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February 1, 2024

**VIA ELECTRONIC FILING**

Ms. A. Shonta Dunston  
Chief Clerk  
North Carolina Utilities Commission  
430 N. Salisbury Street  
Dobbs Building, Fifth Floor, Room 5063  
Raleigh, NC 27603

Re: 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 NC  
Docket W-1300, Sub 60  
Public / Redacted Late-Filed Exhibit No. 4 in Response to the Commission's  
Request for Information at the October 2, 3, and 9, 2023, Hearing

Dear Ms. Dunston:

On behalf of Old North State Water Company, Inc. (ONSWC), and in accordance with Commission Staff's request, we herewith provide for public filing additional information requested by the Commission at the above referenced hearing regarding ONSWC's duty to build and operate force main rather than the developer, labeled as Late-Filed Exhibit No. 4. A confidential version of this Late-Filed Exhibit No. 4 was previously filed with the Commission on December 19, 2023.

This public redacted exhibit will be provided to Kim Mitchell at the Commission and to [NCUCExhibits@ncuc.net](mailto:NCUCExhibits@ncuc.net).



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Please do not hesitate to contact me with any questions or concerns regarding this filing.

Sincerely,

*/s/ David T. Drooz*

David T. Drooz

cc: Commission Staff – Legal  
NC Public Staff

pbb

**Late-filed Exhibit Request**

At hearing, Mr. McDonald was asked by the Commission if NNP Briar Chapel had the obligation to build and own the wastewater force main serving Briar Chapel. (T Vol 4, pp 142-44) The witness was not sure of the details, and ONSWC offered to file documentation to clarify, which the Commission accepted. (*Id.*)

**Information in Response to Commission Question**

There are six different contracts that are relevant to construction and ownership of the force main and related assets. These contracts are attached as Appendices to the ONSWC Motion for Approval of Asset Transfer filed in Docket Nos. W-1300, Sub 94, and W-1320, Sub 4.

Relevant parts of the six contracts are summarized below. In brief, the original Asset Purchase Agreement (APA) executed in October of 2014 obligated the developer to build and convey to ONSWC “certain additional components of the Wastewater Utility System serving the existing and future Briar Chapel service area.” This would include the force main running from SD East to the treatment plant, and related equipment, because that was necessary to serve the future Briar Chapel service area.

However, the third amendment to the APA, signed in January of 2019, shifted the duty to build, pay for, and own the force main to ONSWC: “ONSWC was to build at its expense, and own and operate, regional lift station, force main, and return reclaimed line to the Briar Chapel wastewater treatment plant to serve the SD East Commercial area and portions of the SD West Commercial area.”

Therefore, in answer to the question from the Commission, this contract amendment provides the documentation that ONSWC had the legal duty to build and own the force main.<sup>1</sup>

**Background Information**

It should be further noted that ONSWC management planned to create a new utility called ONSWC-Chatham North to become the owner of both the Briar Chapel sewer system and the sewer system serving Farrington Village. (*See* Docket Nos. W-1300, Sub 55 and W-1320, Sub 0; W-661, Sub 9 and W-1320, Sub 0.) ONSWC-Chatham North is a wholly owned subsidiary of Chatham North Holdings (CNH). As ONSWC witness McDonald explained:

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<sup>1</sup> The force main and related assets that ONSWC-Chatham North plans to transfer to ONSWC, if approved by the Commission, are listed at the end of this document.

Q. All right. Why was Chatham North Holdings created rather than having Old North State construct and own the facilities?

A. To bring in an investor.

Q. So specifically for the purpose of getting the investor?

A. Yes, ma'am.

(T Vol 4, p 142) As testimony and exhibits establish, and as explained in the Motion to Transfer Utility Assets in Docket No. W-1300, Sub 94, Integra loaned \$5 million to ONSWC and ONSWC flowed those funds to CNH to facilitate construction of utility infrastructure pursuant to this plan. Because the CNH subsidiary ONSWC-Chatham North was to own the utility assets, ONSWC-Chatham North provided a Guaranty back to ONSWC to secure the loan ONSWC made to CNH.

In cooperation with ONSWC management, ONSWC-Chatham North built and owned the force main running from the SD East area to the Briar Chapel treatment plan. ONSWC has been using that force main to provide sewer service to the SD East and West customers through informal agreement. The force main and related equipment are the only assets of value to ONSWC that are held by ONSWC-Chatham North, so ONSWC has applied in Docket No. W-1300, Sub 94, for transfer of those assets in partial satisfaction of the debt owed by ONSWC-Chatham North to ONSWC.

