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April 25, 2024

Ms. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
Mail Service Center 4325
Raleigh NC 27699 -4300

RE: Docket No. W-13333, Sub 5 - PUBLIC

Dear Ms. Dunston:

Please accept for filing the following documents: Response and Answer to Public Staff Motion to Show Cause and or the Appointment of an Emergency Operator on behalf of Currituck Water and Sewer LLC and the affidavits with exhibits and attachments of Matthew Klein and Michael Myers. Some of these documents contain confidential information. The confidential information has been marked "Confidential" on each page.

Thank you for your attention to this matter.

Sincerely,
Edward S. Finley, Jr.
Currituck Water & Sewer,
LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Response and Answer and attachments in this docket was duly served upon parties of record either by depositing same in a depository of the United States Postal Service, first class postage prepaid, or by electronic delivery.

This the 25th day of April 2024.

Edward S. Finley, Jr.,

/s/ Edward S. Finley, Jr.

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COUNSEL FOR RESPONDENT

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Apr 25 2024

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1333, SUB 5

In the Matter of)	
Application by Currituck Water &)	
Sewer, LLC for a Certificate of)	CURRITUCK’S RESPONSE AND ANSWER TO
Public Convenience and Necessity)	PUBLIC STAFF’S MOTION TO SHOW CAUSE
to Provide Water and Sewer Utility)	
Service in Currituck County, North)	
Carolina and for Approval of Rates)	

Currituck Water & Sewer, LLC (“Currituck”) by and through the undersigned counsel, and pursuant to Rules R1-7 and R1-9 of the North Carolina Utilities Commission (“Commission”), submits this Response and Answer to the Public Staff’s Motion to Show Cause. Through its Response and Answer, Currituck requests that the Commission dismiss the Motion to Show Cause in its entirety, and further provides specific answers to the allegations asserted therein.

I. INTRODUCTION AND EXECUTIVE SUMMARY

This proceeding concerns Currituck’s Application for a Certificate of Public Convenience and Necessity and for Approval of Rates (the “CPCN Application”), which asks the Commission to permit Currituck to provide water and wastewater utility service, and charge appropriate rates for doing so, to the Carolina Village Mobile Home Park located in Currituck County, North Carolina (the “Carolina Village MHP”). Following the filing of the CPCN Application on August 16, 2023, and before the deadline to submit testimony and exhibits supporting the application, the Public Staff filed its Motion to Show Cause, which asks the Commission to (1) declare that Currituck has been acting as a public utility without authorization to do so; (2) impose significant fines upon Currituck; and (3) grant emergency operating authority over the Carolina Village MHP Water and Wastewater Systems to another operator.

In support of these extreme requests, the Motion to Show Cause sets forth 41 paragraphs of allegations relating to the ownership, operation, and maintenance of the Carolina Village MHP Water and Wastewater Systems, a significant number of which either misstate relevant facts or assert legal conclusions that find no basis in the law of North Carolina and the Commission's prior rulings. The Motion to Show Cause should be denied.

Currituck has kept the promises it made. Currituck continues to demonstrate its commitment to improve the water and wastewater service to the customers of Carolina Village MHP. First, until May 2023, Currituck was not a public utility. It is not a secret that Currituck only closed on the Carolina Village MHP system in May 2023 because it was a requirement to obtain the USDA loan through Stone Bank. As this docket reveals, Currituck filed its CPCN Application. Moreover, Envirolink serves as a contract operator—not a public utility—at Carolina Village MHP. Second, Carolina Village MHP (through its previous owners) has suffered environmental challenges for many years. Strangely, instead of demonstrating patience and understanding with Currituck's ongoing efforts to secure capital funding, the Public Staff elects to punish the ratepayers of Carolina Village MHP by manufacturing unsubstantiated environmental claims that are inappropriate for consideration in this venue. Finally, as the April 25, 2024, site visit to Carolina Village MHP by the Public Staff (and DEQ) reveals, a well-funded Currituck is keeping its promises to the ratepayers. Promises made and promises kept.

In support of its position that the Motion to Show Cause should be denied, Currituck provides the following relevant factual background, followed by legal argument and specific answers to the allegations asserted in the Motion to Show Cause.

II. RELEVANT FACTUAL BACKGROUND

a. Currituck's Business and Corporate Structure.

Currituck is engaged in the business of owning and operating water and wastewater systems and furnishing water and wastewater operation and management services in the state of North Carolina. It holds, or has applied for, all necessary permits, licenses, and approvals to own and operate such systems and provide such services. *See Exhibit A* hereto, Affidavit of Matthew Klein ("Klein Aff.") ¶ 4.

Currituck was formed on May 31, 2019. Initially, Currituck's sole member was Longleaf Utilities, LLC ("Longleaf"). *See Exhibit B* hereto, Affidavit of Michael Myers ("Myers Aff.") ¶ 6. Longleaf also served as Currituck's initial manager, directing and controlling the activities of Currituck pursuant to Currituck's Operating Agreement. *Id.* Longleaf's sole member is Two River's Holdings, LLC. *Id.* ¶ 7. Two River's Holdings, LLC is owned by the Myers Family Trust, which has as its executors Michael Myers and his wife, Melissa. *Id.* ¶ 8

Pursuant to a Contribution and Unit Purchase Agreement dated December 20, 2021 (the "Contribution Agreement"), Longleaf contributed 100% of its membership interests in Currituck to Currituck Water and Sewer Holdings, LLC ("CWSH") in exchange for 700,000 Class B Units of CWSH (representing a 20% stake). *Id.* ¶ 9; Klein Aff. ¶ 5. Clear Current, LLC ("Clear Current"), the only other member of CWSH, was the owner of the remaining 2,800,000 Class A Units in CWSH (representing an 80% stake). Klein Aff. ¶ 5. Notably, the 80/20 ownership split between Clear Current and Longleaf remained until March 27, 2024. *Id.*; Myers Aff. ¶ 10. At that time, Bernhard Capital Partners ("BCP") made an additional \$6 Million equity investment into Currituck for the benefit of Clear Current. Correspondingly, Clear Current's ownership stake in CWSH increased from 80% to 89% and Longleaf's ownership stake decreased from 20% to 11%. *Id.*

Also on December 20, 2021, CWSH became the sole manager of Currituck, with the full power to conduct Currituck's business, subject to the limitations of Currituck's Operating Agreement (as amended) and CWSH's own Operating Agreement. Klein Aff. ¶ 6. In particular, CWSH's Operating Agreement establishes a Board of Managers to manage its affairs (including its management and operation of Currituck). *Id.* Aside from a few limited matters requiring unanimous consent which are not relevant to this proceeding, any action taken by CWSH that needs approval or consent of the members requires majority approval by the Board of Managers to be effective. *Id.*

Longleaf was permitted by the CWSH Operating Agreement to appoint two members to the CWSH Board of Managers, with the other three members appointed by Clear Current. *Id.* ¶ 7. Consistent with this provision, Clear Current appointed Jeffrey Yuknis, Thomas Henley, and Julius Bedford to the Board of Managers for CWSH following the execution of the Contribution Agreement. *Id.* Subsequently, Clear Current replaced Jeffrey Yuknis with Gary Albertson (who now serves as chairman of the CWSH Board of Managers). Longleaf appointed two members to the Board of Managers following execution of the Contribution Agreement: Michael Myers and Kenneth Raber. *Id.*

Longleaf and Clear Current share no common owners, officers, or board members, have separate bank accounts, prepare separate financial documents and statements, maintain separate corporate records, and have no rights of control over one another. *Id.* ¶ 8; Myers Aff. ¶ 11. Similarly, though CWSH is the sole manager of Currituck, CWSH and Currituck maintain separate and appropriate corporate records, conduct business according to their respective operating agreements, use separate bank accounts, prepare separate financial documents and statements, and

have different officers. Klein Aff. ¶ 9. Further, neither CWSH nor Currituck are undercapitalized, as evidenced in part by the \$6 Million equity investment provided by BCP. *Id.*

On January 23, 2024, the CWSH Board of Managers appointed Matthew Klein to be sole authorized officer of Currituck, serving as the President thereof.¹ *Id.* ¶ 3. As President, Matthew Klein has the authority to manage and control the business of Currituck (at the direction of the CWSH Board of Managers), to bind Currituck to transactions and obligations within the authority provided to him, and to engage appropriate managerial, financial, technical, legal, and other professionals. *Id.*

b. Currituck's Purchase of the Water and Wastewater Assets that Serve the Carolina Village MHP.

On October 21, 2019, Currituck entered into an Asset Purchase and Utility Construction and Maintenance Agreement (“Asset Purchase Agreement”) with two sellers: Equity First NC, LLC (“EFNC”) and CV-WWT, LLC (“CV-WWT”). Motion to Show Cause, Ex. E (p.2-55). The Asset Purchase Agreement provides the terms relating to Currituck’s purchase of the water and wastewater assets that serve the Carolina Village MHP, including the land upon which those assets are located (the “Water and Wastewater Assets”). At the time the Asset Purchase Agreement was entered, EFNC was the owner of certain property upon which the assets were located, and CV-WWT was the owner of the assets themselves.²

As is typical in a complicated transaction such as this, the Asset Purchase Agreement was amended on a few occasions to accommodate certain changed circumstances. The First

¹ Prior to this date, Currituck had two officers: Kenneth Raber, who served as President, and Michael Myers, who served as VP, Secretary, and Treasurer.

² The Asset Purchase Agreement does not include the purchase of the land upon which the Carolina Village MHP is located. Rather, the land on which mobile home sites are located is currently owned by Carolina Village MHP, LP and managed by Nelson Communities. Carolina Village MHP, LP purchased Carolina Village MHP from Carolina Village NC, LLC in February of 2022.

