

1 PLACE: Dobbs Building, Raleigh, North Carolina

2 DATE: Tuesday, May 7, 2024

3 TIME: 10:02 a.m. - 11:01 a.m.

4 DOCKET: W-1343, Sub 1

5 BEFORE: Commissioner Floyd B. McKissick, Jr.

6 Commissioner William M. Brawley

7 Commissioner Tommy Tucker

8

9

10

11

IN THE MATTER OF:

12

Application by GWWTP, LLC

13

for a Certificate of Public Convenience and Necessity

14

to Provide Wastewater Utility Service

15

to Ginguite Woods Subdivision in

16

Dare County, North Carolina and

17

for approval of Rates

18

19

VOLUME 2

20

21

22

23

24

NORTH CAROLINA UTILITIES COMMISSION

OFFICIAL COPY

May 23 2024

1 A P P E A R A N C E S:

2 FOR GWWTP, LLC:

3 Edward S. Finley, Jr., Esq.

4 Edward S. Finley, Jr., PLLC

5 2024 White Oak Drive

6 Raleigh, North Carolina 27609

7

8 FOR THE USING AND CONSUMING PUBLIC:

9 Gina Holt, Esq.

10 James Bernier, Esq.

11 Public Staff - North Carolina Utilities Commission

12 4326 Mail Service Center

13 Raleigh, North Carolina 27699-4326

14

15

16

17

18

19

20

21

22

23

24

NORTH CAROLINA UTILITIES COMMISSION

T A B L E O F C O N T E N T S

E X A M I N A T I O N S

	PAGE
PREFILED DIRECT TESTIMONY OF BOB HOWSARE	13
PREFILED DIRECT TESTIMONY AND APPENDIX A OF KUEI FEN SUN	26
PREFILED DIRECT TESTIMONY AND APPENDIX A OF LINDSAY Q. DARDEN	39
PREFILED DIRECT TESTIMONY OF GREGORY J. REGER (Confidential filed under seal)	76
LINDSAY DARDEN	
Direct Examination by Ms. Holt	105
Cross Examination by Mr. Finley	108
Examination by Commissioner McKissick	110

E X H I B I T S:

IDENTIFIED/ADMITTED

Sun Exhibit 1	/ 25
Darden Exhibits 1 and 2	/ 38
GWTP, LLC, Application	/ 113
(Confidential filed under seal)	
Joint Settlement Agreement and	/ 114
Stipulation	
Settlement Exhibit 1	/ 114

P R O C E E D I N G S

COMMISSIONER MCKISSICK: It's now about 10:02 a.m., so we're going to go ahead and get started. Good morning. Let us come to order and go on the record. I'm Floyd B. McKissick Jr., a Commissioner on the North Carolina Utilities Commission, and I will be presiding over this hearing. With me this morning are Commissioners William Brawley, and Tommy Tucker.

I now call for Hearing Docket W-1343, Sub 1, in a matter of Application of GWWTP, LLC, for a Certificate of Public Convenience and Necessity to Provide Wastewater Utility Service to the Ginguite Woods Subdivision in Dare County, North Carolina, and for Approval of Rates.

Before we proceed further, and as required by the State Government Ethics Act, I remind members of the Commission of our duty to avoid conflicts of interest and inquire at this time as to whether any Commissioner has any known conflict of interest with respect to the matters relating to this docket?

(No response.)

COMMISSIONER MCKISSICK: Let the record reflect that I have no such conflicts and that no such

NORTH CAROLINA UTILITIES COMMISSION

1 conflicts have been identified.

2 On January 11, 2024, GWWTP, LLC, which I
3 will hereinafter refer to at times as the Applicant or
4 the Company, filed with the Commission an Application
5 for a CPCN to provide wastewater utility service to
6 the Ginguite Woods Subdivision in Dare County, North
7 Carolina, and for Approval of Rates with confidential
8 attachments.

9 On January 12, 2024, in Docket W-1139, Sub
10 4, the Commission issued an Order discharging
11 emergency operator subject to final financial review
12 of wanting new emergency operator, approving increased
13 rates, and requiring notice, and what I will refer to
14 as the EO, or Emergency Operator Order.

15 In the EO Order, the Commission ordered,
16 among other things, that Enviro-Tech be discharged as
17 emergency operator and that GWWTP be appointed as the
18 emergency operator of the Ginguite Woods Subdivision
19 Wastewater Utility system effective January 1, 2024.

20 The Commission also approved provisional
21 rates pending decision in this docket. As the
22 emergency operator, the Applicant serves 38
23 residential customers in the Southern Shores Landing
24 and seeks to serve customers in the Ginguite mixed use

1 area that is currently being proposed for development;
2 however, at this time, it has no customers.

3 On January 26th, 2024, the Public Staff
4 filed a letter notifying the Commission that the
5 Application was complete.

6 On February 2nd, 2024, the Commission issued
7 an Order finding the Application complete,
8 establishing a Sub 1 Docket for the CPCN Application,
9 closing Dockets Number W-1139, Sub 7, and W-1343, Sub
10 0, and requesting additional information from the
11 Public Staff.

12 On February 9th, 2024, the Public Staff
13 provided the information requested by the Commission.

14 On February 14th, 2024, the Commission
15 issued an Order scheduling hearings, establishing
16 discovery guidelines, and requiring customer notice.
17 The Order scheduled a public witness hearing, which
18 was held on March 18th, 2024, in Manteo, North
19 Carolina, as well as an expert witness hearing
20 scheduled for today.

21 On February 21st, 2024, the Applicant filed
22 its proposed notice to customers which was approved by
23 a Commission Order entered on February 23rd, 2024.

24 On March 11th, 2024, the Applicant filed the

1 direct testimony of Robert Howsare consisting of 12
2 pages.

3 On April 2nd, 2024, the Applicant filed the
4 Response of Robert Howsare regarding customer
5 testimony for the public witness hearing.

6 On April 5th, 2024, the Public Staff filed
7 the direct testimony of Gregory Reger; some of which
8 is confidential, consisting of 10 pages. Direct
9 testimony and exhibits of Lindsay Q. Darden,
10 consisting of 35 pages, one appendix, and two
11 exhibits, and direct testimony and exhibits of Kuei
12 Fen Sun, consisting of 10 pages, one appendix, and one
13 exhibit.

14 On April 16th, 2024, the Public Staff filed
15 a Verified Response to the Company's report on
16 customer complaints.

17 On April 19th, 2024, GWWTP filed a motion to
18 extend time to file rebuttal testimony, which was
19 granted by the Commission on the same date.

20 On April 25th, 2024, the Public Staff
21 notified the Commission that the parties had reached a
22 settlement and principle and that no rebuttal
23 testimony would be filed; about 11 days ago.

24 On May 6th, 2024, the Public Staff filed a

1 Settlement agreement and Stipulation, Joint Settlement
2 Testimony of Kuei Fen Sun, Lindsay Q. Darden, and
3 Gregory G. Reger in a motion to excuse witnesses,
4 waive cross examination, and admit testimony.

5 The intervention and participation of the
6 Public Staff in this proceeding is recognized pursuant
7 to North Carolina General Statute § 62-15(d) and
8 Commission Rule R1-19(e).

9 That brings us to today. Okay. Let's
10 begin. I call upon counsel for the parties to
11 announce their appearances for the record, beginning
12 with the Applicant.

13 MR. FINLEY: May it please the Commission,
14 my name is Edward Finley, Raleigh, North Carolina,
15 appearing on behalf of the Applicant -- all these
16 letters here -- GWWTP, LLC. And Mr. Bob Howsare is
17 here with me. He's the witness and the principal and
18 Julie Perry is here for Peedin and Perry Consultants,
19 who has helped us put these cases together.

20 COMMISSIONER McKISSICK: Thank you, Mr.
21 Finley.

22 MS. HOLT: Good morning. I'm Gina Holt with
23 the Public Staff here on behalf of the Using and
24 Consuming Public. And with me at counsel table is

1 Public Staff Attorney James Bernier.

2 COMMISSIONER MCKISSICK: Thank you. Are
3 there any preliminary matters we need to address at
4 this time?

5 (No response.)

6 COMMISSIONER MCKISSICK: One thing I will
7 express, on behalf of the Commission is, when we get
8 in these settlements like at 3:30 in the afternoon the
9 day before the hearing, it really doesn't always give
10 us adequate time to review the details and to go
11 through the appropriate analysis to determine if all
12 issues have been appropriately addressed, and it looks
13 as if 11 days ago, we advised this settlement would be
14 coming forth.

15 So I will simply ask in the future, both the
16 Public Staff and Mr. Finley, or any other attorneys
17 serving in a similar position that, please try to get
18 in these settlements perhaps 72 hours in advance,
19 because otherwise, there's considerable time spent by
20 our Commission Staff and by Commissioners in preparing
21 for a hearing that otherwise will be unnecessary are
22 only necessary to support the settlement agreement
23 that's been reached between the parties.

24 So on that note, are there preliminary

1 matters that need to be addressed at this time?

2 MS. HOLT: Commissioner McKissick, the
3 Public Staff filed a motion to excuse witnesses, waive
4 cross examination, and admit testimony. And we filed
5 that yesterday, May 6th. And I would like to renew
6 that request.

7 The parties have entered into a Settlement
8 Agreement and Stipulation Agreement and have waived
9 cross of each other's witnesses, and the motion
10 includes the excusal of the Company witness, Bob
11 Howsare, and Public Staff witnesses Kuei Fen Sun,
12 Gregory Reger, and Lindsay Darden. And the Public
13 Staff requests -- that moves that they be excused from
14 testifying at the hearing and that their testimony and
15 exhibits be admitted into evidence.

16 COMMISSIONER MCKISSICK: Mr. Finley, would
17 you like to be heard?

18 MR. FINLEY: We support the motion. And,
19 Chair McKissick, I will just say, just to let you know
20 that, although the party is only filed their
21 settlement in the last few hours, it's not because
22 they haven't been working on reaching an agreement and
23 going through the numbers and coming to a rate that
24 the Company could live with as it moves forward and go

1 through all the schedules and that type of thing.

2 So forgive us for being dilatory in getting
3 that to the Commission, but rest assured that it's not
4 because there wasn't a lot of work being done behind
5 the scenes. As an attorney, you certainly know that
6 often it's on the courthouse steps that the final
7 decision is reached.

8 COMMISSIONER MCKISSICK: Without objection,
9 that motion will be allowed.

10 (WHEREUPON, the prefiled
11 direct testimony of BOB
12 HOWSARE is copied into the
13 record as if given orally
14 from the stand.)
15
16
17
18
19
20
21
22
23
24

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

Docket No. W-1139, Sub 7
Docket No. W-1343, Sub 0
Docket No. W-1343, Sub 1

In the Matter of)	
Joint Application of Ginguite Woods)	
Water Reclamation Association, Inc.	)	Direct Testimony of
and GWWTP, LLC for Approval of	)	Robert Howsare
Transfer of Certificate of Public	)	for GWWTP, LLC
Convenience and Necessity for the)	
Wastewater System Serving the)	
Ginguite Woods Subdivision in Dare)	
County, North Carolina, and for)	
Approval of Rates)	

OFFICIAL COPY

May 23 2024

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

**DOCKET NO. W-1139, SUB 7
DOCKET NO. W-1343, SUB 0
DOCKET NO. W01343, SUB 1**

Direct Testimony of Robert Howsare

On Behalf of GWWTP, Inc.

March 11, 2024

1 Q. Please state your name and business address.

2

3 A. Robert Howsare, 127 Sea Hawk Drive West, Duck, NC 27949

4

5 Q. With whom are you employed and in what capacity?

6

7 A. I am the Owner of RPAM Services, LLC – Consulting Contractor for Saga Construction
8 and Development.

9

10 Q. In the context of your work, what role do you play in overseeing the sewer utility
11 service for the Ginguite Woods subdivision?

12

13 A. I manage the wastewater utility serving the Ginguite Woods subdivision.

14

15 Q. Please explain the interest Saga Construction and Development has in ensuring that
16 appropriate service is provided to the Ginguite Woods subdivision?

17

18 A. As the developer within the subdivision and as a responsible citizen in Dare County it
19 is important to Saga that adequate service be provided in the subdivision and in other
20 areas where Saga is involved in development.

21

22 Q. Is it correct that presently through affiliate entities Saga owns the wastewater
23 facilities serving in Ginguite Woods and that the system is operated through a
24 contract operator.

25 A. Yes

26

1 Q. Is it correct that the current ownership and operation of the Ginguite Woods
2 wastewater system exists through transactions that heretofore were not authorized
3 by the Commission?

4
5 A. Yes. GWWTP owns the Ginguite Woods wastewater system in Dare County and has
6 hired Atlantic OBX as the licensed contract operator.

7
8 Q., Please explain the events that transpired that have led to GWWTP's owning the
9 wastewater system and the hiring of Atlantic OBX as the contract operator.

10
11 A. At the time of filing this application the certificate of public convenience and
12 necessity was held by Ginguite Woods Water Reclamation Association Inc.
13 ("GWWRA"), originally owned by Neil Blinken. Ginguite Woods Water Reclamation
14 Association Inc. was granted the franchise to serve the subdivision by order dated
15 August 13, 2003 in Docket No. W-1139, Sub 0. By order issued August 18, 2009 in
16 Docket No. W-1139, Sub 3 the Commission approved interim rates for GWWRA.

17 Q. When did GWWRA cease to be involved and why?

18 A. Although it still held the franchise, for many years, over a decade, the original holder
19 in the franchise has had no active role in Ginguite Woods. Based on a management
20 contract dated October 16, 1998 the system was originally operated by Enviro-Tech
21 as the contract operator. The original owner of Ginguite Woods Water Reclamation
22 Association Inc., Neil Blenkin, encountered financial and operating difficulties and
23 was unable to continue ownership and operation of the wastewater utility serving
24 Ginguite Woods.

25 Q. What action was taken before the Commission to address a situation involving
26 GWWRA?

1 A. By order issued November 20, 2009 in Docket No. W-1139, Sub 4, the Commission
2 appointed William G. Freed of Enviro-Tech of North Carolina Inc. (Enviro-Tech) as
3 emergency operator of the wastewater system. The Commission determined that
4 there was an imminent danger of losing sewer service due to the lack of a competent
5 utility company and the lack of money to pay current and outstanding bills, and to pay
6 for upgrades to the system, justifying the appointment of an emergency operator in
7 accordance with N.C. Gen. Stat. § 62-116(b). Consequently, on November 20, 2009
8 Mr. Freed and Enviro-Tech continued the role of operating the system but thereafter
9 as the emergency operator as opposed to the contract operator on behalf of the
10 owner, Ginguite Woods Water Reclamation Association, Inc.

11 November 20, 2009 marked the termination of any active or ownership role played by
12 GWWRA for the Ginguite Woods wastewater system.

13 Q. Did the Commission approve interim rates for the emergency operator?

14 A. Yes. In its November 20, 2009, order the Commission approved an interim
15 monthly rate of \$90 per SFE (360 gallons per day). This interim rate remained in effect
16 until the Commission appointed GWWTP as emergency operator and approved
17 provisional rates in 2023.

