORS requests that the Commission reconsider its decision to adopt a rate schedule that unusually decreases the rate for water customers in one territory while placing the approved revenue increase on another, particularly when there is no cost of service study to support such disparate treatment. The Commission’s adoption of this rate schedule is concerning in that it raises the issue of the approved rates being discriminatory. “It is incumbent upon the PSC to approve rates which are just and reasonable, not only producing revenues and an operating margin within a reasonable range, but which also **distribute fairly the revenue requirements**, considering the price at which the company’s service is rendered and the quality of that Service.” Seabrook Island Property Owners Ass’n v. S.C. Public Service Comm’n, 303 S.C. 493, 499, 401 S.E. 2d 672, 675 (1991) *citing* S.C. Code Ann. §58-5-290 (emphasis added).

**2. The Commission’s failure to Accept ORS’s Use of Normalization is Arbitrary and Capricious and Violates Regulatory Accounting Principles**

In denying the normalization of sludge hauling costs, the Commission awarded CWS the recovery of an additional \$96,892 in expenses.

The parties in this proceeding held differing opinions regarding whether the Company should be permitted to claim the actual sludge hauling costs for the test year at its Friarsgate and Watergate facilities or whether these costs should be normalized. As testified to by ORS Audit witness Zachary Payne, ORS’s review of the sludge hauling expenses of the company for the test year and

the two preceding years, ending August 31<sup>st</sup>, showed that there was a larger than normal increase in sludge hauling expenses during the test year for Friarsgate and Watergate. ORS found that this increase was atypical and made an adjustment to normalize these expenses.

South Carolina case law, followed by this Commission for over twenty years, dictates that test year expenses should be normalized as ORS did here. “When an unusual situation exists for utility ratemaking purposes resulting in test year figures that are atypical and thus do not indicate future trends, the Commission should adjust test year data”. Porter v. S.C. Pub. Serv. Comm’n, 328 S.C. 222, 493 S.E.2d (1997); citing Hamm v. S.C. Pub. Serv. Comm’n, 309 S.C. 282, 422 S.E.2d 110 (1992). In fact, this Commission in this very Order states the proper method for adjusting test year data where it states that “When the test year figures are atypical, the Commission should adjust the test year data. See S. Bell Tel. & Tel. Co. v. Pub. Serv. Com, 270 S.C. 590, 603 (1978).” (sic) Order No. 2018-345(A), Pg. 6. The principle of normalization is a widely accepted pro forma adjustment to test year data. “Normalization adjustments are usually made to revenues or to expenses to offset for unusual operating events leading to these adjustments...(s)uch events, when of an abnormal or nonrecurring nature, require adjusting the test year to a normal, ongoing level of operation.” *Accounting for Public Utilities*, §7.05, p. 7-7 (LexisNexis, Nov. 2017).

However, in the present case, the Commission failed to properly consider or weigh the testimony and the regulatory principle of normalization when it stated that ORS “simply speculates that the costs will not recur in a similar amount. Moreover, the testimony indicates that the sludge costs have increased because of the DHEC Consent Order and were prudently incurred.” Order No. 2018-35(A), Pg. 22.

As this Commission itself stated in Order 2010-375, as well as in numerous other prior orders, “(t)his Commission allows certain accounting and pro forma adjustments to be made to the actual

test year figures. Adjustments are made for: (1) items occurring in the test year that are not expected to recur in the future; (2) items of an extraordinary nature whose effects must be annualized or normalized to reflect properly their impact; and (3) other items which should be included or excluded for ratemaking purposes. Adjustments are also made for "known and measurable changes" in expenses, revenues and investments occurring after the test year. So. Bell Tel. & Tel. Co., 270 S.C. at 602, 244 S.E.2d at 284." Commission Order No. 2010-375, p. 10.

The Commission provides no support for its ruling which determined the abnormally high sludge hauling expense for the test year, incurred due to a DHEC Consent Order, constitutes "prudently incurred" costs. The Order is arbitrary and counter to the greater weight of the evidence by departing from this Commission's long established regulatory practice of normalization and in defining this methodology as "simply speculation."

On cross-examination CWS Witness Gilroy testified the Company was in the process of negotiating an interconnection between the Friarsgate facility and the City of Columbia, and when that interconnection is established CWS will have a cost of \$0 for sludge hauling. Not only will CWS have a sludge hauling cost of zero but the interconnection will resolve its NPDES permit violation problems for the Friarsgate location. Further, Witness Gilroy also stated on cross-examination that the sludge hauling costs during the test year were "unusually high." See, Tr. Pg. 513, L. 13, Pg. 551, L. 10, also Pg. 480-482 and P. 490.

Thus, not only are the costs allowed by the Commission extraordinary, but by the Company's own admission, will likely be zero soon; and yet CWS's customers will continue to pay for these costs in their rates due to the Commission's decision. The Commission's arbitrary decision to allow CWS to recover this extraordinary sludge hauling expenses will provide CWS with a windfall at the expense of its customers.

ORS therefore asks that the Commission reconsider and revise its Order to accept the normalization adjustment for sludge hauling and remove \$96,892 from the Company's expenses.

**3. The Commission's Decision to Allow the Recovery of Legal Costs, Incurred in Unsuccessfully Defending Lawsuits Brought Against the Company, from Ratepayers Is Arbitrary and Capricious and Violates Regulatory Accounting Practices.**

The Commission erred in the approval of \$998,606 in litigation expenses.

The Commission awarded CWS the recovery of \$998,606 in legal fees and costs. These fees were incurred by CWS in five legal actions, including a contentious defense of an action brought by the Congaree River Keeper for illegal discharges by CWS into the Saluda River and the Town of Lexington's condemnation of the I-20 System. ORS provided testimony and documentary evidence to the Commission to evidence that the Company had failed to allocate its financial and litigation costs between these various legal actions. ORS was therefore unable to directly assign specific financial and litigation costs to each legal action. See, Revised Surrebuttal Exhibit MPS-1 (Hearing Exhibit 16) and Tr. P. 710 line 12 through P. 711, line 10.

The Commission's Order forces CWS's ratepayers to pay for the Company's failure to comply with State and Federal environmental laws. In addition to this clearly being unfair to ratepayers, it is counter to the principle previously expressed by this Commission that the costs of the unsuccessful defense of a civil action by a public utility are not to be passed to the utilities ratepayers. See, Order No. 2006-543, pg. 27, citing Condon v. State of South Carolina, 354 S.C. 634, 583 S.E.2d 430 (2003). Based upon the standard developed in the Commission's Order in this case, a utility can defend any action brought against it for a failure to comply with its operating permits and licenses or any federal or state law. The Commission's decision has placed the entire cost of any litigation on the ratepayer – even when a Court finds that the utility has been operating

illegally. Other than a claim by one CWS Witness that CWS's defense of the Riverkeeper's action somehow benefitted ratepayers, there is no evidence in the record or in the verbiage of the Order itself to support this finding. There is, of course, no benefit to CWS ratepayers; in the Company having to defend itself from allegations, proven to be true, that identify its mismanagement resulted in the discharge of raw sewage into a South Carolina river. The fines imposed on a wastewater utility for illegal discharges are not recoverable from the Company's ratepayers, it is therefore confounding that the Commission has allowed the Company to recover the litigation costs in unsuccessfully contesting such violations.

It is the duty of the Commission to "balance the respective interests of the company and the consumer." Seabrook Island Property Owners Ass', v. S.C. Pub. Serv. Comm'n, 401 S.E.2d 672, 303 S.C. 493, 498 (1991). As to the issue of litigation expenses presented in this case, however, the Commission has failed to take the interests of the Company's ratepayers into consideration. The Commission has given CWS, and all public utilities in this state, a blank check to deny and contest in court all charges, violations or lawsuits brought against the utility for even the most egregious acts.

The Commission has itself adopted the standards for determining the reasonableness of legal fees under Rule 407, SCACR, *Rules of Professional Conduct*. In Re: Application of Carolina Water Service, Inc. for Adjustment of Rates and Charges, Order No. 2006-543, Pg. 27. There are 8 standards which must be met under Rule 407 to determine the reasonableness of attorney fees, including: "(4) The amount involved, and the results obtained." *Id.*, 2006 S.C. PUC Lexis 189, p. 41. In that prior CWS case, the Commission stated, "the Company failed to provide further evidence of the prudence of these expenses". *Id.* And yet here, the Commission has now awarded extraordinarily large legal fees incurred by the Company, not even in a rate case, but in

unsuccessfully defending itself from civil actions initiated due to the Company's inability to operate its systems within the parameters of its license and the law. While in the 2006 Order the Commission held that "Without the proper evidence before us, we cannot properly evaluate the expenses claimed." *Id.* Citing Hilton Head Plantation Utilities, Inc. v. Public Service Comm'n of South Carolina, 312 S.C. 448, 441 S.E.2d 321 (1994). The Commission has now awarded the same Company legal fees unrelated to the rate case with absolutely no evidence in the record which in any way supports or substantiates the reasonableness of these expenses.

There is additionally no precedent for, or evidence in the record of this case, to explain why the Company was permitted to expense legal fees over a period of 66 years. Legal fees do not depreciate, particularly over a 66-year period as approved by the Commission in this Order, yet the Commission has ordered these costs to be paid by ratepayers until the year 2084 without an explanation as to the propriety of using such a lengthy period. The reason the Company asked for these fees to be spread over such a long period is quite obviously to attempt to hide these absurdly high costs, incurred in a losing cause.

There is no statutory or case law which supports a finding that legal expenses incurred by a public utility in unsuccessfully defending an action for environmental violations may be included in a company's expenses to be recovered from the utilities ratepayers over a period usually reserved for the depreciation of items in a company's rate base. Both these expenses and the extraordinary period over which the Commission has provided the company to collect them, fails to meet any of the criteria for their inclusion in the Company's expenses. See, *Accounting for Public Utilities*, §4.03 Criteria for Inclusion of Items in Rate Base, p. 4-5 (LexisNexis, Nov. 2017).

Finally, as some of the legal fees at issue here were incurred by the Company in the Town of Lexington's condemnation of CWS's I-20 System, there is the possibility that the Company

will recover some or all these costs in the current condemnation action. The Company thus may have the opportunity to recover these costs both from ratepayers and the Town of Lexington.

Therefore, ORS respectfully requests that the Commission adopt the approach put forth by ORS witness Schellinger in denying the Company's recovery of these costs.

**4. The Commission Erred in Allowing the Company to Recover Through Rates Certain Costs Incurred by the Company in a Project Which Is Still Incomplete and Not Used and Useful in Providing Service to Ratepayers.**

The Commission erred when it awarded CWS an additional \$1,081,375 in rate base for the Friarsgate EQ Basin Project.

On cross-examination at the hearing, Company Witness Gilroy provided testimony that the EQ Liner was still not installed at Friarsgate, Tr. P. 478, lines 13 – 19. Yet, the Commission has allowed the Company to collect certain costs associated with the EQ Basin Project including the remediation of the old in ground basin and liner. At the time of the hearing this project had not yet been completed, and neither the basin or liner are currently being used to provide service to ratepayers. The Company should not be permitted to put these costs into Rate Base or collect a return on these costs.

The EQ Basin project may never be completed because, as Company Witness Gilroy testified on cross-examination, the new liner “wasn’t put in correctly” (Tr. P. 480, lines 3 – 7) and that “we have to go back in” to correct the improperly prepared base of the pond. Tr. P. 479, l. 21 – P. 480 l. 2. Further, CWS witnesses testified at the hearing that it was in the process of establishing an interconnection of its Friarsgate system with the City of Columbia (Tr. P. 481, lines 10-14), which may render the completion of the EQ Basin Project unnecessary.

Even though the new EQ liner may never be installed, and is not used and useful, the Commission has awarded the Company the partial costs which they had incurred as a part of the EQ Basin Project as of the date of the hearing. This is counter to the well-established regulatory principle of “used and useful” which provides that “Only plant currently providing or capable of providing utility service to the consuming public is allowed in the rate base.” *Accounting for Public Utilities*, §4.03, p. 4-5. The Commission’s arbitrary inclusion of partial project costs into rate base fails the “used and useful” test and is clearly erroneous in view of the substantial evidence on the whole record.

ORS therefore requests that the Commission reconsider the inclusion of the partial EQ Basin Project costs into CWS’s rate base and reduce the calculation of the Company rate base by \$1,081,375.

**5. The Commission Erred in Failing to Address the Tax Issue of a new tax on Contributions in Aid of Construction (“CIAC”) or to Preserve the Benefits of the Tax Cuts and Jobs Act for CWS Ratepayers.**

ORS supported the Company’s request to revise its tap/connection fees to permit a tax multiplier for the imposition of an increased tax liability levied on the company for any CIAC provided to the Company. Yet the Commission failed to address this issue in any way in its Order, despite the issue being uncontested by any party.

Further, the Commission failed to preserve the benefits of the reduction of the corporate tax rate from 21% to 35% under the Federal Tax Cut and Jobs Act (“Tax Act”) for South Carolina ratepayers. In Order 2018-308, the Commission held that: “Beginning January 1, 2018, regulatory accounting treatment is required for all regulated utilities for any impacts of the new law including current and deferred tax impacts.” The Commission further found that: “For water/wastewater utilities with operating revenues that are equal to or greater than \$250,000, the issue will be

addressed in the next rate case or other proceeding.” The Commission erred by failing to consider, or address in any manner in its final Order, the adjustments proposed by both ORS and CWS in this proceeding. The Commission further erred in providing no explanation, finding or conclusion in its Order which in any way addressed ORS’s proposed adjustments related to the Tax Act.

In Commission Order 2018-308, this Commission pledged to address this issue in each water/wastewater utilities “next rate case.” Yet it has failed to do so in Order 2018-345(A). To date, almost 6 months of this tax benefit is already in jeopardy. Failure to affirmatively provide that these benefits be passed from regulated South Carolina utilities to their ratepayers has the potential to cost the citizens of this State millions of dollars. The benefit of the Tax Cuts and Jobs Act should be immediately provided to CWS ratepayers. To continue to allow these benefits to flow to the shareholders of the utility is counter to the economic interests of South Carolina.

ORS therefore requests that the Commission reconsider its decision and address the impacts of the Tax Cuts and Jobs Act in the Order.

**6. The Commission’s Order Erred when it Approved a 10.5% ROE which was Unsupported by any Credible or Reliable Evidence.**

In accepting the Company’s proposed ROE of 10.50%, as opposed to ORS’s recommended 9.08% ROE, the Commission has increased CWS’s revenue requirement by \$544,782.

The Commission erred when it accepted the small company risk premium adjustment in its decision to award a 10.50% ROE. This adjustment, contains a 50-basis point adder or “risk premium.” This adder is based solely on Witness D’Ascendis’ speculation that a company the size of CWS faces a greater risk than the Company otherwise used in his proxy group. Yet the Commission gives no reason or explanation as to why it accepted this adjustment, why such a premium is warranted, or what evidence in the record that it found persuasive in making this novel

finding. The small company risk premium adjustment has been presented to the Commission numerous times in prior CWS and affiliated utility rate cases in an effort to provide the Company with an inflated ROE. In each previous case the Commission has refused to accept the proposal of the Utility. *See, e.g.*, Commission Docket Numbers 2015-199-WS (Order No. 2015-876), 2013-201-WS (Order No. 2013-910), 2013-199-WS (2013-909(A)), 2012-177-WS (Order No. 2013-79), 2011-47-WS (Order No. 2011-784 and 2014-320), 2009-479-WS (Order No. 2010-557) and 2009-473-WS (Order No. 2010-375 and 2012-547). Mr. D'Ascendis' small company risk premium analysis has not been accepted by any regulatory body and yet has now been accepted without explanation in Commission Order No. 2018-345(A).

The Commission has similarly, in these same cases, ruled against accepting Mr. D'Ascendis Comparable Earnings ("CEM") Model, which yields a very remarkable 12.06% ROE. Dr. Carlisle explained to the Commission on page 28 of his Surrebuttal testimony why this methodology is incorrect. Dr. Carlisle's response was not even included or addressed in the Commission's Order. If this one previously unaccepted model had not been used, Mr. D'Ascendis average ROE calculation would have been a 9.94%, which is much closer to the 9.08% recommendation of Dr. Carlisle.

The Commission has provided no reasoning or logic behind its decision to accept two previously rejected methodologies which, by the Company's own witness's acknowledgement, has not been accepted by ANY other regulatory body in the United States. Tr. Pg. 460, lines 5 - 19. The decision is therefore arbitrary and capricious and to the significant detriment of CWS's ratepayers; whose interests the Commission clearly ignored in awarding an excessive ROE based on an unaccepted, incomplete and biased analysis. "While the regulatory commission's

responsibility is to set adequate rates of return, their express duty is to protect utility customers from unjust prices as well.” *Accounting for Public Utilities*, §9.10(3)(b), p. 9-28.

Finally, the Commission has in this Order suddenly, and without explanation, rejected Dr. Carlisle’s adjustment of 0.02% in the Company’s debt. This, despite that fact that the Commission in all the above cited prior Utilities, Inc. company cases, accepted this adjustment. “An administrative agency acts arbitrarily if it fails to follow its own precedents without justification.” In Re: Utilities Servs. Of S.C., Inc., 2007-286-WS, 2009 WL 2987189 (May 29, 2009) citing 330 Concord Street Neighborhood Association v. Campsen, 309 S.C. 514, 424 S.E.2d 538 (Ct. App. 1992).

Therefore, ORS requests that the Commission reconsider the authorized ROE of 10.5% ROE and adopt ORS Witness Carlisle’s recommended 9.08% ROE.


### Conclusion

Commission Order No. 2018-345(A) departs significantly from past Commission decisions without any explanation and erred in failing to properly consider all of the evidence in the record of this case; as shown by the Orders failure to address even one of the admissions of CWS Witnesses in answer to cross-examination questions. The evidence presented during the hearing and through pre-filed testimony does not support the Commission’s Order with regards to its adoption of a rate structure proposed post-hearing, failure to adopt the established regulatory accounting principle of normalization, in awarding the recovery through rates of attorney’s fees incurred by the utility in unsuccessfully defending itself from civil actions based on its discharges into the Saluda River, in awarding the partial recovery of costs for the replacement of an Equalization Liner which as of the date of the hearing had still not been installed – but is being

paid for by ratepayers, in failure to address the impacts of the Tax Cuts and Jobs Act, and in accepting the small risk premium adjustment and unorthodox CEM model when setting CWS's ROE.

For the reasons state herein, ORS respectfully requests that the Commission reconsider its ruling in Order No. 2018-345(A) and find for ORS on the six issues discussed herein.

Dated this 19<sup>th</sup> day of June 2018.



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**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**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** )  
 )  
 )  
 )

**PETITION FOR REHEARING AND  
RECONSIDERATION**

Pursuant to S.C. Code § 58-5-330 and 10 S.C. Code Ann. Regs. 103-825 and applicable South Carolina law, Carolina Water Service, Inc. (“CWS” or “Company”) hereby petitions the Public Service Commission of South Carolina (“Commission”) to rehear and reconsider a portion of its rulings in Order No. 2018-802 (“Order”). The Order was served on CWS on January 25, 2019. As explained further below, the Commission should rehear and reconsider its decision in Order No. 2018-802 to deny recovery of litigation expenses for the case entitled *Congaree Riverkeeper, Inc. v. Carolina Water Service, Inc.* (“*Riverkeeper*”) for the following reasons.

(1) In violation of the provisions of S.C. Code Ann. §1-23-320 and the Due Process provisions of the South Carolina and United States Constitutions, the basis for the Commission’s ruling on recovery of litigation expenses for the *Riverkeeper* case was different from the basis upon which the Commission granted rehearing on that issue in Order No. 2018-494.

(2) The uncontradicted evidence presented to the Commission regarding the *Riverkeeper* litigation showed that CWS’s defense of that case was prudent, reasonable, unavoidable and beneficial to ratepayers. Accordingly, it was an error of law for the Commission to deny recovery of the expenses of such defense.

(3) Because the *Riverkeeper* litigation was not finalized at the time that the Commission issued the Order, the Commission should have treated the *Riverkeeper* litigation expenses in the same way that it treated litigation expenses for the ALC cases, by ordering CWS to establish a regulatory asset to be considered in a future rate case when the final outcome of the *Riverkeeper* litigation is known.<sup>1</sup>

### **BACKGROUND**

The *Riverkeeper* litigation arose from a complex set of issues arising under the provisions of the Federal Clean Water Act (“CWA”), 33 U.S.C. §§1251 *et seq.* and spawning sporadic litigation for approximately two decades. The background is fully developed in the record of this docket and will be very briefly summarized here. In 1994 CWS was issued a permit pursuant to the National Pollutant Discharge Elimination System (“NPDES”) of the CWA that allowed CWS to discharge treated effluent from its I-20 wastewater treatment plant. That permit included a provision that the I-20 facility be connected to a permanent, regional treatment facility when such a connection was “constructed and available.”

The only feasible possible connection was with a regional system operated by the Town of Lexington (“the Town”). Beginning in the late 1990s, CWS began efforts to interconnect its system with that of the Town, but despite the efforts of CWS, the South Carolina Department of Health and Environmental Control (“DHEC”), the Central Midlands Council of Governments and various other entities, the connection was not completed until February, 2018 when it was taken over by the Town as a part of a condemnation action brought by the Town. See Transcript, at pp. 167-171.

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<sup>1</sup> With regard to this ground for rehearing and reconsideration, CWS will ask the Commission to consider facts arising since the issuing of the Order, as permitted by S.C. Code Ann. §58-5-330.

The difficulty of completing the connection is illustrated by the decision made by this Commission in Order No. 2003-10 in Docket No. 2002-147-S. In that case the Commission considered the approval of a wholesale treatment agreement proposed by the Town of Lexington to CWS. The Commission rejected the agreement, finding that it was not in the public interest because it would result in excessive rates to CWS customers and because it would inappropriately require those customers to subsidize capacity for future growth and expansion of the Town's system. Order No. 2003-10 at p. 13.

Following the rejection of the contract there were additional efforts to arrange for interconnection of the I-20 discharge into the regional system but no satisfactory arrangement was finalized and the Town had not yet commenced condemnation proceedings to take the system and complete the interconnection. The *Riverkeeper* case was filed in January 2015 seeking injunctive relief requiring CWS to close the I-20 facility and interconnect its discharge to the regional system. The issues raised in the *Riverkeeper* litigation were the same issues that had proved difficult since the 1990s: whether the Town of Lexington had an obligation to provide wholesale interconnection on terms that would be approved by this Commission; what authority DHEC had to require the Town and CWS to reach agreement; and whether interconnection to the regional treatment facility was "available" as required under the CWS NPDES permit. On March 30, 2017, an order granting summary judgment against CWS was entered in the *Riverkeeper* case. It was this order that was cited by the Commission as the principal basis for its denial of recovery of litigation expenses for the *Riverkeeper* litigation. See Order No. 2018-802, at pp. 13-18.

The order granting summary judgment did not end the *Riverkeeper* litigation and at the time of the Commission's decision remained subject to a potential appeal. Most recently, and subsequent to the rehearing in this docket, the parties have informed the court that they are

conducting settlement negotiations and the court has issued orders staying the proceedings. See attached Exhibits 1 through 4.

### **GROUND FOR REHEARING AND RECONSIDERATION**

1. The Basis for the Commission's Decision to Deny Recovery of *Riverkeeper* Litigation Expenses is Different from the Basis Upon Which Rehearing Was Granted.

In order No. 2018-494 the Commission granted rehearing regarding litigation costs and required the parties to provide disaggregated expense records so that the Commission could "address the reasonableness of the fees in each particular case based on the factors listed in Commission Order 2006-543, page 27." Order No. 2018-494, at p. 1. In Order No. 2006-543 the Commission applied the factors of Rule 1.5, Rule of Professional Conduct, Rule 407 SCACR, citing the application of those factors in *Condon v. State of South Carolina*, 354 S.C. 634, 583 S.E.2d 430 (2003). As Rule 1.5 and the *Condon* case make clear, the seven factors of Rule 1.5 apply to determine the reasonableness of attorneys' fees and not the separate question of whether attorneys' fees can be recovered in utility rates.

The Commission's decision to refuse to allow CWS to recover for litigation expenses from the *Riverkeeper* case was not based on an application of the Rule 1.5 factors. Instead, the Order addresses the *Riverkeeper* expenses in terms of whether the expenses were reasonable and necessary to the provision by CWS of utility services to its customers. See Order No. 2018-802, at pp. 18-19. In support of its decision to refuse to allow recovery for the *Riverkeeper* litigation expenses the Order cites *State ex rel. Utilities Commission v. Public Staff, North Carolina Utilities Commission*, 317 N.C. 26, 343 S.E.2d 898 (1986). That case applied utility rate regulation principles and precedent to the question of whether the utility could recover litigation expenses in

rates charged to its customers. That issue is fundamentally different from the determination of the reasonableness of fees under Rule 1.5

The South Carolina Administrative Procedures Act requires that all parties to a contested case be provided notice of the issues to be determined in such proceeding. S.C. Code Ann. §1-23-320. Article I, Section 22 of the South Carolina Constitution provides that no person may be bound by a decision of an administrative agency “except on due notice and an opportunity to be heard.” The 14<sup>th</sup> Amendment to the U.S. Constitution also requires that the administrative agencies of the states must provide due process, including notice and an opportunity to be heard. The Order failed to provide CWS the notice required by these statutory and constitutional provisions. Accordingly, it should be vacated and a rehearing should be ordered with appropriate notice of the issues to be considered by the Commission.

2. The Provisions of Order No. 2018-802 Refusing to Allow Recovery of *Riverkeeper* Litigation Expenses Is Wrong as a Matter of Law Because the Record Does Not Provide a Basis to Overcome the Presumption that the Expenses Were Reasonable and Incurred in Good Faith.

Under well-established South Carolina law, “[a]lthough the burden of proof of the reasonableness of all costs incurred which enter into a rate increase request rests with the utility, the utility’s expenses are presumed to be reasonable and incurred in good faith.” *Hamm v. South Carolina Public Service Commission*, 309 S.C. 282, 266, 422 S.E.2d 110, 112 (1992). The record in this docket does not provide a basis for overcoming the presumption that the Company’s *Riverkeeper* litigation expenses were reasonable and incurred in good faith. Instead, the record shows that CWS was at all times willing to enter into an interconnection agreement with the Town that was consistent with the ruling by this Commission in Order No. 2003-10 in which an interconnection agreement proposed by the Town was rejected because of its negative impact on CWS ratepayers. The efforts of CWS in its negotiations with the Town and in its litigation of the

*Riverkeeper* case were intended to benefit CWS customers by obtaining interconnection on terms that would be reasonable and appropriate and could be approved by the Commission. Tr. at pp. 167-169.

The efforts by CWS to obtain an interconnection agreement that would be acceptable to this Commission were supported by rulings on similar issues by the South Carolina Supreme Court. In *City of Columbia v. Board of Health and Environmental Control*, 292 S.C. 199, 355 S.E.2d 536 (1987) the Court addressed a similar impasse between a private sewer company and a municipality. In that case DHEC ordered the City of Columbia to either (1) acquire by condemnation or negotiation certain wastewater treatment facilities owned by the utility, or (2) allow the utility to interconnect its facilities to those of the City. On appeal, the Supreme Court affirmed the authority of DHEC to order Columbia to take those actions.

In the related case of *Midlands Utility, Inc. v. S.C. Department of Health and Environmental Control*, 313 S.C. 210, 437 S.E.2d 120 (1993) the Court considered a series of fines imposed by DHEC on the utility and held that as to certain of them DHEC could not fine the utility for permit violations that occurred during the time that Columbia was appealing the DHEC orders considered in the *City of Columbia* case. The utility made the showing that it had been unable to meet its permit limits without upgrading its facilities and that it had not been allowed to upgrade its facilities while the *City of Columbia* case was being appealed and decided. The Court found that “[b]ecause the City of Columbia, not Midlands, was the primary cause of the continued discharges at the Lincolnshire and Washington Heights systems, we hold the circuit court abused its discretion by assessing a fine against Midlands for these discharges.” *Midlands Utility, supra*, 313 S.C. at 212.

The record in this proceeding shows that CWS consistently pursued an interconnection agreement that would have resulted in rates that were fair to its customers. Its course of action was supported by the Commission decision in Order No. 2003-10 and by the decisions of the Supreme Court in the *City of Columbia* and *Midlands Utility* cases. The summary judgment order in the *Riverkeeper* litigation is clearly inconsistent with these prior authorities relied upon by CWS. Accordingly, recovery of litigation expenses for defending the *Riverkeeper* case is analogous to this Commission's treatment of recovery of GridSouth expenses by jurisdictional electric utilities. In Orders No. 2005-2 and 2010-79 the Commission allowed South Carolina Electric & Gas ("SCE&G") and Duke Energy Carolinas, LLC ("DEC"), to recover their expenses incurred in pursuing the development of a regional transmission organization. The effort was begun in response to policies of the Federal Energy Regulatory Commission ("FERC") and then abandoned when FERC policy changed. See Order No. 2005-2, pp. 14-24 and Order No. 2010, p. 15. The Commission allowed SCE&G and DEC to recover their GridSouth development costs amortized over a period of five years.

In the *Riverkeeper* litigation CWS pursued an interconnection agreement with the Town of Lexington in a way that was consistent with the rulings of this Commission and the South Carolina Supreme Court. The District Court's ruling in the *Riverkeeper* case on summary judgment was inconsistent from the previous authorities that had guided CWS's actions. That change is similar to the FERC change in policy that led to the abandonment of the GridSouth project by SCE&G and DEC. The Commission should treat the CWS *Riverkeeper* litigation expenses in the same fashion as it treated the GridSouth expenses. The record in this proceeding provides no basis for a finding to overcome the presumption that CWS's *Riverkeeper* expenses were reasonable and incurred in good faith.

3. Because the *Riverkeeper* Litigation Was Not Finalized at the Time the Commission Issued the Order the *Riverkeeper* Litigation Expenses Should Have Been Treated as a Regulatory Asset for Consideration at a Later Time.

In the Order, the Commission decided that ratemaking treatment for CWS litigation expenses for the “ALC Cases” should be deferred because the “cases have not yet been concluded, and no final order has been issued.” Order No. 2018-802 at p. 21. CWS submits that the Commission should take the same approach with the *Riverkeeper* litigation expenses since there has not been a final disposition of the *Riverkeeper* litigation and in light of the settlement discussions reflected in Exhibits 1 through 4. Under S.C. Code Ann. §58-5-330 the Commission is expressly authorized, in determining whether to reconsider a previous ruling, to consider all facts “including those arising since the making of the order or decision...” Under the circumstances presented here, it is appropriate for the Commission to reconsider its treatment of the *Riverkeeper* litigation expenses and to treat those expenses in similar fashion to the expenses of the ALC Cases.

### CONCLUSION

The Commission should rehear and reconsider those portions of the Order addressing the treatment of the *Riverkeeper* litigation expenses. The Commission’s rulings concerning the *Riverkeeper* litigation expenses are unlawful as specified in this petition. Accordingly, the Commission should rehear and reconsider its decision on such issues and modify its rulings consistent with the grounds stated in this petition.

Dated this 14<sup>th</sup> day of February, 2019.

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Attorneys for Carolina Water Service, Inc.

**EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

CONGAREE RIVERKEEPER, INC, )  
)  
Plaintiff, )  
)  
v. )  
)  
CAROLINA WATER SERVICE, INC., )  
)  
Defendant. )

C.A. No. 3:15-cv-194-MBS

**CONSENT MOTION TO STAY**

Defendant Carolina Water Service, Inc., with the consent of Plaintiff Congaree Riverkeeper, Inc., requests that the Court stay all proceedings in this action for 15 days pending resolution of the productive settlement agreement negotiations currently occurring between the parties. A proposed order is attached for the Court's consideration as **Exhibit A**.

Respectfully submitted, this 8th day of January, 2019.

*[Signature page following]*

ELECTRONICALLY FILED - 2019 February 14 2:11 PM - SCPSC - Docket # 2017-292-WS - Page 10 of 18

Respectfully submitted,

*s/ Rita Bolt Barker*

---

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Rita Bolt Barker (Federal Bar No. 10566)  
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*Attorneys for Defendant  
Carolina Water Service, Inc.*

January 8, 2019  
Columbia, South Carolina

---

**From:** SCDEfilingstat@scd.uscourts.gov  
**Sent:** Thursday, January 10, 2019 2:15 PM  
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**U.S. District Court**

**District of South Carolina**

**Notice of Electronic Filing**

The following transaction was entered on 1/10/2019 at 2:14 PM EST and filed on 1/10/2019

**Case Name:** Congaree Riverkeeper Inc v. Carolina Water Service Inc

**Case Number:** 3:15-cv-00194-MBS

**Filer:**

**WARNING: CASE CLOSED on 03/30/2017**

**Document Number:** 125(No document attached)

**Docket Text:**

**TEXT ORDER** granting [124] Motion to Stay proceedings for 15 days. The Court will lift the stay on January 28, 2019, unless notified of need for extension by the parties. Signed by Honorable Margaret B Seymour on 1/10/2019.(mdea )

**3:15-cv-00194-MBS Notice has been electronically mailed to:**

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rpruzin@selcsc.org, sferguson@selcsc.org

**3:15-cv-00194-MBS Notice will not be electronically mailed to:**

**EXHIBIT 3**

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

CONGAREE RIVERKEEPER, INC,	)	
	)	
Plaintiff,	)	C.A. No. 3:15-cv-194-MBS
	)	
v.	)	<b>SECOND CONSENT MOTION TO STAY</b>
	)	
CAROLINA WATER SERVICE, INC.,	)	
	)	
Defendant.	)	

Defendant Carolina Water Service, Inc., with the consent of Plaintiff Congaree Riverkeeper, Inc., requests that the Court stay all proceedings in this action for an additional 7 days pending resolution of the productive settlement agreement negotiations currently occurring between the parties. The Court previously stayed the case for 15 days, through January 28, 2019. Dkt. No. 125. The parties respectfully request additional time to complete their negotiations. A proposed order is attached for the Court’s consideration as **Exhibit A**.

Respectfully submitted, this 24th day of January, 2019.

*[Signature page follows]*

ELECTRONICALLY FILED - 2019 February 14 2:11 PM - SCPSC - Docket # 2017-292-WS - Page 14 of 18

Respectfully submitted,

*s/ Rita Bolt Barker*

---

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*Attorneys for Defendant  
Carolina Water Service, Inc.*

January 24, 2019  
Columbia, South Carolina

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**U.S. District Court**

**District of South Carolina**

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**Case Name:** Congaree Riverkeeper Inc v. Carolina Water Service Inc

**Case Number:** 3:15-cv-00194-MBS

**Filer:**

**WARNING: CASE CLOSED on 03/30/2017**

**Document Number:** 127

**Docket Text:**

**ORDER granting [126] Motion to Stay proceedings for 7 days. The Court will lift the stay on February 4, 2019, unless notified of need for extension by the parties. Signed by Honorable Margaret B Seymour on 1/25/2019.(mdea )**

**3:15-cv-00194-MBS Notice has been electronically mailed to:**

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7a2e5adc4622fc3639a8c60f0acfc8f81d032b0962fe87237b6da77b5f54b]]

BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
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

CERTIFICATE OF SERVICE

This is to certify that I, Toni C. Hawkins, paralegal with the law firm of Robinson Gray Stepp & Laffitte, LLC have this day served a copy of **Carolina Water Service, Inc.'s Petition for Rehearing and Reconsideration** in the foregoing matter to the parties listed below by electronic mail:

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Dated this 14<sup>th</sup> day of February, 2019.

*Toni C. Hawkins*

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA**

**Docket No. 2017-292-WS**

**IN RE:** )  
 )  
Application of Carolina Water Service, )  
Inc. for Adjustment of Rates and )  
Charges and Modification to Certain )  
Terms and Conditions for the Provision )  
of Water and Sewer Service )

**MOTION TO DISMISS**

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TO: Frank R. Ellerbe, III, Esq., Samuel J. Wellborn, Esq., Charles L.A. Terreni, Esq., Scott Elliott, Esq. and John M. Hoefer, Esquire, all of whom are Counsel for the Applicant, Carolina Water Service, Inc.:

The Office of Regulatory Staff (“ORS”) hereby moves before the South Carolina Public Service Commission (“Commission”) to Dismiss the Petition for Rehearing or Reconsideration (“Petition”) filed by the Applicant Carolina Water Service (“CWS” or “Company”) on February 14, 2019 in the above captioned matter.

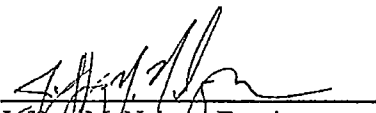
ORS’ Motion is based on CWS having filed a Notice of Appeal of Commission Order No. 2018-802 with the South Carolina Supreme Court on February 25, 2019. In accordance with South Carolina Appellate Court Rule 205 “[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.” CWS has filed a Notice of Appeal with the South Carolina Supreme Court and jurisdiction over this case now rests with that Court. The Commission lacks

the proper jurisdiction to entertain the Company Petition for Rehearing or Reconsideration. Until the appeal before the Supreme Court is disposed of, the Commission's lack of jurisdiction over this case dictates that the Petition must be dismissed.

Additionally, ORS believes that Order No. 2018-802 is the Final Order of the Commission in this docket. For the Commission to permit, and rule on, an infinite number of Motions for Reconsideration creates the possibility of an endless series of requests for reconsideration of the Commission's latest order. The Commission has now held two full evidentiary hearings in this docket and issued two Final Orders. If the company disagrees with Commission Order 2018-802 the proper forum to express that disagreement is now with the South Carolina Supreme Court.

In conclusion, ORS prays that the Commission Dismiss the Company Motion for Reconsideration of Order No. 2018-802 based on lack of jurisdiction.

Respectfully submitted and dated this 27<sup>th</sup> day of February 2019.

  
\_\_\_\_\_  
Jeffrey M. Nelson, Esquire  
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Attorneys for the SC Office of Regulatory Staff



response to the ORS petition for reconsideration, the Commission issued Order No. 2018-494 granting rehearing on four of the six issues raised by ORS, including the litigation expense issue which is the subject of the CWS Petition. Following the rehearing, the Commission issued Order No. 2018-802. Among other rulings, Order No. 2018-802 ruled on recovery of litigation expenses differently from the ruling on that issue in Order No. 2018-345(A). CWS filed its Petition seeking rehearing and reconsideration of the ruling on recovery of litigation expenses.

On February 25, 2019 CWS filed a notice of appeal of Order No. 2018-802 with the South Carolina Supreme Court. In its cover letter with the notice CWS explained that it had filed a petition for rehearing and reconsideration and was filing the notice of appeal because of uncertainty as to whether its Petition would toll the time for appeal.<sup>2</sup> See Exhibit 1. The ORS Motion requests dismissal of the Petition on the grounds that it is not permitted because it follows a previous order granting rehearing and because the notice of appeal divested the Commission of jurisdiction.

### **Argument**

#### 1. The ORS Motion is at Odds with the Plain Language of S.C. Code Ann. §58-5-330.

S.C. Code Ann. §58-5-330 provides for rehearing of matters decided by the Commission in water and sewer cases.

Within twenty days after an order or decision is made by the commission, any party to the action or proceeding may apply for a rehearing as to any matter determined in the action or proceeding and specified in the application for rehearing and a rehearing must be granted if in the judgment of the commission sufficient reason exists. No right of appeal arising out of an order or decision of the commission accrues in any court to any corporation or person unless the corporation or person makes application to the commission for a rehearing within the time specified. The application must set forth specifically the ground on which the applicant considers the decision or order to be unlawful. The determination must be made by the commission within thirty days after it is finally submitted. If, after the hearing and a consideration of all the facts, including those arising since the making of the order or decision, the commission is of the opinion that the original order or decision, or any part of it, is in any respect unjust or unwarranted or should be changed, the

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<sup>2</sup> CWS intends to file a motion with the Supreme Court requesting that its appeal be held in abeyance pending the Commission's ruling on the Petition.

commission may abrogate, change or modify it and, if changed or modified, the modified order must be substituted in the place of the order originally entered and with like force and effect.

There is no qualification in this provision as to what orders or decisions are covered and the language is very clear that there is no right to appeal an order of the Commission unless the party seeking the appeal has first asked the Commission for a rehearing and explained the basis for the request. The ORS Motion asks the Commission to rewrite this statutory provision to limit the circumstances under which a party must ask for rehearing or reconsideration. The Commission has only the authority granted to it by the General Assembly and that grant does not include the power to rewrite statutory provisions. *South Carolina Cable Televisions Assn. v. Public Service Commission*, 313 S.C. 48, 437 S.E.2d 38 (1993).

There is another provision of S.C. Code Ann. §58-5-330 that demonstrates that the ORS argument is incorrect. Section 58-5-330 expressly allows the consideration of matters “arising since the making of the order or decision...” In its Petition CWS cited this provision as authority for one of its grounds supporting its Petition. See Petition, pp. 2, 8. The ORS position that CWS has no right to request rehearing and reconsideration under the circumstances of this proceeding would nullify the statutory provision that allows CWS to base its Petition on matters arising since the hearing in September 2018. This is another reason that the Commission should reject the ORS interpretation of S.C. Code Ann. §58-5-330.

## 2. The ORS Jurisdictional Argument Conflicts with Recent Precedent.

In its Motion ORS argues that the CWS notice of appeal divests the Commission of jurisdiction over the Petition. The situation presented by the combination of the CWS Petition and Notice of Appeal was also presented in the appeal by the South Carolina Coastal Conservation League and Southern Alliance for Clean Energy (“CCL/SACE”) of orders in Docket 2018-2-E. In that case CCL/SACE filed a notice of appeal after the issuance of a directive denying a petition

for reconsideration but before a formal order was issued. The respondent, South Carolina Electric & Gas, filed a motion with the Supreme Court to dismiss the appeal or alternatively to hold it in abeyance pending a final ruling by the Commission. The Court issued an order denying the motion to dismiss but granting the request to hold the appeal in abeyance. See Order dated August 16, 2018 in Appellate Case no. 2018-001165 (Attached as Exhibit 2).

The quandary faced by CCL/SACE with respect to Docket No. 2018-2-E (and described in a letter to the Commission attached as Exhibit 3) is similar to that faced by CWS in this proceeding: failure to file a timely notice of appeal is jurisdictionally fatal to the appeal but so is failure to file a petition for rehearing or reconsideration. In the CCL/SACE appeal the Supreme Court resolved the dilemma by accepting a notice of appeal and holding it in abeyance while allowing the Commission time to fully address matters for which rehearing or reconsideration was sought. The Court did not hold that the Commission was divested of jurisdiction by the filing of the notice of appeal. The ORS argument to the contrary should be rejected.

3. The ORS Argument that CWS's Petition is a Disallowed "Successive Motion" Is Contrary to South Carolina Cases Applying Rule 59(e) SCRCP.

Rule 59(e) SCRCP is the civil procedure device for asking a trial court to reconsider its rulings. See *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-779 (2004). In *Elam*, the Court reviewed in detail the question of whether and when successive motions for reconsideration would toll the time for filing a notice of appeal. In that case the Department of Transportation ("DOT") had made a post-trial motion that was denied and then filed a Rule 59(e) motion that repeated the arguments made in the post-trial motion. The Court of Appeals dismissed the DOT appeal as untimely on the ground that the Rule 59(e) motion was a successive motion that did not stay the time for appeal. In its discussion explaining its reversal of the Court of Appeals ruling, the Supreme Court described the importance of allowing lower courts and tribunals a full opportunity to address all issues.

[A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.

*Elam, supra*, 361 S.C. at 23.

The Court's ruling in *Elam* that the DOT motion for reconsideration should be allowed stressed the importance of allowing a full treatment of issues prior to appellate review. The ORS motion takes a directly contrary position. The CWS Petition is the first time that it has had an opportunity to ask the Commission to reconsider its rulings in Order No. 2018-802. The strong preference expressed in *Elam* for lower courts and tribunals to have a full opportunity to address issues before appeal requires that the Commission deny the ORS Motion and proceed with consideration of the CWS Petition.

### Conclusion

The ORS Motion is contrary to the statute that provides for rehearing and reconsideration, the Supreme Court's treatment of a recent similar appeal from the Commission and the Court's treatment of requests for reconsideration in circuit court. The CWS Petition is CWS's first opportunity to ask the Commission to reconsider its rulings in Order No. 2018-802. Both CWS and the Commission deserve an opportunity to have the issues fully addressed. Accordingly, the ORS Motion should be denied.

Dated this 5<sup>th</sup> day of March 2019.

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and

s/Frank R. Ellerbe, III  
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Attorneys for Carolina Water Service, Inc.



**ROBINSON  
GRAY**

Litigation + Business

**Exhibit 1**

FRANK R. ELLERBE, III

DIRECT 803 227.1112 DIRECT FAX 803 744.1556

fellerbe@sowellgray.com

February 25, 2019

**VIA HAND-DELIVERY**

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
1231 Gervais Street  
Columbia, South Carolina 29201

**Re: Carolina Water Service, Inc. for Approval of an Increase in its Rates for  
Water and Sewer Services - Docket No. 2017-292-WS**

Dear Mr. Shearouse:

Enclosed for filing is a Notice of Appeal and Certificate of Service in the above matter. A check in payment of the \$100 filing fee is also enclosed.

This Appeal is being filed with the Supreme Court pursuant to Rule 203(d)(2). On January 25, 2019, Carolina Water Service, Inc. ("CWS") filed a Petition for Rehearing and Reconsideration ("Petition") of Order No. 2018-802 with the South Carolina Public Service Commission. The Petition was filed pursuant to S.C. Code Ann. §58-5-330. Ordinarily our notice of appeal would not be ripe until the Commission ruled on the Petition. However, in this case Order No. 2018-802 was a ruling arising from a previous petition for rehearing filed by another party. Because of uncertainty as to whether successive petitions for rehearing toll the time for filing a notice of appeal, CWS is filing this notice of appeal today.

Please stamp the extra copy provided and return it with our courier. Should you have any questions, please contact me.

Yours truly,

  
Frank R. Ellerbe, III

FRE:tch  
Enclosures

cc: Public Service Commission of South Carolina (via electronic filing)  
Parties of Record in Docket No. 2017-292-WS

# The Supreme Court of South Carolina

South Carolina Coastal Conservation League and  
Southern Alliance for Clean Energy, Appellants,

v.

South Carolina Public Service Commission, South  
Carolina Electric & Gas, CMC Steel South Carolina,  
South Carolina Energy Users Committee, South Carolina  
Solar Business Alliance, LLC, Southern Current, LLC  
and South Carolina Office of Regulatory Staff,  
Respondents.

Appellate Case No. 2018-001165

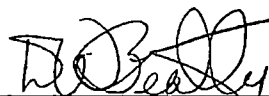
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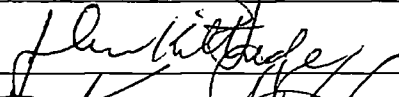
## ORDER


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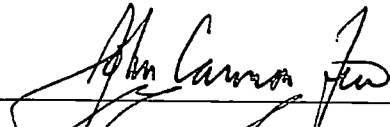
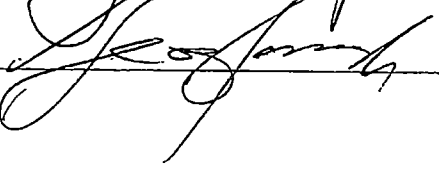
Respondent South Carolina Electric & Gas moves for the dismissal of appellants' notice of appeal or, in the alternative, to hold the notice of appeal in abeyance. Appellants oppose the motion to dismiss, but concur with the request to hold the appeal in abeyance pending the anticipated order from the Public Service Commission on the petition(s) for rehearing. The motion to dismiss is denied, but the request to hold the appeal in abeyance is granted, with the right to amend the notice of appeal if necessary following the issuance of the Commission's order. This includes the timelines for briefing pursuant to the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

  
\_\_\_\_\_  
C. J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.  
  
\_\_\_\_\_  
J.

Columbia, South Carolina  
August 16, 2018

- cc:
- James Blanding Holman, IV, Esquire
  - Andrew McClendon Bateman, Esquire
  - Jenny Rebecca Pittman, Esquire
  - Alexander George Shissias, Esquire
  - Timothy F. Rogers, Esquire
  - Richard Lee Whitt, Esquire
  - Benjamin Parker Mustian, Esquire
  - K. Chad Burgess, Esquire
  - Matthew William Gissendanner, Esquire
  - Scott A. Elliott, Esquire
  - Jocelyn Boyd, Esquire
  - Fred David Butler, Esquire
  - Mitchell Willoughby, Esquire

# SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 843-720-5270

463 KING STREET, SUITE B  
CHARLESTON, SC 29403-7204

Facsimile 843-414-7039

June 29, 2018

*Via Electronic Filing and E-mail*

F. David Butler, Esq.  
Hearing Officer  
Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, South Carolina 29211  
[David.Butler@psc.sc.gov](mailto:David.Butler@psc.sc.gov)

**Re: Annual Review of Base Rates for Fuel Costs for South Carolina Electric Gas Company; Docket No. 2018-2-E  
Appellate Case No. 2018-001165**

Dear Mr. Butler:

Thank you for your email clarifying that the Public Service Commission of South Carolina will issue a more full and complete order on rehearing and reconsideration in the 2018 Annual Review of Base Rates for Fuel Costs for South Carolina Electric & Gas Company (“SCE&G”), Commission Docket No. 2018-2-E. We thought it would be helpful to share our clients’ position on the timing of the notice of appeal and flag this as a procedural issue that may be worth bringing to the attention of the Commission for future proceedings.

South Carolina Appellate Court Rule 203 requires that all notices of appeal from administrative tribunals must be served within thirty days of receipt of the decision granting or denying any timely petition for rehearing. S.C. App. Ct. R. 203(b)(6). The only instance where this deadline can be extended is where “*a decision indicates* that a more full and complete decision is to follow.” *Id.* (emphasis added). In that case, a party “*need not* appeal until receipt of the more complete decision[.]” *Id.* (emphasis added).

Because the May 23 directive in this proceeding did not expressly indicate that a more full and complete decision would follow, Conservation Groups filed their notice of appeal within thirty days from that directive, in order to fully protect their right to appeal.<sup>1</sup> Significantly, the requirement of service of the notice of appeal is jurisdictional. If a party misses the deadline, the appellate court “has no authority or discretion to rescue the delinquent party by extending or ignoring the deadline for service of the notice.”

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<sup>1</sup> The Conservation Groups appreciate the email clarification regarding the more full and complete order, but note that Appellate Court Rule 203 specifically references the administrative tribunal’s “decision.” To protect their right to appeal, Conservation Groups relied specifically on the language in the Commission’s decision (the directive).

*Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004) (citations omitted). This heightens the importance of a timely filed notice of appeal.

Appellate Rule 203 includes language permitting an earlier filing (the parties “*need not* appeal until receipt of the more complete decision”). However, it would still be helpful for parties considering appeal and those responding to such an appeal if the Commission were to provide a clear signal in future directives addressing petitions for rehearing or reconsideration when a more full and complete order is forthcoming. The following phrasing would mirror the language that tolls the appeal deadline in Appellate Rule 203: “A more full and complete order will follow this directive.”

Although it may be possible to infer from the Commission’s directives when a more full and complete order is forthcoming (as suggested by SCE&G in this proceeding), relying on this inference puts the appealing party at risk of an adverse interpretation on appeal. If a directive is misconstrued and the appellate deadline missed, the consequences are severe for the party wishing to appeal.

By copy of this letter, we are serving other parties of record. Thank you for your time and consideration of this matter.

Respectfully submitted this 29th day of June, 2018.

s/ J. Blanding Holman, IV  
J. Blanding Holman, IV  
S.C. Bar No. 72260  
Southern Environmental Law Center  
463 King St. – Suite B  
Charleston, SC 29403  
Telephone: (843) 720-5270  
Fax: (843) 720-5240  
bholman@selcsc.org

Katie C. Ottenweller  
Admitted *pro hac vice*  
Southern Environmental Law Center  
Ten 10<sup>th</sup> Street NW, Ste. 1050  
Atlanta, GA 30309  
Telephone: (404) 521-9900  
Fax: (404) 521-9909  
kottenweller@selcga.org

*Attorneys for Conservation Groups*

STATE OF SOUTH CAROLINA  
BEFORE THE PUBLIC SERVICE COMMISSION  
DOCKET NO. 2018-2-E

In the Matter of: )  
)  
) CERTIFICATE OF SERVICE  
)  
Annual Review of Base Rates for )  
Fuel Costs for South Carolina )  
Electric & Gas Company )  
)

I hereby certify that the following persons have been served with this letter by electronic mail and/or U.S. First Class Mail at the addresses set forth below:

Andrew M. Bateman, Esq.  
Jenny R. Pittman, Esq.  
Office of Regulatory Staff  
1401 Main Street, Suite 900  
Columbia, SC 29201  
abateman@regstaff.sc.gov  
jpittman@regstaff.sc.gov

Richard L. Whitt, Esq.  
Austin & Rogers, P.A.  
508 Hampton Street, Suite 300  
Columbia, SC 29201  
rlwhitt@austinrogerspa.com

Benjamin P. Mustian, Esq.  
Willoughby & Hoefler, P.A.  
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Matthew Gissendanner, Esq.  
South Carolina Electric & Gas Company  
220 Operation Way - MC C222  
Cayce, SC 29033  
matthew.gissendanner@scana.com

This 29<sup>th</sup> day of June, 2018.  
s/ A. Rachel Pruzin

ELECTRONICALLY FILED - 2018 June 29 12:03 PM - SCPSC - Docket # 2018-292-VRBgePage 43 of 13

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**Docket No. 2017-292-WS**

**In Re:** )  
 )  
**Application of Carolina Water Service,** ) **SUPPLEMENTAL MEMORANDUM IN**  
**Inc. for Approval of an Increase in its** ) **SUPPORT OF PETITION FOR**  
**Rates for Water and Sewer Services** ) **REHEARING OR RECONSIDERATION**  
 )  
 )  
 )  
 )

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Carolina Water Service, Inc. (“CWS” or “Company”)<sup>1</sup>, pursuant to S.C. Code Ann. §58-5-330 submits this supplemental memorandum and exhibits in support of its pending Petition for Reconsideration (“CWS Petition”).