Amendment to the Asset Purchase Agreement was entered in August of 2020 (“First Amendment”). The primary purpose of the First Amendment was to modify the description of the assets to be purchased and to include an option additional land relating to the wastewater treatment plant site. Motion to Show Cause, Ex. E (p.57-62).

The Asset Purchase Agreement was again amended on February 7, 2022, through a document titled the “Amended and Restated Asset Purchase and Utility Construction and Maintenance Agreement” (the “Restated Asset Purchase Agreement”). Motion to Show Cause, Ex. E (p.64-116). The purpose of the Restated Asset Purchase Agreement was, among other things, to address changes relating to the ownership of Carolina Village MHP (which occurred in February of 2022) and the impact those changes had on the requirements for water and wastewater service at Carolina Village MHP.

Finally, the Restated Asset Purchase Agreement was again amended on August 15, 2023 (“First Amendment to the Restated Asset Purchase Agreement”). Motion to Show Cause, Ex. E (p.118-122). The purpose of the First Amendment to the Restated Asset Purchase Agreement was to address certain concerns raised by the Public Staff in discussions with representatives of Currituck. Specifically, these amendments cleared up minor discrepancies concerning the timing of the delivery of certain closing documents, clarified the allocation of the purchase price among the Water and Wastewater Assets and the land to be purchased, confirmed that the deadline for deeds to be conveyed was previously extended by thirty days, and deleted a provision which stated that closing would occur within thirty days.

c. Closing and Title to the Water and Wastewater Assets.

Though the Asset Purchase Agreement was entered on October 21, 2019, the sale of the Water and Wastewater Assets did not close at the time. Rather, before that sale could close, several

prerequisites had to be completed. Klein Aff. ¶ 10. These included obtaining appropriate approvals from the Commission, obtaining and providing certain easements, executing certain related transaction documents, and obtaining financing. *Id.* Additionally, in the purchase documents, Currituck agreed to provide certain plans, designs, and improvements relating to the Carolina Village MHP Water and Wastewater Systems, which took time to develop and which had to be altered in February of 2022 in conjunction with the sale of the Carolina Village MHP to a new owner that had different requirements for the systems. *Id.*

Currituck's intent from the outset of the transaction was to refrain from taking ownership of the Carolina Village MHP Water and Wastewater Systems until it had authority, from the Commission, to charge the residents of the Carolina Village MHP for the provision of water and wastewater services. *Id.* ¶ 11. Accordingly, following the execution of the Asset Purchase Agreement on October 21, 2019, Currituck worked diligently to complete all of the requirements necessary for it to seek such approval. *Id.*

This included seeking and obtaining financing to purchase and operate the Carolina Village MHP Water and Wastewater Assets. *Id.* ¶ 13. Currituck's corporate restructuring in December of 2021, as set forth in the Contribution Agreement, reflected a significant step in that process, as Clear Current brought additional assets and opportunities to Currituck (through CWSH). *Id.* This included the opportunity to obtain financing for the purchase of the Water and Wastewater Assets via a United States Department of Agriculture ("USDA") Guaranteed Loan through its Business and Industry Program with Stone Bank as the lender (the "Stone Bank Loan"). *Id.* As outlined in more detail in the August 15, 2023 letter filed by Edward Finley in Docket Nos. W-1130, Sub 11 and W-1333, Sub 0, the negotiations concerning the Stone Bank Loan were extensive and complicated, involving multiple parties (as that loan was intended to apply not only to the Water

and Wastewater Assets at Carolina Village MHP but also to the purchase and upgrade of facilities at Eagle Creek), substantial efforts to meet USDA lending requirements, and significant efforts to prepare and provide materials relating to the future repair and operation of the systems whose purchase the Stone Bank Loan was to finance. *Id.* ¶ 14. Because the Stone Bank Loan was the first water and wastewater project Stone Bank had ever considered financing, the process was further drawn out. *Id.* Significantly, Stone Bank Required Currituck to close on the purchase of the Water and Wastewater Assets for their intended use as collateral prior to closing the Stone Bank Loan. *Id.* ¶ 15. Currituck accordingly closed the sale transaction, and officially took ownership of the Water and Wastewater Assets, on May 15, 2023 (as reflected in the real property records filed with the Currituck County Register of Deeds). *Id.*

Prior to May 15, 2023, Currituck did not own the Water and Wastewater Assets. Myers Aff. ¶ 34. However, following entry into the Asset Purchase Agreement, certain documents were created and exchanged between Currituck, EFNC, and CV-WWT as part of their efforts to move toward an eventual closing. *Id.* For example, on February 17, 2022, EFNC and CV-WWT executed Bills of Sale conveying the Water and Wastewater Assets to Currituck.³ *Id.* These documents were prepared and exchanged following entry into the Restated Asset Purchase Agreement as evidence of good faith and continued dealings between the parties. *Id.* At that time, and in part in

³ In the Motion to Show Cause, the Public Staff highlights a purported discrepancy between these February 17, 2022, Bills of Sale and Bills of Sale provided by Currituck in response to Data Request No. 7 on March 25, 2024. In the Data Request response, Currituck indicated that there were not Bills of Sale created previously, and accordingly submitted Bills of Sale dated March 25, 2024 after the fact to clear up the paperwork. The Public Staff apparently already had copies of the February 17, 2022 Bills of Sale at the time it served Data Request No. 7, which is puzzling given that it requested them again. Nonetheless, the discrepancy between the two sets of Bills of Sale is both immaterial and easily explained. After it received Data Request No.7, Currituck searched its records but was unable to locate the February 17, 2022, Bills of Sale. As a result, it reasonably believed that none had been prepared and thus sought to clear up the issue by creating the March 25, 2024, Bills of Sale. It is now clear that this effort was not necessary, as the Public Staff had the February 17, 2022, Bills of Sale prior to serving the Data Request. Regardless of their date, the fact remains that the Bills of Sale did not “close” the sale of the Water and Wastewater Assets, rendering the date of their execution irrelevant to any issue presented by the Motion to Show Cause.

exchange for the Bills of Sale, Currituck also distributed the purchase price of the Water and Wastewater Assets to EFNC and CV-WWT. *Id.*

Ultimately, Currituck was not able to proceed with the Stone Bank Loan. Klein Aff. ¶ 16. The terms of the Stone Bank Loan were unfavorable and unacceptable both to Currituck and also to the Public Staff (which was apprised about the negotiations). *Id.* The Public Staff specifically raised the concern that the interest rate for the proposed loan - which was set at 10.25% - was too high to be appropriately recovered through water and wastewater rates. *Id.* Immediately after the Stone Bank Loan fell through, Currituck sought financing from alternative sources. *Id.* ¶ 17. Eventually it was successful in obtaining financing from BCP. As noted above, BCP provided a \$6 Million equity investment, portions of which Currituck used to purchase the assets comprising the Eagle Creek wastewater treatment system and to implement immediate and necessary improvements associated with both the Eagle Creek and Carolina Village MHP Water and Wastewater Systems. *Id.*

d. The Management and Operation of the Carolina Village MHP Water and Wastewater Systems.

Historically, the Carolina Village MHP Water and Wastewater Systems were owned and operated by CV-WWT. CV-WWT was not, and is not, owned by, controlled by, and/or affiliated with Currituck, CWSH, Clear Current, Longleaf, or Envirolink, Inc. (“Envirolink”). Myers Aff. ¶ 29. It shares no common owners, officers, or board members with any of these entities. *Id.* While it operated, CV-WWT did not share any corporate records or bank accounts with any of these entities either. *Id.*

In January of 2016, Envirolink entered into a Management Agreement with CV-WWT pursuant to which Envirolink took over the operations and maintenance of the Carolina Village MHP Water and Wastewater Systems. *Id.* ¶ 13. This occurred following an inquiry by the North

Carolina Department of Environmental Quality (“DEQ”), which had concerns about the lack of a certified operator for the Carolina Village MHP Water and Wastewater Systems. *Id.* ¶ 14. In October of 2019, Envirolink and CV-WWT executed a new Management Agreement for the Carolina Village MHP Water and Wastewater Systems which permitted Envirolink to continue managing the systems until closing on the Asset Purchase Agreement on behalf of CV-WWT. *Id.* ¶ 15.

On December 20, 2021, Currituck also entered into a general services agreement with Envirolink (the “Service Agreement”). *Id.* ¶ 16. This Service Agreement applied to the Eagle Creek and Carolina Village MHP Water and Wastewater Systems, and other future acquisitions (to take effect upon closing thereon). *Id.* Pursuant to the Service Agreement and subject to the obligations set forth therein, the parties agreed that Envirolink would continue to manage and operate the Carolina Village MHP Water and Wastewater Systems on behalf of CV-WWT, while Currituck worked to close the sale of the Water and Wastewater Assets. *Id.* ¶ 17.

Envirolink has never been owned by, controlled by, and/or affiliated with Currituck, CWSH, or Clear Current. *Id.* ¶ 18. Envirolink is wholly owned by Envirolink Holdings, Inc. which is wholly owned by Michael Myers. *Id.* ¶ 19. Envirolink shares no common owners, officers, or board members with Currituck, CWSH, or Clear Current, aside from Michael Myers, who is also a member of the Board of Managers for CWSH (but has no role with Clear Current). *Id.* ¶ 20. Envirolink maintains separate bank accounts, prepares separate financial documents and statements, maintains separate corporate records, and operates its business separately from Currituck, CWSH, and Clear Current. *Id.* ¶ 21.

e. Compensation for Water and Wastewater Utility Services at the Carolina Village MHP.

Currituck has never received compensation, of any kind, relating to the provision of water and wastewater utility services to the Carolina Village MHP. *Id.* ¶¶ 26, 33.

