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S.C. SUPREME COURT

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2014-346-WS - ORDER NO. 2022-79

JANUARY 27, 2022

IN RE: Application of Daufuskie Island Utility Company, Incorporated for Approval of an Increase for Water and Sewer Rates, Terms and Conditions	) ORDER DENYING REQUEST OF DAUFUSKIE ISLAND UTILITY COMPANY, INCORPORATED TO IMPOSE REPARATIONS SURCHARGES ON CUSTOMERS

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the "Commission" or "PSC") regarding the requested recovery by Daufuskie Island Utility Company, Inc. ("DIUC" or the "Company") of reparations surcharges from its customers. As part of a Settlement Agreement filed February 18, 2021, all parties agreed to litigate the reparations surcharges issue separately.

The South Carolina Office of Regulatory Staff ("ORS"), Haig Point Club and Community Association, Inc. ("HPCCA"), Melrose Property Owner's Association, Inc. ("MPOA"), and Bloody Point Property Owner's Association ("BPPOA") (collectively, the "POAs" or "Intervenors") oppose DIUC's proposal, which would allow the Company to collect reparations surcharges, as well as the Commission-approved rates and charges.

To be precise, DIUC requests that the Commission implement rates retroactively, by billing the Company's customers two separate surcharges for the collection of past monies that the Company claims are due, even though lawful rates have been in effect since

March 1, 2021, pursuant to Commission Order No. 2021-132 (the "Order on Second Rehearing"). The Company's request is as follows:

> DIUC asserts the temporary rates permitted by Order 2015-846's rate increase of 43%, which was mitigated but not corrected by Order 2018-68's further changes permitting a rate increase of 88.5%, were confiscatory. DIUC seeks reparations to recoup through a surcharge its shortfall in revenues and return with interest accumulating until the surcharge becomes effective, back to its January 2018 billing for service provided for the last quarter of 2017, until its first billing following a final decision on the recoupment issue. DIUC also seeks reparations to recoup through a surcharge the credit/refund made in its January 2018 billing for the difference between the 88.5% increase and the 108.9% increase that had been in effect during the first appeal with interest accumulating until the surcharge becomes effective.

Order on Second Rehearing, Exhibit 1, paragraph 8.

The Settlement Agreement contained a provision that outlined a procedure under which the Parties would brief the question of whether DIUC can charge its customers reparations in this case as described above for the Commission for further determination, and the proceeding would remain open until the issue of reparations is fully adjudicated.[1] *Settlement Agreement*, ¶8.f., p. 5. The sole issue for consideration before the Commission is whether DIUC may charge its customers reparations in the form of surcharges resulting from what DIUC described as "confiscatory" rates. *Settlement Agreement*, ¶8, p. 5. Upon review of the Parties' arguments and the materials submitted in the record of this Docket, this Commission denies DIUC's request to charge its customers the reparations surcharges.

[1] In the Settlement Agreement, the Parties agreed that each would have the opportunity to present "their positions regarding [...] reparations via written submission." Commission Order No. 2021-132, Order Exhibit 1, paragraph 8; See also Commission Order No. 2021-132, which states, "the Parties can brief the matter [of the legality of retroactive reparations] to the Commission for its further determination in this case." Order p. 5

II. Statutory Standards and Required Findings

DIUC is a public utility under the laws of the State of South Carolina, and is subject to the Commission's jurisdiction with respect to its rates, charges, tariffs, and terms and conditions of service as generally provided in S.C. Code Ann. Sections 58-5-210 *et seq.* This Commission must exercise its dual responsibility of permitting utilities an opportunity to earn a reasonable return on the property the utility has devoted to serving the public, on the one hand, and protecting the consumers from rates that are so excessive as to be unjust or unreasonable on the other. In this case, the Commission must determine whether or not DIUC's plan to levy surcharges on its customers in addition to the Company's approved rates and charges (the "Current Rates") is just and reasonable under South Carolina law.

III. Review of the Timeline in the Case

It is undisputed that this proceeding has been lengthy. Every utility's rate proceeding before this Commission begins once the Commission accepts a utility's rate application for filing. From that date, the Commission is statutorily required to issue its order no more than six months later. However, this case has a long history after the initial process.

For purposes of analysis of this case, it is useful to provide the procedural history of this matter:

1) On June 9, 2015, DIUC filed an application seeking approval of a new schedule of rates and charges for water and sewer service provided to DIUC's customers within its authorized service area ("Proposed Rates"), and seeking additional annual

revenues for combined operations of $1,182,301. (Application Schedule A-4, Pro Forma Proposed Rates, Total Revenues).

2) On December 8, 2015, the Commission issued Order No. 2015-846 ruling on DIUC's Application. Commission Order No. 2015-846 approved rates ("Initially Approved Rates") allowing DIUC to earn additional annual revenue of $462,798.

3) DIUC filed a Petition for Reconsideration and/or Rehearing of Order No. 2015-846. On February 25, 2016, the Commission issued Order No. 2016-50 denying DIUC's Petition for Reconsideration and/or Rehearing.

4) On January 20, 2016, DIUC filed a Petition for Bond Approval in which it notified the Commission that, under S.C. Code Ann. § 58-5-240(D), DIUC intended to put its Proposed Rates into effect under surety bond during the pendency of an appeal.

5) On March 1, 2016, the Commission issued Order No. 2016-156 approving the surety bond proposed by DIUC ($787,867), effective July 1, 2016, for a period of one year. On June 30, 2017, the Commission issued Order No. 2017-402(A) extending DIUC's surety bond for an additional six months.

6) On March 22, 2016, DIUC filed and served its Notice of Appeal seeking review of Commission Order Nos. 2015-846 and 2016-50 ("the Orders").

7) On July 1, 2016, and pursuant to S.C. Code § 58-5-240(D), the Company began collecting its Proposed Rates under bond.

8) On July 26, 2017, the South Carolina Supreme Court reversed the Orders, and remanded the case to the Commission for a de novo hearing. *Daufuskie Island Utility*

Company v. S.C. Office of Regulatory Staff, 420 S.C. 305, 803 S.E.2d 280 (2017) ("*DIUC I*").

9) On December 6th and 7th of 2017, the Commission conducted a de novo Rehearing of DIUC's Application.

10) On January 31, 2018, and following the Rehearing, the Commission issued Order No. 2018-68. On February 20, 2018, DIUC filed a Petition for Reconsideration of Order No. 2018-68. On May 16, 2018, the Commission issued Order No. 2018-346, denying DIUC's Petition for Reconsideration.