**BACKGROUND**

This proceeding was initiated when CWS filed an application for a rate increase in November 2017. Following an evidentiary hearing in April 2018, the South Carolina Public Service Commission (“Commission”) issued Order No. 2018-345(A) granting a portion of the rate increases sought by CWS. In June 2018 ORS filed a petition for rehearing or reconsideration asking that the Commission reconsider six specific issues ruled on in Order No. 2018-345(A). In response to the ORS petition for reconsideration, the Commission issued Order No. 2018-494 granting rehearing on four of the six issues raised by ORS, including the litigation expense issue which is the subject of the CWS Petition. Following the rehearing, the Commission issued Order No. 2018-802. Among other rulings, Order No. 2018-802 ruled on recovery of litigation expenses differently from the ruling on that issue in Order No. 2018-345(A). On February 14, 2019 CWS

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<sup>1</sup> CWS has recently changed its name to Blue Granite Water Company (See Docket No. 2018-365-WS), but to avoid confusion will continue to use its former name for purposes of this proceeding.

filed its Petition with this Commission seeking rehearing and reconsideration of the ruling on recovery of litigation expenses. On February 25, 2019 CWS filed a notice of intent to appeal with the South Carolina Supreme Court.

In response to the CWS Petition, the Office of Regulatory Staff (“ORS”) filed a motion requesting dismissal of the CWS Petition on the grounds that it was not permitted because it followed a previous order granting rehearing and because the notice of appeal divested the Commission of jurisdiction. On March 7, 2019, the Commission issued Order No. 2019-178 dismissing the CWS Petition on the ground that the notice of appeal divested the Commission of jurisdiction. On March 22, 2019 CWS filed a motion with the Supreme Court asking that the case be remanded to this Commission for reconsideration of the CWS Petition. On May 15, 2019, the Supreme Court issued an order dismissing the CWS notice of appeal, vacating Commission Order No. 2019-178 and directing the Commission to rule on the merits of the CWS Petition. CWS submits this supplemental memorandum in support of the CWS Petition and to provide the Commission with additional information relevant to the issue presented in its Petition.

### ARGUMENT

The CWS Petition seeks to have the Commission reconsider the recovery in its rates of expenses relating to litigation in which CWS was a party. That litigation was entitled *Riverkeeper v. Carolina Water Service*. (“*Riverkeeper*”). At the time that the CWS Petition was filed with the Commission CWS was able to inform the Commission that there were discussions about settling the *Riverkeeper* litigation, but CWS was not able to provide the Commission with any information about the terms of the settlement. The *Riverkeeper* case has now been settled and the settlement has been approved by the Federal Court. See Exhibit 1 – Consent Order and Final Judgment and Exhibit 2 – Final Settlement Agreement (“*Settlement*”).

CWS believes that the terms of the Settlement should be reviewed by the Commission as part of its consideration of the CWS Petition. Under the applicable statutory provision that allows for reconsideration of decisions by the Commission, events and facts occurring after the order being reconsidered are expressly allowed to serve as a basis for reconsideration. See S.C. Code Ann. §58-5-330. In this case the Settlement provides substantial benefits to the customers of CWS that should be taken into account by the Commission in considering the issues raised in the CWS Petition.

The primary issue in the *Riverkeeper* litigation concerned the difficulty that CWS faced in complying with a regulatory requirement to close its I-20 wastewater treatment plant without being able to negotiate a wholesale contract with the Town of Lexington. As a part of the Settlement CWS has negotiated an agreement with the Congaree Riverkeeper that addresses two similar situations. In the Settlement, the Congaree Riverkeeper agreed that it will support: (1) an effort by CWS to negotiate a wholesale agreement with the Town of Lexington to allow the closure of the Watergate treatment facility; and (2) a wholesale treatment agreement with the City of Columbia to allow the closure of the Friarsgate treatment facility. See Settlement (Exhibit 2) at pp. 2-3. The Riverkeeper also expressly agreed that, for a period of five years, it will not bring any legal action asserting any claims that CWS has failed to connect the Watergate or Friarsgate systems to regional wastewater system. See Settlement (Exhibit 2) at pp.2-3. CWS believes that the Settlement will help in its effort to negotiate wholesale treatment contracts with the Town of Lexington and the City of Columbia that will be beneficial to customers by obtaining treatment services on reasonable terms and by avoiding litigation.

The Settlement includes financial terms that require CWS to make certain payments to counsel for the Riverkeeper, a donation to the Central Midlands Council of Governments and a

payment to the U.S. Treasury. CWS commits that it will not seek to recover any part of those payments from its customers.

### CONCLUSION

CWS continues to believe that the Commission should rehear and reconsider Order No. 2018-802 for the reasons stated in the CWS Petition. By this supplemental memorandum CWS provides the Commission with additional information that supports and buttresses the arguments advanced in that Petition. The defense by CWS of the *Riverkeeper* litigation was reasonable and prudent, and its expenses in that litigation are fully recoverable in rates following well established regulatory principles. The Settlement now finalizes the *Riverkeeper* litigation, and it provides significant benefits to ratepayers that should be considered by the Commission as it decides the issues presented by the CWS Petition.

s/Frank R. Ellerbe, III  
Frank R. Ellerbe, III  
Samuel J. Wellborn  
ROBINSON GRAY STEPP & LAFFITTE, LLC  
Post Office Box 11449  
Phone: 803-929-1400  
[fellerbe@robinsongray.com](mailto:fellerbe@robinsongray.com)  
[swellborn@robinsongray.com](mailto:swellborn@robinsongray.com)

Attorneys for Carolina Water Service, Inc.

May 21, 2019

Exhibit 1

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

CONGAREE RIVERKEEPER, INC.  Plaintiff,  vs.  CAROLINA WATER SERVICE, INC.  Defendant.	C.A. No.: 3:15-cv-194-MBS  <b>CONSENT ORDER AND FINAL JUDGMENT</b>
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Upon consideration of the parties' agreement, evidenced by the endorsements of the parties in the Settlement Agreement found at ECF No. 129-2 and incorporated herein by reference, and it otherwise appearing proper to do so, it is hereby:

**ORDERED** that the agreement and settlement documented in the Settlement Agreement executed by the Plaintiff Congaree Riverkeeper, Inc. and Defendant Carolina Water Service, Inc. is hereby approved;

**ORDERED** that the revised joint motion to enter consent order and final judgment, ECF No. 129, is granted, and the joint motion to enter consent order and final judgment, ECF No. 128, is denied as moot;

**ORDERED** that this Court expressly reserves personal and subject matter jurisdiction to enforce the Settlement Agreement against all of the parties named in the Settlement Agreement, and their affiliates, representatives, assigns and successors;

**ORDERED** that this Court expressly incorporates the terms of the Settlement Agreement as part of this Order; AND

**ORDERED** that this Court finds that there is no just reason for delay pursuant to Federal Rule of Civil Procedure 54(b), and hereby enters final judgment as to Plaintiff Congaree Riverkeeper, Inc.'s claims against Defendant Carolina Water Service, Inc.

SO ORDERED AND ENTERED this 11th day of March, 2019.

s/Margaret B. Seymour  
Margaret B. Seymour  
Senior United States District Judge

Columbia, South Carolina

Exhibit 2

**EXHIBIT 2**

**FINAL SETTLEMENT AGREEMENT**

ELECTRONICALLY FILED - 2019 May 21 3:25 PM - SCPSC - Docket # 2017-292-WS - Page 7 of 19

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into this 14<sup>th</sup> day of February, 2019, by and between Plaintiff Congaree Riverkeeper, Inc. (“CRK”) and Defendant Carolina Water Service, Inc., now known as Blue Granite Water Co. (“CWS”) (collectively sometimes hereinafter referred to as the “Parties”) with respect to that certain action styled *Congaree Riverkeeper, Inc. v. Carolina Water Service, Inc.*, pending in the United States District Court for the District of South Carolina, Case No. 3:15-CV-194-MBS (the “Action”).

RECITALS

WHEREAS, CRK brought, and the Parties have been litigating, the Action, which is a citizen suit under 33 U.S.C.A. § 1365 alleging violations of the federal Clean Water Act (“CWA”) arising out of the permitted discharge of treated wastewater into the Lower Saluda River by CWS from its I-20 wastewater collection, treatment and disposal system serving certain portions of Lexington County, South Carolina (“I-20 System”);

WHEREAS, summary judgment has been granted to CRK in orders issued by the United States District Court (“Court”) in the Action, which orders CWS would appeal if the Action is not otherwise resolved through settlement;

WHEREAS, pending in the Court are further proceedings for determination of any penalty for the Court’s finding of liability for CWS’s inability to obtain a connection from the Town of Lexington (“the regional facility”) for the I-20 System and on the amount of attorney’s fees for CRK;

WHEREAS, CRK maintains that the Court properly concluded that CWS had violated the CWA due to its failure to connect the I-20 System to the regional facility and eliminate its

discharge, and the Court would have imposed significant penalties as a result of these violations and granted CRK its attorneys' fees, CRK has nonetheless concluded, after analyzing the facts and law applicable to the Action, and taking into account the burdens, risks, uncertainties, and expense of litigation, that this Agreement is fair, reasonable, adequate, and in its best interest; and

WHEREAS, CWS maintains that it was lawfully operating the I-20 System under a valid NPDES permit and believes that it has not committed a violation of the CWA due to the unavailability of the regional facility to eliminate the permitted discharge from the I-20 System and its actions to eliminate the discharge, and without admitting that any such violation exists from its inability to connect to the regional facility, CWS has similarly concluded that this Agreement is desirable in order to resolve finally and completely this Action in both the best interest of its shareholders and customers.

NOW, THEREFORE, it is stipulated and agreed by CRK and CWS that the Action shall be fully and finally settled, resolved, and ended on the terms and conditions set forth below.

**I. NON-MONETARY SETTLEMENT TERMS**

**A. Covenant Not to Sue**

CRK agrees that it will not institute, bring, establish, or assert in any manner in any action, proceeding (including condemnations), claim, cause of action, suit, demand, penalty, fine, or enforcement effort, whether of a legal, equitable, administrative, executive, legislative or other nature ("Future Claim"), pertaining to or arising out of the fact that the CWS Watergate wastewater collection and disposal system serving certain portions of Lexington County ("Watergate System") has not been connected to the Town of Lexington's ("Town") regional facility, and/or the CWS Friarsgate wastewater collection and disposal system serving certain

portions of Richland County ("Friarsgate System") has not been connected to the City of Columbia's ("City") regional facility. CRK's release of its claims regarding CWS's failure to connect its Watergate and Friarsgate facilities shall be applicable for only 5 years from the date of the execution of this agreement. CRK further agrees that it will not suggest, encourage, counsel, advise, or in any other manner support any other person or groups of persons (including but not limited to (i) incorporated or unincorporated associations or organizations, (ii) courts, (iii) Federal, state, regional, or local governmental agencies, (iv) political subdivisions of the governing bodies thereof, (v) Federal, state, regional or local government executives or legislators, or (iv) persons or entities of any other type, form, or nature whatsoever) to threaten, support, institute, bring, establish, or assert in any manner any such Future Claim regarding the fact that the Watergate System and Friarsgate System are not connected to the Town's and City's regional facilities.

**B. Connection of Watergate System**

CWS agrees that it will undertake the following steps with respect to the elimination of the current discharges from the Watergate System:

1. CWS is seeking a wholesale service agreement from the Town for submission to the Public Service Commission of South Carolina ("PSC") for approval. Upon PSC approval of a connection agreement between CWS and the Town, and completion of this connection, CWS will eliminate the discharge from the Watergate System into Fourteen Mile Creek and operate the approved connection.

2. In the event that the Town refuses to offer wholesale treatment service to CWS for purposes of giving effect to the connection contemplated herein, or the PSC withholds approval of the contract pertaining to same, CWS agrees that it will not file

an action objecting to the Town's right to take the Watergate System through a condemnation proceeding.

**C. CRK Support for Connection of Watergate System**

CRK agrees that it will publicly support CWS's efforts to connect the Watergate System to the Town's regional facility and to eliminate the discharge as contemplated above. To comply with its obligations in this regard, CRK shall not be required to become a party to any judicial or administrative proceedings. However, CRK will provide an appropriate public statement of support for the applicable CWS initiative to achieve elimination of this discharge for dissemination to the media.

**D. Non-Disparagement/Communications about the Settlement**

The Parties agree that they will not communicate about this Agreement or the Action until the Court's approval of the Settlement Agreement. Once the Settlement Agreement is approved, the parties agree that if they desire to communicate about this Agreement or the Action, they may do so only to the extent those communications are consistent with the terms set forth in Exhibit A.

**II. MONETARY SETTLEMENT TERMS**

CWS will make the following payments within 30 days of the Court's approval of the Settlement Agreement.

**A. Payment to CRK's Counsel**

Via wire transfer, CWS will pay to CRK's counsel, Southern Environmental Law Center, the sum of Three Hundred Eighty-Five Thousand and no/100ths Dollars (\$385,000.00).

**B. Donation to the Central Midlands Council of Governments**

In furtherance of CRK's mission and purpose, CWS will donate to the Central Midlands Council of Governments ("CMCOG") the sum of Three Hundred Fifty Thousand and no/100ths Dollars (\$350,000.00) to be used for the following purposes:

1. \$250,000.00 to support water quality monitoring initiatives of the Midlands Rivers Coalition; and
2. \$100,000.00 to support the CMCOG's revisions to, and implementation of, its Section 208 Water Quality Management Plan.

Two checks from CWS payable to CMCOG in these amounts will be jointly presented to CMCOG by CRK and CWS.

**C. Payment to the United States Treasury**

CWS will pay into the United States Treasury Twenty Three Thousand and no/100ths Dollars (\$23,000.00) in full satisfaction of any obligation owed by CWS resulting from the operation of the I-20 System.

**III. EFFECT OF THE COURT'S APPROVAL OF THE SETTLEMENT AGREEMENT**

CRK agrees that the Court's approval of the Settlement Agreement will constitute, and have the identical effect, of a full and complete release of CWS from any and all liability with respect to the matters raised or that could have been raised regarding the I-20 System in the Action.

**IV. REPRESENTATIONS AND WARRANTIES**

A. CRK represents and warrants that it has all requisite corporate power and authority to execute, deliver, and perform this Agreement, that its signatory below is fully

authorized to enter into same, and that no further or additional authorization is needed for its counsel to execute and deliver this Agreement. The execution, delivery, and performance by CRK of this Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action. This Agreement has been duly and validly executed and delivered by CRK and constitutes its legal, valid, and binding obligation.

B. CWS represents and warrants that it has all requisite corporate power and authority to execute, deliver, and perform this Agreement, that its signatory below is fully authorized to enter into same, and that no further or additional authorization is needed for its counsel to execute and deliver this Agreement. The execution, delivery, and performance by CWS of this Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action. This Agreement has been duly and validly executed and delivered by CWS and constitutes its legal, valid, and binding obligation.

#### V. MISCELLANEOUS

A. Neither this Agreement, nor any exhibit, document, or instrument delivered as part of this Agreement, nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of this Agreement is intended to be or shall be construed as or be deemed to be evidence of any admission or concession by CWS of any liability or wrongdoing, or of the truth of any allegation in the Complaint, or that CWS does not have viable grounds to challenge the Court's grant of summary judgment in favor of CRK, or that the Court would not have denied penalties or limited attorneys' fees consistent with the arguments that CWS made in the pending briefing, had the parties not entered into this Agreement. Nothing in this Agreement, nor any exhibit, document, or instrument delivered as part of this Agreement, nor any statement, transaction, or proceeding in connection with this

Agreement is intended to be or shall be construed as evidence of any admission or concession by CRK that the Court would not order penalties or attorneys' fees consistent with arguments that CRK made in the pending briefing had the parties not entered into this Agreement. Notwithstanding the foregoing, CWS shall have the absolute and unfettered right to use the filed Settlement Agreement in any proceeding, judicial, administrative, legislative or otherwise, to establish that the Action has ended after the Court's finding of liability but before the resolution of penalties and attorneys' fees, except that CWS or its agents and/or owners may not use this Agreement to seek vacatur of the Court's March 30, 2017 summary judgment order or of any other final order issued by this Court.

B. This Agreement, including all Exhibits attached hereto, constitutes the entire agreement by and among the Parties with regard to the subject of this Agreement, and shall supersede any previous agreements and understandings between the Parties with respect to the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by all Parties hereto.

C. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

D. Any notice, request, instruction, or other document to be given by any party to this Agreement to any other party to this Agreement shall be in writing and delivered personally, or sent by overnight delivery service, or by United States Postal Service Priority Mail, Signature Confirmation Requested, as follows:

**For CWS:**

John M. S. Hoefler, Esquire  
Chad N. Johnston, Esquire

Ms. Catherine E. Heigel  
President, Carolina Water Service, Inc.

Willoughby & Hoefler, P.A.  
P.O. Box 8416  
Columbia, SC 29202-8416

130 S. Main Street, Suite 600  
Greenville, SC 29601

Rita Bolt Barker, Esquire  
Wyche, P.A.  
P.O. Box 728  
Greenville, SC 29601

with copy to:  
Laura K. Granier, Esquire  
Vice President and General Counsel  
Utilities, Inc.  
2335 Sanders Road  
Northbrook, IL 60062

**For CRK:**

Catherine Wannamaker, Esquire  
Blan Holman, Esquire  
Southern Environmental Law Center  
463 King Street, Suite B  
Charleston, SC 29403

with copy to:  
Bill Stangler  
Congaree Riverkeeper  
1001 Washington Street, Suite 201  
Columbia, SC 29201

E. This Agreement shall be construed in accordance with South Carolina law without regard to its choice of law rules. In the event that a dispute with respect to this Agreement shall arise after the Court's approval of the Settlement Agreement, the Parties agree that the matter may be submitted to this Court for resolution under a breach of contract cause of action and no other. The Parties further agree that they shall bear their own costs in the event

that a disputed matter under the Agreement is submitted for resolution under the terms of this section.

F. The recitals set out in the preamble herein shall be deemed to have the same legal effect as if they had been set forth in the body of this Agreement and constitute consideration for terms and conditions set out herein. The headings herein, however, are used for the purpose of convenience only and are not meant to have legal effect.

G. The waiver by any Party of any breach of this Agreement or any term or condition hereof by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement or any term or condition hereof.

H. This Agreement shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and all parties have contributed substantially and materially to the preparation of this Agreement.

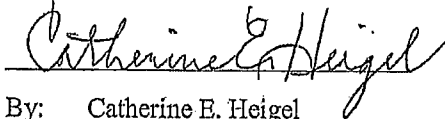
I. The Parties shall in good faith fully cooperate with each other in discharging the duties and implementing the terms of this Agreement.

J. In addition to the acts recited in this Agreement, the Parties agree to perform or cause to be performed on the date of this Agreement or thereafter any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

WHEREUPON, having fully set forth their agreement, the Parties have set their hands and seals on the date first stated above.

Blue Granite Water Co.

Congaree Riverkeeper, Inc.



By: Catherine E. Heigel

Its: President

\_\_\_\_\_  
By: Bill Stangler

Its: Executive Director

WHEREUPON, having fully set forth their agreement, the Parties have set their hands and seals on the date first stated above.

Blue Granite Water Co.

Congaree Riverkeeper, Inc.

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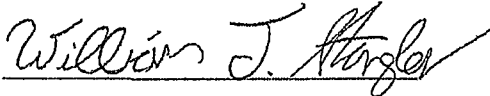
  
\_\_\_\_\_  
By: Bill Stangler  
Its: Executive Director

EXHIBIT A  
COMMUNICATION POINTS

1. Congaree Riverkeeper, Inc. ("CRK") and Carolina Water Service, Inc., now known as Blue Granite Water Co. ("Blue Granite") have resolved the dispute between them that has been the subject of an action in the United States District Court of the District of South Carolina under the federal Clean Water Act ("Act").
2. Blue Granite disagrees with the Court's finding that it was liable for failing to connect to the Town of Lexington's regional facility or that Blue Granite could be lawfully enjoined from continuing to operate and discharge under its NPDES permit for the I-20 facility and would have appealed that decision but for this settlement. Blue Granite further believes that the Court could not have lawfully imposed penalties or attorneys' fees based on the arguments it has made about its good faith efforts to comply with the Act and inability to obtain a connection without the Town of Lexington's willingness and cooperation.
3. CRK believes that the Court properly found Blue Granite to be liable for failing to connect to the regional facility but has settled the remaining penalty and attorneys' fees issues in an effort to conclude this litigation and to ensure that penalties are spent on important water quality issues in South Carolina.
4. As part of the resolution of the dispute between CRK and Blue Granite, Blue Granite will make the following payments: (a) \$385,000 to CRK's counsel, Southern Environmental Law Center, (b) \$350,000 to the Central Midlands Council of Governments ("CMCOG") to be used to support water quality monitoring initiatives of the Midlands Rivers Coalition and CMCOG's revisions to, and implementation of, its Section 208 Water Quality Management Plan; and (c) \$23,000 to the United States Environmental Protection Agency.
5. In any communications about the Action or this Agreement, either party may reference facts established in any public document filed with the Court, including either parties' pleadings, exhibits, or other official records.

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**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA**

**Docket No. 2017-292-WS**

<b>IN RE:</b>	)	
	)	
<b>Application of Carolina Water Service,</b>	)	<b>MEMORANDUM IN OPPOSITION</b>
<b>Inc. for Adjustment of Rates and</b>	)	<b>TO CAROLINA WATER</b>
<b>Charges and Modification to Certain</b>	)	<b>SERVICE, INC.'S PETITION FOR</b>
<b>Terms and Conditions for the Provision</b>	)	<b>REHEARING OR RECONSIDERATION</b>
<b>of Water and Sewer Service</b>	)	

The Office of Regulatory Staff (“ORS”) respectfully submits this Memorandum in Opposition to Carolina Water Service, Inc. (“CWS” or “Company”) Petition for Rehearing or Reconsideration. The Commission ruled properly in its Order on Reconsideration that CWS customers should not be responsible for CWS decisions that failed to “minimize costs” as required by the South Carolina Supreme Court and failed to operate “in good faith” as noted by Judge Seymore in order to comply with all applicable laws and regulations. CWS has provided the Commission with no sound regulatory or legal basis to force its customers to pay for its own repeated management mistakes and decisions.

**REGULATORY BACKGROUND**

This contested rate case matter was first filed with the Commission in November 2017 when CWS filed for a rate increase. Following discovery and a Commission hearing, the Commission issued Order No. 2018-345 granting partial rate relief to CWS. ORS timely filed a Petition for Rehearing or Reconsideration in June 2018. That ORS Petition requested that the Commission reconsider its rulings on six contested matters including allowing CWS to recover its litigation expenses from the lawsuit filed by the Congaree Riverkeeper, Inc. in 2015 against CWS

in federal district court. The Commission granted rehearing to ORS on four of the six issues identified by ORS. After rehearing, the Commission issued Order No. 2018-802 adopting the ORS position that CWS should not be authorized to recover from its customers \$416,093 in litigation expenses resulting from its unsuccessful defense of the Riverkeeper lawsuit.

The federal district court ruled that CWS committed 23 violations of the federal Clean Water Act (“CWA”) through unlawful discharges into the Saluda River from its I-20 Waste Water Treatment Plant (“WWTP”) and ordered CWS to pay a penalty of \$23,000 to the United States Treasury. The federal district court ordered CWS to connect its I-20 Waste Water Treatment Plant (“WWTP”) with the regional treatment plant as required in its original CWS DHEC NPDES Permit No. SC0035564 issued in 1994 (“NPDES Permit”).

In 2018, CWS timely filed for rehearing or reconsideration of the Commission ruling denying the CWS request to include the Riverkeeper legal expenses in CWS customer rates. CWS also filed an appeal in 2019 with the South Carolina Supreme Court. The Supreme Court recently dismissed the CWS appeal and remanded this matter back to the Commission to review its rate making treatment of the CWS Riverkeeper lawsuit legal expenses. CWS filed its latest memorandum in support of its Petition for Reconsideration or Rehearing with the Commission on May 21, 2019.

#### **BRIEF OVERVIEW OF THE RIVERKEEPER/CWS LITIGATION**

The Riverkeeper litigation against CWS was filed on January 14, 2015 in the federal district court of South Carolina. The Riverkeeper lawsuit alleged that CWS violated the CWA in three different causes of action. The Riverkeeper agreed to drop one of the allegations in its pleading early in the litigation. The Riverkeeper asserted in its remaining two causes of action that CWS failed to timely connect its I-20 WWTP with a regional system as specifically required

in the NPDES Permit. Notably, the NPDES Permit expressly provided that the CWS I-20 WWTP “**is considered a temporary treatment facility** that will be closed out when the regional sewer system is constructed and available.” EC No.57-1 (emphasis added). The Riverkeeper also alleged that the CWS I-20 WWTP made ongoing and unlawful waste discharges over the years into the Saluda River in violation of the NPDES Permit’s waste discharge limitations.

For years after receiving the NPDES Permit, CWS management failed to craft and implement a successful interconnection agreement with the Town of Lexington as expressly required by the NPDES Permit. Despite the express terms of its NPDES permit, CWS was never successful in having the I-20 temporary treatment facility designated as a “permanent treatment facility.” The inconsistent conduct and ongoing violations of the Clean Water Act by CWS management ultimately led Judge Seymour to observe on summary judgment that “**defendant did not engage in negotiations with Town (Lexington) after the denial by the PSC in 2003 until 2014, after Plaintiff (Riverkeeper) served its notice of intent to sue under the CWA.** Federal District Court Order page 7. (emphasis added). See, also, ECF No. 58-1 at 8.

The “benefits” now claimed by CWS relating its recent settlement with the Riverkeeper are the very same actions and benefits that CWS has been **required** to seek since it received the NPDES Permit from DHEC in 1994. After an 11-year hiatus between 2003 and 2014, CWS management was forced to again seek to connect its I-20 WWTP with the Regional System only **after** the Riverkeeper advised CWS that it intended to sue in 2014. CWS management alone made the decision to wait 11 years between 2003 and 2014 before even attempting to comply with its legal obligations under the CWA and the express terms of its NPDES Permit. CWS customers were not involved in the ongoing and failed CWS management decisions resulting in unlawful and ongoing discharges from the CWS I-20 WWTP and failure to connect to the Regional System. An

agreement by the Riverkeeper not to sue for five years is essentially meaningless since CWS agreed, because of the successful Riverkeeper lawsuit, to take the required steps to comply with the CWA and the terms of the NPDES Permit.

CWS customers should not be forced by the Commission to pay for CWS's legal costs for its ongoing management failures to comply with the Clean Water Act. The Commission properly found and ruled that such legal costs did not benefit CWS customers and that those legal expenses should be the sole responsibility of shareholders and not CWS customers. CWS has not provided the Commission with any lawful basis or with evidence necessary to support a reconsideration of its ruling protecting CWS customers.

**THE CWS/RIVERKEEPER SETTLEMENT AGREEMENT  
DOES NOT ALTER OR AMEND THE FEDERAL DISTRICT  
COURT ORDER FINDING CWS REPEATEDLY VIOLATED THE  
CLEAN WATER ACT AND ITS NPDES PERMIT  
OR ELIMINATE THE COURT MANDATED PENALTY OF \$23,000**

CWS requests that the Commission reconsider its ruling to not allow CWS to charge its customers for its unsuccessful legal defense costs of the federal district court lawsuit brought by the Riverkeeper. CWS asserts that its Settlement Agreement with the Riverkeeper provides certain customer "benefits" that now justify Commission approval for CWS to include \$416,093 in litigation costs in customer rates. CWS makes this highly dubious claim even though CWS was not successful in defending against the CWA claims asserted by the Riverkeeper. CWS's memoranda fail to provide any substantive basis to the Commission as to why its customers should now be responsible for the multi-decade failures of management to timely connect its I-20 WWTP to the regional system as required in its NPDES Permit.

The Riverkeeper lawsuit was the direct result of CWS management failing to maintain ongoing compliance with its NPDES permit and state and federal law requirements over

substantial periods of time. The Commission's rules and regulations require CWS to maintain operating compliance with local, state and federal statutes and regulations at all times. (*See, e.g.*, S.C. Code Regs. Ann. 103-700(B)). The existing record evidence demonstrates that CWS failed to comply with the Commission-required operating standards and conduct. During the 2018 Commission rehearing proceeding, ORS witness Hipp testified that the Riverkeeper legal expenses should not be paid by CWS customer since CWS's management failed to operate its I-20 WWTP in accordance with the express terms of its NPDES Permit. Hipp testified that:

"The ratepayers receive no economic benefit from Judge Seymour's Order which held that CWS violated its environmental permit and imposed serious and costly penalties. As a regulated utility with a defined service territory, CWS is required to provide adequate and efficient service at just and reasonable rates. The ratepayer pays for utility service which includes the reasonable expectation the Company's business practices and operations comply with federal, state and local laws. Because the Company's operations did not deliver service in compliance with federal and state environmental laws, the ratepayers could not be assessed the penalties, or the litigation costs related to the CRK case." Rehearing Transcript at p. 389, l. 12 to 20.

CWS customers had no input or involvement regarding the series of flawed managerial judgments that resulted in CWS's ongoing failure to connect its I-20 WWTP to the regional system. As Judge Seymour stated in her order, the DHEC Permit imposed specific obligations on CWS:

"The Permit puts the onus on Defendant to provide a satisfactory agreement for PSC's approval. The prior denials demonstrate what the PSC will find acceptable in a proposed agreement. Further, Defendant has the obligation to contract with Town or take other measures to fulfill the Permit requirements. Defendant has kept its plant open **for seventeen years after** it was required to connect. While regional connection does require other actors' assistance and approval, **Defendant cannot be rewarded for its lack of a good faith effort** to engage in negotiations and receive the required approvals." Federal District Court Order at p. 14. (Emphasis added.)

**CWS FAILED TO TAKE ACTIONS REQUIRED TO  
MINIMIZE OPERATING COSTS**

The South Carolina Supreme Court has provided the Commission with clear guidance on how to address this operational matter. In an electric case appeal, the Court reversed a decision by the Commission to allow Carolina Power & Light to recover in customer rates the costs of CP&L's management failure to ensure full compliance with NRC operating and construction standards and requirements. CP&L failed to confirm that 96 seismic pipe supports installed in a CP&L nuclear generating station met NRC standards. Upon discovery of the improper installation of the pipe supports by NRC, CP&L was required to shut the nuclear generating station down a second time to correct and repair the improperly installed pipe supports. CP&L incurred an additional \$1 million in fuel costs during the second shutdown due to its own failure to confirm that the pipe supports were properly installed in the first place. Hamm v. PSC and CP&L, 291 S.C. 1190, 352 S.E.2d 476 (1987). The Supreme Court noted that the Commission decision to allow CP&L to recover those additional costs from ratepayers due to the company failure to comply with NRC operating requirements created "no incentive to minimize costs". *Id.* In the same manner, any approval by the Commission in this matter to force CWS customers to pay for years of poor CWS management actions and decisions resulting in ongoing violations of the Clean Water Act and related legal defense costs eliminates any CWS operating incentives "to minimize costs." The Commission ruled properly in its Order on Reconsideration and should reject the CWS efforts to burden its customers with the costs of its own management failures to comply with applicable operations law regarding its I-20 waste treatment plant.

The CWS Settlement Agreement is irrelevant to assignment of litigation costs. The "settlement" presented to the Commission in this rehearing in no way alters review of this matter. The settlement simply requires CWS having to engage in actions and conduct to comply fully with

the long-standing Clean Water Act requirements and the express terms of the NPDES Permit. CWS was always required to comply with the CWA and its NPDES Permit. CWS management's failure to comply with those existing regulatory requirements rests solely on the shoulders of CWS management. The resulting legal and litigation costs should not be imposed now by the Commission on CWS customers due to a "settlement agreement." CWS must understand that it has an ongoing responsibility to "minimize costs." CWS management failed to adhere to that basic and important legal and regulatory requirement. Only CWS management and its shareholders should be responsible for paying the legal and litigation costs of ongoing mistakes and failure to timely comply for many years with all applicable laws, regulations and operating permits.

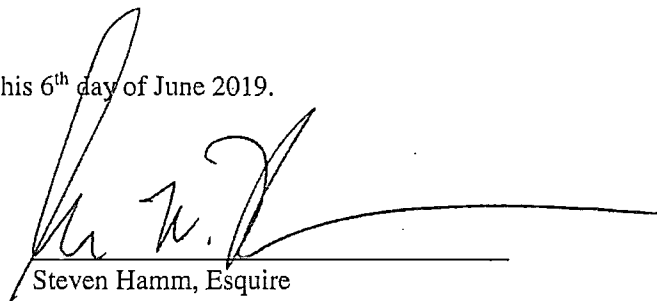
#### **CWS FAILED TO ACT IN GOOD FAITH**

The eleven-year span between 2003 and 2014 when CWS failed to contact the Town of Lexington to negotiate for connection with the Regional System reflects a serious "lack of good faith effort" on the part of CWS. Federal District Court Order at p.14. Taking no formal action over those eleven years to proceed with its NPDES requirement to connect with the Regional System serves as a serious indictment of CWS management compliance decisions. That lack of good faith management effort serves as the foundation of the legal defense costs CWS now seeks to impose on its customers. That same conduct demonstrates CWS failed to "minimize costs" as required by the South Carolina Supreme Court. The failure to act for eleven years to try to connect to the Regional System and its failure to act in good faith, as noted by Judge Seymour, cannot serve as an appropriate Commission basis to burden CWS customers with the resulting legal costs. CWS management and shareholders should accept responsibility and pay the resulting costs of years of poor management conduct and operations.

## CONCLUSION

The Commission ruled properly in its 2018 Order on Reconsideration that CWS customers should not be responsible for payment of CWS defense litigation costs in the Riverkeeper litigation. CWS management made decisions that failed to “minimize costs” and failed to operate “in good faith” in compliance with all applicable laws and regulations. CWS has not engaged in any conduct that merits a reward from the Commission in the Riverkeeper litigation. The Settlement Agreement added nothing to CWS’s preexisting obligations to comply with the law. The Commission should uphold its 2018 Order on Reconsideration and reject the self-serving request by CWS to transfer the legal defense costs of repeated management failures to the customers of CWS.

Respectfully submitted and dated this 6<sup>th</sup> day of June 2019.



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**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**Docket No. 2017-292-WS**

<b>In Re:</b>	)	
	)	
<b>Application of Carolina Water Service, Inc. for Approval of an Increase in its Rates for Water and Sewer Services</b>	)	<b>REPLY OF CAROLINA WATER SERVICE TO ORS OPPOSITION TO PETITION FOR REHEARING AND RECONSIDERATION</b>
	)	
	)	
	)	

Carolina Water Service, Inc. (“CWS” or “Company”)<sup>1</sup>, pursuant to S.C. Code Ann. §58-5-330 and this Commission’s Rules of Practice and Procedure, submits this reply memorandum (“Reply”) to the Memorandum in Opposition of the Office of Regulatory Staff (“ORS”) to the CWS Petition for Rehearing and Reconsideration (“ORS Memorandum”). As explained in this Reply the arguments advanced in the ORS Memorandum should be rejected and the Commission should grant the relief requested in the CWS Petition for Rehearing and Reconsideration (“CWS Petition”).

**BACKGROUND**

This proceeding was initiated when CWS filed an application for a rate increase in November 2017. Following an evidentiary hearing in April 2018, the South Carolina Public Service Commission (“Commission”) issued Order No. 2018-345(A) granting a portion of the rate increases sought by CWS. In June 2018, the ORS filed a petition for rehearing or reconsideration asking that the Commission reconsider six specific issues ruled on in Order No. 2018-345(A). In response to the ORS petition for reconsideration, the Commission issued Order No. 2018-494

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<sup>1</sup> CWS has recently changed its name to Blue Granite Water Company (See Docket No. 2018-365-WS), but to avoid confusion will continue to use its former name for purposes of this proceeding.

granting rehearing on four of the six issues raised by ORS, including the litigation expense issue arising from *Congaree Riverkeeper v. Carolina Water Service* federal court litigation (“*Riverkeeper*”) which is the subject of the CWS Petition. Following the rehearing, the Commission issued Order No. 2018-802. Among other rulings, Order No. 2018-802 ruled on recovery of litigation expenses differently from the ruling on that issue in Order No. 2018-345(A). On February 14, 2019 CWS filed its Petition with this Commission seeking rehearing and reconsideration of the ruling on recovery of litigation expenses. On February 25, 2019 CWS filed a notice of intent to appeal with the South Carolina Supreme Court.

In response to the CWS Petition, the Office of Regulatory Staff (“ORS”) filed a motion requesting dismissal of the CWS Petition on the grounds that it was not permitted because it followed a previous order granting rehearing and because the notice of appeal divested the Commission of jurisdiction. On March 7, 2019, the Commission issued Order No. 2019-178 dismissing the CWS Petition on the ground that the notice of appeal divested the Commission of jurisdiction. On March 22, 2019 CWS filed a motion with the Supreme Court asking that the case be remanded to this Commission for reconsideration of the CWS Petition. On May 15, 2019, the Supreme Court issued an order dismissing the CWS notice of appeal, vacating Commission Order No. 2019-178 and directing the Commission to rule on the merits of the CWS Petition. On May 21, 2019 CWS submitted a supplemental memorandum in support of the CWS Petition and to provide the Commission with additional information relevant to the issue presented in its Petition. On June 6, 2019, the ORS filed the ORS Memorandum to which CWS now responds.

#### ARGUMENT

This Reply will address arguments advanced in the ORS Memorandum: (1) the ORS Memorandum relies almost exclusively on findings from a non-final summary judgment order from a federal court that conflict with undisputed evidence presented in this proceeding in the

hearing on remand; and (2) the ORS Memorandum mischaracterizes the benefits to ratepayers obtained by the settlement CWS entered in the *Riverkeeper* litigation.

**1. Assertions in the ORS Memorandum Are Not Supported by the Record in This Proceeding or Applicable Law.**

The ORS discussion of the *Riverkeeper* litigation, for which CWS was initially allowed by the Commission to recover related attorney fees and costs, repeatedly misstates or omits facts which demonstrate that CWS made a good faith effort to obtain a connection of the I-20 System to the Town of Lexington (“Town”) regional line and that ratepayers did receive a benefit from the Company’s defense of itself in the citizen suit.<sup>2</sup>

For example, ORS argues that “[a]fter an 11-year hiatus between 2003 and 2014, CWS management was forced to again seek to connect its I-20 WWTP with the regional system only after the Riverkeeper advised CWS that it intended to sue in 2014 (*sic*). CWS management alone made the decision to wait 11 years between 2003 and 2014 before even attempting to comply with its legal obligations under the [Clean Water Act] and the express terms of its NPDES Permit.” (**Emphasis** in original, emphasis supplied.) The inaccuracy of the factual assertions made in this statement are apparent on the face of the record in this proceeding – much of it developed in the direct and cross examination of ORS’s own witness -- which demonstrates the following:

- Notwithstanding the Town’s completion of its regional line in 1999, it entered into a July 2000, enforcement agreement with DHEC which recognized that the Town did not then have the capacity to take or treat the influent flow from the I-20 System and would not have such capacity for the foreseeable future. [Tr. p. 169, ll. 10-14, Hg. Ex. 7 at p. 12.]

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<sup>2</sup> As has been previously asserted by CWS, ORS’s petition for rehearing in this matter raised only one issue, i.e., whether the attorney fees paid by the Company in the various litigation matters which the Commission allowed in expenses for ratemaking purposes were reasonable under the factors identified by the Supreme Court in the *Jackson v. Speed* and *Glasscock* cases. Accordingly, ORS did not raise in its petition the issue of whether these expenses benefitted ratepayers and, therefore, this cannot be a basis for reconsideration. By addressing ORS’s newly raised issue in this Reply, CWS does not waive, but expressly reserves, its position that the matter of benefit to customers from this litigation is not properly before the Commission.

- Upon learning that the expansion of the Cayce regional treatment facility was nearing completion such that Town would have adequate treatment capacity available for the I-20 System influent flow, CWS requested a connection of the I-20 System with the Town's regional line on October 5, 2011, but received no response to that request. [Tr. p 169, ll. 4-7, Hg. Ex. 7 at p. 10.]
- After learning that the expansion of the Cayce treatment facility was completed in the fall of 2012, CWS again requested a connection to the Town's regional line on July 22, 2013. On this occasion, the Town did respond and on July 31, 2013, confirmed that it now had available to it adequate treatment capacity at the Cayce facility, but stated that it lacked pumping capacity in its own facilities to transport the I-20 System flow through the Town's regional line to Cayce for treatment. [Tr. p. 169, ll. 8-12, Hg. Ex. 7 at p. 12.]
- The Congaree Riverkeeper, Inc. ("CRK") did not give its 60-day notice of intent to bring a citizen suit against CWS under the Federal Clean Water Act until November 4, 2013 – several months after CWS had sought and been denied an interconnection by the Town. [Tr. p. 271, ll. 13-17.]
- The Town, even though it owned the regional line to which CWS was obligated to connect, had more effluent limit exceedances recorded in the on-line records of the Environmental Protection Agency during the relevant per period, received multiple permit renewals during the relevant period, but did not connect its own Coventry Woods wastewater treatment facility to that line until October of 2015 – none of which CRK or DHEC took action to address. [Tr. 318, l. 17 – p. 322, l. 14.]
- The Town refused to provide CWS with wholesale service which would have eliminated the Company's discharge from the I-20 System. [Tr. p. 328, l. 22 – p. 329, l.1; p. 333, l.24 – p. 334, l.1.]
- The Town did not make an offer to purchase the I-20 System from CWS until after the District Court issued its original order imposing a \$1.5 Million penalty on CWS. [Tr. p. 334, ll. 6- 16.]

Thus, the record **in this proceeding**<sup>3</sup> conclusively demonstrates that (a) the Town did not have the ability to take the influent flow from the I-20 System and arrange for its treatment by

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<sup>3</sup> In support of its contention that customers got no benefit and that the litigation costs resulted solely from improper management on the part of CWS, ORS cites to the discussion regarding CWS's efforts to obtain a connection from the Town set out in the original District Court order in the CRK action. ORS Mem. at 3, 5. This, however, fails to address the fact that the District Court vacated the penalties imposed upon CWS for not obtaining the connection and that the matter was ultimately resolved by settlement in which CRK agreed that the settlement was not an admission of liability on the part of CWS. As a matter of law, preliminary rulings in a matter that does not reach final judgment cannot be the basis for collateral estoppel. See *Richburg v. Baughman*, 290 S.C. 431, 351 S.E.2d 164 (1986).

Cayce between 2003 and 2013 and (b) CWS did attempt to obtain a connection from the Town between 2003 and 2014 and *prior* to CRK's issuance of its 60-day notice of intent to sue in 2013. And these facts testified to by CWS's witness were not only unrefuted by ORS in the surrebuttal testimony of its witness Dawn Hipp, they were also the subject of cross-examination by ORS counsel who did not even attempt to dispute this evidence (Tr. p. 178, l. 23 – p. 180, l.3). Instead of addressing these undisputed facts directly, the ORS Memorandum avoids them by relying almost entirely on a summary judgment order that clearly conflicts with the documented record of CWS's efforts to interconnect the I-20 facility. CWS submits that Commission should review and rely on the testimony and exhibits presented in the hearing in this proceeding to independently decide the issues raised in the CWS Petition. The ORS Memorandum also makes misstatements of law in support of its position that CWS customers did not benefit from the Company's defense against of the *Riverkeeper* litigation. ORS contends that CWS had a "legal obligation" to connect the I-20 System to the Town's regional line arising under the "express terms" of the Company's NPDES Permit. These contentions are both wrong.

As to the latter contention, although the District Court order of March 2017 concluded that CWS had an obligation to connect to the Town's regional line under the permit, it did not find that this was an "express term[]" of the permit. To the contrary, the District Court expressly found that the permit was ambiguous with respect to CWS's obligation to connect and that CWS's interpretation of the permit in that regard was reasonable – a finding that was admitted on cross-examination by ORS witness Strangler. [Tr. p. 306, l. 20 – p. 308, l. 25.]

As to the former contention, the findings of the District Court in its March 2017 order are not binding upon this Commission, which is free to make its own findings of fact and conclusions

of law regarding matters within its jurisdiction. See *Richburg v. Baughman, supra*.<sup>4</sup> However, it is beyond dispute that this Commission is required to follow South Carolina law which demonstrates that CWS's NPDES permit did not require it to connect to the Town's regional facility during the relevant period. For example, the South Carolina Administrative Law Court ("ALC") and the South Carolina Board of Health and Environmental Control ("Board") expressly ruled in 2003 and 2004, respectively, that CWS was not obligated to connect the I-20 System to the Town's regional line even though the line had been completed by 1999. [Hg. Ex. 12, Tr. p. 314, ll. 17-24.] ORS witness Strangler testified that he was aware of, but not familiar with, these rulings of the ALC and the Board. [Tr. p. 309, l. 6 – p. 311, l. 4.] However, Strangler testified that he was familiar with the Supreme Court's holding in *City of Columbia v. Board of Health* that a municipal designated management agency ("DMA") under the water quality management plan adopted by Central Midlands Council of Governments, the regional planning agency under 33 U.S.C.A. §1288 ("208 Plan"), bears the burden of offering a wholesale connection to a public utility whose sewer treatment facilities are scheduled for elimination or acquiring that utility's system through purchase or condemnation. [Tr. p. 327 ll. 5-16.] In a related, subsequent appeal, *Midlands Utility v. DHEC*, the Court of Appeals held that the public utility could not be penalized for failing to connect to a regional facility where, as is the case here, the municipal DMA refused to provide a connection – a South Carolina appellate court decision of which ORS witness Strangler professed to be unaware. [Trp. p. 327, l. 22 – p. 328, l. 2.] Notwithstanding that lack of knowledge, it is clear that South Carolina law views CWS's "legal obligation" quite differently than the view which ORS urges this Commission to adopt.

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<sup>4</sup> As the Commission is aware, the penalty originally imposed upon BGWC for not having connected the I-20 System to the Town's regional line was vacated by the District Court.

The Commission should reject ORS's contention that "CWS's management fail[ed] to comply with ... existing regulatory requirements" and failed to "act in good faith" by not connecting the I-20 System to the Town's regional line "for eleven years" and that the lack of such connection which led to the *Riverkeeper* litigation "rests solely on the shoulders of CWS's management." ORS Mem. at 7. The record before this Commission demonstrates to the contrary and any findings of the District Court which suggest otherwise are irrelevant in the circumstances of this proceeding.

Finally, the contention that customers did not benefit from the Company's defense of the *Riverkeeper* litigation is refuted by the facts which ORS's own witnesses acknowledged at the hearing. Specifically, ORS witness Strangler agreed that CRK stated to the District Court that relief it sought against CWS included a "shutdown" of the I-20 System, notwithstanding its impact on customers. [Tr. p. 337, l. 2- p. 338, l. 20.] On cross-examination, ORS witness Hipp also acknowledged that customers would not have benefitted from the threatened shutdown of the I-20 System. [Tr. p. 448, l.23 – p. 452, l. 6.]

The position of ORS taken in this proceeding can be summarized as follows: as a public utility, CWS is obligated to provide sewer service to its customers, but it provides no benefit to its customers when it defends itself against a plaintiff whose claims seek the termination of that service pursuant to an ambiguous NPDES permit term requiring connection to a regional facility (the specific terms of which have been interpreted by two quasi-judicial tribunals and one appellate tribunal in South Carolina as not requiring connection to a regional facility); further, it must bear the consequences of the refusal of a municipal Designated Management Agency to comply with clear South Carolina law with respect to its obligations under the 208 Plan to make a connection available. The Commission should reject this view as unsupported by the record in this proceeding and the applicable law.

And in this latter regard, should there be any doubt about whether that segment of the public comprising CWS's former I-20 customers have benefitted from that which ORS claims CWS was obligated to obtain – a connection which has resulted in the Town becoming their sewer service provider – the Commission only need take notice of the current rates imposed upon these former CWS customers (<https://www.lexsc.com/DocumentCenter/View/835/2019-Water-and-Sewer-Rates>) which are already higher than those CWS is entitled to charge and which are subject to no regulatory oversight by this Commission. *See* S.C. Code Ann. §58-5-30. To the contrary, these former customers of CWS are now left to the ratemaking actions of the Town's council, for which none of these customers have the ability to vote, and which may set whatever rates, terms and conditions of service it may decide. *See Sloan v. City of Conway*, 347 S.C. 324, 330, 555 S.E.2d 684, 686 (2001) (holding that a municipality (1) has no obligation to furnish utility service to non-residents, (2) that, should it do so, it is not obligated to charge “reasonable rates,” and (3) “actually has ‘an obligation to sell its surplus [service] for the sole benefit of the city at the highest price obtainable.’”). These harms are precisely the type that this Commission found to be contrary to the public interest in 1996 and 2002 when it rejected terms offered by the Town for the purchase of, and then wholesale service to, the CWS I-20 System. *See* Tr. p. 169, ll. 7-9, Order No. 2003-10, Docket No. 2002-147-S, January 7, 2003, Tr. p. 317.

**2. The ORS Memorandum Mischaracterizes the Ratepayer Benefits Obtained by the Settlement of the Riverkeeper Litigation.**

As attachments to its Supplemental Memorandum supporting its petition for rehearing and reconsideration, CWS provided the Commission with a copy of the Settlement Agreement from the *Riverkeeper* litigation and the order of the District Judge approving the settlement. CWS argued that the settlement provided important benefits to ratepayers because of the provisions in the Settlement Agreement that enhanced the ability of CWS to negotiate successful resolutions in two situations (the closure of the Watergate and Friarsgate treatment facilities) that are similar to

the difficult issues confronted in the *Riverkeeper* litigation. See CWS Supplemental Memorandum at pp. 3-4. The ORS Memorandum does not mention this aspect of the Settlement Agreement and does not attempt to explain why it is not beneficial to ratepayers for CWS to have an opportunity to negotiate satisfactory resolutions regarding the closure of the Watergate and Friarsgate facilities. Instead the ORS Memorandum addresses the Settlement Agreement solely by rehashing its argument on the *Riverkeeper* litigation. This approach by the ORS mischaracterizes the Settlement Agreement and should be taken by the Commission as an admission by the ORS that the Settlement Agreement did provide substantial ratepayer benefits.

### CONCLUSION

CWS continues to believe that the Commission should rehear and reconsider Order No. 2018-802 for the reasons stated in the CWS Petition. The ORS Memorandum provides no legitimate basis for a rejection of the CWS Petition. The defense by CWS of the *Riverkeeper* litigation was reasonable and prudent, and its expenses in that litigation are fully recoverable in rates following well established regulatory principles. The Settlement Agreement now finalizes the *Riverkeeper* litigation, and it provides significant benefits to ratepayers that should be considered by the Commission as it decides the issues presented by the CWS Petition.

s/Frank R. Ellerbe, III  
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 Samuel J. Wellborn  
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Attorneys for Carolina Water Service, Inc.

May 21, 2019

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
Columbia, South Carolina

HEARING #18-11711

APRIL 3, 2018

10:30 A.M.

DOCKET NO. 2017-292-WS:

CAROLINA WATER SERVICE, INC. – Application for Approval of an  
Increase in Its Rates for Water and Sewer Services

TRANSCRIPT OF TESTIMONY  
AND PROCEEDINGS

VOLUME 4 OF 5

HEARING BEFORE: Swain E. WHITFIELD, CHAIRMAN; Comer H.  
'Randy' RANDALL, VICE CHAIRMAN; and COMMISSIONERS  
John E. 'Butch' HOWARD, Elliott F. ELAM, Jr.,  
Elizabeth B. 'Lib' FLEMING, Robert T. 'Bob'  
BOCKMAN, and G. O'Neal HAMILTON

ADVISOR TO COMMISSION: F. David Butler, Esq.  
LEGAL ADVISORY STAFF

STAFF: Jocelyn G. Boyd, Chief Clerk/Administrator; James  
Spearman, Ph.D., Executive Assistant to Commissioners; Douglas K.  
Pratt, William O. Richardson, Thomas Ellison, and John Powers,  
Technical Advisory Staff; Jo Elizabeth M. Wheat, CVR-CM/M-GNSC,  
Court Reporter; and Calvin Woods, Hearing Room Assistant.