Following its entry into the Management Agreement with CV-WWT in January of 2016, Envirolink invoiced Carolina Village NC, LLC – which owned the Carolina Village MHP until February of 2022 – for its services relating to the operation and maintenance of the Carolina Village MHP Water and Wastewater Systems. *Id.* ¶ 22. Envirolink continued invoicing Carolina Village MHP, LP – which took over ownership of the Carolina Village MHP in February of 2022 – for those same services until May 15, 2023. *Id.* In May of 2023, Envirolink stopped charging Carolina Village MHP, LP for services because Currituck had, as of May 15, 2023, closed on the sale of the Water and Wastewater Assets.⁴ *Id.* ¶ 23.

Though Envirolink charged Carolina Village NC, LLC, and later Carolina Village MHP, LP, for services until May 15, 2023, the last time it received a payment from the owners of the Carolina Village MHP for such services was in 2021.⁵ *Id.* ¶ 26.

Importantly, Envirolink never issued any invoices for services directly to any of the residential end-users of the Carolina Village MHP Water and Wastewater Systems either before or after the sale of the Water and Wastewater Assets. *Id.* ¶ 27. Instead, through May of 2023, it only charged the Carolina Village MHP owners for services. *Id.* The owners of the Carolina Village MHP were not the users of the services provided by Envirolink. It is Currituck's understanding that, at least prior to May 15, 2023, the owners of the Carolina Village MHP sought

⁴ Envirolink inadvertently continued sending invoices to Carolina Village MHP, LP through the end of 2023 for services rendered. *See* Motion to Show Cause, Ex. H. However, upon realizing the mistake, Envirolink credited Carolina Village MHP, LP for all amounts invoiced after May 15, 2023, removing such charges from its outstanding accounts receivable balance, and halted all future invoices. Myers Aff. ¶ 24.

⁵ Envirolink subsequently wrote off all unpaid invoices issued prior to January 2023 as bad debt. Myers Aff. ¶ 25.

to recover the amounts charged to them by Envirolink for its operation of the Carolina Village MHP Water and Wastewater Systems through the rent they charged to residents at the Carolina Village MHP. Currituck had no role in that process. *Id.* ¶¶ 27-28 Similarly, though Envirolink was aware of and involved with the billing practices of the owners of the Carolina Village MHP by virtue of its role as an operator, it never issued any bills, invoices, notices, or communications to residents of the Carolina Village MHP for its own benefit or the benefit of Currituck. *Id.*

In the Motion to Show Cause, the Public Staff highlights a complaint received from a resident at the Carolina Village MHP relating to a direct bill received for water and wastewater service in March of 2022 (prior to the Currituck's ownership of the Water and Wastewater Assets). Motion to Show Cause, Ex. A. In connection with that bill, the resident also provided a copy of communications from Nelson Communities which described CV-WWT as a division of Envirolink and included information about Envirolink's business. To be clear, neither the bill, nor the notice provision, was authorized to be prepared or sent by Envirolink or Currituck. *Id.* ¶¶ 28, 32. Rather, Nelson Communities directed that the notice and invoices be issued to the residents on behalf of the owners of the Carolina Village MHP. *Id.* CV-WWT is not and never has been a division of Envirolink. *Id.* ¶ 30. Further, Currituck did not acquire the Water and Wastewater Assets in February of 2022 as stated in the notice. *Id.* ¶ 34. To be clear, Currituck did not acquire such assets until May 15, 2023. *Id.* ¶ 23. No portion of any payments that were made by the owners of the Carolina Village MHP in 2021 or prior were ever remitted to Currituck, and no payments have been made to any entities since 2021. *Id.* ¶¶ 26, 28, 33.

Instead, as reflected in communications submitted by CV-WWT to the Public Staff in April of 2022, in February of 2022, CV-WWT and Nelson Communities decided to segregate rent into rent for water and wastewater service and rent for other service in anticipation of the sale of the

Carolina Village MHP Water and Wastewater Systems to Currituck. *See* Motion to Show Cause, Ex. A.⁶ Once objections to this change were brought to the attention of CV-WWT and Nelson Communities by the Public Staff, CV-WWT and Nelson Communities reversed course, directing Carolina Village MHP customers not to pay the new invoices (and issued refunds to all that had already paid). CV-WWT and Nelson Communities elected instead to return to their prior billing practices which did not segregate rent for water and wastewater and rent for other services. At no point in this process, or ever in its involvement in operating and maintaining the Carolina Village MHP Water and Wastewater Systems, did Envirolink directly bill any end-user at Carolina Village MHP for any services it had provided. Myers Aff. ¶¶ 27-28.

f. The Condition of the Carolina Village MHP Water and Wastewater Systems.

Prior to closing the sale of the Water and Wastewater Assets on May 15, 2023, Currituck was not the owner, operator, or permittee of the Carolina Village MPH Water and Wastewater Systems. Klein Aff. ¶ 12. As a result, Currituck was not responsible for any repairs, capital investments, or compliance with DEQ regulations or consent orders, or any other obligations, orders, or regulations applicable to the Carolina Village MHP Water and Wastewater Systems. *Id.*

Nevertheless, Currituck was aware that significant capital improvements to the Carolina Village MHP Water and Wastewater Systems would be needed. *Id.* In anticipation of closing, Currituck pursued the Stone Bank Loan to, among other purposes, fund the improvements it would undertake after closing. *Id.* ¶ 13. In pursuit of the Stone Bank Loan, Currituck closed on the purchase of the Carolina Village MHP Water and Wastewater Systems to serve as collateral. Klein Aff. ¶ 25. Because of the delays and exorbitant interest rate, discussed above, the Stone Bank Loan

⁶ Notably, the responses provided to the Public Staff's inquiries came from Libby Jenkins. She was appointed to manage CV-WWT to help it manage the transition to Currituck. Prior to that appointment, she also worked as an accounting clerk for Envirolink. Libby Jenkins never had any control over the operations of Envirolink. Myers Aff. ¶ 31.

did not close, and Currituck was unable to finance the repairs without a different source of funding. *Id.* ¶ 15; Myers Aff. ¶ 35.

When BCP approved \$6 Million for the purchase of the Eagle Creek assets and for needed capital improvements at both Eagle Creek and the Carolina Village MHP, Currituck was able to proceed with significant repairs and improvements. Myers Aff. ¶ 36. This included authorizing Envirolink to make immediate repairs to the water and wastewater system and engaging a contractor, ELJ, Inc. (“ELJ”), to assist with longer-term upgrades and improvements. *Id.* ¶ 37. ELJ has since engaged engineers and hydrogeologists to aid in the design, permitting, and implementation of the capital improvements at the Carolina Village MHP Water and Wastewater Systems. *Id.*

With respect to the Carolina Village MHP wastewater treatment plant, Envirolink contributed to Currituck a wastewater treatment facility that will be retrofitted into the existing wastewater treatment facility capable of meeting the effluent limits required by the anticipated subsurface drip irrigation permit. *Id.* ¶ 38. Additionally, Envirolink, on behalf of Currituck

- purchased and installed two new blowers,
- repaired one of the existing blowers and has it in inventory for a spare,
- repaired the filters,
- repaired the skimmers on the clarifier,
- had Envirolink stage one of its operable generators at the wastewater treatment facility,
- is renovating the four lift stations, including installing new pumps, control boxes, new piping, new handrails, new backerboard and new telemetry,
- cleared the pond,
- trimmed bushes,

- repaired certain piping,
- had the piping painted based on its purpose in the wastewater treatment process, and
- purchased a new storage building for parts and supplies.

Id. ¶ 39. Additionally, through ELJ, Currituck has engaged McConnell & Associates and Andrews & Associates to design the wastewater treatment facility and permitted means of disposal. *Id.* ¶ 40.

In addition to these immediate improvements, Currituck, via Envirolink, is preparing to upgrade the Carolina Village MHP wastewater treatment plant to ensure compliance with DEQ regulations. *Id.* ¶ 41. Currituck has also taken steps to address disposal issues that have allegedly impacted the Carolina Village MHP wastewater treatment for some time. *Id.* Specifically, Andrews & Associates and McConnell and Associates, via ELJ, are preparing a plan for a subsurface drip system. *Id.* The original schedule was for those repairs to be completed by mid-September 2024 and the system be online by the end of September 2024. *Id.* However, this schedule is in the process of being revised based on information obtained during an April 24, 2024 tour of the Carolina Village Water and Waste Water System initiated by Currituck and Envirolink that included representatives from DEQ and the Public Staff. *Id.* This tour was arranged by Currituck to review improvements completed since the \$6 million commitment by BCP and to discuss future improvement plans. *Id.*

With respect to the Carolina Village MHP well system, immediate repairs that have been completed include

- installing new chemical pumps,
- replumbing to remove chlorine storage from the electrical control room,
- repairing booster pumps,

- painting the well houses, and
- ordering a new air-compressor.

Id. ¶ 42.

MacConnell & Associates, through ELJ, is also assisting with the redesign and permitting of the water system. *Id.* ¶ 43. Additional planned improvements include replacement of the booster pumps, fire hydrants, and ground storage tank, which is expected to be complete in September, 2024. *Id.* Finally, with respect to the Carolina Village MHP wastewater treatment plant, there is an existing pond that needs to be abandoned. Again, ELJ engaged MacConnell & Associates to assist in this process, and MacConnell & Associates expects this work to be completed by mid-September, 2024. *Id.* ¶ 44.

Currituck has followed through on its commitments at Carolina Village MHP Water and Wastewater Systems. *Id.* ¶ 45. These completed repairs and improvements, combined with the designs and construction of more substantial capital improvements satisfy and resolve each of the concerns raised by the Public Staff in the Motion to Show Cause, eliminating any concern that the Carolina Village MHP Water and Wastewater Systems is in an emergency state in need of an alternative operator.

