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September 25, 2023

Ms. A. Shonta Dunston  
Chief Clerk  
North Carolina Utilities Commission  
430 N. Salisbury Street  
Raleigh, NC 27603

***RE: In the Matter of Application of Old North State Water Company, Inc.  
for Authority to Adjust and Increase Rates for Water Utility Service  
in All Its Service Areas in NC  
Docket No. W-1300, Sub 60  
ONSWC Public Redacted Motion for Approval of Asset Transfer***

Dear Ms. Dunston:

Attached is Old North State Water Company, Inc.'s ("ONSWC") Public Redacted Motion for Approval of Asset Transfer.

Thank you in advance for your assistance with this filing. If you should have any questions, please do not hesitate to contact me.

Very truly yours,

*/s/ David T. Drooz*

David T. Drooz

Attachments

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota  
Nevada New Jersey New York North Carolina Pennsylvania South Carolina Texas Washington

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cc: Reita Coxton, NC Public Staff - Legal  
Jennifer Harrod, Commission Staff - Legal  
Jessica Heironimus, NC Public Staff - Legal  
Gina Holt, NC Public Staff - Legal  
Erica Jones, NC Public Staff - Legal  
Charles M. Junis, PE, NC Public Staff  
John L. McDonald, ONSWC

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. W-1300, SUB 60

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:	)	ONSWC PUBLIC REDACTED MOTION FOR APPROVAL OF ASSET TRANSFER
Application by Old North State	)	
Water Company, Inc., 3212 6 <sup>th</sup>	)	
Avenue South, Suite 200,	)	
Birmingham, Alabama 35222, for	)	
Authority to Adjust and Increase	)	
Rates for Water Utility Service in All	)	
of Its Serve Areas in North Carolina	)	
	)	
	)	

NOW COMES Old North State Water Company, Inc. (ONSWC or Company) through the undersigned counsel and requests that the North Carolina Utilities Commission (Commission) issue an order approving transfer of the ownership of the wastewater force main serving Briar Chapel, and related property, from ONSWC-Chatham North to ONSWC. In support of this public redacted Motion, ONSWC shows the following.

1. On May 19, 2023, the Commission issued its Order Requiring Further Reporting and Directing Old North State Water Company, Inc. to Refrain from Certain Actions (May 19 Order) in the above-captioned docket. The recital of evidence in the May 19 Order includes the statement that:

ONSWC loaned CNH [previously defined as Chatham North Holdings, Inc.] \$5,000,000 in December of 2020 with a maturity date of December of 2024. In connection with that loan, CNH granted ONSWC a security interest in all of its assets and signed a promissory note. ONSWC-C[N]<sup>1</sup> [previously defined as ONSWC-

<sup>1</sup> The Commission's order inadvertently used the term "ONSWC-CH" in the quoted language instead of the previously defined "ONSWC-CN."

Chatham North, LLC] provided an unconditional guarantee. Mr. McDonald executed the loan agreement on behalf of both ONSWC and CNH. CNH has not repaid any portion of the loan.

2. CNH is the manager of ONSWC-CN. ONSWC-CN and CNH have no ongoing business activity and no revenues.

3. CNH and ONSWC-CN are not public utilities and are not affiliates of ONSWC under Chapter 62 of the North Carolina General Statutes. The Commission has no jurisdiction over these entities.

4. The \$5,000,000 loan from ONSWC to CNH related to construction of a force main that is used to carry effluent from the commercial customers of the SD East and SD West Commercial Areas of Briar Chapel, in addition to wastewater from Lift Station A, old force main bypass, to the wastewater treatment facility located in the Briar Chapel subdivision that is operated by ONSWC. See Attachments 1 and 2 for maps showing the force main location and the service area. It also related to construction of a pipeline for water reclamation that is not being used. Both the force main and the reclamation pipeline are owned by ONSWC-CN.

5. ONSWC has been maintaining and using this force main under an informal agreement approved by John McDonald, on behalf<sup>2</sup> of ONSWC, ONSWC-CN, and CNH, but ONSWC has no formal written rights to continued use of the force main at this time.

6. ONSWC has the authority to provide sewer service to the customers

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<sup>2</sup> Mr. McDonald is the President and sole director of ONSWC and of CNH. CNH is the Managing Member of ONSWC-CN. Mr. McDonald therefore has the authority to act on behalf of all parties to this informal arrangement.

in the SD East and SD West Commercial Areas of Briar Chapel and to residential customers in the Briar Chapel subdivision pursuant to an order issued by the Commission issued on April 20, 2015, approving transfer of the water and sewer Certificate of Public Convenience and Necessity from Briar Chapel Utilities, LLC, to ONSWC in Docket Nos. W-1300, Sub 9 and W-1230, Sub 1.

