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Public Utilities Act and are not in violation of any rule, order, or regulation of the Commission.

### **First Defense**

Subject to and without waiving the foregoing Motion to Dismiss, and by way of further defense, Respondents respond to the allegations in this Complaint as follows: (1) ONSWC denies that it has engaged in unreasonable and unjust practices in dealing with WLI, or that it has impaired WLI's rights or otherwise breached the Agreement between ONSWC and WLI ("WLI Agreement") relating to Salter's Haven at Lea Marina subdivision ("Salter's Haven" or "Salter's Haven Subdivision"); (2) Pluris denies that it has engaged in unlawful conduct in violation of the provisions of the Public Utilities Act; (3) Pluris denies that it has engaged in unreasonable or unjust practices with regard to WLI's provision of wastewater service to the Lea Tract property ("Lea Tract") adjacent to the Salter's Haven Subdivision; (4) Pluris denies that it has engaged in other unjust or unreasonable practices; (5) Respondents deny that they have engaged in any coordinated actions amounting to practices that are unjust and unreasonable; and (6) there is no impediment to WLI installing the gravity wastewater collection system in the Lea Tract provided for in the WLI Agreement for ONSWC to provide wastewater service in the Lea Tract, if and when development of that tract commences.

### **Second Defense**

By way of additional defense, Respondents respond to the allegations in the numbered paragraphs of the Complaint as follows:

1. The allegations in paragraph 1 are admitted upon information and belief.

2. It is admitted upon information and belief that WLI is engaged in real estate development activities, including the development of the Salter's Haven Subdivision.<sup>1</sup> Respondents are without sufficient knowledge or information to either admit or deny whether WLI is engaged in the construction of wastewater collection facilities for future development of the property known as the Lea Tract that is located adjacent to Salter's Haven, and the same is therefore denied.

3. It is admitted that ONSWC is a public utility, as defined in N.C. Gen. Stat. 62-3(23)a, and the present holder of the franchises authorized by the Commission to provide wastewater service to Salter's Haven Phases 1 and 2, as well as to Majestic Oaks, Majestic Oaks West, and Forest Sound (f/k/a Southside Commons and f/k/a Grey Bull) (collectively, the "Transfer Areas" or the "Service Area"). With regard to the allegations in footnote 1 in paragraph 3, it is admitted that WLI filed a petition to intervene and motion for reconsideration in Docket No. W-1300, Sub 56, which docket concerned the Notice of Contiguous Extension filed by ONSWC relating to Salter's Haven Phases 1 and 2, which Notice was accepted by Commission Order issued in that docket on September 29, 2021. Respondents note that the Commission denied WLI's petition to intervene and dismissed with prejudice WLI's motion for reconsideration in that docket by its *Order Denying Petition to Intervene and Finding Motion for Reconsideration Moot* issued on January 11, 2022. It is also admitted that the Lea Tract is not part of the Salter's Haven Subdivision or part of ONSWC's Service Area. The remaining allegations contained in footnote 1 are denied.

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<sup>1</sup> For the avoidance of doubt, this defined term does not include the tract adjacent to but not included in the Salter's Haven Subdivision, which tract is understood to be owned by Bert Lea and is referred to in the Complaint as the Lea Tract, which is also sometimes referred to as the Extended Service Area ("ESA").

4. It is admitted that ONSWC is a public utility subject to the Commission's jurisdiction as provided for in Chapter 62 of the North Carolina General Statutes. All remaining allegations in paragraph 4 are not allegations of fact, but are legal conclusions that do not require a response.

5. It is admitted that Pluris is a public utility and that Pluris and ONSWC jointly filed an Application for Transfer of the Certificate of Public Convenience and Necessity ("CPCN") ("Joint Application") on October 9, 2020 in Docket Nos. W-1300, Sub 69 and W-1305, Sub 29, by which the parties requested that the Commission approve the transfer of utility franchises for the Transfer Areas (including Salter's Haven Phases 1 and 2), and assets described in the Joint Application from ONSWC to Pluris. It is further admitted that the Joint Application is still pending. The allegations in footnote 2 to paragraph 5 are also admitted. All remaining allegations contained in paragraph 5 are denied.

