Original

POSTED 29 Apr 04 RNG

BEFORE THE

PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

Docket No. 2003-368-S

RECEIVED
2004 APR 29 PM 2:56
SC PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY OF

LARRY ABERNATHY

FOR THE

CITY OF CLEMSON

Q. **PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

A. My name is Larry Abernathy. I have served on the Clemson City Council for the past twenty-eight years, including the past twenty as Mayor. My business address is Post Office Box 1566, Clemson, South Carolina 29633-1566..

Q. **WHAT IS YOUR EXPERIENCE WITH UTILITY ISSUES IN GENERAL AND WITH THIS RATE CASE SPECIFICALLY?**

A. In its role as the elected governing body of the City of Clemson, the City Council adopts all policies and establishes rates for the utilities that are owned and operated by the City. The City has dealt with Madera Utilities, Inc., for the past several years, but more so with the residents who are served by Madera and are dissatisfied with the company's service.

RETURN DATE: OK RNG
SERVICE: OK RNG

Q. **WHEN DID YOU FIRST BEGIN TO CONSIDER THE ISSUES OF THE HEATHERWOOD LAGOON AND MADERA UTILITIES?**

A. The City Council learned that the Heatherwood lagoon was scheduled for closure several years ago. However, it really moved to the "front burner" in 1996. At that time, the City of Clemson was the only option for diverting the wastewater. The Pickens County Middle Basin WWTP had not been constructed, and the City had sufficient capacity to provide service for these Madera customers in our Pendleton/Clemson wastewater treatment plant.

City Council approved a contract for the evaluation of the Heatherwood lagoon and connection alternatives by B.P. Barber Engineers in 1996. City staff also evaluated the potential impact on our Pendleton/Clemson wastewater treatment plant capacity should the effluent be diverted to the City's system in the future. Council authorized an update of the Barber study in 2002. We thought that the DHEC order requiring closure of the lagoon and diversion of the effluent would move this issue forward, but we were mistaken in that belief because of Madera's appeal of that order.

Q. **HAS THE CITY CONSIDERED THE ISSUES RELATED TO THE MADERA DIVERSION OF WASTEWATER EFFLUENT INTO THE CITY'S UTILITY SYSTEM?**

A. Yes. City staff met with Mr. Jack Rogers to discuss the potential of allowing Madera to connect to our collection system. Additionally, staff shared with him the results of the B.P. Barber Engineering study. We also discussed the potential for the City to take over the ownership of the collection system, but only after Madera, would pay the costs to

connect to the City's system. Additionally, I met with Mr. Rogers at the DHEC offices in Columbia to visit with Mr. Robin Foy about the Heatherwood lagoon, the DHEC order, and timing of the closure.

The Clemson City Council has also discussed this issue on multiple occasions. It has been the position of the Council that the City of Clemson should not be considered as a "bail out option" by Madera. The City Council would consider taking over the collection system, but Madera should be responsible for paying the costs related to connecting to the City's system. If Madera would accept responsibility for those costs, the City Council would likely agree to accept the collection system and divert the wastewater. The City would not pay for the actual closure of the lagoon system because that is a responsibility of the lagoon's owners.

Q. **DID THE CITY COUNCIL RECOGNIZE THAT THERE WOULD BE A POTENTIAL IMPACT ON THE 114 HOUSEHOLDS THAT ARE SERVED BY MADERA? IF SO, WHAT WAS YOUR RESPONSE AND ACTIONS IN COMMUNICATING THIS TO THE CITY RESIDENTS?**

A. Yes. The City Council knew that the residents were in an unfavorable position. Not only had the City received reports and comments about the poor quality of Madera's service, but the residents consistently described the lack of maintenance on the system to members of Council. The City Administrator advised Council that it would not be prudent for Council to accept a transfer of the Madera system to the City of Clemson without improving the collection system deficiencies.

If the City were to accept transfer of the Madera system without improvements to the collection system, we believe that any future damage due to sewer back-up problems

could become our responsibility and liability. If we know that there were problems and failed to correct the situation in a reasonable time, we would likely be liable for that failure to take action.