7. It would be preferable for ONSWC to secure the formal ownership right to the force main used to serve its sewer customers rather than continue to rely on an informal agreement.

8. ONSWC has valued the force main and related property at

██████████. Attachment 3 is confidential.

9. ONSWC has entered into an Asset Purchase Agreement with ONSWC-CN under which ownership of the force main and related property would be transferred from ONSWC-CN to ONSWC in exchange for satisfaction of ██████████ of the \$5,000,000 owed by its parent company CNH to ONSWC. Attachment 4 is confidential.

10. The May 19 Order, in ordering paragraph 5, provides “[t]hat ONSWC shall take no action with respect to the loan to CNH and the guarantee from ONSWC-CN without submitting such action to the Commission for review and approval”.

11. ONSWC-CN and CNH have no assets of current value to ONSWC except the force main and related property that are described in Attachment 3. ONSWC-CN and CNH have no sources of revenue. Therefore, the force main and

related property are the only likely sources of even partial satisfaction of the debt that CNH owes to ONSWC.

12. The proposed transfer of the force main and related property from ONSWC-CN to ONSWC in exchange for satisfaction of [REDACTED] of the \$5,000,000 owed by CNH to ONSWC is in the public interest:

- The transfer will remove most of a paper asset (the loan) on the ONSWC books and replace it with physical property that is used and useful in providing utility service to ONSWC customers.
- The transfer will formally provide ONSWC with the rights to assets needed to provide utility service, rather than rely on an informal agreement to use those assets.
- The attached valuation for the assets in the proposed transfer is fair and reasonable.

13. CNH was created with the intent that it would take ownership of the Briar Chapel and Fearington Village utilities, in anticipation that those two utilities would be combined. CNH through ONSWC-CN constructed the pipelines to transfer wastewater from Fearington Village to Briar Chapel, and clean effluent from Briar Chapel to Fearington Village's discharge point.

14. Due to numerous operational and pipeline failures in Briar Chapel by the then contract operator, the residents of Briar Chapel demanded the interconnection project between Briar Chapel and Fearington Village not be approved. Once the interconnection project became non-viable due to public opposition, the need for the reclaimed line was obviated and there was no reason to transfer Briar Chapel into ONSWC-CN and CNH. Additionally, the SD East lift station had to be completed to serve the SD East and SD West commercial areas of Briar Chapel, as the apartments, gas station and Food Lion were already under

construction or were breaking ground shortly. The logical path was to complete the force main and related lift stations for the use of ONSWC.

15. Any remaining loan debt which cannot be repaid will likely be written off at some point in the future.

WHEREFORE, Old North State Water Company, Inc., requests that the Commission issue an order approving the transaction described in Attachment 4 and the valuation of the assets, as shown in Attachment 3, for purposes of vesting ONSWC with ownership of assets it uses to provide utility service and to determine their rate base value for ONSWC.

This the 25th day of September, 2023.

FOX ROTHSCHILD LLP

**/s/ David T. Drooz**

David T. Drooz

North Carolina State Bar No. 10310

Fox Rothschild, LLC

434 Fayetteville Street

Suite 2800

Raleigh, North Carolina 27601

Telephone: 919.719.1258

ddrooz@foxrothschild.com

Attorney for Old North State Water Company,  
Inc.

**VERIFICATION**

John McDonald, being duly sworn, deposes and says: that he is the President of Old North State Water Company, Inc., that he is familiar with the facts set out in the attached ONSWC MOTION FOR APPROVAL OF ASSET TRANSFER; and that the same is true to the best of his knowledge.

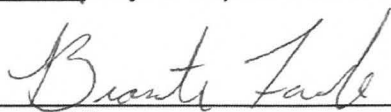
  
\_\_\_\_\_

John McDonald

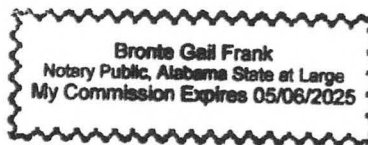
State of Alabama  
County of Montgomery

Sworn to and subscribed before me this

the 22nd day of September 2023.

  
\_\_\_\_\_

Notary Public



My Commission Expires: 05/06/2025



## CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing ONSWC PUBLIC REDACTED MOTION FOR APPROVAL OF ASSET TRANSFER upon all parties of record in this proceeding by emailing the parties, or their counsel of record, an electronic copy or by causing a paper copy of the same to be hand-delivered or deposited in the United States Mail, postage prepaid, properly addressed to each.

This the 25th day of September, 2023.

Electronically Submitted  
/s/ David Drooz