6. It is admitted that as public utilities, Respondents are subject to the jurisdiction of the Commission as provided for in the North Carolina Public Utilities Act.

7. The allegations in paragraph 7 are not allegations of fact, but are legal arguments or conclusions that do not require a response.

8. It is admitted that the terms of N.C. Gen. Stat. § 62-30 speak for themselves. All remaining allegations in paragraph 8 are not allegations of fact, but are legal conclusions that do not require a response.

9. The allegations in paragraph 9 are admitted upon information and belief.

10. The allegations in paragraph 10 are admitted upon information and belief.

11. It is admitted that on or about December 13, 2018, ONSWC and WLI entered into the WLI Agreement. The terms of the WLI Agreement, which set forth the

rights and responsibilities of those two parties, relate to the installation of a wastewater collection system in the Salter's Haven Subdivision as well as in the Lea Tract, and the provision of service to the Service Area, and are the best evidence of those parties' agreement.

12. Upon information and belief, it is admitted that approximately 29 lots in Phase 1 of Salter's Haven have installed or intend to install grinder pumps and low-pressure wastewater collection facilities, as is specifically provided for in the WLI Agreement, and that of those approximately 29 lots, 8 lots have either installed grinder pumps or are under construction. As provided for in Section 16.6 of the WLI Agreement, the homeowners in Salter's Haven Phase 1 served by low-pressure collection facilities are financially responsible for their grinder pump stations. All remaining allegations in paragraph 12 are denied.

13. It is admitted that the lots in the Salter's Haven Subdivision that have installed grinder pumps and low-pressure wastewater collection facilities have been accepted by ONSWC as part of the wastewater collection system that WLI constructed. All remaining allegations in paragraph 13 are denied.

14. Upon information and belief, it is admitted that WLI purchased the property for the Salter's Haven development from Bert Lea. Also upon information and belief, it is admitted that as part of that transaction Mr. Lea, who retained ownership of the Lea Tract, and WLI agreed that WLI would make water and wastewater service available for the development of 30 homes in the Lea Tract, which is adjacent to but outside the Salter's Haven Subdivision. It is admitted that a map is attached to the Complaint as Exhibit B, which depicts the approximate location of the boundaries of the Salter's Haven Subdivision

and the approximate location of the adjoining Lea Tract. All remaining allegations in paragraph 14 are denied.

15. The allegations in paragraph 15 of the Complaint are denied.

16. The responses set forth above as to the allegations in paragraphs 1-15 and any included footnotes are realleged as if fully set forth herein.

17. It is admitted that the WLI Agreement sets forth the entire agreement between WLI and ONSWC, as shown by the merger/integration clause in Section 17.10 of that Agreement. It is also admitted that the WLI Agreement provides for WLI to construct a wastewater collection system in Salter's Haven to enable the provision of wastewater service to owners of lots in Salter's Haven and to construct a wastewater collection system in the ESA. It is further admitted that the WLI Agreement contemplates that the capacity of the Majestic Oaks wastewater treatment plant ("Majestic Oaks WWTP") would be increased to provide wastewater treatment service to the Salter's Haven Subdivision and the ESA, when ONSWC obtains an extension of the CPCN authorizing it to serve the ESA. However, ONSWC and Pluris intend for Pluris to treat the wastewater from the properties in the Transfer Areas, including the Salter's Haven Subdivision, at Pluris' current 250,000 gallons per day ("gpd") membrane bio-reactor ("MBR") treatment plant in Hampstead ("Pluris WWTP"). Pluris is presently expanding its Pluris WWTP, the capacity of which will be increased to its next increment of 500,000 gpd before Memorial Day. All remaining allegations in paragraph 18 are denied.

18. It is admitted that the WLI Agreement does not expressly prohibit the use of grinder pumps or low-pressure wastewater collection facilities. It is further admitted that while the WLI Agreement affirmatively allows the installation of low-pressure wastewater collection facilities and grinder pumps in at least a portion of the Salter's Haven

Subdivision, it expressly provides for the installation of a gravity collection system to serve the Lea Tract. All remaining allegations in paragraph 18 are denied.

