ELECTRONICALLY FILED - 2019 May 2 4:37 PM - SCPSC - Docket # 2018-358-WS - Page 1 of 8

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2018-358-WS

In the Matter of:	)	
	)	
Verified Application of Carolina Water Service, Incorporated for Approval of Annual Rate Adjustment Mechanisms and Petition for an Accounting Order to Defer Expenses	)	**PETITION FOR DECLARATORY ORDER AND REQUEST FOR EXPEDITED CONSIDERATION**
	)	

Blue Granite Water Company (the "Company" or "Blue Granite") files this petition for declaratory order and request for expedited consideration pursuant to S.C. Code Ann. Regs. 103-825. The Company seeks an order from the Commission declaring that S.C. Code Ann. § 58-5-240(F) would not prevent the Commission from approving the pass-through mechanism and passing through the associated charges as proposed in this proceeding, and then the Company filing for a general rate case within a twelve-month period. This position is supported by the language of S.C. Code Ann. § 58-5-240 and appears to be shared by the Commission. The Company files this petition for a declaratory order out of an abundance of caution, seeking assurance from the Commission that this position will be applied equally to the Company, and will permit the Company to file for a general rate case within twelve months of its filing the Amended Application.

The Company also requests expedited consideration of this request as the Commission's position on this issue has a direct impact on the posture of the instant proceeding and the Company's ability to timely file its anticipated general rate case. Pursuant to S.C. Code Ann. Regs. 103-825(A)(2), the Company herein provides the following: (a) a full disclosure of the

petitioner's interest; (b) the uncertainty which is the subject of the petition; (c) the statutory provision or other authority involved; and (d) a complete statement of the facts prompting the petition.

I. Background

On November 14, 2018, Carolina Water Service, Inc.—now Blue Granite—filed for approval, with the Public Service Commission of South Carolina (the "Commission") in the above-referenced docket, certain proposed annual rate adjustment mechanisms for purchased water and wastewater treatment expenses and for authority to continue to defer the Company's purchased water and wastewater treatment expenses (above or below the amounts reflected in base rates) until such expenses are reflected in rates. Inasmuch as the requested relief did not involve a change to any of the Company's rates at that time, and did not require a determination of the entire rate structure and overall rate of return, the Company requested that the Commission allow its proposal to be put into effect without notice or hearing, consistent with S.C. Code Ann. § 58-5-240(G). On December 5, 2018, the Commission denied the Company's request to implement the rate adjustment mechanisms without a hearing and instructed staff to establish a hearing date. Because the matter was set for hearing, the Company decided to seek recovery, as part of this proceeding, of the currently deferred expenses that would be recovered through the proposed rate adjustment mechanisms, i.e., actual purchased water and wastewater treatment expenses resulting from changes in third party providers' rates. The Company therefore filed a letter on January 11, 2019 providing notice of its intent to file an amended application that would propose recovery of such expenses, and then filed the amended application on February 21, 2019 ("Amended Application").

It has come to the Company's attention that a potential interpretation of S.C. Code Ann. § 58-5-240(F) could be that filing for a change to any specific charge, including permitting the pass-through of the charges described in the Amended Application, could prevent the Company from

ELECTRONICALLY FILED - 2019 May 2 4:37 PM - SCPSC - Docket # 2018-358-WS - Page 2 of 8

seeking a change to other charges or terms of service prior to the expiration of the twelve-month period prescribed in that statutory provision. Although the Company believes that this interpretation would be at odds with Commission precedent, the language and the intent of that statute, and that it would lead to absurd results—because the Company currently anticipates the need to file for a general rate proceeding within the next twelve months—the Company seeks assurance that the Commission does not interpret this statutory provision in such a way as to prevent the Company filing a general rate case during the twelve-month period described in S.C. Code Ann. § 58-5-240(F).

II. The Requested Changes to Specific Charges

Exhibits E, F, and G to the Company's Amended Application show in redline the changes to discrete charges contained within specific rate schedules. As proposed in the Amended Application, the Company would pass through charges from third party providers to water distribution customers and all sewer customers, consistent with the Company's most recently approved rate design. Notably, the Amended Application seeks no change to the Company's base rates, its entire rate structure, or its authorized rate of return.

The changes to these charges, as explained in the Amended Application, were intended to be, and were in fact, limited to passing through changes to the expenses charged to the Company by third parties for these commodities and services, and are charges over which the Company has no control. The Company proposed no changes to the twenty-eight basic facilities charges contained in those schedules or an additional four water commodity charges contained in those schedules. Further, the Company proposed no changes to its non-recurring charges, such as those for water service connections, water meter installations, or customer account charges, or to any of the other terms of its provision of service to customers.

