

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION
APPLICATION OF CURRITUCK WATER AND SEWER, LLC FOR
AUTHORITY TO TRANSFER THE SANDLER UTILITIES AT MILL
RUN, LLC WASTEWATER SYSTEM AND PUBLIC UTILITY
FRANCHISE IN CURRITUCK COUNTY, NORTH CAROLINA AND FOR
APPROVAL OF RATES**

**DOCKET NO. W-1333, SUB 0
DOCKET NO. W-1130, SUB 11**

CORRECTED REBUTTAL TESTIMONY

OF

BRITTNEY WILLIS

May 4, 2022

1 **Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

2 A. My name is Brittney Willis. I am employed by L.M. Sandler & Sons as a
3 Senior Project Manager, and my business address is 448 Viking Drive, Suite
4 220, Virginia Beach, Virginia 23452.

5 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH**
6 **CAROLINA UTILITIES COMMISSION?**

7 A. Yes. I filed direct testimony on February 4, 2022 and rebuttal testimony on
8 March 22, 2022, in this docket.

9 **Q. WHAT IS THE PURPOSE OF YOUR REVISED REBUTTAL**
10 **TESTIMONY?**

11 A. The primary purpose of my corrected rebuttal testimony is to correct my
12 statement that the Public Staff has not yet included Sandler Utilities'
13 substantial investment in 2022 in the amount of about \$195,000 (to date) in
14 the rate base. In fact, the Public Staff did include Sandler Utilities'
15 investment in 2022 in the amount of about \$195,000 in the rate base.
16 Therefore, I have removed that statement in this corrected rebuttal
17 testimony.

18 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

19 A. The purpose of my rebuttal testimony is to respond to the testimony of Public
20 Staff Witnesses D. Michael Franklin and Iris Morgan. My rebuttal testimony
21 focuses on (1) the Public Staff witnesses' calculation of the original cost net
22 investment in the Eagle Creek Wastewater Utility System (*i.e.*, the rate base),

1 and (2) the Public Staff witnesses' disallowance of the additional purchase
2 price of \$88,900 required by the Revised and Restated Asset Purchase
3 Agreement ("APA") dated April 14, 2021 between Sandler Utilities at Mill
4 Run, LLC's ("Sandler Utilities" or "Sandler") and Currituck Water and
5 Sewer, LLC ("CWS").

6 **Q. DOES THE APA CONTAIN A PROVISION ABOUT THE**
7 **PURCHASE PRICE FOR CWS TO PURCHASE THE EAGLE**
8 **CREEK WASTEWATER SYSTEM FROM SANDLER UTILITIES?**

9 **A.** Yes. The agreement of Sandler Utilities and CWS about the purchase price
10 is contained in Section 4.2 of the APA.

11 **Q. PLEASE EXPLAIN THE PURCHASE PRICE AGREED TO BY**
12 **SANDLER UTILITIES AND CWS.**

13 **A.** The APA between Sandler Utilities and CWS was filed with the Joint
14 Application, which seeks authority from the North Carolina Utilities
15 Commission ("Commission") to transfer the Eagle Creek wastewater utility
16 system ("Eagle Creek Wastewater System" or "Wastewater System") and
17 franchise in Currituck County, North Carolina to CWS and to approve rates
18 for the wastewater operations. The agreed upon and necessary purchase
19 price for the Eagle Creek Wastewater System is \$250,000, plus additional
20 Commission-approved capital costs incurred by Sandler up to the date of the
21 closing, plus \$88,900 to be recovered after the closing as new connections

1 are made to the Eagle Creek wastewater treatment plant from the adjacent
2 Fost and Flora subdivisions that other developers will build.

3 **Q. HAS THE PUBLIC STAFF PROVIDED A RECOMMENDATION**
4 **FOR THE SANDLER UTILITIES' ORIGINAL COST NET**
5 **INVESTMENT IN THE EAGLE CREEK WASTEWATER SYSTEM?**