The allegations in footnote 3 in paragraph 18 consist almost entirely of legal arguments or legal conclusions, rather than allegations of fact, and require no response. Respondents admit that they made separate filings in Docket Nos. W-1300, Sub 69 and W-1305, Sub 29. The contents of those filings speak for themselves and are the best evidence of Respondents' statements in those filings. Any allegations contained in footnote 3 inconsistent with those filings are denied. It is further and specifically denied that there is any ambiguity or aspect of the WLI Agreement which would allow or require the Commission to consider extrinsic or parole evidence, given the merger/integration clause contained in Section 17.10 of the WLI Agreement.

19. It is admitted that ONSWC and Pluris negotiated and subsequently entered into an Asset Purchase Agreement ("APA") providing for Pluris' acquisition of certain utility assets and franchises of ONSWC associated with the Transfer Areas, including the franchise authorizing ONSWC to serve Phases 1 and 2 of the Salter's Haven Subdivision. It is further admitted that Respondents filed the Joint Application for transfer of those assets, including the CPCN for Salter's Haven, with the Commission in Docket Nos. W-1300, Sub 69 and W-1305, Sub 29.

20. It is admitted that pursuant to the APA between ONSWC and Pluris, Pluris would acquire certain assets of ONSWC relating to the Transfer Areas, consisting of certain items of wastewater infrastructure, easements, real estate, and franchises to serve the Transfer Areas, and customer accounts, but not including the Majestic Oaks WWTP or the disposal ponds associated with it.

21. It is admitted that ONSWC has informed the Commission in Docket Nos. W-1305, Sub 29 and W-1300, Sub 69 that ONSWC had previously planned to expand the capacity of the Majestic Oaks WWTP from 60,000 gallons per day to 200,000 gallons per day to continue serving the Majestic Oaks and Majestic Oaks West subdivisions, the Hampstead Shopping Center, and to serve the Forest Sound subdivision (f/k/a Southside Commons and f/k/a Grey Bull), and the Salter's Haven Subdivision. ONSWC also informed the Commission that due to environmental regulatory compliance issues with the Majestic Oaks WWTP, ONSWC intends to decommission the Majestic Oaks WWTP and the associated disposal ponds so that wastewater from the Service Area may be treated at Pluris' WWTP. For this reason, the Commission issued its *Order Granting Motion and Approving Bulk Service Rate* in these dockets, which granted ONSWC's request that Pluris be allowed to provide bulk wastewater treatment service to ONSWC for all of the Transfer Areas. It is a superior solution that wastewater from the Service Area be treated at Pluris' WWTP, instead of at ONSWC's Majestic Oaks WWTP. The Majestic Oaks WWTP is experiencing substantial environmental regulatory compliance issues, and the capacity of that plant would have to be expanded to serve the Service Area. In addition, the Majestic Oaks WWTP, which is located within the Majestic Oaks Subdivision, will be able to be decommissioned once the Commission approves the Joint Application. There is sufficient wastewater treatment capacity in Pluris' WWTP to serve the Transfer Areas, including the Salter's Haven Subdivision, as well as the ESA. The allegation in footnote 6—that the provision of wastewater service by Pluris to the Salter's Haven Subdivision and the Lea Tract might not be in accordance with rates, terms, and conditions that are just, reasonable, and nondiscriminatory—is denied. To the contrary, it is reasonable, just, and nondiscriminatory for Pluris to require that a gravity wastewater



collection system be installed in the Lea Tract. All remaining allegations contained in paragraph 21 are denied.

22. The allegations in paragraph 22 are denied.

23. It is admitted that ONSWC has not signed WLI's wastewater collection system permit applications to the North Carolina Department of Environmental Quality ("NCDEQ") for the Lea Tract because the applications provide for grinder pumps and low-pressure wastewater collection facilities in the Lea Tract. All remaining allegations in paragraph 23 are denied.

24. It is denied that ONSWC has breached the WLI Agreement, and that ONSWC has not performed its obligations under the WLI Agreement.

