BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-92-WS - ORDER NO. 2006-458

AUGUST 4, 2006

IN RE: Application of Carolina Water Service, Inc. for Adjustment of Rates and Charges for the Provision of Water and Sewer Service.	)))	ORDER DENYING MOTION TO RECONSIDER

This matter comes before the Public Service Commission of South Carolina ("Commission") on the motion of Carolina Water Service, Inc. ("CWS") to reconsider the directive of June 27, 2006, memorialized in Order No. 2006-407 (dated July 25, 2006). Specifically, CWS opposes the Commission's request that CWS supplement its application for a rate increase in Docket No. 2006-92-WS with basic accounting information concerning its facilities and the subdivisions they serve throughout South Carolina.[1] In the Commission's judgment, this information may be necessary to assist

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[1] The Commission's July 25 Order No. 2006-407 requested that CWS provide the following information to supplement its application:

a. Provide a listing by subdivision name and number of each subdivision served by CWS, and for each subdivision listed provide the individual system(s) by name and number that serve such subdivision and the services provided to each subdivision.
b. Provide by system name and number for each of the individual systems owned and operated by Carolina Water Service the operating revenue, operating expenses, net income, and rate base components in the identical format and detail contained on Schedule B and Schedule C of the Company's application, the totals of which should equal the water, sewer, and combined operations of Carolina Water Service included on pages 1 through 3 of Schedule B, and pages 1 through 3 of Schedule C of the Company's application.
c. Provide by subdivision name and number, customer type (water or sewer), and customer class (residential, commercial, etc.), and the number of customers at the beginning of the test year and at the end of the test year, the total of which should equal the amounts contained on schedule F of the company's application.

(continued...)

the Commission in fulfilling its statutory mandate "to approve rates which are just and reasonable" pursuant to S.C. Code Ann. 58-5-210 (Supp. 2005). Nevertheless, CWS is requested, not ordered, to provide the information, and is free to respond as it deems appropriate. For the reasons set forth herein, CWS' motion for the Commission to reconsider the request that CWS supplement its application is denied.

At the outset, CWS complains that it was not given prior notice and an opportunity to be heard before the Commission passed its motion and made the ensuing request. In fact, CWS and the public were given lawful notice that the Commission would take up the case and its request for a new hearing schedule at its meeting of June 27, 2006. Neither the Commission's rules, nor the law, require the Commission to give CWS or any of the parties advance notice of the text or substance of a Commissioner's motion. In any case, both CWS and the Office of Regulatory Staff have now had the opportunity to be heard, as evidenced by the Commission's present consideration of their arguments.

CWS opposes the Commission's request on several grounds.[2] CWS argues that the Commission is improperly engaging in discovery, and that under S.C. Code Ann. § 58-3-60(D) (Supp. 2005) the Office of Regulatory Staff and other parties of record have

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d. Provide by subdivision name and number the dollar amount of pass through charges for each type of customer (water, sewer, etc.) contained on an average customer's monthly bill. Pass through charges are charges for water purchased from a government body or agency, or other entity and/or sewer treatment charges, where treatment services are provided by a government body or agency or other entity. Also, identify the source of such charges by subdivision name and number.

e. Provide by subdivision name and number the rate charged by any government body or agency or other entity for purchased water and /or purchased sewer treatment.

f. Provide by individual system name and number, the expenditures for infrastructure improvement for the past five (5) years and the projected infrastructure expenditures for the next five (5) years.

[2] The Office of Regulatory Staff concurs with CWS's arguments. Letter of C. Lessie Hammonds, July 3, 2006.

the exclusive authority to request information from an applicant. CWS asserts that the Commission is attempting to independently investigate the facts of the case in violation of S.C.A.C.R. Rule 501, Canon 3. The company also contends that the Commission's request is an improper response to criticism of the company at night hearings. Finally, CWS states that even if such a request were proper it would be unable to produce the information because it does not maintain its records in the manner in which the information is sought.

CWS' arguments for reconsideration are premised on the mischaracterization of the Commission's request for information as a discovery request, akin to an interrogatory or a data request. The Commission has not posed a discovery request to CWS, and it is not seeking to participate as a party of record in the case. Instead, the Commission has alerted CWS about its concerns regarding the sufficiency of the information presented in the Company's application, and it invited the applicant to address those concerns by supplementing the application. CWS will not be compelled to respond to the Commission's request as would be necessary to a discovery request from an opposing party pursuant to Rule 26 and Rule 37 of the South Carolina Rules of Civil Procedure or a data request pursuant to 26 S.C. Code Ann. Regs. 103-853. CWS is free to respond – or not respond – as it sees fit. CWS bears the burden of proof, and it must ultimately determine how to meet this burden, just as the Commission will have to determine whether the Company has presented sufficient evidence to show that CWS' requested rates are just and reasonable.

CWS argues that the Commission is conducting an "independent investigation" of this case and violating Canon 3 of the Code of Judicial Conduct by requesting information from the company. In making this argument, counsel cites to the Commentary to Canon 3B, SCACR Rule 501, which states "A judge must not independently investigate facts in a case and must consider only the evidence presented." However, the plain language of Canon 3B and the cited commentary shows that this statement in the commentary pertains to the prohibition against *ex parte* communications in Canon 3B(7) and does not prevent a court from requesting information on the record in the presence of all of the parties.[3] By posing its request, the Commission did not attempt to conduct an *ex parte* investigation in this case, and the Commission has not violated Canon 3B.

Moreover, CWS' suggestion that the Commission's request could be interpreted as an improper response to public criticism of the company in public hearings is unfounded. The Commission's request is consistent with its duty to determine whether CWS' requested rates are just and reasonable. The Commission is not prohibited from requesting relevant information in a rate case because similar information is also of interest to a company's customers.[4] Moreover, it is entirely appropriate for the

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[3] Canon 3B(7) states in pertinent part: " (7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding." See e.g. Horton v. Ferrell, 355 Ark. 366, 981 S.W. 2d 88 (Ark. 1998) (special master conducted an independent investigation and obtained evidence through *ex parte* communications with third parties outside of the presence of counsel in violation of Canon 3B(7)).

[4] Neither CWS nor the Office of Regulatory Staff has argued that the requested information is not relevant to the case.

Commission to take notice of customers' concerns when they are voiced under oath and on the record in one of the Commission's public hearings.

Additionally, CWS states that it should not be required to amend its application. However, the Commission did not order CWS to amend its application, an act that would arguably trigger new statutory deadlines in this case. Instead, it asked CWS to supplement its application with additional information for the test year in question.

As a final matter, CWS claims that it "maintains its records pertaining to its assets, expenses, and revenues on a statewide basis and not on a system or subdivision basis." Therefore, CWS argues that it does not have the information requested by the Commission and that it cannot be ordered to compile it. The Commission notes that CWS does not say that it is unable to compile the requested information for its individual systems, or that it would present a particular hardship to do so. Again, the Commission did not order CWS to compile any information. CWS is free to respond to the Commission as it sees fit.

IT IS THEREFORE ORDERED THAT:

For the foregoing reasons, CWS' motion for the Commission to reconsider its request that CWS supplement its application for a rate increase with the information detailed in the directive of June 27, 2006, is denied.

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

BY ORDER OF THE COMMISSION:

G. O'Neal Hamilton, Chairman

ATTEST:

C. Robert Moseley, Vice Chairman

(SEAL)