BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 93-737-W/S - ORDER NO. 94-806

AUGUST 25, 1994

IN RE: Application of Heater of Seabrook, Inc. for Approval of an Increase in Rates & Charges for Water & Sewer Service for Customers located in its Service Area in South Carolina.	)	ORDER DENYING PETITION FOR REHEARING AND RECONSIDERATION OF ORDER NO. 94-644

This matter is before the Public Service Commission of South Carolina (the Commission) on Heater of Seabrook, Inc.'s (Heater's or the Company's) Petition for Rehearing and Reconsideration (Petition) of Order No. 94-644 (July 11, 1994). Order No. 94-644 denied Heater's request for an increase in its rates and charges. After thorough consideration of the Petition for Rehearing and Reconsideration, the Commission finds and concludes that the Petition should be denied for the reasons set forth below.

1. Heater asserts the Commission "erred by failing to set a reasonable operating margin or return on rate base." Petition p. 2. The Commission disagrees.

In Order No. 94-644 the Commission determined that the operating margin which Heater was currently earning, 8.60%, was fair and reasonable. The Commission found that this operating margin allowed the utility to recover its expenses, enabled the Company to raise funds necessary for the discharge of its duties,

and provided the Company's shareholders with an opportunity to earn a return on their investment. These are the guidelines which the Commission must consider in setting rates for a regulated utility. See Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1923) and Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944). Moreover, the Commission specifically determined that Heater had not justified a need for an increase in its current rate and charges.

As specifically stated by the South Carolina Supreme Court, "the determination of a fair operating margin is peculiarly within the province of the Public Service Commission and cannot be set aside in the absence of a showing that it is unsupported by the substantial evidence in the record." Seabrook Island Property Owners Association v. S. C. Public Service Commission, 303 S.C. 493, 401 S.E.2d 672, 674 (1991). The Commission's decision finding 8.60% a proper operating margin is supported by the substantial evidence of record and is not an abuse of discretion. Consequently, the Petition on this issue should be denied.

2. Heater argues that the Commission erred by failing to set rates using a rate of return on rate base methodology. The Commission disagrees.

This Commission is not bound by any statutory methodology in setting rates for water and sewer utilities. As noted in Order No. 94-644, "for water and sewerage utilities, where the utility's rate base has been substantially reduced by customer donations,

tap fees, contributions in aid of construction, and book value in excess of investment, the Commission may decide to use the 'operating ratio' and/or 'operating margin' as guides in determining just and reasonable rates, instead of examining the utility's return on its rate base." Order p. 29. The Commission determined it would use the operating margin methodology in this case. Use of the operating margin has resulted in fair rates to both the utility and ratepayer. The Commission did not abuse its discretion in determining it would regulate Heater on an operating margin rather than a return on rate base methodology.

3. Heater also contends the Commission erred by imputing availability fees as revenues to the utility rather than reducing the utility's rate base by treating the availability fees as contributions in aid of construction. The Commission disagrees.

In prior decisions the Commission treated availability fees as contributions in aid of construction. In Order No. 94-644, the Commission determined the better policy is to recognize the fees as revenues when the fees are available for the utility's use[1] or the fees benefit the utility. The Commission noted that its own regulations refer to availability fees as rates which are subject to the Commission's jurisdiction. Further, the Commission found the Consumer Advocate's testimony regarding this treatment of availability fees persuasive. The Commission's decision to impute availability fees as revenues is clearly supported by the law and

1. Heater bills and collects availability fees from lot owners on Seabrook Island.

the substantial evidence of record.

4. Heater also argues that the Commission erred in determining that the utility did not justify its need for a rate increase. The Commission disagrees.

In ruling on Heater's Application the Commission determined that the appropriate operating margin for the Company is 8.60%. This operating margin is the same margin that the utility was earning during the test year ending September 30, 1993. Thereafter, the Commission stated that the Company had not justified a need for an increase in its rates and charges. The Commission recognized that the reasons given in support of Heater's rate application were almost identical to the reasons given in support of its last rate application. The Commission then determined that the specific expense increases which the utility listed as justifying its proposed rate applications were minimal increases, and, in one case, an actual decrease from recent years. The Commission's conclusion that Heater did not substantiate its request for a rate increase is fully supported by the substantial evidence of record and does not constitute an abuse of discretion.

5. Finally, Heater contends the Commission erred by considering the potential sale of the utility to the Town of Seabrook as a factor in its decision denying a rate increase. The Commission disagrees.

In establishing the appropriate rates and charges for Heater, the Commission considered and set a fair and reasonable operating

margin for the utility, considered the operating revenues and expenses of the utility, and determined that the utility had not justified a need for a rate increase. The Commission also recognized that the utility had been negotiating its sale to the Town of Seabrook and encouraged both parties to continue in their discussions. The Commission's recognition of negotiations for the sale of the utility was only one relevant factor in its decision regarding this rate application. The Commission's decision was fully supported by the evidence of record and does not constitute an abuse of discretion.

For the reason recited above, the Commission finds and concludes that Heater's Petition for Rehearing and Reconsideration of Order No. 94-644 should be and is hereby denied.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Rudolph Mitchell
Chairman

ATTEST:

Gary E Walsh
Deputy Executive Director

(SEAL)