25. It is admitted that WLI's consulting engineer contacted ONSWC to request ONSWC's signatures on the wastewater collection system permit applications to NCDEQ. All remaining allegations contained in paragraph 25 are denied.

26. The allegations contained in paragraph 26 are admitted.

27. The allegations contained in paragraph 27 are denied.

28. The allegations contained in paragraph 28 are denied.

29. The allegations contained in paragraph 29 are denied.

30. It is admitted that ONSWC's rights and obligations under the WLI Agreement have not been assigned to Pluris since the Commission has not yet approved the Joint Application. All remaining allegations contained in paragraph 30 are denied.

31. The allegations contained in paragraph 31 are denied.

32. The allegations contained in paragraph 32 are denied.

33. The responses set forth above as to matters alleged in paragraphs 1-32 and any included footnotes are realleged as if fully set forth here.

34. The allegations contained in paragraph 32 are denied. The WLI Agreement expressly provides for the installation of a gravity wastewater collection system to serve the Lea Tract.

35. The allegations contained in paragraph 35 are denied, except to admit that ONSWC accepted a portion of the wastewater collection system installed or to be installed by WLI in Salter's Haven Phase 1 which will serve approximately 29 lots and consist of a low-pressure wastewater collection system, due to the fact that the WLI Agreement affirmatively provides for the installation of such facilities in a portion of the Salter's Haven Subdivision. The WLI Agreement does not provide for installation of a low-pressure wastewater collection system in the Lea Tract.

36. The allegations contained in paragraph 36 amount to legal arguments or legal conclusions, rather than allegations of fact. To the extent any response is required, the allegations in paragraph 36 are denied.

37. The allegations contained in paragraph 37 are admitted.

38. It is admitted that Randy Hoffer is an employee of Pluris and that he received a telephone call from D. Logan, who Mr. Hoffer understood to be the owner of WLI. During the call, Mr. Logan stated that he had a "gentleman's agreement" with Bert Lea, owner of the Lea Tract, whereby WLI agreed that it would provide wastewater service to the Lea Tract, and that Mr. Logan hoped that Pluris would help WLI achieve that agreement. Mr. Hoffer and Pluris' consulting engineer thereafter visited the Lea Tract, and advised WLI that WLI should install a lift station connected to the future lots in the Lea Tract and connect the lift station to the collection system in the Salter's Haven Subdivision. Is it admitted that WLI asked Pluris to sign its NCDEQ permit application for a low-pressure wastewater collection system in the Lea Tract. However, since the CPCN for the

Salter's Haven Subdivision has not yet been transferred to Pluris and no CPCN has been issued for the Lea Tract, Pluris informed WLI that it does not have standing to execute WLI's NCDEQ permit application for the Lea Tract and that NCDEQ would not accept an application signed by Pluris. All remaining allegations in paragraph 38 are denied.

39. The allegations contained in paragraph 39 are denied. It is specifically denied that the WLI Agreement provides for installation of a low-pressure wastewater collection system in the Lea Tract. Pluris admits that it does not favor the use of low-pressure wastewater collection systems and grinder pumps by any developer. Due to the extent of operational issues and problems associated with low-pressure systems, Pluris does not enter into new development agreements with any developer which provide for installation of such systems, where a gravity system with lift station(s) can be utilized to deliver wastewater to a treatment facility.

Low-pressure wastewater collection systems require that each residence attached to such a system have a grinder pump station. Pluris' experience is that customers living in residences served by grinder pumps will routinely call their wastewater utility service provider when there is a problem with their grinder pump station, even though homeowners typically own the grinder pumps at their residences and are financially responsible for maintaining, repairing, and replacing them. Those calls not only tie up utility service personnel, but the customer is sometimes surprised and usually unhappy to discover that they own and are responsible for the grinder pump, and they often project that unhappiness onto utility personnel who are forced to deal with those situations. In the Lea Tract situation, all 30 potential future residences can be connected to a single lift station from which the wastewater would be pumped to the treatment facility, instead of the scenario that WLI seeks to achieve. Installation of a low-pressure collection system (rather than a

gravity collection system) in the Lea Tract would allow WLI to save money on the cost to install the collection system, but in practical terms would mean that there would be 30 individual lift stations, one at each residence.

