

**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. 7999

This 21st day of June, 2011, the Commission determines and Orders the following:

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 other various terms, for Southern Shores to 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.¹ This master supply agreement sets the rates that Southern Shores will charge for its water services during the period 2011-2020.²

¹ Representatives of the condominium associations and the recreation association signed the Agreement. The associations, along with 18 metered commercial customers, are Southern Shores only retail customers. are Southern Shores' only retail customers.

² As noted earlier in this proceeding, the Agreement sets forth a monthly per-unit rate (set each year) which is then

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2. In PSC Order No. 7973 (May 24, 2011), the Commission outlined the past history of its rate oversight of Southern Shores' services and how the Commission would deem the April contract submission by the company as a rate change application under 26 Del. C. § 304(a). The Commission also announced that it had tentatively decided to allow the Agreement, and its present and future rate changes, to go into effect without any further Commission investigation - so long as no complaints were forthcoming challenging either the Agreement or its rates. The Commission directed the utility to publish newspaper notice of the rate change Agreement and send notices, soliciting comments, to the affected condominium association "customers." At the same time, the Commission allowed the new contractual rate for 2011 to go into effect on June 1, 2011, but only on a temporary basis and subject to refund.

3. Southern Shores confirms (by affidavits) that the notices were published and sent. Staff reports that no complaints, nor other

applied to the number of units in each association. The associations pay this aggregated per unit charges for their particular units. The Agreement's schedule for the monthly per unit rates shows pre-determined increases in such per unit charges for each year during the years 2011-2015. Thereafter, annual per unit increases will be determined by applying a consumer price index formula, but with the any yearly increase subject capped at 3 per cent. The Agreement also sets forth metered bulk rates for the utility to provide water service to the associations' irrigation systems, with rates set at one level per thousand gallons (\$7.34) for the years 2011-2012, but then increasing (\$7.97) for the years 2012-2020.

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comments, have been received by the June 20 deadline set in Order No. 7973. Staff recommends that the Commission follow through on its earlier tentative decision and simply allow the Agreement, and its rate changes over the next nine years, to "go into effect" upon the expiration of the statutory 60 day review period. 26 Del. C. § 304(a).³

4. The Commission will accept Staff's recommendation. The Water Supply Agreement, dated April 1, 2011, will be allowed to go into effect without suspension and without any further investigation or hearing by the Commission. Accordingly, the Agreement's rates will become Southern Shores legal rates for its water supply services to the condominium and recreation associations. In undertaking this course, the Commission, once more, emphasizes that one should not take from this decision that the Commission has approved the Agreement's rates as just and reasonable.⁴ Those rates will simply become the

³ Because the Commission earlier allowed the rates to go into effect on June 1, 2011 on a temporary basis, the 60 day period has been shortened. The effective date for the rates to change would be June 1, 2011. See 26 Del. C. § 304(a) (allowing Commission to shorten the waiting period for rate change application).

⁴ See PSC Order No. 7973 at ¶ 9 (May 24, 2011) (emphasizing that any potential Commission decision to allow increased rates under Agreement to go into effect should not be understood as any finding that such rates are just and reasonable). Compare PSC Orders Nos. 5331 at ¶¶ 8-9 (Jan. 31, 2000) & 5394 at ¶¶ 9-10 (March 28, 2000) (similar disclaimers that Commission inaction that allowed Southern Shores initial rates to go into effect was not any finding that such initial rates were just or reasonable).

utility's legal rates, but nothing in this present inaction precludes a later investigation into the reasonableness of these rates based upon a later customer complaint or the Commission's own initiative to launch a later rate investigation. See 26 Del. C. §§ 309(a), 311.

