BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

ND-2021-22-S - ORDER NO. 2021-462

JUNE 30, 2021

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| IN RE: Non-Docket Opened Pursuant to Chief Hearing Officer Directive Order No. 2021-77-H Regarding the Provisions of S.C. Code Ann. Section 58-5-240, Including Thirty Day Notice Requirement of S.C. Code Ann. Section 58-5-240(A) | ) ) ) ) ) ) | ORDER ADDRESSING NOTICE OF INTENT – S.C. CODE ANN. § 58-5-240(A) |

## I. INTRODUCTION AND DISCUSSION OF THE LAW

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the letter of counsel for the Office of Regulatory Staff ("ORS") of June 10, 2021, asserting, *inter alia,* that the Application of Condor Environmental, Inc. ("Condor") for an Expansion of its Existing Service Area to Include Certain Portions of Spartanburg County and Approval of Agreement of Rates and Charges appears to request the establishment of new rates and charges. According to ORS, this triggers the provisions of S.C. Code Ann. Section 58-5-240, including the thirty days' notice requirement of S.C. Code Ann. Section 58-5-240(A). On June 11, 2021, the Chief Hearing Officer issued Order No. 2021-77-H, which requested that counsel for Condor file comments with the Commission responding to the ORS counsel's assertions regarding the applicability of the stated statutes to the present matter.

Counsel for Condor responded on June 16, 2021, denying the applicability of S.C. Code Ann. Section 58-5-240(A) to this proceeding, and citing, *inter alia,* the provisions of

S.C. Code Ann. Section 58-5-240(G), which counsel believes carves out an exception to the rate case statute. According to Condor's counsel, this section begins with "Notwithstanding the provisions of this section," and, in his view, ignoring this introduction would make this plain language meaningless. Counsel notes that the statute gives the Commission discretion to waive the statute's requirements, and that the Commission has historically done so. However, counsel also states that, if the Commission agrees with the ORS interpretation of the statute, he asks the Commission to accept his letter as notice of Condor's intent to put in effect a new rate or charge no sooner than thirty days from June 16, 2021. Counsel for Condor did note that there is a new rate proposed for an apartment complex, and that Condor had not served apartments before. ORS responded with a letter dated June 21, 2021, in which it asserted that it disagreed with many of Condor's arguments in its June 16, 2021 letter, and continued to assert that the 30-day notice provision of S.C. Code Ann. Section 58-5-240(A) applies to Condor's Application.

After much reflection, this Commission agrees with ORS's position on the Notice question, and will grant Condor counsel's request to accept the June 16, 2021 letter as notice of Condor's intent to put in effect a new rate or charge no sooner than thirty ("30") days from June 16, 2021, pursuant to S.C. Code Ann. Section 58-5-240(A).

This Code Section states, in part:

> Whenever a public utility desires to put into operation a ***new*** rate, toll, rental, charge, or classification or new regulation, it shall give to the commission and the regulatory staff not less than thirty days' notice of its intention to file.... (emphasis added).

S.C. Code Ann. Section 58-5-240(A( (2015)

The June 10, 2021 letter from counsel for the Office of Regulatory Staff points out that ....

> ORS would note that this Application appears to request the establishment of new rates and charges. Therefore, the provisions of S.C. Code Ann. §58-5-240, including the thirty days' notice requirement of S.C. Code Ann. §58-5-240(A), also appear to apply to the Application.

ORS counsel reasserted this position in the letter of June 21, 2021. We agree with and adopt the ORS position that thirty days' notice is required for the present Application. We reserve judgment as to the applicability of S.C. Code Ann. Section 58-5-240(A) for other applications. Again, however, we accept Condor's June 16, 2021 letter as its thirty-day notice in this situation.

## II. FINDINGS OF FACT

1. The ORS letter of June 10, 2021, raised the applicability of the thirty-day letter of intent provision in S.C. Code Ann. Section 58-5-240(A).

2. On June 11, 2021, the Chief Hearing Officer issued Order No. 2021-77-H, which requested a response from Condor as to the applicability of the thirty-day letter of intent to its Application.

3. On June 16, 2021, counsel for Condor filed its response, opposing the applicability of the thirty-day notice provision in the present case, but containing the request that if the Commission agreed with ORS's position, that the Commission accept the June 16, 2021 response letter as the thirty-day Notice of Intent. Counsel for Condor did note that Condor was proposing a new rate in the present case.

4. On June 21, 2021, counsel for ORS submitted a letter reiterating the ORS position that the thirty-day notice provision of S.C. Code Ann. Section 58-5-240(A) applies to Condor's Application in this case.

## III. CONCLUSIONS OF LAW

1. The thirty-day Notice of Intent provision of S.C. Code Ann. Section 58-5-240(A) is applicable to the present Application, which includes a proposed new rate.

2. Condor's June 16, 2021 letter is acceptable as the thirty-day Notice of Intent in this case.

3. This finding is applicable in this factual situation for this Application, but must such applicability must be examined on a case-by-case basis.

## IV. ORDERING PARAGRAPHS

1. The thirty-day Notice of Intent required by S.C. Code Ann. Section 58-5-240(A) is applicable in the present situation.

2. The letter of June 16, 2021 from Condor is acceptable as the thirty-day Notice of Intent in this case.

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

BY ORDER OF THE COMMISSION:

Justin T. Williams, Chairman
Public Service Commission of
South Carolina