APPEARANCES:

*CHARLES L.A. TERRENI, ESQUIRE*, and *SCOTT  
ELLIOTT, ESQUIRE*, representing CAROLINA WATER COMPANY,  
INC., APPLICANT

*LAURA P. VALTORTA, ESQUIRE*, representing FORTY  
LOVE POINT HOMEOWNERS' ASSOCIATION, INTERVENOR

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00193

**APPEARANCES (Continuing):**

***JAMES S. KNOWLTON***, appearing *pro se*, INTERVENOR

***JEFFREY M. NELSON, ESQUIRE***, and ***FLORENCE P. BELSER, ESQUIRE***, representing THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF

THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

DOCKET NO. 2017-292-WS

In the Matter of	)	
	)	
Application of Carolina Water Service,	)	<b>REBUTTAL TESTIMONY</b>
Inc. for an Adjustment of Rates and	)	<b>OF</b>
Charges and Modifications to Certain	)	<b>MICHAEL R. CARTIN</b>
Terms and Conditions for the Provision of	)	
Water and Sewer Service	)	

1 **Q. THE ORS RECOMMENDS AN INCREASE IN LATE FEE REVENUE**  
 2 **ASSOCIATED WITH THE PROPOSED INCREASE IN CWS' REVENUES. PLEASE**  
 3 **RESPOND TO THE ORS RECOMMENDATION. (SHELLINGER PAGE 10, LINE 3),**

4 **A.** CWS disagrees with ORS' adjustment. Proposing an increase to late fee revenues due to  
 5 a potential increase in future rates is not known and measurable and therefore not appropriate.  
 6 Although the Company understands ORS' rationale for this adjustment, it cannot be presumed that  
 7 late fee revenues will increase proportionately with the percentage rate increase approved in this  
 8 case. CWS proposes that miscellaneous revenue not be adjusted to the test year for late fee  
 9 revenues because any adjustment would be speculative and is not known and measurable. ORS'  
 10 adjustment would lower the Company's rate request by \$35,576 and the Company requests this  
 11 adjustment be removed as part of this case.

12 **Q. ORS RECOMMENDS THAT CWS BE DENIED RECOVERY OF CERTAIN**  
 13 **FINANCIAL AND LEGAL COSTS ASSOCIATED WITH ITS I-20 SEWER SYSTEM**  
 14 **(PAGE 13, LINE 3 SHELLINGER TESTIMONY). HOW DO YOU RESPOND?**

15

1           A. ORS' recommendation is contrary to established precedent. Ongoing litigation costs  
2 are ordinarily treated as a regulatory asset. The Commission has long held that expenses for legal  
3 services during the test year when reasonably incurred are allowed for ratemaking purposes.  
4 Regulated utilities, like any business, will experience litigation costs associated with its business  
5 operations. Prudently incurred litigation costs limit exposure to liability and benefit the utility and  
6 its rate payers. And the Commission has allowed recovery of legal expense incurred for purposes  
7 which protect the interest of the utility and its ratepayers. Accordingly, the costs incurred in  
8 defending the Congaree Riverkeeper's ongoing lawsuit regarding the I-20 system should be  
9 allowed and amortized at a rate of 1.5% annually as authorized by the settlement of CWS' last rate  
10 case in Docket No. 2015-199-WS. Similarly, the costs of defending the lawsuit to condemn the I-  
11 20 system brought by the Town of Lexington, in which the value of the condemned assets is at  
12 issue, should be amortized at a rate of 1.5% annually... Although CWS agrees that penalties are  
13 not recoverable, it disagrees with ORS that the costs of "settlements" are not recoverable (see  
14 Schellinger Direct, p. 13, l. 9-11). Settlements limit litigation costs and liability which benefit the  
15 utility and its ratepayers and recovery of litigation expense is in the public interest. The Company  
16 requests the Commission approve recovery of financial and litigation costs associated with the I-  
17 20 sewer system totaling \$998,606 to be amortized at 1.5%. Recovery of these costs equates to  
18 \$14,979 in annual amortization expense.

19           **Q.    ORS RECOMMENDS THAT CWS COMPLETE AN INFLOW AND**  
20           **INFILTRATION STUDY AND COSTS BENEFITS ANALYSIS FOR THE SEWER**  
21           **SYSTEM SERVING PROPERTIES OWNED BY DANCING DOLPHIN, LLC. WHAT IS**  
22           **CWS' POSITION? (SCHELLINGER PAGE 17, LINE 1).**

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

HEARING #18-11711R      SEPTEMBER 6, 2018      10:02 A.M.

DOCKET NO. 2017-292-WS:

CAROLINA WATER SERVICE, INC. – Application for Approval of an  
Increase in Its Rates for Water and Sewer Services

*Rehearing Regarding Certain Issues Addressed by Order No.  
2018-345(A)*

TRANSCRIPT OF TESTIMONY  
AND PROCEEDINGS

VOLUME 1 OF 1

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

ADVISOR TO COMMISSION:      F. David Butler, Esq.  
LEGAL ADVISORY STAFF

**STAFF:** Jocelyn G. Boyd, Chief Clerk/Administrator; Joseph  
Melchers, General Counsel; James Spearman, Ph.D., Executive  
Assistant to Commissioners; Jerisha Dukes, Commissioners' Staff;  
Douglas K. Pratt, William O. Richardson, Thomas Ellison, and John  
Powers, Technical Advisory Staff; Randy Erskine, Information  
Technology Staff; Jo Elizabeth M. Wheat, CVR-CM/M-GNSC, Court  
Reporter.

**APPEARANCES:**

*CHARLES L.A. TERRENI, ESQUIRE, SCOTT ELLIOTT,  
ESQUIRE, and JOHN M. S. HOEFER, ESQUIRE,*  
representing CAROLINA WATER COMPANY, INC., APPLICANT

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**APPEARANCES (Continuing):**

**LAURA P. VALTORTA, ESQUIRE**, representing FORTY LOVE POINT HOMEOWNERS' ASSOCIATION, INTERVENOR

**JAMES S. KNOWLTON**, appearing *pro se*, INTERVENOR

**JEFFREY M. NELSON, ESQUIRE**, and **FLORENCE P. BELSER, ESQUIRE**, representing THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF

1 THEREUPON came,

2                   **M I C H A E L   R .   C A R T I N ,**

3 called as a witness on behalf of the Applicant, Carolina  
4 Water Service, who, having been first duly affirmed, was  
5 examined and testified as follows:

6                   **DIRECT EXAMINATION**

7 **BY MR. ELLIOTT:**

8 **Q**    Mr. Cartin, would you state and spell your name for the  
9        record, please?

10 **A**    My name is Michael Cartin. M-i-c-h-a-e-l C-a-r-t-i-n.

11 **Q**    And, Mr. Cartin, by whom are you employed, and in what  
12        capacity?

13 **A**    I'm employed by Carolina Water Service. I'm the  
14        director of External Affairs and Strategy.

15 **Q**    All right, sir. And how long have you been with  
16        Carolina Water?

17 **A**    About four and a half years.

18 **Q**    Thank you. Did you cause to be prepared and prefiled  
19        with this Commission eight pages of direct testimony?

20 **A**    I did.

21 **Q**    Have you had an opportunity to read your testimony  
22        before your appearance this morning?

23 **A**    Yes, sir.

24 **Q**    Do you have any changes or corrections to your  
25        testimony?

1 A I do not.

2 Q If I asked you those some questions today, would your  
3 answers be the same?

4 A Yes.

5 MR. ELLIOTT: Mr. Chairman, I'd move the  
6 direct testimony of Mr. Cartin into the record as  
7 if given orally from stand.

8 CHAIRMAN RANDALL: Okay. The direct testimony  
9 of Mr. Cartin will be read into the record as if  
10 given orally from the stand. Thank you.

11 MR. ELLIOTT: And, Mr. Chairman, if I may, I'd  
12 like to go ahead and get the rebuttal testimony  
13 into the record at this time before he begins his  
14 testimony.

15 CHAIRMAN RANDALL: Okay.

16 BY MR. ELLIOTT:

17 Q And so, Mr. Cartin, did you cause to prepared and  
18 prefiled seven pages of rebuttal testimony in this  
19 docket?

20 A I did.

21 Q Have you had an opportunity to reread that testimony?

22 A Yes.

23 Q Do you have any changes or corrections to your  
24 testimony?

25 A I do not.

1 Q If I asked you those some questions again this morning,  
2 would your answers be the same?

3 A Yes.

4 MR. ELLIOTT: Thank you.

5 Mr. Chairman, I'd move the prefiled rebuttal  
6 testimony into the record.

7 CHAIRMAN RANDALL: Okay. Mr. Cartin's  
8 prefiled rebuttal testimony will be read into the  
9 record as if given orally from the stand.

10 MR. ELLIOTT: Thank you, sir.

11 BY MR. ELLIOTT:

12 Q And, Mr. Cartin, did you cause to be prepared and  
13 prefiled, with your rebuttal testimony, three exhibits:  
14 A, B, and C?

15 A Yes.

16 Q Have you had an opportunity to reread those exhibits?

17 A I have.

18 Q Any changes or corrections to your exhibits?

19 A No, sir.

20 MR. ELLIOTT: Mr. Chairman, I'd move the three  
21 exhibits to his rebuttal testimony into the record  
22 as the next hearing exhibit, I think No. 2.

23 CHAIRMAN RANDALL: Correct. Mr. Cartin's  
24 Exhibits A through C will be entered as Exhibit No.  
25 2, a composite exhibit.

1 [WHEREUPON, Hearing Exhibit No. R-2 was  
2 marked and received in evidence.]

3 MR. ELLIOTT: Thank you.

4 BY MR. ELLIOTT:

5 Q Mr. Cartin, the costs associated with the Friarsgate EQ  
6 basin remediation work performed by the company,  
7 pursuant to a DHEC consent order, is the subject of the  
8 rehearing in this proceeding. Briefly describe what the  
9 consent order required.

10 A It required us to do a project which had two scopes of  
11 work: one scope being the remediation of the basin;  
12 also, the second scope would be the repair of the EQ  
13 liner.

14 Q And has the remediation been completed?

15 A Yes. It was completed in February of this year.

16 Q Have there been any other impacts to the remediation and  
17 repair project since it commenced in September of 2017?

18 A Yes. In November of 2017, the company was notified by  
19 DHEC that the City of Columbia, as well as Richland  
20 County, had available capacity to take our flow from the  
21 Friarsgate wastewater treatment plant to their regional  
22 facility. This triggered a condition in our NPDES  
23 Permit which required us to interconnect with a local  
24 wastewater provider.

25 In late February 2018, the company chose to proceed

1 your O&M?

2 **A** It increased our O&M by approximately \$20,000 a month.

3 **Q** Is the company seeking to recover its increased O&M  
4 costs in this proceeding?

5 **A** No, it is not. Just like the decrease in the sludge-  
6 hauling expenses, the increase in O&M due to the  
7 ClearWater Solutions contract was outside of the test  
8 year, and it was not known and measurable at the time of  
9 Application.

10 **Q** Now, how much in litigation costs is the company asking  
11 this Commission to authorize it to recover in this  
12 proceeding?

13 **A** CWS is seeking to recover a total of \$992,000 over  $66\frac{2}{3}$   
14 years. This equates to an annual revenue requirement of  
15 \$14,894. The company is not asking to recover a return  
16 on these costs, just a return of.

17 **Q** All right. And I think the original amount in the  
18 Commission order was approximately \$998,000. Can you  
19 explain the difference?

20 **A** Yes. There were three invoices which were improperly  
21 coded to this project, so the amount was lowered by  
22 about \$5600.

23 **Q** Did you break down the I-20 litigation costs by case in  
24 your direct testimony?

25 **A** Yes, I did. There's a table in my direct testimony

1           which lists the different legal proceedings and the  
2           costs incurred associated with each proceeding.

3   **Q**    And is Carolina Water providing testimony in this case  
4           in support of the reasonableness of its I-20 litigation  
5           costs?

6   **A**    Yes. Witness Babcock will be testifying to the  
7           reasonableness of the fees in this case.

8                       **MR. ELLIOTT:** Thank you, Mr. Cartin.

9

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23   [PURSUANT TO PREVIOUS INSTRUCTION, THE PREFILED  
24   REHEARING DIRECT TESTIMONY<sub>[CORRECTED 8/6/18]</sub> OF MICHAEL R.

25   CARTIN FOLLOWS AT PGS 25-33]

1 Q. HOW MUCH LITIGATION COST RELATED TO THE COMPANY'S FORMER  
2 I-20 WWTF IS CWS SEEKING TO RECOVER IN THIS PROCEEDING?

3 A. CWS is seeking to recover a total of \$ 991,508.64 over a period of 66 years, which equates  
4 to an increase in the annual revenue requirement of \$14,872.63. The Company is not asking to  
5 recover a return on these costs.

6 Q. DOES THIS AMOUNT DIFFER FROM THE TOTAL PREVIOUSLY  
7 REQUESTED FOR I-20 RELATED LEGAL EXPENSES BY THE COMPANY IN ITS  
8 EARLIER TESTIMONY?

9 A. Yes, the original amount was \$ 998,606.14. The difference from the revised amount of  
10 \$7,097.50 reflects the removal of certain charges contained on three invoices, which were  
11 incorrectly coded to the I-20 WWTF.

12 Q. PLEASE BREAK DOWN THE I-20 LITIGATION-RELATED COSTS  
13 ACCORDING TO THE DIFFERENT THE LEGAL MATTERS WHICH COMPRISE  
14 THE TOTAL.

15 A. The table below lists the different legal proceedings for which the Company has engaged  
16 legal counsel to represent its interests:

Case	Hours	Cost
CRK v. CWS	1,542	\$ 395,196.25
Town of Lexington v. CWS (condemnation)	252	\$ 78,482.00
ALC - DHEC Permit Denial	846	\$ 233,223.00
ALC - I-20 Connection	194	\$ 51,039.00
CWS v. EPA	581	\$ 146,420.25
<b>Total</b>	<b>3,415</b>	<b>\$ 904,360.50</b>
Expenses		\$ 12,319.91
Advances		\$ 74,828.23
<b>Total from Breakdown of Costs</b>		<b>\$ 991,508.64</b>

1

2 **Q. HOW DID THE COMPANY COMPILE THIS COST SUMMARY?**

3 **A.** The Company worked with the legal counsel that submitted bills to CWS relating to the I-  
4 20 WWTF to review each invoice to determine which fee entries related to which proceeding and  
5 then summed the individual case totals.

6 **Q. IS CWS PROVIDING TESTIMONY IN SUPPORT OF THE REASONABLENESS**  
7 **OF ITS I-20 RELATED LITIGATION COSTS?**

8 **A.** Yes, Company Rehearing Witness Babcock addresses the reasonableness of the legal fees  
9 incurred by CWS in the representation of its interests in the five above-listed matters.

10 **Q. DOES THIS CONCLUDE YOUR REHEARING DIRECT TESTIMONY?**

11 **A.** Yes.

1 Q. MS. HIPPI ASSERTS THAT CWS DID NOT DISPUTE ORS' NORMALIZATION OF  
2 WATERGATE SLUDGE HAULING COSTS FOR THE WATERGATE PLAN; IS SHE  
3 CORRECT?

4 A. No, she is not. CWS sought and obtained recovery for the combined costs of sludge hauling  
5 at the Watergate and Friarsgate wastewater treatment facilities.

6 Q. HOW DO YOU RESPOND TO MS. HIPPI'S ARGUMENT THAT THE RECENT  
7 REDUCTION IN THE COMPANY'S SLUDGE HAULING EXPENSES CONFIRMS  
8 THAT THE TEST YEAR EXPENSES WERE ABNORMALLY HIGH?

9 A. As I explained in my direct testimony, CWS took affirmative measures to reduce its sludge  
10 hauling expenses. Specifically, it rented a sludge press to reduce the volume of sludge being  
11 transported. Essentially, Ms. Hipp advocates punishing the company for undertaking measures  
12 that increase its operational efficiency.

13 Q. MS. HIPPI TESTIFIED THAT IT IS "PREMATURE FOR THE RATEPAYERS TO  
14 BE RESPONSIBLE FOR ANY LITIGATION COSTS" FOR THE RIVERKEEPER SUIT,  
15 AND RECOMMENDS THE COMMISSION DENY RECOVERY OF THE EXPENSE FOR  
16 THE ACTION. DO YOU AGREE?

17 A. No. I would point out that Ms. Hipp's recommendations regarding the recovery of legal  
18 expenses are inconsistent. Ms. Hipp has proposed that CWS's condemnation related expenses and  
19 the costs of litigation for the two actions before the Administrative Law Court, should be assigned  
20 to a regulatory asset, and that CWS should be permitted to request their recovery later once the  
21 outcome is determined. Yet, she advocates total denial of Riverkeeper litigation expenses. If it is  
22 indeed premature for CWS to seek recovery of the Riverkeeper expenses, as she testified, it seems  
23 those expenses should also be assigned to a regulatory asset for recovery at a later date.

1 Q. CAN YOU EXPLAIN THE DISCREPANCY BETWEEN THE SUMMARY OF  
2 LITIGATION EXPENSES CWS PROVIDED IN THE APRIL 3, 2018 HEARING AND  
3 THOSE ACCOMPANYING YOUR DIRECT TESTIMONY?

4 A. Yes, at the hearing, we inadvertently characterized \$5,617 of legal fees as related to the I-  
5 20 litigation, when they were incurred for the Friarsgate WWTF and regulatory matters. I regret  
6 the error. However, I would point out those fees were recoverable operating expenses; they just  
7 were not incurred in connection with the I-20 litigation.

8 Q. DID CWS REVISE THE SUMMARY OF LITIGATION EXPENSES THAT  
9 ACCOMPANIED YOUR DIRECT TESTIMONY?

10 A. Yes. Upon further review of invoices following an ORS request, CWS eliminated an  
11 additional \$1,480.50 of legal expenses. These expenses were related to other matters, not I-20.  
12 However, the expenses are otherwise recoverable; they just were not incurred in the I-20 litigation.

13 Q. WITNESS HIPP PROPOSED AN ADJUSTMENT TO REMOVE \$20,377 PAID TO  
14 WINSTON AND STRAWN, LP. DO YOU AGREE WITH THIS ADJUSTMENT?

15 A. No, I do not. While Ms. Hipp testified that ORS could not verify the work performed by  
16 Winston and Strawn was related to the Riverkeeper case, the plain language of the invoices reveals  
17 the opposite. The invoices, which were filed under seal, clearly show that Winston and Strawn  
18 were consulted regarding discovery issues in the Riverkeeper case. ORS never mentioned to the  
19 Company they had any concern with the details on these invoices. If given the opportunity, the  
20 Company would have been able to explain the fees and its relevance to the litigation. I've attached  
21 a declaration from the firm confirming the invoices at issue in Ms. Hipp's testimony were for the  
22 Riverkeeper case as Exhibit A. The Company respectfully requests that the Commission reaffirm  
23 recovery of these expenses in this rehearing.

1 Q. WITNESS HIPPI PROPOSES REMOVING \$86,682 FOR ADVANCES AND  
2 EXPENSES INVOICED BY WILLOUGHBY AND HOEFER P.A. FOR VARIOUS  
3 CONSULTANTS AND ADVISORS. DO YOU AGREE?

4 A. No. Ms. Hipp bases her recommendation on the fact that CWS did not provide any vendor  
5 invoices for the various expenses, and it did not assign them to specific litigation. I do not believe  
6 anyone questions whether the advances and/or expenses were paid to the various parties, and they  
7 were all related to the litigation. I have provided copies of the disputed invoices relating to  
8 advances as Exhibit B. As clearly shown in the Exhibit, \$20,700.00 of advances paid were related  
9 to the Riverkeeper case and \$52,060.00 of advances were related to the Condemnation case. The  
10 Company respectfully requests recovery of these costs. The remaining \$13,922 were expenses  
11 incurred as part of the ordinary course of business.

12 Q. WITNESS HIPPI PROPOSES REMOVING \$155,974 FOR LEGAL SERVICES  
13 PERFORMED BY WILLOUGHBY AND HOEFER P.A. WHERE THE DESCRIPTION  
14 OF THE LEGAL WORK WAS REDACTED. DOES THE COMPANY AGREE WITH  
15 THIS ADJUSTMENT?

16 A. No. ORS proposes to disallow any invoices "where a description of work was redacted,"  
17 even if the redaction was partial. Redactions to the invoices were necessary because they involve  
18 ongoing litigation and CWS must protect privileged information and attorney work product. We  
19 understood that ORS acknowledged the need for CWS to make redactions, and we have provided  
20 ORS redacted legal invoices in past cases without incurring objection. We have been in frequent  
21 communication with ORS providing information in response to the agency's discovery requests  
22 and no one alerted us to this issue. We first learned of ORS's change of position in Ms. Hipp's

1 testimony. Even with redactions, the invoices provide ample basis to allow the recovery of these  
2 expenses, and the Commission should allow them.

3 **Q. MS. HIPP PROPOSES TO REALLOCATE \$19,759 TO THE RIVERKEEPER**  
4 **CASE FROM HOURS ATTRIBUTED TO ACTIONS PENDING BEFORE THE**  
5 **ADMINISTRATIVE LAW COURT. DO YOU AGREE?**

6 **A. CWS does not contest this reallocation.**

7 **Q. MS. HIPP PROPOSES TO REALLOCATE \$2,985 TO CWS' SUIT AGAINST THE**  
8 **TOWN OF LEXINGTON FROM WORK CWS ATTRIBUTED TO THE**  
9 **CONDEMNATION ACTION. DO YOU AGREE?**

10 **A. CWS does not contest this reallocation.**

11 **Q. MS. HIPP PROPOSES TO REMOVE \$91,785.34 ASSOCIATED WITH THE EQ**  
12 **REMEDICATION WORK DONE AT THE FRIARSGATE WWTF AS IT IS NOT**  
13 **ASSOCIATED WITH THE PROJECT. DO YOU AGREE?**

14 **A. The Company agrees that the one invoice referenced for \$89,542.84 was not associated with**  
15 **the EQ remediation project. It should have been coded to the Friarsgate Collection System project**  
16 **as it was work required per the Consent Order No. 17-060-W and associated with Project ID #**  
17 **2017102, which was included in plant in service in this rate case. The Company respectfully**  
18 **requests inclusion of this invoice as part of the Collection System work that was performed at**  
19 **Friarsgate consistent with the manner in which the Commission authorized recovery of other**  
20 **Collection System amounts in this proceeding.**

21 **Q. WHAT STEPS HAS CWS TAKEN TO ADDRESS THE SEWER SERVICE**  
22 **CONCERNS OF THE DIXONS, KINGS AND WAGGONERS IN THE FORTY LOVE**  
23 **POINT SUBDIVISION?**

1                   **COMMISSIONER WILLIAMS:** Thank you.

2                   **CHAIRMAN RANDALL:** Commissioners, other  
3 questions?

4                                   [No response]

5                   Okay. Now, we'll go to redirect.

6                   **MR. TERRENI:** None.

7                   **CHAIRMAN RANDALL:** No redirect. All right,  
8 thank you.

9                   Okay, Mr. Laird. Thank you. You may step  
10 down.

11                   **WITNESS:** Thank you.

12                                   [WHEREUPON, the witness stood aside.]

13                   **MR. ELLIOTT:** We'd call Bob Gilroy to the  
14 stand, Mr. Chairman

15                                   [Witness affirmed]

16 THEREUPON came,

17                                   **R O B E R T   H .   G I L R O Y ,**

18 called as a witness on behalf of the Applicant, Carolina  
19 Water Service, who, having been first duly affirmed, was  
20 examined and testified as follows:

21                                   **DIRECT EXAMINATION**

22 **BY MR. ELLIOTT:**

23 **Q**     Mr. Gilroy, would you please state and spell your name  
24           for the record?

25 **A**     My name is Bob Gilroy, or Robert Gilroy. R-o-b-e-r-t G-

1 i-l-r-o-y.

2 **Q** Mr. Gilroy, by whom are you employed and what do you do?

3 **A** I'm employed by Carolina Water Service. Currently, I'm  
4 a special projects consultant.

5 **Q** And I should ask just really for the benefit of the  
6 Commissioners – counsel won't mind – what is the next  
7 step for you, with respect to your employment at  
8 Carolina Water?

9 **A** This is my last time testifying. At the end of the  
10 month, I'll be retiring. Soon be floating on a pontoon  
11 in Lake Murray.

12 **CHAIRMAN RANDALL:** We'd appreciate you not  
13 smiling so much.

14 [Laughter]

15 **BY MR. ELLIOTT:**

16 **Q** All right. Back to work, Mr. Gilroy. Did you cause to  
17 be prepared and prefiled with this Commission seven  
18 pages of hearing rebuttal – rehearing rebuttal  
19 testimony?

20 **A** Yes, I did.

21 **Q** Have you had a chance to review your testimony prior to  
22 your appearance this afternoon?

23 **A** Yes, I have.

24 **Q** Do you have any changes or corrections to your  
25 testimony?

1 **A** No.

2 **Q** If I asked you those same questions today, would your  
3 answers be the same?

4 **A** Yes, they would.

5 **MR. ELLIOTT:** Mr. Chairman, I'd move Mr.  
6 Gilroy's rebuttal testimony into the record as if  
7 given orally from the stand.

8 **CHAIRMAN RANDALL:** Okay. Mr. Gilroy's  
9 rebuttal testimony will be read into the record as  
10 if given orally from the stand.

11 **MR. ELLIOTT:** Thank you, sir.

12 **BY MR. ELLIOTT:**

13 **Q** And, Mr. Gilroy, attached to your rebuttal testimony,  
14 have you attached five exhibits, A through E, to your  
15 testimony?

16 **A** Yes, I have.

17 **Q** Have you had a chance to review those exhibits prior to  
18 this afternoon's appearance?

19 **A** Yes.

20 **Q** Do you have any changes to those?

21 **A** None.

22 **MR. ELLIOTT:** Mr. Chairman, I'd move the five  
23 exhibits into the record as a composite exhibit at  
24 this time.

25 **CHAIRMAN RANDALL:** Okay. Mr. Gilroy's five

1 exhibits RHG-A through RHG-E will be composite  
2 Exhibit No. 7.

3 [WHEREUPON, Hearing Exhibit No. R-7 was  
4 marked and received in evidence.]

5 MR. ELLIOTT: Thank you, sir.

6 BY MR. ELLIOTT:

7 Q Mr. Gilroy, for your benefit, I would refer you to page  
8 six of your prefiled testimony and I would ask you to  
9 please summarize the facts showing that the Town of  
10 Lexington is responsible for the failure to connect the  
11 I-20 system to the Town's regional line.

12 A Yes, and I'll revert to my testimony on here, because  
13 there's some dates and I want to make sure I have this  
14 right.

15 The Town did not have the capacity to take the I-20  
16 flow when its regional line was permitted by DHEC in  
17 1999, as is shown by the July 2000 agreement between the  
18 Town and DHEC. The Town's proposed wholesale rate  
19 rejected by the Commission in 2003 was unreasonable, and  
20 I believe that the Town set it at a high level because  
21 it did not have capacity available to provide CWS  
22 wholesale service at that time.

23 The Town, unbeknownst to CWS, entered into its 2009  
24 contract with the City of Cayce and issued bonds which  
25 precluded a wholesale service arrangement.

1           The expansion of the Cayce treatment facility came  
2 on-line in the fall of 2012, and in the summer of 2013  
3 the Town acknowledged to me that it owned sufficient  
4 capacity in the Cayce regional treatment facility to  
5 take the flow from the I-20 plant, but stated that it  
6 did not have sufficient pumping capacity to transport  
7 the flow from the I-20 system to that Cayce wastewater  
8 treatment facility.

9           And with respect to an agreement for the sale of  
10 the I-20 system to the Town, the Town's offer to  
11 purchase it for about one-third of the I-20 rate base  
12 reflects an effort to leverage the threat of penalties  
13 sought by the CRK, or Congaree Riverkeeper, in a federal  
14 court action, to force CWS to accept less than fair  
15 market value.

16 **Q** Thank you. Does that complete your summary?

17 **A** Yes..

18  
19  
20  
21  
22  
23 [PURSUANT TO PREVIOUS INSTRUCTION, THE  
24 PREFILED REHEARING REBUTTAL TESTIMONY OF  
25 ROBERT H. GILROY FOLLOWS AT PGS 167-173]

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 20172-292-WS**

**In Re: Application of Carolina Water  
Service, Incorporated for Approval of an  
Increase in Its Rates for Water and Sewer  
Services**

**REHEARING REBUTTAL**  
**TESTIMONY OF**  
**ROBERT H. GILROY**

1 **Q. MR. GILROY, WHAT IS THE PURPOSE OF YOUR REHEARING REBUTTAL**  
2 **TESTIMONY?**

3 A. My rehearing rebuttal testimony responds to a portion of the rehearing direct testimony of  
4 ORS witness Dawn M. Hipp. In her testimony, Ms. Hipp asserts that “CWS failed to manage  
5 properly its I-20 sewer system to comply with the NPDES permit requirements,” apparently  
6 because it was not connected to the Town of Lexington regional line. Ms. Hipp then contends that  
7 the Federal court action brought by the Congaree Riverkeeper, Inc. against CWS for violating its  
8 National Pollutant Discharge Elimination System, or “NPDES,” permit and the associated legal  
9 expense could have been avoided if CWS had done so. Ms. Hipp’s testimony in this regard is  
10 factually incorrect.

11 **Q. GENERALLY, WHAT IS YOUR RESPONSE TO THIS TESTIMONY OF MS.**  
12 **HIPP?**

13 A. I am aware of CWS’s repeated efforts to obtain a connection of the I-20 System to the  
14 regional line constructed by the Town of Lexington in 1999 and the reasons why that connection

1 never happened. Further, the Commission's past orders in matters pertaining to the I-20 System  
2 refute Ms. Hipp's assertion.

3 **Q. WHAT ARE YOUR REASONS FOR STATING THAT MS. HIPPI'S TESTIMONY**  
4 **IS FACTUALLY INCORRECT?**

5 **A.** There are several reasons and I would like to describe them in chronological order to the  
6 extent I can do so.

7 In 1996 the Commission refused to approve the Company's application to sell the I-20  
8 sewer system, after the Company's customers overwhelmingly voted against the transaction in a  
9 referendum.

10 In July of 2000, the Town entered into an enforcement agreement with the Department of  
11 Health and Environmental Control, or DHEC, which acknowledged that the Town lacked capacity  
12 at the time to take and treat the flow from the I-20 System. This lack of treatment capacity was  
13 not remedied by the Town until 2012 when the City of Cayce's expanded regional wastewater  
14 treatment facility came on line.

15 In 2003, the Commission denied approval of a proposed agreement for the Town to provide  
16 wholesale service to the I-20 System. The Commission found the Town's proposed wholesale rate  
17 -- which had been amended to provide a treatment rate that was then higher than that originally  
18 offered by the Town in 2000 -- was unreasonably high. Subsequently, CWS's I-20 NPDES Permit  
19 was modified to specifically provide that CWS was not obligated to connect unless the Town  
20 offered wholesale treatment service that the Commission would approve.

21 In 2009, the Town contracted with the City of Cayce to acquire capacity in a planned  
22 expansion of its regional treatment facility and issued bonds to cover the Town's share of the

1 construction costs. Under the terms and the bonds issued, the Town was precluded from offering  
2 wholesale service to CWS for the I-20 System. However, the Town did not make CWS aware of  
3 these contractual and bond restrictions at that time.

4 In 2011, I learned the expansion of the City of Cayce's regional treatment facility was  
5 nearing completion. I inquired of the Town regarding the availability of a wholesale connection in  
6 October of 2011 but received no response. A copy of my inquiry is attached as RHG Rehearing  
7 Rebuttal Exhibit "A." I later learned that the expansion was completed in the fall of 2012.

8 On July 22, 2013, I again inquired of the Town regarding the availability of a wholesale  
9 connection. I was informed by the Town on July 31, 2013, that capacity in the Cayce regional  
10 treatment facility was available, but there was not adequate pumping capacity to take the I-20 flow.  
11 Copies of my July 22, 2013, inquiry to the Town and its July 31, 2013, response are attached to  
12 my testimony as RHG Rehearing Rebuttal Exhibit "B."

13 In March of 2014, CWS made a written request to the Town for a wholesale connection of  
14 the I-20 System. A copy of that request is attached as RHG Rehearing Rebuttal Exhibit "C." In  
15 May of 2014, the Town responded and advised CWS it was not interested in providing wholesale  
16 service. A copy of that response is attached as RHG Rehearing Rebuttal Exhibit "D".

17 In the summer of 2014, CWS began having a series of meetings with the Town to discuss  
18 a connection of the I-20 System. In these meetings, the Town refused to offer a wholesale  
19 connection, but indicated it would be willing to purchase the I-20 sewer system only if CWS would  
20 also sell the I-20 water system and the Watergate water and sewer systems. We refused to sell any  
21 water systems to the Town but told the Town that we would sell the I-20 and Watergate sewer  
22 systems. Over the next several months, we provided the Town with system maps, financial

1 projections of income and expense related to these two systems, technical data concerning the  
2 quantity and constituent strength of flow, customer data, and access to the systems for inspection.  
3 We also made a price projection to the Town. However, the Town did not make an offer to  
4 purchase either system.

5 In January of 2015, the Congaree Riverkeeper filed its citizen suit against CWS in Federal  
6 court asserting that CWS had violated its permit by not connecting the I-20 System to the Town's  
7 regional line. In July of 2015, we applied to DHEC to renew our NPDES permit for the I-20  
8 System. In September of 2015, DHEC issued a notice of its intent to deny renewal of the CWS I-  
9 20 NPDES permit.

10 On November 10, 2015, at a meeting facilitated by ORS at its offices, the Town disclosed  
11 to CWS for the first time that it could not offer a wholesale service connection for the I-20 System  
12 due to the restrictions in its 2009 contract with Cayce and covenants in its bonds issued for the  
13 expansion of the Cayce regional treatment facility. That meeting is the subject of the January 6,  
14 2016, report by ORS to the Commission in Docket Number 2015-327-S pursuant to its Order No.  
15 2015-836.

16 Between January and August of 2016, CWS representatives attended several meetings with  
17 Town and DHEC representatives to discuss a possible resolution or a process CWS and the Town  
18 could use to reach an agreement on the value of the I-20 System. These meetings did not produce  
19 an offer of purchase from the Town and in August of 2016, DHEC denied renewal of the I-20  
20 NPDES permit and issued enforcement orders against both CWS and the Town requiring the  
21 parties to coordinate a plan to eliminate the discharge from the I-20 System or face potential  
22 penalties.

1 Finally, after the Federal court issued an order in March of 2017 finding CWS liable for  
2 violating its NPDES permit for not having connected the I-20 System to the Town's regional line  
3 and imposing a \$1.5 Million penalty on CWS, and after the Town was ordered by DHEC to  
4 eliminate the I-20 discharge, the Town made an offer to purchase the I-20 System for about \$1.3  
5 Million in May of 2017. CWS did not consider that offer to be made in good faith given that it  
6 was less than a third of the rate base associated with the I-20 System and rejected it. That led to  
7 the Town's condemnation action filed in October of 2017 in which it offered only slightly more,  
8 about \$1.58 Million, for the I-20 System. The Company rejected that offer as also not being in  
9 good faith. The Town took possession of the I-20 System in February of 2018 and is now serving  
10 the former CWS customers in that service area.

11 **Q. WAS THE CONGAREE RIVERKEEPER AWARE OF THE COMPANY'S**  
12 **EFFORTS TO OBTAIN AN OFFER OF PURCHASE FOR THE I-20 SYSTEM FROM**  
13 **THE TOWN?**

14 A. Yes, it was.

15 **Q. HOW DO YOU KNOW THAT?**

16 A. Because, in the course of discovery in the condemnation action that was filed against CWS  
17 by the Town to take the I-20 System, the Town produced communications their attorney had with  
18 the Congaree Riverkeeper. Among these communications, is an email from counsel for the  
19 Congaree Riverkeeper to counsel for the Town of Lexington on August 4, 2014, asking whether  
20 the Congaree Riverkeeper's filing the Federal court lawsuit would be helpful to the Town in its  
21 negotiations with CWS. A copy of this email is attached to my testimony as RHG Rehearing  
22 Rebuttal Exhibit "E."

1 **Q. WOULD YOU SUMMARIZE THE FACTS SHOWING THAT THE TOWN IS**  
2 **RESPONSIBLE FOR NO CONNECTION OF THE I-20 SYSTEM TO THE TOWN'S**  
3 **REGIONAL LINE HAVING EVER BEEN MADE BY CWS?**

4 A. Yes. The Town did not have capacity to take the I-20 flow when its regional line was  
5 permitted by DHEC in 1999 as is shown by the July 2000 agreement between them. The Town's  
6 proposed wholesale rate rejected by the Commission in 2003 was unreasonable and I believe that  
7 the Town set it at a high level because it did not have capacity available to provide CWS wholesale  
8 service at that time. The Town, unbeknownst to CWS, entered into its 2009 contract with Cayce  
9 and issued bonds which precluded a wholesale service arrangement.

10 The expansion of the Cayce treatment facility came on line in the fall of 2012 and in the  
11 summer of 2013, the Town acknowledged to me that it owned sufficient capacity in the Cayce  
12 regional treatment facility to take the flow from I-20 but stated that it did not have sufficient  
13 pumping capacity to transport the flow from the I-20 System to the Cayce treatment facility.

14 And, with respect to an agreement for the sale of the I-20 System to the Town, the Town's  
15 offer to purchase it for about one-third of the I-20 rate base reflects an effort to leverage the threat  
16 of penalties sought by the Congaree Riverkeeper in the Federal court action to force CWS to accept  
17 less than fair market value.

18 **Q. COULD CWS HAVE AVOIDED THE LITIGATION EXPENSES AS MS. HIP**  
19 **ARGUES?**

20 No, CWS could not have avoided the litigation expense in the Federal court action given  
21 the Town's refusal to offer reasonable rates to CWS or the I-20 customers, its self-inflicted  
22 restriction on offering wholesale service to CWS for the I-20 System, its refusal to offer a

1 reasonable purchase price for the I-20 and Watergate systems, and its strategy of cooperating with  
2 the Congaree Riverkeeper to effectively force the Company to give the I-20 System to the Town.

3 **Q. DOES THIS CONCLUDE YOUR REHEARING REBUTTAL TESTIMONY?**

4 **A. Yes, it does.**

1                   **MR. ELLIOTT:** Please answer any questions  
2                   counsel or the Commissioners may have.

3                   **CHAIRMAN RANDALL:** Thank you.  
4                   Ms. Valtorta?

5                   **MS. VALTORTA:** No questions.

6                   **CHAIRMAN RANDALL:** Mr. Knowlton?

7                   **MR. KNOWLTON:** No questions. Thank you.

8                   **CHAIRMAN RANDALL:** ORS?

9                   **MR. NELSON:** Got a few questions

10   **CROSS EXAMINATION**

11 **BY MR. NELSON:**

12 **Q**    Good afternoon, Mr. Gilroy.

13 **A**    Good afternoon.

14 **Q**    Explain for me, if you will, a little bit on your  
15        testimony. Is it your contention or is it CWS's  
16        contention that the Town worked in concert with the  
17        Congaree Riverkeeper in these two actions, the  
18        condemnation and the Riverkeeper's federal court case?

19 **A**    Yes, it is.

20 **Q**    Let me ask you to, please, turn to your Exhibit E, the  
21        first page of your Exhibit E.

22 **A**    [Indicating.]

23 **Q**    And this is a series of e-mails, apparently, between the  
24        attorney for the Town of Lexington and Blan Holman who  
25        is with the Southern Environmental Law Center. Do you

1 know where these came from?

2 **A** I believe they came through discovery motions.

3 **Q** Okay. Discovery in the federal or the –

4 **A** Yes.

5 **Q** – Town case? Okay. Could I just have you read – and  
6 these are in backwards order I guess, bottom to top.  
7 Could you just read these two on the bottom half of the  
8 page? If you want to read the whole page, that's fine.  
9 But could you read these two from the bottom of the  
10 page, the one from Blan Holman dated August 4, 2014,  
11 2:37, and the one from Brad Cunningham to Blan Holman  
12 dated Monday, August 4, 2014, 2:43 p.m.? Could you read  
13 the body, beginning with the one from Mr. Holman to Mr.  
14 Cunningham, please?

15 **A** Yeah, and that's – so that's going to go from bottom to  
16 top, right?

17 **Q** Yes, it is going to go from bottom to top. Thanks.

18 **A** Okay. Let's see, from Blan Holman to Brad Cunningham,  
19 "Thanks Brad. As you know, my client has signaled its  
20 intent to sue CWS over failure to hook up per the 208  
21 Plan incorporated into CWS's NPDES Permit. Client wants  
22 to know if" filling a complaint – in filling – if  
23 filling – "if filing a complaint" how "would be" – and  
24 that's what it says – "a complaint now would be helpful  
25 in negotiations. I could see being potentially helpful

1 but also potentially disruptive. I'm on my cell," and  
2 he gives his cell number, "if you get a second."

3 **Q** And then the second one, which is the one from Mr.  
4 Cunningham to Mr. Holman?

5 **A** Right. "At this point, it would be more likely  
6 disruptive in my opinion."

7 **Q** So isn't the Town, in fact, signaling the Congaree  
8 Riverkeeper's lawyers that it would be disruptive,  
9 actually, to the condemnation action, to bring that  
10 federal lawsuit?

11 **A** On this page, but I think in subsequent communications  
12 it's not.

13 **Q** Okay. That's the only one I'm looking at right now.  
14 Thank you. Can you explain for the Commission a little  
15 bit – we had some discussion. Can you explain what a  
16 208 Plan is?

17 **A** Yeah, a 208 Plan is – it's set up so you have regional  
18 facilities to treat waste, because there's so many  
19 smaller facilities around. So the COG sets up – through  
20 the COG there's a 208 Plan set. It's basically a –

21 **Q** And the COG is –

22 **A** Central Organization of Governments, sorry. And I  
23 believe that that's – once they come up with this plan  
24 and it's okayed by EPA, you have regional providers,  
25 designated regional providers, for the 208 Plan. So, in

1 other words, smaller plans have to, at some point –  
2 they're classified as temporary plans. At some point,  
3 they have to connect to the regional provider.

4 **Q** And the intent of that is to, what, reduce the –

5 **A** Reduce discharges into the rivers, streams, and bodies  
6 of water, and just reduce the total number of plants and  
7 basically consolidate it into less discharges.

8 **Q** Is there one 208 Plan that covers the Midlands area of  
9 South Carolina? Or are there several? To your  
10 knowledge. If you don't know, that's fine.

11 **A** Well, no, I'm not – for this one, there's one plan for  
12 the Midlands, yes. But there's multiple providers. The  
13 City of Columbia is a provider, Richland County is a  
14 provider.

15 **Q** But one plan?

16 **A** Right.

17 **Q** And that's, what, EPA? DHEC? Somebody signs off on it  
18 as far as the government goes; is that correct?

19 **A** Yeah, and I'm not positive about that, but the EPA would  
20 be the one. But I'd defer that question to someone a  
21 little more knowledgeable in that field.

22 **Q** The 208 Plan we're talking about here that covers the  
23 Central Midlands, when was that 208 Plan entered?

24 **A** I don't know the exact date.

25 **Q** Does 1998 sound familiar?

1 A It may be. I don't know.

2 Q Do you know when – how long have you been with the  
3 company, by the way, Mr. Gilroy?

4 A Since 1989.

5 Q Do you know when a first attempt was made by CWS to  
6 interconnect to the Town of Lexington under the 208  
7 Plan?

8 A Not – the ones that I know of, that I'm aware of, are in  
9 my testimony here, and I believe it goes back to 1996.

10 Q Okay. So that would even predate the 208 Plan?

11 A It may, yeah.

12 Q What type of negotiations took place? Because a lot of  
13 these legal bills and everything deal with this  
14 condemnation action.

15 A At which time? There were several.

16 Q And I guess I noticed one – I think it's your Exhibit C,  
17 is March 21, 2014. And that's, I guess, one of the  
18 occurrences that happened trying to do the  
19 interconnection; is that correct?

20 A That would be the letter from Richard Durham?

21 Q Right.

22 A Yeah, that would be involved.

23 Q Was this the first written offer to do this  
24 interconnect? What had preceded this?

25 A What preceded that, there's an Exhibit A or whatever,

1 that's my communications with the Town of Lexington  
2 asking for the availability of capacity in the plant.

3 **Q** What was –

4 **A** That was 2011, when I began that.

5 **Q** Thank you. What was the effort? Was it to just do an  
6 interconnection to flow CWS's, the I-20 plant, waste to  
7 the Town of Lexington? Or was this part of what  
8 eventually turned out to be the condemnation? Was that  
9 also part of the effort?

10 **A** No, it wasn't part of the condemnation. That was most  
11 recent – back in 2011 is when I asked for the  
12 availability of an interconnection from the Town, and  
13 didn't get a response. And then Cayce upgraded their  
14 plant in 2012, so in 2013 I again wrote to the Town and  
15 asked them about their availability. And I'm not sure –  
16 just a second [indicating].

17 Yeah, in 2011, I asked for availability for an  
18 interconnection, in an e-mail form, to Allen Lutz, who's  
19 the utility director. I didn't get a response on that  
20 one. In 2013, after learning that the Cayce plant  
21 hadn't completed its upgrades, that's when I sent  
22 another communication to the Town of Lexington and asked  
23 if they had availability to accept CWS's flow through an  
24 interconnection. Their reply at that time was, while  
25 Cayce had upgraded their plant, they did not have the

1 pumping capacity in their transmission line at the time,  
2 until a new lift station was built sometime down the  
3 road to take that flow.

4 **Q** Wasn't there another option, besides interconnecting  
5 with the Town of Lexington, or is this the only option  
6 that the I-20 plant had?

7 **A** Well, the only feasible option is interconnecting with  
8 the Town of Lexington. They have – they built that  
9 line; they built it right there in proximity to the  
10 plant, just several feet off the property, as a matter  
11 of fact. And there isn't another utility around. The  
12 City of Columbia or Cayce doesn't have lines in that  
13 area.

14 **Q** So what – I mean, we started this 208 Plan and attempts  
15 to interconnect way back in late '90s. Here we are  
16 finally at 2018. I guess maybe a year ago or whatever,  
17 something happened with the condemnation. What took 20  
18 years to work out? What was the central issue there?

19 **A** To my knowledge, it's the Town of Lexington saying no.

20 **Q** Is it the Town of Lexington or is it what the Town of  
21 Lexington wanted to charge or pay CWS?

22 **A** I think it's what they wanted to charge. I believe –  
23 and, again, I'm checking my notes, because there's a lot  
24 of dates involved here. There was the first go-round in  
25 '96, I believe the Commission rejected a sale of I-20 to

1 the Town. And again in 2003, the Commission denied a  
2 wholesale agreement for an interconnection with the  
3 Town, simply because of the rates or the cost that the  
4 Town wanted to charge per connection for an  
5 interconnection.

6 **Q** Where, to the best of your knowledge, does the  
7 condemnation action stand now? Is it finalized? Are we  
8 done with it? Are you done with it?

9 **A** I think it's still with the condemnation court. I'm not  
10 fully involved in that any longer, so I haven't been  
11 keeping up with it, but I know it's still in that  
12 process with the court.

13 **Q** One more question for you Mr. Gilroy. The sludge  
14 expenses. I'm going to get off the other topic for a  
15 minute, here. There was some discussion about – and it  
16 wasn't you; it was one of the prior witnesses talking  
17 about an increase in I&I work on the Friarsgate system.  
18 Is that true that that's something y'all are involved in  
19 right now?

20 **A** Yes. There is work being done as far as I&I in the  
21 system. I'm not fully engaged in that any longer, so  
22 I'm not up-to-date on exactly what's going on.

23 **Q** Does that work on improving the I&I on the system, does  
24 that increase your sludge?

25 **A** No, I think that work will take years, and I think it

1 has the opposite effect; it reduces flow.

2 **Q** So, eventually, it will end up, what? I'm trying to get  
3 to what the I&I does and what the program is here that  
4 affects it. So, you've got a program underway right  
5 now. Can you explain a little bit about what the  
6 program entails?

7 **A** Well, I know it's to address the current I&I in the  
8 program, but as far as the details, I think maybe Mr.  
9 Laird or someone else can answer that more informatively  
10 than I can. I apologize, but I haven't been involved in  
11 it in a little bit now.

12 **MR. NELSON:** Thank you, Mr. Gilroy. I  
13 appreciate it.

14 No more questions, Mr. Chairman.

15 **CHAIRMAN RANDALL:** Thank you, Mr. Nelson.  
16 Commissioners. Commissioner Whitfield.

17 **COMMISSIONER WHITFIELD:** Thank you, Mr.  
18 Chairman.

19 **EXAMINATION**

20 **BY CHAIRMAN WHITFIELD:**

21 **Q** Good afternoon, Mr. Gilroy.

22 **A** Good afternoon.

23 **Q** You've got a good bit in your rebuttal testimony about  
24 the efforts to connect to the Town of Lexington's lines,  
25 and, of course, Mr. Nelson has also questioned you on

1           that subject just now, as well. I think, in looking  
2           back through the litigation costs, it's fair to say the  
3           largest portion is the part that's the defense of the  
4           CRK or *Congaree Riverkeeper* case. Would you not agree?

5   **A**       To tell you the truth, I would not know, because I'm not  
6           involved in the finances as far as it goes with the  
7           attorneys.

8   **Q**       Okay. Well, they had the chart on the screen a little  
9           earlier today. And I want to say it was close to 40  
10          percent, certainly in the 30 percent range, and seemed  
11          to be the largest legal expense out of the whole figure,  
12          by itself. And my question's going to pertain to that.  
13          Obviously, you're familiar with Ms. Hipp's testimony,  
14          because that's what your rebuttal revolves around. If  
15          you need to, I'll give you a second; I'm going to refer  
16          to Ms. Hipp's testimony, page 11, probably, looks like,  
17          around lines 15 through 18.

18   **A**       I don't have Ms. Hipp's testimony.

19   **Q**       Okay. I'll give you a second to get a copy of it,  
20          because I'm going to refer to that.

21                   **MR. ELLIOTT:** Did you say page 11?

22                   **COMMISSIONER WHITFIELD:** Yes, sir. Page 11,  
23                   starting with around line 15, Ms. Dawn Hipp's  
24                   testimony.

25                   **MR. ELLIOTT:** [Indicating.]

1                                   **WITNESS:** [Indicating.]

2 **BY CHAIRMAN WHITFIELD:**

3 **Q**    Ms. Hipp states that if the company had properly managed  
4        the I-20 system in accordance with the NPDES Permit,  
5        then the CR case could have been avoided, and the legal  
6        fees resulting from the company's defense in that case  
7        would not have been necessary. My question to you is,  
8        what prevented the company from operating its permit –  
9        from operating its system in accordance with that NPDES  
10       permit?

11 **A**    Well, the permit said that when there was availability  
12        with the regional provider of the 208 Plan, which is the  
13        Town of Lexington, that we must connect. And in every  
14        corner, the Town of Lexington denied us connecting, for  
15        one reason or another. So, we couldn't connect. we  
16        couldn't forcefully connect. You know, we couldn't do  
17        it in the middle of the night, so it – you know, we had  
18        to have an agreement for connection, which we could not  
19        come to terms with.

20 **Q**    And that's the only part you feel like you violated of  
21        the permit? I know the permit specified for you to do  
22        that, and you, of course, stated repeatedly to Mr.  
23        Nelson and again gone through it pretty much  
24        chronologically the number of times and efforts you made  
25        to connect.

1 A Correct, that's --

2 Q And, of course, you had a separate legal expense, not  
3 nearly as high, but a separate expense from that.

4 A Yeah, I think the whole question of whether we were  
5 violating the permit by not connecting, as the permit  
6 stated we must.

7 COMMISSIONER WHITFIELD: All right, Mr.  
8 Gilroy.

9 That's all I have, Mr. Chairman.

10 CHAIRMAN RANDALL: Thank You.

11 Commissioner Elam.

12 EXAMINATION

13 BY COMMISSIONER ELAM:

14 Q Good afternoon, Mr. Gilroy. During this period, '98  
15 until, you know, recently, did the I-20 plant undergo  
16 any capital improvements?