6 **A.** Yes. Public Staff Witnesses Franklin and Morgan calculated the original
7 cost net investment of the Eagle Creek Wastewater System as of December
8 31, 2021, to be \$389,499. As support for the Public Staff's calculation of the
9 rate base of \$389,499, Public Staff Witness Morgan determined the amount
10 of the plant in service to be \$2,206,202 from Sandler Utilities' last general
11 rate case in Docket No. W-1130, Sub 8. Public Staff Witness Morgan then
12 added the amount of \$484,389 (rather than Sandler Utilities' total investment
13 of \$686,564 in 2020, 2021, and 2022) of additional plant items to the amount
14 of plant in service, resulting in a total plant in service amount of \$2,690,591.
15 Public Staff Witnesses Franklin and Morgan then reduced the total plant in
16 service amount of \$2,690,591 to \$389,499 by adjusting for accumulated
17 depreciation and depreciation expense and significant downward
18 adjustments to Sandler Utilities' plant additions made in 2020 and 2021.
19 Prior to closing, the Public Staff witnesses should include additional
20 investment made by Sandler Utilities for the Eagle Creek system after the
21 Public Staff's review. Public Staff Witness Morgan appears to agree with
22 updating the rate base, as she testified that the "original cost net investment

1 of \$389,499 is subject to change based on the inclusion of reasonable and
2 prudent plant additions between December 31, 2021 and closing, and net of
3 plant retirements and additional accumulated depreciation and amortization
4 through the date of closing.” (Public Staff Witness Morgan Testimony, p.
5 6.)

6 **Q. PLEASE DESCRIBE THE ADJUSTMENTS THAT THE PUBLIC**
7 **STAFF WITNESSES MADE TO SANDLER UTILITIES’**
8 **WASTEWATER SYSTEM ADDITIONS IN 2020 AND 2021.**

9 **A.** Public Staff Witnesses Franklin and Morgan reduced Sandler Utilities’
10 Wastewater System additions in 2020 and 2021 by \$207,633 (and, again, did
11 not consider the system additions made in 2022). Public Staff Witnesses
12 Franklin and Morgan also did not allow \$2,914 for Wastewater System
13 additions in 2016. In regard to the Wastewater System investments that
14 Sandler Utilities made in 2020, Public Staff Witnesses Franklin and Morgan
15 disallowed \$130,744 for the replacement of controllers and 12 vacuum
16 valves, \$3,941 for the cost of a temporary sewerage pump, and \$42,702 for
17 labor and equipment expenses associated with the November 2020
18 wastewater system outage. For the Wastewater System improvements that
19 Sandler Utilities made in 2021, Public Staff Witnesses Franklin and Morgan
20 disallowed \$27,333 for repairs to the pump house and irrigation system and
21 pipe and sprinkler heads.

1 **Q. WHAT IS THE PUBLIC STAFF’S EXPLANATION FOR ITS**
2 **DISALLOWANCE OF \$207,633 OF CAPITAL IMPROVEMENTS IN**
3 **2020 AND 2021?**

4 **A.** The stated justification by Public Staff Witnesses Franklin and Morgan for
5 the majority of the adjustments to the Wastewater System additions in 2020
6 and 2021 is that they do not view those system additions to be reasonable or
7 prudent. Apparently, the Public Staff believes that the system improvements
8 related to the new controllers and valves would not have been incurred if
9 Sandler Utilities had properly maintained the Wastewater System. Public
10 Staff Witness Franklin stated that “the November 2020 outage stemmed from
11 Sandler’s continuing failure to properly maintain the Eagle Creek
12 wastewater utility system and take appropriate action to improve wastewater
13 system reliability.” (Public Staff Witness Franklin Testimony, p. 27.)

14 I want to again mention that Sandler Utilities does not dispute that that the
15 Eagle Creek Wastewater System has experienced a number of outages and
16 sanitary sewer overflows, the vast majority of which occurred beginning in
17 September of 2020. Sandler Utilities sincerely regrets these significant
18 problems in the Vacuum Collection System. Sandler Utilities has made
19 substantial investment in repairs and capital improvements in the
20 Wastewater System—in particular in the Vacuum Collection System—to
21 remedy the Vacuum Collection System’s problems and to ensure that the

1 Wastewater System will function properly and reliably and in compliance
2 with all regulatory and environmental regulations.

3 **Q. IS THE PUBLIC STAFF’S OPINION ABOUT THE NEED FOR THE**
4 **NEW CONTROLLERS AND VALVES CORRECT?**

5 **A.** No. Sandler Utilities’ need to purchase and install new controllers and
6 valves was not the result of “Sandler’s [alleged] continuing failure to
7 properly maintain the Eagle Creek wastewater utility system.” The
8 controllers and valves were at the end of their useful lives and needed to be
9 replaced.

