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BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CARONIA

DOCKET NO. 2018-364

Stephen and Beverly Noller and	)
Michael and Nancy Halwig,	)
Complainants,	)
	)
v.	)
	)
	)
Daufuskie Island Utility Co., Inc.,	)
Respondent.	)

REBUTTAL TESTIMONY OF

NANCY HALWIG

ON BEHALF OF COMPLAINANTS

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Q. PLEASE STATE YOUR NAME, ADDRESS AND YOUR INTEREST IN THIS MATTER.

A. My name is Nancy Halwig and my address is 305 10th Street Northeast, Atlanta, Georgia. My interest in this case is that I own 46 Driftwood Cottage Lane with my husband, and am a Complainant in this matter.

Q. HAVE YOU READ THE DIRECT TESTIMONY OF AND REVIEWED THE EXHIBITS OF THE ORS STAFF (MS. DAWN M. HIPP), AND DIUC'S, TESTIMONY OF MICHAEL J. GUASTELLA AND JOHN F. GUASTELLA?

A. Yes, I have read that material.

Q. IN REGARD TO THE ORS TESTIMONY ON PAGE 6, LINES 9-14 THERE IS A REFERENCE TO A MARCH 2017 UPDATE FROM DIUC TO THE ORS STAFF, AND ANOTHER UPDATE REFERENCED FROM MARCH FOR 2017. HAVE YOU REVIEWED THOSE LINES AND THOSE TWO UPDATES?

A. Yes, I have read the material and am familiar with those updates[1], but do not agree that they are updates on any progress of DIUC to restore service to Driftwood Cottage Lane. In fact, the correspondence referred to merely continues to provide that the customers are being forced to replace the water and sewer mains for the benefit of DIUC because DIUC refused to do so. Particularly aggravating to me is a statement in the March 2017 e-mail that both the Halwigs and Nollers are working with Thomas and Hutton on it and cooperating. There was no opportunity for any cooperation with DIUC, only to comply with its demands to meet its requirements and sign anything it presented to us in order for us to ever have the hope of getting water and sewer back for our homes and, therefore, the ability to use our property. For over two years we were strung along first by DIUC, then by the new owners of Melrose Resort and DIUC. Being forced to choose to do whatever DIUC demanded is not cooperation, especially when the only alternative is to give up on a very large investment of money and real property for our homes. DIUC had a one phrase answer that it used from 2015 through today, that "it would not be fair to its other customers" for it pay to replace any equipment to serve our properties, including the other lots along Driftwood Cottage Lane where other houses could be built. The only offer of assistance that might be called cooperation would be the naming of Thomas & Hutton as an engineer with which DIUC had confidence, and the use of Mr. Lee, who we found out later was and in fact an owner of DIUC. As presented in our prior testimony, Mr. Lee's quote to install the replacement mains was twice as high as that of which we were able to achieve with another contractor. We do not see DIUC as ever having cooperated with us. Moreover, Mr. Mike Guastella refused to speak with me and required me to talk with his attorney, and then tried to force us to pay his attorney.

[1] See Exhibit Complainants 00188 and Complainants 00192, attached.

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Q. REGARDING THE STATEMENT OF ORS DIRECT TESTIMONY PAGE 13, LINES 11-13, HAVE YOU EVER HEARD OF A SITUATION WHERE A UTILITY REFUSED TO DO WHAT WAS NECESSARY TO RESTORE SERVICE TO A CUSTOMER?

A. No, just like ORS Staff, which could not find any precedent in PSC's prior decisions concerning such a situation, we have never heard of any utility, of any sort, refusing to repair or replace its own equipment in order to provide service to existing customers. It seems clear from the continuing statement from DIUC that it would not be fair to other customers for it to pay for the replacement equipment is a clever way of saying that it would not be profitable. However, as a regulated utility for which any future rate making decision would have to be made by the Commission, it's unclear why DIUC would assume that the Commission would require the capital investment to be passed on to its other consumers in any particular way. It seems much more obvious that the concern is the that the Commission could determine that such expenditures should be absorbed by the company as a form of self-insured retention or reserve for such equipment loss. DIUC knew the area of Driftwood Cottage Lane was a potential threat to its equipment, just look at the testimony of Mr. Michael Guastella at Page 4, Lines 3 through 16; Page 5, lines 3 through 17. DIUC ignored the fact that the water main was exposed and made no plans to relocate it to prevent an interruption of service to its customers.