17 A Um --

18 Q Or was it just you were supposed --

19 A If I can go back --

20 Q -- to interconnect, so why would you make capital  
21 improvements?

22 A Yeah, I think -- I'm going back, because I wasn't  
23 managing the I-20 plant at that time. There were  
24 improvements made to, basically, updating lift stations,  
25 collection systems, those type of things. But as far as

1 the plant goes, there was work being done at the plant  
2 as it went along. The permit's been expired for a good  
3 number of years, so there were no – you know, it's been  
4 classified as a temporary plant, working under an  
5 expired permit, so there were going to be no major  
6 upgrades –

7 **Q** Okay.

8 **A** – in that case.

9 **COMMISSIONER ELAM:** Okay. Thank you.

10 **CHAIRMAN RANDALL:** Any other Commissioners?

11 [No response]

12 Okay. If not, any redirect?

13 **MR. ELLIOTT:** If I may.

14 **CHAIRMAN RANDALL:** Be careful.

15 **MR. ELLIOTT:** I came this close [indicating]  
16 to suggesting it would be short.

17 [Laughter]

18 **REDIRECT EXAMINATION**

19 **BY MR. ELLIOTT:**

20 **Q** I just want to follow up questions that Mr. Nelson had  
21 for you about your Exhibit E to your testimony, if  
22 you'll go there, please?

23 **A** [Indicating.]

24 **Q** Now, Mr. Nelson asked you about the first page of that –

25 **A** Yes, sir.

- 1 Q – exhibit. I'd like you to turn, if you would, please,  
2 to roughly the fourth page of that exhibit. It's  
3 actually got a Bates stamp number at the foot: 196.  
4 TOL...196. You see that small number there?
- 5 A Yes, at the bottom right?
- 6 Q Correct. Now, reading from bottom to top, the e-mail at  
7 the bottom is from a Heather Murray. And either from  
8 your reading of this e-mail or from your knowledge,  
9 however limited, of the Riverkeeper's litigation, do you  
10 know who Heather Murray represents in that litigation?
- 11 A It's CRK, I believe. She's with Southern Environmental  
12 Law.
- 13 Q Thank you. And the e-mail is to a David Black at Nexsen  
14 Pruitt. Do you know who Mr. Black represents?
- 15 A He represents the Town of Lexington.
- 16 Q Thank you. And read – publish that e-mail from Ms.  
17 Murray, please?
- 18 A At the bottom of the page?
- 19 Q Please.
- 20 A “Hi David, Please find the draft affidavit attached.  
21 Don't hesitate to contact us with any questions.”
- 22 Q And it says, “Thanks, Heather”?
- 23 A “Thanks, Heather,” yes.
- 24 Q Turn the page, please.
- 25 A [Indicating.]

1 Q Do you see that document that's labeled "Affidavit of  
2 XX"?

3 A Yes, I do.

4 Q And do you understand that this affidavit was sent to  
5 Mr. Black by Ms. Murray in her e-mail of February 25?

6 A Yes, I do.

7 Q And going up the page to the middle of the page, the  
8 second e-mail, do you recognize the name Catherine  
9 Wannamaker?

10 A Yes, also with Southern Environmental Law.

11 Q And she sends an e-mail to David Black. Would you  
12 please publish that e-mail?

13 A From Catherine Wannamaker; to Heather Murray and David  
14 Black. "Hey David - just thought I'd check in on this  
15 affidavit. Have you had a chance to look it over or  
16 talk to the Town folks about it? I think we are about  
17 to extend discovery through April in our case, but we  
18 probably need to turn this over to them in the next few  
19 weeks if we plan to use it. Thanks, Catherine."

20 Q Thank you. And then reading up the page, do you see the  
21 e-mail from Mr. Black to Ms. Wannamaker?

22 A Yes.

23 Q Would you please publish his e-mail?

24 A "Even better. Please see our amended answer,  
25 counterclaim, and verification," in parentheses,

1           “(language you need is in the counterclaim facts).”

2   **Q**   All right. And so, you understand there that Mr. Black  
3           is sending the Town’s pleading to Ms. Wannamaker?

4   **A**   That’s the way I took it.

5   **Q**   And then publish the last e-mail on that page, at the  
6           top, please. Who is it from?

7   **A**   Oh, From Catherine Wannamaker to David Black.

8   **Q**   Right. And what does Ms. Wannamaker tell Mr. Black?

9   **A**   “Great – we like it. Wondering if we still need the  
10           affidavit but we can discuss.”

11   **Q**   And so what was your purpose of including this exchange  
12           in your testimony?

13   **A**   Basically, in my opinion, it was the Riverkeeper’s  
14           representatives working with the Town of Lexington in  
15           the case, in my opinion, to, I guess, do what they could  
16           to lessen the value, helping to lessen the value of the  
17           property.

18                   **MR. ELLIOTT:** I don’t have any further  
19           questions. Thanks, Mr. Gilroy.

20                   **CHAIRMAN RANDALL:** Thank you.

21                   Any recross by the parties?

22                   **MR. NELSON:** No further questions from ORS,  
23           Mr. Chairman.

24                   **CHAIRMAN RANDALL:** Thank you.

25                   **MS. VALTORTA:** No questions.

1                   **MR. KNOWLTON:** No.

2                   **CHAIRMAN RANDALL:** Okay, Mr. Gilroy. You may  
3                   step down, retire to the lake.

4                   **WITNESS:** Thank you, very much.

5                   **MR. ELLIOTT:** We probably ought to let Mr.  
6                   Gilroy be excused to go to the lake this afternoon.  
7                   We may not, but I would ask if he might be excused.

8                   **CHAIRMAN RANDALL:** Okay. Any objection from  
9                   anybody?

10                                   [No response]

11                                   [WHEREUPON, the witness was excused.]

12                   **MR. ELLIOTT:** Thank you, Mr. Chairman.

13                   **CHAIRMAN RANDALL:** I think they all want you  
14                   out of here.

15                   **MR. ELLIOTT:** Yeah.

16                   **MR. TERRENI:** Not as much as he does.

17                                   [Laughter]

18                   **CHAIRMAN RANDALL:** Okay. Next witness.

19                   **MR. ELLIOTT:** Mr. Chairman, we would call  
20                   Keith M. Babcock to the stand.

21                                   And before we swear him, we have, Mr. Chairman  
22                   – and I've shown it to counsel – we have a blowup  
23                   of his exhibit to his testimony, which we'd like to  
24                   place here [indicating]. I'm going to disadvantage  
25                   Mr. Terreni and Mr. Hoefler, but it's hard to make

1 MR. BABCOCK: Yes, sir.

2 MR. ELLIOTT: I think it's B.

3 CHAIRMAN RANDALL: Okay. It's one of the  
4 exhibits.

5 MR. BABCOCK: Yes, sir.

6 CHAIRMAN RANDALL: I like that, when we enter  
7 all that.

8 [Witness affirmed]

9 THEREUPON came,

10 K E I T H M . B A B C O C K ,

11 called as a witness on behalf of the Applicant, Carolina  
12 Water Service, who, having been first duly affirmed, was  
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. ELLIOTT:

16 Q Mr. Babcock, would you please state and spell your name  
17 for the record?

18 CHAIRMAN RANDALL: Push that little button  
19 right on the front until that red light -

20 WITNESS: [Indicating.]

21 CHAIRMAN RANDALL: You're on.

22 WITNESS: I'm on there? Okay. Keith, K-e-i-  
23 t-h, Moss, M-o-s-s, Babcock, B-a-b-c-o-c-k.

24 BY MR. ELLIOTT:

25 Q Thank you, Mr. Babcock. And by whom are you employed

1 and what do you do?

2 **A** I'm an attorney, and I'm employed with the law firm of  
3 Lewis Babcock, LLP.

4 **Q** And did you cause to be prepared and prefiled with this  
5 Commission revised direct testimony in this docket?

6 **A** I did.

7 **Q** In fact, did you cause to be prepared and prefiled ten  
8 pages of revised testimony?

9 **A** I did.

10 **Q** Have you had a chance to review your testimony prior to  
11 your appearance this afternoon?

12 **A** I did.

13 **Q** Do you have any corrections or changes to your  
14 testimony?

15 **A** I have one small one. I noticed, when I was reviewing  
16 my testimony this morning, on page nine, when I was  
17 going through the various factors to be reviewed for the  
18 reasonableness of attorney's fees, I had quoted all of  
19 the factors except for the third one. If you look at  
20 page nine, line six, where it says, "The fee customarily  
21 charged," that should've been in quotes. The language  
22 is correct; I just should've had quotes like I had  
23 quotes for the others.

24 **Q** Quotes surrounding the entire paragraph?

25 **A** No, it should've started "The third factor is..." and it

1           should start with "the fee customarily charged in the  
2           locality for similar legal services."

3   **Q**    End of quote.

4   **A**    End of quote there.

5   **Q**    Okay. Any other corrections or changes to your prefiled  
6           testimony?

7   **A**    No, sir.

8   **Q**    If I asked you those questions this afternoon, would  
9           your answers be the same?

10 **A**    Yes, sir.

11                   **MR. ELLIOTT:** Mr. Chairman, I would move Mr.  
12                   Babcock's revised direct testimony into the record  
13                   as if given orally from the stand as he has sort of  
14                   corrected it.

15                   **CHAIRMAN RANDALL:** Mr. Babcock's revised  
16                   prefiled direct testimony will be read into the  
17                   record as if given orally from the stand, as he  
18                   sort of revised it, then, to quote you.

19 **BY MR. ELLIOTT:**

20 **Q**    All right, Mr. Babcock, attached to your revised  
21           testimony are four appendices. Have you had a chance to  
22           review those prior to your appearance this afternoon?

23 **A**    Yes, sir.

24 **Q**    Do you have any changes or corrections to those  
25           appendices?

1 **A** No, sir.

2 **MR. ELLIOTT:** Mr. Chair, I'd move those four  
3 appendices to his prefiled testimony into the  
4 record as if given orally from the stand.

5 **CHAIRMAN RANDALL:** Okay. Mr. Babcock's  
6 Appendices A through D will be entered as Exhibit  
7 No. 8.

8 [WHEREUPON, Hearing Exhibit No. R-8 was  
9 marked and received in evidence.]

10 **MR. ELLIOTT:** Thank you, Mr. Chairman.

11 **WITNESS:** Mr. Elliott, if I might, for the  
12 Commissioners' benefit, the chart that we were  
13 referencing before I began testifying appears at  
14 Appendix B to my testimony.

15 **CHAIRMAN RANDALL:** Appendix B. That way, all  
16 parties can – everybody has a copy of that, right?

17 **MR. ELLIOTT:** Yes, sir. Excellent.

18 **BY MR. ELLIOTT:**

19 **Q** Mr. Babcock, on whose behalf are you presenting  
20 testimony in this matter?

21 **A** I'm presented testimony on behalf of Carolina Water  
22 Service, Inc.

23 **Q** First, would you please summarize your educational  
24 background and employment experience?

25 **A** I received an A.B. degree from Princeton University in

1 1973. I received a Juris Doctorate from George  
2 Washington University Law School with honors in 1976. I  
3 then began work at the South Carolina Attorney General's  
4 office under Attorney General Dan MacLeod – which is  
5 where you and I met – and I was there from 1977 to 1981.  
6 I then went into private practice, and, in 1984, I  
7 formed, along with Cam Lewis and Johnny Gregory, the  
8 firm then known as Lewis, Babcock & Gregory. And it has  
9 had different names over the years, but Mr. Lewis's name  
10 and my name were always the first two, so it's now Lewis  
11 Babcock.

12 **Q** Thank you.

13 **CHAIRMAN RANDALL:** Mr. Elliott, the folks in  
14 the back can't really hear you very well, so make  
15 sure you get that mic close to you.

16 **MR. ELLIOTT:** [Indicating.] Thank you, sir.

17 **BY MR. ELLIOTT:**

18 **Q** All right, Mr. Babcock. What's the purpose of your  
19 testimony in this proceeding?

20 **A** The purpose of the testimony is to present the  
21 Commission with my opinion concerning the reasonableness  
22 of attorneys' fees that CWS has sought in this  
23 proceeding.

24 **Q** And have you formed an opinion as to the reasonableness  
25 of these attorneys' fees?

1 **A** I have. And one thing, perhaps, before we get to the  
2 opinion, for the Commission's benefit, during my entire  
3 time as an attorney I've been a trial and appellate  
4 attorney. That's what I do, and I started that way with  
5 Mr. McLeod's office and I continued there in private  
6 practice.

7 **Q** Thank you. And having formed an opinion, what did you  
8 do to form it?

9 **A** Well, I first met with you, Mr. Terreni, and Mr. Hoefer  
10 at Mr. Hoefer's office. And Mr. Hoefer gave me an  
11 overview of generally what had occurred and why. And  
12 what's important here is there were five different cases  
13 that formed the basis for these attorneys' fees, so I  
14 needed to understand what the different cases were and  
15 what was at issue in each one of the cases. After we  
16 had that discussion, I asked to see a number of  
17 different documents – the pleadings, motions, various  
18 court filings; that was primarily my focus point – and  
19 then look at all the legal bills. So I pulled all that  
20 material together, because I thought that was the way to  
21 attack the question of the reasonableness of the  
22 attorneys' fees.

23 **Q** Good. Please address the attorneys' fees associated  
24 with each of these actions.

25 **A** All right. The chart, which is Appendix B, sets forth –

1 and by way of backdrop, perhaps, you've got two federal  
2 court cases. One is the *Riverkeeper* lawsuit and the  
3 other was a lawsuit against the EPA. There are two ALJ  
4 cases, both involving the DHEC permit, and then there is  
5 the condemnation case. Now, maybe – if I could explain  
6 these cases a little bit, would that be helpful?

7 **Q** Please.

8 **A** All right. So you've got the condemnation case, and I  
9 started with that case because I do a lot of  
10 condemnation work, so that was of interest to me. And  
11 condemnation cases, there was a time, as Your Honor  
12 would remember, when condemnation cases were pretty run-  
13 of-the-mill. Lots of people tried them and they weren't  
14 all that difficult. And the reason they weren't all  
15 that difficult was because you eliminated the issue of  
16 liability. All you had in a condemnation case, at its  
17 heart, was the issue of just compensation to the  
18 landowner. And just compensation involves two  
19 components: One is the value of the land acquired and  
20 the other is any damages to the remainder. So that's  
21 what the cases are about. And when I started trying  
22 them, they were relatively straightforward, but over the  
23 years, as you've had more complicated – it was primarily  
24 commercial takings, when you have transactions that  
25 involve businesses. Even though the business loss does

1 not come in directly, they typically have the greater  
2 value for land and the damage to the remainder.

3 So, they've gotten much more complicated over the  
4 years, and when I started you didn't do a lot of  
5 discovery. You just went to trial, you had a little  
6 folder, and you could try your case. Then they got more  
7 complicated, as lawyers tend to make things, and we  
8 started doing a lot more discovery, and that meant a lot  
9 more depositions, more different kinds of experts. In  
10 addition to an appraiser coming in to testify, you would  
11 frequently have predicate witnesses in terms of land-use  
12 planners or engineers, that sort of thing. So over the  
13 years, they had become very involved cases – not all,  
14 but a number of them have.

15 This is a particularly interesting case to me,  
16 because I've never seen one quite like it. In this  
17 case, the Town of Lexington is acquiring, or has  
18 acquired – because in condemnation, you acquire the  
19 property when you file your notice of condemnation and  
20 you pay your deposit into the court. It's called a  
21 quick take; that gives you the right to take immediate  
22 possession of the property. So in this case, what you  
23 had was an ongoing business acquired by the Town of  
24 Lexington.

25 In my opinion it would be inequitable to simply

1           compensate CWS based upon the value of the real estate  
2           and the mortar – bricks and mortar. Since you had an  
3           ongoing business taken, I think the only way they can  
4           get compensated would be to be paid for the ongoing  
5           business that the Town of Lexington is now operating.  
6           So that's a novel issue, and I kind of wish I was  
7           involved in the case, then, because it has a way to  
8           create new law in South Carolina. This is a rare thing.  
9           This doesn't happen very often. I'm aware of a  
10          situation in a port, I think down in Florida, maybe New  
11          Orleans, where they did a similar thing, that the Town  
12          acquired an ongoing business.

13                 And so I think, ultimately, the South Carolina  
14          Supreme Court is going to be the arbiter of – unless  
15          they settle it – of whether, when a condemnor takes an  
16          ongoing business that it then operates – and that, to  
17          me, is a critical issue. If they were just taking it  
18          and not operating it, then you're into a more normal  
19          condemnation setting. But when you take it and operate  
20          it, the only way you can get full, fair, and just  
21          compensation – which is the phrase I always use when  
22          I'm trying a case, because I'm normally for the  
23          landowner – the only way you can get there is to pay for  
24          the value of the business they took.

25                 So, it's a fascinating legal issue, but that makes

1 for – here’s the problem. Anytime a lawyer says,  
2 “That’s an interesting legal issue,” or, in my case,  
3 “That’s a fascinating legal issue,” what that means is  
4 it’s going to be expensive and there’s going to be –  
5 because it’s going to be a lot of time, a lot of  
6 research, a lot of motions, a lot of arguments. Stuff I  
7 love to do. But, unfortunately, clients are going to  
8 have to pay for it, one way or the other. So anytime  
9 you hear that “interesting” or “fascinating legal  
10 principle,” hold onto your wallet.

11 **Q** Good.

12 **A** Now, do you want me to address that – the legal fees,  
13 I’ve broken down on my chart for each year, because I  
14 thought the only way to look at this in a fair  
15 assessment was to look at each year at each case. So  
16 I’ve broken down in the chart each year, and you’ll see  
17 2015, 2016, 2017, 2018, and then a total at the bottom.  
18 So if you go over to the right-hand column, you can see  
19 for each case, by year, how much the attorneys’ fees and  
20 costs were, and then it’s totaled up on the right-hand  
21 column.

22 The other column, which we’ll get to in a minute,  
23 is the Willoughby & Hoefler column, because they did the  
24 primary work. That’s in the first column. So, for  
25 instance – and we can go through these one-by-one, but I

1 don't know that we need to.

2 Q I think not. I think not.

3 A Okay. So, if you want to look at the totals, on the  
4 total column, the last column, you've got total, *Town of*  
5 *Lexington versus CWS* condemnation. And you run that  
6 out, you can see how much Willoughby & Hoefler and how  
7 much for the total. And the same thing for each one of  
8 the other cases.

9 Q Good. Thank you. Please discuss the cases in federal  
10 court.

11 A Okay. And they didn't have quite the same fascination  
12 to me that the condemnation case had, but you've got –  
13 your primary case is the *Riverkeeper* case. And in that  
14 case, you've got an effort by the Riverkeeper to attack  
15 CWS's compliance or noncompliance with the permit. It  
16 was interesting to me in that case that you didn't have  
17 DHEC bringing the case and you didn't have EPA bringing  
18 the case, so normally – and I can speak about DHEC with  
19 some knowledge because my wife has been in the General  
20 Counsel's office – she's Deputy General Counsel – since  
21 1977. She's had one job since 1977, which is pretty  
22 remarkable. Also one husband since 1975, so that's all  
23 my benefit. But in the *Riverkeeper* suit, you had the  
24 Riverkeeper, who has the right to bring the action;  
25 there's no question that he had the right to bring the

1           action. But he's attacking the noncompliance with the  
2           permit. And, to me – well, it was an interesting legal  
3           question because you had the question of definitions  
4           that Judge Seymour got into. But, basically, at the end  
5           of the day, you had a situation where the company had  
6           three options – or, I guess, a fourth, which is  
7           noncompliance. But one was the interconnection. That  
8           was the one they wanted, and they couldn't get it. The  
9           second was to sell the whole operation which, in effect,  
10          is happening by way of the condemnation case. It's a  
11          forced sale, but that's effectively what's happening.  
12          Or to stop service to the people, and I think if they  
13          had taken that option, this Commission would've been  
14          awfully upset about that.

15                 So they were stuck. And they were stuck in the  
16          litigation because when you get – let me back up.  
17          Federal court is, with all due deference, tougher than  
18          state court primarily because they've got all kinds of  
19          filing requirements. You have to file so much more  
20          paper in federal court. You've got tough deadlines.  
21          And in federal court, you not only have the Federal  
22          Rules of Civil Procedure, you've got the local district  
23          rules and you've got the individual judge's preferences.  
24          For some reason, a few years ago, we decided that it  
25          wasn't good enough to make lawyers comply with the first

1 two, that we were going to make lawyers have to go –  
2 with whatever judge you are, you've got to go check his  
3 or her preference. So it's really hard. And I love  
4 federal court, but what you find is there are many more  
5 state court practitioners than federal court  
6 practitioners. So you've got intense time deadlines,  
7 filings, and they are unforgiving. I made the mistake a  
8 few years ago of – this shows you how intricate these  
9 are. If you file something with the court that is more  
10 than – and this was before, or maybe it was after e-  
11 filing. But if it was more than such a number of pages,  
12 the judge's preference was that she also get a hard copy  
13 of whatever it was. And I had failed to do that. Just  
14 didn't do it. The next thing I know, I had a federal  
15 clerk – her clerk – calling me up and saying, "Mr.  
16 Babcock, you filed this document. It's more than 50  
17 pages; it's 100 pages. And you didn't send –" this was  
18 Judge Curry. "You didn't send Judge Curry a hard copy."  
19 I said, "Oh, my goodness. I'm sorry. We'll get it over  
20 to her right away." She said, "Well, Mr. Babcock, if  
21 you're practicing in federal court, you have to follow  
22 the rules." And I said, "Yes, I know that, and we'll  
23 make sure we follow the rules." But that's the kind of  
24 thing you face and you have to bow and scrape at the  
25 federal court when they want you to bow and scrape.

1           But the point is it's tough, and once the  
2           *Riverkeeper* lawsuit was brought, CWS had no choice but  
3           to fight as hard as they could, because they had no  
4           option. They couldn't just say, "We don't want to be in  
5           federal court," or, "we don't want to have this  
6           lawsuit." So that was a long, hard fight.

7           The other federal case was an effort to try to get  
8           EPA to change the, what is it, 20- -

9           **Q** 208 plan?

10          **A** - 208 Plan or to force the interconnection. And I think  
11          that was a long shot, but I think the idea of bringing  
12          that case was an excellent one because it was one way to  
13          undo the logjam, and if it had been successful it  
14          would've been great, and it was much less expensive than  
15          the other case. So I thought that was a good legal  
16          strategy. Ultimately, unsuccessful, because that's the  
17          only case - of all the cases we've got, that's the only  
18          case that's finished. All the other cases are ongoing.

19          And just to complete the case analysis, the other  
20          two are the ALJ cases. And one of those is a primary  
21          case and it involves the fight about the DHEC permit.  
22          There's a secondary case which had to be filed because  
23          there was a short timeframe if the permit was ultimately  
24          denied that they had to have a submission. So that was  
25          a protection appeal to the ALJ because they had to

1 protect the timeline.

2 **Q** Before we go beyond these cases, I do want to refer you  
3 to your prefiled on page five. Would you please  
4 describe the effectiveness of this aggressive defense in  
5 the federal *Riverkeeper* case, especially concerning the  
6 \$1.5 million fine that was assessed and is now vacated?

7 **A** Right. And there are really two parts to that. Number  
8 one is the position in the underlying case, which is, at  
9 its heart, that CWS was unable to do what was being  
10 required. And I think when you look at the  
11 interconnection, you're basically talking about two  
12 parties doing a deal, but it takes two parties being  
13 willing to do a deal. And if you didn't have a willing  
14 party, even though CWS was under a permit requirement to  
15 do it, they couldn't do it on their own. So they were  
16 stuck there. And to me, that's – you can't comply with  
17 it.

18 Now, I'm not a federal judge, and Judge Seymour –  
19 she's been a judge a long time. And I'm certainly not  
20 going to be critical on the record of a federal judge  
21 about anything. But the one thing she did do that the  
22 attorneys were able to undo was a \$1.5 million fine  
23 which, to me, is astounding, when the company could not  
24 do what she wanted them to do. That penalty has been  
25 vacated. Now, there's still a legal issue about that.

1 It's not entirely off the board, but they got the \$1.5  
2 million number off the board and the penalty off the  
3 board now. And that was good legal work.

4 **Q** Let's turn to the issue of the reasonableness of the  
5 attorneys' fees. And you've got your spreadsheet in  
6 front of you, and we have it here on the screen – every  
7 screen – and this blowup. Would you just discuss  
8 briefly, if you would, the costs by year for Willoughby  
9 & Hoefer.

10 **A** All right. And, again, I focused on the Willoughby &  
11 Hoefer bills – I looked at the others, but the far  
12 greater percentage was with Willoughby & Hoefer. And I  
13 want to talk about them in a minute, Mr. Elliott. But  
14 looking at the Willoughby & Hoefer chart is the first  
15 one, and if you look at it by year, 2015 would be  
16 \$106,371.97; 2016 would be \$506,850.53; 2017 would be  
17 \$332,808.44. There's nothing shown for 2018, because  
18 that period was only the first two months of this year  
19 and they apparently just didn't bill for those two  
20 months, so we've got nothing – no numbers there.

21 **Q** Good. Now, are you familiar with Willoughby & Hoefer?

22 **A** I'm very familiar with Willoughby & Hoefer. I first met  
23 Mitch Willoughby through his wife, B.J. Willoughby. She  
24 was with us at the South Carolina Attorney General's  
25 office. So I met Mitch, in an early day, as a spouse of

1           one of the employees at the office. I met Mr. Hoefer in  
2           the late '80s or early '90s. It was either before or  
3           after his deployment to Afghanistan, but it was right in  
4           that time period. And then met Mr. Lowell probably ten  
5           years or so ago. I had some work with him and I've been  
6           able to see his work as an environmental attorney very  
7           closely since about 2011. He's involved with a mutual  
8           client, so I've been able to see what he's been doing  
9           for that client. And, finally, Mr. Johnston, I met him  
10          a few years ago and he and I have had some cases – I  
11          think one or two cases, since he went to the firm.

12                 They are all outstanding lawyers, particularly Mr.  
13          Hoefer and Mr. Lowell. Mr. Johnston is a younger  
14          lawyer, and – from my perspective, almost everybody is a  
15          younger lawyer. But Mr. Hoefer and Mr. Lowell are very  
16          good trial and appellate lawyers, and Mr. Lowell is so  
17          good – he'll tell you about this – that there's a South  
18          Carolina Supreme Court case from a few years ago which  
19          referred to him as an environmental scholar. And I  
20          guess if I had a South Carolina Supreme Court who talked  
21          about me as being any kind of scholar, I'd be pretty  
22          proud of it, too. But that's what the South Carolina –  
23          the South Carolina Supreme Court doesn't just throw  
24          words out there. If they put those words in there, they  
25          showed tremendous respect for Mr. Lowell. And Mr.

1           Johnston is just a very good, younger lawyer. He's  
2           going to – I'm sure, if I'm around ten years from now, I  
3           would be talking about him in those kind of glowing  
4           terms. He's a lawyer who's on his way, and he's quite  
5           good.

6       **Q**     Now let's look at the attorneys' fees and costs, if you  
7           would, please.

8       **A**     All right. I thought it was instructive – and when you  
9           get into fees – and I'm going to talk about the factors  
10          in a minute. But in trying to judge what would be  
11          appropriate fees for lawyers of different levels of  
12          experience, there was a filing by Tom Tisdale in the  
13          *Riverkeeper* case when they filed a motion for attorneys'  
14          fees. And Mr. Tisdale is a past president of the South  
15          Carolina Bar. He's practiced in Charleston for years;  
16          he's extraordinarily well respected down there. And he  
17          opined that, in his opinion, good, typical billing rates  
18          for attorneys with over 20 years of experience would be  
19          over \$400; attorneys with 15 years of experience would  
20          be in the \$350-\$400 an hour range; and attorneys with  
21          four years of experience would be in the \$250-\$300 an  
22          hour range. And I think that is an accurate assessment  
23          of attorneys' fees in urban areas in South Carolina. I  
24          think you see a little different billing rate in some of  
25          the more rural areas, but this would be very typical for

1 urban areas.

2 So I looked at that rate, and I think he's right.  
3 And I looked at what the rates were that were charged by  
4 the Willoughby & Hoefer firm. And to be quite honest  
5 with you, when I first saw them, I was astounded,  
6 because they were significantly lower than I would've  
7 expected. John Hoefer charged \$315 an hour, Randy  
8 Lowell charged \$270 an hour, and Chad Johnston charged  
9 \$225 an hour. And I was just very surprised by that, so  
10 I spoke to Mr. Hoefer. And what he told me was  
11 consistent with his affidavit that CWS has been a  
12 longtime client of theirs, and they had arbitrarily low  
13 rates because of that longtime relationship. And those  
14 are, as I say, significantly lower than I would've  
15 expected the rates to be, but I understand we all have  
16 certain situations when we have longtime relationships  
17 with clients where we have a different billing  
18 arrangement, so it's entirely appropriate. And it was  
19 to everybody's benefit, I guess other than Willoughby &  
20 Hoefer, that they charged these lesser numbers, because  
21 higher numbers would have been reasonable, just as I  
22 found their fees and bills to be reasonable.

23 **Q** All right. In assessing the reasonableness of the  
24 attorneys' fees and costs, what standards did you use?

25 **A** Well, I try to listen to courts when they tell me

1 something, and in the rehearing order – as I understood  
2 it – the Commission was directing somebody looking at  
3 the reasonableness of the fees to go to page 27 of Order  
4 No. 2006-543 in Docket No. 2006-92-WS. And there, what  
5 the Commission did was to look at Rule 407 of the  
6 appellate court rules, and specifically Rule 1.5.

7 Now, this rule is part of our ethics rules, and it  
8 gives guidance for what lawyers can and can't do. So  
9 this rule talks about the different factors, and there  
10 are eight of them, for the reasonableness of attorneys'  
11 fees. And so that's the Supreme Court saying these are  
12 the factors, from an ethical standpoint, that would make  
13 for – that you would use when looking at attorneys'  
14 fees. In civil and in domestic, there's a different –  
15 slightly different standard. *Glasscock versus Glasscock*  
16 and *Jackson versus Spee*, they list six factors; but  
17 really, when you break them down, they're basically the  
18 same. It's just that the Rule 1.5 has eight factors and  
19 the civil factors are six, but when you get down to the  
20 end it's basically the same analysis.

21 Would you like me to go through the analysis?

22 **Q** Let's go through all eight, please.

23 **A** Okay. Well, the first factor is the time and labor  
24 required, the novelty and difficulty of the questions  
25 involved, and the skills requisite to perform the legal

1 services properly.

2 So, looking at the invoices, I think – the  
3 Commission, I'm sure, has them available to them. I  
4 think if you look at the specificity with what was done,  
5 you know, I talked about the individual lawyers. These  
6 cases were quite difficult, particularly three of them:  
7 the *Riverkeeper* lawsuit, the condemnation lawsuit, and  
8 the DHEC permit issue. Those are tough and significant  
9 cases. So if you look at those cases, in particular,  
10 only experienced and skillful lawyers would have  
11 undertaken the cases and there's no question that this  
12 firm fits in that category.

13 **Q** Let me interrupt you one second –

14 **A** Sure.

15 **Q** – if I may. The issue has arisen over the recovery of  
16 attorneys' fees to the prevailing party, in condemnation  
17 cases. The Commission would benefit from knowing that  
18 law.

19 **A** Well, I'm hesitant to tell a former judge what the law  
20 is, but the eminent domain code was passed by the  
21 General Assembly in 1987 or '88. Prior to that, each  
22 condemning authority had their own statutes. So if you  
23 wanted to see the condemnation procedure for a utility,  
24 you went to one part of the Code. If you wanted to see  
25 the condemnation procedure for a county or city, you

1           went to another part of the Code. And if you wanted to  
2           see the condemnation procedure for a State agency, you  
3           went to another part of the Code. Now, that actually  
4           worked pretty well for those of us who worked in the  
5           area, because we knew that, and it was harder for other  
6           people to figure it out, so it gave us a leg up. But  
7           that really wasn't fair; it wasn't fair across the  
8           board.

9           So in '87 or '88, they passed the eminent domain  
10          code and they pulled altogether all the statutory  
11          procedures for condemnation – and “eminent domain” and  
12          “condemnation” are the same thing, so I switch back and  
13          forth between the terms, but they're the same thing. So  
14          in the eminent domain code, there's a provision for  
15          attorneys' fees and costs to be awarded to the  
16          prevailing party, and that's the phrase that's used,  
17          “prevailing party.” And “prevailing” is defined as  
18          being closer to the landowner's – let me back up. Only  
19          the landowner's attorney can get the fees and costs; the  
20          government can't. So in the prevailing-party scenario,  
21          for the landowner, if the jury's verdict is closer to  
22          their high testimony – in other words, the highest value  
23          put in evidence by the landowner – in comparison to the  
24          highest value of the condemnor's testimony, if it's even  
25          just \$1 closer, the landowner would be considered to

1           prevail and the judge would be able to award attorneys'  
2           fees and costs as he deemed or she deemed appropriate.

3           Now, if you break that down, think about it, it  
4           ought to be between the highest figure that the  
5           landowner puts up and the lowest figure that the  
6           condemnor puts up. Those are really the extremes that  
7           should've been looked at, because what you're trying to  
8           do is to discourage landowners' attorneys – because  
9           that's what we would do, is put up a high number. And  
10          frequently you could have two numbers; you would have  
11          the appraiser's number and you'd have the landowner's  
12          number. So what was done in the past is you'd have that  
13          appraiser's number and then you'd have the landowner's  
14          number would be higher, and you'd be trying to get that  
15          jury to bring in a number above the appraiser.  
16          Conversely, the condemnor can put up two appraisers and  
17          they would have two different numbers. So we should be  
18          discouraging condemnors was from putting in arbitrarily  
19          low numbers. But Vic Evans, who was then – I think Vic  
20          had gone from the Attorney General's office to the DOT  
21          at that point in time. He was in-house. He had been a  
22          deputy when I was there at the Attorney General's  
23          office. Vic was a real manipulator, and Vic convinced  
24          the committee, whoever was putting it together, that  
25          this high-high thing was the way to go. It really

1           wasn't fair, because it should've discouraged the  
2           condemnor, but it didn't. But that's the statute. And  
3           that's the statute, and it's not been amended and I  
4           seriously doubt it's going to be amended anytime soon.

5           **Q**    So it's not sufficient for the landowner to get an  
6           award; he has to get an award, and the number has to be  
7           closer to his higher number?

8           **A**    Correct. Now, as an aside, most condemning agencies  
9           will not take that into effect in terms of negotiating a  
10          settlement. They make you go get the jury verdict, and  
11          if you get the jury verdict then you get your attorneys'  
12          fees and costs.

13          **Q**    All right. Thank you. Now, I interrupted you. Back to  
14          – we're down to seven, I think, of these factors.

15          **A**    Yeah. The second element is the likelihood that the  
16          acceptance of the particular employment will preclude  
17          other employment by the lawyer.

18                Now, in most firms, if – this factor works better  
19          if you've got a solo lawyer, a lawyer practicing by  
20          himself, because he would be in a situation where he  
21          might say, "I can't take this case because I've got this  
22          other case." Typically in cases that have – in firms  
23          that have any kind of size, what happens is the lawyers  
24          who are working on these cases, they can't take as many  
25          other cases as they otherwise would, so the work gets

1 shifted to other lawyers in the office. And I suspect  
2 that's exactly what happened here. And if you have this  
3 happening enough times, what happens is law firms have  
4 to add lawyers. So that's the effect of it. And in  
5 this firm, these cases – again, primarily the  
6 *Riverkeeper* case, the condemnation case, and the DHEC  
7 permit – that would have had an impact on these  
8 individual lawyers' workloads, no question.

9 The third element is, the fee customarily charged  
10 in the locality for similar legal services. And I've  
11 already really talked about that. If you use the  
12 framework that Mr. Tisdale used, which I would agree  
13 with, then you see that the Willoughby & Hoefer numbers  
14 are significantly under those.

15 The fourth factor is the amount involved and the  
16 results obtained. I think, again, you're looking at  
17 four ongoing cases, but we've got to take a snapshot of  
18 where they are right now. And we talked about the  
19 *Riverkeeper* case and how that had to be fought and how  
20 they've already obtained good results by having that  
21 penalty taken off the board. That looks like a case  
22 that may ultimately have to go to the Fourth Circuit  
23 Court of Appeals. That's the only way – if Judge  
24 Seymour doesn't change her present position. So until  
25 that happens, you're not going to know the full

1 situation. But what we do know is that the standard  
2 that's been set so far is an interconnection, which you  
3 can't do; a sale of the system, which effectively has  
4 happened; or stopping services. They fought as hard as  
5 they could and did as much as they could, with an  
6 incredible standard, and did get that \$1.5 million  
7 penalty taken off the board.

8 The fifth factor is the time limitation imposed by  
9 the client or by the circumstances. And here, again,  
10 the federal court time limits are just really tough.  
11 State court, less so, because you can get scheduling  
12 orders that help you out a little bit. But the ALJ also  
13 has some tough time factors there, too, so you've got,  
14 of the five cases, really four with pressure points.  
15 And in a condemnation case or an eminent domain case,  
16 those cases, either side can call priority. So at any  
17 given time, you know that case might be jumped to the  
18 top of the docket and placed for trial. Now, typically,  
19 the judges do that when both sides want it, but  
20 technically either side can ask for it.

21 The sixth factor is the nature and length of the  
22 professional relationship with the client. And as we've  
23 already seen in this case there's a longtime working  
24 relationship with CWS, between the Willoughby & Hoefer  
25 firm and it. That is the cause of the reduced rate,

1 reduced and favorable rate.

2 The seventh factor is the experience, reputation,  
3 and ability of the lawyer or lawyers performing the  
4 services. And I think I've already talked about the  
5 high opinion I have of Mr. Hoefer and Mr. Lowell and Mr.  
6 Johnston.

7 And the final factor is whether the fee is fixed or  
8 contingent. A contingency fee is one that is based – as  
9 the Commission may be aware – is based upon the results  
10 that are obtained. In other words, in a typical  
11 contingency fee, the lawyer would get a percentage –  
12 either a third, or 40 percent – of whatever are the  
13 dollars he gets for his client. Frequently,  
14 condemnation cases on the landowner side are taken on a  
15 contingency basis, except for corporations.  
16 Corporations don't like contingencies, they don't  
17 understand contingencies, so they frequently won't do  
18 it. In this case, it needed to be on a fixed basis,  
19 because – and that's to the client's benefit – because  
20 if we were dealing with a contingency case and we're  
21 dealing with what I think are going to be significant  
22 numbers for the value of the business, but would be  
23 significant if you were just looking for typical  
24 appraised value, if you had – it's typically a fee of a  
25 percentage above the deposit or the offer by the

1           condemning authority. But I think it would've been to  
2           everybody's advantage to have this on an hourly basis.  
3           That's certainly – if I had been approached about taking  
4           the case, that's how I would've taken it.

5           So those are your factors. I don't think there's  
6           any question but that these fees are incredibly  
7           reasonable, and I think if you break it down and look at  
8           it on a yearly basis, and you look at it on a case-by-  
9           case basis, there's just no question in my mind that  
10          these are reasonable fees.

11                       **MR. ELLIOTT:** Thank you, so much, Mr. Babcock.

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23 [PURSUANT TO PREVIOUS INSTRUCTION, THE PREFILED  
24 REVISED REHEARING DIRECT TESTIMONY {W/CORR'N} OF  
25 KEITH M. BABCOCK FOLLOWS AT PGS 220-229]

Please note: The correction/change noted at page nine herein reflects the testimony given during the hearing in this matter.

**BEFORE**

**SOUTH CAROLINA PUBLIC SERVICE COMMISSION**

**DOCKET NO. 2017-292-WS**

**In Re:**

**Application of South Carolina Water Services, Inc. )  
For Approval of an Increase in Rates for Water and )  
Sewer Services )**

**Revised Direct Testimony**

**of**

**Keith M. Babcock, Esq.**

**On Behalf of**

**Carolina Water Service, Inc.**

**August 2, 2018**

**BEFORE  
SOUTH CAROLINA PUBLIC SERVICE COMMISSION**

**DIRECT TESTOMONY OF KEITH M. BABCOCK, ESQ.**

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**Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS FOR THE RECORD.**

A. My name is Keith Moss Babcock. I am an attorney. I am a partner in the law firm of Lewis Babcock L.L.P., which is located at 1513 Hampton Street, Columbia, South Carolina, 29201.

**Q. ON WHOSE BEHALF ARE YOU PRESENTING TESTIMONY IN THIS PROCEEDING?**

A. I am presenting testimony on behalf of the applicant, Carolina Water Service, Inc. ("CWS").

**Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND EMPLOYMENT EXPERIENCE.**

A. I received an AB degree from Princeton University in 1973, and I received a Juris Doctor degree with honors from George Washington University Law School in 1976. I started as an attorney at the South Carolina Attorney General's Office where I worked from 1977 to 1981. I went into private practice in 1981, and in 1984, I was one of the founding partners of my firm, which is now known as Lewis Babcock L.L.P.

I am a trial lawyer, and I have tried numerous cases in various South Carolina Circuit Courts, as well as the United States District Court for the District of South Carolina. I am also an appellate attorney, and I have argued numerous cases before the South Carolina Court of Appeals and the South Carolina Supreme Court, as well as the Fourth Circuit Court of Appeals.

My practice primarily focuses on condemnation cases, business and governmental disputes, legal malpractice, and legal ethics. I have attached as appendix A to my Direct Testimony a current Curriculum Vitae, along with copies of my reported decisions for both state and federal court.

**Q. WHAT IS THE PURPOSE OF TESTIMONY IN THIS PROCEEDING?**

A. The purpose of my testimony in this proceeding is to present to the Commission my opinion concerning the reasonableness of attorney's fees that CWS has sought to include as part of its application for an increase in its rates for water and sewer services.

1 **Q. HAVE YOU FORMED AN OPINION AS TO THE REASONABLENESS OF**  
2 **THOSE ATTORNEY'S FEES?**

3 A. Yes. In my opinion, they are definitely reasonable.  
4

5 **Q. WHAT DID YOU DO TO FORM THAT OPINION?**

6 A. I met with John Hoefler, Scott Elliott, and Charlie Terreni to get an overview of the various  
7 legal proceedings associated with the attorney's fees at issue. I then had an opportunity to  
8 review a number of documents. I started with reviewing the invoices themselves, and I  
9 then proceeded to review pleadings, motions, orders, and other documents associated with  
10 the various legal proceedings.  
11

12 The proceedings included two actions in federal court, one of which is referred to as the  
13 Riverkeeper action and the other is a declaratory judgment action involving EPA. There  
14 is also a state court condemnation action involving the Town of Lexington. Finally, there  
15 are various matters involving the Administrative Law Court for the State of South Carolina.  
16

17 **Q. MR. BABCOCK, PLEASE ADDRESS THE ATTORNEY'S FEES ASSOCIATED**  
18 **WITH EACH OF THESE ACTIONS.**

19 A. When considering any question concerning attorney's fees, I believe it is important to look  
20 at the number of years at issue, as well as the number of legal proceedings. In this case,  
21 the time period runs from September 2015 to February 2018, so I think the starting point  
22 should be to consider how much time and resulting fees and costs are associated with each  
23 type action for each year. At my direction, a revised spreadsheet was prepared which is  
24 attached as Appendix B to my direct testimony, which demonstrates the attorney's fees and  
25 costs associated with the various actions for the years 2015, 2016, 2017, and 2018. In that  
26 regard, the total attorney's fees and costs for each year are as follows: 2015 - \$106,521.97;  
27 2016 - \$529,150.00; 2017 - \$351,564.47; and 2018 - \$4,272.20. The attorney's fees and  
28 costs are smaller for 2018 because only two months were involved, and Willoughby &  
29 Hoefler did not submit any invoices during those months.  
30

31 **Q. HOW WOULD YOU LIKE TO BREAK DOWN YOUR TESTIMONY OF THE**  
32 **REASONABLENESS OF THE ATTORNEY'S FEES AT ISSUE?**

33 A. I think the best way to break it down would be to discuss the five different actions  
34 individually, and then look at the reasonableness of the attorney's fees themselves.  
35

36 **Q. WHERE WOULD YOU LIKE TO START?**

37 A. I would like to start with the condemnation case. When I started practicing law, many  
38 attorneys thought condemnation actions were relatively simple, and many attorneys  
39 handled them. Condemnation cases have become much more involved over the years, and  
40 larger commercial cases can be quite difficult. While the jury only has to determine the

1 amount of just compensation to the landowner, the presentation of that issue in trial,  
2 particularly with the use of expert witnesses, can be very challenging. A large part of my  
3 practice involves condemnation actions, and most of those cases are the larger, more  
4 complicated commercial variety.  
5

6 In this case, you have a unique situation. The Town of Lexington, as part of the overall  
7 environmental issue which spawned all of these cases, eventually started a condemnation  
8 case against the CWS to take over the CWS I-20 wastewater system. Notably, the Town  
9 only took this action when forced to do so by DHEC.  
10

11 Typically, a condemnor and a landowner negotiate prior to the institution of a  
12 condemnation case. In fact, such a negotiation is mandated by statute, S.C. Code Ann. §  
13 28-2-70(B). In this case, the negotiations occurred over several years but were ultimately  
14 unsuccessful.  
15

16 Normally, a condemnor acquires either a part of a piece of property or the whole piece of  
17 property, and the legal issues involve the fair market value of the property acquired, plus  
18 any damages to the remainder. In this condemnation case, they are taking over the entire  
19 operating system, such that CWS will lose the entire system. While normally, a landowner  
20 does not receive compensation for business losses in South Carolina, where the Town is  
21 taking over the entire system and will be able to continue the business which CWS is  
22 operating, compensation will need to be paid not only for the real property itself, but also  
23 the financial loss of the system, since the Town will be able to operate it. It appears that  
24 this will be hotly contested when it proceeds to trial, which is frankly unlike any that I have  
25 ever seen in 40 years of trying condemnation cases.  
26

27 **Q. WHAT ABOUT THE CASES IN FEDERAL COURT?**

28 **A.** There are two federal court actions. The first case, which I will call the Riverkeeper action,  
29 is the primary one. The second action is a declaratory judgment suit involving EPA.  
30

31 Before I talk about the individual actions, let me address litigation in federal court. Over  
32 the years, litigation in federal court has become more difficult and more expensive. There  
33 is a benefit in federal court in that one judge is assigned the case from start to finish, which  
34 is not the case in state court. However, there are numerous filing requirements and  
35 deadlines in a federal court case that do not exist in a state court case. The attorney must  
36 not only know the Federal Rules of Civil Procedure, but also the Local District Court Rules,  
37 as well as the individual preferences of each District Court judge. The rules and deadlines  
38 are very rigid, and a misstep can cause significant problems for a case, which can  
39 sometimes be fatal. While there are a number of lawyers who try cases in the South  
40 Carolina state court system, the number is much smaller of those attorneys who try cases

1 in Federal Court. A byproduct of the complexity of trying cases in Federal Court is that  
2 they are almost always very expensive.

3  
4 The first federal court case is the Riverkeeper action. While the Riverkeeper certainly had  
5 the right to file this lawsuit, I find it significant that neither the United States Environmental  
6 Protection Agency, nor the South Carolina Department of Health and Environmental  
7 Control ("DHEC") apparently thought that the environmental issues warranted either of  
8 those agencies initiating an action. When the Commission looks at this case, it is very  
9 important to remember that it is still going on. In other words, the totality of this case  
10 cannot be evaluated until it is concluded. However, at this stage, a couple of things are  
11 important to me. First, CWS had no involvement in initiating the action, which was done  
12 by the Riverkeeper. However, once the Riverkeeper began the action against CWS, it had  
13 no choice but to aggressively defend itself because the action was based on the need for an  
14 interconnection which the Town refused to provide. The paperwork that I have seen  
15 demonstrates an aggressive defense by the attorneys on behalf of CWS, which, among  
16 other things, caused Judge Seymour to vacate the \$1.5 million penalty she had assessed at  
17 one point in the proceeding. I cannot overemphasize the significance of the elimination of  
18 that penalty.

19  
20 The second action in federal court was for a declaratory judgment and an injunction against  
21 the Environmental Protection Agency and the Town of Lexington. Although this case  
22 would have been a difficult one to win, I think it was a smart strategic effort to try to unlock  
23 the logjam created by the 1997 208 plan and the inability of CWS to gain an interconnection  
24 of the I-20 system to the Town of Lexington.

25  
26 **Q. I THINK THAT LEAVES US WITH THE ADMINISTRATIVE LAW COURT**  
27 **ACTIONS. PLEASE TELL US ABOUT THOSE.**

28 **A.** The Administrative Law Court ("ALC") handles nearly all of the disputes that people have  
29 with South Carolina state agencies. Many of these disputes involve the granting or denial  
30 of permits. This is particularly so with the Department of Health and Environmental  
31 Control. Because of the high stakes and the amount of money involved in these permits,  
32 they are frequently hard fought. In the world of litigation, hard fought equates to numerous  
33 hours of work for attorneys and their staff, which in turn, equates to large invoices to the  
34 client. It is unfortunate that it has become so expensive to litigate, but that is simply a fact  
35 of life.

36  
37 The primary case before the ALC was the DHEC permit denial. This permit was critical  
38 to CWS because the permit allowed it to release effluent to the Saluda River. If CWS could  
39 not release into the river and could not connect to the Lexington system, it could not operate  
40 the I-20 system.

1  
2 The second Administrative Law Court action involved a challenge to a DHEC  
3 administrative order which required CWS to present plans to construct a connection to the  
4 Town's line no later than 60 days after the DHEC permit denial became final. This action  
5 was simply to protect the company in the event that the permit denial was ultimately  
6 upheld. It is significantly smaller than the main ALC matter, but it was necessary legal  
7 since it involved a separate DHEC administrative order.  
8

9 **Q. NOW, MR. BABCOCK, LET'S TURN BACK TO THE ISSUE OF THE**  
10 **REASONABLENESS OF THE ATTORNEY'S FEES. I WOULD LIKE TO**  
11 **DIRECT YOUR ATTENTION TO THE SPREADSHEET WHICH IS ATTACHED**  
12 **AS EXHIBIT B TO YOUR TESTIMONY. PLEASE DISCUSS THE ATTORNEY'S**  
13 **FEES AND COSTS FOR THE CALENDAR YEARS 2015, 2016, 2017, AND 2018.**

14 **A.** I would be pleased to do that, but let me clarify one thing. My analysis focused on the  
15 invoices submitted by Willoughby & Hoefler. Those invoices totaled more than 90 percent  
16 of the attorney's fees at issue. I also reviewed the invoices for the other firms, and they all  
17 appeared reasonable to me. While I knew some of the lawyers involved with those other  
18 statements, some I did not.  
19

20 I would like to direct the Commission's attention to the first column of this spreadsheet.  
21 As you can see, the spreadsheet breaks down the attorney's fees and costs for each year by  
22 case. For 2015, the fees and costs for Willoughby & Hoefler total \$106,371.97. Below  
23 that, the fees and costs are broken down by case for 2016, and they total \$506,850.53.  
24 Finally, this same breakdown is utilized for 2017, where the total is \$332,808.44. As I  
25 testified earlier, there are no Willoughby & Hoefler fees and costs for 2018 because no  
26 invoices were submitted during the first two months of this year.  
27

28 **Q. ARE YOU FAMILIAR WITH THE WILLOUGHBY & HOEFER LAW FIRM AND**  
29 **THE LAWYERS WHO WORKED ON THESE CASES?**

30 **A.** Yes, I am. The Willoughby & Hoefler firm is an outstanding Columbia law firm that now  
31 also has an office in Charleston. I have known Mitch Willoughby since the late 1970s  
32 when I met him through his wife, B.J. Willoughby, who worked with me at the South  
33 Carolina Attorney General's Office. I first met John Hoefler in the late 1980s or early  
34 1990s, either before or after his deployment to Afghanistan. The other two primary  
35 attorneys who worked on these cases are Randy Lowell and Chad Johnston.  
36

37 **Q. IF YOU WOULD, MR. BABCOCK, PLEASE TELL US A LITTLE BIT ABOUT**  
38 **MR. HOEFER, MR. LOWELL, AND MR. JOHNSTON.**

39 **A.** I would be pleased to do so. Mr. Hoefler is an outstanding trial lawyer who regularly  
40 appears before administrative agencies, along with state and federal courts. He was

1 admitted to the South Carolina Bar in 1984, which means he has been practicing for nearly  
2 34 years. He has a well-deserved outstanding reputation among the members of the Bar.

3  
4 Now, let me talk about Randy Lowell, who is another outstanding attorney. Like John, he  
5 is a trial lawyer and an appellate court lawyer, who has appeared both in state court and  
6 federal court. One of his primary practice areas is environmental law, and I have had the  
7 occasion to view him work particularly over the last six or seven years. The South Carolina  
8 Supreme Court referred to Randy in an opinion as an "environmental scholar," a reference  
9 that he is rightfully proud of. *Georgetown Cty. League of Women Voters v. Smith Land*  
10 *Co.*, 393 S.C. 350, 356, 713 S.E.2d 287, 290 (2011) (J. Hearn, dissenting). Randy has also  
11 edited the *South Carolina Administrative Practice and Procedure, Third Edition*.