10 **Q. PLEASE DESCRIBE YOUR RESPONSE TO THE PUBLIC STAFF’S**
11 **SPECIFIC ADJUSTMENTS TO THE PLANT ADDITIONS IN 2020**
12 **AND 2021?**

13 **A.** The Public Staff improperly disallowed the following wastewater system
14 improvements made by Sandler Utilities in 2020 and 2021:

- 15 • 10/12/2020 Invoice 0156 for Flovac for Controllers, Labor, Pump, and
16 Motor in the amount of \$18,973.97. The new pump and motor are critical
17 components to upgrading the Eagle Creek Wastewater System.
- 18 • 10/12/2020 Invoice 163 for Flovac for 45 Controllers and Shipping in the
19 amount of \$9,561.84. The controllers were at the end of their useful life and
20 needed to be replaced.

- 1 • 11/13/2020 Invoice 0179 for Flovac for 30 New Controllers in the amount
2 of \$6,362.64. The controllers were at the end of their useful life and needed
3 to be replaced.
- 4 • 11/23/2020 Invoice 0183 for Flovac for 26 New Controllers, 10 3” Valve
5 Piston Type in the amount of \$10,746.71. This capital improvement was
6 required to retrofit some of the pedestal mounted controllers.
- 7 • 11/30/2020 Invoice 0026223 for Envirolink for Vacuum Pump Renewal and
8 Replacement in the amount of \$42,702.24. This improvement is a critical
9 component to keeping the system upgraded and fully operational. Renewal
10 and replacement of pumps means greater longevity for the components of
11 the Vacuum Collection System.
- 12 • 12/21/2020 Invoice 0199 for Flovac for 57 Flovac Controllers in the amount
13 of \$7,101.75. This capital improvement was necessary to increase the supply
14 of replacement controllers and replace the controllers that were at their end
15 of life.

16 **Q. PLEASE EXPLAIN WHY THOSE CAPITAL IMPROVEMENTS**
17 **SHOULD BE INCLUDED IN THE RATE BASE FOR THE EAGLE**
18 **CREEK WASTEWATER SYSTEM.**

19 **A.** Sandler Utilities’ capital investment in the new controllers, valves, and
20 pumps was both reasonable and prudent and was not due to an alleged
21 “failure to properly maintain the Eagle Creek wastewater utility system.” In
22 regard to the controllers, the average service life of current controllers is

1 advertised to be 40 to 50 years with a rebuild requirement at year 10.
2 However, that long service life was not available for the controllers that were
3 on the market 20 years ago (and even 10 years ago) when the Eagle Creek
4 Vacuum Collection System was constructed. Additionally, the HP
5 controllers that had been previously purchased had been found to be firing
6 (opening the valves) with 40 to 50 gallons of sewage, rather than the required
7 10 gallons. This problem resulted in smaller amounts of emergency storage
8 and thus shorter response time before the occurrence of a sanitary system
9 overflow (“SSO”), which required Sandler Utilities to replace all of those
10 controllers during an outage to resolve the SSO situation and allow the
11 Vacuum Collection System to operate properly. Due to those issues, along
12 with the age of the Vacuum Collection System, impact from storms, high
13 groundwater, and inflow and infiltration contribution from the homeowners’
14 laterals, the service life of the controllers was reduced because the
15 mechanical components were used to a greater capacity. The result was that
16 the existing controllers were at the end of their useful life and could no longer
17 be rebuilt, which required Sandler Utilities to purchase and install new
18 controllers. New controllers and valves were also required for the pedestal
19 mounted controllers to ensure that the new system being installed would be
20 completely functional. It is also imperative that the operators of the Eagle
21 Creek Wastewater System have a necessary supply of functional spare
22 controllers on-site in rotation so that any necessary repairs can be performed

1 expeditiously without extended impact to the homeowners. This is a critical
2 component to keeping an aging system functional without significant
3 downtime.

4 Regarding the pumps, while both the vacuum pump system and the sewage
5 pump system can operate with one pump, it is critical to have both pumps
6 fully operational to avoid long-term overload on the other pump,
7 which could ultimately lead to total failure of the Vacuum Collection
8 System. These pumps have a defined lifespan that is shortened when
9 excessively used, so it is imperative to bring in new and/or upgraded
10 pumps when necessary to allow for system improvements.

