

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1300, SUB 60

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Old North State Water Company, Inc., for Authority to Adjust and Increase Rates for Water Utility Service in All Its Service Areas in North Carolina) ORDER ON LEGAL COMPLIANCE, ACCOUNTING REVIEW, AND RECAPITALIZATION

HEARD: Monday, October 2, 2023, at 1:00 p.m., in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner ToNola D. Brown-Bland, Presiding; and Commissioners Daniel G. Clodfelter, Kimberly W. Duffley, Jeffrey A. Hughes, and Floyd B. McKissick, Jr.

APPEARANCES:

For Old North State Water Company, Inc.:

Gray Styers and Elizabeth Sims Hedrick, Fox Rothschild, LLP,
434 Fayetteville Street, Suite 2800, Raleigh, North Carolina 27601

For the Using and Consuming Public:

Reita D. Coxton, Staff Attorney, Public Staff – North Carolina Utilities
Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699

BY THE COMMISSION: On June 29, 2021, Old North State Water Company, LLC¹ (ONSWC or the Company), filed an application for a general rate case. Ultimately, the Public Staff and ONSWC filed a Joint Settlement Agreement and Stipulation on March 8, 2022 (Stipulation), which settled all matters in dispute. The matter came on for evidentiary hearing on March 8, 2022. The North Carolina Utilities Commission (Commission) issued its Order Approving Settlement Agreement and Stipulation, Granting Partial Rate Increase, And Requiring Customer Notice on June 13, 2022 (Rate Case Order).

In the Rate Case Order, the Commission directed the Public Staff to conduct an investigation and directed the parties to work together to create a plan to improve the capitalization of ONSWC:

¹ ONSWC subsequently converted from a limited liability company to a C corporation. The new name of the utility is Old North State Water Company, Inc.

[t]hat pursuant to N.C.G.S. § 62-34, the Public Staff shall thoroughly review the various sources of funding utilized by ONSWC for its capital and operational needs, the funds disbursed by ONSWC to Chatham North Holdings, Inc., and the relationships, operating agreements, and contracts between and among the Company, Integra, the Integra Subsidiaries, and Chatham North Holdings, Inc.; including whether they are reasonable, appropriate, and in conformity with North Carolina law and Commission Rules, including but not limited to N.C.G.S. §§ 62-153, 62-160, and 62-167. Within six months of the date of this Order, the Public Staff shall make a report to this Commission regarding the Company's compliance with applicable North Carolina law. ONSWC shall have the opportunity to respond to the Public Staff's report within 30 days of the filing of such report. Additionally, the parties shall work together to create a plan to improve the capitalization of the Company, and the parties shall make a report to the Commission within six months of the date of this Order regarding the recapitalization plan[.]

Rate Case Order at 32.

In carrying out the investigation as directed by the Rate Case Order, the Public Staff sought personal financial information of John McDonald, and ultimately filed a motion to compel on August 2, 2022. The Commission denied the motion, stating

The Commission cannot compel Mr. McDonald to make his personal assets available to the Company, and thus will not compel Mr. McDonald to provide his personal financial information under the circumstances and justification currently presented in the Motion. Nothing in this order prevents the Public Staff or the Commission from drawing inferences that logically flow from Mr. McDonald's refusal to make his financial information available. Further, nothing in this order prevents the Commission — in this docket or any other — from requiring the Company to raise additional capital and from imposing consequences if it does not.

Order Denying Motion to Compel and Granting In Part and Denying In Part Relief Sought by Old North State Water Company, Inc. at 3.

On December 12, 2023, the Public Staff filed its Report on ONSWC's Compliance with Laws and Recapitalization Plan (Public Staff Report). The Public Staff stated that the parties had been unable to agree on a recapitalization plan. The Public Staff Report contained the following factual assertions and legal conclusions:

- Integra Water, LLC (Integra) is the parent company for the following entities: Integra Water Madison County, LLC, Integra Water Creola, LLC, and Integra Water Vinemont, LLC, (collectively, Integra Subsidiaries). John McDonald is the sole owner of Integra.
- Chatham North Holdings, Inc. (CNH) is the sole owner of ONSWC-Chatham North, LLC (ONSWC-CN). Integra owns 95% of CNH and Two Rivers Holdings, LLC owns the remaining 5%. Two Rivers Holdings, LLC, is owned by Michael Myers.
- John McDonald is the sole owner of ONSWC.
- Pursuant to the definition of “public utility” set out in N.C.G.S. § 62-3(23)c, ONSWC is not an affiliate of Integra, of the Integra Subsidiaries, nor of CNH, because it does not own any of those entities, nor is it owned by them.
- ONSWC funds its capital and operational needs using operating revenues and long-term debt issued by Integra or an Integra Subsidiary.
- ONSWC loaned CNH \$5,000,000 in December of 2020 with a maturity date of December of 2024. In connection with that loan, CNH granted ONSWC a security interest in all of its assets and signed a promissory note (CNH Promissory Note). ONSWC-CN provided an unconditional guarantee. Mr. McDonald executed the loan agreement on behalf of both ONSWC and CNH. CNH has not repaid any portion of the loan. Based on confidential financial statements it has reviewed, the Public Staff has concerns about CNH’s and ONSWC-CN’s ability to repay the loan.
- Public utilities must get Commission approval before issuing any security pursuant to N.C.G.S. § 62-161(a), subject to an exception not relevant here, and promissory notes are securities under N.C.G.S. § 62-3(26). The Public Staff’s opinion is that pursuant to N.C.G.S. § 62-161(a), ONSWC should have sought Commission approval for the loan to CNH.
- As of the date of the Public Staff Report, ONSWC owed Integra and the Integra Subsidiaries approximately \$13,882,387 from debt composed of two notes payable, four long-term notes, and nine vehicle “notes,” which the Public Staff states are in fact vehicle leases.
- ONSWC is making monthly payments of approximately \$11,000 on the vehicle “notes” and a note that ONSWC issued to Integra in 2014. There are no signed loan documents relating to this note.
- The other five notes that ONSWC gave to Integra and the Integra Subsidiaries are governed by Intercompany Loan and Security Agreements in which ONSWC grants a security interest in all of its assets to the lender.

A utility must have Commission permission prior pledging its assets to an affiliate, under N.C.G.S. § 62-160. The Public Staff states that since ONSWC is not an affiliate of Integra or the Integra Subsidiaries, the pledge in the Intercompany Loan and Security Agreement “considered in isolation does not appear to fall within the parameters of N.C.G.S. § 62-160.”

With respect to a recapitalization plan, the parties had not reached agreement. The Public Staff suggested three options: (1) Integra acquiring ONSWC; (2) Integra and the Integra Subsidiaries forgiving a portion of ONSWC’s debt; or (3) an equity infusion from Mr. McDonald. As a fourth option, the Public Staff stated that the Commission could declare Mr. McDonald a *de facto* public utility, pursuant to N.C.G.S. § 62-3(23)(c), as the sole shareholder of ONSWC. The Public Staff contends this would give the Commission the power to “regulate and control his conduct related to ownership and operation of ONSWC.”

Additionally, the Public Staff Report stated that it experienced “significant difficulty” obtaining financial statements from ONSWC in a timely fashion. Furthermore, the Public Staff identified multiple instances where ONSWC provided inconsistent financial statements for the same reporting periods in filings in the Commission’s dockets. The Public Staff stated that these issues were concerning and undermine its confidence in the accuracy of financial information ONSWC has provided to the Commission and the Public Staff, as well as Integra’s and ONSWC’s accounting and financial reporting functions, personnel, and systems.

The Public Staff made the following recommendations:

1. That the Commission schedule an evidentiary hearing;
2. That the Commission consider declaring Mr. McDonald a *de facto* public utility;
3. That the Commission order a management audit pursuant to N.C.G.S. § 62-37(b);
4. That the Commission order a full forensic audit of the books and records of ONSWC; and
5. That the Commission order a full forensic audit of the financial statements of Integra and the Integra Subsidiaries.

On January 11, 2023, ONSWC filed a Response to the Public Staff Report (Response).

ONSWC accepted responsibility for its “failure to seek advance approval for the promissory note to CNH,” which it characterized as an “unintentional oversight.” It stated that it was in the process of acquiring ownership of the assets of ONSWC-CN in satisfaction of the note, and that it would inform the Commission when the transaction is complete. ONSWC further stated that it now understood that the definition of security under

Chapter 62 is broader than publicly traded securities regulated by the United States Securities and Exchange Commission and that it would seek approval to issue securities in the future.

With respect to the notes that ONSWC issued to Integra and the Integra Subsidiaries, ONSWC asserted that “it does not appear there is any cure for the earlier noncompliance other than future compliance.” ONSWC stated that the loans provided necessary financing that no other lender would have been willing to provide and have not materially impaired its operations. Further, it noted that the Public Staff did not express any concerns about this arrangement at the time it entered into the Stipulation.

ONSWC asked that the Commission deny the other recommendations of the Public Staff relating to accounting and management audits on the grounds that they would be an expense and distraction from the Company’s operations.

ONSWC did not agree with any of the Public Staff’s proposals for recapitalizing the Company. ONSWC continued to take the position that there is no functional distinction for the Company between debt and equity, given that Integra was ONSWC’s only source of funding. ONSWC stated there is no reason to be alarmed by its debt, given that the debt is owned by companies that are also owned by Mr. McDonald, who had every incentive to support the financial success of ONSWC.