11) On June 13, 2018, DIUC filed and served its Notice of Appeal seeking review of Order No. 2018-68 and Order No. 2018-346 (the "Orders on Rehearing").

12) The Orders on Rehearing approved rates ("Subsequently Approved Rates") allowing DIUC to earn additional annual revenue of $950,166. As per S.C. Code Ann. § 58-5- 240(D), Commission Order No. 2018-68 required DIUC to refund to its customers the difference between the revenue collected by DIUC under the Proposed Rates and the revenue approved by the Orders on Rehearing resulting in the Subsequently Approved Rates.

13) Following the Rehearing, DIUC did not exercise its rights under S.C. Code Ann. § 58-5-240(D) to put its Proposed Rates into effect under bond during its appeal of the Orders on Rehearing, but instead implemented the Subsequently Approved Rates.

14) On July 24, 2019, the South Carolina Supreme Court reversed the Orders on Rehearing, and again remanded the case to the Commission for another *de novo* hearing.

Daufuskie Island Utility Company v. S.C. Office of Regulatory Staff, 427 S.C. 458, 832 S.E. 2d 572 (2019) ("*DIUC II*").

15) On February 25, 2021, the Commission held a virtual hearing, during which the parties submitted a Settlement Agreement, and the Commission heard supporting settlement testimony.

16) On March 30, 2021, the Commission issued Order No. 2021-132 ("Order on Second Rehearing") approving rates effective March 1, 2021 ("Current Rates"). No Petitions for Reconsideration and/or Rehearing or appeals resulted from the Order on Second Rehearing.

IV. Analysis and Conclusions

A. Retroactive Ratemaking is Prohibited

The question before the Commission is whether granting the Company's request is allowable under South Carolina law, or whether it is illegal retroactive ratemaking. We hold that granting the Company's request constitutes illegal retroactive ratemaking, which makes the proposed surcharges unjust and unreasonable. In addition, the request suffers from other infirmities which are discussed below.

The parties agree that the Current Rates approved by the Order on Second Rehearing are prospective. *See* Order on Second Rehearing, Exhibit 1, at Paragraph 2: ("These rates and charges become effective upon Order of the PSC accepting this Settlement Agreement and may be first billed by DIUC to its customers in the first bill issued by DIUC thereafter.") The prospective nature of the Current Rates follows the general principle that rates approved by the Commission following a water or sewer rate

case conducted pursuant to S.C. Code Ann. Section 58-5-240 are prospective. Ratemaking is a prospective rather than a retroactive process. *Porter v. SCPSC*, 328 S.C. 222, 493 S.E.2d 92 (1997). The principle is that retroactive ratemaking with respect to utilities is prohibited, based on the general principle that customers who use service provided by a utility should pay for its production rather than requiring future ratepayers to pay for past use. *Id.* In the present case, the previous orders approving rates issued in this Docket (the Orders and the Orders on Rehearing) adjusted rates by approving rates that replaced existing rates with new rates going forward, except when S.C. Code Ann. § 58-5-240(D) applied.

The Commission cannot adjust "lawfully approved" rates retroactively. The Current Rates are "lawful" rates, and therefore "final rates," and cannot be adjusted retroactively since the Current Rates were never appealed. DIUC argues that the Current Rates "are not final rates and, as such, the requested modification of the issued rates [the Current Rates] is not retroactive ratemaking." *DIUC Reply Brief in Support of Request for Reparations (DIUC Reply Brief)*, p. 6. According to DIUC, "there has yet to be a *final* rate such that the concept of retroactive ratemaking would be implicated." *DIUC Submission in Support of Request for Reparations (DIUC Brief)*, p. 23. DIUC further cites as support language from the Settlement Agreement attached as Order Exhibit 1 to the Second Order on Remand:

> that this proceeding, Docket No. 2014-346-WS, will remain open until the issue of reparations is fully adjudicated, including any appeals and final order(s) on remand, if necessary.

Settlement Agreement, dated February 18, 2021, ¶ 8.f, p. 5. Likewise, DIUC argues that because this case is "an open proceeding, the data, evidence and information – as well as the rates to be ordered – are all subject to change in this docket." *DIUC Reply Brief*, p. 6.

Contrary to DIUC's position, however, the Current Rates are "final," because the Order on Second Rehearing is a final order. No party challenged the Order on Second Rehearing within the time allowed for appeal. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 734 S.E.2d 778 (2013) (an unappealed ruling is the law of the case). DIUC agrees: "a Commission rate order is not final until all appeals are exhausted or the time to appeal has expired." *DIUC Reply Brief*, p. 6. Moreover, DIUC agrees that the Current Rates are "just and reasonable." Exhibit 1 to Second Order on Remand, paragraph 5. The Current Rates are "lawful rates," because they were approved by a Commission Order (the Order on Second Rehearing) that has not been appealed. S.C. Code Ann. § 58-5-290 makes clear that the Current Rates could only be adjusted prospectively, and not retroactively.

Similarly, the proceedings on reparations surcharges currently before the Commission are not an "open proceeding." The Order on Second Rehearing clarifies that "the Parties can brief the matter [DIUC's Request] to the Commission for its further determination in this case." *Order on Second Rehearing*, p. 5. Then via Order No. 2021-501 issued July 26, 2021, this Commission struck certain portions of the Affidavit of John F. Guastella filed by DIUC because that affidavit was an "attempt to introduce other evidence into the case, including opinion evidence of the effect of the Commission's decisions on DIUC's rate of return on equity." *Commission Order No. 2021-501*, Finding of Fact No. 3, p. 4.

Therefore, while DIUC had the right to seek judicial review of this Order, the time to challenge the Order on Second Rehearing has passed. Likewise, agreeing to allow the parties to brief and argue whether or not reparations as requested by DIUC are legally appropriate does not give the Commission the authority to make rates provisional and subject to revision going back. This Commission will address the status of the Initially Approved Rates and the Subsequently Approved Rates below, but the proposition that the Current Rates are not "final rates" or that this is an "open proceeding" where rates are subject to change has no basis in law and cannot support DIUC's argument that its request does not constitute retroactive ratemaking.

The Initially Approved Rates and the Subsequently Approved Rates were "lawfully established" rates and "final rates" and cannot be adjusted retroactively. The South Carolina Supreme Court has spoken specifically about circumstances similar to the present case. In *SCE&G v. PSC*, 275 S.C. 487, 272 S.E. 2d 793 (1980), the Court noted that when a rate is lawful, the Commission has no authority to determine that the rate previously fixed and approved was unreasonably low, and that the customers would thus pay the difference to the utility. This is precisely the relief and result sought by DIUC in the present case, which is prohibited.