11 Therefore, I believe that Sandler Utilities' investment in the new controllers and
12 valves was both reasonable and prudent. Accordingly, of the amount the
13 Public Staff recommends for disallowance, \$96,000 should be included in
14 the rate base.

15 **Q. IN ADDITION TO THE PLANT INVESTMENTS THAT SANDLER**
16 **UTILITIES MADE IN 2020 AND 2021, HAS SANDLER UTILITIES**
17 **CONTINUED TO MAKE IMPROVEMENTS TO THE**
18 **WASTEWATER SYSTEM IN 2022?**

19 **A.** Yes. To date, Sandler Utilities has made substantial investment in the Eagle
20 Creek Wastewater System in 2022 in the amount of about \$195,000.
21 Specifically, beginning on January 31, 2022, Flovac installed a remote
22 monitoring system on the valve pits (each pit on the 8-inch main and

1 additional sensors on the 10-inch main), along with two additional monitors
2 on the collection lines. The remote monitoring system with the additional
3 monitors will ensure that the Vacuum Collection System is reliable. The
4 monitoring system allows multiple people to remotely monitor the vacuum
5 flow status of the lines so that any possible leaks that might occur on the
6 lines will be identified quickly. This expedient identification of any possible
7 leaks on the collection lines will ensure that the contract operators may
8 address the leaks quickly and before any homeowners might be affected. The
9 cost of the remote monitoring system is \$195,297.69. Sandler Utilities is
10 planning to install a control panel replacement in the amount of \$70,000.

11 **Q. IS SANDLER UTILITIES CONTINUING TO MAKE CAPITAL**
12 **IMPROVEMENTS IN THE EAGLE CREEK WASTEWATER**
13 **SYSTEM?**

14 **A.** Yes. Sandler Utilities is continuing to invest in necessary improvements in
15 the Eagle Creek Wastewater System, and particularly in the Vacuum
16 Collection System. That investment will continue in 2022 and possibly after
17 2022.

18 **Q. SINCE SANDLER UTILITIES HAS MADE SUBSTANTIAL**
19 **INVESTMENT IN THE EAGLE CREEK WASTEWATER SYSTEM**
20 **SINCE DECEMBER 31, 2021, IS IT YOUR UNDERSTANDING**
21 **THAT THE PUBLIC STAFF INTENDS TO MAKE A**

1 **SUPPLEMENTAL FILING PRIOR TO THE CLOSING WITH AN**
2 **UPDATED AMOUNT FOR THE RATE BASE?**

3 **A.** Yes. Public Staff Witness Franklin stated in his testimony and the Public
4 Staff stated in response to a data request that the Public Staff is
5 recommending that the transfer be held in abeyance until either Sandler
6 Utilities meets the conditions of the Amended Consent Judgment or CWS is
7 made a party of the Amended Consent Judgment. In response to a data
8 request, the Public Staff stated: “[S]upplemental filings will be required to
9 support a subsequent hearing once it is determined the transfer should no
10 longer be held in abeyance. At that time, a supplemental filing will be made
11 with the then current original cost net investment.”

12 **Q. DO YOU AGREE WITH THE PUBLIC STAFF THAT A**
13 **SUPPLEMENTAL FILING FOR INVESTMENTS MADE BY**
14 **SANDLER UTILITIES AFTER THE PUBLIC STAFF’S INITIAL**
15 **FILING SHOULD BE PROVIDED BEFORE THE CLOSING TO**
16 **DETERMINE THE THEN-CURRENT RATE BASE?**

17 **A.** Sandler Utilities’ continuing investment in the Wastewater System in 2022
18 (and afterwards)—to ensure that the Wastewater System will be safe and
19 reliable and be in full compliance with the Amended Consent Judgment’s
20 mandate to undertake to address “necessary upgrades to the design and
21 physical infrastructure of the [Vacuum] Collection System”—should be
22 included in the Public Staff’s updated calculation prior to the closing.

1 Sandler Utilities requests that the Commission allow Sandler the opportunity
2 to respond to the Public Staff's supplemental rate base filing prior to the
3 closing.