18 Q. Please explain how GWWTP became involved in ownership and operation of the
19 Ginguite Words wastewater system.
20

21 A. GWWTP acquired the interest originally held by Neil Blinken in Ginguite Woods Water
22 Reclamation Association Inc. The wastewater system in Ginguite Woods consisted of
23 several discrete assets. GWWTP acquired them between November 13, 2015 and
24 March 24, 1017. On March 3, 2010 Paragon Utilities Inc., owned by local investors,
25 had acquired one asset, 0.114 acres, composing the system in foreclosure through a
26 sheriff's sale. As far as we can determine, Paragon Utilities Inc. did not inform the
27 Commission or obtain the Commission's permission to acquire a portion of the
28 assets formerly held by GWWRA. GWWTP acquired one tract from GWWRA on

November 13, 2015. GWWTP acquired the Paragon Utilities Inc. tract on March 24, 2017.

Q. When GWWTP took over ownership of the system did it seek permission from the Commission?

A. No. GWWTP took over ownership and control of all the Ginguite Woods wastewater assets. Likewise, GWWTP's acquisition and control of the wastewater system was undertaken without seeking the Commission's approval. The original owner had, in effect, relinquished any role in owning and operating the system, and GWWTP determined it necessary to step in and obtain the system on an emergency basis to avoid service disruption, degradation to the environment and the threat to development activities.

Q. Please explain why GWWTP failed to seek Commission approval to acquire the Ginguite Woods wastewater treatment system assets.

A. Due to the need to act expeditiously to avoid loss of service to customers, degradation to the environment and interference with development activities, and through inadvertence and unfamiliarity by GWWRA and GWWTP with public utility regulatory requirements, the transaction whereby ownership and control of the wastewater system was obtained by GWWTP was not approved by the Commission as required by statute. Also, at the time, GWWTP was unaware that Commission approval was required.

Q. What role did Enviro-Tech and William Freed play and the operation of the Ginguite Woods system after the acquisition by GWWTP?

A. After acquisition, William Freed and Enviro-Tech continued to serve as nominal emergency operator of the system. However, upon GWWTP's acquisition of ownership and control from GWWRA the need for continuation of operation by an

1 emergency operator ended. GWWTP was not constrained by the financial and
2 operational limitations handicapping GWWRA.

3 Q. Were Enviro-Tech and Mr. Freed compensated for the services they provided as
4 emergency operator?

5
6 A. Yes. Through the collection of monthly flat sewage rates and a \$100,000 payment
7 from GWWTP Enviro-Tech was fully compensated for the services it provided as
8 emergency operator when in 2021 it ceased to serve as operator in Ginguite Woods.

9 Q. Please relate the history of the technical operation of the Ginguite Woods system
10 after acquired by GWWTP.

11
12 A. Subsequent to GWWTP's acquisition of the Ginguite Woods sewer system, several
13 companies have operated the system on GWWTP's behalf. While Enviro-Tech
14 remained the nominal emergency operator, from the perspective of GWWTP, the
15 subsequent operators have actually served in roles more appropriately classified as
16 contract operators.

17 On or about August 2021 Enviro-Tech, due to a sale of a portion of its business,
18 ceased to provide services within Ginguite Woods.

19 Q. Was the Commission's permission sought when Enviro-Tech ceased to serve as the
20 emergency operator and operation was undertaken by others?

21
22 A. Again, the parties, through inadvertence, failed to notify the Commission of this
23 relinquishment of service by the nominal emergency operator. In addition, this
24 ambiguity in ownership and operating responsibility has resulted in omissions and
25 oversight in maintaining some records and filing of some reports.

26 Q. Please identify the company that currently provides operation services at Ginguite
27 Woods.

1
2 A. Presently, Atlantic OBX serves as contract operator on behalf of GWWTP.
3 Should the Commission approve the application of transfer of ownership, GWWTP,
4 LLC, as owner and franchise holder, intends to continue to rely upon a qualified
5 system operator as the contract operator or perhaps its own employees. Should the
6 Commission approve this petition, GWWTP, LLC., with access to ample financial
7 resources, will not need to operate the system through an emergency operator.

8 Q. Have William Freed and the Enviro-Tech notified the Commission of its wish to be
9 relieved of the responsibility as emergency operator?
10

11 A. Yes. Enviro-Tech and William Freed have requested that they be relieved as the
12 nominal emergency operator, thereby obtaining authority to relinquish formal
13 authority actually relinquished in 2001.

14 Q. Does GWWTP currently operate the Ginguite Woods wastewater system as
15 emergency operator?
16

17 A. Yes. By order issued November 1, 2023, in Docket No W-1139, Sub 5 the Commission
18 appointed GWWTP as emergency operator. In that docket the Commission approved
19 provisional rates of \$180 per month. GWWTP requests that the Commission
20 terminate the status of GWWTP as emergency operator and approve GWWTP as the
21 holder of the certificate of public convenience and necessity in its order in this
22 docket.

23 Q., Please describe the improvements GWWTP has made and the nature of capital
24 upgrades.
25

26 A. To date GWTP has made approximately \$440,000 in capital upgrades and, upon
27 approval of the CPCN, plans to make an additional \$600,000 in capital
28 improvements, including \$500,000 for back-end replacement of the sewer plant and

1 \$100,000 in additions and upgrades to be undertaken after back-end replacement is
2 complete due to the age of the sewer plant. These improvements, as well as others,
3 are necessary to ensure proper operation of the Ginguite Woods wastewater system
4 and to provide safe and reliable service to customers.

5
6 Q. Will such improvements in the Ginguite Woods system eventually result in increased
7 rates?

8
9 A. Yes. Such investments in the Ginguite Woods system will eventually result in a rate
10 increase, which will be subject to the Commission review and approval in a future
11 rate case.

12
13 Q. Has GWWTP met with the Public Staff on the issues involved in this docket and
14 attempted to respond to Public Staff data requests in order to assist the Public Staff
15 in auditing the Company's books and preparing the Public Staff testimony and
16 position in this docket?

17
18 A. Yes. The Company has had many meetings with the Public Staff and has responded
19 to many data requests.

20
21 Q., Please explain the Company's intention of extending service beyond the existing
22 Ginguite Woods service connections.

23
24 A. Saga's planned commercial development is within the current service district. There
25 are currently no plans to service outside of the district.

26 Q. Is GWWTP seeking to recover the full extent of its capital expenditures and O&M
27 expenses in the rates it is requesting in this docket?

1 A. No. Although the Company is seeking recovery of the front-end upgrades to the
2 wastewater system, the positive acquisition adjustment, and the O&M expenses
3 adjusted to a reasonable, normalized level, the Company has not yet completed the
4 significant back-end upgrade of the wastewater treatment plant, which will be
5 completed toward the end of 2024 and will not be reflected in rates. In addition, the
6 Company has proposed rates that are based on the numbers of future customer
7 connections, and not the existing customers, therefore reducing the rates for all
8 customers and not allowing the Company to realize full recovery of its total allowed
9 revenue requirement until the system is built out.

10 Q. During the time GWWTP has owned and operated the Ginguite Woods wastewater
11 system has the Company been appropriately compensated for the improvements
12 and repairs that have been made or for the operations of the system that have been
13 undertaken on the Company's behalf?
14

15 A. No. The revenues that have been received have been used to compensate the
16 emergency operator or the contract operator and have not been available to provide
17 compensation to G WWTP. Furthermore, the level of the rates that have been in effect
18 during the time GWWTP has owned this system have been inadequate. In effect,
19 GWWTP has operated this system during its ownership at a substantial loss.
20

21 Q. At the time that GWWTP was required to step in and obtain ownership and control of
22 the Ginguite Woods system and during the time of its ownership has the system been
23 in the state of repair and operation that it should have been?
24

25 A. No. Based on the history as outlined above GWWTP was forced to step in and in effect
26 rescue the Ginguite Woods wastewater system in order to avert an emergency. By any
27 reasonable definition, the Ginguite Woods system was a troubled system in need of
28 improvement and repair and with rates that were inadequate to support the repair,
29 maintenance and operation of the system without an uncompensated infusion of

capital by GWWTP. It was necessary for the Commission to appoint Enviro-Tech as an emergency operator in 2009. The fact that it was necessary for the Commission to place the system in the hands of an emergency operator is evidence that a system posed an emergency and a threat to customers and the environment.

Q. Do these facts from your perspective justify the rate base GWWTP has requested in this case including the requested plant acquisition adjustment?

A. Yes. Based on consultation with legal counsel and our consultants, Peedin and Perry Consulting LLC, it is my understanding that this is consistent with the Commission's April 30, 1997, Order, in Docket No. W-274, Sub 122, regarding the Heater Utilities, Inc. acquisition of the Hardscrabble water system. In that case the Commission ruled that for a positive acquisition adjustment to be approved, the proposed transfer must be:

1. prudent.

2. the result of arm's length bargaining.

3. the benefits accruing to the customers (both on the acquired system and on the acquiring system) outweigh the costs of inclusion in rate base of the excess purchase price.

In this current CPCN proceeding, the GWWTP purchase price for utility assets of \$110,000 is prudent and the result of arm's length bargaining. The benefits accruing to the customers on the Ginguite Woods wastewater system materially outweigh the costs of inclusion in the rate base of the purchase price.

The current CPCN proceeding is the only proceeding in which the Company has requested an acquisition adjustment for Ginguite Woods. The Company met with the Public Staff prior to filing and has had several discussions during the Emergency Operator and the CPCN pre-filing phase in order to brief the Public Staff on the system abandonment issues and the history of the wastewater system upgrades that were completed prior to obtaining the CPCN. On January 12, 2024,

1 in Docket No. W-1139, Sub 4, the Commission issued its Order appointing the
2 Company as the new Emergency Operator, and the rates have been set based on
3 a rolling 12-month of expenses, since the Company agreed not to request rate
4 base recovery for its extensive wastewater system upgrades and the positive
5 acquisition adjustment until the CPCN Application proceeding. In the current
6 CPCN docket, the Company is requesting rate base recovery of its investment
7 along with the positive acquisition adjustment as the purchase meets all of the
8 criteria for approval by this Commission as stated above.

9 Q. Is it the intent of GWWTP to continue to own and operate the Ginguite Woods system
10 presently and into the future?

11 A. Yes.

12 Q. Are you sponsoring the applications submitted in this docket and do you wish the
13 Commission to accept it into the record?

14 A. Yes.

15 Q. What accounting adjustments or items of interest in the application are necessary for
16 you to bring to the Commission's attention?

17
18 A. GWWTP continues to respond to Public Staff data requests. GWWTP at this time is
19 unaware of what if any adjustments the Public Staff may recommend at the
20 conclusion of its audit and investigation. To the extent that the parties have
21 unresolved issues as this case proceeds, GWWTP will attempt to respond in its
22 rebuttal testimony.

23
24 Q. Does this conclude your direct testimony?

25
26 A. Yes

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

(WHEREUPON, Sun Exhibit 1
is received into evidence.)
(WHEREUPON, the prefiled
direct testimony and
Appendix A of KUEI FEN SUN
is copied into the record
as if given orally from the
stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-1343, SUB 1

In the Matter of
Application by GWWTP, LLC for a)
Certificate of Public Convenience and)
Necessity to Provide Wastewater Utility)
Service to Southern Shores Landing)
and Ginguite Mixed Use Development)
in Dare County, North Carolina, and for)
Approval of Rates)

**TESTIMONY OF
KUEI FEN SUN
PUBLIC STAFF – NORTH
CAROLINA UTILITIES
COMMISSION**

April 5, 2024

OFFICIAL COPY

May 23 2024

1 **Q. Please state your name, business address, and present**
2 **position.**

3 A. My name is Kuei Fen Sun. My business address is 430 North
4 Salisbury Street, Raleigh, North Carolina. I am a Public Utility
5 Regulatory Analyst with the Accounting Division of the Public Staff –
6 North Carolina Utilities Commission (Public Staff).

7 **Q. Briefly state your qualifications and experience.**

8 A. My qualifications and duties are included in Appendix A.

9 **Q. What is the mission of the Public Staff?**

10 A. The Public Staff represents the concerns of the using and consuming
11 public in all public utility matters that come before the North Carolina
12 Utilities Commission. Pursuant to N.C. Gen. Stat. § 62-15(d), it is the
13 Public Staff's duty and responsibility to review, investigate, and make
14 appropriate recommendations to the Commission with respect to the
15 following utility matters: (1) retail rates charged, service furnished,
16 and complaints filed, regardless of retail customer class; (2)
17 applications for certificates of public convenience and necessity; (3)
18 transfers of franchises, mergers, consolidations, and combinations
19 of public utilities; and (4) contracts of public utilities with affiliates or
20 subsidiaries. The Public Staff is also responsible for appearing
21 before State and federal courts and agencies in matters affecting
22 public utility service.

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony in this proceeding is to present the
3 results of my investigation of the application filed by GWWTP, LLC
4 (GWWTP or the Company) for a Certificate of Public Convenience
5 and Necessity (CPCN) to provide wastewater utility service to
6 Southern Shores Landing and Ginguite Mixed Use Development
7 (collectively Ginguite Woods) in Dare County and for approval of
8 rates (Application). Specifically, I will discuss my calculation of: (1)
9 net book value for plant in service; (2) the Public Staff's
10 recommended O&M expenses; (3) the Public Staff's recommended
11 revenue requirement to be recovered through monthly rates; (4) the
12 amounts for future improvements and acquisition adjustment; and (5)
13 the estimated revenue requirements associated with due diligence
14 expenses, future improvements, and acquisition adjustment.

15 **Q. Please describe the scope of your investigation into the**
16 **Company's filings.**

17 A. My investigation includes a review of the application, exhibits, a prior
18 transfer application, historical activities for the Company, and the
19 testimony filed by the Company; and an examination of the books
20 and records for the 12-month test year ended August 31, 2023. The
21 Public Staff has also conducted extensive discovery in this matter,

1 including auditing information provided by the Company in response
2 to the Public Staff's data requests.

3 **Q. Please briefly describe the Public Staff's presentation of the**
4 **issues in this case.**

5 A. Each Public Staff witness will present testimony and exhibits
6 supporting his or her position and will recommend any appropriate
7 adjustments to the Company's proposed rate base and cost of
8 service for the test year. My exhibits reflect and summarize these
9 adjustments, as well as the adjustments I recommend.

10 **Q. Briefly describe the presentation of your testimony and**
11 **exhibits.**

12 A. My testimony contains a discussion of each issue resulting from my
13 investigation, and my exhibits consist of schedules showing the
14 calculation of my adjustments to revenues, expenses, and rate base.
15 My schedules also reflect adjustments recommended by other Public
16 Staff witnesses.

17 Schedule 1 of Public Staff Sun Exhibit I presents the return on
18 original cost rate base under present rates, the Company's proposed
19 rates, and the Public Staff's recommended rates.

1 Schedule 2 of Public Staff Sun Exhibit I, along with its supporting
2 schedules, presents the original cost rate base, revenue impact
3 associated with acquisition adjustment and future improvement.

4 Schedule 3 of Public Staff Sun Exhibit I, along with its supporting
5 schedules, presents the calculation of net operating income for a
6 return under present rates, the Company's proposed rates, and the
7 Public Staff's recommended rates.

8 Schedule 4 of Public Staff Sun Exhibit I, presents the calculation of
9 composite tax rate, rate of return, and gross up factor.