Q. REGARDING THE TESTIMONY OF JOHN F. GUASTELLA, ON PAGE 2, LINES 14-19, THERE IS A STATEMENT THAT "THE DESTRUCTION OF THE ROADWAY IN WHICH MAINS WERE LOCATED ELIMINATED ANY POSSIBILITY OF REPLACING THE MAINS AND SAFELY PROVIDING CONTINUIOUS UTILITY SERVICE TO THE REMAINING CUSTOMERS ALONG DRIFTWOOD COTTAGE LANE. IS THAT A TRUE STATEMENT?

A. No. Replacement mains exist now connecting Driftwood Cottage Lane mains to those at Martinangel Road, installed by DIUC's customers without any experience whatever in such utility matters. We were able to obtain the easement, hire the engineers and surveyors, and hire and pay the contractors to do the work to replace the mains even without an agreement with DIUC in place. Obviously, there was a very real possibility of needing to replace the mains to provide continuous utility service along Driftwood Cottage Lane. DIUC just chose not to.

Q. ON PAGE 3, LINE 7-10, MR. GUASTELLA STATES THAT "IT BECAME THE RESPONSIBILTY OF THE COMPLAINANTS TO ENTER INTO A MAIN OR SERVICE EXTENSION AGREEMENT". DID DIUC EVER EXPLAIN WHY THE REPLACEMENT MAIN WAS YOUR RESPONSIBILITY?

A. No. DIUC refused to lift a finger to assist us, only gave us its demands that we would have to meet for any replacement mains before it would accept them and

provide water and sewer service to our homes. Its only statement offered in explanation was that it would not be fair to other customers for DIUC to pay to replace their mains. This explanation assumes that the PSC would approve a rate that included such costs in future rate requests, or at least we assumed that since no other explanation has ever been given. And DIUC never explained why it was not its responsibility to maintain service to its customers. If a sink hole or other event caused a loss of equipment of any utility, any customer would expect the utility to take care of fixing it.

Q. ON PAGE 4 OF MR. GUASTELLA'S TESTIMONY, LINES 7-12, THERE IS A DESCRIPTION OF THE DESTRUCTION OF DRIFTWOOD COTTAGE LANE AND THE EVIDENCE OF AN EROSION SURROUNDING YOUR PROPERTY, AND THAT, THEREFORE, "THE COMPLAINANTS CANNOT BE CONSIDERED REASONABLY PERMANENT CUSTOMERS". DO YOU PLAN TO ABANDON YOUR PROPERTY LIKE TWO OTHER OWNERS ON DRIFTWOOD COTTAGE LANE?

A. No. Those two homes had no protection from erosion, and are waiting for either a renourishment project or other remedy so that they could reclaim their property and put them back in service. Our properties have protection and we will work to repair and maintain our property. We have no plans to abandon them. In addition to our own efforts to repair and maintain our bulkhead, Melrose Resort has the opportunity to work to repair the entire bulkhead in the Resort, and to participate with the Melrose Property Owner's Association to implement the beach renourishment project, for which the State has issued a permit. Mr. Guastella's statement assumes our property rights are meaningless and ignores that other agencies have jurisdiction over beachfront issues, that DIUC does not. DIUC should not assume our properties are lost, it is not its decision. We are absolutely reasonably permanent customers now that we have been able to have our water and sewer restored and our homes can now be used as they were for many years prior to the two years such use was impossible due DIUC's abdication of its responsibilities.

Q. REGARDING THE TESTIMONY OF MR. MICHAEL J. GUASTELLA, ON PAGE 2, LINES 19-23, THERE IS A REFERENCE TO A STATEMENT BEING MADE BY THE COMPLAINANTS "ALL LOTS ON DRIFTWOOD COTTAGE LANE". WHAT DID YOU MEAN BY REFERENCING ALL LOTS ON DRIFTWOOD COTTAGE LANE?

A. There are lots on Driftwood Cottage Lane that could have future houses on them. The state law allows houses to be built between the baseline and setback lines in this area. Section 48-39-290 of The Beachfront Management Act provides for new homes to be built in this area. So the Driftwood Cottage Lane mains can serve future customers. My reference to "all lots" corrects DIUC's interpretation that we Complainants will be the only customers using the mains in the future.

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Q. IN REGARD TO PAGE 7, LINES 11-13 AND LINES 22-25, DID YOU "DEMAND" THAT DIUC INSTALL EROSION CONTROL DEVICES?