4 **Q. PURSUANT TO THE APA, IS CWS REQUIRED TO PAY THE**
5 **AMOUNT OF \$88,900 FOR CONNECTION FEES COLLECTED**
6 **FROM THE FOST AND FLORA CUSTOMERS?**

7 **A.** Yes. Sandler Utilities and CWS agreed in the APA that CWS would remit
8 \$100 for each of the anticipated 889 connections made to the Eagle Creek
9 wastewater treatment plant from the Fost and Flora subdivisions. Therefore,
10 Sandler Utilities and CWS anticipate that Sandler Utilities will receive an
11 additional purchase price of \$88,900 when the additional connections are
12 made.

13 **Q. WHAT IS THE PUBLIC STAFF'S POSITION ABOUT THE \$88,900**
14 **AMOUNT TO BE PAID BY CWS TO SANDLER UTILITIES FOR**
15 **THE FOST AND FLORA NEW CONNECTIONS?**

16 **A.** Public Staff Witnesses Franklin and Morgan "oppose" the \$88,900 as an
17 additional purchase price amount. Presumably this means they oppose
18 recognition of the \$88,900 for purposes of determining the rate base that will
19 be approved for CWS as a result of the transfer. The Public Staff witnesses
20 state that the Fost and Flora connections, and therefore the amount of
21 \$88,900, "do not directly benefit" the Eagle Creek customers. Witness
22 Franklin also points out that the new connections from the Fost and Flora

1 subdivisions have not been made to the Eagle Creek wastewater treatment
2 plant.

3 **Q. DO YOU AGREE WITH THE PUBLIC STAFF' POSITION?**

4 **A.** No. I believe that the Public Staff's position is neither reasonable nor,
5 according to counsel, legally correct.

6 **Q. PLEASE EXPLAIN YOUR RESPONSE TO THE PUBLIC STAFF'S**
7 **POSITION THAT SANDLER UTILITIES SHOULD NOT BE**
8 **ENTITLED TO RECEIVE THE FUTURE PAYMENTS TOTALING**
9 **\$88,900 FOR THE FOST AND FLORA CONNECTIONS?**

10 **A.** First, it should not matter that the connections have yet to be made. CWS
11 has an existing contractual duty to pay Sandler the additional purchase price
12 of \$88,900. The APA provides a timetable for paying the \$88,900 in
13 quarterly installments as the new connections are made, and further states
14 that "Buyer's obligation for the Additional Purchase Price shall survive the
15 Closing."

16 Second, the prefiled direct testimony of CWS Witness Myers enumerates the many
17 benefits that will accrue to the Eagle Creek ratepayers as a result of the
18 transfer. One of the benefits is that:

19 The addition of Fost & Flora customers, along with potential
20 customers in the area, to the Eagle Creek wastewater treatment plant
21 will result in a larger customer base and thus a greater economy of
22 scale. This larger customer base will help to defer both initial capital
23 upgrade costs and future cost of service expenditures, and will help
24 to minimize increased rates in the future.

1 The Public Staff does not deny the economy of scale for the Eagle Creek
2 Wastewater System that will result from the addition of the Fost and Flora
3 customers, as asserted by CWS Witness Myers. Rather, the Public Staff
4 witnesses simply contend there will not be any “direct” benefit. While
5 economy of scale may not be a “direct” benefit, it is certainly a real benefit.

6 In a data response to Sandler Utilities, the Public Staff stated:

7 It is indeterminate whether the additional [Fost and Flora] customers that
8 would be added would be of direct benefit to the existing customers
9 since the addition may cause the need for additional improvements
10 and/or expansion of the WWTP that otherwise would not be required.

11 The position that “[i]t is indeterminate” does not refute the testimony of CWS
12 Witness Myers with facts. “Indeterminate” simply means the Public Staff
13 does not know.

14 Third, CWS is not seeking any change in rates as part of this transfer docket.
15 If the transfer is approved, CWS will have the burden of proving that any
16 future rate increases it may seek are reasonable and prudent. In both the
17 present transfer docket and in any future rate case, the interests of all
18 ratepayers should be evaluated, not just the interest of Eagle Creek
19 ratepayers. If the transfer were denied and Sandler Utilities operated the
20 Eagle Creek Wastewater System for the Eagle Creek customers while CWS
21 had to operate a separate wastewater system for Fost and Flora customers,
22 none of the customers would benefit from the economy of scale of a
23 combined wastewater operation.

