

A background image of a water droplet falling into a pool of water, creating ripples. The droplet is in the center, and the ripples spread outwards. The water is a light blue color.

Proceedings and filings before the Public Service Commission of South Carolina

Water/Waste Water Workshop

Jeffery M. Nelson, Esq. and Courtney D. Edwards, Esq.
South Carolina Office of Regulatory Staff

January 31, 2013

South Carolina Office of Regulatory Staff

1. A Party of Record in all filings, applications, or proceedings before the Commission.
2. Represents “the public interest” of South Carolina before the Commission.
3. “Public Interest” is defined as (1) a balance of the interests of the using and consuming public, (2) the financial integrity of public utilities, and (3) the economic development of South Carolina.

Who is Subject to the Commission's Rules and Regulations?

- All “Public Utilities” (S.C. Code Ann. § 58-5-10(4) (Supp. 2011))
- Businesses that are not **Exclusively** a “Public Utility”
 - Regulated v. Non-regulated activities
 - Affiliated Companies; KPOG v. SCPSC, 593 S.E.2d 148 (SC 2004) provided that the PSC only has authority over “a utility with respect to its activities in the provision of utility services.” PSC thus may not *regulate* the activities of a parent or affiliated corporation of the regulated utility.
- Governmental Entities are not Regulated

Applications and Filing Requirements

1. Certificates of Public Convenience and Necessity
2. Changes in Rates and Charges
3. Performance Bonds
4. Territory and Customers
5. Contract Approval
6. Settlement Agreement
7. Rule-to-Show Cause
8. Petition for Forfeiture
9. Receivership
10. Bankruptcy
11. Other Records and Reports

Rate Case Application Procedure

- Parties to a Docket
- Representative Capacity
- Contents of an Application – Reg. 103-823
- Filing and Service – Reg. 103-830
- Notice of Hearing/Filing – Reg. 103-836
- ORS Audit and Inspection
- Hearing Procedure
- Briefs or Proposed Orders
- Petition for Rehearing

Parties to a Docket

- Applicant - A party on whose behalf an application is made to the Commission.
- Intervenor - A person who files a Petition to Intervene in a proceeding before the Commission and has obtained approval. (Reg. 103-825)
- Protestant - A person who objects on the grounds of individual or public interest to the approval of an application, petition, motion or other matter which the Commission may have under consideration. A protestant may offer sworn testimony without having the privilege of cross-examining witnesses offered by other parties.

Representative Capacity

- Representation of a party in a proceeding shall include the right to offer evidence and to cross-examine witnesses offered by other parties.
- Those persons who may act in a representative capacity are:
 - Any individual representing himself/herself, or
 - An attorney authorized to practice law in the state of SC
 - **An attorney not authorized to practice before the courts of the state of SC, but authorized to practice before the courts of another state, may represent a party in any formal proceeding before the Commission upon association with an attorney admitted to practice before the courts of SC.

Representation by an Attorney

- Representation of Entities by an attorney - Any entity, including but not limited to a corporation, partnership, limited liability company, or professional association, must be represented by an attorney admitted to practice law in SC.
- Notice of Appearance - An attorney shall file with the Commission a Notice of Appearance when retained or authorized to represent a party after commencement of a case.

Contents of an Application

1. The precise legal name of the applicant.
2. The name, title, address, e-mail address, and telephone number of the person to whom correspondence or communications relative to the application is to be addressed.
3. The following data attached as exhibits and developed for a historic twelve-month test period unless otherwise directed:
 - a. Balance sheet;
 - b. Profit and loss statement;
 - c. Accounting and pro forma adjustments;
 - d. Computation of proposed increase or decrease;
 - e. Effect of proposed increase or decrease to include copies of present and proposed tariffs;
 - f. Statement of fixed assets and depreciation reserve;
 - g. Rates of return on rate base and on common equity.
4. All other information required by statute or by the Commission's Rules and Regulations. (Reg. 103-823)

Operating Margin and Rate of Return

- Section 58-5-240(H) states that “the commission's determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record. The commission shall specify an allowable operating margin in all water and wastewater orders.”

Filing and Service of Pleadings

- Complaints/Petitions and Answers – Reg. 103-830
- Service between Parties – Reg. 103.830.1

Notice of Hearing

- Notice of Hearing - When the Commission receives a filing that requires a hearing, the Commission will issue a Notice of Hearing. (Reg. 103-836)
- The notice will contain a:
 - statement of the date, time, and place of the public hearing,
 - reference to the legal authority,
 - description of the subject and issues involved, and
 - hearing examiner, if one has been assigned. (Reg. 103-804)
- Public Hearings - In cases where the applicant has requested a rate increase, the Commission may decide to schedule additional public hearings in the service areas of the utility that has filed for the rate increase. These hearings are conducted so that members of the public who do not wish to intervene and participate formally in the rate case proceeding may be heard by the Commission.

Notice of Filing

- The Commission will also issue a Notice of Filing or Scheduling Order, which establishes dates for the various parties to prefile written testimony and exhibits with the Commission, and to serve these materials on all other parties in the case. (Reg. 103-845)
- The prefiled written material (i.e. testimony and exhibits) describes the matters that the parties wish to orally bring before the Commission at the merits hearing.

ORS Audit and Inspection

- ORS Audit and Inspection - ORS will conduct a site inspection and an audit of the utility company's records during the time between the issuance of the Notice of Hearing and the prefiling of testimony. ORS will examine the Company's accounting and other relevant records. If the matter before the Commission is not a rate case, then ORS may conduct an investigation during this time.
- Party Discovery - During the period prior to the hearing, the parties may conduct discovery, that is, they may ask each other questions through the use of written interrogatories, oral depositions, or other allowable discovery methods. (Regs. 103-832-35)

Hearing Procedure

- Evidence will ordinarily be received upon applications and petitions in the following order:
 - (1) Applicant or Petitioner;
 - (2) Other parties;
 - (3) ORS

Briefs or Proposed Orders

- The presiding officer shall fix the time for filing and service of briefs or proposed orders.
- Table of Contents and Citations
- Briefs should contain:
 1. A concise statement of the case;
 2. An abstract of the evidence relied upon, preferably assembled by subjects;
 3. Factual and legal arguments, or if a proposed Order, reasons and authorities therefore.
- Exhibit Reproduction
- Filing and Service

Petition for Rehearing

- Any party of record may, within 20 days after the date of receipt of Order, petition the Commission for rehearing or reconsideration.
- Action by the Commission. The Commission must act upon the petition for rehearing or reconsideration within thirty (30) days after such petition is filed.
- To preserve a parties' rights to appeal, a Petition for Rehearing or Reconsideration must be filed.

Pro Se Litigant Guide

- [Commission Pro Se Litigant Guide](#)

Questions