12  
13 Finally, Chad Johnston is the third lawyer who had significant time in these cases. Chad  
14 is a younger lawyer who was admitted to the Bar in 2007. I have also had occasion to work  
15 with Chad since he joined the Willoughby & Hoefer firm, and he is a fine young attorney.

16  
17 CWS was very fortunate to have these three lawyers doing the bulk of the legal work on  
18 the five cases at issue. Having these three lawyers working on these five cases is as good  
19 as it gets.

20  
21 **Q. NOW, LET'S GET TO THE ATTORNEYS FEES AND COSTS.**

22 **A.** Before I talk about the reasonableness of the attorney's fees and costs at issue before the  
23 Commission, I would like to discuss the motion the Riverkeeper made in its federal case  
24 for attorney's fees and costs. That motion, which was dated April 13, 2017, sought an  
25 award of \$436,460.00 in attorney's fees, and \$16,659.25 in costs, for a total of \$453,119.25.  
26 I believe that motion has yet to be ruled upon. In support of that motion, the Riverkeeper  
27 filed a declaration from Thomas S. Tisdale, Jr. Mr. Tisdale is a fine Charleston attorney  
28 who has practiced law in South Carolina since 1964, is a past president of the S.C. Bar, and  
29 is currently with the firm of Hellman, Yates and Tisdale. Prior to that, he was a partner at  
30 Nexsen Pruet, and before that, he founded the firm of Young, Clement, Rivers & Tisdale.  
31 In that case, Mr. Tisdale opined that typical billing rates for attorneys with over 20 years  
32 of experience would be over \$400.00, attorneys with 15 years of experience would be in  
33 the \$350.00 to \$400.00 an hour range, and attorneys with four years of experience would  
34 be in the \$250.00 to \$300.00 an hour range. I would agree with Mr. Tisdale that those are  
35 fairly accurate ranges for lawyers with different amounts of experience in urban areas in  
36 South Carolina.

37  
38 In this case, the hourly rates used by the law firm of Willoughby & Hoefer are significantly  
39 lower than those ranges. Here, John Hoefer charged \$315.00 an hour, Randy Lowell  
40 charged \$270.00 an hour, and Chad Johnston charged \$225.00 an hour. When I first

1 reviewed the attorney fee invoices in this case, I was surprised to see how low the  
2 Willoughby & Hoefler rates were because I would have expected them to be significantly  
3 higher. In discussing the billing rates with Mr. Hoefler, he advised me, which I believe is  
4 also reflected in his affidavit, that they had a lower billing rate for CWS than other clients  
5 due to the long-standing relationship with CWS. That fact is reflected in Mr. Hoefler's  
6 affidavit in this proceeding, which is attached as Appendix C. I have also attached as  
7 Appendix D a second affidavit from Mr. Hoefler which makes a \$1,480.50 adjustment in  
8 his firm's total of fees and costs.  
9

10 **Q. IN ASSESSING THE REASONABLENESS OF THE ATTORNEYS FEES AND**  
11 **COSTS, WHAT STANDARD DID YOU USE?**

12 A. I thought it most appropriate to use the standard set forth by this Commission on page 27  
13 of Order No. 2006-543 in Docket No. 2006-92-WS. In that Order, this Commission looked  
14 to Rule 407, SCACR, Rule 1.5, which is part of the Rules of Professional Conduct for  
15 attorneys in this state. There are eight factors in that rule, and I will go through them one  
16 by one. However, I think the attorney's fees in this case also satisfy the standard utilized  
17 by South Carolina courts in some other cases, which is very similar to the Rule 1.5  
18 elements. See, e.g., *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991); *Jackson*  
19 *v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997).  
20

21 **Q. MR. BABCOCK, IF YOU WOULD, PLEASE DISCUSS THE EIGHT FACTORS**  
22 **UNDER RULE 1.5.**

23 A. Certainly. The first factor is the "time and labor required, the novelty and difficulty of the  
24 questions involved, and the skills requisite to perform the legal services properly." As you  
25 can see from the individual invoices, as well as the charts, there was a significant amount  
26 of time that the lawyers at Willoughby & Hoefler devoted to these cases from September  
27 2015 through 2018. The invoices themselves are very detailed, and I refer the Commission  
28 to each of those invoices. As I have already discussed, these cases were quite difficult,  
29 particularly the Riverkeeper suit, the appeal of the DHEC permit, and the condemnation  
30 case. I have previously explained how difficult each one of those cases was, along with  
31 the issues involved in those cases. Only an experienced and skillful attorney would have  
32 undertaken these cases, and there is no question but that Mr. Hoefler and Mr. Lowell, with  
33 Mr. Johnston assisting, qualify.  
34

35 The second element is "the likelihood that the acceptance of the particular employment  
36 will preclude other employment by the lawyer." While I have not seen any indication that  
37 the Willoughby & Hoefler firm had to turn down cases because of these five matters, there  
38 is no question but that cases of this magnitude, particularly the Riverkeeper case, the appeal  
39 of the DHEC permit matter, and the condemnation case would have impacted the case load  
40 for these three attorneys. Typically, what happens in law firms is that when attorneys have

1 cases such as these, work gets shifted to other attorneys in the firm that the lawyers  
2 involved in the cases would normally have handled. Remember, as I previously discussed,  
3 particularly with the federal cases, there are hard and rigorous case scheduling orders which  
4 push the attorneys from the start of the case to the end.  
5

6 The third factor is "the fee customarily charged in the locality for similar legal services." As  
7 I have already testified, the fees charged by the Willoughby & Hoefer are under the fees  
8 that would be charged in the Columbia area, which would be similar to other urban areas  
9 in South Carolina.  
10

11 The fourth factor is "the amount involved and the results obtained." I have already  
12 discussed the amount of the attorney's fees, and I would again refer the Commission to the  
13 charts we looked at earlier. With the exception of the declaratory judgment/injunction case  
14 involving EPA, all of these cases are still ongoing, so we do not know the final results.  
15 While the declaratory judgment/injunction was dismissed by the court, as I have already  
16 testified, this was filed for more strategic reasons than anything else. While winning this  
17 case would have been difficult, it was appropriate to try to encourage EPA to either modify  
18 the 1997 208 plan or require Lexington to allow the interconnection. The stakes were  
19 simply too large not to make that effort. In so far as the Riverkeeper suit is concerned, the  
20 Riverkeeper filed that lawsuit, and CWS had no choice but to aggressively defend itself.  
21 Furthermore, although there was a \$1.5 million penalty assessed by Judge Seymour at one  
22 point in time, the Willoughby & Hoefer firm successfully got Judge Seymour to vacate  
23 that.  
24

25 The fifth factor is "the time limitations imposed by the client or by the circumstances."  
26 Here, with one exception, the hard time factors were all dictated by the circumstances. For  
27 instance, the Riverkeeper suit was brought in federal court, and I have already explained  
28 the difficult time requirements for federal court litigation. The two matters before the  
29 Administrative Law Court were both necessitated by actions taken by the Department of  
30 Health and Environmental Control. Finally, the condemnation suit was initiated by the  
31 Town of Lexington, and the lawyers for CWS have aggressively been representing CWS  
32 in that action.  
33

34 The sixth factor is "the nature and length of the professional relationship with the client."  
35 As I previously testified, it is my understanding that the rates charged by the Willoughby  
36 & Hoefer firm were significantly lower than what would be appropriate in the legal  
37 community in Columbia due to the fact that there was a long-standing relationship between  
38 the firm and CWS.  
39

1 The seventh factor is "the experience, reputation, and ability of the lawyer or lawyers  
2 performing the services." I have already addressed this factor with the three attorneys  
3 primarily involved with the legal services in these cases. However, let me reiterate. Mr.  
4 Hoefler and Mr. Lowell are two of the finest lawyers not only in Columbia, which is where  
5 Mr. Hoefler has his office, or Charleston, where Mr. Lowell has his office, but throughout  
6 the state of South Carolina. Mr. Johnston is a younger lawyer who has not yet reached that  
7 level, but he is well on his way.

8  
9 The final factor is "whether the fee is fixed or contingent." The fees in this case were  
10 calculated using fixed hourly rates, which would certainly have been the only way any  
11 attorney would have taken the two actions in federal court or the two actions before the  
12 Administrative Law Court. While actions representing a landowner in condemnation cases  
13 are frequently undertaken on a contingency fee basis, that is not normally how larger  
14 corporations hire attorneys for condemnations cases. In fact, given the amount of money  
15 being sought by the landowner in the condemnation case, using an hourly fee approach  
16 almost certainly would be in the client's best interest.

17  
18 Let me finish my testimony by reiterating that the fees and costs at issue are incredibly  
19 reasonable. In my opinion, they could have been significantly larger and would have still  
20 fallen within the reasonable range.  
21  
22  
23  
24  
25

1           **MR. ELLIOTT:** Would you please answer any  
2 questions counsel have, or these Commissioners.

3           **CHAIRMAN RANDALL:** Okay. Before we continue  
4 on, we're going to take a short break, and we'll  
5 say ten minutes. That'll be at 3 p.m., according  
6 to my watch.

7                           [WHEREUPON, a recess was taken from 2:50  
8 to 3:00 p.m.]

9           **CHAIRMAN RANDALL:** Please be seated. Okay.  
10 We are on cross from the other parties. And, Ms.  
11 Valtorta?

12           **MS. VALTORTA:** I don't have any questions.

13           **CHAIRMAN RANDALL:** Thank you, ma'am.  
14 Mr. Knowlton?

15           **MR. KNOWLTON:** No questions.

16           **CHAIRMAN RANDALL:** Mr. Nelson?

17           **MR. NELSON:** My father was a trial lawyer and  
18 trial judge for 50 years, and the three things he  
19 told me never to do was, he said, "Don't do  
20 domestic work unless you're starving, never  
21 represent yourself, and never cross-examine another  
22 lawyer."

23                           [Laughter]

24                           And here I am, I'm going to dive in here  
25 anyways.

**CROSS EXAMINATION**

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**BY MR. NELSON:**

**Q** Mr. Babcock, as part of your reviewing the matters in this case and preparing your testimony to offer today, did you review Federal Court Judge Seymour's March 29, 2017, order?

**A** Yes, I reviewed – I think I reviewed all the orders in the case, and there were, in particular, two orders by Judge Seymour, and I think one was March of 2017 and maybe one was March of 2018, if I recall.

**Q** I'm going to go ahead and hand you – well, I'm going to go ahead and hand you both of them, I guess.

**A** Okay.

**Q** Since both of them are right here.

**A** Okay.

**MR. NELSON:** And I would point out for the Commission that the 2017 – March 2017 – order we're talking about is DMH-1; it is an exhibit that's already in. And the other one is not, however.

**BY MR. NELSON:**

**Q** [Indicating.]

**A** [Indicating.] Thank you.

**Q** Could you read – there's two passages that I want you to read on that 2017 order. The first one is going to be at page 14, and I should have highlighted that portion

1 for you on that page.

2 **A** The highlighted portion starts with "Second"?

3 **Q** Yes, sir. Go ahead and please read that for the  
4 Commission.

5 **A** All right. This is in the middle of a paragraph, but:  
6 "Second, while there is more than one party required to  
7 connect the I-20 Plant to the regional system, the harm  
8 is still traceable to Defendant. The Permit puts the  
9 onus on Defendant to provide a satisfactory agreement  
10 for PSC's approval. The prior denials demonstrate what  
11 PSC will find acceptable in a proposed agreement.  
12 Further, Defendant has the obligation to contract with  
13 Town or take other measures to fulfill the Permit  
14 requirements. Defendant has kept its plant open for  
15 seventeen years after it was required to connect. While  
16 regional connection does require other actors'  
17 assistance and approval, Defendant cannot be rewarded  
18 for its lack of a good faith effort to engage in  
19 negotiations and receive the required approvals. The  
20 court finds that the independent actors' behavior is  
21 sufficiently predictable. The court finds that  
22 Plaintiff's injury is traceable to Defendant's actions."

23 **Q** Thank you, sir. There's another passage on page 28, but  
24 just based on this passage, even, alone, isn't it true  
25 that the federal judge found that it was not entirely

1 the Town of Lexington's fault that CWS had not  
2 interconnected with the Town?

3 **A** Well, I think the words speak for themselves, but I  
4 think you have a situation where I don't know how you  
5 require one party – in this case, CWS – to enter into a  
6 contract. It's got to be a two-way street. And the  
7 record that I've seen shows repeated efforts by CWS to  
8 do just that.

9 **Q** But as far as a legal liability for doing the  
10 interconnection, as far as the federal judge has ruled,  
11 it is the liability or responsibility of the company to  
12 arrange somehow for the interconnection?

13 **A** That's what she found in this order, but I still don't  
14 know how you have a one-sided, forced contract. You  
15 can't do that.

16 **Q** Let me ask you one more thing. The other order that  
17 I've got here was the 2018 order. Could you please go  
18 to page ten? I don't have it highlighted on there. I  
19 apologize. If you want to – again, you can read the  
20 whole paragraph if you want to, but would you at least  
21 read the passage that begins on page ten, Subsection I,  
22 “Nevertheless,” and read that for the Commission?

23 **A** All right. Again, you're picking up mid-paragraph.

24 **Q** If you prefer, sir, you can go ahead and read the whole  
25 paragraph.

1 A Well, I just – I think – and I – I think it would be  
2 better to read the whole paragraph, just because that  
3 gives you better context.

4 Q Let's do that, yes, sir.

5 A This is under a heading called "Penalties." "Regarding  
6 the fines imposed, Defendant contends that it was denied  
7 due process because the specific issue of the amount of  
8 a penalty was not briefed or argued by the parties. The  
9 Clean Water Act is a strict liability statute. Once the  
10 court found liability, it could assess a penalty in  
11 accordance with the factors found at 33 U.S.C. Section  
12 1319, see *Stoddard versus Western Carolina Regional*  
13 *Sewer Authority* 784 F.2d 1200, 1208, (4th Circuit, 1986)  
14 (holding that upon finding a violation, the court must  
15 issue a penalty; however, the amount of the penalty is  
16 discretionary with the court). Nevertheless, in the  
17 interest of justice and because the parties essentially  
18 agreed at the summary judgement hearing that discovery  
19 and argument on the fine amount would be appropriate,  
20 the court vacates the \$1,500,000 amount and will hold a  
21 hearing on the appropriate penalty for violation of the  
22 NPDES Permit. The court declines to vacate the fine for  
23 the effluent limitation violations."

24 Q So what the judge has said, essentially – and tell me if  
25 I'm right, here – has said is that they are still going

1 to have a hearing to determine the amount of the  
2 penalty; is that correct?

3 **A** Well, yes, but what's even more significant here is that  
4 she is saying that, despite the fact that the parties  
5 had agreed that they wouldn't get into the penalty issue  
6 earlier, she had, on her own, done that, without  
7 briefing and without argument. And one of the critical  
8 things, whenever – and to me, it's astounding – I guess  
9 I'd better be careful here – that a \$1,500,000 fine  
10 would be levied without having briefing and argument,  
11 because, for your benefits, when you have a motion in  
12 state or federal court, almost always – always, in state  
13 court; most of the time in federal court – what you have  
14 is a briefing on the motion where the parties submit  
15 their legal positions, in terms of why they think they  
16 should win, and then oral argument where you come before  
17 the judge, you make your argument, and then you answer  
18 his or her questions about your position. And that's  
19 the only way it really gets framed, because, in a legal  
20 issue, until – and the whole idea behind our system is  
21 to have each side with good representation making their  
22 arguments so that either a judge or jury can decide.  
23 But unless you've had the opportunity to brief it and  
24 argue it, you haven't been heard. And I don't know how  
25 the judge could've issued the \$1.5 million fine without

1 having that.

2 So she's saying she's going to vacate it, and she  
3 did. Took it away. Now there's going to be a future  
4 discussion on the point, after the parties have the  
5 right to brief and argue, because that's the only way  
6 you can do it.

7 **Q** So, the amount of the fine is still to be determined,  
8 correct? Or penalty?

9 **A** I would say whether an amount, would still be an open  
10 question.

11 **Q** And whether an amount, it could be the \$1.5 million  
12 again? Or it could be more, or it could be less, or  
13 nothing, I guess. Right?

14 **A** You're just picking up numbers. I mean –

15 **Q** Yeah.

16 **A** – the number would be whatever the judge decides, zero  
17 or something else.

18 **Q** It could be the number that she did before, or something  
19 less or more.

20 **A** It could be any kind of a number. We don't know. What  
21 we do know is the 1.5 came without any briefing or  
22 argument, so that number, to me, is suspect, because she  
23 didn't have briefing or argument.

24 **Q** And that's why she's withdrawn it, then, and now we  
25 still have another phase to go, I guess, in this.

1 **A** Well, the parties – she realized the parties had both  
 2 agreed that that was not to be before her at that point  
 3 in time. Yes, sir.

4 **MR. NELSON:** Thank you, sir. I appreciate it.

5 **CHAIRMAN RANDALL:** Commissioners.

6 Commissioner Howard.

7 **EXAMINATION**

8 **BY COMMISSIONER HOWARD:**

9 **Q** Mr. Babcock, I enjoyed your presentation and I hope you  
 10 can say the same as to mine when I get through.

11 [Laughter]

12 The issue I have in rate cases for legal fees is  
 13 the customer has no say-so. The customers of CWS could  
 14 care less whether they pay a \$200 lawyer or a \$500  
 15 lawyer. So what, as a customer – what right do I have  
 16 as a customer, or do we have as a Commissioner – in  
 17 other words, I feel like there ought to be some  
 18 guidelines. And the guidelines could be the amount of  
 19 hours, the amount of hours spent on the case. Now,  
 20 whether CWS wants to pay \$500 an hour or \$200 an hour is  
 21 fine, but I just don't think – I got a problem with  
 22 putting \$400 lawyers in rate base and the customers pay  
 23 for it, because you've got the lawyer out there so you  
 24 can get your rates at a higher rate for the customer.  
 25 So, consequently, then, the customer is getting sort of,

1           you know, banged over twice. And then the other thing I  
2           got is these companies, most companies, have outside  
3           counsel. I'm looking at outside counsel sitting at the  
4           table, with expert witnesses and expert lawyers at \$400  
5           an hour, knowing it's going into rate base, knowing the  
6           customers have got to pay for it. What can we, as  
7           Commissioners, do to make sure that the customers get a  
8           fair treatment when it comes to legal expense in a rate  
9           case?

10       **A**   Well – and let me answer that question this way. I'm  
11           not a PSC lawyer, and I haven't had to sit where you  
12           have to sit. And it's a tremendous responsibility that  
13           I know y'all have. But from a legal perspective of what  
14           this company did –

15                       **CHAIRMAN RANDALL:** Get that microphone in  
16                       front of you.

17                       **WITNESS:** Oh, I'm sorry [indicating]. I'm  
18                       sorry.

19                       What this company did is what it had to do,  
20                       because it got sued. I think, if we were looking  
21                       at a situation where it had initiated the  
22                       litigation, then you've got to have a different set  
23                       of questions to be answered. But when they got  
24                       sued, and the whole case starts with the  
25                       Riverkeeper suing, and then you have DHEC with its

1 permit change. So these are all things that were  
2 beyond the company's capability.

3 And which lawyers to use. Well, the reason  
4 most companies get outside counsel – and this is  
5 true not just here; it's true everywhere. Most  
6 companies do not have inside counsel who were trial  
7 and appellate lawyers. They do other things. They  
8 may do transactions, they may do contracts, they  
9 may do a lot of other things. So what companies  
10 like CWS have to do is to get outside counsel to do  
11 their trial and appellate work. In this case – and  
12 let me back off on one point. I think most lawyers  
13 would agree that a lawyer that charges \$400 an hour  
14 is likely of a different caliber than a lawyer that  
15 charges \$200 an hour. There's a reason that the  
16 hourly rates for better lawyers are higher. So  
17 when you talk about \$400 an hour for a lawyer,  
18 you're talking about a better lawyer, and under Mr.  
19 Tisdale's analysis, a more experienced lawyer than  
20 the young, inexperienced lawyer for the lesser  
21 rate. It's not every lawyer is the same. So  
22 lawyers who are better at what they do command a  
23 higher hourly fee. Again, here, they kept their  
24 rates arbitrarily low and would've been consistent  
25 with a much lower-experience lawyer than either Mr.

1           Hoefer or Mr. Lowell.

2           So what the company did was very prudent, and  
3           they're doing their best to benefit the ratepayers  
4           because they are trying to provide the services.  
5           Again, they were faced with a situation where they  
6           couldn't comply with the permit because they  
7           couldn't force interconnection. They could only  
8           either sell the station, or stop servicing. And if  
9           they stopped servicing, the people who they are  
10          servicing don't get that; they get stopped. And  
11          that would be wrong.

12 **BY COMMISSIONER HOWARD:**

13 **Q**   Well that's sort of the point I'm making. I, as a  
14          ratepayer, could care less whether they're paying \$400  
15          for a lawyer. I guess my question is, how do I know,  
16          for example, that Mr. Hoefer billed for 700 hours? How  
17          do I know that's a fair amount, sitting here? How do I  
18          know? I can justify in my mind that, okay, he's \$400 an  
19          hour, versus, you know, Joe Blow who's \$200 an hour.  
20          But knowing this is going back to the customer, the  
21          customer's got to pay, the ratepayers have to pay for  
22          these legal fees, and I've just got a problem with not  
23          having any guidelines. And I don't know who would  
24          furnish the guidelines – you know, how long it would  
25          take or what's a fair amount of hours to bill for a

1 particular case.

2 **A** Okay, and let me answer it this way. The Supreme Court  
3 did that by establishing the eight factors that were to  
4 be utilized, that this Commission said were to be  
5 utilized. So the Supreme Court has done that.

6 Now, in terms of how many hours something takes,  
7 that's very case-reactive. And you can't say, "Well,  
8 they should've only done 100 hours and they did 200  
9 hours." All we can say is that we know that the  
10 lawyers' bills were very itemized, you can see where the  
11 time was spent. And all of it, from my standpoint, was  
12 appropriate. There wasn't anything inappropriate that  
13 was done. Again, they were forced into litigation.

14 **Q** I understand that. And I guess I don't have a problem  
15 with it; I don't like the fact, but still maybe it's the  
16 ratemaking situation that bothers me more than anything  
17 else, that a client has to pay for a better lawyer so  
18 the customer can get a better rate to charge them.  
19 That's by and large where I'm coming from.

20 **A** Well, from my standpoint, you always want a better  
21 lawyer representing you.

22 **Q** I'm sure you do. I'm sure that your standpoint. And  
23 I'm not saying it's a bad standpoint. But me looking at  
24 a ratepayer situation, I really could care less if  
25 you're a good lawyer or a bad lawyer; just get it done.

1 A Well, it's going to cost time and money for that to get  
2 done.

3 Q I know it. Thank you, very much.

4 A Thank you, sir.

5 CHAIRMAN RANDALL: Commissioner Elam.

6 EXAMINATION

7 BY COMMISSIONER ELAM:

8 Q Good afternoon, Mr. Babcock.

9 A Good afternoon.

10 Q Following up along those lines, a circuit court judge,  
11 when he's presented with, you know, a request for fees  
12 like this, takes these factors into account, right?

13 A Yes, sir – well, the similar factors in *Glasscock* and  
14 *Spee*, but –

15 Q Right.

16 A – yes.

17 Q And the circuit judge can decide for him- or herself  
18 what they think is a fair rate and a fair amount of  
19 hours for a particular case. There's a pretty decent  
20 amount of discretion for a judge on that, isn't there?

21 A The judge has discretion in terms of analyzing what was  
22 done and how it was done, yes, sir.

23 Q Okay. Looking at your prefiled testimony, I want to  
24 look initially at page five, at a sentence that starts  
25 in the middle of line 14, talking about the paperwork

1 that you've seen about the aggressive defense by  
2 attorneys for Carolina Water that caused Judge Seymour  
3 to vacate the \$1.5 million penalty. And you say you  
4 can't overemphasize the significance of the elimination  
5 of that penalty. You see that?

6 **A** Yes, sir.

7 **Q** What is the significance of the elimination of that  
8 penalty?

9 **A** That you no longer have a \$1.5 million penalty, because  
10 if it hadn't been vacated, it would still be on them.

11 **Q** From a ratepayers' standpoint, what is the significance  
12 of eliminating that penalty?

13 **A** Well, again, I'm not sure I can address it from the  
14 ratepayers' standpoint, other than to say, if they had  
15 the \$1.5 million penalty, that might be a matter that  
16 would need to be considered by this Commission for the  
17 rates, because they would've had the penalty put on.  
18 It's got to go somewhere.

19 **COMMISSIONER ELAM:** Okay. Thank you. Nothing  
20 further.

21 **CHAIRMAN RANDALL:** Any Other questions,  
22 Commissioners?

23 **COMMISSIONER ERVIN:** I have one question.

24 **CHAIRMAN RANDALL:** Commissioner Ervin?

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

**EXAMINATION**

1

2 **BY COMMISSIONER ERVIN:**3 **Q** Mr. Babcock, it's good to see you.4 **A** Good to see you, sir.5 **Q** I wondered if – you mentioned that they were sued, the  
6 company was sued, and they had to respond, but with one  
7 exception; didn't they bring an action against the EPA  
8 in federal court?9 **A** Yes, sir. That was an action they did initiate, but it  
10 wouldn't have been necessary if it weren't for the river  
11 case. This was a, what I would call, kind of an attack,  
12 on the side, to try to make something happen. But they  
13 did initiate that one, yes, sir.14 **Q** Wasn't that kind of a longshot, in the sense of trying  
15 to get the EPA to overturn their own rules and  
16 regulations as to how that plan was set up? Wasn't that  
17 kind of – call it a Hail Mary?18 **A** Judge, I wouldn't go quite a Hail Mary, but, yes, it was  
19 not one that would've had a great confidence level when  
20 you brought it. But particularly when we see where  
21 Judge Seymour was going, to try to have some other  
22 attack to try to make something happen, I think, was  
23 definitely worthwhile. And if you look at the actual  
24 numbers for that lawsuit, that was significantly less  
25 than, certainly, the other lawsuits.

1 Q But not a good result was obtained.

2 A Didn't win.

3 Q Didn't win. That's the only question I have. Thank  
4 you.

5 A Thank you, sir.

6 CHAIRMAN RANDALL: Thanks, Commissioner.  
7 Anyone else?

8 [No response]

9 Okay. Mr. Elliott, any redirect?

10 MR. ELLIOTT: No redirect, Mr. Chairman.

11 CHAIRMAN RANDALL: Thank you.

12 All right. We'll let you step down, Mr.  
13 Babcock.

14 WITNESS: May I be excused?

15 CHAIRMAN RANDALL: Yes.

16 WITNESS: Thank you, sir.

17 [WHEREUPON, the witness was excused.]

18 CHAIRMAN RANDALL: Okay. Mr. Terreni.

19 MR. TERRENI: Mr. Chairman, may I have one  
20 second to confer with Mr. Nelson about something?

21 CHAIRMAN RANDALL: Sure

22 [Discussion off the record]

23 MR. TERRENI: Mr. Chairman, in an effort to  
24 resolve some of the issues before the Commission,  
25 if it pleases the Commission, CWS would be willing

1 testimony given by witnesses for Carolina Water Service  
2 concerning the federal lawsuit *Congaree Riverkeeper v.*  
3 *Carolina Water Service.*

4 Q And have you reviewed the prefiled testimonies of CWS's  
5 witnesses in this case?

6 A Yes, I have.

7 Q Can you tell us why Congaree Riverkeeper filed the  
8 lawsuit against CWS?

9 A Yes. Our Citizen Clean Water Act lawsuit against CWS  
10 was brought in an effort to bring the I-20 facility into  
11 compliance with their Clean Water Act permit. The  
12 permit had unambiguously required that the I-20 plant be  
13 connected to a regional wastewater treatment system and  
14 cease discharging into the Lower Saluda River – which is  
15 a designated State scenic river – since 1999. A decade  
16 and a half later, the discharges from the I-20 plant  
17 continued into waters where the public recreates. And  
18 there were also numerous effluent limitation violations  
19 at the I-20 plant. Our litigation sought to address  
20 both of those issues.

21 Q Does CRK regularly bring lawsuits against other entities  
22 that improperly discharge into the State's waters?

23 A So, Congaree Riverkeeper's mission is to protect and  
24 improve water quality, wildlife habitat, and recreation  
25 on the Congaree, Broad, and Lower Saluda Rivers through

1 advocacy, education, and enforcement of environmental  
2 laws. So we monitor all sorts of sites and polluters in  
3 our watershed. We take enforcement actions, when  
4 necessary. While this was our first federal Clean Water  
5 Act lawsuit that the organization ever filed, we have  
6 sent notices of intent to sue over other sites and other  
7 polluters, and we've also resolved violations with  
8 others without the need for litigation. We would  
9 certainly file litigation for other violations of the  
10 Clean Water Act, if necessary. We focused on Carolina  
11 Water Service because they were clearly violating the  
12 terms of their permit and it was having a real impact on  
13 the river, and we would certainly consider litigation  
14 against any other company doing the same thing.

15 **Q** Would CRK have brought the lawsuit against CWS, had the  
16 company not had multiple effluent discharge violations?

17 **A** So, the Carolina Water Service's regular pattern of  
18 ongoing effluent violations was one of the things that  
19 brought this facility to our attention in the first  
20 place, and it was a key factor in the decision to file  
21 the lawsuit.

22 **Q** Were CWS's effluent discharge exceedances only a  
23 secondary component of the CRK lawsuit?

24 **A** No, they were not. We brought two specific claims in  
25 our lawsuit: one, that CWS had routinely violated the

1 terms of their NPDES permit with effluent violations,  
2 and that they violated their permit by failing to  
3 connect to the regional sewer system.

4 **Q** In your opinion, Mr. Stangler, was the company's only  
5 liability that which arose from their inability to  
6 interconnect with the Town of Lexington?

7 **A** No. Carolina Water Service is also liable for a number  
8 of effluent violations, including repeated violations  
9 for fecal coliform bacteria and biochemical oxygen  
10 demand. The court's ruling demonstrates this point, as  
11 the court found that they had violated effluent  
12 limitations in their Clean Water Act permit 23 times,  
13 and that was a ruling that the court refused to  
14 reconsider at CWS's request.

15 **Q** Did CRK bring suit in an effort to have CWS terminate  
16 sewer service to the more than 2000 customers?

17 **A** No, we did not. We never asked for a termination of  
18 their sewer service to customers in our litigation.  
19 And, in fact, when the court ruled in our favor, the  
20 court gave CWS a year to reach a resolution to avoid  
21 that sort of termination.

22 **Q** Did CWS violate its NPDES permit requirements by  
23 discharging untreated wastewater into the river?

24 **A** Yes. They violated the limits of their NPDES permit.  
25 They discharged undertreated waste, because they did not

1 meet the limits of their permit.

2 **Q** And did CWS's difficulties in negotiating an  
3 interconnection or the sale of its system to the Town of  
4 Lexington allow CWS to violate its NPDES permit?

5 **A** No, it did not. The Clean Water Act is what's called a  
6 strict liability statute. All the plaintiff needs to do  
7 is establish that the defendant violated the terms of  
8 their permit. Good faith efforts to comply or alleged  
9 impossibility is not a valid defense. Under the Clean  
10 Water Act, the party must either achieve the discharge  
11 levels they've been allowed, pay the consequences, or  
12 stop discharging.

13 **Q** Can you tell the Commission a little bit about the  
14 court's ruling in the federal court action you had?

15 **A** Yes. In March of 2017, the federal court held that  
16 Carolina Water Service violated their Clean Water Act  
17 permit by failing to connect to the regional system for  
18 more than 15 years and by violating multiple effluent  
19 limits contained in the permit repeatedly. The court  
20 imposed a \$1.5 million penalty against CWS for its  
21 violations of the connection requirement and a \$23,000  
22 penalty for violating the effluent limits.

23 **Q** And did the court grant CWS's reconsideration after this  
24 ruling?

25 **A** So, CWS filed multiple motions after the court's order,

1 as was its practice throughout this litigation. One of  
2 their motions sought reconsideration of the court's  
3 ruling on liability and penalties; another sought to  
4 dismiss the case as moot, even after the court had  
5 ruled.

6 Regarding reconsideration, the court largely denied  
7 the request for reconsideration, finding there was no  
8 basis to change its conclusion that CWS had violated the  
9 Clean Water Act for failing to connect to the regional  
10 system and by exceeding their effluent limitations.  
11 They did grant reconsideration on the \$1.5 million  
12 penalty because the parties had agreed that we would  
13 present evidence on appropriate penalty if they were  
14 found liable, and we had not had a chance to present  
15 such evidence.

16 It is important to note that this penalty  
17 proceeding is still ongoing. We're going to conduct  
18 discovery on the penalty and argue an appropriate  
19 penalty by October 8th. And the court could easily  
20 impose the \$1.5 million penalty, a higher penalty after  
21 reconsidering – or a higher penalty after reconsidering  
22 this evidence.

23 **Q** Was the fine imposed on CWS related to the improper  
24 discharges and effluent violations vacated?

25 **A** No, that was not. The court explicitly refused to

1 vacate the \$23,000 penalty for the effluent limitation  
2 violations. And, again, the penalty for the violation  
3 of the connection requirement was not vacated to never  
4 be reinstated. The court is now deciding what that  
5 penalty should be after briefs are filed in October.

6 **Q** Could CWS have avoided costly litigation with CRK, had  
7 they not violated their NPDES permit and had not  
8 discharged poorly treated waste into the river?

9 **A** Yes, of course. It was the pattern of ongoing effluent  
10 violations that we noticed, and then the failure to  
11 connect and eliminate the discharge by 1999 as required  
12 in the permit. CWS said that it did not have the  
13 ability to resolve the connection issue, but we  
14 disagree, and the federal court has disagreed. The  
15 federal court explained that the onus was on CWS to  
16 connect, regardless of whether they could achieve the  
17 sort of connection that they wanted. The court also  
18 found that there are numerous ways to connect to a  
19 facility, and they found that "connect" does not mean on  
20 the defendant's terms, nor does it mean that they will  
21 have a continuing role after the connection is made.

22 CWS certainly had the power to stop the effluent  
23 limitations that we sued them over, and they did not.

24 **Q** Mr. Stangler, did CWS undertake years of efforts to  
25 comply with its permit, and was it prevented from

1 complying with the connection requirement?

2 **A** I think that assertion by Carolina Water Service is  
3 misleading. This case has a very long history. The  
4 federal court found that, in 1998, they initially  
5 attempted to comply with the permit. However, they  
6 failed to undertake any attempt to comply with the  
7 permit between the years of 2002 and 2014. The long and  
8 short of it is that CWS attempted to connect on terms  
9 that were favorable to CWS, but this does not comport  
10 with the strict liability nature of the Clean Water Act.

11 As we've noted, the effluent limitation violations  
12 were separate violations that CWS also failed to remedy.  
13 Moreover, as is required by the Clean Water Act, we  
14 provided Carolina Water Service with a 60-day notice of  
15 intent to sue letter over this facility on November 4,  
16 2013, and yet we did not file our lawsuit until January  
17 of 2015. CWS had time during that period to try and  
18 resolve this situation, but no resolution was reached.  
19 The idea that our litigation was impossible to avoid is  
20 wrong.

21 **Q** Could you please tell us what the purposes is of a CWA  
22 citizen suit?

23 **A** Yeah. The citizen suit plays a key role in ensuring  
24 that dischargers do not have a license to pollute  
25 indefinitely in cases where the government agencies do

1 not stop such pollution. That is exactly what happened  
2 here. DHEC had not been able to force CWS to comply  
3 with the Clean Water Act and their permit, and so we  
4 stepped in to do so.

5 **Q** Mr. Stangler, what, in your opinion, would be the effect  
6 of the PSC's allowing CWS to recover fees for defending  
7 against such a citizen suit?

8 **A** So a Clean Water Act citizen suit is designed to result  
9 in penalties that have a deterrent effect on current and  
10 would-be polluters. The federal court found that such  
11 penalties are appropriate and, if the PSC allows CWS to  
12 pass on its attorneys' fees to its consumers, then this  
13 mitigates that deterrent effect that Congress intended  
14 with the citizen-suit provision of the Clean Water Act.

15 You have to ask yourself the question, why would a  
16 utility ever voluntarily come into compliance if it  
17 could instead refuse to comply, litigate for years, and  
18 then recover the cost of that litigation from consumers,  
19 even if it doesn't prevail?

20 **Q** Mr. Stangler, does that conclude your testimony?

21 **A** Yes, it does.

22 **MR. NELSON:** Thank you, sir.

23 [PURSUANT TO PREVIOUS INSTRUCTION, THE  
24 PREFILED REHEARING SURREBUTTAL TESTIMONY OF  
25 BILL STANGLER FOLLOWS AT PGS 273-281]

**THE OFFICE OF REGULATORY STAFF  
SURREBUTTAL REHEARING TESTIMONY**

**OF**

**BILL STANGLER**

**AUGUST 29, 2018**



**DOCKET NO. 2017-292-WS**

**Application of Carolina Water Service, Incorporated for  
Approval of an Increase in Its Rates for Water and Sewer  
Services**

**SURREBUTTAL REHEARING TESTIMONY**

**BILL STANGLER**

**ON BEHALF OF**

**THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF**

**DOCKET NO. 2017-292-WS**

**IN RE: APPLICATION OF CAROLINA WATER SERVICE,**

**INCORPORATED FOR APPROVAL OF AN INCREASE IN ITS RATES FOR**

**WATER AND SEWER SERVICES**

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.**

**A.** My name is Bill Stangler. My office is at 1001 Washington Street in Columbia, South Carolina. I am your Congaree Riverkeeper.

**Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.**

**A.** I have a bachelor’s degree in Geography from the University of South Carolina. For the last almost 7 years my full-time job has been as Congaree Riverkeeper - running the non-profit organization and advocating for our local rivers.

**Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA (“COMMISSION”)?**

**A.** No.

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS REHEARING PROCEEDING?**

---

**CONGAREE RIVERKEEPER**  
**1001 Washington Street**  
**Columbia, SC 29201**  
**00303**

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1 A. The purpose of my testimony is to respond to testimony given by witnesses for  
2 Carolina Water Service concerning the federal lawsuit of *Congaree Riverkeeper, Inc. vs.*  
3 *Carolina Water Service, Inc.* (Civil Action Number 3:15-cv-00194-MBS).

4 Q. **HAVE YOU REVIEWED THE PREFILED TESTIMONIES OF CWS’**  
5 **WITNESSES?**

6 A. Yes

7 Q. **WHY DID CRK FILE THE LAWSUIT AGAINST CWS?**

8 A. Our citizen Clean Water Act lawsuit against CWS was brought in an effort to bring  
9 the I-20 facility into compliance with their federal Clean Water Act permit. This permit  
10 had unambiguously required that the I-20 Plant be connected to a regional wastewater  
11 treatment system *and* cease discharging into the Lower Saluda River – a state scenic river  
12 – since 1999. A decade and a half later, CWS’s discharges from the I-20 Plant continued  
13 into waters where the public recreates. There were also numerous effluent limitation  
14 violations at the I-20 Plant. Congaree Riverkeeper’s litigation sought to address both of  
15 these issues.

16 Q. **DOES CRK REGULARLY BRING LAWSUITS AGAINST OTHER GROUPS**  
17 **THAT IMPROPERLY DISCHARGE INTO THE STATE’S WATERWAYS?**

18 A. Congaree Riverkeeper’s mission is to protect and improve water quality, wildlife  
19 habitat, and recreation on the Congaree, Lower Saluda, and Lower Broad Rivers through  
20 advocacy, education, and enforcement of environmental laws. We monitor all sorts of sites  
21 in our watershed and take enforcement action when necessary. While this is the first federal  
22 CWA lawsuit that Congaree Riverkeeper ever filed, we have sent notices of our intent to

1 do so at other sites and have resolved violations at others without the need for litigation.  
2 We would file other litigation for violations of the federal CWA if necessary – in other  
3 words, we did not specifically target CWS as a company. We focused on CWS because  
4 they were clearly violating terms of their Clean Water Act permit, and it was having real  
5 impacts on the River. We would consider litigation against any other company doing the  
6 same thing.

7 **Q. WOULD CRK HAVE BROUGHT THE LAWSUIT AGAINST CWS HAD THE**  
8 **COMPANY NOT HAD MULTIPLE EFFLUENT DISCHARGE VIOLATIONS?**

9 **A.** CWS's regular pattern of ongoing effluent violations was one of the things that  
10 brought this facility to our attention and was a key factor in the decision to file the lawsuit.

11 **Q. WERE CWS'S EFFLUENT DISCHARGE EXCEEDANCES ONLY A**  
12 **SECONDARY COMPONENT OF THE CRK LAWSUIT?**

13 **A.** No. We brought two specific claims in our lawsuit, that CWS had routinely violated  
14 the terms of their NPDES permit with effluent violations, and that they had violated their  
15 permit by failing to connect to the regional sewer system.

16 **Q. IN YOUR OPINION, WAS THE COMPANY'S ONLY LIABILITY THAT WHICH**  
17 **AROSE FROM THEIR INABILITY TO INTERCONNECT WITH TOWN OF**  
18 **LEXINGTON?**

19 **A.** No. CWS was also liable for numerous effluent violations, including repeated  
20 exceedances for fecal coliform bacteria and biochemical oxygen demand (BOD5). The  
21 Court's ruling demonstrates this point as the Court found that CWS had violated the

1 effluent limitations contained in its Clean Water Act permit 23 times - a ruling that the  
2 Court refused to reconsider at CWS's request.

3 **Q. DID CRK BRING SUIT IN AN EFFORT TO HAVE CWS TERMINATE SEWER**  
4 **SERVICE TO THEIR MORE THAN 2,000 CUSTOMERS?**

5 **A.** No. We never asked for a termination of CWS's sewer service to customers in the  
6 litigation, and in fact, when ruling in our favor, the Court gave CWS a year to reach a  
7 resolution in an effort to avoid this sort of termination.

8 **Q. DID CWS VIOLATE ITS NPDES PERMIT REQUIREMENTS BY**  
9 **DISCHARGING UNTREATED WASTE INTO THE RIVER?**

10 **A.** Yes, CWS violated the limits of their NPDES permit. I would say they discharged  
11 undertreated waste because the effluent did not meet the limits of their permit.

12 **Q. DID CWS'S DIFFICULTIES IN NEGOTIATING AN INTERCONNECTION OR**  
13 **SALE OF ITS SYSTEM TO THE TOWN OF LEXINGTON ALLOW CWS TO**  
14 **VIOLATE ITS NPDES PERMIT?**

15 **A.** No. The Clean Water Act is a strict liability statute. All the plaintiff need do is  
16 establish that the defendant violated the terms of its NPDES permit. Good faith efforts to  
17 comply, or alleged impossibility, is not a valid defense to liability. Under the Clean Water  
18 Act the party must either achieve the discharge levels it has been allowed, or pay the  
19 consequences of its discharge, or stop discharging.

20 **Q. TELL ME ABOUT THE COURT'S RULING IN THE FEDERAL COURT**  
21 **ACTION.**

1 A. In March of 2017, the federal court held that CWS violated its Clean Water Act  
2 permit by failing to connect to the regional system for over 15 years and by violating  
3 multiple effluent limits contained in its permit repeatedly. The court imposed a \$1.5  
4 million penalty against CWS for its violation of the connection requirement and a \$23,000  
5 fine against CWS for its violation of the effluent limits.

6 **Q. DID THE COURT GRANT CWS RECONSIDERATION AFTER THIS RULING?**

7 A. CWS filed multiple motions after the Court's Order, as was its practice throughout  
8 this litigation (motions which CWS repeatedly lost after extensive time was spent litigating  
9 them by both sides). One of CWS's motions sought reconsideration of the Court's ruling  
10 on liability and penalties; another sought to dismiss the case as "moot" even after the Court  
11 had ruled. Congaree Riverkeeper spent huge amounts of time dealing with all of CWS's  
12 motions in this litigation, which unquestionably made the attorneys' fees for both sides  
13 much higher than necessary.

14 Regarding reconsideration, the Court largely denied CWS's request for  
15 reconsideration, finding that there was no basis to change its conclusion that CWS had  
16 violated the CWA for failing to connect to the regional facility and by exceeding the  
17 effluent limitations. The court merely granted reconsideration on the \$1.5 million penalty  
18 issue because the parties had agreed that they would present evidence on an appropriate  
19 penalty if CWS was found liable, and the parties had not had a chance to present such  
20 evidence at the time of the Court's ruling. It is important to note that this penalty  
21 proceeding is still ongoing – the parties are now allowed to conduct discovery on penalties

1 and argue what penalty is appropriate by October 8, 2018. The Court could easily impose  
2 a \$1.5 million penalty – or a higher penalty – again, after considering this evidence.

3 **Q. WAS THE FINE IMPOSED ON CWS RELATED TO THE IMPROPER**  
4 **DISCHARGES AND EFFLUENT VIOLATIONS VACATED?**

5 **A.** No. The Court explicitly refused to vacate the \$23,000 penalty for the effluent  
6 limitation violations. And again, the penalty for violation of the connection requirement  
7 was not “vacated” to never be reinstated – the Court will be deciding what this penalty  
8 should be after briefs are filed in early October. The penalty could be less than the \$1.5  
9 million originally assessed, the same amount, or more – it just depends on how the Court  
10 weighs the evidence.

11 **Q. COULD CWS HAVE AVOIDED COSTLY LITIGATION WITH CRK HAD THEY**  
12 **NOT VIOLATED THEIR NPDES PERMIT AND HAD NOT DISCHARGED**  
13 **POORLY TREATED WASTE INTO THE RIVER?**

14 **A.** Yes, of course – it was a pattern of ongoing effluent violations that we noticed, and  
15 then the failure to connect and eliminate these discharges in 1999 as required by the Permit.  
16 CWS says that it did not have the ability to resolve the connection issue, but we disagree  
17 and the federal court disagreed. The federal court explained that “the onus” was on CWS  
18 to connect, regardless of whether CWS could achieve the sort of connection (a bulk  
19 treatment agreement where CWS retained ownership and profits from the system) that it  
20 wanted. *See Congaree Riverkeeper v. CWS*, March 30, 2017 Order at 26. The Court also  
21 found that “there are numerous ways to connect to the facility. The Court finds ‘connect’

1 does not mean on Defendant's terms, nor does it infer that Defendant will have a continuing  
2 role after connection is made." *Id.*

3 And CWS certainly had the power to stop the effluent limitation violations that we  
4 sued over, but they did not.

5 **Q. DID CWS UNDERTAKE YEARS OF EFFORTS TO COMPLY WITH ITS**  
6 **PERMIT AND WAS IT PREVENTED FROM COMPLYING WITH THE**  
7 **CONNECTION REQUIREMENT?**

8 **A.** That assertion by CWS is misleading. This case has a very long history, but as the  
9 federal court found, "in 1998, Defendant initially attempted to comply with the permit;  
10 however, Defendant failed to undertake any attempt to comply with the permit between  
11 2002 and 2014." *Id.* at 28. The long and short of it is that CWS attempted to connect on  
12 terms that were favorable to CWS, but this does not comport with the strict liability nature  
13 of the CWA. As noted above, the effluent limitation violations were separate violations  
14 that CWS failed to remedy.

15 Moreover, as is required by the CWA, Congaree Riverkeeper provided CWS with  
16 60-days' notice of its intent to sue over this facility on November 4, 2013 and did not file  
17 this case for over a year, until January 14, 2015. CWS had time during this period to try  
18 and resolve the situation, but no resolution was reached. The idea that litigation was  
19 impossible to avoid is simply wrong.

20 **Q. WHAT ARE THE PURPOSES OF A CWA CITIZEN SUIT?**

21 **A.** As the Fourth Circuit has recognized, the "citizen suit provision is 'critical' to the  
22 enforcement of the CWA" since it "allows citizens 'to abate pollution when the government

1 cannot or will not command compliance.” *The Piney Run Pres. Ass’n v. The Cnty.*  
2 *Comm’rs of Carroll Cnty., MD*, 523 F.3d 453, 456 (4th Cir. 2008) (quoting *Friends of the*  
3 *Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 152 (4th Cir. 2000);  
4 *Gwaltney*, 484 U.S. at 62). The citizen suit plays a key role in ensuring that dischargers  
5 do not have a license to pollute indefinitely in cases where the government agencies do not  
6 stop such pollution.

7 That is exactly what happened here – DHEC had not been able to force CWS to  
8 comply with the Clean Water Act, and Congaree Riverkeeper stepped in to do so.

9 **Q. WHAT WOULD BE THE EFFECT OF THE PSC ALLOWING CWS TO**  
10 **RECOVER FEES FOR DEFENDING SUCH A CITIZEN SUIT?**

11 **A.** The Clean Water Act citizen suit is designed to result in penalties which have a  
12 deterrent effect on current and would-be polluters. The federal court found that such  
13 penalties are appropriate here (and again, is still considering what penalty would be  
14 appropriate for violations of the connection requirement). If the PSC allows CWS to pass  
15 its attorneys’ fees on to consumers, then this mitigates the deterrent effect that Congress  
16 intended with the citizen suit provision. Why would a utility ever voluntarily come into  
17 compliance if it could choose instead to refuse to comply, litigate for years, and then  
18 recover the costs of litigation from consumers if it did not prevail? This is not how the  
19 CWA was designed and should not be the result here.

20 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

21 **A.** Yes.

1                   **MR. NELSON:** Mr. Stangler is available for  
2 questions from the other parties and Commissioners.

3                   **CHAIRMAN RANDALL:** Thank you. Thank you.  
4 Ms. Valtorta.

5                   **MS. VALTORTA:** No questions.

6                   **CHAIRMAN RANDALL:** Mr. Knowlton?

7                   **MR. KNOWLTON:** I have no questions.

8                   **CHAIRMAN RANDALL:** Thank you.  
9 Company. Mr. Hoefer.

10                  **MR. HOEFER:** Thank you, Mr. Chairman. If I  
11 could have a moment to reorient with Mr. Elliott?

12                  **COMMISSIONER HOWARD:** Mr. Hoefer, you do  
13 realize that's \$400 an hour there.

14                  **MR. HOEFER:** I'm sorry, Mr. Chairman?

15                  **COMMISSIONER HOWARD:** You do realize that's  
16 \$400 an hour you're billing over there.

17                                 [Laughter]

18                                 Just teasing you. Thank you.

19                  **MR. HOEFER:** Commissioner Howard, I have tried  
20 by the word, but I haven't been able to get anybody  
21 to pay me on that basis.

22                                 [Laughter]

23                  **COMMISSIONER HOWARD:** Touché.

24                  **MR. HOEFER:** Thank you. Thank you, Mr.  
25 Chairman.

**CROSS EXAMINATION**

1

2 **BY MR. HOEFER:**3 **Q** Good afternoon, Mr. Stangler. How are you today?4 **A** Not bad. How are you, John?5 **Q** I'm doing well, thank you. You state at page one, on  
6 line two of your prefiled testimony, that you are quote,  
7 "your Congaree Riverkeeper." Who is the "your" you're  
8 referring to there, Mr. Stangler?9 **A** Citizens of the Midlands who care about clean water and  
10 healthy rivers.11 **Q** So is it fair to say that it's more than just the people  
12 who belong to your organizations as members, or people  
13 who recreate on river, or people who do business on the  
14 river; it's the community as a whole?15 **A** Yes.16 **Q** Okay. And you've been employed as the Congaree  
17 Riverkeeper since 2011; is that correct?18 **A** Almost seven years now.19 **Q** 2011 is when you became employed there? And did you  
20 come to that position straight after completing your  
21 Geography degree at USC?22 **A** I was actually in grad school at USC for several years,  
23 and before finishing my master's degree, I took this  
24 job.25 **Q** Okay, all right. Well, thank you. And you had your

1           undergraduate year, you graduated in 2010? Is that  
2           right?

3       **A**     2009.

4       **Q**     2009. So anything that happened with Carolina Water  
5           Service's I-20 system before 2011, you would've learned  
6           about that after the fact?

7       **A**     Yes. I've learned a lot about the – I certainly  
8           followed some issues on the rivers, as I worked as a  
9           river guide and was involved in river issues at my time  
10          at USC. But I certainly learned more about Carolina  
11          Water Service from 2011 and on.

12      **Q**     Okay. Page one, line seventeen, of your testimony, you  
13          state that your job involves – quoting here –  
14          “advocating for local rivers.” Is that correct?

15      **A**     That is correct.

16      **Q**     Tell me, what rivers do you consider to be within the  
17          ambit of your advocacy function?