10 **Q. What conclusions have you reached regarding the Company's**
11 **rates requested for sewer operations?**

12 A. Based on the results of my investigation, the Company's original cost
13 rate base as of August 31, 2023, is \$416,097 for sewer operations.
14 The test year level of operating revenue deductions requiring a return
15 is \$139,894. Based on the foregoing, I utilized the rate base method
16 to evaluate the Company's proposed revenue requirement.

17 I calculated the gross revenue requirement using the overall rate of
18 return of 7.00% recommended by Public Staff witness Gregory J.
19 Reger. The resulting total revenue requirement is \$175,361, of which
20 all is attributed to service revenue. Therefore, the Public Staff
21 recommends that sewer service rates be set to reflect a service

1 revenue decrease of \$68,719 based on the difference between the
2 recommended revenue requirement of \$175,361 and the service
3 revenue under the present emergency operator rates of \$244,080
4 approved in Docket W-1139 Sub 4 on January 12, 2024.

5 **Q. Does Public Staff Sun Exhibit I reflect adjustments supported**
6 **by other Public Staff Witness?**

7 A. Yes, Public Staff Sun Exhibit I reflects the following adjustments
8 supported by other Public Staff witnesses:

9 1. The recommendation of Public Staff Regulatory Analyst
10 Reger regarding the overall rate of return; and

11 2. The recommendations of Public Staff Engineer Lindsay
12 Darden for the following items:

- 13 (a) Service revenues at present rates;
- 14 (b) Service revenues at Company's proposed rates;
- 15 (c) Maintenance and repairs (M&R);
- 16 (d) Contract operator;
- 17 (e) Purchase power/electric;
- 18 (f) Chemicals;
- 19 (g) Testing;
- 20 (h) Permit fees; and
- 21 (i) Sludge removal;

22

1 **Q. What adjustment will you discuss?**

2 A. I will discuss the following recommended accounting and ratemaking
3 adjustments:

4 (a) Plant in service;

5 (b) Accumulated depreciation and depreciation expense;

6 (c) Acquisition Adjustment;

7 (d) Future Improvement;

8 (e) Cash working capital;

9 (f) Other expense: professional expenses;

10 (g) Regulatory fees; and

11 (h) State and federal income taxes.

12 **PLANT IN SERVICE**

13 **Q. In what areas have you made adjustments to plant in service?**

14 A. The Company reported \$550,345 for sewer plant in service, including
15 a Purchase Acquisition Adjustment (PAA) of \$110,000. Based on the
16 recommendation of Public Staff witness Darden, I removed \$110,000
17 from the plant in service for the PAA as well as reclassified \$26,833
18 from sludge removal in operations and maintenance expense to
19 plant in service for the Front-End Upgrade project.

ACCUMULATED DEPRECIATION AND DEPRECIATION EXPENSE

1 **Q. How have you adjusted accumulated depreciation and**
2 **depreciation?**

3 **A.** I calculated amounts for accumulated depreciation and depreciation
4 expense to reflect depreciation related to the adjusted plant balance
5 as of December 31, 2023. Accumulated depreciation and
6 depreciation expense were calculated based on the service lives
7 recommended by Public Staff witness Darden and the year each
8 plant asset was placed in service, using the half-year convention
9 methodology. Details can be found on Public Staff Sun Exhibit I,
10 Schedules 2-1.

11 **ACQUISITION ADJUSTMENT**

12 **Q. Please explain your calculation of purchase acquisition**
13 **adjustment.**

14 **A.** GWWTP purchased one acre of land, the utility facilities on the land,
15 and the wastewater lagoon in 2017 for \$110,000. At the time the
16 system was acquired, the net plant in service was zero. Therefore,
17 the Company has included the entire purchase price in plant in
18 service. Public Staff witness Darden recommends no acquisition
19 adjustment for this proceeding. Witness Darden further discusses
20 the requested acquisition adjustment in her testimony.

1 **Q. What is the estimated revenue requirement associated with an**
2 **acquisition adjustment?**

3 A. As shown on Public Staff Sun Exhibit I, Schedule 2-2, the revenue
4 requirement associated with the Company's \$110,000 acquisition
5 adjustment would be \$13,355.

6 **FUTURE IMPROVEMENT**

7 **Q. What is the estimated revenue requirement associated with**
8 **future improvements to the GWWTP wastewater system?**

9 A. As shown in the Public Staff Sun Exhibit I, Schedule 2-2, the revenue
10 requirement associated with the Company's estimated future capital
11 improvement of \$600,000 would be \$75,291.

12 **CASH WORKING CAPITAL**

13 **Q. Please describe your calculation of cash working capital.**

14 A. Cash working capital provides the Company with the funds
15 necessary to carry on its day-to-day operations. I included one-
16 eighth (1/8) of total operating and maintenance expenses as a
17 measure of cash working capital.

1 **OTHER EXPENSE – PROFESSIONAL EXPENSES**

2 **Q. Please explain your adjustment to other expense- professional**
3 **expenses.**

4 A. I adjusted other expense – professional expenses to reflect the actual
5 amount on the invoices provided by the Company.

6 **REGULATORY FEE**

7 **Q. Please explain your adjustment to regulatory fees.**

8 A. The statutory regulatory fee rate of 0.1475% was applied to revenues
9 under the service areas' present rates, the Company's proposed
10 rates, and the Public Staff's recommended rates.

11 **STATE AND FEDERAL INCOME TAXES**

12 **Q. What adjustment have you made to state and federal income**
13 **taxes?**

14 A. State and federal income taxes are based on the statutory corporate
15 rates for the income after all Public Staff adjustments. The calculation
16 of state and federal income taxes is shown on Public Staff Sun
17 Exhibit I, Schedule 3-1.

18 **Q. Does this conclude your testimony?**

19 A. Yes, it does.

APPENDIX A**QUALIFICATIONS AND EXPERIENCE**

KUEI FEN SUN

I graduated from North Carolina State University with a Master of Science in Accountancy in 2010. Prior to joining the Public Staff, I worked in state government and the private sector in North Carolina for 14 years as an external and internal auditor.

I am responsible for (1) examining and analyzing the applications, testimony, exhibits, books and records, and other data presented by utilities and other parties involved in Commission proceedings; and (2) preparing and presenting testimony, exhibits, and other documents for presentation to the Commission in those proceedings.

Since joining the Public Staff in September 2021, I have performed several audits and presented testimony and exhibits before the Commission regarding a range of electric, natural gas, and water and sewer topics, general rates, quarterly earnings, annual review, and riders. I have filed testimony and exhibits regarding the C&P Enterprises, Inc. general rate case, the Water and Sewer Investment Plans of Carolina Water Service, Inc. of North Carolina and Aqua North Carolina, Inc. and reviewed transfer and contiguous extension filings. I have worked on electric rider rate proceedings, particularly in program cost review of demand-side

management and energy efficiency (DSM-EE) programs for DEC, DEP and DENC, the Joint Agency Asset Rider proceeding (JAAR), the Existing Demand Side Management Program Rider, the Bulk Power Marketing Rider (BPM), and the review of New River Light and Power Purchase Power Adjustment (PPA). I also assisted on the Performance-Base Regulation (PBR) for DEC and DEP.

1 (WHEREUPON, Darden Exhibits
2 1 and 2 is received into
3 evidence.)
4 (WHEREUPON, the prefiled
5 direct testimony and
6 Appendix A of LINDSAY Q.
7 DARDEN is copied into the
8 record as if given orally
9 from the stand.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-1343, SUB 1

In the Matter of)	
Application by GWWTP, LLC for a)	
Certificate of Public Convenience and	)	TESTIMONY OF
Necessity to Provide Wastewater Utility	)	LINDSAY Q. DARDEN
Service to Southern Shores Landing and	)	PUBLIC STAFF –
Ginguite Mixed Use Development in Dare	)	NORTH CAROLINA
County, North Carolina, and for Approval	)	UTILITIES COMMISSION
of Rates)	

April 5, 2024

1 **Q. Please state your name, business address, and present**
2 **position.**

3 A. My name is Lindsay Q. Darden. My business address is 430 North
4 Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am a
5 Public Utilities Engineer with the Water, Sewer, and Telephone
6 Division of the Public Staff – North Carolina Utilities Commission
7 (Public Staff).

8 **Q. Please state your qualifications and duties.**

9 A. My qualifications and duties are included in Appendix A.

10 **Q. What is the purpose of your testimony?**

11 A. The purpose of my testimony is to provide the North Carolina Utilities
12 Commission (Commission) with the results of my investigation of
13 specific areas of the application filed on January 11, 2024, by
14 GWWTP, LLC (GWWTP), in Docket No. W-1343, Sub 1, for a
15 Certificate of Public Convenience and Necessity (CPCN) to provide
16 wastewater utility service to Southern Shores Landing and Ginguite
17 Mixed Use Development (collectively Ginguite Woods) in Dare
18 County, and for approval of rates. I also discuss whether issuing a
19 CPCN to GWWTP is in the best interest of the using and consuming
20 public.

21 The specific areas of my investigation include reviewing consumer
22 statements of position filed in the docket and Notices of Violation

1 (NOVs) and Notices of Deficiency (NODs) issued by the North
2 Carolina Department of Environmental Quality (DEQ). I also assisted
3 the Public Staff's Accounting Division with reviewing expenses,
4 recommended rates, and plant in service.

5 **Q. Please describe the Ginguite Woods service area and**
6 **wastewater utility system.**

7 A. The Ginguite Woods service area consists of Southern Shores
8 Landing, a subdivision with 38 single-family homes, and Ginguite
9 Mixed Use Development, a future development consisting of retail
10 and residential townhomes. The subdivision and the mixed-use
11 property are adjacent to each other and are along North Carolina
12 Highway 158 at the intersection of Landing Trail in Dare County.

13 Southern Shores Landing consists of single-family homes and
14 townhomes. The Ginguite Mixed Use Development is planned to be
15 constructed within the next two years, and the plan currently includes
16 36 townhomes as well as office and retail spaces and a restaurant.
17 The site of the Ginguite Mixed Use Development was formerly
18 referred to as The Ginguite Center in Docket No. W-1139.

19 The Ginguite Woods wastewater system currently serves the 38
20 residential customers in Southern Shores Landing and consists of
21 32,500 gallons-per-day (GPD) wastewater collection, treatment, and
22 spray irrigation facilities. The wastewater collection facilities consist

1 of gravity sewer lines, lift stations, and force main. The wastewater
2 treatment plant (WWTP) and system is permitted by DEQ under
3 Permit No. WQ0017224 for a bar screen; a 9,861-gallon aerated
4 equalization tank; a flow splitter/control box; two aeration tanks, each
5 with 16,420-gallon capacity; two clarifiers, each with 2,775 gallons of
6 usable volume; a 3,211-gallon aerated sludge holding tank; blowers;
7 a gravity-fed tertiary filter unit; a 1,840-gallon clear well; a 2,065-
8 gallon mudwell; tablet chlorination unit; a 922-gallon chlorine contact
9 tank; a reclaimed water utilization system including spray irrigation;
10 a 23,114-square foot infiltration pond; piping; valves; and
11 appurtenances. A copy of the permit is included in Exhibit 5 of the
12 Application.

13 **Q. Please provide a brief history of the ownership and operation of**
14 **the WWTP.**

15 A. The WWTP serving the Ginguite Woods service area has gone
16 through periods of time when the ownership and plant operation
17 responsibilities were not reported to, nor approved by, the
18 Commission.

19 By order dated August 13, 2003, in Docket No. W-1139, Sub 0,
20 Ginguite Woods Water Reclamation Association, Inc. (GWWRA),
21 was granted a CPCN to provide sewer service in Ginguite Woods.
22 GWWRA contracted with Enviro-Tech of North Carolina, Inc. (Enviro-

1 Tech) (formerly William G. Freed, Inc.), to operate the WWTP. On
2 November 6, 2009, GWWRA's owner, Mr. Neal Blinken, notified the
3 Public Staff that he did not have the necessary capital to adequately
4 fund sewer operations. By order dated November 20, 2009, in
5 Docket No. W-1139, Sub 4, the Commission appointed Enviro-Tech,
6 the public utility, as emergency operator.¹

7 On March 3, 2010, Paragon Utilities Inc. (Paragon), acquired
8 ownership of GWWRA through foreclosure of assets of the Ginguite
9 Woods system. GWWRA and Paragon did not seek or receive
10 permission to transfer the assets or inform the Commission of the
11 transfer.

12 Between November 13, 2015, and March 24, 2017, GWWTP
13 acquired the system assets associated with the Ginguite Woods
14 system and gained full ownership. GWWTP acquired and gained
15 control of the Ginguite Woods system without seeking or receiving
16 Commission approval. Enviro-Tech continued to operate the system
17 after GWWTP gained ownership. On or about April 2021, Envirolink,
18 Inc. (Envirolink), acquired the Enviro-Tech operations company, but
19 not the public utility, and took over its operation contracts, including

¹ By order dated March 1, 2002, in Docket No. W-1165, the Commission approved the transfer of the franchise to provide sewer utility service in the Villages at Ocean Hill Subdivision in Currituck County, North Carolina, from Corolla North Utilities to Enviro-Tech of North Carolina, Inc.

1 those providing service in Ginguite Woods. On or about August 2021,
2 Enviro-Tech ceased operation of the Ginguite Woods system. The
3 Commission was not notified of the relinquishment of service by the
4 emergency operator as required by statute. In April 2022, GWWTP
5 terminated the services of Envirolink and contracted Atlantic OBX,
6 Inc. (Atlantic OBX), to operate the system and perform billing and
7 customer service.

8 Enviro-Tech filed a Petition with the Commission on September 15,
9 2023, to terminate its role as emergency operator, a role Enviro-Tech
10 had relinquished in 2021. The Commission appointed GWWTP as
11 the emergency operator by order dated January 12, 2024. The order
12 discharged Enviro-Tech as the emergency operator, appointed
13 GWWTP as the new emergency operator, approved increased rates,
14 and required customer notice. In addition, Ordering Paragraph No. 2
15 states “[t]hat pursuant to N.C.G.S. § 62-110.3(d), the \$20,000 bond
16 posted by Enviro-Tech for Ginguite Woods is hereby declared
17 forfeited.”

18 During periods of time in which there was inadequate operation,
19 violations occurred, and standard maintenance work was not
20 performed. This resulted in the degradation of the WWTP, and
21 extensive capital improvement projects are now needed, some of

1 which GWWTP has already undertaken and others that GWWTP
2 plans to complete.

3 **Q. Briefly describe the results of your investigation of DEQ NOVs,**
4 **NODs, and Civil Penalties.**

5 A. The Ginguite Woods wastewater system operates under DEQ permit
6 WQ0017224, which applies to the WWTP and the reclaimed water
7 utilization system. GWWTP and the North Carolina Environmental
8 Management Commission entered into a Settlement Agreement in
9 June of 2022 to address noncompliance violations occurring at the
10 WWTP from January through August 2021. The Settlement
11 Agreement is included as Exhibit 5 of the Application. GWWTP
12 included supporting documentation showing that they fulfilled the
13 Settlement Agreement. The Settlement Agreement resolved the
14 violations through August 2021. My investigation included all NOV
15 and NODs from September 1, 2021, through December 31, 2023.

