BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2019-281-S - ORDER NO. 2020-419

JULY 6, 2020

IN RE:	Application of Palmetto Utilities, Incorporated for Adjustment (Increase) of Rates and Charges, Terms and Conditions, for Sewer Service Provided to Customers in Its Richland and Kershaw County Service Areas	))))))	ORDER ON INTERLOCUTORY MOTIONS

This matter comes before the Public Service Commission of South Carolina ("Commission") on three interlocutory motions filed in the above-captioned docket: (1) the motion by the Office of Regulatory Staff ("ORS") seeking to file witness Daniel P. Hunnell, II's testimony and exhibits under seal; (2) the motion by Palmetto Utilities, Inc. ("PUI" or "the Company") to strike portions of the pre-filed direct testimony and exhibits of Charles E. Loy, Daniel P. Hunnell, II, and Christina L. Seale, and for imposition of sanctions; and (3) the motion by PUI to dismiss the petition to intervene of Lisa Levine or, alternatively, to strike Ms. Levine's briefs and preclude her from testifying. This Order addresses only those decisions announced in the Commission's directive dated June 17, 2020, and the conclusions contained herein are subject to modification by Commission orders, if any, issued after June 17, 2020.

First, as to the motion filed by ORS, we grant the request for ORS to file witness Daniel P. Hunnell, II's unredacted testimony and exhibits under seal with the Commission. Mr. Hunnell's testimony includes information produced to ORS by PUI in response to

requests propounded pursuant to S.C. Code Ann. § 58-4-55(A). PUI opposes ORS's motion, based upon its view that Section 58-4-55(A) imposes mandatory confidential treatment of all information and documents produced to ORS pursuant to that statute. However, the statute also provides that the Commission may rule that certain information produced pursuant to ORS information requests is not confidential or proprietary. In order to resolve the ongoing dispute between the parties as to what information in the unredacted Hunnell testimony and exhibits is confidential and proprietary, and what information is public, the Commission must review the unredacted version of the testimony and exhibits. Accordingly, we find that ORS's motion that the unredacted Hunnell testimony and exhibits be filed with the Commission under seal should be granted.

Second, in a related motion, PUI has moved to strike portions of the pre-filed direct testimony and exhibits of ORS witnesses Loy, Hunnell, and Seale, and has further requested that the Commission impose monetary sanctions against ORS. We hold this motion in abeyance at this time.

Finally, PUI has also moved to strike Ms. Levine's pre-hearing briefs and preclude her testimony. Ms. Levine, a non-lawyer intervenor appearing pro se, has not filed any documents styled as pre-filed testimony, but has filed a pre-hearing brief within the time for filing pre-filed testimony, and Ms. Levine has subsequently filed two amendments to that document. It is within the discretion of the Commission to accept Ms. Levine's pre-hearing brief in lieu of pre-filed testimony. In order to allow Ms. Levine's full participation as an intervenor in this matter, we deny the Company's motion to strike the pre-hearing briefs. Also, Ms. Levine may testify as to matters of which she has personal knowledge

and present evidence she has gathered in the course of discovery. She will also be permitted to present an opening statement and closing argument and to cross-examine other witnesses just like the other parties. Importantly, we note that our ruling herein does not include any judgment as to admissibility of the matters contained in Ms. Levine's documents. Any objections as to admissibility will be ruled upon separately.

FINDINGS OF FACT

1. On May 27, 2020, ORS filed its Motion for Leave to File Testimony and Exhibits Under Seal, in which it sought to file the unredacted testimony of Daniel P. Hunnell, II and three accompanying exhibits under seal. PUI maintains that these materials are confidential, but ORS asserts that the materials at issue are necessary to support its position in this docket.

2. The testimony and exhibits at issue in ORS's motion contain information and materials obtained through the processes described in S.C. Code Ann. §§ 58-4-50 and 58-4-55.

3. On June 5, 2020, PUI filed its Return to ORS's Motion for Leave to File Testimony and Exhibits Under Seal, as well as a separate Motion to Strike and for Imposition of Sanctions. PUI sought to have certain portions of the pre-filed direct testimony of ORS witnesses Loy, Hunnell, and Seale stricken and to have the Commission impose sanctions against ORS for alleged violations of the confidentiality provisions of Section 58-4-55(A).

4. On June 5, 2020, PUI also moved to dismiss the Petition to Intervene of Lisa Levine or, alternatively, to strike Ms. Levine's pre-hearing brief and to bar her from

testifying. Ms. Levine had not pre-filed testimony as required by the Commission's procedural scheduling order in this Docket.

CONCLUSIONS OF LAW

1. As to ORS's Motion for Leave to File Testimony and Exhibits Under Seal, the Commission rules that it needs to review the unredacted documents at issue to determine whether confidential treatment of those documents is warranted. The Commission further rules that filing the unredacted testimony and exhibits under seal affords the information adequate protection until the Commission makes its ruling as to its confidentiality. Therefore, ORS's motion is granted.

2. As to PUI's Motion to Strike certain portions of ORS witnesses' pre-filed testimony described above and to have the Commission impose sanctions, the Commission finds it necessary to review fully all of the unredacted testimony prior to issuing a ruling. Accordingly, we hold this motion in abeyance pending production and review of the disputed materials.

3. As to PUI's Motion to Dismiss Ms. Levine's Petition to Intervene or, in the Alternative, to Strike Ms. Levine's Pre-hearing Brief and to preclude her from testifying, we note that Ms. Levine is a non-lawyer appearing *pro* se, and we decline to elevate form over substance in handling her intervention. We find it appropriate that Ms. Levine should be permitted to testify as to matters of which she has personal knowledge, and that she should be allowed to present evidence gathered in the course of discovery, if she does wish to present testimony. She will also be afforded the opportunity to offer an opening statement and closing argument and to cross-examine witnesses, if she desires.

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

BY ORDER OF THE COMMISSION:

Comer H. "Randy" Randall, Acting Chairman

ATTEST:

Florence P. Belser, Vice Chair