18      **A**     Yes, so we work on 90 miles of rivers in the Midlands,  
19          which is the Lower Saluda from Lake Murray down to the  
20          confluence, the Broad River from the Parr Shoals dam  
21          down to the confluence, and then the entire length of  
22          the Congaree until it merges with the Wateree River.  
23          Technically – I usually say three rivers, but Little  
24          River in Richland County is also a river and also is in  
25          our jurisdiction. There's also more than 2000 tributary

1           – miles of tributaries that we also work to protect in  
2           our watershed.

3   **Q**    So your advocacy function does include tributaries into  
4           the rivers you've identified?

5   **A**    Yes, it does.

6   **Q**    All right. Now, in connection with your duties, do you  
7           monitor discharges by utilities into those rivers and  
8           tributaries?

9   **A**    Yes, we do.

10  **Q**    How do you go about conducting that monitoring?

11  **A**    There's a handful of ways. We review discharge  
12           monitoring reports, the permittee-responsible  
13           monitoring, both through FOIA requests to DHEC and  
14           through the EPA's enforcement and compliance online  
15           history, ECHO, database. We also collect water quality  
16           samples downstream of several wastewater discharges in  
17           the area.

18  **Q**    So you review the ECHO database for the discharges into  
19           these rivers and the tributaries?

20  **A**    The ECHO database, as well as occasionally doing more  
21           thorough follow-ups with FOIA reviews at DHEC and  
22           actually getting the hard copies of the DMRs.

23  **Q**    Okay. And I want to hand you a document and ask you if  
24           you can tell me what it is [indicating].

25  **A**    [Indicating.] This appears to be a printout from the

1 ECHO website with some information about the Town of  
2 Lexington's Coventry Woods wastewater plant that used to  
3 discharge into Twelve Mile Creek.

4 **Q** And is Twelve Mile Creek one of the tributaries that you  
5 monitor?

6 **A** It is.

7 **Q** And have you reviewed this ECHO report for the Town of  
8 Lexington before?

9 **A** I don't know when that one was done [indicating], and  
10 they update this regularly, so I have reviewed in the  
11 past compliance reports and DMR's for the Coventry Woods  
12 facility.

13 **Q** Okay. Now let me ask you, Mr. Stangler, as an exhibit  
14 to the Complaint that the Riverkeeper filed in federal  
15 court, you also attached an ECHO detailed facility  
16 report for the Carolina Water Service I-20 system, did  
17 you not?

18 **A** I believe we may have used ECHO data to supplement. We  
19 also included the actual DMRs that we copied from DHEC.

20 **MR. HOEFER:** Okay. And, Mr. Chairman, I'm  
21 going to be going back and forth with Mr. Stangler  
22 quite a bit.

23 **BY MR. HOEFER:**

24 **Q** Let me ask you if you could look at this document and  
25 tell me what that is [indicating].

1 A [Indicating.] This appears to be another ECHO printout  
2 for the CWS I-20 facility.

3 Q And does that document bear a legend at the top of each  
4 page?

5 A A legend?

6 Q Does it have writing at the top of each page?

7 A Yes, it appears to be a reference to a court filing.

8 Q And is that reference to the court filing the *Congaree*  
9 *Riverkeeper, Inc., versus Carolina Water Service* case in  
10 United States District Court?

11 A I'm going to assume that it is.

12 Q Well, take –

13 A I don't actually remember the numbers off the top of my  
14 head.

15 Q Did you review the Complaint in the *Congaree Riverkeeper*  
16 case filed in federal court?

17 A [Indicating.] There it is. Yes, the numbers match up.

18 Q Okay. So is this a document that was filed in federal  
19 court?

20 A Yes.

21 MR. HOEFER: Mr. Chairman, at this time, I  
22 would like to enter into the hearing record as the  
23 next exhibits the detailed facility report of the  
24 Lexington Coventry Woods subdivision that Mr.  
25 Stangler identified – and I do have a copy for

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counsel, I'm sorry.

[Documents distributed]

**CHAIRMAN RANDALL:** Okay. We will enter it as Exhibit No. -

**MR. NELSON:** If we could just have a moment?

**CHAIRMAN RANDALL:** Okay.

**MR. NELSON:** Sorry, Mr. Chairman.

**CHAIRMAN RANDALL:** Oh, that's quite all right, Mr. Nelson.

**MR. NELSON:** I still haven't looked at it.

**CHAIRMAN RANDALL:** I'd like to let you review that.

**MR. NELSON:** And I may have a question regarding the relevance of the documents, which Mr. Hoefer, I'm sure, will explain.

[Brief pause]

Again, I don't have an objection to the document itself, provided that Mr. Hoefer can establish what relevance this has to the proceeding.

**CHAIRMAN RANDALL:** Mr. Hoefer, do you intend -

**MR. HOEFER:** I do intend to establish the relevance -

**CHAIRMAN RANDALL:** - to establish the -

**MR. HOEFER:** - of the document.

1           **CHAIRMAN RANDALL:** – relevance? So we will  
2 admit – we'll admit it as Exhibit No. 9.

3                           [WHEREUPON, Hearing Exhibit No. R-9 was  
4 marked and received in evidence.]

5           **MR. HOEFER:** And as the next hearing exhibit,  
6 Mr. Chairman, I would offer the exhibit Mr.  
7 Stangler just identified as being attached to the  
8 Complaint in the federal court case, which is the  
9 ECHO detailed facility report for the CWS I-20  
10 regional system.

11           **COMMISSIONER ERVIN:** Mr. Chairman, could I ask  
12 Mr. Hoefer a question? May I?

13           **CHAIRMAN RANDALL:** Sure.

14           **COMMISSIONER ERVIN:** Mr. Hoefer, how are you,  
15 sir?

16           **MR. HOEFER:** I'm doing fine, Your Honor, how  
17 are you?

18           **COMMISSIONER ERVIN:** I'm great. I know you  
19 are very thorough in your presentation, and we  
20 appreciate that, but I hope you're not going to  
21 make us retry the federal case today.

22           **MR. HOEFER:** Well, Your Honor, I am going to  
23 demonstrate the relevance of the –

24           **COMMISSIONER ERVIN:** All right.

25           **MR. HOEFER:** – documents that I need to –

1                   **COMMISSIONER ERVIN:** Could you give us a hint  
2                   about what that might be, since this has already  
3                   been litigated in federal court?

4                   **MR. HOEFER:** Well, in fact, the Town of  
5                   Lexington's ECHO filing has not been litigated in  
6                   federal court.

7                   **COMMISSIONER ERVIN:** Thank you.

8                   **MR. HOEFER:** But the relevance is, this  
9                   witness has testified that the company was in  
10                  violation of its permit, that his function is  
11                  monitoring the conduct of permitted dischargers,  
12                  and that the attorneys' fees and expenses in this  
13                  case were unnecessary. I think we're entitled to -

14                  **COMMISSIONER ERVIN:** All right.

15                  **MR. HOEFER:** - lay out -

16                  **COMMISSIONER ERVIN:** Thank you.

17                  **MR. HOEFER:** - all of that. Thank you.

18                  **COMMISSIONER ERVIN:** Okay, thank you.

19 **BY MR. HOEFER:**

20 **Q**     So, Mr. Stangler -

21                  **CHAIRMAN RANDALL:** Hang on for one second, and  
22                  let me ask Mr. Nelson -

23                  **MR. NELSON:** I have no objection -

24                  **CHAIRMAN RANDALL:** Okay.

25                  **MR. NELSON:** - to - apparently, where Mr. -

1                   **CHAIRMAN RANDALL:** So we'll enter that as  
2                   Exhibit No. 10.

3                                   [WHEREUPON, Hearing Exhibit No. R-10 was  
4                                   marked and received in evidence.]

5 **BY MR. HOEFER:**

6 **Q**     Mr. Stangler, let me ask you to go back to, first, the  
7           exhibit that's been entered into evidence, consisting of  
8           the exhibit to your Complaint in federal court, the  
9           Congaree River Complaint in federal court, and ask you  
10          to look at that [indicating].

11 **A**     [Indicating.]

12 **Q**     All right, sir. That shows ten permit limit exceedances  
13          occurring in eight of thirteen quarters, during the  
14          period October 1, 2011, and ending December 31, 2014,  
15          does it not?

16 **A**     I see eight of twelve, right here, in the enforcement  
17          compliance summary.

18 **Q**     If you would, go to page 4-of-5 of that document, Mr.  
19          Stangler.

20 **A**     All right. Four? Or five?

21 **Q**     Page 4-of-5.

22 **A**     Okay.

23 **Q**     And you see the section entitled "Three Year Compliance  
24          Status By Quarter"?

25 **A**     Yes.

1 Q And how many quarters are listed across the page there?

2 A Thirteen.

3 Q Okay. And during that 13-quarter period, how many  
4 permit exceedances do you count for the Carolina Water  
5 Service I-20 system?

6 A You have an unknown, you have – one, two, three, four,  
7 five, six, seven – eight with violations, three with no  
8 violations, and one I actually don't know what the UND –  
9 I think it might mean undetermined?

10 Q I'm not asking about the facility level status; I'm  
11 asking about the specific exceedances. If you will look  
12 below that in the chart?

13 A Something important to point out about the way that ECHO  
14 works: What you're looking at is a single exceedance is  
15 listed on here, not all of them, so you actually, to  
16 break down the – you have to go a lot deeper into ECHO  
17 to get the individual noncompliance pieces. So this is  
18 a summary that doesn't even show all the violations, but  
19 I see ten quarters where there were violations for  
20 different parameters.

21 Q Okay. And do you also see in this report, in the  
22 section, "Informal Enforcement Action (5 Years)," do you  
23 see that Carolina Water Service received eight violation  
24 letters or warning letters?

25 A Yes, I see a number of notice of violation letters.

1 Q Okay. And the violations that are shown in this ECHO  
2 detailed facility report, they were part of the basis  
3 for your lawsuit, correct?

4 A Yes.

5 Q Now, let me ask you to go to the detailed facility  
6 report for the Town of Lexington. It's been entered  
7 into evidence. Do you have that document, sir?

8 A I do.

9 Q And if you would, go to page 3-of-5, and look at the  
10 section, "Three-Year Compliance Status by Quarter."

11 A Uh-huh?

12 Q You have that?

13 A Yes.

14 Q And doesn't that show that in the eight quarters – in  
15 eight of the quarters during the period April 1, 2012,  
16 through June 30, 2015, the Town was in violation of its  
17 effluent limits under its NPDES permit?

18 A Yes, it was.

19 Q And there were a total of 16 permit limit exceedances,  
20 were they not?

21 A Actually, I can't speak to the total number, because  
22 this is a summary chart that doesn't show individual  
23 violations, as I mentioned.

24 Q Sure. Just shown on this chart, there are 16?

25 A There are 16 instances where there was a violation

1 within a quarter for a certain parameter.

2 **Q** And given your familiarity with the ECHO detailed  
3 facility report, you know what the abbreviation SNC  
4 stands for, do you not?

5 **A** "Significant noncompliance."

6 **Q** How many instances were there significant noncompliance  
7 by the Town of Lexington during that 13-quarter period?

8 **A** This chart shows four quarters where there were  
9 significant noncompliance violations for two different  
10 parameters.

11 **Q** Okay. And isn't it correct that the detailed report,  
12 detailed facility report, for the I-20 system, that was  
13 attached to your Complaint in federal court, showed no  
14 significant noncompliances, did it?

15 **A** Yes, the CWS I-20 report did not have what the EPA calls  
16 SNC violations.

17 **Q** Significant noncompliance, correct?

18 **A** Yes.

19 **Q** Go to the next page of that exhibit that you're looking  
20 at, page 4-of-5 under "Informal Enforcement Actions."  
21 And tell me, am I not correct that from the period of  
22 August – no, excuse me – April 23, 2010, to August 8,  
23 2014, that the Town of Lexington received 11 letters of  
24 violation or warning letters?

25 **A** That is what this printout shows.

1 Q Okay, thank you. You state at page 12 – let's go back  
2 to your testimony, Mr. Stangler, if we could. You state  
3 at page two, lines one through three, that the purpose  
4 of your testimony – and I'm quoting here – “is to  
5 respond to testimony given by witnesses for Carolina  
6 Water Service concerning the US District Court case  
7 captioned *Congaree Riverkeeper, Inc., versus Carolina*  
8 *Water Service, Inc.*, Civil Action No. 3:15-cv-00194-MBS;  
9 is that correct?

10 A Yes.

11 Q Before we get into talking about that federal court  
12 action, I want to ask you this question: To which  
13 Carolina Water Service witnesses' testimonies are you  
14 responding to?

15 A I reviewed testimony from Mr. Babcock and also Mr.  
16 Gilroy.

17 Q Okay. And you are responding to all parts of both of  
18 those testimonies?

19 A No, I don't believe I'm responding to every part of  
20 their testimony.

21 Q Okay. Is there some part you're not responding to?

22 A I'm unclear on the question. Can you rephrase it?

23 Q Well, I'm asking you which parts of Mr. Gilroy's and Mr.  
24 Babcock's testimonies are you responding to?

25 A Generally, the portions that discussed our litigation.

1 Q Okay. You indicate that the citizen suit brought  
2 against Carolina Water Service by the Congaree  
3 Riverkeeper is the first one Congaree Riverkeeper, Inc.,  
4 every brought?

5 A Yes.

6 Q Prior to that federal court action, had you had any  
7 experience in dealing with attorneys in litigation  
8 matters?

9 A Had I, personally, or had the organization?

10 Q Well, let's start with you personally.

11 A Yes, I've dealt with attorneys in litigation matters  
12 before, but I've never been a participant in a citizen  
13 or environmental lawsuit.

14 Q Okay. And in your dealings with attorneys in litigation  
15 matters prior to the filing of this lawsuit, tell me  
16 what those experiences involve.

17 A General conversations with attorneys, environmental  
18 attorneys – are you specifically talking about  
19 environmental litigation work?

20 Q No, I'm asking about you, personally, as a human being.  
21 Have you dealt with attorneys in litigation matters  
22 prior to the Congaree –

23 A Yeah, I did have an underage drinking ticket when I was  
24 in college.

25 Q Well, that's not what I was talking about.

1 A Well –

2 Q I'm sorry. That's really not what I was driving at.

3 A Well, you asked.

4 Q Let me ask you this question: Is it fair to say you've  
5 been deeply involved in this *Congaree Riverkeeper versus*  
6 *Carolina Water Service* case?

7 A Yes.

8 Q Has there been anyone at Congaree Riverkeeper, Inc.,  
9 that's been more involved in that federal court action  
10 than you?

11 A Until about eight months ago, or seven months ago, I was  
12 the only staff person for the organization, so, no, I've  
13 been the most involved staff person for the  
14 organization.

15 Q Do you recall, Mr. Stangler, giving a presentation to  
16 the Leadership Columbia class for the Columbia Chamber  
17 of Commerce on May 5, 2015?

18 A I do not remember that specific presentation. I give a  
19 lot of presentations to a lot of groups.

20 Q Have you appeared in front of a Leadership Columbia  
21 class?

22 A I have in the past, yes.

23 Q Okay. Do you recall, in that presentation, telling the  
24 Leadership Columbia class that the filing of the citizen  
25 suit in federal court was one of the achievements you

1 were most proud of in your career?

2 **A** I do not recall that, specifically, but I won't deny it.

3 **Q** Okay. Does that sound like something you might've said?

4 **A** Certainly.

5 **Q** Okay. Would you have less pride in that achievement if  
6 the federal court, or a federal court, determined that  
7 Carolina Water Service was not obligated to pay any  
8 penalty?

9 **A** I don't know that that would be the case.

10 **Q** Okay. Did you also state to the Leadership Columbia  
11 class that the Southern Environmental Law Center was  
12 representing the Congaree Riverkeeper for free in this  
13 federal court litigation?

14 **A** I believe I occasionally reference pro bono  
15 representation from SELC, so it's certainly possible  
16 that, in a presentation I gave in 2015, I mentioned  
17 that.

18 **Q** Okay. You indicate – go to page five of your testimony,  
19 if you would, lines six through thirteen?

20 **A** Okay.

21 **Q** You have it? You indicate there that CWS filed multiple  
22 motions in this litigation, correct?

23 **A** Yes.

24 **Q** And that the Congaree Riverkeeper – and I'm going to  
25 quote here – “spent huge amounts of time dealing with

1 all of CWS's motions in this litigation"; is that  
2 correct?

3 **A** Yes.

4 **Q** Do I understand, then, correctly that you personally  
5 have spent a huge amount of time on CRK's responses to  
6 these motions?

7 **A** I think that is a reference to the effort and time put  
8 in by both Southern Environmental Law Center and myself  
9 and my organization.

10 **Q** So your answer to my question is, yes, you have spent –

11 **A** Yes, I have spent a significant amount of time.

12 **Q** Okay. Am I correct in understanding that you've  
13 reviewed all the pleadings, the motions, the motion  
14 exhibits, the affidavits, the orders, the discovery  
15 requests, the discovery responses, and the documents  
16 produced, and all the papers filed in that federal court  
17 action?

18 **A** I have reviewed many. I won't say that I've reviewed  
19 every document in this case. I do depend on my  
20 attorneys to do a good bit of that work, as well.

21 **Q** Can you tell us which documents you think you might not  
22 have reviewed?

23 **A** Now, that seems like a very difficult question to  
24 answer.

25 **Q** Are you suffering from a lapse of memory, or you just

1 don't know?

2 **A** To tell you –

3 **MR. NELSON:** Objection.

4 **WITNESS:** – the documents that I haven't seen?

5 **MR. NELSON:** This is – for one thing, it's  
6 abusive questioning. For another thing, Mr.  
7 Stangler's already answered that he doesn't know  
8 what –

9 **CHAIRMAN RANDALL:** Microphone. Microphone.

10 **MR. NELSON:** Asked and answered, and also I  
11 think Mr. Hoefler is just being abusive of the  
12 witness, and I'd ask him to stop.

13 **CHAIRMAN RANDALL:** Okay. Let's just move on.

14 **MR. HOEFER:** Thank you, Mr. Chairman.

15 **BY MR. HOEFER:**

16 **Q** Well, let me ask you this, Mr. Stangler: Were you  
17 present in federal court for the arguments of counsel on  
18 the motions for summary judgment that were filed by  
19 Congaree Riverkeeper and Carolina Water Service in this  
20 federal case?

21 **A** Yes, I was.

22 **Q** Okay. And did Mr. Holman – and Mr. James Blanding  
23 Holman, IV – did he not represent Congaree Riverkeeper  
24 and make that oral argument?

25 **A** Yes, Blane was one of the attorneys that represented us.

1 Q And did he argue that motion?

2 A Yes.

3 Q Okay. Let's go back to your testimony at page two,  
4 lines eight through nine. Are you there?

5 A Yes.

6 Q And, there, you state, I believe, and I'm quoting –  
7 well, you state Congaree Riverkeeper brought the federal  
8 action against CWS, and now I'm quoting, "in an effort  
9 to bring the I-20 facility into compliance with their  
10 federal Clean Water Act permit." Is that correct?

11 A Yes.

12 Q Tell me, by the phrase "federal Clean Water Act permit,"  
13 do you mean the National Pollutant Discharge Elimination  
14 System Permit No. SC0035564, issued to Carolina Water  
15 Service?

16 A I do mean the NPDES permit for the CWS I-20 wastewater  
17 plant.

18 Q Okay. And that permit was issued on November 17, 1994;  
19 is that correct?

20 A I believe that is correct.

21 Q And it was expired on September 30, 1999; is that  
22 correct?

23 A That sounds correct.

24 Q Okay. I want to show you a document and ask if you can  
25 identify this for me please, sir [indicating].

1 **A** [Indicating.] This appears to be a copy of the 1995  
2 NPDES permit for the I-20 wastewater plant.

3 **Q** And does the document bear the federal court legend at  
4 the top that I asked you about earlier?

5 **A** Yes, it does.

6 **Q** And was this filed in federal court?

7 **A** Yes, it appears to be.

8 **MR. HOEFER:** I would move as the next hearing  
9 exhibit, Mr. Chairman, the November 17, 1994,  
10 Surface Water Discharge permit to Carolina Water  
11 Service. It bears the federal court entry number  
12 1-1.

13 **CHAIRMAN RANDALL:** Mr. Nelson?

14 **MR. NELSON:** Without objection, Mr. Chairman.

15 **CHAIRMAN RANDALL:** It'll be Exhibit No. 11.

16 [WHEREUPON, Hearing Exhibit No. R-11 was  
17 marked and received in evidence.]

18 **BY MR. HOEFER:**

19 **Q** Mr. Stangler, did the Congaree Riverkeeper's lawsuit  
20 result in Carolina Water Service bringing the I-20  
21 facility into compliance with the NPDES permit that was  
22 just entered into the record?

23 **A** I believe the lawsuit resulted in the end of the issues  
24 that we had with the I-20 facility and, eventually,  
25 ended with the elimination of the discharge, and there

1 are no longer any ongoing violations, effluent  
2 violations, from the facility.

3 **Q** Well, at the risk of being accused of being abusive by  
4 Mr. Nelson again, I'll ask you to answer the question I  
5 asked. Did the Congaree Riverkeeper's lawsuit result in  
6 Carolina Water Service bringing the I-20 facility into  
7 compliance with that NPDES permit?

8 **A** I believe it did.

9 **Q** Okay. And how's that?

10 **A** Because one of the requirements of that permit was the  
11 elimination of that discharge, and I believe that  
12 lawsuit was the impetus for that final result.

13 **Q** When did the discharge end, Mr. Stangler?

14 **A** I believe it was February 28th, approximately 1:15 p.m.

15 **Q** And who owned the I-20 system on February 28?

16 **A** The Town of Lexington.

17 **Q** Okay. And when did the Town of Lexington take the I-20  
18 system?

19 **A** I don't actually remember the exact date where they  
20 initiated condemnation and took ownership. I believe it  
21 was earlier that year?

22 **Q** Okay. And isn't it true that that permit that was just  
23 entered into evidence was transferred by DHEC from  
24 Carolina Water Service to the Town of Lexington?

25 **A** Along with the rest of the property that they condemned,

1           they also got the permit.

2   **Q**    Did DHEC transfer the permit from Carolina Water Service  
3           to the Town of Lexington?

4   **A**    I believe they did.

5   **Q**    Okay. So at the time the discharge was eliminated,  
6           Carolina Water Service didn't own the system and didn't  
7           hold the permit, did they?

8   **A**    No.

9   **Q**    Thank you. Now, isn't it also true that the Town of  
10          Lexington had operated the I-20 system for a month  
11          before they eliminated that discharge?

12   **A**    I believe that is correct.

13   **Q**    Okay. So Carolina Water Service never connected the  
14          I-20 system to the Town's regional facility, did it?

15   **A**    I guess you are correct that CWS never did come into  
16          compliance with the permit.

17   **Q**    Okay. Now, let me ask you this: How did you come to  
18          prefile testimony in this case?

19   **A**    ORS reached out and asked if we'd be willing to testify.

20   **Q**    And who, from ORS, called you?

21   **A**    I believe they reached out to the attorneys that worked  
22          on this case, with the Southern Environmental Law  
23          Center, and then I was contacted by our attorneys.

24   **Q**    Okay. So you did not have an initial contact with ORS;  
25          it was your lawyers that had the initial contact with

1           ORS. Is that correct?

2   **A**     Yes, that is correct.

3   **Q**     And your testimony is that the ORS lawyers contacted the  
4           Congaree Riverkeeper, Inc., lawyers in the federal court  
5           case?

6   **A**     To the best of my knowledge.

7   **Q**     Okay. All right. And after that contact, did you meet  
8           with people from ORS?

9   **A**     Yes.

10 **Q**     Okay. When did you meet with them?

11 **A**     We had a phone conversation, and I met at their office  
12           last week.

13 **Q**     Okay. When was the first contact that you had? Was it  
14           the phone conversation?

15 **A**     It was – the first contact was a phone conversation, and  
16           I don't know the exact date. I believe it was within  
17           the last two weeks.

18                   **MR. NELSON:** I'm going to object of this  
19                   continued line of questioning for relevance. I  
20                   don't understand what how we got Mr. Stangler over  
21                   here to testify has to do with anything in this  
22                   case.

23                   **MR. HOEFER:** Your Honor, it is cross-  
24                   examination. There hasn't been any discovery. I  
25                   think I'm entitled to a little latitude to find out

1           how Mr. Stangler – otherwise a disinterested person  
2           – came to testify in this case about legal fees  
3           incurred by Carolina Water Service, which are at  
4           issue in this case.

5                   **CHAIRMAN RANDALL:** Okay. All right. Being  
6           discretionary, we're going to give you some  
7           latitude there.

8                   **MR. HOEFER:** Thank you, Your Honor.

9   **BY MR. HOEFER:**

10 **Q**   Now, Mr. Stangler, let's go back to your testimony, at  
11       page two of your testimony.

12 **A**   Okay.

13 **Q**   Starting on line nine. The permit you're referencing  
14       there, you say, "This permit had unambiguously required  
15       that the I-20 Plant be connected." You see that?

16 **A**   Yes.

17 **Q**   And that permit is the Carolina Water Service I-20 NPDES  
18       permit that's been entered into the record?

19 **A**   Yes.

20 **Q**   Okay. You say this permit had unambiguously required  
21       that the I-20 plant be connected to a regional  
22       wastewater system – regional wastewater treatment system  
23       and cease discharging into the Lower Saluda River, a  
24       State scenic river, since 1999.

25 **A**   Yes.

- 1 Q And you go on to say that, quote, "A decade and a half  
2 later, CWS's discharges from the I-20 plant continued  
3 into waters where the public recreates." Is that right?
- 4 A Yes.
- 5 Q Okay. You're aware, are you not, that CWS's position in  
6 the federal court case was that there was no connection  
7 available to it from the Town of Lexington?
- 8 A I've heard that, yes.
- 9 Q And you are also aware that CWS's position was that a  
10 connection involved just that, a connection of the I-20  
11 system owned by CWS to the Town's regional line?
- 12 A Yes, I'm aware that was –
- 13 Q Okay.
- 14 A – the contention.
- 15 Q You referenced the federal court order a number of times  
16 in your testimony, correct?
- 17 A Yes.
- 18 Q And, specifically, at page five of your testimony, lines  
19 one through three, if you could go there?
- 20 A Yes.
- 21 Q Is that the federal court order that you're talking  
22 about, the one issued in March 2017?
- 23 A Yes.
- 24 Q Okay. Do you have a copy of that federal court order?
- 25 A Not in front of me. I believe one can be provided.

1 Q It's been entered into evidence. You've seen the  
2 federal court order, have you not?

3 A I have.

4 Q Okay. All right. For ease of reference, without having  
5 to bother the court reporter – [indicating].

6 A [Indicating.]

7 Q If you would, go to page 25 of that order, Mr. Stangler.

8 A All right.

9 Q And if you would, go to the top of the page, beginning  
10 with the word "The" in the first paragraph?

11 A The order reads: "The terms in question are 'connect'  
12 and 'available.' The court finds that both 'connect'  
13 and 'available' are ambiguous terms with reasonable  
14 interpretations by both parties. Therefore, the court  
15 will look at extrinsic evidence to determine the meaning  
16 of the terms. Additionally, the court considers the  
17 permit in regard to the Clean Water Act's purpose, which  
18 is to eliminate discharges from the nation's waterways,"  
19 and there's a citation.

20 Q Mr. Stangler, the federal court said that the permit was  
21 ambiguous, didn't it?

22 A That is what this reads right here.

23 Q But yet you testified that the permit unambiguously  
24 required connection, haven't you?

25 A Yes.

1 Q Okay. Are you aware of whether any other courts or  
2 administrative agencies have interpreted this permit in  
3 the same manner that the Congaree Riverkeeper interprets  
4 it?

5 A I am not aware of that.

6 Q Okay. Are you aware of any other courts or agencies  
7 that have interpreted it in the manner that Carolina  
8 Water Service interprets –

9 A I'm not aware of that, either.

10 Q Okay. Well, let me ask you – and I understand that  
11 you've reviewed some and didn't review others. But let  
12 me ask you, if I could, to look at this document and  
13 tell me if you can identify it [indicating].

14 A [Indicating.] This appears to be the administrative law  
15 court final order for a *Carolina Water Service v. South*  
16 *Carolina DHEC* case from 2002.

17 Q And you are in the hearing earlier when Mr. Gilroy  
18 testified on behalf of Carolina Water Service?

19 A Yes.

20 Q Did you hear his testimony mentioning this order?

21 A I did not.

22 Q You did not, okay. And are you aware that, in this 2002  
23 order, the administrative law court found that Carolina  
24 Water Service could not be penalized for not having  
25 connected the I-20 system to the Town's regional line?

1 A I'm not aware of that.

2 Q You're not aware of that. Okay. Thank you. Mr.  
3 Stangler, let's look at another document that was filed  
4 in the federal court action. I'd ask if you can  
5 identify this [indicating]?

6 A [Indicating.] This appears to be an order from the DHEC  
7 board, case between DHEC and Carolina Water Service,  
8 dated 2004.

9 Q Have you ever seen that document before?

10 A Yes, I believe I have.

11 Q You have, okay. And are you aware that that document  
12 affirmed the administrative law court order we just  
13 spoke of, and said Carolina Water Service could not be  
14 penalized for not connecting the I-20 system to the  
15 Town's regional facility?

16 A I do not specifically recall that conclusion.

17 Q You don't?

18 A I don't. You're asking me if I remember the – it's hard  
19 to keep track of all of the different court cases that  
20 I've reviewed that y'all have been part of.

21 Q Well, let me ask you this. What do you know about that  
22 order? You said you were familiar with it.

23 A I do recall I know I've looked at several of the  
24 administrative law cases. I believe this one did deal  
25 with the 208 Plan and the efforts to eliminate the CWS

1 I-20 discharge. I'd be happy to read it again if you  
2 want to point me to a specific section.

3 **Q** No, that won't – you've identified the document. That's  
4 all I would require. Thank you.

5 **A** [Indicating.]

6 **MR. HOEFER:** Mr. Chairman, at this time, I  
7 would move into evidence as the next exhibit a  
8 March 15, 2004, order of the Board of Health and  
9 Environmental Control. It bears the federal court  
10 entry number 16-3.

11 **MR. NELSON:** I'm not sure where any of this is  
12 going, to be honest with you. I think we're –  
13 we're talking about legal –

14 **CHAIRMAN RANDALL:** Microphone.

15 **MR. NELSON:** We're going into tremendous  
16 detail about federal court actions, ALC actions.  
17 This is a DHEC board action. I don't see – most of  
18 these don't even involve the legal fees that are at  
19 issue in this case. So, I don't – other than  
20 trying to show that Mr. Stangler's picking on the  
21 company, somehow, I don't know where any of this is  
22 going. I believe it's irrelevant.

23 **MR. HOEFER:** Mr. Chairman, it's completely  
24 relevant because the Office of Regulatory Staff is  
25 taking the position that the legal fees that had

1           been sought shouldn't be allowed to be recovered.  
2           This witness is saying that Carolina Water Service  
3           filed unnecessary motions. It's necessary for the  
4           company to be able to demonstrate to the Commission  
5           the reasons why they filed those motions in federal  
6           court and the reasons why they took the litigation  
7           posture they did, for the Commission to understand  
8           whether or not the fee was reasonable under the  
9           *Glasscock* and the *Jackson v. Spee* factors, which  
10          this Commission ordered in the order granting the  
11          rehearing be examined. Notwithstanding that ORS  
12          hasn't really addressed that, Carolina Water  
13          Service does intend to follow the Commission's  
14          directive. That's why it's relevant.

15                 **COMMISSIONER ERVIN:** Mr. Chairman, may I make  
16                 a suggestion, and, counsel, perhaps we could save  
17                 some time? I don't know. You look like you've got  
18                 a number of different documents that you want  
19                 entered in the record. If you could go ahead and  
20                 identify them, perhaps we could enter them in the  
21                 record and wouldn't have to go through each one.

22                 **MR. HOEFER:** Well, happily, Commissioner  
23                 Ervin, some of them we may not. I see the stack,  
24                 and I get it.

25                 **COMMISSIONER ERVIN:** I see the big stack.

1           **MR. HOEFER:** But some of them may not need to  
2           come in, and I'll try to go as quickly as I  
3           possibly can.

4           **COMMISSIONER ERVIN:** Thank you. Thank you.

5           **MR. HOEFER:** All right.

6           **CHAIRMAN RANDALL:** Okay, we still need to  
7           address –

8           **MR. NELSON:** If I could briefly respond, I  
9           understand where Mr. Hoefer is going with this  
10          line, but I would point out, as I mentioned in our  
11          opening statement, we are not contesting the  
12          reasonableness of the amount of any of these bills.  
13          What we are contesting is whether or not these  
14          fees, these attorneys' fees, are properly placed on  
15          the backs of the ratepayers, as opposed to be  
16          something that should either be deferred for the  
17          time being until the case is concluded or that  
18          should be paid for by the shareholders. That's our  
19          – we don't question the reasonableness of these  
20          fees.

21          **MR. HOEFER:** Well, Mr. Chairman, fortunately,  
22          ORS doesn't get to decide that. You decided that  
23          when you issued your order on rehearing. And I  
24          will tie it up all at the end, in a nice, neat bow,  
25          so everybody will understand why this is relevant.

1 But they have talked excessively in their order  
2 about the federal court order. And what we need to  
3 demonstrate to the Commission is the reasons why  
4 the company did, in fact, litigate these issues,  
5 did, in fact, file the motions that this witness  
6 has said were excessive, so the Commission can  
7 understand the very question Commissioner Howard  
8 asked, "How are the ratepayers benefiting?" We'll  
9 demonstrate that at the end.

10 **CHAIRMAN RANDALL:** Okay. I'm going to  
11 overrule Mr. Nelson's objection, and we'll  
12 continue. And we'll enter this document as Hearing  
13 Exhibit No. 12. And I would also take note of  
14 Commissioner Ervin's suggestion.

15 [WHEREUPON, Hearing Exhibit No. R-12 was  
16 marked and received in evidence.]

17 **MR. HOEFER:** Thank you, Mr. Chairman. And at  
18 this time, I would ask that the Commission take  
19 notice of a February 25, 2002, order of the South  
20 Carolina Administrative Law Court, issued by Judge  
21 Anderson – Judge Ralph King Anderson, III – and  
22 this order is specifically referenced in the  
23 exhibit that we just entered into evidence.

24 **CHAIRMAN RANDALL:** Okay, we will take notice.

25 **MR. HOEFER:** Thank you, Mr. Chairman.

1 BY MR. HOEFER:

2 Q You heard Mr. Gilroy testify earlier that the Town  
3 didn't have treatment capacity to take the flow from the  
4 I-20 plant in 1999?

5 A Yes, I heard that.

6 Q Do you agree with that testimony?

7 A I – I don't know that as a fact.

8 Q You don't.

9 A I don't, not –

10 Q Okay. You don't know whether or not the Town –

11 A I don't know –

12 Q – had the capacity –

13 A – what the Town's –

14 Q – in 1999?

15 A – capacity was in 1999.

16 Q You don't know, okay.

17 A No.

18 CHAIRMAN RANDALL: Do you have a copy of the  
19 ALC?

20 MR. HOEFER: Yes, sir. How many would you  
21 like, Mr. Chairman?

22 CHAIRMAN RANDALL: Enough for Ms. Wheat and  
23 anybody else.

24 [Document distributed]

25 <

1 **BY MR. HOEFER:**

2 **Q** So, Mr. Stangler, coming back to the question I asked  
3 that you don't know, let me show you this document and  
4 ask if you can identify it [indicating].

5 **A** [Indicating.] It appears to be some sort of agreement  
6 between the Town of Lexington and DHEC.

7 **Q** Have you seen that document before?

8 **A** I don't know that I have.

9 **Q** Does it bear the federal court legend?

10 **A** It does.

11 **Q** So this was one of the documents you may not have  
12 reviewed?

13 **A** This may be one of the documents that I did not review.

14 **Q** Thank you.

15 Beg the Chair's indulgence.

16 [Brief pause]

17 Mr. Stangler, if DHEC and the Town of Lexington  
18 agreed in 2000 that the Town didn't have capacity to  
19 take the flow from the I-20 system, how could Carolina  
20 Water Service connect to the Town's regional line?

21 **A** I think that the federal court clearly said there were  
22 other opportunities. And, again – we can go back and  
23 look at the order if you want – to do that after 2000.  
24 I don't know the exact timing of when more capacity  
25 became available in that system.

1 Q So, again, your testimony is you don't know in the year  
2 2000 whether or not the Town, in fact, had capacity to  
3 take the I-20 flow?

4 A I do not know that.

5 MR. HOEFER: Okay. thank you.

6 Mr. Chairman, at this time, I would ask the  
7 Commission to take notice of its Order No. 2003-10  
8 in Docket No. 2002-147-S, January 7, 2003.

9 CHAIRMAN RANDALL: Okay, we will take notice.  
10 And a copy for Ms. Wheat?

11 MR. HOEFER: [Indicating.]

12 BY MR. HOEFER:

13 Q Mr. Stangler, did you hear Mr. Gilroy testify about the  
14 company's attempt to have the Commission approve a  
15 wholesale service agreement with the Town of Lexington?

16 A I did hear that.

17 Q And you understand that was denied by the Commission?

18 A Yes.

19 Q Let's go back to your testimony, if we could, page two,  
20 lines 20 through 21, Mr. Stangler.

21 A Yes.

22 Q And there you state, quote, "We monitor all sorts of  
23 sites in our watershed and take enforcement action when  
24 necessary"; is that correct?

25 A Yes.

1 Q I'll come back to that "when necessary" part in a  
2 minute, but let me ask you to confirm one way you do  
3 this monitoring is to review the DMR, the discharge  
4 monitoring reports of permit holders?

5 A That is correct.

6 Q Okay. And for this – well, not for this case. Strike  
7 that. You have reviewed the 1997 Water Quality  
8 Management Plan adopted by the Central Midlands Council  
9 of Governments under Section 208 of the Clean Water Act,  
10 have you not?

11 A The 208 Plan, yes.

12 Q And that 208 Plan covers the watershed that you monitor?

13 A Yes, it does.

14 Q And it covers tributaries and rivers that are within  
15 your monitoring and advocacy scope; is that correct?

16 A Yes, it does.

17 Q Okay. Now, isn't the same connection requirement that  
18 CWS had for the I-20 facility applicable to the Town's  
19 Coventry Woods wastewater treatment facility?

20 A The Town's Coventry Woods plant was also considered a  
21 temporary facility that was supposed to tie into the  
22 regional system.

23 Q Okay. And when was it supposed to tie in?

24 A I believe it had a similar timeframe. I don't know the  
25 exact date. And they tied in in, I believe, October of

1 2015; they ended their discharge.

2 **Q** And so they had a similar timeframe; by that, do you  
3 mean they had the same obligation to tie in, or connect,  
4 in 1999 that CWS had?

5 **A** I don't have their permit in front of me, so I can't  
6 speak to –

7 **Q** Okay.

8 **A** – specifics, but I'm sure you have a copy.

9 **Q** Your certainty is going to be rewarded, sir. That's  
10 correct. Let me ask you if you can look at that  
11 [indicating] and identify that for me.

12 **A** [Indicating.] This appears to be a 2000 NPDES permit for  
13 the Town of Lexington's Coventry Woods wastewater  
14 treatment plant.

15 **Q** Have you ever seen that document before?

16 **A** I have.

17 **Q** Okay.

18 **A** I believe, either this one or perhaps a different  
19 version of it. I don't know which years I reviewed.  
20 I've seen the Coventry Woods NPDES permits before.

21 **Q** And when you say different versions, is that because  
22 that permit was renewed and modified a number of times  
23 subsequent to the expiration date of 2002?

24 **A** I say that because I don't know which ones I've actually  
25 looked at in the past. Permits are supposed to be

1 reissued every five years. So when I had an intern  
2 compile all the permits, we had permits that went back  
3 several years.

4 **Q** Okay. Well, let me ask you – well, first, Mr. Chairman,  
5 I'd move, as the next hearing exhibit, the Surface Water  
6 Discharge Permit for the Town of Lexington Coventry  
7 Woods wastewater treatment plant, issued March 24, 2000.  
8 It bears the federal court entry number 81-11.

9 **CHAIRMAN RANDALL:** Mr. Nelson?

10 **MR. NELSON:** No sense making an objection.

11 I'm fine.

12 **CHAIRMAN RANDALL:** This'll be Exhibit No. 13.

13 [WHEREUPON, Hearing Exhibit No. R-13 was  
14 marked and received in evidence.]

15 **BY MR. HOEFER:**

16 **Q** Mr. Stangler, if I could get you to please go to page 5-  
17 of-20 – let's see here. Yeah, page 5-of-22. Do you  
18 have that?

19 **A** The page that starts with groundwater requirements?

20 **Q** Yes, sir, and the next section is headed "D. Schedule of  
21 Compliance"?

22 **A** Yes, sir.

23 **Q** Okay. And if you would read for me, out loud, section  
24 D.2.a.

25 **A** Yes. "In accordance with the Area wide 208 Water

1           Quality Management Plan, this facility is considered a  
2           temporary treatment facility that must be closed out.  
3           The Department has determined that a regional sewerage  
4           system is available. The permittee has until October 1,  
5           2001, to cease discharge from this facility (see  
6           paragraph 1 above)."

7   **Q**    Okay. Mr. Stangler, you've already testified the Town  
8           didn't cease their discharge until October 2015; is that  
9           correct?

10 **A**    Yes.

11 **Q**    So the Town was more than a decade and a half without  
12           eliminating that discharge that they were obligated to  
13           eliminate. That true?

14 **A**    Yes.

15 **Q**    Okay. Why didn't the Congaree Riverkeeper bring a  
16           citizen suit against the Town?

17 **A**    We actually placed the Town of Lexington – we published  
18           what we call the Dirty Half-Dozen List, which was a list  
19           of the top six polluters that we were concerned about  
20           and issues we were looking at, and the Town of Lexington  
21           and their Coventry Woods facility was on that list. We  
22           drew public attention to that issue, and then DHEC  
23           actually issued administrative orders against the Town.  
24           They had a compliance meeting. They were going to – I  
25           believe they were working to remedy issues with that

1 facility. And through that process, we learned that  
2 there were efforts underway to eliminate that discharge  
3 in the near future.

4 **Q** Okay. Let me ask you this. When did the Congaree  
5 Riverkeeper send a notice of violation or a 60-day  
6 notice, if you will, to Carolina Water Service?

7 **A** I am going to have to refer to my notes to remember the  
8 exact date on that, but I believe – [indicating].  
9 November 4, 2013.

10 **Q** Okay. So in 2013, Congaree Riverkeeper had identified  
11 Carolina Water Service, sent them a 60-day notice. Had  
12 Congaree Riverkeeper in 2013, November 2013, had it  
13 identified the Town was in violation of its permit?

14 **A** Yes.

15 **Q** And but you didn't send the Town a 60-day notice, did  
16 you?

17 **A** We did not.

18 **Q** Let me ask you to go –

19 **A** Nor did we send 60-day notices to a handful of other  
20 sewer facilities that may or may not have been in  
21 violation at the time.

22 **Q** Thank you. But is the reason why you didn't send one to  
23 the Town is because they owned the regional line?

24 **A** No.

25 **Q** Okay. Let me ask you to go to page three of your

1 testimony, lines five through six.

2 **A** Yes.

3 **Q** And you say there, quote, "We would consider litigation  
4 against any other company doing the same thing"; is that  
5 correct?

6 **A** That is correct.

7 **Q** Do you mean by that that you would only consider  
8 litigation against a private entity, when you use the  
9 word "company"?

10 **A** I do not.

11 **Q** Okay.

12 **A** A better term may have been "entity."

13 **Q** Okay, thank you. Now you say, also at page three – go  
14 to lines seven through ten. You have that?

15 **A** Yes.

16 **Q** You say that a key factor in Congaree Riverkeeper's  
17 decision to bring the federal court action against CWS  
18 was the multiple effluent discharge violations CWS had;  
19 is that correct?

20 **A** Yes.

21 **Q** And I think we've already established the Town of  
22 Lexington had multiple effluent violations during that  
23 period, did they not?

24 **A** That is correct.

25 **Q** Okay. Now, you were in here and you heard Mr. Gilroy's

1 testimony about the communications between your counsel  
2 and – or, excuse me – Congaree Riverkeeper,  
3 Incorporated's counsel and the Town?

4 **A** Yes.

5 **Q** Why wasn't that affidavit that was drafted and exchanged  
6 between Ms. Wannamaker and Mr. Black – why wasn't that  
7 filed in federal court?

8 **A** I'm actually – I don't know what, specifically, that was  
9 referring to.

10 **Q** You don't know what the affidavit was referring to?

11 **A** I don't know that affidavit off the top of my head.

12 **Q** Okay, well let's – let me show you this document and ask  
13 you if you can identify it [indicating].

14 **A** [Indicating.] This appears to be the same e-mails that  
15 were read earlier.

16 **Q** And this is an exhibit from Mr. Gilroy's testimony  
17 that's been entered into evidence in this case; is that  
18 not correct?

19 **A** I believe it is.

20 **Q** And you reviewed Mr. Gilroy's testimony, didn't you?

21 **A** I did review.

22 **Q** Did you review these in his exhibit?

23 **A** I am not going to claim that I reviewed every page or  
24 every piece of – every bit of testimony.

25 **Q** And you didn't review this exhibit.

1 A This – I have seen some of these e-mails, but, no, I did  
2 not review all of this.

3 Q Okay. Did you review the affidavit?

4 A No.

5 Q Okay.

6 A I did not.

7 Q Thank you. Mr. Stangler, go to page four, line fifteen  
8 of your testimony. And am I not correct that you  
9 mention there the Clean Water Act is a strict liability  
10 statute?

11 A That is correct.

12 Q Is a violation of an NPDES permit a Clean Water Act  
13 violation, Mr. Stangler?

14 A Yes, it is.

15 Q Now go on to page eight of your testimony, if you would,  
16 sir.

17 A [Indicating.]

18 Q You have that? And at page eight of your testimony, you  
19 mention two federal court decisions involving Clean  
20 Water Act violation cases?

21 A Yes.

22 Q Did you review those cases before you filed your  
23 testimony in this case?

24 A I am somewhat familiar with those cases, but actually  
25 that was – testimony was prepared with assistance from

1 my attorneys, and so the citations to court cases were  
2 from the attorneys. So I can't speak to – while I know  
3 I've looked up the *Piney Run Pres.* and *Friends of the*  
4 *Earth* cases before, I'm not – I can't speak to them  
5 right off the top of my head.

6 **Q** Okay. Well, do you consider yourself knowledgeable  
7 generally about appellate court cases dealing with Clean  
8 Water Act violations?

9 **A** I like to tell people that I'm not an attorney; I only  
10 get to play one on TV.

11 **Q** Okay. But you've cited some cases here in your  
12 testimony, correct?

13 **A** Yes.

14 **Q** So I'll ask my question again. Are you generally  
15 knowledgeable about appellate court decisions in cases  
16 involving Clean Water Act violations arising out of  
17 NPDES violations?

18 **A** No.

19 **Q** Are you familiar with any South Carolina cases dealing  
20 with the obligations of a designated management agency?

21 **A** Off the top of my head, no.

22 **Q** Did you read the Carolina Water Service admissions in  
23 the federal court case, their memos?

24 **A** You'll have to be a little more specific.

25 **Q** Did you read the memoranda submitted by Carolina Water

1 Service in the federal court cases – in the federal  
2 court case, the memoranda they have submitted to the  
3 District Court?

4 A I read some of them, yes.

5 Q Okay. Did you ask your attorneys to explain any of the  
6 case law in those memoranda?

7 A Yes, we discussed some of the underlying case law.

8 Q And was one of the cases you discussed *City of Columbia*  
9 *versus Board of Health* which is reported at  
10 355 S.E.2d 536?

11 A Yes.

12 Q You did discuss that case. So you're aware that, in  
13 that case, the South Carolina Supreme Court held that  
14 the burden of making a connection to a regional facility  
15 is on the designated management agency.

16 A I am aware of that.

17 Q Okay. And did you also discuss the case of *Midlands*  
18 *Utility versus DHEC* reported at 437 S.E.2d 120?

19 A I do not recall that one.

20 Q You don't recall that case?

21 A No.

22 Q Well, let me ask you, do you recall reading a case where  
23 the South Carolina Court of Appeals found that a utility  
24 – in fact, *Midlands Utility* – could not be penalized for  
25 violating the permit limits when the *City of Columbia*

1 would not give them a connection?

2 A I do not recall that.

3 Q Okay. Go to page six, line sixteen, in your testimony,  
4 please.

5 A [Indicating.]

6 Q And I think you state there that CWS had the ability to  
7 resolve the connection issue?

8 A What would you like me to –

9 Q At page six, line sixteen?

10 A Yes. You want me to read it?

11 Q No, I'm just asking, you're saying there that CWS did  
12 have the ability to resolve the connection issue. Isn't  
13 that what you're saying?

14 A Yes.

15 Q Okay. All right. What action should they have taken to  
16 resolve the issue?

17 A The contention there is that CWS only acted to resolve  
18 this issue on their terms, and not terms that weren't  
19 necessarily favorable to the company. So it seems that  
20 there would've been other ways to do it that may not  
21 been as financially lucrative for the company.

22 Q Well, let's explore that for a minute, Mr. Stangler.  
23 You do acknowledge, do you not, that the Town of  
24 Lexington refused to offer a wholesale service  
25 connection?

1 **A** I believe that is the case.

2 **Q** And you understand the Town of Lexington took the  
3 position in November of 2015, at a meeting organized by  
4 the Office of Regulatory Staff, disclosed to Carolina  
5 Water Service, that they were legally precluded from  
6 giving wholesale service to Carolina Water Service?

7 **A** Yes.

8 **Q** And that was because the Town of Lexington had entered  
9 into a 2009 contract with the City of Cayce, which  
10 precluded providing wholesale service to private  
11 utilities?

12 **A** Yes.

13 **Q** And that's also because the Town of Lexington had issued  
14 bonds to finance the capacity it was purchasing in the  
15 Cayce treatment plant, and those bonds had covenants  
16 that prohibited the Town of Lexington from offering  
17 wholesale service to a private utility?

18 **A** After 2009.

19 **Q** Correct. You do understand. Okay. Okay. What could  
20 Carolina Water Service have done to – we've established  
21 the Town couldn't give them, wouldn't give them,  
22 wholesale service. What should Carolina Water Service  
23 have done to make the connection from that point  
24 forward?

25 **A** So, actually, the issue is not necessarily a connection

1 but an elimination of the discharge to the Saluda River.  
2 And there are a handful of potential ways that could be  
3 done. Certainly, sale of the facility; condemnation,  
4 friendly or otherwise, are options to do that. There  
5 are perhaps less feasible but still potentially possible  
6 opportunities. Pump-and-haul: Rather than discharging  
7 the waste to the Saluda River, they could pump it from  
8 the lagoon and haul it to an approved treatment facility  
9 that would give them a rate. And I'm sure there are  
10 other possibilities, as well.

11 **Q** Do you know of any approved treatment facilities that  
12 would take pump-and-haul in that capacity?

13 **A** I don't know.

14 **Q** I'm asking you, do you know?

15 **A** I do not – I have not investigated that.

16 **Q** You do not know of any.

17 **A** I'm not responsible for providing that service.

18 **Q** I understand that. I'm just asking if you know of any.

19 **A** I'm not aware of any.

20 **Q** Okay, thank you. Do you think the Town negotiated in  
21 good faith with CWS?

22 **A** I can't speak to that.

23 **Q** Okay. Now, again, we've established you've reviewed  
24 some of the documents filed in federal court. Did you  
25 happen to review the affidavits of Mr. Gilroy and Mr.

1 Durham on behalf of Carolina Water Service, filed in  
2 federal court?

3 **A** I'm sure I did at one point. It would likely have been  
4 several years ago.

5 **Q** Okay. And you read in Mr. Gilroy's testimony in this  
6 case where he described communication he had with Mr.  
7 Allen Lutz, of the Town of Lexington?

8 **A** I don't recall that, specifically.

9 **Q** Okay. Let me ask you if you'd take a look at that  
10 document and tell me what that is [indicating].

11 **A** [Indicating.] This appears to be an e-mail between Bob  
12 Gilroy and Allen from the Town of Lexington.

13 **Q** Okay. And this was an exhibit to Mr. Gilroy's testimony  
14 in this case. Did you review his exhibit?

15 **A** I did not get to review all of the exhibits, so I can't  
16 say that I saw this one.

17 **Q** Okay. All right. Mr. Stangler –

18 **A** Yes.

19 **Q** – at page five, lines 11 through 13 of your testimony,  
20 you state that, quote, “Congaree Riverkeeper spent huge  
21 amounts of time dealing with all of CWS's motions in  
22 this litigation, which unquestionably made the  
23 attorneys' fees for both sides much higher than  
24 necessary”; is that correct?

25 **A** Yes.

1 Q Is it fair to say you think CWS filed too many motions  
2 in the federal court case?

3 A Yes.

4 Q Okay. What's your base of knowledge with respect to the  
5 appropriate number of motions filed in a federal court  
6 action?