III. THE MOTION TO SHOW CAUSE SHOULD BE DENIED AS A MATTER OF LAW.

The Commission lacks jurisdiction to consider the requests made by the Public Staff in the Motion to Show Cause because Currituck is not, and has not acted as, a public utility with respect to the operation of the Carolina Village MHP Water and Wastewater Systems. It never charged the using and consuming public for any utility service provided at the Carolina Village MHP, nor has it received any money in connection with doing so. Currituck is wholly separate and distinct from Envirolink, the company with which it contracted to maintain and operate the Carolina

Village MHP Water and Wastewater Systems since Currituck's closing on those assets. The mere fact that Envirolink in the past was paid by the owners of the Carolina Village MHP for services rendered is not conduct attributable to Currituck through any legal doctrine.

a. The Motion to Show Cause Is an Inappropriate and Defective Legal Mechanism.

As an initial matter, the Public Staff offers no authority setting forth the standard the Commission should utilize when evaluating the requests set forth in the Motion to Show Cause to render legal determinations, impose fines, and appoint an emergency operator. Neither Commission Rules R1-7 nor R1-9 expressly authorize the filing of a motion to show cause nor explain the procedures or standards to be followed when evaluating such a request. Though N.C.G.S. § 62-116(b) provides the Commission with the authority to grant emergency operating authority to an alternative operator in the event of an emergency, that authority is intended to be temporary and may only be issued after appropriate notice and a hearing consistent with the requirements of N.C. Gen. Stat. § 1A-1, R. 65 (concerning temporary restraining orders and injunctive relief). Moreover, those provisions provide no grounds enabling a motion to show cause for the purpose of imposing sanctions, or otherwise set forth the burden that must be met to conclude that Currituck's conduct rises to the level sufficient to warrant the issuance of fines.

This matters because a typical motion to show cause seeks to hold a party in contempt of an order issued by a court. *See, e.g., Adams Creek Assocs. v. Davis*, 746 S.E.2d 1, 10 (N.C. Ct. App. 2013). A finding of contempt normally is only appropriate where a party has *willfully* violated that prior order. *Id.* (quotation omitted) (explaining that willfulness requires a showing that the party had an ability to comply with the court order and that it deliberately and intentionally failed to do so) (emphasis added). Here, the Public Staff identifies no court or Commission order that Currituck has willfully violated. Rather, it complains about certain actions taken by Currituck and

contends that those actions provide grounds for the Commission to impose fines and penalties and to temporarily appoint another entity to operate the Carolina Village MHP Water and Wastewater System. Because the Motion to Show Cause fails to identify any Commission order that Currituck has willfully disobeyed, there simply is no basis to conclude that Currituck has acted in contempt of an obligation imposed upon it. Accordingly, the Motion to Show Cause should be denied on its face as procedurally improper.

Instead, the Commission should proceed with the orderly review of the CPCN Application, which begins in earnest with the submission of Currituck's pre-filed testimony and will include consideration of the various issues addressed in the Motion to Show Cause, should the Public Staff elect to raise them, at the appropriate time. Simply, there is no reason to allow the Public Staff to hijack these proceedings, forcing Currituck to put the cart before the horse in laying out the case for the Commission to grant the CPCN Application without the benefit of the normal case schedule, testimony, and related submissions that typically guide the Commission's analysis.

b. The Commission Lacks Jurisdiction to Consider the Motion to Show Cause.

Regardless of how the Motion to Show Cause is construed, however, the Commission does not have the jurisdiction to rule on it. "The Commission is vested with the authority to 'regulate public utilities generally, their rates, services and operations...'" *C&P Enters. v. State ex rel. N.C. Utils. Comm'n*, 126 N.C. App. 495, 499 (1997) (quoting N.C.G.S. § 62-2). However, it lacks the authority to regulate business activities that are not those of a public utility, as defined in N.C.G.S. § 62-3. *State ex rel. Utils. Com. v. Carolina Tel. & Tel. Co.*, 148 S.E.2d 100, 108-09 (N.C. 1966). Specifically, N.C.G.S. § 62-3(23)a.2 provides the relevant definition of a public utility in this context, explaining that it is "a person...now or hereafter owning or operating in this state equipment or facilities for...[d]iverting, developing, pumping, impounding, distributing or

furnishing water to or for the public for compensation, or operating a public sewerage system for compensation.”

Currituck has not engaged in any actions concerning the Carolina Village MHP Water and Wastewater Systems which meet this definition for at least three reasons.

First, at no time has Currituck furnished any water or wastewater utility service to the using or consuming public – that is, residents at the Carolina Village MHP – for compensation. Currituck had no involvement whatsoever with Carolina Village MHP prior to its entry into the Asset Purchase Agreement on October 21, 2019. Pursuant to that agreement, Currituck agreed that it would purchase the Water and Wastewater Assets, which it eventually did on May 15, 2023. At no point before or after it closed on the purchase of the Water and Wastewater Assets did Currituck issue or authorize any bill to any of the residents at Carolina Village MHP for any service relating to the Carolina Village MHP Water and Wastewater Systems. Nor did it otherwise seek any compensation from those residents relating to the provision of any services, either directly or indirectly.⁷

The same holds true for Envirolink. From January of 2016 through May of 2023, Envirolink only ever charged the entities that owned Carolina Village MHP for the services it provided in operating and maintaining the Carolina Village MHP Water and Wastewater Systems for contract operator services and other expenses. The owners of the mobile home park have never been users or consumers of the services provided by Envirolink. Instead, as outlined above, those services were used and consumed solely by the residents at Carolina Village MHP, who were not

⁷ Owning the Water and Wastewater Assets, without more, is insufficient to transform Currituck into a public utility subject to the Commission’s jurisdiction. *See, e.g., State ex rel. N.C. Utils. Com. v. New Hope Rd. Water Co.*, 102 S.E.2d 377, 379 (N.C. 1958) (holding that merely owning water assets but not selling water to anyone for compensation does not make one a public utility).

billed by Envirolink. Relatedly, while the owners of Carolina Village MHP received payments from the residents in the form of rent (which was presumably set at a rate sufficient for the park owners to cover the costs associated with the provision of water and wastewater service), Envirolink never received any such payments either directly from residents or indirectly from the owners of the Carolina Village MHP. The arrangement between the Carolina Village MHP owners and residents concerning the payment for water and wastewater service is typical throughout the state of North Carolina. To Currituck's knowledge, this type of arrangement has never been found to transform a service provider such as Envirolink into a public utility subject to Commission regulation. *See, e.g., Onnipauper LLC v. Dunston*, 892 S.E.2d 487, 494 (N.C. Ct. App. 2023) (citing N.C.G.S. § 62-3(23)(d)(4)) (explaining that the provision of water and wastewater service in the context of a landlord-tenant relationship is exempt from public utility regulation)

Second, Currituck has never received any compensation from residents at the Carolina Village MHP, from the owners of the Carolina Village MHP, or through Envirolink, for any services provided by Envirolink relating to the Carolina Village MHP Water and Wastewater Systems. To the contrary, Currituck *has paid Envirolink* for services performed at the Carolina Village MHP Water and Wastewater Systems since acquisition of those assets pursuant to the terms of Currituck's Service Agreement with Envirolink.

Third, because Currituck and Envirolink are separate entities, neither Envirolink's operation and/or maintenance of the Carolina Village MHP Water and Wastewater Systems nor its past receipt of compensation from the Carolina Village MHP owners for such services are attributable to Currituck or somehow transform Currituck into a public utility. As discussed in detail above, Currituck and Envirolink have distinct owners, officers, records, bank accounts, and operations. Neither enjoys the right to control the other's business. The only points of commonality

between the two entities are (1) that Michael Myers, through his ownership of Longleaf, has ownership and a role in managing both companies, and (2) that Currituck contracts with Envirolink to manage the Carolina Village MHP Water and Wastewater Systems. Neither of those facts is sufficient to make Currituck and Envirolink one and the same for purposes of the legal analysis that underpins the Motion to Show Cause.

The Commission may only disregard the corporate form and thus the distinctions between Currituck and Envirolink if either or both entities are so operated that they are mere instrumentalities or alter egos of the other. *Estate of Hurst v. Moorehead I, LLC*, 748 S.E.2d 568, 573-74 (N.C. Ct. App. 2013) (citations omitted). To prove that Currituck and Envirolink are mere instrumentalities of one another (or of their respective owners), the Public Staff would have to demonstrate not merely control by one over the other, but “complete domination, not only of finances, but of policy and business practice...so that the corporate entity...had at the time no separate mind, will or existence of its own...” *Id.* at 577-78 (quoting *Glenn v. Wagner*, 329 S.E.2d 326, 330 (N.C. 1985)). Other factors relevant to this analysis include evidence of inadequate capitalization or insolvency, a lack of compliance with corporate formalities, excessive fragmentation of a single enterprise into separate corporations, the non-functioning of officers and directors, or the absence of corporate records. *Id.* (citing *Glenn*, 329 S.E.2d at 330-31).

None of these factors have been alleged or exist, and as such the Public Staff makes no attempt to argue that they are within the Motion to Show Cause. Currituck and Envirolink do not have control over one another. Though Michael Myers owns Envirolink, Longleaf (which is owned by the Myers Trust) holds only a minority membership interest in CWSH, and only has representatives serving in two of the five Board of Managers positions which operate and direct both CWSH and Currituck. Currituck and Envirolink also have different officers. Neither entity is

undercapitalized (*see, e.g.*, the BHP \$6 Million equity investment), each operates through separate bank accounts, and each follows standard corporate formalities such as maintaining corporate records and adhering to the terms of their respective operating agreements. Neither entity dominates the other nor has the ability to dictate the affairs of the other through direction from shareholders or other corporate control. This is not a situation in which either company is a mere instrumentality of the other such that they can be treated as one and the same with respect to their actions. Rather, the limited commonality in ownership and control between Currituck and Envirolink (via Longleaf and Michael Myers involvement) is insufficient to justify treating the two companies as alter egos. *See, e.g., Parker Excavating, Inc. v. JOMCO Contracting, LLC*, No. 1:19-cv-00062-MR, 2020 U.S. Dist. LEXIS 146745, at *4 (W.D.N.C. Aug. 14, 2020) (explaining that “the mere allegation that the corporate entities had some overlapping owners or agents is insufficient to give rise to alter ego liability”); *id.* (quoting *U.S. Fire Ins. Co. v. Allied Towing Corp.*, 966 F.2d 820, 828 (4th Cir. 1992) (“The corporate veil, however, may not be pierced solely because of an overlap (or even identity) of corporate officers and directors.”)).