Pluris also knows from experience with other wastewater systems it has acquired that include grinder pumps that those pumps cause operational issues and problems with items that are, unfortunately, flushed down toilets (e.g., “flushable” wipes (which are not actually disposable), feminine hygiene products, etc.), which items are not a problem in gravity flow systems.<sup>2</sup> In addition, items that are sometimes flushed (e.g., Barbie dolls) get stuck in a grinder pump’s cutting teeth, causing damage to the unit, leading to service calls, customer dissatisfaction, etc.

Pluris denies WLI’s accusation that it is the subject of “retribution” by Pluris. Pluris has cooperated with and accommodated WLI to provide wastewater service for a number of unrelated WLI developments, two of the most recent being Edens Lane, a 140-lot development, and Sparrows Bend, a 377-lot development, both of which are in Hampstead. Wastewater treatment for both of those developments is provided by Pluris’ WWTP in Hampstead. That Pluris plant is the same facility now providing bulk treatment service to ONSWC for the Transfer Areas, and the same facility about which WLI now expresses a lack of “confidence” in its Complaint.<sup>3</sup>

Pluris’ willingness to cooperate with and accommodate WLI is demonstrated by the fact that Pluris helped WLI with a “permitting problem” at its Sparrows Bend development due to issues with the lift station built by WLI in that development.

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<sup>2</sup> The wastewater treatment problems created by “flushable” wipes is such that they have become the subject of a number of legal proceedings, one example of which is *Commissioners of Public Works of the City of Charleston d.b.a. Charleston Water System v. Costco Wholesale Corporation, et al.*, Case No. 2:21-cv-00042-RMG (USDC – D. S. C.).

<sup>3</sup> Complaint ¶ 62.

Installation of incorrect pumps by WLI in a lift station meant that the lift station could not be certified, which threatened to delay WLI “getting the lots platted as that process is being finalized.”<sup>4</sup> In response to WLI’s consulting engineer’s inquiry, NCDEQ wrote: “We would allow Pluris to pump-n-haul it to their Hampstead plant without a permit if they were willing to do so.”<sup>5</sup> Although Pluris was not involved in the design and construction of that lift station, and did not cause the lift station problems, Pluris was willing to cooperate with the effort to secure permission from NCDEQ, on WLI’s behalf, for Pluris to provide pumping and hauling of wastewater at no cost to WLI, while WLI addressed its lift station issues, which allowed WLI to move forward with the development and sale of homes.

40. The allegations contained in paragraph 40 are denied.

41. The allegations contained in paragraph 41 are denied.

42. The allegations contained in paragraph 42 are denied.

43. The allegations contained in paragraph 43 are denied.

44. The responses set forth above as to the allegations in paragraphs 1-43 and any included footnotes are realleged as if fully set forth here.

45. Pluris admits that other than issues and problems of the type identified in paragraph 39, there is no material impact on the operation of the wastewater treatment plant by the presence of grinder pumps and low-pressure facilities. The remaining allegation in paragraph 45 regarding “collection systems” is denied. As illustrated in the response to the allegations in paragraph 39, there are collection system operational issues and problems

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<sup>4</sup> Email from WLI engineer Tim Clinkscales to NCDEQ’s Dean Hunkele, dated March 6, 2018, at 2:45 PM.

<sup>5</sup> Email response from NCDEQ’s Dean Hunkele to Tim Clinkscales, dated March 6, 2018, at 2:56 PM.

for the serving utility and significant cost responsibility for the homeowner associated with low-pressure wastewater collection systems and the grinder pump stations they require.

46. Respondents imagine that low-pressure collection systems may have been installed elsewhere in coastal areas of the state. However, Respondents do not have sufficient knowledge or information to admit whether low-pressure systems are “common” in coastal areas, and that allegation is therefore denied.

