

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF SOUTHERN SHORES WATER COMPANY)
FOR APPROVAL OF METERED) PSC DOCKET NO. 09-424
COMMERCIAL WATER RATE)
(FILED SEPTEMBER 26, 2009))

ORDER NO. 7672

AND NOW, this 6th of October, 2009, the Commission determines and orders the following:

WHEREAS, Southern Shores Water Company ("SSWC") provides water service to residential and commercial condominium customers in the Sea Colony development in Bethany Beach, Delaware ("Sea Colony"); and

WHEREAS, the Commission has permitted SSWC to provide this water service pursuant to a Water Supply Agreement, dated January 2002, between SSWC and the customers' respective 27 condominium associations (the "Associations");¹

¹ Originally, the Commission authorized SSWC's predecessor, Sea Colony Water Company, L.L.C. ("SCWC"), to provide water service to Sea Colony pursuant to a Water Service Agreement, dated January 1, 1999. See PSC Order No. 5394 (Jan. 31, 2000). In that Order, the Commission cautioned that it was making no determination that the water rates were just and reasonable. Rather, the Commission was simply allowing the Water Service Agreement, and its rates, to go into effect as the SCWC's tariffed rates. The Commission did so, emphasizing SCWC's long history of providing water service, under contracts, to the condominium associations within its service area. See Order No. 5394, ¶ 8. The Commission further cautioned in that Commission approval would be required if SCWC sought to: (i) materially change any terms of the 1999 Water Service Agreement; (ii) provide service to an additional party not a signatory to the Water Service Agreement; or (iii) provide water service within its service area by means other than the 1999 Water Service Agreement. *Id.* at ¶ 9. In 2001, Tidewater Utilities, Inc. acquired SCWC and subsequently changed its name to SSWC. The Commission authorized this transaction in PSC Order No. 5801 (Sep. 4,

WHEREAS, pursuant to the Water Supply Agreement, the charge for water service is calculated based on a specific monthly dollar amount per condominium unit within an Association. Each Association, in turn, incorporates its cost of water service within the bundled condominium fee it charges each unit owner. For the most part, the water provided by SSWC is not metered, either at the delivery point to the Associations or at the distribution point to the individual units. The Water Supply Agreement requires the associations to purchase all of their water services from SSWC. The rate set forth in the Water Supply Agreement is \$22.39 per month, per condominium. The monthly fee is subject to an annual increase tied to the Consumer Price Index. The Water Supply Agreement also provides for a metered rate for irrigation accounts. That fee is \$7.34 per 1,000 gallons; and

WHEREAS, on September 23, 2009, SSWC notified the Commission that it recently discovered that 19 of its 47 metered accounts were not for irrigation, but rather were commercial accounts. SSWC stated that it has been charging these accounts a rate of \$7.00 per 1,000 gallons. Because this rate is not specified in the Water Supply Agreement, SSWC now seeks Commission approval of this rate;² and

2001). The 1999 Water Service Agreement expired by its terms on December 31, 2001. The 2002 Water Service Agreement between SSWC and the Associations is nearly identical to the 1999 Water Service Agreement.

² SSWC also noted that the Water Service Agreement is "set to renew" on January 1, 2010, and at that time, it plans to update the agreement to

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF
NOT FEWER THAN THREE COMMISSIONERS:**

1. As we have stated previously, the Commission

has regulated the rates of a public water utility, either large or small, by assaying the utility's revenue requirements (and the resulting rate structure needed to raise those revenues) under a conventional cost-of-service methodology. That methodology, recognized by the Public Utility Act as the traditional benchmark for utility rate regulation, focuses on rates sufficient to cover the utility's operating expenses and provide a reasonable return on the capital committed to provide the utility service. See 26 Del. C. §§ 102((3), 311.

In addition, normally, the Commission reviews a water utility's proposed new rates on an *ex ante* basis, generally suspending the effectiveness of Company proposed rate increases and then undertaking an investigation (including public hearings) into the justness and reasonableness of the new rates. However, the Public Utility Act does not, necessarily, compel the Commission to undertake such a before-the-fact scrutiny in every instance of a rate change sought by a utility. Instead, the statutory scheme recognizes the possibility that the Commission may, in its discretion, allow proposed rate changes to go into effect - as lawful rates - but subject to the power of the Commission, on later complaint or on its own motion, to decide to inquire into the reasonableness of those effective rates and, if determined to be unreasonable, to set differing lawful rates to be charged on a "going-forward" basis. See 26 Del. C. §§ 309-311.

See PSC Order No. 5331, ¶¶ 5-6 (Jan. 31, 2000).

include a provision for these accounts, but at an increased rate of \$7.34 per 1,000 gallons. The Commission notes that, pursuant to a Second Amendment to Water Service Agreement, dated January 1, 2008, the term of the Water Service Agreement expires on December 31, 2009. The Agreement does not appear to contain a provision providing for an automatic renewal.

2. The Commission is inclined to allow the metered, commercial rate of \$7.00 per thousand gallons to go into effect as a lawful rate as the Commission has done with other rates charged by SSWC. However, the Commission will first require that, by no later than October 10, 2009, SSWC provide written notice to its affected commercial customers that: (i) SSWC has requested Commission approval of the metered, commercial rate; (ii) by no later than October 30, 2009, objections or comments may be filed with the Commission; (iii) that if no objections or comments are filed, the Commission may approve the rate without further action; and (iv) that if any objections or comments are filed, the Commission will consider SSWC's application at its regularly scheduled Commission meeting at 1:00 p.m. on November 3, 2009.

3. SSWC shall file a copy of the above notice with the Commission.

4. The Commission retains jurisdiction in this matter, including the authority to make such further Orders as may be just or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

PSC Docket No. 09-424, Order No. 7672 (Con't)

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Katie Rochester
Acting Secretary