Further, neither *DIUC I* nor *DIUC II* made any determination that the Initially Approved Rates were unlawful or not lawfully established. Nor did either opinion make any determination that directed the Commission to implement the Proposed Rates (or the Current Rates). Neither opinion directed the Commission to calculate or implement any

particular rates. The Supreme Court opinions did not rule on the merits of the case,but called for *de novo* hearings before the Commission.

There are instances where the Commission's adjustment of rates looking back following an appeal is not considered illegal retroactive ratemaking, such as when rates are found to be unlawful. Such an instance is illustrated by *Hamm v. Central States Health and Life Co. of Omaha*, 299 S.C. 500, 386 S.E. 2d 250 (1989). DIUC argues that "when the Supreme Court determines upon timely appeal to reverse a Commission order, the rates permitted by that reversed order are still not "final" since they will not be "lawfully established" until changed on remand and any subsequent appeals have been ended by order. *DIUC Reply Brief*, p. 6. The Commission order approving the new rates and charges was not appealed, therefore, the rates are lawful, and implementing new rates retroactively would constitute illegal retroactive ratemaking.

B. Parties Blaming Parties for Delay

Aside from the matter of retroactivity, DIUC attempts to justify its request for reparations surcharges in this matter by blaming other entities for the prolonged nature of this case. The record documents various unopposed requests for extensions filed by the parties, which were granted by the Commission. A review of these instances reveals that no one party was responsible for delays or for prolonging the proceedings. The proceedings were extensive, but given their nature, and the fact that there were discovery issues, the time spent on the case by the Commission was warranted.

C. "Inappropriate" Discovery

DIUC also complains about "inappropriate discovery" by ORS. First, DIUC never sought a protective order, which is available under Commission Regulations and the South Carolina Rules of Civil Procedure. Second, ORS asserts that it had a statutory obligation to conduct discovery relating both to the Application as filed, and in each instance, where DIUC presented new or previously undisclosed facts or ORS's investigation of DIUC raised new questions that required further investigation.

A review of the filings posted to the Commission's Docket Management System indicates that, despite the fact that DIUC's counsel filed a letter on November 15, 2019, stating the Company did not intend to introduce any additional evidence in this docket, DIUC filed twenty-two (22) pages of testimony and forty-two (42) pages of exhibits on June 16, 2020. As a result, ORS asserted that it was statutorily obligated to review the testimony filed by DIUC and issue discovery requests to investigate the matters presented by the Company. In response to ORS's requests, DIUC alleged that the discovery was in contradiction to the Court's instruction despite the fact that the Court explicitly stated:

> [i]n this reversal and remand, [the Court does] not address the merits at all. Rather, we simply require the commission and ORS evaluate the evidence and carry out their important responsibilities consistently, within the 'objective and measurable framework the law provides.'

DIUC II, 427 S.C. at 464, 832 S.E. 2d at 575.

Accordingly, counsel for ORS e-mailed counsel for DIUC on July 23, 2020, and "once again [reiterated] the [previously sent request] that all documentation that demonstrates payment of these invoices be provided." Counsel for ORS stated ORS's

position that it "is imperative that the parties cooperatively work together to ensure all pertinent information is readily available." *ORS Motion to Compel*, p. 2. On July 24, 2020, ORS issued a second continuing request for production of documents for the second remand proceeding; however, DIUC continued its uncooperative posture. In order to comply with its statutory obligation and enforce its rights to acquire the documents to which ORS was entitled by statute, ORS filed a Motion to Compel. In response, DIUC stated "[t]he supposition that there has been some sort of incomplete response or that DIUC intentionally withheld information is totally ridiculous." *DIUC Response to Motion to Compel*, p. 8. However, at oral argument on the matter, counsel for DIUC conceded that DIUC could provide the requested reconciliation to ORS but merely chose not to so. On October 8, 2020, the Commission issued Order No. 2020-700 "[granting] the Motion to Compel filed by the ... ORS." Subsequently, on December 11, 2020, DIUC produced discovery responses, including new information, totaling 134 pages to ORS. Much of the information that DIUC produced related to expenses for which DIUC did not originally request recovery. Based upon the new information provided by DIUC in the third proceeding ORS was able to confirm certain rate case expenses were appropriate for recovery and recommend to the Commission that recovery from DIUC's customers was now just and reasonable. *ORS Brief in Opposition to DUIC's Request for Retroactive Reparations (ORS Brief)*, p. 11.

ORS offered to cease discovery to the extent DIUC stopped the submission of new evidence into the record. However, because DIUC introduced new facts to the Commission, and ORS had an obligation to investigate the new facts and utilize an

objective and measurable framework to make a recommendation to this Commission, ORS issued additional discovery requests. Upon a review of the evidence and filings in this proceeding, this Commission finds no evidence to support DIUC's allegation that ORS inappropriately used discovery in contravention of the Supreme Court's instructions.

D. Original Rates vs. Current Rates

In its original Application, DIUC sought a 108.9% increase in its rates in order to generate additional revenue of $1,182,301, which would have increased DIUC's total adjusted revenue to $2,267,722. On February 18, 2021, ORS and the Intervenors agreed to settle the case, and in doing so, affirmed that the settled upon rates were "just, fair, and reasonable, [and...] in accord with applicable law and regulatory policy." *Settlement Agreement*, p. 5, para. 10. They settled upon revenue number is $2,267,714, which is an $8 difference from the total revenue sought in the original Application. DIUC's Request for Reparations is based upon this specific revenue amount. Although ORS argued ". . . the composition of those rates is substantively different," (*ORS Brief*, p. 8), DIUC asserted that the difference ORS refers to is that a major component of the costs ORS agreed to include to reach the 108.9% increase are rate case expenses that DIUC incurred as a result of seeking an incremental 43% increase, then an 88.5% increase via two appeals and rehearing. *DIUC Reply Brief*, p. 19. Accordingly, DIUC argues that the Settlement Agreement only allows DIUC to collect costs it incurred during the rate case up to the notice cap. DIUC also asserts it is not being made whole by the new rates and that, even with the increase, it is suffering unconstitutional confiscation without the requested restitution through reparations surcharges. *DIUC Reply Brief*, p. 21. As a result, DIUC

asserts that ORS and the Intervenors now agree to the Application's requested revenue, but not until after they have cost DIUC additional legal and consulting fees and lost return without the adequate rates. *DIUC Brief*, p. 12.