ONSWC rejected the proposal for Integra to forgive some of the Company’s debts as unreasonable. It stated this could create taxable income for ONSWC. ONSWC questioned whether the Commission had the necessary jurisdiction over Integra to enter such an order and whether it would constitute a taking of its property.

ONSWC continued to reject the proposal for Mr. McDonald to invest additional capital as unnecessary and overreaching. It saw no practical benefit to Integra acquiring ONSWC, given that Mr. McDonald, who owns and controls Integra, had already promised to provide financial support to ONSWC. Further it found it inappropriate to force Integra, as an unaffiliated company, to acquire ONSWC.

ONSWC argued against the Commission declaring Mr. McDonald to be a *de facto* or *de jure* public utility absent facts supporting a conclusion that ONSWC is not being maintained as a legally separate entity from Mr. McDonald.

ONSWC made a proposal of its own, that some of the loans from the Integra and the Integra Subsidiaries could be converted into equity upon the expiration of their terms, thus creating a capital structure of approximately 45% equity at the end of 2024.

With respect to the timeliness and accuracy of its financial statements, ONSWC largely accepted the Public Staff’s critiques. It stated that the rapid growth of ONSWC and of Integra, which provides some administrative support to ONSWC, had caused the companies to outgrow their accounting staff. ONSWC also laid blame at the feet of a prior owner of ONSWC and the owner’s contractor, which was supposed to provide guidance on regulatory accounting and compliance with Commission rules.

ONSWC asserted that it was improving its accounting capabilities by adding internal and external resources. As of the first of 2023, Integra had hired a new Chief Financial Officer (CFO) and was recruiting an additional individual for its accounting staff. Mr. McDonald planned to hire an outside firm in the spring of 2023 to “thoroughly review the accounting needs and processes and to perform an accounting review of ONSWC and its financial statements.” The Company stated that it would provide a copy of this accounting review on request.

On May 19, 2023, the Commission issued its Order Requiring Further Reporting and Directing Old North State Water Company, Inc. to Refrain from Certain Actions (Order Requiring Further Reporting). In the Order Requiring Further Reporting the Commission required: (1) ONSWC to promptly notify the Commission of any financial staff whom it has hired since the date of the Public Staff Report or who are employed by Integra to provide accounting services to ONSWC; (2) ONSWC to provide the Commission with a copy of the report of the accounting review it has commissioned as soon as practicable, but no later than June 19, 2023; (3) the Public Staff to provide any updates or modifications to recommendations the Public Staff made in the Public Staff Legal Compliance and Recapitalization Report; and (4) the Public Staff to respond to ONSWC’s proposal for Integra to convert some of its secured debt to an equity interest in ONSWC. The Commission ordered that ONSWC to refrain from issuing any securities or granting any security interest in its assets without prior approval from the Commission and to take no action with respect to the loan to CNH and the guarantee from ONSWC-CN. The Commission also scheduled an evidentiary hearing on July 25, 2023, related to the issues raised and the relief sought in the: (1) the Public Staff Report; (2) ONSWC Response; and (3) all subsequent reports made in this docket (Investigation Hearing).

On May 25, 2023, ONSWC filed a Motion on Accounting Review and Motion for Extension of Time, in which it stated that the review (Outside Accounting Review). On June 12, 2023, the Commission issued its Order Granting Motion of Old North State Water Company, Inc. for an Extension of Time to File Report and Rescheduling Hearing (June 2023 Extension Order). The June 2023 Extension Order extended ONSWC’s deadline to submit the results of the Outside Accounting Review until August 4, 2023, and the Public Staff’s deadline to notify the Commission of any updates or modifications to the recommendations made in the Public Staff Report, specifically including, but not limited to, its response to ONSWC’s proposal for Integra to convert some of its secured debt to an equity interest in ONSWC until September 5, 2023. In the June 2023 Extension Order, the Commission defined the scope of the Outside Accounting Review as follows:

the scope of the outside accounting review should include a review of the Company’s accounting needs and processes, including an examination of the transactions between Old North State Water Company, Inc. and any of the following: Integra Water, LLC, Integra Water Madison County, LLC, Integra Water Creola, LLC, Integra Water Vinemont, LLC, John McDonald, Chatham North Holdings, Inc., and ONSWC-Chatham North, LLC (ONSWC-CN).

June 2023 Extension Order at 2.

The Commission further provided that “the focus of the hearing shall be whether the management, operation, and financing of Old North State Water Services, Inc., is consistent with the public interest and the interests of customers.” *Id.* at 3. The Commission identified three witnesses it wanted to examine: Mr. McDonald, Integra’s new Chief Financial Officer Joseph Mitchell, and a member of the engagement team that conducts the Outside Accounting Review of the Company.

On August 4, 2023, ONSWC filed the following documents: (1) Financial Statements as of December 31, 2022 (Reviewed 2022 Financial Statements) and the Independent Accountants’ Review Report (Outside Review Report); (2) a letter from Haynes Downard LLP regarding the review dated August 2, 2023; and (3) a Supplemental Memo from ONSWC in regard to the accounting review dated August 4, 2023 (Mitchell Memo).

On September 5, 2023, the Public Staff filed a letter regarding the Outside Accounting Review stating that the recommendations made in the Public Staff Report remained unchanged.

On September 19, 2023, ONSWC made a confidential filing which included the following financial statements: Balance Sheet as of June 30, 2023; June 2023 Year-to-Date Statement of Operations; and June 2023 Year-to-Date Statement of Cash Flows.

On September 25, 2023, ONSWC filed in the present docket the verified ONSWC Motion for Approval of Asset Transfer, seeking to transfer from ONSWC-CN to ONSWC the wastewater force main and related property that is used to serve customers of the Briar Chapel system (Force Main Transfer Motion). The Force Main Transfer Motion stated the Company’s intention for the transfer to be in satisfaction of the loan from ONSWC to CNH, with a likely write-off of any remaining loan debt amount not covered by the value of the force main and related property.²

On October 2, 2023, the Investigation Hearing began. The Investigation Hearing continued into October 3, 2023, and concluded on October 9, 2023. Michelle Boswell, Director of Accounting for the Public Staff, and Charles Junis, Director of the Public Staff Water, Sewer, and Telephone Division, testified on behalf of the Public Staff. On behalf of ONSWC, John McDonald, Joseph Mitchell, and Joseph Max Cambell, Jr., testified. Because the hearings were anticipated to and did involve extensive testimony about documents that ONSWC had identified as confidential, the Commission conducted the hearing in closed session.

On November 17, 2023, ONSWC filed the following late-filed exhibits: ONSWC Confidential Late-Filed Exhibit 1 – ONSWC’s Amended Annual Report with explanation, ONSWC Confidential Late-Filed Exhibit 2 – ONSWC’s Annual Report Correction Exhibit,

²Although the transfer motion has not been withdrawn in this docket, it was refiled on November 9, 2023, in new Docket Nos. W-1300, Sub 94 and W-1320 Sub 4.

and ONSWC Confidential Late-Filed Exhibit 3 addressing Commission questions from the hearing.³

On November 20, 2023, the Public Staff and ONSWC filed proposed orders and legal briefs.

On December 19, 2023, ONSWC filed Confidential Late-Filed Exhibit 4, providing information about the wastewater force main serving Briar Chapel.⁴

On March 14, 2024, ONSWC gave notice to the Commission that the litigation of claims involving ownership of ONSWC has been resolved. In light of that, ONSWC filed with the Commission a Petition for Acceptance of Financing Agreements with Integra Water, LLC in a new docket, W-1300 Sub 99. In that Petition, ONSWC requests, among other things, that the Commission to approve a consolidation of the debts ONSWC previously owed to Integra and the Integra Subsidiaries into one obligation to Integra. ONSWC states that under the proposed refinancing agreement Integra is receiving an assignment of all those outstanding debts and that ONSWC will have no obligation to Integra for any previously accrued interest.

INTRODUCTION

As is evident from the foregoing procedural history, the Public Staff invested substantial time and expertise in the investigation the Commission ordered. The Commission is appreciative of the sustained efforts of the Public Staff in addressing the failures by ONSWC to follow North Carolina law and procedures identified in this docket. Because of the Public Staff's diligence and persistence and the progress to date by ONSWC to achieve compliance and in light of the Company's improvements in its accounting processes, the Commission does not find it necessary, as this order sets out below, to adopt some of the Public Staff's more stringent recommendations. The Commission notes and appreciates ONSWC's willingness to provide additional reporting to the Commission to demonstrate its continued progress on accurate and timely financial reporting. The Commission expects ONSWC to continue its recent track record of legal compliance, and to continue to improve in the area of being transparent and forthcoming with the Commission and the Public Staff as to matters that may affect the rates and services of its North Carolina customers.

³ ONSWC filed public versions of these exhibits on February 5, 2024.

⁴ ONSWC filed a public version of this exhibit on February 1, 2024.

