

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF )  
SOUTHERN SHORES WATER COMPANY, LLC )  
OF ITS 2011 WATER SUPPLY AGREEMENT )  
WITH THE SEA COLONY CONDOMINIUM ) PSC DOCKET NO. 11-246  
ASSOCIATIONS )  
(DEEMED FILED APRIL 25, 2011) )

**ORDER NO. 7973**

This 24th day of May, 2011, the Commission determines and Orders the following:

**I. SOUTHERN SHORES WATER COMPANY'S WATER SUPPLY CONTRACTS**

1. In April, 2011, Southern Shores Water Company, LLC ("Southern Shores") submitted to the Commission a master Water Supply Agreement ("the Agreement"), dated April 1, 2011. The Agreement sets forth the rates, and various terms, by which Southern Shores will provide its water utility services to 30 residential condominium associations and a recreational association in the Sea Colony condominium complexes in and around Bethany Beach.<sup>1</sup> It has been signed by Southern Shores and representatives of each of the covered condominium and recreation

<sup>1</sup> The condominium associations and the recreation association, along with 18 metered commercial customers are Southern Shores' only retail customers.

associations. By its terms, the Agreement will govern water services to those association customers from May 1, 2011 through June 30, 2020.

2. This is not the first time Southern Shores has used a master supply contract with the Associations to govern the rates for its water utility services. When in 2000, Southern Shores first came under Commission oversight, it was known as Sea Colony Water Company ("Sea Colony"). At that time, Sea Colony offered a similar supply contract between it and its Association "customers" as the initial schedule for its rates for water supply to residential customers in the Sea Colony development. Because the supply contract pre-dated the Commission's regulatory supervision, and in the absence of any call from either an association or unit owner for a more extensive review of the contractual rates, the Commission decided to allow the three-year water supply contract (and its rates) to simply "go into effect" as the company's initial lawful rate schedule. See PSC Order Nos. 5331 (Jan. 31, 2000) and 5394 (March 28, 2000). In doing so, the Commission emphasized that its action, or more precisely its inaction, was not to be taken as any determination by the Commission about the justness and reasonableness of the rates set forth in the 1999 supply contract. In addition, the Commission emphasized that such "go into effect" action would not preclude the Commission from investigating the justness and reasonableness of those rates based on some later complaint. Finally, the Commission announced that review of the utility's rates would be

justified if Sea Colony sought to make a material change to any term in the supply contract. PSC Order No. 5394 at ¶¶ 9-10.<sup>2</sup>

3. When this initial 1999 contract lapsed in 2002, Sea Colony/Southern Shores then notified the Commission of a new five-year contract to govern the utility's water services to the Associations. And when this five-year contract ended, Southern Shores then submitted to the Commission's Staff ("Staff") several contractual "extensions" of the earlier supply contracts which carried forward inflation-adjusted per-unit rates through April of 2011. Because these extension agreements simply prolonged the use of the inflation adjustment mechanism set forth in the initial 1999 supply contract, the water utility company and Staff assumed that none of the extensions created any "material" changes to the utility company's rates. Thus, the extension agreements were simply reviewed by Staff.<sup>3</sup>

## **II. THE 2011 WATER SUPPLY AGREEMENT**

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<sup>2</sup> The supply contract called for a periodic payment by the condominium associations based on a fixed per unit, monthly charge multiplied by the number of units in the particular association. The per-unit fixed charge could each year, increase (but not decrease) based on changes reflected in an inflation index, but subject to a 3% cap. PSC Order No. 5394 at ¶ 2.

<sup>3</sup> In 2008, Southern Shores notified the Commission that it had been providing metered water services to 19 commercial customers who were not parties to any of the earlier water supply agreements or extensions. The Commission then permitted Southern Shores to tariff a separate metered commercial rate and allow that

4. The Agreement submitted by Southern Shores to the Commission in April, 2011 echoes the rate structure used by Southern Shores in its 1999 supply contract for pricing water services to the Associations. Southern Shores will charge each association a bulk, unmetered per month assessment based upon a single set monthly fixed service fee, multiplied by the number of units in that association. As in the original 1999 supply contract, the Agreement also contains a separate rate for metered water supplied to each association's irrigation system.