In the spring and summer of 2002, The City of Clemson initiated a series of meetings with affected residents of Eastbriar and Heatherwood to inform them about the DHEC order and eventual closure of the lagoon. We informed the residents that the City Council was willing to accept the collection system from Madera, and that the City of Clemson would then become their wastewater utility service provider. However, we also informed the residents of the problems (inflow and infiltration of ground water) with the collection system.

The City Council had indicated that the existing users of the City's system should not be responsible to cover the costs of repairing the Madera collection lines, and the Heatherwood and Eastbriar residents would be required to pay a "surcharge" of approximately $1.00 per 1,000 gallons of water consumed for a period of eight to ten years. That would allow the persons using the system and benefiting from the improvements to pay the costs of correcting the collection system problems, while not placing an additional burden on the other user's of the city's system. Our philosophy was, "The City did not create these problems, so our existing ratepayers will not bear the costs of bailing out Madera's failure to plan and maintenance deficiencies." Likewise, the City did not force this issue on the residents. We informed them that an alternative wastewater treatment plant was available and Madera could arrange for the wastewater effluent to be treated at Pickens County's new Middle Basin Treatment Plant. However, the current rates of Pickens County are already $1.00 per 1,000 gallons more expensive

than Clemson's rates. Council agreed that the impacted residents could have their own "vote" to determine if they wanted the City of Clemson to be their future wastewater service provider – with the provision that an additional surcharge would be calculated into their rates. The City provided a "ballot" and allowed the residents to respond to Council's position. The response was overwhelmingly positive to have the City become the new wastewater provider, if possible. Nearly 70% of the households responded, with 95% of these respondents choosing to have the City of Clemson become the provider – even with the proposed surcharge to cover collection system repair costs.

Although the Clemson City Council did not have "official public hearings" for these meetings, each of the sessions was attended by at least one member of City Council. On each occasion, that Council representative informed the residents that we are interested in their well being, but we did not have authority over Madera's rates or operations. That is the role of the Commission and the Department of Health and Environmental Control.

Q. **WHY DO YOU BELIEVE THAT THE COMMISSION SHOULD NOT GRANT THE PROPOSED INCREASE THAT MADERA HAS REQUESTED?**

A. Madera Utilities has not operated with good utility practices, in my opinion, and they have not shown attention to its customers. I believe that the company has not communicated with its customers at all. In fact, the City of Clemson has taken the lead in keeping these customers informed of the DHEC order, the rate filing at the Commission, and their rights as utility customers. In fact, Madera did not even give the City of Clemson a courtesy call to inform us that it had filed for the rate increase.

We have been forced to rely on Mr. Robin Foy of DHEC to keep us informed of Madera's actions, or its failure to act. For many months, Madera has been under an order which requires the lagoon effluent to be diverted. We know that Madera will have to choose between the City of Clemson and Pickens County treatment alternatives, but the company has not communicated its planning or decisions to us. We know that it has appealed the DHEC order in the Richland County Circuit Court, but we have no idea when that issue will ultimately be decided.

We find it curious that Madera has been fighting the lagoon closure with DHEC for a few years, but now it proposes an unreasonably excessive rate increase to spend the residents' money in diverting the effluent flow. As a governing body, we share frustrations about unfunded mandates. We did not like to spend money completing a Water Vulnerability Analysis this past year, and our federal government did not send us a check to allow us to pay for that exercise. However, we found a way to pay for the study and are completing that unfunded mandate within the required time frame.

For over a decade, Madera has known that the closure of the lagoon was going to happen and it has had plenty of time to make financial plans. Madera consciously chose not to take planning steps. The Commission should not reward that refusal to plan properly.

Q. **WHAT AMOUNT SHOULD BE ALLOCATED IN REVENUE REQUIREMENTS FOR MADERA'S PROPOSED IMPROVEMENTS?**

A. None. Madera's management has known for the past eleven (11) years that effluent from its system would be diverted to another utility. They have had the same amount of time to create a capital reserve account, but they have not set aside any revenues to plan

for this certainty. The stockholders of the company are properly responsible for making these investments. Then, after the work has been completed and costs verified, Madera could apply to the Commission to include the costs in its revenue requirements for rate-making purposes. In addition, Madera should be required to amortize the costs of their improvements over the life of the assets.