16 Between September 1, 2021, and December 31, 2023, the Ginguite
17 Woods WWTP received seven NOV and three NOD letters. The
18 NOVs and NODs were the result of the following: (1) Limit
19 Exceedances of Total Suspended Solids, Ammonia Total Nitrogen,
20 Fecal Coliform, and/or Turbidity; (2) Monitoring Violations of Total
21 Phosphorous, Turbidity, Total Nitrogen, Total Dissolved Solids,
22 and/or Chloride; and (3) Reporting Violations of Total Nitrogen and/or

1 Total Dissolved Solids that occurred on September 30, 2021 (NOV-
2 2021-LM-0093), March 14, 2022 (NOD-2022-LV-0026), October 25,
3 2022 (NOV-2022-MV-0146), April 3, 2023 (NOV-2023-LV-0240 and
4 NOV-2023-LM-0023), May 8, 2023 (NOV-2023-LV-0315), July 25,
5 2023 (NOD-2023-PC-0206), August 3, 2023 (NOV-2023-LV-0533),
6 and December 11, 2023 (NOD-2023-LV-0161). One NOV was the
7 result of missing the Groundwater Quality Monitoring Report for
8 August 2021, issued March 14, 2022 (NOV-2022-PC-0107).

9 An inspection of the WWTP was performed by Robert Tankard and
10 Victoria Herdt of the Washington Regional Office of DEQ on March
11 14, 2023. The inspection resulted in DEQ finding the facility to be
12 non-compliant with regard to Permit WQ0017224. According to the
13 DEQ summary report of the compliance inspection, the following
14 issues were observed: (1) one of the blowers needed to be replaced
15 or repaired; (2) the tankage for the clarifier, filters, and disinfection
16 were in bad shape and need to be replaced within the next two to
17 five years; (3) the weir and skimmer of the clarifier appeared to be
18 nearing the end of their useful service life; (4) the tertiary filters only
19 worked in manual mode; (5) the disinfection system needed to be
20 repaired due to fecal result limits; (6) the reclaimed valve was
21 questionable; (7) the irrigation system did not work; (8) new pumps
22 and controller were probably needed; (9) the generator needed to be
23 replaced; and (10) vegetation was needed on the infiltration pond

1 bank. The report also stated the following observations: (1) the EQ
2 basin tanks, digester, and aeration basins were new; (2) the turbidity
3 meter had been replaced and calibrated; and (3) the infiltration pond
4 was cleaned and in great condition.

5 **Q. Have you conducted a site visit of the Ginguite Woods**
6 **wastewater system and, if so, what were your observations?**

7 A. On March 19, 2024, I, along with Public Staff Attorney, Davia Newell,
8 visually inspected the wastewater system while accompanied by
9 GWWTP representative Bob Howsare and Atlantic OBX
10 representative Dave Robinson. A reporter with the Outer Banks
11 Voice, Kipp Tabb, was also present at the inspection.

12 Contractors were on-site during the site visit, working on the
13 electrical panels for the plant. The blowers were running
14 intermittently during the site visit. GWWTP completed an upgrade to
15 the front end of the plant earlier this year. The front end of the plant,
16 including the equalization (EQ) basin tanks, digester, and aerations
17 basins appeared in excellent condition. GWWTP plans to upgrade
18 the back end of the plant in the fall of 2024. The back-end portion of
19 the plant appeared to be in poor condition. The tanks, panels, and
20 walkways were very worn and rusted. The back end of the plant is
21 still operational, but, according to the operator, it does not operate as
22 designed in certain conditions, such as excessive rainfall. The spray

1 irrigation system is not in use and has not been in use for
2 approximately ten years. Mr. Robinson stated that the current flow
3 through the plant does not generate the amount of reclaimed water
4 needed for the spray irrigation to function properly and therefore the
5 system has not been utilized. GWWTP plans to refurbish the spray
6 irrigation system and add a computerized controller to the system.

7 Mr. Robinson pointed out the manhole location that had previously
8 experienced overflows. Since Atlantic OBX has been operating the
9 plant, overflow at the manhole has occurred three times, which is
10 significantly less frequent than under previous operators, according
11 to customer accounts. Each overflow that Atlantic OBX has
12 experienced was not large enough to require reporting a Sanitary
13 Sewer Overflow report to DEQ. Pictures from the site visit are
14 included in **Darden Exhibit No. 1.**

15 **Q. Did GWWTP provide Notice to Customers of the Application?**

16 A. Yes. On February 24, 2024, the Commission issued the Order
17 Approving Customer Notice (Notice Order). On March 1, 2024,
18 GWWTP filed a Certificate of Service stating that the notice was
19 mailed or hand delivered by the date specified in the Notice Order.

20 **Q. Has the Public Staff received any customer complaints?**

21 A. No customer complaints have been received by the Public Staff
22 Consumer Services Division.

1 **Q. Has the Public Staff received any consumer statements of**
2 **position?**

3 A. Yes. As of April 2, 2024, the Public Staff has received 19 consumer
4 statements of position. All the statements opposed the proposed rate
5 increase. One of the consumer statements described a service issue
6 with the sprinkler irrigation system at their home not working for the
7 past ten years. None of the other consumer statements of position
8 expressed concerns with the service currently provided by GWWTP.

9 **Q. Please summarize the public hearing conducted in this case.**

10 A. The Commission conducted a hearing to receive testimony from
11 public witnesses on March 18, 2024, at 7:00 p.m. at the Dare County
12 Courthouse in Manteo, North Carolina. Approximately 21 customers
13 attended as well as two reporters. Five customers testified on the
14 record during the hearing. All customers who attended and those that
15 testified were residents of Southern Shores Landing.

16 Wayne Avery testified that the majority of the residents of Southern
17 Shores Landing are retirees and live on a fixed income, and that a
18 large increase in rates would be a significant financial burden. Mr.
19 Avery described that most of the homes in the community are
20 occupied by only one or two residents, which results in low usage.
21 Mr. Avery shared his frustration with the lack of communication from
22 “the owners” to the residents concerning the future mixed-use

1 development. Mr. Avery stated that he has been a resident for 11
2 years and has not had any service issues during that time.

3 Matthew Huband testified that he has experienced continual odor
4 and effluent discharge from a manhole located on Landing Trail after
5 excessive rain. Mr. Huband stated that the odor and the overflows
6 through the manhole have been resolved since the tank replacement
7 that occurred late last year. Mr. Huband has been a resident since
8 2018.

9 Linda Sears addressed consumption amounts and stated that the
10 Homeowners Association mandates homes to have a maximum
11 occupancy of six people due to the WWTP capacity. Ms. Sears
12 stated that, as of the morning of that day (March 18, 2024), there
13 were no signs or contact information for the operator, Atlantic OBX,
14 or owners, GWWTP, on the WWTP site. Ms. Sears also stated that
15 the irrigation sprinkler system that is included in the property deed
16 does not work. The sprinkler system is part of the Ginguite system,
17 and GWWTP is responsible for maintaining it.

18 Susan Johnson testified that she has not received any notices of
19 noncompliance from GWWTP. She also stated that the odor from the
20 plant is strong during the summer. Ms. Johnson has been a resident
21 of Southern Shores Landing for ten years.

1 Caroline Haas testified against the increase of rates. She mentioned
2 the average sewer bill of municipalities. Ms. Haas described an
3 instance when an overflow resulted in sewage running along
4 Highway 158, located in front of the plant. Ms. Haas also pointed out
5 the constant issuance of fines by DEQ to the owners.

6 GWWTP filed a Report on the Customer Hearing on April 2, 2024, in
7 the docket. In reference to the odor complaints, GWWTP stated that
8 it is not possible to eliminate all odor at a sewage treatment plant.
9 Mr. Howsare stated that he has been on site at the plant dozens of
10 times in the last year or more, and while standing on top of or close
11 by the plant, he has noticed the earthy odor that can be expected of
12 a sewage treatment plant that is properly operating. The Company
13 stated it will continue to monitor the sewage treatment plant to
14 identify and address any odor-related issues that result in an odor
15 that arises from inappropriate treatment. In reference to the irrigation
16 system, the Company stated that it is in the process of refurbishing
17 the irrigation system and that when the flow from the Ginguite Mixed
18 Use Development is added to the plant, there should be sufficient
19 effluent to operate the irrigation system. In reference to Ms. Hass'
20 testimony describing an overflow of effluent from the irrigation pond
21 onto Highway 158, the Company stated that the total flow for the
22 plant per day would not raise the water level by a quarter of an inch
23 and that it would require a substantial flow in excess of the total flow

1 of the plant per day to cause the infiltration pond to overflow onto the
2 highway. The Public Staff will be filing a response to GWWTP's
3 customer hearing report on April 16, 2024, as ordered by the
4 Commission.

5 The Public Staff has given this customer testimony proper
6 consideration in formulating its recommendations.

7 **Q. Is GWWTP providing safe and reliable service?**

8 A. Yes. Based on my site visit, review of environmental records, the
9 minimal amount of NOVs issued by DEQ recently, and the lack of
10 customer complaints regarding service quality or customer service
11 issues over the past three years, I conclude that GWWTP is
12 providing adequate service to its sewer customers.

13 **BILLING ANALYSIS**

14 **Q. What are the present and proposed sewer utility service rates?**

15 A. The present rates were approved by the Commission's Order
16 Discharging Emergency Operator Subject to Final Financial Review,
17 Appointing New Emergency Operator, Approving Increased Rates,
18 and Requiring Customer Notice issued on January 12, 2024, in
19 Docket No. W-1139, Sub 4. The present and proposed rates are as
20 follows:

21	<u>Present</u>	<u>Proposed</u>
22	<u>Monthly Sewer Utility Service:</u>	

1	Residential Flat Rate (per SFE ²)	\$180.00	\$172.82
2	<u>Connection Charge:</u> (per SFE)	\$3,500	\$3,500
3	<u>Reconnection Charge:</u>		
4	If sewer utility service cut off by utility	\$15.00	\$15.00

5 **Q. Briefly explain your billing analysis.**

6 A. I reviewed and analyzed GWWTP's current and projected billing data
7 and customer flow allocation. I performed a billing analysis to
8 determine the level of annual service revenues produced at present
9 and the Company's proposed rates utilizing the projected full buildout
10 of customers for Ginguite Woods. I confirmed the billing determinants
11 for end of period (EOP) customer counts, analyzed the plans for the
12 future Ginguite Mixed Use Development, and agree with the billing
13 determinants used by the Company in the Application.

14 The flat rates for Ginguite Woods are based on a per single-family
15 equivalent (SFE). The present rates define SFE as 360 GPD. DEQ
16 issues permits for wastewater treatment plants with required
17 capacity amounts of gallons per day of usage determined by the 15A
18 NCAC 02T .0014 rules. The 15A NCAC 02T .0014 rules were
19 recently revised by the enactment of Session Law 2023-137, and the
20 capacity amount required for the type of residential homes in the

² Single-Family Equivalent (SFE)

1 Ginguite Woods service area has been reduced³. The minimum
 2 design capacity amount for a residential three-bedroom home was
 3 reduced from 360 GPD to 225 GPD. To account for this rule change,
 4 the rate design defines SFE as 225 GPD, and the capacity amounts
 5 for each type of customer is based on the current 15A NCAC 02T
 6 .0014 rules.

7 Based on the 15A NCAC 02T .0014 rules, the SFEs listed below in
 8 **Darden Table 1**, are calculated for the residential and commercial
 9 customers:

10 **Darden Table 1 – SFE Allocations per Customer Type**

	SFEs Allocated (SFE = 225 GPD)
Existing Customers	38
Future Residential Units	47
Future Restaurant	21
Future Commercial Space	7

11 The billing determinants are consistent with the Company's
 12 proposed billing determinants. The rates are based on the full
 13 buildout of the Ginguite Mixed Use Development. The Public Staff
 14 and the Company have discussed this methodology and agree that

³ See December 13, 2023 Memorandum issued by the NPDES Branch Chief describing Session Law 2023-137 – Changes to Wastewater Design Flow Rates in 15A NCAC 02T .0014(b). <https://www.deq.nc.gov/session-law-2023-137-changes-wastewater-design-flow-rates/download?attachment>

1 including the future customers in the rate calculations accurately
2 distributes the cost of service amongst the customer base. Although
3 the Company will not be recovering the total service revenue
4 requirement until the future customers are added, by incorporating
5 the future customers into the billing determinants, the cost of service
6 for the entire plant and system is distributed equitably among all
7 existing and potential customers. This methodology is a reasonable
8 and preferred alternative to an excess capacity adjustment for
9 overbuilt plant.

10 Furthermore, Southern Shores Landing customers have filed
11 consumer statements about their concerns with having to pay for the
12 plant associated with the future development. By including the future
13 customers in the billing determinants, the recovery of the cost of
14 service is shared and appropriately addresses the customers'
15 concerns.

1 **Q. What are the Public Staff's calculated annual service revenues**
2 **under the present rates and the Company's proposed rates?**

3 A. The Public Staff's calculated present and proposed service revenues
4 for the 12-month period ended August 31, 2023, are shown below in
5 **Darden Table 2.** The revenues were calculated using the Public
6 Staff's recommended billing determinants, GWWTP's present rates
7 approved in Docket No. W-1139, Sub 4, and GWWTP's proposed
8 rates. The service revenues are based on the billing determinants at
9 full buildout.

10 **Darden Table 2 - Public Staff's Calculated Service Revenues**

	Present Rates	Company Proposed Rates
PS Calculated Service Revenue	\$244,080	\$234,344

11 **RATE DESIGN**

12 **Q. What is your recommendation concerning GWWTP's proposed**
13 **rates?**

14 A. The Public Staff recommends a rate decrease for the Ginguite Woods
15 service area. My revenue calculations are shown in **Darden Exhibit**
16 **No. 2.** The Public Staff recommended rates are as follows:

1	<u>Monthly Sewer Utility Service:</u>	
2	Flat Rate (per SFE ⁴)	\$129.33

3	<u>Connection Charge (per SFE):</u>
4	\$3,500

5	<u>Reconnection Charge:</u>	
6	If sewer utility service cut off by utility	\$15.00

7 My recommended rate design recovers the service revenue
8 requirement determined by Public Staff Financial Analyst Kuei Fen
9 Sun.

10 **EXPENSES**

11 **Q. Please describe your investigation of operating and contract**
12 **expenses identified in the Application.**

13 A. My investigation of operating expenses included reviewing expenses
14 for the contract operator, maintenance and repair (M&R), electric
15 power, chemicals, testing, permit fees, and sludge removal. I
16 reviewed GWWTP's expenses for the test year, the 12-month period
17 ended August 31, 2023, which were provided in the Application. In
18 response to Public Staff Data Request No. 1, GWWTP provided the
19 invoices supporting the expense amounts.

⁴ SFE = 225 GPD.

1 Based on my review of the invoices, I agree with the amounts listed
2 on the Application, for the following expenses:

3	<u>Expense</u>	<u>Amount</u>
4	Contract Operator	\$48,000
5	Chemicals	\$ 2,265
6	Electric Power	\$ 5,554

7 **Q. Have you recommended any adjustments to expenses related to**
8 **sewer operations?**

9 A. Yes, I have provided Public Staff Financial Analyst Sun with
10 recommendations for adjustments to expenses for M&R, testing, and
11 sludge hauling.