FINDINGS OF FACT

Corporate Relationships

1. ONSWC is duly organized as a public utility operating under the laws of the State of North Carolina and is subject to the jurisdiction of the Commission pursuant to N.C.G.S. § 62-3(23)a.2.
2. John McDonald is the corporate president and chief executive officer of ONSWC and the owner of ONSWC.
3. Mr. McDonald is the sole member and owner of Integra and the Integra Subsidiaries.
4. ONSWC, Integra, and the Integra Subsidiaries are under the common ownership and control of Mr. McDonald.
5. CNH owns 100% of ONSWC-CN.
6. Integra owns 95% of CNH. Two Rivers Holdings, LLC owns the remaining 5%.
7. CNH and ONSWC-CN are under the common control of Mr. McDonald.
8. With respect to ONSWC, Integra, the Integra Subsidiaries, CHN, and ONSWC-CN corporate formalities, such as annual meetings, separate bank accounts, and abiding by operating agreements and bylaws, have been observed.
9. ONSWC owns the assets it uses to provide public utility water services, except for a force main and related assets owned by ONSWC-CN and used by ONSWC to provide service to its customers on the Briar Chapel system.
10. As admitted by ONSWC, ONSWC has operated with verbal agreements that should be reduced to writing.
11. No evidence was presented that suggests that Mr. McDonald or any of the entities he owns or controls made inappropriate use of the Company or its assets for the personal benefit of Mr. McDonald or the other entities he owns or controls.

Intercompany Loans and Cash Transfers

Integra Notes

12. ONSWC has received loans from Integra and the Integra Subsidiaries, memorialized in six promissory notes, five of which are also governed by Intercompany Loan and Security Agreements (collectively, Integra Notes) that were not submitted for advance approval from the Commission.

13. The Integra Notes have provided financing for ONSWC capital projects and operations at a time when commercial loans were not available.

14. There is an unwritten agreement between the Integra Subsidiaries and the Company to waive interest on the five secured Integra Notes.

CNH Promissory Note

15. ONSWC loaned \$5 million to CNH, as set forth in the CNH Promissory Note. The CNH Promissory Note is guaranteed by ONSWC-CN in a Guaranty Agreement also dated December 4, 2020. Neither the CNH Promissory Note nor the ONSWC-CN Guaranty Agreement were submitted by ONSWC for advance approval from the Commission.

16. The CNH Promissory Note did not result in diversion of any operating revenues of ONSWC because Integra had loaned \$5 million to ONSWC in a promissory note on the same date of December 4, 2020, although at a higher interest rate. In effect, Integra funded CNH capital needs by passing the funds through ONSWC.

17. Some part of the ONSWC-CN assets funded by the CNH Promissory Note, namely a wastewater force main and related assets serving the Briar Chapel system, are used for the benefit of ONSWC and its customers, and ONSWC has the ability to make a claim against the assets of ONSWC-CN in the event that CNH were to default on repayment of the loan from ONSWC.

18. The CNH Promissory Note created a risk for ONSWC of nonpayment by CNH. CNH does not have income for funds to repay the note. Its only assets of value are the wastewater force main and related assets.

Intercompany Cash Transfers

19. ONSWC has received intercompany cash transfers from Integra and the Integra Subsidiaries, and ONSWC is owed repayment of funding it provided to ONSWC-CN and CNH. ONSWC did not notify the Commission in advance of these various funds transfers.

20. ONSWC acknowledges that it is reasonable, appropriate, and necessary for it to obtain advance approval from the Commission for any future secured loans, and to file its existing loans for approval.

Cost Allocation Manual and Plan and Support Services Agreement

21. ONSWC receives various administrative support services from Integra provided by Integra personnel.

22. Integra charges ONSWC for support services on a monthly basis. The method Integra uses to track and allocate the cost of shared services between itself and ONSWC is not documented in a Commission-approved cost allocation manual or plan.

The terms and conditions surrounding how those services are provided are, likewise, not memorialized in a Commission-approved written support services contract.

23. ONSWC acknowledges that it is reasonable, appropriate, and necessary for ONSWC to record all services agreements in written agreements and file copies of those agreements with the Commission for approval. On November 17, 2023, ONSWC filed a proposed support services agreement for Commission approval in Docket No. W-1300, Sub 95.

Accounting Functions

24. The Public Staff has expressed concerns about ONSWC's accounting policies, procedures, and practices. At the hearing, Witness Boswell listed numerous accounting and documentation deficiencies at ONSWC, including discrepancies in Company financial statements and reporting.

25. ONSWC admits that its accounting function needed improvement and that in the past it had inaccuracies in its financial statements and delays in financial reporting.

26. ONSWC retained Haynes Downard LLP, an accounting firm located in Alabama, to conduct the outside accounting review ordered by the Commission. The review was completed by Max Campbell.

27. On August 4, 2023, ONSWC filed the Haynes Downard Outside Review Report. The Outside Review Report primarily involved applying analytical procedures to financial data, specifically the balance sheet as of December 31, 2022, and review of the Integra Notes and the CNH Note. Haynes Downard did not evaluate ONSWC's accounting processes or any other internal controls or processes of the Company.

28. The Outside Review Report included the 2022 financial statements for ONSWC. Those financial statements are inconsistent with ONSWC's 2022 Annual Report filed with the Commission, and the Public Staff identified errors in the Company's 2022 financial statements that Haynes Downard reviewed.

29. Mr. Mitchell and Mr. Campbell do not have extensive regulatory accounting experience.

30. Integra's CFO detailed actions he had taken and planned to take to address the Company's accounting needs and processes, including hiring new personnel, streamlining accounting operations, instituting a hard close that provides financial statements within 45 days of the end of each quarter, implementing new accounting software, and planning for regulatory accounting training for staff.

31. ONSWC has also retained regulatory accounting consultants, NewGen Strategies and Solutions, LLC (NewGen) and Peedin & Perry Consulting, LLC (Peedin & Perry).

32. The Company has amended its 2022 annual report and provided both a reconciliation of the inconsistencies between the annual report and the financial statements contained in the Outside Review Report and an explanation of how those inconsistencies arose.

33. An audit could cost five to seven times as much as the accounting review.

34. In their respective proposed orders, both the Public Staff and the Company have proposed that the Commission order an agreed-upon procedures audit, although the scope of the audit recommended by the Public Staff was considerably broader than that recommended by the Company.

Recapitalization

Sufficiency of Financing and Access to Capital

35. ONSWC has been operating at a loss.

36. The Company acknowledges that this is due, at least in part, to the fact that there has not been a rate increase to cover cost increases for sewer operations. The Company has stated that it needs a sewer rate case to provide additional revenues, and it plans to file a rate increase application for its sewer systems in the near future. ONSWC receives cash to cover its losses and capital needs from Integra.

37. Integra's owner, Mr. McDonald, has committed to continuing to cause Integra to fund ONSWC indefinitely, as needed.

38. In the water rate case segment of this docket, capitalization was initially identified by the Public Staff as a concern about the debt-to-equity ratio in the capital structure. However, after ONSWC provided additional information to the Public Staff and negotiated a settlement on cost of capital, the Public Staff's finance witness testified to having his earlier concerns allayed.

39. Mr. McDonald has provided financial statements for Integra for 2022. Those financial statements have not been reviewed or audited to determine whether they accurately reflect Integra's operations or financial standing.

40. There is no evidence that ONSWC has experienced difficulty accessing capital to date.

41. At the time of the Investigation Hearing, the Company had a \$1 million bond posted with the Commission. Of that amount, \$740,000 was assigned to specific subdivisions and \$260,000 was unassigned.

42. No evidence was presented that the Company's past and current financial status presents current operational issues. ONSWC has recently hired operational staff as direct employees. The result has been a marked improvement in operations, as

evidenced by the decrease in customer complaints, a large decline in wastewater Notices of Violation (NOVs) issued by the North Carolina Department of Environmental Quality, and a long list of infrastructure improvements.

Recapitalization Plan

43. As part of the Stipulation in the rate case, the Public Staff withdrew its recommendation for an infusion of equity to allow the Company to achieve an actual capital structure of 50% debt and 50% equity.

44. Subsequent to the Rate Case Order, as stated above, the Public Staff and ONSWC have been unable to agree on a recapitalization plan that would reduce ONSWC's current debt. The Public Staff put forth three suggestions in the Public Staff Report. ONSWC rejected all three suggestions in the ONSWC Response to the Public Staff Report and stated that "ONSWC does not believe recapitalization would benefit utility customers or improve financial viability."

45. Mr. McDonald testified that ONSWC and Integra were willing to provide financial projections demonstrating that Integra will have a cash reserve that could be called upon by ONSWC, if necessary.

46. ONSWC states that it plans to file for approval of a line of credit from Integra that will allow ongoing capital infusions to ONSWC as needed.

47. Mr. McDonald has offered to convert the necessary portion of the loans to equity such that the capital structure reaches approximately 45% equity at the end of calendar 2024.

48. In its proposed order, the Public Staff does not propose that the Commission take specific action to recapitalize the Company.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-11

Corporate Relationships

The evidence supporting these findings of fact is found in the prehearing filings of the parties, the testimony and exhibits of Public Staff witnesses Boswell and Junis, in the testimony and exhibits of ONSWC witnesses McDonald and Mitchell, and the verified Force Main Transfer Motion.

The basic facts about Mr. McDonald's majority ownership of and control over ONSWC, Integra, the Integra Subsidiaries, CNH, and ONSWC-CN are not in dispute, as demonstrated by the Public Staff Report, the Company's Response, and the other prehearing filings of the parties. Similarly, there has been no evidence that Mr. McDonald owns any assets in his own name that are utilized for providing public utility services in North Carolina, nor does the Public Staff contend otherwise. The evidence is that ONSWC owns or leases those assets, with the exception of the force main and related

assets serving Briar Chapel, which witness McDonald testified are owned by ONSWC-CN. Tr. vol. 4, 137.