ELECTRONICALLY FILED - 2019 May 2 4:37 PM - SCPSC - Docket # 2018-358-WS - Page 3 of 8

ELECTRONICALLY FILED - 2019 May 2 4:37 PM - SCPSC - Docket # 2018-358-WS - Page 4 of 8

III. S.C. Code Ann. § 58-5-240(F)

The statutory provision at issue, S.C. Code Ann. § 58-5-240(F), is quoted as follows:

> After the date the schedule is filed with the commission and provided to the Office of Regulatory Staff, no further rate change request under this section may be filed until twelve months have elapsed from the date of the filing of the schedule; provided, however, this section shall not apply to a request for a rate reduction.

The question presented in this petition is whether this provision would act to prevent the Company from passing through its purchased water and wastewater expenses as proposed in the Amended Application and then filing a general rate case filed within twelve months. The Company submits that passing through third-party water and wastewater expenses is not the type of "rate change request" contemplated in S.C. Code Ann. § 58-5-240(F) that would prevent a subsequent "further rate change request." This position is supported by the language of S.C. Code Ann. § 58-5-240, and this position appears to be shared by the Commission.

As demonstrated by S.C. Code Ann. § 58-5-240(G), by its terms, S.C. Code Ann. § 58-5-240—including subsection (F)—applies to full blown rate cases, where the petitioning utility seeks changes to its entire rate structure and its overall rate of return. Indeed, S.C. Code Ann. § 58-5-240(G) specifically carves out rates or tariffs that do not require a determination of the entire rate structure or an overall rate of return. Although in this case the Commission determined not to exercise its authority under subsection (G) to process this case without a hearing, the fact remains that S.C. Code Ann. § 58-5-240 makes a clear distinction between general rate cases and narrowly-focused rate adjustment cases such as this, requiring twelve months only between full blown rate cases.

Commission precedent supports this distinction. Other utilities, the Office of Regulatory Staff ("ORS"), and the Commission have treated these expenses with relative routine and considered them to be appropriately passed through to customers "without markup or margin" outside of a general rate case and regardless of the timing specified in S.C. Code Ann. § 58-5-

240(F). As one example, the Commission initially authorized a pass-through mechanism for Kiawah Island Utility, Inc. ("KIU") in Order No. 2002-285, Docket No. 2001-164-WS (Apr. 18, 2002). Thereafter, in the same docket, KIU requested and was granted a series of increases in its rates for potable water based on increases in its own wholesale cost of potable water it purchased from St. Johns Water Company, including back-to-back increases requested on June 1, 2012 and October 10, 2012, neither of which were opposed by any party, including ORS, and both of which were approved by the Commission. In a November 30, 2015 request filed with the Commission, KIU requested a further increase to the rate for potable water to all classes of customers based on an increase in its purchased water expenses. KIU then filed an application instituting a general rate case on November 11, 2016, and the issue of the twelve-month stay-out provision was not raised.

As recently as April 25, 2019, the Commission determined that these pass-through costs are appropriate for recovery outside of a general rate case, and it permitted such recovery immediately on the heels of a general rate case. On October 25, 2018, in Docket No. 2018-257-WS, KIU filed for a general rate increase, citing various expenses giving rise to the application, including interest on long term debt, employee payroll and benefits, overhead and management expenses, and an increase in the Company's operating margin. Rather than include and pass through its purchased water expenses as part of that application, KIU proposed to make a subsequent filing notifying the Commission of the purchased water rate increase and to "implement this increase beginning May 1, 2019." Craig Sorensen Test. at 7, Docket No. 2018-257-WS (filed Jan. 31, 2019). The Commission approved an overall rate increase of 6.88 percent as part of the general rate case and approved KIU's proposal to "increase its water rates to reflect the pass-through charge" following resolution of the rate case. Order No. 2019-288 at 10, 11,

ELECTRONICALLY FILED - 2019 May 2 4:37 PM - SCPSC - Docket # 2018-358-WS - Page 5 of 8

Docket No. 2018-257-WS (Apr. 25, 2019). As described in KIU's notice to customers approved by the Commission on April 24, 2019 in Order No. 2019-296:

> 1. You were notified in November 2018 that Kiawah Island Utility, Inc. (KIU) filed an application with the South Carolina Public Service Commission (PSC) requesting approval of new rates. On April 25, 2019, KIU received approval of an overall increase of 6.88% in water and sewer rates.
>
> 2. On March 1, 2019, St. Johns Water Company increased the cost of KIU's purchased water by $0.11 per thousand gallons. KIU is authorized to pass that increase on to our customers after providing a 30 day advance notice. This letter gives notice that an amount of $0.11per thousand gallons of usage will be added to your consumption rate beginning on your June statement.

With the Commission's approval, KIU passed through its increased purchased water expenses to customers only six months following its application for a general rate increase.