12 MAINTENANCE AND REPAIR EXPENSE

13 The Public Staff reviewed GWWTP's M&R expenses for its sewer
14 operations. The Company provided invoices and explanations for
15 expenses in response to Public Staff Data Requests Nos. 1 and 3. I
16 reclassified \$823 for testing equipment and supplies from M&R to the
17 Testing expense. I reclassified \$450 for a vacuum truck to pump
18 septage from a lift station from the Sludge Hauling expense to M&R.
19 An invoice from Albetuck Land Development LLC for \$14,000 for
20 cutting down trees, clearing, and mulch around Ginguite Trail Pond
21 was included in the M&R expense. In response to Public Staff Data
22 Request No. 3, the Company stated that the landscape work was a

1 requirement of the Division of Water Resources and included
2 preparing the slopes for the infiltration pond, clearing of overgrown
3 vegetation, and mowing around the pond. Typically, with regular,
4 routine maintenance, landscape work is less expensive to maintain
5 than the initial work needed to address an overgrown area. Therefore,
6 it does not appear that this amount of work will be a recurring, annual
7 expense. I annualized the total amount of \$14,000 over five years and
8 included \$2,800 in the total M&R expense. The Public Staff
9 recommends a reduced M&R expense of \$26,465.

10 TESTING EXPENSES

11 The Public Staff has reviewed GWWTP's sewer testing expenses. I
12 included the total from the invoices provided in response to Public Staff
13 Data Request No. 1. As stated above, I reclassified \$823 for testing
14 equipment and supplies from the M&R expense to Testing. The Public
15 Staff recommends testing expenses of \$12,625.

16 SLUDGE HAULING EXPENSE

17 The Public Staff has reviewed the sludge hauling quantities and
18 expenses provided by GWWTP. Sludge hauling amounts are
19 included on the invoices from Atlantic OBX. The invoices from
20 Atlantic OBX that included sludge hauling during the test year were
21 for hauling in October, November, and December 2022. Sludge
22 hauling charges did not appear any other time during the test year.

1 Two Atlantic OBX invoices from October 2022 identified a total
2 amount of \$16,841.67 and described it as: "Sludge Removal to Start
3 Construction at Plant," and included a charge for "Holding Tank
4 Rental." The Atlantic OBX invoice from November 2022 identified a
5 total amount of \$9,991.56 and described it as a charge for "Holding
6 Tank Rental, Pickup and Cleaning" and "Transfer from KDHWTP
7 to Plant in Order to have Good Biology in Tank After Construction."
8 The Atlantic OBX invoice from November 28, 2022, identifies a total
9 amount of \$1,675 for sludge hauling.

10 Sludge hauling can vary from year to year depending on operational
11 changes or system maintenance requirements needed in addition to
12 routine sludge hauling. The Company was not able to provide sludge
13 hauling data for the 24 months prior to the start of the test year due
14 to the previous operator not providing records to GWWTP.

15 The sludge hauling events that occurred during the construction of
16 the front end of the plant replacement in October and November
17 2022 do not provide a representative annual level for sludge hauling.
18 I capitalized the \$26,833.23 amount of sludge hauling as plant in
19 service to be included with the WWTP Steel Tank
20 Replacement/Front End Upgrade project. Based on my review of the
21 invoices, it appears that the November 28, 2022, invoice totaling
22 \$1,675 represents an expected amount of sludge hauling associated

1 with typical operation of the plant. During my site visit, Mr. Robinson,
2 the operator, stated that, currently, sludge hauling typically occurs on
3 a quarterly basis. Although the test year invoices do not show sludge
4 hauling occurring quarterly, the construction sludge hauling activity
5 may have affected the expected frequency of sludge hauling.
6 Therefore, based on the invoices and Mr. Robinson's input, I
7 determined that the \$1,675 invoice amount served as a
8 representative level for sludge hauling that is expected to occur
9 quarterly. The Public Staff recommends an ongoing sludge hauling
10 expense of \$6,700.

11 **PLANT IN SERVICE**

12 **Q. What adjustments have you made to plant additions since the**
13 **Docket No. W-1139, Sub 3 case?**

14 A. In response to Public Staff Data Requests Nos. 1 and 4, GWWTP
15 provided invoices and supporting documentation for plant additions
16 made since October 2009, which was the last rate case associated
17 with the WWTP in Docket No. W-1139, Sub 3. With the exception of
18 the acquisition adjustment related to purchase, the Public Staff
19 agrees with the plant amounts and service lives associated with the
20 plant in service items included in the Application. As stated
21 previously, the Public Staff recommends including the \$26,833.23
22 sludge hauling amount, originally included in the Sludge Hauling

1 expense, with the WWTP Steel Tank Replacement/Front End
2 Update project plant in service amount.

3 **Q. Briefly describe GWWTP's plans for capital improvements.**

4 A. GWWTP intends to replace the back end of the WWTP in the fall of
5 2024 for an estimated cost of \$500,000. In addition to the
6 replacement of the back end of the plant, GWWTP has estimated
7 approximately \$100,000 worth of additions and upgrades to be
8 completed after the back end of the plant replacement. The
9 Company states that the back end of the plant replacement and the
10 additional upgrades will be financed using the owner's equity.

11 The total estimated cost of these capital improvements is \$600,000.
12 I provided the estimated service lives shown in **Public Staff Sun**
13 **Exhibit 1, Schedule 2-2**. The estimated service lives are based on
14 preliminary information since the identified improvements are
15 planned and not installed. The estimated service lives were primarily
16 based on lives from other proceedings with similar equipment types.
17 The resulting revenue requirement determination, identified in
18 **Public Staff Sun Exhibit 1, Schedule 2-2**, provides the Commission
19 with an estimate, based on currently known information, of the
20 revenue requirement and rate impact associated with the planned
21 improvements.

1 It will be incumbent upon GWWTP to ensure the improvements are
2 reasonable and prudent for the capital investment associated with
3 the improvements to be added to rate base and included in rates in
4 a future rate case proceeding. At that time, depreciation lives and
5 associated rates may be adjusted to account for the actual
6 improvements made, including details on the specific equipment and
7 materials used. Inclusion of the currently planned capital
8 improvements totaling \$600,000 for the sewer system, based on the
9 resulting revenue requirements to support the improvement costs, as
10 identified in **Public Staff Sun Exhibit 1, Schedule 2-2**, would result
11 in a \$53.72 per month increase in sewer flat rates.⁵ This is equivalent
12 to a 42% increase in the sewer monthly flat rate of \$129.33
13 recommended by the Public Staff.

14 **Q. What is your recommendation concerning the acquisition**
15 **adjustment proposed by GWWTP?**

16 A. The Public Staff does not support recovery of an acquisition
17 adjustment. As a general proposition, when a public utility buys
18 assets that have previously been dedicated to public service as utility
19 property, the acquiring utility is entitled to include in rate base the
20 lesser of the purchase price or the net original cost of the acquired

⁵ Rate impact is determined by dividing the revenue requirement included in the prefiled testimony of Public Staff witness Sun by the number of sewer SFEs (113) and then by the number of months in a year and reflecting that amount in the sewer flat rate.

1 facilities owned by the seller at the time of the transfer. See W-1000,
2 Sub 5 Order. Typically, companies seek acquisition adjustments to
3 facilitate the sale or transfer of a utility before closing occurs.

4 The Commission has indicated "a strong general policy against the
5 inclusion of acquisition adjustments in rate base subject to
6 exceptions in appropriate instances." *Id.* at 24. In the W-1000, Sub 5
7 Order, the Commission discusses circumstances when the rate base
8 treatment of acquisition adjustments was not applicable. The
9 Commission stated:

10 After examining the relevant policy considerations and
11 the prior decisions of the Commission, the Commission
12 concludes that the outcome in an acquisition
13 adjustment case should hinge upon whether the party
14 seeking rate base treatment for an acquisition
15 adjustment has established by the greater weight of the
16 evidence that the purchase price which the purchaser
17 has agreed to pay is prudent and that the benefits of
18 including the acquisition adjustment in rate base
19 outweigh any resulting burden to ratepayers. After
20 conducting such an analysis, the Commission
21 concludes that inclusion of the acquisition adjustment
22 in North Topsail's rate base would be inappropriate
23 because UI is obligated to purchase North Topsail
24 regardless of our decision with respect to the
25 acquisition adjustment issue and because UI has failed
26 to meet its burden of proving that the benefits to
27 affected customers from the inclusion of the acquisition
28 adjustment in rate base outweigh the resulting harm.
29 *Id.* at 22.

30 On page 11 of his prefiled direct testimony, witness Howsare testifies
31 that the purchase price is prudent, the result of arm's length
32 bargaining, and the benefits accruing to the customers materially

1 outweigh the costs of inclusion in the rate base of the purchase price.
2 GWWTP did not provide any documentation or explanation to
3 support witness Howsare's statement. The Public Staff requested
4 support in Public Staff Data Request No. 3, and the Company did not
5 provide further support for the prudence of the purchase price
6 amount. In reference to the prudence of the purchase price, the
7 Company stated that the utility had issues with the abandonment of
8 the system by the prior franchise owner. This statement does not
9 support the prudence of the \$110,000 purchase price amount. In
10 reference to the benefits to customers outweighing the costs of
11 inclusion in the rate base of the purchase price, the Company's
12 response stated that the customers are benefited due to the
13 operation of the system by a financially viable Company who desires
14 to own and operate the system, and to provide safe, adequate, and
15 reliable sewer service to the customers. Although the Public Staff
16 believes that those outcomes are important and necessary, they are
17 the expected standards and responsibilities of a utility company.
18 Similar to the Commission's decision stated above, the Public Staff
19 believes that GWWTP has failed to meet its burden of proving that
20 the benefits to the affected customers from the inclusion of the
21 acquisition adjustment in rate base outweigh the resulting harm.

22 The Commission also states above that the inclusion of the
23 acquisition adjustment in rate base would be inappropriate because

1 the buyer was obligated to purchase the system regardless of the
2 Commission decision with respect to the acquisition issue. GWWTP
3 purchased the WWTP assets and gained ownership without
4 Commission approval years prior to the filing of the Application.
5 Therefore, the purchase of the system is complete and is not
6 conditioned on the approval and inclusion of the requested
7 acquisition adjustment in rates. The Public Staff does not support an
8 acquisition adjustment applied retroactively to a purchase that is
9 already complete. The criteria that the Commission is to consider and
10 determine applicable to a request for an acquisition adjustment
11 should be analyzed before a sale is complete, when negotiations and
12 changes could still be completed if necessary. Section 110(a) of
13 Chapter 62 states in pertinent part that “no public utility shall
14 hereafter begin the construction or operation of any public utility plant
15 or system or acquire ownership or control thereof, either directly or
16 indirectly, without first obtaining from the Commission a certificate
17 that public convenience and necessity requires, or will require, such
18 construction, acquisition, or operation . . .”. Section 111(a) of
19 Chapter 62 states in pertinent part that “[n]o franchise now existing
20 or hereafter issued under the provisions of this Chapter . . . shall be
21 sold, assigned, pledged or transferred, nor shall control thereof be
22 changed through stock transfer or otherwise, or any rights
23 thereunder leased, nor shall any merger or combination affecting any

1 public utility be made through acquisition of control by stock
2 purchase or otherwise, except after application to and written
3 approval by the Commission. . .”.

4 On page 11 of his prefiled direct testimony, witness Howsare testifies
5 that the requested acquisition adjustment justification is consistent
6 with the case filed by Heaters Utilities, Inc., for the transfer of the
7 Hardscrabble water system in Docket No. W-274, Sub 122. The
8 Public Staff disagrees with his opinion that the Hardscrabble docket
9 is directly relatable to this one. In the Hardscrabble docket, the sale
10 was pending and was waiting on the determination of an acquisition
11 adjustment. Additionally, that docket involved a small utility being
12 sold to a larger utility with more resources and a larger customer
13 base, which provided the benefit of economies of scale to the existing
14 customer base. In the W-274, Sub 122 Order, the Commission
15 determined that an acquisition adjustment was appropriate, stating:

16 The Commission concludes that it is not reasonable,
17 and would conflict with sound regulatory policy and
18 practice, to send a signal to the water utility industry
19 that a small system should be allowed to deteriorate so
20 that it can command a higher sales price, since the
21 acquiring company could then obtain rate base
22 treatment on its purchase price. *Id.* at 11.

23 GWWTP acquired the WWTP assets and ownership between
24 November 13, 2015, and March 24, 2017. The plant in service
25 records provided by GWWTP show projects in 2019, 2022, and

1 2023. GWWTP owned and operated the WWTP for approximately
2 two to four years before investing in any significant capital upgrades.
3 The Public Staff believes that allowing an acquisition adjustment
4 after an owner has purchased a plant and allowed it to continue to
5 deteriorate for years before making any major capital improvements
6 would, as the Commission described above, send a signal to the
7 water utility industry that allowing a system to deteriorate could lead
8 to justifying a higher sales price since an acquisition adjustment may
9 be granted.

10 In the W-1000, Sub 5 Order, the Commission assessed whether an
11 acquisition adjustment was appropriate with respect to the Carolina
12 Water Service, Inc. of North Carolina systems, Chapel Hills and High
13 Meadows. The Commission stated:

14 The Hearing Examiner reached the opposite
15 conclusion with respect to the Chapel Hills and High
16 Meadows systems since the record did not establish
17 that the prior owner would have failed to make
18 necessary system improvements in the absence of a
19 transfer, the amount which Carolina Water Service had
20 spent on service improvements was unclear, there had
21 been no violations assessed against the High
22 Meadows system, the record did not demonstrate that
23 the sales had been conducted at arms length and that
24 the purchase prices were reasonable, the
25 circumstances surrounding the transfers were unclear,
26 the purchases had been effectuated without prior
27 Commission approval, and it was doubtful that the
28 benefits to customers outweighed the costs. . *Id.* at 24.

1 The Commission clearly stated that an acquisition adjustment was
2 not approved due to the following: the record did not establish that
3 the prior owner would have failed to make necessary system
4 improvements in the absence of a transfer; the circumstances
5 surrounding the transfer were unclear; the purchases had been
6 effectuated without prior Commission approval; and it was doubtful
7 that the benefits to customers outweighed the costs. The same
8 circumstances are applicable to GWWTP in this case. GWWTP was
9 the owner before the request for an acquisition adjustment was
10 submitted and had made necessary system improvements after a
11 couple years of ownership. The circumstances surrounding the
12 transfer and history of ownership and operation have been unclear
13 due to the involved parties changing operations and ownership
14 without Commission approval. GWWTP purchased the system
15 without Commission approval and has stated that the purchase was
16 not dependent on an acquisition adjustment. Lastly, GWWTP has not
17 provided adequate support for how the acquisition adjustment
18 benefits customers.

19 As stated above, GWWTP has not quantified “the impact of including
20 the acquisition adjustment in rate base on the rates paid by
21 customers of the acquired and acquiring utilities.” Allowing GWWTP
22 to recover in rate base the entire difference between the purchase
23 price of \$110,000 and the net plant in service of \$0 at the time of

1 purchase would equate to a \$10.90 increase in residential monthly
2 wastewater flat rates⁶ as shown in **Public Staff Sun Exhibit 1,**
3 **Schedule 2-2.** This equates to an 8% increase in the residential
4 sewer monthly flat rate of \$129.33 recommended by the Public Staff.