These actions are consistent with the ONSWC obligation to NNP-Briar Chapel wherein ONSWC took responsibility for providing an operational force main. NNP-Briar Chapel has not objected to the arrangement whereby ONSWC-Chatham North became the builder and owner of the force main, as the end result of providing sewer utility service through the force main for the benefit of Briar Chapel customers was achieved. Indeed, the settlement between ONSWC and NNP-Briar Chapel evidenced in the September 27, 2022, letter agreement provides for NNP-Briar Chapel to provide ONSWC an easement to the SD East lift station, which is used to move effluent through the force main.

Finally, ONSWC holds the franchise to provide sewer utility service to Briar Chapel, including the SD East and West commercial areas. (See the map of the Briar Chapel Master Development Plan, attached as Schedule 3 to the Application in Docket No. W-1300, Sub 9; the Asset Purchase Agreement between Briar Chapel Utilities and ONSWC that included an extended or expanded service area and was included in the request for a CPCN; and the Commission's CPCN order in that docket approving the service territory as shown on the map.) As the franchise holder, ONSWC has the obligation to operate and own – or otherwise secure legal rights to – the assets needed to provide utility service. Its actions in arranging construction of the force main, operating it, and seeking approval to acquire ownership of it, are consistent with that franchise-holder obligation as well as consistent with its agreements with NNP-Briar Chapel.

**Summary of Relevant Portions of Contracts**

1. **October 31, 2014, Asset Purchase Agreement** between Old North State Water Company, LLC (later changed from LLC to a C Corporation) (Buyer); Briar Chapel Utilities, LLC (Seller); and NNP-Briar Chapel, LLC (Developer). This Agreement notes that the wastewater utility system serving the Briar Chapel development was installed by NNP-Briar Chapel and conveyed to Briar Chapel Utilities on December 22, 2009, and that Briar Chapel Utilities had obtained the necessary approvals from the N.C. Utilities Commission and the N.C. Department of Environmental Quality to provide sewer service. It also notes that Envirolink, Inc., had been the contract operator for the wastewater utility system since August of 2008. The Agreement provides that (i) Briar Chapel Utilities will transfer the existing Wastewater Utility System Assets to ONSWC; (ii) ONSWC will expand the capacity of the existing Wastewater Treatment Plant; (iii) NNP-Briar Chapel will construct and transfer certain additional components of the Wastewater Utility System serving the existing and future Briar Chapel service area; and (iv) ONSWC will operate the existing and future expansions of the wastewater utility system. Mr. Myers signed the contract on behalf of ONSWC.
2. **December 30, 2014, First Amendment to Asset Purchase Agreement** between Old North State Water Company; Briar Chapel Utilities; NNP-Briar Chapel; and a new party – Envirolink, Inc. This amendment created an exception, set out below, to the general provision in part 3.1 (a) (viii) for the assignment of all Briar Chapel Utilities and NNP-Briar Chapel contracts for operation and maintenance of the sewer system to ONSWC. The exception ended the operation and billing contract for Envirolink, in contemplation that ONSWC would assume those responsibilities:

However, the Parties agree that the Agreement for Operations, Maintenance and Management Services dated August 1, 2008, the Billing and Collection Services Agreement dated September 28, 2010, both as amended by Amendment to Agreement for Operations, Maintenance and Management Services and to Billing and Collection Services Agreement dated August 1, 2013, that are attached hereto as Exhibit "B" and incorporated herein by reference, shall not be assigned to and assumed by Buyer and shall be terminated on the Initial Closing Date.

Also, part 3.10 was amended to change the closing date deadline from December 31, 2014, to April 1, 2015. Other amendments referenced requirements for grinder pump specifications and the persons to receive notices for the parties. Mr. Myers signed this First Amendment on behalf of both ONSWC and Envirolink, and was listed as the person for notices for both ONSWC and Envirolink.

