BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No.: 2005-13-W/S

IN THE MATTER OF:	)	
	)	
Application of Wyboo Plantation Utilities, Inc. for Adjustment of Rates and Charges for the Provision of Water and Sewer Services	)	**MEMORANDUM IN OPPOSITION TO MOTION SEEKING APPROVAL TO PRESENT THE PRE-FILED TESTIMONY OF JOE MAREADY AT THE HEARING IN THIS DOCKET**
	)	

Pursuant to Rule 103-840 of the Regulations of the Public Service Commission of South Carolina ("Commission"), The Villas of Wyboo Owners Association ("Villas") hereby opposes Wyboo Plantation Utilities, Inc.'s ("Wyboo") Motion to Present the Pre-Filed Testimony of Joe Maready at the hearing in the above captioned proceeding. The Villas will be severely prejudiced if the pre-filed testimony of Joe Maready is introduced into the record at the hearing without counsel having the opportunity to cross-examine him, and therefore the Villas oppose Wyboo's request.

Wyboo pre-filed direct testimony by Joe Maready to support its request for an increase in its rates and charges. Tragically, Mr. Maready died prior to the hearing currently scheduled to begin December 13, 2006. Commission Rule 103-869 provides that witnesses shall be examined orally and that they shall be sworn or affirmed before their testimony shall be deemed evidence in the proceeding.

The South Carolina Public Service Commission adopted the South Carolina Rules of Evidence ("SCRE") pursuant to Commission Rule 103-870. Clearly, Rules 103-869 and 103-870 work together with the understanding that a fundamental tenant of the courtroom practice of law is a party's opportunity to cross-examine witnesses pursuant to

SCRE 611 on any matter relevant to any issue in the case. Such opportunity is essential because it gives the decision maker the ability to ascertain the credibility of a witness.

Joe Maready's testimony is hearsay under SCRE 802 because it is a statement of Mr. Maready which is being offered into evidence without his presence. The South Carolina Rules of Evidence allow for exceptions to the hearsay rules; however, none are applicable in this situation. It is undisputed that Mr. Maready is unavailable to testify at the hearing because of his unfortunate death. *See, Mattox v. U.S.*, 156 U.S. 237, 15 S.Ct. 337, 39 L.Ed. 409 (1895) (recorded testimony of a witness who is now deceased may be admitted because the prosecutor had the opportunity to cross-examine the witness). In *Mattox*, the witness previously had been cross-examined whereas in the present case counsel did not and will not have the opportunity to cross-examine Mr. Maready.

After showing the unavailability of a witness, the party presenting testimony has the burden to show that one of four exceptions listed in SCRE 804(b) applies to allow the testimony to be presented. The only potential exception would be SCRE 804(b)(1) that allows for former testimony to be presented when it was given by a witness in the same or a different proceeding or deposition if the party against whom the testimony is offered had the opportunity to develop the testimony by direct, cross, or redirect examination. The pre-filed testimony fails on both requirements. It neither qualifies as former testimony as defined by the rule nor were the parties against whom the testimony is offered, allowed to develop the testimony by direct, cross, or redirect examination.

Commission Rule 103-803 states that, "[i]n any case where compliance with any of these rules and regulations produces unusual hardship or difficulty, the application of such rule or regulation may be waived by the Commission upon a finding by the

Commission that such waiver is in the public interest." This is not a light undertaking and should be reserved for extraordinary situations where the Commission finds that both prongs of the Rule are met. Although the Commission has the authority to determine public interest, the Villas maintain the Commission should not allow this testimony into the record without the opportunity for cross-examination due to the prejudicial impact upon the Villas and other parties

WHEREFORE, for the foregoing reasons, The Villas of Wyboo Owners Association respectfully submits this Memorandum in Opposition to the Motion Seeking Approval to Present the Pre-filed testimony of Joe Maready into the record in the above captioned proceeding and requests that pre-filed testimony is excluded from the hearing.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: s/Robert E. Tyson, Jr.
Robert E. Tyson, Jr.
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for The Villas of Wyboo Owners Association

Columbia, South Carolina
December 1, 2006