5 Approval of an acquisition adjustment is not appropriate to be
6 determined after the system is purchased and is not in the public
7 interest. Further, GWWTP has not established by the greater weight
8 of the evidence that the benefits to Ginguite Woods customers
9 resulting from the allowance of rate base treatment of an acquisition
10 adjustment in this case would offset or exceed the resulting burden
11 or harm to customers, including but not limited to, the future rate
12 impact of the requested acquisition adjustment.

13 **Q. What is your recommendation concerning the bond for the**
14 **wastewater utility system?**

15 A. North Carolina Session Law 2023-137, Section 24 revised N.C.G.S.
16 § 62-110.3(a) to read that no franchise may be granted to any water
17 or sewer utility company “until the applicant furnishes a bond,
18 secured with sufficient surety as approved by the Commission, in an
19 amount not less than twenty-five thousand dollars (\$25,000).” In

⁶ Rate impact is determined by dividing the respective revenue requirement included in the prefiled testimony of Public Staff witness Sun by the number of sewer SFEs (113), and then by the number of months in a year and reflecting that amount in the residential wastewater flat rate.

1 addition, the bond “shall be conditioned upon providing adequate
2 and sufficient service within all the applicant's service areas.”
3 Further, N.C.G.S. § 62-110.3(a) provides:

4 In setting the amount of a bond, the Commission shall
5 consider and make appropriate findings as to the
6 following:

- 7 (1) Whether the applicant holds other water
8 or sewer franchises in this State, and if
9 so its record of operation,
- 10 (2) The number of customers the applicant
11 now serves and proposes to serve,
- 12 3) The likelihood of future expansion needs
13 of the service,
- 14 (4) If the applicant is acquiring an existing
15 company, the age, condition, and type of
16 the equipment, and
- 17 (5) Any other relevant factors, including the
18 design of the system.

19 Commission Rules R7-37 and R10-24 restate and reaffirm most of
20 these provisions and requirements although the Commission Rules
21 have not been updated to reflect the revised bond amount required
22 by N.C.G.S. § 62-110.3. Bond is required to ensure the continued
23 provision of adequate and sufficient wastewater services in the event
24 a wastewater utility is unable to provide such service due to financial
25 constraints, mismanagement, or other factors. The factors and
26 findings set forth in N.C.G.S. § 62-110.3(a)(1) – (5) make clear that
27 the bond amount depends heavily on the applicant's financial,
28 managerial, and technical expertise; the applicant's prior
29 performance where applicable; the number of current and projected

1 future wastewater customers; system expansion plans and needs;
2 the complexity of the applicant's system and facilities; and any other
3 factors that bear upon the risk of the applicant providing inadequate,
4 inconsistent, and/or insufficient wastewater services. North Carolina
5 Gen. Stat. § 62-110.3 and Commission Rules R7-37 and R10-24
6 make it clear that a higher risk of deficient wastewater services
7 necessitates a higher bond amount.

8 GWWTP does not have a history of operations and management in
9 North Carolina under Commission regulation, and due to the
10 customer size, the improvements planned by GWWTP, and the size
11 of the WWTP and wastewater collection system, I recommend that a
12 \$100,000 bond be posted by GWWTP.

13 **Q. What is your recommendation regarding the requested grant of**
14 **a CPCN for Ginguite Woods?**

15 A. While the Public Staff has found that GWWTP has the financial,
16 technical, and managerial ability to own and operate the Ginguite
17 Woods wastewater system, the Public Staff's support of the request
18 to grant a CPCN is contingent on the following conditions: (1)
19 denying an acquisition adjustment; (2) requiring a bond of \$100,000;
20 and (3) approving a monthly residential flat rate of \$129.33.

- 1 **Q.** **Does this conclude your testimony?**
- 2 **A.** Yes, it does.

OFFICIAL COPY

May 23 2024

APPENDIX A

QUALIFICATIONS AND EXPERIENCE

Lindsay Q. Darden

I graduated from North Carolina State University, earning a Bachelor of Science Degree in Civil Engineering. I am a licensed Professional Engineer (PE - State of North Carolina #042110). I am also certified as a B-Well Operator (#130281) by the North Carolina Water Treatment Facility Operators Certification Board. I worked for the North Carolina Department of Environmental Quality (DEQ), Public Water Supply Section for four years prior to joining the Public Staff in December 2016. Prior to working for DEQ, I worked for Smith Gardner, an engineering consulting firm.

My duties with the Public Staff are to monitor the operations of regulated water and wastewater utilities with regard to rates and service. These duties include conducting field investigations, reviewing, evaluating, and recommending changes in the design, construction, and operations of regulated water and wastewater utilities, presenting expert testimony in formal hearings, and presenting information, data, and recommendations to the North Carolina Utilities Commission.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

(WHEREUPON, the prefiled
direct testimony of GREGORY
J. REGER is copied into the
record as if given orally
from the stand.
Confidential filed under
seal)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-1343, SUB 1

In the Matter of)	
Application by GWWTP, LLC for a)	
Certificate of Public Convenience and	)	TESTIMONY OF
Necessity to Provide Wastewater Utility	)	GREGORY J. REGER
Service to Southern Shores Landing	)	PUBLIC STAFF – NORTH
and Ginguite Mixed Use Development	)	CAROLINA UTILITIES
in Dare County, North Carolina, and for	)	COMMISSION
Approval of Rates)	

April 5, 2024

1 **Q. Please state your name, business address, and present**
2 **position.**

3 A. My name is Gregory J. Reger, and my business address is 430 North
4 Salisbury Street, Raleigh, North Carolina. I am a Public Utilities
5 Regulatory Analyst in the Economic Research Division of the Public
6 Staff – North Carolina Utilities Commission (Public Staff).

7 **Q. Please state your qualifications and duties.**

8 A. I received a Bachelor of Arts degree in Business, with a Minor in
9 Mathematics from Lake Forest College in 2008, and a Master of
10 Public Administration degree from Syracuse University in 2012. Prior
11 to joining the Public Staff in December of 2023, I held data analytics,
12 budget and performance management, and process improvement
13 roles at the local and federal government level for 10 years, I was
14 awarded a one-year local government management fellowship with
15 the City of Hamilton, OH Electric Department, and I was a Contractor
16 Operations Specialist/Assessor & Final Inspector for two years in the
17 Weatherization Department of a nonprofit in Chicago. Since joining
18 the Public Staff, I have conducted rate of return and financial viability
19 studies in water and wastewater utility cases and filed an affidavit on
20 fair rate of return in a small water and sewer utility rate case in Docket
21 No. W-1263, Sub 4. In addition, I have been involved in the
22 evaluation of ferry operations, as well as the investigation and

1 analysis of electric utilities' proposed riders, avoided cost rates, and
2 integrated resource plans.

3 **Q. What is the purpose of your testimony?**

4 A. The purpose of my testimony is to provide the North Carolina Utilities
5 Commission (Commission) with the results of my investigation of the
6 financial viability of GWWTP, LLC (GWWTP or the Company) to
7 provide wastewater utility service to Southern Shores Landing and
8 Ginguite Mixed Use Development (collectively Ginguite Woods) in
9 Dare County and for approval of rates, and to recommend a fair rate
10 of return to be employed as a basis for determining the appropriate
11 revenue requirement for GWWTP.

12 **Q. Why is it necessary to assess the company's financial viability?**

13 A. Past owners of the system did not have the resources to adequately
14 maintain this wastewater utility system. The wastewater system
15 currently owned by GWWTP was relinquished by the original owner
16 in 2009, six years after receiving a CPCN, as the owner did not have
17 the necessary capital to adequately fund operations. The
18 Commission then appointed an emergency operator, Enviro-tech,
19 who operated from November 2009 to August 2021. In addition to
20 the costs GWWTP would incur operating the wastewater system,
21 Public Staff Engineer Lindsay Darden testifies that the wastewater

1 treatment plant is in poor condition and has rust, holes, and a non-
2 working spray irrigation system. Accordingly, it is important that
3 GWWTP have the financial capability to make the needed capital
4 expenditures that were identified in the Company's Application for a
5 Certificate of Public Convenience and Necessity (Application).

6 **Q. What information did you examine in the course of your**
7 **investigation?**

8 A. In investigating GWWTP's financial viability, I examined the financial
9 and accounting information that GWWTP provided in connection with
10 the Application, Mr. Howsare's direct testimony, Mr. Howsare's
11 response to customer testimony, and GWWTP's responses to the
12 Public Staff's data requests, in particular financial statements and pro
13 forma financial modeling provided by GWWTP and reviewed by the
14 Public Staff.

15 **Q. Please describe the findings of your investigation of the**
16 **Company's financial viability.**

17 A. My investigation and analysis indicate that GWWTP has the financial
18 resources to operate the wastewater system and to fund needed
19 upgrades. GWWTP's owners have cash on hand **[BEGIN**
20 **CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**, a
21 combined net worth of approximately **[BEGIN CONFIDENTIAL]**

1 [REDACTED] [END CONFIDENTIAL], and earn a combined annual
2 salary of [BEGIN CONFIDENTIAL] [REDACTED] [END
3 CONFIDENTIAL] from their partnership and co-ownership in SAGA
4 Construction, Inc. SAGA Construction has a vested interest in the
5 wastewater utility system, as it is planning to build a mixed-use
6 development (commercial and residential) to be served by this
7 wastewater system. Additionally, GWWTP has already made
8 improvements to the wastewater system since 2019 totaling
9 \$459,630.

10 The Company provided financial projections that assume completion
11 of the mixed-use development and adds 39 customers in Year Two
12 and 36 customers in Year Three. Based on the information provided,
13 which assumes an increase in rates from a subsequent rate case in
14 2024 and effective in 2025, GWWTP will have positive net income
15 beginning in Year Two. If the rates recommended by the Public Staff
16 continue for the next five years, GWWTP should experience a
17 positive net income upon full build-out of the mixed-use development
18 in Year Three. These findings indicate GWWTP will be financially
19 viable operationally assuming this mixed-use development adheres
20 to the projected schedule.

1 Per Docket No. W-1139 Sub 0, the original intention of the
2 wastewater system (per Public Staff Witness Lucas in January 2001)
3 was to serve 36 residential customers in the Ginguite Woods
4 townhouse development, along with various commercial customers
5 in "The Ginguite Center," with system costs to be recovered through
6 tap fees and developer contributions. For this system, rates have
7 been historically set with the expectation that that commercial area
8 will eventually be developed and receive wastewater services,
9 sharing the burden of system operations and maintenance. In Docket
10 No. W-1139, Sub 3, filed June 2009, the mixed-used development
11 had not yet been built, and rates were designed with an excess
12 capacity adjustment. This development is still in the planning stages
13 and has not received a special use permit from the Town of Southern
14 Shores to begin construction. Until the mixed-use development is
15 built and operational, GWWTP's revenues will not be sufficient to
16 cover all operational expenses and the Company will be operating at
17 a net loss. As evidenced in Mr. Howsare's direct testimony, the
18 Company is aware that it will not realize full recovery of its capital
19 and operational expenses until full build-out. SAGA Construction is
20 committed to a full build-out, and GWWTP has the financial
21 resources to cover operational losses in the meantime.

1 **Q. What is your recommendation regarding the financial viability**
2 **of GWWTP to operate the wastewater system?**

3 A. Based on my evaluation of the information mentioned above, I
4 conclude that GWWTP is financially viable to operate the wastewater
5 system. In addition, GWWTP has the financial viability to make
6 necessary system improvements and upgrades and to adequately
7 maintain the wastewater system. However, GWWTP's financial
8 viability is merely one factor that the Public Staff considers in its
9 review and is not dispositive of the Public Staff's ultimate
10 recommendation to the Commission regarding the Application.

11 **Q. What is a fair rate of return?**

12 A. The fair rate of return is a percentage, which, when multiplied by a
13 utility's rate base investment, will yield the dollars of net operating
14 income a utility should have the opportunity to earn for investors to
15 recover the cost of capital. This dollar amount of net operating
16 income is available to pay the interest cost on a utility's debt and a
17 return to the common equity investor.

18 **Q. How did you determine the fair rate of return that you**
19 **recommend in this proceeding?**

20 A. The Economic Research Division (ERD) of the North Carolina Public

1 Staff makes recommendations to the Commission on appropriate
2 rates of returns for water and wastewater companies. From 1981
3 through the early 2000's, the ERD applied the Montclair Method,
4 established in Docket No. W-173, Sub 14, which uses a risk premium
5 method to derive a reasonable margin on expense. The Montclair
6 Method identified a risk-free rate based on average yields of 5-Year
7 Treasury bonds and added a risk premium of three hundred basis
8 points. This method was applied for over 25 years, until Federal
9 Reserve policies significantly cut interest rates, leading to sustained
10 decreases in the 5-Year Treasury bill rates, which led to questions
11 as to the appropriateness of the Montclair Method for determining
12 the appropriate cost of capital or the margin on expenses.

13 Analysis by the ERD noted a substantial difference between
14 Commission approved rates of return on common equity for larger
15 NC based water and wastewater utilities and natural gas utilities
16 using the Montclair Method. This issue prompted the ERD, beginning
17 in 2011, to rely on the approved average overall cost of capital for
18 Carolina Water Service Inc. of NC and Aqua NC as the basis for the
19 overall return on rate base and the recommended margin on
20 expenses. The recommended fair rate of return on rate base is
21 7.00%, based on the two most recent litigated rate cases involving
22 Carolina Water Inc. of NC (CWSNC), Docket No. W-354, Sub 400

1 and Aqua NC, Inc. (Aqua NC) Docket No. W-218, Sub 573. Given
2 that the overall cost rate is based on current competitive rates of
3 return, the 7.00% should not place GWWTP at a disadvantage when
4 seeking investors; furthermore, this rate should not place an
5 unreasonable cost on ratepayers for wastewater service.

6 **Q. What is your recommended capital structure?**

7 A. I recommend the use of a hypothetical capital structure comprised of
8 50% common equity and 50% debt. GWWTP has financed its utility
9 operations with 100% common equity, given it has no long-term debt.

10 The capital structure is a representation of how a utility's assets are
11 financed, the relative proportions of debt and common equity to the
12 total of these forms of capital. The actual capital structures of smaller
13 utilities often are asymmetrical in that they are composed of either
14 100% equity balances of common equity or large balances of debt,
15 neither of which are appropriate for ratemaking purposes. For
16 example, if a utility owner financed the utility's rate base with little or
17 zero amount of debt, the utility's capital structure would be comprised
18 of 100% common equity. If one was to apply an average approved
19 ROE, the higher cost rate for equity would lead to a higher level of
20 revenue requirement than necessary to maintain financial
21 sustainability. Furthermore, it is virtually impossible to estimate the

1 appropriate equity cost rate given the absence of publicly traded
2 securities that are comprised of unbalanced capital structures with
3 100% equity financing. In my opinion, the use of 50% debt and 50%
4 equity capitalization ratio continues to be a reasonable assumption,
5 as evidenced by recent ratemaking proceedings for CWSNC and
6 Aqua NC.