Because Currituck and Envirolink are not alter egos of one another (or subject to sole control by a dominant owner), their corporate formalities remain intact, and the two companies must be treated as separate and distinct from one another. This in turn means that Envirolink’s actions as contract operator of the Carolina Village MHP Water and Wastewater System are not attributable to Currituck for purposes of a public utility analysis.

There are no grounds supporting the conclusion that the Commission has jurisdiction to consider the Motion to Show Cause or grant the relief requested therein. Currituck has never acted as a public utility with respect to the provision of water and wastewater service to Carolina Village MHP.

c. The Commission Should Not Use this Proceeding to Decide Issues Concerning Alleged Environmental Permit Violations.

The Public Staff's request for the appointment an emergency operator is premised upon alleged "compliance issues identified by [DEQ] and observed by the Public Staff Inspection team..." Motion to Show Cause ¶ 40. Importantly, most of the compliance issues described in the Motion to Show Cause concern past conduct dating as far back as 2016 – over seven years *before* Currituck took ownership of the Water and Wastewater Assets. *See, e.g.* Motion to Show Cause ¶¶ 18-23. Certainly, supposed violations from years past cannot constitute an "emergency" warranting the appointment of a new operator now, as the purpose of N.G.C.S. § 62-116(b) is to provide temporary relief to meet an ongoing problem.

In a tacit acknowledgement that this history has no bearing on the requested "emergency" relief, the Public Staff focuses on notices of violation ("NOVs") recently issued on March 1, 2024 by DEQ. Motion to Show Cause ¶¶ 18-19. As the Commission is well aware, a NOV is not a final determination or adjudication of an environmental permit violation. Rather, it serves as notice of an alleged violation, to which a party may respond and which ultimately must be decided through a final agency action. *See, e.g.*, N.C.G.S. § 143-215.6A (explaining that the amount of any penalty assessed must be determined through the consideration of certain factors set forth in N.C.G.S.143B-282.1(b)); Motion to Show Cause, Ex. I, J (noting only that a civil penalty "may" be assessed following a response from Currituck). In the event that a penalty is assessed, the party assessed the penalty has the right to challenge the assessment through a filing with the DEQ. N.C.G.S. § 143-215.6A(d). That, in turn, triggers quasi-judicial proceedings with the DEQ through which an ultimate determination can be made concerning purported violations and the penalties for such. N.C.G.S. § 143B-282.1.

The process outlined above is ongoing with DEQ concerning the two current NOV's identified in the Motion to Show Cause. There is, accordingly, no reason for the Commission to entertain the Public Staff's request for an emergency operator on the basis of those NOV's, as the issue is already being handled by the agency through which the NOV's were issued – DEQ. It is DEQ, not this Commission, that is vested with the authority to adjudicate the pending NOV's. *See id.* Accordingly, it would be inappropriate, and a violation of the doctrine of primary jurisdiction, to prematurely consider and/or rule upon the NOV's in this proceeding (by appointing an emergency operator or otherwise considering the facts outlined therein “adjudicated”) instead of deferring their resolution to DEQ – the administrative agency with special competency in deciding such issues. *See, .e.g., Glob. Naps N.C., Inc. v. BellSouth Telcomms., Inc.*, 455 F. Supp. 2d 447, 448 (E.D.N.C. 2006) (citation omitted) (explaining that the doctrine of primary jurisdiction requires proceedings to be stayed where they “contain some issue within the special competence of an administrative agency.”)⁸

IV. ANSWER TO SPECIFIC ENUMERATED ALLEGATIONS CONTAINED IN THE MOTION TO SHOW CAUSE

In addition to the foregoing, and given the procedural uncertainty surrounding the Motion to Show Cause in this proceeding, Currituck provides the following specific answers to the allegations in the Motion to Show Cause, which are repeated herein for purposes of completeness and clarity.

BACKGROUND⁹

⁸ Moreover, it would also be an error to grant emergency relief on the basis of allegations which have not yet been substantiated.

⁹ Currituck's Answer restates the headings used in the Public Staff's Motion to Show Cause herein for purposes of clarity. Currituck's restatement of such headings does not reflect its agreement with any of the content contained in those headings, and Currituck specifically objects to and denies all such headings to the extent they attempt to characterize any of the allegations outlined in the Motion to Show Cause. Further, Currituck uses the same abbreviations in this Answer as those used in the preceding sections of this Response and Answer.

1. On August 16, 2023, Currituck filed an Application for a Certificate of Public Convenience and Necessity and for Approval of Rates (Application) to provide water and sewer utility service to the Carolina Village subdivision in Currituck County, North Carolina, in accordance with N.C. Gen. Stat. § 62-110. The Carolina Village subdivision is also known as the Carolina Village Mobile Home Park; it will be referred to as Carolina Village MHP in the remainder of this filing.

ANSWER: Currituck admits the allegations contained in Paragraph 1 of the Motion to Show Cause.

2. The Carolina Village MHP is a community of 149 mobile home sites. The Carolina Village MHP receives water and wastewater service from water and wastewater utility assets located throughout the community. The land on which the mobile home sites and utility assets are located is broken down into multiple parcels. The land on which the mobile home sites are located is currently owned by Carolina Village MHP, LLC, and, upon information and belief, managed by Nelson Communities, which is located in New York. Carolina Village MHP, LLC, purchased the mobile home park from Carolina Village NC, LLC in February 2022.

ANSWER: Currituck denies that the Carolina Village MHP is owned by Carolina Village MHP, LLC. Currituck also denies that the Carolina Village MHP consists of only 145 mobile home sites and that it is divided into multiple parcels. Currituck admits the remaining allegations contained in Paragraph 2 of the Motion to Show Cause.

3. The utility assets and most of the real property on which they are located are either owned or controlled by Currituck.

ANSWER: Currituck admits that it presently owns the Water and Wastewater Assets. Currituck denies the remaining allegations contained in Paragraph 3 of the Motion to Show Cause.

4. On March 22, 2022, the Consumer Services Division of the Public Staff received a complaint from a customer at Carolina Village MHP. The customer complained about poor water quality and sewer backups and raised questions about the way in which she was being

charged for water and sewer service. According to the customer, she received the attached invoice for water and sewer service charging for services provided in March 2022. A direct bill from a different entity for individually itemized water and wastewater service was a departure from past practice whereby residents were not charged for water and wastewater service separately because those services were included in monthly lot rent paid to the mobile home park owner. As discussed below, the customer's description of the change in billing practices is corroborated by the documents she gave the Public Staff to support her claim. The customer complaint was forwarded to the Public Staff Water and Legal Divisions for investigation. Documentation provided by the customer showed that residents of Carolina Village MHP began receiving utility bills for water and wastewater service from CV-WWT, LLC (CV-WWT), in March 2022. Communications from Nelson Communities (the manager of the mobile home park) included the following statement: "CV-WWT LLC, a division of Envirolink, took over operations, maintenance, and management of the Carolina Village MHC, LLC's water and sewer system serving the community in February 2022." The utility bill included references to, and information about, Envirolink, Inc. (Envirolink). Envirolink's name and logo were clearly printed on the top of the invoice and the mailing address for the utility is the same as Envirolink's address.

ANSWER: Paragraph 4 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 4 of the Motion to Show Cause that are inconsistent with those documents. Currituck denies the remaining allegations contained in Paragraph 4 of the Motion to Show Cause.

5. The documents and account of events provided by the customer indicated that CV-WWT and Envirolink were acting as a de facto utility in violation of Chapter 62 of the North Carolina General Statutes and Commission rules, because they did not have Commission granted authority to charge for water and sewer service. Based on information provided by the customer,

the Public Staff sent the attached cease and desist letter to CV-WWT and Envirolink. CV-WWT responded to the Public Staff's letter on April 29, 2022 (April 2022 Response), through Michael Myers, the President of Envirolink and Vice President, Secretary, and Treasurer of Currituck. According to the April 2022 Response, "the water and sewer system has been and continues to be owned by CV-WWT. Recently, the mobile home park was sold to a new owner with a goal to transfer the water and sewer system to a buyer that is a Public Utility." On May 24, 2022, the Public Staff responded to the April 2022 Response and asked additional questions based on the information included therein. CV-WWT responded on June 10, 2022 (June 2022 Response). In the June 2022 Response, CV-WWT stated that "[m]oving forward, Nelson Communities will pay for water/sewer directly until CV-WWT can transfer the water and sewer utility to a public utility." In making this statement, CV-WWT acknowledged that the park owner had been, and would continue, paying for water and sewer service for the park. Both responses were signed by Elizabeth "Libby" Jenkins.¹⁰ The documents received from the customer and correspondence between the Public Staff, CV-WWT, and Envirolink are attached as Exhibit A.

ANSWER: Paragraph 5 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 5 of the Motion to Show Cause that are inconsistent with those documents. Currituck denies the remaining allegations contained in Paragraph 5 of the Motion to Show Cause.