Q. **WHAT ARE THE OTHER PROBLEMS WITH THE PROPOSED MADERA RATE STRUCTURE?**

A. Madera is treating each household as equal in its rate request. That is – each customer is a user – not each customer deserves equity in the costs of service. However, why should a single, elderly person that uses only 1,500 gallons of water per month pay the same amount as a family of six persons? Apparently, Madera does not consider the basic issue of equity in rates to be important. The Clemson City Council disagrees with this philosophy. We believe that equity is important and that rates should reflect the capacity requirements that a customer places on the utility. In the opinion of the City Council, it is unreasonable to set rates that are not equitable. A fee of $893 per year for sewer service is simply not reasonable for a single person household.

Q. **WHY DO YOU SAY THAT IT IS UNREASONABLE? COMPARED TO WHAT?**

A. A household in the City of Clemson utility system that uses 5,000 gallons of water per month will pay $25 per month ($300 annually). The Madera proposed rate is nearly three times that amount. In my opinion, a rate of $893 per year will negatively impact the disposable income of the household, will make the resale value of the property decline, and is not a fair rate for the quality of service that is received. The residents of these

neighborhoods are being asked to pay excessively for the poor management of the utility. The stockholders of Madera should not be rewarded for failing to hold management accountable.

Q. **IS THE CITY INTERESTED IN TAKING OVER THE MADERA WASTE-WATER COLLECTION SYSTEM?**

A. Yes – but only under specific conditions. The City of Clemson would be interested in taking responsibility for the collection system, but not in the form of a "bail out" of Madera. In our opinion, Madera has failed to plan properly for the certainty of the lagoon closure and effluent diversion. We have known for the past 12 years that this lagoon system would be closed and the effluent diverted. If Madera had increased its rates in 1992 to generate $10,000 per year – which would have represented less than a 50% rate increase or $8 per month for a residential household – it could have reserved $120,000 for diverting the flow. Simply stated, we do not believe that a failure on Madera's part to plan for the future can justify an emergency rate increase of 325%. Madera has the option to sell additional stock to raise capital for the lagoon closure. Instead, the Company opted to request the Commission to approve an excessive rate increase. It seems that the Company's routine response to any problem has been – delay, delay, delay, and hope that someone will bail the corporation out of any potential financial loss.

The City of Clemson would be the best operator of this wastewater collection system and would make the improvements to the collection lines. The homeowners have already "voted" to accept a surcharge on their wastewater rates for the next 8 to 10 years. The service level and response time for emergencies would be dramatically improved with our wastewater service for the Heatherwood lagoon customers. The Commission

would not have to deal with the problems of this utility in future years. The customers would be assured that the replacement work would be completed to the City's construction specifications. And, the list could go on and on. It simply makes sense for the City of Clemson to take over this wastewater system. However, it also makes sense that Madera should be required to pay the costs of meeting the requirements of the DHEC order that it has been challenging for the past many months.

Q. **WHY DO YOU BELIEVE THAT MADERA SHOULD BE REQUIRED TO PAY FOR SOME BASIC COSTS OF IMPROVEMENT PRIOR TO THE CITY OF CLEMSON TAKING OVER THE SYSTEM?**

A. Madera has known that this lagoon closure was a reality. Madera has had 12 years to plan for the certainty of that event. Madera has sold other utility operations in South Carolina. Madera has applied to the Commission for rate increases to address the need for additional revenue in prior years which would avoid rate shock for its customers. We do not believe that the residents of Eastbriar and Heatherwood should have to cover the cost of diverting this wastewater flow. There is no legitimate reason that this unreasonably excessive rate request should have ever been filed. It is simply the result of lack of planning and poor management oversight.

Q. **DOES THIS CONCLUDE YOUR TESTIMONY?**

A. Yes.