5. The Agreement is not, however, a complete copy of the earlier supply contracts. First, the 2011 Agreement does not simply carry forward the pre-existing per-unit rate from the earlier contract extensions. Instead, the Agreement sets a new per-unit fixed fee for 2011 (\$30.94) and calls for pre-set upward increases to such fixed fee in 2012 (\$33.69), 2013 (\$36.59), 2014 (\$39.33), and 2015 (\$41.69). Only in 2016 will the Agreement's yearly increases again start to be keyed to annual changes in the inflation index, subject to a 3% cap. In addition, the Agreement is for a significantly longer term than the prior supply contracts and any of the contract extensions. This Agreement will govern water utility services for a little over nine years.

commercial rate to go into effect in November, 2009. See PSC Order No. 7682 (Nov. 3, 2009).

**III. CHANGES IN SOUTHERN SHORES**

6. There have been other changes since the Commission allowed the initial water supply contract to go into effect in 2000. First, the utility has changed from an entity controlled by the Sea Colony developer to an "independent" public utility controlled by Tidewater Utilities, Inc. Second, Southern Shores' revenues have significantly increased over the past decade. Its rate revenues now hover within distance of the \$1 million dollar level, which is the trigger for its classification of the water utility company as a Class A utility under this Commission's "Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Public Service Commission." (26 Del. Admin. Code §1002). Third, Southern Shores has recently reported a significant capital investment in upgrades and renovations to its water treatment plant. See PSC Order No. 7917 (Feb. 2, 2011).

**IV. TENTATIVE DECISION ABOUT FUTURE PROCEEDINGS AND TEMPORARY RATES**

7. In light of the nature of the rate terms in the Agreement that Southern Shores submitted to the Commission, its nine-year term, and the real possibility that Southern Shores could move to a Class A utility classification during the early years of the Agreement, Staff directed

Southern Shores to docket its submission as a rate change application. See 26 Del. C. §304(a)<sup>4</sup> The Commission concurs in that decision.

8. The question now facing the Commission is how to deal with the rate change application. For almost ten years, Southern Shores has provided its water services to the Associations under some form of a contractual master supply contract. Over those years, the Commission has never spoken directly on the reasonableness of the rates contained in such agreements. Rather, the Commission allowed the initial 1999 water supply contract to go into effect, with its inflation adjusted rates carried forward under various later contractual agreements and extensions. At the same time, Staff reports that over the same period, the Commission has received few, if any, complaints about the prices being charged by Southern Shores for its water utility services to the Associations in the various phases of the Sea Colony complex. In addition, Southern Shores has represented to Staff that the proposed 2011 Agreement was the product of negotiations with a "review team" representing the Associations and that such negotiation resulted in: (1) the multi-year phase-in of a rate increase needed to capture capital treatment plant improvements and (2) an extended term for the new agreement.

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<sup>4</sup> The Staff set a "filing date" for the rate change application of April 25, 2011.

9. Upon Staff's recommendation, the Commission now decides-on a tentative basis-to plot the same course in this rate increase application that the Commission followed in 2000 with regard to the initial 1999 master supply contract between the utility and the Associations. Under such procedure, the Commission tentatively decides to provide notice of the new Agreement to customers, solicit any complaints, and - if none are forthcoming - to allow the Agreement with its increased rates (present and future) to go into effect as the governing rate schedule for water service to the Association customers without further investigation or hearing. As outlined earlier in PSC Order No. 5394, after the expiration of 60 days, from the filing date, the rates set forth in the Agreement - including the future pre-set and inflation-indexed increases - would become the legal rates. Nevertheless, the Commission stresses that this process would not reflect any determination that such rates are just or reasonable. More importantly, on later complaint or upon subsequent Commission initiative, the Commission would still be able to initiate an investigation into the Agreement and its rates. If any of the rates set forth in the Agreement are found to be unjust and unreasonable, the Commission reserves the power to prescribe a new rate for such water services, to govern prospectively. See 26 Del. C. §§309 and 311. If, however, there are any complaints filed with the Commission about the Agreement and its rates in response to the present public notices, then the Commission can determine whether to undertake the procedures allowed

by 26 Del. C. §§305 and 306 and conduct further investigation and hearings on the reasonableness of the rates.

10. Upon Staff's further recommendation, the Commission will deviate in one aspect from the process used in 2000: The Commission directs that the rates in the Agreement may go into effect, on a temporary basis and subject to refund, effective June 1, 2011. This decision is based on the long history of water service being provided to the Associations under water service agreements, and Southern Shores' representations that the Agreement was finalized based on "arms-length" negotiations between the water utility company and counseled representatives of the Associations. If the Commission later decides to further investigate the Agreement's rates, then the Commission will then decide whether to continue this temporarily allowed rates or suspend the Agreement's rates. See 26 Del. C. §306.