Some of the contracts between and among the companies owned and controlled by Mr. McDonald are not in writing. For instance, ONSWC uses the Briar Chapel force main pursuant to an informal, unwritten agreement approved by Mr. McDonald on behalf of ONSWC, ONSWC-CN, and CNH. Force Main Transfer Motion at 2. Witness McDonald testified that the agreement between Integra and ONSWC not to charge interest on the Integra Notes was a verbal agreement that had not been reduced to writing. See Tr. vol. 4, 48-50.

Witness McDonald testified that the companies he owns and controls maintain separate corporate existences. For instance, the companies have their own sets of books and checking accounts. Tr. vol. 4, 30. He testified that each company has and follows an operating agreement and bylaws. *Id.* at 31. The Company conducts an annual meeting each year, which is documented. *Id.* at 130.

Discussion and Conclusions

As a threshold matter for deciding the other issues presented in this proceeding, the Commission addresses the legal status of Mr. McDonald, Integra, the Integra Subsidiaries, CNH, and ONSWC-CN under North Carolina General Statutes Chapter 62. Two issues are presented: whether the corporate entities are affiliates of ONSWC and whether Mr. McDonald should be deemed a *de facto* or *de jure* public utility.

ONSWC Affiliates

The lawfulness of the Company's conduct in contracting with Integra, the Integra Subsidiaries, CNH, and CNH-ONSWC turns in part on whether those entities are affiliates of ONSWC. Under N.C.G.S. § 62-153(a), public utilities are required to file copies of contracts with any affiliated companies. The Commission has the power to disapprove such contracts, if it finds them to be unjust or unreasonable or made for the purpose or with the effect of concealing, transferring, or dissipating the earnings of the public utility. If the Commission disapproves the contract, it is void. Further, under N.C.G.S. § 62-153(b), no public utility may pay fees or compensation of any description to an affiliate without first filing copies of all proposed agreements with the Commission and obtaining its approval.

Under N.C.G.S. § 62-160, a public utility may not pledge its assets to any affiliated entity in a way that would increase its liabilities or decrease its assets without first making application to the Commission and obtaining permission to do so.

Initially, as noted above, the Public Staff took the position that Integra, the Integra Subsidiaries, CNH, and CNH-ONSWC were not affiliates of ONSWC. However, in its post-hearing brief, the Public Staff concluded that any entity Mr. McDonald owns or controls is an affiliate of ONSWC.

In post-hearing submissions, ONSWC did not directly address the question, choosing instead to concede that the Commission has broad statutory authority under N.C.G.S. §§ 62-30, -34, -133 to review contracts with both affiliates and non-affiliates to ensure they are just and reasonable. Brief of ONSWC Addressing Legal Questions Raised by Commission at October 9, 2024 Hearing at 7 (ONSWC Brief). ONSWC states that “[r]egardless of the Commission’s authority to review agreements among public utilities and related companies, ONSWC has and remains willing to voluntarily provide the Commission with copies of the Integra loan documents, any agreements to waive interest payments, the Support Services Agreement between ONSWC and Integra, and any other similar related company information.” *Id.* at 7-8. Accordingly, ONSWC concludes that resolving the legal question of the definition of affiliates is not necessary to address the issues in the docket. *Id.* at 8. The concessions ONSWC makes in its brief fall short of the authority the Commission has with respect to contracts with and security interests granted to affiliates, and accordingly, the Commission does not agree with the Company that the issue is irrelevant.

As both parties note, Chapter 62 of the General Statutes does not contain a general definition of affiliate in the definitions section of the statute, N.C.G.S. § 62-3, or elsewhere. (Article 6B contains a definition applicable only to that Article. N.C.G.S. § 62-126.3.)

The Commission can cite to a definition that was agreed to in approving regulatory conditions as a condition of the merger of Duke Energy Carolinas, LLC (DEC) and the corporation then known as Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. (PEC). The Commission approved the following definition of affiliate: “Duke Energy and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly by Duke Energy.” Order Approving Merger Subject to Regulatory Conditions and Code of Conduct, Regulatory Conditions *Application of Duke Energy Corporation and Progress Energy, Inc., to Engage in a Business Combination Transaction and to Address Regulatory Conditions and Codes of Conduct*, Nos. E-2, Sub 998, E-7, Sub 986, at Appendix A, Regulatory Conditions (N.C.U.C. June 29, 2012). The Regulatory Conditions further explained that DEC and PEC were affiliates of each other, and that Duke Energy and any business it controlled were affiliates of each. Chapter 62 of the North Carolina General Statutes does not limit the meaning of “affiliate” to regulated public utilities, and it has not been the Commission’s practice to do so. See also *State ex rel. Utilities Com. v. Intervenor Residents of Bent Creek/Mt. Carmel Subdivisions*, 286 S.E.2d 770 (N.C. 1982).

Based on the foregoing, for purposes of N.C.G.S. §§ 62-51, -153, -160; Integra, the Integra Subsidiaries, CHN, and CHN-ONSWC are all affiliates of ONSWC.

Accordingly, to the extent that it has not already done so, ONSWC must file all contracts between itself and any of its affiliates for review by the Commission. Any agreements not already reduced to writing must be appropriately documented and filed with the Commission. The filing or filings should include details of any compensation that ONSWC has already paid and is obligated to pay under any such contracts.

McDonald as De Facto Utility

The Public Staff advocates for the Commission to declare Mr. McDonald to be a *de facto* utility.

Pursuant to N.C.G.S. § 62-3(23)a.2., a public utility is “a person . . . owning or operating in this State equipment or facilities for: . . . 2. [d]iverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation; or operating a public sewerage system for compensation . . .” The Public Staff argues that the *de facto* utility doctrine allows the Commission to exercise its jurisdiction over persons engaging in activities reserved for Commission-recognized public utilities. The Public Staff further contends that under the *de facto* utility doctrine, a person may be determined to be a public utility if he owns facilities used to furnish water and sewer service to the public and receives on-going compensation for the use of those facilities. The Public Staff argues that the Commission has determined corporate entities to be *de facto* utilities in the past, and this designation was upheld on appeal. See *State ex rel. Utils. Comm'n v. Buck Island, Inc.*, 592 S.E.2d 244 (N.C. Ct. App. 2003), *State ex rel. Utils. Comm'n v. Carolina Water Serv.*, 598 S.E.2d 179 (N.C. Ct. App. 2004).

The Public Staff contends that designating Mr. McDonald as a *de facto* utility is necessary to ensure that ONSWC has continued access to capital to provide adequate and reliable utility service, arguing that neither Integra nor Mr. McDonald has a legal obligation to continue funding the Company’s operational and capital needs. Public Staff Proposed Order at 50.⁵ Additionally, the Public Staff notes that as a public utility, Mr. McDonald would be required to provide his personal financial information to the Public Staff and the Commission.

In response, the Company observes that Mr. McDonald does not own or operate any public utility assets in his own name. It cites authorities that provide that a corporation has a distinct existence from its shareholders. See, e.g., *Bd. of Transp. v. Martin*, 249 S.E.2d 390, 396 (N.C. 1978). Further, ONSWC states that the corporate form cannot be disregarded absent extreme circumstances which it contends are not present here. See *Green v. Freeman*, 749 S.E.2d 262, 270 (N.C. 2013). The Company argues that the Court of Appeals did not apply a *de facto* public utility theory in *Buck Island* and *Carolina Water Service*, but rather applied the statutory definition of public utility to corporations that owned utility facilities, even though the corporations had not sought authority from the Commission to do so.

ONSWC also cites N.C.G.S. § 62-3(23)c, which extends the definition of public utility to include a utility’s parent or subsidiary corporation to the extent the Commission finds the affiliation has an effect on rates or services. Since Mr. McDonald is not a corporation, ONSWC reasons that he cannot be a public utility under Chapter 62.

⁵ The Commission notes that elsewhere the Public Staff contended that “Mr. McDonald, in his role as manager, has obligated Integra to continue to fund ONSWC. This obligation is not documented in a written guarantee.” Public Staff Brief at 3.

The scope of the Commission's authority and jurisdiction has been granted to it by the General Assembly. Chapter 62 of the General Statutes defines the term public utility. N.C.G.S. § 62-3(23)a.2. As provided under the statute, the term "public utility" may also include a parent or subsidiary corporation of a public utility if the Commission finds the affiliation has an effect on the rates or services of the utility. N.C.G.S. § 62-3(23)c. Since it is undisputed that Mr. McDonald does not own any public utility assets in North Carolina in his own name, and since he is not a corporate entity of any kind, in order to find Mr. McDonald to be a public utility, the Commission would have to disregard the corporate structure of ONSWC.

The Commission agrees with ONSWC that the decisions of the Court of Appeals in the related cases *Buck Island* and *Carolina Water Service* do not support the position of the Public Staff in this proceeding. Rather, the Court of Appeals simply applied the statutory definition of a public utility to the facts before it, holding that Buck Island was a public utility because "the plain language of the statute encompasses both the ownership and operational elements of the utility service," and Buck Island was part owner of the backbone facilities used to produce water and treat sewage and received tap fees. *Buck Island*, 592 S.E.2d at 249; *see also Carolina Water Service*, 598 S.E.2d at 183-84.

