

Service as Emergency Operator

The Public Staff has confirmed that Carolina Water Service, Inc. of North Carolina (CWSNC) is willing to serve as the emergency operator of the Outer Banks/Kinnakeet Associates, LLC (OBKA) Kinnakeet Shores WWTP and Kinnakeet Shores Collection System, subject to the conditions described herein.

1. CWSNC intends to operate the Kinnakeet Shores system with contract labor and provide management and oversight by its existing CWSNC staff in North Carolina.

2. CWSNC anticipates being able to begin serving as emergency operator for the Kinnakeet Shores system two weeks after being appointed by the Commission.

3. CWSNC has requested that the Commission's Order appointing CWSNC emergency operator clearly state:

- a. That CWSNC as emergency operator shall not be responsible for, or liable for, any acts, omissions, system operations and maintenance, or system installations, occurring prior to the date of the appointment as emergency operator.
- c. That CWSNC shall have no responsibility for OBKA's handling of customer deposits, if any, or any other obligations or liabilities of OBKA arising from its operation of the water and wastewater utility systems.
- d. That CWSNC shall not be responsible for, or liable for, any acts, omissions, obligations, or liabilities of OBKA, Ray E.

Hollowell, Jr. (Mr. Hollowell),¹ the owners of any property on which the utility assets are located, or any of them.

- e. That CWSNC as emergency operator shall be made financially whole by being reimbursed for all capital investment for replacements and upgrades, earn the Commission approved return on CWSNC's capital investments, earn the Commission approved operating margin on CWSNC's reasonable operating expenses, recovering all of CWSNC's reasonable operating expenses as emergency operator.
- f. That there be a true up at the time CWSNC is relieved of its duties.
- g. That upon appointment of CWSNC as emergency operator, the customers of this system shall be subject to the applicable CWSNC uniform rates.
- h. That CWSNC as emergency operator may petition the Commission at any time to be discharged as the emergency operator, which discharge the Commission shall approve.

The Public Staff fully supports all of these provisions.

Investment in System Renovations

- 4. Based on North Carolina Department of Environmental Quality, Division of Water Resources, Water Quality Regional Operations Section records

¹ Ray E. Hollowell, Jr., is the sole company official and managing member of OBKA.

and its preliminary due diligence, CWSNC anticipates making necessary replacements and upgrades to the Kinnakeet Shores wastewater treatment and collection systems totaling no less than \$1,000,000.

5. In its preliminary due diligence, CWSNC identified the need for immediate system renovations and replacements in order to materially improve the operation and compliance record of the Kinnakeet Shores sewer utility system. These immediate improvements will include repair or replacement of (a) the existing irrigation system for effluent disposal, (b) critical pumps, motors, and blowers, (c) electrical systems, (d) emergency generator, (e) UV disinfection system, (f) stairs and walkways, (g) building roof, and (h) tank coatings.

6. CWSNC has agreed to immediately invest its own funds to expedite the system improvements and bring the system closer to permit compliance.

7. CWSNC's advancement of the plant improvement capital funds will greatly accelerate the necessary renovations and replacements. CWSNC would be fully reimbursed for the expeditious capital renovations through eventual distribution of the bond funds and rates subject to true up, as compared to renovations made only after the Commission receives the forfeited bond proceeds. It is expected the costs of the necessary immediate improvements will materially exceed the \$110,000 bond amount.

8. It has become increasingly difficult to obtain qualified entities to operate water and wastewater utilities in emergency situations. Traditional ratemaking approaches have proven inadequate to compensate emergency operators for the substantial financial and management resources required to

operate and maintain a water or wastewater utility system owned by another entity.

For these reasons, the Public Staff recommends the following:

- a. That CWSNC be authorized to earn a return on investment in plant and recover the annual depreciation expense related to the investment. The Public Staff maintains that an appropriate return would be the overall rate of return of 7.14% which is the same return approved for CWSNC for its other North Carolina service areas by general rate case order issued April 8, 2022, in Docket No. W-354, Sub 384, which is based on a capital structure of 49.80% long-term debt with an embedded cost of 4.85%, and 50.20% common equity with an equity return of 9.40%.
- b. That CWSNC may petition the Commission for approval to adjust the rate of return to the most recent approved rate in its most recent rate case order.
- c. That CWSNC should be allowed to earn a margin on its reasonable and prudent operating expense. As CWSNC would receive the annual depreciation funds as its plant investment declines, the operating margin would not apply to the depreciation expense as is normal rate making practice under the operating ratio Montclair method previously approved by the Commission. The Public Staff recommends that a 7.14% operating margin will be fair compensation for

CWSNC given the magnitude and difficulty of its responsibilities as emergency operator of the OBKA sewer utility system.

9. That CWSNC should be allowed to charge its uniform sewer rates. CWSNC's current rates have been in effect since April 8, 2022, pursuant to the Commission's Order in Docket No. W-354, Sub 384.

Based on the ratemaking approach described above, the Public Staff recommends that the Commission appoint CWSNC as emergency operator of the OBKA sewer utility system and grant a rate increase from OBKA's current rates to CWSNC's uniform flat rate sewer charges on a provisional basis. The Schedule of Provisional Rates is attached hereto as Appendix A.