5. The Commission acknowledges that the course here chosen is different from the Commission's prevalent practice. Historically, the Commission has acted so as to require water utilities, large or small, to gain Commission approval before they can implement any changes to their rates. Indeed, the Commission's "Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Public Service Commission" (26 DE Admin. Code § 1002) ("MFRs") - in both parts A & B - anticipate that the utility will file sufficient information with a rate change application to allow the Commission to efficiently make an investigation and finding whether the proposed rates are just and reasonable. However, the statutory scheme does not explicitly require such Commission pre-approval in all cases. Instead, the statutory scheme requires some initial affirmative action by the Commission to investigate the rates. Otherwise, in the absence

of such action, the rate increase sought by the utility will simply go into effect.⁵

6. Here, the Commission accepts Staff's view that the unique circumstances surrounding Southern Shores and its customer base lean towards simply allowing the Agreement and its rates to go into effect. The Commission used the same process for Southern Shores' initial rates when it first become subject to the jurisdiction of the Commission. Moreover, while the Commission offers no findings as to whether the Agreement's rates (present or future) are just or reasonable, Staff has reported that the annual rate amounts for water service to individual condominium units in the Sea Colony complex under the new Agreement - while generally somewhat higher - are still within shouting distance of the unmetered yearly rates charged to other highly seasonal customer bases along the Delaware coastline.

⁵ 26 Del. C. § 306(a). See also *In the Matter of the Application of Wilmington Suburban Water Corp.*, 367 A.2d 1338, 1341 (Del. Super. 1976) (under pre-1974 Delaware statutory scheme "[i]t is clear that under § 151 the public utility, unless the Commission takes countervailing action, may put into effect a rate change on 30 days notice to the Commission"). Compare *Southern Railway Co. v. Seaboard Allied Milling Corp.*, 442 U.S. 444, 453-461 (1979) (reviewing similar "suspend or go into effect" statutory scheme under former Interstate Commerce Act provisions).

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7. This decision only applies to sales of water service made to the condominium and recreation associations under the terms of the Water Supply Agreement dated April 1, 2011. Other sales of water and water services by Southern Shores shall be subject to the utility's otherwise tariffed rates. Those other rates are not changed by this Order.

8. The directives in Ordering paragraphs 8 and 9 of Order No. 7973 remain in effect. Southern Shores shall include the Water Supply Agreement dated April 1, 2011 as part of its publicly filed and available Tariff.

9. Once Southern Shores meets the criteria of a Class A Utility under the Commission's MFRs, Southern Shores shall comply with all the reporting and filing requirements called for from a Class A utility. If Southern Shores believes that its rate structure is inconsistent with any of such Class A reporting requirements, the burden is on the utility to make a written application to the Commission for a waiver of any particular obligation.

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

1. That, for the reasons set forth in the body of this Order and in the body of PSC Order No. 7973 (May 24, 2011), the Commission declines to suspend, or initiate an investigation into, the rates and

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terms and conditions set forth in the Water Supply Agreement (dated April 1, 2011) executed between Southern Shores Water Company, LLC and 30 condominium associations and the Sea Colony Recreation Association, all located with the greater Sea Colony complexes in Bethany Beach, Delaware. Pursuant to 26 *Del. C.* § 304(a), such Agreement and the present and future rates set forth within such contract shall become effective on June 1, 2011.

2. That the temporary rates allowed to go into effect on June 1, 2011, under PSC Order No. 7973 (May 24, 2011), are confirmed as the utility's lawful rates and no refunds are necessary.

3. That the Agreement and rates now allowed to go into effect shall remain subject to challenge by either complaint or Commission initiative under 26 *Del. C.* §§ 309 & 311. The present decision to allow such rates to go into effect shall not be binding in any later such investigation.

4. That the Commission hereby finally 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 Subject to the Jurisdiction of the Public Service Commission" (26 DE Admin. Code § 1002, Part B) in conjunction with the rate change application deemed submitted on

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April 25, 2011. Such requirements are waived in the context of that application only.

5. 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

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

Commissioner

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ATTEST:

/s/ Alisa Carrow Bentley
Secretary