A. No, the word, on the page previous to the one you referenced, is clearly "suggested". The word "demand" is clearly not used looking at Page 6, line 26. More importantly, the idea of the relocation of the mains across the golf course was ignored by DIUC. Obviously having relocated a portion of the Driftwood Cottage Lane mains previously, and having them exposed by the hurricane, protecting what was there while an alternative site for relocation was pursued seemed a prudent thing to do to protect DIUC's equipment. Even its customers thought of that and suggested it too.

Q. REGARDING PAGE 9, LINES 7-11, WHEN DID YOU SEE THE DECEMBER 10, 2015 LETTER REFERENCED IN THIS PART OF MR. QUASTELLA'S TESTIMONY?

A. We did not see this until over a year later. Mr. Josey said he never received the December 10, 2015 letter in 2015[2], and by the time we did see it, the DIUC's refusal to do anything to help replace its equipment was well known.

Q. IN REGARD TO TESTIMONY OF MR. GUASTELLA ON PAGE 11, LINES 11-14, REFERENCING THE REINSTALLATION OF MAINS "AT THAT LOCATION" DID YOU EVER HEAR OR READ DIUC TO SAY THAT IT WAS EXPLORING OR CONSIDERING ANOTHER LOCATION TO REPLACE THE MAINS?

A. No. The Complainants suggested it but DIUC never showed any interest in replacing its mains before or after the damage from the hurricane. DIUC only stated that the mains would only be replaced by its customers. As it never took any action to relocate them, we were forced to undertake the utility's work to get our water back so we could use our homes.

Q. IN REGARD TO THE TESTIMONY ON PAGE 12, LINES 16-24, THERE IS A REFERENCE TO THE INSTALLATION OF NEW UTILITY EASEMENTS THAT COULD BE ADEQUATELY PROTECTED FROM EROSION OR OTHER THREATS BUT THAT SUCH WAS LIKELY TO BE "VERY SHORT TERM". HAD YOU EVER HEARD DIUC USE THE REFERENCE TO SHORT TERM OR REASONABLY PERMANENT CUSTOMERS BEFORE YOU FILED YOUR COMPLAINT IN THIS MATTER?

A. No. It appears that these ideas came to DIUC only after we challenged them for having forced us to install their replacement equipment or to abandon our homes as an alternative. We waited to file this Complaint until after the installation was complete and water and sewer service could actually be turned back on because we were concerned, as proved to be true, that DIUC would not do anything to

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[2] See Exhibit Complainants 00190, attached.

help us or restore service until we paid for everything and paid its tax. The proposed Addendum by DIUC made that clear. Only after the ORS agreed that service could be restored without affecting this proceeding would DIUC restore it. The idea of our property being lost and service being short term was not mentioned then or ever, until DIUC filed responses to this Complaint. As stated previously, the notion that this utility can decide the fate of our property is appalling and not justified in any way. We have a right to protect our property and we have a right to pursue all means available under the law to maintain it, and we are doing so. For over two years we had no use of our properties because DIUC would never provide even temporary service. The Complaint was the only means available to try to correct the very wrong treatment we have endured to get our water back, and thus the use of our property back.

Q. IN REGARD TO THE TESTIMONY ON PAGE 23, LINES 6 THOUGH 21, WHAT IS YOUR RESPONSE TO MR. MICHAEL GUASTELLA'S ALLEGATION THAT YOU BREACHED THE CSA?

A. We did not breach the agreement, which were forced into. It was not voluntary, it was extortion. Even if we had signed voluntarily, there is no mention in the agreement of all of the proposed Addendum terms. That is not just 'assembling all the paperwork'. No mention of taxes, attorney's fees or any other costs are in the CSA except the "cost of installation". The Addendum even required that we give up our right to complain to this Commission or challenge DIUC in any way. Clearly, that was not in the agreement that we had no choice but to sign. To try to shoe horn the tax and fees into it after the fact, while claiming it is being generous for not charging 'administrative costs' for the time spent by DIUC doing nothing but demanding we do everything, is galling, but beside the point that <u>only</u> the costs of installation were agreed to be paid by its customers in that agreement, under duress with no other alternative but to abandon our home.

Q. DOES THIS CONCULDE YOUR PRE-FILED DIRECT TESTIMONY?

A. Yes, it does.

Q. THANK YOU.

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Mike Guastella

From: Campbell, Chad
Sent: Tuesday, March 21, 2017 2:02 PM
To: Mike Guastella
Subject: RE: DIUC - Driftwood Cottage Ln - Halwig

Thanks for the update Mike

From: Mike Guastella [mailto:mjg@guastella.com]
Sent: Tuesday, March 21, 2017 10:38 AM
To: Campbell, Chad <ccampbe@regstaff.sc.gov>
Subject: DIUC - Driftwood Cottage Ln - Halwig

Chad,

A quick update on the Driftwood/Halwig situation. I heard from Thomas & Hutton again and it sounds as though they will be working with both residents (Halwig & Noller) to provide the engineering reports for new customer service lines. They will be inspecting the area possibly as soon as this week. Our Operators will be with the engineer to answer any questions and show them our facilities. I will update you again when I have new information.