According to the POAs, any comparison of the revenue produced by the originally proposed rates and the Current Rates could not support the relief sought by DIUC, and DIUC conflates "revenues" with "rates." Moreover, the POAs assert that DIUC overlooks the fact that the settled-upon rates reflect different assets and expenses (including expenses that changed over time) than the originally proposed rates and provided the following table:

	Application	Order on Second Rehearing
Total O&M Expenses	$866,936	$1,005,801
Net Operating Expenses	$1,649,127	$1,827,517
Net Operating Income	$618,595	$ 440,197
Rate Base	$7,085,475	$5,900,924
Rate of Return	8.73%	7.46%

POAs Brief In Opposition to DIUC's Request for Reparations (POAs Brief), dated June 17, 2021, pp. 13 – 14.

The POAs state that these inputs changed because additional *de novo* hearings took place where additional evidence was presented. According to *DIUC I*, the presentation of additional evidence at a hearing on remand was allowable. In *DIUC I*, the South Carolina Supreme Court overruled *Parker v. South Carolina Public Service Commission*, 288 S.C. 304, 342 S.E.2d 403 (1986), which previously had prohibited the introduction of new evidence into the record on a hearing on remand in the absence of direct authorization by the Supreme Court. *DIUC I* held that a remand to the Commission for a new hearing

necessarily grants the parties the opportunity to present additional evidence. Accordingly, the presentation of new evidence on remand in this case was appropriate, but resulted in different amounts for expenses, income, rate base, and rate of return.

The POAs assert that the settled upon rates reflect DIUC's "legal and consulting fees" that have changed since its initial Application, and DIUC will have the right to seek additional incurred expenses in a future rate case. In other words, assuming in theory that the POAs "cost" DIUC anything over the length of this case, their ratepayer members are paying those legally incurred costs in the settled upon rates. Therefore, the POAs argue that the proposition that DIUC could recover more from ratepayers than what is already contained in the settled upon rates is not only unlawful and lacking a factual basis, but such proposition argued by DIUC is also grossly unfair. *POAs Brief*, p. 16.

Also, $699,631 in plant in service assets, which DIUC included in its initial Application, are not part of the rate base approved by the Order on Second Rehearing.

According to ORS, the rates set forth in the Settlement Agreement are different than those sought by DIUC in its original Application. ORS asserted that, while the dollar figure settled upon is nearly equal to the dollar figure that DIUC originally sought, the composition is substantively different.

ORS argued that the amount of rate case expenses, which are embedded in the $2,267,714 of annual revenue for DIUC and were approved by the Commission as a result of the Settlement Agreement, "vary significantly from what DIUC sought in the original application." In its original Application, DIUC only sought recovery of approximately $95,600 in rate case expenses." Pursuant to Commission Order No. 2021-132, DIUC may

now collect approximately $910,790 in rate case expenses. The difference is stark and clearly shows that while the total revenue value settled upon is nearly equal to the total revenue increase for which DIUC originally applied, the composition of those revenues is dramatically different. *ORS Brief*, p. 11.

ORS also asserts that the rate base expenses differ between what DIUC agreed to recover and what it sought in its original Application. The settled upon revenue excludes Utility Plant in Service of $699,361. According to the Settlement Agreement, "[t]he inclusion of $542,978 for Guastella Associates' Rate case expenses along with the additional legal rate case expenses, related minor adjustments, and fall-out adjustments generates $2,267,714 of annual revenue for DIUC in DIUC's 2021 Rates. As shown in the Second Revised Notice of Filing, the rates most recently noticed to DIUC customers indicated annual revenue of $2,267,722. Including the $699,361 in Utility Plant In Service would result in rates that exceed the noticed revenue of $2,267,722." *Settlement Agreement*, ¶7, p. 3. DIUC agreed to "delay seeking recovery of the corresponding $699,361 until its next rate filing . . . ." This is yet another example of the difference between the composition of revenues which DIUC agreed to in the settlement and the revenues it sought in the original Application.

ORS further asserts that while DIUC may now be allowed the opportunity to earn $2,267,722 in revenue, the resulting rates were only determined to be just and reasonable by the Parties after the Commission compelled DIUC to comply with its regulatory and statutory obligations and DIUC agreed to forego seeking recovery of nearly $700,000 in plant in service expenses. Furthermore, the total revenues are comprised of very different

rate case expenses than those DIUC originally sought for recovery. For the aforementioned reasons, ORS argues that the mere fact the Parties agreed on a revenue figure similar to that originally sought in DIUC's Application does not indicate DIUC's original Application sought just and reasonable rates. *ORS Brief*, p. 12. This Commission agrees with the ORS conclusion. Accordingly, granting reparations through further surcharges to the Company's customers would be unjust and unreasonable.

E. "Unfair" Length of Proceeding and Evolving Revenue Amounts and Rates

Regarding DIUC's assertion that the other parties in this proceeding "cost DIUC six years of legal and consulting fees and lost return without adequate rates," this Commission has already reviewed the nature of this proceeding's length above and found that no party unfairly lengthened this proceeding. In reviewing the record of facts and arguments put forth by the Parties, the Commission finds that despite the similarity in settled-upon and originally applied for revenue amounts, the composition of those revenue figures is significantly different. The revenue figure originally applied for reflected substantially different rate case expenses and rate base than the revenue amount settled upon by the Parties and approved by the Commission in Order No. 2021-132. Moreover, the Company originally applied for the rates below:

