BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2007-286-WS - ORDER NO. 2011-542

AUGUST 16, 2011

IN RE: Application of Utilities Services of South Carolina, Incorporated for Adjustment of Rates and Charges and Modifications to Certain Terms and Conditions for the Provision of Water and Sewer Service	)))))	ORDER DENYING IN PART AND GRANTING IN PART PETITION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Office of Regulatory Staff's ("ORS's") Petition for Rehearing and/or Reconsideration of Order No. 2011-363, which was an Order on remand. We deny in part and grant in part, as explained below.

In Utilities Services of South Carolina, Inc. v. South Carolina Office of Regulatory Staff, 392 S.C. 96, 708 S.E. 2d 755 (2011), the South Carolina Supreme Court held, *inter alia*, that the Commission did not give Utilities Services of South Carolina, Incorporated ("the Company," "the utility," or "Utilities Services") a fair opportunity during the Company's rate case to respond to Commission questions regarding neighborhood-by-neighborhood data or the reasonableness of the Company's payments to an affiliated entity. The Court stated specifically:

> Because the PSC did not give Utility a fair opportunity to respond in this case, we reverse and remand for further proceedings. *Cf. Hilton Head Plantation Utilities, Inc. v. Public Service Comm'n of S.C.*, 312 S.C. 448, 449-52, 441 S.E. 2d 321, 322-23 (1994) (after finding the PSC did not err in denying a rate increase based on the lack of evidence before it, remanding to provide the utility "an ample opportunity to explain its expenditures and justify them").

708 S.E. 2d at 762.

Pursuant to this Supreme Court opinion, on remand this Commission issued Order No. 2011-363, which directed the Company to provide written verified testimony on the precise issues cited by the Court, i.e. the neighborhood-by-neighborhood data on specific capital improvements and ongoing operations programs, plus comparative information with regard to payments to the Company's affiliated entity Bio-Tech. The Order also allowed a response from ORS.

ORS filed a Petition for Rehearing and/or Reconsideration. Paragraphs one through three of the Petition opine that the Commission should make a decision on remand based on the facts and evidence already contained in the record, that the Commission should simply adopt ORS's original proposed order in the case as the best resolution in the case, and that allowing additional evidence to be filed does not comply with the Supreme Court Order. Also, ORS states that, without express direction, which was provided for in the Hilton Head case, the Commission should not entertain additional evidence not already contained in the record. These arguments are without merit in the present case.

First, we hold that simply adopting ORS's proposed order without holding an evidentiary hearing would deprive the utility of its "fair opportunity" to respond to the Commission's specific inquiries in this case as ordered by the Supreme Court. Also, we do not comprehend how it is possible to give the Company a "fair opportunity to respond" to the Commission's request for additional information without taking additional evidence in some fashion. By definition, the information requested by the

Commission is not in the already established record of this case and must be furnished by the Company in addition to the information already given.

Second, as shown in the language quoted above from the Utilities Services Supreme Court Order, the Court reversed and remanded the case to the Commission for further proceedings, and in doing so directed the Commission's attention to the Hilton Head case.[1] Considering the Supreme Court's reference to Hilton Head in the context of the Court's language (i.e., "a fair opportunity to **respond**"), this Commission concludes that it may follow the Hilton Head procedure on remand, which the Court indicated was also a case where a utility needed to be provided an "ample opportunity" to explain and justify expenditures. The Hilton Head case allowed the Commission to "receive any other evidence as it be advised." 441 S.E. 2d at 452.

The Commission did hold an additional evidentiary hearing in the Hilton Head case, wherein the utility was allowed to explain the questioned expenditures to its affiliate. Accordingly, it is our belief that, even if we accepted the argument that there was no direct language about receiving new evidence in the Utilities Services opinion, the Court authorized the taking of additional evidence by citing the Hilton Head case as an example, which did contain such language. For this reason, this Commission believes that it may hold an evidentiary hearing in this matter, to take evidence limited to the matters cited by the Supreme Court.

---

[1] In referring the Commission to the Hilton Head case, the Supreme Court used the introductory signal "*Cf.*" The term "*Cf.*" is defined as "[a]n abbreviated form of the Latin word *confer*, meaning 'compare.' [It] **[d]irects the reader's attention to another** part of the work, to another volume, **case**, etc., **where** contrasted, **analogous, or explanatory views or statements may be found**." Black's Law Dictionary, Fifth Edition. [emphasis added]

Although we understand that Piedmont Natural Gas Company, Inc. v. Hamm, 301 S.C. 50, 389 S.E. 2d 655 (1990) stands for the proposition that the Supreme Court must authorize the taking of additional evidence, we believe that the Court did so in the present case. We would also note that the Piedmont case was a dispute over the meaning of the term "substantiate the record," which does not appear in the Utilities Services opinion.

Paragraphs four through six of the ORS Petition state that, should the Commission allow new evidence to be introduced, that the Commission should schedule a contested case with the right of cross-examination. Pursuant to its written filings in this Docket, Utilities Services does not object. The Company further notes that ORS should be allowed to provide its own witnesses if appropriate, although the witnesses would be limited to providing testimony on the subjects as designated above. We would note that, should we establish a contested case hearing in this matter, the Company would be allowed to cross-examine any ORS witnesses that may be presented. Considering our ruling that new narrowly defined evidence may be introduced into the record of this case, and that we may hold a hearing to consider that evidence, we grant this portion of the ORS Petition, and hold that a contested case hearing shall be scheduled on this matter. Evidence shall be limited to the matters outlined in the Supreme Court Utilities Services case, and Order No. 2011-363. In granting this relief, this Commission has addressed the concerns about precedent expressed in Paragraph seven of the ORS Petition.

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

BY ORDER OF THE COMMISSION:

John E. Howard, Chairman

ATTEST:

David A. Wright, Vice Chairman

(SEAL)