11. The Commission also notes that it last dealt with the general terms and conditions for Southern Shores' water utility services in 2000. At that time, the Commission allowed the water utility company's general service conditions to go into effect, but with qualification. See PSC Order No. 5394 at ¶ 11. More than ten years have now passed, and the ownership of the water utility company has changed. Because Southern Shores will likely move into Class A utility status soon, the Commission directs that the water utility review its current tariff terms and

conditions and proposes any changes or updates to those provisions. Southern Shores shall submit such modifications to the Staff for review before presenting them to the Commission for approval. If Southern Shores decides that no revisions are necessary, the water utility company shall inform the Commission of such decision.

12. In a similar vein, the Commission believes that as Southern Shores approaches its Class A designation, the water company should attempt to update and centralize its regulatory documents. Thus, the Commission orders Southern Shores to file a single document, constituting a tariff, to capture all of its water utility services - not only for the Associations but also its commercial accounts and bulk sales. All of Southern Shores' services should be included within such a tariff (and its attachments) and all of the water utility company's terms and conditions for services should be set forth in such tariff. In addition, such tariff should not only be filed with the Commission, but should be available for public inspection at the water utility company's office. Such a single document will not only allow the Commission to track the water utility company's rate charges, but will make further future modifications to rates or terms and conditions easier to process.

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

1. That pursuant to 26 *Del. C.* §304(a), the Commission shall deem that Southern Shores Water Company, LLC filed an application for a rate

change for its services to the Sea Colony condominium and recreation associations as of April 25, 2011. Such application, which the Commission received on April 12, 2011, shall be a request to revise its rates to those set forth in the Water Supply Agreement, dated April 1, 2011, executed by the water utility company and various Sea Colony condominium and recreation associations

2. That, pursuant to 26 Del. C. §§ 102A and 304(a), Southern Shores Water Company, LLC, shall cause the attached notice, labeled as "Exhibit A," to be published in The Wave newspaper during the week of May 31, 2011.

3. That, pursuant to 26 Del. C. §§102A and 304(a), Southern Shores Water Company, LLC, shall also, on or before May 31, 2011 send by United States certified mail, and by concurrent Internet electronic mail where available, a copy of the notice attached here to as "Exhibit A," to the following persons and entities:

- The principal of each Sea Colony condominium association and recreation association that is a signatory to the Water Supply Agreement dated April 1, 2011.

On or before June 29, 2011, Southern Shores Water Company. LLC shall file with the Commission one or more affidavits, with accompanying supporting documents, to demonstrate such publication, mailing, and electronic service.

4. That the Secretary shall serve a copy of this Order and accompanying notice on the Public Advocate.

5. That, as explained in the body of this Order, after the expiration of the period for comments allowed for in the public notice, the Commission will enter such further Order as it deems appropriate. In the absence of the filing of any complaint that the proposed terms, rules, and contractual rates are unjust, unreasonable, or unduly discriminatory, the Commission may allow the contractual rates set forth in the Water Supply Agreement dated April 1, 2011 to go into effect without further investigation or hearings.

6. That the Commission hereby provisionally excuses Southern Shores Water Company, LLC from compliance with "Part B: Rate Increase Application - Small Utilities" of the Commission's "Minimum Filing Requirements for All Regulated Companies" in conjunction with the rate change application deemed submitted on April 25, 2011.

7. That, pursuant to 26 Del. C. §306(a)(2), the rates and charges set forth in the Water Supply Agreement dated April 1, 2011, and submitted to the Commission on April 12, 2011 shall be permitted to go into effect, on a temporary basis as of June 1, 2011. Such temporary rates shall be subject to refund if the Commission might later find such rates to be unjust and unreasonable in whole or in part.

8. That, on or before July 20, 2011, Southern Shores Water subsequent Commission action, Commission action, proposed revisions to its current terms and conditions for services. If Southern Shores Water Company, LLC does not propose any changes to its current terms and conditions, it shall notify the Commission of such decision by writing on or before such date.

9. That, on or before July 25, 2011, Southern Shores Water Company, LLC shall submit to the Commission, for initial Staff review, a formal tariff-like document compiling all the terms, conditions, and rates governing its water utility services to all of its customers. After Staff review of such document, Southern Shores Water Company, LLC shall file such document with the Commission as its governing tariff.

10. That Southern Shores Water Company, LLC is hereby notified that it shall be charged the cost of this proceeding under 26 Del. C. §114(b).

11. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae

Chair

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/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Dallas Winslow  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley  
Secretary

" E X H I B I T " A "

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SOUTHERN SHORES WATER COMPANY, LLC )  
OF ITS 2011 WATER SUPPLY AGREEMENT )  
WITH THE SEA COLONY CONDOMINIUM ) PSC DOCKET NO. 11-246  
ASSOCIATIONS )  
(DEEMED FILED APRIL 25, 2011) )

NOTICE OF FILING OF NEW 2011 WATER SUPPLY AGREEMENT BETWEEN SOUTHERN SHORES WATER COMPANY, LLC AND SEA COMONY DEVELOPMENT CONDOMINIUM ASSOCIATIONS, SEA COLONY RECREATIONAL ASSOCIATION, AND ALL OTHER CUSTOMERS OF WATER SERVICES FROM SOUTHERN SHORES WATER COMPANY, LLC

**TO: Sea Colony development Condominium Associations;  
Sea Colony Recreational Association; and  
All other Customers of Water Services from Southern Shores Water Company**

Southern Shores Water Company, LLC ("Southern Shores") is a water utility that provides water services to the condominium units and common areas, as well as various commercial entities, within the Sea Colony complexes in and around Bethany Beach, Delaware. Southern Shores is a public utility subject to the regulatory oversight of the Delaware Public Service Commission (the "Commission"). Such oversight includes the Commission's ability to determine the justness and reasonableness of the rates that Southern Shores charges for its water utility services. The Commission also has the authority to supervise the terms and conditions and adequacy of the water utility services provided by the Southern

Shores.

In April, 2011, Southern Shores submitted to the Commission a new Water Supply Agreement (the "Agreement") executed by the utility and 26 condominium associations and the recreational association in the Sea Colony complex (the "Associations"). By its terms, the Agreement would set the rates that Southern Shores would charge these Associations for its water utility services from May of 2011 through June of 2020. The Agreement provides for a monthly charge (based on a fixed service fee times the number of units) to be charged to each condominium association and a separate metered charge for water supplied for irrigation units. The monthly fixed service fee is set at \$30.94 per unit in 2011 with prescribed increases in 2012 (\$33.69), 2013 (\$36.59), 2014 (\$39.33), and 2015 (\$41.69). Thereafter, the fixed service fee will increase each year based on formula keyed to an inflation index. The metered irrigation supply charge would be \$7.34 for 1000 gallons for the years 2011-2012 and \$7.97 per thousand gallons for the years 2013 to 2020.

Traditionally, the PSC conducts hearings to investigate the justness and reasonableness of any new rates charged by a regulated water utility.

However, in 2000 and thereafter, the Commission has allowed rates under similar agreements between Southern Shores and the Associations to go into effect without full-blown rate investigations and hearings.

The Commission has tentatively decided to follow the same procedure with respect to the Agreement now submitted by Southern Shores to govern

until 2020. In its PSC Order No. 7973, the Commission has outlined the reasons for that tentative decision. Thus, unless the Commission receives a complaint about the rates proposed to be charged under the new Supply Agreement, the Commission may allow those rates to go into effect as Southern Shores' legal rates, without further investigation or hearings.

Such action would not preclude the Commission from conducting any appropriate investigation into the justness and reasonableness of such charges, and if such might then be found to be unjust or unreasonable, to then set reasonable rates to govern thereafter.

*If you wish to file a complaint about the new rates set forth in the Agreement, and to request further Commission investigation and hearings, on such rates, you must do so on or before June 17, 2011. You must file five copies of such complaint with the Commission at the address set forth below:*

Delaware Public Service Commission  
861 Silver Lake Boulevard, Suite 100  
Dover, DE 19902  
Attn: PSC Dckt. No. 11-246

You should, if possible, also send an electronic copy of such complaint as an attachment to an Internet e-mail addressed to <http://www.depsec.delaware.gov>.

In addition, the Commission has allowed the Agreement rates to go into effect temporarily on June 1, 2011, but subject to refund, if the Commission might determine that those rates are unjust and unreasonable.

You are urged to review PSC Order No 7973 available at <http://www.depsc.delaware.gov> and at the Commission's office in Dover. You can also review the Agreement submitted to the Commission at the Commission's office in Dover during normal business hours.

If you have questions about this matter, you may contact the Commission at 1-800-282-8574 (toll free in Delaware) or 302-736-7500. You can also send inquiries about this matter by Internet e-mail addressed to [vincent.ikwuagwu@state.de.us](mailto:vincent.ikwuagwu@state.de.us). If you are disabled and need assistance to participate in this matter, please contact the Commission for such assistance.