1 **Q. ARE YOU AWARE OF OTHER TRANSFER CASES WHERE**
2 **FUTURE CONNECTION FEES HAVE BEEN PART OF THE**
3 **PURCHASE PRICE?**

4 **A.** Yes. Future connection fees have been recognized by the Commission as
5 part of the purchase price in other transfer applications. In response to a data
6 request from Sandler Utilities, the Public Staff replied: “To my knowledge,
7 the Sandler-Currituck transfer is the only transfer filed with the Commission
8 with an APA that provides payment to the seller for future connections to the
9 utility system being transferred.”

10 I have not done a comprehensive search of such cases, but my legal counsel has
11 provided the following example where the purchase price included a value
12 for future connections. In Docket Nos. W-1300, Sub 10, and W-1082, Sub
13 4, there was a transfer of the Twin Lake Farm water system from Dutchman
14 Creek, Inc., to Old North State Water Company, LLC (“Twin Lake Farm
15 Transfer Proceeding”). The Commission’s February 4, 2016, Order stated
16 in Finding of Fact No. 4:

17 Dutchman and Old North State entered into an Asset Purchase Agreement
18 dated November 21, 2014, for Old North State to purchase from
19 Dutchman all the Twin Lake water utility system facilities for the
20 purchase price of \$50,000, plus \$600 per connection for the next 12
21 lots to receive water service for which Dutchman has already
22 installed the distribution water main and a number of services.

23 In Twin Lake Farm Transfer Proceeding, the \$50,000 purchase price was more than
24 the original cost net investment of Dutchman even without counting the

1 additional purchase price of \$7,200 for future connections, and there was no
2 positive acquisition adjustment, so the \$7,200 was not relevant to the
3 determination of rate base for the buyer. Nonetheless, the additional
4 purchase price was recognized by the Commission in the findings of fact. In
5 this transfer proceeding, the additional purchase price for future connections
6 in the Fost and Flora subdivisions is relevant to the transfer from Sandler
7 Utilities to CWS because the purchase price without the additional amount
8 for future connections is less than the original cost net investment of Sandler
9 Utilities.

10 In the Commission's Order in Twin Lake Farm Transfer Proceeding, denying a
11 positive acquisition adjustment to allow the higher of the purchase price or
12 seller's rate base to become the rate base for the buyer, the Commission
13 relied on Public Staff testimony that "[a]ny benefits accruing to the
14 Dutchman customers as a result of the proposed transfer would not outweigh
15 the cost of including the excess purchase price in rate base." The main point
16 of this Order is that benefits to the seller's customers must outweigh the
17 amount of purchase price in excess of the seller's rate base before the
18 purchase price can be included in the buyer's rate base.

19 The situation in the Twin Lake Farm transfer proceeding is different from the
20 position of Sandler Utilities in the present case, where Sandler Utilities
21 supports a rate base for CWS equal to the original cost net investment of
22 Sandler because the full purchase price, including the \$88,900 for future

1 connections, is greater than the original cost net investment of Sandler.
2 However, it is appropriate for the Commission to recognize that connection
3 fees are part of the purchase price in the present case just as it did in the Twin
4 Lake Farm case.

5 **Q. ARE YOU AWARE OF OTHER CASES WHERE FUTURE**
6 **CONNECTION FEES WERE CONSIDERED AS PART OF THE**
7 **PURCHASE PRICE?**

8 **A.** Yes, although as noted previously, my analysis is the result of a non-
9 comprehensive search and there could be other cases that neither I nor legal
10 counsel have discovered yet. The next example is the transfer of the water
11 system for Currituck Club from The Currituck Associates to Carolina Water
12 Service, Inc. of North Carolina. The August 20, 2001, Order in Docket No.
13 W-354, Sub 249 states in Finding of Fact No. 9:

14 The purchase price for the initial facilities is \$100,000. In addition, CWS
15 will also pay the Seller one half of each water tap-on fee collected on
16 residential lots of numerical designation 300 or higher, the Center
17 Court homesites, and any future homesites outside of Magnolia Bay,
18 and the Club Cottages (approximately 252 lots at \$1,000 per lot will
19 be reimbursed to the seller, for a total purchase price of \$352,000).
20 Net plant in service at the time of transfer is greater than the \$352,000
21 total purchase price, therefore, CWS is entitled to include in rate base
22 only the purchase price paid for the acquired facilities.