Amended Statement of Proposed Rates

			Haig Pt Present Rates	Melrose Present Rates	OILC Proposed Rates
I	Residential Rates				
A.	Water				
1)	Tapping Fees & 3/4" Meter Box		$500.00	$500.00	$500.00
2)	Base Quarterly Charge		$82.09	$80.72	$149.30
3)	Consumption Charge (per 1,000 gallons)	0 to 22,500 gallons per quarter	$2.78	$0.00	$4.41
		Over 22,500 gallons	$2.78	$2.44	$4.41
B.	Sewer				
1)	Tapping Fees & Service Lateral		$500.00	$500.00	$500.00
2)	Base Quarterly Charge		$110.38	$80.72	$218.19
3)	Volumetric Charge (per 1,000 gallons)	0 to 22,500 gallons per quarter	$1.32	$0.00	$2.38
		Over 22,500 gallons	$1.32	$1.95	$2.38
C.	Irrigation				
1)	Tapping Fees & 3/4" Meter Box		$500.00	$500.00	$500.00
2)	Consumption Charge (per 1,000 gallons)	0 to 18,000 gallons per quarter	$2.76	$1.68	$4.85
		18,001 to 60,000 gallons	$3.09	$1.66	$5.73
		Over 60,000 gallons	$3.50	$1.66	$6.61
II	Commercial Rates				
A.	Water				
1)	Tapping Fees per Hotel or Inn Room		$250.00	$250.00	$250.00
2)	Tapping Fees up to 1-1/2" Meter		$500.00	$500.00	$500.00
3)	Tapping Fees 2" or 3" Meter		$1,500.00	$1,500.00	$1,500.00
4)	Tapping Fees for 6" Meter		$3,500.00	$3,500.00	$3,500.00
	Note: Larger meters on a case by case basis				
5)	Base Quarterly Charge		$86.93	$136.60	$209.01
6)	Consumption Charge (per 1,000 gallons)	0 to 22,500 gallons per quarter	$2.76	$0.00	$4.41
		Over 22,500 gallons	$2.76	$1.95	$4.41
B.	Sewer				
1)	Tapping Fees per Hotel or Inn Room		$250.00	$250.00	$250.00
2)	Tapping Fees 4" - 8" Sewer Pipe		$500.00	$500.00	$500.00
2)	Base Quarterly Charge		$178.21	$138.80	$305.45
3)	Volumetric Charge (per 1,000 gallons)	0 to 22,500 gallons per quarter	$1.32	$0.00	$2.38
		Over 22,500 gallons	$1.32	$1.95	$2.38
C.	Irrigation				
1)	Tapping Fees & 3/4" Meter Box		$500.00	$500.00	$500.00
2)	Consumption Charge (per 1,000 gallons)	0 to 18,000 gallons per quarter	$2.76	$1.66	$4.85
		18,001 to 60,000 gallons	$3.09	$1.66	$5.73
		Over 60,000 gallons	$3.50	$1.66	$6.61

However, the Company settled upon the rates below:

Daufuskie Island Utility Company, Inc

Settlement Rates and Revenues
(Billing Analysis)

WATER

Customer	Classification	Consumption	Usage Charge	Units	Base Charge	Revenue
Haig Point-Residential	3/4" Meter			1,061	$155.88	$165,399
	0 to 22,500 gals.	8,360,179	$4.47			$37,373
	Over 22,500 gals.	3,192,729	$4.47			$14,271
Haig Point-Irrigation				727		
	0 to 18,000 gals.	8,367,838	$4.91			$41,086
	18,001 to 60,000 gals.	9,829,270	$5.80			$57,010
	Over 60,000 gals.	10,049,342	$6.69			$67,230
Melrose-Residential	3/4" Meter			452	$155.88	$70,462
	0 to 22,500 gals.	4,106,940	$4.47			$18,354
	Over 22,500 gals.	2,177,808	$4.47			$9,735
Melrose-Irrigation				100		
	0 to 18,000 gals.	1,368,330	$4.91			$6,719
	18,001 to 60,000 gals.	2,002,230	$5.80			$11,613
	Over 60,000 gals.	2,866,268	$6.69			$19,178
Haig Point-Commercial	Metered			106	$218.23	$23,132
	0 to 22,500 gals.	2,413,190	$4.47			$10,787
	Over 22,500 gals.	2,132,690	$4.47			$9,533
Melrose-Commercial	Metered			329	$218.23	$71,798
	0 to 22,500 gals.	1,752,859	$4.47			$7,834
	Over 22,500 gals.	2,544,783	$4.47			$11,375
	Water Service Total	61,283,205		2,775		$653,671

SEWER

Customer	Classification	Consumption	Usage Charge	Units	Base Charge	Revenue
Haig Point-Residential	3/4" Meter			1,061	$226.37	$240,179
	0 to 22,500 gals.	8,360,179	$2.41			$20,148
	Over 22,500 gals.	3,192,728	$2.41			$7,694
Melrose Residential	3/4" Meter			448	$226.37	$101,414
	0 to 22,500 gals	3,926,006	$2.41			$9,462
	Over 22,500 gals	2,296,390	$2.41			$5,534
Haig Point-Commercial	Metered			102	$316.91	$32,325
	0 to 22,500 gals	2,362,530	$2.41			$5,694
	Over 22,500 gals	2,132,690	$2.41			$5,140
Melrose-Commercial	Metered			329	$316.91	$104,263
	0 to 22,500 gals	1,559,487	$2.41			$3,758
	Over 22,500 gals	2,438,565	$2.41			$5,877
	Water Service Total	26,266,577		1,940		$541,483

REVENUE SUMMARY:	Total Residential Water and Sewer Service Revenues		$700,007
	Total Commercial Water and Sewer Service Revenues		$291,512
	Total Irrigation Service Revenues		$203,635
	Total Water and Sewer Service Revenues		$1,195,154
	Availability Billing Water: Haig Point	1,917 / $112.23	$215,145
	Melrose	1,617 / $112.23	$181,476
	Bloody Point	368 / $112.23	$41,301
	Availability Billing Sewer: Haig Point	1,917 / $146.01	$279,901
	Melrose	1,617 / $146.01	$236,098
	Bloody Point	368 / $146.01	$53,732
	Total Water and Sewer Availability Revenues		$1,007,653
	Total Misc. Other Revenue		$64,907
	Total Operating Revenue		$2,267,714

Accordingly, there is no dispute that the rates are also different.

Finally, while DIUC argues in its brief that it is not being made whole by the new rates alone, the Settlement Agreement – signed by DIUC -- states, "[t]his Settlement Agreement results in rates for water and wastewater service that are just and reasonable and will allow the Company the opportunity to earn a reasonable return on the basis of its 2014 rate application." *Settlement Agreement*, ¶ 5, p. 2.

As a result, the Commission finds that the similarities between revenue settled upon and revenue originally applied for do not indicate that the rates DIUC originally applied for were *de facto* just and reasonable. Further, the length of the proceeding was long, but not unfairly so, given the circumstances of the case.

F. Appeal Bonds as the Sole Statutory Remedy

According to DIUC, S.C. Code Ann. Section 58-5-240(D) does not support the result proposed by ORS. DIUC states that, by the time the Commission issued its first Order on Rehearing, it had obtained the first bond and a second renewal bond that required a letter of credit supported by one of its owners. However, the second bond expired on December 31, 2017, and DIUC asserts it was impossible to obtain another rate collection bond. As a result, DIUC claims it had no choice but to implement whatever rate increase the Commission would allow so it could become effective by the January 1, 2018 billing for service provided during the last quarter of 2017. *DIUC Brief*, p. 18.

According to the POAs, the plain language of S.C. Code Ann. Section 58-5-240(D) expressly provides the only mechanism for "protecting" rates on appeal, and DIUC did not follow that process when it appealed the Orders on Rehearing. The POAs assert there is no

language in S.C. Code Ann. Section 58-5-240(D) or elsewhere in Title 58 that would allow the relief DIUC seeks in terms of reparations via surcharges. *POAs Brief*, p. 9.