Accordingly, after consideration of the law and competent, material, and substantial evidence in the record, the Commission does not find Mr. McDonald to be a public utility because he does not fit within the statutory definition of a public utility.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-20

Intercompany Loans and Cash Transfers

The evidence supporting these findings of fact is found in the prehearing filings of the parties, the testimony of Public Staff witnesses Boswell and Junis, the testimony of ONSWC witnesses McDonald, Mitchell, and Campbell, and the exhibits of both parties. These findings of fact are not contested by any party.

Ordering paragraph 12 of the Rate Case Order directed the Public Staff to review, among other things, "the relationships, operating agreements, and contracts between and among ONSWC, Integra, the Integra Subsidiaries, and Chatham North Holdings, Inc.; including whether they are reasonable, appropriate, and in conformity with North Carolina law and Commission Rules, including but not limited to N.C.G.S. §§ 62-153, 62-160, and 62-167." Pursuant to that instruction, the Public Staff Report contains a section entitled "Legal Compliance." In that section, the Public Staff determined that ONSWC had not complied with the requirement of obtaining prior Commission approval under N.C.G.S. § 62-161(a) for: (1) the December 2020 loan of \$5 million from ONSWC to CNH; and (2) approximately \$13,882,387 of debt owed by ONSWC to Integra and the Integra Subsidiaries based on two notes payable, four lines of credit, and nine vehicle notes. The Public Staff did not recommend any specific remedy or regulatory action for this noncompliance, other than its general recommendation for management and forensic audits of ONSWC.

As noted in the Rate Case Order, in March 2022 ONSWC provided in its water rate case certain late-filed exhibits related to: (1) the Intercompany Promissory Note from CNH to ONSWC, dated December 4, 2020; (2) Intercompany Promissory Note from ONSWC to Integra dated December 4, 2020; (3) the Intercompany Promissory Note from ONSWC to Integra dated January 1, 2019; (4) the Intercompany Promissory Note from ONSWC to Integra Water Creola, LLC, dated January 1, 2019; (5) the Intercompany Promissory Note from ONSWC to Integra Water Madison County, LLC, dated January 1, 2019; and (6) the Intercompany Promissory Note from ONSWC to Integra Water Vinemont, LLC, dated January 1, 2019.

Witness McDonald was questioned as to why Integra loaned \$5 million to ONSWC and then ONSWC loaned \$5 million to CNH on the same day, as opposed to Integra directly loaning the \$5 million to CNH. He explained that the original plan was for ONSWC to transfer its Briar Chapel system to CNH and the loans were set up to follow the assets. Tr. vol. 4, 36-37. Witness McDonald explained that the ultimate use of the funds from the loan to CNH funded the construction of the force main owned by CNH's subsidiary, ONSWC-CN, and that force main is used in serving ONSWC customers in Briar Chapel. See, e.g., Tr. vol. 4, 145-46.

In addition, ONSWC has received additional funding support from Integra and the Integra Subsidiaries in the amount of \$2,305,743. Tr. vol. 4, 105; Accounting Review Report. This additional intercompany funding support is not documented in written loan agreements.

ONSWC has acknowledged that "[i]t is reasonable, appropriate, and necessary for ONSWC to obtain advance approval from the Commission for any future secured loans, and to file its existing loans for approval even though that will not be advance approval." ONSWC Proposed Order at 11.

Discussion and Conclusions

For the reasons stated above, all of the loans that ONSWC received from Integra and the Integra Subsidiaries, as well as the loan that ONSWC made to CNH, should have been submitted to the Commission pursuant to N.C.G.S. § 62-153 as affiliate transactions. Moreover, the loans from Integra and the Integra Subsidiaries to ONSWC were secured by ONSWC's assets, and as such, ONSWC was obligated by N.C.G.S. § 62-160 to apply for and receive permission from the Commission prior to pledging its assets to an affiliate. Finally, N.C.G.S. § 62-3(26) defines securities broadly, to include notes "or other evidences of . . . indebtedness." Accordingly, the secured promissory notes that ONSWC gave to Integra and the Integra Subsidiaries constituted an issuance of securities under N.C.G.S. § 62-161(a), again requiring authorization from the Commission.

The transactions involving CNH and ONSWC-CN merit additional discussion. The use of ONSWC as an intermediary to funnel \$5 million from Integra to CNH could have an adverse impact on ratepayers because the risk of default by CNH falls on ONSWC instead of Integra. The Commission notes that ONSWC acknowledges that the depreciated book value of the cost of constructing the force main, and not the value of the note receivable

represented by the loan, would be the appropriate valuation of the asset in rate base, if the force main is transferred to ONSWC. ONSWC Proposed Order (citing Motion for Approval of Asset Transfer, Nos. W-1300, Sub 94, W-1320, Sub 4 (Nov. 9, 2023).

In its Response to the Public Staff Report, ONSWC stated that it had inadvertently failed to obtain prior Commission approval for the loan it made to CNH and for the debt it incurred with Integra and the Integra Subsidiaries. The Commission notes this is not an adequate response and reflects a casual attitude toward a violation the requirements for public utilities under Chapter 62. ONSWC has elected to be a public utility in North Carolina. ONSWC and its managers are expected to inform themselves of the obligations and requirements of operating a regulated public utility. This case has raised broader questions of accountability, however, than merely pre-approval of securities. The cash advances by Integra to ONSWC that are not the subject of promissory notes or written agreements, the verbal waiver of interest payments, and the provision of support services from Integra to ONSWC without a written agreement (discussed below) all impede regulatory review of regulated utility activity. By not presenting these agreements to the Commission for review and approval, ONSWC has deprived the Commission of the ability to fully understand the liabilities and risks ONSWC faces, including any interest that creditors of Integra and the Integra Subsidiaries may have or claim in the Integra Notes.

Witness McDonald testified in the rate case that outside financing was unavailable to ONSWC “as a practical matter” and that Integra had provided ONSWC with “sufficient financing at a reasonable cost.” Tr. vol. 2, 69. This reasoning does not justify Mr. McDonald’s decision to unilaterally obligate ONSWC for millions of dollars in debt and encumber its assets without seeking review and approval by the Commission. These were not minor and inconsequential infractions. If ONSWC had followed the law and sought Commission approval of the loans, the Commission and the Public Staff would have been alerted to the Company’s financial position much earlier. The result very well could have been that ONSWC would have filed a rate case sooner. The Company acknowledges that the “fact that the ONSWC sewer systems have never had a general rate case has contributed to the Company’s operating losses, which in turn has required capital infusions from Integra.” ONSWC Proposed Order at 14. Pushing the expenses off into the future does not ultimately benefit ratepayers. It can lead to rate shock resulting from the sudden, significant increases in rates, and it exposes ratepayers to the potential of paying for interest expense ONSWC might not otherwise have incurred.

It is not acceptable for ONSWC to engage in “self-help” by taking actions that are prohibited and then asking for forgiveness after the fact. ONSWC should be mindful that the Commission has available to it a broad range of options for addressing and redressing such conduct by public utilities.

ONSWC committed that in the future it would seek approval for new securities, obligations, or liabilities as required by N.C.G.S. § 62-161 and other sections of Chapter 62. At the hearing, Mr. McDonald offered to consolidate the promissory notes into one documented note between Integra and ONSWC. Tr. vol. 5, 21-22.

As noted, ONSWC is seeking approval to take ownership of certain assets of ONSWC-CN in exchange for reduction of the promissory note from CNH and has filed for approval of transfer of the ONSWC-CN force main and related facilities from ONSWC-CH to the Company in Docket Nos. W-1300, Sub 94, and W-1320, Sub 4. While ONSWC has indicated it will likely write off any remaining amount of the debt owed by CNH that exceeds the Commission-approved transfer value of the force main and related facilities, the Commission will address these issues in the appropriate docket.

ONSWC must file all of the Integra Notes, along with any associated agreements such as the agreement to waive interest, for the Commission's review and approval. All arrangements by ONSWC for loans to or from ONSWC's affiliates must be documented and appropriately filed with the Commission for review and approval, whether written or oral, and whether or not original documentation is extant.

The Commission observes that on March 14, 2024, in Docket No. W-1300, Sub 99, ONSWC filed with the Commission a Petition for Acceptance of Financing Agreements with Integra, LLC (Sub 99 Petition). In that Petition, ONSWC states that the Company and Integra have agreed upon the terms of three financing agreements labelled as follows: (1) Consolidated Intercompany Loan and Refinancing Agreement, (2) Promissory Note, and (3) Working Capital Line of Credit Promissory Note. The Commission acknowledges that in the Sub 99 Petition ONSWC seeks to consolidate the debts that ONSWC had previously owed to Integra and the Integra Subsidiaries into one obligation to Integra. Further, ONSWC states that under the refinancing proposal the Company will have no obligation to Integra for any previously accrued interest. ONSWC further states that the proposed consolidation would greatly simplify the balance sheet of ONSWC, providing more clarity and transparency of its debt obligations for its own internal accounting and planning purposes as well as for external monitoring by the Public Staff and the Commission. In its Sub 99 Petition ONSWC also maintains that the proposed Working Capital Line of Credit Promissory Note will ensure that the Company has access to sufficient funding to provide reliable service to its customers throughout 2024 and to satisfy any remaining concerns about the source and adequacy of ONSWC's funding raised in this docket. The Sub 99 Petition also sets forth the proposed interest rate for both the consolidated Promissory Note and the Working Capital line of Credit Promissory Note. To the extent that the Sub 99 Petition does not include all arrangements by ONSWC for loans to or from ONSWC's affiliates, whether written or oral, and whether or not original documentation is extant, ONSWC should immediately file in Docket No. W-1300, Sub 99, any other such agreements with affiliates as well as any other promissory notes with the Commission for review and approval. The Commission will render its decision concerning ONSWC financing proposal by future order in Docket No. W-1300, Sub 99.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 21-23

Cost Allocation Manual and Plan and Support Services Agreement

The evidence supporting these findings of fact is found in the prehearing filings of the parties, the testimony of Public Staff witness Boswell, in the testimony of ONSWC witnesses McDonald, Mitchell, and Campbell, and the exhibits of both parties.