7 A It is a personal opinion of mine.

8 Q Okay. If CWS wanted to avoid filing motions and the  
9 Town was unwilling or unable to provide wholesale  
10 service, what was it that CWS should've done in order to  
11 avoid filing those motions?

12 A Motions that included attempts to stay the case and  
13 motions that attempted to dismiss the case for standing,  
14 we could have let the case proceed.

15 Q Well, I'm asking a different question.

16 A Okay.

17 Q If they wanted to reduce the number of motions they were  
18 filing, and the Town would not give them a wholesale  
19 connection, what could Carolina Water Service have done  
20 with respect to the Town?

21 A I presume you could've made them other offers to  
22 eliminate the discharge.

23 CHAIRMAN RANDALL: Mr. Hoefer, let me ask you,  
24 real quick. We're kind of looking for that little  
25 bow that you were talking about earlier.

1           MR. HOEFER: It's coming, Mr. Chairman, and it  
2           won't be long.

3           CHAIRMAN RANDALL: Won't be long?

4           MR. HOEFER: It won't be long.

5           CHAIRMAN RANDALL: Okay.

6           MR. HOEFER: Now, I'll qualify that by saying  
7           it's sort of like Mr. Elliott's "brief," but it's  
8           not --

9           CHAIRMAN RANDALL: Well, that's not any good.

10          MR. HOEFER: But it's not quite that bad.

11          CHAIRMAN RANDALL: Okay. We got another ten  
12          minutes before Ms. Wheat needs to break, so --

13          MR. HOEFER: Thank you, Mr. Chairman.

14   **BY MR. HOEFER:**

15   **Q**    Mr. Stangler, page seven, line 17 through 19, of your  
16          testimony?

17   **A**    Could you repeat those numbers?

18   **Q**    Page seven, lines 17 through 19.

19   **A**    Yes.

20   **Q**    You state CWS had time, during this period, to try to  
21          resolve the situation, but no resolution was reached; is  
22          that correct?

23   **A**    Yes.

24   **Q**    During that period, isn't it true that the Town refused  
25          to offer wholesale service?

1 A I guess so.

2 Q And isn't it also true that the Town never offered to  
3 purchase the CWS system during that period?

4 A I'm not familiar with all of the negotiations that you  
5 had with the Town.

6 Q Are you aware of any offer that was made by the Town of  
7 Lexington to purchase the I-20 system?

8 A Of an offer?

9 Q Yes.

10 A During that time period, or otherwise?

11 Q Otherwise or during that time period.

12 A I believe the Town did make an offer to purchase the  
13 system. I don't know the exact date.

14 Q Was it after the federal court issued its order imposing  
15 the \$1.5 million penalty on CWS?

16 A I believe that is correct.

17 Q Okay. And how much was that offer for, if you know?

18 A I do not know, of the top of my head.

19 MR. HOEFER: Okay. Mr. Chairman, if you'll  
20 indulge me, I'm going to try to cut some things  
21 out.

22 CHAIRMAN RANDALL: Good plan.

23 [Brief pause]

24 BY MR. HOEFER:

25 Q Go to page eight of your testimony, Mr. Stangler.

1    **A**    All right.

2    **Q**    At line 16, I think you asked this rhetorical question –  
3           correct me, if I'm wrong – “Why would a utility ever  
4           voluntarily come into compliance if it could choose,  
5           instead, to refuse to comply, litigate for years, and  
6           then recover the cost of litigation from consumers if it  
7           did not prevail?”

8    **A**    Yes, I asked that rhetorical question.

9    **Q**    Okay. Let me ask you this question, Mr. Stangler: If  
10           the designated management agency obligated to eliminate  
11           a discharge under a 208 Plan has no obligation to  
12           provide wholesale service, and can make a low or even no  
13           offer to purchase a private utility system, knowing that  
14           the penalties are going to be imposed on that utility  
15           system if it does not accept the offer, why would a  
16           designated management agency ever offer fair  
17           compensation for that utility system?

18   **A**    I don't know the answer to that question.

19   **Q**    Okay, thank you. We've already covered this, I think,  
20           but just to reconfirm, you were present on November 17,  
21           2016, on the motions for summary judgment in federal  
22           court?

23   **A**    Yes.

24                    **COMMISSIONER ERVIN:** Now you're repeating  
25           yourself. You've asked that question and it's been

1 answered. I think we're losing patience with you,  
2 counselor. We've tried -

3 MR. HOEFER: I'm about -

4 COMMISSIONER ERVIN: - to be patient. We  
5 have.

6 MR. HOEFER: I'm about to conclude, Your  
7 Honor.

8 COMMISSIONER ERVIN: Thank you.

9 MR. HOEFER: Thank you.

10 BY MR. HOEFER:

11 Q Let me hand you this document, if I could, sir  
12 [indicating].

13 A [Indicating.]

14 Q Let me ask you to turn to page 25.

15 A Would you like me to identify the document?

16 Q Well, I'm going to ask you some questions about it.  
17 It'll go quickly, I promise. Excuse me, I'm sorry.  
18 Page 51. I apologize.

19 A [Indicating.]

20 MR. NELSON: I would like somebody to identify  
21 what this document is. I don't even -

22 CHAIRMAN RANDALL: That would be nice.

23 MR. HOEFER: Certainly.

24 [Document distributed]

25 <

1 BY MR. HOEFER:

2 Q Now, Mr. Stangler, this is a transcript of that hearing  
3 in federal court, is it not?

4 A I believe it is.

5 Q Okay. And I ask you to go to page 51, line 25.

6 A Okay.

7 Q And the person identified there, Mr. Holman, is that the  
8 Congaree Riverkeeper attorney, James Blanding Holman,  
9 IV?

10 A Yes.

11 Q Okay. Let me ask you to go to page 55.

12 A You're going to give me paper cuts.

13 Q And if you would, come to line six.

14 A Okay.

15 Q And if you would, I'd like you to read aloud to the  
16 Commission starting on line six, and read it through  
17 line 16.

18 A "CWS did not deny that this court could order shutdown.  
19 You asked the question. And the answer was, that would  
20 be a," something, something, "man, that would be – we  
21 would – nobody wants to see that, it's an environmental  
22 problem, it's a practical problem, it would open up CWS  
23 for liability.

24 "Your Honor, shutdown of a facility that is not  
25 complying with the Clean Water Act is relief that we

1 sought, it is relief that is appropriately considered,  
2 and should be considered at the appropriate time. No  
3 one wants to create a public health emergency, but we do  
4 need to stop the environmental degradation that's  
5 happening."

6 **Q** Mr. Stangler, your testimony that the Congaree  
7 Riverkeeper never asked for termination of service of  
8 the CWS customers in federal court is not true, is it?

9 **A** To stop CWS from providing service – sewer service to  
10 their customers is certainly different than allowing the  
11 company to continue discharging into the river  
12 illegally, in my opinion.

13 **Q** Was Mr. Holman your attorney in this case?

14 **A** Yes.

15 **Q** Was he authorized to make the statement to the court?

16 **A** Yes.

17 **Q** Did he not say that "Shutdown of a facility that is not  
18 complying with the Clean Water Act is relief that we  
19 sought"?

20 **A** He said that, yes.

21 **MR. HOEFER:** Thank you.

22 No further questions, Mr. Chairman.

23 **CHAIRMAN RANDALL:** Thank you. We're going to  
24 take a break for ten minutes.

25 [WHEREUPON, a recess was taken from 4:58

1 to 5:10 p.m.]

2 **CHAIRMAN RANDALL:** Please be seated.

3 Okay. Commissioners, questions? Commissioner  
4 Whitfield.

5 **COMMISSIONER WHITFIELD:** Thank you, Mr.  
6 Chairman.

7 **EXAMINATION**

8 **BY COMMISSIONER WHITFIELD:**

9 **Q** Mr. Stangler, just one question for you.

10 **A** All right.

11 **Q** Mr. Stangler, why was DHEC unable to force Carolina  
12 Water Service to comply with the Clean Water Act, as you  
13 state on page eight in your surrebuttal rehearing  
14 testimony?

15 **A** I can't speak to the exact reasons that they weren't  
16 able to do it. They certainly made some attempts. And  
17 to be completely honest, it seems like they just gave  
18 up. After years of litigation, the case that they had  
19 was stayed and was never picked back up, and they  
20 stopped issuing enforcement actions.

21 **COMMISSIONER WHITFIELD:** Thank you.

22 That's all I have, Mr. Chairman.

23 **CHAIRMAN RANDALL:** Commissioners, anyone else?

24 [No response]

25 Mr. Nelson, redirect.

**Dawn Hipp -- Direct Examination by Ms. Belser**

Docket No. 2017-292-WS

Carolina Water Service, Inc./ REHEARING

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1 **BY MS. BELSER:**

2 **Q** Ms. Hipp, would you state your name and occupation for  
3 the Commission, please.

4 **A** [HIPPI] Certainly. My name is Dawn Hipp, and I am the  
5 chief operating officer with the Office of Regulatory  
6 Staff.

7 **Q** And did you prefile 30 pages of direct rehearing  
8 testimony in this case on August 16th?

9 **A** [HIPPI] Yes, I did.

10 **Q** Do you have any changes or updates to your prefiled  
11 testimony?

12 **A** [HIPPI] There is one small update. My job title changed  
13 on August 17th, and that is not reflected in my direct  
14 testimony.

15 **Q** And that would be on page one, line thirteen?

16 **A** [HIPPI] That's correct.

17 **Q** And that new job title is -

18 **A** [HIPPI] Chief operating officer.

19 **Q** Thank you. With that update, if I asked you the  
20 questions contained in your prefiled direct rehearing  
21 testimony, would your answers remain the same?

22 **A** [HIPPI] Yes, they would.

23 **MS. BELSER:** Mr. Chairman, I ask that the  
24 prefiled direct rehearing testimony of Ms. Hipp be  
25 entered into the record of this case is if given

1 orally.

2 CHAIRMAN RANDALL: Ms. Hipp's prefiled direct  
3 rehearing testimony will be read into the record as  
4 if given orally from the stand.

5 BY MS. BELSER:

6 Q Ms. Hipp, did you also prepare eight exhibits marked  
7 Rehearing Exhibits DMH-1 through DMH-8 and which were  
8 attached to your prefiled direct testimony?

9 A [HIPPI] Yes, I did.

10 Q And of those habits, are Rehearing Exhibits DMH-2, -3,  
11 -4, and -5 filed under seal because those exhibits  
12 contained records deemed confidential by CWS?

13 A [HIPPI] Yes. Yes, they are.

14 Q Do you have any changes or corrections to either the  
15 public version or the confidential version of your  
16 exhibits?

17 A [HIPPI] No, I do not.

18 MS. BELSER: Mr. Chairman, I'm going to ask  
19 that there be two hearing exhibits, one for the  
20 public version of these exhibits and then the  
21 confidential versions in a separate exhibit. So at  
22 this time I would ask that the public version of  
23 Ms. Hipp's Rehearing Exhibits DFS<sub>[sic]</sub>-1 through  
24 DFS<sub>[sic]</sub>-8, which were filed with the Commission as  
25 attachments to the prefiled direct rehearing

1 testimony, be marked as the next hearing exhibit  
2 and entered into the record of this case.

3 **CHAIRMAN RANDALL:** Okay. Ms. Hipp's testimony  
4 – public exhibits, excuse me, DMH-1 through -8,  
5 will be entered as Hearing Exhibit No. 16.

6 [WHEREUPON, Hearing Exhibit No. R-16 was  
7 marked and received in evidence.]

8 **MS. BELSER:** I also request that the  
9 confidential versions of Ms. Hipp's Exhibits DMH-2  
10 through DMH-5, which were filed under seal with the  
11 Commission, be marked as a composite exhibit and  
12 marked as the next hearing exhibit number and  
13 entered into the record of this case.

14 **CHAIRMAN RANDALL:** Okay. Ms. Hipp's  
15 confidential Exhibits -2 through -5 will be entered  
16 as Exhibit No. 17.

17 [WHEREUPON, Hearing Exhibit No. R-17 was  
18 marked and received in evidence.]

19 **MS. BELSER:** Thank you, Mr. Chairman.

20 **BY MS. BELSER:**

21 **Q** Ms. Hipp, did you also prepare and prefile 14 pages of  
22 surrebuttal rehearing testimony?

23 **A** [HIPPI] Yes, I did.

24 **Q** And do you have any changes or updates to your  
25 surrebuttal testimony?

1 A [HIPP] No, I do not.

2 Q If you were asked those questions from the surrebuttal  
3 testimony, would your answers remain the same?

4 A [HIPP] Yes, they would.

5 MS. BELSER: Mr. Chairman, I'd ask that Ms.  
6 Hipp's prefiled surrebuttal rehearing testimony be  
7 entered into the record as if given orally from the  
8 stand.

9 CHAIRMAN RANDALL: Ms. Hipp's surrebuttal  
10 testimony will be read into the record as if given  
11 orally from the stand. Thank you.

12 MS. BELSER: Thank you.

13 BY MS. BELSER:

14 Q And, Ms. Hipp, did you also prepare two exhibits marked  
15 Surrebuttal Rehearing Exhibits DMH-1 and DMH-2, which  
16 were attached to your surrebuttal testimony?

17 A [HIPP] Yes, I did.

18 Q And do you have any changes or corrections to those  
19 exhibits?

20 A [HIPP] I do not.

21 MS. BELSER: Finally, Mr. Chairman, I ask that  
22 Ms. Hipp's two exhibits, DFS<sub>[sic]</sub>-1 and DFS<sub>[sic]</sub>-2 that  
23 were attached to the surrebuttal rehearing  
24 testimony, be marked as the next hearing exhibit  
25 and entered into the record of this case.

1                   **CHAIRMAN RANDALL:** Okay.. Ms. Hipp's  
2                   Surrebuttal Exhibits DMH-1 and -2 will be entered  
3                   as Exhibit No. 18.

4                                 [WHEREUPON, Hearing Exhibit No. R-18 was  
5                                 marked and received in evidence.]

6                   **MS. BELSER:** Thank you, Mr. Chairman.

7 **BY MS. BELSER:**

8 **Q**     Ms. Hipp, do you have a summary of your direct and  
9                   surrebuttal testimonies?

10 **A**     [HIPP] Yes, I do.

11 **Q**     Please provide that to the Commission.

12 **A**     [HIPP] Certainly.

13                   I could be optimistic and say "good afternoon,"  
14                   like Daniel has done; however, I think we'll go "good  
15                   evening." Chairman and members of the Commission, thank  
16                   you for the opportunity to discuss these issues which we  
17                   find are very important to CWS ratepayers.

18                   In summary, ORS requests that the Commission amend  
19                   its ruling in Order 2018-345(A) to adopt ORS's  
20                   adjustment to remove \$96,892 in order to normalize  
21                   sludge-hauling and -disposal expense, as you've heard  
22                   from ORS Witness Sullivan; deny recovery of \$336,915 in  
23                   litigation expenses attributed to the US District Court  
24                   case with the Congaree Riverkeeper, in which CWS was  
25                   found to have violated its environmental permits on

1 numerous occasions; deny recovery of \$130,643 in  
2 litigation expense attributed to the US District Court  
3 case CWS initiated against the US EPA and Town of  
4 Lexington that was subsequently dismissed; establish a  
5 regulatory asset for litigation costs related to the  
6 Town of Lexington condemnation action and the two  
7 appeals of the DHEC administrative orders, and  
8 Commission, the Commission<sub>[sic]</sub> and ORS have agreed to a  
9 deferral account for those charges related to the Town  
10 of Lexington condemnation, and you heard about that  
11 earlier today; and then, finally, adopt ORS's  
12 adjustment to remove approximately \$2242 in plant-in-  
13 service related to the EQ basin.

14 I'd like to break down, even at this late hour, our  
15 detailed explanation as to why these adjustments are  
16 appropriate for the Commission to look at.

17 First, sludge hauling: As explained in ORS's  
18 testimony, the test-year expenses for sludge hauling at  
19 the Watergate and Friarsgate wastewater treatment  
20 facilities were atypical in comparison to the sludge-  
21 hauling expenses reported by the company for the years  
22 2015 and 2016. While the company provided no specific  
23 reasons for the higher-than-normal sludge-hauling  
24 expense at their Watergate facility, the company  
25 acknowledged one of the causes of the higher-than-normal

1 recommended by the company.

2 Moving on to litigation expenses, which we find are  
3 an important part of this case, I think it might be  
4 helpful for me to provide just a basic overview of ORS's  
5 position on the litigation expenses. Today, CWS  
6 customers are paying rates for wastewater service that  
7 include approximately \$1 million in litigation expenses.  
8 Of that \$1 million, approximately \$340,000 are  
9 attributed to the US District Court case in which CWS  
10 was found to have violated the Clean Water Act and  
11 severely fined by the court. CWS has not demonstrated  
12 that its customers received any benefit from this  
13 litigation. In fact, the customers have not received  
14 the service quality that the Commission regulations  
15 require.

16 Commission Regulations 103-540 require CWS to  
17 operate and maintain, in safe, efficient, and proper  
18 conditions, all of its facilities and equipment used in  
19 connection with the services it provides to any  
20 customer. Likewise, in Commission Regulation  
21 103-570(A), CWS is required to comply with all laws and  
22 regulations of the State and local agencies pertaining  
23 to sewerage service. CWS should not be rewarded for  
24 failing to provide service in compliance with State and  
25 federal laws. If CWS is allowed to recover these legal

1 costs from their customers, the company has no incentive  
2 to operate its utility systems in compliance with State  
3 and federal laws.

4 Customers are also paying for approximately  
5 \$130,000 in litigation expense attributed to CWS's  
6 attempt to sue the US EPA and the Town of Lexington.  
7 This case was dismissed, as you have heard earlier  
8 today, and, again, CWS has not demonstrated how the  
9 customer benefited from this attempt to sue the Town and  
10 the US EPA, and which was characterized by one of the  
11 witnesses today for CWS as very difficult to win. CWS's  
12 attempt to sue the US EPA and the Town of Lexington was  
13 not successful, did not minimize costs, and CWS should  
14 not be allowed to recover these litigation expenses from  
15 the ratepayer.

16 Turning to the condemnation and the two DHEC  
17 appeals, the condemnation of the I-20 sewer system by  
18 the Town of Lexington and the appeals of the DHEC  
19 administrative orders are ongoing and no final order has  
20 been issued. Therefore, it is premature for CWS to be  
21 allowed to recover these costs from ratepayers. CWS's  
22 current rates include these litigation expenses, yet the  
23 cases aren't concluded and the outcomes aren't known.  
24 ORS recommends a regulatory asset be established for the  
25 legal expenses related to the condemnation and appeals

1 of the DHEC administrative orders, such that the  
2 Commission can consider these expenses and how they  
3 should be treated in the next general rate case. The  
4 regulatory asset, as we had discussed earlier, should be  
5 limited only to the litigation expenses, and no carrying  
6 costs should be allowed to accrue. And as I mentioned,  
7 the company and ORS agree that the Town of Lexington  
8 expenses should be placed in a deferral.

9 At a more granular level – because we want to get  
10 in deep, this late in the afternoon.

11 [Laughter]

12 – ORS analyzed and verified the legal expenses and  
13 invoices, the allocation of those expenses that were  
14 contained in the total that's in the Commission order of  
15 \$996,808.

16 In its rehearing testimony, CWS indicated that  
17 several of the invoices included for recovery in that  
18 original order were not attributed to the five legal  
19 actions that we are addressing today and are in dispute.  
20 CWS indicates that the proper starting balance for  
21 litigation expenses for the rehearing is \$991,508.64,  
22 and ORS recommends the Commission adopt the following  
23 adjustments to that starting balance, based on ORS's  
24 review of these legal invoices and the allocation:

25 Remove \$467,558.64 in expenses, after ORS

1 adjustments to address redactions, allocation errors,  
2 and unallocated and unsupported expenses and advances  
3 related to the two US District Court cases, in which the  
4 customer received no benefit.

5 Establish a regulatory asset for the legal expenses  
6 related to the condemnation of the I-20 sewer system and  
7 the two DHEC appeals. The current total for these  
8 actions are roughly \$334,406. No expenses would be  
9 recovered from customers until the outcomes of the  
10 litigation are final and the Commission establishes an  
11 amortization period for the deferral in the next rate  
12 case.

13 And, finally, remove \$189,543 in legal expenses  
14 related to work descriptions that contained a redaction  
15 which limited ORS's review of the work performed or for  
16 expenses and advances that were unallocated,  
17 unsupported, and undocumented.

18 Turning to the Friarsgate EQ basin liner project,  
19 Order 2018-345(A) allowed CWS to include \$1,081,375 as  
20 plant-in-service related to the Friarsgate EQ basin  
21 liner project. As you recall, ORS did not agree with  
22 CWS's pro forma adjustment to plant-in-service related  
23 to this project, because the EQ liner was not installed  
24 and it was not providing service to CWS customers.  
25 ORS's original proposal would have allowed CWS to add

1                   **DIRECT REHEARING TESTIMONY AND EXHIBITS OF**  
2                                   **DAWN M. HIPPI**  
3                                   **ON BEHALF OF**  
4                   **THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF**  
5                                   **DOCKET NO. 2017-292-WS**  
6                   **IN RE: APPLICATION OF CAROLINA WATER SERVICE,**  
7                   **INCORPORATED FOR APPROVAL OF AN INCREASE IN ITS RATES FOR**  
8                                   **WATER AND SEWER SERVICES**

9  
10 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.**

11 **A.**           My name is Dawn M. Hipp. My business address is 1401 Main Street, Suite 900,  
12 Columbia, South Carolina 29201. I am employed by the State of South Carolina as the  
13 Chief Operating Officer  
~~Director of the Utility Rates and Services Department~~ of the Office of Regulatory Staff  
14 (“ORS”).

15 **Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.**

16 **A.**           I received my bachelor’s Degree in political science from Minnesota State  
17 University - Moorhead. Prior to my employment with ORS, I managed the financial,  
18 operations and regulatory aspects for an environmental company that provided turn-key  
19 hazardous waste consulting services for the United States Department of Defense.

20           In 2004, I joined ORS as a Program Specialist for the Water and Wastewater  
21 Department. I became a Director in 2007 and currently manage the regulatory operations  
22 of the ORS Utility Rates and Services Department. In this role, I supervise the daily

1 activities which include regulatory analysis and compliance monitoring for electric, natural  
2 gas, water and wastewater investor-owned utilities. In addition, I am responsible for the  
3 operations of the ORS Consumer Services Division.

4 **Q. HAVE YOU TESTIFIED BEFORE THE PUBLIC SERVICE COMMISSION OF**  
5 **SOUTH CAROLINA (“COMMISSION”)?**

6 **A.** Yes. I have testified on numerous occasions before the Commission relating to  
7 general rate cases, consumer complaints and other proceedings.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS REHEARING**  
9 **PROCEEDING?**

10 **A.** The purpose of my rehearing testimony is to re-affirm the positions identified by  
11 ORS witnesses Matthew P. Schellinger II and Zachary J. Payne during the hearing held on  
12 April 3, 2018, and to present ORS’s analysis and recommendations resulting from new  
13 evidence presented by Carolina Water Service, Inc. (“CWS” or “Company”) upon request  
14 by the Commission in accordance with Order 2018-494. Specifically, my testimony will  
15 focus on the following issues decided by this Commission:

- 16 1) Recovery of sludge hauling expenses that were abnormally high during the test year  
17 for Friarsgate and Watergate wastewater treatment facilities (“WWTF”);
- 18 2) Recovery of litigation costs related to federal and administrative court cases which  
19 total \$998,606 and are amortized over 66.67 years;
- 20 3) Recovery of \$1,081,375 in capital costs related to replacement of the Friarsgate  
21 Equalization Basin Liner (“EQ Project”) which is not in-service to customers; and,

- 1           4) Implementation of water rates for Service Territory 1 and Service Territory 2 that  
2           do not allocate the increase in revenue requirement in a transparent and fair manner.

3   **1. Sludge Hauling Expense**

4   **Q. DID ORS IDENTIFY ANY FACTORS WHICH CONTRIBUTED TO THE**  
5   **ABNORMALLY HIGH SLUDGE HAULING EXPENSE DURING THE TEST**  
6   **YEAR ENDING AUGUST 31, 2017 (“TEST YEAR”)?**

7   **A.**           Yes, ORS identified several factors which contributed to the high sludge hauling  
8           expense during the test year and which lead to ORS’s recommended adjustment of  
9           \$(96,892) to normalize sludge hauling expenses for the Friarsgate and Watergate WWTFs.

10   **Sludge Hauling for the Watergate WWTF**

11           CWS **did not** dispute ORS’s adjustment to normalize sludge hauling expenses for  
12           the Watergate WWTF in testimony provided at the initial hearing. ORS recommends the  
13           Commission accept ORS’s adjustment to normalize the sludge hauling expenses for the  
14           Watergate WWTF based on the average sludge hauling expenses for 2015, 2016 and 2017.  
15           The sludge hauling expenses for the test year were \$72,007 as reflected in ORS witnesses  
16           Payne and Sullivan’s testimony. CWS witness Michael Cartin provides no additional  
17           information on page 5 of his revised rehearing direct testimony to substantiate sludge  
18           hauling costs for the Watergate WWTF will reach the test year levels of \$72,007. If one  
19           were to annualize the five months of data reflected in CWS witness Cartin’s revised  
20           rehearing testimony, the Company’s sludge hauling expense would be approximately  
21           \$51,000 which is close to the three-year average proposed in the normalization adjustment  
22           by ORS witnesses Payne and Sullivan.

1 **Q. PLEASE EXPLAIN WHY CWS RATEPAYERS SHOULD NOT PAY FOR**  
2 **ABNORMALLY HIGH SLUDGE HAULING EXPENSE FOR THE FRIARSGATE**  
3 **WWTF.**

4 **A.** Fundamentally, test year expenses are the starting point for development of future  
5 rates and are designed to reasonably represent the expected operating conditions of the  
6 Company during the time customers will be required to pay the new rates approved by the  
7 Commission. CWS's test year sludge hauling expenses are abnormally high and do not  
8 represent normal operating conditions going forward as demonstrated by CWS witness  
9 Cartin's rehearing direct testimony.

10 In addition, the interconnection of the Friarsgate sewer collection system to the City  
11 of Columbia is imminent and will eliminate the Company's sludge hauling expense at the  
12 Friarsgate WWTF. It is not reasonable to require the ratepayer to pay any sludge hauling  
13 expense after the interconnection to the City of Columbia is complete. A reasonable  
14 balance between the Company and the ratepayer would be for the Commission to adopt the  
15 ORS adjustment to normalize the test year sludge hauling expenses for the Watergate and  
16 Friarsgate WWTF as presented in ORS witness Sullivan's rehearing direct testimony.

17 **2. Litigation Expense**

18 **Q. BRIEFLY EXPLAIN ORS'S ADJUSTMENTS TO CWS LITIGATION EXPENSES.**

19 **A.** ORS's position related to the CWS litigation costs centers on the simple fact that  
20 ratepayers should not bear the burden of legal costs related to CWS's failure to operate its  
21 1-20 sewer system in accordance with its NPDES permit. These legal costs should be the

1 shareholders responsibility. Otherwise, no incentive exists for regulated utilities to operate  
2 in compliance with federal, state and local laws.

3 Specifically, ORS recommends CWS shareholders be responsible for all litigation  
4 expenses related to the legal action brought by the Congaree Riverkeeper, Inc. ("CRK").  
5 CWS was found to have violated its environmental permit and the Federal judge issued  
6 substantial fines as a result. In addition, ORS recommends the shareholders be responsible  
7 for all litigation expenses related to CWS's legal action against the United States  
8 Environmental Protection Agency ("US EPA") and the Town of Lexington. This legal  
9 action was dismissed by the Federal Court and provided no economic benefit to CWS  
10 customers.

11 There are several legal actions where the final outcomes are unknown, and it is  
12 premature to allow the Company to recover these legal expenses from ratepayers before a  
13 final Order has been rendered. For this reason, ORS recommends a regulatory asset be  
14 established for litigation expenses related to the condemnation of the I-20 sewer system  
15 and the two (2) appeals related to the SC DHEC environmental permit for I-20 sewer  
16 system.

17 **Q. PLEASE IDENTIFY THE FEDERAL AND STATE COURT CASES THAT**  
18 **GENERATED THE LITIGATION EXPENSES WHICH ARE IN DISPUTE.**

19 **A.** Based on CWS' response to ORS Audit Request #30 (See Hearing Exhibit No. 16,  
20 Revised Surrebuttal Exhibit MPS-1), the Company was a participant in the following  
21 federal, circuit and administrative court cases:  
22

#	Docket #	Jurisdiction	Plaintiff	Defendant
1	3:15-cv-00194-MBS	US District Court	Congaree Riverkeeper, Inc.	CWS
2	3:15-cv-04919-MBS	US District Court	CWS	US EPA and Town of Lexington
3	16-023-W	Administrative Law Court	SC DHEC	CWS
4	16-024-W	Administrative Law Court	SC DHEC	Town of Lexington
5	2017-CP-3203693	Lexington County 11 <sup>th</sup> Circuit	Town of Lexington	CWS

1

2 **Q. WHAT IS THE STATUS OF EACH OF THESE CASES?**3 **A.** Based on information publicly available or provided by the Company, ORS  
4 understands the status of each case is as follows:5 **Congaree Riverkeeper, Inc. v. CWS (3:15-cv-00194-MBS)**6 Judge Margaret Seymour issued an Order on March 29, 2017<sup>2</sup>, which found that:

- 7 1) CWS violated its National Pollutant Discharge Elimination System (“NPDES”)  
8 permit by failing to interconnect with the regional system;
- 9 2) CWS exceeded its NPDES permit effluent limits;
- 10 3) CWS shall be ordered to pay a fine of \$1,500,000 for failure to connect to a regional  
11 system;
- 12 4) CWS shall be ordered to pay a fine of \$23,000 for violations of the effluent  
13 limitations;
- 14 5) Effective April 1, 2018, CWS is prohibited from discharging into the Saluda River;  
15 and

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<sup>2</sup> Civil Action No. 3:15-cv-00194-MBS, Order and Opinion (March 29, 2017), pp. 30-31.

1           6) Effective April 1, 2018, CWS must connect to a regional wastewater treatment  
2           plant.

3           After Judge Seymour's March 29, 2017 Order, the Court issued an Order on March 26,  
4           2018, that awarded the CRK recovery of attorney fees from CWS and vacated the  
5           \$1,500,000 fine levied on CWS for failure to connect the I-20 sewer system to a regional  
6           system. CWS did not appeal the fine of \$23,000 for violations of the effluent limits. On  
7           April 4, 2018, the Court ordered a stay. The Court issued an Order on May 29, 2018,  
8           appointing a mediator and allowing 35 days for mediation related to the Plaintiff's request  
9           for attorney's fees and the amount of fine related to the failure to interconnection with a  
10          regional system. ORS understands settlement negotiations were initiated but no settlement  
11          has been reached on the CRK attorney's fees or the amount of the fine as of the date of this  
12          testimony.

13          **CWS v. US EPA and Town of Lexington (3:15-cv-04919-MBS)**

14          Judge Margaret Seymour issued an Order on September 16, 2016, granting the US EPA's  
15          and the Town of Lexington's motions to dismiss the action brought by CWS. The Order  
16          also dismissed CWS's cause of action for lack of subject matter jurisdiction. No appeal was  
17          filed by CWS.

18          **CWS v. SC DHEC (16AO340)**

19          CWS filed for a contested case hearing before the Administrative Law Court on September  
20          22, 2016. According to CWS, the case is held in abeyance pending the condemnation of  
21          the I-20 sewer system by the Town of Lexington.

22          **SC DHEC v. CWS (16AO341)**

1 According to CWS, this case is held in abeyance and awaiting the outcome of Case  
2 16AO340. To date, no hearing has been held and no final order has been issued.

3 **Town of Lexington v. CWS (2017-CP-3203693)**

4 The Town of Lexington filed a Notice of Condemnation for the I-20 Sewer system on  
5 October 9, 2017. CWS transferred the customers and assets to the Town of Lexington  
6 effective February 1, 2018. Mediation on the issue of compensation to CWS for the sewer  
7 system has been scheduled between the Town of Lexington and CWS for September 6,  
8 2018. To date, no final order has been issued by the Circuit Court.

9 **Q. DID CWS PROVIDE ORS THE LITIGATION EXPENSES IN A**  
10 **DISAGGREGGATED FORMAT SUCH THAT THE EXPENSES CAN BE**  
11 **DIRECTLY ATTRIBUTED TO A SPECIFIC CASE?**

12 **A.** Yes. On July 25, 2018, ORS received the disaggregated information related to the  
13 litigation expenses. In March 2018, ORS originally requested CWS provide a detailed  
14 breakdown of litigation expenses to demonstrate the specific expenses attributed to each  
15 case. However, the Company was unable to directly assign the litigation expenses to a  
16 specific case with accuracy (See Hearing Exhibit 16, Revised Surrebuttal Exhibit MPS-1).  
17 Therefore, the litigation expenses could not be verified by ORS during the rate case.

18 **Q. DOES THE DISSAGGREGATED INFORMATION RELATED TO LITIGATION**  
19 **EXPENSES TOTAL \$996,808 AS ORIGINALLY PRESENTED BY CWS DURING**  
20 **THE RATE CASE?**

21 **A.** No. The actual litigation invoices and detailed breakdown do not total to the  
22 original amount presented by CWS for inclusion during the rate case. The total provided

1 by CWS to ORS on July 25, 2018, was \$992,606. After receipt of the breakdown of  
2 litigation expenses, ORS requested documentation of a specific charge, and CWS advised  
3 that the charge should not have been included in litigation expenses. CWS then recalculated  
4 and filed revised rehearing testimony reflecting litigation expenses of \$991,508.

5 **Q. PLEASE EXPLAIN ORS'S POSITION ON THE LITIGATION EXPENSES**  
6 **RELATED TO THE CONGAREE RIVERKEEPER, INC. VERSUS CWS CASE.**

7 **A.** ORS determined \$315,866 of the litigation expenses, after ORS adjustments, are  
8 related to the CRK versus CWS case in which the U.S. District Court found CWS to have  
9 violated its NPDES permit by failing to interconnect to a regional system and found that  
10 CWS violated the effluent limits of its NPDES permit on 23 occasions. Judge Margaret  
11 Seymour's Orders have not been vacated, reversed or appealed related to the permit  
12 violations or the \$23,000 fine levied for the effluent limit violations.

13 The legal fees incurred by CWS in this case are not expenses incurred to provide  
14 adequate sewer service to customers. To the contrary, CWS failed to properly manage its  
15 I-20 sewer system to comply with the NPDES permit requirements. If the Company had  
16 properly managed the system in accordance with the NPDES permit, the CRK case could  
17 have been avoided, and the legal fees resulting from CWS's defense would not be  
18 necessary. In the testimony of CWS witness Keith Babcock, the Company appears to  
19 blame the Town of Lexington for the Company's permit violations in the I-20 sewer  
20 system.<sup>3</sup> This is simply not true. CWS witness Babcock also implies the environmental  
21 violations must not be very serious if the US EPA or SC DHEC did not bring separate legal

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<sup>3</sup> Revised Rehearing Testimony Keith M. Babcock, p. 4 lines 6-7

1 actions against CWS.<sup>4</sup> This statement demonstrates the cavalier attitude of the Company  
2 on the issue of environmental compliance – if a regulatory agency does not sue you in  
3 Federal Court, it must not be serious.

4 Fundamentally, ORS believes it is improper for CWS customers to pay for legal  
5 fees that could have been avoided had CWS responsibly operated its I-20 sewer system in  
6 accordance with its NPDES permit. CWS is required to and has a responsibility to operate  
7 its systems in compliance with SC DHEC’s regulations. ORS re-affirms its  
8 recommendation that \$315,866 in litigation expenses related to the environmental permit  
9 violations be recovered from the shareholder and not the ratepayer.

10 **Q. IS THE OUTCOME OF THE CONGAREE RIVERKEEPER, INC. VERSUS CWS**  
11 **CASE KNOWN?**

12 **A.** CWS states in its June 25, 2018, Return to ORS’s Petition for Reconsideration, that  
13 “the outcome from this litigation is far from clear.”<sup>5</sup> CWS witness Babcock states the  
14 “totality of this case cannot be evaluated until it is concluded.”<sup>6</sup> These statements support  
15 ORS’s position that it is premature for the ratepayers to be responsible for any litigation  
16 costs for this legal action. While the parties have agreed to mediation on specific issues  
17 related to the recovery of Plaintiff attorney’s fees and the amount of the penalty assessed  
18 for failure to interconnect the I-20 sewer system to a regional wastewater provider, the  
19 mediation does not reverse or vacate the findings by Judge Seymour that CWS violated its  
20 NPDES permit and effluent limits.

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<sup>4</sup> Revised Rehearing Testimony Keith Babcock p. 5 lines 4-8.

<sup>5</sup> p. 8 of 23

<sup>6</sup> Revised Rehearing Testimony Keith Babcock p. 5 lines 9-10

1 **Q. WHAT IS ORS'S POSITION RELATED TO LITIGATION EXPENSES**  
2 **INCURRED TO MEDIATE THE RECOVERY OF ATTORNEY'S FEES AND**  
3 **REDUCE THE AMOUNT OF THE \$1,500,000 PENALTY?**

4 **A.** It is ORS's position that ratepayers should not be required to fund CWS's efforts  
5 to mediate or settle the issues of how much CWS should pay in the CRK attorney's fees or  
6 the reduction in the \$1,500,000 fine. It is not reasonable policy to allow CWS to pass the  
7 penalty or attorney's fees on to its ratepayers. Therefore, ORS recommends the litigation  
8 expenses incurred to mediate or settle these issues should not be eligible for future rate  
9 recovery.

10 **Q. DO RATEPAYERS BENEFIT FROM THE CONGAREE RIVERKEEPER, INC.**  
11 **LITIGATION?**

12 **A.** No. The ratepayers receive no economic benefit from Judge Seymour's Order  
13 which held that CWS violated its environmental permit and imposed serious and costly  
14 penalties. As a regulated utility with a defined service territory, CWS is required to provide  
15 adequate and efficient service at just and reasonable rates. The ratepayer pays for utility  
16 service which includes the reasonable expectation the Company's business practices and  
17 operations comply with federal, state and local laws. Because the Company's operations  
18 did not deliver service in compliance with federal and state environmental laws, the  
19 ratepayers should not be assessed the penalties, or the litigation costs related to the CRK  
20 case.

21 **Q. DID CWS PROVIDE AN ANALYSIS OF THE COSTS AND BENEFITS TO THE**  
22 **RATEPAYERS RELATED TO THE LITIGATION?**

1 A. No. CWS simply states the litigation to defend itself in the CRK case is a “cost of  
2 doing business.” It is unreasonable public policy to require customers of a regulated utility  
3 to fund all costs under the umbrella explanation of the “cost of doing business.” Legal  
4 expenses related to disputes such as worker’s compensation claims, or right-of-way  
5 procurement may be a “cost of doing business” and included in customer’s rates; however,  
6 the CRK case was not a reasonable and necessary expense for CWS to provide sewer  
7 service to its customers.

8 **Q. WHAT IS ORS’S POSITION ON THE CWS VERSUS US EPA AND TOWN OF**  
9 **LEXINGTON (3:15-CV-04919-MBS)?**

10 A. This case, initiated by CWS, was dismissed by the U.S. District Court. CWS did  
11 not appeal the U.S. District Court Order. ORS determined CWS incurred \$130,643 in legal  
12 fees related to this case, after ORS’s adjustments. CWS witness Babcock states the case  
13 would have been “difficult to win.” In addition, CWS witness Babcock opines the  
14 dismissed case was a strategic effort to force interconnection of the I-20 sewer system to  
15 the Town of Lexington. The case did not result in the interconnection of the sewer system  
16 to the Town of Lexington at all. After the case was dismissed by Judge Seymour, at least  
17 12 months elapsed before the Town of Lexington noticed condemnation of the system.

18 There is no quantifiable benefit to the ratepayers for CWS’s failed attempt to sue  
19 the US EPA and the Town of Lexington. In addition, the expenses related to the case are  
20 not reasonable or necessary to provide service to CWS customers. ORS recommends the  
21 \$130,643 in legal fees for this legal action be recovered from CWS’s shareholders and not  
22 the ratepayers.

1 **Q. PLEASE EXPLAIN ORS'S POSITION ON THE TWO APPEALS OF THE SC**  
2 **DHEC ADMINISTRATIVE ORDERS PENDING AT THE ADMINISTRATIVE**  
3 **LAW COURT.**

4 **A.** The Company indicates its appeal of the SC DHEC Administrative Orders 16-023-  
5 W and 16-024-W are held in abeyance pending the outcome of the Circuit Court  
6 condemnation action. No final Orders have been issued by the Administrative Law Court  
7 ("ALC"). It is premature to allow the Company to recover these legal expenses from  
8 ratepayers before a final Order has been rendered by the ALC. The National Association  
9 of Regulated Utility Commissioners ("NARUC") Uniform System of Accounts ("USOA")  
10 provides an accounting remedy for this type of situation through the establishment of a  
11 "regulatory asset." In addition, the GASB 62, General Standard of Accounting for the  
12 Effects of Regulation, indicates:

13 480. Rate actions of a regulator can provide a business-type activity with reasonable  
14 assurance of the existence of an asset. A regulated business-type activity should capitalize  
15 all or part of an incurred cost that otherwise would be charged to expense if both of the  
16 following criteria are met:

17 a. It is probable that future revenue in an amount at least equal to the capitalized  
18 cost will result from inclusion of that cost in allowable costs for rate-making purposes.

19 b. Based on available evidence, the future revenue will be provided to permit  
20 recovery of the previously incurred cost rather than to provide for expected levels of similar  
21 future costs. If the revenue will be provided through an automatic rate-adjustment clause,  
22 this criterion requires that the regulator's intent clearly be to permit recovery of the  
23 previously incurred cost.

24 It would be reasonable for the Company to request the Commission consider the  
25 establishment of a regulatory asset in which to defer the litigation costs associated with  
26 these two (2) appeals for future rate making treatment. ORS recommends the regulatory  
27 asset be limited to litigation expenses for these legal actions, the regulatory asset not be

1 allowed to accrue carrying costs, and the amortization period for the regulatory asset  
2 deferral be established during the next rate case after all the facts are known.

3 **Q. PLEASE EXPLAIN ORS'S POSITION ON THE TOWN OF LEXINGTON**  
4 **CONDEMNATION ACTION PENDING IN THE LEXINGTON COUNTY**  
5 **ELEVENTH CIRCUIT COURT.**

6 **A.** ORS re-affirms its original position related to the \$72,161 in legal fees, as adjusted  
7 by ORS, related to the condemnation proceeding for the I-20 sewer system. It is ORS's  
8 position it is premature to allow the Company to recover these legal expenses from  
9 ratepayers before a final Order has been rendered. The Company indicated the Town of  
10 Lexington is operating the sewer system and billing customers as of February 1, 2018. The  
11 Circuit Court has not issued an Order related to the compensation; however, one is expected  
12 by the end of 2018. CWS can and should seek recovery of litigation expenses from the  
13 Town of Lexington once the case has concluded. South Carolina law allows "A landowner  
14 who prevails in the trial of a condemnation action, in addition to his compensation for the  
15 property, may recover his reasonable litigation expenses..."<sup>7</sup> It is far from certain if the  
16 ratepayer will be responsible for the full amount of legal expenses.

17 CWS's participation in the condemnation action preserves the Company's right to  
18 receive compensation for the plant assets condemned by the Town of Lexington. However,  
19 it is unclear if CWS intends to return any gains earned through the condemnation on the  
20 plant assets to the ratepayer. Should the Company assign the gains earned through the  
21 condemnation to the shareholders and not ratepayers, it is ORS's position the litigation

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<sup>7</sup> S.C. Code Ann. § 28-2-510 (2007) (B)(1)

1 expenses related to the condemnation case should be recovered from the shareholders. The  
2 ratepayer should not fund CWS's legal efforts to secure higher compensation for its  
3 shareholders.

4 The Commission should safeguard the interests of the ratepayer to ensure the  
5 ratepayer only pays for litigation costs that are reasonably necessary. It would be  
6 reasonable for the Company to request the Commission consider the establishment of a  
7 regulatory asset in which to defer the litigation costs associated with the condemnation for  
8 consideration in future rate making proceedings. If this approach is adopted, ORS  
9 recommends the regulatory asset be limited to litigation expenses for the I-20  
10 condemnation, any litigation expenses recovered from the Town of Lexington be netted  
11 against the regulatory asset balance, the regulatory asset not be allowed to accrue carrying  
12 costs, and the amortization period for the regulatory asset deferral be established during  
13 the next rate case when all of the facts are known.

14 **Q. DID ORS REVIEW AND VERIFY THE EXPENSES RELATED TO LITIGATION**  
15 **MATTERS?**

16 **A.** Yes. ORS reviewed the litigation expense invoices received from CWS on July 25,  
17 2018. As previously state, ORS does not recommend the Company be allowed to recover  
18 from ratepayers any litigation expenses related to the CRK versus CWS case or the CWS  
19 versus US EPA and Town of Lexington case. Further, ORS's review of the litigation  
20 expenses indicates several adjustments are needed to reduce the amount of litigation  
21 expenses for consideration in this rehearing. A summary of ORS's recommended

1 adjustments is reflected in Rehearing Exhibit DMH-1. To summarize, the adjustments are  
2 recommended for the following reasons:

- 3 • Remove \$20,377 for invoices 2484939, 2487836, 2492556 from Winston  
4 & Strawn LLP for legal services to resolve employee benefit and  
5 employment matters. The Company assigned the Winston & Strawn LLP  
6 invoices to the CRK versus CWS case; however, based on the invoice  
7 description ORS was not able to verify the work performed was related to  
8 the CRK versus CWS case. See Rehearing Exhibit DMH-2 for a summary  
9 of the adjustment and the related litigation invoices.
- 10 • Remove \$86,682 for advances and expenses listed on Willoughby &  
11 Hoefler, P.A., Reinhart Boerner Van Duren PC, Haynesworth Sinkler Boyd  
12 P.A., and Baker Donelson Bearman Caldwell & Berkowitz PC invoices.  
13 Approximately, \$72,000 was listed on invoices as advances paid by a law  
14 firm for the services of Berkeley Economic Consulting, Hartman  
15 Consultants LLC and Winthrop Real Estate Advisors. CWS did not provide  
16 any vendor invoices to support the amount paid to the consultants, nor did  
17 CWS assign any of the expenses or advances to a specific legal action. See  
18 Rehearing Exhibit DMH-3 for a detailed breakdown of the adjustment and  
19 corresponding litigation invoices.
- 20 • Remove \$155,974 for legal services performed by Willoughby & Hoefler,  
21 P.A. where the description of professional services was redacted. Where  
22 the description of work included a redaction, an adjustment was made to

1 remove legal expenses related to the work in the description. The redacted  
2 descriptions limited ORS' review of the work performed. Even where there  
3 were multiple tasks in the description, ORS could not determine the time  
4 spent on each task in the description to apportion expense. See Rehearing  
5 Exhibit DMH-4 for a detailed breakdown of the redactions and the  
6 corresponding litigation invoices.

- 7 • Re-allocate \$19,759 to the CRK versus CWS case for legal hours  
8 incorrectly attributed to the legal action ALC – DHEC Permit Denial.  
9 Based on the Willoughby & Hoefer, P.A. invoice #44, the work description  
10 contains details that identify the legal action as involving the Congaree  
11 Riverkeeper. See Rehearing Exhibit DMH-5 for a summary of the  
12 adjustment and corresponding litigation invoice.

- 13 • Re-allocate \$2,985 to the Town of Lexington versus CWS condemnation  
14 action for legal hours incorrectly attributed to the legal action ALC – I-20  
15 Connection. Based on the Haynesworth Sinkler Boyd P.A. invoice  
16 #1773161, the work description details legal actions related to real estate  
17 matters. See Rehearing Exhibit DMH-5 for a summary of the adjustment  
18 and corresponding litigation invoice.

19 **Q. IS THE AMORTIZATION PERIOD FOR LITIGATION EXPENSES OF 66.67**  
20 **YEARS REASONABLE?**

21 **A.** No. As part of a comprehensive settlement in Docket No. 2015-199-WS the Parties  
22 agreed to allow CWS to establish a regulatory asset for litigation expenses related to the

1 condemnation. The settlement agreement approved by the Commission in Order 2015-876  
2 (December 22, 2015) did not specify the recovery period for those expenses. In the instant  
3 rate proceeding, the Company did not request approval of an accounting order to allow  
4 CWS to defer litigation expenses. The Commission's Order 2018-345(A) approved the  
5 recovery of \$996,808 in legal expenses to be recovered from customers over 66.67 years.  
6 The legal fees presented by CWS in this case started in 2015 and continue to 2018.

7 There is no clear justification to spread the recovery of legal expenses incurred in  
8 a three (3) year period over 66.67 years like a large plant asset such as water or sewer  
9 mains. This is simply a strategy to hide the \$996,808 such that the ratepayer will not notice  
10 the impact. ORS recommends the period for recovery of reasonably incurred litigation  
11 expenses be examined by the Commission and set in the next general rate proceeding after  
12 all the facts are known related to the cases.

### 13 3. Friarsgate EQ Basin Liner Project

14 **Q. PLEASE SUMMARIZE THE INFORMATION CWS PROVIDED TO ORS**  
15 **RELATED THE FRIARSGATE EQ BASIN LINER PROJECT IN RESPONSE TO**  
16 **ORS INFORMATION REQUESTS PRIOR TO THE APRIL 3, 2018, RATE CASE**  
17 **HEARING.**

18 **A.** CWS requested \$1,081,375 be included in plant-in-service for Project #2017093  
19 which is the Friarsgate EQ Basin Liner Project ("EQ Project"). The Company records  
20 indicate the EQ Project was started on May 16, 2017, and the purpose of the project was  
21 environmental health and safety compliance. The Company estimated the EQ Project

1                   **SURREBUTTAL REHEARING TESTIMONY AND EXHIBITS OF**

2                                   **DAWN M. HIPPI**

3                                   **ON BEHALF OF**

4                   **THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF**

5                                   **DOCKET NO. 2017-292-WS**

6                   **IN RE: APPLICATION OF CAROLINA WATER SERVICE,**

7                   **INCORPORATED FOR APPROVAL OF AN INCREASE IN ITS RATES FOR**

8                                   **WATER AND SEWER SERVICES**

9  
10 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.**

11 **A.**           My name is Dawn M. Hipp. My business address is 1401 Main Street, Suite 900,  
12 Columbia, South Carolina 29201. I am employed by the State of South Carolina as the  
13 Chief Operating Officer of the Office of Regulatory Staff ("ORS").

14 **Q. DID YOU FILE DIRECT REHEARING TESTIMONY AND EXHIBITS RELATED**  
15 **TO THIS PROCEEDING?**

16 **A.**           Yes. I filed direct rehearing testimony and eight (8) exhibits with the Public Service  
17 Commission of South Carolina ("Commission") on August 16, 2018.

18 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL REHEARING**  
19 **TESTIMONY?**

20 **A.**           The purpose of my surrebuttal rehearing testimony is to respond to the rehearing  
21 rebuttal testimonies filed by Carolina Water Service, Inc. ("CWS" or "Company")  
22 witnesses Michael Cartin, Robert Gilroy and Robert Hunter on August 22, 2018.

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**THE OFFICE OF REGULATORY STAFF**

**1401 Main Street, Suite 900**

**Columbia, SC 29201**

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1 Specifically, I will focus on CWS's response on sludge hauling expenses, litigation  
2 expenses, the Friarsgate EQ Basin Liner Project ("EQ Project") and revenue requirement  
3 allocation.

4 **Sludge Hauling Expenses**

5 **Q. PLEASE CLARIFY ORS'S POSITION ON THE CWS REQUEST FOR**  
6 **APPROVAL TO INTERCONNECT THE FRIARSGATE SEWER SYSTEM TO**  
7 **THE CITY OF COLUMBIA.**

8 **A.** CWS witness Cartin interprets my direct rehearing testimony as ORS's  
9 endorsement or approval of the CWS request to interconnect the Friarsgate sewer system  
10 with the City of Columbia. This interpretation is incorrect. Docket No. 2018-256-S was  
11 filed on August 2, 2018, and ORS is currently evaluating the Company's request. CWS's  
12 responses to ORS's Audit Request #1 was due on August 16, 2018; however, ORS has not  
13 received a response as of the date of this testimony and consequently, has not formed an  
14 opinion on the interconnection request. The Commission required CWS to provide notice  
15 to its customers by no later than August 31, 2018. ORS is not required to present its position  
16 to the Commission on the request until after the return date established by the Commission.