ORS argues DIUC is prohibited from collecting a reparations surcharge because the General Assembly created a statutory remedy to protect entities like DIUC by allowing them to place rates under bond pending appeal, and DIUC did not avail itself of those protections pending resolution of the second appeal. *ORS Brief*, p. 5. The reparations surcharge is not allowed under the law, and DIUC is limited to the remedies available under the law. The Commission sets "just and reasonable" rates, which are in turn collected by utilities from their customers. South Carolina Code Ann. Section 58-5-240(D) states in part, "... [i]f the Commission rules and issues its order within the time aforesaid, and the utility shall appeal from the order, by filing with the Commission a petition for rehearing, the utility may put the rates requested in its schedule into effect under bond only during the appeal and until final disposition of the case . . . ." *S.C. Code Ann. § 58-5-240(D) (2015).* Further, "[a] decision of the commission may be reviewed by the Supreme Court or court of appeals as provided by statute and the South Carolina Appellate Court Rules upon questions of both law and fact, as provided pursuant to this section." *S.C. Code Ann. Section 58-5-340 (2015).*

ORS asserts that South Carolina Code Ann. Sections 58-5-210, -240(D), and -340 collectively create a substantive right for DIUC (the right to appeal a Commission Order if the utility determines that rates ordered are not just and reasonable) and provide a remedy for infringement of that right (the right to charge its customers rates higher than those ordered by the Commission during the pendency of the appeal). *ORS Brief*, p. 5. ORS

points out that DIUC initially availed itself of the statutory protections provided in S.C. Code Ann. Section 58-5-240(D) and received the commensurate benefit of charging its customers rates in excess of those approved by the Commission during the pendency of the first appeal. However, during the pendency of the second appeal, and despite the availability of a statutory remedy, DIUC did not avail itself of the protections afforded by the South Carolina General Assembly. *Id.* Accordingly, ORS asserts that because DIUC did not put its requested rates into effect under bond pending resolution of the second appeal, DIUC is prohibited from now collecting those revenues from its customers. *See Dockins v. Ingles Markets, Inc.*, 306 S.C. 496, 498, 413 S.E.2d 18, 19 (1992) ("[w]hen a statute creates a substantive right and provides a remedy for infringement of that right, the plaintiff is limited to that statutory remedy." (citing *Campbell v. Bi—Lo*, 301 S.C. 448, 392 S.E.2d 477 (Ct. App. 1990)).

ORS also argues that there is sound policy to prohibit DIUC from retroactively recovering reparations from its customers. The General Assembly set forth a specific mechanism in S.C. Code Section 58-5-240(D), which would have allowed DIUC to recover the revenue it would have realized from its requested rates. According to ORS, this well-reasoned procedure creates specific checks and balances for both utilities and their customers. If the utility avails itself of the protections afforded by S.C. Code Ann. Section 58-5-240(D) and the appellate court reverses the Commission, then during the pendency of the appeal the utility will have collected from its customers the rates it originally sought. However, if the appellate court affirms the Commission's order, then that utility must return to its customers the unlawfully charged rates, with interest. *ORS Brief*, pp. 5 – 6.

ORS argues that, through this mechanism, the General Assembly balanced the interests of utilities and their customers. ORS therefore asserts that if the Commission were to grant DIUC's request to retroactively collect a reparations surcharge in this case, "the Commission would allow DIUC the ability to collect rates outside of the authorized statutory parameters." *ORS Brief*, p. 6. In ORS's view, such Commission action not only would exceed its statutory authority but also would signal to utilities that they need not follow the bond statute and still may recover additional monies. For these reasons, ORS argues that DIUC's unlawful request is not permitted by law and would upset the careful balance set-forth by the General Assembly.

This Commission agrees with and adopts the reasoning discussed by ORS. Through Section 58-5-240(D) of the Code of Laws, the South Carolina General Assembly offered protections to DIUC by providing it a substantive right and a remedy for infringement of that right. DIUC is limited to the remedy made available to it by the General Assembly. Accordingly, because DIUC did not avail itself of the protections afforded by the General Assembly, DIUC is prohibited from now collecting its proposed reparations surcharges from its customers. There are also policy considerations underpinning a prohibition on DIUC charging its customers these reparations.

In addition, S.C. Code Ann. Section 58-5-240 is unequivocal and makes no exemption for a utility that does not avail itself of the specific protections established by the General Assembly, regardless of DIUC's alleged justification. This Commission has never made a finding of fact in this proceeding that DIUC could not afford a bond. The General Assembly created a substantive right for DIUC and provided a remedy for

infringement of that right and DIUC is limited to the statutory remedy made available to it. The Commission finds that because DIUC did not avail itself of the statutory remedy, it is legally prohibited from collecting the reparations it seeks.

G. Constitutional Protections Afforded to DIUC

DIUC makes various claims regarding the Subsequently Approved Rates, for example, DIUC grounds its Request on its "constitutional right to collect rates that meet minimum constitutional standards of a reasonable return on investment." *DIUC Request*, p. 13. DIUC argues that the Subsequently Approved Rates were "insufficient rates" (*DIUC Brief*, p. 14), were "constitutionally insufficient" (*DIUC Brief*, p. 16), and violated "DIUC's federal and state constitutional rights." *DIUC Brief*, p. 17.

More particularly, DIUC argues that "the rates permitted in this case [the Subsequently Approved Rates] were constitutionally insufficient and, as such, the requested relief is necessary to remedy DIUC's federal and state constitutional rights." *DIUC Brief*, p. 16-17. Citing a host of cases, DIUC argues that the Subsequently Approved Rates "have not provided DIUC its constitutionally guaranteed just compensation for its property issued and its operating expenses, given the duration of this rate proceeding" (*DIUC Brief*, p. 14), and that therefore the Subsequently Approved Rates were "confiscatory." *DIUC Brief*, p. 13.

In addition, DIUC claims it "could not obtain further bonds" following the Orders on Rehearing. *DIUC Brief*, p. 19. DIUC further claims that "[w]ithout the requested relief, DIUC will have been denied constitutionally appropriate rates as well as the benefit of meaningful judicial review." *DIUC Brief*, p. 24. Finally, DIUC makes a variety of

arguments regarding delay and the time that passed before the Commission's approval of the Current Rates. For example, DIUC argues about "being placed in an inferior position because of the extensive delays in obtaining a final, proper rate ruling." *DIUC Reply*, p. 1. DIUC further argues "ORS and the intervenors were able to extend this case by six years of costly litigation . . . ." *DIUC Brief*, p. 12.