OBKA Consent to Appointment of Emergency Operator

This week the Public Staff made multiple attempts to contact Mr. Hollowell by telephone and email to confirm whether OBKA consents to the appointment of an emergency operator. The Public Staff received a telephone call from Mr. Hollowell this morning. Mr. Hollowell indicated that he would send an email to the Public Staff and/or make a filing in these dockets. The Public Staff has not received an email from Mr. Hollowell, nor has he made a filing in these dockets. At this time, the Public Staff is unable to advise the Commission whether OBKA consents to the appointment of an emergency operator.

Bond

In accordance with Commission orders and N.C. Gen. Stat. § 62-110.3, OBKA posted bond secured by certificates of deposit in the amounts of \$10,000

(Docket No. W-1125, Sub 1), \$25,000 (Docket No. W-1125, Sub 2), and \$75,000 (Docket No. W-1125, Sub 6).

N.C.G.S. § 62-110.3(d) provides as follows:

The appointment of an emergency operator, either by the superior court in accordance with G.S. 62-118(b) or by the Commission with the consent of the owner or operator, operates to forfeit the bond required by this section. The court or Commission, as appropriate, shall determine the amount of money needed to alleviate the emergency and shall order that amount of the bond to be paid to the Commission as trustee for the water or sewer system.

N.C.G.S. § 62-118(b) provides as follows:

If any person or corporation furnishing water or sewer utility service under this Chapter shall abandon such service without the prior consent of the Commission, and the Commission subsequently finds that such abandonment of service causes an emergency to exist, the Commission may, unless the owner or operator of the affected system consents, apply in accordance with G.S. 1A-1, Rule 65, to a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in the district or set of districts as defined in G.S. 7A-41.1 in which the person or corporation so operates, for an order restricting the lands, facilities and rights-of-way used in furnishing said water or sewer utility service to continued use in furnishing said service during the period of the emergency. An emergency is defined herein as the imminent danger of losing adequate water or sewer utility service or the actual loss thereof. The court shall have jurisdiction to restrict the lands, facilities, and rights-of-way to continued use in furnishing said water or sewer utility service by appropriate order restraining their being placed to other use, or restraining their being prevented from continued use in furnishing said water or sewer utility service, by any person, corporation, or their representatives. The court may, in its discretion, appoint an emergency operator to assure the continued operation of such water or sewer utility service. The court shall have jurisdiction to require that reasonable compensation be paid to the owner, operator or other party entitled thereto for the use of any lands, facilities, and rights-of-way which are so restricted to continued use for furnishing water or sewer utility

service during the period of the emergency, and it may require the emergency operator of said lands, facilities, and rights-of-way to post bond in an amount required by the court. In no event shall such compensation, for each month awarded, exceed the net average monthly income of the utility for the 12-month period immediately preceding the order restricting use.

The Public Staff recommends that OBKA forfeit its bond. In the event that OBKA does not consent to the appointment of an emergency operator, the Public Staff recommends that the Commission pursue the forfeiture of OBKA's bond pursuant to N.C.G.S. § 62-110.3(d).

Respectfully submitted, this the 29th day of July, 2022.

PUBLIC STAFF
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Electronically submitted
/s/ Elizabeth D. Culpepper
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CERTIFICATE OF SERVICE

I do hereby certify that I have this day served a copy of the foregoing upon each of the parties of record in this proceeding or their attorneys of record by emailing them an electronic copy or by causing a paper copy of the same to be hand-delivered or deposited in the United States Mail, postage prepaid, properly addressed to each.

This the 29th day of July, 2022.

Electronically submitted
/s/ Elizabeth D. Culpepper

SCHEDULE OF PROVISIONAL RATES

for

OUTER BANKS/KINNAKEET ASSOCIATES, LLC
(Carolina Water Service, Inc. of North Carolina, Emergency Operator)

for providing sewer utility service in

KINNAKEET SHORES SUBDIVISION,
PHASES 6 THROUGH 12 AND 15 THROUGH 22,
HATTERAS PLAZA, SUN COAST REALTY OFFICE,
HATTERAS REALTY COMPLEX, US POST OFFICE – AVON
AND KINNAKEET SHORES CLUBHOUSE

Dare County, North Carolina

Monthly Flat Rate Service, per SFE or REU: \$ 85.12

Multi-residential customers who are served by a master
meter shall be charged the flat rate per unit. \$ 85.12

New Sewer Customer Charge: \$ 27.00

Connection Fee: \$2,500 per REU ^{1/}, with a minimum of \$2,500

Reconnection Charge: ^{2/}

If sewer service is cut off by utility for good cause: Actual Cost

MISCELLANEOUS UTILITY MATTERS

Charge for processing NSF Checks: \$ 25.00

Bills Due: On billing date

Bills Past Due: 21 days after billing date

Billing Frequency: Bills shall be rendered monthly

Finance Charge for Late Payment:

1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Notes:

^{1/} REU = Residential Equivalent Unit = 360 gallons/day design flow utilizing the 2T Rules.

^{2/} The utility shall itemize the estimated cost of disconnecting and reconnecting service and shall furnish this estimate to customer with cut-off notice. Customers who request to be reconnected within nine months of disconnection at the same address shall be charged the base facility charge for the service period they were disconnected.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1125, Subs 9 and 10, on this the _____ day of _____, 2022, effective _____.