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	)	**PETITION FOR REHEARING OR RECONSIDERATION**

Introduction

Pursuant to S.C. Code § 58-27-2150 and 10 S.C. Code Ann. Regs. 103-825, and applicable South Carolina law, the South Carolina Office of Regulatory Staff ("ORS") hereby respectfully petitions the Public Service Commission of South Carolina ("Commission") to rehear or reconsider its findings and conclusions in Order No. 2018-345(A) ("Order"). The Order was served on ORS on May 30, 2018.

Specifically, ORS petitions the Commission for a rehearing or reconsideration of the Commission's determination regarding the following six issues: 1) the Commission erred in adopting a water rate schedule which was only proposed by the Applicant post-hearing, 2) the Commission erred in rejecting the normalization of sludge hauling costs for the Friarsgate and Watergate treatment facilities, 3) the Commission erred in approving legal fees incurred by Carolina Water Service, Inc. ("CWS" or "the Company") in part[1] related to a federal court ruling

[1] CWS sought recovery of $998,606 in legal fees and costs. These fees were allegedly incurred 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. In Revised Surrebuttal Exhibit MPS-1 ORS provided the Commission with evidence that the

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."

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[2], 2) the Company maintain separate charges for Water Supply customers and Water

[2] 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

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 31st, 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 prudency 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 19th day of June 2018.

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