7 **Q. What is your recommended cost of capital?**

8 A. Based on GWWTP's capital structure as of August 31, 2023,
9 consisting of 100% equity, I recommend an overall rate of return of
10 7.00%, derived from applying a cost of debt of 4.20% and a rate of
11 return on common equity of 9.80%, to a hypothetical capital structure
12 consisting of 50.00% long-term debt and 50.00% common equity. No
13 information was received that warranted an increase to the cost rates
14 of debt and cost rates of equity above those received by CWSNC
15 and Aqua NC.

16 **Q. Does this conclude your testimony?**

17 A. Yes.

1 COMMISSIONER MCKISSICK: Now, I will say that
2 there are a few Commission questions that we have here
3 that, perhaps respected counsel can address at this
4 time because I think that we would like to get these
5 answers into our record, to the extent that you're
6 able to do so at this time; notwithstanding the fact
7 that the motion to allow the excusing of those
8 witnesses has been allowed.

9 MS. HOLT: Thank you.

10 COMMISSIONER MCKISSICK: Okay. And I guess
11 what I'll do is go through those particular questions
12 which been prepared by our Commission Staff, and I'll
13 also look to see if there are any other questions from
14 my fellow Commissioners at this time.

15 And I'll let each party address these
16 particular questions as you might appropriately be
17 able to do so. Some of them would probably be more
18 appropriately addressed to the Public Staff, some to
19 the Applicant. But we'd like to be heard -- or like
20 to hear from each of you as it relates to those
21 particular matters.

22 Regarding the agreed upon rate case expenses
23 on Public Staff Settlement Exhibit 1, Schedule 3.2, on
24 Line 2, legal fees an amount of \$57,725 is listed; do

1 these legal fees relate only to the CPCN Application
2 or are the legal fees related to the appointment of
3 the new emergency operator for a Ginguite Woods now
4 known as Southern Shores Landing, also included in
5 this amount?

6 MS. HOLT: Those --

7 COMMISSIONER MCKISSICK: And I'll hear from
8 Mr. Finley first.

9 MR. FINLEY: Chair McKissick, I have
10 consulted with Accountant Perry over here, and she
11 assures me that the EO activity -- the legal expense
12 having to do with that -- have been removed from the
13 case, and it's only the CPCN costs that are being
14 solved in this docket today.

15 COMMISSIONER MCKISSICK: Those are the only
16 ones?

17 MS. HOLT: That's correct.

18 COMMISSIONER MCKISSICK: You agree with
19 that?

20 MS. HOLT: Yes, the Public Staff agrees.

21 COMMISSIONER MCKISSICK: And the legal fees
22 that have been incurred in this timeframe, I guess
23 they are all related solely and exclusively to the
24 CPCN proceeding; is that correct?

1 MR. FINLEY: That's correct. As you
2 probably are aware, there are all sorts of data
3 requests that have been submitted and answered, and
4 testimony, and there's been a lot of work, but it's --
5 you're correct.

6 COMMISSIONER MCKISSICK: Very good.

7 Now, another question, on Line 3, accounting
8 fees, an amount of \$11,363 is listed; can you explain
9 the nature of these accounting fees? Are these fees
10 related to the internal accountants of the Company or
11 external accounting consultants and, if so, please
12 explain.

13 MR. FINLEY: All of the accounting fees have
14 to do with the CPCN Application, but the case started
15 out as a transfer. We filed it as a transfer
16 Application because there was a CPCN outstanding. The
17 owner of the CPCN had left a long time ago, and the
18 Public Staff requested that we change and resubmit the
19 Application, as a CPCN Application and that is the
20 reason for accounting fees.

21 COMMISSIONER MCKISSICK: All right. And is
22 that your understanding as well?

23 MS. HOLT: My understanding is that those
24 fees pertain to external consultants.

1 COMMISSIONER MCKISSICK: External
2 consultants. Mr. Finley; is that correct?

3 MR. FINLEY: That's correct.

4 COMMISSIONER MCKISSICK: All right. And
5 what is the time period in which these accounting fees
6 were incurred?

7 MR. FINLEY: Accountant Perry says that the
8 accountants first started working on this case
9 approximately four months before the first Application
10 was filed, so it was probably in 2022, and we don't
11 have the exact date but that's our best guess.

12 COMMISSIONER MCKISSICK: Approximately.

13 MR. FINLEY: Approximately, yes.

14 COMMISSIONER MCKISSICK: Do you have any
15 questions related to that or on behalf of the Public
16 Staff?

17 MS. HOLT: One minute. Let me verify those
18 dates. I'm confirming the start date.

19 COMMISSIONER MCKISSICK: That's fine, take
20 your time.

21 MR. FINLEY: You know, we're having to sort
22 of speak off the top of our heads here, and we
23 understand that you're in a bind as much as we are,
24 and to the extent that you would like to follow up

1 with some sort of exhibit, we'd be happy to provide
2 that.

3 COMMISSIONER MCKISSICK: Okay.

4 MR. FINLEY: Written answers to your
5 questions.

6 COMMISSIONER MCKISSICK: Sir, are you
7 proposing a late filed exhibit as to this question, or
8 as to all of these questions, which I've posed?

9 MR. FINLEY: Well, we'll leave that to the
10 Commission. If you'd like it, you let us know and
11 we'll try to accommodate you.

12 COMMISSIONER MCKISSICK: Okay. Thank you.

13 MS. HOLT: Still searching.

14 COMMISSIONER MCKISSICK: Okay.

15 MS. HOLT: We can confirm beginning of 2022.

16 COMMISSIONER MCKISSICK: 2022. Okay. Very
17 good. All right.

18 The Stipulation states that Public Staff
19 will file accounting schedules detailing the final
20 revenue requirement prior to filing the joint proposed
21 order, scheduled rates, and notice to customers.

22 Could you explain, for the record, why that
23 information is not included in this Stipulation; and
24 then, secondly, did the Public Staff calculate the

1 approximate monthly rates based upon the stipulated
2 rate case expense amount and, if so, what was that
3 approximate amount?

4 MS. HOLT: In answer to your first question,
5 the Public Staff envisions extra -- or envisioned
6 extra, additional rate case expense past the hearing
7 date -- attendance at this -- Company counsel at this
8 hearing and after the hearing -- up to a certain
9 amount. And those costs will need to be audited, if
10 you will; verified.

11 So we -- that's why we requested additional
12 time, and when we have a final revenue requirement
13 number, rates will be designed on that final number
14 which we will file with the Commission. As to the
15 rates as of this date --

16 COMMISSIONER MCKISSICK: I guess the
17 question was: Did you take into account also the
18 stipulated rate case expense amounts, was a part of
19 that question.

20 MR. BERNIER: I think the short answer is,
21 yes. The cap that Attorney Holt was explaining is
22 included in the amounts before the Commission.

23 COMMISSIONER MCKISSICK: And what was that
24 approximate amount that you took into account?

1 MR. BERNIER: The -- it's 2,500.

2 COMMISSIONER MCKISSICK: 2,500.

3 MR. BERNIER: Additional expenses. Hearing
4 and post hearing to draft the proposed order and
5 finalize the schedules.

6 COMMISSIONER MCKISSICK: Okay. Thank you.

7 Mr. Finley, would you like to be heard as it
8 relates to these -- that question or questions?

9 MR. FINLEY: We don't have anything further
10 to say.

11 COMMISSIONER MCKISSICK: Okay. All right.

12 Well, next is based upon, I guess, the early
13 comments recommending approval of CPCN on Page 3 for
14 Ms. Darden's testimony and Stipulation. Is the Public
15 Staff satisfied that all ownership documents have been
16 appropriately recorded with regard to the Company's
17 ownership and operation of the wastewater system?

18 MS. HOLT: Yes.

19 COMMISSIONER MCKISSICK: You are?

20 MR. BERNIER: Yes.

21 MS. HOLT: And in answer to your question,
22 the rate that was anticipated based on the cost,
23 including the \$2,500 cap was \$150.38.

24 COMMISSIONER MCKISSICK: \$150.38. that

1 supplements your earlier response?

2 MS. HOLT: Yes.

3 COMMISSIONER MCKISSICK: Is that your
4 understanding, Mr. Finley?

5 MR. FINLEY: That's my understanding, and I
6 tell you that, some of the time that we've been
7 spending the last few weeks and days is coming up with
8 what that rate would be. That's a lot of the
9 negotiation that we've been going through to get the
10 expenses in the right category, some are amortized and
11 some are not. So, yes, I agree with that answer.

12 COMMISSIONER MCKISSICK: Okay. And, of
13 course, I look, Mr. Finley, to you for this response.
14 Does the Company agree with the Public Staff's
15 recommended \$100,000 bond for the wastewater
16 operations of Southern Shores Landing?

17 MR. FINLEY: It is the Company's opinion
18 that, that bond is steep in light of what we've got
19 here, 38 customers, and the approximately a million
20 dollars that have been invested in this system. They
21 have gone for many months with a \$90 per month a bill
22 to the customers.

23 The emergency operator Mr. Freed had a
24 \$20,000 bond as the emergency operator. He has

1 forfeited that bond to the Commission, so we would
2 respectfully request a lower bond than \$100,000,
3 \$50,000, \$75,000, leave that up to the Commission.

4 But, you know, the emergency operator was --
5 was getting a rate of \$180 per month, and we're down
6 to \$150 per month. But the Company's been losing
7 money. I would say that, the Company's investment in
8 this system is 100 percent equity, so it's a safe
9 investment. And we've got a lot of substantial
10 capital behind it, so we would ask for the lowest bond
11 that the Commission deems appropriate: \$50,000,
12 \$75,000.

13 COMMISSIONER MCKISSICK: And would the
14 Public Staff like to be heard as it relates to this
15 issue that was not addressed in the Stipulation?

16 MS. HOLT: Yes. That was an oversight. We
17 stand by our recommendation of \$100,000, which is in
18 the testimony of Witness Lindsay Darden, which was
19 admitted into evidence.

20 COMMISSIONER MCKISSICK: Okay.

21 MR. FINLEY: Can I make one more point?

22 COMMISSIONER MCKISSICK: Sure. Go right
23 ahead.

24 MR. FINLEY: You know, as we got toward the

1 finish line here, so to speak, one of the things that
2 the Company agreed to do was to waive the filing of
3 the rebuttal testimony. So we had it all prepared and
4 ready to go and address some of the issues that the
5 Public Staff raised, but we deemed it appropriate in
6 the end to try to compromise and come up with a
7 position that we could live with, although, you know,
8 whenever you do that, you win some, you lose some.
9 Nobody is particularly happy with the whole
10 settlement, so just to help you put that in
11 perspective.

12 COMMISSIONER MCKISSICK: Okay. And would
13 the Company provide the Commission an update on the
14 status of the mixed use development that's currently
15 pending. And based upon information that's available
16 to you today, what is the anticipated timing of that
17 development coming on-line and being served by the
18 wastewater utility entity?

19 MR. HOWSARE: We plan on getting approvals.
20 We are kind of waiting on this to go back to the Town
21 because they want us to have a CPCN and see it before
22 we made an Application. So we plan on making that
23 Application for that development late this year.

24 MR. FINLEY: And when you start you're --

1 MR. HOWSARE: I would probably begin
2 construction in mid '25 and complete it in '26.

3 MR. FINLEY: Mid '25 if all the pieces fall
4 into place, and completion in '26.

5 MR. HOWSARE: End of '25; early '26.

6 MR. FINLEY: End of '25 early '26. The
7 Company understands that it needs to go back to the
8 Town to get the Town's approval to move forward with
9 that part of the development, and the parties in that
10 endeavor have been waiting for the Commission in this
11 endeavor to grant the CPCN before we can finalize that
12 extra step and move into that part of the development.

13 COMMISSIONER MCKISSICK: Okay. And while it
14 wasn't addressed in the Stipulation, I assume that
15 everybody supports the issue, and so the CPCN; is that
16 correct? Can you say that on the record?

17 MS. HOLT: That's correct.

18 COMMISSIONER MCKISSICK: Is that correct,
19 Mr. Finley?

20 MR. FINLEY: By all means.

21 COMMISSIONER MCKISSICK: One of the
22 disadvantages of getting in these Settlement
23 Agreements a little late, sometimes there are details
24 that might come up. Give me one minute, please. And,

1 I guess, the other question would be, as it presently
2 stands, all the title issues have been taken care of
3 and addressed that need to be addressed at this time
4 so that title is vested?

5 MR. HOWSARE: I didn't know there was any
6 title issues.

7 COMMISSIONER MCKISSICK: Appropriately with
8 the entity.

9 MR. FINLEY: Everything is in WWTP's name.
10 Some of it has been there for some time, but it's
11 all -- there are no title issues.

12 COMMISSIONER MCKISSICK: All the title
13 issues have been resolved.

14 MR. FINLEY: Yes, sir.

15 COMMISSIONER MCKISSICK: Is that your
16 understanding, Ms. Holt?

17 MS. HOLT: It is.

18 COMMISSIONER MCKISSICK: Let me look to see
19 if there are any other questions from my fellow
20 Commissioners.

21 Yes, go ahead, Commissioner Brawley.

22 COMMISSIONER BRAWLEY: Thank you. And I
23 guess this question would be for the petitioners. As
24 I understand, you've got \$600,000 in planned

1 improvements that have not yet been fulfilled, and I
2 was wondering how much of that is to expand the system
3 to support the additional construction versus just to
4 support the existing 38 customers?

5 MR. FINLEY: Yeah. It's -- it would have to
6 be done, Commissioner Brawley, if they never move into
7 that mixed use development. So that's improvements
8 that have to be made. There's capacity, and my
9 understanding is, there's capacity in the system the
10 way it's designed to serve that new development. But
11 the equipment and facilities need to be improved so
12 that they work like they're supposed to before -- you
13 know, before that can be done or anything else can be
14 done as we move forward under the DEQ's requirements.

15 COMMISSIONER BRAWLEY: As a follow-up,
16 because I noticed on Page 6 in Section 3, that you're
17 reserving the right to come back on the rates on the
18 38 if the development doesn't go forward. So this
19 is -- so there was some concern that you might be
20 transferring all the risk of development on the rest
21 of the property to ratepayers and, if I understand
22 what you're telling me, that if it's just 38 people,
23 you're still going to have to spend the \$600,000?

24 MR. FINLEY: That is correct.

1 MR. HOWSARE: Approximately, yes.

2 (Sidebar at counsel table.)

3 MR. FINLEY: I'm not going to tell him that.

4 COMMISSIONER BRAWLEY: You're not going to
5 tell us what?

6 MR. FINLEY: The accountant has said that in
7 past cases, when rates were set, and it's not unusual
8 in these cases, the Commission will accept an excess
9 capacity adjustment so that it's not necessarily the
10 case that all the investment is recovered as a rate
11 base.

12 COMMISSIONER BRAWLEY: Okay. We'll deal
13 with that later. I guess as a follow-up question, if
14 the balance of this property isn't developed in the
15 way it is, what is the potential for you service --
16 serving adjacent properties other than the proposed?

17 MR. HOWSARE: There are other nearby
18 properties.

19 MR. FINLEY: Mr. Howsare, says there are
20 other nearby properties.

21 MR. HOWSARE: But this -- our commercial
22 development is reliant upon this plant as well. So I
23 think there's a very high probability that will
24 happen.

1 COMMISSIONER BRAWLEY: Well, you're dealing
2 with commercial real estate, so you never want to say
3 "will." All right.