In another example, after filing a letter of intent, on November 14, 2013, in Docket No. 2013-380-S, Ocean Lakes Utilities, L.P. ("Ocean Lakes") filed an application requesting to implement a pass-through mechanism by which increases in purchased wastewater treatment services would be passed through to customers, as well as requesting an increase to the rate for wastewater to all classes of customers. In Order No. 2014-48, issued on January 14, 2014, the Commission granted these requests. As soon as April 21, 2014, approximately five months following its previous pass-through expense increase, Ocean Lakes made a subsequent filing in that docket notifying the Commission that it would be "implementing a $ 1.51 adjustment over a two year period with the first being a $.76 increase effective July 1, 2014." Likewise, Ocean Lakes filed similar notifications on March 30, 2015, April 28, 2017, March 28, 2018, and April 16, 2019.

In another case, Harbor Island Utilities, Inc. ("Harbor Island") filed for a general rate increase on August 17, 2016 in Docket No. 2016-29-WS, and the Commission authorized an operating margin of 13.75 percent and an annual increase in total operating revenues of $216,016. Order No. 2017-80(A) at 12, 14, Docket No. 2016-29-WS (Feb. 1, 2017). Thereafter, on May 24, 2017—approximately nine months after filing its general rate case application in the same

ELECTRONICALLY FILED - 2019 May 2 4:37 PM - SCPSC - Docket # 2018-358-WS - Page 6 of 8

docket—Harbor Island made a filing notifying the Commission that its purchased water costs would be increasing with the next monthly billing cycle. ORS filed a letter indicating that it did not object to the filing, and the Commission approved the increased pass-through rate on June 7, 2017 in Order No. 2017-366.

These cases make it clear that the Commission has established a position that these pass-through expenses are not of the type contemplated in S.C. Code Ann. § 58-5-240(F) that would prevent a separate or "further rate change request" within a twelve-month period. Indeed, the Commission's treatment of this issue evidences a consistent pattern that the third-party expenses of the type addressed in the Amended Application are appropriately passed through to customers regardless of the timing contemplated in S.C. Code Ann. § 58-5-240(F). This petition for a declaratory order merely seeks assurance from the Commission that this position will be applied equally to the Company, and will permit the Company to file for a general rate case within twelve months of its filing the Amended Application.

The Company believes that interpreting S.C. Code Ann. § 58-5-240(F) to mean that a utility cannot both pass-through third party expenses, as well as initiate a general rate case proceeding within a twelve-month period, would lead to an absurd result not intended by the legislature. *See Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 275 (1994) (when construing a statute, the Court will reject meaning that would lead to an absurd result not intended by the legislature); *Joseph v. State*, 351 S.C. 551, 571 (2002) ("[I]f possible we will construe a statute so as to escape an absurd result and carry the legislative intention into effect."). The third-party expenses that the Commission has routinely permitted to be passed through to customers are distinct from those a utility might otherwise seek to adjust on its own initiative through a general

ELECTRONICALLY FILED - 2019 May 2 4:37 PM - SCPSC - Docket # 2018-358-WS - Page 7 of 8

rate case.[1] The Company proposes to pass through, without margin or markup, discrete charges originating from third-party increases, and to have the option of later making a general rate case filing within a twelve-month period. Interpreting S.C. Code Ann. § 58-5-240(F) in a way that would preclude a utility from passing through third party expenses and then separately initiating a general rate case proceeding would lead to absurd result not intended by the legislature.

IV. Conclusion

As explained above, Blue Granite files this petition seeking an order from the Commission declaring that S.C. Code Ann. § 58-5-240(F) would not prevent the Commission from approving the pass-through mechanism and changes to the associated passed through charges proposed in the Amended Application, and then the Company filing for a general rate case within a twelve-month period. Because the Commission's position on that issue has a direct impact on the posture of the instant proceeding, and on the Company's ability to timely file an anticipated rate case, the Company respectfully requests expedited consideration of its petition.

s/Frank R. Ellerbe, III
Frank R. Ellerbe, III
Samuel J. Wellborn
Robinson Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, South Carolina 29211
Telephone: (803) 227-1112
fellerbe@robinsongray.com
swellborn@robinsongray.com

Attorneys for Blue Granite Water Company

[1] Although the S.C. Supreme Court has not directly taken up this issue, it has generally acknowledged in dictum that a "utility may file an application for a rate increase no more than once per year." *Utilities Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 114 (2011). The Court offered this commentary in the context of two successive general rate cases. As explained herein, that is not the situation presented by the Company's proposal in this petition.

ELECTRONICALLY FILED - 2019 May 2 4:37 PM - SCPSC - Docket # 2018-358-WS - Page 8 of 8