3. **April 30, 2015, Second Amendment to Asset Purchase Agreement** between Old North State Water Company; Briar Chapel Utilities; and NNP-Briar Chapel. Envirolink was not a party to this amendment. In this amendment, part 3.4, ONSWC agreed not to seek an increase in rates or connection fees for at least two years after the Initial Closing Date. The original agreement had specified three years. Part 4.2 was amended to obligate NNP-Briar Chapel to design, engineer and install a reuse spray irrigation system, upset pond, and effluent storage if needed for the Briar Chapel development, including its Expanded Service Area. This amendment replaced the original requirement for NNP-Briar Chapel to expand the existing wastewater treatment plant – designed for 250,000 gpd – to 600,000 gpd to the extent needed to serve the Briar Chapel development, including its Expanded Service Area. Part 4.2(c) gave NNP-Briar Chapel the right to build odor control improvements, if not satisfied with the results of the ONSWC odor control management plan. Such improvements are to be conveyed to ONSWC, and ONSWC would pay NNP-Briar Chapel for the improvements to the extent the costs are allowed into rate base. Part 6.2 was amended to add requirements for ONSWC to operate and maintain an odor control misting system. This amendment was signed by Mr. McDonald for ONSWC.
  
4. **January 4, 2019, Asset Purchase Agreement Amendment** between NNP-Briar Chapel and Old North State Water Company. Neither Briar Chapel Utilities nor Envirolink were parties to this amendment; Briar Chapel Utilities had been dissolved at that time. This third amendment to the original agreement added provisions that included:
  - a. ONSWC was to build at its expense, and own and operate, regional lift station, force main, and return reclaimed line to the Briar Chapel wastewater treatment plant to serve the SD East Commercial area and portions of the SD West Commercial area.
  
  - b. ONSWC was to reserve 600,000 gpd of wastewater treatment capacity in the expanded Briar Chapel plant for the Briar Chapel development and its Expanded Service Area. Upon utilization of 2,777 REUs by NNP-Briar Chapel, including within the Expanded Service Area and all commercial development within the Briar Chapel compact community, any excess reserved treatment capacity was to be returned to ONSWC. ONSWC also had to reserve for NNP-Briar Chapel up to 195,000 gpd of discharge capacity through the expanded Ferrington Village discharge permit. ONSWC further had to reserve 50,000 gpd of wastewater treatment plant and SD East pump station capacity for NNP-Briar Chapel.

- c. In part 1.6, NNP-Briar Chapel was obligated to pay ONSWC a capacity fee for a prorated portion of the cost of (i) the regional lift station and force main, and (ii) the return reclaimed water line. The capacity fee related to the force main and lift station was:

The total capacity of the regional pump station and force main will be 750,000 GPD. Developer's reserved portion of that capacity shall be 50,000 GPO. [REDACTED]

Part 1.7 recognized that NNP-Briar Chapel had constructed portions of the lift station, force main, and reclaimed water line, and therefore should receive a credit of [REDACTED] against the capacity fees owed under part 1.6. In addition, NNP-Briar Chapel was to pay ONSWC [REDACTED] for assets installed at ONSWC expense that would benefit future responsibilities of NNP-Briar Chapel.

Part 2.1 amended parts 4.2(a) and 5.3(c) of the original agreement to waive NNP-Briar Chapel’s prior obligation to build additional spray fields and ponds (beyond the existing 400,000 gpd amount), due to the discharge capacity resulting from the force main and reclaimed water line.

This amendment was signed by Mr. Myers for ONSWC.

[REDACTED]

6. **September 22, 2023, Asset Purchase Agreement** between ONSWC-Chatham North, LLC, (Seller) and Old North State Water Company, Inc. (Buyer). 



That Motion is pending before the Commission for decision.

**List of Assets Proposed for Transfer in Docket No. W-1300, Sub 94**

- 15,750 of 4” DIP force Main
- Labor and materials for construction
- Engineering design and certification
- 10’ diameter wetwell for SD East lift station and installation
- 10 - 14” Air release valves
- 15 – 14” plug valves
- 17 – pressure clean out assemblies
- Two Grundfos 161 Hp submersible pumps and associated rails, chain, bases, etc.
- Associated vaults with the ARVs and valves noted above
- Multiple 24” road bores with steel casing pipe from 40’-100’
- Erosion control, restoration traffic control, etc.
- Legal fees

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<sup>2</sup> The original agreement valued the force main assets at \$4,217,834.00. That amount has since been adjusted to \$3,748,000. The change will be reflected in an update to CONFIDENTIAL APPENDIX 4 filed in Docket Nos. W-1300, Sub 94, and W-1320 Sub 4.



Docket No. W-1300, Sub 60  
ONSWC PUBLIC / REDACTED Late-Filed Exhibit 4 – Information regarding  
ONSWC’s duty to build and operate force main rather than the developer

Construction management fees

Consulting fees (management of the construction communications process)