6. In June 2023, Currituck contacted the Public Staff seeking its support for a petition asking that Currituck's ownership and operation of the water and wastewater systems serving Carolina Village MHP be exempt from Commission regulation¹¹. On June 2, 2023, the

¹⁰ The identity of the individual authoring the response is significant because the same individual, Elizabeth Jenkins, executed the 2022 APA and both bills of sale in February 2022. The 2022 APA and bills of sale predated the April 2022 Response by at least 60 days. Additional information about the 2022 APA and bills of sale is provided in Paragraph 14 below.

¹¹ Michael Myers represented Currituck in all meetings with the Public Staff regarding Currituck. The position that he took that a certificate of public convenience and necessity was not required for operation of the Carolina Village water and wastewater system is not consistent with his submission of an application for a certificate of public convenience

Public Staff sent Currituck a list of questions related to Currituck's position that it should be exempt from Commission regulation. The Public Staff's questions and Currituck's responses to those questions are attached as Exhibit B.

ANSWER: Paragraph 6 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 6 of the Motion to Show Cause that are inconsistent with those documents. Currituck admits the remaining allegations contained in Paragraph 6 of the Motion to Show Cause.

7. On June 7, 2023, Currituck sent the Public Staff a draft of the exemption petition it intended to file for review. On June 15, 2023, the Public Staff emailed Currituck a copy of Exhibit A and asked Currituck to reconcile differences between (a) the information Envirolink and CV-WWT provided in response to the cease-and-desist letter from the Public Staff and (b) information in the draft exemption petition Currituck sent the Public Staff. The draft of the exemption petition Currituck provided is attached as Exhibit C. The Public Staff did not receive a written response to its inquiry. The primary concern related to conflicting assertions about the owner of the water and wastewater system at the time of the complaint. The response to the complaint stated that CV-WWT owned the utility in April 2022, but, according to the draft petition, purchase agreement, and bills of sale received from the North Carolina Department of Environmental Quality (NC DEQ) discussed below, Currituck acquired the water and wastewater system in February 2022.

ANSWER: Paragraph 7 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 7 of the Motion to Show Cause that are inconsistent with those documents. Currituck denies that it acquired the Water and Wastewater Assets in February of 2022. Currituck admits the remaining allegations contained in Paragraph 7 of the Motion to Show Cause.

and necessity for the systems on behalf of Old North State Water Company, LLC in Docket No. W-1300, Sub 29 on January 19, 2017.

8. The Public Staff and Currituck met to discuss Currituck's exemption petition on July 13, 2023. The discrepancy regarding when Currituck acquired the water and wastewater system was discussed during that meeting. Michael Myers participated in the call on behalf of Currituck. He was unable to explain why information he provided the Public Staff during its review of a customer complaint was materially inconsistent with the draft petition or the fully executed Amended and Restated Asset Purchase and Utility Construction and Maintenance Agreement, dated February 7, 2022 (2022 APA), that was provided in support of the draft petition. The 2022 APA was included as Exhibit 4 to Currituck's Application.

ANSWER: Currituck admits that the July 13, 2023 meeting occurred and that the document referenced in Paragraph 7 was included as Exhibit 4 to Currituck's Application. Currituck denies the remaining allegations contained in Paragraph 8 of the Motion to Show Cause.

9. On August 9, 2023, the Public Staff contacted Currituck with additional questions about the acquisition of the water and wastewater systems serving Carolina Village MHP. Currituck provided answers to those questions on August 14, 2023. Questions 3 and 5 asked about the financial arrangement between Currituck, Envirolink, and the owner of the mobile home park. Question 3 asked Currituck to describe the service and billing arrangements between Currituck, Envirolink, the mobile home park owner, the mobile home park manager, and the park residents. Currituck (also referred to as CWS) responded as follows: "Since May 2023, Envirolink has been operating the facilities without compensation from CWS, MHP, MHP management or residents. Prior to May 2023, Envirolink received compensation from the MHP owner." Question 5 asked Currituck to "confirm that currently neither CWS nor Envirolink is billing the MHP, MHP management or residents." Currituck's responded as follows: "This is correct." The entire list of the Public Staff's questions and Currituck's responses to those questions are attached as CONFIDENTIAL Exhibit D. As discussed below, Currituck's responses to Questions 3 and 5 are not consistent with documents Currituck provided in response

to discovery requests from the Public Staff.

ANSWER: Paragraph 9 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 9 of the Motion to Show Cause that are inconsistent with those documents. Currituck denies the remaining allegations contained in Paragraph 9 of the Motion to Show Cause.

10. On August 15, 2023, 33 days after the meeting in which the Public Staff questioned Currituck about the date on which it took ownership of water and wastewater systems serving Carolina Village MHP, the 2022 APA was amended and the closing date was modified (2023 Amendment). The closing date specified in Paragraph 8.1 of the 2022 APA was March 9, 2022. The 2023 Amendment amended Paragraph 8.1 of the 2022 APA and retroactively extended the closing date to somewhere between April 2023 and September 2023.

ANSWER: Paragraph 10 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 10 of the Motion to Show Cause that are inconsistent with those documents.

11. As noted above, Currituck's Application seeking Commission authorization to operate water and wastewater utility systems was filed in this docket the following day, August 16, 2023.

ANSWER: Currituck admits the allegations contained in Paragraph 11 of the Motion to Show Cause.

PUBLIC UTILITY STATUS

12. N.C.G.S. § 62-2(23)a.2. defines a public utility as "a person . . . now or hereafter owning or operating in this State equipment or facilities for . . . [d]iverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation."

ANSWER: Paragraph 12 of the Motion to Show Cause contains legal conclusions to which no response is required.

13. As discussed below, Currituck is a public utility because it is using equipment and facilities it owns and operates to provide water and sewer utility services to the residents of the Carolina Village MHP for compensation.

ANSWER: Currituck denies the allegations contained in Paragraph 13 of the Motion to Show Cause.

14. Ownership. Currituck, under signature of Michael Myers, entered into an Asset Purchase and Utility Construction and Maintenance Agreement with Equity First NC, LLC, and CV-WWT, LLC (2019 APA), to purchase the Carolina Village water and wastewater utility systems (Carolina Village Utility System) on October 21, 2019. The 2019 APA has been amended in August 2020, on February 7, 2022 (2022 APA), and August 15, 2023 (2023 Amendment), all three under signature of Michael Myers for Currituck. The four contracts related to the purchase are attached as Exhibit E. The precise date on which Currituck took ownership of the Carolina Village Utility System is not immediately apparent because of (1) the way in which the APA and amendments to the same are written; (2) the dates on the bills of sale for the wastewater utility asset and real property on which the Carolina Village Utility System is located; (3) the dates on which real property records reflecting Currituck's ownership and control of the Carolina Village Utility System; and (4) the retroactive modification of the closing date. Bills of sale (included in Currituck's Non-Discharge Permit Ownership/Name Change application to DEQ dated May 1, 2023) executed by CV-WWT and EFNC transferring ownership of the wastewater utility assets and the real property on which the Carolina Village Utility System is located, respectively, transfer ownership to Currituck on February 17, 2022. The bills of sale are attached as Exhibit F.¹² Real property records reflecting Currituck's

¹² The Public Staff obtained the bills of sale from NC DEQ. The Public Staff requested bills of sale from Currituck in discovery, specifically Public Staff Data Request No. 7, but was initially told that bills of sale could not be located. Currituck finally provided three bills of sale via email on March 25, 2024. In that email, Currituck stated

ownership or control over the real property on which the Carolina Village Utility Systems is located were recorded by the Currituck County Register of Deeds on April 26, 2023 (Special Warranty Deed) and May 15, 2023 (Assignment and Assumption of Water and Sewer Utility Easement and Assignment and Assumption of Deed of Well Easement). Based solely upon the dates on which the aforementioned real property records were recorded, Currituck became the sole owner of the Carolina Village Utility System no later than May 15, 2023. The date of that bill of sale suggests that the transaction was consummated (albeit not formally reflected in the real property records of Currituck County) before the closing date set forth in the 2022 APA, which raises questions of why Currituck waited over a year to perfect its interest in the real property related to the Carolina Village Utility System and why the 2023 Amendment retroactively extended the closing date in the 2022 APA. To further complicate the situation and cloud the issue, on March 25, 2024, Currituck sent the Public Staff bills of sale for the water system assets, wastewater system assets, and real property related to the Carolina Village Utility System. According to the bills of sale provided by Currituck, ownership of all assets and the real property was transferred on April 16, 2023. There are also questions regarding why conflicting bills of sale for the same property, executed by the same individual (Elizabeth Jenkins), were provided to two different state agencies.

ANSWER: Paragraph 14 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 14 of the Motion to Show Cause that are inconsistent with those documents. Currituck admits only that it became the owner of the Water and Wastewater Assets on May

that: “the transfer was completed without a BOS, so we executed a post closing BOS (attached).” The bills of sale for the wastewater system and the real property on which the utility assets are located Currituck provided to the Public Staff are not the same as the bills of sale Currituck provided to NC DEQ. The bills of sale provided to NC DEQ were signed on February 17, 2022, but the bills of sale the Public Staff received from Currituck were signed on March 25, 2024 and all three stated that “the Seller and Buyer closed the transaction on April 26, 2023, without Bill of Sale and Seller is executing this Bill of Sale subsequent to the closing.” The bills of sale provided by Currituck are attached as Exhibit Q.

15, 2023. Currituck denies the remaining allegations contained in Paragraph 14 of the Motion to Show Cause.

15. Operation. Currituck operates the Carolina Village Utility System through a contractual arrangement with Envirolink. The Utility Management Service Agreement between Envirolink, under signature of Michael Myers, and Currituck, under signature of Jeffrey Yuknis, is dated December 20, 2021, and attached as Exhibit G.

ANSWER: Paragraph 15 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 15 of the Motion to Show Cause that are inconsistent with those documents. Currituck denies the remaining allegations contained in Paragraph 15 of the Motion to Show Cause.