Regards,

Mike Guastella

Vice President-Operations
Guastella Associates, LLC
725 N Hwy A1A, Suite B103
Jupiter, FL 33477
Office: 617-423-3030
Cell: 775-267-7035
Fax:617-423-2929

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DAUFUSKIE ISLAND UTILITY COMPANY, INC.
PO BOX 360
Northborough, MA 01532
617-423-7878

January 27, 2017

BY EMAIL

Mr. J. Rene Josey, Esq.
Turner | Padget
319 South Irby St.
P.O. Box 5476
Florence SC 29502

Re: Utility service to homes on
Driftwood Cottage Lane
TPGL File No.: 13926.101

Dear Mr. Josey,

This letter is in response to the continued request for restoration of water and sewer services to 46 and 36 Driftwood Cottage Lane, after hurricane Matthew in October 2016 destroyed a section of the road which contained DIUC water and sewer facilities.

According to an email from Mrs. Julie Dilullo, President of the Melrose Property Owners Association, Driftwood Cottage Lane will not be restored. To date, this area of road has now been destroyed twice from extensive erosion through tidal and storm surges. DIUC no longer has a location in which to install water and sewer facilities to these customers.

We recommend that the customers of 36 and 46 Driftwood Cottage Lane seek regulatory approval to construct new customer service lines that extend to within DIUC's existing right of way along Martinangel Lane. We will then be willing to provide utility services through a new tie in at that location. The customers must provide DIUC with documentation from all relevant regulatory agencies allowing this installation and occupancy of their respective residences prior to the new service being initiated.

We suggest that the customers consider using the professional engineering services of Thomas & Hutton and the construction services of Terry Lee Construction, who have extensive knowledge and experience of utility construction on Daufuskie Island. DIUC has a continuing working relationship with both companies and Terry Lee is president of DIUC, so the customers are certainly free to make any other arrangements.

GUASTELLA ASSOCIATES, LLC
Manager of DIUC,

Mike J. Guastella
Vice President- Operations

Cc: Mike Halwig
Mr. & Mrs. Noller
JT Bramlette
Chad Campbell
Ken Crow

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From: Josey, J. Rene
Sent: Tuesday, January 10, 2017 3:06 PM
To: jmhalwigmd@aol.com
Cc: Josey, J. Rene
Subject: RE: DIUC - Driftwood Cottage Ln
Attachments: StateSewerRegulations.pdf

I got the 12/10 letter yesterday but am not finding where I received it previously. He did not send a copy of that regulation but I have pulled and attached a copy.

As you noted yesterday, you have provided them with a requested route—they have not provided me or you (to my knowledge) with any follow-up response or cost estimate, etc.

The attached regulations say it is there duty to avoid a disruption in service an respond/repair any disruption in service – that would seem to be part of their costs of business having been given the utility franchise/monopoly for the area.

I can write him back with that observation if you think appropriate. The utility and developer seem to be looking at each other and crying "chicken vs. egg: who goes first?"

J. Rene Josey
Attorney
PO Box 5478 | Florence, SC 29502
319 South Irby Street | Florence, SC 29501
843-656-4451 | Fax 843-413-5818
jjosey@turnerpadget.com
Bio | vCard | Location

From: jmhalwigmd@aol.com [mailto:jmhalwigmd@aol.com]
Sent: Tuesday, January 10, 2017 1:33 PM
To: Josey, J. Rene
Subject: Fwd: DIUC - Driftwood Cottage Ln

Did you get this 12/10 letter her is referring to?

-----Original Message-----
From: Mike Guastella <mjg@guastella.com>
To: JJosey <JJosey@turnerpadget.com>
Cc: jmhalwigmd <jmhalwigmd@aol.com>
Sent: Mon, Jan 9, 2017 1:43 pm
Subject: DIUC - Driftwood Cottage Ln

Mr. J. Rene Josey,

Please see attachments.

Regards,

Mike Guastella

Vice President-Operations

Guastella Associates, LLC
725 N Hwy A1A, Suite B103
Jupiter, FL 33477
Office: 617-423-3030
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