Company witness Mitchell testified in response to Commission questions that ONSWC recognized that a written affiliate services agreement typically exists to document support services being provided by an affiliated company. Tr. vol. 5, 42. Witness McDonald testified that the timetable for providing such an agreement was “fairly short.” *Id.* On November 17, 2023, ONSWC filed a written support services agreement and requested acceptance of that agreement and authorization to receive services thereunder in Docket No. W-1300, Sub 95.

Public Staff witness Boswell testified that written agreements between related parties, frequently referred to as affiliate agreements, are common and are used to ensure that utility customers are not disadvantaged when a utility does business with a related party. An affiliate agreement and related cost allocation manual or plan would ensure that costs for shared personnel and accounting systems are allocated fairly between Integra, the Integra Subsidiaries, and ONSWC. An affiliate agreement can also be used to address another concern witness Boswell articulated: the security of North Carolina ratepayers’ personal information that is stored in a shared billing system. Steps must be taken to safeguard North Carolina ratepayers’ privacy and those measures can be articulated in an affiliate agreement. Tr. vol. 2, 30.

Discussion and Conclusions

Because ONSWC plans to continue doing business and sharing systems with Integra, an affiliate agreement and underlying cost allocation manual or plan must be submitted for Commission consideration and approval under N.C.G.S. § 62-153. Further, ONSWC must submit for Commission review and approval the details of any compensation it has paid to Integra under any services agreement. ONSWC should update its filing in Docket No. W-1300, Sub 95 as necessary to address the directives in this order.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 24-34

Accounting Functions

The evidence supporting these findings of fact is found in the prehearing filings of the parties, the testimony of Public Staff witnesses Boswell and Junis, in the testimony of ONSWC witnesses McDonald, Mitchell, and Campbell, and the exhibits of both parties.

At the hearing, Public Staff witness Boswell listed numerous accounting and documentation deficiencies at ONSWC, including discrepancies between the financial statements reviewed by Haynes Downard and the Company’s Annual Report filed with the Commission. See Tr. Vol. 3, 24-34; Confidential Public Staff Redirect Exhibit No. 1. Witness Boswell explained that without accurate company financial records, the Public Staff could not perform its role and that it is not possible for the Public Staff to determine appropriate rates. Tr. vol. 3, 37. Witness Boswell explained why in the Public Staff’s view forensic and management audits are still necessary: “there are so many unanswered questions and it’s been such a long period in trying to get just the basic information.” Tr. vol. 3, 45. She

acknowledged that the Public Staff had not spoken about these concerns with Integra's CFO or the outside accounting firm that conducted the accounting review. Tr. vol. 3, 45-47.

Witness Boswell testified that the Public Staff believed the Haynes Downard Outside Review Report fell short of what the Commission ordered because it did not provide assurances that ONSWC financial statements were free of material misstatements and that it did not provide that the Company had internal controls to ensure there would not be misstatements in the financial statements going forward that would affect their accuracy. Tr. vol. 3, 24. Further, witness Boswell identified information in ONSWC's reviewed 2022 Financial Statements that did not comply with generally accepted accounting principles, such as the failure to discount the debts to account for the interest moratorium and the concerns about collectability of the debt between ONSWC and CNH. *Id.* at 32.

The Public Staff has taken the position that an additional assessment of ONSWC's accounting function and the debt instruments is necessary because of the issues with the outside accounting review completed by Haynes Downard. The Public Staff proposed a highly detailed agreed-upon procedures audit should be required, which it attached to its Proposed Order. In addition to a review of ONSWC's books and records, the proposed audit would include an examination of all affiliated companies' books and records to verify the transactions between them and ONSWC, a review of the corporate documents of all entities under the common control of Mr. McDonald, and a review of all books and records relating to Integra's debt. The Public Staff states that ONSWC should not move forward with filing a rate case until: (1) the additional assessment is completed, and any issues identified therein are addressed; (2) it resolves the Public Staff's concerns with its accounting processes, books, and records; and (3) until the Motion to Transfer Assets is fully resolved.

In the ONSWC Response, the Company conceded that in the past it had "been slow to provide financial statements requested by the Public Staff, and that there are inconsistencies in the financial statements." Response at 7. Integra, which provides ONSWC with accounting services, hired Joseph Mitchell as its CFO in January of 2023. Witness McDonald testified that Mr. Mitchell has over 30 years' experience in financial reporting, and that he heads a new team of five accounting professionals. Tr. vol. 3, 159. ONSWC witness Mitchell testified that when he joined Integra, the accounting staff consisted of someone working in accounts payable and an accounting manager. *Id.* at 9.

Witness Mitchell further testified about steps ONSWC has taken to reduce inaccuracies and delays in its financial statements. *See, e.g.*, tr. vol. 4, 11-14. One such step is a commitment to produce financial statements within 45 days of the end of each quarter. Tr. vol. 3, 161.

In witness Mitchell's Supplemental Memo for the Accounting Review, filed on August 4, 2023 (Mitchell Supplemental Memo), he listed some of the key actions ONSWC has taken to improve its accounting and reporting processes to raise the level of accounting performance:

- Converted to a new billing system in Q1 2023 for more timely customer invoicing, accurate payment applications and enhanced AR reporting;
- Upgraded finance personnel by hiring an assistant controller dedicated to ONSWC business unit accounting and reporting;
- Hired a senior accountant and accounting specialist to augment accounting operations;
- Assigned an AP specialist dedicated to ONSWC payables to ensure timely and accurate expense capture;
- Streamlined the accounting process by eliminating location level cash, AP and AR accounts and maintaining cash, payables, and receivables at the parent level;
- Minimized the number of intercompany transfers with affiliates;
- Formalized a hard month-end close cycle with established deadlines; and
- Formalized monthly financial review with senior management.

Mitchell Supplemental Memo at 1; see *also* tr. vol. 3, 160-64; tr. vol. 4, 7-19, 47.

In addition, witness Mitchell noted that ONSWC has identified certain other continuous improvement initiatives to further enhance accounting as a core competency including the following:

- Upgrade the accounting software for improved speed and reporting enhancements;
- Develop subject matter expert for fixed asset accounting;
- Pursue professional development training in utility accounting and rate school; and
- Incorporate stat data for financial analysis and operational performance metrics.

Id. at 1.

Witness Mitchell opined that ONSWC has significantly improved its accounting processes and that ONSWC is now producing considerably more timely and accurate financial statements than in the past. *Id.*; see *also* tr. vol. 3, 160-64; tr. vol. 4, 7-19, 47.

ONSWC witnesses Mitchell and Campbell testified that they have limited utility regulatory accounting experience. Tr. vol. 4, 86-87; tr. vol. 5, 82. Witness Mitchell, as Integra's CFO testified that he had a plan to address this issue, by sending staff to utility accounting training opportunities and by hiring experienced regulatory accounting consultants, NewGen and Peedin & Perry, to assist with ONSWC utility proceedings. Tr. vol. 3, 162; tr. vol. 4, 47. Additionally, Witness Campbell testified that he believed Integra's new CEO Mitchell has an appropriate level of knowledge to provide accounting for ONSWC. Tr. vol. 5, 80.

Witness Campbell testified that an audit could cost five to seven times more than the accounting review. Tr. vol 4, 107-09.

Company Witness Campbell, who prepared the Outside Review Report, testified about the procedures he performed as part of the accounting review of ONSWC, which primarily involved applying analytical procedures to the balance sheet as of December 31, 2022, and the related statements of operations, cash flows and changes in shareholder's equity for the year then ended, and the related notes to the financial statements, reviewing documentation of the intercompany loans, and making inquiries of Company management. Tr. vol. 5, 72-79.

ONSWC asserts that the Public Staff's concerns about financial statements not being timely prepared have been addressed by ONSWC, primarily through the testimony of witness Mitchell, the Integra CFO, and the Mitchell Supplemental Memo. For instance, the Public Staff agreed that the new policy of implementing a hard month-end close cycle was "definitely a plus and would lead to more accurate financials going forward." Tr. vol 3, 82. In addition to the hard close, witness Mitchell committed to producing financial statements within 45 days of the end of each quarter. *Id.* at 161. As noted, on September 9, 2023, ONSWC filed an update of its financial statements through the end of the second quarter (June 30, 2023). ONSWC also provided the Public Staff on September 29, 2023, with updated financials for Integra in response to Data Request No. 78. Tr. vol. 4, 34.

The Public Staff also expressed concerns regarding inconsistent information being provided in the financial statements and discrepancies between the financial statements and the amounts included in the Commission's annual reports. In hearing testimony, witness Mitchell explained how the material discrepancies between the ONSWC annual report and the financial statements cited by the Public Staff had occurred and the steps being taken to correct them. *Id.* at 21-24. The Commission requested that ONSWC provide a late-filed exhibit that identified corrections to the annual report, and that explained each of the adjustments. *Id.* at 24-25. ONSWC filed the amended 2022 Annual Report and the reconciliation for the corrections on November 17, 2023, as late-filed exhibit 2.