4 Thank you, Mr. Chairman. That answers my
5 question.

6 COMMISSIONER MCKISSICK: Commissioner
7 Tucker, any questions?

8 COMMISSIONER TUCKER: Yes, sir, just a
9 couple.

10 Mr. Finley, has the Public Staff been
11 approached about your question about a lesser bond,
12 and has there been any negotiations with the Public
13 Staff about that?

14 MR. FINLEY: No, sir. There has not been
15 any discussion about that yet.

16 COMMISSIONER TUCKER: I guess in lieu of the
17 travails of this system and having to put on, you
18 know, call in an emergency operator, I guess the bond
19 was placed that high to make sure everything's
20 covered, although I have reviewed some financials and
21 the new owners seem to be in a position to cover what
22 needs to be done.

23 I guess I -- I don't know if it's proper or
24 not because I'm new, but I'll ask the Public Staff, is

1 there any consideration for a lesser bond?

2 MS. HOLT: Not at this time.

3 MR. FINLEY: Commissioner Tucker, I will say
4 that the bonds are not free and, you know, you got
5 to -- you got to -- you got to put up the money or
6 else you got to get a letter of credit or something
7 like that. And it's not -- not free and just another
8 expense that the Company must incur to continue to do
9 business and service customers.

10 COMMISSIONER TUCKER: Well, I ran a business
11 for 20 years. I bought many bonds over that, so I
12 understand the expense of them. I just was trying to
13 close out this issue today under Chair McKissick's
14 leadership, and, of course, we knew that there was
15 some lack of agreement on the bond. So I'll just take
16 that in consideration.

17 The amortization of the capital
18 improvements; did I read somewhere it was three years
19 only? Is that for something else, ma'am?

20 MR. FINLEY: We're trying to get your answer
21 right now.

22 COMMISSIONER TUCKER: You can get it later
23 if you need to, sir. That's fine with me.

24 MR. FINLEY: We'll get it to you.

1 COMMISSIONER TUCKER: Yes, sir. Thank you.

2 COMMISSIONER MCKISSICK: Is there any
3 questions on Commissioner's questions?

4 MS. HOLT: I'd just like to add one thing to
5 Commissioner Tucker's question regarding the bond.
6 The Company never raised the amount of bond as an
7 issue during -- they didn't file a rebuttal, and it
8 wasn't a part of the Stipulation.

9 So it was not -- we didn't receive a request
10 for a lesser bond amount.

11 COMMISSIONER MCKISSICK: Sure.

12 COMMISSIONER TUCKER: Just as a follow-up,
13 then, how did Public Staff calculate that the bond
14 needed to be \$100,000 when the previous owner only had
15 a \$20,000 bond and forfeited that? And I understand
16 you want to cover that, and I understand what the
17 bonds are for, but there are an expense. I'm just
18 trying to reach a happy medium here, and if they never
19 raise the issue, I understand that as well. Just --
20 you know, it's -- it's an expense, additional expense,
21 and I just want to know how you calculated 100,000
22 versus when it was a 20,000.

23 MS. HOLT: Well, as to -- do you want to
24 speak -- as to when the initial bond was set at

1 \$20,000, circumstances have changed and the
2 legislature has changed the minimum amount of bond to
3 25,000. It was \$10,000. In terms of the exact
4 calculation of the \$100,000 bond, we looked at a lot
5 of different criteria in our assessment of what it
6 should be and -- and we -- and our engineer could
7 better speak to that if you want to call her.

8 COMMISSIONER TUCKER: Well, I'm just trying
9 to understand, you know, the calculation from, you
10 know, what the legislature went to 25,000. You're now
11 at 100. If I were in your shoes, with all the trouble
12 that you've had with this particular case, this
13 docket, I would certainly want to make sure that I ask
14 for enough to cover any future problems that may
15 occur.

16 Although, if I read correctly, the new owner
17 has submitted financials and are in better financial
18 shape than the previous owner. So, you know, I'm a
19 former legislator, negotiator in bills, and those kind
20 of things, and I understand your, perhaps, rigidity
21 and not moving off the 100,000. I'm just asking so we
22 can close this out. Is there any opportunity? Mr.
23 Finley mentioned \$75,000 bond, which is, you know,
24 three times what you had and 50,000 what the

1 legislature requires. Is Public Staff comfortable
2 with maybe moving to that amount?

3 MS. HOLT: We -- perhaps it would be
4 opportune time to take a recess to maybe discuss
5 between the Public Staff and the Company the bond
6 issue, Chair McKissick, if that would be okay.

7 COMMISSIONER TUCKER: I'm only asking
8 because -- excuse me, sir. I interrupted you. Go
9 ahead.

10 COMMISSIONER MCKISSICK: The thing I wanted
11 to just be certain of is, my understanding, the
12 original bond was like \$95,200, but they were not able
13 to raise that amount in terms of the prior operators;
14 is that factually accurate information based upon the
15 records that you have before you?

16 MS. HOLT: I don't know that.

17 COMMISSIONER MCKISSICK: You probably need
18 to go back and check.

19 MS. HOLT: I don't know, but I could check.

20 COMMISSIONER MCKISSICK: All right. Tell
21 you what we will do, at your request we will go ahead
22 and take a 10-minute recess, and we will resume at --
23 it's 10:38 right now; so 10:48 we'll resume, and it'll
24 give you-all a chance to discuss matters.

1 MS. HOLT: Thank you.

2 COMMISSIONER MCKISSICK: Okay. Thank you.

3 (A recess was taken from 10:38 a.m. until 10:50 a.m.)

4 COMMISSIONER MCKISSICK: We are going to go
5 ahead back on the record for the remainder of the
6 hearing.

7 And I'm going to look at Public Staff
8 attorney. I believe you have some information to
9 report, and we'd also like to go ahead and get a
10 witness on the stand so we can make certain that we
11 have all of this officially in the record.

12 MS. HOLT: Certainly. In light of the
13 Commission's questions, we feel that it would be
14 helpful to call Ms. Lindsay Darden to the stand.

15 LINDSAY DARDEN;

16 having been duly sworn,

17 testified as follows:

18 COMMISSIONER MCKISSICK: Can you state your
19 name for the record?

20 THE WITNESS: Lindsay Darden.

21 COMMISSIONER MCKISSICK: Go right ahead.

22 DIRECT EXAMINATION BY MS. HOLT:

23 Q Lindsay, I know your testimony has been admitted
24 into evidence already, but I think I need to go

1 through normal introduction as well.

2 Could you please state your name position
3 for the record?

4 A Lindsay Darden, Utilities Engineer with the
5 Water, Sewer, and Telephone Division.

6 Q And on April 5th, 2024, did you prefile testimony
7 consisting of 35 pages in question and answer
8 form?

9 A Yes.

10 Q An appendix and two exhibits?

11 A Yes.

12 Q Do you have any changes or corrections to your
13 direct testimony?

14 A No.

15 Q Okay. And if I were to ask you those same
16 questions today, would your answers be the same?

17 A Yes.

18 Q All right.

19 MS. HOLT: Ms. Darden's testimony at my
20 earlier request was admitted into evidence. So if
21 it's okay with you, I will proceed with a limited
22 direct?

23 COMMISSIONER MCKISSICK: Feel free to
24 proceed.

1 Q Ms. Darden, there have been some questions
2 regarding the Public Staff's recommended bond
3 amount for this Company of \$100,000, which was
4 not controverted by the Company; nonetheless,
5 what was the basis for your recommendation of
6 \$100,000?

7 A When we consider bond, we look at the size of the
8 system, the complexity of the plant, and the
9 history that the Company has in operations.

10 All of these were considered, and this is
11 also a very unique case where there's the -- the
12 interest of the -- if the plant is with this
13 mixed use development that has yet to be built.
14 So that's a factor in weighing the risk for the
15 current customers when considering in setting the
16 bond.

17 Also, the current state of the plant,
18 although there's been significant improvements,
19 there's still drastic improvements that need to
20 be made, and that was also considered when we
21 made our recommendation.

22 Q Thank you. Commissioner Tucker asked whether or
23 not the Public Staff would consider a lesser bond
24 of a lesser amount.

1 A Yes.

2 Q And could you state, for the record, what your
3 understanding of -- has the Public Staff and the
4 Company discussed a lower bond -- a lower bond
5 amount?

6 A It's my understanding the Company and Public
7 Staff had reached an agreement of setting a bond
8 of \$85,000.

9 Q So that would, in effect, amend your recommended
10 amount?

11 A Yes.

12 Q Amend our Settlement Agreement --

13 A Yes.

14 Q -- to include a \$85,000 bond amount.

15 A Yes.

16 Q Thank you.

17 MS. HOLT: Ms. Darden is available for cross
18 examination.

19 COMMISSIONER MCKISSICK: Mr. Finley, do you
20 have any questions?

21 MR. FINLEY: Yes, please, Chair McKissick.

22 CROSS EXAMINATION BY MR. FINLEY:

23 Q Ms. Darden, it's -- the Public Staff made a
24 recommendation of \$100,000 in its presentation of

1 testimony, correct?

2 A Yes.

3 Q But for one reason or another, it was not
4 included in the Stipulation, correct?

5 A Correct.

6 Q Okay. And, as part of its investigation, the
7 Public Staff looks at the potential owner of a
8 system that's trying to acquire CPCN as to its
9 financial liability and ability to provide
10 service after it receives the CPCN, correct?

11 A Yes.

12 Q And you did that, and you're satisfied that the
13 owners of this system at GWWTP does have the
14 financial resources and wellbeing to continue to
15 operate the system, correct?

16 A Yes.

17 Q And we're in a situation where we've got 38
18 residential customers at the moment?

19 A Correct.

20 Q And we got a situation where we may be adding
21 additional customers, and we're in a situation
22 where, irrespective of whether that additional
23 customers are added or not, substantial
24 improvements need to be made to the system; is

1 that correct?

2 A Correct.

3 Q Now, it's a fact, is it not, that from time to
4 time, the Public Staff will go back and look at
5 the bond that exists and has been approved for a
6 particular system and make a recommendation of
7 the Commission that the existing bond be
8 adjusted, correct?

9 A Yes.

10 Q And so, as time goes by, the bond at the
11 recommendation of the Public Staff or the Company
12 can be to increase the bond or lower the bond,
13 right?

14 A Yes, pending circumstances change or risk factors
15 are adjusted.

16 Q Thank you for that.

17 MR. FINLEY: No further questions.

18 EXAMINATION BY COMMISSIONER MCKISSICK:

19 Q Ms. Darden, it's my understanding that this
20 \$85,000 bond has now been stipulated to and that,
21 that occurred during the recess that we took a
22 few minutes ago; is that correct?

23 A Yes, that's correct.

24 Q Now, have you been at this hearing since it

1 began, at approximately 10:00 a.m.?

2 A Yes.

3 Q Did you hear questions, which I posed to both the
4 Public Staff and to Mr. Finley, relating to a
5 variety of matters either that were contained in
6 the Settlement Agreement or that might have been
7 omitted from the Settlement Agreement?

8 A Yes.

9 Q Did you hear those questions?

10 A Yes.

11 Q Is there anything that you would like to state on
12 the record that would provide supplemental
13 information that might be pertinent to those
14 particular questions which I asked or which you
15 may feel, perhaps, it was omission that was not
16 made by one of the respective attorneys that you
17 would like to provide additional testimony
18 relating to?

19 A The only thing I can think of is just to clarify
20 the questions having to do with the accounting
21 the legal invoices having to do with the CPCN
22 verse the EO. There was a lot of correspondence
23 back and forth with the Public Staff and the
24 Company trying to make that distinction clear,

1 and that was a factor into our calculations and
2 settlement talks.

3 Q And what would you like to clarify as it relates
4 to that?

5 A Just that the -- the costs that were included in
6 this case are for the CPCN and doesn't include
7 the Emergency Operator Application.

8 Q Is there -- are there any other matters beyond
9 that particular issue?

10 A No, not at this time.

11 COMMISSIONER MCKISSICK: Let me see if
12 Commissioners have any questions they'd like to raise.

13 (No response.)

14 COMMISSIONER MCKISSICK: I am not seeing
15 any. I will now see if there are any questions on
16 Commissioner's questions.

17 MR. FINLEY: No, sir. None from the
18 Company.

19 MS. HOLT: None from the Public Staff.

20 COMMISSIONER MCKISSICK: Thank you. Ms.
21 Darden, we appreciate you providing testimony today.

22 Now let me look to both counsel and see if
23 there are any documents or exhibits that need to be
24 included into the record that we have not already

1 included as a part of the record at this time.

2 MR. FINLEY: We would like the Application
3 that has been filed to support the CPCN in the record.

4 COMMISSIONER MCKISSICK: Without objection,
5 That's allowed.

6 (WHEREUPON, GWWTP, LLC,
7 Application is received
8 into evidence.
9 Confidential filed under
10 seal.)

11 MS. HOLT: And if we haven't done earlier,
12 we would move the Settlement Agreement and
13 Stipulation, and Stipulation exhibit into evidence.

14 COMMISSIONER MCKISSICK: Okay. Without --
15 yes. Would you like to be heard, Mr. Finley?

16 MR. FINLEY: Hope the Commission now has its
17 record about the bond. Apologize for not having that
18 addressed before now, but I will tell you that I'm
19 going to get fired over here if I don't say this, that
20 is that the Company feels very strongly about having
21 the bond as low as possible.

22 And I told Mr. Howsare that the Public Staff
23 will have the opportunity to look at that bond as we
24 forward. And he would very much like it be known that

1 the Company continues to look at the bond to the
2 extent it continues to do a good job to make
3 improvements that it may want to come in and take
4 another look at the bond at some future time. And
5 he's out to convince his owners and investors that
6 this is the thing to do, and we appreciate the
7 willingness of the Company and the Public Staff to
8 settle that issue and like to make that known to the
9 Commissioners.

10 COMMISSIONER MCKISSICK: Duly noted as a
11 part of the record.

12 (WHEREUPON, Joint
13 Settlement Agreement and
14 Stipulation is received
15 into evidence.)

16 (WHEREUPON, Settlement
17 Exhibit 1 is received into
18 evidence.)

19 COMMISSIONER MCKISSICK: Are there any other
20 matters that we need to address today? I look to both
21 counsel.

22 MR. FINLEY: When do you want your proposed
23 order?

24 COMMISSIONER MCKISSICK: Sure. What I was

1 going to request was that proposed orders be filed by
2 June 7th, 2024, if that's acceptable. And then if you
3 want to brief any matters that you feel are
4 appropriate, they should be filed by -- at the end --
5 by that date.

6 MS. HOLT: That will be fine.

7 COMMISSIONER MCKISSICK: Does that work for
8 you, Mr. Finley?

9 MR. FINLEY: Yes, sir.

10 COMMISSIONER MCKISSICK: On that note, we're
11 hereby adjourned. Thank you for your time.

12 (The proceedings were adjourned.)
13
14
15
16
17
18
19
20
21
22
23
24

C E R T I F I C A T E

I, KAYLENE CLAYTON, DO HEREBY CERTIFY that
the Proceedings in the above-captioned matter were
taken before me, that I did report in stenographic
shorthand the Proceedings set forth herein, and the
foregoing pages are a true and correct transcription to
the best of my ability.

Kaylene Clayton

Kaylene Clayton