Each of DIUC's arguments seeks to challenge the Subsequently Approved Rates. DIUC's attempts to challenge the Subsequently Approved Rates constitute an improper collateral attack on final orders of the Commission containing "lawfully approved" rates: the Orders, and the Orders on Rehearing. *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 391 (2015) (stating that the filed rate doctrine prohibits collateral attacks on previously determined rates).

Similarly, DIUC's request seeking to recover the difference between its Proposed Rates and the Subsequently Approved Rates plus interest for the period before the Orders on Rehearing is also unlawful (in addition to those reasons set out herein) because it is a collateral attack on Commission Order No. 2018-68 and violates Section 58-5-240(D) of the South Carolina Code of Laws. DIUC implemented the process set out in Section 58-5-240(D) following the issuance of the Orders:

> (1) DIUC put its Proposed Rates into effect under bond;
>
> (2) DIUC charged the Proposed Rates until the issuance of the Orders on Rehearing; and
>
> (3) DIUC refunded the difference between the Proposed Rates and the Subsequently Approved Rates (which were "lawfully approved" rates) with appropriate interest.

DIUC did not challenge that portion of Commission Order No. 2018-68 requiring DIUC to provide the refunds and interest mandated by Section 58-5-240(D). Therefore, that portion of Commission Order 2018-68 is "the law of the case," and DIUC cannot challenge that ruling now. *Atl. Coast Builders & Contractors, LLC v. Lewis,* 398 S.C. 323, 329-30, 730 S.E.2d 282, 285 (2012) ("An unappealed ruling, right or wrong, is the law of the case.") In fact, DIUC provided refunds and interest as required by Commission Order 2018-68.

H. Lost Revenues and Foregone Recovery of Certain Expenses

Regarding DIUC's claim of lost revenues, the POAs assert that DIUC's request is

> ...based not any particular expense or asset or other rate input, but instead on a flawed assumption (DIUC was entitled to these revenues all along) that is completely divorced from a ratemaking process that requires a demonstration of assets and expenses as a necessary precursor to revenues.

POAs Brief, p. 14. The POAs, therefore, argue that DIUC's request is arbitrary and completely unsupported. Moreover, because DIUC was able to "introduce new evidence that altered" recovery of expenses in its Application and advocate continually for a higher rate base over the course of this proceeding, DIUC had the ongoing ability to seek recovery of updated expenses. As a result, the POAs assert there are no lost revenues that DIUC should be able to collect, because DIUC never established the right to collect any such revenues in rates. *POAs Brief*, p. 16.

Considering DIUC's claims that the length of this case caused it to expend costs that cannot be wholly addressed by implementation of the settled upon rates, the Commission previously concluded that no party unfairly lengthened this proceeding.

DIUC also argues that the length of this proceeding entitles it to recoup lost revenues that it "should have been able to collect." *DIUC Brief*, p. 13. However, as noted by the POAs, DIUC had the ability throughout this proceeding to introduce new evidence to cover ongoing expenses as they were incurred. Additionally, there has been no finding that any expense is now recoverable and that "should" have been recovered previously. *POAs Brief*, p. 16. This Commission finds that there are no lost revenues that DIUC should recover through a reparations surcharge.

The Commission also disagrees with DIUC's assertion that, even with the increase, it is suffering unconstitutional confiscation without the requested reparations surcharges. The Settlement Agreement "results in rates for water and wastewater service that are just and reasonable and [would] allow the Company the opportunity to earn a reasonable return on the basis of its 2014 rate application." *Settlement Agreement*, p. 2. Accordingly, this Commission finds that the implementation of the settled upon rates is just and reasonable, and allow the Company the opportunity to earn a reasonable return on the basis of its 2014 rate application.

DIUC also cites *Bluefield* and asserts the Company is entitled to "a fair return upon the value of that which it employs for the public convenience." *DIUC Brief*, p. 14. While DIUC failed to tie its proposed reparations surcharge to any particular asset or expense, assuming arguendo that DIUC presented facts sufficient to tie this reparations surcharge to specific expenses, this Commission would still be without the ability to provide DIUC the recourse it seeks. According to DIUC, its constitutional ability to recover a reparations surcharge is grounded in the principle that DIUC has a constitutional right to collect rates

that meet minimum constitutional standards of a reasonable return on investment. DIUC also argues that "[c]omplying with this constitutional due process requirement is mandatory and the reasoning is sound — when a utility invests in equipment and real property for use in providing service, the utility is allowed to charge rates sufficient to allow it to operate and maintain that plant in service." *DIUC Brief*, p. 13.

Based upon the briefs, it appears that neither the POAs nor ORS dispute the constitutional basis entitling a utility to the opportunity for a reasonable return on the value of the utility's investment employed for the public convenience. However, DIUC specifically agreed not to seek the value of certain property that it claims to be used for public service in this proceeding. According to the Settlement Agreement:

> DIUC's Application included $8,139,260 of reported used and useful facilities included in Utility Plant in Service. Commission Orders 2015-846 and 2018-68 both reduced that amount by $699,361. The inclusion of $542,978 for Guastella Associates rate case expenses along with the additional legal rate case expenses, related minor, and fall-out adjustments generates $2,267,714 of annual revenue for DIUC in DIUC's 2021 Rates. As shown in the Second Revised Notice of Filing the rates most recently noticed to DIUC customers indicated annual revenue of $2,267,722. Including the $699,361 in Utility Plant In Service would result in rates that exceed the noticed revenue of $2,267,722. Therefore, DIUC will delay seeking recovery of the corresponding $699,361 until its next rate filing, and the Parties agree to reserve their positions as to the $699,361 reduction to Utility Plant in Service for consideration in DIUC's next rate case.

Settlement Agreement, ¶7, p. 3.

Because DIUC agreed not to seek the expenses associated with this investment in this proceeding, it reasons that DIUC may not recover a reparations surcharge tied to this investment.

