BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NOS. 2004-357-W/S, 2006-92-W/S, 2006-97-W/S AND 2006-107-W/S

ORDER NO. 2006-284

MAY 17, 2006

IN RE:	**Docket No. 2004-357-W/S** – Application of Carolina Water Service, Inc. for Adjustment of Rates and Charges and Modification of Certain Terms and Conditions for the Provision of Water and Sewer Service,	) ORDER GRANTING PETITION AND MOTION FOR CONFIDENTIAL TREATMENT
	Docket No. 2006-92-W/S – Application of Carolina Water Service, Inc. for Adjustment of Rates and Charges for the Provision of Water and Sewer Service,	)
	Docket No. 2006-97-W/S - Application of Tega Cay Water Service, Inc. for Adjustment of Rates and Charges and Modifications to Certain Terms and Conditions for the Provision of Water and Sewer Service,	)
	AND	)
	Docket No. 2006-107-W/S – Application of United Utility Companies, Inc. for Adjustment of Rates and Charges and Modification to Certain Terms and Conditions for the Provision of Water and Sewer Service	)

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition of the Office of Regulatory Staff (ORS) for an Order Requiring Funding for a Management Review Audit and Request for Expedited Review. The Petition also requests other relief. Accompanying the Petition is a Cost Impact

Summary. Further, ORS, Carolina Water Service, Inc. (CWS), Tega Cay Water Service, Inc. (Tega Cay), and United Utility Companies (United)(together, the Joint Movants) have filed a Joint Motion for Confidential Treatment, requesting that this Commission declare the original unredacted Petition and Cost Impact Summary above to be confidential, and requesting further relief. Because of the reasoning stated below, we grant the Petition and the Joint Motion.

ORS states in its Petition that in the May 4-5, 2005 hearing of Docket No. 2004-357-WS, ORS informed the Commission that it intended to initiate the Request for Proposal (RFP) process for a Management Review Audit to be conducted. On February 1, 2006, the RFP was issued by the South Carolina Materials Management Office (MMO) at the request of ORS to procure an expert consultant to perform an Audit of Water Services Corporation (WSC), which provides management, administration, engineering, accounting, billing, data processing and regulatory services to subsidiaries of Utilities, Inc., including, but not limited to CWS, Tega Cay, and United (collectively, the Companies). The purpose of the audit, according to ORS, is to determine whether there may be cost savings due to efficiency measures which could be passed on to consumers in the form of lower rates. ORS notes that the audit is intended to focus on the following three areas: 1) Basic Corporate Decision-Making; 2) Major Operational Activities; and 3) Staff Functions. MMO received proposals and bids from four vendors interested in conducting the audit.

On March 2, 2006, ORS advised the Commission that once an expert consultant was chosen, and a fee was known, ORS would petition the Commission for an order

requiring WSC to provide funding for the audit. See S.C. Code Ann. Section 58-4-100 (Supp. 2005). According to ORS, the evaluation and negotiation process of the RFP has been completed, the consultant has been selected, and an upper limit on the consultant's fee has been determined. The negotiated, quoted fee of the selected vendor expires on May 17, 2006. Further, ORS states that upon the issuance of a Commission Order directing WSC to provide funding for the audit, the MMO will issue an "Intent to Award" notice identifying the selected vendor and the amount of that vendor's bid. Further, non-selected vendors will have a 16-day notice period in which they may protest the award. If there are no protests, then the contract will be awarded to the vendor selected by ORS.

The selected vendor will have 6 months from the date of award to complete the Management Review Audit and issue a final report, which will consist of audit findings and management recommendations which shall be provided to ORS and the Commission. Counsel for ORS and counsel for the Companies and WSC consent that the payment of said Management Review Audit will be paid by Water Services Corporation on behalf of CWS, Tega Cay, and United, and that WSC will be reimbursed by each company for its pro rata share according to customer base.

In its Petition, ORS requests that CWS, Tega Cay, and United be allowed to recover the cost of the audit in each of its pending rate cases in an amount proportionate to each company's customer base and amortized in the same manner as rate case expenses for each of the three pending cases. The cost of the audit shall include capitalized and recorded company staff time not to exceed $18,500. ORS further states that if the proposed rates of the Companies, as requested in the respective Applications,

are approved by the Commission, yet do not generate sufficient revenue for each company to recover its proportionate share of the audit costs, that the Companies should be allowed to impose a surcharge to customers to recover that portion of the audit costs not recovered through the Companies' proposed rates.

Further, ORS and the Companies jointly move for an Order (i) declaring the unredacted Petition and Cost Impact Summary as confidential, (ii) affording the unredacted Petition and Cost Impact Summary confidential treatment, and (iii) protecting the unredacted Petition and Cost Impact Summary from public disclosure. ORS and the Companies assert that the unredacted Petition and Cost Impact Summary is pursuant to the RFP initiated by ORS for a Management Review Audit to be conducted by a selected vendor. As part of the RFP process, ORS negotiated a fee for the audit, and ORS requests that the amount of the fee remain confidential until a contract with a selected vendor has been executed.

The Joint Movants believe that it is not appropriate to make the amount of the negotiated fee publicly available until a contract for services is executed, and they further assert that access to this confidential information could give competing bidders an unfair competitive advantage. The Joint Movants state that this concern is recognized in the South Carolina Freedom of Information Act which allows exemption from disclosure documents of and documents incidental to proposed contractual arrangements. *See* S.C. Code Ann. Section 30-4-40(a)(5) (Supp. 2005). In addition, the Joint Movants cite S.C. Code Ann. Section 11-35-410, which states in part that commercial or financial information obtained in response to a "Request for Proposals" or any type of bid

solicitation which is privileged and confidential need not be disclosed. The Joint Movants therefore submit that the unredacted information contained in the Petition and Cost Impact Summary should be treated as confidential information.

We grant expedited review of the Petition because of the May 17, 2006 expiration of the negotiated, quoted fee of the vendor. On May 15, 2006, the parties filed a "Joint Consent Order for Funding of Expert to Conduct Management Review Audit." The Commission appreciates the parties' cooperation in preparing such a document, but is instead issuing its own Order based on its desire to deal more comprehensively with all issues raised by the Petition.

We grant both the Petition and the Joint Motion as filed. With regard to the Petition, clearly, it would be extremely helpful to determine whether there may be cost savings due to efficiency measures which could be passed on to consumers in the form of lower rates. This determination is a very worthwhile undertaking. The final report shall be provided to the Commission and to ORS. Further, it appears that ORS has followed the proper State procedures in this matter, and the cost of the audit should be recoverable by each company in a proportionate share to each company's customer base and amortized in the same manner as rate case expenses for each of the three pending rate cases. In addition, we agree with the surcharge language proposed, should the companies not be awarded sufficient revenue to recover their proportionate amount of the cost of the audit. See S.C. Code Ann. Section 58-4-100 (Supp. 2005).

Finally, we grant the Joint Motion for confidentiality of the unredacted Petition and the Cost Impact Summary. Clearly, the exemption from public disclosure under the

Freedom of Information Act applies, as does the exemption found in the Procurement Act quoted above. Accordingly, we hold that the unredacted Petition and Cost Impact Summary are confidential, the unredacted Petition and Cost Impact Summary shall be afforded confidential treatment, and the unredacted Petition and Cost Impact Summary are hereby declared to be non-public materials, and shall be protected from public disclosure.

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

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

G. O'Neal Hamilton, Vice Chairman

(SEAL)