23 Clearly there are transfer cases where the Commission has recognized future
24 connection fees as a proper component of the purchase price. In Docket No.
25 W-354, Sub 249, the Commission accepted the amount for future

1 connections as part of the purchase price that became the rate base for the
2 buyer.

3 Therefore, the Public Staff is incorrect in suggesting the position of Sandler Utilities
4 and CWS on this issue is unique to the present docket.

5 **Q. SHOULD THE COMMISSION CONSIDER THE ECONOMY OF**
6 **SCALE BENEFITS THAT A COMBINED WASTEWATER**
7 **SYSTEM WOULD PROVIDE TO THE EAGLE CREEK**
8 **CUSTOMERS, ALONG WITH THE FOST AND FLORA**
9 **CUSTOMERS?**

10 **A.** My legal counsel has informed me that the applicable statutory authority for
11 Commission consideration of this transfer application is N.C. Gen. Stat. §
12 62-111 (a), which states in pertinent part:

13 No franchise now existing or hereafter issued under the
14 provisions of this Chapter, other than a franchise for motor carriers
15 of passengers shall be sold, assigned, pledged or transferred, nor
16 shall control thereof be changed through stock transfer or otherwise,
17 or any rights thereunder leased, nor shall any merger or combination
18 affecting any public utility be made through acquisition or control
19 by stock purchase or otherwise, except after application to and
20 written approval by the Commission, which approval shall be given
21 if justified by the public convenience and necessity.

22 N.C. Gen. Stat. § 62-111 (a), has been interpreted by the North Carolina Court of
23 Appeals to require the Commission to inquire into all aspects of anticipated
24 services and rates occasioned and engendered by the proposed transfer. *See*
25 *Utilities Commission v. Village of Pinehurst*, 99 N.C. App. 224, 393 S.E.2d
26 111 (1990), *disc. review allowed*, 328 N.C. 97, 402 S.E.2d 427, *aff'd*, 331

1 N.C. 278, 415 S.E.2d 199 (1992). In *Village of Pinehurst*, the Court made
2 it clear that the correct legal standard for considering a transfer
3 application is as follows: “[W]hen the Commission is adjudging
4 public convenience and necessity in the context of proposed transfers of
5 water and sewer franchises under G.S. § 62411(a), it must inquire
6 into *all* aspects of anticipated service and rates occasioned and
7 engendered by the proposed transfer, and then determine whether the
8 transfer will serve the public convenience and necessity.”

9 The Public Staff witnesses’ position—that the amount of \$88,900 should
10 be denied because it does not provide a direct benefit to just the Eagle
11 Creek customers—is contrary to the enunciated legal standard. It is clear
12 that the Commission must weigh all benefits, and for all customers.

13 **Q. WILL YOU PLEASE SUMMARIZE YOUR REBUTTAL ON THIS**
14 **ISSUE?**

15 **A.** Yes. It would be manifestly unfair to ignore the full price being paid by
16 CWS as an excuse to lower the rate base for CWS. CWS has testified to the
17 economies of scale that will benefit the Eagle Creek customers, as well as
18 the Fost and Flora customers, if the transfer is approved. In most transfer
19 cases in which there is no positive acquisition adjustment, the Commission
20 approves the rate base for the buyer as the lesser of the seller original cost
21 net investment or the purchase price. That same approach is proper for the
22 present case. In taking that approach, the amount of the purchase price

1 should include the full amount to be paid by the buyer (CWS), and should
2 not exclude the value of future connection fees as recommended by the
3 Public Staff. The result in Docket No. W-354, Sub 249, supports Sandler's
4 position on this issue in the present case.

5 **Q. IS SANDLER UTILITIES PERMITTED TO TERMINATE THE APA**
6 **AND NOT PROCEED WITH THE SALE OF THE EAGLE CREEK**
7 **WASTEWATER SYSTEM TO CWS IF IT IS NOT SATISFIED WITH**
8 **THE AMOUNT OF THE RATE BASE?**

9 **A.** Yes. Section 4.2(c) of the APA gives Sandler Utilities the right to terminate
10 the agreement in the event that Sandler is not satisfied with the amount of
11 the rate base established by the Commission.

12 **Q. DOES THIS CONCLUDE YOUR CORRECTED REBUTTAL**
13 **TESTIMONY?**

14 **A.** Yes.