ONSWC rejects the Public Staff's call for a full audit. In its proposed order, it makes alternative suggestions. First, it suggests that the Commission direct ONSWC to file quarterly reports, until terminated by future order of the Commission, regarding its progress to implement improved accounting processes and practices to ensure accurate, complete, and timely financial records and reporting. Second, it proposes that because the primary concerns raised by the Public Staff relate to the accuracy and proper accounting of the

transactions between ONSWC and Integra, that the Commission should direct ONSWC to engage an outside certified public accounting firm to conduct an attestation review using the following agreed-upon procedures in accordance with attestation standards established by the American Institute of Certified Public Accountants:

- (1) Verify, trace, and document all cash flows between Integra and ONSWC for the period beginning January 1, 2020, through December 31, 2023; and
- (2) Document all paid in capital transactions for Integra and ONSWC for the period beginning January 1, 2020, through December 31, 2023.

Discussion and Conclusions

The Commission shares the Public Staff's concerns regarding the identified errors and discrepancies in ONSWC's financial records. However, Integra has responded to these concerns and has made a significant effort and investment to improve its accounting functions, including increasing its accounting staff from two to five. Moreover, ONSWC has recognized that even this level of staffing is not currently adequate to support the Company in utility proceedings, and therefore it has engaged two outside consulting firms with regulatory utility experience, NewGen and Perry & Peedin. Additionally, ONSWC's recent conduct displays an intention and ability to produce financial reports in a timely fashion.

A full audit or even the extensive agreed-upon procedures engagement suggested by the Public Staff, would be costly and time-consuming, further delaying ONSWC's ability to file a wastewater rate case, which would likely be the most suitable plan at this juncture for ONSWC to improve its present financial position. For similar reasons, the Commission declines to order at this time that the asset transfer motion regarding the Briar Chapel force main must be resolved prior to ONSWC initiating a wastewater rate case.

While the Commission is not persuaded that the Public Staff's recommendation for a full audit or extensive financial review is necessary at this time, the Commission is also not willing to rely solely on ONSWC's testimony and exhibits showing major improvements in its accounting functions and the Commission will direct ONSWC to take additional actions as outlined below. The Public Staff has expressed valid and substantial concerns about past accounting deficiencies, and ONSWC must correct those deficiencies and not repeat them. Accurate and timely financial statements, compliance with NARUC's Uniform System of Accounts prescribed for water and sewer utilities, and appropriate regulatory accounting practices by the utility are essential for the Public Staff and Commission to perform their roles under Chapter 62.

There are multiple instances of ONSWC including inaccurate information in filings with the Commission. As evidenced by the proceedings in this docket since the Rate Case Order was entered, the Company's failure to follow the laws and rules governing public utilities and its inaccurate filings have used a tremendous amount of the resources of ONSWC, the Public Staff, and this Commission. ONSWC must be proactive in its relationship with the Public Staff and this Commission. If the Company discovers an error

in a filing with the Commission, then it must take remedial measures promptly upon discovery.

The Commission reminds ONSWC that it must provide complete, accurate, and timely information, and the Company will be subject to potential disallowances and sanctions if it neglects to do so.

Accordingly, the Commission adopts the proposal of ONSWC with respect to additional accounting procedures and reporting. The Commission will require ONSWC to file quarterly reports, until terminated by future order of the Commission, regarding its progress to implement improved accounting processes and practices to ensure accurate, complete, and timely financial records and reporting. The Commission will also direct ONSWC to engage an outside certified public accounting firm to conduct an attestation review as described in the Company's proposed order (Attestation Review).

Further, when ONSWC files its next rate case, it must support its application with testimony from an expert with significant regulatory accounting experience. The Commission gives full credence to Public Staff witness Boswell's testimony that the Public Staff cannot adequately review a utility's application for a rate increase if the financial statements do not provide accurate and consistent information. It is ONSWC's duty to ensure that it does not file a rate case until it can confidently support its request for a rate increase with complete and accurate financial information that is supported by sufficient documentation.

Concerning the operations of the regulated water and wastewater operations, the Commission finds that it is appropriate for ONSWC to make a filing in this docket identifying the certified operator in responsible charge (ORC) for each water system and stating whether the ORC is a contract employee or an employee of ONSWC or an affiliate (and if so, to identify the specific affiliate). For each wastewater treatment facility, ONSWC shall identify the person assigned to oversee the operations and state whether that person is a contract employee or an employee of ONSWC or an affiliate (identifying the specific affiliate, if applicable).

With respect to permits issued by applicable divisions of the North Carolina Department of Environmental Quality (DEQ) for water and wastewater operations, the Commission determines that ONSWC should provide a listing of each permit and the applicable facility for which ONSWC is not identified as the permit owner and state who is noted by DEQ as the permit owner.

Finally, the Commission determines that ONSWC should make a filing with the Commission clearly identifying the entities or individuals that own or operate all equipment, property, or facilities used by ONSWC to provide water and wastewater utility services in North Carolina. For any equipment, property, or facilities used for utility operations that is not owned by ONSWC, the Company should provide a listing of the property, identify the owner, and state the owner's relationship to ONSWC.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 35-48

Recapitalization

The evidence supporting these findings of fact is found in the Stipulation; the prehearing filings of the parties; the testimony of Public Staff witnesses Boswell and Junis; the testimony of ONSWC witnesses McDonald and Mitchell; and the exhibits of both parties.

It is uncontested that at the time of the October 2023 hearing, ONSWC was and had been operating at a loss. See, e.g., Amended Annual Report of Old North State Water Company, No. M-2, Sub 2023W (Nov. 9, 2023) (showing utility operating loss of \$937,836).

In its prefiled testimony in the water rate case that was the original subject of this docket, the Public Staff stated its concern about the high percentage of long-term debt in the capital structure of ONSWC. In settlement, this issue was resolved by the parties. ONSWC witness McDonald stated in filed settlement testimony that

I have the authority to commit Integra to continuing to finance the capital needs of ONSWC, and I do make that commitment. As a practical matter, ONSWC is on sound footing for its financial needs. In conjunction with that financing commitment, the Public Staff has agreed to withdraw its recommendation for an infusion of equity to create an actual capital structure of 50% debt and 50% equity, and has agreed to withdraw its recommendation of audited financial statements.

Tr. vol. 2, 75-76.

In support of the Stipulation, Public Staff witness Hinton testified as follows:

- Q. Do you still have concerns about the company's application that proposed a capital structure containing 83% long-term debt and 17% common equity?
- A. No, following settlement discussions, the Company provided consolidated financial statements of Integra Water, LLC (Integra). Those statements indicate a reasonable level of long-term debt and common equity for Integra. Furthermore, my discovery that Integra Water, LLC does not technically own ONSWC has not changed my recommendation on the cost of capital. I understand that John McDonald is the Member, Organizer, and Manager of ONSWC and Michael Myers is a Member and Organizer of ONSWC. Therefore, John McDonald is a co-owner of ONSWC while being the sole member of Integra Water, LLC (Integra). However, Mr. McDonald's role as the Manager of ONSWC, Integra's financial vitality, and his commitment that Integra will finance ONSWC's future capital requirements and fund ONSWC's ongoing, day-to-day capital and

operational needs supports my recommendation that ONSWC use a 7.00% overall cost of capital, with a hypothetical capital structure composed of 50% long term debt and 50% equity. John McDonald's authority to provide ONSWC with Integra's capital resources further supports this assurance. This commitment is memorialized on page 8 of the Joint Settlement Agreement and Stipulation filed in this docket on March 8, 2022, and is the basis for my revised recommendation that it is not necessary for the Company to bring its actual capital structure to 50% common equity, maintain a 45% equity ratio, or file audited financial statements with its Annual Report to the Commission for the next three years as means of showing its compliance with the recommended capital ratios.

Tr. vol. 2, 308-09.

Accordingly, the Stipulation reflected that the Public Staff had withdrawn its recommendation for an infusion of capital to bring the capital structure to 50% equity. Stipulation at 8.

At the water rate case expert witness hearing in this docket, witness Hinton testified that ONSWC was financially viable, despite its high debt ratio, because it had the backing of Integra. He based this opinion on his examination of the confidential financial statements of Integra and its subsidiaries to determine if it had the resources to fulfill its commitment to fund ONSWC. See tr. vol 2, 318-19.

This was memorialized in the Rate Case Order:

In settlement testimony, Public Staff witness Hinton revised his concerns about the high debt ratio and financial viability of ONSWC articulated in his direct testimony. He stated that further discussions with the Company during settlement talks and his review of the consolidated financial statements of Integra led him to withdraw his prior recommendations that the Company change its actual capital structure and be required to submit audited financial statements. An essential part of the changes to Public Staff witness Hinton's position is the settlement commitment of ONSWC witness McDonald, as the authorized representative of Integra, for Integra to continue to finance the capital needs of ONSWC at sufficient levels to permit ONSWC to fund its capital needs and operational expenses such that ONSWC can provide good quality, reliable water service to its customers consistent with environmental and regulatory requirements.

Rate Case Order at 19. It was at the instigation of the Commission, and not the parties, that the issue of recapitalization was reopened.