Additionally, the originally applied for revenue was $2,267,722, the settled-upon revenue is $2,267,714, and the total revenue ordered by the Commission on re-hearing was $2,023,743. *See* Commission Order No. 2018-68. As detailed above, DIUC specifically agreed to forego recovery of any expenses tied to alleged $699,361 in Plant In Service. The remainder of the revenue collected pursuant to the Settlement Agreement, which nearly matches the revenue DIUC noticed, is comprised almost entirely of updated rate case expenses. *See* Commission Order No. 2021-132, Order Exhibit 1, paragraph 7. Certain of these rate case expenses were not incurred by DIUC, or provided for the Parties review, until the third proceeding and much of the remaining rate case expenses were not shown to be just and reasonably recoverable until this Commission ordered DIUC to provide documents it willfully withheld. Thus, certain of these expenses did not even exist and could not have been recovered until the third proceeding. *Id.* Moreover, because of DIUC's refusal to comply with its discovery obligations, the remaining rate case expenses that were recovered pursuant to the Settlement Agreement should not have been recovered until this third proceeding. *Id.*

Accordingly, while this Commission could only speculate as to property or expenses that on which the reparations surcharge is based, it is clear that these expenses consist, either of plant that DIUC agreed not to seek in this proceeding or of rate case expenses that were not available for recovery until the third proceeding before this Commission. Accordingly, DIUC has no entitlement to a reparations surcharge, the calculation of which is based either on plant it agreed not to seek or rate case expenses that were unrecoverable until the third proceeding. DIUC also argues that, "[t]o be

constitutionally appropriate, the ultimate result of the rates permitted DIUC must be 'a return to the equity owner [that is] commensurate with returns on investments in other enterprises having corresponding risks.' " *DIUC Brief*, p. 15.

After careful review of the record, DIUC has failed to present any evidence on which this Commission can rely that would indicate that the rates ordered by this Commission previously were not commensurate with returns on investments in other enterprises having corresponding risks. DIUC also asserts that a constitutional taking has occurred. However, DIUC has pointed to no finding of fact by this Commission or the Court indicating that it was entitled to property of which it was later deprived and has failed to show that it had a property interest taken by Commission Order.

I. Benefits of Judicial Review

DIUC claims that, unless the reparations surcharge is granted, it will not receive the benefits of judicial review and will have been denied constitutionally appropriate rates. *DIUC Brief*, p. 24. DIUC cites a case from Illinois (*Indep. Voters of Illinois v. Illinois Com .Comm'n*, 117 Ill. 2d 90, 104, 510 N.E.2d 850, 857 (1987)) and argues that after a rate order is judicially set aside, it would be unfair for the party losing the appeal to "continue to benefit from what has been determined to be unlawful portions of a rate increase."

DIUC also argues that, if it is not able to charge a reparations surcharge to address the shortfall in revenues and return created by, among other things, the length of this proceeding and the "seed" for judicial review, then DIUC will not be able to realize the full benefits of judicial review. Accordingly, DIUC asserts that "[f]ailing to grant the requested relief would be contrary to the constitutional rights of DIUC." *DIUC Brief*, p. 24.

ORS asserts DIUC received the benefit of Commission and appellate review multiple times and notes that the Settlement Agreement specifically allows DIUC to continue to seek the benefit of judicial review. *See* Commission Order No. 2021-132, Order Exhibit 1, Paragraph 8. Moreover, ORS argues that DIUC seeks not only judicial review in this proceeding but also interest from its customers that in some cases may exceed $44,000 per certain customers. ORS asserts that DIUC's request is patently unjust and unreasonable.

The Commission agrees with ORS. As discussed previously, the Commission finds that no constitutional violation occurred and, therefore, denying DIUC's request to charge its customers for reparations will not deny it 'constitutionally appropriate rates' or the benefit of meaningful judicial review. Regarding DIUC's assertion that it would be unfair for the party losing an appeal to continue to benefit from what has been determined to be an unlawful portion of a rate increase, it is within this Commission's sole authority to set rates and neither this Commission nor the Court made a finding that a previous rate increase was unlawful. Moreover, as discussed previously, DIUC received the benefit of the appeals process and was able to introduce additional evidence into the record on remand. Therefore, DIUC received the benefit of additional proceedings and the recovery of expenses incurred subsequent to filing its original Application. DIUC has had ample judicial review. Accordingly, this Commission does not agree with DIUC's assertion that absent granting it the ability to charge its customers reparations, it would be denied judicial review.

V. FINDINGS OF FACT

1. DIUC requests that the Commission implement rates retroactively, by billing the Company's customers for two separate surcharges for collection of past monies that the Company claims are due, even though lawful rates have been in effect since March 1, 2021, pursuant to Commission Order No. 2021-132 (the "Order on Second Rehearing").

2. The Settlement Agreement in this matter contained a provision that outlined a procedure under which the Parties would brief the question of whether DIUC can charge its customers reparations in this case as described above for the Commission for further determination, and the proceeding would remain open "until the issue of reparations is fully adjudicated." *Settlement Agreement*, p. 5.

3. The Commission may not impose new rates retroactively when lawful rates are in effect.

4. No one party caused unreasonable delay in the Commission's proceedings. Although the proceeding was long, it was not unfairly long under the circumstances of the case.

5. No inappropriate discovery was propounded by the Office of Regulatory Staff.

6. The rate base expenses in the Settlement Agreement differ between what DIUC agreed to recover and what it sought in its original Application.

7. The similarities between revenue settled upon and revenue originally applied for do not indicate that the rates DIUC originally applied for were *de facto* just and reasonable.

8. Because DIUC did not avail itself of the protections afforded by the General Assembly, DIUC is prohibited from now collecting its proposed reparations surcharges from its customers.

9. There has been no finding by the Commission or the South Carolina Supreme Court that the rates granted to DIUC were constitutionally insufficient.

10. DIUC had the ongoing ability to seek recovery of updated expenses. As a result, there are no lost revenues that DIUC should be able to collect, because DIUC never established the right to collect any such revenues in rates.

11. DIUC will not be denied judicial review when the Commission denies its requests for reparations via surcharges.

VI. CONCLUSIONS OF LAW

1. Granting DIUC's requested relief would constitute illegal retroactive ratemaking.

2. The Settlement Agreement results in rates for water and wastewater service that are just and reasonable and will allow the Company the opportunity to earn a reasonable return on the basis of its 2014 rate application.

3. DIUC is limited to the bond provisions of S.C. Code Ann. Section 58-5-240 (D), which provides a statutory remedy when a water/wastewater utility wishes to appeal the findings of the Commission related to the amount of revenue granted to the utility pursuant to a rate proceeding.

4. No allegations of constitutional insufficiency have been made concerning the rates and charges currently granted for DIUC. The last rate order was not appealed; therefore, it is the law of the case.

5. DIUC has not been denied the benefits of judicial review.

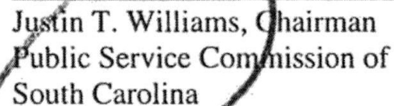
6. The request for the imposition of reparations in the form of surcharges on DIUC's customers must be denied.

VII. ORDERING PROVISIONS

1. The request for imposition of reparations through surcharges is denied.

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

BY ORDER OF THE COMMISSION:



Justin T. Williams, Chairman
Public Service Commission of
South Carolina