17 The facts contained in my direct rehearing testimony of the Company's intention  
18 to interconnect the Friarsgate sewer system to the City of Columbia and the subsequent  
19 impact of the interconnection to reduce the future sludge hauling expense for the Friarsgate  
20 WWTF were provided to ORS by the Company in response to ORS's Second Audit  
21 Information Request and through CWS witness Cartin's rehearing direct testimony. ORS's  
22 adjustment to normalize sludge hauling does not consider the future interconnection of the

1 calculation. ORS stands by the adjustment presented at the April hearing in the case and  
2 does not change the adjustment to reflect further reductions in sludge hauling expense  
3 presented by CWS witness Cartin in his rehearing testimonies. Any savings experienced  
4 by CWS for using the sludge press will be retained by the Company.

5 **Litigation Expenses**

6 **Q. PLEASE RESTATE ORS'S POSITION ON THE CWS REQUEST FOR**  
7 **RECOVERY FROM RATEPAYERS OF THE LITIGATION EXPENSES**  
8 **RELATED TO THE CONGAREE RIVERKEEPER, INC. VERSUS CWS**  
9 **FEDERAL COURT CASE.**

10 **A.** CWS witness Cartin does not understand the ORS position on the recovery of  
11 litigation expenses from CWS ratepayers attributed to the Congaree Riverkeeper, Inc.  
12 ("CRK") legal action against CWS. As stated in my direct rehearing testimony, ORS's  
13 position related to the CWS litigation costs centers on the simple fact that ratepayers should  
14 not bear the burden of legal costs related to CWS's failure to operate its I-20 sewer system  
15 in accordance with its National Pollutant Discharge Elimination System ("NPDES")  
16 permit. These legal costs should be the shareholders' responsibility. Otherwise, no  
17 incentive exists for regulated utilities to operate in compliance with federal, state and local  
18 laws.

19 **Q. WHAT IS YOUR RESPONSE TO CWS WITNESS ROBERT GILROY'S**  
20 **STATEMENT THAT YOUR TESTIMONY IS FACTUALLY INCORRECT?**

21 **A.** CWS witness Gilroy's rehearing rebuttal testimony characterizes the ORS position  
22 that CWS failed to manage its I-20 sewer system in compliance with its NPDES permit

1 requirements as “factually incorrect.” CWS witness Gilroy rehearing rebuttal testimony  
2 provides a one-sided account of the history of the interconnect and subsequent  
3 condemnation of the I-20 sewer system, the Town of Lexington’s actions, and CWS’s  
4 efforts. ORS was not a party to the CRK lawsuit and was not involved in the negotiations  
5 involving the interconnection or the condemnation of the I-20 sewer system.

6 ORS made its recommendation that ratepayers should not pay litigation expenses  
7 related to the CRK versus CWS federal court case because CWS is required to and has a  
8 responsibility to operate its systems in compliance with SC DHEC’s regulations. As a  
9 matter of sound regulatory policy, ORS believes it is not reasonable and therefore improper  
10 for CWS customers to pay for legal fees that were incurred in a legal action in which CWS  
11 was found to have violated its environmental permits. As stated in my testimonies, if CWS  
12 is allowed recovery of the litigation costs associated with the CRK federal court case, the  
13 Company has no incentive to operate its utility systems in compliance with its  
14 environmental permits and state and federal law.

15 **Q. WHAT FACTS SUPPORT ORS’S CONCLUSION THAT CWS FAILED TO**  
16 **PROPERLY MANAGE ITS I-20 SEWER SYSTEM IN COMPLIANCE WITH ITS**  
17 **NPDES PERMIT REQUIREMENTS?**

18 **A.** ORS was not a party to the CRK versus CWS legal action. In making its  
19 recommendation related to whether the ratepayers be required to pay for these legal  
20 expenses, ORS examined the Opinion and Order issued by Judge Margaret Seymour on

1 March 26, 2017.<sup>3</sup> The Opinion and Order (See Surrebuttal Rehearing Exhibit DMH-1)  
2 states on page 28:

3 “The court finds that the sewage discharge is a serious violation.”

4  
5 “Defendant has violated its permit for over seventeen years; however, only  
6 recently have any person or group undertaken an enforcement action.”

7  
8 “Lastly, Defendant will need to undertake costs to correct the problems  
9 caused by its failure to fulfill permit requirements. Taking the above into  
10 consideration the court orders a fine in the amount of \$1,500,000.”

11  
12 “The court finds that there is no genuine issue of material fact that  
13 Defendant violated its effluent limitations twenty-three times since 2009.”

14  
15 The plain reading of the U.S. District Court Opinion and Order indicates CWS violated its  
16 NPDES permit.

17 **Q. PLEASE EXPLAIN WHY YOU STATE THE OUTCOME OF THE CRK VERSUS**  
18 **CWS CASE IS NOT FINALIZED.**

19 **A.** The Commission allowed CWS to recover approximately \$1,000,000 in legal  
20 expenses for legal actions where the outcomes are not finalized. In the Company’s  
21 rehearing direct testimony, CWS witnesses Babcock and Cartin affirm the fact that the  
22 outcomes for these legal cases have not been finalized. ORS highlighted this contradiction  
23 for the Commission. CWS witness Cartin seems to suggest that a regulatory asset should  
24 be established for legal expenses related to the CRK case. The Commission should reject  
25 this suggestion and the Company should not be allowed to recover legal expenses from  
26 ratepayers in legal actions where the Company was found to have violated its  
27 environmental permits.

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<sup>3</sup> Civil Action Number: 3:15-cv-00194-MBS

1 **Q. ARE THE LEGAL EXPENSES CWS MIS-CHARACTERIZED AS LEGAL FEES**  
2 **RELATED TO THE I-20 LITIGATION RECOVERABLE OPERATING**  
3 **EXPENSES?**

4 **A.** No. CWS witness Cartin asserts in his rebuttal that \$5,617 of legal fees included in  
5 the \$996,808 approved for recovery from CWS ratepayers are recoverable operating  
6 expenses. Likewise, CWS witness Cartin makes the same assertion related to \$1,480.50 in  
7 legal expenses. CWS did not present these invoices to ORS; therefore, ORS is not able to  
8 review or verify these claims.

9 **Q. PLEASE EXPLAIN ORS'S REVIEW OF THE WINSTON & STRAWN, LP**  
10 **INVOICES.**

11 **A.** The Commission requested CWS dis-aggregate its legal expenses. In accordance  
12 with S. C. Code Laws § 58-4-55 as amended by Act No. 258 (2018), ORS requested CWS  
13 provide copies of all legal invoices that total \$996,808 and included for recovery and a  
14 schedule of the legal expenses to demonstrate what charges were incurred for each legal  
15 action. CWS provided hard copies of the invoices and the schedule on July 25, 2018, and  
16 electronic copies of the invoices on July 30, 2018. The Company categorized on the  
17 schedule that the Winston & Strawn, LP invoices totaling \$20,377.37 were work and  
18 expenses performed related to the CRK versus CWS case.

19 ORS's review is limited to the information provided by CWS. The invoices  
20 provided to ORS did not identify the work description specific to the CRK case. See  
21 CONFIDENTIAL Rehearing Exhibit DMH-2 for copies of the invoices provided to ORS  
22 by CWS. The Winston & Strawn LP invoices stated that the invoices were for work in

1 connection with a matter that was not the CRK litigation. Further the descriptions on the  
2 invoices did not reference the CRK litigation. It is CWS's responsibility to meet its burden  
3 of proof by supporting its books and records with adequate detail such that ORS can verify  
4 its expenditures. Now on rebuttal, CWS attempts to rehabilitate its lack of review of  
5 supporting legal documentation by providing an affidavit from Winston & Strawn, LP  
6 which explains the errors on the law firm's invoices.

7 **Q. DO YOU AGREE WITH CWS WITNESS CARTIN'S CLAIM THAT ORS DID**  
8 **NOT AFFORD CWS AN OPPORTUNITY TO EXPLAIN THE LEGAL FEES FOR**  
9 **WINSTON & STRAWN LP?**

10 **A.** No. It is ORS's role to inspect, audit and examine the books and records of  
11 regulated utilities. To address errors made by the utility, ORS recommends correcting  
12 adjustments to reflect ORS's examination. CWS witness Cartin attempts to discredit  
13 ORS's examination of legal invoices and characterize ORS's adjustment as unfair or  
14 unexpected because ORS did not discuss the adjustment with CWS prior to filing direct  
15 rehearing testimony. It is CWS's responsibility to keep accurate and adequate records  
16 sufficient to support its request for rate recovery. The Company should not rely upon  
17 ORS's review to substitute for its own diligence.

18 **Q. WHAT IS ORS'S RECOMMENDATION RELATED TO THE WINSTON &**  
19 **STRAWN, LP INVOICES?**

20 **A.** ORS re-affirms its recommendation that all legal expenses related to the CRK  
21 versus CWS case be recovered from shareholders and not ratepayers. This would include  
22 the \$20,377.37 in Winston & Strawn, LP invoices.

1 **Q. WHAT IS YOUR RESPONSE TO CWS WITNESS CARTIN'S REHEARING**  
2 **REBUTTAL TESTIMONY RELATED TO THE EXPENSES AND ADVANCES**  
3 **CWS FAILED TO PROVIDE SUPPORTING INVOICES FOR AND ASSIGN TO A**  
4 **PARTICULAR LEGAL ACTION?**

5 **A.** The Commission's Directive Order No. 2018-494 required CWS to disaggregate  
6 the \$996,808 in legal expenses. With the exception of the Winston & Strawn, LP invoices,  
7 CWS did not directly assign expenses and advances detailed on legal invoices from  
8 Willoughby & Hoefler, P.A., Reinhart Boerner Van Duren PC, Haynesworth Sinker Boyd  
9 P.A. and Baker Donelson Bearman Caldwell & Berkowitz PC. In rehearing rebuttal  
10 testimony Exhibit B, CWS witness Cartin provided ORS with copies of invoices to support  
11 the advances paid by the law firm of Willoughby & Hoefler, P.A. to Berkley Economic  
12 Consulting, Inc., Hartman Consultants, LLC and Winthrop Real Estate Advisors. ORS  
13 reviewed Exhibit B and recommends the following adjustments:

14 1) Assign \$52,442 in advances paid for consulting services for Hartman  
15 Consultants, LLC and Winthrop Real Estate Advisors to the Town of Lexington  
16 versus CWS condemnation of the I-20 sewer system. It is ORS's position it is  
17 premature to allow the Company to recover these legal expenses from ratepayers  
18 before a final Order related to the condemnation action for the I-20 sewer system  
19 has been rendered. If CWS prevails in the condemnation action, then CWS can and  
20 should seek recovery of litigation expenses from the Town of Lexington once the  
21 case has concluded. It would be reasonable for the Commission to consider the  
22 establishment of a regulatory asset in which to defer the litigation costs associated

1 with the condemnation for consideration and a prudence determination in future  
2 rate proceedings.

3 2) Remove \$21,049.14 in mailing, court-reporting and advances paid to Berkley  
4 Economic Consulting, Inc. as these expenses are related to the CRK versus CWS  
5 federal court case. As stated earlier, it is ORS's position that ratepayers should not  
6 bear the burden of legal costs related to CWS's failure to operate its I-20 sewer  
7 system in accordance with its NPDES permit.

8 3) Remove \$13,191.63 for undocumented and unsupported expenses and advances  
9 CWS did not assign to a legal action and did not provide documentation to support.

10 **Q. DID YOU UPDATE THE SUMMARY OF ORS ADJUSTMENTS TO CWS LEGAL**  
11 **EXPENSES?**

12 **A.** Yes. See Surrebuttal Rehearing Exhibit DMH-2 to reflect the adjustments to legal  
13 expenses and advances to assign \$52,442 to the Town of Lexington condemnation case.

14 **Q. PLEASE EXPLAIN WHY ORS RECOMMENDED AN ADJUSTMENT TO**  
15 **REDUCE LEGAL EXPENSES BY \$155,974.50 DUE TO REDACTIONS**  
16 **REFLECTED ON LEGAL INVOICES FROM WILLOUGHBY & HOEFER P.A.**

17 **A.** ORS's verification of the Willoughby & Hoefler P.A. invoices contained in  
18 CONFIDENTIAL Rehearing Exhibit DMH-4 was limited due to the redactions explained  
19 by CWS as "protected privileged information and attorney work product." ORS's  
20 adjustments were limited to those billed hours by attorneys where the work description  
21 contained a redaction.

1 It was common for attorneys at Willoughby & Hoefler P.A. to work simultaneously  
2 on several different legal actions for CWS in the same billing entry. The legal invoices  
3 contain numerous entries with work descriptions which detail the attorney's work for  
4 different legal cases; however, the time billed was not separated by legal action. For  
5 example, the attorney bills a total of 3.4 hours and the work description reads:

6 *Review client correspondence. Research statutory issue RE: REDACTED.*  
7 *Email response internally on same.*  
8

9 In the example, CWS allocated 2 hours of the attorney's time to the ALC- DHEC permit  
10 denial case and 1.4 hours of the attorney's time to the ALC – I-20 connection case. Based  
11 on the work description and redaction, ORS could not verify the allocation of time.

12 CWS reviewed the legal invoices and attempted to allocate the attorney's hours to  
13 a specific legal action. For those attorney hours that ORS was able to verify both the work  
14 performed and the allocation, ORS concluded CWS's allocations were reasonable with the  
15 adjustment noted in prior rehearing testimony. However, if the work description for the  
16 attorney's time contained a redaction, ORS could not verify to which legal action the  
17 attorney's hours should be allocated or which legal action the redaction should be  
18 attributed. In addition, there were occasions where the work description is vague, and,  
19 with the redaction, ORS could not verify the legal expense was valid or properly assigned  
20 to the relevant legal action.

21 **Q. DOES ORS ACCEPT CWS'S CLAIM THE REDACTIONS ON LEGAL INVOICES**  
22 **WERE DUE TO PRIVILEGED ATTORNEY-CLIENT WORK PRODUCT?**

1 A. Whether the information is privileged and in need of redaction is not the issue. The  
2 issue is ORS was unable to verify the expenses or determine whether the expense was  
3 properly assigned to the correct legal action.

4 Q. **WHAT IS YOUR RESPONSE TO CWS WITNESS CARTIN'S ASSERTION THAT**  
5 **ORS CHANGED ITS POSITION ON REDACTIONS AND DID NOT INFORM**  
6 **CWS?**

7 A. As stated earlier in my surrebuttal rehearing testimony, it is ORS's role to inspect,  
8 audit and examine the books and records of regulated utilities. CWS witness Cartin  
9 attempts to discredit ORS's examination of legal invoices and characterize ORS's  
10 adjustment as unfair or unexpected because ORS did not discuss the adjustment for legal  
11 hours where the work description contained a redaction.

12 Q. **DID CWS DISPUTE ORS'S RECOMMENDATION RELATED TO ORS'S**  
13 **ADJUSTMENT FOR THE CWS VERSUS U.S. EPA AND TOWN OF LEXINGTON**  
14 **FEDERAL COURT CASE OR THE REALLOCATION OF CERTAIN LEGAL**  
15 **EXPENSES?**

16 A. CWS appears to have accepted the ORS recommendation that \$130,643 in legal  
17 fees related to the CWS versus the US EPA and Town of Lexington be recovered from  
18 CWS's shareholders and not the ratepayers. In addition, CWS witness Cartin did not  
19 contest the reallocations recommended by ORS.

20 **EQ Basin Project**

21 Q. **WHAT IS YOUR RESPONSE TO CWS'S REQUEST TO RE-CLASSIFY**  
22 **\$89,542.84 IN PLANT IN SERVICE TO ANOTHER CAPITAL PROJECT?**

1 A [HIPP] It has been filed and it has not been approved.

2 Q Now, I think you testified in your direct that legal  
3 expenses related to disputes, such as workers'  
4 compensation claims or right-of-way procurement, may be  
5 a, quote, "cost of doing business," unquote, and  
6 included in customer rates. You recall testifying to  
7 that?

8 A [HIPP] Yes.

9 Q All right.

10 A [HIPP] In fact, in the rate case itself, we did include  
11 expenses, legal expenses, related to property easements  
12 and those sorts of things. Not workers' comp., but  
13 property easements and some of those items.

14 Q Well, in fact, the costs that would be included as a  
15 cost of business is broader than your two examples,  
16 isn't it?

17 A [HIPP] Correct.

18 Q The company may have legal expenses for negotiating  
19 contracts.

20 A [HIPP] They certainly may incur all sorts of legal  
21 expenses outside of those that flow through customer  
22 rates.

23 Q Such as contracts, correct?

24 A [HIPP] Correct.

25 Q Such as merger costs, correct?

1 A [HIPP] Depends on how the merger is structured.

2 Q Did you include merger costs in this – in this –

3 A [HIPP] I don't recall –

4 Q – in the schedules –

5 A [HIPP] – that we saw merger costs. Let me just take a  
6 look at what we had seen, in terms of legal costs  
7 [indicating].

8 The legal costs that we included, just in general,  
9 related to property easements, DHEC permitting, the West  
10 Columbia bulk water contract negotiations. We allowed  
11 \$88,765 of the original \$145,495 that the company had  
12 requested.

13 Q Good, that's helpful. And we can agree, can we not,  
14 that utilities such as Carolina Water may find  
15 themselves in litigation from time to time, can't we?

16 A [HIPP] Yes.

17 Q We can agree that, on occasion, Carolina Water may have  
18 to bring a lawsuit, correct?

19 A [HIPP] I – I mean, it is possible, yes.

20 Q Yeah. And we can agree that, from time to time, they  
21 may find themselves as a defendant in a lawsuit,  
22 correct?

23 A [HIPP] Yes.

24 Q And I do not understand your testimony to be that all  
25 litigation costs are excludable from rates.

1 A [HIPP] You are correct. We think that litigation costs  
2 and legal expenses should be looked at on a case-by-case  
3 basis, and we have done that in this case.

4 Q And tell me if this fairly summarizes the ORS position  
5 on the *Riverkeeper* litigation costs: The ratepayers  
6 received no economic benefit from Judge Seymour's order,  
7 which held that CWS violated its environmental permit  
8 and imposed serious and costly penalties.

9 Is that a fair statement? Does that –

10 A [HIPP] Correct, yes.

11 Q – fairly describe your objection?

12 A [HIPP] It does. It does.

13 Q All right. Now, you've been here for – all day,  
14 correct?

15 A [HIPP] I have.

16 Q And you heard the testimony of Mr. Gilroy?

17 A [HIPP] Yes.

18 Q You heard the testimony of Mr. Babcock?

19 A [HIPP] Yes.

20 Q You heard the testimony of your witness, Mr. Stangler,  
21 correct?

22 A [HIPP] Correct.

23 Q And isn't it true, Ms. Hipp, that, when this lawsuit was  
24 filed by the Riverkeeper, the I-20 customers were  
25 threatened with loss of service?

1 A [HIPP] It's difficult – I was not a – our agency, the  
2 ORS, was not a participant in any of these litigation  
3 efforts, either for the company – on the company's  
4 behalf or the company defending itself. So it's  
5 difficult for me to talk about what the intention is of  
6 someone bringing suit against the company, or the  
7 company, in reverse. I can't answer that question.

8 Q Well, you heard Mr. Babcock's testimony, did you not?

9 A [HIPP] I heard him testify to the reasonableness of the  
10 expenses.

11 Q And you heard Mr. Babcock testify that the company was  
12 faced with three options: interconnect with the City of  
13 Lexington, sell to the City of Lexington, or shut down.  
14 You heard his testimony, didn't you?

15 A That was his testimony, yes.

16 Q And you heard your witness's testimony, Mr. Stangler,  
17 who testified a moment ago, that his lawyer told the  
18 federal judge, "Your Honor, shutdown of a facility that  
19 is not in compliance with the Clean Water Act is relief  
20 that we sought." You heard Mr. Stangler testify to  
21 that.

22 A [HIPP] I heard him read that excerpt.

23 Q Right, and you understand the excerpt was from a  
24 transcript. You're familiar with transcripts, are you  
25 not?

1 A [HIPP] Correct.

2 Q And you understand that – you know Mr. Holman?

3 A [HIPP] Yes.

4 Q He appears before the Commission, correct? Mr. Holman –

5 A [HIPP] Oh, I'm sorry. Yes.

6 Q – appears before the Commission, correct? And he was  
7 representing Mr. Stangler, correct?

8 A [HIPP] In that lawsuit, based –

9 Q And you heard Mr. Stangler –

10 A [HIPP] – on the transcript.

11 Q And you heard Mr. Stangler testify that Mr. Holman had  
12 Mr. Stangler's authority to inform the court that a  
13 shutdown of the I-20 system was relief that they sought.  
14 You heard that.

15 A [HIPP] That is written in the transcript.

16 Q And tell me how the shutdown of the I-20 system would  
17 benefit the I-20 sewer customers.

18 A [HIPP] I think the characterization of the shutdown of  
19 the I-20 system as being a possible outcome or a logical  
20 outcome is inaccurate. I mean, it certainly is a  
21 possibility. But that – I mean, you're looking at other  
22 State agencies that would need to approve of that,  
23 potentially, that outcome. It certainly is not the  
24 outcome that Judge Seymour anticipated in her opinion  
25 and order, which is what ORS relied upon as its making

1 its recommendation to the Commission to disallow those  
2 expenses. The judge found that the company had violated  
3 its permit. There's no economic benefit to customers,  
4 who are currently paying service charges for the company  
5 to operate in compliance with that permit, for then the  
6 company to be found in federal court to have violated  
7 the permit on repeated issues, to be repeated occasions  
8 to be fined, and then be told to find a rational way to  
9 interconnect or stop the discharge. Judge Seymour  
10 didn't order that, and that's not what ORS's basis for  
11 making this recommendation is.

12 **Q** Thank you for that. Please tell me what benefits the  
13 I-20 customers will receive from a shutdown of the I-20  
14 system.

15 **A** [HIPP] I don't know. I mean, the other – one could look  
16 at it as, you know, a migration to an alternative. So  
17 the shutdown doesn't mean termination of service to the  
18 customers: Today, I can flush my toilet, run my  
19 dishwasher, run my washing machine; tomorrow, I can't.  
20 A shutdown of the service means elimination of that  
21 discharge, whether it be through sale, condemnation,  
22 some other alternative. You know, Mr. Stangler  
23 identified other alternatives. The problem is, CWS's  
24 problem, in its permit it voluntarily agreed to this  
25 condition and then did not adhere to that.

1 Q So it's fair to say that, if the I-20 customers were  
2 shut off from their sewer system, they would not benefit  
3 from having no sewer service; isn't that true, Ms. Hipp?

4 A [HIPPI] The cust- - if - if service were terminated to a  
5 customer or customers, as a result, you are correct,  
6 they would not have service.

7 Q And they would not benefit. Thank you.

8 Now, you've got - you raised several questions  
9 about some of these fees, and I think, if I understand  
10 your testimony, you are satisfied that the Winston &  
11 Strawn invoices are applicable to the *Riverkeeper* suit;  
12 is that correct?

13 A [HIPPI] Company rebuttal testimony - Company Witness  
14 Cartin provided additional information in his rebuttal.  
15 It did not come in with the information request  
16 responses to ORS, nor did it come in through direct  
17 testimony. Through rebuttal, he indicates that, through  
18 an affidavit, that that work was done in support of the  
19 *Congaree Riverkeeper*. The allocation - the company did  
20 not make an allocation of those charges in the proper  
21 manner, such that we could discern it. We agree that it  
22 should be allocated to the *Congaree Riverkeeper* and  
23 subsequently it should not be allowed for recovery  
24 through ratepayers.

25 Q Thank you. And you had questions initially about the

1 Baker, Donelson, Bearman, Caldwell & Berkowitz invoices.

2 Where did you finally allocate those invoices to?

3 A [HIPP] There was no definitive allocation. ORS removed  
4 them.

5 Q And you –

6 A [HIPP] And it was – just to make sure that I get this  
7 clear on record, it was the expenses and advances that  
8 were contained in those invoices that were unallocated  
9 by the company. The company had an opportunity to  
10 allocate, as the Commission requested, and disaggregate  
11 those expenses, and it didn't do that.

12 Q What was Baker Donelson representing the company for?

13 A [HIPP] I couldn't tell you. I mean, we'd have to go  
14 ahead and look at the invoices.

15 Q But you have the invoices.

16 A [HIPP] Yes.

17 Q All right. And I think you concluded that the Berkeley  
18 Economic Consulting expenses were properly allocated to  
19 the *Riverkeeper* case, correct?

20 A [HIPP] Right, after the rebuttal testimony of the  
21 company revealed that the allocation belongs to the  
22 *Congaree Riverkeeper*. ORS agrees with the allocation,  
23 and it requests that the Commission remove those  
24 expenses.

25 Q And you are satisfied that the consulting services of

1 Hoffman Consultants and Winthrop Real Estate are  
2 allocable to the condemnation matter, correct?

3 A [HIPP] That is correct.

4 Q And then you had concerns about the redacted invoices  
5 from Willoughby & Hoefer, correct?

6 A [HIPP] Yes, we did.

7 Q And the ORS has accepted redacted invoices from  
8 attorneys in the past.

9 A [HIPP] We have.

10 Q And the reason for redacted attorneys-fees invoices are  
11 that those invoices are not confidential, by law, or  
12 were not in this case, correct?

13 A [HIPP] The invoices provided to ORS, under the new  
14 statute that ORS abides by, were confidential, but –

15 Q But when they were provided in this case, they were not.

16 A [HIPP] When they were provided in the original case to  
17 ORS and then returned to the company, no, they were not.

18 Q And the ORS has concerns in these cases that, if those  
19 records are public, that members of the public could see  
20 them and ascertain not just what the costs are but what  
21 the legal tactics and strategies are, correct?

22 A [HIPP] ORS doesn't have concerns that the public can see  
23 it; the company has expressed concern about the public  
24 seeing it.

25 Q Well, you can understand why the company would have

1 concerns, could you not? For instance, in this case,  
2 you have worked with the Riverkeeper in this case, to  
3 try to block recovery of these legal fees, have you not?

4 **A** [HIPP] No, we have not.

5 **Q** The Riverkeeper was not a witness on behalf of the  
6 Office of Regulatory Staff?

7 **A** [HIPP] We did not work – the characterization that ORS  
8 worked with the Riverkeeper to block the recovery is  
9 inaccurate. The Riverkeeper is here simply to respond  
10 to rebuttal that the company put in, related to  
11 characterizing the intention of the Riverkeeper's  
12 lawsuit. ORS was not a party in the federal lawsuit.  
13 We cannot speak to that. We wanted to make sure that  
14 the Commission had a party to speak to the intention –  
15 and who better than the Riverkeeper to do it?

16 **Q** And you can understand why the company would have some  
17 concern that you would share its legal strategies and  
18 tactics with the Riverkeeper, can you not?

19 **A** [HIPP] I don't understand the question. ORS did not  
20 share the legal expenses with the Riverkeeper. ORS, in  
21 fact, kept the confidential documents in a manner such  
22 that only ORS employees would be able to look at it. So  
23 the Riverkeeper didn't review legal expenses related to  
24 this; they were here simply to testify as to what  
25 happened in the federal lawsuit.

1 Q Now, in your Petition for Reconsideration, you argue,  
2 quote, "There is, additionally, no precedent for or  
3 evidence in the record of this case to explain why the  
4 company was permitted to expense legal fees over a  
5 period of 66 years." Do you recall that?

6 A [HIPP] I believe that's in our Petition for Rehearing  
7 and Reconsideration.

8 Q All right. And you recall a few minutes ago I asked you  
9 if you'd consulted with Mr. Schellinger about your  
10 testimony today, do you not?

11 A [HIPP] Correct.

12 Q And I think you recall my asking you a few minutes ago  
13 if it was not important for the ORS to look back to  
14 previous rate cases to establish certain baseline kinds  
15 of data, correct?

16 A [HIPP] Correct.

17 Q Now, you've been with the ORS since almost the  
18 beginning, I think, have you not?

19 A [HIPP] I have, since the beginning.

20 Q And you've been in water and wastewater all that time,  
21 correct?

22 A [HIPP] Correct.

23 Q And you may have heard me state, to you and to others,  
24 that oftentimes you know more about my clients than I  
25 do. Do you recall ever hearing my saying that?

1 A [HIPP] I think I've heard you say that.

2 Q Yeah. So you're very familiar with these cases and the  
3 history of these Carolina Water Service rate cases.  
4 That's fair to say, correct?

5 A [HIPP] Yes.

6 Q And you recall Mr. Schellinger testifying in the 2015-  
7 199-WS docket that the ORS proposed to remove certain  
8 deferred charges. These charges consisted of expenses  
9 for I-20 litigation efforts and deferred expenses for  
10 tank inspections. Do you recall his testifying to that?

11 A [HIPP] Vaguely.

12 Q But you don't dispute it.

13 A [HIPP] I don't, subject to check. I don't know if it  
14 was Mr. Schellinger or who that was, but it sounds  
15 familiar.

16 Q And is Ms. Gearhart – is she still with y'all?

17 A [HIPP] She's not.

18 Q All right. But she was the audit witness in that case,  
19 do you recall that?

20 A [HIPP] Correct.

21 Q And Ms. Gearhart, in Docket No. 2015-199-WS,  
22 demonstrated this adjustment that Mr. Schellinger  
23 proposed in his testimony in that case. Do you recall  
24 that?

25 A [HIPP] Subject to check, yes. I understand that this is

1 a settlement agreement where ORS and the company agreed,  
2 in the context of a settlement agreement, to include  
3 some limited expenses related to the I-20 litigation and  
4 amortize those over a period of time, in the context of  
5 the 2015-199-WS case.

6 **Q** Thank you. And you'll recall that, in that case,  
7 Carolina Water actually sought in its application to  
8 recover about \$121,000 – \$121,516, to be exact – in  
9 rates, earning an ROE. Do you recall that?

10 **A** [HIPP] Subject to check. The dollar amount sounds  
11 familiar, and the rate-base treatment of those  
12 expenditures was an issue, yes.

13 **Q** And the ORS declined to accept that allocation but  
14 proposed, instead, recovery of \$121,516 amortized over  
15 66.7 years, with no rate-base treatment, correct?

16 **A** [HIPP] In the context of the settlement, yes.

17 **Q** Well, help me understand what you mean by that, because,  
18 as I recall your testifying, the ORS sends out a couple  
19 of hundred audit requests, correct?

20 **A** [HIPP] Correct.

21 **Q** And the ORS makes a certain adjustments, correct?

22 **A** [HIPP] Correct.

23 **Q** And the ORS is very good – at the end of its audit  
24 period, it will have an exit conference or an exit  
25 interview; is that correct?

1 A [HIPP] We do.

2 Q And the ORS will sit down and will tell the company all  
3 the adjustments that it proposed, correct?

4 A [HIPP] Yes, we do.

5 Q And, in addition, the ORS is very good about providing  
6 the company with their work papers, demonstrating what  
7 adjustments they're making. Y'all do that, don't you?

8 A [HIPP] Yes. Upon request of the company, we definitely  
9 will provide our work papers.

10 Q And you recall that in the 2015 case, that the company  
11 asked for this adjustment information and that Mr.  
12 Schellinger provided them with the ORS adjustments and  
13 the work papers demonstrating those adjustments. You  
14 recall that, don't you?

15 A [HIPP] I believe we did.

16 Q All right. And, of course, that's before a settlement.  
17 That's during the exit interview, that's before the case  
18 has been settled. Isn't that correct?

19 A [HIPP] I believe so.

20 Q All right. So this is an adjustment that y'all made  
21 irrespective of a settlement, correct?

22 A [HIPP] Correct.

23 Q So it would be reasonable for the company, in its 2017  
24 rate-case application, to seek the same treatment of its  
25 I-20 litigation costs as recommended by Mr. Schellinger

1 in the 2015 case.

2 **A** [HIPP] It certainly would be reasonable for it to seek  
3 those costs. It doesn't mean that it's reasonable to  
4 recover them in that manner, and ORS offered –  
5 obviously, in this case – offered a differing  
6 adjustment.

7 **Q** And so, when you write in your Petition for Rehearing  
8 that there's no precedent for this sort of accounting  
9 treatment, that's not really true, is it?

10 **A** [HIPP] I don't know that I necessarily disagree with our  
11 wording. This is a unique situation. Again, looking at  
12 legal expenses on a case-by-case basis, this is a large  
13 dollar sum related to an effort or a legal action where  
14 the company violated its permit. The company requested  
15 to recover that over the life of a plant asset, a  
16 comparable time such as the life of a plant asset, and  
17 we think it was an attempt to camouflage the volume of  
18 expenses such that customers would not notice it in  
19 rates. Because what it really boils down to at the end  
20 of the day is, in rates right now, for the first year,  
21 is \$14,000. While that's insignificant or could be  
22 insignificant, on the aggregate that's a very large  
23 amount that customers are paying for, for a legal action  
24 where they received no benefit and the company was found  
25 to have violated its permit. That's not reasonable to

1 expect that, because the company incurred legal  
2 expenses, that it should be allowed to recover it  
3 through rates to customers for that period of time.

4 **Q** So it's your testimony that the company acted  
5 unreasonably to rely on the ORS recommendation in the  
6 previous case.

7 **A** [HIPP] I think that, you know, every rate case is a  
8 different scenario. In the case where we have a  
9 settlement agreement, there's language that was read  
10 earlier in the record that it's not precedential  
11 setting. The company is free to offer its adjustments.  
12 So it can offer its adjustments. That doesn't mean ORS  
13 is going to agree to it, or that the Commission is going  
14 to agree to it.

15 **Q** And so when the ORS recommended an accounting adjustment  
16 in 2015 to recover \$121,516 in I-20 litigation costs  
17 over 66.7 years without rate treatment, was it obviously  
18 attempting to hide those costs?

19 **A** [HIPP] I don't think so. I think, at the time, with the  
20 information that we had, that was a good adjustment.  
21 The dollar value was very low, the legal expenses were  
22 not significant at that time, and that adjustment, when  
23 offered, could've been rejected very well by the  
24 Commission, but in a comprehensive settlement the  
25 company agreed to that and ORS agreed. Settlements are

1 a give-and-take.

2 Q And so let's go back and let's look at the  
3 interconnection between Friarsgate and Columbia, please.  
4 As we discussed, the status is that Carolina Water has  
5 negotiated an interconnection agreement with the City of  
6 Columbia, correct?

7 A [HIPP] That's correct.

8 Q And the company has filed a request with this Commission  
9 to approve the agreement, correct?

10 A [HIPP] That's correct.

11 Q The ORS has an opportunity to investigate the benefits  
12 of that agreement, correct?

13 A [HIPP] Yes.

14 Q And, ultimately, it's up to the Commission to decide  
15 whether to approve it, or not.

16 A [HIPP] Correct.

17 Q Let's assume that the Commission, in its wisdom, decides  
18 to disapprove the agreement; and, for the purposes of my  
19 question, let's assume that a part of the permit, CWS's  
20 permit, is that when a reasonable provider is available,  
21 it must connect; and let's assume that, because the  
22 Commission disapproves the agreement, that the company  
23 is in violation of its permit; and last, let's assume  
24 that some enterprising young man sues the company  
25 because they have violated their permit. Can Carolina

1 Water Service defend that case, Ms. Hipp?

2 **A** [HIPPI] I think you're asking me to do a lot of  
3 speculation on this issue. I mean, these are  
4 hypothetical situations that you're asking me to render  
5 an opinion on, when all the facts aren't known. I'm not  
6 looking at those legal expenses. I don't know the  
7 context, aside from the assumptions. I'm not  
8 comfortable offering you an opinion on that issue.

9 **Q** But you are comfortable giving me an opinion on the  
10 company's reaction to being sued by the Riverkeeper on  
11 the I-20 system, are you not?

12 **A** [HIPPI] Most definitely. And I'm supported by an order  
13 from the federal judge related to, you know, what was  
14 found – what the company was found to be in violation  
15 of. That is finality, and these customers should not  
16 pay for those rates related to that. It's just not  
17 reasonable.

18 **Q** And is it your testimony that the companies should've  
19 simply surrendered to the Riverkeeper when he filed  
20 suit?

21 **A** [HIPPI] My testimony is that the company can defend  
22 itself in any lawsuit that its management deems  
23 necessary. My testimony indicates that ratepayers  
24 should not be liable for those charges. If the company  
25 management wants to defend itself in court on differing

1           lawsuits, it's this Commission that determines what goes  
2           into rates. And our position, ORS's position, is that  
3           these costs should not be passed along to ratepayers.  
4           If the company wants to incur them, then the  
5           shareholder.

6       **Q**     So it's your position that – your – the ORS position is  
7           that, when faced with a lawsuit which may have resulted  
8           in the loss of service for at least 2000 of its  
9           customers, it had no business defending the case and  
10          protecting the rights of the customers. Is that –

11       **A**     [HIPP] That is not –

12       **Q**     – your testimony?

13       **A**     [HIPP] – my testimony.

14                       **MR. ELLIOTT:** No further questions; Mr.  
15                       Chairman.

16                       **CHAIRMAN RANDALL:** Thank you.  
17                       Commissioners. Commissioner Whitfield.

18                       **COMMISSIONER WHITFIELD:** Thank you, Mr.  
19                       Chairman.

20   **EXAMINATION**

21       **BY COMMISSIONER WHITFIELD:**

22       **Q**     Just a couple of questions for the panel. We've been  
23           here a long time today. So, I'll start with you, Mr.  
24           Sullivan. Mr. Sullivan, in Michael Cartin's rehearing  
25           direct testimony on pages five and six – I'll give you a

1 second to get there. You may not need it for what I'm  
2 going to ask you, but if you want to go ahead and get  
3 there.

4 **A** [SULLIVAN] [Indicating.]

5 **Q** You there?

6 **A** [SULLIVAN] I believe so.

7 **Q** Okay. He states that the company hired ClearWater  
8 Solutions to mitigate Carolina Water Service's sludge-  
9 hauling expenses. Did you – did ORS take the ClearWater  
10 contract expenses into consideration when you reviewed  
11 your rehearing adjustments?

12 **A** [SULLIVAN] No, we did not. And I just would like to  
13 point out – because I heard “contract services” earlier  
14 – our cutoff date, as was mentioned by Mr. Cartin, or  
15 Company Witness Cartin, previously indicated our cutoff  
16 date was February 12, 2018, which is correct. We also  
17 toured the Friarsgate facility on February 22nd of 2018.  
18 At that time, there were no mention of contract  
19 services; there were CWS employees running that  
20 facility. The contract service – contract services was  
21 not mentioned, except subsequent to February 22nd, when  
22 our testimony was due March 12th.

23 **Q** Okay. I think I'd heard Ms. Hipp tell Mr. Elliott just  
24 now that the company didn't bring those costs forward –  
25 I think she said, but I wasn't sure what ORS ended up

1           doing, and I know there's been a lot of discussion about  
2           the recommendations ClearWater had, such as the sludge  
3           press and that sort of thing. So, what you're saying  
4           is, at that point, February 22nd, you didn't have  
5           knowledge – the company didn't bring these forward, as  
6           she said, so you didn't take that into consideration  
7           when you reviewed the rehearing adjustments.

8   **A**   [SULLIVAN] Correct. As part of the rehearing, we just  
9           substantiate our original position –

10 **Q**   Original position.

11 **A**   [SULLIVAN] – on normalizing sludge-hauling costs. We  
12           have looked and verified all the invoices that were  
13           provided for the updated sludge-hauling costs. They are  
14           supported. We've never had an issue with the sludge-  
15           hauling costs being supported by invoices. But in  
16           regards to bringing up other areas where costs have  
17           increased, et cetera, those weren't items brought to the  
18           attention of ORS during its initial review.

19 **Q**   Well, according to his testimony, going forward, it  
20           might be going down because of the recommendations they  
21           were offered.

22 **A**   [SULLIVAN] On the sludge hauling?

23 **Q**   Right.

24 **A**   [SULLIVAN] If they potentially – if the interconnection  
25           goes through, then the sludge hauling could potentially

1 be zero, correct.

2 **Q** But you'll have the bulk costs that have been  
3 mentioned –

4 **A** [SULLIVAN] Correct.

5 **Q** – going – which, as she said, would be a new charge,  
6 going forward.

7 **A** [SULLIVAN] Correct. And I'll elaborate on what she said  
8 earlier. The contract services, obviously, if you bring  
9 a contract employee in, or a contract company in, then  
10 what happened to the employees that were at the  
11 facility? So you're going to have – I think Mr. Cartin  
12 touched on this earlier. You're going to have some  
13 costs go up, and you're going to have some costs go  
14 down. And until you can perform a thorough and  
15 extensive audit on that, you don't know the exact  
16 effects on whether it's going to be an increase or a  
17 decrease or how much of an increase or how much of a  
18 decrease, et cetera.

19 **Q** Thank you. One more question for the panel – and, Ms.  
20 Hipp, if you want to answer this, it's certainly fine,  
21 either one of you. And I hesitate to do it; it's a  
22 little speculative in nature. But, the fine that's been  
23 discussed – and I think Mr. Babcock made a lot of –  
24 discussed a lot about getting the judge to withdraw the  
25 \$1.5 million penalty. But, going forward, there was a

1 lot of back-and-forth after Mr. Nelson crossed him, that  
2 that could come back, and, of course, we don't know how  
3 much. Does ORS have an opinion as to what they think  
4 might happen with that \$1.5 million penalty? And, if  
5 so, could you share it?

6 A [HIPP] And, again, Commissioner, just to make sure you  
7 understand, ORS is not a party to that.

8 Q Correct. I – yeah.

9 A [HIPP] So, we're not a participant. We are watching  
10 closely –

11 Q Right.

12 A [HIPP] – to see what happens in that case.

13 Q I realize you're not a party, but –

14 A [HIPP] Right.

15 Q – do you have an –

16 A [HIPP] Our opinion is that, whatever the penalty is –  
17 whether it's \$1 or \$1.5 million or \$2 million – the  
18 customers should not pay for that. And so whatever it  
19 is, at the end of the day, through the proceeding that  
20 they have, or discovery, or however that's decided,  
21 we'll make sure that the customer does not pay that  
22 penalty. Likewise, we'll make sure that the customer  
23 doesn't pay the legal expenses related to negotiating  
24 what that penalty should or shouldn't be.

25 COMMISSIONER WHITFIELD: Thank you, Ms. Hipp.

1 That's all I have, Mr. Chairman.

2 **CHAIRMAN RANDALL:** Thank you.

3 Commissioner Elam.

4 **EXAMINATION**

5 **BY COMMISSIONER ELAM:**

6 **Q** Ms. Hipp, given that you'll make sure – or, at least,  
7 obviously, you'll recommend – that customers do not pay  
8 that fine, is a fine like that some incentive to operate  
9 the systems, you know, in compliance with their permits?

10 **A** [HIPPI] One would think so. The other incentive would be  
11 that the company cannot receive rate recovery for these  
12 types of legal expenses. That's a significant  
13 deterrent.

14 **Q** Yeah. I don't believe ORS has ever recommended that  
15 customers pay for fines.

16 **A** [HIPPI] We have not.

17 **Q** Mr. Sullivan. Normalization. When you use the concept  
18 of normalization, do you do it for single expenses or do  
19 you do it for the package of costs as a whole?

20 **A** [SULLIVAN] [No response.]

21 **Q** Well, you don't do it for the package of costs as a  
22 total, do you?

23 **A** [SULLIVAN] No – I mean, you take everything into  
24 consideration during the course of a review of a rate  
25 application.

1 Q Right.

2 A [SULLIVAN] You know, and that's why I brought up in my  
3 testimony, I mean, we realize other costs were going up,  
4 such as salaries and purchased-water expenses and  
5 purchased-sewer expenses. So, I mean, we take it all as  
6 a whole; but, specifically in this case, it was the  
7 increase in sludge-hauling expenses during the test year  
8 that stood out, and we take the position that they  
9 should be normalized.

10 COMMISSIONER ELAM: Okay. Thank you.

11 CHAIRMAN RANDALL: Commissioner Hamilton.

12 COMMISSIONER HAMILTON: Thank you, Mr.  
13 Chairman.

14 EXAMINATION

15 BY COMMISSIONER HAMILTON:

16 Q One question, Ms. Hipp: We've talked a lot today about  
17 litigation, but could you tell me or help me, other than  
18 the *CWS versus EPA and the Town of Lexington*, have any  
19 orders been issued on other litigation that we've  
20 discussed?

21 A [HIPPI] No. The two sets of litigation where orders have  
22 been issued, you've properly characterized. One is the  
23 *Riverkeeper* lawsuit and the other is the *CWS versus US*  
24 *EPA and the Town of Lexington*. Those have orders in  
25 them. The other cases – the Town of Lexington

1 condemnation, the administrative law court appeals of  
2 the DHEC orders – there may be procedural orders in  
3 those, but a final order has not been issued.

4 **COMMISSIONER HAMILTON:** Thank you, ma'am, very  
5 much. I hope we're ending the day with that.

6 **CHAIRMAN RANDALL:** Commissioner Williams.

7 **COMMISSIONER WILLIAMS:** Yes, Mr. Chairman,  
8 thank you. A couple of questions.

9 **EXAMINATION**

10 **BY COMMISSIONER WILLIAMS:**

11 **Q** This is for Ms. Hipp. If a system is constructed  
12 according to DHEC's loading requirements, could there be  
13 times when the load on that system exceeds capacity and  
14 discharges above NPDES limits?

15 **A** [HIPPI] Again, I'm not a DHEC expert on the permit, but,  
16 no, I think if the permit is designed properly and the  
17 load is correct, you know, you won't exceed capacity.  
18 Now, there's going to be weather, you know, inadvertent  
19 weather issues – hurricanes and flood, that type of  
20 thing – that may impact that. I don't know.

21 **Q** If the limits were exceeded, do you think it would be  
22 the company's fault?

23 **A** [HIPPI] The company is responsible for maintaining safe  
24 and efficient operations within the parameters of its  
25 permit. It would be up to DHEC to determine whether or

1 not the company was at fault.

2 **Q** A couple of questions about this litigation. You've  
3 been doing this for a long time, right, in terms of work  
4 for ORS?

5 **A** [HIPP] Yes.

6 **Q** So this is not your first rodeo.

7 **A** [HIPP] No.

8 **Q** I'm trying to understand what the reasonable response  
9 for the company would have been when faced with a  
10 lawsuit. And where I'm going is, I think your  
11 testimony, in some way, shape, or form, considered it  
12 unreasonable for the company to defend itself and then  
13 ask for the ratepayer to pay for the cost of that  
14 litigation.

15 **A** [HIPP] No, I don't think that's my testimony. My  
16 testimony isn't that it's unreasonable for the company  
17 to defend itself; it's that it's unreasonable for the  
18 ratepayer, in the situation of the *Congaree Riverkeeper*  
19 lawsuit that resulted in the federal order finding that  
20 the company had violated its permit – it's unreasonable  
21 for the ratepayers to pay for those legal expenses.  
22 That's what's unreasonable. It's a policy issue. It's  
23 not the standard of the expense or what the company  
24 should or should not have done. The fact of the matter  
25 is that the ratepayers should not pay for that. Just

1 because the company incurs an expense, it doesn't  
2 automatically mean that the ratepayer pays for it.  
3 There's an incentive inherent in regulation, for  
4 regulated utilities.

5 **Q** Okay. What if the outcome would have been different?

6 **A** [HIPP] It's a great question. We've batted that one  
7 around in the office, as well: You know, what if they  
8 had prevailed? Again, it's a case-by-case basis. We  
9 would look at the outcome and make a recommendation to  
10 this Commission. You know, we may go granular on those  
11 expenses. We didn't challenge the reasonableness of the  
12 dollar value, the hours spent; there may be a closer  
13 look.

14 **Q** Okay. So you're saying that there's only two outcomes,  
15 generally speaking – win or lose – and so your testimony  
16 is you don't know whether or not it would've been  
17 reasonable or unreasonable if they would've won?

18 **A** [HIPP] I don't, because we would look at the order, such  
19 as we've done here, and see what the components of the  
20 order were, whether or not the company was found to have  
21 violated its permit but prevailed on some other issue.  
22 You know, what we're hinging on here is that the company  
23 was found to have violated its permit.

24 **Q** Thank you.

25 **A** [HIPP] You're welcome.

1                   **CHAIRMAN RANDALL:** Commissioners, any other  
2                   questions?

3                                   [No response]

4                                   **EXAMINATION**

5 **BY CHAIRMAN RANDALL:**

6 **Q**     Ms. Hipp, just one, or one and a half. Page 14 of your  
7           prefiled direct rehearing testimony states that the *CWS*  
8           *versus EPA and Town of Lexington* case had no  
9           quantifiable benefit to the ratepayers. Define  
10          “quantifiable benefit.”

11 **A**     [HIPP] One that you can touch and feel, one that, you  
12          know, impacts the ratepayer. The company provided no  
13          support, except to say, as we have heard today, you  
14          know, termination would be a terrible outcome, so,  
15          obviously, the benefit to that is to remain and have  
16          service. That's not a quantifiable benefit, in my mind.

17 **Q**     Would ORS consider the resulting interconnection with  
18          Lexington sewer system to be a quantifiable benefit?

19 **A**     [HIPP] I don't know. We're still looking at the  
20          interconnection request that's been brought before the  
21          Commission. We've had some information requests that  
22          we're looking at the responses of; and we'll be looking  
23          at the economic benefits, potentially, for the  
24          customers, the cost-benefit analysis that the company  
25          may have performed; and we'll make a reasonable

1 recommendation to the Commission.

2 **CHAIRMAN RANDALL:** Thank you.

3 Commissioners, anything else?

4 [No response]

5 Any redirect?

6 **MS. BELSER:** Just briefly.

7 **CHAIRMAN RANDALL:** I've heard that before.

8 [Laughter]

9 **REDIRECT EXAMINATION**

10 **BY MS. BELSER:**

11 **Q** Ms. Hipp, we've heard – in questioning, we've had  
12 references to the "I-20 facility" and the "I-20 system."  
13 Is there a difference in the "I-20 facility" versus the  
14 "I-20 system"?

15 **A** [HIPPI] Not in my mind.

16 **Q** Does the "system" encompass more than the wastewater  
17 treatment –

18 **A** [HIPPI] Yes.

19 **Q** – facility? And what would the "system" include?

20 **A** [HIPPI] Well, the system would include all the collection  
21 system, piping. You know, one can interpret that to  
22 mean the service territory, as well, the customers.

23 **MS. BELSER:** Mr. Chairman, may I approach the  
24 witness?

25 **CHAIRMAN RANDALL:** Yes.

1                   **MS. BELSER:** I'm referring to – I'm not sure  
2                   which hearing exhibit. It's the transcript that  
3                   was from the *Congaree Riverkeeper* case that Mr.  
4                   Hoefler introduced, and I'm referring to page 55,  
5                   and I want to ask Ms. Hipp if she would read lines  
6                   11 through 16.

7 **BY MS. BELSER:**

8 **Q**     [Indicating.]

9 **A**     [Indicating.]

10                   **MS. BELSER:** And, Mr. Chairman, this was a  
11                   portion that was referenced earlier, and it was, I  
12                   believe, when Mr. Hoefler said that Mr. Holman was –  
13                   this was Mr. Holman speaking.

14 **BY MS. BELSER:**

15 **Q**     And it's lines 11 through 16 please.

16 **A**     [HIPP] "Your Honor, shutdown of a facility that is not  
17                   complying with the Clean Water Act is relief that we  
18                   sought. It is relief that is appropriately considered,  
19                   and should be considered at the appropriate time. No  
20                   one wants to create a public health emergency, but we do  
21                   need to stop the environmental degradation that's  
22                   happening."

23 **Q**     And the term there used is "facility," is it not?

24 **A**     [HIPP] Correct.

25 **Q**     Not the entire system that would include all the piping

1 to the customers and that Mr. Scott kept referencing as  
2 shutting down the system; is that correct?

3 **A** [HIPP] Correct.

4 **MS. BELSER:** Thank you.

5 **CHAIRMAN RANDALL:** Okay. I'm not sure that  
6 entire transcript has been entered, Mr. Butler is  
7 saying, and Ms. Wheat, as well. So would you be  
8 willing to enter that, if either one can enter that  
9 as an exhibit?

10 **MR. ELLIOTT:** We'd offered it up. That'd be  
11 fine, Mr. Chairman.

12 **CHAIRMAN RANDALL:** Okay.

13 **MS. BELSER:** Nothing further, Mr. Chairman.

14 **CHAIRMAN RANDALL:** Thank you. Okay.  
15 That will be Exhibit No. 19.

16 [WHEREUPON, Hearing Exhibit No. R-19 was  
17 marked and received in evidence.]

18 **CHAIRMAN RANDALL:** Any recross.

19 **MR. ELLIOTT:** No, thank you, Mr. Chairman.

20 **CHAIRMAN RANDALL:** Thank you.

21 Okay. We'll excuse this panel – or, you may  
22 step down.

23 [WHEREUPON, the witnesses stood aside.]

24 Anything else, Ms. Belser?

25 **MS. BELSER:** Not of these witnesses. No