47. The allegations contained in paragraph 47 are denied. A gravity wastewater collection system can be installed in the Lea Tract by WLI, as provided for in the WLI Agreement, and such a system will provide adequate service to any future customers in the Lea Tract without subjecting them to the financial responsibility for maintaining and replacing grinder pump stations. Respondents believe that WLI’s effort to avoid “economic waste” as referenced in paragraph 47 is a reference to the fact that it will be much cheaper for WLI to install a low-pressure system in the Lea Tract (which shifts the pump equipment costs to rate payers/homeowners), than a gravity system, as the latter would require installation of a collection system with a single lift station to pump waste from the 30 residences in the Lea Tract, which would be a superior means of providing service to utility customers in the Lea Tract.

48. The allegations in paragraph 47 are denied. It is Pluris' experience that utility customers in residences served with grinder pump stations typically call the utility and demand that the utility service, repair, and replace their grinder pumps, due to their failure to understand that those responsibilities reside with the ratepayer/homeowner. While not the only reason for Pluris' preference to avoid low-pressure wastewater collection systems, this is a significant operational issue for any wastewater utility.

49. In addition to specifically denying the allegation of “retaliatory action” against WLI, as Pluris has cooperated with and accommodated WLI as illustrated in the response to paragraph 39, all remaining allegations in paragraph 49 are denied.

50. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 and the same are therefore denied.

51. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and the same are therefore denied.

52. It is denied that the actions described in paragraphs 50 and 51 would, if taken, eliminate any material impact on the serving utility arising from use of a low-pressure collection system and grinder pump stations.

53. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 and the same are therefore denied.

54. It is denied that, as a general proposition, Pluris is obligated to agree in new development agreements to accept low-pressure collection systems, grinder pump stations, or other contractual terms with which it does not agree. WLI’s Complaint presents its dispute as to the interpretation of its agreement with ONSWC (the WLI Agreement), specifically as to whether that agreement authorizes WLI to install a low-pressure collection system in the Lea Tract. If the Commission chooses to resolve this issue, and approves the Joint Application, Pluris and WLI will have to abide by the consequences of any such decision. It is denied that Pluris’ acquisition of other existing utility systems, some of which include low-pressure systems, obligates Pluris to agree that WLI can install such a system in the Lea Tract. All remaining allegations contained in paragraph 54 are denied.

55. The allegations contained in paragraph 55 are denied.

56. The allegations contained in paragraph 56 are denied.

57. The responses set forth above as to the allegations in paragraphs 1-56 and any included footnotes are realleged as if fully set forth here.

58. The allegations contained in paragraph 58 are denied.

59. The allegations contained in paragraph 59 are denied except to admit that Pluris could not sign a NCDEQ permit application for the Lea Tract (and NCDEQ would not accept such an application signed by Pluris), as it is neither the certificated utility nor the owner of the franchise for Salter's Haven, much less for the Lea Tract, which is not part of ONSWC's Commission-authorized Service Area.

60. In addition to specifically denying that Pluris has impaired WLI's ability to obtain any permit to which it is entitled, all remaining allegations contained in paragraph 60 are denied.

61. It is admitted that WLI will have to deal with Pluris in the future if it seeks wastewater treatment service in a service area assigned to Pluris in eastern North Carolina. WLI has a history of successfully dealing with Pluris in connection with other WLI developments in eastern North Carolina, most recently including Edens Lane and Sparrows Bend.

62. As to the allegations contained in paragraph 62, while Pluris has no ability to admit or deny the state of WLI's "confidence," Pluris specifically denies any suggestion that it has engaged in any wrongful conduct, and denies all remaining allegations contained in paragraph 62.

63. The allegations contained in paragraph 63 are denied.



64. In addition to specifically denying that Pluris has impaired WLI's ability to obtain any permit to which it is entitled, all remaining allegations contained in paragraph 64 are denied.

65. The responses set forth above as to the allegations in paragraphs 1-64 and any included footnotes are realleged as if fully set forth here.

66. In addition to specifically denying the allegation of coordination, all remaining allegations contained in paragraph 66 are denied.

67. The responses set forth above as to the allegations in paragraphs 1-66 and any included footnotes are realleged as if fully set forth here.

