BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 93-670-W/S - ORDER NO. 97-546

JUNE 27, 1997

IN RE: Application of Mountain Bay Estates Utility Co., Inc. for Approval of an Increase in its Water and Sewer Services.	) ORDER) DENYING) PETITIONS FOR) REHEARING) AND/OR) RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on two Petitions for Rehearing and/or Reconsideration filed in this case by the Foxwood Hills Property Owners Association (Foxwood Hills or the POA), and by Mountain Bay Estates Utility Company, Inc. (Mountain Bay or the Company), respectively. For the reasons stated below, both Petitions must be denied.

The first Petition, filed by Foxwood Hills, urges this Commission to place a different interpretation on Judge McKellar's November 19, 1996 Order than we did in Order No. 97-392. Specifically, Judge McKellar stated as follows:

> Upon remand, the Commission is directed to rule upon Mountain Bay's rate application based upon the existing record and excluding enhancement fees as utility revenue. Furthermore, no additional evidence will be taken as the current record is complete.

We held in Order No. 97-392, that although we disagreed with the Court's basic premise, which would have us exclude enhancement

fees as utility revenue, we felt that the language as stated above left us no choice but to order enhancement fees excluded as utility revenue, and grant rate relief accordingly. We then proceeded to do so, despite our misgivings about this principle. We have reexamined this language and the remainder of Judge McKellar's Order, and still believe that the holding of the Court left us no latitude in the matter but to do what we did in Order No. 97-392. Because of our disagreement with the Circuit Court holding, and our recognition of the potential difficulties associated with a large resultant rate increase for Mountain Bay's customers (the members of the POA, among others), we instructed Staff to further appeal the matter to the Supreme Court. However, we do not believe that the Circuit Court Order left us with any other options in the matter. Therefore, the Petition of the POA must be denied.

A Petition for Rehearing and/or Reconsideration was also filed by Mountain Bay. Mountain Bay complains that the rate relief granted by us in Order No. 97-392 was inadequate, and that it does not provide Mountain Bay with a legally sufficient operating margin.

We disagree. In Order No. 97-392, we made specific reference to the satisfaction of the criteria set forth in the Bluefield and Hope decisions by our findings. Further, we found that the 3.86% operating margin allows the Company to recover its expenses, enables the Company to raise funds necessary for the discharge of its duties, and provides the Company's shareholders with an opportunity to earn a return on their investment. We do not think

that Mountain Bay has shown any evidence to the contrary. Its Petition contains the bare assertion that the granted operating margin violates various provisions of the Administrative Procedures Act. This is inadequate to justify granting rehearing and/or reconsideration. Therefore, Mountain Bay's Petition must be denied.

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

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Deputy Executive Director

(SEAL)