16. Historic compensation. Currituck is providing water and wastewater utility service to the public for compensation through its relationship with the owner of the mobile home park, Carolina Village MHP, LLC. As discussed above and shown in Exhibit D, Envirolink (acting on Currituck's behalf) received direct compensation from the owner of the mobile home park for services rendered through May 2023.

ANSWER: Paragraph 16 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 16 of the Motion to Show Cause that are inconsistent with those documents. Currituck denies the remaining allegations contained in Paragraph 16 of the Motion to Show Cause.

17. Current compensation. Upon information and belief, Currituck is, and has been, receiving indirect compensation from the owner of the mobile home park since May 2023. Based on invoices received in response to Public Staff discovery requests, some, or all, of the costs of operating and maintaining the Carolina Village Utility System are being charged back to the mobile home park owner through Envirolink. The charges passed through to the mobile home park owner include electricity, chemicals, parts and supplies, and testing. Copies of invoices from Envirolink to Carolina Village MHP, LLC, for the months of July 2022 through December

2023 are attached as Exhibit H. These types of costs are integral expenses for utility operations, which are borne by the utility owner and then generally recovered through rates approved by the Commission. The costs of operating and maintaining the Carolina Village Utility System should be borne by the owner of the system (Currituck) and not the owner of the mobile home park whose residents the system serves (Carolina Village MHP, LLC). By paying those operating costs, Carolina Village MHP, LLC, is indirectly compensating Currituck for the water and wastewater services it is providing. The invoices also include a 15% mark-up that is direct compensation for Envirolink. These invoices show the following:

- a. By assessing and receiving the 15% mark-up, Envirolink is being compensated by the mobile home park owner despite Currituck's representations to the contrary.
- b. Currituck is being compensated by not paying its own operating costs.
- c. The way Envirolink invoiced Carolina Village MHP, LLC, did not change after May 2023, the month after which Currituck alleges Envirolink no longer billed or received compensation from the mobile home park owner.

See Paragraph No. 9 above.

ANSWER: Paragraph 17 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 17 of the Motion to Show Cause that are inconsistent with those documents. Currituck further denies the remaining allegations contained in Paragraph 17 of the Motion to Show Cause.

WASTEWATER SYSTEM PERMIT VIOLATIONS

18. By letter dated March 1, 2024, the North Carolina Department of Environmental Quality, Division of Water Resources (DWR) issued a Notice of Violation & Intent to Access Civil Penalty (NOV) for the Carolina Village Collection System operating under Permit Number WQCSD0176. A copy of the NOV for the Carolina Village Collection System is attached as

Exhibit I. The NOV documents substantial noncompliance with applicable regulatory standards.

ANSWER: Paragraph 18 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 18 of the Motion to Show Cause that are inconsistent with those documents. Currituck denies the remaining allegations contained in Paragraph 18 of the Motion to Show Cause.

19. By letter dated March 1, 2024, DWR issued a Notice of Violation & Intent to Access Civil Penalty (NOV) for the Carolina Village Wastewater Treatment Plant (WWTP) operating under Permit Number WQ0004696. A copy of the NOV for the Carolina Village WWTP is attached as Exhibit J. The NOV documents substantial noncompliance with applicable regulatory standards.

ANSWER: Paragraph 19 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 19 of the Motion to Show Cause that are inconsistent with those documents. Currituck denies the remaining allegations contained in Paragraph 19 of the Motion to Show Cause.

20. There is a history of noncompliance with environmental standards at the Carolina Village Collection System and Carolina Village WWTP (collectively, the Carolina Village Wastewater System). Envirolink began operating both systems on, or about, January 1, 2016, under a Utility Management Service Agreement with CV-WWT dated January 1, 2016 (2016 Management Agreement). The 2016 Management Agreement was superseded by a Utility Service Agreement between Envirolink and EFNC, CV-WWT, and CVNC dated October 21, 2019. Both agreements are attached as Exhibit K.

ANSWER: Paragraph 20 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 20 of the Motion to Show Cause that are inconsistent with those documents. Currituck admits only that in the past, DEQ raised concerns relating the operation of the Carolina Village Water and Wastewater System which ultimately led to Enivrolink's involvement. Currituck denies all remaining allegations contained in Paragraph 20 of the Motion to Show Cause.

21. On June 24, 2016, Carolina Village NC, LLC, at that time the owner of Carolina

Village WWTP (DEQ Permit No. WQ004696), entered into a Special Order by Consent (SOC), EMC SOC S15-003, with the North Carolina Environmental Management Commission, as a result of the permitted wastewater treatment system being in disrepair and not capable of meeting effluent limits required by the permit. The SOC identified specific activities to be undertaken and required due dates. The initial SOC expired on November 1, 2017, but was subsequently extended with the last SOC due to expire on July 1, 2019. On February 11, 2020, DEQ sent a letter to Carolina Village NC, LLC, stating that the continuance of the SOC is “not a viable option and that action shall be taken as needed to address any ongoing compliance and/or permitting matters.” The SOC documents described above are attached as Exhibit L. From January 1, 2020, through March 1, 2024, DEQ has issued 46 NOVs to the Carolina Village WWTP resulting in \$64,166 in fines and penalties. These NOVs have typically included monthly average limit exceedances for biochemical oxygen demand (BOD), nitrogen ammonia total, nitrogen nitrate total, nitrogen total, total suspended solids, and phosphorus total, monthly geometric mean exceedance for coliform, fecal membrane filtration (MF), membrane fecal coliform broth, as well as frequency and monitoring violations. These exceedances represent incomplete or ineffective treatment. The WWTP NOVs and Civil Penalties prior to March 1, 2024, described above, are attached as Exhibit M.

ANSWER: Paragraph 21 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 21 of the Motion to Show Cause that are inconsistent with those documents. Currituck denies all remaining allegations contained in Paragraph 22 of the Motion to Show Cause.

22. The Carolina Village Collection System, DEQ permit No. WQCSD0176, has received three NOVs between January 1, 2020, and March 1, 2024. Two NOVs were issued in 2022, and one NOV was issued in 2024. The 2022 NOVs identified inoperable lift station pumps with bypass pumps installed and a site inspection identifying that all lift stations have a “type of

temporary pump and float system that is not permitted” for the lift stations. These conditions were still present on February 21, 2024. The 2022 Collection System NOV's are attached as Exhibit N.

ANSWER: Paragraph 22 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 22 of the Motion to Show Cause that are inconsistent with those documents. Currituck denies all remaining allegations contained in Paragraph 22 of the Motion to Show Cause.

23. DEQ's Drinking Water Watch website shows that between August 2018 and February 2024, DEQ issued 36 NOV's to the Carolina Village Water System. NOV's were typically issued for failing to monitor coliform and chlorine residual and failing to perform public notice. The Carolina Village Water System also received NOV's for failing to monitor disinfection by products, asbestos, nitrate, lead and copper, and dalapon, as well as failing to submit a consumer confidence report. A summary table of the NOV's described above from DEQ's Drinking Water Watch is provided as Exhibit O.

ANSWER: Paragraph 23 of the Motion to Show Cause contains allegations concerning documents which speak for themselves. Currituck denies all allegations contained in Paragraph 23 of the Motion to Show Cause that are inconsistent with those documents. Currituck denies all remaining allegations contained in Paragraph 23 of the Motion to Show Cause.

SITE VISIT

24. Charles Junis, the Director of the Public Staff Water, Sewer, and Telephone Division, and D. Michael Franklin, Public Utilities Engineer III with the Public Staff Water, Sewer, and Telephone Division, observed the condition of the Carolina Village Utility System during a site visit on February 21, 2024 (Public Staff Inspection Team). The site visit was performed in conjunction with a compliance inspection performed by NC DEQ's Washington Regional Office, Water Resources Water Quality Regional Operations personnel (DEQ Inspection Team, and together with the Public Staff Inspection Team, the Inspection Team).

After the Inspection Team arrived at the Carolina Village WWTP, David May (the DEQ Inspection Team lead inspector) contacted Michael Myers, Andrew White (Envirolink NC Operations Manager Triangle/OBX Operations), and Michelle Pharr (the Backup Operator in Responsible Charge from Albemarle Environmental) to provide notice of the unannounced inspection. After notification, the Backup ORC and their support personnel met the Inspection Team at the Carolina Village WWTP to provide access, operate equipment, and answer questions. During the site inspection, David May maintained continuous telephone contact with Andrew White, Don Feller (Envirolink Quality Manager), and David Pharr (the ORC) and described the Inspection Team's observations and the condition of the Carolina Village WWTP and later, the Carolina Village Water System. The ORC, by phone, provided additional information and addressed questions about areas with which the backup ORC was not familiar.

ANSWER: Currituck admits that a site visit took place on February 21, 2024. Currituck is presently without sufficient information to admit or deny the specific details of what occurred during the visit, or who was present, because it was not provided with sufficient notice of the visit in advance to make arrangements for any representatives of Currituck or Envirolink to attend. As a result, Currituck denies the remaining allegations contained in Paragraph 24 of the Motion to Show Cause.

CURRENT STATUS OF THE WASTEWATER SYSTEM

25. The site inspection revealed (1) that the Carolina Village WWTP is not properly maintained, and (2) the facility is in a significantly neglected condition. Currently there is no functional means of wastewater disposal at the facility. An unpermitted active discharge had been placed into use, pumping improperly treated wastewater out of a pipe exiting through the fence at the back of the WWTP, with wastewater ponding behind the WWTP and flowing into and polluting surface waters. See attached Exhibit P, Photos 1 and 2.

ANSWER: Currituck denies the allegations contained in Paragraph 25 of the Motion to Show Cause.