68. In addition to specifically denying that Pluris is providing any service to WLI at the Salter's Haven Subdivision, as it does not hold the franchise for that Service Area, and that ONSWC or Pluris is providing any service to WLI in the Lea Tract, because the Lea Tract is not part of Salter's Haven and is not part of any service area assigned to either ONSWC or Pluris, all remaining allegations contained in paragraph 68 are denied.

69. The allegations contained in paragraph 69 are denied. If and when there is actually some development activity on the Lea Tract requiring wastewater service, ONSWC or Pluris will provide such service to that area, upon being authorized to do so by the Commission.

70. It is denied that Pluris is controlling ONSWC with respect to the installation of grinder pumps and low-pressure facilities in the Lea Tract, or that WLI will not be able to secure adequate service at such time as development activity on the Lea Tract requires wastewater service at such time as the Commission authorizes ONSWC or Pluris to provide such service to that area.

71. The allegations contained in paragraph 71 are denied.

72. The allegations contained in paragraph 72 are denied. Any impediment to constructing wastewater collection facilities on the Lea Tract is solely a product of WLI's desire to avoid the "economic waste" it alleged in paragraph 47 of the Complaint by allowing it to install the cheapest possible collection system in the Lea Tract and passing the resulting costs of doing so on to rate payers/homeowners. ONSWC and Pluris do not believe that the WLI Agreement authorizes WLI to do so.

73. The allegations contained in paragraph 73 are denied. Any impediment to constructing wastewater collection facilities in the Lea Tract is solely a product of WLI's desire to avoid the "economic waste" it alleged in paragraph 47 by allowing it to install the cheapest possible collection system in the Lea Tract and passing the resulting costs on to ratepayers/homeowners. ONSWC and Pluris do not believe that the WLI Agreement authorizes WLI to do so.

74. Respondents lack sufficient information to either admit or deny whether there is a present need to extend wastewater service to the Lea Tract, and that allegation is therefore denied. It is admitted that the customers in the Lea Tract may be served by ONSWC when a Notice of Contiguous Extension is filed by ONSWC (or by Pluris if the Commission approves the Joint Application) and recognized by the Commission.

75. It is admitted that it is appropriate to enforce the terms of the WLI Agreement. All remaining allegations contained in paragraph 75 are denied.

76. All matters alleged in the Complaint not specifically admitted hereinabove are denied.

### **Third Defense**

As a further defense, Respondents allege that Section 17.10 of the WLI Agreement provides as follows:

Entire Agreement. This writing embodies the entire agreement and understanding between the Parties hereto and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

This provision states in no uncertain terms that the entire agreement between ONSWC and WLI relating to the Salter's Haven Subdivision and the adjacent Lea Tract, is contained in the four corners of that Agreement. If the terms of the WLI Agreement do not provide for WLI's installation of a low-pressure system in the Lea Tract, then WLI's claim to that effect fails.

Beyond the plain language of the contract, the legal effect of the merger/integration clause in the WLI Agreement is that where, as here, a written contract includes a merger or integration clause which makes a statement to the effect that the written instrument contains "the entire agreement between the parties," then the parol evidence rule excludes prior or contemporaneous oral agreements which are inconsistent with the written contract.

*Cable TV, Inc. v. Theatre Supply Co.*, 62 N.C. App. 61, 64-65, 302 S.E.2d 458, 460 (1983).

WHEREFORE, ONSWC and Pluris respectfully request that the Commission issue an Order:

1. Dismissing WLI's Complaint;
2. Denying the requested declaratory ruling requested by WLI;
3. Granting the approval of the Transfer Application as requested by ONSWC and Pluris in Dockets W-1300, Sub 69 and W-1305, Sub 29; and
4. Granting such other and further relief as the Commission deems just and proper.



Respectfully submitted, this the 18th day of January, 2022.

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### CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document, has been served on all counsel of record for all parties in these dockets by either depositing same in a depository of the United States Postal Service, first-class postage prepaid and mailed by the means specified below, or by electronic delivery.

This the 18th day of January, 2022.

FOX ROTHSCHILD LLP

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