Public Staff witness Junis testified that the Public Staff recommends an equity infusion from Mr. McDonald because the Outside Accounting Review Report indicated that ONSWC remains a going concern only based on the capital of its single shareholder. Tr. vol. 3, 68.

Additionally, the Public Staff raised concerns about ONSWC's exposure to financial losses due to ongoing litigation. As Public Staff witness Boswell testified, one set of claims has been resolved, but litigation between the Company and Michael Myers and his company, Envirolink was still ongoing at the time of the hearing. Tr. vol. 3, 61-62. Company witness McDonald testified that Myers and Envirolink assert claims of approximately \$2.2 million and that Mr. Myers claims a 5% ownership interest in ONSWC. Tr. vol. 4, 60-61.

In its proposed order, ONSWC acknowledges many of the facts that are of concern to the Public Staff. "ONSWC has been operating at a loss, at least in part, because there has not been a rate increase to cover cost increases for sewer operations. In addition, there is concern that the source of funding for ONSWC is private, rather than capital markets where a track record of stock and debt issuances might indicate funding capability." ONSWC Proposed Order at 13-14. Further, the Company admits that the fact that it has never had a general rate case for its sewer systems has contributed to its operating losses, and that it needs a sewer rate case to provide additional revenues." *Id.* at 14.

Witness McDonald testified that he would continue to cause Integra to fund ONSWC indefinitely. Tr. vol. 4, 160-61. He notes that in the last two years, ONSWC has spent the money necessary to increase its operational staff and decrease the number of its NOVs. *Id.* at 158.

At the time of the hearing, ONSWC had a \$1 million bond posted with the Commission. Of that amount, \$740,000 was assigned to specific subdivisions and \$260,000 was unassigned. Tr. vol. 3, 74.

Discussion and Conclusions

The Commission appreciates the efforts of the parties to agree on a recapitalization plan. After a careful review of the evidence and the submissions of the parties, the Commission is not persuaded that there have been sufficient changes since the Rate Case Order to justify disturbing the settlement reached in the Stipulation that was approved in the Rate Case Order. In the Rate Case Order the Commission approved a hypothetical capital structure (as has been done in numerous rate cases) for ratemaking purposes, so the actual debt-to-equity ratio had no effect on rates. Similarly, altering the actual capital structure's debt-to-equity ratio will not increase the amount of total capital available to ONSWC. The Commission concludes that a change in the actual capital structure of ONSWC should not be required in this proceeding.⁶

⁶ Of course, this conclusion here does not serve as any binding precedent as to how the Commission may rule in any future rate case, including a sewer utility rate case to be filed by ONSWC.

Mr. McDonald has offered to convert the Integra Notes (or any consolidated note that may subsequently be approved) into equity, to the extent needed to achieve a 45% equity ratio in the ONSWC capital structure, when the notes become due in December of 2024. The Commission concludes that it is more appropriate to address this issue in a separate docket in which the Company files the Integra Notes for review by the Commission.

Similarly, the Commission will not require ONSWC to take any additional actions at this time to recapitalize the business. The Commission shares the concern of the Public Staff about ONSWC's ongoing losses. However, the ongoing losses have been equally matched by Integra's continued funding and a promise by Mr. McDonald to continue funding ONSWC's operations at least through a forthcoming wastewater rate case.

At this time, the Commission determines that it is reasonable and in the public interest to require ONSWC to notify the Commission as soon as possible if and when ONSWC determines at a future time that Integra is unwilling or unable to provide necessary capital for ONSWC's needs.

Further, pursuant to N.C.G.S. § 62-51, the Commission finds that it is reasonably necessary for the Public Staff to inspect the financial records of Integra in order to ensure that it has sufficient cash reserves to fund ONSWC's operational and capital needs.

Finally, the Commission finds that it is reasonable to require ONSWC to provide notice of any new substantial litigation in which it is a party.

IT IS, THEREFORE, ORDERED as follows:

1. That Integra, the Integra Subsidiaries, CNH, ONSWC-CN and any other entity under the ownership or control of Mr. McDonald, directly or indirectly, are determined to be affiliates of ONSWC for purposes of N.C.G.S. §§ 62-51, -153, -160;
2. That ONSWC shall comply with North Carolina law with respect to any and all transactions with its affiliates and must seek and obtain prior approval from the Commission or give appropriate notice of such transactions as may be required by N.C.G.S. §§ 62-153, -160, or -167;
3. That ONSWC shall not issue any securities or grant any security interest in its assets without prior approval from the Commission;
4. That if ONSWC discovers an error in a filing with the Commission, then it shall take remedial measures promptly upon discovery;
5. That ONSWC shall document in its financial statements all agreements with and financial obligations to and from affiliated entities;

6. That to the extent it has not already done so, ONSWC shall (a) reduce to writing all existing agreements between itself and any of its affiliates (including informal agreements such as cash advances) and (b) file all existing agreements between itself and its affiliates, along with (i) the details of any compensation received under such agreements and (ii) full details of any entity which may have or claim an ownership or security interest in the Integra Notes or any assets of ONSWC, with the Commission for its review under N.C.G.S. § 62-153 no later than 30 days after entry of this order as follows:

- a. ONSWC shall file all existing and proposed agreements, except for the CNH Promissory Note and related agreements and the Support Services Agreement and any related agreements, in Docket No. W-1300, Sub 99;
- b. the Commission will address the CNH Promissory Note and related agreements in Docket Nos. W-1300, Sub 94, and W-1320, Sub 4; and
- c. ONSWC shall prepare and file in W-1300 Sub 95 a cost allocation manual outlining how shared costs will be allocated to ONSWC and Integra or an Integra Subsidiary;

7. That within 30 days of this Order, ONSWC shall make a filing in this docket identifying the certified ORC for each water system and stating whether the ORC is a contract employee or an employee of ONSWC or an affiliate (and if so, to identify the specific affiliate). For each wastewater treatment facility, identify the person assigned to oversee the operations and state whether that person is a contract employee or an employee of ONSWC or an affiliate (identifying the specific affiliate, if applicable);

8. That within 30 days of this Order, ONSWC shall provide a listing of each permit and the applicable facility for which ONSWC is not identified as the permit owner by the DEQ and state who is noted by DEQ as the permit owner;

9. That in Docket No. W-1300, Sub 95 within 30 days of this Order, ONSWC shall make a filing clearly identifying the individuals or entities that own or operate all equipment or facilities used by ONSWC to provide water and wastewater utility services in North Carolina. For any equipment, property, or facilities used for utility operations that is not owned by ONSWC, it should provide a listing of the property, identify the owner, and state the owner's relationship to ONSWC;

10. That within 30 days of this Order, ONSWC shall update its Support Services Agreement filing in Docket No. W-1300, Sub 95 as necessary to (a) address the privacy of North Carolina customer data and (b) submit for Commission review and approval the details of any compensation it has paid to Integra under any unwritten or informal services agreement;

11. That the Chief Clerk shall establish Docket No. W-1300, Sub 60AR, for the reporting requirements herein;

12. That ONSWC shall notify the Commission of any and all future litigation in which claims made by or against ONSWC exceed \$100,000 within 10 days of its commencement of such action (if initiated by ONSWC) or service upon ONSWC (if claims are made against ONSWC) by a filing in Sub 60AR;

13. That ONSWC shall file in Docket No. M-2, Sub 2023W a narrative reconciliation that is consistent with the financial information in the restated 2022 Financial Statement explaining the difference between the originally filed 2022 Annual Report and the amended 2022 Annual Report;

14. That ONSWC shall promptly notify the Commission by making a filing in this docket as soon as possible if Integra is no longer providing funding to meet the operational needs of ONSWC or if ONSWC finds itself without access to capital financing that is needed to fund capital projects or operations;

15. That the Public Staff may inspect the financial records of Integra in order to determine whether it has sufficient cash reserves to fund ONSWC's operational and capital needs;

16. That ONSWC shall file quarterly reports in Sub 60AR, until terminated by future order of the Commission, regarding its progress to implement accounting processes and practices to ensure accurate and timely financial records and reporting;

17. That no later than 30 days after the date of this Order, ONSWC shall engage an outside certified public accounting firm to conduct the Attestation Review in accordance with attestation standards established by the American Institute of Certified Public Accountants performing the following procedures:

- a. Verify, trace, and document all cash flows between Integra and ONSWC for the period beginning January 1, 2020, through December 31, 2023; and
- b. Document all paid in capital transactions for Integra and ONSWC for the period beginning January 1, 2020, through December 31, 2023;

18. That ONSWC shall file the results of the Attestation Review with the Commission in the Sub 60AR as soon as the report outlining the results of the engagement is complete;

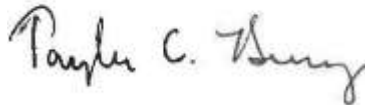
19. That ONSWC shall file quarterly financial statements for ONSWC within 45 days after the end of each quarter in Sub 60AR ; and

20. That when ONSWC files its next rate case, it must support its application with testimony from an expert with significant regulatory accounting experience.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of April, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Taylor C. Berry".

Taylor C. Berry, Deputy Clerk

Chair Charlotte A. Mitchell did not participate in this decision.

Commissioner Karen M. Kemerait did not participate in this decision.

Commissioner ToNola D. Brown-Bland resigned from the Commission effective December 1, 2023, and did not participate in this decision.

Commissioner Daniel G. Clodfelter resigned from the Commission effective November 15, 2023, and did not participate in this decision.