26. Neither blower was in operation. One blower motor was not properly mounted,

missing a belt, not functional, and appeared to have been out of service for an extended period. See Exhibit P, Photo 3. The ORC was asked about the condition of the blowers and stated that the functional blower was on a timer where it would operate for 40 minutes and then would be shut off for 20 minutes. However, during the several hours that the Inspection Team was on site waiting for the backup ORC to arrive, the blower never operated. The backup ORC was requested to start the functional blower, which a staff member performed by bypassing the timer and activating a contact in the control panel with a screwdriver. See attached Exhibit P, Photo 4. On starting, the blower made a continuous, loud shrieking noise. The basins did begin to churn after the addition of air from the blower, which resulted in a terrible odor and solids being stirred up from the bottom of the basins. See Exhibit P, Photos 5 and 6. The ORC stated the blower was not being used since there was not a spare and there was concern it would fail.¹³

ANSWER: Currituck denies the allegations contained in Paragraph 26 of the Motion to Show Cause. Currituck further states that at the time of the site visit, new blowers were on order. While the new blowers were being shipped, the ORC used parts from both blowers operate one of the blowers.

27. Additionally, sludge and solids accumulation were noted in all WWTP tanks with the clarifier full of solids. Chlorine tablets were not present for disinfection. The tertiary filters did not appear to have been operated in the recent past based on dryness and crusting. See attached Exhibit P, Photo 7. When the filters were manually placed in operation, a piping failure occurred. Black water flowed from the tertiary filter piping for an extended period while the filters were in operation and the water did not become significantly clearer during operation. See attached Exhibit P, Photo 8. Furthermore, the standby generator was not operable resulting in no electric power being available to the WWTP in case of a power outage. See attached Exhibit P,

¹³ The logic of that decision is questionable since not having a blower in operation is equivalent to having no functional blower, and no aeration of the basins hinders the treatment process.

Photo 9.

ANSWER: Currituck admits only that the standby generator was not operable at the time of the site visit. Currituck denies the remaining allegations contained in Paragraph 27 of the Motion to Show Cause. Currituck further states that there was a generator on the grounds for operation of other facilities that could have been used in the event of a power outage at the time of the site visit.

28. A wrack line, an area where organic material such as grass and leaves and other debris is deposited by the flow of water, was observed within and around the basin structure receiving and holding effluent from the WWTP. See attached Exhibit P, Photo 10. The elevation of the wrack line coincided with a low point on the dike wall along the southeastern corner of the structure. Observations suggest that the basin structure has overflowed in the past. See attached Exhibit P, Photo 11.

ANSWER: Currituck admits only that a wrack line is present within and around the basin structure receiving and holding effluent. Currituck denies the remaining allegations contained in Paragraph 28 of the Motion to Show Cause.

29. After inspecting the WWTP, the Inspection Team inspected the sewer lift stations. Lift station controls and pumps have been an issue for over a year and continue to be in a state of disrepair. The replacement control panels appeared to have been left outside the water tank for months. See attached Exhibit P, Photo 12. Normally lift station lids are kept closed to reduce inflow and infiltration, noise, debris entry, and vandalism. Each of the four lift stations had their lids opened with makeshift equipment installed to keep the lift stations functional. See attached Exhibit P, Photos 13, 14, 15, and 16. Mr. Junis attempted to contact the emergency contacts listed on the signs affixed to fencing and found one number going unanswered and the second answered by an individual stating he was no longer a point of contact for the system.

ANSWER: Currituck admits that normally lift station lids are kept closed, but denies that this possible when bypass or temporary pumping facilities are installed. Currituck denies the remaining allegations contained in Paragraph 29 of the Motion to Show Cause.

CURRENT STATUS OF THE WATER SYSTEM

30. At the Carolina Village Water System, orthophosphate, a chemical used for lead and copper corrosion control and as a sequestration agent in water systems, was not being fed because a chemical pump outlet was burnt out. The chemical feed pump on top of the orthophosphate vat had the intake line moved to the sodium hypochlorite vat to feed chlorine for disinfection. The orthophosphate vat level was also low, and debris was observed inside. See attached Exhibit P, Photos 17 and 18.

ANSWER: Currituck denies the allegations contained in Paragraph 30 of the Motion to Show Cause.

31. Based on the equipment and discussion with the ORC, the Carolina Village Water System should have two functional pumps with each pump operated by a separate motor that is electrically wired to an enclosed electrical panel such that electrical wiring and connections are protected from the environment. However, contrary to the above, a singular pump motor was wired from an exposed electrical panel. The ORC stated that a relay contact replacement maintenance activity was being performed. However, based on the wiring lying on the floor, it was obvious that one of the pump motors was not operational. See attached Exhibit P, Photo 19. The relay contacts were being modified to alternate the well pumping.

ANSWER: Currituck denies the allegations contained in Paragraph 31 of the Motion to Show Cause.

32. The ground storage tank has peeling paint and considerable exterior corrosion. See attached Exhibit P, Photo 20. The ORC operates the system to keep the tank full. Based on the condition of the water system equipment, it is reasonable to be concerned about the state of the interior of the tank and whether it is contributing negatively to the quality of the water.

ANSWER: Currituck admits that the ground storage tank has peeling paint and corrosion and that the ORC operates the system to keep the tank full. Currituck denies the remaining the allegations contained in Paragraph 32 of the Motion to Show Cause.

CIVIL PENALTY ASSESSMENT

33. Currituck has been engaging in activities reserved for a certificated public utility in violation of Chapter 62 of the North Carolina General Statutes.

ANSWER: Currituck denies the allegations contained in Paragraph 33 of the Motion to Show Cause.

34. N.C.G.S. § 62-110(a) states, in pertinent part, that, “no public utility shall hereafter begin the construction or operation of any public utility plant or system or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation...”

ANSWER: Paragraph 34 of the Motion to Show Cause contains legal conclusions to which no response is required.

35. Each day that Currituck engages in activities reserved for certificated public utilities can result in assessment of a daily civil penalty of \$1,000 for each offense. See N.C.G.S. § 62-310.

ANSWER: Currituck denies the allegations contained in Paragraph 35 of the Motion to Show Cause.

36. Currituck has violated N.C.G.S. § 62-110(a) at least 634 times by operating a public utility without Commission approval, based on the time, 317 days, between the filing of the easements (May 15, 2023) and the date of this filing and serving both water and sewer. The bills of sale for the “entire sanitary sewer treatment, storage, disposal and collection system located at Carolina Village Subdivision” and “Tract 2A, Tract 2B and East Tract” dated February 17, 2022 included in Currituck’s Non-Discharge Permit Ownership/Name Change application to DEQ provide evidence that the number of offenses could be even greater.

ANSWER: Currituck denies the allegations contained in Paragraph 36 of the Motion to Show Cause.

37. Currituck has also violated Commission Rule R10-7 by failing to “comply with

the rules of the North Carolina Department of Environmental Quality and the rules of other state and local governmental agencies in the design, construction, operation, and maintenance of its sewer facilities and in the collection, treatment and discharge of the sewage being treated.”

ANSWER: Currituck denies the allegations contained in Paragraph 37 of the Motion to Show Cause.

38. Given the foregoing, the Commission has the authority to impose civil penalties, and the circumstances warrant exercising its authority. Currituck could be assessed a civil penalty of \$951,000 for acting as a public utility without Commission approval and not complying with sewer related environmental regulations since at least May 15, 2023. In the alternative, Currituck should be allowed to post a bond in the amount of \$500,000 subject to forfeiture.

ANSWER: Currituck denies the allegations contained in Paragraph 38 of the Motion to Show Cause.

EMERGENCY

39. N.C.G.S. § 62-116(b) gives the Commission the authority to “grant emergency operating authority to any person to furnish water or sewer utility service to meet an emergency to the extent necessary to relieve the emergency.” An emergency is defined as “the imminent danger of losing adequate water or sewer service or the actual loss thereof.”

ANSWER: Paragraph 39 of the Motion to Show Cause contains legal conclusions to which no response is required.

40. As evidenced by the compliance issues identified by DWR and observed by the Public Staff Inspection Team, the Carolina Village Wastewater System is not providing adequate service and, as such, the Carolina Village MHP has suffered an actual loss of adequate sewer service.

ANSWER: Currituck denies the allegations contained in Paragraph 40 of the Motion to Show Cause.

41. As evidenced by the description above, the operating conditions of the Carolina Village Water System are precarious and the Carolina Village MHP is at risk of losing adequate water service if either of the following things occur: (1) the one wired pump motor fails; or (2) corrosion of the water tank results in a major leak. In addition, the water quality is unknown to some degree due to monitoring violations that have not been resolved and returned to compliance.

ANSWER: Currituck denies the allegations contained in Paragraph 41 of the Motion to Show Cause.

NOW, THEREFORE, Currituck respectfully requests that the Commission deny the Motion to Show Cause and all of the relief requested therein in its entirety and further requests all other just and proper relief.

Respectfully submitted,

/s/ Edward S. Finley, Jr.

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Counsel for Currituck Water & Sewer, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing CURRITUCK'S RESPONSE AND ANSWER TO PUBLIC STAFF'S MOTION TO SHOW CAUSE upon each of the parties of record in these proceedings or their attorneys of record by deposit in the U.S. Mail, postage prepaid, or by email transition.

This 25th day of April, 2024

/s/ Edward S. Finley, Jr.

Edward S. Finley, Jr.


DOCKET NO. W-1333, SUB 5

VERIFICATION

STATE OF NORTH CAROLINA)
)
COUNTY OF WAKE)

I, Michael Myers, being duly sworn, depose and say:

I am the President of Envirolink, Inc and a member of the Board of Managers of Currituck Water and Sewer Holdings, LLC. I have read the foregoing Response and Answer to Public Staff's Motion to Show Cause and the facts stated therein are true of my personal knowledge, except as to any matters stated on information and belief. As to those matters, I believe them to be true.



Michael Myers

Sworn to and subscribed before me

April 25, 2024



Notary Public

My Commission Expires: 10/29/2027

